

Exhibit No. 5P

PUBLIC

Exhibit No.:
Issues: Eureka Acquisition
Witness: Brian W. Eisenloeffel
Exhibit Type: Direct
Sponsoring Party: Missouri-American Water Company
Case No.: WA-2021-0376
Date: November 5, 2021

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. WA-2021-0376

DIRECT TESTIMONY

OF

BRIAN W. EISENLOEFFEL

ON BEHALF OF

MISSOURI-AMERICAN WATER COMPANY

Exhibit No. 5 P
Date 1/20/22 Reporter Bjv
File No. _____

AFFIDAVIT

I, Brian Eisenloeffel, under penalty of perjury, and pursuant to Section 509.030, RSMo, state that I am Director of Operations for Missouri-American Water Company, that the accompanying testimony has been prepared by me or under my direction and supervision; that if inquiries were made as to the facts in said testimony, I would respond as therein set forth; and that the aforesaid testimony is true and correct to the best of my knowledge and belief.


Brian Eisenloeffel

November 5, 2021
Dated

**DIRECT TESTIMONY
BRIAN W. EISENLOEFFEL
MISSOURI AMERICAN WATER COMPANY
CASE NO.: WA-2021-0376**

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DIRECT TESTIMONY

BRIAN W. EISENLOEFFEL

I. INTRODUCTION

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- Q. Please state your name and business address.**
- A. My name is Brian W. Eisenloeffel, and my business address is 727 Craig Rd, St. Louis, MO 63141.
- Q. By whom are you employed and in what capacity?**
- A. I am employed by Missouri-American Water Company (“MAWC”, “Missouri-American” or the “Company”) as the Senior Director of Operations for our St. Louis region.
- Q. Please summarize your educational background and business experience.**
- A. I received my Bachelor of Science in Civil Engineering from the University of Texas at San Antonio. I have been employed at MAWC for 19 years. I began as an engineer working on improvement projects throughout the state of Missouri. After that I became a supervisor in our St. Louis operation at our production plants. I have had various responsibilities as manager of our water main replacement program, manager of our St. Louis transmission and distribution maintenance, and then as the manager of field operations for our East Central Division.
- Q. What are your current employment responsibilities?**
- A. I am currently responsible for all field operations in the St. Louis area for Missouri American Water. I oversee the St. Louis County water system and the Arnold wastewater system as well as several small wastewater systems in St. Louis and Jefferson County.
- Q. What is the purpose of your direct testimony in this proceeding?**
- A. The purpose of my Direct Testimony is to support MAWC’s Application for certificates of

1 convenience and necessity associated with the acquisition of the water and wastewater
2 assets of the City of Eureka.

3 II. EUREKA SYSTEM

4 **Q. How does MAWC plan to provide service to the Eureka area?**

5 **A.** MAWC proposes to purchase substantially all of the water and wastewater assets of the
6 currently unregulated systems of the City of Eureka, Missouri (“Eureka”).

7 **Q. Has MAWC agreed to a Purchase Agreement with Eureka?**

8 **A.** Yes. On November 17, 2020, MAWC entered into a Purchase Agreement with Eureka. A
9 copy of the Purchase Agreement is attached as Schedule BWE-1.

10 **Q. Please generally describe the Eureka water system.**

11 **A.** The City of Eureka water system serves approximately 4,100 water customers. The water
12 system includes six (6) wells, eight (8) booster pump stations, seven (7) storage tanks, and
13 the water distribution system. The water distribution system includes approximately 58.8
14 miles of water main ranging in size from 2-inch to 12-inch, 642 fire hydrants, and
15 associated valves and fittings.

16 **Q. Please generally describe the Eureka wastewater system.**

17 **A.** The City of Eureka wastewater system serves approximately 4,100 wastewater customers.
18 The wastewater treatment plant is a three-cell aerated lagoon plant with a design flow of
19 2.8 million gallons per day, according to the Missouri Department of Natural Resources
20 (MDNR) Operating Permit. The permit is attached as Schedule BWE-2. The wastewater
21 collection system includes ten (10) sewer lift stations, approximately 62.5 miles of sewer
22 main ranging in size from 4-inch to 48-inch, and 1,452 manholes.

23 **Q. What MDNR compliance issues exist with regard to the Eureka system?**

1 A. The wastewater plant is not currently meeting effluent limit parameters. Specifically,
2 removal efficiency related to biochemical oxygen demand (BOD). The current operating
3 permit for the wastewater plant attached as Schedule BWE-2 includes new ammonia limits
4 that will go into effect October 1, 2022. As a condition of this permit Eureka has entered
5 a Schedule of Compliance (SOC). The permit outlines conditions and timeline for new
6 treatment to attain compliance prior to the expiration. The timeline by the MDNR in the
7 permit suggests that improvements should already be under construction. Eureka has not
8 begun the multi-year process to design, permit and construct any plant modifications to
9 meet new ammonia limits with less than a year left on their permit. MAWC witness Jeffery
10 Kaiser addresses MAWC plans for the wastewater plant.

11 **Q. Does MAWC plan any investments in regard to the Eureka water and wastewater**
12 **systems?**

13 A. Yes. Those will be addressed by MAWC witness Jeffrey Kaiser.

14 **III. MAWC QUALIFICATIONS**

15 **Q. Please describe MAWC.**

16 A. MAWC is a Missouri corporation, active and in good standing with the Missouri Secretary
17 of State, with its principal office and place of business at 727 Craig Road, St. Louis,
18 Missouri 63141.

19 **Q. Does MAWC currently provide water and/or sewer service in Missouri?**

20 A. Yes. MAWC currently provides water service to approximately 470,000 customers and
21 sewer service to approximately 15,000 customers in the State of Missouri. MAWC is a
22 "water corporation," a "sewer corporation" and a "public utility" as those terms are defined
23 in Section 386.020 and is subject to the jurisdiction and supervision of the Commission.

1 **Q. Do you have any examples of the quality of service provided by MAWC?**

2 A. In 2020, MAWC was ranked the second highest in the Midwest for customer service among
3 water utilities by J. D. Power. MAWC's parent, American Water Works Company,
4 consistently ranks in the top quartile of independent customer service surveys when
5 compared to other utilities. Our four St. Louis water plants have participated in the
6 Partnership for Safe Water for 18 years or longer. This program is sponsored by the
7 American Water Works Association (AWWA) and the United States Environmental
8 Protection Agency (EPA) as well as other organizations to recognize commitment to
9 superior water quality. Less than 2% of surface water systems participate in the Partnership
10 program.

11 **IV. CERTIFICATE OF CONVENIENCE AND NECESSITY ("CCN")**

12 **Q. For what area does MAWC seek CCNs in this case?**

13 A. A map of the area sought to be certificated is attached as **Schedule BWE-3**. A copy of the
14 description of the area is attached as **Schedule BWE-4**. By this description, MAWC
15 intends to cover the city limits of Eureka (within St. Louis County) and any customers
16 currently provided service by Eureka. MAWC will receive a franchise from Eureka as
17 called for by the Purchase Agreement.

18 **Q. Has MAWC performed a feasibility study associated with the Eureka systems?**

19 A. Yes. Attached hereto are **Schedule BWE-5 C**, a feasibility study for the Eureka water
20 system, and **Schedule BWE-6 C**, a feasibility study for the Eureka sewer system. No
21 external financing is anticipated. **Schedule BWE-5 C** and **Schedule BWE-6 C** have been
22 identified as "Confidential" in accordance with Commission Rule 20 CSR 4240-
23 2.135(2)(A)(3) and (6) as they contain market specific information and information

1 representing strategies employed in contract negotiations.

2 **VI. SERVICE**

3 **Q. What business office will be used to provide service to Eureka?**

4 A. Eureka customers will be temporarily served from MAWC operations located at the Eureka
5 Wastewater Plant on Truitt Drive until a permanent office is located, with hours from 8:00
6 am-4:30 pm, Monday thru Friday. The same customer service team that takes care of
7 existing MAWC customers will also take care of Eureka customers. Customer service
8 hours are 7:00 am-7:00 pm, Monday thru Friday and 24/7 coverage for emergencies.

9 **Q. How would customers in the Eureka service area contact the Company during non-
10 business hours?**

11 A. The same customer service team that takes care of existing MAWC customers will also
12 take care of Eureka customers. Customer service hours are 7:00 am-7:00 pm, Monday thru
13 Friday and 24/7 coverage for emergencies.

14 **Q. What payment options will be available to Eureka customers?**

15 A. MAWC currently accepts and will offer to Eureka customers payment options of check,
16 credit/debit cards and electronic funds transfer (EFT). Eureka customers will also have the
17 option to make MAWC payments online via check or credit/debit cards.

18 **Q. Does MAWC have a process for integrating the Eureka customers into its system?**

19 A. Yes. Attached hereto and marked as **Schedule BWE-7** is an Integration Appendix which
20 includes information relevant to the integration process of this proposed acquisition

21 **Q. What benefits are associated with MAWC's purchase of the Eureka systems and
22 MAWC's provision of water and sewer service to the Eureka area?**

1 A. The grant of the requested CCNs (and approval of the underlying transaction) will result
2 in the provision of regulated water and sewer service to the current and future residents of
3 the service area. The water and sewer assets of Eureka would be acquired by MAWC, a
4 Missouri public utility, and be subject to the jurisdiction of the Commission. MAWC has
5 considerable expertise and experience in providing water and sewer utility services to
6 residents of the State of Missouri and is fully qualified, in all respects, to own, operate and
7 improve the water and sewer systems currently being operated in and around the City of
8 Eureka. Moreover, MAWC has the experience and resources to address the new permit
9 limits that will impact the Eureka wastewater plant when the current permit expires and to
10 address the aesthetic issues identified by residents.

11 **VIII. APPRAISAL**

12 **Q. Was an appraisal process of the Eureka systems conducted?**

13 A. Yes. Details about the appraisal may be found in the Direct Testimony of Company witness
14 Joseph E. Batis.

15 **IX. CONCLUSION**

16 **Q. Please summarize your testimony?**

17 A. The City of Eureka and its citizens have shown their desire to sell the water and sewer
18 systems to MAWC. The Company has expertise in providing both water and sewer
19 services. The citizens of Eureka voted to sell to MAWC and we can efficiently and
20 affordably provide critical water and wastewater services. Because MAWC is regionalized,
21 particularly in St. Louis County, it can provide economies of scale and a high level of
22 efficiency. In fact, Eureka is one of only two communities in St. Louis County that is not
23 currently operated by MAWC. The Company's nationwide affiliations and mass

1 purchasing power gives it the ability to gain significant savings on necessary equipment.
2 MAWC has the workforce resources available to improve and maintain the Eureka water
3 and sewer systems and provide quality customer service. The Commission should approve
4 MAWC's application for CCNs.

5 **Q. Does this conclude your direct testimony?**

6 **A. Yes.**

Agreement for the Purchase of Eureka, Missouri's Water and Wastewater Systems

This Agreement for Purchase of Water and Wastewater System (the "Agreement") is made and entered into on the 17th day of November, 2020 by and between Missouri-American Water Company, a Missouri corporation ("Missouri-American"), and the City of Eureka, Missouri ("Seller"). Hereinafter, Missouri-American and Seller may be referred to individually as a "Party" or together as the "Parties".

RECITALS:

A. Seller currently owns and operates a water treatment facility and distribution system and sewer treatment and collection system with approximately 4,000 water connections and 3,900 sewer connections (collectively, the "System") in or near Eureka, Missouri.

B. Seller desires to sell substantially all of the assets that constitute or are used in furtherance of the System to Missouri-American pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, and the representations, warranties, and covenants contained herein, and in exchange for other consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

ARTICLE 1

Definitions and Related Matters

For purposes of this Agreement, the capitalized terms used herein shall have the meanings assigned to them herein or in the attached Exhibit 1 and, for purposes of this Agreement and all other documents executed in connection herewith, the rules of construction set forth in Exhibit 1 shall govern.

ARTICLE 2

Purchase and Sale of Assets; Closing

2.1 Transfer of Assets. On and subject to the terms and conditions of this Agreement, at the Closing on the Closing Date and effective as of the Effective Time, Missouri-American shall purchase, acquire and accept from Seller, and Seller shall sell, convey, transfer, assign and deliver to Missouri-American, free and clear of all Encumbrances, the Acquired Assets. Notwithstanding anything to the contrary contained in this Section 2.1 or elsewhere in this Agreement, the Excluded Assets are not part of the sale and purchase contemplated hereunder, are excluded from the Acquired Assets, and shall remain the exclusive property of Seller subsequent to the Closing.

2.2 Consideration.

(a) The consideration for the System and the Acquired Assets shall consist of the Purchase Price. At Closing, Missouri-American shall pay to the Seller and such other payees set forth on Schedule 2.2, in accordance with wire transfer instructions to be provided by the Seller to Missouri-American at least three Business Days prior to the Closing Date, in immediately available funds, an aggregate amount equal to the Purchase Price.

(b) Missouri-American shall prepare the Allocation, which Allocation shall be binding upon Seller. The Parties shall report, act, and file Tax Returns in all respects and for all Tax purposes consistent with the Allocation. No Party shall take any Tax position (whether in audits, Tax Returns, or otherwise) that is inconsistent with or contrary to the Allocation. In the event that the Allocation is disputed by any Governmental Authority, the Party receiving notice of such dispute will promptly notify the other Party, and

the Parties will consult in good faith as to how to resolve such dispute in a manner consistent with the Allocation.

2.3 No Assumption of Liabilities. Any and all Liabilities of Seller, whether or not incurred in connection with the operation of the System, shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by Seller. Notwithstanding anything to the contrary contained in this Agreement, Missouri-American will not assume or be deemed to assume, and shall have no liability or obligation with respect to, any Liability of Seller, none of which Liabilities are part of the Contemplated Transactions.

2.4 Closing. Unless this Agreement is first terminated pursuant to Article 8 hereof, and subject to the satisfaction or, if permissible, waiver of each of the conditions set forth in Article 5 hereof, the Closing will take place at the Eureka City Hall or such other place or by such other means (e.g., facsimile and overnight delivery of original execution documents) as is agreed to by the Parties at 10:00 A.M., Central time, on (a) such date as is three (3) Business Days after the date on which all of the conditions set forth in Article 5 hereof shall have been satisfied or (to the extent permissible) waived (other than those conditions which, by their nature are to be satisfied or waived at Closing but subject to their satisfaction or waiver at Closing) or, if Missouri-American shall so elect, the final day of Seller's billing period of which such date is a part or (b) such other date as the Parties hereto may agree upon in writing. In any event, the Closing shall be effective as of the Effective Time.

2.5 Closing Obligations.

In addition to any other documents to be delivered under other provisions of this Agreement, at Closing:

(a) Seller shall deliver or cause to be delivered to Missouri-American, together with funds sufficient to pay all Taxes necessary for the transfer, filing or recording thereof (if any), the following documents:

(i) the Bill of Sale, duly executed by Seller;

(ii) the Intangible Assignments, duly executed by Seller;

(iii) the Franchise Agreement, duly executed by Seller;

(iv) all Consents and approvals from Governmental Authorities, and third parties under Contracts, necessary to ensure that Missouri-American will continue to have the same full rights with respect to the Acquired Assets as Seller had immediately prior to the consummation of the Contemplated Transactions, including the written Consents, in form and substance acceptable to Missouri-American, of the Governmental Authorities and third parties set forth in Schedule 2.5(a)(iv);

(v) a payoff letter from each lender from which Seller has incurred indebtedness for borrowed money which is outstanding, if any, and from each person or entity listed on Schedule 2.2, and a release of all Encumbrances relating to the Acquired Assets executed, filed and/or recorded by the holder of or parties to each such Encumbrance (including without limitation any violations cited by the Missouri Department of Natural Resources or any other Governmental Authority with authority over the System or the Acquired Assets, whether or not listed on Schedule 3.14), if any, in each case in substance and form reasonably satisfactory to Missouri-American and its counsel;

(vi) an affidavit, as provided in Section 1445(b)(2) of the Code, stating under penalties of perjury that Seller is not a foreign person within the meaning of Section 1445(f)(3) of the Code;

(vii) for each interest in Real Property and each easement and/or right-of-way affecting any Real Property or Acquired Asset, whether or not identified on Schedule 3.4, a recordable warranty deed or such other appropriate document or instrument of transfer or approval, as the case may require, each in form and substance reasonably satisfactory to Missouri-American;

(viii) such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by Missouri-American, each in form and substance reasonably satisfactory to Missouri-American;

(ix) a copy of each permit, license, easement, land-right and other necessary authority for the operation of the System and the Acquired Assets, in each case validly issued in the name of the Seller and in full force and effect;

(x) a copy of Tax clearance certificates indicating Seller has no Tax due and dated within 30 days of Closing from any jurisdictions for which Seller may be subject to Tax, including, without limitation, Missouri;

(xi) the certificate contemplated by Section 5.1(d);

(xii) a legal opinion of Seller's legal counsel, affirmatively opining to such matters as Missouri-American or its legal counsel may reasonably request, including but not limited to the due authorization and execution of this Agreement by Seller and the enforceability thereof;

(xiii) a copy, certified by the Clerk of the City of Eureka to be true, complete and correct as of the Closing Date, of the resolutions of the Eureka Board of Aldermen approving the Contemplated Transactions and as to the incumbency and signatures of the officers of Seller executing this Agreement or any of the Transaction Documents on behalf of Seller;

(xiv) to the extent such transfer is requested by Missouri-American, evidence satisfactory to Missouri-American of the transfer of all utilities with respect to the System from Seller to Missouri-American; and

(xv) all other documents, instruments and writings required or reasonably requested by Missouri-American to be delivered at or prior to the Closing pursuant to this Agreement or otherwise required in connection herewith.

(b) At or prior to the Closing, Missouri-American shall deliver the following:

(i) to the Seller and such other payees set forth on Schedule 2.2, in accordance with wire transfer instructions to be provided by the Seller to Missouri-American at least three Business Days prior to the Closing Date, in immediately available funds, an aggregate amount equal to the Purchase Price;

(ii) to the Seller, the Intangible Assignments, duly executed by Missouri-American; and

(iii) to the Seller, the Franchise Agreement, duly executed by Missouri-American;

(iv) to the Seller, all other documents, instruments and writings required or reasonably requested by Seller to be delivered at or prior to the Closing pursuant to this Agreement or otherwise required in connection herewith.

ARTICLE 3
Representations and Warranties of Seller

Seller hereby makes the following representations and warranties to Missouri-American, each of which is true and correct on the date hereof, will be true and correct at Closing and shall survive the Closing and the Contemplated Transactions hereby to the extent set forth herein:

3.1 Organization of Seller. Seller is a duly organized municipality organized and in good standing under the Laws of the State of Missouri, with full power and authority to conduct the Business and the System as they are now being conducted and to own, lease and operate the System and the Acquired Assets.

3.2 Enforcement; Authority; No Conflict.

(a) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency or other similar Laws affecting the rights of creditors generally and by general principles of equity. Seller has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Transaction Documents and to consummate the Contemplated Transactions. The Eureka Board of Aldermen has duly authorized the execution, delivery, and performance of this Agreement by Seller and no other proceeding on the part of Seller is necessary to authorize the execution, delivery and performance of this Agreement.

(b) This Agreement has been, and the Transaction Documents will be, duly executed and delivered by Seller.

(c) Neither the execution, delivery or performance by Seller of this Agreement or the Transaction Documents nor the consummation by it of the Contemplated Transactions will (i) contravene, conflict with or result in a violation of any provisions of the municipal code or other governing documents of Seller, (ii) contravene, conflict with or result in a violation of or give any Governmental Authority or other Person the right to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under any Laws or any Order to which Seller or any of the Acquired Assets may be subject, (iii) contravene, conflict with or result in a violation of any of the terms or requirements of or give any Governmental Authority the right to revoke, withdraw, suspend, cancel, terminate or modify any Permit or other authorization by a Governmental Authority that is held by Seller or that otherwise relates to the System or any of the Acquired Assets, (iv) contravene, conflict with or result in a violation or breach of any provision of, require the Consent of any Person under, or give any Person the right to declare a default or exercise any remedy under or to accelerate the maturity or performance of or to cancel, terminate or modify any Contract, indenture, mortgage, note, lease or other instrument or document to which Seller is a party or by which any of the Acquired Assets are bound or (v) result in the imposition or creation of any Encumbrance upon or with respect to any of the Acquired Assets.

(d) No filings or registrations with, notifications to, or authorizations, Consents or approvals of, a Governmental Authority or third party are required to be obtained or made by Seller in connection with the execution, delivery or performance by Seller of this Agreement or the Transaction Documents or the consummation by Seller of the Contemplated Transactions except related to the MoPSC approval. Neither the Contemplated Transactions nor the Transaction Documents will result in the creation of any Encumbrance against any of the Acquired Assets.

3.3 Assets. Except as set forth on Schedule 3.3, Seller has clear, good, and marketable title to, or a valid leasehold interest in, all of the Acquired Assets, free and clear of all Encumbrances. Except as set forth on Schedule 3.3, none of the Acquired Assets are leased or on loan by Seller to any third party. The Acquired Assets constitute all of the assets and property that, together with the rights granted or conveyed under the Transaction Documents, are necessary for the operation of the System, the Business and the Acquired Assets as conducted as of the date hereof. Upon the Closing, Missouri-American shall be vested