

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 11th day of July, 2012.

In the Matter of Missouri-American Water Company)
for a Certificate of Convenience and Necessity)
Authorizing it to Install, Own, Acquire, Construct,) **File No. WA-2012-0066, et al.**
Operate, Control, Manage, and Maintain Water and)
Sewer Systems in Christian and Taney Counties,)
Missouri.)

ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT

Issue Date: July 11, 2012

Effective Date: July 21, 2012

Procedural History

On August 26, 2011, Missouri-American Water Company (“MAWC”) filed two applications with the Missouri Public Service Commission seeking the grant of Certificates of Convenience and Necessity (“CCNs”).¹ Specifically, MAWC requests that the Commission grant it authority to install own, acquire, construct, operate, control, manage, and maintain water and sewer systems for the public in the incorporated village of Saddlebrooke located in Christian and Taney Counties, Missouri.²

The Commission issued notice and set an intervention deadline. AG Processing, Inc. (“AGP”) was granted intervention.³ The Commission’s Staff filed a recommendation to conditionally grant the CCN and a recommendation on setting initial rates for water and

¹ The applications were filed pursuant to Sections 393.140 and 393.170, RSMo 2000, and Commission Rules 4 CSR 240-2.060, 4 CSR 240-3.305, and 4 CSR-3.600.

² The water and sewer files (File Numbers WA-2012-0066 and SA-2012-0067, respectively) were consolidated on October 17, 2011. File Number WA-2012-0066 was designated as the lead case. A full description of the water and sewer systems appears in Staff’s Recommendation filed on January 6, 2012; i.e. EFIS Docket Entry No. 13, *Staff Recommendation*, pp. 2-3. EFIS is the Commission’s Electronic Information and Filing System

³ AGP late filed its application on February 12, 2012. No party objected and intervention was granted on February 27, 2012.

sewer service. The Office of the Public Counsel (“Public Counsel”) and AGP opposed the recommendation, and the Commission convened a local public hearing to hear public comments.⁴ Ultimately, a procedural schedule was set culminating with an evidentiary hearing to be held on June 28-29, 2012.⁵

On June 28, 2012, at the start of the evidentiary hearing, the parties requested a recess to negotiate a possible settlement. On June 29, 2012, at the parties request, the procedural schedule was suspended, and later that day, they filed a Unanimous Stipulation and Agreement (“Agreement”) purporting to resolve all issues in this matter.⁶

The Agreement

The agreement includes provisions addressing: (1) transfer of ownership; (2) approval of the CCN; (3) rate base issues; (4) depreciation rates; (5) tariff sheets with customer and commodity charges; (6) future rate adjustments; (7) future rate filings; (8) a commitment for a cost allocation study; (9) compliance with the Commission’s rules; (10) records maintenance; (11) follow-up reviews; (12) compliance with the Agreement; and (13) rate-making principles. Further, in the event the Commission accepts the terms of the Agreement, the signatories agree that all prefiled testimony not yet admitted into evidence shall be received into evidence without the necessity of the witnesses taking the stand. And finally, the Agreement contains a contingent waiver of rights. If the Commission unconditionally approves the Agreement without modification, the signatories agree to waive their respective rights to present oral argument and written briefs pursuant to §536.080.1, RSMo 2000; their respective rights to the reading of the transcript by the

⁴ EFIS Docket Entry No. 35, *Order Setting Local Public Hearing, Directing Notice and Modifying Procedural Schedule*, issued and effective on April 2, 2012. The Local Public Hearing was held in: Branson, Missouri on May 1, 2012.

⁵ EFIS Docket Entry No. 28, *Order Setting Procedural Schedule*, issued and effective on March 15, 2012.

⁶ EFIS Docket Entry No. 66, *Unanimous Stipulation and Agreement*, filed on June 29, 2012.

Commission pursuant to §536.080.2, RSMo 2000; their respective rights to seek rehearing, pursuant to §536.500, RSMo 2000; and their respective rights to judicial review pursuant to §386.510, RSMo 2000.⁷

Standards for Approving a CCN and for Setting Initial Rates

Section 393.170.3 authorizes the Commission to grant a certificate of convenience and necessity when it determines, after due hearing, that the proposed grant is "necessary or convenient for the public service."⁸ It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.⁹ The Commission may impose the conditions it deems reasonable and necessary for the grant of a CCN,¹⁰ and the Commission has articulated the specific criteria to be used when evaluating CCN applications as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.¹¹

⁷ Section 386.510 was revised in 2011 with the passage and signing into law of S.B. 48, although the revisions have not yet appeared in a Cumulative Supplement.

⁸ Section 393.170; *St. ex rel. Intercon Gas, Inc. v. Public Service Commission*, 848 S.W.2d 593, 597 (Mo. App. 1993); *State ex rel. Webb Tri-State Gas Co. v. Public Service Commission*, 452 S.W.2d 586, 588 (Mo. App. 1970). The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," *Intercon Gas, Inc.*, 848 S.W.2d at 597; *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973), and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.⁸ *Id.*; *State ex rel. Transport Delivery Service v. Burton*, 317 S.W.2d 661 (Mo. App. 1958).

⁹ *In the Matter of the Application of Southern Missouri Gas Company, L.P., d/b/a Southern Missouri Natural Gas, for a Certificate of Public Convenience and Necessity Authorizing It to Construct, Install, Own, Operate, Control, Manage, and Maintain a Natural Gas Distribution System to Provide Gas Service in Lebanon, Missouri*, Case Number GA-2007-0212, et al., 2007 WL 2428951 (Mo. P.S.C.); *Intercon Gas, supra*, quoting *St. ex rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo. App. 1975).

¹⁰ Section 386.170.3.

¹¹ *In the Matter of RDG Development, LLC for a Certificate of Convenience and Necessity Authorizing it to Own, Operate, Maintain, Control and Manage a Sewer System in Callaway County, Missouri*, File Number SA-2010-0096, 2009 WL 5069710 (Mo. P.S.C. 2009); *In re Central Jefferson County Utilities, Inc.*, File Number SO-2007-0071, 2007 WL 824040, 7-8 (Mo. P.S.C. 2007); *In Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991); *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173, 1994 WL 762882, *3 (Mo. P.S.C. 1994). These factors are sometimes referred to as the "Tartan Factors."

The Commission also has exclusive jurisdiction to establish public utility rates,¹² and the rates it sets have the force and effect of law.¹³ A public utility may submit rate schedules or “tariffs,” and thereby suggest to the Commission rates and classifications which it believes are just and reasonable, but the final decision is the Commission's,¹⁴ subject to judicial review on the question of reasonableness.¹⁵ A “just and reasonable” rate is one that is fair to both the utility and its customers.¹⁶ It is no more than is sufficient to “keep public utility plants in proper repair for effective public service, [and]. . . to insure to the investors a reasonable return upon funds invested.”¹⁷ The Commission must consider the “public interest” when it makes its determination as to whether the proposed rates are just and reasonable,¹⁸ and it is within the discretion of the Commission to determine when the evidence indicates the public interest would be served.¹⁹

Analysis and Decision²⁰

While the procedural posture of this case evolved into that of a contested nature, contested matters may be resolved informally by agreement.²¹ The parties have now retracted their request for an evidentiary hearing, have requested approval of their

¹² *May Department Stores Co. v. Union Electric Light & Power Co.*, 107 S.W.2d 41, 57 (Mo.1937).

¹³ *State ex rel. Utility Consumers' Council of Missouri, Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 49 (Mo. banc 1979).

¹⁴ *May Dep't Stores*, 107 S.W.2d at 50.

¹⁵ *St. ex rel. City of Harrisonville v. Pub. Serv. Comm'n of Missouri*, 291 Mo. 432, 236 S.W. 852 (1922); *City of Fulton v. Pub. Serv. Comm'n*, 275 Mo. 67, 204 S.W. 386 (1918); *City of St. Louis v. Pub. Serv. Comm'n of Missouri*, 276 Mo. 509, 207 S.W. 799 (1919); *Kansas City v. Pub. Serv. Comm'n of Missouri*, 210 S.W. 381 (1919); *Lightfoot v. City of Springfield*, 361 Mo. 659, 236 S.W.2d 348 (1951).

¹⁶ *St. ex rel. Valley Sewage Co. v. Pub. Serv. Comm'n*, 515 S.W.2d 845 (Mo. App., K.C.D. 1974).

¹⁷ *St. ex rel. Washington University et al. v. Pub. Serv. Comm'n*, 272 S.W. 971, 973 (Mo. banc 1925).

¹⁸ *In re Rahn's Estate*, 291 S.W. 120, 123 (Mo. 1926); *Morrshhead v. Railways Co.*, 96 S.W. 261, 271 (Mo. banc 1907); *Missouri Public Service Co. v. City of Trenton*, 509 S.W.2d 770, 775 (Mo. App. 1974).

¹⁹ *State ex rel. Intercon Gas, Inc. v. Public Service Comm'n of Missouri*, 848 S.W.2d 593, 597-598 (Mo. App. 1993).

²⁰ Section 386.420.2, RSMo 2000 requires a report of the Commission's conclusions.

²¹ The Agreement waives procedural requirements that would otherwise be necessary before final decision. Section 536.060, RSMo 2000. Any requirement for a hearing was met in this matter when the parties agreed to forego a contested case proceeding after being provided the opportunity for an evidentiary hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Comm'n of State of Mo.*, 776 S.W.2d 494, 495-496 (Mo. App. 1989).

Agreement to resolve all issues, and have requested the Commission to enter all pre-filed testimony into the record.²²

The Commission recognizes that the Agreement for the grant of the CCNs and for setting initial rates resulted from negotiations between many parties with diverse interests. The signatories agree that the grant of the CCNs is necessary and convenient for the public service and that the proposed revenue requirement and rate design set out in the Agreement are just and reasonable. The exemplar tariffs filed with the Agreement demonstrate that the proposed initial rates mirror those of the nearby Stonebridge subdivision. Indeed, at the Local Public Hearing in Branson, which was attended by approximately half of the customers to be served, the testimony demonstrates that the residents favor MAWC's acquisition of the assets to provide water and sewer service²³ and that the rates existing for the Stonebridge subdivision were fair and acceptable.²⁴

Based on the Commission's independent and impartial review of the verified filings and the testimony entered into the record, the Commission finds and concludes that all legal requirements for granting the requested CCNs have been satisfied.

The Commission has also compared the substantial and competent evidence on the whole record with the Agreement as to setting initial rates and the design for implementing

²² See Paragraph 28 of the Agreement. With the admission of the testimony, the record thus contains substantial and competent evidence. The competent and substantial evidence standard is not a standard of proof but, rather, is a standard of judicial review of an administrative agency's decision pursuant to section 536.140.2, RSMo Cum.Supp.2010; *Schnell v. Zobrist*, 323 S.W.3d 403, 412 (Mo. App. 2010).

²³ The Village of Saddlebrooke has entered into a franchise agreement with MAWC for provision of these services. See EFIS Docket Entry No. 12, *Supplement to Application*, filed on December 22, 2011 and Schedule DRW -2, attached to the Direct Testimony of Dennis Williams for MAWC.

²⁴ Transcript, Volume 2.

those rates between rate classes.²⁵ The Commission independently and impartially finds and concludes that the rates proposed in the Agreement, and the rate design determining how those rates are collected among the individual rate classes, are just and reasonable and in the public interest.

Further, the Agreement's proposed terms support the provision of safe and adequate service. The initial rates approved by the Commission today are concluded to be no more than what is sufficient to keep MAWC's utility plants in proper repair for effective public service, and insure to MAWC's investors an opportunity to earn a reasonable return upon funds invested.

The parties expressly ask for an order approving all of the specific terms and conditions of the Agreement.²⁶ And, without further discussion, the Commission incorporates all provisions of the Agreement, as if fully set forth, into this order.

THE COMMISSION ORDERS THAT:

1. The Unanimous Stipulation and Agreement ("Agreement") filed on June 29, 2012 is approved. The provisions of the Agreement are incorporated into this order, as if fully set forth, unconditionally and without modification. The signatory parties shall comply with the terms of the Agreement. A copy of the Agreement shall be attached to this order as "Attachment A."

2. The parties' prefiled testimony, already filed in the Commission's Electronic Filing and Information System ("EFIS"), is hereby admitted into evidence. A notation in EFIS for

²⁵ Although the Agreement is commonly referred to as a "Black Box Settlement," and the signatory parties do not stipulate to a specific capital structure, rate base, return on equity and over-all rate of return, the revenue requirement agreed upon by the parties falls within the ranges advocated in the parties' testimony.

²⁶ The Agreement waives procedural requirements that would otherwise be necessary before final decision. Section 536.060, RSMo 2000. Also, because the settlement being approved disposes of this action, the Commission need not separately state its findings of fact. Section 536.090, RSMo 2000.

the issuance of this order shall stand in lieu of a notation in EFIS for any exhibit's entry into the record.

3. Missouri American Water Company shall file tariff sheets consistent with this order.

4. The Commission's Staff shall file a recommendation regarding approving Missouri American Water Company's compliance tariffs no later than seven days after the tariff sheets referenced in Paragraph 3 are filed.

5. This order shall become effective on July 21, 2012.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Jarrett, Kenney,
and Stoll, CC., concur.

Stearley, Deputy Chief Regulatory Law Judge