

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Joint Application of )  
Missouri-American Water Company and )  
Aqua Missouri, Inc. Aqua Development, Inc., )  
and Aqua/RU, Inc. d/b/a Aqua Missouri, Inc. )  
for Authority for Missouri-American Water ) File No. \_\_\_\_\_  
Company to Acquire Certain Assets of )  
Aqua Missouri, Inc., Aqua Development, Inc., )  
and Aqua/RU, Inc. d/b/a Aqua Missouri, Inc. )  
and, in Connection Therewith, )  
Certain Other Related Transactions. )

**JOINT APPLICATION AND,  
IF NECESSARY, MOTION FOR WAIVER**

COME NOW Missouri-American Water Company (MAWC) and Aqua Missouri, Inc., Aqua Development, Inc., and Aqua/RU, Inc. d/b/a Aqua Missouri, Inc. (collectively “Aqua Missouri”) and, pursuant to Section 393.190, RSMo, 4 CSR 240-3.310 and 4 CSR 240-3.605, state the following to the Missouri Public Service Commission (Commission) as their Joint Application and, If Necessary, Motion for Waiver:

**BACKGROUND INFORMATION**

1. MAWC is a Missouri corporation with its principal office and place of business at 727 Craig Road, St. Louis, Missouri 63141. MAWC is a Missouri corporation in good standing. A certified copy of MAWC’s certificate of good standing was submitted in Case No. SA-2007-0316 and is incorporated by reference. MAWC currently provides water service to the public in and around the cities of St. Joseph, Joplin, Brunswick, Mexico, Warrensburg, Parkville, Riverside, Jefferson City, and parts of St. Charles, Warren, Jefferson and Platte Counties, and most all of St. Louis County, Missouri. MAWC currently provides water service to

approximately 452,000 customers. MAWC provides sewer service to approximately 1,100 customers in Jefferson, Platte, and Warren Counties, Missouri. MAWC is a “water corporation,” a “sewer corporation” and a “public utility” as those terms are defined in Section 386.020 RSMo. 2000, and is subject to the jurisdiction and supervision of the Commission as provided by law. MAWC has no overdue Commission annual reports or assessment fees. There is no pending action or final unsatisfied judgment or decision against MAWC from any state or federal agency or court which involves customer service or rates, which action, judgment or decision has occurred within three years of the date of this Joint Application.

2. Aqua Missouri, Inc. is a Missouri corporation with an office and place of business at 5402 Business Hwy 50, Jefferson City, Missouri 65102. A certified copy of Aqua Missouri, Inc.’s certificate of good standing is attached hereto as **Appendix A**. Aqua Missouri, Inc. currently provides water and sewer service to the public in and around parts of Cole, Callaway and Pettis Counties, Missouri. As of December 31, 2009, Aqua Missouri, Inc. provides water service to approximately 436 customers and sewer service to approximately 2,223 customers. Aqua Missouri, Inc. is a “water corporation,” a “sewer corporation” and a “public utility” as those terms are defined in Section 386.020 RSMo, and is subject to the jurisdiction and supervision of the Commission as provided by law. Aqua Missouri, Inc. has no overdue Commission annual reports or assessment fees. There is no pending action or final unsatisfied judgment or decision against Aqua Missouri, Inc. from any state or federal agency or court which involves customer service or rates, which action, judgment or decision has occurred within three years of the date of this Joint Application.

3. Aqua Development, Inc. is a Texas corporation with an office and place of

business at 5402 Business Hwy 50, Jefferson City, Missouri 65102. A certified copy of Aqua Development's certificate that it is authorized to do business in Missouri is attached hereto as **Appendix B**. Aqua Development currently provides water and sewer service to the public in and around parts of Morgan County, Missouri. As of December 31, 2009, Aqua Development provides sewer service to approximately 24 customers. Aqua Development is a "sewer corporation" and a "public utility" as those terms are defined in Section 386.020 RSMo, and is subject to the jurisdiction and supervision of the Commission as provided by law. Aqua Development has no overdue Commission annual reports or assessment fees. There is no pending action or final unsatisfied judgment or decision against Aqua Development from any state or federal agency or court which involves customer service or rates, which action, judgment or decision has occurred within three years of the date of this Joint Application.

4. Aqua/RU, Inc. d/b/a Aqua Missouri, Inc. is a Missouri corporation with an office and place of business at 5402 Business Hwy 50, Jefferson City, Missouri 65102. A certified copy of Aqua/RU's certificate of good standing and its fictitious name registration are attached hereto as **Appendix C**. Aqua/RU currently provides water service to the public in and around parts of Barry, Benton, Christian, Greene, Stone and Taney Counties, Missouri. As of December 31, 2009, Aqua/RU provides water service to approximately 1,154 customers. Aqua/RU is a "water corporation" and a "public utility" as those terms are defined in Section 386.020 RSMo, and is subject to the jurisdiction and supervision of the Commission as provided by law. Aqua/RU has no overdue Commission annual reports or assessment fees. There is no pending action or final unsatisfied judgment or decision against Aqua/RU from any state or federal agency or court which involves customer service or rates, which action, judgment or decision has

occurred within three years of the date of this Joint Application.

5. Communications in regard to this Application should be addressed to:

Greg Weeks, Vice President  
Missouri-American Water Company  
727 Craig Road  
St. Louis, Missouri 63141  
(314) 996-2351  
(314) 997-2451 (facsimile)  
[greg.weeks@amwater.com](mailto:greg.weeks@amwater.com)

Kenneth C. Jones, Corporate Counsel  
Missouri-American Water Company  
727 Craig Road  
St. Louis, Missouri 63141  
(314) 996-2278  
(314) 997-2451 (facsimile)  
[kenneth.jones@amwater.com](mailto:kenneth.jones@amwater.com)

Terry Rakocy, President  
Aqua Missouri, Inc.  
1100 S. Schuyler Avenue  
Kankakee, Illinois 60901  
(815) 614-2031  
[tjrakocy@aquaamerica.com](mailto:tjrakocy@aquaamerica.com)

Christopher Luning, Vice President and Corporate Counsel  
762 West Lancaster Avenue  
Bryn Mawr, Pennsylvania 19010  
(610)645-1068  
[cpluning@aquaamerica.com](mailto:cpluning@aquaamerica.com)

#### **THE TRANSACTION**

6. MAWC and Aqua Missouri have entered into an Asset Purchase Agreement dated December 10, 2010 (Agreement), a copy of which is attached as **Appendix D** and incorporated herein by reference. Pursuant to the Agreement, MAWC proposes to purchase substantially all of the assets of Aqua Missouri, as specifically described in the Agreement under the terms and provisions further described in the Agreement, including its certificates of convenience and

necessity.

7. Because Aqua Missouri is a water and sewer corporation doing business in the State of Missouri, it is subject to the provisions of Section 393.190.1, RSMo, which states, in pertinent part, that “no . . . water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public . . . without having first secured from the Commission an order authorizing it so to do.”

#### **ADDITIONAL INFORMATION**

8. MAWC’s verification of authority authorizing the purchase of the subject assets and related transactions contemplated by the Agreement is attached as **Appendices E**. A certified copy of the resolutions of the Board of Directors of Aqua Missouri, Inc., Aqua Development, Inc., and Aqua/RU, Inc. d/b/a Aqua Missouri, Inc. authorizing the sale, respectively, of the subject assets and related transactions contemplated by the Agreement are attached as **Appendices F, G and H**.

9. A balance sheet and income statement with adjustments showing the results of the acquisition of the property for MAWC is attached as **Appendix I**.

10. The sale of assets should have no impact on the tax revenues of relevant political subdivisions as both MAWC and Aqua Missouri are private entities.

11. MAWC proposes to serve the customers of Aqua Missouri utilizing the existing rates, the rules and regulations of Aqua Missouri, until such time as the rates or rules and regulations may be modified according to law.

## **PUBLIC INTEREST**

12. The proposed acquisition of the specified assets of Aqua Missouri and the related transactions are not detrimental to the public interest and, in fact, will be consistent with and will promote the public interest. The assets of Aqua Missouri would be acquired by MAWC, a Missouri public utility, and remain subject to the jurisdiction of the Commission. MAWC has considerable expertise and experience in providing water and sewer utility services to residents of the State of Missouri and is fully qualified, in all respects, to own and operate the systems currently being operated by Aqua Missouri and to otherwise provide safe, reliable and affordable service.

## **CONTINGENT REQUEST FOR WAIVER**

13. This case is not likely to be a contested case within the meaning of Commission rule 4 CSR 240-4.020(2) because previous applications addressing the same issues presented in this filing have generally not become contested proceedings. However, in the event that the Commission nevertheless concludes that the filing of this Joint Application is likely to be a contested case, Applicants request a waiver of the sixty (60) day notice for good cause shown as permitted by Commission rule 4 CSR 240-4.020(2)(A).

14. The reason for this request relates to the nature of an asset purchase negotiation as that which resulted in the execution of the subject Agreement and the filing of this Joint Application. Sixty days prior to the filing, the parties did not have an agreement. In fact, this Joint Application has been filed the next business day following the execution of the Agreement. It would serve no purpose to wait sixty days before filing the application for Commission approval. Accordingly, to the extent that the Commission may find it to be applicable, the

parties request a waiver from the provisions of Commission Rule 4 CSR 240-4.020(2) to allow for the filing of this Joint Application.

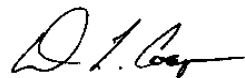
WHEREFORE, MAWC, Aqua Missouri, Inc., Aqua Development, Inc., and Aqua/RU, Inc. d/b/a Aqua Missouri, Inc. respectfully request that the Commission issue its order:

(A) authorizing Aqua Missouri, Inc., Aqua Development, Inc., and Aqua/RU, Inc. d/b/a Aqua Missouri, Inc. to sell and MAWC to acquire the assets identified herein of Aqua Missouri, Inc., Aqua Development, Inc., and Aqua/RU, Inc. d/b/a Aqua Missouri, Inc. to include the certificates held by these entities or, in the alternative a certificate to provide water and sewer service in the areas now served by those entities;

(B) authorizing MAWC to enter into, execute and perform in accordance with the terms described in the Agreement attached to this Joint Application and to take any and all other actions which may be reasonably necessary and incidental to the performance of the acquisition; and,

(C) granting such other relief as may be deemed necessary and appropriate to accomplish the purposes of the Agreement and the Joint Application and to consummate related transactions in accordance with the Agreement.

Respectfully submitted,



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Dean L. Cooper MBE#36592  
BRYDON, SWEARENGEN & ENGLAND P.C.  
312 E. Capitol Avenue  
P. O. Box 456  
Jefferson City, MO 65102  
(573) 635-7166

(573) 635-3847 facsimile  
[dcooper@brydonlaw.com](mailto:dcooper@brydonlaw.com)

Kenneth C. Jones MBE #38498  
MISSOURI-AMERICAN WATER COMPANY  
727 Craig Road  
St. Louis, MO 63141  
(314) 996-2278  
(314) 997-2451 (telefax)  
[kenneth.jones@amwater.com](mailto:kenneth.jones@amwater.com)

ATTORNEYS FOR MISSOURI-AMERICAN  
WATER COMPANY

**//S// Marc H. Ellinger by dlc**

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Marc H. Ellinger, CPA #40828  
Attorney at Law  
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Christopher P. Luning Vice President, Corporate  
Development and Corporate Counsel  
762 West Lancaster Ave.  
Bryn Mawr, Pennsylvania 19010  
(610) 645-1068  
[cpluning@aquaamerica.com](mailto:cpluning@aquaamerica.com)

ATTORNEYS FOR AQUA MISSOURI, INC.,  
AQUA DEVELOPMENT, INC., AND  
AQUA/RU, INC. D/B/A AQUA MISSOURI, INC.

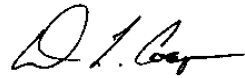


## CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on December 13, 2010, to the following:

Office of the General Counsel  
Governor Office Building  
Jefferson City, MO 65101  
[gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov)

Office of the Public Counsel  
Governor Office Building  
Jefferson City, MO 65101  
[opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)

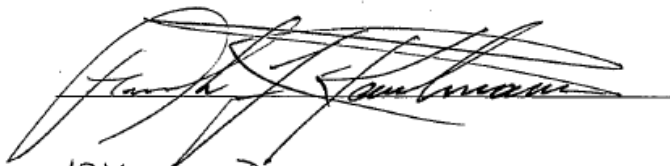


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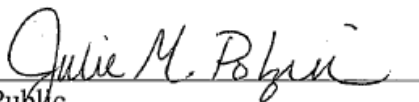
State of Missouri     )  
                                  ) ss  
County of St. Louis    )

I, Frank Kartmann, having been duly sworn upon my oath, state that I am the President of Missouri-American Water Company, that I am duly authorized to make this affidavit on behalf of Missouri-American Water Company, that the matters and things stated in the foregoing Joint Application and appendices thereto are true and correct to the best of my information, knowledge and belief.



Subscribed and sworn before me this 13th day of December, 2010.

**JULIE M. POLZIN**  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Louis County  
My Commission Expires 6/11/2012  
Commission # 08575308

  
\_\_\_\_\_  
Notary Public

AFFIDAVIT

State of Illinois        )  
                                  ) ss  
County of Kankakee    )

I, Terry J. Rakocy, having been duly sworn upon my oath, state that I am President of Aqua Missouri, Inc., that I am duly authorized to make this affidavit on behalf of Aqua Missouri, Inc., that the matters and things stated in the foregoing Joint Application and appendices thereto are true and correct to the best of my information, knowledge and belief.

  
\_\_\_\_\_

Subscribed and sworn before me this 13<sup>th</sup> day of December, 2010.

  
\_\_\_\_\_  
Notary Public

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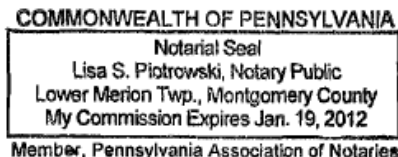
Commonwealth of Pennsylvania )  
 ) ss  
County of Montgomery )

I, Christopher P. Luning having been duly sworn upon my oath, state that I am Vice President, Corporate Development and Corporate Counsel of Aqua Development, Inc., that I am duly authorized to make this affidavit on behalf of Aqua Development, Inc., that the matters and things stated in the foregoing Joint Application and appendices thereto are true and correct to the best of my information, knowledge and belief.

Christopher P. Luning

Subscribed and sworn before me this 13<sup>th</sup> day of December, 2010.

Lisa S. Piotrowski  
Notary Public



AFFIDAVIT

State of Illinois        )  
                                  ) ss  
County of Kankakee    )

I, Terry J. Rakocy, having been duly sworn upon my oath, state that I am President of Aqua/RU, Inc. d/b/a Aqua Missouri, that I am duly authorized to make this affidavit on behalf of Aqua/RU, that the matters and things stated in the foregoing Joint Application and appendices thereto are true and correct to the best of my information, knowledge and belief.

Terry J. Rakocy

Subscribed and sworn before me this 13<sup>th</sup> day of December, 2010.

Jane Zivanni  
Notary Public

## **APPENDICES**

- Appendix A Aqua Missouri, Inc. Certificate of Good Standing
- Appendix B Aqua Development, Inc certificate that it is authorized to do business in Missouri
- Appendix C Aqua/RU, Inc. d/b/a Aqua Missouri, Inc. Certificate of Good Standing and copy of its fictitious name registration
- Appendix D Asset Purchase Agreement between Missouri-American Water Company and Aqua Missouri, Inc., Aqua Development Company, d/b/a Aqua Missouri, Inc., Aqua/RU, Inc. d/b/a Aqua Missouri dated December 10, 2010
- Appendix E MAWC Verification of Authority
- Appendix F Certified copy of the resolutions of the Board of Directors of Aqua Missouri, Inc.
- Appendix G Certified copy of the resolutions of the Board of Directors of Aqua Development, Inc.
- Appendix H Certified copy of the resolutions of the Board of Directors of Aqua/RU, Inc. d/b/a Aqua Missouri, Inc.
- Appendix I Pro Forma Balance Sheet and Income Statement for MAWC