

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

In the Matter of Missouri-American Water        )  
Company for a Certificate of Convenience        )  
and Necessity Authorizing it to Install, Own,    )        File No. SA-2021-0017  
Acquire, Construct, Operate, Control, Manage, )  
And Maintain a Sewer System in and around    )  
The City of Hallsville, Missouri.                )

**DISTRICT’S AMENDED RESPONSE TO THE STAFF  
RECOMMENDATION AND REQUEST FOR EVIDENTIARY HEARING**

COMES NOW Boone County Regional Sewer District (“District”) under 4 CSR 240-2.080(13) and the Commission’s *Order Setting Deadline for Response to Staff’s Recommendation* dated November 23, 2020, by counsel, and files the *District’s Amended Response to the Staff Recommendation and Request for Evidentiary Hearing* in response to the *Staff Recommendation to Grant Certificate of Convenience and Necessity* (“Staff Recommendation”) filed by the Missouri Public Service Commission’s Staff (“Staff”). In support thereof, the District states as follows:

**INTRODUCTION**

1. Missouri-American Water Company (“MAWC”) has entered into an Asset Purchase Agreement with the City of Hallsville (“City”) outlining MAWC’s purchase of the City’s sewer systems.

2. MAWC has filed an Application with the Missouri Public Service Commission (“the Commission”) requesting a Certificate of Convenience and Necessity (“CCN”) to install, own, acquire, construct, operate, control, manage, and maintain the

sewer systems in the City **and around** the City in unincorporated areas of Boone County, as an addition to MAWC's existing service territories.<sup>1</sup>

3. MAWC's Application is unique for two reasons: (1) It involves an applicant, MAWC, that is a lower level continuing authority seeking approval to acquire and operate a privately-owned sewer system in the service area boundaries of a higher level continuing authority, the District, over the District's objection;<sup>2</sup> and (2) It involves a sewer system with a long history of Missouri Department of Natural Resources compliance violations that is rapidly nearing treatment capacity, yet contains no plan or realistic estimated cost of addressing these issues or realistic projection of how these costs will impact rates.

4. On November 18, 2020, Staff filed a recommendation to approve MAWC's request for a CCN in its Application, with various conditions.

5. Having reviewed MAWC's Application, Feasibility Study, the Missouri State Operating Permit for the City's sewer system ("MSOP")<sup>3</sup>, the City's Request for Proposals for the sale of its sewer system ("RFP")<sup>4</sup>, Staff's Recommendation, and the

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<sup>1</sup> See Staff Recommendation, Appendix A at p. 3, FN 5 ("The majority of the [City's] collection system lies within the corporate boundaries. The storage basins and land application system are outside the corporate boundaries.")

<sup>2</sup> Under 10 CSR 20-6.010(2)(B)3, MAWC is a Level 3 Continuing Authority. The Missouri Clean Water Commission has approved the District, along with the City of Columbia and Boone County, as the Level 2 Continuing Authority for Boone County. Per MAWC, the District's service area is "all of Boone County not served by a municipal wastewater system." Response in Opposition to BCRSD's Application to Intervene ("MAWC Opp.") MAWC Opp. ¶ 8.

<sup>3</sup> A copy of the MSOP for the Hallsville Wastewater Treatment Facility is attached hereto as Appendix A.

<sup>4</sup> A copy of the City's RFP seeking proposals for the sale of its sewer system is attached hereto as Appendix B.

Staff Memorandum, the District has identified three issues that it seeks to bring to the attention of the Commission.

6. The first issue is that MAWC lacks authority to acquire and operate a sewer system in the District's service area. In addition, MAWC's proposal fails to meet two of the five Tartan Criteria established in *In the Matter of Tartan Energy Company, et al.*, 3 Mo. PSC 173, 177 (1994) because MAWC's acquisition and operation of the City's system is detrimental to the public interest and is not economically feasible. These issues are laid out in further detail below.

7. The District respectfully requests an evidentiary hearing in this matter, or alternatively, denial of MAWC's Application requesting a CCN and waiver of the 60-day notice requirement contained in 20 CSR 4240-4.017(1).

**I. MAWC Lacks Authority To Operate In The District's Service Area.**

8. The District is a higher level continuing authority than MAWC.<sup>5</sup>

9. The District's service area, as noted by MAWC itself, is "all of Boone County not served by a municipal wastewater system."<sup>6</sup>

10. Under sections 201 and 208 of the Federal Clean Water Act, 33 U.S.C § 1251 *et seq.* as amended, the District has the planning right to decide what entities and persons build and operate wastewater treatment facilities within its service area.

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<sup>5</sup> 10 CSR 20-6.010(2)(C). *See also* District's Reply to MAWC's Response in Opp. to District's Application to Intervene.

<sup>6</sup> *See* MAWC Response in Opp. to District's Application to Intervene ¶ 8.

11. This is very important because the District, within the boundaries of its service area, has a limited stream capacity within its borders in which to discharge treated wastewater.

12. Sewer systems upstream from the District's facilities use and reduce the District's capacity. This reduction in stream capacity impacts the District's ratepayers because it will result in the District having to spend more money on wastewater treatment to meet the requirements of the Missouri State Operating Permits for its wastewater treatment facilities.

13. The City's system is upstream from the District's facilities such that the operation and management of it directly impacts the amount of money the District must spend on wastewater treatment and the rates charged to the District's ratepayers.

14. The City's system has a long history of violations cited by DNR for a variety of reasons, including the type of facility, age of facility, and fact that the City does not own any of the land on which its wastewater is land applied or have control over the landowners.

15. The City's system is antiquated and the only real solution is for the City—or the purchaser of the system such as MAWC—to build a new treatment plant or transport the flow (wastewater) from the system's storage lagoon to a different treatment facility.

16. Both the Staff and MAWC inherently recognize that granting the CCN requested by MAWC will promote the usurpation of the District's jurisdiction in its service area of Boone County over the its objection.

17. It is undisputed that all customers served by the City's sewer system reside in Boone County, both in and outside of the city limits of Hallsville.

18. The Staff's Memorandum states:

In its Application, MAWC requested a service area which mirrors Hallsville's city limit boundary lines. However, the supplied map and legal description did not include all of the City's assets, such as storage basins and underground wastewater lines.<sup>7</sup>

19. The Staff's Memorandum recognizes that most of the City's collection system is in the City's limits and that the storage basins and land application system are outside the City's limits in unincorporated Boone County.<sup>8</sup>

20. Per the Staff's Memorandum, the Staff and MAWC agree that the actual service area requested by MAWC includes not only the area within Hallsville's city limit boundary, but also portions of unincorporated Boone County.<sup>9</sup>

21. Per the Staff, MAWC will be filing a revised service area map and corresponding legal description to reflect its actual service area.<sup>10</sup>

22. If the Commission grants the requested CCN, all customers of MAWC's privately owned sewer system (the storage basins and land application system of which are in the District's service area) will be in the District's service area.

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<sup>7</sup> See Staff Recommendation, Appendix A at p. 8.

<sup>8</sup> See Staff Recommendation, Appendix A at p. 3, FN 5.

<sup>9</sup> See Staff Recommendation, Appendix A at p.8.

<sup>10</sup> See Staff's Recommendation, Attachment A at p. 8.

23. The District will not agree to waive its authority over its service area<sup>11</sup> to the detriment of its customers.

24. Accordingly, MAWC lacks authority to acquire and maintain the City's sewer system.

25. Because MAWC lacks authority to acquire and maintain the City's sewer system, the requested CCN should be denied because granting it would unlawfully usurp the District's authority within Boone County<sup>12</sup> to the detriment of the District's ratepayers.

## **II. MAWC's Proposal Is Detrimental To The Public Interest**

26. The Staff concludes that MAWC's proposal "is not detrimental to the public interest" based on its analysis of the first four Tartan Criteria, the fact that the City residents voted to sell they City's system, and the involvement of the City's elected officials in negotiating and signing the Purchase Agreement.<sup>13, 14</sup>

27. The Staff's Recommendation and Staff's Memorandum do not address or adequately consider several aspects of the City's system and MAWC's proposals that should be considered by the Commission.

28. As noted above, the City's sewer system is antiquated and has a history of violating environmental laws. This history is bound to repeat itself absent the

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<sup>11</sup> See the District's *Reply to MAWC's Response in Opp. to District's Application to Intervene*. See also 10 CSR 20-6.010.

<sup>12</sup> *Id.* See also 10 CSR 20-6.010.

<sup>13</sup> See Staff's Recommendation, Attachment A at p.10.

<sup>14</sup> It should be noted that the City's residents did not vote to sell the City's sewer system to MAWC, only to sell it in general. See Staff's Recommendation, ¶11.

construction of a new treatment facility or transporting the wastewater from the sewer system to a new facility for a couple of reasons.

29. First, continued operation of the system is not feasible because it requires wastewater to be land applied and MAWC will not own any land application fields.<sup>15</sup> Instead, these lands are leased from two third party owners. The two leases pose significant issues.

30. One lease expired on November 30, 2020 and MAWC has not indicated a renewal occurred or that it has secured additional land application fields.<sup>16</sup> Also, the owner of these formerly leased fields owns the pivots and associated wastewater irrigation equipment so this equipment is no longer available for use by MAWC.<sup>17</sup>

31. Even assuming the ongoing existence of these leases, both have a troubling history of issues. One of the landowners has constructed waterways that have resulted in partially treated wastewater entering the receiving stream and presumably will continue to do so in the future.<sup>18</sup> Also, both owners have failed to take wastewater when land application is necessary to prevent illegal storage lagoon discharges.<sup>19</sup>

32. Even more concerning is that an analysis of the City's RFP and current MSOP shows that the treatment capacity of the sewer system's existing lagoon and land

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<sup>15</sup> See Staff's Recommendation, Attachment A at pp.4-6.

<sup>16</sup> See Staff's Recommendation, Attachment A at p. 5 ("The City's Contract with the farmer near Cell 2 was extended to November 30, 2020 on July 1, 2020.").

<sup>17</sup> See Staff's Recommendation, Attachment A at pages 5-6.

<sup>18</sup> *Id.* at p.5.

<sup>19</sup> *Id.*

application system are rapidly reaching maximum capacity because growth in the City is “rising steadily.”<sup>20</sup>

33. The currently approved additions to the collection and treatment system result in a projected growth of 322 lots in Douglas Pointe, Echo Ridge Silver Creek and Sunnyslope Subdivisions.<sup>21</sup>

34. Based on the analysis by the District and its engineering consultant, the current reported flow plus the additional flow from this growth will exceed the permitted design flow of the City’s current sewer system by 26%. Also, this additional flow from growth reduces the storage capacity of the lagoon to 201 days. The District’s engineering consultant’s experience is that a minimum of 180 days of storage capacity is needed and 210 days storage are recommended when wastewater is land applied to row crops (as the MSOP reflects to be the case with the City’s system).<sup>22</sup>

35. In addition, the District’s engineering consultant has indicated that the current wastewater irrigation rates in the MSOP of 24-inches per year for Fields #004, #005, #006, and #008 containing row crops and 36-inches per year for Field #002 containing grass are excessive to the detriment of the environment. The District’s engineering consultant’s experience has indicated the wastewater irrigation rate should be 6-inches per year for the fields with row crops and 24-inches per year for fields with

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<sup>20</sup> See Staff’s Recommendation, Attachment A at 4. (“Growth within the City has been rising steadily”). See also Appendices A and B.

<sup>21</sup> See Appendix B, RFP. These lots are in addition to the 323 homes recently constructed. *Id.* (“The recently constructed Phase 1 of the Echo Ridge subdivision included 233 homes. The first two phases of Douglas Point added 90 homes. The construction of more phases of both subdivisions are planned, in addition to the aforementioned Meadow Lake Subdivision.”)

<sup>22</sup> See Appendix A, MSOP.



grass. Reducing the irrigation rate results in the amount of wastewater needing to be land applied exceeding the land application capacity of MAWC. In other words, MAWC lacks sufficient land application fields.

36. For all the above reasons, a MAWC’s proposal—which does not address the need for or cost of a new treatment system or the transport of wastewater from the City’s current system to a different treatment facility—is a band-aid approach to the issues with City’s swiss cheese system.

37. The District and its engineering consultant estimate that the minimum cost to build a new treatment system is \$6,300,000, which includes \$4,500,000 in construction costs, \$900,000 in engineering costs, and \$900,000 in contingencies. This figure does not include any land acquisition costs.

38. The District and its engineering consultant estimate that the minimum cost to transport wastewater from the Hallsville storage lagoon to the District’s Rocky Fork Wastewater Treatment Facility (“Rocky Fork”) is \$4,969,710. This figure includes \$3,501,000 (from the District’s current Facility Plan) to construct a force main and associated pump stations from the District’s Cedar Gate Wastewater Treatment Facility (“Cedar Gate”) to the Rocky Fork, \$694,500 associated with pumping the flow from the Hallsville storage lagoon to Cedar Gate, and \$774,210 associated with constructing additional wastewater treatment capacity at Rocky Fork to enable Rocky Fork to receive the flow.

39. Regardless of whether a new wastewater treatment plant is constructed or the flow from the Hallsville storage lagoon is transported to Rocky Fork, the associated cost is millions of dollars and will result in a significant rate increase.

40. MAWC's proposal does not completely or accurately address the issues with the City's sewer system or reflect the capital costs that will need to be expended or the impact these expenditures will have on rates, and is detrimental to the public interest for these reasons.

### **III. Issue Regarding the Economic Feasibility.**

41. With respect to prong (4) of the Tartan Energy Criteria, economic feasibility of MAWC's proposal, the Staff concludes that:

MAWC's feasibility study indicates that the purchase of the City's sewer assets will not generate positive income. However, the effect of this transaction on MAWC's general population of ratepayers is likely to be negligible so it is not a detriment to the public interest.<sup>23</sup>

42. In rendering this conclusion, the District's accounting consultant notes that the Staff failed to consider multiple issues with MAWC's feasibility study, including:

- a. It is not a traditional feasibility study in that it contains no qualitative analysis and no conclusion that MAWC's proposal is economically feasible.
- b. The data used by MAWC was stale, being from MAWC's 2018 Annual Report rather than its latest annual report, which was 2019, filed with the Commission on May 15, 2020.

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<sup>23</sup> See Staff's Recommendation, Attachment A at p. 10(4).

- c. MAWC used water utility system cost trends on a wastewater system analysis.
- d. The study projected a significant loss in all years that increases over time without factoring in significant capital costs for future wastewater requirements necessary to accommodate projected growth in the community given the current design flow of the sewer system.<sup>24</sup>
- e. The study contains no financial or qualitative data to demonstrate MAWC's proposal is in the public interest, but rather merely contains a declaratory statement to this effect.

43. Because of these issues, MAWC's feasibility study fails to demonstrate that its proposal is economically feasible.

### **CONCLUSION**

44. The District respectfully requests that the above-captioned case be set for hearing and asks the Commission to order the parties to file a proposed procedural schedule no later than December 24, 2020, or alternatively deny MAWC's *Application and Motion for Waiver*.

WHEREFORE, the District respectfully submits this *Amended Response to the Staff Recommendation and Request for Evidentiary Hearing* for the Commission's consideration.

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<sup>24</sup> See Point II above for further discussion on this item.

LATHROP GPM LLP

*/s/ Jennifer S. Griffin* \_\_\_\_\_

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Attorney for Boone County

Regional Sewer District

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**AFFIDAVIT OF TOM RATERMANN**

STATE OF MISSOURI     )  
   )     ss.  
COUNTY OF BOONE     )

COMES NOW Tom Ratermann, General Manager of the Boone County Regional Sewer District, and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *District's Amended Response to the Staff Recommendation and Request for Evidentiary Hearing*; and that the same is true and correct according to his best knowledge and belief, under penalty of perjury.

Further the Affiant sayeth not.

/s/ Tom Ratermann  
Tom Ratermann

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**AFFIDAVIT OF DENNIS E. STITH**

STATE OF MISSOURI     )  
   )     ss.  
COUNTY OF BOONE     )

COMES NOW Dennis E. Stith, P.E., and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *District's Amended Response to the Staff Recommendation and Request for Evidentiary Hearing*; and that the same is true and correct according to his best knowledge and belief, under penalty of perjury.

Further the Affiant sayeth not.

*/s/ Dennis E. Stith*  
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Dennis E. Stith

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**AFFIDAVIT OF STEPHEN M CONNELLY**

STATE OF MISSOURI     )  
   )     ss.  
COUNTY OF BOONE     )

COMES NOW Stephen M. Connelly, CPA, PC, and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *District's Amended Response to the Staff Recommendation and Request for Evidentiary Hearing*; and that the same is true and correct according to his best knowledge and belief, under penalty of perjury.

Further the Affiant sayeth not.

/s/ Stephen M. Connelly  
Stephen M. Connelly

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served on all counsel of record by electronic mail this 8th day of December 2020.

*/s/ Jennifer S. Griffin* \_\_\_\_\_

Jennifer S. Griffin  
Attorney for Boone County  
Regional Sewer District