

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

In the Matter of Missouri-American Water )  
Company for Certificates of Convenience and )  
Necessity Authorizing it to Install, Own, Acquire, )  
Construct, Operate, Control, Manage and )  
Maintain a Sewer System in an area of Clinton )  
County, Missouri (Timber Springs Estates) )

**File No. SA-2019-0183**

**STAFF RESPONSE TO ORDER**

**COMES NOW** the Public Service Commission Staff (“Staff”), by and through counsel, and files its *Response to Order*. On March 14, 2019, the Commission issued its *Order Directing Filing*, directing the Commission’s Staff to answer a series of questions regarding Missouri-American Water Company’s (“MACW”) proposed area Certificate of Convenience and Necessity (“CCN”). Staff’s answers to the Commission’s questions are as follows:

1. *Does MAWC provide water service in the proposed CCN area?*

**Staff Response:** MAWC does not currently provide water service in the proposed CCN area.

- a. *If not, who does?*

**Staff Response:** The general area does not receive water service from any PSC regulated entity. As such, Staff is not aware of what entity provides water service to the various residents in the proposed MAWC certificated area. MAWC would be better situated to name the entities that provide water service in the proposed certificated area. That being said, according to the City of Trimble’s website, which is located just outside of the proposed MAWC service area, it receives water service from Public Water Supply District #1 of Clinton County. Staff is also aware of Public Water Supply District #4 of

Clinton County that provides water service in the general area.

b. *Does MAWC plan to acquire a water CCN for this service area?*

**Staff Response:** At this time, Staff is not aware of any plans by MAWC to acquire a CCN for the proposed service area

2. *What is the difference in area between the proposed CCN and the Timber Springs Estates subdivision?*

**Staff Response:** Please see the map attached to this filing as Appendix A illustrating the certificated area requested by MAWC. As noted on the map, Timber Springs Estates is a smaller area within the larger certificated area. The total recommended area is a little less than four square miles, or approximately 2,000 acres. Timber Springs Estates is approximately 100 acres.

Based on Staff's review of the proposed service area, it appears that there are two additional subdivisions as well as various other residential and farm structures. The majority of the service area is undeveloped at this time.

3. *Why should a CCN be granted for an area extending beyond the Timber Springs Estates subdivision?*

**Staff Response:** There are various reasons why a CCN extending beyond the Timber Springs Estates subdivision should be granted by the Commission.

First, it is Staff's position that it is in, and promotes, the public interest. As is well known by the Commission, small water and sewer systems struggle to meet current and future DNR/EPA regulations. Because of this, the Commission has been very aggressive in encouraging consolidation of small systems, commending such action, and even

promulgating rules to assist larger utility companies to acquire nonviable systems.<sup>1</sup> In many instances in the recent past, smaller systems have become distressed and the customers are either receiving less than safe and adequate service or are on the verge of receiving less than safe and adequate service. By granting a certificated area larger than the footprint of the Timber Springs subdivision, this Commission would be taking a proactive approach to avoid future potential environmental issues. It is Staff's position that this is in the public interest.

Second, it will promote regulatory efficiency. Once a CCN is granted to a utility, that utility is mandated to provide service to all customers in the service area who request it, and are willing and able to abide by the rules and regulations of the utility. However, no customer is required to accept service. Thus, it will be up to the residents living within MAWC's service territory, if the CCN is approved, to elect to become customers of MAWC. By already having a CCN granted, this determination by the customers will be able to occur quickly and efficiently.

Third, the requested certificated area fits within MAWC's existing footprint in Northwest Missouri. MAWC provides water service to an area in and around the city of St. Joseph, water and sewer service in and around the city of Lawson, and water and sewer service in an area north of Kansas City in Platte County that includes several communities including Parkville, Platte Woods and Riverside. Attached to Staff's Response to Commission Order as Appendix B is a map of MAWC's existing service areas in Northwest Missouri. As can be seen, the proposed service area fits within MAWC's already existing triangle of service areas. MAWC already has employees in the

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<sup>1</sup> See Commission Rule 4 CSR 240-10.085 – Incentives for Acquisition of Nonviable Utilities.

areas and in Staff's opinion is the best positioned Commission regulated entity to provide service to the areas in the proposed certificated area.

4. *MAWC is in talks with one of two other sewer systems in the area, how many customers do those systems serve?*

**Staff Response:** The two other systems that Staff is aware of are Clinton Estates and Centennial Acres. It is Staff's understanding that Clinton Estates has approximately 49 connections and Centennial Acres has approximately 19 connections. MAWC may have more accurate information to provide the Commission.

a. *Who owns those sewer systems?*

**Staff Response:** Each of these systems are owned and operated by Homeowners Associations and are not regulated by the Commission, according to information on the discharge permits issued by DNR. It is Staff's understanding that the Clinton Estates sewer system is owned by the Clinton Estates Homeowners Association. The DNR permit number for this system is MO-0129836 and the subdivision is located in the southeast portion of the requested service area.

It is Staff's understanding that the Centennial Acres sewer system is owned by the Centennial Acres Homeowners Association (which may also include Centennial Farms Association, Inc.). The DNR permit number for this system is MO-0117447 and the subdivision is directly adjacent to the Timber Springs Subdivision.

b. *Are the customers residential?*

**Staff Response:** It appears that all structures within the requested service area are residential, based on Staff's field observations. MAWC may have additional information to answer this question.

c. *Have the owners of the other sewer systems or their customers expressed an interest in being acquired?*

**Staff Response:** Not to Staff. MAWC may have more information regarding the answer to this question.

d. *What is the status of any potential acquisition?*

**Staff Response:** While Staff is aware that MAWC has discussed potential acquisition with one of the systems within the requested certificated area, Staff is not aware of the status of those discussions. MAWC would be better positioned to address any potential future acquisitions.

5. *What, if any, harm would result of approval of only the Timber Springs Estates subdivision area, if no additional residential growth is expected?*

**Staff Response:** Assuming that the status quo remains constant, there would be no immediate harm by the approval of a CCN that only covers the Timber Springs Estates subdivision. However, if circumstances were to change, additional administrative steps would be necessary. For example, to serve individual homeowners not living in any subdivision who wish to connect to an already established wastewater system, MAWC would be required to file an application to further expand its certificated area. Expansion of MAWC's service territory for these reasons could be cost prohibitive to both the individual and MAWC. In the existing subdivisions within the requested service area, other than Timber Springs, the HOAs that own and operate the systems could decide that they no longer wish to be in the wastewater business. If those systems are not within an existing certificated area, then additional steps would be necessary for the HOAs to extricate themselves from the business. This could cause unnecessary delay and

expense to the existing customers within the subdivision and the customers of a potential purchasing entity.

6. *What, if any, harm would result from applying for approval of an additional service area as additional systems are acquired?*

**Staff Response:** As noted above, the harm could be two-fold. First, if an environmental emergency arose due to the HOAs lack of resources such as a catastrophic failure of a treatment facility causing issues with discharge compliance, having to go through the process of obtaining a new CCN could unnecessarily prolong the emergency. Second, having to come to the Commission for approval to extend an already approved CCN could potentially cost all customers more money and reduce efficiency.

7. *Are there any instances where the Commission has purposefully granted overlapping CCN areas? Why?*

**Staff Response:** There have been instances where the Commission has granted overlapping service territories to regulated utilities, however, they have been infrequent. At the onset, Staff would like to be clear that it is not endorsing the issuance, nor recommending approval of, overlapping service territories of regulated utilities in this matter, or at any point in the future. Any request for a certificate of convenience and necessity necessarily must be judged upon the specific facts and circumstances at the time of its filing, including any request that would result in service territory encroaching upon that of another regulated utility.

Generally, the policy behind the granting of certificates of convenience and necessity has been defined by the courts as avoiding destructive competition and

undesirable duplication of service.<sup>2</sup> The dominant thought and purpose of the policy is the protection of the public, while the protection given the utility is merely incidental.<sup>3</sup> In furthering this policy, the legislature has vested the Commission with exclusive authority to allocate the territory in which a particular regulated utility may render service, by providing that the Commission shall pass upon the question of the public necessity and convenience for any new or additional company to begin business anywhere in the state, or for an established company to enter new territory.<sup>4</sup> Section 393.170, RSMo, is the governing statute for the grant of a certificate of convenience and necessity for the allocation of utility service territory. Section 393.170.3, RSMo, authorizes the Commission to grant a CCN when it determines, after due hearing, that the proposed project is “necessary or convenient for the public service.”<sup>5</sup> The courts have interpreted the term “necessity” not to mean essentially or absolutely indispensable, but rather as a requirement that the evidence show that additional service will be an improvement justifying the cost of its provision.<sup>6</sup> As stated above, the dominant purpose of the policy for granting certificated territories to regulated utilities is the protection of the public.

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<sup>2</sup> *State ex rel. Public Water Supply District v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980).

<sup>3</sup> See *De Paul Hospital School of Nursing, Inc. v. Southwestern Bell Tel. Co.*, 539 S.W.2d 542, 548 (Mo. App. 1976); *State ex rel. Electric Company of Missouri v. Atkinson, et al.*, 275 Mo. 325, 204 S.W. 897; *State ex rel. Pitcairn v. Public Service Commission*, 232 Mo.App. 535, 111 S.W.2d 222; *State ex rel. Crown Coach Company v. Public Service Commission*, 238 Mo.App. 287, 179 S.W.2d 123, 126(5, 6) (1944).

<sup>4</sup> *State ex rel. Doniphan Tel. Co. v. Pub. Serv. Comm'n*, 377 S.W.2d 469, 474 (Mo. App. 1964); *State ex rel. City of Sikeston v. Pub. Serv. Comm'n of Missouri*, 82 S.W.2d 105, 110 (Mo. 1935); *Pub. Serv. Comm'n v. Kansas City Power & Light Co.*, 31 S.W.2d 67, 69-70 (Mo. banc 1930); *State ex rel. Harline v. Pub. Serv. Comm'n, Mo. App.*, 343 S.W.2d 177, 182 (Mo. App. 1960).

<sup>5</sup> 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); *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.).

<sup>6</sup> *State ex rel. Public Water Supply District v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980).

However, the Missouri Supreme Court in *State ex rel. Electric Company of Missouri v. Atkinson* points out that the "...policy covers a particular case when competition would impair or destroy a utility and, as a consequence, eventually entail an increase of rates charged the public."<sup>7</sup> Further, the Court stated that "[i]t is to be kept in mind, nevertheless, that the rule is not a finespun theory, applicable without discrimination in every case where competition seeks to enter."<sup>8</sup> Thus, when granting a CCN, the Commission does have the authority to issue a certificate to a public utility even though such certificate will overlap with another public utility's area of service.<sup>9</sup> That being said, when determining whether to grant more than one certificate within one certificated area, the public interest and convenience is still the Commission's chief concern.<sup>10</sup>

While the Commission has the authority to authorize overlapping service territories, it appears to have done so sparingly. Staff Counsel has conducted a review of past Commission orders, to the extent possible, and believes the following are at least three instances where the overlapping service areas were purposefully granted by the Commission:<sup>11</sup>

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<sup>7</sup> *Atkinson*, 204 S.W. at 899.

<sup>8</sup> *Id.*

<sup>9</sup> *Osage Water Co. v. Miller County Water Authority, Inc.*, 950 S.W.2d 569, 575 (Mo. App. 1997); *State ex rel. Missouri Pacific Freight Transp. Co. v. Public Serv. Comm'n*, 295 S.W.2d 128, 132 (Mo. 1956); 3) *State ex rel. Crown Coach Co. v. Pub. Serv. Comm'n*, 238 Mo. App. 287, 179 S.W.2d 123, 126-129; *State ex rel. Electric Co. of Missouri v. Atkinson*, 204 S.W. 897, 899-900 (Mo. banc 1918).

<sup>10</sup> *Osage Water Co.*, 950 S.W.2d at 575; *Missouri Pacific Freight*, 295 S.W.2d at 132; *State ex rel. Orscheln Bros. Truck Lines, Inc. v. Pub. Serv. Comm'n*, 433 S.W.2d 596, 605 (Mo. App. 1968); *Crown Coach Co.*, 179 S.W.2d at 126-129.

<sup>11</sup> In its review, Staff Counsel uncovered two instances where, based upon the specific facts and circumstances of each case, the Commission denied requests for overlapping certificated areas: *Re Cent. W. Util. Co.*, 3 P.U.R.3d 24 (Feb. 4, 1954) and *In Matter of Vincent N. Mueller & Sons, Inc.*, 20 Mo. P.S.C. (N.S.) 6 (Apr. 11, 1975). In *Re Cent. W. Util.*, the Commission denied the requested certificated area overlapping with that of another utility, holding that, the incumbent utility was serving all customers in the proposed overlapping area, that the service was adequate, and that there was no evidence of unsatisfied need therein. In *Mueller & Sons*, the Commission granted the incumbent sewer utility's motion to dismiss on the basis that, while incumbent had yet to begin construction on its sewer system, it had complied with



- 1) *Western Power & Light Company*, Order Approving CCN Issued February 14, 1916<sup>12</sup> (*State ex rel. Elec. Co. of Missouri v. Atkinson*, 275 Mo. 325, 204 S.W. 897, (1918)):

In what is perhaps the seminal case illustrating the Commission's authority to approve overlapping service territories, the Commission granted Western Power & Light Company ("Western") a certificate of public convenience and necessity to construct, maintain, and operate an electric light and power system in the city of Maplewood under a franchise agreement on February 14, 1916.<sup>13</sup> However, beginning in the late 1800s, the Electric Company of Missouri ("Electric Co.") began furnishing electricity to citizens of St. Louis County, including in the area that would eventually become the city of Maplewood.<sup>14</sup> While Electric Co. had never secured a franchise with the City of Maplewood, or from the Commission, at the time the Commission granted a CCN to Western, Electric Co. did have a franchise with St. Louis County, and was furnishing electricity to the citizens of Maplewood and other municipalities in the County. On appeal, the Supreme Court proceeded as if both Companies were properly certificated.<sup>15</sup> The Missouri Supreme Court held:

In this case these two corporations are operating in numerous other places. The per cent of appellant's business which would be affected

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the ordered conditions imposed on its CCN by the Commission, or was in the process of doing so. Further, the Commission found that the water shed involved in the matter, and the certificated area in question, was such a size that the public interest required only one regulated sewer corporation serve it as a public utility.

<sup>12</sup> It should be noted that Staff Counsel was unable to locate the Commission's *Order*. However, this case was the subject of an appeal, and ultimate decision of the Missouri Supreme Court in *State ex rel. Elec. Co. of Missouri v. Atkinson*, 275 Mo. 325, 204 S.W. 897, (1918).

<sup>13</sup> *Atkinson* 204 S.W. at 897.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 4.

by competition thus introduced is quite small. It has no plant, in the ordinary sense, in Maplewood. It has no generating plant anywhere. Two-fifths of the poles it uses in Maplewood are those of other corporations. The probabilities that it will be injuriously affected are small. There is little likelihood the competition will prove “destructive.” The increase in business in the whole territory served is 10 per cent. per annum. The needs of the city are great and pressing. Its funds are in such condition that it is not possible for it to pay appellant's rate and secure the lights necessary for its illumination. In these circumstances we cannot say that the Public Service Commission was wrong in issuing its certificate. *That certificate may be issued if the commission finds the improvement necessary or convenient.* Section 72, Laws, 1913, p. 610. We do not think this record justifies us in holding the commission's finding was unwarranted. The judgment is affirmed.<sup>16</sup> (Emphasis added)

2) *Application of The Gas Service Company for a Certificate of Convenience and Necessity to Serve as a Natural Gas Public Utility a Described Area is Platt County, Missouri*, Case Number 12,632, 6 Mo. P.S.C. (N.S.), effective December 31, 1956:

In this matter, after a series of three orders, the Commission ultimately approved overlapping service territories for the Gas Service Company (a predecessor of Missouri Gas Energy, now Spire Missouri (Spire West)) (“GSC”) and Missouri Public Service Company (a predecessor of The Empire District Electric Company’s gas operations) (“MPS”).

On May 24, 1955, the Public Service Commission issued a consolidated order in Case Numbers 12,632 and 12,674 granting the GSC an area certificate to

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<sup>16</sup> *Atkinson*, 204 S.W. at 899–900.

provide natural gas service to the area making up the site of the Mid-Continent International Airport (“MCI”) outside of Kansas City,<sup>17</sup> and a line certificate for a fourteen (14) mile long transmission line that would tap into a twelve (12) inch line serving the City of St. Joseph.<sup>18</sup> The Commission’s Order also simultaneously denied MPS’s request for a CCN over the same area.<sup>19</sup> However, because of concerns relating to the gas supply available to the City of St. Joseph, the Commission explicitly limited GSC’s area CCN to the airport site itself, and denied GSC the ability to interconnect its airport supply line with distribution lines to serve areas outside of the airport.<sup>20</sup>

On January 12, 1956, in Case Number 13,172, the Commission authorized MPS to construct, operate and maintain a natural gas transmission and distribution system in portions of Platte County, Missouri. Of the areas granted, Sections 10, 11, and 12 in T52N, R35W overlapped with the line certificate granted to GSC in Case No. 12,632.<sup>21</sup>

Later, on November 16, 1956, GSC applied for modification of the certificates granted in the Commission’s May 24, 1955, Report and Order in Case No. 12,632. GSC sought full and unrestricted use of the supply line supplying natural gas service to customers for which it had been previously certificated after

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<sup>17</sup> *Application of the Gas Service Company for a Certificate of Convenience and Necessity to Serve as a Natural Gas Public Utility a Described Area is Platte County, Missouri*, Case Number 12,632, 6 Mo. P.S.C. (N.S.), page 114, 116 ordered para. 2, effective May 24, 1955.

<sup>18</sup> *Id.* at 116, ordered para. 2.

<sup>19</sup> *Id.* at 116.

<sup>20</sup> *Id.* at 114.

<sup>21</sup> *In the Matter of the Application of Missouri Public Service Company for a Certificate of Convenience and Necessity for Ownership, Operation and Maintenance of a Natural Gas System in and Area Adjacent to Platte City and Tracy, Platte county, Missouri, as Shown on the Attached Map Marked Exhibit A*, Case Number 13,172 (unreported).

Cities Service Gas Company (owner and operator of the 12 inch pipeline supplying the city of St. Joseph) had completed the construction of an additional 16 inch pipeline to serve St. Joseph, Missouri, removing any need to restrict service to the MCI site alone.<sup>22</sup> Effective December 31, 1956, the Commission modified its May 24, 1955 order, finding that “the facts show that the construction will be in the public interest and that none of the customers now served or to be served in any of the applicant’s certificated areas will be adversely affected by the construction as proposed or the change in the use of the present 12 inch line heretofore authorized in this case.”<sup>23</sup>

While there was no discussion in the Commission’s December 31, 1956, Modified Order regarding the approval of a service territory overlapping with that of MPS’s, the Modified Order effectively did just that; the modified order not only removed any restrictions on GSC’s area certificate for the MCI site, but also converted GSC’s previously secured line certificate (which traversed Sections 10, 11, and 12 in T52N, R35W of Platte County), to an area certificate. This matter was thoroughly analyzed by the Commission in Case No. GA-2007-0289, et al.,<sup>24</sup> a case in which Empire disputed the accuracy of MGE’s tariffs in regard to the description of MGE’s certificated territory.

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<sup>22</sup> *Application of the Gas Service Company for a Certificate of Convenience and Necessity to Serve as a Natural Gas Public Utility a Described Area is Platte County, Missouri*, Case Number 12,632, Report and Order issued December 18, 1956, effective December 31, 1956, 12,632 modified order, pg. 1.

<sup>23</sup> *Id.* at 3.

<sup>24</sup> See *In the Matter of the Application of Missouri Gas Energy, a Division of Southern Union Company, 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 Platte County, Missouri, as an Expansion of its Existing Certified Area*, Case No. GA-2007-0289.

3) *In the Matter of the Application of Summit Natural Gas of Missouri Inc., for Permission and Approval and a Certificate of Convenience and Necessity to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage a Natural Gas Distribution System to Provide Gas Service to One Property in Lawrence County as an Expansion of its Existing Certificated Area, Case No. GA-2018-0396, Effective August 25, 2018.*

This matter arose out of a consumer complaint filed with the Commission against Summit Natural Gas of Missouri, Inc. (“Summit”) for failing to provide natural gas service to Complainant’s newly constructed home, even though Summit had run a service line to within one foot of the complainant’s home.<sup>25</sup> The Complainant’s home was in Spire Missouri, Inc’s service territory; however, Summit held a line certificate for the area and had the authority to provide service to individuals from its pipeline (known as “farm taps”) if necessary to gain right-of-way to construct the pipeline.<sup>26</sup> Filing an Application for a CCN to serve the Complainant’s home was contemplated in the stipulation and agreement approved by the Commission, resolving the complaint case, and Spire Missouri did not object to the granting of the certificate that overlapped with its service territory.<sup>27</sup>

Ultimately, the Commission found that Summit possessed adequate technical,

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<sup>25</sup> See *Paul Brown and Debra Brown, Complainants v. Summit Natural Gas of Missouri, Inc., Respondent*, Case. No. GC-2017-0199.

<sup>26</sup> File No. GA-2007-0168, *Stipulation and Agreement of SMNG and MGE*, (filed December 4, 2007), para. 3.A.

<sup>27</sup> *In the Matter of the Application of Summit Natural Gas of Missouri, Inc., for Permission and Approval and a Certificate of Convenience and Necessity to Construct, Install, Own, Operate, Maintain, and otherwise Control and Manage a Natural Gas Distribution System to Provide Gas Service to One Property in Lawrence County as an Expansion of its Existing Certificated Areas, Case No. GA-2007-0396, Order Granting Certificate of Convenience and Necessity and Granting Waivers*, (Issued August 15, 2018, effective August 25, 2018) p. 5.

managerial, and financial capacity to operate the natural gas systems necessary to serve the property, and concluded that the issuance of the CCN was in the public interest.<sup>28</sup>

While the level of detail included in the above listed Commission decisions regarding the reasoning for authorizing overlapping service territories varies among each, the underlying analysis appears to remain the same. When the Commission is presented with the issue of allowing some form of competition, the Commission should aim to protect the public, with an eye toward avoiding destructive competition and undesirable duplication of service.<sup>29</sup> In other words, the public interest and convenience is the Commission's chief concern.<sup>30</sup> When making this determination, it is within the Commission's discretion to determine when the evidence indicates the public interest will be served in the award of a certificate to a competing utility.<sup>31</sup> However, that discretion and exercise is not absolute, and are subject to a review by the courts to determine whether the Commission's orders are lawful and reasonable.<sup>32</sup> And while instances of judicial review of Commission orders granting overlapping certificated areas have been rare, the courts have applied the same standard when reviewing instances where the Commission authorized certificated areas that overlapped with unregulated utility providers.<sup>33</sup> When conducting this review, courts have commonly applied considerations

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<sup>28</sup> *Id.*

<sup>29</sup> *State ex rel. Public Water Supply District v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980); *State ex rel. Electric Company of Missouri v. Atkinson, et al.*, 275 Mo. 325, 204 S.W. 897 (1918).

<sup>30</sup> *Osage Water Co.*, 950 S.W.2d at 575; *Missouri Pacific Freight*, 295 S.W.2d at 132; *State ex rel. Orscheln Bros. Truck Lines, Inc. v. Pub. Serv. Comm'n*, 433 S.W.2d 596, 605 (Mo. App. 1968); *Crown Coach Co.*, 179 S.W.2d at 126-129.

<sup>31</sup> See *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973).

<sup>32</sup> *Pub. Water Supply*, 600 S.W.2d at 154.

<sup>33</sup> See *Missouri Pub. Serv. Co. v. City of Trenton*, 509 S.W.2d 770, 771 (Mo. App. 1974); *State ex rel. Ozark Elec. Co-op. v. Pub. Serv. Comm'n*, 527 S.W.2d 390, 392 (Mo. App. 1975) *State ex rel. Pub. Water Supply Dist. No. 8 of Jefferson Cty. v. Pub. Serv. Comm'n*, 600 S.W.2d 147 (Mo. Ct. App. 1980); *Osage Water Co.*

such as failure, breakdown, incompleteness, or inadequacy in the existing facilities wherein a CCN is being sought by a utility provider attempting to enter the existing service area of another utility provider, or to extend service to a new territory.<sup>34</sup>

**WHEREFORE**, Staff respectfully submits its *Response to Order* for the Commission's information and consideration, and requests the Commission grant such other and further relief as the Commission considers just in the circumstances.

Respectfully submitted,

**/s/ Mark Johnson**

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### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record on this 25<sup>th</sup> day of March, 2019.

**/s/ Mark Johnson**

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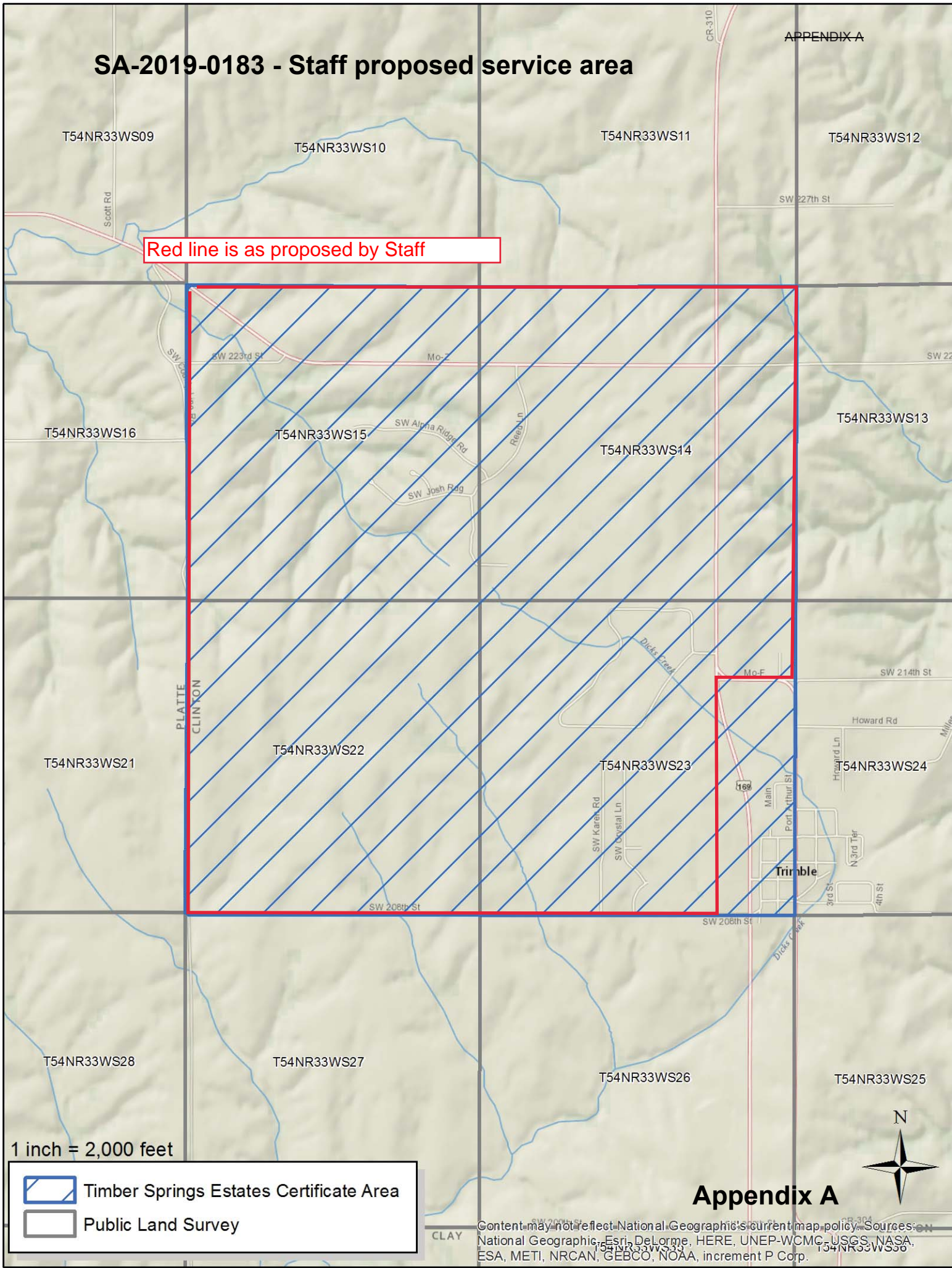
*v. Miller Cty. Water Auth., Inc.*, 950 S.W.2d 569, 572 (Mo. Ct. App. 1997).

<sup>34</sup> *Matter of Application of KCP&L Greater Missouri Operations Co. for Permission & Approval of a Certificate of Pub. Convenience & Necessity Authorizing It to Construct, Install, Own, Operate, Maintain & Otherwise Control & Manage Solar Generation Facilities in W. Missouri*, 515 S.W.3d 754, 761 (Mo. Ct. App. 2016); *Pub. Water Supply*, 600 S.W.2d at 154.



# SA-2019-0183 - Staff proposed service area

APPENDIX A

Red line is as proposed by Staff



1 inch = 2,000 feet

-  Timber Springs Estates Certificate Area
-  Public Land Survey

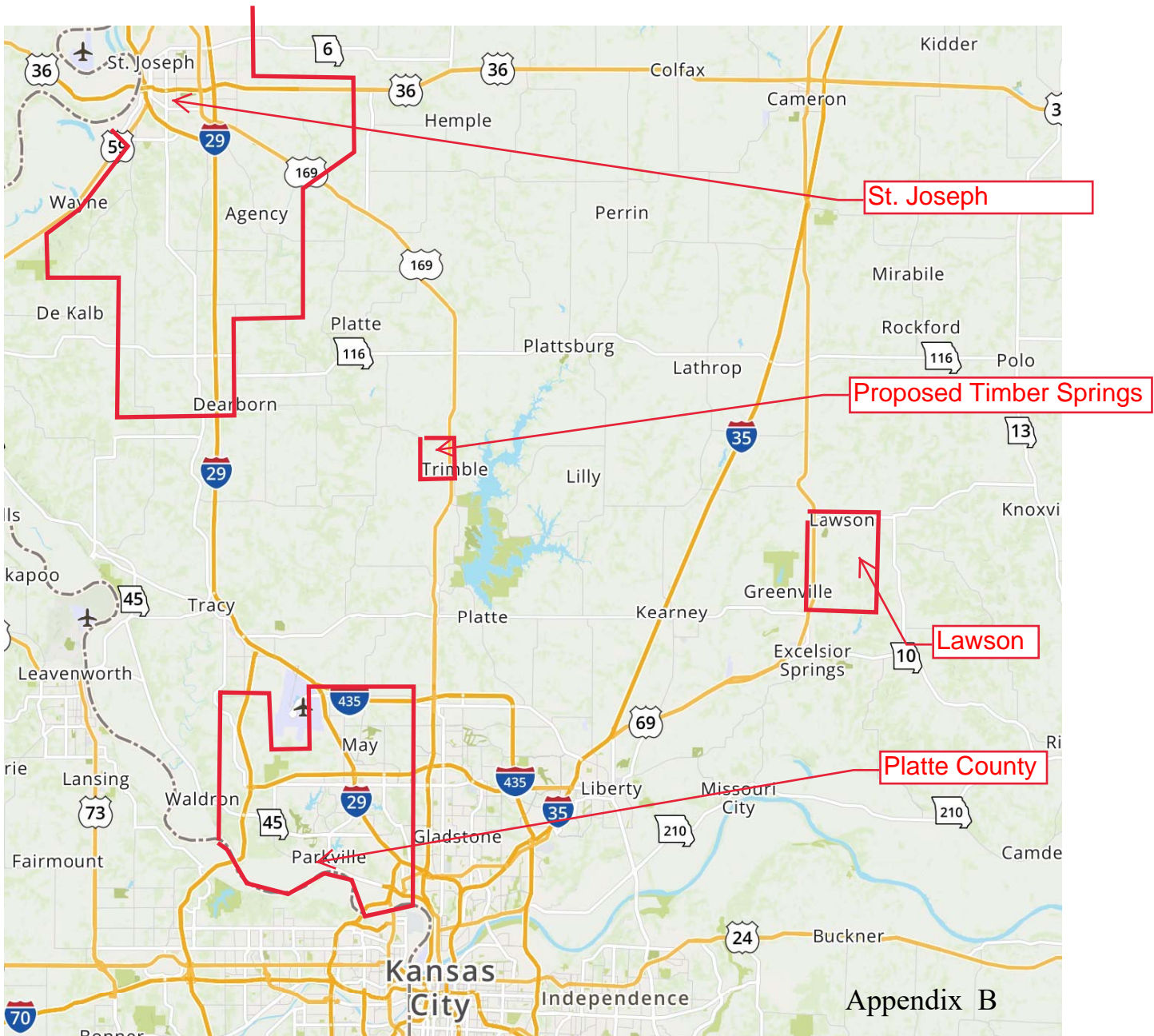
## Appendix A







Missouri-American service areas - west and northwest Missouri



**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF MISSOURI**

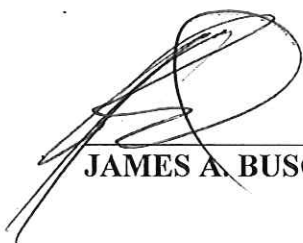
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System in an area of Clinton County, )  
Missouri (Timber Springs Estates) )

**AFFIDAVIT OF JAMES A. BUSCH**

STATE OF MISSOURI )  
 ) ss.  
COUNTY OF COLE )

**COMES NOW JAMES A. BUSCH** and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Staff Response to Order*; and that the same is true and correct according to his best knowledge and belief.

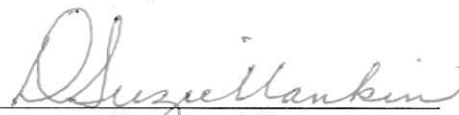
Further the Affiant sayeth not.

  
\_\_\_\_\_  
**JAMES A. BUSCH**

**JURAT**

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 25<sup>th</sup> day of March 2019.

D. SUZIE MANKIN  
Notary Public - Notary Seal  
State of Missouri  
Commissioned for Cole County  
My Commission Expires: December 12, 2020  
Commission Number: 12412070

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

**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF MISSOURI**

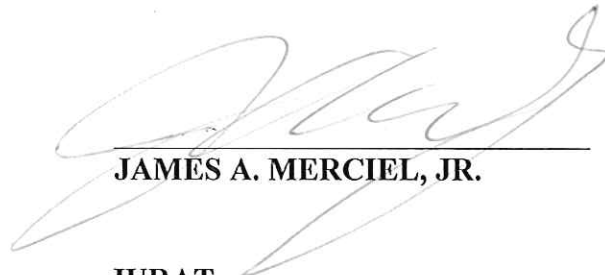
In the Matter of Missouri-American Water )  
Company for Certificates of Convenience ) File No. SA-2019-0183  
and Necessity Authorizing it to Install, )  
Own, Acquire, Construct, Operate, )  
Control, Manage and Maintain a Sewer )  
System in an area of Clinton County, )  
Missouri (Timber Springs Estates) )

**AFFIDAVIT OF JAMES A. MERCIEL, JR.**

STATE OF MISSOURI )  
 ) ss.  
COUNTY OF COLE )

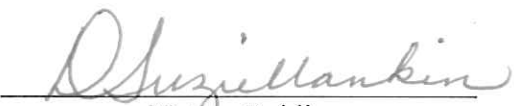
COMES NOW JAMES A. MERCIEL, JR. and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Staff Response to Order*; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

  
\_\_\_\_\_  
JAMES A. MERCIEL, JR.  
  
JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 25<sup>th</sup> day of March 2019.

D. SUZIE MANKIN  
Notary Public - Notary Seal  
State of Missouri  
Commissioned for Cole County  
My Commission Expires: December 12, 2020  
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\_\_\_\_\_  
Notary Public