

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
January 17, 2002**

**CASE NO: WA-2001-288**

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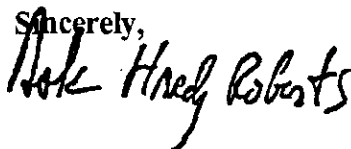
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**Enclosed find certified copy of ORDER in the above-numbered case(s).**

Sincerely,



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 17th day  
of January, 2002.

|  |   |                                    |
|--|---|------------------------------------|
| In the Matter of the Application of St. Louis County | ) |                                    |
| Water Company, doing business as Missouri-American   | ) |                                    |
| Water Company, for Restatement and Clarification of  | ) | <b><u>Case No. WA-2001-288</u></b> |
| Its Certificate of Convenience and Necessity for     | ) |                                    |
| St. Louis County, Missouri.                          | ) |                                    |

**ORDER APPROVING UNANIMOUS SETTLEMENT AGREEMENT,  
GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY,  
AND CLOSING CASE**

**Syllabus:**

This case approves a unanimous settlement agreement, grants Applicant a Certificate of Convenience and Necessity for Florissant and a Certificate of Convenience and Necessity for Webster Groves, and closes this case.

**Procedural History:**

On October 31, 2000, St. Louis County Water Company, doing business as Missouri-American Water Company, filed its application for restatement and clarification of its Certificate of Convenience and Necessity for St. Louis County, Missouri.

The Missouri Public Service Commission issued its Order Directing Notice on November 14. Therein, the Commission established an intervention period of 30 days, ending on December 14, and directed MAWC to serve its application on each affected municipality and to file proof of service in this case on or before November 24. MAWC filed proof of service on November 22.

Thereafter, the Cities of Winchester and Maryland Heights jointly moved for leave to intervene and moved for a hearing on December 12. The City of Chesterfield moved for leave to intervene on December 13. The City of St. Ann applied to intervene on December 14. On December 15, the Cities and Villages of Ballwin, Bel-Nor, Bel-Ridge, Bella Villa, Bellerive, Bellefontaine Neighbors, Breckenridge Hills, Bridgeton, Clayton, Cool Valley, Crestwood, Des Peres, Green Park, Hazelwood, Manchester, Maplewood, Normandy, Pasadena Hills, Pine Lawn, Richmond Heights, Riverview, Rock Hill, Town and Country, University City, Velda City, and Wildwood (Cities and Villages) jointly filed their application to intervene out-of-time. On December 21, counsel for Company filed a copy of a letter that Company sent to each proposed intervenor. On January 11, 2001, the Commission granted intervention to all applicants, set a prehearing conference for January 25, and directed that a proposed procedural schedule be jointly developed and filed by February 1.

On January 25, the Commission convened the prehearing conference as scheduled. However, on February 1, the parties did not file a proposed procedural schedule; rather, MAWC filed a Motion for Continuance, requesting that the due date for the proposed procedural schedule be reset to February 15. On the same day, the Staff of the Missouri Public Service Commission filed its concurrence with MAWC's motion. Before the Commission had an opportunity to take up and rule on MAWC's motion and Staff's concurrence, MAWC filed its Unanimous Stipulation and Partial Settlement and Continuance of Remaining Issues on February 7. The Commission approved the Partial Settlement on February 20 and, according to the terms of the Partial Settlement, granted MAWC a Certificate of Convenience and Necessity to serve Valley Park.

The order of February 20 also required the parties to file a proposed procedural schedule by May 31. On May 24, certain intervenors moved to extend that date to September 30. Staff and the Office of the Public Counsel both advised the Commission, on May 30, that they did not object. On June 14, the Commission granted the motion.

On September 28, the parties filed their Unanimous Settlement Agreement, a copy of which is attached hereto as Attachment 1. On October 4, the Commission directed the Staff to file its supporting suggestions by October 12. The Commission also directed all of the parties to cooperate with Staff in developing suggested language for the final order. Staff filed its suggestions in support of the Unanimous Settlement Agreement on October 12.

Because the parties resolved their dispute and entered into a unanimous settlement agreement, the basic issue of the Commission's authority to grant the requested relief was not well-developed. Therefore, on October 24, the Commission issued its Order Directing Filing, requiring MAWC to brief "the exact relief sought and the Commission's authority to grant that relief." MAWC filed its brief on November 21.<sup>1</sup>

In its Brief of November 21, the Company informed the Commission – for the first time in this proceeding – that acquisitions of the Florissant and Webster Groves systems are imminent and that it sought prompt approval. However, because Company had not yet met the statutory preconditions for relief, the Commission issued its Order Directing Filing on January 9, 2002.

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<sup>1</sup> While only MAWC, as the applicant, was required to brief these points, all of the parties were invited to file briefs. However, they declined.

Section 393.170<sup>2</sup> authorizes the Commission to grant Certificates of Convenience and Necessity to water corporations. Subsection 2 of that section states in part: "Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities." Missouri Courts have uniformly held that municipal permission is a necessary precondition to the Commission's grant of a Certificate of Public Convenience and Necessity.<sup>3</sup> Because the record did not show that MAWC had obtained the necessary municipal franchises, the Commission directed that MAWC file proof thereof. MAWC complied on January 14.

**Discussion:**

***Background***

This case arose out of MAWC's proposed acquisition of the water distribution assets of the cities of Valley Park, Webster Groves and Florissant in St. Louis County, Missouri, and MAWC's corresponding need for legal authority to operate those systems.

In its application, MAWC states that its predecessor-in-interest obtained, in 1902, a perpetual franchise from the no-longer-existing County Court of St. Louis County, Missouri, to provide public water service throughout the county. In the six existing incorporated cities of the county, Kirkwood, Webster Groves, Ferguson, Bridgeton, Pacific, and Florissant, a municipal franchise was also required. Likewise, a municipal franchise was also required in any subsequently incorporated city except to the extent that MAWC's

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<sup>2</sup> All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

<sup>3</sup> *E.g., St. ex rel. PWSD No. 2 of Jackson Co. v. Burton*, 379 S.W.2d 593, 599 (Mo. 1964).

predecessor served the residents of that city prior to its incorporation. With the creation of this Commission in 1913, it was believed that a certificate of convenience and necessity from the Commission was also required for MAWC's predecessor to expand its services to previously unserved county residents.

While both Webster Groves and Florissant already existed as municipal corporations in 1902, Valley Park was not incorporated until 1917, subsequent to the County Court franchise granted to MAWC's predecessor in 1902. At that time, MAWC's predecessor did not serve any customers in Valley Park. In 1982, MAWC's predecessor sought and obtained limited authority which authorized it to serve a single housing development in Valley Park.<sup>4</sup> Since 1982, Valley Park has annexed certain unincorporated sections of the county served by MAWC. Today, MAWC provides all of the water used by the residents of Valley Park and directly serves some of those residents. However, MAWC believed that it needed a certificate of convenience and necessity from this Commission in order to operate the water distribution system previously belonging to the City of Valley Park and, thereby, to serve the whole of that city.

Because the closing of the Valley Park transaction was imminent, that aspect of the case was resolved separately. Valley Park granted the requisite municipal franchise to MAWC on November 20, 2000, and the Commission granted a certificate of convenience and necessity to MAWC for Valley Park on February 20, 2001.

### ***The Unanimous Settlement Agreement***

The certificate granted on February 20, 2001, concerned only Valley Park, leaving the issues of Webster Groves and Florissant to be resolved later. At the urging of

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<sup>4</sup> *In the Matter of St. Louis County Water Company*, Case No. WA-82-141 (Order, issued April 23, 1982).

the parties, the Commission put off the development of a procedural schedule in order to permit an attempt to resolve the case by negotiation. That effort was ultimately successful.

The parties have negotiated a resolution of the remaining issues. In their Unanimous Settlement Agreement of September 28, the parties state that the passage of Senate Bill 369 during the last legislative session addressed some of the intervenors' concerns.<sup>5</sup> Their remaining concerns were addressed by the development of a generic franchise agreement and MAWC's offer to enter into that agreement with any requesting intervenor.

### ***Staff's Suggestions***

On October 12, 2001, Staff filed its Suggestions in support of the Unanimous Settlement Agreement. In its terse pleading, Staff states that the Commission should approve the Unanimous Settlement Agreement and grant the requested restatement of MAWC's authority because it will permit convenient specification of MAWC's authority in the Commission's records; it will resolve ambiguity and confusion attending the perpetual franchise granted in 1902; and it will render future litigation less likely. Staff further recommends that the Commission include MAWC's Jefferson County service area in the restatement of MAWC's authority as requested by the parties. Finally, Staff offers certain suggested language for the Commission's use.<sup>6</sup>

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<sup>5</sup> Relating to municipal control of utility rights-of-way and codified as Sections 67.1830, 67.1832, 67.1834, 67.1836, 67.1838, 67.1840, 67.1842, 67.1844, and 67.1846, RSMo Supp. 2001.

<sup>6</sup> The Commission requested suggested language in its Order Directing Filing issued on October 4. The suggested language supplied consists only of legal descriptions of St. Louis County and the affected portion of Jefferson County.

### ***What is the Relief Sought by MAWC?***

Just what relief does MAWC seek in this proceeding? In its prayer contained in its Application, MAWC prays that the Commission will

issue its order stating that Applicant has a Certificate of Convenience and Necessity to provide retail water service to areas of Jefferson County previously defined in Case No. 15,297, as well as to all areas of St. Louis County, Missouri, where Applicant is otherwise legally permitted to provide service consistent with its legal relationship with each respective incorporated municipality, and that such grant of authority does not restrict or limit Applicant's existing authority under its perpetual franchise from the St. Louis County Court.

Paragraph 6 of the Application states:

In discussions between the Company and the Commission Staff over the years, it has often been suggested that the Company should seek to restate and clarify its grandfather authority. This would permit the Applicant's authority to be represented in the Commission's records in a manner that is traditional for other utilities within the state. It would also eliminate administrative confusion and uncertainty with respect to the interpretation of the perpetual county court franchise, as well as the pragmatic necessity for piecemeal applications as is deemed necessary at this time for clarification of Applicant's authority to serve the City of Valley Park.

Taking the prayer and Paragraph 6 together, it appears from the Application that MAWC seeks a declaration from the Commission to the effect that its 1902 St. Louis County Court franchise, plus the Commission's order in Case No. 15,297, together constitute a certificate of convenience and necessity authorizing MAWC to serve all of the comprehended area without any need for further action of the Commission.<sup>7</sup> This interpretation corresponds with MAWC's announced goal, in Paragraph 6, of avoiding "piecemeal applications" and

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<sup>7</sup> However, contrary to the scope of relief sought in the prayer, Paragraph 7 of the Application states, "Areas specifically defined in Jefferson County by prior order of this Commission are unaffected by this application, as this Application refers only to St. Louis County."



also gives meaning to its use of the words “restatement” and “clarification” in the title of its application.

Because the Application was unclear with respect to the specific relief sought herein by MAWC, the Commission on October 24 directed MAWC to brief the Commission as to the specific relief sought and the Commission’s authority to grant that relief. The other parties were invited to brief these questions, but were not required to do so. MAWC filed its brief on November 21; no other party filed a brief.

In its Brief, MAWC explains that the relief it seeks has changed over the course of this proceeding.<sup>8</sup>

The Commission’s Order Directing Filing raises profound questions; but due to negotiations and consequent changes to the relief requested in the Unanimous Settlement Agreement, perhaps those questions are more profound than necessary under the circumstances now existing. The relief requested in the Application has been significantly simplified by the Unanimous Settlement Agreement.

MAWC explains, in its Brief, that its use of the word “restatement” was drawn from the language of corporate law and that a corporation may “‘restate’ its previously amended articles into one document in the interest of housekeeping.”<sup>9</sup> The term “clarification,” in turn, “was used to indicate that no declaration about the past status was necessary.”<sup>10</sup> Borrowed from Section 392.530, the term was employed to signify that a grant of authority

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<sup>8</sup> *Brief of St. Louis County Water Company d/b/a Missouri-American Water Company in Response to Order Directing Filing*, p. 1 (filed on November 21, 2001).

<sup>9</sup> *Brief of St. Louis County Water Company*, p. 2.

<sup>10</sup> *Id.*

now did not imply that authority had not existed previously.<sup>11</sup> The Brief states that the relief sought in the Application has been superseded by the Unanimous Settlement Agreement.

That document includes the following prayer for relief:<sup>12</sup>

Wherefore, the undersigned being the attorneys of record for all of the parties in the instant case, herewith Stipulate and Agree that the Commission may issue its Order restating and clarifying Applicant's Certificate of Convenience and Necessity for St. Louis County, Missouri, and those portions of Jefferson County previously authorized in Case No. 15,297. Intervenor have no objection to inclusion of the Intervenor Cities identified herein within the certificated area or to the inclusion of the remainder of St. Louis County and those other Cities who did not choose to intervene following receipt of notice as directed by the Commission's Order of November 24, 2000. In addition, Applicant herewith requests expedited approval of the instant Unanimous Settlement Agreement so that it may honor the request of the City of Webster Groves, Missouri, to provide water service within such city consistent with a franchise agreement heretofore awarded to Applicant by such City.

Contrary to the assertion of MAWC's Brief, it does not appear that the Unanimous Settlement Agreement seeks relief different from that sought in MAWC's original application. Indeed, the Unanimous Settlement Agreement elsewhere states:

Accordingly, Intervenor Cities have no further objections to the granting of the relief requested in the Application. Similarly, Staff and the Office of the Public Counsel have no objection to the granting of the relief requested in the Application.<sup>13</sup>

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<sup>11</sup> Section 392.530 provides: "Sections 392.361 to 392.520 are enacted in part to clarify and specify the law existing prior to September 28, 1987. Any specific grant of authority to the commission contained in those provisions shall not be construed as indicating or meaning that the commission did not possess such authority under the law existing prior to September 28, 1987."

<sup>12</sup> *Unanimous Settlement Agreement*, p. 4 (emphasis deleted). The prayer for relief contains a request for expedited treatment. Commission Rule 4 CSR 240-2.080(17) requires that: "[a]ny party seeking expedited treatment in any case shall include in the title of the pleading the words 'Motion for Expedited Treatment.' The pleading shall also set out with particularity the following: (A) The date by which the party desires the commission to act; (B) The harm that will be avoided, or the benefit that will accrue, including a statement of the negative effect, or that there will be no negative effect, on the party's customers or the general public, if the commission acts by the date desired by the party; and (C) That the pleading was filed as soon as it could have been or an explanation why it was not." The *Unanimous Settlement Agreement* does not meet the requirements of this rule.

<sup>13</sup> *Unanimous Settlement Agreement*, p. 2.

Unlike the Unanimous Settlement Agreement, MAWC's Brief does seek a different form of relief. MAWC's Brief states:<sup>14</sup>

Implications in the Application that some declaration was requested from the Commission with respect to the "perpetual franchise" held by the Applicant (hereinafter explained), have been eliminated. What is requested now, is simply a Certificate of Convenience and Necessity without regard to the presence or absence of any other rights which may or may not be held by the Applicant.

\* \* \*

What is sought in this case, is a pronouncement from the Commission that the Applicant has now been afforded all the authority from the Commission that is necessary *regardless of any pre-existing rights*, for the Applicant to provide service in the areas described in the Application. \* \* \* [A]ll the Company actually needed was Commission authority to serve in several areas where the Company itself conceded no exemption or prior rights existed.

Rather than a declaration or restatement to the effect that MAWC's original county franchise constitutes sufficient authority to provide water service in every part of St. Louis County without the need for further Commission action, MAWC now seeks a Certificate of Convenience and Necessity from this Commission encompassing all of St. Louis County. MAWC's Brief states:<sup>15</sup>

All the requirements for the award of an initial Certificate required by 4 CSR 240-2.060 were met in the Applicant's verified Application. The relief requested by the Unanimous Settlement Agreement, i.e. permission to serve the legally described areas of all of St. Louis County, should be easily within the Commission's authority to authorize.

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<sup>14</sup> Brief of St. Louis County Water Company, pp. 1 and 2-3.

<sup>15</sup> Brief of St. Louis County Water Company, p. 6.

MAWC's Brief goes on to state an alternative scope of relief:<sup>16</sup>

But acquisitions of the systems of both Webster Groves and Florissant are presently pending, and certification from the Commission for the Company to serve those areas is a critical precondition to completion of those transactions. If, regardless of the reason, the Commission does not feel comfortable issuing an Order defining the Company's certificated area to include the totality of St. Louis County, it should at least authorize certification for the cities of Florissant and Webster Groves.

To sum up: having examined the Application, the Unanimous Settlement Agreement, Staff's Suggestions in Support of the Unanimous Settlement Agreement, and MAWC's Brief, the Commission determines that MAWC seeks a Certificate of Convenience and Necessity encompassing all of St. Louis County, Missouri, plus that portion of Jefferson County, Missouri, that MAWC is already authorized to serve under a prior order of this Commission. In the alternative, MAWC seeks a Certificate of Convenience and Necessity authorizing it to serve the cities of Florissant and Webster Groves in St. Louis County, Missouri.

***The Commission's Authority to Grant the Requested Relief***

Section 393.170 authorizes the Commission to grant Certificates of Convenience and Necessity to water corporations:

1. No gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water system or sewer system without first having obtained the permission and approval of the commission.

2. No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the

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<sup>16</sup> *Id.*

commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.

3. The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void.

Subsection 1 of Section 393.170 prohibits the construction of utility plant without prior approval of the Commission. It has been interpreted as applying to a utility's initial entry into public service. The application presently pending before the Commission does not seek authority to construct any utility plant and this is hardly MAWC's initial entry into public service. Subsection 3 of Section 393.170, in turn, specifies *how* the Commission shall exercise the authority granted in Subsections 1 and 2; it also authorizes the Commission to impose conditions on grants of authority under Subsections 1 and 2.

Subsection 2 of Section 393.170 is the provision applicable to this matter. It prohibits the "exercise [of] any right or privilege under any franchise hereafter granted . . . without first having obtained the permission and approval of the commission." The intent of the legislature as expressed in a statute must be determined from the language used, giving the words their plain and ordinary meaning.<sup>17</sup> The plain and ordinary meaning of a

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<sup>17</sup> *State ex rel. Riordan v. Dierker*, 956 S.W.2d 258, 260 (Mo. banc 1997); *Blue Cross and Blue Shield of Kansas City, Inc., v. Nixon*, 26 S.W.3d 218, 228 (Mo. App., W.D. 2000) (en banc).

word is found in the dictionary.<sup>18</sup> “Hereafter” means “after this”; and “hereafter granted” therefore refers to a franchise granted *after* the effective date of Section 393.170.2.<sup>19</sup> According to the “historical and statutory notes” in Vernon’s Annotated Missouri Statutes, this section originated in Missouri Laws of 1913.<sup>20</sup> The franchise granted by the St. Louis County Court to MAWC’s predecessor in 1902 was not, therefore, “hereafter granted” with respect to a statute first effective in 1913.

Subsection 2 also requires the “permission and approval” of the Commission prior to the exercise of any right or privilege “under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year[.]” “Heretofore” means “previously”; and “heretofore granted” therefore refers to a franchise granted *before* the effective date of the Section 393.170.2.<sup>21</sup> As has been shown, MAWC’s franchise, granted by the St. Louis County Court in 1902, was indeed granted before the statute became effective in 1913. However, this authority is not a blanket authority with respect to such prior franchises, but is limited, by the plain language of the statute, to only those franchises (1) not “heretofore” actually exercised or (2) the exercise of which has been suspended for more than one year. The meaning is that Commission approval is not necessary where service was already actually being provided under a franchise granted prior to 1913; otherwise, Commission approval is necessary.

So far as the present record reveals, although the St. Louis County Court in 1902 granted a franchise extending to “all public highways as they now exist, or as hereafter may

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<sup>18</sup> *Curry v. Ozarks Electric Corp.*, 39 S.W.3d 494, 496 (Mo. banc 2001).

<sup>19</sup> *American Heritage Dictionary, Second College Edition* (1985), at 607.

<sup>20</sup> At page 610.

<sup>21</sup> *American Heritage Dictionary, supra.*

be laid out or open within the present limits of St. Louis County," MAWC's predecessor had not, by 1913, actually extended water service to all parts of St. Louis County. A question then necessarily arises whether, with respect to those still unserved portions of the county, the franchise had not yet been "actually exercised" within the meaning of the statute as of its effective date in 1913?

However, the Commission need not resolve the question stated above in order to resolve this contested case. So far as the record reveals, the only areas in St. Louis County to which MAWC presently proposes to extend service are the cities of Florissant and Webster Groves. These cities were both already incorporated in 1902 and, consequently, the 1902 county franchise could not, and did not, authorize MAWC's predecessor-in-interest to serve them.<sup>22</sup> Only with the express permission of each of those cities could MAWC extend service to them.<sup>23</sup> That was true in 1902, it was true in 1913 and it is still true today.

Whether or not the 1902 county franchise authorized MAWC's predecessor-in-interest to serve Florissant and Webster Groves, that franchise could not, and did not, relieve MAWC of the necessity of obtaining a Certificate of Convenience and Necessity from this Commission with respect to those cities. "[T]he state as the sovereign power may condition the exercise of a privilege granted by one agency upon approval of another. Such was done in the passage of the Public Service Commission Act, particularly instanced

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<sup>22</sup> See Exhibit B to Application, at pp. 34-35: "At the time of the franchise granted by the St. Louis County Court . . . there were in existence a number of incorporated cities in St. Louis County . . . . The St. Louis County Court had no jurisdiction over the roads in these incorporated cities and the roads and streets in these incorporated cities were not county highways to which the franchise of the St. Louis County Court was applicable. The St. Louis County Court had no power to and did not attempt to grant franchises for the use of the streets in those cities."

<sup>23</sup> The consent of the municipality is an "absolute prerequisite." *St. ex inf. Shartel ex rel. City of Sikeston v. Missouri Utilities Co.*, 331 Mo. 337, 350, 53 S.W.2d 394, 399 (Mo. banc 1932).

in the commission's authority to grant or withhold certificates of convenience and necessity[.]”<sup>24</sup> The effect of the Commission's Certificate of Convenience and Necessity is not to “confer any new powers upon [an applicant]”; rather, it permits the applicant “to exercise the rights and privileges presumably already conferred upon it by state charter and municipal consent.”<sup>25</sup>

### ***Certificates of Convenience and Necessity***

MAWC has met the statutory precondition for the certificates it seeks by submitting proof that it has obtained the necessary municipal franchises.<sup>26</sup> All of the parties have, by joining in the Unanimous Settlement, consented to the issue of these certificates. It remains only for the Commission to determine whether “after due hearing . . . such exercise of the right, privilege or franchise is necessary or convenient for the public service.”<sup>27</sup>

As for the statutory reference to a hearing, the Commission determines that, since all of the parties agree that the requested certificates be granted and since there are no requests for a hearing, no hearing is necessary.<sup>28</sup> In view of the unusual nature of this case, the Commission will waive compliance with Commission Rule 4 CSR 240-2.060, (1) and (4). Based on the Application and other pleadings of record, the Commission finds that St. Louis County Water Company lawfully does business as Missouri-American Water Company and is a water corporation, subject to the jurisdiction of this Commission. The

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<sup>24</sup> *Shartel, supra*, 331 Mo. at 347-348, 53 S.W.2d at 397.

<sup>25</sup> *Shartel, supra*, 331 Mo. at 350-351, 53 S.W.2d at 399.

<sup>26</sup> Section 393.170.2.

<sup>27</sup> Section 393.170.3.

<sup>28</sup> *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).



Commission further finds that MAWC presently serves some 300,000 customers in St. Louis County and a portion of Jefferson County pursuant to authorization by this Commission and various other governmental bodies. MAWC is the largest single water corporation in the state of Missouri.<sup>29</sup> MAWC presently serves some citizens of Florissant and provides all of the water which the city distributes to the rest. MAWC also serves some residents of Webster Groves and supplies some of the water that the city distributes to the rest.

The Commission has historically considered a range of factors in determining whether or not to grant a Certificate of Convenience and Necessity:<sup>30</sup>

The PSC has authority to grant certificates of convenience and necessity when it is determined after due hearing that construction is "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable", but that an additional service would be an improvement justifying its cost. Additionally, what is necessary and convenient encompasses regulation of monopoly for destructive competition, prevention of undesirable competition, and prevention of duplication of service. The safety and adequacy of facilities are proper criteria in evaluating necessity and convenience as are the relative experience and reliability of competing suppliers. Furthermore, it is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served in the award of the certificate.

In the present case, no new construction is proposed. Rather, the large, private, regulated utility that already supplies the greater part of the water used by the residents of Florissant and Webster Groves will acquire those cities' existing distribution systems and will provide water service directly rather than through the intermediary of the city. The result will necessarily be a more efficient, integrated system. An economy of scale should

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<sup>29</sup> 2001 Annual Report of the Missouri Public Service Commission, p. 48.

<sup>30</sup> *State ex rel. Intercon Gas, Inc. v. Public Service Commission of Missouri*, 848 S.W.2d 593, 597-598 (Mo. App., W.D. 1993).

result in reduced costs for maintenance, administration and billing and collection, but no information has been provided as to present or future rates.

Based on the foregoing, the Commission concludes that the Unanimous Settlement Agreement should be approved and the requested Certificates of Convenience and Necessity granted.

**IT IS THEREFORE ORDERED:**

1. That the Unanimous Settlement Agreement filed by the parties on September 28, 2001, is approved.

2. That the Commission waives compliance with Commission Rule 4 CSR 240-2.060, (1) and (4).

3. That St. Louis County Water Company, doing business as Missouri-American Water Company, is granted a certificate of public convenience and necessity to own, operate, control, manage, and maintain public drinking water facilities and to render drinking water service to the public within the City of Florissant, Missouri, located in St. Louis County, Missouri.

4. That St. Louis County Water Company, doing business as Missouri-American Water Company, is granted a certificate of public convenience and necessity to own, operate, control, manage, and maintain public drinking water facilities and to render drinking water service to the public within the City of Webster Groves, Missouri, located in St. Louis County, Missouri.

5. That this order shall become effective on January 27, 2002.

6. That this case may be closed on January 28, 2002.

**BY THE COMMISSION**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Murray, Lumpe, and Forbis, CC.,  
concur.

Gaw, C., dissents, with dissenting  
opinion to follow.

Simmons, Ch., absent.

Thompson, Deputy Chief Regulatory Law Judge

ALJ/Secretary: Thompson, Pope

1-15  
Date Circulated

WA-2001-288  
CASE NO.

absent  
Simmons, Chair

am  
Murray, Commissioner

SL  
Lumpé, Commissioner

2/16 & NO dissent to follow  
Gaw, Commissioner

OK  
Forbis, Commissioner

p. 12, Jan 17.

1-17  
Agenda Date

Action taken: 3-1 AS

Must Vote Not Later Than \_\_\_\_\_

# STATE OF MISSOURI

## OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and  
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,  
Missouri, this 17<sup>th</sup> day of Jan. 2002 .

Dale Hardy Roberts

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

