

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 12th day of November, 2015.

In the Matter of the Application of Missouri-American)
Water Company for a Certificate of Convenience and)
Necessity Authorizing it to Install, Own, Acquire,)
Construct, Operate, Control, Manage and Maintain)
A Sewer System in Benton County, Missouri)

File No. SA-2015-0065

**ORDER GRANTING CERTIFICATE OF CONVENIENCE AND
NECESSITY**

Issue Date: November 12, 2015

Effective Date: December 12, 2015

Missouri-American Water Company filed an application with the Commission on September 8, 2014, seeking a certificate of convenience and necessity to purchase and operate a sewer system in a rural portion of Benton County, Missouri. The sewer system in question is currently served by Benton County Sewer District No. 1, which is operated by a receiver appointed by the United States District Court for the Western District of Missouri.

The Commission provided notice of the application, and set October 1, 2014 as the deadline for interested persons to intervene. The Missouri Department of Natural Resources filed a timely application to intervene and was granted leave to intervene on October 7, 2014. George M. Hall, an individual resident of the area for which Missouri-American seeks to be certified as a sewer provider, applied to intervene out of time on November 16, 2014. The Commission's Staff filed a pleading opposing Mr. Hall's request to intervene the next day.

While considering Mr. Hall's request to intervene out of time, the Commission conducted a local public hearing on November 24, 2014, in Benton County. At that local public hearing Mr. Hall, and others, testified in opposition to Missouri-American's application. Other members of the public testified in support of that application.

On December 17, 2014, the Commission denied Mr. Hall's application to intervene out of time, finding that he failed to demonstrate that his stated interests differ from those of the general public who are represented in this case by the Office of the Public Counsel. Further, the Commission found that Mr. Hall failed to demonstrate that his stated interests may be adversely affected by a final order arising from this case. Although the Commission denied Mr. Hall's request to intervene, it did grant him leave to file an *amicus curiae* brief, which he filed on January 9, 2015.

On December 26, 2014, Mr. Hall asked the Commission to reconsider its order denying his application to intervene out of time. The Commission denied reconsideration in an order issued on January 7, 2015. Mr. Hall appealed the denial of his application to intervene out of time to the Missouri Court of Appeals – Western District on January 14, 2015.

The Court of Appeals dismissed Mr. Hall's appeal in an opinion issued on September 22, 2015.¹ The Court of Appeals found that Mr. Hall did not demonstrate a claim to intervene as a matter of right. Rather, he sought only permissive intervention, the denial of which is not a final order of the Commission and is not subject to interlocutory appeal. The Court of Appeals' dismissal of Mr. Hall's appeal returned jurisdiction over Missouri-American's application to the Commission as of October 14, 2015, when the Court's mandate issued.

¹ Case No. WD78297.

On November 17, 2014, before Mr. Hall filed his appeal, the Staff of the Commission filed its recommendation regarding Missouri-American's application. Staff advised the Commission to grant the requested certificate to Missouri-American, subject to certain conditions. On October 23, 2015, after the appeal was resolved, the Commission allowed all parties until November 4, 2015 to respond to Staff's recommendation. Missouri-American responded that it accepts the conditions proposed by Staff. No other party responded.

The Commission finds that no party objects to the Commission granting Missouri-American's application for a certificate of convenience and necessity, subject to the conditions recommended by Staff, and no party requests a hearing regarding that application. Since no party requests a hearing, the Commission may make a determination without conducting a hearing.²

Section 393.170, RSMo (2000) requires a sewer corporation to receive approval from the Commission before constructing or operating a sewer system. The Commission may grant a sewer corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either "necessary or convenient for the public service."³ The Commission has stated five criteria that it will use in making that determination:

- 1) There must be a need for the service;
- 2) The applicant must be qualified to provide the proposed service;
- 3) The applicant must have the financial ability to provide the service;

² *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

³ Section 393.170.3 RSMo (2000).

- 4) The applicant's proposal must be economically feasible; and
- 5) The service must promote the public interest.⁴

The testimony offered at the local public hearings demonstrated a clear need for good sewer service in the territory Missouri-American asks to serve. Some residents and potential customers might prefer to scrap the entire centralized sewer service and instead rely on individual sewage disposal options. If those residents wish to pursue that option, nothing in this order will force them to take service from Missouri-American. Other residents are not willing or able to rely on other options and need the centralized sewage disposal option offered by the company. Missouri-American is a large, financially stable company with the expertise and financial wherewithal to take over and operate a very troubled sewer system. What is more, Missouri-American will charge the customers of the sewer system a substantially lower rate than they currently pay to the Sewer District.⁵ Based on the verified application and the verified recommendation of Staff, the Commission independently finds and concludes that granting Missouri-American's application for a certificate of convenience and necessity to provide sewer service meets the above-listed criteria. The Commission will also consider the matters raised by Mr. Hall in his *amicus curiae* brief.

In his *amicus curiae* brief, Mr. Hall asserts several arguments. First, he alleges Missouri-American lacks standing to apply for the certificate of convenience and necessity because Benton County Sewer District #1 was dissolved by a vote of the people in 2013 and, therefore, there is no entity capable of selling anything to Missouri-American. He then

⁴ *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

⁵ Staff's recommendation explains that residential customers of the Sewer District currently pay \$84.00 per month for sewer service. Missouri-American will charge those customers \$65.22 per month, a decrease of 22.36 percent.

challenges the legality of the order of the Federal District Court that authorized the court-appointed receiver to sell the assets of the Sewer District to Missouri-American. Second, he alleges that the asset purchase agreement submitted as an exhibit to Missouri-American's application is invalid because it is not dated. Finally, he asserts that the feasibility study submitted with the application is flawed because it assumes that the current customers of the Sewer District will become customers of the Missouri-American's system and asserts that many Sewer District customers will refuse to hook-up to the Missouri-American system. He is concerned that if many customers do not hook-up to the Missouri-American system, rates charged to the remaining customers will need to be increased to unsustainable levels to cover the costs required to operate the system.

The arguments presented in the *amicus curiae* brief are not persuasive. This Commission has no authority to assess or challenge the validity of the federal court order that authorized the trustee to sell the assets of the Sewer District to Missouri-America and approved the asset purchase agreement,⁶ nor does it have authority to determine how the proceeds of the sale are distributed. This Commission only has authority to determine whether Missouri American, a regulated sewer corporation, should be given authority to operate that system. The concerns expressed about the viability of the sewer system if substantial numbers of Sewer District customers refuse to take service from Missouri-American are also unpersuasive. Missouri-American proposes to provide service to the customers of this system as a part of its existing Jefferson City Area operating district. That means the costs of providing sewer service to this system will be shared among the customers of the larger district, lending stability to the rates. In sum, none of the

⁶ The August 25, 2014 Order of the United States District Court for the Western District of Missouri is attached to Missouri-American's application.

arguments presented in the *amicus curiae* brief cause the Commission to alter its finding and conclusion that Missouri-American's application should be granted.

THE COMMISSION ORDERS THAT:

1. Missouri-American Water Company is granted permission, approval, and a certificate of convenience and necessity to install, own, acquire, construct, operate, control, manage, and maintain a sewer system for the public in Benton County, Missouri, as more particularly described in the company's application.

2. The certificate of convenience and necessity is granted upon the conditions set out in this order.

3. Missouri-American Water Company shall notify the Commission of the closing of the assets within 5 days after such closing.

4. Missouri-American Water Company shall submit new tariff sheets within 30 days of the effective date of this order, as 30-day filings, for its existing sewer tariff No. 10, depicting the Benton County service area with a written description that is consistent with that shown by Attachment A to Staff's recommendation, a map consistent with that shown by Attachment B to Staff's recommendation, a revised Sheet SR1 to add applicability of existing rates to Benton County, and rule changes to address installation, ownership, and maintenance of pump units.

5. If closing does not take place within 30 days following the effective date of this order, Missouri-American Water Company shall submit a status report within 5 days after this 30-day period regarding the status of closing, and additional status reports within 5

days after each additional 30-day period, until closing takes place, or until Missouri-American Water Company determines that closing will not occur.

6. If Missouri-American Water Company determines that closing will not occur, it shall notify the Commission of such, after which time the Commission may cancel, or deem null and void, the Certificate of Convenience and Necessity issued to the company, and order replacement of any tariff sheets specific to the Benton County service area that may have become effective.

7. Missouri-American Water Company shall utilize and apply the depreciation rates shown in Attachment D to Staff's recommendation.

8. Missouri-American Water Company shall keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform Systems of Accounts.

9. Missouri-American Water Company shall keep operations records, including those for customer complaints/inquiries, meter placement and replacement/testing, vehicle, equipment and telephone use records, and customer account records.

10. Nothing in the Staff recommendation or this order shall bind the Commission on any ratemaking issue in any future rate proceeding.

11. Missouri-American Water company shall ensure adherence to Commission Rule 4 CSR 240-13.020(1) regarding the production of customer bills within a 26-35 days of service billing period within 30 days of this order.

12. Missouri-American Water Company shall distribute to Benton County customers an informational brochure detailing the rights and responsibilities of the utility and its customers, before the first billing from the company, consistent with the

requirements of Commission Rule 4 CSR 240-13.040(3).

13. Missouri-American Water Company shall include the Benton County customers along with existing customers for its reporting to the Consumer and Management Analysis Unit (CMAU)⁷ staff for 1) Average Abandoned Call Rate, 2) Average Speed of Answer, 3) 1st Call Effectiveness, 4) Average Customer Response Time, 5) Call Volumes, 6) Call Center Staffing, 7) Call Center Staffing Levels, 8) the number of actual monthly meter reads in total and by district, 9) the number of monthly estimated meter reads, 10) the number of consecutive estimated reads, and 11) the meter reader staffing levels.

14. Missouri-American Water Company shall provide adequate training to all customer service representatives before the Benton County customers receive their first bill for sewer service from the company.

15. Missouri-American Water Company shall provide to the CMAU staff on a monthly basis a document detailing the bills to Benton County customers that were issued for greater than 35 days of service.

16. Missouri-American Water Company shall provide to the CMAU staff within 30 days after billing a sample of 10 billing statements of its first month bills issued to the Benton County customers.

⁷ Staff's recommendation refers to the Engineering and Management Services Unit (EMSU). Since that recommendation was filed, the EMSU has been renamed as part of a reorganization of the Commission's Staff.

17. This order shall become effective on December 12, 2015.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style.

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and
Coleman, CC., concur.

Woodruff, Chief Regulatory Law Judge