

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



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

**File No. SA-2021-0017**

---

**REPORT AND ORDER**

---

**Issue Date: November 17, 2021**

**Effective Date: December 17, 2021**

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

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

**File No. SA-2021-0017**

**APPEARANCES**

For Missouri-American Water Company:

**Dean L. Cooper and Jennifer L. Hernandez**, Brydon, Swearingen & England, P.C.,  
312 E. Capitol Ave., Jefferson City, Missouri 65102.

**Timothy W. Luft**, Missouri-American Water Company, 727 Craig Road, St. Louis,  
Missouri 63141.

For the Staff of the Missouri Public Service Commission:

**Travis J. Pringle**, 200 Madison Street, Suite 800, Jefferson City, Missouri 65102.

For the Office of the Public Counsel:

**Nathan Williams**, P.O. Box 2230, Jefferson City, Missouri 65102.

For Boone County Regional Sewer District:

**Jennifer S. Griffin**, Lathrop GPM LLP, 314 E. High Street, Jefferson City, Missouri  
65101.

Regulatory Law Judge: **John T. Clark**

## TABLE OF CONTENTS

<b>Appearances</b> .....	1
<b>Procedural History</b> .....	3
<b>Issues</b> .....	5
A. Is the Commission prohibited from granting a certification of convenience and necessity to MAWC for the Hallsville System as a matter of law? .....	6
1. Must the Commission deny MAWC’s application for a certificate of convenience and necessity because the District holds superior status as a continuing authority under Clean Water Commission regulations? .....	6
2. Do the District’s regulations prevent the Commission from granting MAWC a CCN for the Hallsville System? .....	17
B. Is MAWC’s provision of wastewater service, associated with the purchase of the City of Hallsville wastewater system, “necessary or convenient” for the public service under Section 393.170? .....	21
C. What conditions should be imposed on a CCN issued to MAWC for the Hallsville System? .....	29
<b>Ordered Paragraphs</b> .....	33

## **REPORT AND ORDER**

The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

### **PROCEDURAL HISTORY**

On July 20, 2020, Missouri-American Water Company (MAWC) applied for a certificate of convenience and necessity (CCN) to install, own, acquire, construct, operate, control, manage, and maintain a sewer system in and around Hallsville, Missouri. MAWC requested Commission approval to acquire the City of Hallsville sewer system. In addition, MAWC requested waiver of the 60-day notice requirement under Commission Rule 20 CSR 4240-4.017.<sup>1</sup>

The Commission issued notice of the application, and the Boone County Regional Sewer District (District) filed a timely request to intervene. On September 16, 2020, the Commission granted the District's intervention request over MAWC's objection. The Staff of the Commission (Staff) and the Office of the Public Counsel (OPC) are also parties to this proceeding.<sup>2</sup>

At the direction of the Commission, Staff filed its recommendation on November 18, 2020. Staff recommended the Commission grant MAWC's application with

---

<sup>1</sup> All citations to the Code of State Regulations are to the regulations currently in effect, unless otherwise noted.

<sup>2</sup> Section 386.710.1(2), RSMo (2016); Commission Rule 20 CSR 4240-2.010. All citations to Missouri statute are to the Revised Statutes of Missouri (2016), unless otherwise noted.

conditions. The District objected to Staff's recommendation and requested an evidentiary hearing.<sup>3</sup> MAWC filed a response to Staff's recommendation, indicating it accepted the conditions proposed by Staff for issuance of a CCN in this case.<sup>4</sup>

On January 20, 2021, the Commission issued a procedural schedule based on a schedule proposed by the parties and set an evidentiary hearing for April 8, 2021. The parties filed direct, rebuttal and surrebuttal testimony. The Commission held an evidentiary hearing on April 8, 2021, by telephone and video conference. During the hearing, the Commission heard testimony from MAWC witnesses that Hallsville was expected to approve a new flat rate structure on April 12, 2021, and that MAWC proposed to adopt the Hallsville rates in place at closing on the system.

Also during the hearing, the Commission took official notice of the Commission's order approving an agreement to resolve MAWC's most recent rate proceeding, File No. WR-2020-0344. In addition, the Commission's order and incorporated agreement in that case were included on the record as an exhibit. All parties stipulated on the record that the depreciation rates established in File No. WR-2020-0344 constituted the depreciation rates recommended by Staff as a condition of approval of MAWC's application.<sup>5</sup>

On April 23, 2021, the Commission directed MAWC to file documentation to confirm the status of and describe any new rate structure in place for the system. The Commission also directed Staff to file a supplemental recommendation to address whether a new rate structure results in any changes to Staff's recommendation.

---

<sup>3</sup> *District's Response to the Staff Recommendation and Request for Evidentiary Hearing* (Dec. 4, 2020). Documents filed in this case, File No. SA-2021-0017, are cited in this order by document title and filing date on first reference, with abbreviated citations on subsequent reference. A file number is specified only for documents filed in other Commission cases.

<sup>4</sup> Missouri-American's Response to Staff's Recommendation (Dec. 4, 2020).

<sup>5</sup> Transcript Vol. 2, p. 196-199.

On April 28, 2021, MAWC filed a response, advising the Commission of a new Hallsville rate ordinance and providing a copy of the ordinance, effective on April 12, 2021. On May 10, 2021, Staff filed a *Supplemental Recommendation* and attached additional documents. When no objections were received in the period provided, the Commission admitted as exhibits the ordinance and Staff's supplemental recommendation and attachments on May 27, 2021.

The parties filed initial briefs on June 9, 2021, and reply briefs on June 16, 2021. On June 25, 2021, the Commission granted the District's motion for leave to file a response to reply briefs filed by Staff and MAWC and accepted a response brief filed by the District on June 24, 2021. As provided by the Commission's June 25 order, Staff and MAWC filed supplemental response briefs on July 2, 2021, and the case was deemed submitted for the Commission's decision on that date.<sup>6</sup>

## **ISSUES**

The parties proposed two issues for the Commission's determination: 1) Is MAWC's provision of wastewater service, associated with the purchase of the City of Hallsville wastewater system, "necessary or convenient" for the public service under Section 393.170?; and 2) What conditions should be imposed on a CCN issued to MAWC for the Hallsville System? Prior to evaluating those issues, the Commission will address its authority to grant a CCN in this matter.

---

<sup>6</sup> "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 20 CSR 4240-2.150(1).

- A. Is the Commission prohibited from granting a certification of convenience and necessity to MAWC for the Hallsville System as a matter of law?**
- 1. Must the Commission deny MAWC’s application for a certificate of convenience and necessity because the District holds superior status as a continuing authority under Clean Water Commission regulations?**

**Findings of Fact<sup>7</sup>**

1. MAWC is a Missouri corporation and a “sewer corporation” and “public utility” as defined by Section 386.020, RSMo (Cum. Supp. 2020), and is authorized to provide water and sewer service to portions of Missouri.<sup>8</sup>

2. MAWC provides water service to the public in and around the cities of St. Joseph, Joplin, Brunswick, Mexico, Warrensburg, Parkville, Riverside, Jefferson City, and most of St. Louis County, as well as parts of Cole, St. Charles, Warren, Jefferson, Morgan, Pettis, Benton, Barry, Stone, Greene, Taney, Christian, Clay, Ray and Platte counties in Missouri.<sup>9</sup>

3. MAWC provides sewer service to the public in Callaway, Jefferson, Pettis, Cole, Morgan, Platte, Taney, Stone, Christian, St. Louis, Clinton, Clay, Ray and Warren counties in Missouri.<sup>10</sup>

4. MAWC provides water service to about 470,000 customers and sewer service to about 15,000 customers in Missouri.<sup>11</sup>

5. MAWC is a subsidiary of American Water Works Company.<sup>12</sup>

6. The Missouri Department of Natural Resources (DNR) has authority to

---

<sup>7</sup> Issues are divided for purposes of organization and clarity. Findings of fact are cumulative; each set of findings incorporates findings stated for any previous issues.

<sup>8</sup> Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 2; *Application and Motion for Waiver*, ¶¶ 2-3 (July 20, 2020).

<sup>9</sup> Ex. 1, Horan Direct, p. 7.

<sup>10</sup> Ex. 1, Horan Direct, p. 7.

<sup>11</sup> Ex. 1, Horan Direct, p. 7.

<sup>12</sup> Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 7.

issue permits for sewer systems under the Missouri Clean Water Law.<sup>13</sup>

7. MAWC qualifies as a Level 3 Continuing Authority under Missouri Clean Water Commission (Clean Water Commission) regulations.<sup>14</sup>

8. The District is a common sewer district organized under Chapter 204, RSMo.<sup>15</sup>

9. The District was organized with the approval of Boone County voters and has been in existence since 1973.<sup>16</sup> The District is governed by a board of trustees appointed by the Boone County Commission.<sup>17</sup>

10. The District provides wastewater collection and/or treatment services to about 7,148 customers in incorporated and unincorporated areas of Boone County.<sup>18</sup>

11. In January 2010, the Clean Water Commission approved the District as a Level 2 Continuing Authority.<sup>19</sup>

12. The Clean Water Commission approved the District as a Level 2 Continuing Authority in unincorporated Boone County, excluding municipalities.<sup>20</sup>

13. The District's level 2 Continuing Authority has superior status to a Level 3 Continuing Authority in the DNR permit process, as provided by Clean Water Commission regulation.<sup>21</sup>

14. The City of Hallsville is a fourth-class city located in Boone County<sup>22</sup> and

---

<sup>13</sup> Section 644.026, RSMo 2016; Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 7-9; Ex. 200, Ratermann Rebuttal, p. 7-8.

<sup>14</sup> Ex. 100, Corrected Busch Direct, p. 2; Schedule JAB-d2, p. 8.

<sup>15</sup> Ex. 200, Ratermann Rebuttal, p. 5.

<sup>16</sup> Ex. 200, Ratermann Rebuttal, p. 5; Ex. 3, Corrected Horan Surrebuttal, p. 10, Schedule MH-9, p. 1-2.

<sup>17</sup> Ex. 200, Ratermann Rebuttal, p. 5.

<sup>18</sup> Ex. 200, Ratermann Rebuttal, p. 6; Transcript Vol. 2 at p. 256; Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 7.

<sup>19</sup> Ex. 200, Ratermann Rebuttal, p. 6; Ex. 3, Corrected Horan Surrebuttal, p. 8-10, Schedule MH-8, p. 18-31.

<sup>20</sup> Ex. 200, Ratermann Rebuttal, p. 6; Ex. 3, Corrected Horan Surrebuttal, p. 9, Schedule MH-6, p. 96; Schedule MH-7, p. 2; Schedule MH-8, p. 29, 31; Transcript Vol. 2, p. 218-222; Ex. 6; Ex. 5.

<sup>21</sup> Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 8-9.

<sup>22</sup> Ex. 1, Horan Direct, p. 4.



owns and operates a sewer system (Hallsville System) that provides service to about 664 customer accounts.<sup>23</sup> While the majority of the Hallsville System's collection facilities are located within incorporated Hallsville, the Hallsville System's wastewater "treatment" facilities are located in unincorporated Boone County.<sup>24</sup>

15. The Hallsville System assets were put in service in the early 1970s. The treatment system is mainly gravity fed, with the exception of pumps located in the plant's two pump houses. The system includes PVC and clay pipes of various sizes. Newer Hallsville subdivisions utilize only PVC pipes. The system contains 10,020 linear feet of force main and 63,847.13 linear feet of gravity sewer. There are a total of five lift stations with 7.5 horse power duplex pumps.<sup>25</sup>

16. All homes and businesses connected to this system are currently metered for water, which is supplied by the City of Hallsville.<sup>26</sup>

17. Growth within the City of Hallsville has been rising steadily.<sup>27</sup>

18. The City of Hallsville is governed by a board of aldermen, consisting of four aldermen and a mayor.<sup>28</sup>

19. In July 2019, MAWC submitted a proposal to purchase the Hallsville System.<sup>29</sup>

20. On August 26, 2019, the Hallsville Board of Aldermen enacted Ordinance No. 370, calling for a November 5, 2019 election to propose the sale of Hallsville's sewer system to MAWC.<sup>30</sup>

---

<sup>23</sup> Ex. 1, Horan Direct, p. 4; Ex. 100, Corrected Busch Direct, p. 2; Schedule JAB-d2, p. 7.

<sup>24</sup> Transcript Vol. 2 at p. 141; Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 8, 9.

<sup>25</sup> Ex. 100, Busch Corrected Direct, Schedule JAB-d2, p. 9.

<sup>26</sup> Ex. 100, Busch Corrected Direct, Schedule JAB-d2, p. 9.

<sup>27</sup> Ex. 100, Busch Corrected Direct, Schedule JAB-d2, p. 9.

<sup>28</sup> Transcript Vol. 2, p. 108.

<sup>29</sup> Transcript Vol. 2, p. 98-100, 116-117, 121; Ex. 305, Proposal Offer.

<sup>30</sup> Ex. 1, Horan Direct, p. 4, Schedule MH-1; Ex. 2: Carter Direct p. 4.

21. In September 2019, the City of Hallsville sought proposals for the purchase of the Hallsville System, requesting submissions no later than November 1, 2019.<sup>31</sup> Hallsville sought proposals from other buyers after scheduling a ballot issue on the sale to MAWC on the advice of the city's legal counsel.<sup>32</sup>

22. On October 3, 2019, the City of Hallsville conducted a public meeting in regard to the proposed sale.<sup>33</sup>

23. MAWC conducted public meetings in Hallsville on October 10 and 29, 2019.<sup>34</sup>

24. Hallsville voters approved sale of the Hallsville System to MAWC in a November 5, 2019 election, with a vote of 136 in favor and 64 opposed.<sup>35</sup>

25. On or before November 1, 2019, in response to the city's request for proposals, Liberty Utilities, MAWC and the District submitted proposals to purchase the Hallsville System.<sup>36</sup> On January 22, 2020, representatives of Liberty Utilities, MAWC and the District presented proposals to purchase the Hallsville System to the Hallsville Board of Aldermen.<sup>37</sup>

26. In July 2020, MAWC and the City of Hallsville entered a purchase agreement to allow MAWC to acquire the Hallsville System.<sup>38</sup>

27. According to the District, over seven months after the voters of Hallsville authorized the sale to MAWC and the month after the City of Hallsville formally executed a purchase agreement with MAWC, the District prepared a new "draft facility plan," dated

---

<sup>31</sup> Ex. 202, Stith Rebuttal, p. 6, Schedule DES-2; Ex. 2, Carter Direct, p. 4.

<sup>32</sup> Transcript Vol. 2 at p. 117.

<sup>33</sup> Ex. 2, Carter Direct, p. 4-5.

<sup>34</sup> Ex. 1, Horan Direct, p. 5; Ex. 2, Carter Direct, p. 5.

<sup>35</sup> Ex. 2, Carter Direct, p. 4-5; Ex. 8, Election Certification; Ex. 1, Horan Direct, p. 4-5.

<sup>36</sup> Ex. 2, Carter Direct, p. 4; Transcript Vol. 2 at p. 212.

<sup>37</sup> Ex. 2, Carter Direct, p. 4; Transcript Vol. 2 at p. 120.

<sup>38</sup> Ex. 2, Carter Direct, p. 5; Transcript Vol. 2 at p. 122-123; Ex.1, Horan Direct, p. 5, Schedule MH-2.

August 10, 2020, that proposes to close three District wastewater treatment facilities, construct pump stations at those locations, and build force main to transport wastewater to the District's Rocky Fork Wastewater Treatment Facility.<sup>39</sup>

28. According to the District, four months later it prepared a new "facility plan," dated December 10, 2020, that included a plan to transport wastewater from facilities not owned or operated by the District, including the City of Hallsville.<sup>40</sup>

29. According to the District, it submitted the December 10, 2020 facility plan to DNR, and the District's general manager corresponded by email with a DNR engineer about the plan.<sup>41</sup>

30. The District's witness, Mr. Ratermann, testified that the December 10, 2020 facilities plan is not an area-wide management plan, but would be part of the District's over-all area-wide management plan. He further testified that no area-wide plan had been submitted as evidence in this case.<sup>42</sup>

31. No copy of any correspondence between the District and DNR was submitted as evidence in the case. No documents showing DNR receipt of or action related to the December 10, 2020 facility plan were submitted as evidence in the case. No documents were submitted showing that an area-wide plan incorporating the new December 10, 2020 facilities plan was provided to DNR were submitted as evidence in this case.

---

<sup>39</sup> Transcript Vol. 2, p. 239-241; Ex. 307, Draft Facility Plan.

<sup>40</sup> Transcript Vol. 2, p. 239-241; Ex. 200, Ratermann Rebuttal, p. 11-12, Schedule TR-1

<sup>41</sup> Transcript Vol. 2 p. 200, 241-242.

<sup>42</sup> Transcript Vol. 2, p. 256-257

32. The Hallsville System is permitted by DNR<sup>43</sup> as a “no discharge” system, which means that permit does not authorize the discharge of wastewater directly into the waters of the state.<sup>44</sup>

### **Conclusions of Law<sup>45</sup>**

A. Section 386.020(49), RSMo (Cum. Supp. 2020) defines “sewer corporation” as including:

every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain, except that the term shall not include sewer systems with fewer than twenty-five outlets[.]

B. Section 386.020(43), RSMo (Cum. Supp. 2020) defines “public utility” as including:

every pipeline corporation, gas corporation, electrical corporation, telecommunications company, water corporation, heating company or refrigerating corporation, and sewer corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter[.]

C. MAWC is a “sewer corporation” and “public utility” subject to regulation by the Commission pursuant to its authority under Chapters 386 and 393, RSMo.<sup>46</sup>

D. Section 393.170, RSMo (Cum. Supp. 2020), requires a certificate of convenience or necessity granted by the Commission before MAWC may provide sewer service in the proposed Hallsville service area.

---

<sup>43</sup> Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 7; Ex. 202, Stith Rebuttal, p. 5-6, Schedule DES-3, p. 1-20.

<sup>44</sup> Transcript Vol. 2 at p. 186-187.

<sup>45</sup> Issues are divided for purposes of organization and clarity only. Conclusions of law are cumulative; each set of conclusions incorporates conclusions stated for any previous issues, as necessary. Some issues may not require additional conclusions of law.

<sup>46</sup> *State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm’n*, 858 S.W.2d 806, 808 (Mo. App. W.D. 1993)(Section 393.140 establishes the Commission’s general powers); see also Section 386.250.

E. Since MAWC brought the application, it bears the burden of proof.<sup>47</sup> The burden of proof is the preponderance of the evidence standard.<sup>48</sup> In order to meet this standard, MAWC must convince the Commission it is “more likely than not” that its assertions are true.<sup>49</sup>

F. The Clean Water Commission, part of DNR, is composed of members appointed by the Governor with the advice and consent of the Senate.<sup>50</sup>

G. DNR is authorized to issue or deny permits for the construction and operation of treatment facilities and sewer systems.<sup>51</sup>

H. DNR permitting is governed by Chapter 6 of the Clean Water Commission’s rules. Clean Water Commission rules require the designation of a “continuing authority” in any application to DNR for an operating or construction permit pursuant to the Missouri Clean Water Law.<sup>52</sup>

I. Clean Water Commission rules define five levels of continuing authority. The highest level, providing greatest authority is Level 1. That level is superior to the other levels, which descend from Level 2 to Level 5.<sup>53</sup>

J. Clean Water Commission rules provide that a Level 3 authority may “constitute a continuing authority” in a permit application “by showing” that a superior

---

<sup>47</sup> “The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue”. *Clapper v. Lakin*, 343 Mo. 710, 723, 123 S.W.2d 27, 33 (1938).

<sup>48</sup> *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 Mo. banc 1996).

<sup>49</sup> *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

<sup>50</sup> Section 644.021, RSMo.

<sup>51</sup> Section 644.026, RSMo (Clean Water Commission authority to establish permits by rule); Section 644.051.3, RSMo (requiring permits for construction, replacement and modification of any system designed to convey or discharge sewage to waters of the state and construction of earthen wastewater storage).

<sup>52</sup> 10 CSR 20-6.010(1), (2)(A). Chapter 6 of the Clean Water Commission’s regulations bear a current publication date of May 31, 2020.

<sup>53</sup> 10 CSR 20-6.010(2)(B).

continuing authority is “not available,” does not have “jurisdiction,” is “forbidden by state statute or local ordinance from providing service,” or when one of seven exceptions exist.<sup>54</sup>

K. Permit applicants that propose “use of a lower preference continuing authority,” when a “higher level authority is available,” are required to submit additional information with the application to demonstrate the application qualifies for one of seven exceptions to the preference for higher level authorities.<sup>55</sup>

L. Such additional information includes voluntary waiver or refusal of service by superior continuing authorities as well as specified technical and economic circumstances that make service by superior continuing authorities impractical.<sup>56</sup>

M. Such additional information may include a “to-scale map” demonstrating that the “legal boundary” of the property to be connected is “beyond” 2,000 feet “from the collection system operated by the higher preference authority.”<sup>57</sup>

N. Such additional information may not “conflict with any area-wide management plan approved under section 208 of the Federal Clean Water Act or by the Missouri Clean Water Commission.”<sup>58</sup>

O. Section 208 of the federal Clean Water Act limits federal grants for the construction of publicly owned treatment works to those projects that conform to an area-wide management plan approved by the Environmental Protection Agency.<sup>59</sup>

P. Section 208 of the federal Clean Water Act provides that no permit under the

---

<sup>54</sup> 10 CSR 20-6.010(2)(B) (citing requirements stated in 10 CSR 20-6.010(2)(C) for additional information required when applicants propose use of a lower preference authority).

<sup>55</sup> 10 CSR 20-6.010(2)(C); Clean Water Commission Rule 10 CSR 20-6.010(2)(B) states: “Continuing authorities are listed in preferential order,” with Level 1 authorities possessing the highest rank.

<sup>56</sup> 10 CSR 20-6.010(2)(C)1-7.

<sup>57</sup> 10 CSR 20-6.010(2)(C)3.

<sup>58</sup> 10 CSR 20-6.010(2)(C).

<sup>59</sup> 33 U.S.C. § 1288(d). The federal Clean Water Act establishes requirements for “area-wide waste treatment management plans,” and provides that such plans “shall be submitted to the Administrator for his approval.” See 33 U.S.C. § 1288(b)(3). The Administrator referenced by the federal Clean Water Act is the administrator of the U.S. Environmental Protection Agency. See 33 U.S.C. § 1251(d).

National Pollutant Discharge Elimination System may be issued for any “point source” in conflict with an approved area-wide management plan.<sup>60</sup>

Q. Clean Water Commission rules allow municipalities and public sewer districts to seek designation as Level 2 continuing authorities.<sup>61</sup> The Clean Water Commission rule in effect in 2010, when Clean Water Commission approved the District’s request to be recognized as a Level 2 authority, required submission of a “Regional Sewage Service and Treatment Plan” to be “developed by all affected political subdivisions and submitted” to DNR, subject to Clean Water Commission approval.<sup>62</sup>

R. Clean Water Commission rules define a Level 1 authority as “a municipality or public sewer district or governmental entity which has been designated as the area-wide management authority under section 208(c)(1) of the Federal Clean Water Act.”<sup>63</sup>

S. Clean Water Commission rules define a Level 2 authority as “a municipality, public sewer district, or governmental entity” that provides “wastewater collection and/or treatment services on a regional or watershed basis as outlined in section (2)(F) of this rule and approved by the Missouri Clean Water Commission.”<sup>64</sup>

T. Sewer companies regulated by the Public Service Commission are defined as Level 3 authorities by Clean Water Commission Rule 10 CSR 20-6.010(2)(B)3.

U. Clean Water Commission rules require any entity regulated by the Commission to obtain a certificate of convenience and necessity from the Public Service Commission before applying for a permit from DNR.<sup>65</sup>

---

<sup>60</sup> 33 U.S.C. § 1288(e) (citing 33 U.S.C. § 1342, entitled the National Pollutant Discharge Elimination System).

<sup>61</sup> 10 CSR 20-6.010(2)(F).

<sup>62</sup> 10 CSR 20-6.010(3)(C).

<sup>63</sup> 10 CSR 20-6.010(2)(B)1.

<sup>64</sup> 10 CSR 20-6.010(2)(B)2.

<sup>65</sup> 10 CSR 20-6.010(2)(B)3.

V. Duly promulgated rules of a state administrative agency have the “force and effect of law.”<sup>66</sup>

W. By statute, a fourth-class city may sell a public wastewater system upon passage of an ordinance, notice to customers, conduct of a public meeting at least 30 days before the public vote, and the approval of voters by a majority of votes cast on the issue.<sup>67</sup>

### **Decision**

From the outset of its intervention, the District has characterized its status as a Level 2 continuing authority as a dispositive fact. It has contended that a Commission order granting MAWC a CCN will “usurp the District’s authority as a Level 2 Continuing Authority”<sup>68</sup> and that, because of the District’s status, MAWC “lacks authority” to “acquire and operate a sewer system in the District’s service area.”<sup>69</sup> However, that fact is not dispositive.

DNR regulations do not prevent applicants for a permit to propose using a lower preference of continuing authority. A lower level continuing authority, such as MAWC, when applying for a DNR permit where a higher level continuing authority, such as the District, is available must show that the superior continuing authority is “not available,” does not have “jurisdiction,” is “forbidden by state statute or local ordinance from providing service,” or one of seven exceptions. DNR makes the determination as to which continuing authority prevails and will receive a permit. DNR is also the only body able to grant waivers regarding continuing authority.<sup>70</sup>

---

<sup>66</sup> *Mo. Coal. For Env’t. v. Joint Comm. on Admin. Rules*, 948 S.W.2d 125, 134 (Mo. banc 1997).

<sup>67</sup> Section 88.770.1, RSMo (Cum. Supp. 2020). This statute was amended effective August 28, 2019. Among other changes the amendment authorizes the municipal sale of a wastewater systems on a simple majority vote.

<sup>68</sup> *District’s Reply to MAWC’s Response in Opposition to District’s Application to Intervene*, ¶ 19 (Sept. 8, 2020).

<sup>69</sup> *District’s Amended Response to the Staff Recommendation and Request for Evidentiary Hearing*, (Dec. 8, 2020).

<sup>70</sup> 10 CSR 20-6.010(2)(C).



DNR will decide whether to grant MAWC an operating permit for Hallsville's system, pursuant to state statute and regulation.<sup>71</sup> The Commission does not need to conclude that DNR will grant MAWC a permit for the Hallsville System before issuing MAWC a CCN to operate that system.

The District argues that it has exercised its authority as a Level 2 continuing authority by adopting Sanitary Sewer Use Regulations and a Clean Water Commission approved area-wide management plan. No single document has been identified on the record as an area-wide management plan that includes the City of Hallsville. The only evidence provided regarding Clean Water Commission approval for such a plan is testimony from the District's general manager that he has corresponded by email with a DNR engineer in regard to the December 2020 facility plan. The District's witness was willing to identify the "facility plan" as part of an area-wide management plan only when prompted to do so by District counsel. When asked if an area-wide management plan had been provided to the Commission in this case, Mr. Ratermann testified he did not believe it had.

The Commission is not able to find, based on the evidence on the record and the authorities cited by the parties, that issuance of a CCN to MAWC would necessarily conflict with any area-wide management plan that may ultimately be approved under section 208 of the federal Clean Water Act or by the Clean Water Commission. Instead, that determination will be made by DNR. Without a clear demonstration that any future application by MAWC for a DNR permit for the Hallsville System must fail as a matter of law, this Commission risks reaching beyond its statutory authority to draw conclusions on

---

<sup>71</sup> Sections 640.710; 644.026, RSMo; 10 CSR 20-6.010.

matters entrusted to another state agency.

The matters to be considered by this Commission and the Clean Water Commission are segregated by Clean Water Commission rules that require PSC-regulated entities, such as MAWC, to first seek a CCN before applying for a permit, and the Commission has the sole authority to grant a CCN. Therefore, the Commission concludes that the District's superior status as a continuing authority under Clean Water Commission regulations does not preclude the Commission from issuing a CCN to MAWC.

**2. Do the District's regulations prevent the Commission from granting MAWC a CCN for the Hallsville System?**

**Findings of Fact**

33. The District has adopted regulations entitled "Sanitary Sewer Use Regulations."<sup>72</sup>

34. The Hallsville System disposes of wastewater through a "land application process" that applies wastewater to farmland.<sup>73</sup> The Hallsville System does not dispose of wastewater by discharge into the District's sewer system or treatment facilities.

35. No evidence was offered that the District has given notice to DNR and Hallsville or MAWC that a private sanitary sewer system "can be connected" to the District's system.

**Conclusions of Law**

X. Section 204.320, RSMo, authorizes sewer district boards of trustees to "pass all necessary rules and regulations" to conduct district business.

---

<sup>72</sup> Transcript Vol. 2 at p. 258; Ex. 200, Ratermann Rebuttal, Schedule TR-1, p. 178-213.

<sup>73</sup> Ex. 1, Horan Direct, p. 5.

Y. Section 204.330.7, RSMo vests common sewer district boards of trustees with:

all of the powers necessary and convenient to provide for the operation and maintenance of its treatment facilities and the administration, regulation, and enforcement of its pretreatment program, including the adoption of rules and regulations, to carry out its powers with respect to all municipalities, subdistricts, districts, and industrial users which discharge into the collection system of the district's sewer system or treatment facilities.

Z. The authority created by Section 204.330.7 includes the "promulgation of any rule, regulation or ordinance."

AA. The District's regulations state a "scope and purpose" to "govern the use of public sanitary sewers, the installation and connection of building sanitary sewers, and the discharge of waters and wastes into the public sanitary sewer systems," with the purpose of "protect[ing] and promot[ing] the public health and ... ensur[ing] the safe and efficient delivery of wastewater collection and centralized treatments services within the areas of Boone County, Missouri, subject to the jurisdiction of the Boone County Regional Sewer District."<sup>74</sup>

BB. The District's regulations do not apply to the Hallsville System, which is a "wastewater collection system or treatment facility ... constructed and operated under a [DNR] permit issued to another public or governmental wastewater management and treatment agency having exclusive jurisdiction."<sup>75</sup>

CC. District regulations do not apply when the District "waives the right to act as Continuing Authority for such system or facility."<sup>76</sup>

---

<sup>74</sup> Boone County Regional Sewer District Sanitary Sewer Use Regulations, § 2.2; see Ex. 200, Ratermann Rebuttal, Schedule TR-1, p. 188.

<sup>75</sup> Boone County Regional Sewer District Sanitary Sewer Use Regulations, §§ 2.5, 2.5.2; see Ex. 200; Ratermann Rebuttal, Schedule TR-1, p. 188.

<sup>76</sup> Boone County Regional Sewer District, Sanitary Sewer Use Regulations, § 2.5.2; see Ex. 200, Ratermann Rebuttal, Schedule TR-1, p. 188.

DD. District regulations do not expressly address the sale of a municipal sewer system in Boone County.

EE. District regulations define “private sanitary sewer systems” as systems “that are not under the jurisdiction of the District or other governmental entity and which [are] regulated by [DNR] and, when applicable, the Missouri Public Service Commission.”<sup>77</sup>

FF. Under its regulations, the District may give notice to DNR and an entity holding a DNR operating permit that a private sanitary sewer system “can be connected” to the District’s system.<sup>78</sup> The District’s regulations provide “no private sanitary sewer system which is regulated by [DNR] shall be granted a new operating permit or renewal of an existing operating permit,” when such notice is made by the District.<sup>79</sup>

### **Decision**

The District contends that its regulations prohibit private ownership and operation of the Hallsville System.<sup>80</sup> Because this argument proposes that approval of a CCN for the Hallsville System is contrary to law, the Commission takes up this issue as a threshold matter.

The Commission finds District regulations pose no legal barrier to consideration of MAWC’s application. First, the Commission does not find in the District’s regulations a clear prohibition of private ownership and operation of sewer systems in Boone County. In fact, the regulations contemplate circumstances in which private ownership of sewer systems may occur.<sup>81</sup> Nor do the regulations expressly address the sale of municipal

---

<sup>77</sup> Boone County Regional Sewer District Sanitary Sewer Use Regulations, § 2.6.2.3; see Ex. 200, Ratermann Rebuttal, Schedule TR-1, p. 190.

<sup>78</sup> Boone County Regional Sewer District Sanitary Sewer Use Regulations, § 2.6.2.3; see Ex. 200, Ratermann Rebuttal, Schedule TR-1, p. 190.

<sup>79</sup> Boone County Regional Sewer District, Sanitary Sewer Use Regulations, § 2.6.2.3; see Ex. 200, Ratermann Rebuttal, Schedule TR-1, p. 190.

<sup>80</sup> *District’s Post-Hearing Brief*, p. 8-12 (June 9, 2021); *District’s Response to Reply Briefs of Staff and MAWC*, p. 1 (June 24, 2021).

<sup>81</sup> Boone County Regional Sewer District Sanitary Sewer Use Regulations, §2.6.2.3 (“If neither the District

systems. The Hallsville System, as it exists today, is not subject to the District's regulations.<sup>82</sup>

Second, to the extent the regulations authorize the District to require a private system to connect to the District's system, the District has not made such a demand. District regulations Section 2.6.2.3 authorizes the District to require private sanitary sewer systems to connect to the District's system under specified circumstances. As provided by the regulation, the District invokes this authority by giving notice to DNR and the operator of a private sewer system of the availability of the District's system and the District's intention to require the system to connect. There is no evidence on the record that the District has given such notice, nor is there any evidence to indicate it has the present right to do so.

The District's theory that its regulations are controlling has drawn arguments from MAWC and Staff that the District's regulations are preempted by Missouri's Clean Water Law. It is not necessary for the Commission to determine whether the District's regulations are preempted when it is clear that the District's regulations do not apply to the facts at this time and may apply only if MAWC applies to DNR for a permit for the Hallsville System and if the District issues notice that it will require the Hallsville System to connect.<sup>83</sup> If the parties' dispute persists, MAWC and the District may require judicial

---

under the provisions of these regulations nor any other public or governmental agency having jurisdiction is willing and/or able to provide wastewater collection and treatment services, but wastewater collection and treatment services are nonetheless required in the geographic area to which a Department issued operating permit is applicable and it is demonstrated that a competent, qualified and solvent private person, entity or organization is ready, willing and able to provide such services as Continuing Authority pursuant to Department regulations, then such other person, entity or organization may act as Continuing Authority without objection of the District if approved by the Department.")

<sup>82</sup> Boone County Regional Sewer District Sanitary Sewer Use Regulations, §§ 2.5, 2.5.2; see Ex. 200, Ratermann Rebuttal, Schedule TR-1, p. 188.

<sup>83</sup> The District regulation describing the process for demanding connection of a private sanitary sewer system provides that no "new operating permit or renewal of an existing operating permit" shall be issued if the District gives notice to DNR and the "Continuing Authority to whom such operating permit has been or will be issued."

action to sort out the District's authority under its regulations and Chapters 204 and 250, RSMo, in relation to Missouri's Clean Water Law. Under the facts now in existence, the District's authority under its regulations does not compel a finding that issuing a CCN to MAWC is contrary to law.

**B. Is MAWC's provision of wastewater service, associated with the purchase of the City of Hallsville wastewater system, "necessary or convenient" for the public service under Section 393.170?**

**Findings of Fact**

36. Hallsville serves 664 sewer accounts and has contracts to provide treatment to the Sunnyslope and Silver Creek subdivisions.<sup>84</sup>

37. The Hallsville System applies wastewater to irrigate farm land under agreements with area farmers.<sup>85</sup> When wastewater cannot be used for irrigation, wastewater is held in three holding cells or lagoons.<sup>86</sup>

38. The Hallsville System does not own the equipment or land used for application of wastewater.<sup>87</sup>

39. The challenges confronting the Hallsville System include unauthorized discharge of wastewater, inflow and infiltration (where uncontaminated water enters the sewers), and deterioration of infrastructure.<sup>88</sup>

40. DNR has found the Hallsville System to be out of compliance with a variety of requirements in the past five years, including requirements to aerate the system's primary storage cell, submit a complete annual operations report, and lower lagoon and

---

<sup>84</sup> Ex. 1, Horan Direct, p. 4.

<sup>85</sup> MAWC witness Matt Horan describes the wastewater applied in irrigation as "untreated," Ex. 1, Horan Direct, p. 5; while Staff's corrected memorandum attached to Staff's recommendation describes the wastewater used in irrigation as "partially treated." Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 10.

<sup>86</sup> Ex. 1, Horan Direct, p. 5; Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 10.

<sup>87</sup> Ex. 1, Carter Direct, p. 6; Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 10-11.

<sup>88</sup> Ex. 2, Carter Direct, p. 3; Ex. 1, Horan Direct, p. 6-7.

storage basins to specified operating levels.<sup>89</sup>

41. Although discharge is not authorized by the Missouri State Operating Permit, the Hallsville System's main holding lagoon discharged "continuously" for most of the year 2020, in violation of an operating permit issued by DNR.<sup>90</sup> The system was considered to be "under enforcement" by DNR's water protection enforcement section.<sup>91</sup>

42. It would be too costly for Hallsville residents for the municipality to provide funding to fix the Hallsville wastewater system.<sup>92</sup>

43. MAWC anticipates adding "some form of treatment" to the Hallsville System, if it is acquired.<sup>93</sup> MAWC has developed several treatment options with cost estimates for the Hallsville System, but has not decided on what technology to use, and has not completed any designs.<sup>94</sup>

44. MAWC will need to conduct additional engineering and studies to determine the best treatment approach for the Hallsville System. That project will also require engineering approval from DNR and a construction permit before any work can begin.<sup>95</sup>

45. Staff witness Jarrod Robertson credibly testified that without experiencing daily operation and compliance issues in real time, it is not conceivable to devise a plan for upgrades specific enough for drafting of plans and specifications.<sup>96</sup>

46. MAWC has acquired systems similarly situated to Hallsville's system. MAWC invested the necessary capital to improve those systems.<sup>97</sup>

47. MAWC has the financial resources to invest in the Hallsville System. MAWC

---

<sup>89</sup> Ex. 1, Horan Direct, p. 6-7; Transcript Vol. 2 at p. 112-113.

<sup>90</sup> Ex. 1, Horan Direct, p. 6; Transcript Vol. 2 at p. 112.

<sup>91</sup> Ex. 1, Horan Direct, p. 7.

<sup>92</sup> Ex. 2, Carter Direct, p. 3.

<sup>93</sup> Ex. 1, Horan Direct, p. 5. Transcript Vol. 2, p. 76.

<sup>94</sup> Ex 3: Horan Surrebuttal, p. 7-8. Schedule MH-5C.

<sup>95</sup> Ex 3, Horan Surrebuttal, p. 7.

<sup>96</sup> Ex. 101, Robertson Surrebuttal, p. 10.

<sup>97</sup> Ex 3, Horan Surrebuttal, p. 6.

placed in service improvements worth more than \$226 million to keep pace with the replacement needs of its water distribution and sewer collection infrastructure.<sup>98</sup>

48. MAWC has submitted a feasibility study as required by Commission Rule 20 CSR 4240-3.305.<sup>99</sup>

49. The feasibility study provides insight into the financial ramifications of the application, and the effect it may have on ratepayers of the new system and the general body of ratepayers. The projections included in the feasibility study are estimates and not actual costs.<sup>100</sup>

50. MAWC's feasibility study indicates that the purchase of the City's sewer assets will not generate positive income, but the effect of the acquisition of the Hallsville System on MAWC's general population of ratepayers is likely to be negligible.<sup>101</sup>

51. Hallsville's Mayor Logan Carter credibly testified that it is in the public interest for MAWC to own and operate the Hallsville System.<sup>102</sup>

52. The City of Hallsville and the District are parties to contracts to provide wastewater treatment, via the Hallsville System, to District customers in the Sunnyslope and Silver Creek subdivisions located outside the city limits (Cooperative Agreements).<sup>103</sup>

53. The Silver Creek subdivision is receiving sewer service from the City of Hallsville, but the Sunnyslope subdivision has not been connected to the Hallsville System.<sup>104</sup>

---

<sup>98</sup> Ex. 3, Horan Surrebuttal, p. 6

<sup>99</sup> Ex. 1, Horan Direct, p. 7. Schedule MH-4C.

<sup>100</sup> Ex. 102, Young Rebuttal, p. 3.

<sup>101</sup> Ex. 100, Corrected Busch Direct, Schedule JAB-d2, p. 15; Ex. 3, Horan Surrebuttal, p.5.

<sup>102</sup> Ex. 2, Carter Direct, p. 5.

<sup>103</sup> Ex. 1, Horan Direct, p. 4; Ex. 2, Carter Direct, p. 4.

<sup>104</sup> Transcript Vol. 2 at p. 130.



## Conclusions of Law

GG. The Commission may take official notice to the same extent as the courts take judicial notice.<sup>105</sup> Judicial notice permits the court and jury to rely upon known facts without additional proof because such facts constitute either “judicial knowledge” or “common knowledge.”

HH. A certificate of convenience and necessity does not override or repeal any existing authority of municipalities or counties. It simply allows the utility “to exercise the rights and privileges presumably already conferred upon it by state charter and municipal consent.”<sup>106</sup>

II. The Hallsville board of alderman is authorized to sell the municipality’s wastewater system after an ordinance is passed setting the terms of the sale and is ratified by a majority of the voters voting on the question.<sup>107</sup>

JJ. The Commission may grant a certificate of convenience and necessity after determining the proposed service is “necessary or convenient for the public service.”<sup>108</sup>

KK. The term “necessity” does not mean “essential” or “absolutely indispensable,” but rather that the proposed service “would be an improvement justifying its cost,” and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.<sup>109</sup>

LL. While controlling statutes provide no “specific criteria” to guide the

---

<sup>105</sup> Section 536.070(6) RSMo.

<sup>106</sup> *Stopaquila.org v. Aquila, Inc.*, 180 S.W.3d 24, 40 (Mo. App. W.D. 2005) (emphasis supplied) (citing *State ex. inf. Shartel v. Missouri Utilities Co.*, 331 Mo. 337, 53 S.W.2d 394, 399 (1932).

<sup>107</sup> Section 88.770.1 RSMo (Cum. Supp. 2020). This statute was amended effective August 28, 2019. Among other changes the amendment authorizes the municipal sale of a wastewater systems on a simple majority vote.

<sup>108</sup> Section 393.170.3, RSMo (Cum. Supp. 2020).

<sup>109</sup> *State ex rel. Intercon Gas, Inc., v. Public Service Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. App. 1993), citing *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973), citing *State ex rel. Transport Delivery Service v. Burton*, 317 S.W.2d 661 (Mo. App. 1958).

Commission's determination of public convenience or necessity,<sup>110</sup> the Commission considers five criteria which are commonly referenced as the "Tartan factors." The Tartan Factors are as follows:<sup>111</sup>

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

MM. It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.<sup>112</sup>

NN. Commission Rule 20 CSR 4240-3.305 requires that applications for certificates of convenience and necessity for a sewer utility include a feasibility study containing plans and specifications for the utility system and estimated cost of the construction of the utility system during the first three (3) years of construction; plans for financing; proposed rates and charges and an estimate of the number of customers, revenues and expenses during the first three (3) years of operations.

### **Decision**

MAWC seeks a CCN to install, own, acquire, construct, operate, control, manage, and maintain a sewer system in and around Hallsville, Missouri, as an addition to MAWC's existing service territories. This necessarily would involve the Hallsville System, a

---

<sup>110</sup> *United for Mo. v. Pub. Serv. Comm'n*, 515 S.W.3d 754, 759 (Mo. App. W.D. 2016) (citing *State ex rel. Ozark Elec. Coop v. Pub. Serv. Comm'n*, 527 S.W.2d 390, 394 (Mo. App. 1975)).

<sup>111</sup> *In re Tartan Energy*, Report and Order, 3 Mo.P.S.C. 3d 173, Case No. GA-94-127, 1994 WL 762882 (September 16, 1994).

<sup>112</sup> *State ex rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo. App. 1975).

municipal system not under the Commission's jurisdiction, becoming a private system subject to the Commission's jurisdiction.

The Commission may grant a sewer corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service." The rule does not establish a standard for granting a CCN. When applying for a CCN, the burden of establishing that an application is "necessary or convenient for the public service" rests on the applying party. The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity in the case *In Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991). The Intercon case combined the standards used in several similar certificate cases, and set forth the following criteria: (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; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.

There is a present and future need for the service. The CCN is needed primarily because MAWC's acquisition of the Hallsville System benefits both the City of Hallsville and its customers. Over 660 Hallsville residents currently make use of the existing sewer system. Hallsville has additional contracts to provide service to two subdivisions outside of Hallsville. Hallsville's population growth is increasing. The Hallsville System has had frequent problems complying with the Missouri State Operating Permit and there is a present need for the Hallsville System to be brought into compliance with the Missouri State Operating Permit. MAWC's acquisition of the Hallsville System will not result in

duplication of service as the District has no sewer assets located in Hallsville and it is not currently authorized to provide service in Hallsville.

MAWC is an existing water and sewer corporation and public utility subject to the jurisdiction of the Commission. MAWC has demonstrated that it is qualified to provide the service as it is currently providing water service to approximately 470,000 customers and sewer service to more than 15,000 customers in Missouri. Staff's witness credibly testified that MAWC "demonstrates the requisite [technical, managerial, and financial]<sup>113</sup> capabilities by displaying it has adequate resources to operate utility systems it owns, acquires, constructs, expands, as well as perform capital improvements and respond to emergency situations should they arise."<sup>114</sup> MAWC has shown the financial ability to provide the service and does not anticipate any external financing. MAWC has also demonstrated that it has sufficient funds available to make the necessary investments in the Hallsville System to bring it into compliance with Commission and DNR regulations.

The proposal to purchase and operate the Hallsville System is economically feasible according to MAWC's feasibility study. That study is realistic given their experience and history of performance. While the system will initially run at a deficit, MAWC's financial standing is such that this situation will not impact its ability to provide safe and adequate service. The effect of this transaction on MAWC's general population of ratepayers is likely negligible.

The District argues that the application does not promote the public interest. Much of that argument centers on DNR being unable to issue an operating permit, and that argument has already been addressed within this order. The District also asserts that "the

---

<sup>113</sup> In addition to the Tartan Factors, Staff reviews an applicant's technical, managerial, and financial capabilities (TMF). Staff asserts that TMF capacity helps lead to sustainable systems.

<sup>114</sup> Ex. 101, Robertson Surrebuttal, p. 3.

competition offered by MAWC is undesirable and destructive and will result in duplication of service or unnecessary services that are not in the interest of the public as a whole.”<sup>115</sup> Both competition and duplication of services necessarily involve utilities providing the same service in the same area. As MAWC points out, the Hallsville System is already providing service to over 660 customers that are not the District’s customers. MAWC’s purchase of the Hallsville System will not result in duplication of services, but merely the transfer of ownership of an existing service and its customers.<sup>116</sup>

The proposal promotes the public interest as demonstrated by Hallsville residents voting overwhelmingly to sell the city’s sewer assets to MAWC. Hallsville’s system has a history of failure to comply with the Missouri State Operating Permit and is considered to be “under enforcement” by DNR’s water protection enforcement section. Staff’s witness described the Hallsville System as a small system with “environmental issues.”<sup>117</sup> Currently Hallsville has no plan to address the improvements to the system that are needed. Hallsville’s Mayor testified that it would be too expensive for Hallsville residents for the municipality to provide funding to fix the Hallsville wastewater system. MAWC has acquired systems similarly situated to Hallsville’s system and invested the necessary capital to improve those systems and bring them into compliance.

The Commission finds that the factors for granting a certificate of convenience and necessity to MAWC have been satisfied and that it is in the public’s interest for MAWC to provide sewer service to the customers currently served by Hallsville. The Commission

---

<sup>115</sup> District Reply Brief, p. 1.

<sup>116</sup> This transfer would include the existing District customers in the Sunnyslope and Silver Creek Subdivisions that the Hallsville System will serve pursuant to two cooperative agreements.

<sup>117</sup> Transcript Vol. 2, p. 138-139

will authorize the transfer of assets and grant MAWC the certificate of convenience and necessity to acquire the Hallsville sewer assets.

**C. What conditions should be imposed on a CCN issued to MAWC for the Hallsville System?**

**Findings of Fact**

54. In File No. WR-2017-0285, the Commission ordered water and sewer depreciation rates applicable to all divisions of MAWC.<sup>118</sup> Those depreciation rates were carried forward and adopted in MAWC's most recently resolved general rate case, File No. WR-2020-0344.<sup>119</sup>

55. MAWC does not pursue rate cases on a system by system basis. MAWC cannot raise Hallsville's rates without initiating a general rate case that would include all of MAWC's Missouri service areas.<sup>120</sup>

**Conclusions of Law**

OO. The Commission may impose "such condition or conditions as it may deem reasonable and necessary," when issuing a CCN.<sup>121</sup>

PP. Authority conferred by a CCN is null and void unless "exercised within a period of two years" of the date the certificate is granted.<sup>122</sup>

QQ. The Commission can neither "enforce, construe nor annul" contracts.<sup>123</sup>

**Decision**

Staff recommends the Commission grant MAWC a CCN for the Hallsville System, subject to a set of conditions, which MAWC has agreed to accept. Most of the conditions

---

<sup>118</sup> Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 16.

<sup>119</sup> Ex. 306, Commission Order: Stipulation and Agreement ¶ 13; Transcript Vol. 2 at p. 196-199.

<sup>120</sup> Transcript Vol. 2, p. 140.

<sup>121</sup> Section 393.170.3, RSMo.

<sup>122</sup> Section 393.170.3, RSMo.

<sup>123</sup> *Staff of the Mo. Pub. Serv. Comm'n v. Consol. Pub. Water Supply Dist. C-1*, 474 S.W.3d 643, 657 (Mo. App. W.D. 2015).

proposed by Staff are conditions that are often ordered by the Commission when existing water and sewer systems are acquired. These conditions provide for the accurate filing of service area maps and legal descriptions, as well as tariffs governing the provision of service, and require other company filings to insure adequate customer service. The Commission finds these conditions are reasonable and necessary and will approve all such recommended conditions.

However, the Commission will not approve as proposed by Staff a condition to address continuation of service to District customers in the Sunnyslope and Silver Creek subdivisions. The Commission finds Staff's recommendation – that the Commission direct MAWC to negotiate new agreements with the District – poses a risk, particularly in this contentious case, that negotiations will fail. Therefore, the Commission will require that, as a condition of the CCN, MAWC maintain service to District customers in the Sunnyslope and Silver Creek subdivisions on the same terms as those provided by the existing agreements between the City of Hallsville and the District and for the period provided by the Cooperative Agreements.

This condition is necessary to maintain service to District customers, including customers in the Silver Creek subdivision, which lacks an alternative source of sewer service. While MAWC contended, in an effort to avoid the District's intervention in this case, that MAWC is not contractually bound to the Cooperative Agreements by the Hallsville purchase agreement,<sup>124</sup> construction and enforcement of contracts exceeds the scope of the Commission's jurisdiction. Therefore, the Commission does not purport to construe those contracts. Nonetheless, the Commission finds that it is in the public interest to avoid a loss of service to District customers as a result of MAWC's acquisition and operation of

---

<sup>124</sup> MAWC's *Response in Opposition to BCRSD's Application to Intervene*, p. 3-4 (Aug. 31, 2020).

the Hallsville System. For that reason, the Commission finds it is necessary to require MAWC to maintain service to District customers in the Sunnyslope and Silver Creek subdivisions. In addition, the Commission finds the Cooperative Agreements provide for service on reasonable terms.

The District has also presented five proposed conditions that it requests the Commission attach to any CCN issued to MAWC for the Hallsville System. The District asks the Commission to impose conditions on any CCN to MAWC in this case to require MAWC to (1) continue service to District customers; (2) obtain a DNR operating permit within two years of issuance of the CCN; (3) obtain consent from the District for plans to address Hallsville System capacity and “compliance” issues before applying to DNR for a construction or operating permit; (4) prohibit MAWC from applying to convert the Hallsville System to a “discharge” facility under DNR regulations; and (5) require MAWC to own any land used for land application of wastewater in the Hallsville System.<sup>125</sup>

Other than a condition to ensure continued service to District customers, which is addressed above, the Commission finds that the conditions requested by the District are neither reasonable nor necessary. The District requests the Commission condition a CCN to MAWC on a requirement that MAWC acquire a DNR permit for the Hallsville System within two years. MAWC counters with a request that any condition require MAWC to *apply for a permit within two years*.<sup>126</sup> The Commission finds that a condition imposing a time limit for applying for or securing a DNR permit is neither reasonable nor necessary on these facts.

---

<sup>125</sup> *District's Post-Hearing Brief*, p. 20-25 (June 9, 2021); *District's Position Statement*, p. 3-4 (March 24, 2021).

<sup>126</sup> At hearing, counsel for MAWC indicated it did not contest a proposed condition requiring MAWC to obtain a permit within two years, Transcript Vol. 2 p. 48, 65-67, but that position changed in post-hearing briefs. See *Missouri-American's Initial Brief*, p. 11-12 (June 9, 2021).



Section 393.170.3, RSMo (Cum. Supp. 2020), provides that the authority “conferred” by a CCN is “null and void” if not “exercised” within two years of issuance. Counsel for the District advised during hearing that the District reads Section 393.170.3 to require MAWC to acquire a permit within two years, or a CCN will be rendered null and void under the statute.<sup>127</sup> If the District is correct, a condition that duplicates a statutory mandate is unnecessary. The District offered no factual justification to explain why the Commission’s order should be concerned with the duration of the DNR permitting process. With no purpose stated on the record – other than the District’s general opposition to MAWC’s acquisition of the Hallsville System, the Commission finds it would be unreasonable in this case to impose a stopwatch on the DNR permit process, particularly when DNR’s regulations specifically require applicants to seek a CCN before a permit. The Commission anticipates MAWC must proceed to acquire all necessary permits to operate the Hallsville System, and no additional condition need be imposed to that end.

Nor is the Commission persuaded that the CCN granted here should be conditioned on District consent and approval of MAWC proposals for the operation or modification of the Hallsville System. First, the District has consistently asserted that DNR may not issue a permit to MAWC over the District’s objection. Thus, if District approval is required for a permit application before DNR, such a condition in this Commission’s order is unnecessary. Alternatively, should DNR conclude it has authority to issue a permit to MAWC over the District’s objections, any condition in this Commission’s order that would also require the District’s approval may inappropriately encroach on the statutory authority of DNR and the Clean Water Commission.

---

<sup>127</sup> Transcript Vol. 2 at p. 65-66; See also *District’s Reply Brief*, p. 8 (June 16, 2021).

Similarly, whether the Hallsville System should be authorized to operate as a “discharge” facility is clearly within the authority of DNR and Clean Water Commission. If state law and DNR regulations do not prioritize the District’s position on such an issue, no facts have been presented in this case to justify imposing such a preference. Likewise, the District’s request that the Commission require MAWC to own any land used for wastewater application suffers from the same problem. DNR has the expertise and authority to determine the appropriate specifications and limitations on any permit it issues to MAWC for the Hallsville System. Such a technical issue, in this case, belongs before DNR. Therefore, the Commission will not condition the CCN granted to MAWC as the District has requested.

Finally, the Commission will grant MAWC’s request for waiver of the 60-day notice requirement under 20 CSR 4240-4.017. The Commission finds good cause exists for waiver, based on MAWC’s verified declaration that it had no communication with the Office of the Commission regarding substantive issues in the application within 150 days before it filed its application.

**THE COMMISSION ORDERS THAT:**

1. MAWC is authorized to acquire the sewer assets of the City of Hallsville.
2. MAWC is granted a certificate of convenience and necessity to install, own, acquire, construct, operate, control, manage, and maintain a sewer system in and around Hallsville, Missouri.
3. The authority granted by this order is subject to the following conditions:
  - a. MAWC is granted a CCN for a service area that includes only the territory of the incorporated City of Hallsville and any Hallsville System facilities located outside city limits;
  - b. MAWC shall adopt the existing sewer rates for the City of Hallsville;

- c. MAWC shall maintain sewer service to District customers receiving sewer service from the City of Hallsville, consistent with the terms of the City of Hallsville-Boone County Regional Sewer District Cooperative Agreements dated January 14, 2019, and April 8, 2019, as contained in Exhibits 303 and 304.
- d. Before submitting revised tariffs, MAWC shall file a revised service area map and corresponding legal description that includes all Hallsville System assets to be acquired, including storage basins and underground wastewater lines;
- e. MAWC shall submit new and revised tariff sheets to take effect before closing on the Hallsville System;
- f. MAWC shall notify the Commission within five days of closing on the Hallsville System;
- g. If closing on the Hallsville System does not occur within 30 days after the effective date of this order, MAWC shall file a report on the status of the transaction within five days after the initial 30-day period expires, and subsequent status reports within five days after each subsequent 30-day period, until closing takes place or until MAWC files a notice stating closing will not occur;
- h. MAWC shall notify the Commission if MAWC determines it will not acquire the Hallsville System. At such time, MAWC shall submit tariff sheets as appropriate and necessary to cancel service area maps, descriptions, rates and rules applicable to the Hallsville System;

- i. MAWC shall create and keep financial books and records for plant-in-service and operating expenses in accordance with the National Association of Regulatory Utility Commissioners Uniform System of Accounts;
- j. Depreciation rates ordered for MAWC in File No. WR-2020-0344 shall apply to the Hallsville System;
- k. Before closing or at closing, MAWC shall obtain from the City of Hallsville all available plant-in-service records and documents, including all plant-in-service original cost documentation, with depreciation reserve balances; documentation of contribution-in-aid-of-construction transactions; and any capital recovery transactions.
- l. After closing, MAWC shall include the Hallsville System in MAWC's monthly customer service and billing reports to the Commission's Customer Experience Department;
- m. MAWC shall train its call center personnel regarding rates and rules applicable to the Hallsville System;
- n. Within 30 days of closing, MAWC shall distribute to Hallsville System customers an informational brochure detailing the rights and responsibilities of the utility and customers regarding sewer service, consistent with the requirements of Commission Rule 20 CSR 4240-13;
- o. Within 10 days after closing, MAWC shall provide the Customer Experience Department an example of actual communication with Hallsville System customers regarding the acquisition and operation of the Hallsville System, including information about how customers may contact MAWC;

p. Within 30 days after closing, MAWC shall provide to the Commission's Customer Experience Department a sample of 10 billing statements from MAWC's first month of billing for the Hallsville System; and

q. MAWC shall file notice within 10 days when the requirements stated in items (m), (n), (o), and (p) are complete.

4. The Commission imposes no condition that addresses the two-year provision of Section 393.170.3, RSMo (Cum. Supp. 2020).

5. The Commission makes no finding that precludes the Commission from considering the ratemaking treatment to be afforded any matters in any later proceeding.

6. The 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1) is waived for good cause.

7. This report and order shall be effective on December 17, 2021.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeier CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Clark, Senior Regulatory Law Judge


**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 November, 2021.**



  
\_\_\_\_\_  
**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**November 17, 2021**

**File/Case No. SA-2021-0017**

**Missouri Public Service Commission**  
Staff Counsel Department  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
staffcounsel@psc.mo.gov

**Office of the Public Counsel**  
Marc Poston  
200 Madison Street, Suite 650  
P.O. Box 2230  
Jefferson City, MO 65102  
opcservice@opc.mo.gov

**Boone County Regional Sewer District**  
Jennifer S Griffin  
314 E. High St.  
Jefferson City, MO 65101  
jennifer.griffin@lathrogpm.com

**Missouri Public Service Commission**  
Kevin Thompson  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
kevin.thompson@psc.mo.gov

**Missouri-American Water Company**  
Dean L Cooper  
312 East Capitol  
P.O. Box 456  
Jefferson City, MO 65102  
dcooper@brydonlaw.com

**Missouri-American Water Company**  
Jennifer L Hernandez  
312 E. Capitol Avenue  
PO Box 456  
Jefferson City, MO 65102  
jhernandez@brydonlaw.com

**Missouri-American Water Company**  
Timothy W Luft  
727 Craig Road  
St. Louis, MO 63141  
Timothy.Luft@amwater.com

**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

*Sincerely,*



**Morris L. Woodruff**  
**Secretary**

---

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.