

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

In the Matter 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 and around the City )  
of Hallsville, Missouri. )

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

**MISSOURI-AMERICAN’S INITIAL BRIEF**

**COMES NOW** Missouri-American Water Company (“MAWC,” “Missouri-American” or “Company”), by and through the undersigned counsel, and states the following to the Missouri Public Service Commission (“Commission”) as its *Initial Brief*. This *Initial Brief* will address the issues described in the *Joint List of Issues, Order of Openings, Witnesses and Cross-Examination* filed on March 22, 2021:

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## **INTRODUCTION**

The MAWC application to purchase the wastewater assets of the City of Hallsville, Missouri, presents a simple question for the Commission. MAWC seeks a certificate of convenience and necessity (“CCN”) associated with this proposed purchase because Hallsville’s wastewater service is not regulated by the Commission and no prior CCN has been granted for the Hallsville area. In this situation, Section 393.170, RSMo, presents the question as to whether or not the proposed service is “necessary or convenient for the public service.” This issue is often translated to the following - is a grant of the CCN in the public interest?

It is hard to imagine how the proposed transaction could not be in the public interest.

The Hallsville wastewater system has known deficiencies, for which Hallsville has no obvious or proposed solution. Hallsville is a willing seller, having put the proposed sale to a vote of its citizens after a series of public meetings on the subject. The proposal was overwhelmingly approved by the voters and a purchase agreement agreed to between Hallsville and MAWC.

MAWC is a known provider of regulated water and wastewater services in Missouri. MAWC’s operations are compliant with environmental laws and sufficiently financed to provide for needed repairs, replacements, and expansions. MAWC’s customer base provides economies of scale and access to assets that Hallsville would not be able to match.

These facts are not questioned by any party. The only objection provided in written testimony concerned a “continuing authority” issue related to Missouri Department of Natural Resources (“MDNR”) regulations associated with MDNR permitting. The Commission should not take this invitation to address this issue, or any other issue that might be raised that is beyond

its subject matter jurisdiction. While MAWC does not believe that this argument has merit, it is ultimately something that should be resolved by MDNR, and may only be resolved by MDNR after a grant of the requested CCN

Accordingly, the Commission should grant MAWC a CCN to provide wastewater service within the proposed service area, subject to the conditions described by the Staff of the Commission, based on the facts and for the reasons specifically discussed in the following pages.

### **ISSUE 1 – Necessary or Convenient**

*Is MAWC’s provision of wastewater service associated with its proposed purchase of the City of Hallsville wastewater system “necessary or convenient for the public service” within the meaning of the phrase in section 393.170, RSMo?*

#### **Background**

MAWC proposes to purchase substantially all of the wastewater assets of the currently unregulated wastewater system of the City of Hallsville, Missouri (“Hallsville”). Hallsville is a Fourth-Class City located in Boone County. (Exh. 1, Horan Dir., p. 4). Hallsville serves over 660 sewer accounts and has contracts to provide treatment to Boone County Regional Sewer District in regard to the Sunnyslope and Silver Creek subdivisions. (*Id.*).

On August 26, 2019, the Hallsville Board of Aldermen passed Ordinance No. 370, *An Ordinance Calling For An Election In The City Of Hallsville, Missouri To Be Held On November 5, 2019 For the Purpose Of Submitting To The Qualified Voters Of The City A Proposition To Sell Certain Assets Associated With The City’s Wastewater System To Missouri American Water* (“Ordinance”). (Exh. 2, Carter Dir., p. 4; Exh. 1, Horan Dir., p. 4).

Section 1 of the Ordinance provided notice of an election to be held on November 5, 2019, to vote on Proposition 1, whether the wastewater utility owned by the City of Hallsville should be sold. Section 2 of the Ordinance provided:

If a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the question, then the City may negotiate a contract with Missouri American Water for a price of not less than \$2,000,000.00 (Two Million Dollars) cash and a capital commitment of \$3,300,000.00 (Three Million Three Hundred Thousand Dollars) over 5 (five) years, including terms that provide for future service, maintenance, capital improvements and other terms and conditions.

(Exh. 2, Carter Dir., p. 4; Exh. 1, Horan Dir., Sched., MH-1) (emphasis added).

Meetings were held in Hallsville to discuss the potential sale. Hallsville held a meeting on October 3, 2019. Two additional meetings were held by MAWC on October 10, 2019 and October 29, 2021. (Exh. 2, Carter Dir., p. 4-5; Ex. 1, Horan Dir., p. 5).

The election was held on November 5, 2019. (Exh. 2, Carter Dir., p. 5; Exh. 1, Horan Dir., p. 5). One Hundred and Thirty-Six (136) votes were cast in favor of the proposition, while Sixty-Four (64) votes were cast against. (Exh. 8). The Ordinance passed and on July 14, 2020, MAWC entered into a Purchase Agreement with Hallsville. (Exh. 2, Carter Dir., p. 5; Exh. 1, Horan Dir., p. 5 and Sched. MH-2).

### **Hallsville System Condition**

The Hallsville wastewater system utilizes a land application process to dispose of its wastewater. Large irrigation systems distribute untreated wastewater onto farmland. This process has resulted in compliance issues with the Missouri Department of Natural Resources (“MDNR”). When irrigation is not possible, wastewater is held and accumulates in three holding cells or lagoons. The collection system has approximately 14 miles of pipe and approximately 260 manholes. (Exh. 1, Horan Dir., p. 5).

There are currently violations of Hallsville's operating permit. The lagoons are not permitted to discharge effluent and are required to land apply the treated wastewater on approved agricultural land. Despite this, the main holding lagoon (Lagoon #2) discharged continuously for most of 2020, in violation of the Missouri State Operating Permit. The discharge eventually enters Waters of the State in violation of the Missouri Clean Water Law. In previous years, it is likely that even the surface land application has resulted in wastewater entering creeks/drainages, again in violation of the operating Permit. (Exh. 1, Horan Dir., p. 6). Additional compliance issues were noted in the Direct Testimony of MAWC witness Horan. (Exh. 1, Horan Dir., p. 6-7). Hallsville does not currently have any plan as to how to address these issues or how it might finance any improvements. (Tr. 133 (Carter); Tr. 266 (Stith)).

As a result of the numerous compliance issues documented over the years by the MDNR, the Hallsville facility is currently under enforcement with MDNR's Water Protection Enforcement Section. (Exh. 1, Horan Dir., p. 7). Hallsville Mayor Logan Carter described the issues as follows:

The wastewater system in Hallsville faces multiple challenges, including, treatment, discharge, I & I issues, as well as deterioration infrastructure. Providing funding to fix all solutions over time would prove too costly to our residents if done by the municipality.

(Exh. 2, Carter Dir., p. 3).

If the Application is granted, MAWC anticipates adding some form of treatment to the system. (Exh. 1, Horan Dir., p. 5). The City of Hallsville's current practice of land applying 100% of the wastewater effluent is not a long-term solution and has a great risk for non-compliance. Moreover, the City of Hallsville does not own the property or the application equipment and is dependent upon local landowners/partners and weather. (Exh. 1, Horan Dir., p. 6)

MAWC's internal engineering professionals developed preliminary cost estimates based upon recent projects and industry knowledge. A description of these projects, along with cost estimates, have been provided. (Exh. 3, Horan Sur., p. 8 and Sched. MH-5C).

However, MAWC would not want to finalize, or choose, an option at this point in time. This is because it is important to operate the Hallsville system for a period of time before MAWC decides the best treatment option. Waiting allows it to thoroughly vet options and operational improvements. For example, MAWC has been allowed to take wastewater samples at the Hallsville system recently. That access has already allowed MAWC to develop a potential option for treatment that was not on its original list of possibilities. (Exh. 3, Horan Sur., p. 8).

Additional engineering and studies will ultimately be needed to determine the best approach. MDNR permitting will also be required before any work can begin. (Exh. 1, Horan Dir., p. 6).

### **Standard**

As stated above, MAWC requests in this case a certificate of convenience and necessity ("CCN") to provide sewer service within the identified service area in and around the City of Hallsville utilizing the Hallsville system.

The Commission may grant a "sewer corporation" a CCN to operate after determining that the construction and/or operation are either "necessary or convenient for the public service."<sup>1</sup> 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

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<sup>1</sup> Section 393.170.3, RSMo.

financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. The factors have also been referred to as the "*Tartan Factors*" or the "*Tartan Energy Criteria*."<sup>2</sup>

### **Assessment of Tartan Factors**

There is a need for the service as residents in and around the City of Hallsville currently make use of the existing wastewater system and there are known compliance violations that must be addressed.

MAWC is qualified to provide the service as it already provides safe, adequate and compliant water service to over 470,000 Missouri customers, and sewer service to over 15,000 Missouri customers. (Exh. 1, Horan Dir., p. 7). MAWC has the financial ability to provide and improve the service. MAWC does not anticipate a need for external financing for this project. MAWC has sufficient funds readily available to it and is committed to making the necessary investments in the Hallsville system to bring it into compliance with the applicable Commission and MDNR regulations. (Exh. 3, Horan Sur., p. 5; Exh. 1, p. 8). As an example of its financial wherewithal, in 2019, MAWC placed in service improvements worth more than \$226 million to keep pace with the replacement needs of its water distribution and sewer collection infrastructure. (Exh. 3, Horan Sur., p. 6). Moreover, in the last several years, MAWC has acquired systems that were similarly situated to that of Hallsville (for example, the City of Lawson (File No. WA-2018-0222)). In those instances, MAWC has also invested the necessary capital to improve those systems. (Exh. 3, Horan Sur., p. 6).

MAWC's feasibility study indicates that the purchase of the City's sewer assets will not generate positive income in the initial years. (Exh. 1, Horan Dir., Sched. MH-4C). However,

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<sup>2</sup> See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

MAWC's financial standing is such that this situation will not impact its ability to provide safe and adequate service and the effect of this transaction on MAWC's general population of ratepayers, if any, is likely to be negligible. (See Exh. 3, Horan Sur., p. 5).

### **Public Interest**

The Commission has previously indicated that positive findings with respect to the four standards above will in most instances support a finding that an application for a CCN will promote the public interest.<sup>3</sup> The factors for granting a CCM to MAWC in this case have been satisfied and it is in the public's interest for MAWC to provide sewer service to the customers currently served by the City of Hallsville. Further, MAWC possesses the necessary technical, managerial, and financial capacity to operate and improve the sewer system it wishes to purchase from the City.

Mayor Carter described the public interest as follows:

Municipal systems, such as the City of Hallsville, frequently lack funding to address critical needs, such as the treatment process in this case. Currently, the largest anticipated capital need is the addition of some type of wastewater treatment. Hallsville's current practice of land applying 100% of the wastewater effluent is not a long-term solution as Hallsville does not own the property or the application equipment and is dependent upon local landowners/partners. Hallsville is confident in MAWC's commitment to compliance and solving water and wastewater challenges and therefore wants to sell this system to MAWC. I believe it is in the public interest for MAWC to own and operate the system and provide service.

(Exh. 2, Carter Dir., p. 5).

The grant of the requested CCN (and approval of the underlying transaction) is in the public interest and will result in the provision of regulated sewer service to the current and future residents of the service area. The wastewater assets of Hallsville would be acquired by MAWC, a Missouri public utility, and be subject to the jurisdiction of the Commission. MAWC has

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



considerable expertise and experience in providing sewer utility services to residents of the State of Missouri and is fully qualified, in all respects, to own, operate and improve the sewer system currently being operated in and around the City of Hallsville. (Exh. 1, Horan Dir., p. 10).

Missouri-American will be able to resolve issues that have been identified by MDNR and resulted in a Notice of Violation. MAWC has the technical knowledge and financial resources to make the upgrades needed to achieve compliance with MDNR requirements.

The citizens of Hallsville will have access to a customer service team 7:00 am-7:00 pm, Monday thru Friday, and 24/7 coverage for emergencies; a customer-friendly website; and JD Power awarded customer service. MAWC currently accepts, and will offer to Hallsville customers, payment options of check, credit/debit cards and electronic funds transfer. Hallsville customers will also have the option to make MAWC payments online via check or credit/debit cards. MAWC will be able to provide local based employees to quickly address problems within the community that include experienced operational personnel licensed in wastewater operations to support any issues or needs that may arise. The Company will also provide long-term rate stability due to its economies of scale, rate structure, and industry expertise. (Exh. 1, Horan Dir., p. 9-11; Tr. 93 (Horan)).

The proposed transaction is in the public interest and the Commission should authorize the transfer of assets and grant MAWC the requested CCN to provide sewer service within the proposed service area.

## **ISSUE 2 - Conditions**

*If the Commission grants MAWC's application for the CCN, what conditions, if any, should the Commission impose?*

### **Staff Conditions**

The Commission should authorize the transfer of assets and grant MAWC the CCN to provide sewer service within the proposed service area, subject to the conditions described by Staff.

### **Rates**

MAWC will provide additional discussion of the question of rates to be initially charged by MAWC upon acquisition of the Hallsville system given that this issue was discussed at the hearing and the Commission requested additional documents related to this issue after the hearing.

Staff had suggested in condition and action 2 that the Commission "Approve MAWC's adoption of existing sewer rates for the City." (Exh. 100, Busch Dir., Sched. JAB-d2, p. 19 of 25). MAWC proposes to charge the Hallsville rates as they exist at the time of closing. (Exh. 1, Horan Dir., p. 9).

The Hallsville rates that will exist at the time of a closing are likely to be those found in Exhibit 308. Exhibit 308 is a copy of City of Hallsville Ordinance No. 384 (Bill No. 2021-2), which describes the Hallsville rate structure. Ordinance No. 384 was passed on April 12, 2021, ". . . to be effective from and after its date of passage and approval."

Exhibit 308, among other things, identifies the following monthly flat sewer charge/rate for Hallsville residents:

- Residential customers - \$38.75;

- Low usage commercial, public authority, and industrial customers (less than 12,500 gallons per month) - \$48.75;
- High usage commercial, public, and industrial customers (more than 12,500 gallons per month) - \$159.75.

The \$38.75 per month fixed residential rate currently charged by Hallsville is consistent with the rate used in MAWC's feasibility study, as well as the materials provided at the public meetings in Hallsville. (Tr. 80, 96 (Horan); see also Tr. 121-122 (Carter)). The offer MAWC initially submitted to Hallsville also referenced a rate of \$38.75. (Ex. 305).

This residential rate is effectively similar to the volumetric rate that Hallsville previously charged - \$19.35 per month for the first 1,000 gallons, plus \$5 per month for each additional 1,000 gallons (Tr. 81 (Horan)). A user of 5,000 gallons under the old Hallsville rate would have been charged \$39.35, while under the new Hallsville flat rate, the customer would be charged \$38.75.

Lastly, the use of the current Hallsville rates is supported by Staff. Subsequent to the hearing in this matter, and in response to the Commission's *Order Directing Filing and Suspending Briefing Schedule*, the Staff filed its *Supplemental Recommendation*, wherein Staff stated that "the City approval of the flat rate structure, resulting in rates similar to those under the volumetric model prior to April 12, 2021, does not alter Staff's ultimate recommendation to approve MAWC's Application at this time." (Ex. 309).

### **BCRSD Proposed Conditions**

The Boone County Regional Sewer District ("BCRSD") proposes five additional conditions in its *Statement of Position*.

- (1) Limit MAWC's service area to the Hallsville city limits, specifically excluding any areas outside of the city limits, other than those where the current

storage basins and land applications are located, absent a valid contract between MAWC and the District;

(2) Require MAWC to obtain an operating permit from MDNR within two years of the effective date of the CCN;

(3) Require MAWC to obtain the District's consent for any plan to address the sewer system's capacity and compliance issues prior to submitting applications for construction or operating permits to MDNR;

(4) Prohibit MAWC from submitting applications for construction or operating permits to MDNR seeking approval to convert the wastewater system from a no discharge facility to a discharge facility; and,

(5) Require MAWC, in any plan involving an irrigation system, to own any land used for land application of wastewater flow collected by the sewer system.

While these conditions were not supported directly by testimony, MAWC will provide a response to each.

MAWC does not object to the District's proposed condition 1. MAWC believes that Condition 1 is consistent with MAWC's requested CCN as reflected in the Direct Testimony of MAWC witness Horan. (Exh. 1, Horan Dir., p. 8 and Sched. MH-3).

MAWC does not object to the District's proposed condition 2, with one adjustment. The condition calls for MAWC to "obtain" an operating permit from the MDNR within a time certain. While MAWC does not anticipate an issue with this deadline, MDNR's actions are not within its control. Thus, MAWC would suggest that the condition be modified to require MAWC to "apply for" an operating permit within the identified time period.

MAWC does object to conditions 3, 4 and 5.

Condition 3 would essentially grant the District "veto power" in regard to any plans to address the system's capacity and compliance issues for an indefinite period of time. Further, such a requirement would allow BCRSD to prevent MAWC's compliance with Condition 2, by merely withholding its consent. MDNR already exists for the purpose of regulating those issues

and it has its own process for taking applications and considering those applications. That process should be sufficient without any additional conditions.

Condition 4 is also unacceptable as it would mandate a certain treatment process for Hallsville, again without regard to what decision may develop from MAWC's operational experience after closing and the decisions of the entity responsible for such issues (DNR).

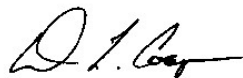
MAWC objects to Condition 5 as it would require ownership of certain land where other treatment options might be acceptable. Again, there is no need for the Commission to regulate what type of treatment should be used, when that is ultimately a matter within the jurisdiction and expertise of MDNR.

## **CONCLUSION**

The Commission should grant MAWC a certificate of convenience and necessity to provide wastewater service within the proposed service area, subject to the conditions described by Staff.

**WHEREFORE**, Missouri-American respectfully requests the Commission consider its *Initial Brief*.

Respectfully submitted,



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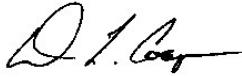
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**ATTORNEYS FOR MISSOURI-AMERICAN  
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**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been sent to all counsel of record by electronic mail this 9<sup>th</sup> day of June, 2021.

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