

**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 And Sewer Line in Benton County, Missouri)

Case No. SA-2015-0065

**STAFF'S RESPONSE TO ORDER DIRECTING RESPONSE
TO MOTION FOR RECONSIDERATION OF ORDER
DENYING APPLICATION TO INTERVENE OUT OF TIME**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and recommends that the Commission not alter or amend its Order of December 17, 2014 denying proposed intervener George M. Hall intervention but granting him leave to file a brief as amicus curiae. As detailed below, Staff is unaware of any federal law or regulation, state regulation, local ordinance, or Missouri-American Water Company (MAWC or Company) tariff provision that would require Mr. Hall, or anyone else, to be served by the sewer system operated by MAWC. Rather, individuals seeking to install on-site sewer systems are required to apply for and receive permits through the Benton County Health Department. Therefore, Staff asserts in response to Mr. Hall's motion that Mr. Hall's purported grievances, if true, would be shared by all in the proposed service area. As such, Mr. Hall's interests or concerns are adequately represented by the Office of the Public Counsel. In support of its position Staff states as follows:

1. On September 8, 2014, Missouri-American Water Company (MAWC or Company) filed an *Application and, if Necessary, Motion for Waiver* (Application) with the Commission seeking a Certificate of Convenience and Necessity (CCN) and authority "to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain a Sewer

System,” and provide sewer service in an unincorporated area in Benton County, referred to herein as the Benton County service area. This *Application* initiated Commission Case No. SA-2015-0065.

2. On September 10, 2014, the Commission issued its *Order Directing Notice and Setting Date for Submission of Intervention Requests*, which directed the Commission’s Data Center and Public Information Office to send out notices regarding the Application, and also established October 1, 2014, as the date by which interested parties could submit requests to intervene in the case. On September 24, 2014, the Missouri Department of Natural Resources (MDNR) submitted a request to intervene in this case, which the Commission granted on October 7, 2014. On November 16, 2014, George M. Hall, filed a motion seeking leave to intervene out of time, ***or in the alternative, to file a brief as amicus curiae*** (emphasis added). The Commission denied Mr. Hall’s application to intervene out of time, but granted his alternative relief to file a brief as *amicus curiae*.

3. On November 4, 2014, Staff requested the Commission issue an order setting a local public hearing, and on November 5, 2014, the Commission issued its *Order Scheduling A Local Public Hearing*. The local public hearing was held on November 24, 2014 in Warsaw, Missouri. At that hearing, rate payers, including the proposed intervener Mr. Hall, had the opportunity to present testimony, many of whom supported MAWC’s Application.

4. Staff reincorporates its prior response to Mr. Hall’s application to intervene and reasserts that Mr. Hall has failed to demonstrate that he meets the criteria found in Commission rule 4 CSR 240-2.075 to permit his intervention in this matter, in either his Motion for Reconsideration, or his subsequent filings of January 2 and January 5, 2015.

Subsection (3) of the rule requires that a proposed intervener carry the burden of showing that (A) the proposed intervener has an interest different from that of the general public or (B) that the intervention would serve the public interest. Mr. Hall has failed to carry the burden on either point, but rather seeks to shift that burden inappropriately to Staff. The burden to demonstrate that he meets the requirements in the rule to intervene is on the applicant. The Commission agreed in its Order of December 17, 2014, denying Mr. Hall's application to intervene that Mr. Hall did not meet the required burden to allow him intervention in this case. In his Motion for Reconsideration and subsequent filings with the Commission, Mr. Hall continues to fail to meet the burden found in the Commission's rules for intervention and, as such, should not be allowed to intervene.

5. Here, the proposed intervener objects to the issuance of a CCN to MAWC, contending that a common sewer system is not needed and that he should be allowed to construct and operate his own on-site sewer system. The ability of any one individual to construct an on-site sewer treatment system is a wholly separate and distinct issue, one that is not in the jurisdiction of the Commission,¹ from the granting of a CCN. Pending before the Commission is an application by MAWC for a CCN to provide sewer service in the area served by Benton County Sewer District No. 1 after the sewer district is dissolved. In the instant case, the sewer facilities themselves are already in place and have been serving residents in the area for many years. In fact, many of the residents who testified at the local public hearing stated that they want to continue the use of the current sewer system. The granting of a CCN to MAWC would not prohibit Mr. Hall,

¹ On-site sewer systems are governed by regulations of both the Missouri Department of Health (at 19 CSR 20-3.015 and 19 CSR 20-3.060), and the Missouri Department of Natural Resources (at 10 CSR 20-6.010 and 20-6.030). In addition to complying with the Missouri laws and regulations, in order to construct an on-site system, a homeowner must secure a permit from the Benton County Health Department. See Benton County Wastewater Treatment Systems Ordinance 1991-1, at <http://benton.lphamo.org/ordinance.htm>.

or anyone else in the service area, from seeking authority from the Benton County Health Department to construct their own on-site sewer treatment facility.²

6. Mr. Hall contends, without support, that granting the CCN would affect his rights to use an on-site sewer system. This contention, if true, would be one shared by all within the service area covered by the CCN. Whether Mr. Hall, or anyone within the service area, can construct and operate on-site sewer systems is dependent on whether state laws and regulations under the exclusive purview of the Missouri Department of Health and MDNR would permit those individual properties to do so. Additionally the proposed CCN will not impact the rights of residents in the area to seek a permit for on-site sewer system construction should they wish to do so.

7. On December 30, 2014, the Commission Ordered Staff to explain the following: Is there any provision in Missouri-American's tariff, local ordinance, state regulation, or federal regulation that would require George M. Hall to become a customer of a sewer system operated by Missouri-American Water Company. Staff is unaware of any federal law or regulation, state law, local ordinance or MAWC tariff provision that would require Mr. Hall to use MAWC's common sewer system if MAWC were certificated provide sewer service in this area. As has been pointed out above, Mr. Hall has the ability to apply for a permit with the Benton County Health Department to construct an on-site sewer system. The Benton County Health Department will then determine if Mr. Hall meets the requirements to construct an on-site sewer system. Thus, even if MAWC has the proposed CCN, those within the service area would be permitted to set up on-site sewer systems, if they qualified under state law and local ordinance.³

² *Id.*

³ *Id.*

8. Mr. Hall has not explained how the public interest favors his intervention and Staff suggests that it does not. The contents of Mr. Hall's motion do not indicate that the Commission's consideration of this matter would be facilitated by his participation as a party. Staff asserts that the Office of the Public Counsel can adequately address the concerns advanced by Mr. Hall on his and others in the proposed service area, as they are all similarly situated.

WHEREFORE, having responded to the Commission's questions contained in its Order dated December 30, 2014, Staff respectfully suggests that Mr. Hall has not raised sufficient grounds in any of his filings for the Commission to alter or amend its Order of December 17, 2014, and, therefore, recommends that the Commission deny Mr. Hall's Motion for Reconsideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by First Class United States Mail, postage prepaid, on this **5th day of January, 2015**, to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case, a copy of which is attached hereto and incorporated herein by reference.

/s/ Cydney D. Mayfield