
**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

INITIAL BRIEF OF STAFF

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**TABLE OF CONTENTS OF
INITIAL BRIEF OF STAFF
CASE NO. SA-2021-0017**

INTRODUCTION..... 1

ARGUMENT..... 5

Issue (1): 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? 6

A. The Application is not detrimental to the public interest..... 9

B. MAWC has demonstrated that its provision of water service is economically feasible..... 14

C. MAWC has indicated it is willing to work with the District. 18

Issue (2): If the Commission grants MAWC’s application for the CCN, what conditions, if any, should the Commission impose? 18

CONCLUSION 22

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This matter involves Missouri-American Water Company’s (“MAWC”) application for a Certificate of Convenience and Necessity (“CCN”) authorizing it to install, own, acquire, construct, operate, control, manage and maintain a sewer system in and around the City of Hallsville, Missouri (“Hallsville”).

Commission Rule 20 CSR 4240-3.305, building off rules listed under 20 CSR 4240-2.060, outlines the filing requirements for a utility seeking a CCN for sewer service, and Missouri Revised Statute Section 393.170 (2018) outlines the statutory requirements for a utility to receive a CCN, including the requirement that issuance of a CCN be “necessary or convenient for the public service.”¹

INTRODUCTION

The Public Service Commission is a Missouri agency responsible for regulating the conduct of certain utility providers, including water and sewer corporations, per Section 386.250, RSMo.

¹ Section 393.170.3, RSMo (2018).

MAWC is an existing water and sewer corporation and public utility subject to the jurisdiction of the Commission, currently providing water service to approximately 470,000 customers and sewer service to more than 15,000 customers throughout Missouri.²

Hallsville's sewer system consists of thirteen miles of pipe and 256 manholes, and provides service to approximately 664 accounts.³

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*. The election was held on November 5, 2019, resulting in passage of the Proposition alluded to in Ordinance No. 370.⁴ On July 14, 2020, MAWC entered into a Purchase Agreement with Hallsville.

Following the Purchase Agreement, MAWC submitted an *Application and Motion for Waiver* ("Application") on July 20, 2020. In its Application, MAWC seeks a CCN to provide sewer service to Hallsville by acquiring the sewer utility assets currently owned by Hallsville.

The Commission issued its *Order Directing Notice and Setting Deadlines for Intervention Applications and Staff's Recommendation* on July 23, 2020. The Commission set a deadline of August 24, 2020, for any applications to intervene, and September 4, 2020, for the filing of Staff's Recommendation or a status report.

The Boone County Regional Sewer District ("District") filed its *Boone County Regional Sewer District's Application to Intervene* on August 20, 2020. The District serves

² Ex. 100, *Direct Testimony of James Busch*, Schedule JAB-d2, pg. 7.

³ *Id.*

⁴ Ex. 8, *Election Result*.

approximately 7,148 customers throughout Boone County, Missouri, including customers around Hallsville.⁵ The District requested intervention due to:

(1) The approval will interfere with the District's statutory authority to set its own rates with respect to District ratepayers serviced by MAWC because MAWC's rates must be approved by this Commission; and (2) When MAWC replaces the existing facility with a new facility due to necessity..., the current rates MAWC asks the Commission to approve will increase greatly to the detriment not only of the District's ratepayers served by MAWC...but also other ratepayers of MAWC.⁶

MAWC filed a response opposing the District's intervention on September 8, 2020, and the Commission granted the District's request for intervention on September 16, 2020.

On September 4, 2020, Staff requested, and received, an extension to file its recommendation no later than October 5, 2020. However, due in part to the intervention of the District, Staff requested and received another extension from the Commission to file its report no later than November 4, 2020.

Staff requested, and received, a third extension to file its recommendation on November 3, 2020. Due to the need for further investigation of agreements between Hallsville, the District, and various landowners, Staff was ordered to file its recommendation no later than November 18, 2020.

Staff filed its *Staff Recommendation to Grant Certificate of Convenience and Necessity* ("Recommendation") on November 18, 2020. Staff concluded that the issuance of a CCN enabling MAWC to serve the customers of Hallsville is necessary or convenient for the public service as outlined under Section 393.170, RSMo (2018).⁷ Staff recommended that the Commission also include 18 conditions as listed in its Recommendation.⁸

⁵ *Boone County Regional Sewer District's Application to Intervene*, pg. 2, para. 5 (August 20, 2020).

⁶ *Id.*, pg. 3, para. 10.

⁷ Ex. 100, Schedule JAB-d2, pg. 6.

⁸ *Id.*, pg. 23-25.

MAWC filed its response to Staff's Recommendation on December 4, 2020, stating that it had no objection to any of the 18 conditions posited by Staff.⁹ That same day, the District also filed its response, arguing that MAWC's Application should not be granted because:

- (1) MAWC lacks authority to acquire and operate a sewer system in Hallsville because the city is within the District's service area;¹⁰
- (2) MAWC's proposal to operate the system is detrimental to the public interest;¹¹ and
- (3) MAWC submitted an inadequate feasibility study regarding its purchase of the Hallsville system.¹²

The District further requested that the Commission set this matter for an evidentiary hearing. The Commission responded by issuing its *Order Directing Proposed Procedural Schedule*, filed on December 21, 2020.

After consultation amongst the District, MAWC, Staff, and the Office of the Public Counsel ("OPC"), the parties filed a *Joint Proposed Procedural Schedule* on January 8, 2021, and the Commission approved on January 20, 2021. Following the filing of direct, rebuttal, and surrebuttal testimony of the parties, the Commission held an evidentiary hearing on this matter on April 8, 2021. The parties agreed to the following issues prior to the evidentiary hearing:

1. 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?

⁹ *Missouri-American's Response to Staff's Recommendation*, pg. 1, para. 3 (December 4, 2020).

¹⁰ *District's Response to Staff Recommendation and Request for Evidentiary Hearing*, pg. 3, para. 6 (December 4, 2020).

¹¹ *Ibid.*

¹² *Ibid.*

2. If the Commission grants MAWC’s application for the CCN, what conditions, if any, should the Commission impose?

ARGUMENT

The Commission has jurisdiction over applications for CCNs under Section 393.170, RSMo (2018). Under the CCN statute, the Commission may approve a CCN application if it is found to meet the standard of “necessary or convenient for the public service.”

Under statute, there is no specific criteria as to when a CCN is “necessary or convenient for the public service”¹³

While the statute does not contain specific guidance within, the Commission has tools to refer to in helping it reach a decision as to whether an application is “necessary or convenient for the public service.” The Commission has issued its own rule, 20 CSR 4240-3.305, outlining the filing requirements of every CCN application for sewer service. This is in addition to the blanket application rules found at 20 CSR 4240-2.060.

The Commission may also look to the courts for guidance as to what would be “necessary or convenient for the public service.” In *State ex rel. Intercon Gas, Inc. v. Public Service Com’n of Missouri*, 848 S.W.2d, 597-98, the court stated that “necessity” does not mean “essential” or “absolutely indispensable.” Rather, “necessity” refers to an additional service which would be an improvement justifying its cost. In short,

“[a]ny improvement which is highly important to the public convenience and desirable for the public welfare may be regarded as necessary. If it is of sufficient importance to warrant the expense of making it, it is a public necessity.”¹⁴

¹³ *State ex rel. Ozark Elec. Co-op v. PSC*, 528 S.W.2d 390, 394 (Mo. App. 1975).

¹⁴ *State ex rel. Intercon Gas, Inc. v. Public Service Com’n of Missouri*, 848 S.W.2d, 597-98 citing *Mo. Coach Lines*, 179 S.W.2d 132, 136 (Mo. App. 1944).

Intercon Gas further holds that the decision of whether the evidence indicates the public interest would be served in the award of the certification falls within the discretion of this Commission.¹⁵

This “necessary or convenient for the public service” standard is applied in every CCN application that comes before the Commission. 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.¹⁶ In this case, that burden rests on MAWC, and does not shift. The Commission determines if MAWC has carried this burden if the preponderance of the evidence shows so, which means the greater weight of the evidence leans towards the party, in this matter MAWC, having carried its burden.

Issue (1): 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?

Yes, MAWC’s provision of wastewater service associated with its proposed purchase of the City of Hallsville waster system is “necessary or convenient for the public service” within the meaning of the phrase in Section 393.170, RSMo (2018).

MAWC applied for a CCN to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain a Sewer System in and around Hallsville on July 20, 2020. This application was the result of public meetings, a vote by the people of Hallsville, and the signing of a Purchase Agreement, dated July 14, 2020, between Hallsville’s elected officials and MAWC to sell the

¹⁵ *Id.*

¹⁶ In the Matter of the Joint Application of Stoddard County Sewer Co., Inc., R.D. Sewer Co., L.L.C. & the Staff of the Missouri Pub. Serv. Comm’n for an Order Authorizing Stoddard County Sewer Co., Inc. to Transfer Its Assets to R.D. Sewer Co., L.L.C., & for an Interim Rate Increase, SO-2008-0289, 2008 WL 4724833 (Mo. P.S.C. Oct. 23, 2008) citing Report and Order, *In the Matter of the Application of Union Electric Company, d/b/a AmerenUE, for an Order Authorizing the Sale, Transfer and Assignment of Certain Assets, Real Estate, Leased Property, Easements and Contractual Agreements to Central Illinois Public Service Company, d/b/a AmerenCIPS, and, in Connection Therewith, Certain Other Related Transactions*, Case No. EO-2004-0108, issued October 6, 2004, effective October 16, 2004. See also Report and Order on Rehearing, issued February 10, 2005, effective February 20, 2005, reiterating the standard, 2005 WL 433375 (Mo.P.S.C.) Re Union Electric Company, d/b/a AmerenUE.

sewer system. On July 23, 2020, the Commission ordered Staff to begin its review and investigation. Staff reviews the Application to ensure that the applying utility complies with the requirements of 20 CSR 4240-2.060 and 3.305, as well as determine if the Application is “necessary or convenient for the public service” within the meaning of Section 393.170, RSMo (2018). This is the standard process employed by Staff, and compliance with the rules is a requirement for a utility seeking a CCN before the Commission.

When investigating a utility’s application for a CCN involving an already existing system, Staff reviews the applicant’s technical, managerial, and financial capabilities to run the system, also known as TMF.¹⁷ TMF capacity helps lead to sustainable systems.

As described by Staff witness Jarrod Robertson, Staff determined that MAWC “demonstrates the requisite TMF 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.”¹⁸ Staff further concluded that MAWC meets the TMF criteria because of the size of MAWC’s current customer base, MAWC’s ability to finance the acquisition itself, and MAWC’s subsidiary status with other American Water Works Company, Inc., and its affiliation with other American Water companies that provide utility service.¹⁹

In its recommendation to approve, Staff concluded that Missouri American Water exhibits the necessary TMF capacities to provide service “necessary or convenient” for Hallsville.²⁰

¹⁷ Ex. 100, Schedule JAB-d2, pg. 14.

¹⁸ Ex. 101, *Surrebuttal Testimony of Jarrod J. Robertson*, pg. 3, ln. 14-16.

¹⁹ *Id.*, ln. 17-22.

²⁰ Ex. 100, Schedule JAB-d2, pg. 14.

In addition to TMF, Staff also utilizes the Tartan Criteria when analyzing utility requests for a CCN.²¹ The Commission articulated this specific criteria to be used when evaluating applications for utility CCNs 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.²² These criteria are also known as the Tartan Factors.

Staff concluded, and Mr. Robertson expanded upon in his testimony, that (1) there is a definite need for service in Hallsville; (2) because MAWC has the requisite TMF capabilities, it is qualified to operate the Hallsville system; (3) MAWC has adequate financial resources to operate systems, acquire new systems, undertake construction of new systems and expansions of existing systems, plan and undertake scheduled capital improvements, and timely respond and resolve emergency issues; (4) a feasibility study that shows this acquisition will not be a detriment to the public interest; and (5) Staff concludes that granting MAWC's Application for a CCN will promote the public interest.²³

However, in opposing MAWC's Application, the District argues that the Application is not "necessary or convenient for the public service" because the Application is (a) detrimental to the public interest;²⁴ (b) that MAWC has not demonstrated that its provision of sewer service is economically feasible;²⁵ (c) MAWC has not performed any kind of study on the long-term needs

²¹ Ex. 101, pg. 4, ln. 3-8. See also Ex. 100, Schedule JAB-d2, pg. 14-15.

²² 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), 1994 WL 762882, *3 (Mo. P.S.C.).

²³ Ex. 100, Schedule JAB-d2, pg. 14-15. See also Ex. 101, pg. 5-6, ln. 1-22 and 1-11.

²⁴ Ex. 200, *Rebuttal Testimony of Tom Ratermann*, pg. 13, ln. 6.

²⁵ Ex. 201, *Rebuttal Testimony of Stephen M. Connelly*, pg. 8, ln. 9-12.

or viability of the Hallsville system;²⁶ (d) MAWC does not have plan for capacity and compliance issues;²⁷ and (e) the District alleges that MAWC does not intend to coordinate a plan with the District.²⁸

A. The Application is not detrimental to the public interest.

District witness Tom Ratermann lays out a number of reasons why the District believes that MAWC's application is detrimental to the public interest. Mr. Ratermann argues that granting MAWC a CCN to operate the Hallsville system would lead to a breach of the Cooperative Agreements between Hallsville the District,²⁹ that the District's Level 2 continuing authority outranks the Level 3 continuing authority of MAWC and prevents MAWC from operating the system within the District's boundaries,³⁰ and that MAWC's Application unlawfully conflicts with the District's long-term facility plan for Boone County.³¹

Regarding the allegations that MAWC's operation of the Hallsville system would lead to a breach of the Cooperative Agreements between Hallsville and the District, Staff specifically accounted for this outcome in its Recommendation.

There are two Cooperative Agreements in place between Hallsville and the District, obligating Hallsville to provide sewer service to District customers in the Sunnyslope and Silver Creek Subdivisions.³² Under the agreements, executed in 2019 and set to expire in 2039, the District is a customer of Hallsville, and pays Hallsville a fee for sewer service, cost of maintenance, repairs, and monthly reports.³³ Though MAWC has argued that the existing

²⁶ Ex. 202, *Rebuttal Testimony of Dennis E. Stith*, pg. 11, ln. 5-7.

²⁷ *Id.*, pg. 6, ln. 13-18.

²⁸ Transcript Vol. II, pg. 67-68, ln. 25 and ln. 1-3.

²⁹ Ex. 200, pg. 16, ln. 15-19.

³⁰ *Id.*, pg. 13, ln 1-2.

³¹ *Id.*, pg. 12, ln. 17-19.

³² Ex. 100, Schedule JAB-d2, pg. 11. See also Ex. 303 (Sunnyslope) and Ex. 304 (Silver Creek).

³³ *Id.*

contracts would not be binding on MAWC if the Commission were to approve its Application,³⁴ Staff has made it clear that, “Ensuring the continued service for the customers in question is essential for the requested CCN to be necessary and convenient for the public service.”³⁵

In order to ensure continued service for the customers affected by the Cooperative Agreements, Staff conditioned its recommendation of approval of MAWC’s Application upon the following:

Within thirty (30) days of receiving an Operating Permit from DNR, MAWC will submit to Staff documentation confirming the initiation of negotiations between MAWC and the District involving both the continuation of service for all existing District customers outside the City’s service area, and the associated Cooperative Agreements between the City and the District. Once an agreement has been reached to ensure continued service, that agreement will also be submitted to Staff.³⁶

MAWC did not object to this condition in its Response to Staff’s Recommendation.³⁷

During the hearing, MAWC witness Logan Carter, who is the current mayor of Hallsville, indicated that Hallsville’s system was not providing service to any customers in the Sunnyslope Subdivision,³⁸ and that the Silver Creek Subdivision has three customers connected to the Hallsville system.³⁹ These numbers were later confirmed by District witness Tom Rattermann.⁴⁰

MAWC has also been proactive itself in preparing to handle the three customers in the Silver Creek Subdivision. MAWC witness Matthew Horan testified that the Company is “committed to working with the District to make sure that we will continue the treatment of

³⁴ *Response in Opposition to BCRSD’s Application to Intervene*, pg. 4, para. 11 (August 31, 2020).

³⁵ Ex. 101, pg. 8, ln. 9-10. See also Transcript Vol. II, pg. 160, ln. 19-24.

³⁶ *Id.*, pg. 7, ln. 1-8. See also Ex. 100, Schedule JAB-d2, pg. 19, para. 5.

³⁷ *Missouri American Water’s Response to Staff Recommendation*, pg. 1, para. 3.

³⁸ Transcript Vol. II, pg. 127, ln. 18-23.

³⁹ *Id.*, pg. 129, ln. 17-20.

⁴⁰ *Id.*, pg. 224, ln. 15-20.

wastewater from these subdivisions.”⁴¹ Mr. Horan went on to note that MAWC counsel “had been working on some draft agreements and is willing to get with the District on this.”⁴²

With MAWC and the District in agreement concerning Staff’s condition to ensure continued service for District customers outside Hallsville’s service area, and customers affected by the Cooperative Agreements, the Commission already has the necessary tool in front of it. Though the District reiterated its opposition against the Commission granting MAWC a CCN for service in Hallsville, it has stated that if the Commission were to approve MAWC’s request for a CCN, Staff’s conditions should be included.⁴³ The District specifically mentioned that the condition to ensure continued service be included in any Commission order approving MAWC’s application.⁴⁴ By conditioning the granting of MAWC’s CCN to operate the Hallsville system on ensuring continued service for the customers detailed above, this concern of the District that MAWC’s Application is detrimental to the public interest is properly addressed. If the Commission grants MAWC’s Application, and MAWC fails to act in good faith regarding Staff’s proposed condition, that would be grounds for Staff to file its own complaint against MAWC to protect the public interest by ensuring continued service for all customers.

If the Commission were to decide that it be better for MAWC to be bound by the current Cooperative Agreements until a new agreement can be reached between MAWC and the District, Staff would have no objection to such a condition. District witness Mr. Rattermann did state that, to ensure certainty for the District’s operations, it would be best to have any agreements worked out and resolved prior to Hallsville’s conveyance of the system to MAWC.⁴⁵

⁴¹ *Id.*, pg. 74, ln. 16-18. See also *Missouri American Water’s Response to Staff Recommendation*, pg. 2, para. 6.

⁴² *Id.*, pg. 74-75, ln. 23-25 and ln. 1. See also Ex. 101, pg. 8, ln. 17-18.

⁴³ *District’s Position Statement*, pg. 3 (March 24, 2021).

⁴⁴ *Id.*

⁴⁵ Transcript Vol. II, pg. 233, ln. 10-16.

The District further alleges that the granting of MAWC's Application would also be detrimental to the public interest because of the District's Level 2 continuing authority power, a designation entirely administered by the Missouri Department of Natural Resources ("DNR").

DNR outlines continuing authority under its rules, specifically 10 CSR 20-6.010(2). The District, as a Level 2 continuing authority, has a higher level continuing authority than MAWC, which is a Level 3.⁴⁶ Continuing authority can play a factor in DNR's issuance of an operating permit, which MAWC would need before it can operate the Hallsville sewer system. The District put forward its Level 2 continuing authority as a reason for the Commission to deny Missouri American Water's application, because it is a Level 3 continuing authority, lower than the District.

Determining an entity's level of continuing authority is not within the jurisdiction of the Commission. It is a determination made by DNR, which is the only agency that can issue and assign continuing authority levels. DNR is also the sole body able to grant waivers regarding continuing authority, per 10 CSR 20-6.010(2)(C).

Generally, continuing authority regulations prohibit the issuance of an operating permit to an applicant that is or will use a lower level continuing authority when a higher level continuing authority is available and such use would conflict with 'any area-wide management plan' or where the applicant is unable to show that it has met one of the requirements listed in 10 CSR 20-6.010(2)(C)1-7.⁴⁷ However, before the continuing authority issue can be resolved by DNR, 10 CSR 20-6.010(2)(B)3 clearly outlines that the only way that MAWC can apply for an operating permit and resolve the continuing authority issue is for MAWC to first receive a CCN from this Commission. Continuing authority is but one factor that DNR reviews when

⁴⁶ Ex. 101, pg. 9, ln. 11-17.

⁴⁷ *Id.*, ln. 5-9.

determining if an applicant is to be granted an operating permit or not. This is a process that happens every time the Commission grants a CCN for sewer service, and the intervention by the District in this matter does not change that process.

Despite the District's claim that its status as a Level 2 continuing authority effectively bars MAWC from operating the Hallsville system,⁴⁸ nothing has been provided that demonstrates that the District definitively has Level 2 continuing authority within Hallsville's corporate boundaries. On the other hand, MAWC has produced evidence indicating the exact opposite: that the District applied to hold Level 2 continuing authority over specific territories, and that its territory "would not have authority in the small municipalities,"⁴⁹ of which Hallsville is one.

Staff cannot predict if DNR will approve an operating permit for MAWC to operate the Hallsville system. However, Staff can definitively state that the only way for the continuing authority question to be answered is by DNR via its processes.⁵⁰ It is Staff's position that it would be in the public interest for MAWC to operate the Hallsville systems; as decisions related to conflicting levels of continuing authority are under the jurisdiction of DNR, the District's Level 2 continuing authority does not serve as a reasonable justification for denying MAWC's Application.

The District's final allegation concerning detriments to the public interest has to do with its long-term facility plan for Boone County. Long-term facility plans do play a role in determining if a lower level continuing authority can operate within the service area of a high level continuing authority.⁵¹ However, that is another determination to be made by DNR when MAWC applies for an operating permit, which can only be resolved once a CCN is issued.⁵²

⁴⁸ Ex. 200, pg_

⁴⁹ Ex. 6, *Boone County Commission Minutes* (30 July 2009), pg. 2.

⁵⁰ 10 CSR 20-6.010(2)(B)3.

⁵¹ 10 CSR 20-6.010(2)(C).

⁵² 10 CSR 20-6.010(2)(B)3.

Finally, this Commission has held in the past that positive findings with respect to the other four Tartan Criteria will support a finding that an application for a CCN will promote the public interest.⁵³ In fact, Hallsville's voting in favor of such a sale, as well as negotiations between Hallsville's elected official and MAWC resulting in the subsequent Purchase Agreement further demonstrate that granting MAWC's requested CCN would serve the public interest.⁵⁴

It remains Staff's conclusion that a CCN for MAWC to operate the Hallsville system would be convenient or necessary for the public interest.

B. MAWC has demonstrated that its provision of water service is economically feasible.

In addition to contending that approving MAWC's Application would be detrimental to the public, the District also contends that MAWC has not demonstrated that its provision of sewer service is economically feasible. As noted in Staff's Recommendation, "the feasibility study indicates that the purchase of the City's sewer assets will not generate positive income. However, the effect of this transaction on MAWC's general population of ratepayers is likely to be negligible so it is not a detriment to the public interest."⁵⁵

That being said, due to the generic appearance of MAWC's feasibility study, District witness Stephen Connelly concluded that the study was not acceptable due to its lack of conclusions, parameters, scenarios, assumptions, or any analysis of qualitative factors.⁵⁶

None of the omissions noted by Mr. Connelly, however, are required by statute or Commission rule when a sewer utility requests a CCN.⁵⁷ Indeed, in the context of a CCN case, Staff witness Matthew Young explained that:

⁵³ GA-94-127, Report and Order, In Re Tartan Energy Company, L.C. dba Southern Missouri Gas Company.

⁵⁴ Ex. 100, Schedule JAB-d2, pg. 15.

⁵⁵ *Id.*

⁵⁶ Ex. 201, pg. 5, ln. 14-20.

⁵⁷ 20 CSR 4240-3.305(1)(A)5.

Generally, the feasibility study submitted in a CCN application provides insight on the financial ramifications of the application, and the effect the application may have on the ratepayers of the new system and the general body of ratepayers. While evaluating the feasibility study provided by the applicant, Staff understands that the projections included in the feasibility study are estimates and not actual costs.⁵⁸

Though the feasibility study itself may have been lacking, Staff did further investigate the Application's feasibility through data requests, and as Mr. Young described, Staff was able to reach a general conclusion that granting MAWC's Application would not be detrimental to the public.⁵⁹ MAWC also noted that the basis for this feasibility study was the same as that used in prior CCN applications before the Commission,⁶⁰ including MAWC's previous applications for acquisition of similarly situated systems submitted over the last few years.⁶¹

In fact, a utility's general rate case is the proper venue to analyze the impact of associated costs and revenues on rates.⁶² Determining any kind of impact on ratepayers would be difficult at this time, because once MAWC does incorporate Hallsville into its rates, "everything will have changed from customer account to revenues to expenses to rate base."⁶³ As stated earlier, it is Staff's position that the immediate effects of the transaction will have negligible impact on MAWC's general population of ratepayers.⁶⁴

The feasibility study submitted by MAWC with its application is typical of what Staff regularly sees in applications for CCNs, and Staff concluded that the feasibility study submitted with MAWC's Application complied with the requirements of Commission Rule 20 CSR 4240-3.305(1)(A)5. Further, along with other data provide by MAWC, Staff concluded that the feasibility study submitted by MAWC was sufficient to satisfy the Tartan Criteria.

⁵⁸ Ex. 102, *Surrebuttal Testimony of Matthew R. Young*, pg. 3, ln. 4-8.

⁵⁹ Transcript Vol. II, pg. 168, ln. 12-16.

⁶⁰ Ex. 3C, *Corrected Surrebuttal Testimony of Matt Horan* (Confidential), pg.4, ln. 17-18.

⁶¹ *Id.*, pg. 6, ln. 9-10.

⁶² *Id.*, ln. 13-14. See also Ex. 3C, pg. 6-7, ln. 20-22 and ln. 1-3.

⁶³ *Id.*, ln. 21-25.

⁶⁴ Ex. 100, Schedule JAB-d2, pg. 15.

- a) Requiring MAWC to conduct detailed studies on long-term needs or the viability of the Hallsville system is not practical prior to the issuance of a CCN.

Commission Rule 20 CSR 4240-3.305(1)(A)5 states that an application for a sewer service CCN must contain “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 changes and an estimate of the number of customers, revenues and expenses during the first three (3) years of operations.”

While plans and specifications are required, Staff has noted that, when a request for a CNN involves the acquisition of an existing system, it is not always practical to expect those plans and specifications.⁶⁵ As Staff witness Jarrod Robertson described:

Until the particular daily operation and compliance issues of an existing system are experienced in real time, it is not conceivable to devise a plan for upgrades specific enough for drafting of plans and specifications. Without this data and firsthand knowledge, a consulting engineer would be forced to make assumptions about repairs versus upgrades, sizing, peak flow management, et cetera. Further, because it costs a great deal of money, consulting engineers do not guess when creating such designs.⁶⁶

As Staff witness Daronn Williams further explained, “If MAWC is granted a CCN, it will analyze real time data from the system (i.e. actual effluent parameters, flows, etc.) and finalize a long-term solution. This is common practice and aligns with Staff’s expectations.”⁶⁷ Furthermore, as MAWC does possess the necessary TMF capabilities and has satisfied the Tartan Criteria, Staff concluded that MAWC has the capabilities to properly operate the system, which includes the necessary technical capabilities to make any necessary repairs or upgrades.⁶⁸

⁶⁵ Ex. 101, pg. 10, ln. 12-14.

⁶⁶ *Id.*, ln. 15-20.

⁶⁷ Ex. 103C, *Corrected Surrebuttal Testimony of Daronn A. Williams* (Confidential), pg. 6, ln. 9-11.

⁶⁸ Ex. 100, Schedule JAB-d2, pg. 14-15.

The lack of such detailed plans and specifications did not play a role in Staff recommending the Commission approve MAWC's Application, subject to Staff's conditions.

- b) MAWC does not need a finalized plan for capacity and compliance issues prior to receiving a CCN.

District witness Dennis Stith expressed concern that MAWC "failed to address critical concerns about the adequacy of design flow and storage capacity of the Hallsville sewer system, and adequacy of available land capacity,"⁶⁹ within its Application. However, this is not the same as MAWC ignoring these capacity and compliance issues.

Staff witness Daronn Williams made it clear in his testimony that, based on discussions with MAWC, the Company was very aware of these issues.⁷⁰ In fact, Staff has been discussing these issues with MAWC since Staff's site inspection of the Hallsville system on September 2, 2020.⁷¹

Similar to Staff's reasoning regarding the long-term needs and viabilities of the Hallsville system, it is Staff's position that it is prudent for MAWC to operate the system prior to deciding the best path forward for capacity and compliance.⁷² This approach is also supported by MAWC's witness Mr. Horan. At the evidentiary hearing, Mr. Horan testified that as soon as MAWC is able to get in and operate the system, the Company can check numbers, verify its own estimates, and work towards a better solution.⁷³

⁶⁹ Ex. 202, pg. 6, ln. 13-15.

⁷⁰ Ex. 103C, pg. 2, ln. 19.

⁷¹ *Id.*, ln. 19-21.

⁷² *Id.*, pg. 6, ln. 9-12.

⁷³ Transcript Vol. II, pg. 85, ln. 3-7.

MAWC has shared different proposals for addressing Hallsville’s issues with capacity and compliance,⁷⁴ and Staff has indicated that all of the proposals are viable, long-term solutions.⁷⁵

C. MAWC has indicated it is willing to work with the District.

The District has also alleged that MAWC will not work with the District going forward if the Commission grants MAWC a CCN to operate the Hallsville system. However, MAWC witness Matthew Horan indicated that the Company is “committed to working with the District to make sure that we will continue the treatment of wastewater from these subdivisions.”⁷⁶

Staff has concluded that the issuance of a CCN to MAWC to operate the Hallsville system is not detrimental to the public interest because MAWC has the requisite TMF capabilities and has satisfied the Tartan Criteria. The feasibility study submitted by MAWC with its Application is sufficient to meet the requirements of Commission Rule 20 CSR 4240-3.305(1)(A)5 and the Tartan Criteria. It is not practical to expect MAWC to conduct detailed studies on the long-term needs and viability of the Hallsville system, or have in place a finalized plan for capacity and compliance needs, prior to the issuance of a CCN. And MAWC has indicated that it is willing to work with the District if this Commission grants its application for a CCN.

Staff’s conclusion remains that the proposal for a new CCN enabling MAWC to provide sewer service to Hallsville, maintaining the existing rates as of April 12, 2021,⁷⁷ is necessary or convenient for the public service, as contemplated by Section 393.170, RSMo (2018).

Issue (2): If the Commission grants MAWC’s application for the CCN, what conditions, if any, should the Commission impose?

⁷⁴ Ex. 103C, pg. 3-6, ln. 7-22, 1-23, 1-23, and 1-3. See also Ex. 3C, pg. 7-8, ln. 22-23 and 1-5 and Schedule MH-5C.

⁷⁵ *Id.*, pg. 6, ln. 13.

⁷⁶ Transcript Vol. II, pg. 74, ln. 16-18. See also *Missouri American Water’s Response to Staff Recommendation*, pg. 2, para. 6.

⁷⁷ Ex. 308, *Hallsville Ordinance No. 384*, and Ex. 309, *Staff’s Supplemental Response*.

Staff conditioned its recommendation for approval on the following conditions:

1. Grant MAWC a CCN to provide sewer service in the proposed City service area, as modified and outlined herein;
2. Approve MAWC's adoption of existing sewer rates for the City;
3. Prior to the submission of revised tariff sheets, MAWC will file a revised service area map and corresponding legal description that includes all of the City's assets, such as storage bins and underground wastewater lines;
4. Require MAWC to submit new and revised tariff sheets, to become effective before closing on the assets, that include:
 - a. Index (Sheet No. IN 1.1)
 - b. Index (Sheet No. IN 1.3)
 - c. Index (Sheet No. IN 1.4)
 - d. Index (Sheet No. IN 1.5)
 - e. Index (Sheet No. IN 1.6)
 - f. Sewer rates (Sheet No. RT 4.1)
 - g. Sewer charges (Sheet No. SC 3.3)
 - h. Service area map (Sheet No. MP 19.2)
 - i. Service area written description (Sheet No. CA 18.2)
5. Within thirty (30) days of receiving an Operating Permit from DNR, MAWC will submit to Staff documentation confirming the initiation of negotiations between MAWC and the District involving both the continuation of service for all existing District customers outside the City's service area, and the associated Cooperative Agreements between the City and the District. Once an agreement has been reached to ensure continued service, that agreement will also be submitted to Staff;
6. Require MAWC to notify the Commission of closing on the assets within five (5) days after such closing;
7. If closing on the sewer system assets does not take place within thirty (30) days following the effective date of the Commission's order approving such, require MAWC to submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until MAWC determines that the transfer of the assets will not occur;
8. If MAWC determines that a transfer of the assets will not occur, require MAWC to notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and require MAWC to submit tariff sheets as appropriate and necessary that would cancel service area maps, descriptions, rates and rules applicable to the City service area in its sewer tariff;

9. Require MAWC to keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;
10. Adopt for the City sewer assets the depreciation rates ordered for MAWC in Case No. WR-2017-0285;
11. Require MAWC to obtain from the City, prior to or at closing, all available plant-in-service related records and documents, including but not limited to all plant-in-service original cost documentation, along with depreciation reserve balances, documentation of contribution-in-aid-of construction transactions, and any capital recovery transactions;
12. Make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCN to MAWC, including expenditures related to the certificated service area, in any later proceeding;
13. Require MAWC to provide training to its call center personnel regarding rates and rules applicable to the City customers;
14. Require MAWC to include the City customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets;
15. Require MAWC to distribute to the City customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its sewer service, consistent with the requirements of Commission Rule 20 CSR 4240-13, within thirty (30) days of closing on the assets;
16. Require MAWC to provide to the CXD Staff an example of its actual communication with the City customers regarding its acquisition and operations of the sewer system assets, and how customers may reach MAWC, within ten (10) days after closing on the assets;
17. Require MAWC to provide to the CXD Staff a sample of ten (10) billing statements from the first month's billing within thirty (30) days after closing on the assets; and,
18. Require MAWC to file notice in this case outlining completion of the above-recommended training, customer communications, and notifications within ten (10) days after such communications and notifications.⁷⁸

Both MAWC and the District expressed no objections to Staff's conditions.⁷⁹ Thus, Staff recommends approval of MAWC's Application, subject to the 18 conditions and actions outlined above.

⁷⁸ Ex. 100, Schedule JAB-d2, pg. 23-25.

⁷⁹ *Missouri American Water's Response to Staff's Recommendation*, pg. 1, para. 3; *Missouri-American's Statement of Position*, pg. 3 (March 24, 2021); *District's Position Statement*, pg. 3 (March 24, 2021).

In addition to the 18 conditions proposed by Staff, the District proposed five conditions of its own.⁸⁰

The first two conditions proposed by the District are that the Commission order MAWC to limit its service area to the city limits of Hallsville, as well as require MAWC to obtain an operating permit from DNR within two years of the issuance of a CCN.⁸¹ Staff has no objection to either of these conditions, but notes that both are effectively required by statute. MAWC can only provide within a service area approved by the Commission per Section 393.170.2, RSMo (2018), in this case the city limits of Hallsville. And if MAWC is unable to obtain an operating permit from DNR, it will have failed to exercise the authority conferred by the granting of the CCN within two years, and it would be null and void per Section 393.170.3, RSMo (2018).

The District's third condition would require MAWC to obtain the District's consent for any plan to address Hallsville's capacity and compliance issues prior to submitting application for construction or operating permits to DNR.⁸² The fourth condition would prohibit MAWC from seeking approval to convert the Hallsville system into discharge facility.⁸³ Both of these conditions revolve around processes that fall under the jurisdiction of DNR, and Staff objects to these conditions as they go beyond the jurisdiction of the Commission, and are issues best addressed by the processes outlined by DNR. Both are covered under 10 CSR 20-6.010.

Staff has no objection to the District's fifth condition, requiring MAWC to own any land used for application of wastewater flow collected by the sewer system, if MAWC were to put forward a plan involving an irrigation system.⁸⁴

⁸⁰ *District's Position Statement*, pg. 3-4.

⁸¹ *Id.*, pg. 3.

⁸² *Id.*, pg. 4.

⁸³ *Id.*

⁸⁴ *Id.*

CONCLUSION

It is Staff’s position that MAWC’s Application for a CCN authorizing it to install, own, acquire, construct, operate, control, manage and maintain a sewer system in and around the City of Hallsville, Missouri is “necessary or convenient for the public interest” as contemplated under Section 393.170, RSMo (2018). Thus, Staff recommends the Commission issue an order approving MAWC’s requested CCN, subject to the 18 conditions and actions outlined by Staff.

Respectfully Submitted,

/s/ Travis J. Pringle

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand delivered, transmitted by facsimile or electronically mailed to all parties and/or counsel of record this 9th day of June, 2021.

/s/ Travis J. Pringle