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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 30th
day of January, 1998.

In the Matter of Missouri-American Water)	
Company for Permission, Approval, and a)	
Certificate of Convenience and Necessity)	
Authorizing it to Construct, Install, Own,)	<u>Case No. WA-97-45</u> ✓ - BH
Operate, Control, Manage and Maintain a)	
Water System for the Public in Certain)	
Areas in St. Charles County, Missouri.)	
In the Matter of Missouri-American Water)	
Company's Revised Tariff Filing Concerning)	<u>Case No. WO-97-492</u> - BH
Service Connections.)	
Public Water Supply District No. 2 of)	
St. Charles County, Missouri,)	
)	
Complainant,)	<u>Case No. WC-96-441</u> - BH
vs.)	
)	
Missouri-American Water Company)	
)	
Respondent.)	

ORDER OF CORRECTION AND MODIFICATION

The Commission issued its Report and Order in these consolidated cases on November 26, 1997, with an effective date of December 9, 1997. On December 8, 1997, the Circuit Court of Cole County issued a temporary restraining order, staying the effective date of the Commission's order until December 22, 1997. A hearing was held and a preliminary injunction was granted on December 22, 1997.

The issuance of the preliminary injunction followed the filing of an Application for Rehearing and Request for Stay on December 5, 1997, by the Public Water Supply District No. 2 of St. Charles County (District No. 2), the complainant in Case No. WC-96-441. By order of December 18,

1997, the Commission denied the Application for Rehearing and Request for Stay. In addition, on December 8, 1997, Missouri-American Water Company (MAWC) filed a Motion for Correction and Clarification and Request for Waiver.

Responses to the various motions and request were filed by both the Staff of the Commission (Staff) and the Office of the Public Counsel (Public Counsel). On December 16, 1997, the Staff filed a response to both District No. 2's Application for Rehearing and Request for Stay and MAWC's Motion for Clarification and Correction and Request for Waiver. On December 18, 1997, Public Counsel filed a Response to MAWC's Motion for Clarification.

The Commission will deal with the District No. 2 application and the MAWC motion separately and on a point-by-point basis.

District No. 2's Application for Rehearing

As grounds for rehearing, District No. 2 argues seventeen separate points. Point nine, with subpoints a through h, states that the Commission's Report and Order has factual inaccuracies.

In point one District No. 2 states that the Commission's 13-day effective date was improper. The Commission has already rejected this argument in its Order Denying Stay, issued December 8, 1997.

In point two District No. 2 states that the Commission acted unreasonably and unlawfully in that the Commission is purported to have approved a variance procedure affecting the entire MAWC service territory without providing notice to all persons affected thereby outside of St. Charles County, in violation of Section 386.490(1), RSMo. 1994. Section 386.490(1) states in pertinent part that "every order of the Commission

shall be served upon every person or corporation to be affected thereby"

In part III, the Variance and Procedure for Waiver of Service Connection Fees portion of the Commission's order, the Commission approved a procedure for MAWC on a company-wide basis, to allow MAWC to evaluate the economic feasibility of waiving service connection fees and to enable the Staff and Public Counsel to readily ascertain the economic viability of each proposal. This procedure is on a case-by-case basis and is intended to facilitate an accompanying application to waive service connection fees for new areas inside the current MAWC service territory. The Commission did not state in its Report and Order that it has altered its notice procedure and does not intend to do so. Adoption of the above procedure affects no one until such time as MAWC employs it in the context of a proper case. At that time notice will be issued to all parties that might be affected, per the Commission's standard rules and procedures. While it is hoped that the process might be efficient as a result of the adoption of the above procedure, the Commission will not, at this time, grant expedited treatment to MAWC.

The only parties affected by the Commission's order are those customers in St. Charles County. No further notice was required as no other party will be affected by this order. The Commission, therefore, determines that proper notice was given to all persons to be affected by the Commission's order. The second District No. 2 point is rejected.

The Commission will, however, clarify its Report and Order, as also requested by MAWC in the first section of part B of its motion, by adding the following language to page 15, as the fourth paragraph:

"The Commission is approving a procedure for MAWC, on a company-wide basis, to allow MAWC to evaluate the economic feasibility of waiving service

connection fees and to enable the Staff, Public Counsel, and other interested parties to readily ascertain the economic viability of each proposal. This procedure is on a case-by-case basis and is intended to facilitate an accompanying application to waive service connection fees for a new area inside the current MAWC service territory. The Commission has not altered its current due process and notice requirements."

In point three District No. 2 states that notice has not been given with regard to those areas which may be found by MAWC to be outside the certificated area but which MAWC may be serving and for which the Commission has ordered MAWC to file applications for certificates when located. The term "application," as used by the Commission on page 11, line six, of the Report and Order, indicates the initiation of the Commission's procedure for determination of the issuance of certificates of convenience and necessity. However, to make this abundantly clear, the Commission will add the following clarifying language to the end of the first partial paragraph on page 11. Following the words "discrete area," the Commission will add the following sentence:

"The filing of each application for a certificate of convenience and necessity will initiate the opening of of a case for the processing of the application."

Point four of District No. 2's application appears to be a restatement of District No. 2's arguments regarding notice, as set out in point two above. The Commission's standard public notice was issued in Case No. WO-97-492 on July 1 to those parties who might be affected in St. Charles County. The Commission has clarified its position in regard to notice in point two above. The Commission determines that no further clarification is needed in this regard.

Point five of District No. 2's application also appears to be a general restatement of point two. The Commission determines that no further clarification is necessary.

Point six of District No. 2's application is an argument of the facts as determined by the Commission. In regard to the procedure for waiver as approved by the Commission and clarified above, the Commission finds that substantial and competent evidence exists on the record in this case sufficient for the Commission to make the findings contained in the Report and Order, as clarified above.

Point seven of District No. 2's application maintains that the approved evaluation procedure regarding MAWC's request to obtain a waiver and/or certificate is unlawful in that a Commission rulemaking is required. The Commission disagrees. As stated in the Report and Order and clarified above, the procedure applies to MAWC only and does not affect or impair the Commission's procedure.

Point eight of District No. 2's application challenges the approved procedure as being too vague to allow other parties to dispute specific variance requests. The Commission determines that, as the approved procedure may not be applied except on a case-by-case basis and through the Commission's standard procedure, notice and opportunity to challenge will be available to all interested parties in each case. Therefore, the Commission determines that point eight is without merit.

Point nine of District No. 2's application notes a number of factual inaccuracies. The Commission determines that none of the factual inaccuracies pointed out by the parties materially affect the Commission's Findings of Fact, Conclusions of Law and ordered section in the Report and Order in this case.

The factual inaccuracies are as follows:

a. The Commission finds that no correction is required.

b. On page four of the Report and Order the Commission stated: "MAWC received two requests to provide service to residential developments in Area 1. . . ." The Commission will correct the above statement to omit the words "in Area 1" and omit the words "both requests were withdrawn when"

The sentence will now read:

"MAWC received two requests to provide service to residential developments, but the potential customers decided to take service from District No. 2 instead."

c. On page four of the Report and Order the Commission refers to Case No. WC-97-492. This is a typographical error. The case number referred to is corrected to read "WO-97-492." The Commission will change the following sentence: "MAWC has withdrawn its request for waiver of service connection fees as a result, but Case No. WC-97-492 remains open for consideration by the Commission of a MAWC proposal to establish financial criteria and analysis to attempt to streamline the certification process when faced with competition for new service areas."

The sentence will now become two full sentences as follows: "Nevertheless, MAWC has not withdrawn its request for waiver of service connection fees. Case No. WO-97-492 remains open for consideration by the Commission of a MAWC proposal to establish financial criteria and analysis to attempt to streamline the certification process when faced with competition for new service areas."

d-e. The Commission has provided clarification of these points in point two above. The Commission will also delete the phrase "applications for a certificate" on page five, line seven, of the Report and Order and put in its place the phrase "applications for waiver of service connection fees."

f. This point is argument on the facts of record. The Commission finds no new facts sufficient to merit reconsideration. The Commission will make a factual correction noted by District No. 2, however. On page seven of the Report and Order the Commission states: "The Commission finds the evidence largely uncontroverted in that MAWC has operated in all three areas without the requisite certificate of convenience

and necessity" The Commission will correct the above language by deleting the words "in all three areas" and substituting the words "in areas two and three."

The sentence will now read:

"The Commission finds the evidence largely uncontroverted in that MAWC has operated in areas two and three without the requisite certificate of convenience and necessity"

g. On pages 11 and 12 of the Report and Order, the Commission states: "That request was later withdrawn and a one-time variance from MAWC's existing service connection fee tariff was requested to allow MAWC to attempt to obtain the contract to serve two planned subdivisions in Area 1, those being McClure Village and Prairie Village." The Commission corrects the above language by deleting the words "in Area 1." In addition, on page 11 of the Report and Order, the Commission states: "In Case No. WO-97-492, MAWC originally filed tariff changes designed to eliminate service connection fees." The Commission corrects the above language by deleting the word "eliminate" and substitutes in its place the words "waive certain."

The first corrected sentence will now read:

"That request was later withdrawn and a one-time variance from MAWC's existing service connection fee tariff was requested to allow MAWC to attempt to obtain the contract to serve two planned subdivisions, those being McClure Village and Prairie Village."

The second corrected sentence will now read:

"In Case No. WO-97-492, MAWC originally filed tariff changes designed to waive certain service connection fees."

h. The Commission will alter the language found in the last paragraph on page 14 of the Report and Order by deleting the words ". . . while unregulated utilities, such as District No. 2, are not. This allows District No. 2 to assume increased service area without the obligation or financial risk associated with providing service to inconvenient or financially risky customers. In short, in a competitive environment, District No. 2 may 'cherry pick' while MAWC may not. Further" and by adding a period at the end thereof. The corrected sentence will read: "The Commission, in making its decision, notes that MAWC and

all regulated water and sewer utilities in the state, are required to provide service to all persons in an authorized service area." The remainder of the arguments in this point raise no new issues.

District No. 2's points 10 through 17 raise no new questions of law or fact not considered by the Commission in its Report and Order.

The MAWC Motion for Correction and Clarification and Request for Waiver

A. Motion for Correction

MAWC raises several matters, involving factual inaccuracies, in its motion for correction. In its first point, MAWC states that the following language in the first full paragraph of page four of the Report and Order is incorrect:

"MAWC received two requests to provide service to residential developments in Area 1, but both requests were withdrawn when the potential customers decided to take service from District No. 2. MAWC has withdrawn its request for waiver of service connection fees as a result,"

MAWC states that it did not withdraw its request for waiver for the two subdivisions in question and adds that the subdivisions are not in area one. The Commission has already acknowledged that the two subdivisions in question are not in area one and deleted the appropriate language. The Commission has made the remainder of the necessary changes previously in this order.

In its second point, MAWC notes two factual errors in the following language on page five of the Report and Order:

"Area 1 - Testimony reflects that, upon request, MAWC began to provide service to the Duck Creek water treatment plant in Area 1 and subsequently obtained a conditional certificate from the Commission to do so by order of October 18, 1997. MAWC also bid to serve two subdivision developments but lost those bids to District No. 2."

The Commission will correct the above language by deleting the word "subsequently," changing the word "water" to "wastewater" and changing the year 1997 to 1996. The Commission will delete the entire sentence "MAWC also bid to serve two subdivision developments but lost those bids to District No. 2."

MAWC notes that the Commission finding on page seven of the Report and Order is factually inaccurate.

The Commission has previously corrected the language in its response to point nine f. of the District's Application by deleting the words "all three areas" and substituting the words "areas two and three" in their place.

On page nine of the Report and Order, in the third full paragraph, the Commission will correct the language therein by deleting the words "the wastewater treatment plant in Area 1,". The Commission will delete the last paragraph on page nine of the Report and Order in its entirety. The Commission will substitute numbers two and three for numbers one and two on line four of ordered paragraph No. 1. The Commission will delete the phrase "in all three areas" found on page ten, line two, of the third paragraph, and substitute for it the phrase "in areas two and three."

The remainder of the MAWC argument regarding part A, Motion for Correction, is a factual argument which the Commission has already considered in its original Report and Order and which needs no further consideration.

MAWC requests, in its part B, Motion for Clarification, that the Commission address what, if any, review process will be followed by the Commission as the result of the Commission approving a procedure for waiver of service connection fees. MAWC requests, at the very least, an expedited procedure.

The Commission has clarified Section III of the Report and Order previously in this order. The Commission finds that no further clarification on this point is necessary.

In part C of MAWC's Motion for Clarification and Request for Waiver, MAWC requests a variance from the Commission's Report and Order. In that Report and Order, the Commission required MAWC to file a metes and bounds description of the Calumet Ranch and Butternut Stage subdivisions. MAWC states that no such plat and metes and bounds description is currently on file in the Recorder's Office of St. Charles County and advises that it requests a waiver from this requirement until such time as MAWC is able to prepare and file a metes and bounds description of its entire service area in its St. Charles district.

The Commission will grant MAWC's request for a waiver of the above requirement. MAWC will now be required to file a metes and bounds description of the Calumet Ranch and Butternut Stage subdivisions concurrently with the proper description of the MAWC St. Charles district.

Finally, MAWC states that it did not, in fact, withdraw its service connection fee waiver request and asked the Commission to make a finding on this request. The first full paragraph on page 12 of the Commission's Report and Order reflects the following:

"The Commission finds that the evidence in this case, at the point when the record was closed, indicates that all parties, including MAWC, agreed that the opportunity was lost for MAWC to serve the two subdivisions and that, therefore, the requested variance was no longer appropriate. The Commission, therefore, considers this issue to be moot and will make no finding on the variance request."

The Commission will delete the above paragraph and replace it with the following:

"The Commission finds that the evidence in this case shows that District No. 2 is currently serving the

areas for which MAWC has requested a variance. In order to avoid uneconomic duplication of service, the Commission will deny the variance request of MAWC."

IT IS THEREFORE ORDERED:

1. That the Commission's Report and Order in this matter, issued November 26, 1997, is hereby corrected in those respects as set out above.

2. That the variance request of MAWC regarding the filing of metes and bounds descriptions for Calumet Ranch and Butternut Stage subdivisions is granted to the extent as set out above.

3. That the request for variance from service connection fee requirements by MAWC is hereby denied.

4. That this order shall become effective on February 10, 1997.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Drainer
and Murray, CC., concur.

Derque, Regulatory Law Judge

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION