# **BEFORE THE PUBLIC SERVICE COMMISSION** $S_{EP}$ OF THE STATE OF MISSOURI $S_{ervice} C_{CP}$

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In the Matter of the Joint Application of Missouri-American Water Company and Warren County Water & Sewer Company for Authority for Missouri-American Water Company to Acquire Certain Assets of Warren County Water & Sewer Company and, in Connection Therewith, Certain Other Related Transactions.

	Commission
Case No	
	Exhibit No. 13
Caso No.	(a) $(b)$ $(a)$ $(a)$ $(a)$ $(a)$

Date MTB

# JOINT APPLICATION AND MOTION FOR EXPEDITED TREATMENT

COME NOW Warren County Water & Sewer Company, Warren-Lincoln Investments, Inc. d/b/a Warren County Water & Sewer, and Gary Smith and A. Lynn Smith (individually and collectively "Warren County"); and, Missouri-American Water Company ("MAWC"), and, pursuant to Section 393.190, RSMo 2000 and 4 CSR 240-3.605, state the following to the Missouri Public Service Commission ("Commission") as their Joint Application and Motion for Expedited Treatment:

## **BACKGROUND INFORMATION**

1. MAWC is a Missouri corporation with its principal office and place of business at 535 N. New Ballas Road, St. Louis, Missouri 63141. MAWC is a Missouri corporation in good standing. A Certificate of Good Standing from the Office of the Missouri Secretary of State was filed in Commission Case No. WM-2001-309 and is hereby incorporated by reference in accordance with Commission Rule 4 CSR 240-2.060(1)(G). MAWC currently provides water service to the public in and around the cities of St. Joseph, Joplin, Brunswick, Mexico, Warrensburg, Parkville, Riverside, Jefferson City, and parts of St. Charles and Platte Counties Missouri, and most all of St. Louis County, Missouri. MAWC currently provides water service to approximately 445,000 customers. MAWC provides sewer service to approximately 100 customers near Parkville,



Missouri. MAWC is a "water corporation," a "sewer corporation" and a "public utility" as those terms are defined in Section 386.020 RSMo. 2000, and is subject to the jurisdiction and supervision of the Commission as provided by law. MAWC currently has a general rate case pending appeal (WR-2000-281) and a general rate case pending before the Commission (WR-2003-0500). MAWC has no overdue Commission annual reports or assessment fees.

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2. Warren County Water & Sewer Company is a Missouri corporation and holder of a Certificate of Convenience and Necessity from the Commission to operate water and sewer utilities in certain areas of Warren, Lincoln and St. Charles Counties, Missouri. Warren County Water & Sewer Company has forfeited its charter to the State of Missouri for administrative deficiencies. The entity thus operates at this time under a registered fictitious name, the ownership of the Corporation's assets being designated by Missouri Law applicable to corporations that have forfeited their charters. All of the stock and all of the assets of the Warren County Water & Sewer Company are thus owned or controlled by Gary Smith, A. Lynn Smith, Warren County Water & Sewer Company or Warren-Lincoln Investments, Inc., also a Missouri Corporation. All of the common stock of Warren County Water & Sewer Company and Warren-Lincoln Investments, Inc. is owned by A. Lynn Smith and Gary Smith.

Warren County has a principal office and place of business located at 1248
 Mimosa Court, Foristell, Missouri 63348. As stated above, Warren County Water & Sewer
 Company cannot produce a Certificate of Good Standing.

4. Communications in regard to this Application should be addressed to:

Dean L. Cooper, Attorney Brydon, Swearengen & England P.C. 312 East Capitol Avenue P.O. Box 456
Jefferson City, Missouri 65102 (573) 635-7166
(573) 635-3847 (facsimile)

#### dcooper@brydonlaw.com

Paul S. DeFord Lathrop & Gage, L.C. 2345 Grand Boulevard, Suite 2800 Kansas City, MO 64108 (816) 292-2000 (816) 292-2001 (facsimile) pdeford@lathropgage.com

#### THE TRANSACTION

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5. MAWC and Warren County have entered into a Contract For Sale of Water Distribution System Assets and Sanitary Sewer Systems Assets of the Warren County Water & Sewer Company to Missouri-American Water Company dated September 2, 2003 ("Agreement"), a copy of which will be marked <u>Appendix A</u> and late-filed with the Commission. Pursuant to the Agreement, MAWC proposes to obtain and acquire certain assets of Warren County as specifically described in the Agreement under the terms and provisions further described in the Agreement. Such assets include the Warren County certificates of convenience and necessity as reflected in Commission Case Nos. WM-93-109 and WA-96-449. The Agreement is not included as it is considered by the applicants to be highly confidential in nature. It will be late-filed with the Commission upon the issuance of the Commission's standard protective order.

6. Because Warren County is a water corporation and sewer corporation doing business in the State of Missouri, it is subject to the provisions of Section 393.190.1, RSMo 2000, which states, in pertinent part, that "no . . . water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public . . . without having first secured from the Commission an order authorizing it so to do."

### ADDITIONAL INFORMATION

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7. A certified copy of the resolutions of the Board of Directors of MAWC and Warren County authorizing the purchase and sale, respectively, of the subject assets and related transactions contemplated by the Agreement are marked <u>Appendix B</u>, attached hereto, and made a part hereof for all purposes.

8. A balance sheet and income statement with adjustments showing the results of the acquisition of the property for MAWC is marked <u>Appendix C</u>, attached hereto, and made a part hereof for all purposes.

9. The sale of assets should have no impact on the tax revenues of relevant political subdivisions as both MAWC and Warren County are both private entities.

## **PUBLIC INTEREST**

10. For the following reasons, the proposed acquisition of the specified assets of Warren County and the related transactions are not detrimental to the public interest of the State of Missouri and in fact will be consistent with and will promote the public interest.

11. The assets of Warren County would be acquired by MAWC, a Missouri public utility, and remain subject to the jurisdiction of the Commission. MAWC has considerable expertise and experience in providing water and sewer utility services to residents of the State of Missouri.

12. MAWC is fully qualified, in all respects, to own and operate the systems currently being operated by Warren County and to otherwise provide safe, reliable and affordable service. MAWC will continue to utilize the rates, rules and regulations and other tariffs currently on file with and approved by the Commission and will continue to operate under those rates, rules and regulations until such time as they may be modified according to law.

13. In order to protect the interests of both MAWC and the customers of Warren County,

MAWC seeks an order/agreement as follows:

A. That the rates existing at the time MAWC acquires the assets will continue in effect until the operation of law date associated with MAWC's next general rate filing after May 1, 2004, and/or thereafter, until changed as a result of a Commission Order. Except as provided in subsection B below, neither MAWC, the Commission Staff nor the Office of the Public Counsel ("OPC") will before May 1, 2004 file a case to change the rates in effect at the time of this acquisition.

B. Neither MAWC, the Commission Staff nor the OPC may file a general rate increase case or a general rate decrease case before May 1, 2004 to change the Warren County rates, unless a significant, unusual event that has major impact on the Warren County operating district occurs, such as:

- (i) terrorist activity or an act of God;
- (ii) a significant change in federal or state tax laws;
- (iii) a significant change in federal or state utility laws or regulations; or,
- (iv) an unexpected extended outage or shutdown of the Warren County water supply or sewer service.

C. Nothing herein shall prohibit rate filings concerning MAWC's operating districts other than Warren County.

14. The customers of Warren County should over time experience an improvement in the quality of their day-to-day utility service.

15. The acquisition of the subject assets by MAWC will improve the ability of these properties to attract capital required to undertake and complete additions, improvements and replacements to its facilities necessary for it to meet the needs of its customers and to satisfy environmental requirements.

## **RATEMAKING TREATMENT**

16. MAWC seeks an order/agreement that the assets that are the subject of this application will be valued for ratemaking purposes at the purchase price contained in the Agreement.

## MOTION FOR EXPEDITED TREATMENT

17. MAWC and Warren County seek to complete this transaction by October 31, 2003, in order to bring to a close, as soon as possible, the proceedings continuing before the Circuit Court of Warren County. Therefore, MAWC and Warren County move the Commission to expedite its processing such that the transaction contemplated by the Agreement can be consummated no later than October 31, 2003.

WHEREFORE, MAWC and Warren County respectfully request that the Commission expedite the processing of this application such that the transaction contemplated by the Agreement can be consummated no later than October 31, 2003, and thereafter issue its order:

(A) authorizing MAWC to acquire the assets identified herein of Warren County;

(B) authorizing MAWC to enter into, execute and perform in accordance with the terms described in the Agreement attached to this Joint Application and to take any and all other actions which may be reasonably necessary and incidental to the performance of the acquisition; and,

(C) granting such other relief as may be deemed necessary and appropriate to accomplish the purposes of the Agreement and the Joint Application and to consummate related transactions in accordance with the Agreement.

Respectfully submitted,

Dean L. Cooper MBE #36592 Richard T. Ciottone MBE #21530 BRYDON, SWEARENGEN & ENGLAND P.C. 312 E. Capitol Avenue P. O. Box 456 Jefferson City, MO 65102 (573) 635-7166 voice/(573) 635-0427 facsimile dcooper@brydonlaw.com

ATTORNEYS FOR MISSOURI-AMERICAN WATER COMPANY

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Paul S. DeFordMBE #29509Lathrop & Gage, L.C.2345 Grand Boulevard, Suite 2800Kansas City, MO 64108(816) 292-2000(816) 292-2001 (facsimile)pdeford@lathropgage.com

ATTORNEYS FOR WARREN COUNTY WATER AND SEWER COMPANY, WARREN-LINCOLN INVESTMENTS, INC. D/B/A WARREN COUNTY WATER AND SEWER, AND GARY SMITH AND A. LYNN SMITH

State of Missouri ) County of <u>Cole</u> )

I, David P. Abernathy, having been duly sworn upon my oath, state that I am the Vice-President of Missouri-American Water Company, that I am duly authorized to make this affidavit on behalf of Missouri-American Water Company, that the matters and things stated in the foregoing Application and appendices thereto are true and correct to the best of my information, knowledge and belief.

Subscribed and sworn before me this <u>440 day of September</u>, 2003. Osage County Notary Public My Commission Expires July 14, 2005

State of Missouri ) 55 County of Lincoln Gary L. Smi The having been duly sworn upon my oath, state that I am Warren County Water & Sewer Company, that I am duly the of 61 tra authorized to make this affidavit on behalf of Warren County Water and Sewer Company, that the matters and things stated in the foregoing Application and appendices thereto are true and correct to the best of my information, knowledge and belief. Subscribed and sworn before me this  $\frac{29}{29}$  day of 2003. Notary F attini 1° cox - STATE OF MISSOURI NOTATI F

State of Missouri )ss County of incoln Fary L. Smith having been duly sworn upon my oath, state that I am of Warren-Lincoln Investments, Inc. d/b/a Warren County the Water & Sewer, that I am duly authorized to make this affidavit on behalf of Warren-Lincoln Investments, Inc. d/b/a Warren County Water & Sewer, that the matters and things stated in the foregoing Application and appendices thereto and true and correct to the best of my information, knowledge and belief. Subscribed and sworn before me this  $\underline{29}$ 2003. day of AFFIDAVIT State of Missouri ) County of incoln ) ss ANCY I. COM NOTARY BLIC . STATE OF MISSOURI דיזאטסט אטכאע MY COMMISSION EXPIRES JULY 7, 2007 I, Gary Smith, having been duly sworn upon my oath, state that the matters and things stated in the foregoing Application and appendices thereto are true and correct to the best of my information, knowledge and belief.

Subscribed and sworn before me this 2 day of (1)

2003.



State of Millor ) ) 15 County of A (uscen)

I. A. Lynn Smith, having been duly swom upon my oath, state that the mannes and things stated in the foregoing Application and appondices thereto are true and correct to the best of my information, knowledge and belief.

2:45t . 2003. Subscribed and swom before me this

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## APPENDICES

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- Appendix A Contract For Sale of Water Distribution System Assets and Sanitary Sewer Systems Assets of the Warren County Water & Sewer Company to Missouri-American Water Company dated September 2, 2003
- Appendix B Certified copy of the resolutions of the Board of Directors of MAWC and Warren authorizing acquisition of the assets and the consummation of related transactions contemplated by the Agreement and this Application
- Appendix C Pro Forma Balance Sheet and Income Statement for MAWC

# **APPENDIX A**

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APPENDIX A WILL BE LATE-FILED WITH THE COMMISSION AFTER THE ISSUANCE OF A PROTECTIVE ORDER.

## MISSOURI-AMERICAN WATER COMPANY CERTIFIED COPY OF CORPORATE RESOLUTION

I, Meredith E. Perkins, Assistant Secretary of Missouri-American Water

Company, hereby certifies that the following is a true and accurate copy of a resolution of

the Board of Directors of said Company approved by Unanimous Written Consent, dated

August 22, 2003, which action shall have the same validity and effect as if such had been

taken at a meeting of the Board of Directors of said Company, duly called and held, at

which all members of the Board of Directors attended and voted therefor and that said

resolutions are still in full force and effect:

**RESOLVED**, that the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Company be, and they hereby are, authorized and directed, per the parameters as presented to the Board of Directors, to execute on behalf of the Company, any agreement for the purchase of the water system assets of Warren County Water & Sewer Company and to take all other and further actions as they deem necessary or desirable to consummate the transaction contemplated therein, including obtaining all requisite approval thereof from any regulatory agency having jurisdiction thereover.

I further certify that the above resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand as Assistant Secretary of

Missouri-American Water Company, and have caused the corporate seal of said

Company to be hereunto affixed, this <u>2</u> day of September, 2003.

Meredith E. Perkins Assistant Secretary

#### STATEMENT OF UNANIMOUS WRITTEN CONSENT TO ACTION TAKEN IN LIEU OF THE ANNUAL MEETING OF THE DIRECTORS OF

#### WARREN COUNTY WATER & SEWER COMPANY

The undersigned, being all the directors of WARREN COUNTY WATER & SEWER COMPANY, a Missouri conjustation (the "Conportion"), in lieu of the annual meeting of the directors, do hereby take the following actions in the name of and on behalf of the Comportation:

RESOLVED, that the following persions be, and they hereby are, appointed as directors of the Corporation, to hold office (unless sooner removed in the manner provide by law) until the next annual meeting of the directors and until their successors are duly appointed and qualified:

#### GARY L SMITH Ed A. LYNN SMITH

- RESOLVED, that all the acts, actions and things done for, in the name of, and on behalf of the Corporation by its officers and directors since the last annual meeting of the corporation be, and they hereby site, in all respects, approved, rabified and confirmed.
- BE IT FLIRTHER RESOLVED, that the officers of the Combration are hereby authorized, and directed, to enter into a Sale Agreement with Missouri-Aminican Water of St. Louis, Missouri, whereby a sale of all the assets of this corporation shall be made. Further, such sale shall be on the terms and conditions as said officers may down to be in the best interest of the Corporation

IN WITNESS WHEREOF, the undersided have exercised this Consent as of August 2, 2003.

#### STATEMENT OF UNANIMOUS WRITTEN CONSENT TO ACTION TAKEN IN LIEU OF THE ANNUAL MEETING OF THE SHAREHOLDERS OF

#### WARREN-LINCOLN INVESTMENTS, INC.

The undersigned, being all the otherchelders of WARREN-LINCOLN INVESTMENTS, INC., a Missiouri corporation (the "Corporation"), in Heat of the annual making of the charabolders, do hereby take the following actions in the name of and on behalf of the Corporation:

RECLIVED, that the following persons be, and they hereby are, appointed as directors of the Componenties, to hold office (unless scener necessories in the minimizer provide by law) until the next second meeting of the shareholders and until their successors are duly appointed and qualified:

#### GARY L SHITH and A. LYNN SMITH

RESOLVED, that all the area, assions and things done for, in the name of, and on behalf of the Corporation by its officers and directors since the last annual mosting of the corporation be, and they have by are, in all respects, approved, ratified and confirmed.

IN WITNESS WHEREOF, the underlight have executed this Consent as of August 1, 2009.

### STATEMENT OF UNANIMOUS WRITTEN CONSENT TO ACTION TAKEN IN LIEU OF THE ANNUAL MEETING OF THE DIRECTORS OF

#### WARREN-LINCOLN INVESTMENTS, INC.

The undersigned, being all the directors of WARREN-LINCOLN INVESTMENTS, INC., a Missouri corporation (the "Corporation"), in light of the annual meeting of the directors, do hereby take the following actions in the name of and on behalf of the Corporation:

RESOLVED, that the following persons be, and they hareby are appointed as directors of the Corporation, to hold office (unless sconer removed in the manner provide by law) until the next minual meeting of the directors and until their successors are duly appointed and qualified:

## GARY L SMITH and A. LYNN SMITH

- RESOLVED, that all the usis, actions and things done for, in the name of, and on behalf of the Corporation by its officers and directors since the last altitual meeting of the corporation be, and they hereby are, in all respects, approved, ratified and confirmed.
- BE IT FURTHER RESOLVED, that the officers of the Corporation are hereby authorized, and directed, to enter into a Sale Agreement with Missouh-American Water of St. Louis, Missouri, whereby a sale of contain real estate assets (Lot 393 Incline Village and property adjacent Treatment Plant 2, Incline Village) of this comportation shall be made. Further, such sale shall be on the terms and conditions as said officers may down to be in the best interest of the Corporation

IN WITHESS WHEREOF, the undersigned have extended this Consent as of August 2, 2003.

. SMITH

## Relence Sheet at June 2002

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Balance Sheet at June 2003	Missouri-American <u>Water Company</u>	Warren County <u>Acquisition</u>	Adjusted Missouri-American <u>Water Company</u>
<u>Assets</u>			
Utility Plant In Service:			••••
Total Plant in Service	\$907,555,423	\$485,000	\$908,040,423
Construction Work In Progress	18,011,243	0	\$18,011,243
Utility Plant Acquisition Adjustment	10,770,117	0	\$10,770,117
Less: Depreciation Reserve	<u>(246,769,350)</u>	<u>(150,000)</u>	<u>(\$246,919,350)</u>
Net Plant in Service	<u>689,567,433</u>	<u>335,000</u>	<u>689,902,433</u>
Non-Utility Property	30,650	0	30,650
Current Assets:			
Cash and Cash Equivalents	2,541,473	0	2,541,473
Customer Accounts Receivable	10,615,518	0	10,615,518
Allowance for Uncollectible Accounts	(408,995)	0	(408,995)
Unbilled Revenues	15,055,402	0	15,055,402
FIT Refund Due	3,213,657	0	3,213,657
Miscellaneous Receivables	1,697,775	0	1,697,775
Materials and Supplies	3,452,270	0	3,452,270
Other	<u>2,32</u> 2,265	<u>0</u> 0	2,322,265
Current Assets	<u>38,489,365</u>	Ū	38,489,365
Deferred Debits:			
Debt and Preferred Stock	12,061,950	0	12,061,950
Expense of Rate Proceeding	589,018	0	589,018
Regulatory AssetIncome Tax Recovery	26,183,664	0	26,183,664
Other	<u>10,777,348</u>	Q	<u>10,777,348</u>
Deferred Debits	<u>49.611,980</u>	<u>0</u>	<u>49,611,980</u>
Totai Assets	\$777.699.428	<u>\$335.000</u>	<u>\$778.034.428</u>
Liabilities and Capitalization			
Company Capitalization:			
Common Stock Equity, Net	\$211,810,592	\$134,000	\$211,944,592
Preferred Stock (Par or Stated Value Outstanding)	2,692,000	0	2,692,000
Long-term Debt (including current maturities)	290,035,000	<u>201,000</u>	290,236,000
Company Capitalization	<u>504,537,592</u>	<u>335,000</u>	504,872,592
Current Liabilities:			
Short-term Debt	3,565,449	0	3,565,449
Accounts Payable	907,810	0	907,810
Taxes Accrued	4,892,775	0	4,892,775
Interest Accrued	3,663,305	0	3,663,305
Customer Deposits	159	0	159
Dividends Declared	<u>11,163,710</u>	<u>0</u>	<u>11,163,710</u>
Current Liabilities	<u>24,193,208</u>	Ō	24,193,208
Deferred Credits:			
Customer Advances for Construction	54,652,389	0	54,652,389
Deferred Income Taxes	71,676,609	0	71,676,609
Deferred Investment Tax Credits	4,664,607	0	4,664,607
Regulatory Liability	3,629,190	0	3,629,190
Other	<u>14,740,683</u>	<u>0</u>	<u>14,740,683</u>
Deferred Credits	<u>149,363,478</u>	<u>0</u>	<u>149,363,478</u>
Contributions in Aid of Construction	<u>99,605,150</u>	<u>0</u>	<u>99,605,150</u>
Total Capitalization and Liabilities	<u>\$777.699.428</u>	<u>\$335.000</u>	<u>\$778.034.428</u>

## Appendix C--2 of 2

# Operating Statement June 2003 YTD

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		Warren	Adjusted
	Missouri-American	County	Missouri-American
	Water Company	<u>Acquisition</u>	Water Company
Operating Revenues	\$158,411,108	\$162,556	\$158,573,664
Operating & Maintenance Expenses	78,512,244	121,854	78,634,098
Depreciation & Amortization Expenses	24,685,196	7,779	24,692,975
Taxes, Other Than Income Taxes	11,874,779	0	11,874,779
Income Taxes, Current, Federal & State	11,482,408	7,546	11,489,954
Provision for Deferred Income Taxes, Net	1,715,233	0	1,715,233
Investment Tax Credit Adjustment, Net	<u>(73,070)</u>	<u>0</u>	<u>(73,070)</u>
Operating Expenses	<u>128,196,790</u>	<u>137,179</u>	<u>128,333,969</u>
Net Operating Income	<u>30,214,318</u>	25,377	<u>30,239,695</u>
Non-Operating Income	5,002,722	<u>0</u>	<u>5,002,722</u>
Gross Income	<u>35,217,040</u>	<u>25,377</u>	35,242,417
Interest on Long-Term Debt	15,620,075	13,266	15,633,341
Amortization Debt Discount/Premium, Net	598,857	0	598,857
Interest on Short-Term Debt	413,627	0	413,627
Other Interest	<u>11,290</u>	<u>0</u>	<u>11,290</u>
Gross Interest Expense	<u>16,643,849</u>	<u>13,266</u>	16,657,115
AFUDCEquity Component	1,181,485	0	1,181,485
AFUDCDebt Component	<u>715,927</u>	Q	<u>715,927</u>
AFUDC	<u>1,897,412</u>	<u>0</u> 0	<u>1,897,412</u>
Net Interest Expense	<u>14,746,437</u>	<u>13,266</u>	<u>14,759,703</u>
Net Income	<u>\$20,470.603</u>	<u>\$12,111</u>	<u>\$20,482,714</u>

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