

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 14th day of October, 2021.

In the Matter of the Joint Application of Missouri-)
American Water Company and DCM Land, LLC, for a)
Variance from the Company's Tariff Provisions) **File No. WE-2021-0390**
Regarding the Extension of Company Mains)

**ORDER GRANTING VARIANCES, GRANTING WAIVER, AND
GRANTING EXPEDITED TREATMENT**

Issue Date: October 14, 2021

Effective Date: October 24, 2021

On May 6, 2021, Missouri-American Water Company (MAWC) and DCM Land, LLC (collectively referred to as the "Joint Applicants") filed an application for variances from provisions of MAWC's tariffs with regard to the connection time limit and funding percentage for an extension of MAWC's water main into the Cottleville Trails development. The Joint Applicants also requested a waiver of Commission Rule 20 CSR 4240-4.017(1)(D) requiring a 60-day notice before filing the case.

The Commission issued notice of the application and set a deadline for the filing of applications to intervene. No requests to intervene were received.

The Commission also ordered the Staff of the Commission to file a recommendation. Staff was granted an extension of time and filed its recommendation on August 13, 2021. Staff argued in its recommendation that the Commission does not have authority to grant a variance from a tariff unless the tariff contains the authority to do so. Staff also objected to a variance of the funding ratio on the grounds that such a variance

would be unduly discriminatory.¹ Staff did not object to the grant of the waiver of the time limit for taking service.

DCM Land and MAWC responded in opposition to Staff's recommendation to deny the variances. The Joint Applicants argue that the Commission has authority under Commission Rule 20 CSR 4240-2.060(4) to grant the requested variances and that they have shown good cause for the Commission to do so.

The parties met in a procedural conference on September 1, 2021. Thereafter, the parties filed a joint proposed procedural schedule which included a date for a stipulation of facts, list of issues, and briefs on the issues. Each of those items was filed on September 16, 2021. No party requested a hearing.

Commission Rule 20 CSR 4240-2.060(4) allows a utility to request a variance from tariff provisions for good cause. All statutory and regulatory requirements for filing of the application were met.

MAWC is a water corporation and a public utility subject to the Commission's jurisdiction. MAWC provides water service to approximately 470,000 customers and sewer service to approximately 15,000 customers in the state of Missouri.² DCM Land is currently developing the Cottleville Trails subdivision. The development is located in St. Charles County, Missouri, in the City of Cottleville. The development has two planned phases. Phase 1 of the project consists of 354 single family residences and 175 apartments and Phase 2 will have an estimated 217 additional homes. A development of

¹ Recommendation, (filed Aug. 13, 2021), paragraph 6.

² Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 7.

this size is not reasonably expected to be completed within 120 days but is reasonably expected to be built over a five-year period.³

The development is located in the service areas of both MAWC and Public Water Supply District No. 2 of St. Charles County (PWSD#2).⁴ However, MAWC and PWSD#2 entered into a territorial agreement⁵ that places the development wholly within MAWC's exclusive territory.⁶ If not for the territorial agreement, the extension of the main to the Cottleville Trails development would not have been subject to a 120-day time limit for taking service and DCM Land would have been able to recover significantly more of its costs under PWSD#2's specifications and rules.⁷

As part of the project, DCM is installing a 12" main in place of an existing 4" main in Old Town Cottleville.⁸ The replacement main will improve fire protection in the area and provide water main access to additional nearby properties.⁹ According to DCM Land's estimates, the total cost of the water infrastructure under MAWC's design and material requirements for Phase 1 is \$2,100,000, which includes \$200,000 to extend the main.¹⁰ DCM has not yet calculated the costs for Phase 2.¹¹ MAWC estimates its total average annual revenues to be \$305,135 once both phases are complete.¹²

³ Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 15.

⁴ Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 5.

⁵ The territorial agreement was approved by the Commission in File No. WO-2001-441 on May 15, 2001, and was amended in File No. WO-2012-0088, which was approved by the Commission on November 15, 2011.

⁶ Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 5.

⁷ See, Response of DCM Land, LLC to Staff's Recommendation (filed Aug. 23, 2021), Appendix A, Rules 4 and 14 of PWSD#2; and Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), paras. 20 and 21.

⁸ Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 22.

⁹ Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 22.

¹⁰ Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 20.

¹¹ Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 20.

¹² Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), paras. 18 and 19. (MAWC estimates its total average annual revenue from the single family homes to be \$158,344 for Phase 1 and \$96,791 for Phase 2. Additionally, MAWC estimates its total average annual revenue from the apartments to be \$50,000.)

The Joint Applicants request variances from part of PSC MO No. 13, 1st Revised Sheet No. R 48, Rule 23A.2. and 3., and a variance from PSC MO No. 13, 1st Revised Sheet No. R 51, Rule 23C.6.¹³ The variance requested from Rule 23A.2. would change the time limit for customers to take service after MAWC accepts the main and determines it is ready for service from 120 days to five years to allow the build out and purchase of the homes and apartment buildings.

The variances requested from Rule 23A.3. and Rule 23C.6. would change the funding ratio for the main extension between DCM Land and MAWC from the current ratio of 95:5 (95% DCM Land and 5% MAWC) to a funding ratio of 86:14 (86% DCM Land and 14% MAWC). MAWC's service area in St. Charles County, including the Cottleville Trails development, is a part of the St. Louis Metro District for the purpose of MAWC's tariff Rule 23 – Extension of Company Mains.¹⁴ Only the St. Louis Metro District has the 95:5 funding ratio for main extensions. All of MAWC's other districts use the 86:14 ratio.¹⁵ The cost difference to DCM Land of the funding ratio variance is estimated to be \$189,000 for the Phase 1 water infrastructure construction.¹⁶

The Commission reviewed the verified application and other pleadings, Staff's verified recommendation, the stipulation of facts, and the briefs on the issues. Because of the added fire protection and access gained to nearby areas, the number of new customers taking service and the revenue expected to be produced, and the specific facts surrounding the location of this development within the service territory of St. Louis Metro District of MAWC instead of another tariffed district or the PWSD#2, the Commission finds

¹³ The tariff provisions are referred as "Rule 23A.2", "Rule 23A.3", and "Rule 23C.6".

¹⁴ Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 5.

¹⁵ Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 14.

¹⁶ Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 21.

that the Joint Applicants have demonstrated good cause to grant the variances as requested. For these reasons, the Commission has also determined that such variances are reasonable and not unduly discriminatory. The Commission will grant the requested tariff variances.

The Joint Applicants also requested that the Commission direct that any Main Extension Contract, as referenced in PSC MO No. 13, 1st Revised Sheet No. R 51, Rules 23C.4. entered into with DCM Land for Cottleville Trails reflect the variances granted.¹⁷ The Commission will grant this request.

In addition to variance from the tariff provisions, the Joint Applicants requested a waiver for this case of 20 CSR 4240-4.017(1) requiring notice of intended case filings be filed at least 60-days prior to the application. Commission Rule 4 CSR 240-4.017(1)(D) allows the Commission to grant a waiver of the 60-day notice requirement for good cause. The Joint Applicants stated that they have had no communication with the Office of the Commission within the prior 150 days regarding any substantive issue likely to be in this case. The Joint Applicants also explain that failure to waive the 60-day notice requirement could result in a costly delay of the development of Cottleville Trails. The Commission finds good cause to waive the 60-day notice requirement and it will be granted.

DCM Land requested the Commission make an expedited decision prior to the closing of lot sales no later than October 31, 2021.¹⁸ DCM Land noted in its motion the additional carrying costs that it may have to pay if a decision is delayed. The Commission will grant the motion for expedited treatment. In doing so, the Commission will also expedite the effective date of this order to become effective in less than 30 days.

¹⁷ Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 12.

¹⁸ Motion for Expedited Treatment, (filed July 13, 2021).

THE COMMISSION ORDERS THAT:

1. The Joint Applicants are granted a variance from part of PSC MO No. 13, 1st Revised Sheet No. R 48, Rule 23A.2. so that 120 days is changed to five years for DCM Land's Cottleville Trails development.
2. The Joint Applicants are granted variances from parts of PSC MO No. 13, 1st Revised Sheet No. R 48, Rule 23A.3. and PSC MO No. 13, 1st Revised Sheet No. R 51, Rule 23C.6. so that the ratio of 95:5 (i.e., 95% DCM Land funded and 5% MAWC funded) is changed to a ratio of 86:14 (i.e., 86% DCM Land funded and 14% MAWC funded) for DCM Land's Cottleville Trails development.
3. Any Main Extension Contract, as referenced in PSC MO No. 13, 1st Revised Sheet No. R 51, Rules 23C.4. entered into by MAWC with DCM Land for Cottleville Trails shall reflect the variances granted.
4. The Joint Applicants are granted a waiver of the 60-day notice requirement in 20 CSR 4240-4.017(1) in this matter.
5. DCM Land's motion for expedited treatment is granted.
6. This order shall become effective on October 24, 2021.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeier CC., concur.

Dippell, Deputy Chief Regulatory Law Judge


STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 14th day of October, 2021.





Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

October 14, 2021

File/Case No. WE-2021-0390

Missouri Public Service Commission
Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel
Marc Poston
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@opc.mo.gov

DCM Land, LLC
Sue A Schultz
600 Washington Ave. 15th Floor
St. Louis, MO 63101
sschultz@sandbergphoenix.com

DCM Land, LLC
Anthony J Soukenik
600 Washington Ave., 15th Floor
St. Louis, MO 63101
asoukenik@sandbergphoenix.com

Missouri Public Service Commission
Casi Aslin
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
casi.aslin@psc.mo.gov

Missouri-American Water Company
Dean L Cooper
312 East Capitol
P.O. Box 456
Jefferson City, MO 65102
dcooper@brydonlaw.com

Missouri-American Water Company
Timothy W Luft
727 Craig Road
St. Louis, MO 63141
Timothy.Luft@amwater.com

Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.