

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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 Regarding the)
Extension of Company Mains)
File No. WE-2021-0390

RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and for its *Recommendation*, states as follows:

1. On May 6, 2021, Missouri-American Water Company (“MAWC”) and DCM Land, LLC (“DCM”) (together, “Joint Applicants”) filed their *Joint Application for Variance and Motion for Waiver* (“Application”) requesting, pursuant to Commission Rule 20 CSR 4240-2.060(4), a variance from certain provisions of MAWC’s tariff with regard to the extension of company mains; more specifically, with terms related to the time by which DCM must connect to MAWC’s system, and relating to the funding ratio associated with an extension of MAWC’s water main into a development located in St. Charles County, Missouri. The Application requests a variance from provisions of PSC MO No. 13, 1st Revised Sheet No. R 48, Rule 23A.2. and 3, as well as a waiver from PSC MO. No. 13, 1st Revised Sheet No. R 51, Rule 23C.6. The Joint Applicants further request a waiver from the notice requirement in Commission Rule 20 CSR 4240-4.017.

2. MAWC is an active Missouri corporation in good standing with the Missouri Secretary of State. Its principal place of business is 727 Craig Road, St. Louis, Missouri 63141. MAWC is a “water corporation,” a “sewer corporation,” and a “public utility” as defined by Section 386.020 RSMo and is subject to Commission jurisdiction.

3. DCM is a Missouri limited liability company and listed as active with the Missouri Secretary of State. DCM's principal place of business is 5731 Westwood, St. Charles, Missouri 63304. DCM Land develops real estate projects in the St. Charles County area.

4. The Joint Applicants request a variance from the definition of new applicants in Rule 23A.2. Under Rule 23A.2, the Company is responsible for all main extensions where the cost of the extension does not exceed four (4) times the estimated average annual revenue from the new Applicant(s) whose service pipes will immediately be connected directly to the extension, with new Applicants defined as "those who commit to purchase water service for at least one year, and guarantee to the Company that they will take water service ... within one hundred (120) days after the date the Company accepts the main and determines it ready for Customer service." Instead of the one hundred twenty (120) days currently in the tariff, the Joint Applicants requests the estimated average annual revenue from new applicants for DCM's new development (Cottleville Trails) be calculated using "...those who commit to purchase water service for at least one year, and guarantee to the Company that they will take water service at their premises **within five (5) years** after the date the Company accepts the main and determines it ready for Customer service." (emphasis added).

5. Under Rules 23A.3 and 23C.6, costs in excess of four (4) times the Company's estimate of average annual revenue from the new Applicant is funded 95% by the Applicant and 5% by the Company for the St. Louis Metro District, and 86% by the Applicant and 14% by the Company for all other districts. The Joint Applicants also

request a variance from the 95:5 funding ratio for the St. Louis Metro District as detailed in Rules 23A.3 and 23C.6, and instead use an 86:14 ratio for Cottleville Trails.

6. Despite the Joint Applicants argument that good cause exists to grant the requested variance, the Commission, for reasons detailed below and in the attached Memorandum, does not have the authority to grant these variances. Further, it is Staff's position that even if the Commission had the authority to grant a variance in this case, doing so with regard to the requested variance from the 95:5 funding ratio detailed in Rules 23A.3 and 23C.6 would be unduly discriminatory and should not be granted.¹

COMMISSION AUTHORITY TO GRANT TARIFF WAIVERS

7. While the Commission Rule 20 CSR 4240-2.060(4) proscribes the filing procedures related to applications for variances or waivers from tariff provisions, those procedures in and of themselves do not grant the Commission the authority to waive provisions of utility tariffs. Any validly adopted tariff "has the same force and effect as a statute, and it becomes state law." ***State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n***, 210 S.W.3d 330, 337 (Mo. App., W.D. 2006), ***Public Service Com'n of State v. Missouri Gas Energy***, 388 S.W.3d 221, 227 (Mo. App., W.D. 2012). As such, a tariff is binding on the utility, the public, and this Commission. This is referred to as the "Filed Rate Doctrine"

¹ As more thoroughly explained in the Memorandum attached hereto, if the Commission were to determine it has the authority to grant a variance in this instance, Staff would not be opposed to the Joint Applicants requested variance from the definition of new applicants in Rule 23A.2.

or “Filed Tariff Doctrine.”² Missouri courts have uniformly applied the Filed Rate Doctrine to decisions of the PSC.³

8. Courts have indicated that a waiver of a line extension tariff for a water corporation is lawful if the tariff contains language authorizing such waiver upon approval by the Commission.⁴ However, no language exists in MAWC’s tariff that allows for a variance from the requested provisions. As stated by the Supreme Court of Missouri in

² “As developed for purposes of the Federal Power Act, the ‘filed rate’ doctrine has its genesis in **Montana-Dakota Utilities Co. v. Northwestern Public Service Co.**, 341 U.S. 246, 251-252, 71 S.Ct. 692, 695, 95 L.Ed. 912 (1951). There, this Court examined the reach of ratemakings by FERC’s predecessor, the Federal Power Commission (FPC). * * * [M]any state courts have applied the filed rate doctrine of **Montana-Dakota** to decisions of state utility commissions and state courts that concern matters addressed in FERC ratemakings.” **Nantahala Power and Light Co. v. Thornburg**, 476 U.S. 953, 962, 964, 106 S.Ct. 2349, 2354-55, 2356, 90 L.Ed.2d 943, (1986).

³ See, e.g., **State ex rel. AG Processing, Inc. v. Public Service Commission**, 311 S.W.3d 361 (Mo. App., W.D. 2010); **Bauer v. Southwestern Bell Tel. Co.**, 958 S.W.2d 568 (Mo. App., E.D. 1997).

⁴ Missouri Courts have held that waiver provisions in line extension tariffs are not unduly discriminatory where such waiver is required to be approved by the Commission on showing that exceptional conditions exist. **State ex rel. Kennedy v. Pub Serv. Comm’n**, 42 S.W.2d 349, 350, 352-53 (Mo. 1931) (upholding tariff waiver provision stating, “In exceptional cases, where extensions are requested under conditions which may appear to warrant departure from the above rules, the cost of such extensions, if requested and desired by the company, shall be borne as may be approved by the Public Service Commission of Missouri.”). The Court discussed the legality of the inclusion of such a waiver provision:

It is urged that the last paragraph of the rule, whereby it is provided that, in exceptional cases where conditions may appear to warrant departures from the rule, the cost of the extension, if so requested by the company, shall be borne as may be approved by the commission, makes the rule discriminatory, or at least makes it possible for the company under the rule to discriminate between proposed consumers. Discrimination is not unlawful unless arbitrary or unjust. [] The rule does not permit the company at its own will to extend to one applicant for service treatment different from that accorded to others. It is only in exceptional cases where conditions may appear to warrant departure from the rule that the deposit requirement may be waived, and then only by permission of the commission, which body is to determiner (sic) whether or not the exceptional conditions exist and, if so, how the cost shall be borne.* * * But that provision was designed only to afford the possibility of granting relief where, because of exceptional conditions, there may be urgent need for such relief and it may justly be granted. Without some such provision in the rule the commission could not authorize the company to make an exception in the application of its approved rule. [] If rightly observed, as we must assume it will be, we think that provision of the rule will not result in unjust discrimination. The evidence indicates that there has been no attempt or disposition so far on the part of the company to do other than comply with the rule according to its spirit and purpose.

(internal citations omitted).

Kennedy, “[w]ithout some such provision in the rule the commission could not authorize the company to make an exception in the application of its approved rule.”⁵

DISCRIMINATORY RATE REQUEST

9. As stated above, and more thoroughly detailed in the attached Memorandum, even if the Commission finds it has the authority to grant the requested waivers, it is Staff’s position that the Joint Applicants’ request for a waiver from the 95:5 funding ratio detailed in Rules 23A.3 and 23C.6 would be unduly discriminatory and should not be granted. The purpose of the Public Service Commission Act is primarily to protect the public from utilities. ***State ex. inf. Barker v. Kansas City Gas Company***, 254 Mo. 515, S163 S.W. 854, 857-58 (1914).⁷ In ***State ex rel. St. Louis Gas Co. v. Public Service Commission***, 315 Mo. 312, 286 S.W. 84 (1926), the Missouri Supreme Court held that the Commission, while it had authority to change tariff provisions, did not have authority to waive them to allow new customers to pay less than the tariff rate for extension of a gas line to service them, as this is discriminatory. In its opinion the Court stated:

A schedule of rates and charges filed and published in accordance with the foregoing provisions acquires the force and effect of law; and as such it is binding upon both the corporation filing it and the public which it serves. It may be modified or changed only by a new or supplementary schedule, filed voluntarily, or by order of the commission. Such is the construction which has been universally put upon analogous provisions of the Interstate Commerce Act, being U. S. Comp. St. s 8563 et seq. (***Louisville, etc., Ry. Co. v. Maxwell***, 237 U. S. 94, 35 S. Ct. 494, 59 L. Ed. 853, L. R. A. 1915E, 665; ***Gulf, etc., Ry. Co. v. Hefley***, 158 U. S. 98, 15 S. Ct. 802, 39 L. Ed. 910); and we have so ruled with respect to similar provisions of our Public Service Commission Law relating to telegraph companies (***State v. Public Service Commission***, 304 Mo. 505, 264 S. W. 669, 671, 672, 35 A. L. R. 328). If such a schedule is to be accorded the force and effect of law, it is binding, not only upon the utility and the public, but upon the Public Service Commission as well.

⁵ *Id.*

The general purpose of the statutory provision above referred to is to compel the utility to furnish service to all the inhabitants of the district which it professes to serve at reasonable rates and without discrimination. The methods by which these results are to be obtained are clearly and definitely prescribed:

"Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such * * * corporation * * * are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished." Rev. St. 1919, § 10478.

The rules and regulations of the St. Louis Gas Company as to extensions are integral parts of its schedule of rates and charges. If they are unjust and unreasonable, the commission, after a hearing, as just referred to, may order the schedule modified in respect to them. But it cannot set them aside as to certain individuals and maintain them in force as to the public generally. The gas company cannot—

"extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are regularly and uniformly extended to all persons and corporations under like circumstances."

10. The Joint Applicants' request for a variance from the 95:5 funding ratio for the St. Louis Metro District in favor of an 86:14 ratio for Cottleville Trails gives DCM an advantage not afforded to other developers. A Company cannot legally offer one customer a different rate than another unless the customers are receiving different services.

All individuals have equal rights both in respect to service and charges. Of course, such equality of right does not prevent differences in the modes and kinds of service and different charges based thereon. There is no cast iron line of uniformity which prevents a charge from being above or below a particular sum, or requires that the service shall be exactly along the same lines. But that principle of equality does forbid any difference in charge

which is not based upon difference in service, and, even when based upon difference of service, must have some reasonable relation to the amount of difference, and cannot be so great as to produce an unjust discrimination.⁶

Further, under Section 393.130.3, utilities are forbidden from granting undue preference or advantage to any ratepayer, just as they may not unduly or unreasonably prejudice or disadvantage any ratepayer in the provision of services. ***State ex rel. City of Joplin v. Public Service Com'n of State of Mo.***, 186 S.W.3d 290, 296 (Mo. App., W.D. 2005). The question of whether discriminatory rates are unlawful and unjust is usually a question of fact, ***State ex rel. Mo. Office of Pub. Counsel v. Mo. Pub. Serv. Comm'n***, 782 S.W.2d 822, 825 (Mo. App., W.D. 1990). Here, the Joint Applicants requested funding ratio provides an advantage to DCM over other MAWC customers. No legal justification has been offered to show that DCM is a unique customer seeking a unique service for which this variance would be reasonable. Thus, it is Staff's position that granting such a variance would be unduly and unjustly discriminatory.

**FAILING TO APPROVE A VARIANCE DOES NOT CREATE
A TAKING OF DCM'S PROPERTY**

12. In their Application, the Joint Applicants argue:

Without the relief requested herein, the combination of the Territory Agreement and MAWC's tariff will have unconstitutional, and presumably unintended, consequences of creating a taking of DCM Land's property interest without just compensation...

The Company's Commission-approved tariff and Commission-approved Territory Agreement do not combine to produce an unconstitutional effect. Joint Applicants fail to

⁶ ***State ex rel. Laundry, Inc. v. Public Service Com'n***, 327 Mo. 93, 111, 34 S.W.2d 37, 45 (Mo. 1931) (quoting ***Western Union Telegraph Co. v. Call Pub. Co.***, 181 U.S. 92, 100, 21 S.Ct. 561, 564, 45

cite any legal authority for the proposition that territorial agreements should remain in effect only if financially beneficial to each specific customer within the bounds of the agreement.

13. Regarding the Territorial Agreement referenced in the Joint Applicant's Application,⁷ the Commission met its constitutional requirements of due process. "Due process requires notice and a hearing; moreover, the adequacy of the notice and the hearing must be evaluated in the context of the specific procedure at issue, in this case, an administrative proceeding."⁸ In an administrative proceeding, "[D]ue process is provided by affording parties the opportunity to be heard in a meaningful manner. The parties must have knowledge of the claims of his or her opponent, [and] have a full opportunity to be heard, and to defend, enforce and protect his or her rights."⁹

14. In File No. WO-2001-441, the Commission sent notice to the members of the General Assembly representing the Applicants'¹⁰ service areas and "to the newspapers which serve Applicants'" service areas as listed in the newspaper directory of the current *Official Manual of the State of Missouri*."¹¹ Further, the Commission established a deadline for any interested person wishing to intervene to do so. Ultimately, the parties to the case entered into a Unanimous Stipulation and Agreement,¹² and the Commission issued its *Report and Order*¹³ approving the Stipulation and Agreement, and

⁷ See Commission File No. WO-2001-441.

⁸ ***State ex rel. Mo. Pipeline Co. v. Mo. Pub. Serv. Comm'n***, 307 S.W.3d 162, 174 (Mo.App. W.D.2009).

⁹ *Id.* (quoting ***Weinbaum v. Chick***, 223 S.W.3d 911, 913 (Mo.App. S.D.2007)).

¹⁰ MAWC and Public Water Supply District No. 2 of St. Charles County.

¹¹ See the Commission's *Order and Notice*, p. 3, issued February 23, 2001, in File No. WO-2001-441, EFIS Item No. 2.

¹² See *Unanimous Stipulation and Agreement*, filed April 16, 2001, in File No. WO-2001-441, EFIS Item No. 5.

¹³ See the Commission's *Report and Order*, issued May 15, 2001, in File No. WO-2001-441, EFIS Item No. 8.

the applied for Territorial Agreement. While no hearing was held,¹⁴ the Commission's *Report and Order* was issued in compliance with Section 386.490, RSMo, allowing affected parties the opportunity to review the Commission's order, and request rehearing in accordance with the provisions of Section 386.500 and 386.510, RSMo. Compliance with this statutory framework satisfied the constitutional requirements of due process.¹⁵

15. Further, consumers of public utilities *do not* hold a vested property interest in their utility rates. In ***State ex rel. Jackson County v. Public Service Commission***, 532 S.W. 2d 20, the court stated:

Consumers' contention of necessity is premised on the argument that they have a protected 'property' interest in the present level of utility rates. We have not been cited any authority for that proposition. On the other hand, there are a number of cases to the contrary.

In ***Sellers v. Iowa Power and Light Company***, 372 F.Supp. 1169 (S.D.Iowa 1974, with three judges participating), plaintiffs challenged the constitutionality of a temporary utility rate increase without a hearing with a due process argument. The court said, I.c. 1172:

'Plaintiffs describe the property they claim was taken from them without procedural due process as the money required to pay the rate increases prior to the determination of their legality, thus depriving them of the use and enjoyment of the fruits of their labors or statutory grants which, but for the increases, would have been available to pay other household expenses.

We believe plaintiffs' claim of property interest is too broadly stated to be within the protection of the Fourteenth Amendment. In our opinion plaintiffs must show they have a legal entitlement to or a vested right in the rates being charged before the proposed increase, before they can claim any property rights protected by the United States Constitution.

At common law a public utility 'like the seller of an unregulated commodity, has the right in the first instance to change its rates as it will, unless it has undertaken by contract not to do so'. ***United Gas Co. v. Memphis Gas Division*** (1958), 358 U.S. 103, 113, 79 S.Ct. 194, 200, 3 L.Ed.2d 153;

¹⁴ The Commission need not hold a hearing if, after proper notice and opportunity to intervene, no party requests such a hearing. ***State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission***, 776 S.W.2d 494 (Mo. App. W.D. 1989).

¹⁵ See ***Harter v. Missouri Pub. Serv. Comm'n***, 361 S.W.3d 52, 59 (Mo. Ct. App. 2011)

FPC v. Hunt (1964), 376 U.S. 515, 522, 84 S.Ct. 861, 11 L.Ed.2d 878; **United Gas Pipe Line Co. v. Mobile Gas Service Corp.** (1956), 350 U.S. 332, 343, 76 S.Ct. 373, 100 L.Ed. 373; **Gas Service Co. v. FPC** (1960), 108 U.S.App.D.C. 334, 282 F.2d 496, 500.

Conversely, utility customers have no vested rights in any fixed utility rates, **Wright v. Central Kentucky Natural Gas Co.** (1936), 297 U.S. 537, 542, 56 S.Ct. 578, 80 L.Ed. 850; **Norwegian Nitrogen Products Co. v. United States** (1933), 288 U.S. 294, 318, 53 S.Ct. 350, 77 L.Ed. 796; **San Antonio Utilities League v. Southwestern Bell Telephone Co.** (5th Cir., 1936), 86 F.2d 584, cert. den., 301 U.S. 682, 57 S.Ct. 783, 81 L.Ed. 1340; **United States Light and Heat Corp. v. Niagara Falls Gas & Electric Light Co.** (2nd Cir., 1931), 47 F.2d 567, 570, cert. den., 283 U.S. 864, 51 S.Ct. 656, 75 L.Ed. 1469; **Lenihan v. Tri-State Telephone & Telegraph Co.** (1940), 208 Minn. 172, 293 N.W. 601, cert. den., 311 U.S. 711, 61 S.Ct. 392, 85 L.Ed. 463; **Wisconsin Telephone Co. v. Public Service Commission** (1939), 232 Wis. 274, 287 N.W. 122, cert. den., 309 U.S. 657, 60 S.Ct. 514, 84 L.Ed. 1006.

As plaintiffs have no property interest in existing rates which is protected by the Fifth and Fourteenth Amendments, we hold that plaintiffs are not entitled to a procedural due process hearing prior to a determination of the lawfulness of the proposed rate increase and that the Iowa statutory provision in 490A.6 which provide for interim collection of the proposed increase under bond to be refunded if found to be excessive does not violate the Due Process Clauses of the Fifth and Fourteenth Amendments.'

The rationale of most of the cases is consistent with the following statement from **Ten-Ten Lincoln Place, Inc. v. Consolidated Edison Co.**, 190 Misc. 174, 73 N.Y.S.2d 2 (1947), to-wit: 'Nor has plaintiff any vested right to utility service or to any particular rate except to the extent that the public service law grants him such right; and he is not entitled to invoke his constitutional guarantees of 'due process' or 'equal protection' under such circumstances.' (Emphasis added.) **We find no provision in the statutory scheme for Missouri granting consumers such a right... (Emphasis added)**

CONCLUSION

16. The Commission is without the authority to waive the provisions of MAWC's tariffs requested by the Joint Applicants. Further, the Commission satisfied the constitutional requirements of due process with regard to File No. WO-2001-441, and DCM has no vested property interest in any utility rate. The fact that DCM may pay less

in connection fees if its Cottleville Trails development were served by a different utility does not rise to the level of an unconstitutional taking of DCM's property interest. Therefore, it is Staff's recommendation to the Commission that it must reject the Joint Applicant's Application.

WHEREFORE, Staff respectfully requests that the Commission reject the Joint Applicants request; and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

/s/ Casi Aslin

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**Attorney for the Staff of the
Missouri Public Service Commission**

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 on this 13th day of August 2021.

/s/ Casi Aslin

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. WE-2021-0390

FROM: Jarrod J. Robertson, Research/Data Analyst, Water and Sewer Department
Daronn A. Williams, Associate Engineer, Water and Sewer Department

/s/ Jarrod J. Robertson 8/13/21
Case Manager, Water & Sewer / Date

/s/ Casi Aslin 8/13/21
Staff Counsel's Office / Date

SUBJECT: Staff's Recommendation to Deny Variance Request

DATE: August 13, 2021

CASE BACKGROUND

On May 6, 2021, Missouri American Water Company ("MAWC") and DCM Land, LLC ("DCM"), (collectively, "Applicants"), filed a *Joint Application for Variance and Motion for Waiver* ("Application") seeking a variance from MAWC's Commission-approved Tariff. The variances would allow changes to the connection time and funding percentage requirements for DCM to connect to an extension of MAWC's water main in the Cottleville Trails development, located in Cottleville, Saint Charles County, Missouri.

According to the Application, the developer, DCM, is currently developing Cottleville Trails as a residential subdivision. The initial development (Phase 1) accounts for 354 single family residences and 175 apartment units. The second phase (Phase 2) plans for the future development of 217 additional single family residences.

The Joint Applicants further request a waiver from the notice requirement in Commission Rule 20 CSR 4240-4.017.

VARIANCE(S) REQUESTED

The specific variance requests are as follows:

- A. The Application requests a variance from PSC MO No. 13, 1st Revised Sheet No. R 48, Rule 23A.2. and 3., and specifically in regard to the following tariff language:
 1. The Company will be responsible for all the main extensions where the cost of the extension does not exceed four (4) times the estimated average annual revenue from the new Applicant(s) whose service pipe(s) will immediately be connected directly to the extension and from whom the Company has received application(s) for service upon forms provided by the Company for this purpose. New Applicants shall be those who commit to purchase water service for at least one year, and guarantee to the Company that they will take water service at their premises within

APPENDIX A

one hundred twenty (120) days after the date the Company accepts the main and determines it ready for Customer service. Estimates of annual revenue will be made by the Company, and will be based on the experience of the Company from the previous year regarding use of water by the other Customers similarly situated.

2. If the estimated cost of the proposed extension required in order to furnish general water service exceeds four (4) times the Company's estimate of average annual revenue from the new Applicant, the Applicant and the Company shall fund the remaining cost (i.e., total cost less four (4) times the estimated average annual revenue from any new Applicants(s) of the proposed water main extension at a ratio of 95:5 (i.e., 95% Applicant funded and 5% Company funded) for St. Louis Metro District, and 86:14 (i.e., 86% Applicant funded and 14% Company funded) for all other districts.
- B. The Application also requests a variance from PSC MO No. 13, 1st Revised Sheet No. R 51, Rule 23C.6, and, specifically as to the following language:
1. Upon completion of the Main Extension, and prior to acceptance of the extension by the Company, the Applicant will provide to the Company a final statement of Applicant's cost to construct such extension. The final statement of costs will be added to the actual cost for the Company to provide services as per the Developer Lay Proposal. Upon acceptance of the main extension, the Company will then issue payment to the Applicant of five percent (5%) (for St. Louis Metro District contracts) and fourteen percent (14%) for all other district contracts) of the total, final costs that exceed four (4) times the estimates average annual revenue pursuant to Provision A.2 and 3., above. The Company will adjust its revenue payment based on the shortfall or excess of the difference between the actual Developer Lay costs and the Developer Lay Proposal payment made by the Applicant pursuant to Provision C.5., above.

Furthermore, the Application requests:

1. The Commission approve that any Main Extension Contract, as referenced in PCS MO No. 13, 1st Revised Sheet No. R 51, Rule 23C.4., to be entered into with DCM for Cottleville Trails reflect the variances granted pursuant to this Application.
2. The Commission allow a variance from the definition of new Applicants provided in Rule 23A.2., specifically, and increase of the one hundred twenty (120) days currently provided by the Tariff.
3. The Commission allow the estimated average annual revenue from new Applicant(s) for Cottleville Trails to be calculated using "...those who commit to purchase water service for at least one year, and guarantee to the Company that they will take water

service at their premises within five (5) years after the date the Company accepts the main and determines it ready for Customer service.”

4. The Commission allow a variance from the 95:5 funding ratio for the St. Louis Metro District provided in Rule 23A.3 and 23C.6., and allow use of the 86:14 (i.e., 86% Applicant funded and 14% Company funded) ratio, for Cottleville Trails.

BACKGROUND OF MAWC

MAWC is an existing water and sewer corporation and public utility subject to the jurisdiction of the Commission, with its principle place of business located at 727 Craig Road, St. Louis, Missouri 63141. MAWC is currently providing water service to approximately 470,000 customers and sewer service to more than 15,000 customers in several service areas throughout Missouri. In recent years, MAWC has acquired several existing small water and sewer systems.

MAWC is a subsidiary of American Water Works Company, Inc. (American Water), and is affiliated with other American Water companies that undertake some of the tasks associated with utility service, such as customer billing, and share technical resources. MAWC has no pending legal action or judgement from any state or federal agency or court which involves customer service or rates, nor been the recipient of any Commission Orders in the three (3) years prior to the date of the Application that would affect this case.

MAWC entered into a Territorial Agreement (Agreement) with Public Water Supply District No. 2 of St. Charles County (“District”) on October 4, 2000, with the Agreement being approved by the Commission in Case No. WO-2001-441.

BACKGROUND OF DCM

According to the application, DCM is a Missouri limited liability company, incorporated March 17, 2014 and listed as active with the Missouri Secretary of State. DCM’s principal office and place of business is 5731 Westwood, St. Charles, Missouri, 63304. In its seven-year history, DCM has developed several residential real estate projects in the St. Charles County area, including The Woods in the Cottleville Trails subdivision, 2018.

STAFF’S INVESTIGATION

Along with an explanation of the individual variance requests, MAWC and DCM provide the following justification in the Application for the multiple variance requests:

1. Good cause exists to allow the requested variances from the one hundred twenty (120) day requirement and 95:5 funding ratio in Rules 23A.2. and 3., and 23C.6., respectively for Cottleville Trails, because:
 - a) Phase 1 will have 519 homes (i.e., 354 single family residences and 175 apartments), and the build-out of a development of such magnitude may not reasonably be expected to occur in 120 days, but is reasonably anticipated

to occur over a 5-year period;

- b) Phase 2 will have an estimated additional 217 homes, and the build-out of a development of such magnitude similarly may not reasonably be expected to occur in 120 days, but is reasonably anticipated to occur over a 5-year period.
2. Good cause exists to allow the requested variances from the one hundred twenty (120) day requirement and 95:5 funding ratio in rules 23A.2. and 3., and 23C.6., respectively, for Cottleville Trails, because Cottleville Trails is located within the jurisdictional boundaries of Public Water Supply District No. 2 – so that, but for the territorial agreement (Agreement) filed between the Public Water Supply District No. 2 (District) and MAWC, pursuant to which such utilities agreed to respective service territories, in Case No. WO-2001-441, approved by the Commission on May 15, 2001, for which DCM and its predecessors in interest received no notice, Cottleville Trails could be served by the District and DCM would not be required to construct the water system in the development at its cost and contribute it to MAWC without reasonable opportunity to recover cost thereof, as will occur if the relief requested herein is not granted. Without the relief requested herein, the combination of the Agreement and MAWC’s tariff will have the unconstitutional, presumably unintended, consequences of creating a taking of DCM’s property interest without just compensation and require either DCM pay significantly higher development costs, and/or the home buyers in Cottleville Trails subdivision to pay higher costs for their homes, than would result if water service were provided by the District.

According to MAWC’s current tariff, P.S.C. MO No. 13, there are no provisions contained within which presently afford MAWC to waive, or request a variance from, the requested tariff provisions.

MECHANISM FOR GRANTING A VARIANCE

On advice of Counsel, and as more thoroughly explained in the pleading attached to this Memorandum, the Commission does not have the authority to grant the requested variances. That being said, many utilities have tariffs that include provisions for requesting waivers or variances from them. However, should the Commission determine it does have the authority to grant the requested variances, Staff provides the following analysis:

Regarding variance requests Nos. 1(a) and 1(b):

Staff agrees with the joint parties’ assertion that it is not reasonable to expect the construction of 747 homes and apartments and each residence to be determined ready for water service within a 120 day window. The National Association of Home Builders (NAHB) estimates the average

house built for sale takes six to seven months to construct for Missouri.¹ This is the timeframe from when building permits are granted until construction is complete. The NAHB also states that in 2012, the average time for all multiunit properties was 12.5 months to complete.² The language in MAWC's tariff requires that water service be ready to be taken "...**at their premises...**" within 120 days of MAWC accepting the main. While the developer may rapidly sell the lots within this development, it will take far beyond 120 days, and perhaps years, for a substantial amount of the lots to be developed and have customers.

Additionally, before each residence is ready to take water service, the developer must accomplish several physical tasks, including dirt work (rough and finish grading, landscaping, erosion control, etc.), utility work (setting up piping and conduits for wet utilities – sewer, storm and water – and dry utilities – electricity, telecommunications (phone, internet, cable), and gas), road work (asphalt paving, curb and gutter installation and street signs and striping), wall construction for soil retaining and stabilization, fencing, flatwork (driveways, porches, patios, walkways and concrete stoops), and the actual construction of each home or apartment complex. In order to provide water service, the distribution lines are installed and then connected to the water provider. If the distribution lines are to be maintained by the water provider, they are donated as Contributions in Aid of Construction (CIAC). In this case, in order to make the physical connection to the water provider, a water main extension must be made in order to provide sufficient water for the development. In accordance with the Tariff language, the developer is subject to a cost sharing mechanism for the main extension.

While there are no provisions contained within MAWC's current tariff which presently afford MAWC to waive, or request a variance from the requested tariff provisions, it is Staff's position that a five year period to construct these residences and have them ready to take water service is a reasonable request, and would create no undue discrimination. If MAWC's tariff contained a provision allowing for a variance, Staff would recommend the Commission approve this specific variance request.

Regarding variance request No. 2:

According to MAWC's response to DR0002, the cost ratio(s), based on the developer's preliminary estimate of cost is as follows:

- 95% DCM/5% MAWC (95:5), equates to \$1,995,000 (DCM) and \$105,000 (MAWC)
- 86% DCM/14% MAWC (86:14), equates to \$1,806,000 (DCM) and \$294,000 (MAWC)

MAWC and DCM have not demonstrated that providing this variance would be in the public interest. Granting this variance would simply be transferring a normal cost of doing business

² See <https://eyeonhousing.org/2015/08/how-long-does-it-take-to-build-a-single-family-home/>.

³ See <https://www.wsj.com/articles/BL-REB-21554>.

from the developer to MAWC's ratepayers. While MAWC explains in its response Staff Data Request 0004 that there would be a benefit to existing MAWC customers with the addition of new customers to share in MAWC's overall costs moving forward (from a ratemaking perspective), the addition of 747 new customers is only a 0.0015% percent increase in MAWC's overall customer base, therefore, no significant benefit appears to exist.

To further address the subject of public interest as it relates to this variance request, MAWC has provided no justification that there is a unique need for development in this particular area, or that there is a public interest, other than, "the developer installing a 12" main in place of an existing 2" main in Old Town Cottleville, which would improve fire protection in the area and provide water main access to several additional properties."³ However, MAWC provided no justification as to why this 12" main is necessary, or how much water is available for fire flow after construction of the subdivision is completed. Additionally, this type of infrastructure project, if indeed prudent, would not need to take place within the confines of this variance request case.

Furthermore, according to MAWC's response to Staff Data Request 0006, MAWC's justification of need for the requested costs ratio(s) lay with benefit to the developer, not the public:

A Territorial Agreement between MAWC and the District has been entered into, and approved by the Commission, that allows MAWC to provide service to the subject area. However, absent the Territorial Agreement, the developer would have obtained service from the water district at a lower cost, due primarily to the differences in the required specifications for such projects and MAWC's requirements for inspections and testing. In addition, under the policies of the water district, the developer may have been able to have recovered its costs of main installation; whereas, absent the requested variances, the developer has little opportunity to recover its costs under MAWC's tariff because the great majority of the homeowners will not be taking service within 1 year of the installation of the pipes. The developer has indicated that, absent the variances, the development would not be economically feasible.

It is important to recognize that the Territorial Agreement entered into by MAWC and the District does not allow MAWC to provide service under the policies of the District, as described in the Data Request response above; the Applicants are still bound by the rules and regulations as set forth by MAWC's tariff. The service territory addressed by the Territorial Agreement is now part of MAWC's service territory, and customers within that area are subject to the rules and regulations in MAWC's tariff. Staff finds it doubtful that in a development of 747 residences, with the accompanying infrastructure costs associated with miles of streets, utilities, etc., a difference of \$189,000 would render the project infeasible.⁴ Developers in other portions of MAWC's service

³ MAWC response to Staff Data Request 0006.

⁴ MAWC response to Staff Data Request 0006.

territory would be subject to these same types of costs. The economics of this project, and the above justification for the cost ratio variance request appear to almost exclusively benefit the developer and, it is Staff's position that it is not in the public interest. Further, it is Staff's position, that the existence of another utility provider with different rules nearby, but outside MAWC's service territory, is not relevant. The developer is rightly subject to the rules of the utility providing service.

In addition, according to MAWC's response to Staff Data Request 0005 and Staff Data Request 0007, MAWC does not plan on seeking any additional variances of this nature, and no variances of this nature have been requested in the past.

The Joint Applicants argument that if the relief requested herein is not granted, the combination of the Agreement and MAWC's tariff would have the unconstitutional consequence of creating a taking of DCM's property interest without proper compensation, will be addressed by Staff Counsel in the accompanying Pleading.

OTHER ISSUES

MAWC is a corporation that is in "good standing" with the Missouri Secretary of State.

MAWC is current with annual report filings with the Commission through calendar year 2020, as documented on the Commission's Electronic Filing and Information System (EFIS).

MAWC is current on its annual assessment quarterly payments through the third quarter of fiscal year 2020.

MAWC has no other pending cases before the Commission that would affect this proposed case requesting a variance from the Commission-approved Tariff, nor will approval or denial of the variance(s) impact any pending cases before the Commission.

STAFF'S RECOMMENDATIONS AND CONCLUSIONS

Based on Staff's review of the application, information obtained through discovery, and review of publicly available information, it is Staff's position that:

1. While Staff recommends that the request to extend the timeline from one hundred twenty (120) days to 5-years is reasonable as it pertains to perceived and actual construction times, on advice of counsel, it must be denied as there is no provision allowing for MAWC to request a waiver or variance to these provisions of MAWC's tariff.
2. Again, on advice of counsel, the Joint Applicants' request for a variance from the cost ratio(s) provisions of MAWC's Main Extension tariffs must be denied as there are no provisions within MAWC's tariff allowing for such a variance. However, it is Staff's position that if such a variance provision existed, the Joint Applicants' request is not in the public interest, as there is no significant increase in customer base to share in

customer costs, the applicants provide no justification that a unique need for this particular development exists in this specific area, and the self-interests of the company and developer do not override the interests of the public. Thus, this request should not be approved as there is no justification for a variance of this nature being in the public's interest.

ATTACHMENTS

- A. Territorial Agreement (MAWC and District)
- B. DR0002
- C. DR0004
- D. DR0005
- E. DR0006
- F. DR0007

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

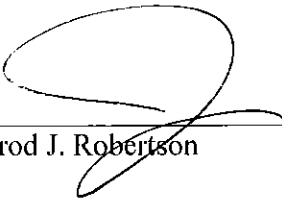
In the Matter of the Joint Application of)
Missouri-American Water Company and) **Case No. WE-2021-0390**
DCM Land, LLC, for a Variance from the)
Company's Tariff Provisions Regarding the)
Extension of Company Mains)

AFFIDAVIT OF JARROD J. ROBERTSON

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW Jarrod J. Robertson, and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Staff Recommendation in Memorandum form*; and that the same is true and correct according to his best knowledge and belief, under penalty of perjury.

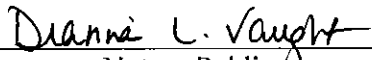
Further the Affiant sayeth not.



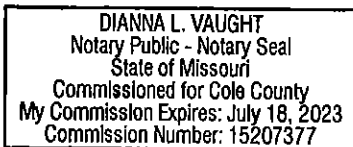
Jarrod J. Robertson

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 13th day of August, 2021.



Notary Public



BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

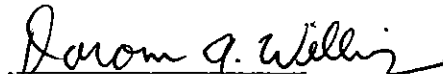
In the Matter of the Joint Application of)
Missouri-American Water Company and)
DCM Land, LLC, for a Variance from the)
Company's Tariff Provisions Regarding the)
Extension of Company Mains)
Case No. WE-2021-0390

AFFIDAVIT OF DARONN A. WILLIAMS

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW Daronn A. Williams, and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Staff Recommendation in Memorandum form*; and that the same is true and correct according to his best knowledge and belief, under penalty of perjury.

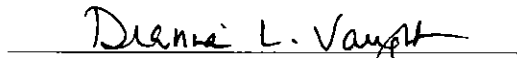
Further the Affiant sayeth not.



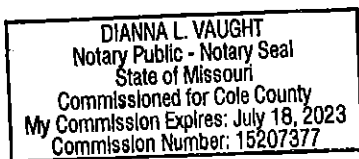
Daronn A. Williams

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 13th day of August, 2021.



Notary Public



TERRITORIAL AGREEMENT

This Agreement made and entered into this 4th day of October, 2000 by and between Public Water Supply District No. 2 of St. Charles County, Missouri (hereinafter the "District") and Missouri-American Water Company (hereinafter the "Company").

Whereas, the District is a political corporation of the State of Missouri located in St. Charles and Warren Counties organized and existing under Sections 247.010 to 247.220 RSMo. for the purpose of providing conveniences in the use of water, ample in quantity for all needful purposes and pure and wholesome in quality, furnished from common sources of supply to many inhabitants of the District now denied such privileges thereby promoting public health and sanitation, and making available conveniences not otherwise possible for the general public welfare; and

Whereas, the Company is a corporation of the State of Missouri and is a water corporation as defined by Chapter 386 RSMo. and is authorized to sell and distribute water subject to regulation by the Missouri Public Service Commission ("PSC"); and

Whereas, the District's and the Company's boundaries are not coequal but do overlap in certain portions of their respective areas; and

Whereas, Section 247.172 RSMo. provides that competition to sell and distribute water, as between and among public water supply districts and water corporations subject to Missouri Public Service Commission jurisdiction may be displaced by written territorial agreements upon approval of the Missouri Public Service Commission; and

Whereas, the District and the Company desire to enter into this Agreement in order to avoid wasteful duplication of facilities, stranded investment and underutilized

APPENDIX 2

system capacity and to allow orderly development, efficient planning for water system expansion and improvement, effective utilization of existing and future system capacity, efficient service and to minimize disputes which may result in higher costs in serving each party's respective inhabitants.

Now, Therefore, in consideration of the mutual covenants, conditions, obligations, promises, restrictions and agreements herein contained, the District and the Company agree as follows:

1. For purposes of this Agreement the following terms shall have the following meaning:

- a. Company: Missouri-American Water Company.
- b. Customer: includes any natural person, firm, association, partnership, business trust, public or private corporation, political subdivision or any agency, board, department or bureau of the State of Missouri or the U.S. Government or any other legal entity which has requested or is receiving water service. Any customer who has requested or is receiving water service at more than one structure shall be a new and different customer at each structure at which water service has been requested.
- c. Customer service lines: includes all water service lines from the water main to the customer.
- d. District: Public Water Supply District No. 2 of St. Charles County, Missouri
- e. Service: shall mean water supply service to a customer.
- f. Structure: shall mean an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus. A "structure" shall include an original structure and any contiguous addition to or expansion thereto and a replacement of a previously existing structure.

2. The District shall have the exclusive right to provide service to all existing and future customers located within its service area as shown on Exhibit A.

3. The Company shall have the exclusive right to provide service to all existing and future customers located within its service area shown on Exhibit B.

4. Neither party may furnish, make available, render or extend service to a structure or customer or for use within the territory of the other party either directly, indirectly or through another entity controlled by the party or controlling the party, in whole or in part, excepting sales to each other.

5. The location of a structure or customer for purposes of this Agreement shall be the geographical location at which service is actually used, regardless of the metering point or point of delivery. The first owner of a new structure who requests and receives service at a structure which is located on or crossed by any mutual boundary line described in Paragraphs 2 and 3 dividing the service territories of the parties shall be permitted to choose either party for permanent service. Thereafter that party shall exclusively serve that structure.

6. The parties may agree on a case-by-case basis by an Addendum hereto to allow a structure to receive service from one party though the structure is located in the service area of the other.

Such Addendum referred to above shall be filed with the Executive Secretary of the Missouri Public Service Commission in the same manner as a motion or other pleading, with a copy submitted to the Office of Public Counsel.

Each Addendum shall consist of a notarized statement identifying the structure, the party to serve the structure and the justification for the Addendum and indicating that the parties support the Addendum.

Each Addendum shall be accompanied by a notarized statement, signed by the customer to be served which acknowledges such customer's receipt of notice of the contemplated service to be provided and that the Addendum represents an exception to the territorial boundaries approved by the Public Service Commission and shall indicate the customer's consent to be served by the Party contemplated by the Addendum.

If the Staff of the Public Service Commission or Office of Public Counsel do not submit a pleading objecting to the Addendum within forty-five (45) days of the filing thereof, the Addendum shall be deemed approved by the aforesaid parties. However, if a pleading in opposition to the Addendum is filed by the above listed parties, the Commission shall schedule an evidentiary hearing at the earliest reasonable opportunity to determine whether the Addendum should be approved. Each Addendum shall contain a statement in bold uppercase typeface indicating that the Staff or Office of Public Counsel has forty-five (45) days to oppose the Addendum or else the Addendum shall be deemed approved by the aforesaid parties.

Each party, pursuant to an executed Addendum, shall have the right to provide temporary service until the Commission approves or disapproves the Addendum. No party shall be required to remove any facilities installed pursuant to an Addendum until the effective date of an Order of the Commission or a court regarding the removal of same.

7 This Agreement shall become effective upon approval by the Missouri Public Service Commission pursuant to Section 247.172 RSMo. The term of this Agreement shall be thirty (30) years. Performance of the parties is contingent upon all of the following having occurred no later than March 1, 2001, unless such condition is

waived, extended or modified by agreement in writing signed by an officer of each party hereto:

a: All required approvals of the Company's Board of Directors or parent corporation.

b: All required approvals of the District's Board of Directors.

c: Approval of the transaction by the Public Service Commission of Missouri.

8. The parties agree to undertake all actions reasonably necessary to implement this Agreement. The parties also agree to share the cost of filing an application for approval of this Agreement, the cost of transcript fees, and other costs. Each party shall bear their own attorney's fees.

9. In the event any controversy or claim by or against either party arises out of this transaction or the subject matter hereof after the effective date of this Agreement, each party shall make available to the other copies of such relevant records as may reasonably be requested pertaining to the controversy or claim.

10. If either party shall default in their performance under this Agreement or in the event of a breach of this Agreement, which default or breach results in the expenditure of attorney's fees to enforce the terms of this Agreement or to recover damages for breach of this Agreement, then the prevailing party shall receive their reasonable and actually incurred attorney's fees and costs in addition to any other damages recovered. In the event of a breach or threatened breach by either party the other party shall be entitled to seek an injunction restraining the breach or threatened breach in addition to any other remedies available at law or in equity.

11. If the Public Service Commission of Missouri does not approve the provisions of this Agreement, then it shall be nullified and of no legal effect between the parties. Further, if any part of this Agreement is declared invalid or void by a Court or agency of competent jurisdiction, then the whole Agreement shall be deemed invalid and void.

12. Neither the boundaries described by this Agreement nor any term of this Agreement may be modified, repealed or changed except by a writing mutually approved by the respective parties and by the Missouri Public Service Commission.

13. This Agreement shall be binding on the parties and all successors, assigns, parent corporations or affiliates of the Company and the District.

14. This Agreement shall in no way affect either party's right to construct such collection, distribution, treatment, storage, pumping, production and transmission facilities within the designated service area of the other as that party deems necessary, appropriate or convenient to provide service to its customers not inconsistent with the terms of this Agreement and as otherwise allowed by law. This Agreement shall in no way affect either party's right to construct, operate, maintain and repair such sanitary sewer collection and sanitary treatment facilities within the designated service area of the other as that party deems necessary, appropriate or convenient to provide sanitary sewer service to its customers as allowed by law.

15. This Agreement constitutes the entire agreement between the parties relating to the allocation of water service rights in the territory described herein.

IN WITNESS WHEREOF, the parties have executed this agreement this ATH
day of OCTOBER, 2000.

PUBLIC WATER SUPPLY DISTRICT
NO. 2 OF ST. CHARLES COUNTY,
MISSOURI

By: Catherine Cobb
Catherine Cobb, President

ATTEST:

Mike Dougherty
Mike Dougherty, Clerk

MISSOURI-AMERICAN WATER
COMPANY

By: Dennis R. Wingertsahn
Dennis R. Wingertsahn
Vice President - Operations

ATTEST:

Robert D. Maul
Robert D. Maul
Assistant Secretary

STATE OF MISSOURI)
) SS:
COUNTY OF St. Charles)

On this 4th day of October, 2000, before me appeared **Catherine Cobb** to me personally known, who, being by me duly sworn, did say that she is the President of **Public Water Supply District No. 2 of St. Charles County, Missouri**, and that the seal affixed to the foregoing instrument is the corporate seal of said **District**, and that said instrument was signed and sealed on behalf of said **District**, by authority of its Board of Directors; and said **Catherine Cobb** acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Kim Cantrell
Notary Public

My term expires:

June 20, 2004

KIM CANTRELL
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
ST. CHARLES COUNTY
MY COMMISSION EXPIRES: JUNE 20, 2004

STATE OF MISSOURI)
) SS:
COUNTY OF ST. LOUIS)

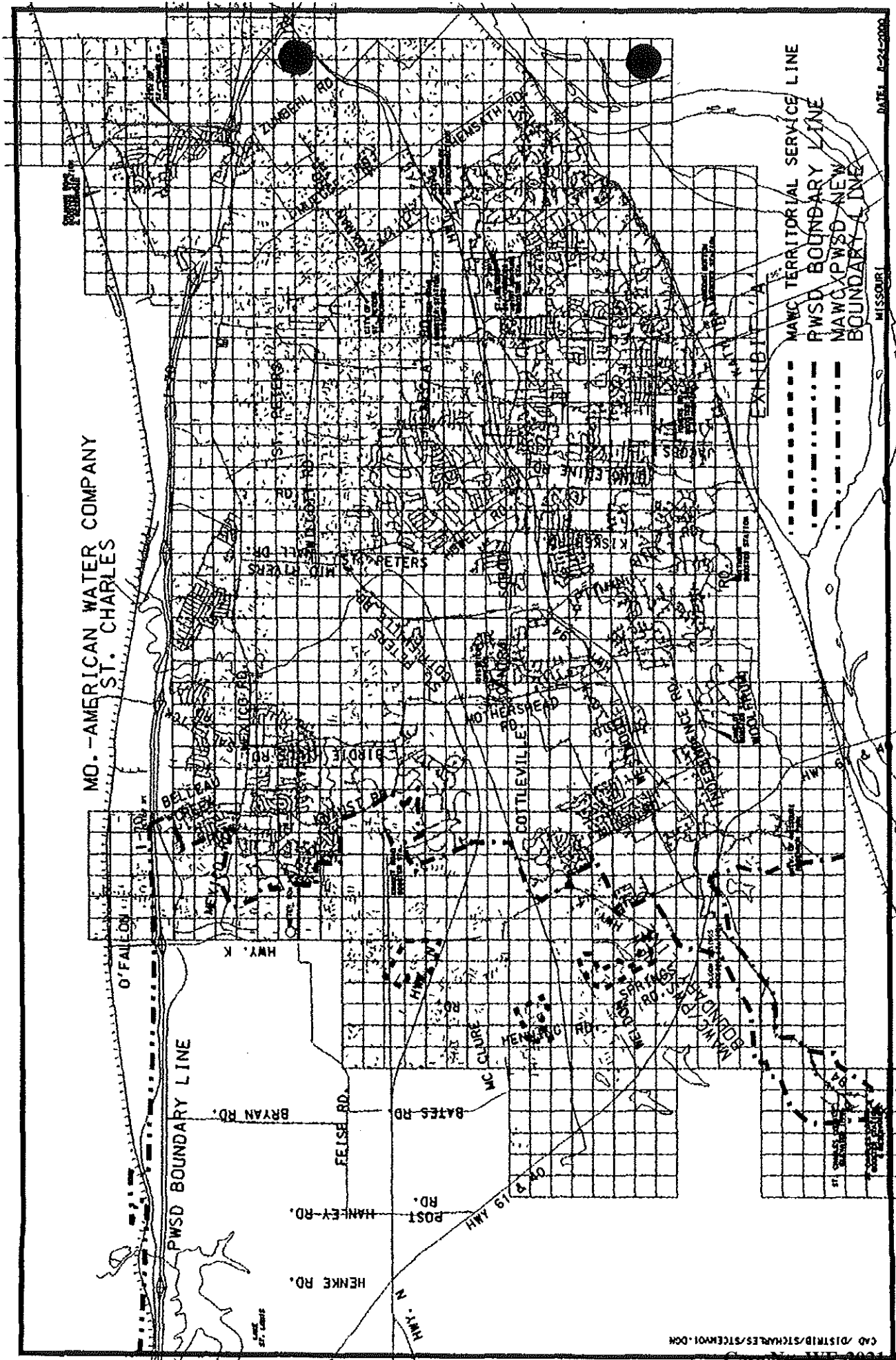
On this 26th day of September, 2000, before me appeared **Dennis R. Wingertsahn** to me personally known, who, being by me duly sworn, did say that he is the Vice President - Operations of **Missouri-American Water Company**, and that the seal affixed to the foregoing instrument is the corporate seal of said **Company**, and that said instrument was signed and sealed on behalf of said **Company**, by authority of its Board of Directors; and said **Dennis R. Wingertsahn** acknowledged said instrument to be the free act and deed of said **Company**.

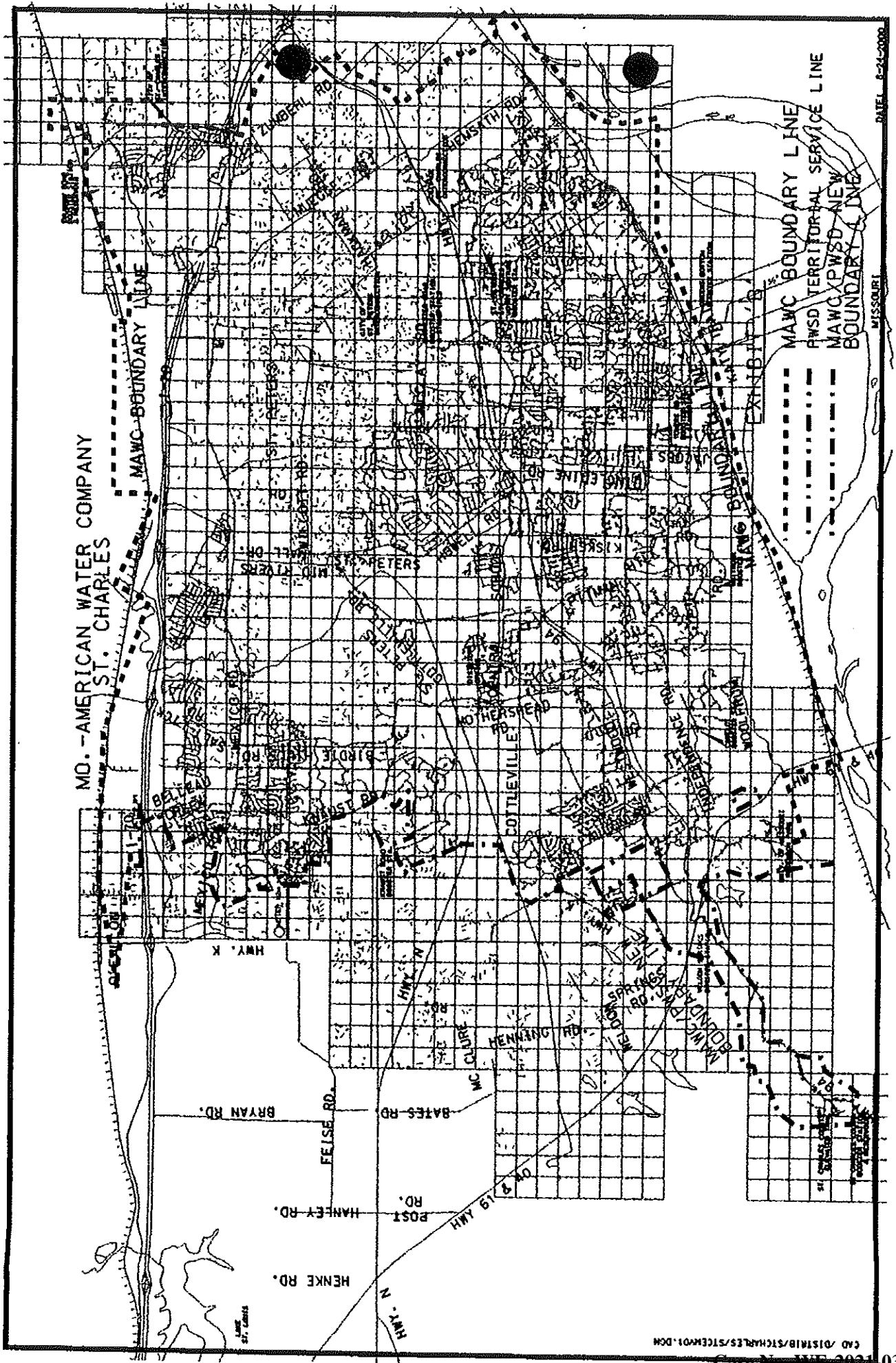
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Staci A. Olen
Notary Public

My term expires:

Staci A. Olen, Notary Public
County Of St. Louis, State Of Missouri
My Commission Expires March 20, 2001





MO. - AMERICAN WATER COMPANY
ST. CHARLES

MAWC - BOUNDARY LINE

MAWC BOUNDARY LINE
 FWSD TERRITORIAL SERVICE LINE
 MAWC XPWSD NEW BOUNDARY LINE

DATE: 8-24-2000

MISSOURI

CAO /DISTAIB/STCHARLES/STCEW01.DGN

**DATA INFORMATION REQUEST
Missouri-American Water Company
WE-2021-0390
Variance Request**

Requested From: Tim Luft
Date Requested: 05/11/2021

Information Requested:

Please provide the estimated shared cost amounts between MAWC and DCM for the 95:5 cost sharing ratio and the 86:14 cost sharing ratio.

Information Provided:

MAWC does not receive final costs until after the completion of the project, at which time it will pay MAWC's portion of the cost to the developer through the final reconciliation process. The cost ratio(s) based on the developer's preliminary estimate of cost is as follows:

95% DCM/5% MAW - \$1,995,000/\$105,000

86% DCM/14% MAW - \$1,806,000/\$294,000

Responsible witness: Derek Linam

**DATA INFORMATION REQUEST
Missouri-American Water Company
WE-2021-0390
Variance Request**

Requested From: Tim Luft

Date Requested: 05/11/2021

Information Requested:

Please discuss costs and benefits to existing MAWC customers associated with granting of the variances requested.

Requested By: Casi Aslin

Information Provided:

The benefit to existing MAWC customers would be the addition of a significant number of new customers that would share MAWC's costs going forward from a ratemaking perspective.

Responsible witness: Derek Linam

**DATA INFORMATION REQUEST
Missouri-American Water Company
WE-2021-0390
Variance Request**

Requested From: Tim Luft
Date Requested: 05/11/2021

Information Requested:

Please provide examples of other situations where MAWC anticipates seeking variances of this nature.

Requested By: Casi Aslin

Information Provided:

Currently, MAWC does not plan to seek any additional variances of this nature.

Responsible witness: Derek Linam

DATA INFORMATION REQUEST
Missouri-American Water Company
WE-2021-0390
Variance Request

Requested From: Tim Luft
Date Requested: 05/21/2021

Information Requested:

- 1) Please explain, in detail, why development of this specific subdivision/system necessitates that a variance be granted:
 - a. Please provide any documentation, studies, analyses or notes demonstrating that development of this subdivision/system will not be undertaken if one or both variances are not granted.
 - b. Please provide any documentation, studies, analyses or notes indicating why and how this development is different than other developments for which MAWC did not seek a variance.
 - c. In the past ten years, how many developers have approached MAWC for a variance of this nature?
 - d. Are there any current or potential customers that would or could be served by this extension that presently lacks safe and adequate water?
 - e. If there are no current customers that could be served by this extension, please provide documentation of any studies, analysis or notes demonstrating a public need for this extension?
 - f. Please provide all written MAWC policies associated with seeking a variance from tariff rules. If MAWC does not have any such written policies, please provide a detailed description of any informal/unwritten policies related to seeking a variance from its tariffs.
- 2) Do MAWC's tariffs explicitly or implicitly allow for a variance from MAWC's Tariff Sheet, 1st Revised Sheet No. R 48, Rule 23 Extension of Company Mains, A.2. and 3.? If yes, please provide a citation to the authorizing provision.

Requested By: Casi Aslin

Information Provided:

1.
 - a. Based on conversations with the developer, MAWC believes that this development is uniquely situated as it sits within an area that would be both within MAWC's certificate of convenience and necessity and within the boundaries of Public Water District No. 2. A Territorial Agreement between MAWC and the District has been entered into, and approved by the Commission, that allows MAWC to provide service to the subject area. However, absent the Territorial Agreement, the developer would have obtained service from the water district at a lower cost, due primarily to the differences in the required specifications for such projects and MAWC's requirements for inspections and testing.

In addition, under the policies of the water district, the developer may have been able to have recovered its costs of main installation; whereas, absent the requested variances, the developer has little opportunity to recover its costs under MAWC's tariff because the great majority of the homeowners will not be taking service within 1 year of the installation of the pipes. The developer has indicated that, absent the variances, the development would not economically feasible.

b. See a above. Also, conversations with the developer lead us to believe that this development is different because the distance the mains need to run, and because the entire site is being raised out to flood plain it is required that the site to be developed all at one time. Most projects of this size would be done over time and in multiple phases.

c. MAWC is not aware of any formal variance requests. However, developers have from time-to-time expressed that a 120 day period is not enough time to connect customers in a subdivision, especially subdivisions similar in size the subdivision that is the subject of this case.

d. MAWC believes that its current customers receive safe and adequate service. However, as part of the water main extension needed for the development, the developer is installing a 12" main in place of an existing 2" main in Old Town Cottleville. That replacement would improve fire protection in the area and provide water main access to several additional properties nearby.

e. See the response to sub-part d above.

f. MAWC does not have any written policy concerning potential tariff variance requests.

2. Variance is not specifically mentioned in MAWC's main extension tariff provision. Variance from tariff provisions is, however, contemplated by Commission Rule 20 CSR 4240-2.060(4), which includes "variances or waivers from commission rules and tariff provisions. . . ."

Responsible witness: Derek Linam

**DATA INFORMATION REQUEST
Missouri-American Water Company
WE-2021-0390
Variance Request**

Requested From: Tim Luft
Date Requested: 06/10/2021

Information Requested:

In MAWC's response to Staff data request No. 0005, it states that currently MAWC does not plan to seek any additional variances of this nature; has MAWC ever requested a variance of this nature in the past, and if so, please provide documentation.

Requested By: Casi Aslin

Information Provided:

MAWC has not previously requested a variance of this nature. Variance related to service line connection fees have been sought previously via case number WO-97-492.

Responsible witness: Derek Linam