

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 21st day of
July, 2022.

In the Matter of Missouri-American Water)
Company for a Certificate of Convenience)
and Necessity Authorizing it to Install, Own,) **File No. WA-2022-0229**
Acquire, Construct, Operate, Control,)
Manage and Maintain a Water and Sewer)
System in an area of Pettis County, Missouri)
(Monsees Lake Estates Subdivision))

**ORDER APPROVING TRANSFER OF ASSETS AND
GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: July 21, 2022

Effective Date: August 20, 2022

Procedural history

On February 25, 2022, Missouri-American Water Company (MAWC) filed an application (Application) regarding the acquisition of an existing unregulated water and sewer system in an area of Pettis County, Missouri (Monsees Lake Estates Subdivision). The Monsees Lake Estates Subdivision Homeowners Association, which is the owner and operator of the water and sewer system, overwhelmingly approved selling those assets to MAWC. That approval occurred in an October 11, 2020, Monsees Lake Estates Subdivision Homeowners Association vote.¹ If the Commission approves the Application, MAWC would provide service for Monsees Lake Estates Subdivision's 60 water and 60 sewer customers.²

¹ The vote was held at the subdivision's annual meeting and pursuant to the Bylaws of Monsees Lake Estates Subdivision Homeowners Association.

² The customer counts are approximate and identified at the time of filing of the Application. Application and Motion for Waiver, filed February 25, 2022, para. 5.

MAWC requested Certificates of Convenience and Necessity (CCNs) to install, own, acquire, construct, operate, control, manage, and maintain the water and sewer system in Monsees Lake Estates Subdivision. On March 25, 2022, MAWC filed an amendment to its Application, which the Commission accepted. Lastly, MAWC requested a waiver of the 60-day notice of case filing requirement.

The Commission issued notice and set a deadline for intervention requests, but received no requests to intervene. On June 9, 2022, the Staff of the Commission (Staff) filed its recommendation to grant a CCN, subject to certain conditions. On June 21, 2022, MAWC stated it had no objection to Staff's recommendation and conditions. On June 24, 2022, Staff filed a correction to its recommendation. MAWC responded that it agrees with the correction, and continued to have no objection.

On June 28, 2022, the Office of the Public Counsel (OPC) requested the Commission order MAWC to provide additional notice to the Monsees Lake Estates Subdivision customers of MAWC's pending general rate case. The Commission allowed time for responses, and received only one response. MAWC replied with suggested compromise language, and an offer to include the language within its letter to the Monsees Lake Estates Subdivision customers upon closing of the purchase of the new system. OPC responded that it had no objection to MAWC's compromise language, and no objection to including the compromise language in MAWC's closing letter.

No party requested a hearing and the requirement for a hearing is met when the opportunity for a hearing has been provided.³ Thus, the Commission will make a determination on the Application.

³ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

Decision

MAWC is a “water corporation,” a “sewer corporation,” and “public utility” as those terms are defined in Section 386.020, RSMo (Supp. 2021), and is subject to the jurisdiction of the Commission.

Section 393.170.2, RSMo (Supp. 2021), requires MAWC to have CCNs, which are granted by the Commission, prior to providing water or sewer service in the Monsees Lake Estates Subdivision service area. Section 393.170.3, RSMo (Supp. 2021), in setting forth the standard for the granting of CCNs, requires that the Commission determine that the services are “necessary or convenient for the public service.” The term “necessity” does not mean “essential” or “absolutely indispensable,” but rather that the proposed project “would be an improvement justifying its cost,” and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.⁴ It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.⁵ Pursuant to Section 393.170.3, RSMo (Supp. 2021), the Commission may impose the conditions it deems reasonable and necessary for the grant of a CCN.

The Monsees Lake Estates Subdivision water and sewer system was installed by the developer of the subdivision. The first well for the water system was constructed in 1968. The wastewater treatment facility was originally constructed in 1967. Subsequently, the developer transferred ownership and operation of the water and sewer system to the Monsees Lake Estates Subdivision Homeowners Association as contributed plant.

⁴ *State ex rel. Intercon Gas, Inc., v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. App. 1993), citing *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973), citing *State ex rel. Transport Delivery Service v. Burton*, 317 S.W.2d 661 (Mo. App. 1958).

⁵ *State ex rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo. App. 1975).

In its most recent inspection report from the Department of Natural Resources (DNR) dated April 2, 2020, the Monsees Lake Estates Subdivision water system received one unsatisfactory finding and five recommendations. None of DNR's concerns with the water system have been addressed as of May 9, 2022.

DNR issued the Monsees Lake Estates Subdivision sewer system a Schedule of Compliance (SOC) on February 17, 2017, setting new effluent limits for ammonia and *E. coli*, and directed compliance to occur in no later than four years following. No upgrades were made as directed, and as a result the sewer system consistently exceeds the *E. coli* limits.

On December 17, 2018, DNR's most recent inspection of the Monsees Lake Estates Subdivision sewer system resulted in an unsatisfactory finding regarding the slopes of the lagoon cells. The slopes have erosion damage and damage from animals burrowing. DNR recommended repair and the use of riprap to prevent future damage. On April 8, 2022, Staff inspected the sewer system and noted the same issues with the lagoon cells, among others. None of DNR's concerns with the sewer system have been addressed.

To address these concerns, MAWC submitted a systematic, planned approach to resolve known water and sewer system compliance issues. For the sewer system, MAWC plans improvements and maintenance to address the effluent flow limitations, and add disinfection to meet *E. coli* limits. MAWC also stated it would address the lagoon damage, and investigate land application of the sludge to nearby farm fields. The Commission notes that the prudence of specific investments will be addressed in a future rate case.

Staff prepared an estimate of rate base, but presented it for informational purposes only. A Commission decision regarding rate base in this case is not necessary. The determination of the value of any acquisition adjustment will be made in MAWC's next general rate filing if it seeks recovery of capital and expense costs related to this water and sewer system.

The Commission may grant a water and sewer corporation a CCN to operate after determining that the construction and operation are "necessary or convenient for the public service."⁶ The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity in *In Re Intercon Gas, Inc.*⁷

The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.⁸

There is a need for the service, as the residents of Monsees Lake Estates Subdivision currently make use of the existing water and sewer system. MAWC is qualified to provide the service, as it already provides water service to approximately 474,000 Missouri customers, and sewer service to approximately 16,500 Missouri customers. MAWC has the financial ability to provide the service because no external

⁶ Section 393.170.3, RSMo (Supp. 2021).

⁷ 30 Mo P.S.C. (N.S.) 554, 561 (1991).

⁸ The factors have also been referred to as the "Tartan Factors" or the "Tartan Energy Criteria." See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

financing is anticipated. The proposal is economically feasible according to MAWC's feasibility study, which is realistic given MAWC's prior experience and past performance. The proposal promotes the public interest by ensuring the water and sewer system are improved and maintained sufficiently to meet DNR requirements.

The Commission finds that there is a need for water and sewer service in Monsees Lake Estates Subdivision and MAWC is qualified to provide that service. The Commission finds that MAWC has the financial ability to acquire Monsees Lake Estates Subdivision's water and sewer systems assets and adequately operate them in the future and that it is feasible for MAWC to do so. The Commission finds that the public interest is served by improving and maintaining the systems sufficiently to meet DNR requirements. The Commission finds that MAWC's ownership and operation of the Monsees Lake Estates Subdivision water and sewer system is necessary and convenient to the public service of the Monsees Lake Estates Subdivision water and sewer system customers. Therefore, the Commission will grant MAWC CCNs for the service areas currently served by those systems. The Commission finds that Staff's recommended conditions, agreed to by MAWC, are reasonable and will, therefore, grant the CCNs subject to those conditions.

As to the additional customer notification requested by OPC, the Commission agrees with OPC. The Monsees Lake Estates Subdivision customers have not been informed of MAWC's pending rate case and should be. Through no party's fault, the Monsees Lake Estates Subdivision customers were not informed of MAWC's pending rate case, which was filed July 1, 2022. The Commission finds OPC's request for additional notification to be reasonable, and will grant it.

In response to OPC's request, MAWC submitted compromise language to notify the Monsees Lake Estates Subdivision customers, and suggested including it in MAWC's closing letter, which is a letter it sends to new customers upon its acquisition of a new water or sewer system (when the purchase closes). OPC responded that it had no objection to the compromise language. OPC also stated it had no objection to the inclusion in MAWC's closing letter.

The Commission finds MAWC's un-objected compromise language to be reasonable, and will grant MAWC's request to use it. The Commission finds MAWC's un-objected suggestion to include the compromise language in its closing letter to be reasonable, and will grant it.

MAWC's Application also asked the Commission to waive the 60-day notice requirement in 20 CSR 4240-4.017(1). The Commission finds good cause exists for waiver based on MAWC's verified declaration that it had no communication with the Commission regarding substantive issues likely to arise in this file within 150 days before filing its Application.

THE COMMISSION ORDERS THAT:

1. The 60-day notice of case filing requirement is waived for good cause found pursuant to 20 CSR 4240-4.017(1)(D).
2. MAWC is granted a certificate of convenience and necessity to provide water and sewer service in the Monsees Lake Estates Subdivision described in the map and legal description MAWC provided to Staff, subject to the conditions and requirements contained in Staff's recommendation, including the filing of tariffs, as set out below:
 - a. MAWC shall adopt the current water rate of the Monsees Lake Estates Subdivision at \$35.30 per month;

- b. MAWC shall adopt the current sewer rate of the Monsees Lake Estates Subdivision at \$58.00 per month;
- c. MAWC shall submit tariff sheets, to become effective before closing on the assets, to include a service area map, service area written description, rates and charges to be included in its EFIS tariffs P.S.C. MO No. 13 and 26, applicable to water and sewer service, respectively;
- d. MAWC shall notify the Commission of closing on the assets within 5 days after such closing;
- e. If closing on the water and sewer system assets does not take place within 30 days following the effective date of this Commission order, MAWC shall submit a status report within 5 days after this 30-day period regarding the status of closing and additional status reports within 5 days after each additional 30-day period until closing takes place, or until MAWC determines that the transfer of the assets will not occur;
- f. If MAWC determines that a transfer of the assets will not occur, MAWC shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and MAWC shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the Monsees Lake Estates Subdivision service area in its water and sewer tariffs, and rate and charges sheets applicable to customers in the Monsees Lake Estates Subdivision service area in both the water and sewer tariffs;
- g. MAWC shall keep its financial books and records for all utility capital related costs accounts and operating expenses in accordance with the NARUC Uniform System of Accounts;
- h. MAWC shall utilize the depreciation rates ordered for it in File No. WR-2020-0344 for the Monsees Lake Estates Subdivision system assets;
- i. MAWC shall provide training to its call center personnel regarding rates and rules applicable to the Monsees Lake Estates Subdivision water and sewer system customers, and MAWC shall provide training to its call center personnel regarding MAWC's transaction fee procedures established after File No. WR-2020-0344;

- j. MAWC shall update all of its future communications with Missouri customers, particularly but not exclusively its overdue/discontinuance notices, informational brochures, and website, to accurately reflect MAWC's current policies regarding debit/credit card transaction fees, within ten (10) business days after closing on the assets;
- k. MAWC shall revise its informational brochure to bring it into full compliance with Commission Rule 20 CSR 4240-13.040(3) within ten (10) business days after closing on the assets;
- l. MAWC shall inform its customers, by using a bill message, that the customer rights and responsibilities section of its website has been updated, and that customers may call in to request an updated brochure, for three (3) monthly billing statements after the updates are completed, and to send a sample bill for each month to the Commission's Customer Experience Department (CXD) Staff;
- m. MAWC shall include the Monsees Lake Estates Subdivision water and sewer system customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets;
- n. MAWC shall distribute to the Monsees Lake Estates Subdivision customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water and sewer service, consistent with the requirements of Commission Rule 20 CSR 4240-13.040(3), within thirty (30) days of closing on the assets;
- o. MAWC shall provide to the CXD Staff an example of its actual communication with the Monsees Lake Estates Subdivision water and sewer system customers regarding its acquisition and operations of the water and sewer system assets, and how customers may reach MAWC, within ten (10) days after closing on the assets;
- p. MAWC shall file a notification in this case in EFIS when it opens its business office at 1705 Montserrat Park, Warrensburg, MO 64093;
- q. MAWC shall provide to the CXD Staff a sample of ten (10) billing statements from the first month's billing within thirty (30) days of closing on the assets;

- r. MAWC shall file notice in this case outlining completion of the above recommended training, customer communications, and notifications within ten (10) business days after such communications and notifications are complete.

3. MAWC is authorized to take other actions as may be deemed necessary and appropriate to consummate the transactions proposed in the Application.

4. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCN to MAWC, including proposed expenditures related to the certificated service area as discussed in the body of this order, in any later proceeding.

5. OPC's request for additional notice be provided to the Monsees Lake Estates Subdivision customers is granted. MAWC shall provide notice to the Monsees Lake Estates Subdivision customers in a closing letter that MAWC sends to new customers upon a purchase closing

6. MAWC's request to use its compromise language in the additional notice requested by OPC is granted. MAWC shall include the following language (submitted in MAWC's request), or language that is substantially similar to the following:

MAWC has adopted and will use Monsees' current water and sewer rates until those rates are changed by the Missouri Public Service Commission. MAWC has filed a rate case before the Missouri Public Service Commission, File Nos. WR-2022-0303 and SR-2022-0304, in which the Monsees' rates will be reviewed. It is expected that any change in rates as a result of these cases would be effective by June 1, 2023.

7. This order shall become effective on August 20, 2022.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

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

Hatcher, Senior 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 21st day of July, 2022.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

July 21, 2022

File/Case No. WA-2022-0229

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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.