

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

In the Matter of Missouri-American Water )  
Company for a Certificate of Convenience )  
and Necessity Authorizing it to Install, Own, )  
Acquire, Construct Operate, Control, )  
Manage and Maintain a Water System and )  
Sewer System in and around the City of )  
Orrick, Missouri )

**File No. WA-2022-0049**  
**File No. SA-2022-0050**

**STAFF REPLY TO MAWC RESPONSE TO  
STAFF STATUS REPORT**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”) and for its *Reply to MAWC Response to Staff Status Report*, states as follows:

**Background**

1. On September 23, 2021, Staff filed its *Status Report* requesting the Missouri Public Service Commission (“Commission “), “direct Staff to submit its Recommendation in this matter no later than December 23, 2021.”

2. On September 28, 2021, MAWC submitted its *Response to Staff Status Report*, in which it proposed an alternative filing date of October 29, 2021. As part of its reasoning, MAWC cites Section 393.320, RSMo.

3. As noted in its *Application and Motion for Waiver*, and in its *Response to Staff Status Report*, MAWC is seeking to establish the ratemaking rate base associated with the City of Orrick water and wastewater system assets pursuant to the methodology prescribed in Section 393.320, RSMo (referred herein as the “appraisal method”). MAWC goes on to state that because of its election to use the appraisal method, Staff “does not need to determine ‘Net Book Value’ of the system to evaluate the appraisal.” Staff disagrees.

## Reply

4. Staff does not dispute MAWC's statement that it is a "large water public utility" pursuant to Section 393.320,1(1), RSMo. Nor does it dispute that the City of Orrick systems are "small water utilities" pursuant to Section 393.320.1(2), RSMo.

5. Staff also agrees with MAWC's analysis that, as the proposed purchase price of \$1,510,000 for the Orrick systems is equal to the total of their appraised values (\$840,000 for water system assets, and \$670,000 for sewer system assets) that together with the reasonable and prudent transaction, closing, and transition costs incurred by MAWC, that amount shall be used by the Commission, and shall constitute the ratemaking rate base for the systems, should the Commission approve MAWC's Application.

6. However, Staff disagrees with MAWC's contentions that, as a result of rate base for the systems constituting the purchase price/appraised value of the systems in this matter, Staff does not need to determine Net Book Value of the systems to evaluate the appraisal, or, review the appraisal at all.

7. While MAWC may be choosing to use the appraisal method provided by Section 393.320, RSMo, its Applications in this matter are primarily requests for Certificates of Convenience and Necessity, pursuant to Section 393.170, RSMo, authorizing it to install, acquire, build, construct, own, operate, control, manage and maintain water and sewer systems in and around the City of Orrick, Missouri.

8. Section 393.170, RSMo, states the following:

1. No gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water system or sewer system, other than an energy generation unit that

has a capacity of one megawatt or less, without first having obtained the permission and approval of the commission.

2. No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.

3. The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void.

9. As stated in subsection 3. of Section 393.170, RSMo, supra, the Commission may grant a certificate after determining that “such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service.”

10. “The determination of what is necessary and convenient has long been, and continues to be, a matter of debate.” ***State ex rel. Pub. Water Supply Dist. No. 8 v. Pub. Serv. Comm'n***, 600 S.W.2d 147, 154 (Mo. App. W.D. 1980). Specific criteria have not been set out by statute as to when a certificate is “necessary or convenient for the public service” and thus should be issued. ***State ex rel. Ozark Elec. Co-op v. Pub. Serv. Comm'n***, 527 S.W.2d 390, 394 (Mo. App. 1975). Instead, whether “the evidence indicates the public interest would be served in the award of the certificate” is within the discretion

of the Commission. ***State ex rel. Intercon Gas, Inc. v. Pub. Serv. Comm'n of Missouri***, 848 S.W.2d 593, 598 (Mo. Ct. App. 1993)(internal citations omitted).

11. Net book value is the traditional method this Commission has used to value utility property when making the public interest determination under Section 393.170. With regard to acquisitions of existing systems, the Commission has expressed interest in Staff's ability to calculate net book value of system assets. While MAWC has chosen to utilize the appraisal method outlined in Section 393.320, RSMo, and thus system assets to be acquired would be valued using the lesser of purchase price or appraised value, together with reasonable and prudent transaction, closing, and transition costs, it is Staff's belief that at least attempting to provide the Commission an analysis of net book value is reasonable to continue to provide relevant information for the Commission to make a public interest determination under Section 393.170. Should Staff ultimately obtain information that would aid in it calculating or estimating the net book value of the systems, that information could, at the very least, provide the Commission with an informational comparison between the valuation methods.

12. Further, should the Commission agree with MAWC's belief that the intent of Section 393.320, RSMo, is to incentivize larger utilities to acquire smaller utilities and spread costs among more customers, an analysis of net book value can provide the Commission with a better understanding of the potential impact to those customers caused by the socialization of the appraised value of a system, and aid in the Commission's determination as to whether the issuance of a certificate of convenience and necessity utilizing the appraisal method in Section 393.320, RSMo, would be in the public interest.

13. Finally, despite MAWC's assertion that one is not needed, an analysis of the Appraisal submitted along with MAWC's Application is necessary to ensure sufficiency and compliance with Section 393.320, RSMo.<sup>1</sup> The Commission, not MAWC, decides whether the application meets the requirements of Section 393.320, and as the party filing the case, MAWC bears the burden of proof on that issue.<sup>2</sup> The appraisals submitted to the Commission in cases where Section 393.320, RSMo, is utilized for rate base valuation rely, at least in part, on a "Cost Approach" analysis. Under this analysis, the appraisers rely upon their own observations of the system(s) along with an engineering report addressing the depreciated cost estimates for the components and infrastructure relating to the water and wastewater systems in appraising the value of such systems; this is the case with the appraisal for the City of Orrick appraisal.<sup>3</sup> Specifically, under the heading "Extraordinary Assumptions"<sup>4</sup> in the City of Orrick appraisal, the authors state:

The appraisers refer the client and intended/authorized users of this appraisal report to the Flinn Engineering report for an assessment of the water and wastewater systems' infrastructure components. The three professional real estate appraisers co-signing this appraisal report are not qualified to independently detect and assess the condition and functionality

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<sup>1</sup> Subsection 3. of Section 393.320, RSMo, states the following:

3. (1) An appraisal shall be performed by three appraisers. One appraiser shall be appointed by the small water utility, one appraiser shall be appointed by the large water public utility, and the third appraiser shall be appointed by the two appraisers so appointed. Each of the appraisers shall be a disinterested person who is a certified general appraiser under chapter 339.

(2) The appraisers shall:

(a) Jointly prepare an appraisal of the fair market value of the water system and/or sewer system. The determination of fair market value shall be in accordance with Missouri law and with the Uniform Standards of Professional Appraisal Practice; and

(b) Return their appraisal, in writing, to the small water utility and large water public utility in a reasonable and timely manner.

<sup>2</sup> *Spire Mo., Inc. v. Pub. Serv. Comm'n*, 607 S.W.3d 759, 769 (Mo. App. W.D. 2020).

<sup>3</sup> See MAWC's *Application and Motion for Waiver*, Appendix G, pages 44-55.

<sup>4</sup> As stated in the appraisal, the 2020-2021 Edition of the *Uniform Standards of Professional Appraisal Practice* (USPAP) defines an extraordinary assumption as follows:

*An assignment-specific assumption as of the effective date regarding uncertain information used in an analysis which, if found to be false, could alter the appraiser's opinions and conclusions.*

of the water and wastewater systems' infrastructure components. **However, the three professional real estate appraisers co-signing this appraisal report assume that the water delivery and wastewater systems' components (including the plant, pumps, and all related facilities) are in proper working order and have been maintained adequately to meet all pertinent codes and regulatory requirements. The client and intended users are advised that if this assumption is found to be false, it could impact the analysis and opinions.**<sup>5</sup>

14. As noted above, the appraisers have made assumptions that, if found to be false, could impact the analysis and opinions of the appraisers. In developing Staff's analysis of net book value in cases involving the acquisition of an existing water or sewer system, Staff reviews the same type of information included in the engineering report relied upon by the appraisers. If Staff's analysis shows that the assumptions made by the real estate appraisers are false, "it could impact the analysis and opinions" in the appraisers' report. As the Commission is certainly an "intended/authorized user" of this appraisal, it is Staff's position that in attempting to analyze net book value, Staff will also develop information that is relevant in determining whether the an appraisal meets the requirements of Section 393.320, RSMo, as well as whether the issuance of CCNs to MAWC authorizing it to install, acquire, build, construct, own, operate, control, manage and maintain water and sewer systems in and around the City of Orrick, Missouri, is convenient or necessary for the public interest.

15. As such, Staff reiterates its request that the Commission establish an extended filing date for Staff's Recommendation of December 23, 2021. The extension will provide Staff the opportunity to investigate the assumptions made by the appraisers in this case and gather the information necessary to determine whether those

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<sup>5</sup> See MAWC's *Application and Motion for Waiver*, Appendix G, page 19. (emphasis added).

assumptions are false, and therefore whether the appraisal meets the requirements of Section 393.320, RSMo. It will also allow Staff to gather and analyze the information necessary to attempt to calculate, or estimate, a net book value for the systems at issue in this case, which is useful in making the Commission's public interest determination under Section 393.170, RSMo.

**WHEREFORE**, Staff respectfully submits this *Reply to MAWC's Response to Staff Status Report* for the Commission's information and consideration and requests the Commission grant such relief as it deems just in the circumstances.

Respectfully submitted,

**/s/ Mark Johnson**

Mark Johnson  
Deputy Counsel  
Missouri Bar No. 64940  
P.O. Box 360  
Jefferson City, MO 65012  
(573) 751-7431 (Telephone)  
(573) 751-9285 (Fax)  
[Mark.johnson@psc.mo.gov](mailto:Mark.johnson@psc.mo.gov)

**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 1<sup>st</sup> day of October, 2021.

**/s/ Mark Johnson**