

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 11th day of January, 2023.

In the Matter of Missouri-American Water)
Company's Application 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 Smithton, Missouri)

File No. WA-2023-0071

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: January 11, 2023

Effective Date: February 10, 2023

On June 21, 2022, Missouri-American Water Company (MAWC) filed an application seeking a certificate of convenience and necessity (CCN) for authority to acquire and operate the assets of a water and sewer system in and around the City of Smithton, Missouri (Smithton or the City). The currently unregulated Smithton water and sewer systems serve approximately 220 water accounts and 220 sewer accounts. Smithton has a population of approximately 510. MAWC's application also requests a waiver of the 60-day notice requirement contained in Commission Rule 20 CSR 4240-4.017(1), and attached its verification affirming that it did not have contact with the Commission about the subject matter of its application within 150 days before filing the application. The application was docketed in two separate cases that were consolidated by the Commission with this being the lead case.

The Commission issued notice and set a deadline for intervention requests, but received none. The Commission also directed its Staff (Staff) to file a recommendation

about MAWC's application. On December 19, 2022, Staff recommended the Commission approve MAWC's request for a CCN, with additional conditions and actions to be taken, which were described in the memorandum accompanying Staff's recommendation.

MAWC is a "water corporation," a "sewer corporation," and "public utility" as those terms are defined in Section 386.020, RSMo., and is subject to the jurisdiction of the Commission. MAWC currently provides water service to approximately 475,000 customers and sewer service to approximately 18,000 customers in Missouri. MAWC is current on its water and sewer Public Service Commission assessment payments, is current on its annual reports, and is in good standing with the Secretary of State's office.

The requested CCN would allow MAWC to provide water and sewer service to Smithton's existing customers by acquiring Smithton's existing water and sewer systems. Smithton held virtual town hall meetings on March 11, 2021, and April 1, 2021, to discuss the proposed sale to MAWC. Smithton held a vote on April 6, 2021, on whether the water and wastewater utility owned by the City should be sold. Over 76% of the votes were in favor of the sale. There was a total of 104 votes cast with 80 voting "yes" and 24 voting "no." MAWC provided information about a website for residents to visit to ask questions or request a yard sign and also provided copies of mailers sent to residents about the vote.

Smithton's water system consists of one elevated 50,000-gallon welded steel tank, two deep wells and approximately 28,000 feet of 2, 4, and 6 inch water mains. There are approximately 30 fire hydrants. The sewer system consists of a two-cell treatment lagoon and a collection system consisting of approximately 23,000 feet of sewer and

75 manholes. Staff reported that the system appears to be generally well maintained and in good condition. MAWC has proposed several improvements to the water system, including:

1. Installation of a new liquid chlorination system and remote control access to the electrical controls for both wells;
2. The water tower and wells will receive new Supervisory Control and Data Acquisition (“SCADA”) controls for remote monitoring to be integrated into MAWC’s existing system; and
3. Possibly adding pipe to prevent water from becoming stagnant inside the pipes and replacing existing mains due to the size and/or if a pipe is at its end of life.

MAWC has also proposed several improvements to the sewer system, including:

1. Sewer and manhole lining to address a moderate Inflow and Infiltration issue;
2. Installation of a disinfection system, such as an ultraviolet system, to meet E. coli limits set by the system’s DNR permit;
3. Installation of aeration device(s) or a moving bed biofilm reactor (commonly referred to as an MBBR) to address ammonia limits set by the system’s DNR permit; and
4. Installation of a SCADA system and new power panels at the lift stations to eliminate safety hazards and to integrate the system into MAWC’s SCADA network.

MAWC seeks to establish the ratemaking rate base associated with the Smithton water and sewer assets in this matter pursuant to Section 393.320, RSMo., which states in pertinent part:

The procedures contained in this section may be chosen by a large water public utility, and if so chosen shall be used by the public service commission to establish the ratemaking rate base of a small water utility during an acquisition.

MAWC is a “large water public utility” as it is a “public utility that regularly provides water service or sewer service to more than eight thousand customer connections and that provides safe and adequate service.”¹ Smithton is a “small water utility” as it is a “water system or sewer system owned by a municipality that regularly provides water service or sewer service to eight thousand or fewer customer connections.”²

Section 393.320.3(1), RSMo requires an appraisal to be performed by three appraisers. Such an appraisal has been performed on the Smithton water and sewer system and is attached to MAWC’s application. The appraisal contains a joint assessment of the fair market value of the water system and sewer system.

Section 393.320.5(1), RSMo states, in part, that the “lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, shall constitute the ratemaking rate base for the small water utility as acquired by the acquiring large water public utility. . . .” In this case, the appraisal report assigns a market value of \$565,000 for the water system and \$670,000 for the sewer system, which combined is \$1,235,000. The agreed upon purchase price between MAWC and Smithton is \$565,000 for the water system and \$1.00 for the sewer system, which combined is \$565,001, which is less than the appraised value and shall constitute the ratemaking base.

¹ Section 393.320.1(1) RSMo.

² Section 393.320.1(2) RSMo.

Staff determined that there were no records maintained by Smithton that would affect Staff's rate base calculation. Staff used asset estimates provided by the Commission's Engineering Analysis Department to calculate an estimated current plant value for each plant asset in each City system. Based upon Staff's analysis, the estimated net book value of assets (rate base) proposed to be purchased from the City of Smithton by MAWC, as of October 31, 2022, is approximately \$708,924 for the water system (which is \$142,924 higher than the proposed purchase price) and \$82,074 for the sewer system (which is \$82,073 higher than the proposed purchase price), for a combined total of \$790,998.

MAWC proposes to apply its existing water rates for the Warrensburg Service Area to the Smithton service area and to utilize the rules governing the rendering of water service currently found in MAWC's water tariff P.S.C. MO No. 13 until rates and rules are modified according to law. Additionally, MAWC proposes to apply its existing sewer rates for the Pettis County Service Area to the Smithton service area and to utilize the rules governing the rendering of sewer service currently found in MAWC's sewer tariff P.S.C. MO No. 26 until rates and rules are modified according to law. The proposed water and sewer rates for the Smithton service area are as follows:

	Customer Charge	Commodity Charge
Water Rates (5/8")	\$9.00	\$6.2469 per 1,000 gal.
Sewer Rates	\$44.03	n/a

On December 29, 2022 the Office of the Public Counsel (OPC) filed a response to Staff's recommendation stating that it has no objection to MAWC acquiring the Smithton systems at the price identified in the purchase agreement, subject to the conditions identified by Staff in its Recommendation. OPC's response noted its concern over a

certain communication between MAWC and Smithton in a July 14, 2020 email that could be interpreted in a way that adds an additional requirement for the appraisers participating in an appraisal pursuant to § 393.320 RSMo. That communication appears to suggest that MAWC must qualify any appraiser that Smithton may choose who does not appear on the list of appraisers MAWC provided. OPC's concern is that this could potentially call into question the independence, impartiality, and objectivity of an appraiser, as well as whether he or she is truly disinterested. OPC seeks no relief related to this concern for this case, but raises its concern about the language for the record. The Commission acknowledges OPC's concern.

Also on December 29, MAWC filed its response to Staff's recommendation, stating that it does not object to Staff's proposed conditions, but expressing the concern that 60 days may not be sufficient for the booking of assets as required in condition 7. The Commission acknowledges MAWC's concern. MAWC also filed a reply to OPC's response on January 6, 2023, explaining that it did not intend to add, or suggest the addition of, any further layer of acceptance of Smithton's choice of appraiser, and that it will remove the reference to qualification from communications with potential sellers going forward.

Decision

More than ten days have passed since Staff filed its recommendation and no party has objected to MAWC's application or Staff's recommendation.³ No party has requested an evidentiary hearing.⁴ Therefore, the Commission will rule upon MAWC's application.

³ Commission rule 20 CSR 4240-2.080(13) provides that parties shall be allowed ten days from the date of filing in which to respond to any pleading unless otherwise ordered by the Commission.

⁴ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

The Commission may grant a water or sewer corporation a CCN to operate after determining that the construction and operation are either “necessary or convenient for the public service.”⁵ The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity in the case *In Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991). 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.⁶ The factors have also been referred to as the “Tartan Factors” or the “Tartan Energy Criteria.”

There is a current and future need for water and sewer service. The existing customer base for the water and sewer systems being acquired has both a desire and need for service, as demonstrated by Smithton’s vote to sell the system to MAWC. In addition, there is a need for steps to be taken to update the water and sewer systems to ensure provision of safe and adequate service. MAWC has demonstrated that it is qualified to provide the service, as it is currently providing safe and reliable water service to 475,000 customers and sewer service to approximately 18,000 customers. MAWC has demonstrated that it has adequate resources to operate the utility systems it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems, to plan and undertake scheduled capital improvements, and timely

⁵ Section 393.170.3, RSMo.

⁶ 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*, File No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

respond and resolve emergency issues when they arise. MAWC has the financial ability to provide the service, and no external financing approval is being requested.

MAWC's acquisition of fragmented, small water providers by a larger provider with the financial and technical wherewithal to properly operate and maintain systems promotes the public interest. The public interest is a matter of policy to be determined by the Commission,⁷ and it is within the discretion of the Commission to determine when the evidence indicates the public interest would be served.⁸ The Commission finds that granting a CCN to MAWC, with the conditions and actions proposed by Staff, promotes the public interest.

Based on the application and Staff's recommendation, the Commission finds that MAWC has complied with the requirements of Sections 393.140 and 393.170, RSMo. The Commission concludes that it is in the public interest for MAWC to provide water and sewer services to Smithton, subject to the conditions set out by Staff, and that the transaction, including setting the rate making rate base at the purchase price with reasonable and prudent transaction, closing, and transition costs, is in the public interest. On the basis of MAWC's representation that MAWC had no communication with the office of the Commission about the subject matter of the application within one hundred fifty days before filing the application, for good cause shown, the Commission will waive application of the pre-filing notice requirements of Commission Rule 20 CSR 4240-4.017(1). The Commission will grant MAWC's requested CCN, and order the conditions described in Staff's recommendation and memorandum.

⁷ *State ex rel. Public Water Supply District No. 8 of Jefferson County v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980).

⁸ *State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri*, 848 S.W.2d 593, 597-598 (Mo. App. 1993).

THE COMMISSION ORDERS THAT:

1. MAWC's application for a CCN to own, install, construct, operate, control, manage, and maintain the water and sewer assets, and to provide water and sewer service in the proposed Smithton service area is granted.

2. MAWC's currently approved proposed rates for the water and sewer system service areas are approved.

3. MAWC shall submit tariff sheets, to become effective before closing on the assets, to include a service area map, and service area written description to be included in its EFIS tariff P.S.C. MO No. 13 and 26, applicable to water service and sewer service in the requested service area.

4. MAWC shall notify the Commission of closing on the assets within five (5) days after the closing.

5. If MAWC does not close on the water and sewer system assets within thirty (30) days following the effective date of this order, MAWC shall submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until MAWC determines that the transfer of the assets will not occur.

6. If MAWC determines that a sale 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 and rate sheets applicable to customers in the Smithton service area.

7. MAWC shall develop a plan to book all of the Smithton plant assets, with the concurrence of Staff and/or with the assistance of Staff, for original cost, depreciation reserve, and contributions (CIAC) for appropriate plant accounts, along with reasonable and prudent transaction, closing, and transition costs. This plan shall be submitted to Staff for review within 60 days after closing on the assets.

8. MAWC shall keep financial books and records for plant-in-service and operating expenses for the Smithton service area systems in accordance with the NARUC Uniform System of Accounts.

9. The depreciation rates ordered for MAWC in File No. WR-2020-0344 are hereby adopted for Smithton water and sewer assets.

10. MAWC shall obtain from Smithton, as best as possible prior to or at closing, all records and documents, including, but not limited to, all plant-in-service original cost documentation, along with depreciation reserve balances, documentation of contribution-in-aid-of construction transactions, and any capital recovery transactions.

11. MAWC shall provide to the Commission's Customer Experience Department ("CXD") an example of its actual communication with the Smithton service area customers regarding its acquisition and operations of the Smithton water and sewer system assets, and how customers may reach MAWC, within ten (10) days after closing on the assets.

12. MAWC shall, within thirty (30) days of closing on the assets, distribute to the Smithton service area customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water service, consistent with the requirements of Commission Rule 20 CSR 4240-13.040(3).

13. MAWC shall provide to the CXD Staff a sample of ten (10) billing statements from the first month's billing within thirty (30) days after closing on the assets.

14. MAWC shall provide training to its call center personnel regarding rates and rules applicable to the Smithton service area customers.

15. MAWC shall include the Smithton service area customers in its established monthly reporting to the Commission Customer Experience Department Staff (CXD Staff) on customer service and billing issues, on an ongoing basis, after closing on the assets.

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

17. Prior to the time of the closing of all assets in this case, the City must have recorded an easement for the parcel that Well #2 and its associated assets sit on.

18. MAWC shall file notice in this case once the conditions in Ordered Paragraphs 1-17 above have been completed.

19. Pursuant to Section 393.320, RSMo., the purchase price for each system, along with reasonable and prudent transaction, closing, and transition costs incurred by MAWC, shall constitute the ratemaking rate base for the Smithton water and sewer systems.

20. The pre-filing notice requirement contained in Commission Rule 20 CSR 4240-4.017(1) are waived.

21. This order shall become effective on February 10, 2023.



BY THE COMMISSION

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

Morris L. Woodruff
Secretary

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

Keeling, 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 11th day of January, 2023.





Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

January 11, 2023

File/Case No. WA-2023-0071

**Missouri Public Service
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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.