

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 20<sup>th</sup> day of September, 2018.

In the Matter of the Joint Application of Rogue )  
Creek Utilities, Inc. and Missouri-American )  
Water Company, for MAWC to Acquire )  
Certain Water and Sewer Assets of Rogue )  
Creek Utilities, Inc. )

**File No. WM-2019-0018**

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

Issue Date: September 20, 2018

Effective Date: September 30, 2018

On July 24, 2018, Missouri-American Water Company (“MAWC”) and Rogue Creek Utilities Inc. (“Rogue Creek” or “RCU”) filed joint applications<sup>1</sup> pursuant to Sections 393.170 and 393.190, RSMo 2016, and Commission Rules 4 CSR 240-2.060, 3.305, 3.310, 3.600, and 4.017 seeking authority for Rogue Creek to sell its water and sewer assets to MAWC. MAWC also requests certificates of convenience and necessity to provide service to Rogue Creek’s customers and a waiver from Commission administrative rule 4 CSR 240-4.017(1).

MAWC is an existing regulated water and sewer utility currently providing water service to more than 450,000 customers and sewer service to more than 4,700 customers in several service areas throughout Missouri. Rogue Creek is the holder of certificates of convenience and necessity to provide water and sewer service in

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<sup>1</sup> Separate but identical applications were filed for the water and sewer utilities in Commission File Nos. WM-2019-0018 and SM-2019-0019. Those files were consolidated for all purposes in File No. WM-2019-0018.

Washington County, Missouri. Rogue Creek provides both water and sewer service to approximately 82 customers.

Rogue Creek is a water corporation, a sewer corporation, and a public utility, as those terms are defined in Section 386.020, RSMo. Rogue Creek was a Missouri corporation that was administratively dissolved by the Corporation Division of the Missouri Secretary of State on December 30, 2004. Environmental H2O, LLC, was appointed as Receiver for Rogue Creek on January 28, 2018.<sup>2</sup> The Cole County Circuit Court (“the Court”) directed the Receiver to transfer by sale or liquidate the assets of Rogue Creek as provided by law.

On May 14, 2018, the Court authorized the Receiver to execute an Asset Purchase Agreement (“Agreement”) providing for the purchase of substantially all of the water and sewer assets of Rogue Creek by MAWC. A copy of the Agreement was attached to the joint application.

On July 25, 2018, the Commission issued notice and set an intervention deadline. The timely application to intervene of the Missouri Department of Natural Resources (“DNR”) was granted. DNR supported the application and stated that it believed good cause exists to waive the 60-day notice requirement of 4 CSR 240-4.017(1) as requested in the application. DNR stated that it had found various points of non-compliance in the drinking water and waste water systems of Rogue Creek since at least 2011. DNR supported MAWC assuming ownership of the assets as soon as possible so that actions to obtain and maintain environmental compliance could begin.

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<sup>2</sup> *In the matter of Public Service Commission of the State of Missouri v. Rogue Creek Utilities Inc.*, Cole County Circuit Court Case No. 07AC-CC00682.

Staff of the Missouri Public Service Commission (“Staff”) filed a recommendation on August 24, 2018. Staff recommended that the transfer of assets be approved with certain conditions. Staff recommends that the Commission do the following:

1. Authorize RCU to sell and transfer water and sewer utility assets, including its certificates of convenience and necessity (CCNs) to provide water and sewer service, to MAWC, and for MAWC to provide water service and sewer service in the Rogue Creek service area, as requested;
2. Authorize MAWC to apply its existing water tariff rules and “All Missouri Service Areas Outside of St. Louis County and Outside of Mexico” water rates, in MAWC’s water tariff PSC MO No. 13, to the Rogue Creek service area;
3. Authorize MAWC to apply its existing sewer tariff rules and its “Cedar Hill” sewer rates, in MAWC’s PSC MO No. 26, to the Rogue Creek service area;
4. Require MAWC to submit new and revised tariff sheets showing the Rogue Creek service area, water rates, sewer rates, and index sheets, for its PSC MO No. 13 water tariff and PSC MO No. 26 sewer tariff, as necessary and as described in detail herein, prior to closing on the assets;
5. Approve MAWC’s existing depreciation rates for water and sewer utility plant accounts to apply to the Rogue Creek service area assets;
6. Require MAWC to submit notice to the Commission within five (5) business days after closing on the asset occurs;
7. Cancel RUC’s existing tariffs for water and sewer service after closing on the assets and the transfer of the CCNs occurs;
8. Require MAWC to, along with notice to the Commission regarding closing on the assets, provide a report regarding resolution of real estate acquisition, easement rights, the cost of real estate and easement acquisition and resolutions, and a statement stating that MAWC has complete access to all utility assets necessary for providing water and sewer service;
9. If closing on the water system assets and/or resolution of the real estate issue does not take place within thirty (30) days following the effective date of the Commission’s order approving such sale and transfer of the assets, require MAWC and/or RCU to 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;

10. If MAWC or RCU determines that a transfer of the assets will not occur, require MAWC and/or RCU to notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and require MAWC to submit tariff sheets as appropriate that would cancel tariff sheets and changes filed and becoming effective, if any, applicable to the Rogue Creek service area;

11. Require RCU to provide to MAWC and for MAWC, as best as possible prior to or at closing, to take physical possession of and maintain all records and documents with respect to regulated operations, and any and all books and financial records of RCU, including but not limited to all plant-in-service original cost documentation, along with depreciation reserve balances and records, invoices and purchase orders and purchase agreements, documentation of contribution-in-aid-of construction transactions, and any capital recovery transactions, all customer billing records and customer deposit records to the extent the Company has customer deposits;

12. Require MAWC to provide, in its next general rate case, an analysis documenting rate base values for RCU utility assets, including an appropriate offset for associated CIAC, and including real estate assets obtained in the context of the RCU transaction;

13. Make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to MAWC, including expenditures related to the Rogue Creek certificated service area and capacity adjustments, in any later proceeding;

14. Require MAWC to provide an example of its actual communication with the RCU service area customers regarding its acquisition and operations of the RCU water system assets, and how customers may reach MAWC regarding water matters, within ten (10) days after closing on the assets;

15. Require MAWC to include the RCU customers in its established monthly reporting to the Customer Experience Department Staff on customer service and billing issues;

16. Require MAWC to distribute to the RCU 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 4 CSR 240-13.040(2)(A-L), within ten (10) days of closing on the assets;

17. Require MAWC to provide adequate training for the correct application of rates and rules to all customer service representatives prior to RCU customers receiving their first bill from MAWC;

18. Require MAWC to provide to the Customer Experience Department Staff a sample of ten (10) billing statements from the first month's billing within thirty (30) days of such billing; and,

19. Require MAWC to file notice in this case once Staff Recommendations regarding customer communications and customer billing, above, have been completed.

The Office of the Public Counsel ("OPC") responded to Staff's recommendation on September 4, 2018. OPC indicated its support for MAWC acquiring Rogue Creek's assets, but disagreed with the recommendation to apply MAWC's existing water tariff rules and rates for its "All Missouri Service Areas Outside of St. Louis County and Outside of Mexico" and MAWC's existing sewer tariff rules and rates for its "Cedar Hill" sewer rates to Rogue Creek's customers.

Under MAWC rates, Rogue Creek's customers will receive a decrease in water rates and an increase in sewer rates for an overall net increase in rates for the typical customer as shown in the combined monthly bill comparison below:

COMBINED BILL COMPARISON -- MONTHLY USAGE

	<u>2,000 gal</u>	<u>3,000 gal</u>	<u>4,000 gal</u>
Rogue Creek	\$ 75.00	\$ 78.89	\$ 82.78
MAWC	<u>\$ 79.63</u>	<u>\$ 85.88</u>	<u>\$ 92.13</u>
	increase \$ 4.63	\$ 6.99	\$ 9.35
percent increase	6.2%	8.9%	11.3%

Staff stated these rates are reasonable because of the capital improvements that MAWC will need to undertake for the Rogue Creek customers and because it will be less cumbersome to use these rates for billing and customer inquiries on billing issues.

OPC argues that the Commission should be consistent with its ruling in Commission File No. WA-2018-0222, regarding the transfer of assets of the City of Lawson, so that Rogue Creek customers continue to use existing rates, or that the Commission should order Rogue Creek customers to be under the tariff for the City of Lawson customers. OPC states that these are more “just” outcomes because the former option would be consistent across Commission cases and the latter option uses a better proxy, the City of Lawson rates, since that is the only other system that has been acquired since the MAWC’s most recent general rate case. OPC did not ask for a hearing.

MAWC responded to OPC thoroughly reiterating the history of this troubled system and the effort and expense that MAWC has expended to decrease lead levels in the water and make other necessary improvements since it began working closely with the Rogue Creek Homeowners Association over two years ago. MAWC also argued that the City of Lawson system was not similarly situated to the Rogue Creek system.<sup>3</sup> MAWC argued there should be no further delay in approving the acquisition.

No party requested an evidentiary hearing in this matter and no law requires one, so the Commission may grant the request based upon the verified application and Staff’s verified recommendation.<sup>4</sup> This action is not a contested case,<sup>5</sup> and the Commission need not separately state its findings of fact.

MAWC and Rogue Creek are water and sewer corporations under Missouri law,<sup>6</sup> subject to the regulation, supervision and control of the Commission with regard to

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<sup>3</sup> See MAWC’s comparison chart at page 3 of its *MAWC Reply to OPC Response*, (filed September 9, 2018).

<sup>4</sup> See, *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

<sup>5</sup> Section 536.010(4), RSMo 2016.

<sup>6</sup> Subsections 386.020(49) and (59), RSMo 2016.

providing water and sewer service to the public. The Commission has jurisdiction to rule on the application because Missouri law requires that before selling or transferring its assets, a water corporation or sewer corporation must first obtain an order from the Commission authorizing the sale or transfer.<sup>7</sup> The Commission will only deny the application if approval would be detrimental to the public interest.<sup>8</sup>

The parties agree that the acquisition of Rogue Creek by MAWC will not be detrimental to the public interest. OPC, however, disagrees with the rates proposed by MAWC and recommended by Staff. If the proposed sale and transfer is approved, those customers currently being served by Rogue Creek will receive their water and sewer service from MAWC, which is fully qualified to own and operate the Rogue Creek system and to provide safe and reliable water and sewer service. MAWC's proposal to apply its existing water tariff and existing Cedar Hill sewer rates to customers in the Rogue Creek service area is reasonable. Those rates will result in Rogue Creek customers having decreased water rates and increased sewer rates for a net rate increase. The transaction will not have any impact on the tax revenues of any political subdivision where the water or sewer facilities are located.

Based on the information provided in the verified joint application and upon the verified recommendation and memorandum of Staff, the Commission finds that the proposed transfer of assets is not detrimental to the public interest and should be approved, subject to the conditions and actions recommended by Staff. Additionally, the Commission will grant MAWC certificates of service for the Rogue Creek service area.

The Commission has also reviewed the arguments of the parties with regard to the appropriate rates. MAWC's arguments in favor of its proposed rates for Rogue

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<sup>7</sup> Section 393.190.1, RSMo 2016.

<sup>8</sup> *State ex rel. City of St. Louis v. Public Service Comm'n of Missouri*, 73 S.W.2d 393, 400 (Mo. 1934).

Creek are sound and persuasive. Rogue Creek is a troubled system in receivership that needs a capable system owner and operator as soon as possible in order to obtain and maintain safety and environmental compliance. MAWC is fully capable of owning and operating the system and providing safe and adequate service. MAWC has been working closely with the Rogue Creek Homeowners Association for over two years, has been operating the systems since March 2017, has incurred more than \$160,000 in expenses to bring about improvements to the system since that time, and will need to make additional investments in the system to maintain compliance with all the relevant safety and environmental standards.<sup>9</sup> Considering these factors, the current Rogue Creek rates are not the best suited rates. Under the proposed rates, depending on usage, typical customers will have a \$4.63 to \$9.35 per month combined increase in their monthly bills, which is reasonable in these circumstances. Additionally, the City of Lawson rates are not appropriate because MAWC's acquisition of this system has very little in common with its acquisition of the City of Lawson system in Commission File No. WM-2018-0222. Considering these factors, the Commission finds the rates proposed by MAWC and recommended by Staff are reasonable and in the public interest.

The Commission may approve MAWC's request for the Rogue Creek customers to become part of an existing MAWC service area if in its opinion those are the rates best suited for the customers due to operational or other factors.<sup>10</sup> After considering all the above factors, the Commission finds that MAWC's proposed rates are the rates best suited for Rogue Creek's ratepayers. The application also asked the Commission to waive the 60-day notice requirement under 4 CSR 240-4.017(1), if necessary. MAWC and Rogue Creek asserted that good cause exists in this case for granting such waiver

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<sup>9</sup> *Joint Application and Motion for Waiver*, (filed July 24, 2018), paras. 11 and 12.

<sup>10</sup> Subsection 393.320.6, RSMo. 2016.



because MAWC has had no communication with the office of the Commission within the prior 150 days regarding any substantive issue likely to be in this case other than pleadings filed as a matter of record. The Commission finds that good cause exists to waive the notice requirement, and a waiver of 4 CSR 240-4.017(1) will be granted.

Additionally, because of the need to transfer these assets as quickly as possible so that MAWC may begin officially providing safe and adequate water and sewer service, the Commission also finds good cause exists to make this order effective in less than 30 days.

**THE COMMISSION ORDERS THAT:**

1. The request for waiver of the notice requirement under Commission Rule 4 CSR 240-4.017(1) is granted.

2. Missouri-American Water Company and Rogue Creek Utilities, Inc.'s joint application for approval of the transfer of the assets to Missouri-American Water Company is granted, subject to the conditions recommended by the Commission's Staff which are delineated in the body of this order.

3. Rogue Creek Utilities, Inc. is authorized to sell and transfer to Missouri-American Water Company the water and sewer assets described in the joint application and the Asset Purchase Agreement entered into between those parties.

4. Missouri-American Water Company and Rogue Creek Utilities, Inc. are authorized to enter into, execute, and perform in accordance with the terms described in the Asset Purchase Agreement attached to its joint application and to take any and all other actions which may be reasonably necessary and incidental to the performance of the acquisition.

5. Missouri-American Water Company is granted certificates of convenience and necessity to provide water and sewer service within the Rogue Creek Utilities, Inc. service area as more particularly described in the application, subject to the conditions and requirements contained in Staff's recommendation and set out above, effective upon the date of closing of the purchase transaction.

6. Missouri-American Water Company shall apply its existing water tariff rules and its "All Missouri Service Areas Outside of St. Louis County and Outside of Mexico" water rates to the Rogue Creek Utilities, Inc. service area.

7. Missouri-American Water Company shall apply its existing sewer tariff rules and its "Cedar Hill" sewer rates to the Rogue Creek Utilities, Inc. service area.

8. Missouri-American Water Company shall submit new tariff sheets in compliance with this order prior to closing on the assets.

9. Missouri-American Water Company's existing depreciation rates for water and sewer utility plant accounts are approved to apply to the Rogue Creek Utilities, Inc. service area assets.

10. Missouri-American Water Company shall submit notice to the Commission within five business days after closing on the assets occurs.

11. Within five business days after closing on the assets occurs, Missouri-American Water Company shall provide a report regarding resolution of the real estate acquisition, easement rights, the cost of real estate and easement acquisition and resolutions, and a statement that it has complete access to all utility assets necessary for providing water and sewer service.

12. After receiving notice of the closing, the Commission will cancel Rogue Creek Utilities' existing certificates of convenience and necessity and tariffs for water and sewer service.

13. If the closing on the water system assets and/or resolution of the real estate issues has not occurred by October 30, 2018, Missouri-American Water Company shall file a status report no later than November 5, 2018, and every 30 days thereafter, until closing takes place, or until Missouri-American Water Company determines that the transfer of the assets will not occur.

14. If Missouri-American Water Company or Rogue Creek Utilities, Inc. determines that a transfer of the assets will not occur, either or both utilities shall notify the Commission of that determination no later than the date the next status report is due after the determination was made, and Missouri-American Water Company shall submit tariff sheets as appropriate that would cancel the tariff sheets and changes filed, if any, applicable to the Rogue Creek service area.

15. Rogue Creek Utilities, Inc. shall provide as best as possible prior to or at closing, for Missouri-American Water Company to take physical possession of and maintain all records and documents with respect to regulated operations and any and all books and financial records of Rogue Creek Utilities, Inc., including, but not limited to, all plant-in-service original cost documentation, along with depreciation reserve balances and records, invoices and purchase orders and purchase agreements, documentation of contribution-in-aid-of construction transactions, and any capital recovery transactions, all customer billing records and customer deposit records to the extent the company has customer deposits.

16. In its next general rate case, Missouri-American Water Company shall provide an analysis documenting rate base values for Rogue Creek Utilities, Inc.'s utility assets, including an appropriate offset for associated contributions-in-aid-of-construction, and including real estate assets obtained in the context of the Rogue Creek Utilities, Inc. transaction.

17. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to Missouri-American Water Company, including expenditures related to the Rogue Creek Utilities, Inc. certificated service area and capacity adjustments, in any later proceeding.

18. Within ten days after closing on the assets, Missouri-American Water Company shall provide to the Commission's Customer Experience Department Staff an example of its actual communication with the Rogue Creek Utilities, Inc. service area customers regarding its acquisition and operations of the Rogue Creek Utilities, Inc. water system assets, and how customers may reach Missouri-American Water Company regarding water matters.

19. Missouri-American Water Company shall include the Rogue Creek Utilities, Inc. customers in its established monthly reporting to the Customer Experience Department Staff on customer service and billing issues.

20. No later than ten days after the closing on the assets, Missouri-American Water Company shall distribute to the Rogue Creek Utilities, Inc. 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 4 CSR 240-13.040(2)(A-L).

21. Missouri-American Water Company shall provide adequate training for the correct application of rates and rules to all customer service representatives prior to Rogue Creek Utilities, Inc.'s customers receiving their first bill from Missouri-American Water Company.

22. Missouri-American Water Company shall provide to the Customer Experience Department Staff a sample of ten billing statements from the first month's billing within 30 days of such billing.

23. Missouri-American Water Company shall file notice in this file within ten days of the above requirements regarding customer communications and customer billing being completed.

24. This order shall become effective on September 30, 2018.



**BY THE COMMISSION**

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

Morris L. Woodruff  
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and  
Coleman, CC., concur.

Dippell, Senior Regulatory Law Judge

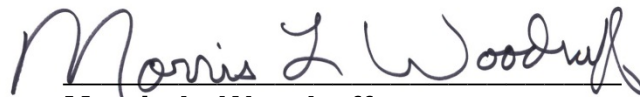
**STATE OF MISSOURI**

**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 20<sup>th</sup> day of September 2018.



  
Morris L. Woodruff  
Secretary

**MISSOURI PUBLIC SERVICE COMMISSION**

**September 20, 2018**

**File/Case No. WM-2019-0018**

**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**

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