

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

In the Matter of the Joint Application of)
Missouri-American Water Company and)
Emerald Pointe Utility Company for)
Missouri-American Water Company to) **File No. WO-2014-0113**
Acquire Certain Water and Sewer Assets)
Of the Emerald Pointe Utility Company in)
Connection Therewith, Certain Other)
Related Transactions)

In the Matter of the Joint Application of)
Missouri-American Water Company and)
Emerald Pointe Utility Company for)
Missouri-American Water Company to) **File No. SO-2014-0116**
Acquire Certain Water and Sewer Assets)
Of the Emerald Pointe Utility Company in)
Connection Therewith, Certain Other)
Related Transactions)

STAFF'S RESPONSE

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and hereby submits its *Response*, stating as follows:

1. On October 25, 2013, Missouri-American Water Company (“MAWC”) and Emerald Pointe Utility Company (“Emerald Pointe”) filed a joint application before the Missouri Public Service Commission seeking authority for Emerald Pointe to sell substantially all its assets to MAWC.

2. On January 24, 2014, Staff filed a recommendation to approve the application subject to several conditions, including a condition that MAWC adopt Emerald Pointe’s sewer tariff.

3. On February 6, 2014, MAWC filed a response to Staff's recommendation notifying the Commission and the parties that it objects to Staff's recommendation regarding adoption of Emerald Pointe's sewer tariff based on Section 393.320(6).

4. On February 7, 2014, the Commission ordered Staff to reply to MAWC's *Response*.

5. Staff has examined both MAWC's *Response* and the additions to Section 393.320 that became effective on August 28, 2013, specifically Section 393.320(6). Staff agrees that this statute requires the Commission to approve a consolidation of Emerald Pointe into an existing MAWC service area; however, Staff does not agree with MAWC's interpretation of what that consolidation should entail. Specifically, Staff is strongly opposed to any reading of this statute that would require imposition of new rates upon customers of an existing regulated company without a rate review of the acquired and acquiring company. A full rate review occurs in general rate increase or small company rate increase cases and includes examination of all relevant factors for setting rates, as well as an opportunity for hearing on all of the many decisions that must be made in a rate case. Without this process, the Commission cannot fulfill its duty to set rates that are just and reasonable.

6. While MAWC has accepted Staff's recommendations regarding continued use of Emerald Pointe's recently established rates, MAWC's objection to Staff's recommendation regarding adoption of MAWC's tariffs is related. Tariffs are tied to rates. Tangible and customized charges are in every company's tariff, such as late fees, connection charges, inspection charges, contributions in aid of construction charges, and any number of other types of charges. Of equal importance, the less tangible costs

associated with the rules and regulations of each company – the responsibilities of the company to its customers – are also taken into account when setting rates. Precisely because of this relationship between rates and tariffs, in almost every case related to the sale or acquisition of a water or sewer company, the acquiring company has been required to adopt the existing tariffs of the acquired company unless the companies' tariffs are so similar that consolidation has no impact on the acquired company's customers. To replace an acquired company's tariff with a tariff that is substantially different - specifically in fees, charges, or other operational concerns - outside of a rate case would violate fundamental ratemaking principles as surely as changing rates without a rate review.

7. For these reasons, Staff cannot agree that Section 393.320(6) would allow or require that MAWC be relieved of the responsibility to adopt the existing tariffs of the small companies it acquires, as tariffs are inextricably entwined with rates. However, Staff does agree that Section 393.320(6) dictates that the Commission designate in its order for this case an existing service area into which Emerald Pointe will be consolidated for ratemaking purposes once a ratemaking case is filed. Staff sees no detriment to the ratemaking process in consolidating Emerald Pointe with an existing MAWC service area for the purposes of MAWC's next rate case and believes this is the only interpretation of the statute that comports with both the new Section 393.320(6) and the remainder of the body of law regarding ratemaking.¹

¹ See *Evans v. Empire Dist. Elec. Co.*, 346 S.W.3d 313, 318 (Mo. App. W.D. 2011) (citing *State ex rel. Sprint Missouri, Inc. v. Pub. Serv. Comm'n of Missouri*, 165 S.W.3d 160, 164 (Mo. banc 2005)) (Noting that, while the PSC has no authority to interpret a statute in a way that is contrary to the plain terms of the statute, "[t]he PSC has been given the statutory authority to interpret statutes pursuant to the administration of their charge; the PSC's interpretation is afforded great weight by Missouri courts").

8. Having discussed the matter, Staff, MAWC, and the Office of the Public Counsel agree that, for the purposes of applying Section 393.320(6) to this acquisition case, Emerald Pointe should be consolidated with MAWC's existing Stonebridge service area as that area is geographically closest to Emerald Pointe. Staff, Public Counsel, and MAWC agree that this recommendation does not prevent any party from arguing for a different consolidation in a future MAWC rate case.²

9. Finally, Staff finds it necessary to make certain revisions to its *Staff Recommendation* as filed and as responded to by MAWC. Specifically, Staff's recommendation filed on January 24, 2014, noted that Staff accounted for the cost of removal associated with Emerald Pointe's treatment plant in its calculation of the sewer utility rate base determination. However, Staff did not specify the amount of this adjustment or the account into which it was placed. Staff now states that the amount of this adjustment was \$41,995, which resulted in the reduction of the reserve associated with sewer account 363-Pumping Equipment. In addition, Staff made minor revisions to its calculations of the water utility rate base determination. These revisions were to Staff's reserve calculations, as well as the summation of the Contributions in Aid of Construction. The total impact of these changes was a reduction of the overall water utility rate base by \$7,937. The Company and the Office of Public Counsel have represented to Staff that they do not oppose these revisions.

WHEREFORE, Staff respectfully requests that the Commission 1) reject MAWC's assertion that adopting Emerald Pointe's tariffs is a violation of Section 393.320, 2) approve the joint application of MAWC and Emerald Pointe subject to the

² Staff understands MAWC's agreement is only as to the consolidation of Emerald Pointe into the Stonebridge service area for geographic reasons and not necessarily as to Staff's legal analysis of Section 393.320(6) as set forth in the above paragraphs.

conditions laid out in Staff's January 24, 2014 recommendation, with the modifications stated above, and 3) order that Emerald Pointe's water and sewer systems be consolidated into MAWC's existing Stonebridge service area for ratemaking purposes.

Respectfully submitted,

/s/ Amy E. Moore

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed with first-class postage, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 24th day of February, 2014.

/s/ Amy E. Moore