

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

In the Matter of the Application 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 Eureka, Missouri)

Case No. WA-2021-0376

MAWC RESPONSE TO STAFF REQUEST TO REOPEN THE RECORD

COMES NOW Missouri-American Water Company (MAWC or Company) and, as its *Response to Staff Request to Reopen the Record*, states as follows to the Missouri Public Service Commission’s (Commission):

SUMMARY

The Commission should not grant Staff the requested waiver from Commission Rule 20 CSR 4240-2.110(8), nor reopen the record in this matter. As explained herein, the Arbors development was specifically discussed in this case (to include in Staff’s calculations, cross-examination of a Staff witness in the hearing by MAWC’s counsel, and in MAWC’s *Initial Brief*) Moreover, information about the Arbors CID was publicly available (to include a specific discussion on the Eureka web site cited by Staff).

More importantly, whether there is a Community Improvement District in place to recover a portion of development costs or all development costs are assumed to have been recovered in lot prices related to property contributed to a city, the issue is the same for the Commission. That is, once the assets are owned by a city, does the path of acquisition matter in regard to the “fair market value” of the assets owned by the city for purposes of Section 393.320, RSMo? Section 393.320 requires as follows in relevant part:

2. **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.**

3. (2) The appraisers shall:

(a) Jointly prepare an appraisal of the **fair market value** of the water system and/or sewer system.

5. (1) **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; provided, however, that if the small water utility is a public utility subject to chapter 386 and the small water utility completed a rate case prior to the acquisition, the public service commission may select as the ratemaking rate base for the small water utility as acquired by the acquiring large water public utility a ratemaking rate base in between. . . .**

8. **This section is intended for the specific and unique purpose of determining the ratemaking rate base of small water utilities and shall be exclusively applied to large water public utilities in the acquisition of a small water utility.**

(emphasis added).

There is nothing in the statute that requires, or even permits, different treatment of plant that has been contributed to a municipality – regardless of how the construction of that plant was financed. The matters discussed in the *Staff's Request* do not change the issues to be determined by the Commission and this matter should not be delayed as suggested by Staff.

BACKGROUND

1. An election was held on August 4, 2020, as to whether the water and wastewater utility systems owned by Eureka should be sold. (Exh. 1, Flower Dir., p. 6, Sched. SMF-2). A majority of votes cast were in favor of the sale (2,289 yes votes (67 percent) to 1,127 no votes (33 percent)). (Exh. 1, Flower Dir., p. 7). Thereafter, on November 17, 2020, MAWC entered into a

Purchase Agreement with Eureka. (*Id.*; Exh. 5P, Eisenloeffel Dir., p. 4, Sched. BWE-1). Almost one year ago, on April 26, 2021, MAWC filed its application requesting that the Commission grant it Certificates of Convenience and Necessity related to water and sewer systems it proposed to purchase from the City of Eureka (Eureka), in St. Louis County. A Staff Recommendation was filed on October 1, 2021. Subsequently, direct, rebuttal and surrebuttal testimony was filed between November 5, 2021 and December 17, 2021; a hearing held on January 20-21, 2022; and briefing completed on February 28, 2022.

2. On April 11, 2022, Staff filed its *Request to Reopen the Record (Staff's Request)*, therein making several statements in regard to the Arbors of Rockwood Community Improvement District (Arbors CID) and its implications for this case. The processing of this case should not be delayed by *Staff's Request*.

RESPONSE

3. The *Staff's Request* should be denied for a variety of reasons.

4. First, as indicated by the *Staff Request* itself, the request is untimely. Commission Rule 20 CSR 4240-2.110(8) states, in part, as follows:

(8) A party may request that the commission reopen the record for the taking of additional evidence if the request is made after the hearing has been concluded, but before briefs have been filed or oral argument presented, or before a decision has been issued in the absence of briefs or argument. (emphasis added)

Staff seeks a waiver of this Rule in conjunction with the request, although this matter will soon have been open for a year. Throughout this case, Staff has been aware of the Arbors assets and the fact they were contributed to Eureka (and even took this into account in its Staff Recommendation and later testimony). The fact that Staff may not have addressed the Arbors CID specifically does not justify a reopening of the record at this point in time.

5. None of the issues raised by Staff concern the fair market value of the assets owned by, and sought to be sold by, Eureka. In accordance with Section 393.320.5(1), the lesser of the purchase price or the appraised (fair market) value, together with the reasonable and prudent transaction, closing and transition costs incurred by MAWC “shall” constitute the ratemaking rate base for the Eureka system being acquired by MAWC. The assets referenced by Staff are owned by Eureka, are currently in service and used and useful for the provision of water service to Eureka residents. (See Tr. 278-279 (McMellen)). Nothing in Section 393.320 references or creates an exception for contributed property and nothing found in *Staff’s Request* would change that situation. The only body with the ability to change that result is the General Assembly.

6. There is nothing new or surprising about the existence of the Arbors subdivision, or that certain assets therein were contributed to Eureka. Eureka Ordinance 2394 (Bill No. 2506), was passed by the Eureka Board of Aldermen, and approved by Mayor Kevin M. Coffey, on October 18, 2016. (Staff Req., Ex. 1).¹ Staff makes allegations that neither MAWC, nor Eureka, disclosed the Arbors CID assessments. The referenced Ordinance created the Arbors CID as a separate political subdivision. (*Id.*) Neither Eureka, nor MAWC, receive any assessments related to this political subdivision. The known existence of the Arbors assets can be seen from the fact that counsel for MAWC cross-examined Staff witness McMellen about the Arbors water system at the hearing in this matter (Tr. Tr. 278-279, 280). This cross-examination was in reference to Staff’s recommendation and testimony suggesting that the value of the Arbors assets should be subtracted from Staff’s calculation of “net book value.”² This is another example of the inherent

¹ Contrary to allegations made by Staff, it should be noted that the Arbors CID was created, zoned and approved prior to Sean Flower becoming Mayor., (Staff Req., Ex. 1). Also, while he did participate in the purchase of some of the lots in the subdivision from the developer (Brewster Road, LLC), he was not a “developer” or even “co-developer” of the subdivision. (See Staff Req., p. 4-5 (“I was neither at the city when this program was set up, I am not the developer. . . .”).

² On the other hand, Mayor Flower testified in person at the hearing and was asked no questions about the Arbors development.

flaw in Staff's attempt to apply a "net book value" analysis to the fair market value/appraisal statute.

7. Further, the Arbors water system was specifically discussed in MAWC's *Initial Brief* as a contributed asset, along with the impact contributed plant should have on fair market value (none). (MAWC Ini. Brf., p. 20-21). Staff complains that the "CID annual assessments were not *disclosed* to Staff." (Staff Req., p. 5). However, it was very clear to Staff that those assets were contributed to Eureka and were constructed by some other party. The Arbors CID is a public entity and the fact that Arbors subdivision residents make payments to the CID is well known. More on point, as can be seen by the *Staff's Request*, Eureka has a public web site³ associated with the water/wastewater properties and the sale process that specifically addresses the Arbors CID situation. (Staff Req., pp. 4-5). If Staff wanted more information from MAWC, it certainly could have asked. It did not.

8. Staff seems to suggest that the Arbors CID was exclusively set up to construct a water system. This political subdivision was responsible for costs beyond a water or sewer system such as construction and installation of public improvements such as lawns, trees, and other landscape, sidewalks, streets, traffic signs and signals, utilities, drainage, storm systems, and other site improvements, streetscape, and lighting within the District. (Staff Req., Ex. 1). There are many costs associated with the Arbors development that may be built into the assessments being paid to the Arbors CID. The Commission does not need to attempt to audit those payments made to a separate political subdivision in order to address the matters raised in this case.

9. Lastly, Staff argues that residents of the Arbors "would pay twice for a water system." It also references a portion of MAWC's *Reply Brief* where MAWC argues that there is

³ <https://www.eureka.mo.us/Faq.aspx?TID=23> (See Item 29).

no “double recovery.” (Steff Req., p. 3). While MAWC would make similar arguments as to the Arbors specifically, it should be pointed out that the section of MAWC’s *Reply Brief* referenced by Staff was specifically responding to Staff’s allegations that the transaction would result in “double recovery” for Eureka because “Eureka residents have already paid for the systems over the years through depreciation.” (Staff Ini. Brf., p. 9-10; *see also* Staff Ini. Brf., p. 7). However, similar arguments would apply here. The Arbors CID has already contributed the relevant assets to Eureka. Nothing in this proceeding will undo or change that transaction.

10. The Arbors CID transaction is fundamentally no different than what was assumed in Staff’s case. As was explained in the portion of the Eureka web site explanation that Staff chose not to include, Eureka suggests that in most cases the developer would be assumed to put all of the development costs (to include construction related to water and sewer, roads, etc.) into the cost of the lots to be sold. Whether there are CID payments (of which homeowners are very much aware at the time of purchase) or those costs are assumed to be a part of lot price, ultimately the water and sewer assets have been contributed to Eureka and are now the property of the Eureka.

11. Even if some subset of Eureka customers could be said to be in the process of “paying” for a subset of the assets to be sold, as citizens, they are also receiving value in that Eureka is selling the systems and Eureka can use and apportion those sales proceeds as it sees fit for the public good. Moreover, none of this changes the “fair market value” of the assets or suggests that Eureka should give the systems away for free.

CONCLUSION

12. Ultimately, *Staff’s Request* is merely a restatement of the larger issues that have been argued in this case. That is, should Section 393.320.5(1) be applied as it is written - the lesser of the purchase price or the fair market value, together with the reasonable and prudent transaction,

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 15th day of April 2022, to:

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