

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 6th day of April, 2011.

In the Matter of the Joint Application of)
Missouri-American Water Company and)
Aqua Missouri, Inc., Aqua Development, Inc. and)
Aqua /RU, Inc. d/b/a Aqua Missouri, Inc. for)
Authority for Missouri-American Water Company) **File No. WO-2011-0168**
to Acquire Certain Assets of Aqua Missouri, Inc.,)
Aqua Development, Inc. and Aqua /RU, Inc. d/b/a)
Aqua Missouri, Inc. and, in connection therewith,)
Certain Other Related Transactions)

ORDER GRANTING APPLICATIONS

Issue Date: April 6, 2011

Effective Date: April 16, 2011

The Missouri Public Service Commission is granting the two applications that are the subject of this action, approving the *Unanimous Stipulation and Agreement* (“agreement”) and incorporating the agreement’s terms into this order, and ordering the parties to comply with the agreement.

A. Procedure

On December 13, 2010, Aqua Missouri, Inc.; Aqua Development, Inc.; and Aqua/RU, Inc. d/b/a Aqua Missouri, Inc. (together, “Aqua”); and Missouri-American Water Company (“MAWC”), filed the two applications.

The applications seek approval for Aqua's sale ("sale")¹ of substantially all its assets² to MAWC. Each application is titled *Joint Application and, if Necessary, Motion for Waiver* ("application"). File No. WO-2011-0168 ("this action") related to water facilities and service. File No. SO-2011-0169 related to sewer facilities and service. On January 12, 2011, the Commission consolidated File No. SO-2011-0169 into this action.

On December 16, 2010 ("notice"), the Commission set a deadline for applications to intervene but the Commission received no application to intervene. On February 25, 2011, Staff filed its recommendation favoring the applications with certain conditions. On March 29, 2011, the parties filed the agreement. No person has sought an evidentiary hearing, and no law requires one.³ Therefore, this action is not a contested case⁴ and the Commission need not separately state its findings of fact.

B. Notice

The statutes address the sale's possible impact on the tax revenues of any political subdivision in which the assets are located ("affected political subdivision"). Affected political subdivisions sometimes spread across more than one county ("affected county). Therefore, the statutes provide that:

The commission shall send a copy of all information obtained by it as to what, if any, impact such sale . . . will have on the tax revenues of [affected] political

¹ The applications also sought waiver of the pre-filing notice under 4 CSR 240-4.020(2), which the Commission granted on January 4, 2011.

² Excluded from the sale are certain specified items including assets related to sewer systems near Taos, Cole County, Missouri.

³ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

⁴ Section 536.010(4), RSMo Supp. 2010.

subdivisions to the county clerk of each [affected] county.

As to each affected county, the Commission caused the notice to be:

- Sent to the county clerk;
- Made available to members of the General Assembly representing the residents; and
- Made available to the news media serving the residents.

In addition, Aqua sent information about the application to its customers.⁵

C. Ruling

The Commission has jurisdiction to rule on the application because:

No . . . water corporation or sewer corporation shall hereafter sell . . . its . . . works or system . . . without having first secured from the commission an order authorizing it so to do. [⁶]

Aqua is subject to that statute because it provides water service to approximately 1,590 customers, and sewer service to approximately 2,247 customers, in Missouri which makes it a water corporation⁷ and a sewer corporation.⁸ MAWC provides water service to 452,000 customers and sewer service to 1,100 customers in Missouri. The Commission will only deny the application if approval would be detrimental to the public interest.⁹ The public interest, the parties agree, will suffer no detriment from the sale under the conditions set forth in the agreement.

⁵ *Statement of Notice Provided*, filed on January 28, 2011.

⁶ Section 393.190.1, RSMo 2000.

⁷ Section 386.020(59), RSMo Supp. 2010.

⁸ Section 386.020(49), RSMo Supp. 2010.

⁹ *State ex rel. City of St. Louis v. Public Service Comm'n of Missouri*, 73 S.W.2d 393, 400 (Mo. 1934).

Those conditions address MAWC's adoption of Aqua's tariffs, Aqua's moratorium on rate actions,¹⁰ the timing of changes in rates for service, depreciation rates, plant rate base, depreciation reserve, contributions in aid of construction, water loss in specified territories,¹¹ customer census, metering, records, billing, and other customer contacts. The conditions also require periodic reporting to the Commission on the status of the sale. The agreement defers determinations on regulatory treatment of tank painting and sludge removal.

Based on the verified filings, the Commission independently finds and concludes that the sale will cause no detriment to the public interest, if the sale occurs under the agreement's conditions. Subject to such conditions, therefore, the Commission will approve the application and incorporate the agreement's terms into this order. The Commission will also require all parties to comply with the agreement.

THE COMMISSION ORDERS THAT:

1. The applications titled *Joint Application and, if Necessary, Motion for Waiver* ("applications") are approved.

2. Aqua Missouri, Inc., Aqua Development, Inc., and Aqua/RU, Inc. d/b/a Aqua Missouri, Inc. (together, "Aqua") are authorized to sell the assets identified in the applications, including the certificates of convenience and necessity ("assets").

3. Missouri-American Water Company ("MAWC") is authorized, in accordance with the terms Asset Purchase Agreement attached to the

¹⁰ Due to expire on September 1, 2011.

¹¹ Riverside, Lake Carmel, and Ozark Mountain.

applications, to acquire the assets; to enter into, execute and perform; and to take any and all other actions that may be reasonably necessary and incidental to performance.

4. The *Unanimous Stipulation and Agreement* (“settlement”) is approved and incorporated into this order as if fully set forth. The parties are ordered to comply with the settlement. This file shall remain open for any filing required under the settlement as incorporated into this order.

5. This order shall become effective on April 16, 2011.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Clayton, Davis, Jarrett
and Kenney, CC., concur.

Jordan, Senior Regulatory Law Judge