

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 21st day of August, 2013.

In the Matter of the Joint Application of Missouri-)
American Water Company and Tri States Utility, Inc.)
for Authority for Missouri-American Water Company) **File No. WO-2013-0517**
to Acquire Certain Assets of Tri States Utility, Inc.)
and in Connection Therewith, Certain Other)
Related Transactions)

**ORDER APPROVING TRANSFER OF ASSETS, GRANTING
CERTIFICATE OF CONVENIENCE AND NECESSITY,
AND GRANTING WAIVER**

Issue Date: August 21, 2013

Effective Date: August 29, 2013

On June 12, 2013, Missouri-American Water Company (“MAWC”) and Tri States Utility, Inc. (“Tri States”) filed a joint application with the Missouri Public Service Commission (“Commission”) seeking authority for Tri States to sell substantially all its assets to MAWC. MAWC is a regulated water and sewer company providing water sewer service to approximately 454,000 customers and sewer service to approximately 4,000 customers in numerous cities and counties within Missouri. Tri States is a regulated water company holding a certificate of convenience and necessity from the Commission, authorizing it to provide water service to approximately 3,472 customers in Taney County, Missouri.

The Commission issued notice and set a deadline for intervention requests. Great Southern Bank applied for and was granted intervention. Great Southern Bank is the

primary creditor of Tri States in a bankruptcy proceeding in the U.S. Bankruptcy Court for the District of Kansas. On July 15, 2013, that Court approved the transfer of Tri States' assets to MAWC, subject to approval by the Commission.

On August 5, 2013, the Commission's Staff filed its recommendation and memorandum to approve the transfer of assets and to grant MAWC a certificate of convenience and necessity, subject to certain conditions. Staff amended its recommendation and memorandum on August 12, 2013 (the "Amended Recommendation"). No party opposed Staff's Amended Recommendation, and MAWC affirmatively agreed to the conditions. No party has requested an evidentiary hearing, and no law requires one.¹ Therefore, this action is not a contested case² and the Commission need not separately state its findings of fact.

The Commission has jurisdiction to approve a transfer of assets because "[n]o . . . 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".³ The Commission will only deny the application if approval would be detrimental to the public interest.⁴ The parties agree that the public interest will suffer no detriment from the sale under the conditions set forth in the Staff's Amended Recommendation.

The Commission may grant a water or sewer corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either "necessary or convenient for the public service."⁵ The Commission articulated

¹ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

² Section 536.010(4), RSMo Supp. 2012.

³ Section 393.190.1, RSMo 2000.

⁴ *State ex rel. City of St. Louis v. Public Service Comm'n of Missouri*, 73 S.W.2d 393, 400 (Mo. 1934).

⁵ Section 393.170.3, RSMo 2000.

the specific criteria to be used when evaluating applications for utility CCNs 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 Staff states in its Amended Recommendation that MAWC possesses adequate technical, managerial, and financial capacity to operate the water system currently certificated for Tri States and advises the Commission to approve the sale and transfer of water utility assets. Additionally, MAWC and Tri States are current on the submission of their annual assessments and annual reports. There are also no current violations or issues with the Department of Natural Resources that need immediate correction, and there are no deficiencies with respect to the water system.

Based on the verified filings, the Commission independently finds and concludes that the sale and transfer of assets will cause no detriment to the public interest, if the sale and transfer occur under the conditions in Staff's Amended Recommendation. Subject to such conditions, therefore, the Commission will approve the application and incorporate the Amended Recommendation's terms into this order. The Commission also concludes that the factors for granting a certificate of convenience and necessity to MAWC have been satisfied and that it is in the public interest for MAWC to provide water service to the customers currently being served by Tri States. Consequently, based on the Commission's

⁶ The factors have also been referred to as the "Tartan Factors" or the "Tartan Energy Criteria." 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*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, *3 (Mo. P.S.C.).

independent and impartial review of the verified filings, the Commission will grant MAWC a certificate of convenience and necessity. The Commission will make this order effective on less than thirty days' notice in order to accommodate the scheduled closing of the sale and transfer of assets transaction.

The application also asked the Commission to waive the 60-day notice requirement under 4 CSR 240-4.020(2), if necessary. The applicants explain that such waiver may not be necessary since matters of this type rarely become contested cases. However, the applicants assert that good cause exists in this case for granting such waiver because the application was filed as soon as possible considering that it involves an asset purchase negotiation during bankruptcy proceedings. In addition, the applicants state that no purpose would be served to require the applicants to wait sixty days after their agreement to file the application with the Commission. The Commission finds that good cause exists to waive the notice requirement and a waiver of 4 CSR 240-4.020(2) will be granted.

THE COMMISSION ORDERS THAT:

1. A waiver of the notice requirement under Commission Rule 4 CSR 240-4.020(2) is granted.
2. The joint application for the sale and transfer of assets filed by Missouri-American Water Company and Tri States Utility, Inc. is approved, subject to the following conditions:
 - a) Missouri-American Water Company shall notify Staff within five days after completion of the transfer of utility assets. If the transfer does not occur within thirty days of the effective date of this order, then Missouri-American Water Company or Tri States Utility, Inc. shall submit a progress report explaining the delay within that thirty day period and each thirty days thereafter until the transfer is complete.
 - b) Missouri-American Water Company shall adopt the tariffs for water service that are currently on file and approved for Tri States Utility, Inc. Missouri-American Water Company shall file, within five days after closing of the transfer of assets,

an adoption notice tariff sheet and revised title page and index sheets, as a 30-day filing, adopting the existing Tri States Utility, Inc. tariff.

- c) Missouri-American Water Company is authorized, upon closing of the transfer, to provide water service under the existing tariffs of Tri States Utility, Inc. on an interim basis until the effective date of the new tariff sheets.
- d) Tri States Utility, Inc. shall transfer to Missouri-American Water Company all of its books and records including, but not limited to, purchase orders, invoices, contracts and agreements relating to the Tri States Utility, Inc. operations, drawings and blue prints of the water system, plant records, operations records, expense records and all customer billing records upon the closing of the transfer of assets.
- e) Missouri-American Water Company shall maintain utility plant records and all customer account records as acquired from Tri States Utility, Inc., and shall keep all books and records, including plant property records, in accordance with the Uniform System of Accounts as described in Staff's Amended Recommendation.
- f) Missouri-American Water Company shall adopt the plant-in-service and depreciation reserve, as calculated by the Commission's Audit Staff valued as of June 30, 2013, for purposes of studying expected rate base for plant-in-service and depreciation reserve to be included within the books and records of Missouri-American Water Company with respect to the Tri States Utility, Inc. system.
- g) Missouri-American Water Company shall maintain and retain proper plant in service, depreciation reserve, cost of removal, salvage, and CIAC records on a going forward basis.
- h) Missouri-American Water Company shall not recover any acquisition adjustment or acquisition premium in relation to this action or any future rate case.
- i) Missouri-American Water Company shall use the schedule of depreciation rates set out in Attachment A to Staff's Amended Recommendation, from the date of the transfer of assets forward, unless changed by any future order of the Commission.
- j) Missouri-American Water Company shall distribute to former Tri States Utility, Inc. customers an informational brochure detailing the rights and responsibilities of the utility and its customers, which shall adhere to the provisions of Commission Rule 4 CSR 240-13.040(3).
- k) Missouri-American Water Company shall include the former Tri States Utility, Inc. customers in its regular reporting to the Commission's Engineering and Management Services Unit regarding customer call data, meter reading data,

and CSC information, as further described in the Staff Amended Recommendation.

- l) Missouri-American Water Company shall provide adequate training to all customer service representatives prior to the former Tri States Utility, Inc. customers receiving their first bill from Missouri-American Water Company.
- m) Missouri-American Water Company shall provide to the Commission's Engineering and Management Services Unit within thirty days of this order a completed "transition schedule" for the actions necessary to successfully transition former customers of Tri States Utility, Inc. into the Missouri-American Water Company customer information system and implementation dates for when bills will begin to be issued to Tri States Utility, Inc. customers by Missouri-American Water Company.
- n) Missouri-American Water Company shall provide to the Commission's Engineering and Management Services Unit a sample of five percent of its first month bills issued to former Tri States Utility, Inc. customers, in order to check for accuracy.

3. Tri States Utility, Inc. is authorized to sell and Missouri-American Water Company is authorized to acquire the assets identified in the joint application.

4. On the effective date of Missouri-American Water Company's new adoption notice tariff sheets and revised title page and index sheets, Missouri-American Water Company is granted a Certificate of Convenience and Necessity for the provision of water service for Tri States Utility, Inc.'s service areas described in the transfer of assets application.

5. Missouri-American Water Company and Tri States Utility, Inc. are authorized to enter into, execute and perform and to take any and all other actions which may be reasonably necessary and incidental to the performance of the acquisition.

6. Nothing in this order constitutes a finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters, including future expenditures by Missouri-American Water Company, in any later proceeding.

7. This order shall become effective on August 29, 2013.



BY THE COMMISSION

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

Morris L. Woodruff
Secretary

R. Kenney, Chm., Jarrett, Stoll,
and W. Kenney, CC., concur.

Bushmann, Regulatory Law Judge