

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 12th day of
March, 2014.

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)

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

Issue Date: March 12, 2014

Effective Date: March 22, 2014

On October 25, 2013, Missouri-American Water Company (“MAWC”) and Emerald Pointe Utility Company (“Emerald Pointe”) filed a joint application seeking authority for Emerald Pointe to sell substantially all its assets to MAWC. MAWC is a regulated water and sewer company providing water service to approximately 454,000 customers and sewer service to approximately 4,000 customers in numerous cities and counties within Missouri. Emerald Pointe is a regulated water and sewer company holding a certificate of convenience and necessity from the Commission and providing service to approximately 380 customers in Taney County, Missouri.

The Commission issued notice and set a deadline for intervention requests, but no persons requested to intervene in this proceeding. On January 24, 2014, the Commission's Staff filed its Recommendation and Memorandum to approve the transfer of assets, subject to certain conditions, including the following:

1. Emerald Pointe should be authorized to sell and transfer its water and sewer utility assets to MAWC, and MAWC should be authorized to acquire Emerald Pointe's water and sewer utility assets. The order should grant MAWC the CCN presently held by Emerald Pointe to provide water and sewer service within the authorized service areas. The transfer of the CCN shall be effective concurrently with closing of the assets between MAWC and Emerald Pointe.
2. MAWC shall notify the Commission when it has closed on the Emerald Pointe assets within five (5) business days after such closing has occurred. If closing has not occurred within thirty (30) days after the effective date of an order approving this *Application*, MAWC shall file a status report on the status of the sale closing, and file a status report every thirty (30) days thereafter until the closing has occurred.
3. MAWC is authorized to, upon closing, provide service on an interim basis under the water and sewer tariffs currently on file and approved for Emerald Pointe, until MAWC tariff sheets regarding rates, service areas, and adoption notices, to be filed as ordered herein, become effective.
4. MAWC shall file tariff sheets for its water tariff No. 13 that include rates, service charges with modifications to rule number references, service area maps, service area descriptions, and appropriate modifications to the index sheet. Emerald Pointe's existing water tariff shall be canceled upon the effective date of these tariff sheets.
5. MAWC shall file a sewer tariff adoption notice sheet, along with a modified index sheet to indicate the presence of the adoption notice sheet.
6. MAWC shall record a value in the amount stated in Staff's recommendation for the amount of the Emerald Pointe acquisition plant in service, net of accumulated depreciation and CIAC, at December 31, 2013, as described within Staff's memorandum, and MAWC shall not seek recovery of any acquisition premium, related to this transaction, through rates.
7. MAWC shall adopt the Emerald Pointe depreciation schedule for water assets, and apply MAWC's existing depreciation schedule for sewer assets presently approved for MAWC, as shown in Attachments A and B to Staff's recommendation.
8. MAWC shall calculate and record depreciation expenses on a going forward basis subsequent to the date of close, using the above-mentioned depreciation schedules.

9. MAWC shall maintain utility plant records and customer account records, and keep all books and records, including plant property records, in accordance with the NARUC Uniform System of Accounts, as described in Staff's memorandum.
10. MAWC shall, after closing on the assets, distribute to former Emerald Pointe 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).
11. MAWC shall provide adequate training to all customer service representatives with respect to adopted Emerald Pointe rates and rules prior to the Emerald Pointe customers receiving their first bills for service from MAWC.
12. MAWC shall provide to the Commission's EMSU Staff a sample of forty-five (45) billing statements of its first month bills that include copies of water and sewer billings issued to the Emerald Pointe customers, in order to check for accuracy, within ten (10) days after issuance of those bills.
13. MAWC shall include the former Emerald Pointe customers in its regular monthly Call Center reporting to Staff.
14. MAWC shall provide to the Commission's EMSU Staff, within thirty (30) days after this order, a completed transition schedule for the actions necessary to successfully transition former customers of Emerald Pointe into MAWC's customer information system, and implementation dates for when bills will begin to be issued to Emerald Pointe customers by MAWC.
15. MAWC shall provide to the Commission's EMSU Staff, within sixty (60) days after this order, a completed acquisition checklist.
16. The Commission's order should make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the transfer of the CCN, including future expenditures by MAWC, in any later proceeding.

On February 6, 2014, the Office of the Public Counsel filed a response to Staff's Recommendation and Memorandum, indicating that it does not oppose Staff's recommendation that the Commission approve the joint application subject to the conditions described in Staff's Recommendation and Memorandum. In *Staff's Response* filed on February 24, 2014, Staff amended its Recommendation and Memorandum (collectively, the "Amended Recommendation"). No party opposed the conditions in Staff's Amended Recommendation, and MAWC affirmatively agreed to all of Staff's proposed

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. MAWC and Emerald Pointe 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 or sewer 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. Pursuant to Section 393.320.6, RSMo Supp. 2012, and by agreement among the parties, the Commission will consolidate Emerald Pointe’s water and sewer systems into MAWC’s existing Stonebridge service area for ratemaking purposes.

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).

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 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 The Commission finds that MAWC possesses adequate technical, managerial, and financial capacity to operate the water and sewer systems currently certificated for Emerald Pointe. The Commission 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 and sewer service to the customers currently being served by Emerald Pointe. Consequently, based on the Commission’s independent and impartial review of the verified filings, the Commission will grant MAWC the certificate of convenience and necessity presently held by Emerald Pointe to provide water and sewer service within the authorized service areas.

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

⁵ Section 393.170.3, RSMo 2000.

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.).

applicants assert that good cause exists in this case for granting such waiver because the application was filed as soon as possible due to the nature of this particular transaction. 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 Emerald Pointe Utility Company is approved, subject to the conditions and requirements contained in Staff's Recommendation and Memorandum, as amended by *Staff's Response*, including those conditions described in the body of this order.

3. Emerald Pointe Utility Company is authorized to sell and Missouri-American Water Company is authorized to acquire the assets identified in the joint application.

4. Missouri-American Water Company is granted the certificate of convenience and necessity presently held by Emerald Pointe Utility Company to provide water and sewer service within the authorized service areas, effective upon the closing of the sale and transfer of assets transaction between Missouri-American Water Company and Emerald Pointe Utility Company.

5. Emerald Pointe Utility Company's water and sewer systems shall be consolidated into Missouri-American Water Company's existing Stonebridge service area for ratemaking purposes.

6. Missouri-American Water Company and Emerald Pointe Utility Company 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.

7. 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.

8. This order shall become effective on March 22, 2014.

9. This file shall be closed on March 23, 2014.

BY THE COMMISSION



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

Morris L. Woodruff
Secretary

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

Bushmann, Regulatory Law Judge