

**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

STAFF’S REQUEST TO REOPEN THE RECORD

COMES NOW Staff of the Missouri Public Service Commission (Staff), through counsel, and files *Staff’s Request to Reopen the Record*.

1. After briefing was completed in this case, but before the Commission has issued a decision, public comments were filed indicating that certain residents of Eureka and proposed MAWC customers would, in fact, be paying twice for the same water system serving the Arbors subdivision in Eureka. Residents of the Arbors subdivision are currently paying assessments ranging from \$500 to \$800 annually through approximately the year 2048, pursuant to a Eureka ordinance creating a Community Improvement District (CID).¹ These assessments are used to cover, among other items, the water infrastructure donated to the City of Eureka and which Missouri-American Water Company (MAWC) includes in its joint application at issue in this case. In its application, MAWC proposes to include in its own rate base (and therefore rates) the purchase price of the water infrastructure serving Arbors residents, even though Arbors residents are

¹ City of Eureka Ordinance 2394, *An Ordinance by the City of Eureka, Missouri, Approving a Petition Requesting the Creation of the Arbors of Rockwood Community Improvement District; Establishing the District as a Political Subdivision of the State of Missouri; Directing the City Clerk to Notify the Missouri Department of Economic Development of the Creation of the District; Approving a Development Agreement Among the City, the District and Brewster Road, LLC; Authorizing Certain Actions in Connection Therewith; and Containing a Severability Clause* (Oct 16, 2016), attached as Exhibit 1.

already paying for and will continue paying for it in full through the CID assessments through approximately 2048.

2. Under 20 CSR 4240-2.110(8), a party may request that the Commission reopen the record for the taking of additional evidence. Normally, this request must be filed before briefs have been filed.² However, the Commission may grant a variance from or waive any rule or provision of a rule upon a finding of good cause.³ Because Staff's motion to reopen the record here is based on information received from public comments filed in this case after briefing was filed but before a decision has been issued, as described in more detail below, Staff contends that there is good cause to waive the requirement that this motion be filed before briefs. Additionally, Staff acknowledges the extraordinary nature of this Motion and notes that reopening the record will allow the parties an opportunity to rebut the evidence Staff proposes to adduce. Finally, as set forth below, Staff's motion asserts the justification for the motion (to admit evidence relevant to the question of whether MAWC ratepayers will be paying twice for the same infrastructure), a brief statement of the proposed additional evidence, and an explanation as to why this evidence was not offered during the hearing.

Good Cause for Waiver of Requirement that Motion be Filed Before Briefing

3. Staff witness Amanda McMellen testified during MAWC cross examination at the hearing⁴ and Staff discussed in its reply briefing⁵ that it deducted \$2.9 million from its estimated net book value as contributed plant for the water system in the Arbors subdivision. The MAWC/City of Eureka appraisals of the water system include this \$2.9

² 20 CSR 4240-2.110(8).

³ 20 CSR 4240-2.205.

⁴ Transcript 277:10-279:5 and Ex. 100, *Staff's Report and Attachments*, Report P. 13.

⁵ *Staff's Reply Brief*, P. 5 (Feb 28, 2022).

million. Therefore, the City of Eureka expects to be paid for the Arbors water system, which would ultimately be paid by all MAWC customers through their rates.

4. Staff argued in its briefing that because much of the Eureka plant is depreciated, Eureka water and sewer customers have already paid for it.⁶ In rebuttal, MAWC argued that Staff's assertion about "double recovery" ... is wrong on a variety of levels...."⁷

5. Since the post hearing briefing, people submitted comments into EFIS stating that Eureka customers living in the Arbors subdivision are currently paying for the water system serving their subdivision, and will continue to pay for it even if the sale to MAWC is completed. Therefore, it is not accurate that Arbors customers will not be detrimentally affected by the sale, and it is accurate that Arbors customers will pay twice for the same assets. Because double recovery of the water infrastructure serving the Arbors residents was an issue in the hearing, reopening the record to receive accurate evidence on this issue will assist the Commission in its determination.

Brief Statement of the Proposed Additional Evidence

6. In 2016 the City of Eureka created The Arbors of Rockwood Community Improvement District (Arbors CID) by Ordinance 2394,⁸ pursuant to Missouri's Community Improvement District Act, §§ 67.1401 through 67.1571, RSMo. An annual assessment is levied against homeowners living in the Arbors to reimburse Brewster Road, LLC/McBride Homes for costs associated with developing the subdivision, including construction of the water system. Dependent on the length of street frontage,

⁶ *Id.* at 5-7 and *Staff's Initial Post- Hearing Brief*, P. 7-10 (Feb 18, 2022).

⁷ *Missouri-American's Reply Brief*, P. 34 (Feb 28, 2022).

⁸ City of Eureka Ordinance 2394, attached as Exhibit 1.

homeowners' assessments range from \$500 to \$800 annually⁹ and according to Ordinance 2394, "the [Arbors CID] shall be in existence for a maximum of 32 years from the effective date of this Ordinance."¹⁰ The Arbors CID was formed for the purpose of, among other things, **"to pay for certain costs** associated with the construction and installation of the following public improvements: ...utilities, drainage, **water, storm and sewer systems**, and other site improvements...."¹¹

7. In the frequently asked questions (FAQ) section on the City of Eureka's website related to the sale to MAWC, Mayor Flower addressed a question whether the Arbors CID assessment fee would be eliminated if the water system is sold to MAWC. Mayor Flower responded that it would not and stated, in part:

The developer still pays the full cost of all public improvements (the city still does not pay to install these utilities), but then puts some of this cost into the lot, and collects some from the buyer after closing for a set number of years. This allows the up front lot/house cost to be lower, and for buyers to pay the additional "extraordinary" cost over time while they actually live there. In the case of the Arbors the developer paid the full cost of all the public improvements. They dedicated it to the city. The city has no debt and no obligations to pay for this asset, it owns it free and clear. The developer paid for part of this cost in the price of the lot, and the developer is also reimbursed for part of it through the annual CID assessment on homeowners. **The city cannot redirect public funds (sale proceeds) to payoff CID payments as that would be causing all residents of the city to pay off the debt owed by the arbors [sic] residents to the private developer for the install of the utilities necessary to build their subdivision.** In effect, the city would be paying to put in the water, sewer, and part of the roads for a private development

⁹ Ordinance 2394, *Amended Petition for Creation of a Community Improvement District Under the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri, As Amended*, Paragraph 5B, attached as Exhibit 1.

¹⁰ Ordinance 2394, P. 2 attached as Exhibit 1 (forming district in 2016 for a maximum term of 32 years).

¹¹ *Id.* at 1 (emphasis added). See also *The Arbors of Rockwood Community Improvement District, Annual Report for Fiscal Year Ending June 30, 2019*, attached as Exhibit 2; *The Arbors of Rockwood Community Improvement District, Annual Report for Fiscal Year Ending June 30, 2020*, attached as Exhibit 3; and Resolution No-2004, *A Resolution of the Arbors of Rockwood Community Improvement District Approving the Assessment Roll for 2020 for the Special Assessment Authorized by Resolution No. 17-005; and Authorizing Certain Actions in Connection Therewith*, attached as Exhibit 4.

if they were to pay off the CID payments. I hope this helps explain this topic. And just for clarity, I was neither at the city when this program was set up, I am not the developer, so I am just explaining what has happened in the past.¹²

8. In other words, Arbors residents will pay twice for the water system serving their neighborhood – once to the Arbors CID and once to MAWC.

Explanation Why This Evidence Was Not Offered During the Hearing

9. Staff represented in its report and at the hearing, without correction from MAWC or Mayor Flower, that the water system at the Arbors was contributed plant from the developer.¹³ The Arbors was developed by Brewster Road, LLC, which is associated with McBride Homes. McBride Homes and Flower & Fendler Homes built the homes in the Arbors subdivision. Mayor Sean Flower, a witness in this case and the current Mayor of Eureka, is an owner of Flower & Fendler Homes. Despite these close ties, neither MAWC nor the City of Eureka disclosed during this proceeding that Arbors residents are paying Arbors CID annual assessments to pay for their water system.

10. Because the CID annual assessments were not disclosed to Staff or the Commission by MAWC, Mayor Flower, as the co-owner of the company co-developing the Arbors subdivision, nor by the anyone else at the City of Eureka, Staff was not apprised of and did not have the opportunity to investigate the Arbors CID payments until after they were brought to Staff's attention in public comments filed after briefing was completed in this case. These public comments specifically address arguments raised in briefing, and therefore arguments relevant to this case, namely whether Arbors residents will pay twice for the same water system.

¹² FAQs • Eureka, MO • CivicEngage (emphasis added).

¹³ Transcript 277:10-279:5 and Ex. 100, *Staff's Report and Attachments*, Report P. 13.

11. Staff therefore offers for the Commission's information and consideration, as well as to clarify the record, that the residents of the Arbors subdivision are paying for their water system through a CID. Whether residents of the Arbors CID would pay twice for a water system is highly relevant to the Commission's determination of whether granting a CCN to MAWC, inclusive of rate base reflecting the purchase price for the Arbors water system, is necessary or convenient for the public interest.

WHEREFORE, Staff respectfully requests the Commission issue an order finding good cause to reopen the record in this proceeding, and schedule a procedural conference to establish procedures for taking additional evidence regarding the payments that residents of the Arbors CID are making and will continue to make into the future for their water system.

Respectfully submitted,

/s/ Karen E. Bretz

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been electronically mailed to all parties and/or counsel of record on this 11th day of April, 2022.

/s/ Karen E. Bretz