

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 4th day of November, 2015

In the Matter of the Joint Application of)
Hickory Hills Water & Sewer Co., Inc. and)
Missouri-American Water Company, for) File No. WA-2016-0019
MAWC to Acquire Certain Water and Sewer Assets)
of Hickory Hills and, in Connection Therewith, Issue)
Indebtedness and Encumber Assets.)

**ORDER DENYING REQUEST FOR LOCAL PUBLIC HEARINGS
AND GRANTING APPLICATIONS WITH CONDITIONS**

Issue Date: November 4, 2015

Effective Date: November 14, 2015

Hickory Hills Water & Sewer Co., Inc. (“Hickory Hills”) and Missouri-American Water Company (“MAWC”) are public utilities subject to the Commission’s regulation. This action consists of two applications to transfer the certificates of convenience and necessity (“certificates”) and assets of Hickory Hills to MAWC. One application addresses water service and the other application addresses sewer service.

The Commission’s staff (“Staff”) filed a recommendation, ¹ and a supplemental recommendation, ² in favor of granting the applications subject to certain conditions.³ The Commission received responses to the recommendation from the parties as follows:

¹ Electronic Filing Information System (“EFIS”) No. 13 (October 2, 2015) *Staff Recommendation*.

² EFIS No. 19 (October 15, 2015) *Response to Order Directing Filing*. sets forth the supplemental recommendation in reply to MAWC’s response to the recommendation.

³ EFIS No. 13 (October 2, 2015) *Staff Recommendation*.

- Support from intervenor Department of Natural Resources (“DNR”);⁴
- No objection to any condition from MAWC;⁵
- No opposition from the Office of the Public Counsel (“OPC”).⁶

Nevertheless, OPC’s response also included the request for a local public hearing.⁷ OPC’s request for a local public hearing⁸ (“request”) is unnecessary because OPC opposes no relief sought in this action. Moreover, a local public hearing would needlessly delay remediation of an environmental hazard as described below. Because of those peculiar and urgent circumstances, the Commission is denying the request and granting the applications.

I. Local Public Hearings

The request drew opposition from Missouri-American Water Company (“MAWC”)⁹ and Staff.¹⁰ OPC filed a reply to the response of MAWC¹¹ and Staff.¹² Staff filed a sur-reply.¹³

⁴ EFIS No. 15 (October 13, 2015) *Missouri Department of Natural Resources’ Response to Staff’s Recommendation*; EFIS No. 23 (October 26, 2015) *Missouri Department of Natural Resources’ Reply to MAWC’s Response to Staff Recommendation and Public Counsel Response*.

⁵ EFIS No. 17 (October 13, 2015) *Response to Staff Recommendation and Public Counsel Response*. MAWC sought clarification of Staff’s position as to the governing tariffs for the Hickory Hills service area, which Staff addressed in its supplemental recommendation. EFIS No. 19 (October 15, 2015) *Response to Order Directing Filing*, second and third pages, paragraphs 9 and 10.

⁶ EFIS No. 14 (October 9, 2015) *The Office of the Public Counsel’s Response to Staff Recommendation and Request for Local Public Hearing*.

⁷ EFIS No. 14 (October 9, 2015) *The Office of the Public Counsel’s Response to Staff Recommendation and Request for Local Public Hearing*.

⁸ In Commission practice, a local public hearing includes a presentation on the Commission’s operations from the Commission’s public communications personnel, brief presentations from parties, and a question-and-answer period between those persons and members of the public. Those events occur outside the presence of the commissioners and the regulatory law judge. At the conclusion of the question-and-answer period, the regulatory law judge takes testimony and exhibits—under oath and subject to cross-examination—from members of the public.

⁹ EFIS No. 17 (October 13, 2015) *Response to Staff Recommendation and Public Counsel Response*. OPC characterizes MAWC’s response as not opposing a local public hearing. EFIS No. 20 (October 23, 2015) *The Office of the Public Counsel’s Response to Staff* page 2 paragraph 7. But we read MAWC’s

A. Standards

OPC does not cite any authority mandating a local public hearing on any of the applications. The law governing the applications for certificates provides:

The commission shall have the power to grant the permission and approval herein specified whenever it shall **after due hearing** determine that such construction or [provision of service] is necessary or convenient for the public service [. ¹⁴]

OPC cites no authority showing that any hearing is due. Because there is no right to a local public hearing, the matter is committed to the Commission's discretion. The Commission exercises its discretion by carefully considering all circumstances.

B. Arguments

The circumstances of this case, as set forth in verified filings, show that convening a local public hearing would hinder, and not promote, not aid, the long-sought remediation of historically troubled systems. The water system is in need of repairs, and the sewer system is in crisis, including:¹⁵

- A lagoon with a useful life that expired 30 years ago, sludge accumulated without removal over that time, resulting in diminished capacity for treatment.

position otherwise because, while MAWC generally does not oppose local public hearings, MAWC specifically distinguishes these applications. EFIS No. 17 (October 13, 2015) *Response to Staff Recommendation and Public Counsel Response* page 4 and 5 paragraph 4.

¹⁰ EFIS No. 16 (October 13, 2015) *Staff's Opposition to OPC's Request for Local Public Hearing*.

¹¹ EFIS No. 22 (October 26, 2015) *The Office of the Public Counsel's Response to MAWC*.

¹² EFIS No. 20 (October 23, 2015) *The Office of the Public Counsel's Response to Staff*.

¹³ EFIS No. 21 (October 23, 2015) *Staff's Reply to OPC*.

¹⁴ Section 393.170, RSMo 2000. Emphasis added.

¹⁵ EFIS No. 13 (October 2, 2015) *Staff Recommendation* page 2 to 3.

- Pipes that admit rainwater that can cause backups to homes, overflow of manholes, and overload in the lagoon, which can cause spillage and threaten a breach of containment.

Those and other issues are the subject of litigation brought by DNR against Hickory Hills and pending in circuit court since 2012.¹⁶ Yet the long-running environmental difficulties of Hickory Hills find no place in OPC's arguments.

1. OPC's Arguments

OPC's arguments relate to communications among the Commission, MAWC, and customers. The current customers of Hickory Hills are among OPC's client base.¹⁷

OPC argues that:

[OPC] believes that affording customers the opportunity to speak to the Commission at a hearing is a critical part of the Commission's process to ensure that a proposed transfer of assets is just and reasonable. [¹⁸]

The transfer of assets is not subject to the "just and reasonable" standard applicable in a utility rate case. The standard governing the applications for transfer is the public interest, which means in this context:

[N]o such change shall be made as would work to the public detriment. 'In the public interest,' in such cases, can reasonably mean no more than 'not detrimental to the public.'" [¹⁹]

¹⁶ *State of Missouri v. Hickory Hills Water & Sewer, Inc.*, Case No. 12MT-CC00027 (Cir. Ct. Moniteau County), also described at EFIS No. 6 (August 18, 2015) *Missouri Department of Natural Resources' Application to Intervene* first and second page 1 paragraph 3.

¹⁷ Section 386.710, RSMo 2000.

¹⁸ EFIS No. 14 (October 9, 2015) *The Office of the Public Counsel's Response to Staff Recommendation and Request for Local Public Hearing* page 3 paragraph 8.

¹⁹ *State ex rel. City of St. Louis v. Pub. Serv. Comm'n of Missouri*, 73 S.W.2d 393, 400 (Mo. banc 1934).

The public interest also determines the applications for certificates as part of the statutory standard of convenience and necessity.²⁰ That standard includes a variety of considerations.

The term “necessity” does not mean “essential” or “absolutely indispensable”, but that an additional service would be an improvement justifying its cost. Additionally, what is necessary and convenient encompasses regulation of monopoly for destructive competition, prevention of undesirable competition, and prevention of duplication of service. The safety and adequacy of facilities are proper criteria in evaluating necessity and convenience as are the relative experience and reliability of competing suppliers. Furthermore, it is within the discretion of the Public Service Commission to determine when the evidence indicates the **public interest** would be served in the award of the certificate. [²¹]

Those factors do not appear in the arguments that OPC offers in support of the request.

As to communication between customers and the Commission, OPC argues:

[OPC] believes that customers should have the opportunity to voice their concerns, if any, to the Commission regarding the proposed transfer. [²²]

But customers have already made full and effective use of that opportunity, Staff notes:

The Commission held a local public hearing for Hickory Hills customers as recently as August 11, 2014, as part of Case No. WR-2014-0167. Public meetings were also held in 2013. Other meetings, formal and informal, have been held over the several years that Hickory Hills has been a problem system. Staff is of the opinion that another local public hearing is unnecessary in this case. [²³]

²⁰ Section 393.170.3, RSMo 2000.

²¹ *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Comm'n of Missouri*, 848 S.W.2d 593, 597-98 (Mo. App. W.D.1993). Emphasis added.

²² EFIS No. 14 (October 9, 2015) *The Office of the Public Counsel's Response to Staff Recommendation and Request for Local Public Hearing* page 3 paragraph 9.

²³ EFIS No. 16 (October 13, 2015) *Staff's Opposition to OPC's Request for Local Public Hearing* page 2 paragraph 6.

OPC does not argue otherwise and suggests no change in its clients' concerns from those previous actions, local public hearings, and meetings.

Nevertheless, as to communications between the customers and MAWC, OPC raises important matters:

. . . [OPC] is concerned that customers of Hickory Hills have not been properly notified of the pending transfer [;²⁴]

and:

Additionally, customers should have the opportunity to meet the potential owner of their water and sewer system and ask questions regarding future plans for their utility. [²⁵]

OPC does not describe any improper notice or suggest what constituted proper notice that did not occur, and MAWC alleges that sufficient communication has occurred:

The customers of Hickory Hills have been extremely involved with the various efforts to address the water and sewer service issues. It is MAWC's belief that they are well aware of the proposals. [²⁶]

MAWC's concern now, like Staff and DNR, is for delay of a much-needed resolution. A local public hearing, with testimony before the Commission that is under oath and subject to cross-examination, would delay that resolution and is not necessary for the Commission to reach its decision in this case.

2. Arguments of MAWC, Staff, and DNR

Further, MAWC, Staff, and DNR implore the Commission to dispense with further delay. MAWC argues:

²⁴ EFIS No. 14 (October 9, 2015) *The Office of the Public Counsel's Response to Staff Recommendation and Request for Local Public Hearing* page 3 paragraph 7.

²⁵ EFIS No. 14 (October 9, 2015) *The Office of the Public Counsel's Response to Staff Recommendation and Request for Local Public Hearing* page 3 paragraph 9.

²⁶ EFIS No. 17 (October 13, 2015) *Response to Staff Recommendation and Public Counsel Response* page 4 to 5 paragraph 4.

Thus, in this case, holding a local public hearing would merely add unnecessary cost and time to the process. [²⁷]

Staff argues:

The Commission should approve the proposed transaction without delay, as quickly as possible, and thereby provide to the ratepayers of Hickory Hills the relief they have sought for some years now. [²⁸]

DNR argues:

Therefore, the PSC should approve the joint application as expeditiously as possible. [²⁹]

The reason for the urgency is what MAWC describes as “a non-compliant system that needs immediate attention.”³⁰

DNR elaborates, recounting that DNR and the:

. . . receiver, the residents, and PSC staff have made exhaustive efforts to get an adequate sewage treatment system in place at Hickory Hills, and in spite of those efforts, funds have not been available to replace the system, and the adverse environmental effects and contamination of the neighboring stream have continued unabated for years, with no relief in sight until MAWC came along with an offer to purchase and replace the system. [³¹]

Staff amplifies that argument, noting Hickory Hills’ history before the Commission, including receivership and past actions.

²⁷ EFIS No. 17 (October 13, 2015) *Response to Staff Recommendation and Public Counsel Response* page 4 to 5 paragraph 4.

²⁸ EFIS No. 21 (October 23, 2015) *Staff's Reply to OPC*.

²⁹ EFIS No. 23 (October 26, 2015) *Missouri Department of Natural Resources' Reply to MAWC's Response to Staff Recommendation and Public Counsel Response* page 2.

³⁰ EFIS No. 17 (October 13, 2015) *Response to Staff Recommendation and Public Counsel Response* page 4, paragraph 4.

³¹ EFIS No. 23 (October 26, 2015) *Missouri Department of Natural Resources' Reply to MAWC's Response to Staff Recommendation and Public Counsel Response* page 2.

Hickory Hills . . . has been a matter of ongoing concern to the Commission and its Staff, as well as DNR, OPC, and its customers, since before it went into receivership in 2007. [³²]

DNR supports the applications because it is satisfied that it can make progress with MAWC to address environmental concerns of the Hickory Hills system.

The arguments of DNR are persuasive because DNR's only interest in this action is the enforcement of environmental laws. Also persuasive are the arguments of Staff. Staff is not an agency statutorily charged to advocate an interest, like DNR and OPC, and does not possess a substantive interest of its own. Staff is above any specific interest and so provides the Commission with neutral, yet expert, advice on public interest and detriment. Staff's arguments against the request are especially persuasive in this context.

3. Ruling

In any event, OPC does not oppose any relief sought in this action.³³ There is no dispute as to the applications so no practical relief would result from a local public hearing. For those reasons, the Commission will deny the request.

It is possible, however, to accommodate both efficient remediation and encourage communication between the public and MAWC. To accomplish this, the Commission will order MAWC to convene a meeting with Hickory Hills' customers within 60 days of this order's effective date. The meeting's purpose is to inform Hickory Hills'

³² EFIS No. 16 (October 13, 2015) *Staff's Opposition to OPC's Request for Local Public Hearing* page 2 paragraph 6.

³³ OPC has made clear that, while it intends to preserve certain theories for future actions, it has renewed its non-opposition. EFIS No. 22 (October 26, 2015) *The Office of the Public Counsel's Response to MAWC*.

customers about the transfer of ownership and operation. OPC, and any other party, may attend that meeting.

II. The Applications for Transfer of Assets

MAWC's response to Staff's recommendation included a reply to OPC's response, and drew a reply and sur-reply from Staff,³⁴ OPC,³⁵ and DNR.³⁶

A. Standards

The standard governing the applications for transfer is the public interest, which means, in this context:

[N]o such change shall be made as would work to the public detriment. 'In the public interest,' in such cases, can reasonably mean no more than 'not detrimental to the public.'" [³⁷]

The public interest also determines the applications for certificates as part of the statutory standard of convenience and necessity.³⁸ That standard includes a variety of considerations:

The term "necessity" does not mean "essential" or "absolutely indispensable", but that an additional service would be an improvement justifying its cost. Additionally, what is necessary and convenient encompasses regulation of monopoly for destructive competition, prevention of undesirable competition, and prevention of duplication of service. The safety and adequacy of facilities are proper criteria in evaluating necessity and convenience as are the relative experience and reliability of competing suppliers. Furthermore, it is within the discretion of the Public Service

³⁴ EFIS No. 19 (October 15, 2015) *Response to Order Directing Filing*.

³⁵ EFIS No. 22 (October 26, 2015) *The Office of the Public Counsel's Response to MAWC*.

³⁶ EFIS No. 23 (October 26, 2015) *Missouri Department of Natural Resources' Reply to MAWC's Response to Staff Recommendation and Public Counsel Response*.

³⁷ *State ex rel. City of St. Louis v. Pub. Serv. Comm'n of Missouri*, 73 S.W.2d 393, 400 (Mo. banc 1934).

³⁸ Section 393.170.3, RSMo 2000. The applications for seek relief in the alternative: a transfer of current certificates, or issuance of new certificates, to MAWC. EFIS No. 1 (July 28, 2015) page 6 paragraph (A).

Commission to determine when the evidence indicates the **public interest** would be served in the award of the certificate. [³⁹]

The Commission also has authority to impose conditions on the certificates, including those that Staff proposes and the parties discuss, as follows.⁴⁰

B. Proposed Conditions

Staff recommends granting the applications subject to certain conditions,⁴¹ which the parties discuss in the filings described above, but which are ultimately unopposed by any party. DNR supports the recommendation⁴² and does not take any position in the other parties' discussion of the conditions.⁴³ OPC expresses certain theories regarding rates, rate base, and rate design that it intends to preserve for a future general rate action.⁴⁴ But OPC but does not oppose the applications or any proposed condition.⁴⁵

Between MAWC and Staff, one clarification remains. MAWC cites the statute requiring the Commission to approve the consolidation of the Hickory Hills system with a service territory of MAWC:

Upon the date of the acquisition of a small water utility by a large water public utility, whether or not the procedures for

³⁹ *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Comm'n of Missouri*, 848 S.W.2d 593, 597-98 (Mo. App. W.D.1993). Emphasis added.

⁴⁰ Section 393.170.3, RSMo 2000.

⁴¹ EFIS No. 13 (October 2, 2015) *Staff Recommendation*.

⁴² EFIS No. 15 (October 13, 2015) *Missouri Department of Natural Resources' Response to Staff's Recommendation*.

⁴³ EFIS No. 23 (October 26, 2015) *Missouri Department of Natural Resources' Reply to MAWC's Response to Staff Recommendation and Public Counsel Response*.

⁴⁴ While every Commission order is immune from collateral attack under Section 385.550, RSMo 2000, the Commission may decide to abrogate any earlier order under Section 386.490.2, RSMo Supp. 2013.

⁴⁵ EFIS No. 14 (October 9, 2015) *The Office of the Public Counsel's Response to Staff Recommendation and Request for Local Public Hearing* page 2 paragraph 3; EFIS No. 22 (October 26, 2015) *The Office of the Public Counsel's Response to MAWC*.

establishing ratemaking rate base provided by this section have been utilized, the small water utility shall, **for ratemaking purposes, become part of an existing service area**, as defined by the public service commission, of the acquiring large water public utility that is either contiguous to the small water utility, the closest geographically to the small water utility, or best suited due to operational or other factors. This **consolidation shall be approved** by the public service commission **in its order approving the acquisition.** [⁴⁶]

MAWC proposes its St. Louis Metro service area,⁴⁷ and Staff supports that choice,⁴⁸ so the Commission will approve that consolidation.

Therefore, the Commission will grant the applications, include conditions on the certificates, and make this order effective in ten days because of the environmental hazards described above.

THE COMMISSION ORDERS THAT:

1. The request for local public hearings is denied.
2. Missouri-American Water Company (“MAWC”) may operate the systems of Hickory Hills Water & Sewer Co., Inc. (“Hickory Hills”) on an interim basis. Any such operation shall:
 - a. Include working with the Missouri Department of Natural Resources “(DNR)” to resolve the sewer noncompliance as quickly as possible.
 - b. Be subject to the current Hickory Hills tariffs until the effective date of adoption notice tariff sheets as set forth in ordered paragraph 4.a.

⁴⁶ Section 393.320.6, RSMo Supp. 2013. Emphasis added.

⁴⁷ EFIS No. 17 (October 13, 2015) *Response to Staff Recommendation and Public Counsel Response* page 2 to 3 paragraph 3.a

⁴⁸ EFIS No. 19 (October 15, 2015) *Response to Order Directing Filing* second and third pages paragraph 9 and 10.

3. The applications for transfer of assets (“transfer”), as described in the body of this order, are granted.

- a. Within five business days after closing on the transfer has occurred, MAWC shall file a notice that the closing has occurred.
- b. The consolidation for ratemaking purposes of Hickory Hills’ service area with the St. Louis Metro service area of MAWC is approved.

4. The applications for certificates of convenience and necessity (“certificates”), as described in the body of this order, are granted. Certificates shall issue to MAWC and shall be effective on the closing date of the transfer. The certificates shall be subject to the following conditions.

- a. Within ten days after closing on the transfer, MAWC shall file adoption notice tariff sheets adopting the existing water tariff, and sewer tariff, of Hickory Hills including existing rates, rules and service area, and proposing a 30-day effective date.
- b. MAWC shall adopt the current Hickory Hills depreciation rates as ordered in File Nos. WR-2009-0151 and SR-2009-0154.
- c. MAWC shall keep Hickory Hills’ financial books and records for rate base, revenues, and operating expenses in accordance with the NARUC Uniform System of Accounts.
- d. MAWC shall maintain and retain proper rate base records on a going forward basis.
- e. For purposes of rate base for plant-in-service and depreciation reserve, MAWC’s books and records of respect to the Hickory Hills system shall

include the plant-in-service, depreciation reserve, CIAC, and CIAC amortization balances as calculated by the Audit Staff valued as of August 31, 2015. The actual values for plant-in-service, depreciation reserve, CIAC, and CIAC amortization shall be subject to review and adjustment in MAWC's next rate case.

- f. MAWC may book a regulatory asset in the amount approximately as set forth in the *Staff Recommendation*, highly confidential version, Memorandum page 7 paragraph 8. Such regulatory asset shall be split equally between water and sewer, associated with amounts paid related to for Hickory Hills' receivership fees and loan payoff. That regulatory asset shall be amortized over a five-year period, beginning the first month following the effective date of this order.
- g. MAWC shall not recognize for accounting purposes any "acquisition adjustment" or "acquisition premium" associated with the transfer.
- h. Within 30 days after closing on the assets, MAWC shall submit payment of the delinquent FY2014 and FY2015 assessments, and payment of the FY2016 assessment of an amount to keep it current according to the option of quarterly payments.
- i. Within 30 days of this order's effective date, MAWC shall ensure adherence to Commission Rule 4 CSR 240-13.020(1) regarding the production of customer bills with a 26-35 days of service billing period.
- j. MAWC shall distribute to Hickory Hills customers an informational brochure detailing the rights and responsibilities of MAWC and its

customers before the first billing from MAWC, consistent with the requirements of Commission Rule 4 CSR 240-13.040(3).

- k. MAWC shall include the Hickory Hills customers along with existing customers for its monthly reporting to the Commission's Consumer and Management Analysis Unit ("CMAU," formerly the Engineering Management Services Unit) staff for 1) Average Abandoned Call Rate, 2) Average Speed of Answer, 3) 1st Call Effectiveness, 4) Average Customer Response Time, 5) Call Volumes, 6) Call Center Staffing Levels, including job titles and the number of people employed in each category, 7) the number of actual monthly meter reads in total and by district, 8) the number of monthly estimated meter reads, 9) the number of consecutive estimated reads and 10) the meter reader staffing levels.
- l. MAWC shall provide adequate training for the correct application of rates and rules to all customer service representatives before HickoryHills customers receiving their first bill from MAWC.
- m. MAWC shall provide to the CMAU staff on a monthly basis a document detailing the bills to Hickory Hills customers that were issued for more than 35 days of service.
- n. MAWC shall provide to the CMAU staff within 30 days of billing a sample of ten billing statements of the first three months' bills issued to Hickory Hills customers, in order to check for accuracy.

- o. MAWC shall provide an example of its communication with the Hickory Hills customers regarding MAWC's acquisition of Hickory Hills and how MAWC can be reached.
- p. MAWC shall work with DNR to resolve the sewer noncompliance as quickly as possible.
- q. Within 60 days of the effective date of this order, MAWC shall convene an informational meeting as described in the body of this order.

5. Nothing in this order precludes the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the applications for transfer or certificates, including expenditures related to the certificated service area, in any later proceeding.

6. This order shall be effective on November 14, 2015.

BY THE COMMISSION



A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp,
and Coleman, CC., concur.

Jordan, Senior Regulatory Law Judge