

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 20th day of
May, 2008.

In the Matter of the Application of Missouri-
American Water Company for the Approval of
an Agreement with MLM Properties, Inc., a
Corporation, of a Water and/or Sanitary Sewer
Service Agreement

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Case No. WO-2008-0301

ORDER GRANTING VARIANCE FROM TARIFF

Issue Date: May 20, 2008

Effective Date: May 30, 2008

On March 11, 2008, Missouri-American Water Company submitted to the Commission a January 7, 2008 Water and/or Sanitary Sewer Service Agreement it reached with MLM Properties, Inc., a developer constructing homes in MAWC's Warren County service area. MAWC seeks Commission approval of this agreement, saying that the agreement is necessary for the expansion and improvements to the Incline Village service area in Warren County, Missouri, as approved in Commission Cases WA-2008-0012 and SA-2008-0019.

On March 12, the Commission added MLM Properties as a party to this case, and gave notice, allowing potential intervenors until April 1 to request intervention. The Commission received no intervention requests.

On May 1, the Staff of the Commission filed its Recommendation, to which no party responded. Staff stated that Rule 10 of MAWC's tariff does not require Commission approval of the agreement, and specifically asked the Commission to take no action on the

agreement. Staff further stated that Rule 11 of MAWC's tariff does not allow it to require a developer to reimburse MAWC for sewer extension costs when the extension is constructed by the developer. However, Staff believes that it is reasonable for MAWC to collect such costs in this instance, and Staff requests the Commission to grant MAWC a variance from its Rule 11 so that it can use its agreement with MLM Properties.¹

Commission Rule 4 CSR 240-2.080(15) allows parties ten days to respond to pleadings. No party responded to Staff's Recommendation.

Rule 10

Staff disagrees with MAWC that Rule 10 of MAWC's tariff requires Commission approval of the agreement. Rule 10 requires Commission approval of an extension agreement if the customer to be served proposes to discharge an abnormally high volume or strength of waste as to require an enlargement of MAWC's existing sewage treatment plant, the construction of a temporary sewage treatment plant, and/or the construction or reconstruction of sewer lines. None of the provisions of Rule 10 are applicable to MAWC here.

Staff points out that MAWC's predecessor, Warren County Water and Sewer Co., had Rule 10 in its tariffs, and that MAWC adopted Warren County Water and Sewer's tariffs after taking over the water and sewer systems from Warren County Water and Sewer. This type of rule is more suited to small water and sewer companies, as MAWC regularly enters into extension agreements with developers and individual customers.

¹ Although MAWC did not expressly ask for waiver of that rule, it asked for "such further relief as is consistent with this application." Staff believes it would be pointless for MAWC to be required to amend its application for this relief.

Rule 11

Staff argues that the agreement fails to comply with MAWC's Rule 11, otherwise known as its "extension rule". Section B of that rule covers the situation where the party requesting the extension, such as MLM Properties is requesting here, undertakes the construction. As opposed to Section A of the rule, which allows MAWC to collect overhead and engineering expenses, Section B of the rule is silent regarding engineering and overhead expenses that MAWC may recover. Yet, MAWC's agreement with MLM Properties provides for MAWC to recover those expenses, anyway.

In spite of Rule 11's prohibition of MAWC recovering those expenses, Staff again points out how MAWC adopted this rule when it took over Warren County Water and Sewer's system, and indicates that this rule is more appropriate for small water and sewer companies. For example, small companies rely more on design engineers and contractors, and small water and sewer company owners often live in their own service areas, thus decreasing those expenses for small companies. In contrast, MAWC's recovery of those expenses may be reasonable and necessary, so that existing customers do not subsidize part of the extension costs. For this reason, Staff recommends that the Commission grant MAWC a variance from that rule so that it may provide service to MLM Properties and the new customers who will eventually connect.²

Commission Rule 4 CSR 240-2.060(4) allows the Commission to waive tariff provisions for good cause. The Commission finds good cause in waiving Rule 11 of MAWC's sewer tariff, so that MAWC may provide service to MLM Properties as it normally would serve other new developments, so that customers do not subsidize part of

² Staff further recommends MAWC consider updating this portion of its tariff for its Warren County service area so that it is consistent with the way MAWC normally conducts business for new developments.

MLM Properties' extension costs, and so that MAWC and MLM Properties may execute their agreement.

IT IS ORDERED THAT:

1. The Commission neither approves nor disapproves the Water and/or Sanitary Sewer Service Agreement Missouri American Water Company reached with MLM Properties, Inc., on January 7, 2008, regarding the Incline Village service area in Warren County, Missouri.

2. Rule 11 of Missouri-American Water Company's sewer tariff is waived for purposes of executing the agreement with MLM Properties, Inc.

3. This order shall become effective on May 30, 2008.

4. This case may be closed on May 31, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

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

Pridgin, Senior Regulatory Law Judge