

At a session of the Public Service Commission held at its office in Jefferson City on the 3rd day of November, 2010.

File No. WO-2011-0015

Effective Date: November 13, 2010

Applicants filed their application on July 15, 2010. The Commission issued notice of the application and set an intervention deadline of August 9. No one requested intervention. On August 25, the Staff of the Commission informed the Commission that Staff would file its recommendation on October 13 and recommended that the Commission direct Loma Linda to send notice of this proposed transfer to its customers. Upon the Commission's direction, Loma Linda notified its customers. Staff filed its recommendation on October 13, with a supplement filed on October 15. No party has responded to Staff's recommendation and no customer has responded to the notice.

Application

The Applicants filed their verified application on July 15, 2010, under Section 393.190 and Commission rule 4 CSR 240-3.605 requesting authority for Missouri-American to acquire substantially all of the assets, including Loma Linda's Certificate of Convenience and Necessity. Included with the application is a copy of the Asset Purchase Agreement and affidavits from Greg Weeks, Vice President of Missouri-American and Eric Blau, general partner of The Meed Company, LLLP, which is a partner of Loma Linda.

The Applicants state that the proposed transaction is not detrimental to the public interest because: (1) the assets of Loma Linda will be acquired by Missouri-American, a Missouri public utility with considerable expertise in providing water and sewer to residents of Missouri, and will remain subject to the jurisdiction of the Commission; and (2) Missouri-American is fully qualified to own and operate the systems currently being operated by Loma Linda and is able to provide safe, reliable, and affordable service.

Applicants have provided Missouri-American's balance sheet and income statement with adjustments showing the results of the acquisition. Applicants also state that there will be no impact on the tax revenues of any political subdivision.

Through an amendment to their application, Applicants inform the Commission that until the rates, rules, regulations and conditions of service are changed according to law, Loma Linda customers will continue to pay their current rates and that Missouri-American's rules, regulations and conditions of service for the Joplin District shall apply to Loma Linda customers.

Staff Recommendation

On October 13, the Staff of the Commission filed its memorandum, informing the Commission that Loma Linda has 334 customers and its service area is a subdivision near Joplin Missouri. Staff states that Loma Linda's current approved rates for residential water service is a base of \$5.48, with a \$2.47 per 1,000 gallons usage. The bill for a customer using 5,000 gallons is \$17.83. Missouri-American's rates for such service in its Joplin service area is a base of \$16.84, with a per-1,000-gallon usage charge of \$3.8017. A customer using 5,000 gallons is charged \$35.85. Staff recommends that the Commission issue an order that:

- approves the Applicants' request to transfer Loma Linda's water assets to Missouri-American;
- requires the Applicants to notify the Commission, within 5 business days, after the assets have been transferred from Loma Linda to Missouri-American;
- requires the Applicants, if closing on the assets has not occurred within 30 days after the effective date of a Commission order approving this transfer, to file a status report with the Commission 30 days after the effective date of the order, and at the end of each subsequent 30-day period, stating the status of easement negotiations, until closing and the transfer of assets is complete. Alternatively, if the transfer is not expected to be completed, requires the Applicants to file a pleading with the Commission stating such;
- requires Missouri-American, after the assets have been transferred, to revise its Joplin tariff;
- requires Missouri-American to record the value of the amount of Loma Linda plant in service, net of accumulated depreciation and CIAC, at December 31, 2009, based on an adjusted property list;
- requires Missouri-American to use a depreciation rate of 1.8% for the building acquired from Loma Linda, until and unless otherwise ordered by the Commission;

Staff goes on to state that it agrees that the purchase price is appropriate in light of Loma Linda's December 2009, plant in service, less accumulated depreciation and net

contribution in aid of construction. However, Staff continues, the following changes to the property list used to determine the net plant value are recommended¹:

- The July 2009 plant addition and associated accumulated depreciation reserve amount, which were previously recorded as standpipes and reservoirs should be eliminated. These amounts represent tank painting which should have been recorded as maintenance expense rather than plant in service.
- A plant amount and an associated accumulated depreciation reserve amount, previously omitted from the property list, should be included in the buildings account.
- A plant amount also previously omitted from the property list, should be included in the land account.
- A depreciation rate of 1.8% for the additional building acquired from Loma Linda, until changed by the Commission in a subsequent rate proceeding.

With regard to the public interest, Staff states that although there have been no service problems with Loma Linda, acquisition of the system by Missouri-American will result in better service due to the operational reliability and utilization of Missouri-American's water personnel. Staff concludes that the transfer of assets will not be detrimental to the public interest.

Findings of Fact

1. Missouri-American is a Missouri corporation with its principal office and place of business at 727 Craig Road, St. Louis, Missouri 63141 and operates as a water corporation, a sewer corporation and a public utility as defined in Section 386.020, RSMo.²

¹ The specific dollar amounts are omitted but are included in Staff's Highly-Confidential version of its Memorandum.

² *Joint Application*, filed on July 13, 2010.

2. Loma Linda is a Missouri general partnership with its principal office and place of business at 5036 Butterfield Drive, Joplin, Missouri 64804 and operates as a water corporation and a public utility as defined in Section 386.020 RSMo.³

3. Missouri-American is a corporation in good standing with the State of Missouri, with a certificate of such submitted in Commission Case No. SA-2007-0316.⁴

4. Loma Linda has attached to the application a copy of its partnership agreement.⁵

5. Neither Missouri-American nor Loma Linda has any pending action or final unsatisfied judgment or decision against it from any state or federal agency or court which involves customer service or rates, which action, judgment or decision has occurred within three years of the date of the application.⁶

6. Neither Missouri-American nor Loma Linda has any overdue assessment or annual report.⁷

7. Included with the application are the verified affidavits of Greg Weeks, Vice President of Missouri-American, and Eric Blau, general partner of The Meed Company, which is a partner of Loma Linda.⁸

8. The Applicants state that Missouri-American intends to purchase substantially all of the assets of Loma Linda.⁹

³ *Id.*

⁴ See Commission Case No. SA-2007-0316.

⁵ *Joint Application, Appendix B.*

⁶ *Joint Application.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

9. The Applicants attached to the application an Asset Purchase Agreement.¹⁰

10. The Applicants state that the proposed transaction is not detrimental to the public interest because: (1) the assets of Loma Linda will be acquired by Missouri-American, a Missouri public utility with considerable expertise in providing water and sewer to residents of Missouri, and will remain subject to the jurisdiction of the Commission; and, (2) Missouri-American is fully qualified to own and operate the systems currently being operated by Loma Linda and is able to provide safe, reliable, and affordable service.¹¹

11. Applicant has provided the balance sheet and income statement of Missouri-American, showing the results of the acquisition of the property.¹²

12. Applicants state that the transfer will not result in any impact on the tax revenues of the Loma Linda subdivision.¹³

Conclusions of Law

1. The Commission has found that Loma Linda operates as a water corporation. The Commission therefore concludes that under Section 390.190, RSMo, the transfer of its assets, which are necessary or useful in the performance of its duties to the public, must be approved by the Commission. Recognizing the Commission's jurisdiction in this regard, Applicants have filed an application requesting such authorization.

2. Commission rules 4 CSR 240-2.060 and 3.605 require that Applicants provide certain information to the Commission. The Commission has found that Applicants have provided the necessary information and concludes that Applicants are in compliance with the Commission's rules.

¹⁰ *Appendix B, to the Joint Application.*

¹¹ *Joint Application.*

¹² *Appendix D, to the Joint Application.*

¹³ *Joint Application.*

3. Because the standard by which the Commission must approve or reject the application is not set out explicitly in Section 393.190, it is inferred that approval of the application must not be detrimental to the public interest.¹⁴

The Applicants, as well as the Staff of the Commission, agree that the transfer will not be detrimental to the public interest. Both agree that Missouri-American is fully qualified to own and operate the system currently being operated by Loma Linda and is able to provide safe, reliable, and affordable service. They also state that the acquisition may result in better service due to the operational reliability and utilization of Missouri-American's water personnel.

The Commission concludes that approval of the application will not be detrimental to the public interest.

Decision

Applicants request for approval of a transfer of assets is in compliance with the Commission's rules and such transfer will not be detrimental to the public interest. The Commission realizes that the customers of Loma Linda will continue to pay their current rates until modified according to law but will be served under the rules, regulations and conditions of Missouri-American's Joplin District.

Based on the verified pleadings, the Commission will approve the application and order that the conditions recommended by Staff be imposed. Upon notification of the completed transfer and the revision of Missouri-American's tariff reflecting the expanded service area, the Commission will cancel the Certificate of Service Authority granted to Loma Linda.

¹⁴ *State ex rel. City of St. Louis v. Public Service Commission of Missouri et al.*, 73 S.W.2d 393 (Mo. banc 1934).

THE COMMISSION ORDERS THAT:

1. The application to transfer the water utility assets of Loma Linda Water Company to Missouri-American Water Company is approved.
2. Missouri-American Water Company shall notify the Commission within five business days after the assets have been transferred.
3. If the transfer has not occurred within 30 days, Missouri-American Water Company shall file a status report explaining why. Such status report shall be filed at every 30-day interval until the transfer is closed.
4. Upon transfer of the assets, Missouri-American Water Company shall amend its Joplin tariff to include the area previously served by Loma Linda Water Company.
5. Missouri-American Water Company shall record the value of the Loma Linda's plant in service, net of accumulated depreciation and Contributions in Aid of Construction, at December 31, 2009, based on the adjusted property list discussed above and set out in the Staff of the Commission's Memorandum.
6. With the exception of the acquired building, which shall be depreciated at a rate of 1.8%, Missouri-American Water Company shall use its depreciation rates for any property transferred to it from Loma Linda.

7. This order shall become effective on November 13, 2010.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'S. C. Reed', written over a horizontal line.

Steven C. Reed
Secretary

(S E A L)

Davis, Jarrett, Gunn, and Kenney, CC., concur.
Clayton, Chm., absent.

Jones, Senior Regulatory Law Judge