

**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI**

In the Matter of Missouri-American Water     )  
Company for a Certificate of Convenience     )  
and Necessity Authorizing it to Install, Own,     )     File No. SA-2021-0017  
Acquire, Construct, Operate, Control, Manage,     )  
And Maintain a Sewer System in and around     )  
The City of Hallsville, Missouri.     )

**DISTRICT’S REPLY TO MAWC’S RESPONSE IN OPPOSITION TO  
DISTRICT’S APPLICATION TO INTERVENE**

**COMES NOW** Boone County Regional Sewer District (“District”) under 4 CSR 240-2.075, and for its reply to Missouri-American Water Company’s (“MAWC”) application to intervene and become a party in this case states as follows:

**INTRODUCTION**

1.     The Commission should grant the District’s application to intervene because the District meets the legal standard for intervention in 4 CSR 240-2.075 in that: (1) the District has an interest MAWC’s application for authority to acquire the City of Hallsville’s (“Hallsville”) sewer system and a certificate of convenience and necessity that is different from that of the general public and this interest may be adversely affected by an order in this case, and (2) granting the District intervention would serve the public interest.

**The District’s Service Area Includes Hallsville Following the Sale of Hallsville’s  
Sewer System**

2.     MAWC’s assertion that the District’s Level 2 Continuing Authority does not include Hallsville is disingenuous and incorrect.

3. It is undisputed that:
  - a. The Missouri Clean Water Commission has approved the District, along with the City of Columbia and Boone County, as the Level 2 Continuing Authority for Boone County;
  - b. The District's service area is "all of Boone County not served by a municipal wastewater system."<sup>1</sup>
  - c. Hallsville is a municipality located in Boone County; and
  - d. Hallsville currently owns and operates its sewer system in Boone County for the benefit of the Hallsville community.<sup>2</sup>
4. It is axiomatic that a municipal wastewater system is a sewer system owned by a municipality.
5. If the Commission grants MAWC authority to acquire Hallsville's sewer system, Hallsville and its surrounding community will no longer be served by a municipal wastewater system but rather a sewer system owned by MAWC, a sewer company regulated by this Commission.
6. Thus, the sale results in Hallsville and its former sewer system being within the District's service area.

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<sup>1</sup> MAWC's Response in Opposition to BCRSD's Application to Intervene ("MAWC Opp.") ¶ 8.

<sup>2</sup> MAWC Opp. ¶ 6 ("To provide service to the proposed area, MAWC will purchase the sewer system from the City of Hallsville (Hallsville). Hallsville is a Fourth Class City located in Boone County. Hallsville serves about 664 accounts.")

7. The District has recognized the effect of such a sale on its service area and has modified its plan for Boone County accordingly. *Draft Facility Plan, Amendment 1 dated August 10, 2020*, a partial copy of which is attached as **Appendix A**.

8. The District's *Draft Facility Plan* states, "This Facility Plan also includes the piping infrastructure for conveying wastewater flows from the City of Hallsville, MO to the District's Rocky Fork WWTF." **Appendix A** at 1-2.

9. Further, the District's amended *Draft Facility Plan* is consistent with the District's power as a Level 2 Continuing Authority for Boone County and the permitting regulations adopted by the Missouri Department of Natural Resources ("DNR").

10. Under DNR's regulations, a person cannot operate a sewer system without first applying for and obtaining an operating permit from DNR that designates a continuing authority with responsibility for ensuring compliance with permit conditions. 10 CSR 20-6.010(2)(A).

11. DNR's regulation ranks continuing authorities in order of preference, with Level 1 as the highest with the greatest jurisdiction and power to Level 5 as the lowest. 10 CSR 20-6.010(2)(B).<sup>3</sup>

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<sup>3</sup> 10 CSR 20-6.010(2)(B) governing continuing authorities provides that:

Continuing authorities are listed in preferential order in the following paragraphs. A level three (3), four (4), or five (5) applicant may constitute a continuing authority by showing that the authorities listed under paragraphs (B)1.-2 of this rule are not available; do not have jurisdiction; are forbidden by state statute or local ordinance from providing service to the person; or that it has met one of the requirements listed in paragraphs (2)(C).1-7 of this rule.

A Level 2 Continuing Authority is defined as:

12. DNR's regulation prohibits the issuance of an operating permit to an applicant that is or will use a lower continuing authority when a higher continuing authority is available, and such use would conflict with "any area-wide management plan" or where the applicant is unable to submit a waiver from the higher authority.<sup>4</sup>  
10 CSR 20-6.010(2)(C).

13. For MAWC to legally own and operate Hallsville's sewer system, MAWC must apply to DNR for a permit designating it as a continuing authority for the sewer system.

14. As a matter of law, MAWC is a Level 3 Continuing Authority. 10 CSR 20-6.010(2)(B)3.

15. The District, as a Level 2 Continuing Authority, is a higher preference continuing authority than MAWC with greater authority in Boone County than MAWC.

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A municipality, public sewer district, or governmental entity which currently provides wastewater collection and/or treatment services on a regional or watershed basis as outlined in section (2)(F) of this rule and approved by the Missouri Clean Water Commission.

10 CSR 20-6.010(2)(B)2.

A Level 3 Continuing Authority is defined to include:

A ... sewer company regulated by the Public Service Commission (PSC) other than one which qualifies under paragraph (2)(B)1. or 2. of this rule or a public water supply district. Permits shall not be applied for by a continuing authority regulated by the PSC until the authority has obtained a certificate of convenience and necessity from the PSC.

10 CSR 20-6.010(2)(B)3.

<sup>4</sup> The regulation also contains a list of six other items that DNR may consider. *Id.*

16. There is no Level 1 Continuing Authority in Boone County such that the District is the highest level continuing authority in Boone County.

17. The District's plan for its Boone County service area is for the District to provide wastewater collection and treatment services to persons in and around Hallsville, not MAWC. **Appendix A.**

18. The District will not waive its authority in Boone County to allow MAWC to provide sewer services to the Hallsville community.

19. If the Commission issues a final order granting MAWC authority to acquire Hallsville's sewer system and a certificate of convenience and necessity, such action will usurp the District's authority as a Level 2 Continuing Authority in its service area and be contrary to the District's plan for Boone County.

20. As such, the District plainly has an interest in this case that is different from that of the general public and that may be adversely affected by the Commission's issuance of an order in this case.

21. The public interest also is served by allowing the District to intervene because the District, in its role as a Level 2 Continuing Authority, acts to protect the public from pollution by working to eliminate noncompliant sewer systems and maintaining affordable rates for sewer service.

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**Granting the Relief Sought by MAWC Will Result in a Disruption of Service to the District's Customers and Hallsville's Breach of the Cooperative Agreements**

22. MAWC admits that the District has two Cooperative Agreements with Hallsville that obligate Hallsville to provide sewer services to District customers through 2039.<sup>5</sup>

23. MAWC claims these agreements do not provide the District a basis for intervention because the agreements are not binding on MAWC.

24. Thus, per MAWC, the purchase transaction at issue in this case authorizes MAWC to disrupt sewer service to the District's customers and results in Hallsville breaching its agreements with the District!

25. MAWC's position that its request for this Commission to approve a transaction with such significant and disastrous consequences does not provide a sufficient interest for the District to intervene is preposterous—if the threat of Hallsville's breach of its contracts with the District and MAWC's disruption of service to the District's customers does not meet the standard for intervention, then the District cannot fathom any circumstances that would.

26. The purpose of the intervention standard in 4 CSR 240-2.075, as noted by MAWC, is to prevent "strangers" from urging claims in a case, not to exclude parties like

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<sup>5</sup> MAWC Opp. ¶ 10.

the District that have legitimate interests that may be adversely impacted by an order issued in a case.<sup>6</sup>

27. In any event, MAWC's analysis of the cooperative agreements is incorrect. The cooperative agreements are binding on MAWC. The agreements do not contain express "inuring to the benefit" language because when the agreements were negotiated the sale of Hallsville's sewer system to a private entity was not even considered. As such, the language was unnecessary and would have been superfluous.

28. Further, under Hallsville's Request for Proposals for the purchase of its sewer system, pursuant to which Hallsville accepted MAWC's proposal and which is part of the terms of the sale, the purchase agreement between Hallsville and MAWC requires MAWC to honor the cooperative agreements.

29. The RFP indicates that its sewer system includes the District's customers, stating:

### **2.1 Description of the System**

The City of Hallsville Wastewater System sanitary sewer system consists of 13 miles of gravity sewers and 1.5 miles of forced main components serving the community of Hallsville. The City currently has 665 sewer customers. Future needs will include the current expansion in Douglas Pointe Subdivision of 72 lots, the approved Echo Ridge Subdivision of approximately 226 lots, and the approved Silver Creek Subdivision with 7 lots. The City has also signed an agreement with Boone County Regional Sewer District (BCRSD) to connect Sunny Slope Subdivision's 17 customers to the City's sewer system. The agreement allows BCRSD to bill the customers and maintain the sewer lines with a portion of the rates to be paid to the City.

**Appendix B** at p. 5.

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<sup>6</sup> MAWC Opp. ¶ 5.

**Hallsville's Citizens Did Not Vote to Sell the Sewer System to MAWC**

30. MAWC's representation that Hallsville's citizens voted to sell the sewer system to MAWC is patently false.

31. As is clear from the face of Hallsville Ordinance No. 370 cited by MAWC, the ballot question presented to the voters of Hallsville was:

**Shall the wastewater (sewer) utility owned by the City of Hallsville, Missouri, be sold?**

YES [ ]

NO [ ]

**Appendix C** at p. 1.

32. As such, Hallsville's citizens could not have and did not approve the sale of its sewer system to MAWC or anyone else because that was not the ballot question before them.

33. By voting yes on the ballot question, the sole action approved by Hallsville's citizens was the sale of the sewer system, not the purchaser.

34. It should also be noted that these same citizens are residents of the District's service area, Boone County, and that these citizens also voted to approve bonding for the District that the District uses to protect their and the public's interest in preventing pollution and maintaining affordable sewer rates.

**CONCLUSION**

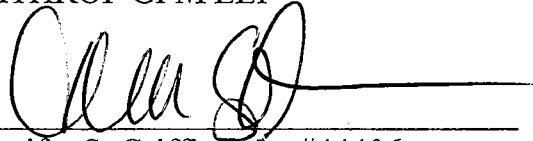
35. For all the above reasons, the Commission should grant the District's Application to Intervene because the District meets the legal standard for intervention. The District has a different interest than that of the general public in MAWC's



application for authority to acquire Hallsville's sewer system and for a certificate of convenience and necessity. The District's interest may be adversely affected by the Commission's final order in this case. In addition, granting the District's Application to Intervene would serve the public interest because of the District's role of protecting the its service area from pollution, keeping service rates affordable, and serving all current and prospective customers in its service area.

WHEREFORE, the District respectfully requests the Commission to issue an order granting the District's Application to Intervene.

LATHROP GPM LLP

A handwritten signature in black ink, appearing to read 'Jennifer S. Griffin', is written over a horizontal line.

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document has be sent via electronic mail or U.S. mail this 8th day of September, 2020, to:

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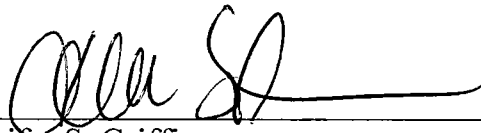
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