

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

In the Matter of the Joint Application of	)	
Missouri-American Water Company and both	)	
Osage Water Company and Environmental	)	
Utilities, L.L.C. for Authority for Missouri-	)	
American Water Company to acquire the water	)	Case No. WO-2005-0086
and sewer assets of both entities, and for the	)	Case No. SO-2005-0087
transfer to Missouri-American Water Company of	)	
Certificates of Convenience and Necessity to	)	
continue operation of such assets as Water and	)	
Sewer Corporations regulated by the Missouri	)	
Public Service Commission.	)	

**MAWC’S PRETRIAL BRIEF**

COMES NOW Missouri-American Water Company (MAWC or the Company), and, as its Pretrial Brief, states as follows to the Missouri Public Service Commission (Commission):

1. On December 22, 2004, the Commission issued its Order Revising Procedural Schedule. This Order, among other things, directed that the parties to file pretrial briefs concisely stating the party’s position on each identified issue.

2. As stated in the Suggested List of Issues document, the list of issues provided by the parties is contingent upon the ultimate execution of a partial stipulation that has not yet been finally negotiated. Accordingly, MAWC’s Pretrial Brief is also contingent upon the completion of such a partial stipulation. If the parties are unable to complete this partial stipulation, MAWC believes that its issues list filed January 6, 2005, would more accurately describe the issues to be decided by the Commission.

## MAWC POSITIONS AS TO ISSUES

**CEDAR GLEN-** Regarding the deep well and the wastewater treatment facilities used by Osage Water Company to provide water and sewer services respectively to Cedar Glen Condominiums (Cedar Glen), may the Commission consider any proposed sale or transfer of those facilities to Cedar Glen in the absence of an agreement or application? If so, is a sale or transfer of those facilities to MAWC, instead of to Cedar Glen, detrimental to the public interest?

**MAWC Position** - No. The Commission may not consider any proposed sale or transfer in the absence of an agreement or application. Because there is no agreement for a sale, any proposal Cedar Glen might make, would not be relevant to this Joint Application.

A somewhat similar situation was addressed by the Commission in *In the Matter of the Application of UtiliCorp United, Inc., d/b/a Missouri Public Service, for authority to sell a part of its franchise, works or system*, 7 Mo. P.S.C. 3d 543 (1998). In that case, the Commission Staff challenged a proposed sale of a natural gas pipeline from UtiliCorp to Williams Gas Pipeline Central as being detrimental to the public interest.

One of the bases for this challenge was Staff's allegation that the proposed agreement was detrimental because there were proposals to purchase the pipeline made by Missouri Gas Energy that the Staff believed were superior to the Agreement that was the subject of the application. The Commission found that "simply because there may have been proposals more favorable to ratepayers at some point does not have much bearing on whether or not the current proposal is detrimental." *Id.* at 545-46.

Any assertion by Cedar Glen that there may at some point in the future be a better proposal, to which Osage Water may or may not agree, is similarly irrelevant in the absence of an agreement or application. Additionally, the Commission should be mindful of the impact the presence or

absence of Cedar Glen water and sewer customers will have on the Osage Water Company rates as Cedar Glen represents approximately 208 of 395 water customers and approximately 208 of 345 sewer customers.

**SHAWNEE BEND-** Should MAWC be authorized to provide service in the area currently described in Osage Water Company's tariff as the "Shawnee Bend" service area?

**MAWC Position** - Yes. This is an area that is described as an existing service territory in Osage Water Company's effective and Commission-approved tariff sheets. MAWC's acquisition of a certificate for this area was contemplated by the parties to the agreements. If MAWC were required to come back to the Commission at a later date with an application for a certificate, would merely add time and expenses that are not necessary.

MAWC believes that the Commission has the authority to transfer this certificated area to MAWC. Section 393.190.1, RSMo contemplates the transfer of certificates stating in part that "The permission and approval of the commission to the exercise of a franchise or permit under this chapter, *or the sale, assignment, lease, transfer, mortgage or other disposition or encumbrance of a franchise or permit under this section . . .*" (Emphasis added).

Additionally, this Commission has purported to "transfer" certificates in the past. An example of this is found in *In the matter of the Application of Southern Missouri Gas Company*, 4 Mo.PSC 3<sup>rd</sup> 383 (1996) (. . . the Commission would customarily either cancel the old certificate and grant a new certificate, or transfer the old certificate – depending upon circumstances – with the effective date of the cancellation, grant, or transfer to be concurrent with the effective date. (386); certificates of convenience and necessity shall be transferred (387)).

*In the Matter of the Joint Application of GTE Midwest and Cass County*, 3 Mo.PSC 3d 306

(1995), the Commission attempted to distinguish situations where it had transferred and where it had issued new certificates. The Commission seemed to indicate acceptance of transfers an entity where it was already a public utility. MAWC is an existing public utility qualified to hold water and sewer certificates of convenience and necessity.

MAWC is primarily interested in obtaining certificates for the geography of the Osage and EU certificated areas, to include the Shawnee Bend area through either transfer or the issuance of a new certificate.

**RATES -** Should MAWC be allowed to file tariff sheets reflecting water and sewer rates for service that are greater than the current Osage Water Company/Environmental Utilities rates in order to enable MAWC to recover a reasonable rate of return on the cost of assets purchased, plus its ongoing operation costs? If so, what water and sewer rates should be reflected in such tariffs? If not, what is the appropriate mechanism for the Commission to consider an increase in rates?

**MAWC Position -**

**Commission Authority**

The Commission may authorize whatever rates it believes are appropriate, with the restriction that the rates must be just and reasonable based upon a consideration of “all relevant factors.”

The Court of Appeals explained as follows concerning the Commission’s authority to set rates without special hearing in *State ex rel. Laclede Gas Company v. Public Service Commission*, 535 S.W.2d 561, 566 (Mo.App W.D. 1976):

The ‘file and suspend’ provisions of the statutory sections . . . lead inexorably to the conclusion that the Commission does have discretionary power to allow new rates to go into effect immediately or on a date sooner than that required for a full hearing as to what will constitute a fair and reasonable permanent rate. This indeed is the intended purpose of the file and suspend procedure. Simply by non-action, the Commission can permit a requested rate to go into effect. Since no standard is specified to control the Commission in whether or not to order a suspension, the determination as to whether or not to do so rests within its sound discretion.

This follows from the Missouri Supreme Court’s reasoning that utility customers have no vested rights in any fixed utility rates and thus no property interest in existing rates that is protected by constitutional due process. *State ex rel. Jackson County v. Public Service Commission*, 532 S.W.2d 20, 31-32 (Mo.banc 1975).

MAWC believes that, much as the Commission would in any case authorizing a new certificated territory, the Commission may authorize in this case the filing of tariff sheets reflecting new rates for customers served by the subject assets. If this is done based upon evidence and after consideration of all relevant factors, those rates should be lawful.

Such rates will necessarily be based upon estimates. The Commission acknowledged in *In the matter of the application of Tartan Energy Company*, 3 Mo. PSC3d 173 (1994) that the setting of initial rates will have estimates involved. “It is difficult to truly calculate cost-based rates for a start-up company, since the actual costs are not and cannot be known with any certainty until the company is up and running. The question, therefore, becomes whether the estimates given are reasonable.” *Tartan Energy* at p. 190.

This having been said, if the Commission does not believe that it has authority to grant an increase in rates that reflects the post transaction rate base, it should clearly state this decision.

The Joint Application reflects that the proposed “transaction is contingent on the Commission setting water and sewer rates and charges which are . . . adequate to provide a rate of return on the purchase price of the assets to be conveyed . . . and that the approval of said increase by the . . . Commission is a condition precedent to [MAWC’s] obligations. . . .”

If the Commission believes it does not have authority to authorize rates that are higher than those currently charged by Osage and EU, it does a great disservice to all the parties to require the

attorneys and witnesses to expend the time and resources to get ready and try a four day hearing.

### **What Rates Should Be Reflected?**

MAWC has computed rates based upon Cedar Glen sewer not being a part of the transaction. This has a significant impact on the rates as Cedar Glen sewer represents approximately 208 of Osage Water Company's 345 sewer customers. The sewer rates that would result if Cedar Glen sewer were later added has been provided in parentheses.

MAWC believes that the following rates should be reflected in the tariffs it is authorized to file for the Osage Water Company and Environmental Utilities service areas to be effective as of closing:

**Water rate** - Monthly Minimum \$16.88

Usage Rate \$ 4.804/1,000 gallons

**Sewer rate** - \$53.12 (\$28.37, with Cedar Glen Sewer)

Contingent upon the following improvements being in-service and used and useful, the following rates should be effective for the Osage Water Company and Environmental Utilities service areas effective six months after closing:

#### **Improvements** -

OSHA compliance (\$28,000)  
Disinfection at wells (\$20,160)  
Install UV at sewer plants (\$50,400)  
Install control system (\$33,600)  
Improvements to filters KK (\$28,000)  
Improvements to filters CBay (\$28,000)  
Purchase lab equipment (\$5,600)  
Fencing (\$84,560)

**Water rate** - Monthly Minimum \$19.67

Usage Rate \$ 5.600/1,000 gallons

**Sewer rate** - \$59.31 (\$31.49, with Cedar Glen sewer)

Contingent upon the following improvements being in-service and used and useful, the following rates should be effective for the Osage Water Company and Environmental Utilities service areas effective twelve months after closing:

**Improvements** - \*

Water quality monitoring equipment \$53,760

Replace water meters \$11,200

Install disinfection at wells \$20,160

Install control system \$39,200

Improvements to filters KK \$28,000

Improvements to filter CBay \$28,000

\* Of these improvements, \$32,536 would not be necessary if MAWC did not acquire Cedar Glen sewer during first 6 months.

**Water rate** - Monthly Minimum \$20.66

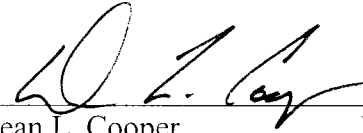
Usage Rate \$ 5.8797/1,000 gallons

**Sewer rate** - \$72.15 (\$36.98, with Cedar Glen sewer)

MAWC believes that the identified improvements are necessary to both comply with state and federal statutes and regulations and to provide high quality service to the customers to be served by the subject assets. Accordingly, MAWC has proposed rates in a form that will be adequate to both support this investment and to ensure that improvements are made to the systems.

WHEREFORE, MAWC requests that the Commission consider this Pretrial Brief.

Respectfully submitted,



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ATTORNEYS FOR  
MISSOURI-AMERICAN WATER COMPANY

### **CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent by U.S. Mail, postage prepaid, or electronic mail, on January 19, 2005, to the following:

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