

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

In the Matter of the Joint Application of Hickory Hills	)	
Water & Sewer Co., Inc. and Missouri-American Water	)	
Company, for MAWC to Acquire Certain Water and	)	File No. WA-2016-0019
Sewer Assets of Hickory Hills and, in Connection	)	and SA-2016-0020
Therewith, Issue Indebtedness and Encumber Assets.	)	

**RESPONSE TO STAFF RECOMMENDATION  
AND PUBLIC COUNSEL RESPONSE**

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

1. On July 28, 2015, a Joint Application was filed seeking approval of a transaction between MAWC and Hickory Hills Water & Sewer Co., Inc. (Hickory Hills). The result of such transaction would provide MAWC with the assets and certificates to provide water and sewer service in the area now served by Hickory Hills. Hickory Hills was placed in the hands of a receiver on January 2, 2007, after it was abandoned by its previous owner. (Public Service Commission of the State of Missouri v Hickory Hills Water & Sewer Co., Inc., Cole County Circuit Court Case No. 06AC-CC00885). The Hickory Hills sewer system has been in non-compliance with Department of Natural Resources (DNR) regulations for several years and the water system is in need of investment. The Receiver, Staff, and Missouri DNR have spent a considerable amount of the state’s resources over the last eight years trying to come up with a solution for the troubled Hickory Hills system.

2. On October 2, 2015, the Staff of the Commission (Staff) filed its Staff Recommendation and an associated Memorandum (Staff Recommendation). On October 9, 2015, the Office of the Public Counsel (Public Counsel) filed its Response to Staff Recommendation and Request for Local Public Hearing (Public Counsel Response).

3. MAWC has reviewed the Staff Recommendation and Public Counsel Response and does not agree with certain aspects of those documents:

a. **Rate Area** – Staff acknowledged that MAWC proposed in the Joint Application to consolidate Hickory Hills with the St. Louis Metro District either in the current rate case (Case NO. WR-2015-0301) or in a future case and further stated its support for this proposal. However, Staff did not recommend a condition or order associated with this issue.

This transaction implicates Section 393.320, RSMo. That section states as follows:

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

(emphasis added).

MAWC is a "large water public utility," within the meaning of the statute, as it is "a public utility that regularly provides water service or sewer service to more than eight thousand customer connections and that provides safe and adequate service. . ." (Section 393.320.1(1), RSMo). Hickory Hills is a "small water utility," within the meaning of the statute as it is "a public utility that regularly provides water service or sewer service to eight thousand or fewer customer connections. . ." (Section 393.320.1(2), RSMo).

Section 393.320.6 requires the Commission, assuming it approves the proposed transaction, to make the Hickory Hills' water and sewer customers a "part of an existing [MAWC] service area" in the Commission's order approving the acquisition. The Staff

Recommendation does not mention Section 393.320, and does not suggest a Commission Order addressing this issue.

b. **Purchase Price/Rate Base** – In this situation, the purchase price is greater than the net book value of Hickory Hills. The Staff Recommendation described why this is necessary:

Because of limited cash flow for Hickory Hills, the Receiver has not been able to fully recover all of his court approved fees. Also, Mr. Cover personally took out a loan to pay off Hickory Hills’ debt that the Receiver inherited from Hickory Hills’ original owners and to compensate two customers for sewer backup claims against . . . Hickory Hills. Staff’s understanding is that the purchase price for . . . Hickory Hill’s assets in this transaction was agreed to in an amount allowing transfer of the assets at their current net book value, and also to allow Mr. Cover to recover a portion of his outstanding receivership costs (receiver fees and repayment of the personal loan).

(Staff Recommendation (Memo), p. 4)

The purchase price and the distribution of that purchase price has been approved by the Circuit Court of Cole County. See **Appendix 1** and **Appendix 2** attached.

The Public Counsel Response states, in part, as follows:

. . . Public Counsel does not necessarily agree with all of the statements in Staff’s attached Memorandum. For example, Public Counsel has concerns with Staff’s recommendation that the Commission authorize MAWC to book a regulatory asset, split equally between water and sewer, associated with amounts paid related to . . . Hickory Hills’ receivership fees and loan payoff. Public Counsel reserves the right to take this, and many other issues addressed by Staff’s Memorandum, up at the next MAWC rate case involving the current customers of Hickory Hills.

(Public Counsel Response, p. 2)

First, the Public Counsel’s general reference to “many other issues addressed by Staff’s Memorandum” is not helpful to this process. Hickory Hills is a situation in need of a solution. If MAWC is going to attempt to provide that solution, it should have full knowledge of the issues

that Public Counsel believes are raised by Staff's Memorandum so that MAWC may make an informed decision as to whether or not to proceed with this matter.

This very much includes the treatment of the purchase price. If the purchase price is treated as Staff has suggested, it will equal rate base. However, if the purchase price is not treated in that fashion, an acquisition premium will exist. It has been suggested in the past by Public Counsel and others that as a result of *State ex rel. AG Processing v. PSC*, 120 S.W.3d 732, 736 (Mo banc 2003)<sup>1</sup>, the Commission must decide at the time of acquisition whether there is or is not an acquisition premium and, if there is, how it will be addressed. The Public Counsel's proposal would not do that.

Further, the Hickory Hills water and sewer operations will require investment to bring them into compliance with operational requirements for safe and adequate service. Because of the small number of customers, this investment will cause extreme rate issues for Hickory Hills, unless the systems are combined with the St. Louis Metro District, as proposed by MAWC. As a practical matter, MAWC should be able to take into account how its purchase costs (before it even begins to invest in improvements) will be treated by the Commission. Therefore, MAWC objects to the OPC's position.

### **LOCAL PUBLIC HEARING**

4. As a general proposition, MAWC does not oppose local public hearings in acquisitions. However, Hickory Hills includes a non-compliant system that needs immediate attention. 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

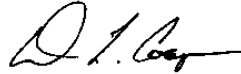
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<sup>1</sup> ". . . the PSC erred when determining whether to approve the merger because it failed to consider and decide all the necessary and essential issues, primarily the issue of UtiliCorp's being allowed to recoup the acquisition premium."

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

**WHEREFORE**, MAWC respectfully requests the Commission consider this response and, thereafter, issue such orders as it shall find to be reasonable and just.

Respectfully submitted,



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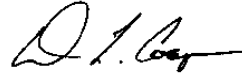
**ATTORNEYS FOR MISSOURI-AMERICAN  
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## CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on October 13, 2015, to the following:

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