

## Exhibit No. 2

Exhibit No.:  
Issues: Eureka Acquisition  
Witness: Sean M. Flower  
Exhibit Type: Surrebuttal  
Sponsoring Party: Missouri-American Water Company  
Case No.: WA-2021-0376  
Date: December 17, 2021

**MISSOURI PUBLIC SERVICE COMMISSION**

**CASE NO. WA-2021-0376**

**SURREBUTTAL TESTIMONY**

**OF**

**SEAN M. FLOWER**

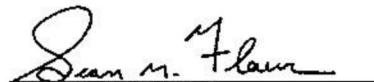
**ON BEHALF OF**

**MISSOURI-AMERICAN WATER COMPANY**

Exhibit No. 2  
Date 1/20/22 Reporter Bjo  
File No. \_\_\_\_\_

**AFFIDAVIT**

I, Sean Flower, under penalty of perjury, and pursuant to Section 509.030, RSMo, state that I am Mayor of the City of Eureka, Missouri, that the accompanying testimony has been prepared by me or under my direction and supervision; that if inquiries were made as to the facts in said testimony, I would respond as therein set forth; and that the aforesaid testimony is true and correct to the best of my knowledge and belief.

  
Sean Flower

December 17, 2021  
Dated

**SURREBUTTAL TESTIMONY  
SEAN M. FLOWER  
MISSOURI AMERICAN WATER COMPANY  
CASE NO. WA-2021-0376**

**TABLE OF CONTENTS**

I. INTRODUCTION.....	3
II. RESPONSE TO STAFF TESTIMONY.....	3

## **SURREBUTTAL TESTIMONY**

**SEAN M. FLOWER**

### **I. INTRODUCTION**

1

2 **Q. Please state your name and business address.**

3 A. Sean M. Flower. My business address is: City of Eureka; 100 City Hall Drive; P.O. Box  
4 125; Eureka, Missouri 63025.

5 **Q. Are you the same Sean M. Flower who previously submitted direct testimony in this  
6 proceeding?**

7 A. Yes.

8 **Q. What is the purpose of your Surrebuttal Testimony?**

9 A. I have read the rebuttal testimony filed in this case and will respond to certain testimony  
10 provided by Staff witness Curt Gateley concerning the transaction process and reality  
11 associated with his recommendation.

### **II. RESPONSE TO STAFF TESTIMONY**

12  
13 **Q. On p. 9 of his Rebuttal Testimony, Staff witness Curt Gateley states as follows:**

14 **“Staff suggests that MAWC revise their application to include an appraisal that takes  
15 into account the actual condition of the plant assets, a negotiated purchase price that  
16 takes into consideration the intended use of the drinking water assets, and refile this  
17 application.” From your perspective, is that a possible process?**

18 A. No.

19 **Q. Why not?**

20 A. First, the price is not negotiable from the City’s perspective. The voters of Eureka  
21 approved the sale of the water and sewer facilities pursuant to the following ballot

1 language:

2 SHALL THE CITY OF EUREKA, MISSOURI BE AUTHORIZED TO  
3 SELL ITS WATER AND WASTE WATER (SEWER) UTILITIES TO  
4 MISSOURI AMERICAN WATER COMPANY FOR THE SUM OF  
5 \$28,000,000.00 (TWENTY-EIGHT MILLION DOLLARS)?

6 Thus, any downward adjustment of the purchase price would require another election.

7 **Q. What was the origin of the \$28,000,000.00 figure in the ballot measure?**

8 A. It came from the appraisal that was performed in accordance with the procedures outlined  
9 in Section 393.320, RSMo.

10 **Q. When did the City of Eureka and Missouri-American Water Company (MAWC)**  
11 **finalize and execute the Purchase Agreement that is the subject of this case?**

12 A. That was done after the results of the election were known. The election was held on  
13 August 4, 2020, and the Purchase Agreement was executed on November 17, 2020.

14 **Q. Was there a reason that the Purchase Agreement was developed after the election?**

15 A. Yes. The City board of alderman and Mayor do not have authority to enter into such an  
16 agreement until after it has been given authority to do so by the voters.

17 **Q. Once an appraisal price has been determined, is it practical to think that a**  
18 **municipality would negotiate a price less than the appraised amount?**

19 A. No.

20 **Q. Why not?**

21 A. The Mayor and Board of Alderman of any city have an obligation to be a steward of all  
22 City assets. Once a fair market value has been established for an asset, we cannot sell it

1 for less. This is particularly true in the current situation where the City has received  
2 confirmation of the fair market value of our utility assets by three appraisers, and agreement  
3 on the value from the proposed purchaser. Legally, I do not believe the City can sell assets  
4 below this fair market value based solely on the staff of the Public Service Commission's  
5 opinion of value. And I further believe the voters of the City would not agree to another  
6 city wide vote to authorize a lower sale price.

7 **Q. How do you view the Staff testimony in this case at a high level?**

8 A. It appears to be fundamentally second guessing the appraisal of the Eureka water and sewer  
9 assets. In addition, the Staff appears to also be ignoring the statutory method of  
10 determining value, and instead substituting an internally created "book value".

11 **Q. What consequences do you believe that has on a going-forward basis for Section  
12 393.320, RSMo.?**

13 A. The General Assembly and State's public policy goal behind Section 393.320 was to  
14 encourage consolidation of smaller utility provers by larger providers. If the Commission  
15 follows the Staff Recommendation and process in this matter, there will be a tremendous  
16 amount of uncertainty injected into the utility sale process, and it is very likely that the  
17 amount of consolidation of smaller systems by larger ones will be greatly reduced.

18 **Q. Why do you believe the Staff's recommendation and process will create uncertainty  
19 in the utility sale process and discourage consolidation?**

20 A. It is a very time consuming and difficult process for a municipal utility provider to make  
21 the decision to sell to a larger provider. The existing system operations have to be properly  
22 assessed, an appraisal is conducted to establish value, there are on site visits, negotiation  
23 of many key issues, major efforts to educate the citizens on the existing system and merits

1 of the sale, and a city-wide election is held. Representations are made to the residents, and  
2 all are based on the appraisal and certain key terms that set the basis of the ballot language.

3 **Q. How long has this process taken for Eureka?**

4 A. In Eureka, this process took nearly 12 months to get to a vote, and roughly 2 months after  
5 for final agreement. It has taken another year after executing the agreement to get to this  
6 point in the process.

7 **Q. What impact has that time had on the Eureka system?**

8 A. Once the vote was completed, Eureka started to approach its system differently, managing  
9 and maintaining it, but no longer considering long term capital improvements. Several key  
10 staff operating these systems have moved on to other jobs, and overall it is very disruptive  
11 to municipal operations once the sale process begins.

12 **Q. In your opinion, what would be the ultimate result of the approach recommended by  
13 the Staff?**

14 A. If the Commission follows the Staff recommendation to adjust the appraisal down based  
15 on its independent judgment (or instead substitute a hypothetical "net book value" for the  
16 value), it would effectively remove the key information the parties need in order to move  
17 forward with elections and sales. No municipality is going to want to go through the  
18 tremendous time, expense, and uncertainty of the sale process, the holding period where  
19 long term capital improvements are slowed, and the overall disruption to employees and  
20 operations, if it knows it cannot rely on the sale price of the system as determined by the  
21 qualified appraisers. In sum, the staff's recommendation and process would not only  
22 permanently end the opportunity for Eureka to consolidate its system (Eureka cannot sell



1 its assets below fair market value based on the opinion of the staff of a State commission),  
2 but I believe it will greatly reduce the likelihood that other smaller operators would choose  
3 to take the time, uncertainty, and delay of a potential consolidation, rather than just  
4 choosing the simpler path of investing directly in the existing system.

5 **Q. Does this conclude your surrebuttal testimony?**

6 **A. Yes.**