

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



In the Matter of the Application of Missouri- )  
American Water Company for a Certificate )  
of Convenience and Necessity Authorizing )  
it to Install, Own, Acquire, Construct, )  
Operate, Control, Manage and Maintain a )  
Water System and Sewer System in and )  
Around the City of Eureka, Missouri )

**File No. WA-2021-0376**

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**AMENDED REPORT AND ORDER**

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**Issue Date: June 29, 2022**

**Effective Date: July 9, 2022**

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Around the City of Eureka, Missouri )

**PARTIES & APPEARANCES**

**MISSOURI-AMERICAN WATER COMPANY:**

**Dean Cooper**, Attorney at Law, Brydon, Swearingen & England, 312 East Capitol,  
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**OFFICE OF THE PUBLIC COUNSEL:**

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**STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:**

**Karen Bretz**, Deputy Counsel, Public Service Commission, 200 Madison Street,  
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**REGULATORY LAW JUDGE:** Kenneth J. Seyer

# AMENDED REPORT AND ORDER

## I. Procedural History

On April 21, 2021, Missouri-American Water Company (MAWC) filed an *Application and Motion for Waiver* for authorization to acquire the water and sewer system assets currently owned and operated by the City of Eureka (Eureka).<sup>1</sup> MAWC also requested a Certificate of Convenience and Necessity (CCN) for the service areas of the water and sewer systems. MAWC filed two identical applications – one for the water system (File No. WA-2021-0376) and one for the sewer system (File No. SA-2021-0377). On the date those applications were filed, MAWC also filed a Motion to Consolidate in both files. The files were consolidated on May 10, 2021, and proceeded under WA-2021-0376 as the lead file.

Jefferson County Public Sewer District (JCPSD) was granted intervention. JCPSD alleged that it is “authorized to provide, has made investments in, and does provide both water and sewer services in Jefferson County in and around Eureka, including portions of the area [MAWC] proposes to serve in its [application].”<sup>2</sup> MAWC submitted a revised legal description and service area map that excludes the Jefferson County portion of Eureka.<sup>3</sup> MAWC, JCPSD, and the Staff of the Commission (Staff) filed a *Partial Stipulation and Agreement* on January 14, 2022, in which the parties agreed that, if the Commission grants the CCNs requested by MAWC, the boundaries of any CCNs issued should be as described in the revised legal description and service area map and those boundaries

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<sup>1</sup> Throughout this Report and Order, the terms “sewer” and “wastewater” are used interchangeably.

<sup>2</sup> *Application to Intervene*, Jefferson County Public Sewer District.

<sup>3</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 10; Exh. 5, *Eisenloeffel Direct Testimony*, Sch. BWE-3, BWE-4.

should be depicted in MAWC's tariff.<sup>4</sup> The Office of Public Counsel (OPC) did not file an objection to the *Partial Stipulation and Agreement*. The Commission has reviewed the unopposed *Partial Stipulation and Agreement*, finds it reasonable, and will approve it.

Staff recommended that the Commission reject MAWC's application for authorization to acquire Eureka's water and sewer system assets and to not grant the CCNs.<sup>5</sup> MAWC filed a response to the recommendation, and the parties agreed to a procedural schedule. A hearing was set and written direct, rebuttal, and surrebuttal testimony was filed.

As part of the procedural schedule, the parties were directed to file a list of issues to be decided by the Commission. The subsequent joint list of issues filed identified three issues to be decided by the Commission:

1. Is MAWC's provision of water and wastewater service associated with its proposed purchase of the City of Eureka water and wastewater systems "necessary or convenient for the public service" within the meaning of the phrase in Section 393.170, RSMo?<sup>6</sup>
2. If the Commission grants MAWC's application for the CCNs:
  - A. What conditions, if any, should the Commission impose, and
  - B. Of which existing service areas should the Eureka water and wastewater systems become a part?
3. Does Section 393.320, RSMo, require the Commission to establish the ratemaking rate base in this case for the Eureka water and wastewater systems? If so, what is the ratemaking rate base that should be established?

Subsequently, the parties filed statements of their positions on the three issues. In their statements of positions, Staff and MAWC appeared to agree on the second issue.

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<sup>4</sup> OPC was not a party to the *Partial Stipulation and Agreement* and neither supports nor opposes it.

<sup>5</sup> *Staff Recommendation*.

<sup>6</sup> Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

This was verified by the presiding judge at the start of the evidentiary hearing on January 20, 2022. The Office of Public Counsel (OPC) took no position on the issue. JCPSD did not file a statement of positions.

The Commission held an evidentiary hearing on January 20-21, 2022. Initial post-hearing briefs were filed on February 18, 2022, and reply briefs were filed on February 28, 2022.

At the request of Staff,<sup>7</sup> the Commission reopened the record<sup>8</sup> and held a third evidentiary hearing session on May 6, 2022. That session was limited to arguments and evidence regarding The Arbors of Rockwood Community Improvement District (Arbors CID) and how the Arbors CID property assessment being paid by residents affects the public interest determination the Commission must make.

In its *Application and Motion for Waiver*, MAWC requested the Commission waive the requirement to give 60-days' notice prior to filing the application, as required in Commission Rule 20 CSR 4240-4.017(1). MAWC filed with the application a verified declaration that no MAWC representative had had any communication with the Office of the Commission, as defined by 20 CSR 4240-4.015(10), within the immediately preceding 150 days regarding the subject matter of the application. The Commission finds that good cause exists to waive the notice requirement, and a waiver of 20 CSR 4240-4.017(1) will be granted.

On June 9, 2022, the Commission issued a *Report and Order* in this case to be effective on July 9, 2022. On June 14, 2022, MAWC filed a motion requesting a correction to the Commission's *Report and Order* due to discrepancies between the body of the

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<sup>7</sup> *Staff's Request to Reopen the Record.*

<sup>8</sup> *Order Granting Request to Reopen the Record.*

*Report and Order* and the Ordered Paragraph 4. No responses to MAWC's motion were filed. The Commission has reviewed MAWC's motion and finds it should be granted. Therefore, the Commission issues this *Amended Report and Order* making changes to Ordered Paragraph 4.

Because the original *Report and Order* was set to become effective on July 9, 2022, the Commission finds it is reasonable to make this *Amended Report and Order* effective on that date, which is less than 30 days after issuance.

## II. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. MAWC is a Missouri corporation with its principal place of business in St. Louis, Missouri.<sup>9</sup>

2. MAWC currently provides water service to approximately 470,000 customers and sewer service to approximately 15,000 customers in the State of Missouri.<sup>10</sup> MAWC provides water and/or sewer service to all of St. Louis County, except for Eureka and one other community.<sup>11</sup>

3. Eureka is a fourth class city located in St. Louis County which has owned its own water and wastewater systems since 1958.<sup>12</sup> As of November 5, 2021, Eureka

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<sup>9</sup> Exh. 5, *Eisenloeffel Direct Testimony*, p. 5.

<sup>10</sup> Exh. 5, *Eisenloeffel Direct Testimony*, p. 5.

<sup>11</sup> Exh. 5, *Eisenloeffel Direct Testimony*, p. 5.

<sup>12</sup> Exh. 1, *Flower Direct Testimony*, p. 3.

served approximately 4,100 water customers and approximately 4,100 wastewater accounts.<sup>13</sup>

4. OPC is a party to this case pursuant to Section 386.710(2), RSMo, and by Commission Rule 20 CSR 4240-2.010(10).

5. Staff is a party to this case pursuant to Section 386.071, RSMo, and Commission Rule 20 CSR 4240-2.010(10).

6. MAWC included in its original proposed water and sewer service areas a portion of Eureka that extends across the Meramec River into Jefferson County and for which JCPSD asserted it has exclusive rights to provide water and sewer services.<sup>14</sup> MAWC submitted a revised legal description and service area map that excludes the Jefferson County portion of Eureka.<sup>15</sup>

7. Eureka first began internal conversations and analysis on the possibility of selling its utilities in 2018.<sup>16</sup> After considering a range of options, Eureka reached out to MAWC in 2019 to explore a potential sale.<sup>17</sup> The two parties entered into an agreement to have Eureka's water and sewer systems appraised.<sup>18</sup>

8. MAWC chose the appraisal procedure provided by Section 393.320, RSMo, to determine the ratemaking rate base for Eureka's water and sewer systems. Under the statute, the appraisal is jointly prepared by three appraisers – one appointed by the small

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<sup>13</sup> Exh. 1, *Flower Direct Testimony*, p. 3.

<sup>14</sup> *Bjornstad Rebuttal Testimony*, pp. 4-5.

<sup>15</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 12; Exh. 5, *Eisenloeffel Direct Testimony*, Sch. BWE-3, BWE-4.

<sup>16</sup> Exh. 1, *Flower Direct Testimony*, p. 5.

<sup>17</sup> Exh. 1, *Flower Direct Testimony*, p. 5.

<sup>18</sup> Exh. 1, *Flower Direct Testimony*, p. 5; Sch. SMF-1.

water utility (Eureka), one by the large water public utility (MAWC), and a third appraiser selected by the two appointed appraisers.<sup>19</sup>

9. In an August 7, 2019, attachment to an e-mail from MAWC Business Services Specialist Melisha Billups to Eureka City Administrator Craig Sabo and Mayor Sean Flower, Billups provided the Eureka officials with a list of appraisers on their “vendor list for appraisal service.”<sup>20</sup> The list highlighted appraisers that MAWC had “previously utilized for water and/or wastewater system appraisals” and, in another attachment, provided “qualification reports” for those appraisers.<sup>21</sup> The e-mail also stated that MAWC “will handle the appraisal cost so [Billups] will take care of getting the contracts secured for the appraisal services.”<sup>22</sup>

10. In an August 9, 2019, e-mail, Sabo informed Billups that Eureka had selected Dinan Real Estate Appraisers to be appointed as their appraiser. On that same date, Billups e-mailed Ed Dinan and Joe Batis (the appraiser appointed by MAWC) to make the two appraisers aware of each other’s appointments and to instruct them to “select a third appraiser to complete the appraisal team to produce one appraisal report.”<sup>23</sup> Billups added:

I am sending you a list of the appraisers that we have pre-qualified and I have also highlighted the appraisers that we have previously utilized for water and/or wastewater system appraisals. If you would like to select an appraiser that is not on the list, please provide me with their contact information so I can get them qualified to provide appraisal services.<sup>24</sup>

Elizabeth Goodman Schneider was subsequently selected as the third appraiser.

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<sup>19</sup> Section 393.320.3(1), RSMo.

<sup>20</sup> Exh. 108, MoPSC 0061 Attachment 1, p. 22.

<sup>21</sup> Exh. 108, MoPSC 0061 Attachment 1, p. 22.

<sup>22</sup> Exh. 108, MoPSC 0061 Attachment 1, p. 22.

<sup>23</sup> Exh. 108, MoPSC 0061 Attachment 1, p. 20.

<sup>24</sup> Exh. 108, MoPSC 0061 Attachment 1, p. 20.

11. Joe Batis testified during the hearing that, over the last 10-15 years, he had participated in 50-75 appraisals of water and/or sewer systems.<sup>25</sup> Of that number, he estimated that one-fourth to one-third were for American Water Company (MAWC's parent company), of which about half were for MAWC, concluding that he had conducted 10-15 appraisals of water and/or sewer systems for MAWC in the last 7-8 years.<sup>26</sup>

12. In an e-mail to the other two appraisers and to Melisha Billups dated January 12, 2020, with the subject line, "REVISED DRAFT – EUREKA," Joe Batis wrote, "While reviewing the report this morning, I made several changes/corrections. Use this copy for your review. Please send your changes/comments." Batis attached a document with the filename, "NEW DRAFT - EUREKA APPR - JAN 12.pdf."<sup>27</sup>

13. The appraisers hired Kelly Simpson of Flinn Engineering to "provide a high-level review of the condition of the [Eureka] system, estimate the 2019 installation cost, and estimate the depreciated book value of the assets."<sup>28</sup>

14. Simpson's assessment of the condition of the above-ground assets was based on Eureka's insurance replacement cost list of assets and information provided by Eureka as to the year of installation.<sup>29</sup> The cost of installation of the below-ground assets was calculated using a combination of Simpson's opinion of cost to install the assets based on knowledge of other systems of similar size, as well as correspondence from

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<sup>25</sup> Tr. 99-100.

<sup>26</sup> Tr. 100-101.

<sup>27</sup> Exh. 108, MoPSC 0061 Attachment 1, p. 25.

<sup>28</sup> Exh. 11, *LaGrand Direct Testimony*, Sch. BWL-3, p. 25.

<sup>29</sup> Exh. 9, *Simpson Direct Testimony*, Sch. KES-1, p. 1.

Eureka, vendors, and contractors.<sup>30</sup> The year of installation for the below-ground assets was estimated based on the installation dates of the above-ground assets.<sup>31</sup>

15. Using that information, Simpson submitted a report dated January 18, 2020, (the Initial Flinn Engineering Report) to the appraisers in which she listed the estimated depreciated book value of the Eureka water system at \$10.6 million and the sewer system at \$5.5 million, for a total of \$16.1 million.<sup>32</sup>

16. The Initial Flinn Engineering Report concluded that the systems were in “good condition and well-maintained”<sup>33</sup> despite Simpson making no on-site inspections of the systems (although she did visit the sites on December 9, 2021, six weeks before the evidentiary hearing).<sup>34</sup> Instead, Simpson relied upon photos that, largely, only showed exteriors of buildings and did not include any photos of building interiors or equipment inside.<sup>35</sup>

17. Simpson also did not review maintenance records for the Eureka water and sewer systems, review inflow and infiltration studies for the sewer system, or do any investigation as to whether the Eureka water and sewer systems were in compliance with Missouri Department of Natural Resources (DNR) regulations.<sup>36</sup> As a result, even though

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<sup>30</sup> Exh. 9, *Simpson Direct Testimony*, Sch. KES-1, p. 1.

<sup>31</sup> Exh. 1, *LaGrand Direct Testimony*, Sch. BWL-3, pp. 1, 3. “We assumed 70% of the water distribution system dates back to 1959 and 5% was added the same year the wells were installed. We assumed that the number of fire hydrants and services/meters installed each year could be prorated based on the quantity of water main installed.”

<sup>32</sup> Exh. 11, *LaGrand Direct Testimony*, Sch. BWL-3.

<sup>33</sup> Exh. 9, *Simpson Direct Testimony*, Sch. KES-1, p. 7.

<sup>34</sup> Exh. 9, *Simpson Direct Testimony*, Sch. KES-1, p. 1; Tr. 221 (Simpson).

<sup>35</sup> Exh. 301; Tr. 205-206 (Simpson).

<sup>36</sup> Tr. 211, 225-226 (Simpson).

compliance violations existed,<sup>37</sup> no DNR compliance issues were mentioned in Simpson's report.<sup>38</sup>

18. Once the Initial Flinn Engineering Report was received, the three appraisers consulted with each other and created an appraisal report dated January 20, 2020.<sup>39</sup> This report (the Initial Appraisal Report) valuing the water system at \$12.5 million (\$3,400 per customer) and the sewer system at \$5.5 million (\$1,400 per customer), for a total of \$18 million, was sent to Eureka on January 20, 2020.<sup>40</sup>

19. On February 6, 2020, MAWC Engineering Manager Derek Linam contacted Kelly Simpson via e-mail requesting to meet with her regarding the Initial Flinn Engineering Report.<sup>41</sup>

20. In a February 7, 2020, e-mail, Linam wrote to Simpson, "I wanted to review the assumption that the system was 70% built by the 1950's. I pulled some statistics from parcels out of GIS and wondered how it might change the depreciated value if we use some different assumptions."<sup>42</sup>

21. On February 10, 2020, Linam sent Simpson an e-mail in which he wrote, "Here is a 'crude' spreadsheet I put together of parcel data, year built, that we can discuss. Thought I would send it to you to look at before our discussion. Again, just wondering how a 'newer' system assumption will impact depreciated value for the water and waste water distribution and collection systems."<sup>43</sup> Six minutes later, Simpson replied, "I'll take a look

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<sup>37</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, pp. 18-19.

<sup>38</sup> Exh. 9, *Simpson Direct Testimony*, Sch. KES-1.

<sup>39</sup> Exh. 300, *Valuation Report* dated January 20, 2020, pp. 2, 76; Exh. 3, *Batis Direct Testimony*, p. 5.

<sup>40</sup> Exh. 300.

<sup>41</sup> Exh 107, *MAWC Response to Data Request 60*, p. 24.

<sup>42</sup> Exh 107, *MAWC Response to Data Request 60*, p. 23.

<sup>43</sup> Exh 107, *MAWC Response to Data Request 60*, p. 17.

before we meet. I attached my spreadsheet if you want to try some different percentages. They are on the 'Water Main' tab and the 'Sewer Tab'. They both feed directly to the 'Depreciation' tab so don't change any numbers on that one."<sup>44</sup>

22. On February 20, 2020, Linam sent Simpson an e-mail with the subject line, "Eureka Parcel Analysis."<sup>45</sup> Attached to the e-mail was Simpson's spreadsheet modified to add a table grouping the number of parcels built in Eureka each year into seven time periods, rather than the three time periods that Simpson had in the spreadsheet she had provided to Linam on February 10, 2020.<sup>46</sup>

23. Kelly Simpson testified that she originally assumed that 70% of the below-ground assets were built and installed when the systems were placed into service (water 1959; sewer 1950) and then an additional 5% of the below-ground assets were built and installed with the addition of each well (for the water system) and each lift station (for the sewer system).<sup>47</sup> The result, she testified, was a "very old and very depreciated below-ground asset number."<sup>48</sup> When Derek Linam made Simpson aware of GIS data in February of 2020, Simpson concluded that the use of the GIS data was "a significantly more accurate and appropriate method of estimating the age" of the below-ground assets.<sup>49</sup>

24. Using that GIS data, Simpson revised her estimates of the age of the below-ground assets and issued the second "final" report,<sup>50</sup> dated March 16, 2020,

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<sup>44</sup> Exh 107, *MAWC Response to Data Request 60*, pp. 17-19

<sup>45</sup> Exh 107, *MAWC Response to Data Request 60*, p. 15.

<sup>46</sup> Exh 107, *MAWC Response to Data Request 60*, p. 16.

<sup>47</sup> Exh. 9, *Simpson Direct Testimony*, p. 7; Tr. 218-219 (Simpson).

<sup>48</sup> Tr. 219 (Simpson).

<sup>49</sup> Exh. 9, *Simpson Direct Testimony*, p. 7.

<sup>50</sup> Exh. 9, *Simpson Direct Testimony*, p. 6.

(Revised Flinn Engineering Report) to the appraisers in which she described how she used the GIS data.<sup>51</sup> The Revised Flinn Engineering Report made no reference to the January 18, 2020, Initial Flinn Engineering Report.<sup>52</sup>

25. Joe Batis sent an e-mail to Melisha Billups on March 16, 2020. In the e-mail, Batis informed Billups that there were “significant impacts to the valuation opinions included in our appraisal report dated January 20, 2020” and that it “would be a good idea to arrange a conference call with you to discuss the following [six] items resulting from the new/updated information provided to Kelly Simpson (Flinn Engineering).”<sup>53</sup> Batis then listed the six items. Batis went on to state that he would be e-mailing Eureka City Administrator Craig Sabo “providing him no specifics about the assignment, changes, etc. -- I will merely tell him that we are in the process of collecting and reviewing additional information and will be determining the impact within the next week or two.”<sup>54</sup> Four minutes later, Batis e-mailed Sabo and Billups, writing the following:

I am in the process of reviewing additional/updated information regarding the assets of the Eureka water and wastewater systems. Until I have reviewed everything in detail, consult with Kelly Simpson (Flinn Engineering), and consult with the other two appraisers, I cannot provide you with any meaningful information about the impact to value. I expect to have a better understanding of the revisions within the next few days, assuming everyone is available for conference calls, etc.<sup>55</sup>

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<sup>51</sup> Exh. 9, *Simpson Direct Testimony*, Sch. KES, p. 3. “[Eureka] began operating the water system in 1959. We assumed the distribution system was expanded with the addition of each well. The quantity of distribution assets was prorated based on the approximate amount of new buildings in the period between well installations. The St. Louis County GIS parcel data includes the year each building was built. The data was queried for buildings within the municipality of Eureka.”

Exh. 9, *Simpson Direct Testimony*, Sch. KES, p. 5. “The oldest sewer lift station was installed in 1950. We assumed the sewer system was expanded with the addition of lift stations. The percentage assets per period were assumed to be similar to the calculation described above for the water distribution assets.”

<sup>52</sup> Exh. 9, *Simpson Direct Testimony*, Sch. KES; Tr. 220 (Simpson).

<sup>53</sup> Exh. 108, MoPSC 0061, Attachment 1, p. 113.

<sup>54</sup> Exh. 108, MoPSC 0061, Attachment 1, p. 113.

<sup>55</sup> Exh. 108, MoPSC 0061, Attachment 1, p. 89.

26. A revised appraisal report by the same appraisers, valuing the water system at \$18 million and the sewer system at \$10 million, was sent to Eureka on March 23, 2020 (Final Appraisal Report).<sup>56</sup> The Final Appraisal Report used the cost approach and the sales comparison approach to arrive at the fair market value of the two systems.<sup>57</sup>

27. The sales comparison approach analysis of the Eureka systems contained in the March 23, 2020, Final Appraisal Report determined a fair market value per customer of \$4,500 for the water system<sup>58</sup> and \$2,500 for the sewer system.<sup>59</sup> At the time of the appraisal, Eureka had 4,009 water customers<sup>60</sup> and 3,957 sewer customers.<sup>61</sup>

28. For the seven comparable water system sales listed in the Final Appraisal Report analysis, the per-customer high sale price was \$4,157, the low was \$2,700, the median was \$3,528, and the mean was \$3,416.<sup>62</sup> For the seven comparable sewer system sales listed in the analysis, the per-customer high sale price was \$5,814, the low was \$1,367, the median was \$3,483, and the mean was \$2,782.<sup>63</sup>

29. The Final Appraisal Report contained no explanation of the reasoning behind the per-customer fair market values that were determined.<sup>64</sup> In addition, no evidence was introduced during the hearing explaining the factors that led to the fair market values that were the conclusion of the analysis.<sup>65</sup> When Joseph Batis, the

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<sup>56</sup> Exh. 3, *Batis Direct Testimony*, p. 6; Sch. JEB-2.

<sup>57</sup> Exh. 3, *Batis Direct Testimony*, Sch. JEB-2, pp. 14-15.

<sup>58</sup> Exh. 3, *Batis Direct Testimony*, Sch. JEB-2, p. 75.

<sup>59</sup> Exh. 3, *Batis Direct Testimony*, Sch. JEB-2, p. 77.

<sup>60</sup> Exh. 3, *Batis Direct Testimony*, Sch. JEB-2, p. 75.

<sup>61</sup> Exh. 3, *Batis Direct Testimony*, Sch. JEB-2, p. 77.

<sup>62</sup> Exh. 3, *Batis Direct Testimony*, Sch. JEB-2, p. 75.

<sup>63</sup> Exh. 3, *Batis Direct Testimony*, Sch. JEB-2, p. 77.

<sup>64</sup> Exh. 3, *Batis Direct Testimony*, Sch. JEB-2.

<sup>65</sup> Exh. 3, *Batis Direct Testimony*; Exh. 4, *Batis Surrebuttal Testimony*; Tr. 132-137, 154-156 (Batis).

appraiser appointed by MAWC, was asked on the stand during the hearing to list the features of the Eureka water and sewer systems that led the appraisers to arrive at the \$4,500 and \$2,500 per customer fair market values, respectively, versus the sales prices of the comparable systems, or to otherwise explain how they arrived at those figures, he could not explain the reasoning.<sup>66</sup> Instead, he could only offer that it was based on the appraisers' "experience and judgment."<sup>67</sup>

30. Eureka placed on an August 4, 2020, ballot the question of whether to grant the city authority to sell its water and sewer utilities to MAWC for a total of \$28 million.<sup>68</sup> The proposition passed with 67% overall approval<sup>69</sup> and 67% approval in the MER-22 precinct, which includes the Arbors CID.<sup>70</sup>

31. On November 17, 2020, MAWC and Eureka entered into an agreement to purchase Eureka's water and sewer systems for \$28 million.<sup>71</sup>

32. If the acquisition of Eureka's water and sewer systems is approved, MAWC intends to add Eureka's approximately 4,100 water customers to the "St. Louis County" customer rate base of approximately 343,000 customers and to add Eureka's approximately 4,100 sewer customers to the "Other Sewer" customer rate base of approximately 8,500 customers.<sup>72</sup>

33. The St. Louis County water customer rate base would be increased to \$1.2 billion with the addition of the \$18 million Eureka water rate base – an increase of

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<sup>66</sup> Tr. 132-135, 154-156 (Batis).

<sup>67</sup> Tr. 136 (Batis).

<sup>68</sup> *Application and Motion for Waiver* (MAWC), Appendix B, p. 1.

<sup>69</sup> Exh. 1, *Flower Direct Testimony*, p. 7.

<sup>70</sup> Exh. 16, *Eureka Voting Results* (August 4, 2020).

<sup>71</sup> *Application and Motion for Waiver* (MAWC), Appendix D.

<sup>72</sup> Exh. 11, *LaGrand Direct Testimony*, pp. 8-9.

1.5%. The Other Sewer customer rate base would be increased to \$43.9 million with the addition of the \$10 million Eureka sewer rate base – an increase of 29.5%.<sup>73</sup>

34. Staff investigated Eureka’s water and sewer systems, including a review of compliance with drinking water and environmental regulations and on-site visits May 12 and June 10, 2021.<sup>74</sup>

35. Eureka’s water system includes six active wells, six 500,000 gallon storage tanks, and one 250,000 gallon storage tank.<sup>75</sup> The system produces an average of 1.4 million gallons of water per day.<sup>76</sup>

36. All of the active wells have raw water quality issues that require softening treatment before distribution to the customers.<sup>77</sup> Over the years, customers have complained about taste, odor, and corrosion of water appliances related to water quality.<sup>78</sup> MAWC indicated to Staff that a significant driver of Eureka’s interest in selling their utilities was to obtain a different source of drinking water from MAWC.<sup>79</sup> However, the water distributed by Eureka meets all primary (health related) drinking water standards.<sup>80</sup>

37. Water in the Eureka system is distributed from the storage tanks by gravity or booster stations that pressurize the water lines.<sup>81</sup>

38. Eureka’s steel water storage tanks were inspected in 2018 and were found to be in “overall good condition, but delamination and flaking of the coating on the roof

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<sup>73</sup> Exh. 11, *LaGrand Direct Testimony*, p. 9.

<sup>74</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, pp. 11, 18.

<sup>75</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 15.

<sup>76</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 15.

<sup>77</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 13-14.

<sup>78</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 14.

<sup>79</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 14; Exh. 7, *Kaiser Direct Testimony*, p. 5.

<sup>80</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 14.

<sup>81</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 16.

and blistering on the floor of one tank was noted, as was sidewall blistering within another tank.<sup>82</sup>

39. If MAWC receives approval to purchase Eureka's water system, the company intends to refurbish tanks where required.<sup>83</sup> In addition, MAWC intends to routinely invest capital to replace water main, service line, valves, and hydrants.<sup>84</sup>

40. MAWC plans major improvements in the first three years of ownership, including water system meter replacements/conversion to the St. Louis County district's meters (estimated at \$1.1 million) and construction of a five-mile water system transmission main to connect to the current MAWC St. Louis County water distribution system (estimated at \$9-10.5 million).<sup>85</sup> MAWC would then use Eureka's water wells as only a backup source of water once Eureka's system is connected to the St. Louis County system.<sup>86</sup>

41. Staff's overall impression of the water system during their site visit was that the facilities "appeared to be in fair to good condition, with the equipment well maintained and exhibiting ordinary wear and tear from normal operations." Staff also found the general housekeeping, grounds maintenance, and site security to be "very good."<sup>87</sup>

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<sup>82</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, pp. 17-18.

<sup>83</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 18.

<sup>84</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 18.

<sup>85</sup> Exh. 7, *Kaiser Direct Testimony*, p. 5; Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, pp. 18, 21-22.

<sup>86</sup> Exh. 7, *Kaiser Direct Testimony*, p. 6.

<sup>87</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 18.

42. Eureka utilizes a three-cell lagoon system with fine bubble aeration and ultraviolet light disinfection.<sup>88</sup> Aquamat® technology is used to further facilitate treatment beyond aeration.<sup>89</sup>

43. In 2016, DNR notified Eureka that it must comply with new ammonia limits by 2021.<sup>90</sup> In 2018, Eureka informed DNR that it planned to construct a new treatment facility to comply and requested, and was granted, an extension to October 1, 2022, to comply with the ammonia limits.<sup>91</sup> As of the date of the Staff inspection, plans for a new plant had not been finalized by Eureka.<sup>92</sup> The current operating permit issued by DNR indicates that an oxidation ditch plant may be required, at an estimated cost of \$14 million.<sup>93</sup>

44. As of June, 10, 2021, Eureka was also under DNR enforcement for exceeding effluent limits and Sanitary Sewer Overflows (SSOs) during 2019 and 2020.<sup>94</sup> During the on-site visit, Staff and MAWC personnel noted large areas of surface boils in Eureka's sewage lagoons, (indicative of broken air piping) that is a likely cause of treatment challenges that lead to effluent parameter violations.<sup>95</sup> City personnel informed Staff that several of the ten lift stations in the system have experienced flooding during

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<sup>88</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 18.

<sup>89</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 18. Note: Aquamats (Advanced Microbial Treatment System for lagoon systems) are biomass support systems consisting of plastic ribbons suspended in the waste stream to provide surface area for bacterial growth and waste decomposition.

<sup>90</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 18.

<sup>91</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 18-19.

<sup>92</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 19.

<sup>93</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 19.

<sup>94</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 19.

<sup>95</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 19.

heavy rains.<sup>96</sup> Inflow and infiltration of the sewer lines is also a concern of Eureka personnel.<sup>97</sup>

45. Staff believes that MAWC has the experience and expertise to operate the sewer system as designed and make needed repairs and improvements.<sup>98</sup>

46. MAWC identified replacement of a lift station, at an approximate cost of \$350,000, as its highest priority should its acquisition of the sewer system be approved.<sup>99</sup> MAWC projects spending \$2.65 million over the next eight years to upgrade or repair several lift stations to prevent future SSOs and to make significant repairs to the collection system to reduce inflow and infiltration.<sup>100</sup>

47. Staff reviewed available information from Eureka and MAWC to estimate the net book value of the assets of the water and sewer systems. Based on their analysis, as of August 31, 2021, the net book value of the assets was approximately \$10.7 for the water system and \$7.1 million for the sewer system, or \$17.8 million combined.<sup>101</sup> Staff's net book value of \$10.7 million did not include \$2.9 million of contributed plant for the water system assets in the Arbors subdivision.<sup>102</sup>

48. Staff acknowledged that, as non-regulated utilities, Eureka has been under no obligation to maintain its books for its water and sewer systems in accordance with the National Association of Regulatory Commissioners (NARUC) Uniform System of Accounts and has not done so.<sup>103</sup>

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<sup>96</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 19.

<sup>97</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 19.

<sup>98</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 19-20.

<sup>99</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 20.

<sup>100</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 20.

<sup>101</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, pp. 20-21.

<sup>102</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 21.

<sup>103</sup> Tr. 273 (McMellen).

49. In Staff's opinion, there is both a current and future need for water and sewer service in the Eureka water and sewer service areas and that MAWC is qualified to own and operate the Eureka water and sewer systems.<sup>104</sup>

50. In its *Application and Motion for Waiver*, MAWC stated that no external financing was anticipated to acquire the Eureka water and sewer systems.<sup>105</sup> In Staff's opinion, MAWC possesses the necessary financial ability for its proposed acquisition and that the proposal is feasible, as the purchase of Eureka's assets will generate positive income.<sup>106</sup>

51. Staff recommended that the Commission reject MAWC's application for the CCNs and authorization to acquire the Eureka water and sewer systems. However, should the Commission approve the application, Staff recommended the following conditions:<sup>107</sup>

- a. Grant MAWC CCNs to provide water and sewer service in the proposed Eureka service areas, as modified and outlined herein;
- b. Approve existing Eureka water and sewer rates applicable to customers in MAWC's Eureka sewer approved service areas;
- c. Require MAWC to submit tariff sheets, to become effective before closing on the assets, to include a service area map, and service area written description to be included in its Electronic Filing Information System (EFIS) tariff P.S.C. MO No. 13 and 26, applicable to water service and sewer service in the requested service area;
- d. Require MAWC to notify the Commission of closing on the assets within five (5) days after such closing;
- e. If closing on the water and sewer system assets does not take place within thirty (30) days following the effective date of the Commission's order approving such, require MAWC to submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional

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<sup>104</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, pp. 26-27.

<sup>105</sup> *Application and Motion for Waiver*, p. 5.

<sup>106</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 27.

<sup>107</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, pp. 29-31.

status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until MAWC determines that the transfer of the assets will not occur;

- f. If MAWC determines that a transfer of the assets will not occur, require MAWC to notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and require MAWC to submit tariff sheets as appropriate that would cancel service area map, legal descriptions, and rate sheets applicable to the Eureka area in its sewer tariff;
- g. Require MAWC to develop a plan to book all of the Eureka plant assets, with the concurrence of Staff and/or with the assistance of Staff, for original cost, depreciation reserve, and contributions (CIAC) for appropriate plant accounts, along with reasonable and prudent transaction, closing, and transition costs. This plan should be submitted to Staff for review within sixty (60) days after closing on the assets;
- h. Require MAWC to keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;
- i. Adopt for Eureka water and sewer assets the depreciation rates ordered for MAWC in File No. WR-2020-0344;
- j. Require MAWC to provide to the Customer Experience Department (CXD) an example of its actual communication with the Eureka service area customers regarding its acquisition and operations of the Eureka water and sewer system assets, and how customers may reach MAWC, within ten (10) days after closing on the assets;
- k. Require MAWC to obtain from Eureka, as best as possible prior to or at closing, all records and documents, including but not limited to all plant-in-service original cost documentation, along with depreciation reserve balances, documentation of contribution-in-aid-of-construction transactions, and any capital recovery transactions;
- l. Except as required by Section 393.320, RSMo, make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCNs to MAWC, including expenditures related to the certificated service areas, in any later proceeding;
- m. Require MAWC to distribute to the Eureka customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its sewer service, consistent with the requirements of

Commission Rule 20 CSR 4240-13.040(3), within thirty (30) days of closing on the assets;

- n. Require MAWC to provide to the CXD Staff a sample of ten (10) billing statements from the first month's billing within thirty (30) days of closing on the assets;
- o. Require MAWC to provide training to its call center personnel regarding rates and rules applicable to the Eureka customers;
- p. Require MAWC to include the Eureka customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets; and
- q. Require MAWC to file notice in this case outlining completion of the above-recommended training, customer communications, and notifications within ten (10) days after such communications and notifications.

52. MAWC does not oppose Staff's recommended conditions.<sup>108</sup>

53. Current monthly rates for Eureka residential water customers consist of a \$15.00 customer charge and a \$2.50 per 1,000 gallons commodity charge.<sup>109</sup> If MAWC's acquisition of Eureka's water system is approved, MAWC proposes to change those rates to match MAWC's current St. Louis area water rates, \$9.00 and \$5.6290, respectively.<sup>110</sup>

54. Current monthly rates for Eureka residential sewer customers consist of a \$15.00 customer charge and a \$2.50 per 1,000 gallons commodity charge.<sup>111</sup> If MAWC's acquisition of Eureka's sewer system is approved, MAWC proposes to change the customer charge to match MAWC's current Other Sewer area sewer rate of \$61.64 and to drop the commodity charge.<sup>112</sup>

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<sup>108</sup> MAWC *Statement of Positions*, p. 3.

<sup>109</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 17.

<sup>110</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, pp. 17-18.

<sup>111</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 17.

<sup>112</sup> Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, pp. 17-18.

55. In 2016, Eureka passed an ordinance approving a petition requesting the creation of the Arbors CID for a new subdivision within the city.<sup>113</sup> The primary purpose of the Arbors CID is to provide a source of revenue to the subdivision developer to construct and install “lawns, trees, and other landscape, sidewalks, streets, traffic signs and signals, utilities, drainage, water, storm and sewer systems, and other site improvements . . . .”<sup>114</sup>

56. Residents within the Arbors CID pay annual assessments of \$500 to \$800 through approximately the year 2048.<sup>115</sup> The assessments do not include sewer system costs.<sup>116</sup> There are 528 total lots in the Arbors subdivision and, as of May 2, 2022, 405 occupancy permits had been issued.<sup>117</sup> Therefore, as of that date, there were 405 Arbors CID customers included in the Eureka water system.<sup>118</sup>

57. If the sale from Eureka to MAWC is approved, the annual revenue requirement associated with the addition of \$2.9 million to the St. Louis County water system customer rate base is likely to be less than \$1 per year for customers in the Arbors CID.<sup>119</sup>

### **III. Conclusions of Law**

A. MAWC is a “water corporation,” a “sewer corporation,” and a “public utility,” as those terms are defined by Section 386.020, RSMo. As such, MAWC is subject to the

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<sup>113</sup> Exh. 110, Document 1, pp. 1-3.

<sup>114</sup> Exh. 110, Document 1, p. 7.

<sup>115</sup> Exh. 110, Document 1, pp. 12-13.

<sup>116</sup> Exh. 14, *Flower Rebuttal Testimony*, p. 6.

<sup>117</sup> Exh. 14, *Flower Rebuttal Testimony*, p. 5.

<sup>118</sup> Exh. 14, *Flower Rebuttal Testimony*, p. 5.

<sup>119</sup> Tr. 341 (McMellen), Tr. 365 (MAWC Closing).

jurisdiction, supervision, control, and regulation of the Commission, as provided in Chapters 386 and 393, RSMo.

B. Section 393.320, RSMo, establishes a process for determining the appraised value of a “small water utility” when purchased by a “large water public utility,” with the appraised value setting the ratemaking rate base of the acquired small water utility. Under Section 393.320, RSMo, MAWC meets the definition of a “large water public utility” and Eureka meets the definition of a “small water utility.”

C. Per Section 393.320.2, RSMo, if the procedures under Section 393.320, RSMo, have been chosen by a large water public utility, those procedures “shall be used by the [Commission] to establish the ratemaking rate base of a small water utility during an acquisition.”

D. Section 393.320.3(1), RSMo, states:

An appraisal shall be performed by three appraisers. One appraiser shall be appointed by the small water utility, one appraiser shall be appointed by the large water public utility, and the third appraiser shall be appointed by the two appraisers so appointed. Each of the appraisers shall be a disinterested person who is a certified general appraiser under chapter 339.

E. Section 393.320.3(2)(a), RSMo, states, in part:

The appraisers shall . . . [j]ointly prepare an appraisal of the fair market value of the water system and/or sewer system. The determination of fair market value shall be in accordance with Missouri law and with the Uniform Standards of Professional Appraisal Practice” (USPAP).

F. Section 393.320.5(1), RSMo, states, in part:

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, shall constitute the ratemaking rate base for the small water utility as acquired by the acquiring large water public utility

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G. In the USPAP definitions, “appraiser” is defined as “one who is expected to perform valuation services competently and in a manner that is independent, impartial, and objective.”<sup>120</sup>

H. USPAP Rule 2-2 (a)(x)(5) states the following regarding the content of a real estate appraisal report:

The content of an Appraisal Report must be appropriate for the intended use of the appraisal and, at a minimum provide sufficient information to indicate that the appraiser complied with the requirements of STANDARD 1 by summarizing the information analyzed and the reasoning that supports the analyses, opinions, and conclusions, including reconciliation of the data and approaches.<sup>121</sup>

I. USPAP Rule 1-4(f) states:

When analyzing anticipated public or private improvements, located on or off the site, an appraiser must analyze the effect on value, if any, of such anticipated improvements to the extent they are reflected in market actions.<sup>122</sup>

J. Section 393.170.2, RSMo, requires MAWC to have CCNs, which are granted by the Commission, prior to providing water or sewer service in the current Eureka service area.

K. Section 393.170.3, RSMo (Supp. 2021), in setting forth the standard for the granting of CCNs, requires that the Commission determine that the services are “necessary or convenient for the public service.” The term “necessity” does not mean “essential” or “absolutely indispensable,” but rather that the proposed project “would be an improvement justifying its cost,” and that the inconvenience to the public occasioned

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<sup>120</sup> Exh. 302, pp. 3, 108-110 (Advisory Opinion 21).

<sup>121</sup> Exh. 302, p. 21.

<sup>122</sup> Exh. 302, p. 19.

by lack of the proposed service is great enough to amount to a necessity.<sup>123</sup> It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.<sup>124</sup>

L. The Commission has previously articulated the specific criteria to be used when evaluating CCN applications: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.<sup>125</sup>

M. Pursuant to Section 393.170.3, RSMo, the Commission may impose the conditions it deems reasonable and necessary for the grant of a CCN.

N. As the applicant, MAWC bears the burden of proof.<sup>126</sup> The burden of proof is the preponderance of the evidence standard.<sup>127</sup> In order to meet this standard, MAWC must convince the Commission it is “more likely than not” that its provision of water and sewer service in the current Eureka service area is necessary or convenient for the public service.

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<sup>123</sup> *State ex rel. Intercon Gas, Inc., v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. App. 1993), citing *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973), citing *State ex rel. Transport Delivery Service v. Burton*, 317 S.W.2d 661 (Mo. App. 1958).

<sup>124</sup> *State ex rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo. App. 1975).

<sup>125</sup> *In Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991); *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173, 1994 WL 762882, \*3 (Mo. P.S.C. 1994). These factors are sometimes referred to as the “Tartan factors.”

<sup>126</sup> *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Commission of State of Mo.*, 116 S.W.3d 680, 693 (Mo. App. 2003).

<sup>127</sup> *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996).

O. If no party timely objects to a nonunanimous stipulation and agreement, the Commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation and agreement.<sup>128</sup>

#### **IV. Decision**

MAWC requests permission, approval, and CCNs to own, acquire, construct, operate, control, manage, and maintain the water and sewer systems for the area currently served by Eureka. In order to be granted CCNs to provide water and sewer service in the existing Eureka service areas, MAWC must show that it is qualified to own and operate Eureka's assets. The Commission traditionally determines if a company is qualified to become a public utility by analyzing the Tartan factors. The Tartan factors contemplate: (1) the need for service, (2) the utility's qualifications, (3) the utility's financial ability, (4) the feasibility of the proposal, and (5) promotion of the public interest.

As evidence of the need for the service, Eureka has been providing its citizens with water and wastewater service for 63 years, and that need will continue into the future for the growing community. By virtue of its track record with other water and sewer systems, MAWC has demonstrated over the years that it is qualified to own and operate the Eureka water and wastewater systems.

By drawing upon its capital, rather than using external financing to acquire Eureka's systems, and by demonstrating, over many years, that it has adequate resources to operate systems similar to those of Eureka, MAWC possesses the financial ability to purchase and operate the Eureka systems. While the prudence of specific

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<sup>128</sup> 20 CSR 4240(2)(C).

investments will be addressed in a future rate case, overall, the acquisition as proposed by MAWC is feasible.

In past cases, the Commission has indicated that positive findings with respect to the first four Tartan factors will, in most instances, support a finding that the fifth factor – promotion of the public interest – has been satisfied.<sup>129</sup> However, this is a position that has not yet been adopted by the courts. OPC argues that “[a]lthough the Commission has applied the Tartan Factors in deciding whether to grant a CCN, Missouri court cases . . . make clear that the primary consideration is the ‘public interest’.”<sup>130</sup> The courts recognize that criteria as to when a CCN is necessary or convenient for the public service is not specified in the statute, leaving it to the discretion of the Commission.<sup>131</sup>

By virtue of 67% support for the ballot proposal asking whether to grant the city authority to sell its water and sewer utilities to MAWC for a total of \$28 million – both in the city as a whole and in the precinct that includes the Arbors subdivision – the citizens of Eureka expressed their preference that Eureka sell the utilities to MAWC. The public interest is also promoted by MAWC – a company with the financial ability and expertise to operate, maintain, and make needed repairs and improvements to Eureka’s water and sewer systems – taking over those systems.

However, the Commission has several concerns with the manner in which an appraised value was determined for Eureka’s water and sewer systems. First, the

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<sup>129</sup> *Missouri-American’s Initial Brief*, p. 9, citing Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

<sup>130</sup> *Initial Post-Hearing Brief (OPC)*, p. 7, citing *State ex rel. Elec. Co. v Atkinson*, 204 S.W. 897, 899 (Mo. Banc 1918); *Office of Pub. Counsel v. Mo. Pub. Serv. Comm’n*, 515 S.W.3d 754, 759-760; *State ex rel. Pub. Water Supply Dist. No. 8 v. Pub. Serv. Comm’n*, 600 S.W.2d 147, 154.

<sup>131</sup> See, e.g., *Matter of Application of KCP&L Greater Mo. Operations, et al. v. Mo. Pub. Serv. Comm’n, et al.*, 515 S.W.3d 754, 759, citing *State ex re. Ozark Elec. Co-op v. Pub. Serv. Comm’n*, 527 S.W.2d, 390, 394 and *State ex re. Intercon Gas, Inc. v. Pub. Serv. Comm’n*, 848 S.W.2d 593, 597-98.

appraisers relied on a report from Flinn Engineering (the Revised Flinn Engineering Report) that evaluated the condition of the Eureka water and sewer systems without the benefit of a prior on-site inspection of the facilities. Instead, Kelly Simpson of Flinn Engineering relied, at least in part, on exterior photos of buildings, water storage tanks, etc. Despite never seeing any of the components of either the water system or the sewer system and despite reviewing no maintenance records, environmental compliance reports, or inflow and infiltration studies, the Revised Flinn Engineering Report provided to the appraisers concluded that, “[o]verall the water and wastewater systems appear to be in good condition and well-maintained.” This opinion undoubtedly led the appraisers to compare the Eureka systems to other water and sewer systems also deemed in good condition as a part of their determination of a fair market value for the Eureka water and sewer systems. Reliance on this report potentially calls into question the appraisal results.

Second, the Commission has concerns with both the manner in which the three appraisers were selected and the contact that MAWC had with the appraisers prior to the issuance of both the Initial Appraisal Report on January 20, 2020, and the Final Appraisal Report on March 23, 2020. The contact between MAWC and the appraisers suggests that the appraisers were not fully “independent, impartial, and objective,” as required by the USPAP and Section 393.320.3(2)a (by virtue of its reference to the USPAP). Particularly troubling is that the appraisers gave MAWC an opportunity to review a draft of the Initial Appraisal Report before providing the final version to Eureka, as required by the statute. Despite these irregularities, however, there is no evidence in the record that the appraisers were not disinterested persons, nor is there expert testimony in the record that the appraisers violated the USPAP as to independence, impartiality, and objectivity.

Third, and most concerning to the Commission, is that the appraisers determined per-customer fair market values for the Eureka water and sewer systems without any substantiated explanation. Neither the Final Appraisal Report nor any other evidence provides an explanation of the reasoning behind the per-customer fair market values that were determined. The \$4,500 per customer fair market value determined by the appraisers for Eureka's water system is 8.25% higher than the next highest comparable water system sale used in the appraisers' analysis. Yet, even when directly asked during the hearing, one of the three appraisers could not identify a single factor about the Eureka system that supported the increased value over any of the comparable systems. There simply is no evidence in the record giving an explanation as to why the appraisers concluded that \$4,500 was the per-customer fair market value of Eureka's water system. This does not appear to meet the standard under the USPAP, which requires an appraisal provide "the reasoning that supports the analyses, opinions, and conclusions" of the appraisal. But, again, there is no expert testimony in the record indicating that the appraisers violated the USPAP.

Fourth, because Section 393.320, RSMo, will establish the amount all of MAWC's ratepayers will pay in the future for the systems, the planned construction of a five-mile water transmission main that would transfer water from MAWC's St. Louis County water distribution system to Eureka and relegate Eureka's wells to use as a backup supply, arguably, should have been considered in the appraisal. Future use is relevant to determining what promotes or is detrimental to the public interest. In addition, an argument can also be made that USPAP Rule 1-4(f) required the appraisers in this matter to consider the effects of MAWC's planned improvements to the water system on the

appraised value of the system. However, there is no expert testimony in the record that the appraisers violated USPAP Rule 1-4(f).

The Commission recognizes that, although Section 393.320, RSMo, requires the use of certified general appraisers and that those appraisers must prepare an appraisal of the fair market value of the water system and/or sewer system in question in accordance with the USPAP, the parties in this matter did not list non-compliance with the USPAP in their prehearing joint list of issues for the Commission to decide at the evidentiary hearing, no evidence directly addressing that issue was presented during the hearing, and the parties did not advance that argument in their post-hearing briefs.

Staff calculated a net book value of approximately \$10.7 million for Eureka's water system and \$7.1 million for the sewer system, or \$17.8 million combined, compared to the total appraised fair market value of \$28 million. The Commission recognizes that the purpose of Section 393.320, RSMo, is to establish procedures to determine the fair market value of small water utilities when purchased by large water public utilities. Further, the Commission also recognizes that when the small water utility is not a public utility subject to Chapter 386, RSMo, net book value is not relevant to fair market value and municipal systems do not use net book value to account for assets or depreciate assets, as a regulated utility is required to do. Finally, the Commission notes that neither Staff nor OPC offered any evidence as to what the fair market value of the assets should be. Therefore, although the gap between Staff's \$18 million net book value and the \$28 million appraised value is concerning, MAWC's election to use Section 393.320 to establish the rate base for the Eureka system means that net book value is not relevant to a determination of a small water utility's fair market value under Section 393.320,

RSMo, because if its provisions are complied with the statute requires the use of the lesser of the appraised value or the purchase price to establish the rate base.

The Commission has considered the issue of whether MAWC water and sewer customers, including future Eureka MAWC customers, will, in future rates, be paying for Eureka assets purchased by MAWC that are fully-depreciated and, therefore, for which past Eureka customers have already paid. Likewise, the Commission has considered the inclusion in MAWC's rate base of the value of the water assets in the Arbors CID that have been, and will continue to be, paid for by the lot owners in the Arbors CID through their assessments. However, not only will any effect on future rates be minimal, but all residents of Eureka, including those in the Arbors CID, will receive value through the city's use of the sale proceeds and improvements in their water service, which justifies the minimal \$1 per year rate impact.

MAWC has a good track record of operating water and sewer systems efficiently and safely. It has the ability and the intention to make needed repairs and upgrades to Eureka's water and sewer systems. MAWC will be able to provide Eureka's citizens with better tasting water that is less harmful to their water appliances and plumbing. While both Eureka's current customers and MAWC's existing customers in the St. Louis County water customer rate base and the Other Sewer customer rate base may experience increased rates in the future as a result of MAWC's acquisition of Eureka's systems, they will also benefit from having the costs of future projects, as well as routine maintenance, spread among a larger customer base.

The Commission finds that there is a need for water and sewer service in Eureka and MAWC is qualified to provide that service. The Commission finds that MAWC has the financial ability to acquire Eureka's water and sewer systems assets and adequately

operate them in the future and that it is feasible for MAWC to do so. The public interest of the citizens of Eureka, including those in the Arbors CID, was expressed by their approval of the sale. The Commission finds that MAWC's acquisition of Eureka's water and sewer systems promotes, and is not detrimental to, the public interest and will grant MAWC CCNs for the service areas currently served by those systems. The Commission finds that Staff's recommended conditions, agreed to by MAWC, are reasonable and will, therefore, grant the CCNs subject to those conditions.

As discussed above, the Commission has valid concerns in this matter about the appraisal process – the lack of evidence supporting the reasoning that led to the fair market values which are contained in the appraisal; the independence, impartiality and objectivity of the appraisers as required by the USPAP; and, in general, whether the determination of the fair market values was done in accordance with the USPAP. Despite those concerns, the statute is clear that, assuming the statute's procedures were followed, the Commission must use the lesser of the resulting appraised value or the purchase price, together with the reasonable and prudent transaction, closing, and transition costs incurred by MAWC as the ratemaking rate base added for the acquisition of the small water utility. There was no evidence presented that the appraisers were either not certified or not disinterested, and no witness testified that the appraisers failed to follow the USPAP. Had there been expert testimony that the appraised fair market value of the two systems was not done in accordance with the USPAP, the determination of the ratemaking rate base to be added for the Eureka water and sewer systems may have been very different in this matter. Absent that evidence, the Commission finds that the statute mandates that the Commission set the ratemaking rate base for the acquired assets at \$18 million for the Eureka water system and \$10 million for the Eureka sewer

system.

**THE COMMISSION ORDERS THAT:**

1. The 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1) is waived for purposes of this application.

2. The *Partial Stipulation and Agreement* filed with the Commission on January 14, 2022, is approved. It shall be attached to this Order and the signatories are ordered to comply with its terms.

3. Upon closing on the Eureka water and sewer systems, MAWC is granted CCNs to provide water and sewer service in the service areas currently served by Eureka and further described in the revised legal description and service area filed in this matter as Exhibit 5, Schedules BWE-3 and BWE-4, respectively. Said CCNs shall be subject to the following conditions:

- a. Rates for customers in the Eureka water service area shall be set at rates equal to the current rates for customers in the MAWC St. Louis County ratemaking rate base; Rates for customers in the Eureka wastewater service area shall be set at rates equal to the current rates for customers in the MAWC Other Sewer ratemaking rate base;
- b. MAWC shall submit tariff sheets, to become effective before closing on the assets, to include a service area map, and service area written description to be included in its EFIS tariff P.S.C. MO No. 13 and 26, applicable to water service and sewer service in the requested service area;
- c. MAWC shall notify the Commission of closing on the assets within five (5) days after such closing;
- d. If closing on the water and sewer system assets does not take place within thirty (30) days following the effective date of the Commission's order approving such, MAWC shall submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until MAWC determines that the transfer of the assets will not occur;

- e. If MAWC determines that a transfer of the assets will not occur, MAWC shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and MAWC shall submit tariff sheets as appropriate that would cancel service area map, legal descriptions, and rate sheets applicable to the Eureka area in its sewer tariff;
- f. MAWC shall develop a plan to book all of the Eureka plant assets, with the concurrence of Staff and/or with the assistance of Staff, for original cost, depreciation reserve, and contributions (CIAC) for appropriate plant accounts, along with reasonable and prudent transaction, closing, and transition costs. This plan should be submitted to Staff for review within sixty (60) days after closing on the assets;
- g. MAWC shall keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;
- h. MAWC shall adopt for Eureka water and sewer assets the depreciation rates ordered for MAWC in File No. WR-2020-0344;
- i. MAWC shall provide to the Customer Experience Department (CXD) an example of its actual communication with the Eureka service area customers regarding its acquisition and operations of the Eureka water and sewer system assets, and how customers may reach MAWC, within ten (10) days after closing on the assets;
- j. MAWC shall obtain from Eureka, as best as possible prior to or at closing, all records and documents, including but not limited to all plant-in-service original cost documentation, along with depreciation reserve balances, documentation of contribution-in-aid-of-construction transactions, and any capital recovery transactions;
- k. Except as required by Section 393.320, RSMo, the Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCN to MAWC, including expenditures related to the certificated service area, in any later proceeding;
- l. MAWC shall distribute to the Eureka customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its sewer service, consistent with the requirements of Commission Rule 20 CSR 4240-13.040(3), within thirty (30) days of closing on the assets;

- m. MAWC shall provide to the CXD Staff a sample of ten (10) billing statements from the first month's billing within thirty (30) days of closing on the assets;
- n. MAWC shall provide training to its call center personnel regarding rates and rules applicable to the Eureka customers;
- o. MAWC shall include the Eureka customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets; and
- p. MAWC shall file notice in this case outlining completion of the above-recommended training, customer communications, and notifications within ten (10) days after such communications and notifications.

4. Upon closing, the Commission authorizes MAWC to establish ratemaking rate base in the amount of \$18 million for the acquired Eureka water system and a ratemaking rate base in the amount of \$10 million for the acquired Eureka sewer system.

5. MAWC is authorized to do and perform, or cause to be done and performed all such acts and things, as well as make, execute, and deliver any and all documents as may be necessary, advisable, and proper to the end that the intent and purposes of the approved transaction may be fully effectuated.

6. This report and order shall become effective on July 9, 2022.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeier CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Seyer, Regulatory Law Judge

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

In the Matter of Missouri-American            )  
Water Company for a Certificate of            )  
Convenience and Necessity Authorizing    )  
it to Install, Own, Acquire, Construct,    ) File No. WA-2021-0376  
Operate, Control, Manage and Maintain    )  
a Water System and Sewer System in        )  
and around the City of Eureka, Missouri.   )

**PARTIAL STIPULATION AND AGREEMENT**

COMES NOW Missouri-American Water Company (“MAWC” or “Company”), the Jefferson County Public Sewer District (“District”), and the Staff of the Missouri Public Service Commission, known together herein as “the Parties,” and submit the following *Partial Stipulation and Agreement* (“*Partial Stipulation*”), to the Missouri Public Service Commission (“Commission”). The Office of Public Counsel has advised the Parties that it neither supports nor opposes the *Partial Stipulation*.

**BACKGROUND**

1. The Application in this case was filed on April 26, 2021. MAWC proposes to purchase substantially all of the water and sewer assets of the currently unregulated system of Eureka, and requests certificates of convenience and necessity (“CCN”) for water and wastewater systems for the public in an area in and around the City of Eureka, Missouri. The city limits of Eureka include area in both St. Louis County and Jefferson County.

2. On May 4, 2021, the District applied to intervene, and intervention was granted on May 18, 2021. The District is a reorganized common sewer district and political subdivision of the state of Missouri, organized pursuant to the provisions of Chapter 249 of the Revised Statutes of Missouri and reorganized pursuant to Section 204.608, RSMo. The District, among

other areas, provides service to certain areas annexed into the City of Eureka, which are located in Jefferson County.

3. While the Eureka city limits extend into Jefferson County, Eureka does not currently provide water or sewer service to that area, as sewer service is provided by the District and water service is provided by the District and Jefferson County Public Water Supply District #2.

### **PARTIAL STIPULATION**

4. The Parties agree that should the Commission grant the CCNs requested in this case, the service areas associated with those CCNs should be limited to St. Louis County and not extend to Jefferson County.

5. Accordingly, the service area map and legal description as provided as Schedules BWE-3 and BWE-4 to the Direct Testimony of Brian W. Eisenloeffel should describe the boundaries of any certificates of convenience and necessity issued in this case and the map and legal description should be depicted in MAWC's tariff.

### **GENERAL PROVISIONS**

6. Except as otherwise expressly specified herein, none of the signatories to this *Partial Stipulation* shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any method of cost determination or cost allocation, depreciation or revenue-related method, or any service or payment standard; and none of the signatories shall be prejudiced or bound in any manner by the terms of this *Partial Stipulation* in this or any other Commission or judicial review or other proceeding, except as otherwise expressly specified herein. Nothing in this *Partial Stipulation* shall preclude the Staff in future proceedings from providing recommendations as requested by the Commission nor

limit Staff's access to information in any other proceedings. Nothing in this *Partial Stipulation* shall be deemed a waiver of any statute or Commission regulation.

7. This *Partial Stipulation* has resulted from negotiations among the signatories and the terms hereof are interdependent. In the event that the Commission does not approve this *Partial Stipulation*, or approves this *Partial Stipulation* with modifications or conditions to which a Party to this proceeding objects, this *Partial Stipulation* shall be void and no signatory shall be bound by any of the agreements or provisions hereof.

8. In the event the Commission accepts the specific terms of this *Partial Stipulation*, the Parties waive, with respect to the issue resolved herein: their respective rights pursuant to Section 536.080.1, RSMo, to present testimony, to cross-examine witnesses, and to present oral argument and written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.070, RSMo; and their respective rights to judicial review of the Commission's Report and Order in this case pursuant to Section 386.510, RSMo. These waivers apply only to a Commission order regarding the issues addressed in this *Partial Stipulation* in this above-captioned proceeding, and do not apply to any matters raised in any prior or subsequent Commission proceeding, or any matters not explicitly addressed by this *Partial Stipulation*.

9. The Staff shall have the right to provide, at any agenda meeting at which this *Partial Stipulation* is noticed to be considered by the Commission, whatever oral explanation the Commission requests. Staff shall, to the extent reasonably practicable, provide the other Parties with advanced notice of the agenda in which Staff will respond to the Commission's request for information. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged, highly confidential, or proprietary.

10. To assist the Commission in its review of this *Partial Stipulation*, the Parties also request that the Commission advise them of any additional information the Commission may desire from the Parties relating to the matters addressed in this Partial Stipulation, including any procedures for furnishing such information to the Commission.

**WHEREFORE**, the undersigned Parties respectfully request that the Commission issue its Order approving the stipulation identified in this *Partial Stipulation and Agreement*.

Respectfully submitted,

/s/ Dean L. Cooper  
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ATTORNEY FOR THE JEFFERSON COUNTY  
PUBLIC SEWER DISTRICT

**/s/ Karen E. Bretz**

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**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 14th day of January, 2022, to:

General Counsel's Office  
[staffcounsel@psc.mo.gov](mailto:staffcounsel@psc.mo.gov)  
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Dean Cooper  
[dcooper@brydonlaw.com](mailto:dcooper@brydonlaw.com)

/s/ David C. Linton

**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 29<sup>th</sup> day of June, 2022.**



  
**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**June 29, 2022**

**File/Case No. WA-2021-0376**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

**Sincerely,**



**Morris L. Woodruff  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.