

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 23rd day of October, 2008.

In the Matter of the Joint Application of Stoddard County)
Sewer Company, Inc., R.D. Sewer Co., L.L.C. and the)
Staff of the Missouri Public Service Commission for an) **Case No. SO-2008-0289**
Order Authorizing Stoddard County Sewer Co., Inc. to)
Transfer its Assets to R.D. Sewer Co., L.L.C., and for an)
Interim Rate Increase.)

**ORDER CONCLUDING SECURITY INTERESTS VOID
AS A MATTER OF LAW**

Issue Date: October 23, 2008

Effective Date: November 2, 2008

Pursuant to the Commission's Report and Order issued on October 23, 2008, bearing the effective date of November 2, 2008, and the Findings of Fact and Conclusions of Law, therein, the Commission concludes that to the extent the purported security interests listed below, which were not approved or authorized by the Commission, sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber, in whole or in part, the franchise, works or system, or assets of any kind necessary or useful in the performance of Stoddard County Sewer Company, Inc.'s duties to the public, said interests are void as a matter of law pursuant to Section 393.190.1, RSMo, 2000 and its amendments and supplements.¹

¹ Section 393.190.1 provides, in pertinent part:

No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public

The purported security interests that are void are as follows:

(1) Deed of Trust and Security Agreement by and between Stoddard County Sewer Co., Inc. and Clinton Enterprises, dated May 24, 1996 and recorded on June 3, 1996, in **Book 289 at Pages 451-463** of the land records of Stoddard County, Missouri,² which purports to grant, bargain, sell, transfer, pledge, mortgage, warrant, hypothecate and convey to the trustee (Clinton Enterprises) with the power of sale, all of the following described property, including all of the rights, title, interest and estate of Borrower, in and to the following:

All those certain lots, pieces or parcels of land and other estates or interests in real estate (hereinafter referred to as the "Land") together with and including all right, title, interest and estate of Borrower therein, situate, lying and being in the County of Stoddard, State of Missouri, legally described as:

All of Lot 1 and the North 35 feet of Lot 2 in Block 1 of Ecology Acres Subdivision, as recorded in Plat Book 8 at Page 4 in the Recorder of Deeds Office of Stoddard County. Missouri.

Together with all estates, tenements, hereditaments, privileges, easements, franchises, licenses, permits and appurtenances belonging or in any wise appertaining to the Land: and all improvements (hereinafter referred to as the

utility, without having first secured from the commission an order authorizing it so to do. . . .
(Emphasis added).

² Documents that were executed in association with the Deed of Trust and Security Agreement, and that were incorporated by reference in paragraph 15 of the Deed of Trust and Security Agreement, entitled "Additional Filings", include:

Deed of Trust and Security Agreement by and between Stoddard County Sewer Co., Inc. and Clinton Enterprises, dated May 24, 1996 (unrecorded), with Rice P. Burns. Jr. of Scott County, Missouri designated as trustee.

Promissory Note executed May 24, 1996 with a payment deadline of May 24, 1997, in the amount of \$100,000.00 from Carl Bien and Ruth Bien to Clinton Enterprises.

Corporation Guaranty Agreement by and between Clinton Enterprises and Carl Bien and Ruth Bien dated May 24, 1996; Security Agreement by and between Bien Co., Inc. and Clinton Enterprises dated May 24, 1996.

Uniform Commercial Code - Financing Statement from Bien Co., Inc. to Clinton Enterprises.

Modification and Extension Agreement by and between Carl Bien and Ruth Bien and Clinton Enterprises, dated June 3, 1997.

Note dated June 3, 1997 in the amount of \$30,000.00 from Carl Bien and Ruth Bien to Clinton Enterprises.

To the extent any of these documents convey an interest in Stoddard County Sewer Co., Inc. and any of its assets that are not encompassed within the Deed of Trust and Security Agreement purported to convey, the transactions encompassed within these agreements are also void pursuant to Section 393.190, RSMo 2000.

"Improvements") which are located on the Land including, without limitation, buildings, warehouses, fences, all utility lines, and equipment, air conditioning and heating equipment, and all additions, substitutions and replacements thereof. The Land and Improvements are hereinafter collectively referred to as the "Trust Premises."

To have and to hold unto the Trustee, its successors and assigns forever, to secure a promissory note to Clinton Enterprises in the amount of \$100,000.

(2) Trust Deed by and between Carl Bien and Ruth Bien and Rice P. Burns, Jr., Trustee of the County of Scott and Clinton Enterprises dated September 8, 1997, recorded September 17, 1997 in **Book 298 at Pages 898-901** of the land records of Stoddard County, Missouri. This document purports to convey in trust:

Part of the South Half of the South Half of the Southwest Quarter of Section 3, Township 25 North, Range 10 East, more particularly described as follows: Beginning at the Northwest corner of the South Half of the South Half of the Southwest Quarter of Section 3 aforesaid; thence East 375 feet; thence South 465 feet; thence West 375 feet; thence North 465 feet to the point of beginning.

To have and hold the same, with the appurtenances, to secure a promissory note to Clinton Enterprises in the amount of \$30,000.

(3) Deed of Trust by and between Stoddard County Sewer Co., Inc. and Citizens Bank of Dexter dated April 30, 1980, signed by Carl Bien on behalf of Bien & Gibbs Lumber Company, Inc., and recorded April 30, 1980 in **Book 209 at Pages 632-635** of the land records of Stoddard County, Missouri; which purports to convey:

All of Lot 1 and the North 35 feet of Lot 2 in Block 1 of Ecology Acres Subdivision, as recorded in Plat Book 8 at Page 4 in the Recorder of Deeds Office of Stoddard County, Missouri.

Together with and including all buildings, all fixtures, including but not limited to all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning apparatus and elevators (the Trustee hereby declaring that it is intended that the items herein enumerated shall be deemed to "have been permanently installed as part of the realty), and all improvements now or hereinafter existing thereon: the hereditaments, and appurtenances and all other rights thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, and the rents, issues and profits of the above described property.

To have and to hold the unto the Trustee, and the successors in interest of the Trustee, forever, in fee simple or other estate, if any, as is stated herein in trust, to secure the

payment of a promissory note of this date in the principal sum of Five Hundred and fifty Thousand Dollars (\$550,000).

(4) Assignment of Secured Note between the Citizens Bank of Dexter and the Small Business Administration (located at 815 Olive St. St. Louis, Missouri) all right and title in the promissory note described in item **(3) above** on December 14, 1983; recorded on December 22, 1983, in **Book 71 at Pages 39-40** of the land records of Stoddard County, Missouri.³

(5) Second Deed of Trust, executed March 1, 2000 between Stoddard County Sewer Co., Inc. and Ed Maglasang, Trustee of the county of St. Louis, State of Missouri, wherein Stoddard County Sewer Co., Inc., conveyed the following real estate:

All of Lot 1 and the North 35 feet of Lot 2 in Block 1 of Ecology Acres subdivision, as recorded .in, Plat Book 8 at Page 4 in the Recorder of Deeds Office of Stoddard County, Missouri.

To hold with the appurtenances in trust for the promissory note executed and delivered to Michael Brennan for the value received of \$40,000. This instrument was recorded in the Office of the Recorder of Deeds for Stoddard County, Missouri on May 3, 2000, in **Book 324, at page 136-137.**

Being void, the security interests listed above cannot in any way bind, nor can the obligations contained therein be transferred to, R. D. Sewer Co., L.L.C., Stoddard County Sewer Co., Inc.'s successor in interest.

THE COMMISSION ORDERS THAT:

1. The purported security interests delineated in the body of this order, are void as a matter of law.

2. No later than November 9, 2008, R. D. Sewer Co., L.L.C. shall file and record a certified copy of this order with the Stoddard County Recorder and Registrar of Deeds and Records, P.O. Box 217, Bloomfield, Missouri.

3. No later than November 9, 2008, R. D. Sewer Co., L.L.C. shall file a certified copy of this order with the Missouri Secretary of State.

³ The underlying security interest is void.

4. This order shall become effective on November 2, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written in a cursive style.

**Colleen M. Dale
Secretary**

(S E A L)

Davis, Chm., Murray, Clayton, Jarrett,
and Gunn, CC., concur.

Stearley, Senior Regulatory Law Judge