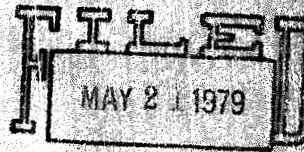


STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of
THE APPROVAL OF STODDARD COUNTY
SEWER CO., INC. FOR PERMISSION,
APPROVAL, AND A CERTIFICATE OF
CONVENIENCE AND NECESSITY AUTHOR-
IZING IT TO CONSTRUCT, INSTALL,
OWN, OPERATE, CONTROL, MANAGE,
AND MAINTAIN A SEWER SYSTEM FOR
THE PUBLIC, LOCATED IN AN UN-
INCORPORATED AREA IN STODDARD
COUNTY, MISSOURI.

CASE NO. SA-79-11



PUBLIC SERVICE COMMISSION

APPLICANT'S BRIEF

JURISDICTION

Jurisdiction of the instant application is conferred upon the Public Service Commission pursuant to Section 393.170 RSMo 1969, as amended, which provides in part that no sewer corporation shall begin construction of a sewer system without first having obtained permission and approval of the Commission. The Commission shall have the powers to grant the permission and approval to construct a sewer system whenever the Commission, after due hearing, determines that such construction of a sewer system is necessary or convenient for the public service.

STATEMENT OF FACTS

On July 17, 1978, Applicant, Stoddard County Sewer Co., Inc., filed its application for certificate of convenience and necessity with the Public Service Commission seeking permission and approval for a certificate of convenience and necessity authorizing it to construct and maintain a sewer system for the public, located in an unincorporated area in Stoddard County, Missouri.

Pursuant to said application, the Public Service Commission, by order dated September 1, 1978, ordered that a hearing should be held for the purpose of receiving evidence in support of or in opposition to the authority sought, and the Commission so ordered that a hearing be set in the Commission's hearing room in Jefferson City, Missouri, on October 19, 1978. On September 29, 1978, the

Commission, in response to a petition from certain occupants of Ecology Acres Subdivision, ordered that the hearing scheduled for October 19, 1978, at Jefferson City, Missouri, be changed and ordered that the hearing be held on October 19, 1978, in Dexter, Missouri.

Subsequently, pursuant to the Commission's above orders, a hearing was held on the instant application in Dexter, Missouri, on October 19, 1978. The hearing on said application was not concluded on said date and was continued to be heard at a date later to be set by the Commission.

A further hearing was scheduled by the Commission by its order dated February 14, 1979, to be held at Jefferson City on February 26, 1979. Due to inclement weather, this hearing was continued and by order of the Commission, it was set for final hearing on March 21, 1979, at the Commission's hearing room in Jefferson City, Missouri, at which time all evidence was submitted by all parties and the hearing was concluded and submitted to the Commission.

At both hearings described above, Applicant presented two witnesses, to wit: Carl Bien, president, Stoddard County Sewer Co., Inc., the Applicant, and Gary L. Gaines, engineer for the Applicant.

At the hearing held in Dexter, Missouri, on October 19, 1978, fifteen public witnesses testified who were all homeowners, either owning property in Ecology Acres or Western Heights Subdivision. No public witnesses appeared at the final hearing in Jefferson City on March 21, 1979, at which hearing Carl Bien again testified on behalf of the Applicant, and Gary L. Gaines, the Applicant's engineer, also testified, and Bill Sankpill, engineer employed by the Public Service Commission, also testified on behalf of the Commission staff.

As previously mentioned, there were no public witnesses at the continued hearing in Jefferson City on March 21, 1979.

However, the office of the Public Counsel was represented by Mr. Daniel S. Ochstein, who cross-examined the witnesses testifying on behalf of the Applicant and the witnesses testifying on behalf of the Commission staff.

As mentioned previously, Mr. Carl Bien, president of the Applicant company, testified at both hearings on behalf of the Applicant. Mr. Bien is a resident of Ecology Acres, Dexter, Missouri, and is president of Stoddard County Sewer Co., Inc., a Missouri corporation (tr. 6).

Mr. Bien introduced and the Commission received into evidence Applicant's Exhibit No. 1, which is a copy of Applicant's certificate of incorporation and Articles of Incorporation pursuant to the laws of the State of Missouri (tr. 7).

Mr. Bien also introduced and the Commission received into evidence Applicant's Exhibit No. 2, which is a map of the area proposed to be served by the Applicant pursuant to a certificate of convenience and necessity and also containing a legal description by metes and bounds of the proposed area to be served. Said proposed area, as shown by Applicant's Exhibit No. 2, is known as Western Heights Subdivision and Ecology Acres Subdivisions, which are contiguous subdivisions (tr. 9).

Mr. Bien testified that he was familiar with the area known as Ecology Acres and Western Heights Subdivision, as he and his business associate, a Mr. Van Gibbs, had purchased Ecology Acres Subdivision in 1974. Mr. Bien and Mr. Gibbs subsequently conveyed Ecology Acres Subdivision to a corporation known as Bien & Gibbs Lumber Company, of which Mr. Bien and Mr. Gibbs are the principal stockholders (tr. 7, 8). Mr. Bien also testified that he was familiar with Western Heights Subdivision as Bien & Gibbs Lumber Company purchased Western Heights Subdivision around 1976 (tr. 8).

Mr. Bien testified that at the time he and Mr. Gibbs pur-

chased Ecology Acres Subdivision, it was already an existing subdivision which had been platted and recorded. However, when Mr. Bien and Mr. Gibbs purchased Western Heights Subdivision via Bien & Gibbs Lumber Company, it had not been platted or subdivided and Mr. Bien and Mr. Gibbs subsequently had Western Heights Subdivision platted and recorded in the land records of Stoddard County (tr. 9, 10).

After Bien & Gibbs Lumber Company obtained title to both Ecology Acres and Western Heights, said corporation began developing the two areas and began selling lots to individuals or to the public (tr. 10). Mr. Bien then testified that some of the lots sold in both Ecology Acres and Western Heights did have housing and improvements on the lots and some lots were just sold as vacant lots (tr. 10).

Mr. Bien testified that the present sewer system or sewer facilities used in both Western Heights and Ecology Acres is either septic tanks or what is known as jet-air systems (tr. 11). As development of both Ecology Acres and Western Heights progressed, it became apparent that the septic tank system was inadequate and that a central sewer system would need to be installed (tr. 11). Mr. Bien subsequently hired an engineering firm, C. R. Trotter & Associates, who informed Mr. Bien that the regulations of the Department of Natural Resources would require Mr. Bien and Mr. Gibbs, as developers of the two subdivisions, to install a central sewer system as soon as possible (tr. 12).

On the advice of said engineering firm and on advice of his attorneys, Mr. Bien decided to install a central sewer system and after much deliberation decided that an application before the Public Service Commission would be the best alternative (tr. 12, 13).

Mr. Bien further testified that there is a total of 278 lots platted for Western Heights and Ecology Acres Subdivisions and it was his best belief that there were presently 78 houses already built in both subdivisions (tr. 14). Mr. Bien further testified

that in all of his sales of his lots, he never charged indirectly in the sales price of any lot for the installation of a central sewer system to recover the actual capital expenditures needed to install the system (tr. 14, 15). Mr. Bien further testified that Bien & Gibbs Lumber Company has never shown any income or shown any expense allocation for the installation of the sewer system (tr. 15).

Mr. Bien further testified that to his knowledge there are not any other public utilities operating a sewer service within the Applicant's proposed service area (tr. 16).

Mr. Bien further testified that if the Commission sees fit to grant the certificate as proposed, that the sewer company would provide an employee for the daily operation and maintenance of the sewer system, and that either said employee or some number will be available 24 hours a day so that the public can report any problem with said system (tr. 129). Mr. Bien also introduced and the Commission received into evidence Applicant's Exhibit No. 5, which is a construction permit received from the Department of Natural Resources giving the Applicant permission to start construction of the system (tr. 131).

Mr. Bien also testified that the sewer company had entered into a stipulation and agreement as to a proposed monthly user rate for the sewer company with the Public Service Commission staff (tr. 132). Said monthly user rate which the Commission staff and the Applicant stipulated and agreed to would be \$11.40 per month (tr. 132). It was also understood that this \$11.40 per month user rate would be in effect for the first eighteen months of operation (tr. 132). It was then understood that the Applicant would then have operating figures which it could submit to the Commission on which to base a more accurate tariff (tr. 132). The Commission staff and the Applicant also stipulated and agreed to a hookon fee to the sewer system at a figure of \$1,035.00 (tr. 134).

It was understood and agreed that this connection fee of \$1,035.00 would be what is termed as a "turnkey project" by which the customer, upon paying that connection fee, would be provided immediate service and the sewer company would provide all the expense and labor in the connection to the system (tr. 136).

Mr. Bien testified that even though the stipulated user fee of \$11.40 per month and the stipulated connection fee of \$1,035.00 is less than the company's proposal as shown by its feasibility statement introduced by its engineer, the company would be satisfied to operate at such figures (tr. 134).

The stipulated figures in effect mean that the company would provide twenty (20%) percent of the capital construction cost and eighty (80%) percent would be financed by the customers.

Mr. Bien also testified that it was his understanding that the stipulation and agreement to the \$1,035.00 connection fee was for the first 105 customers, the capacity of the treatment plant, provided there is a hookup within the first year of the authorization or issuance of the certificate to the company. It was his further understanding that any hookups within this first year would be at a cost of \$1,035.00, but that any hookups after one year from the date of the issuance of the certificate, it would be subject to a 12% interest rate increase for the connection fee (tr. 135).

Gary L. Gaines was called as a witness in behalf of the Applicant and Mr. Gaines testified that he had a Bachelor of Science degree in Civil Engineering, a Master of Science degree in Civil Engineering, and a Master of Science degree in Environmental Engineering, all from the University of Missouri at Rolla (tr. 23). Mr. Gaines also testified that he was a registered professional engineer in the State of Missouri, and was a member of the Missouri Society of Professional Engineers and vice-president of the local chapter (tr. 23, 24). Mr. Gaines testified that his

engineering firm has been employed by several cities in southeast Missouri and that on several occasions he has been a consulting engineer for the installation of water and waste water systems through southeast Missouri (tr. 24, 25). Mr. Gaines testified that there is no significant difference in doing a feasibility study similar to the one he prepared for the Applicant and the ones that he has prepared for various cities in southeast Missouri (tr. 25).

Mr. Gaines introduced and the Commission received into evidence Applicant's Exhibit No. 3, which is the engineer's report on the proposed sanitary sewer facilities for the Applicant (tr. 26, 38). Mr. Gaines testified that his engineer report, Applicant's Exhibit No. 3, describes the conditions that exist in Western Heights Subdivision and Ecology Acres Subdivisions, and said report investigates the existing problems in said area. He further testified that the report proposes solutions to the various problems and gives a preliminary design of any facilities that are proposed and preliminary cost estimates of those facilities (tr. 26). Mr. Gaines testified that the Department of Natural Resources, who has jurisdiction of said engineer reports, had approved the report tendered into evidence by Mr. Gaines (tr. 26, 27).

Mr. Gaines testified that he was familiar with Ecology Acres and Western Heights and that the present facilities, as far as sewer facilities existing in the two subdivisions, were individual home treatment units (tr. 27). Mr. Gaines testified that he has proposed a centralized collection and treatment system (tr. 27).

Mr. Gaines further testified that there is a need for a centralized sewer system because a centralized sewer system is required by state regulations and because it would be in the best interests of the public for the overall environmental impact of the two subdivisions (tr. 27, 28). Mr. Gaines stated that individual home treatment units cause a discharge on each lot of

effluent; with centralized facilities, all the waste water is collected and taken to one location and treated, thereby rendering a more efficient treatment of the waste water by treating it in volume and by isolating the point of effluent to one location, and eliminating the problems of effluent running across home owners' yards and into the streets, etc. (tr. 28).

Mr. Gaines also introduced and the Commission received into evidence Applicant's Exhibit No. 4, which is the economic feasibility study (tr. 29, 38). Mr. Gaines testified that he prepared said Exhibit, which purports to show the financial aspect of the proposed operations. He testified that it is an extension of the engineer's report and it shows the estimated cost of the facilities and the rates that would have to be charged to recover said costs (tr. 29). Mr. Gaines testified as to where he obtained his estimated costs of the construction of the system and where he obtained his figures for the user fee of the system (tr. 30 thru 35).

Mr. Gaines presented two alternatives to the Commission, to-wit:

1. A system using a connection fee plus a user fee; and

2. A system just using a user fee. (tr. 36)

Pursuant to the first method mentioned, Mr. Gaines testified that in order for the company to recover its investment over a ten-year period, the company would have to charge a connection fee of \$1,100.00 and a user fee of \$13.33 per month to recover its operation and maintenance expenses (tr. 36). Under alternative 2, where the premise was that there would be no connection fee, Mr. Gaines testified that the capital cost and the operations and maintenance cost, to be recovered through a monthly user charge, would require a monthly user charge of \$24.91 (tr. 37).

On cross-examination, the Office of the Public Counsel

questioned the fact of whether or not Mr. Gaines had looked into all possible alternatives for the construction of the proposed sewer system. Mr. Gaines answered and said that, in his opinion, a combination pressure and gravity system as he has proposed was the best alternative for the installation of the proposed sewer system for these two subdivisions (tr. 126). Mr. Gaines further testified on cross-examination that the existing septic tanks were not a suitable system for the two subdivisions due to the fact that the soil conditions prevented the septic tank effluent from percolating through the soil (tr. 127). The homes in the subdivision are closely built to each other, and when the effluent is prevented from draining into the soil as exists in these subdivisions, it causes a huge problem in running across people's yards (tr. 127).

The Commission staff called Mr. Bill L. Sankpill, an employee of the Missouri Public Service Commission, who is the manager of the Water and Sewer Department of the Commission (tr. 170). Mr. Sankpill stated that he was familiar with the application of the Stoddard County Sewer Company, Inc., to provide service in Ecology Acres and Western Heights (tr. 170).

Mr. Sankpill further testified that the Commission staff had stipulated and agreed that the \$11.40 monthly rate for the operation and maintenance of the system has been agreed to by the staff, and in fact the staff is recommending that the Commission accept the monthly user rate of \$11.40 (tr. 171).

Mr. Sankpill further testified concerning the \$1,035.00 connection fee that Mr. Bien had previously testified that the Commission staff and the company had stipulated and agreed (tr. 173).

Mr. Sankpill testified that he recommended that the Commission approve the proposed \$1,035.00 connection fee (tr. 171).

Mr. Sankpill then explained in detail his reasons for recommending the proposed connection fee and the proposed user fee (tr. 171 thru 176). Basically, Mr. Sankpill testified that

the estimated cost of the system of \$174,000.00 was true and accurate and that he based his figures on said estimate submitted by the company's engineer (tr. 171). Mr. Sankpill also stated that, using these figures, the company would basically be paying 20% of the total cost of the collecting and treatment facilities and that the customers would pay the balance of 80% (tr. 171, 172).

Mr. Sankpill concluded his testimony by stating that he recommended that the Applicant should receive a certificate of public convenience and necessity from the Commission to operate the proposed sewer system (tr. 176).

The only evidence offered by the public ~~and the owners of~~ ~~of Ecology Acres and Western Heights~~ Ecology Acres and Western Heights (tr. 69 thru 112). The Office of Public Counsel never offered any evidence and only cross-examined the witnesses offered by the Applicant and the staff. The Office of Public Counsel did make an offer of proof concerning a covenant pertaining to Ecology Acres (tr. 165, 166).

ARGUMENT

As stated previously, the Public Service Commission has the power to grant the permission and approval for a company to operate a public sewer system whenever the Commission shall find, after due hearing, that the construction and operation of said sewer system is necessary or convenient for the public service. The only evidence submitted at both hearings was that there definitely was a need for a central sewer system. Furthermore, the regulations of the Department of Natural Resources require that a central sewer system be installed.

The engineer for the Applicant testified that the existing single family dwelling waste water treatment facilities, i.e., septic tanks and jet aeration systems, were grossly inadequate due to the soil conditions of Ecology Acres and Western Heights, and due to the close proximity of the houses in said subdivisions. He

testified that a central sewer sytem would improve the environment immensely and that it was necessary for the public welfare of the two subdivisions that a central sewer system be installed. The engineer for the staff of the Public Service Commission corroborated said testimony. In fact, the necessity of a central sewer system is irrefuted throughout the entire case. There is not one scintilla of evidence to show that a central sewer system is unnecessary or not convenient for the public.

The Applicant's engineer also introduced into evidence the Applicant's feasibility study which is not only irrefuted, but the Commission staff recommended that said economic feasibility study prepared by the Applicant's engineer be accepted and approved by the Commission, subject to a few minor changes. There is not one schtilla of evidence to refute any of the figures used by Applicant's engineer in proposing the rate structure for the company. The staff made certain recommendations and changes as to the design of the system which the company willingly agreed to, and if the Commission sees fit to grant said certificate, the company's engineer will supervise the construction of said treatment plant and facilities according to the specifications and changes outlined by the staff of the Public Service Commission.

Therefore, there seems to be no evidence in conflict as to whether or not the central sewer sytem is necessary or convenient. The only point that the Office of Public Counsel seemed to stress in its cross-examination is that perhaps the connection fee and the proposed user charge per month is too high. However, the Office of Public Counsel did not introduce any evidence to support any speculation by the Office of Public Counsel that said connection fee or said proposed monthly user fee is unreasonable or unfair to any future customers of the system. In fact, the only evidence before the Commission is the evidence presented by the Applicant through its engineer and the evidence presented by the

Commission's staff, which was subsequently agreed to and stipulated between both parties as to a connection fee of \$1,035.00 and a monthly user charge of \$11.40.

SUMMARY

In summary, the Applicant requests that the Commission issue a certificate of public convenience and necessity to the Applicant granting it permission and approval to operate and install a sewer system in Ecology Acres and Western Heights Subdivisions and to approve a tariff with a connection fee of \$1,035.00 for the first 105 customers and a monthly users charge of \$11.40, and for such other relief as to the Commission seems just and proper.

Respectfully submitted,

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