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October 6, 1980

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MISSOURI

PUBLIC SERVICE COMMISSION

Office of the Secretary
Public Service Commission of Missouri
P.O. Box 360
Jefferson City, Missouri 65102

RE: Application of Water's Edge Sewer Company, Case No. SA-80-208

Gentlemen:

I am enclosing herewith the original and nine copies of BRIEF OF INTERVENOR BOONE WATER AND WASTE CO., INC. for filing in the above-referenced case.

Concurrently, I am mailing a copy of said brief and of this letter to all other counsel in the case.

Very truly yours,

JONES, ROPER AND SCOTT

Stephen C. Scott
Stephen C. Scott

SCS:abm

Enclosures

cc: Mr. Raymond C. Lewis, Jr.
Mr. William C. Harrelson
Mr. Thomas M. Schneider

FILED
OCT 7 1980
PUBLIC SERVICE COMMISSION

BEFORE THE PUBLIC SERVICE COMMISSION OF MISSOURI

IN THE MATTER OF:)
The Application of)
WATER'S EDGE SEWER COMPANY)
for Permission and Approval and for a)
Certificate of Convenience and Necessity)
Authorizing it to Construct, Install,)
Own, Operate, Control, Manage and Maintain)
a Sewer System for the Public Located in an)
Unincorporated area in Boone County, Missouri.)

CASE NO. SA-80-208

BRIEF OF INTERVENOR
BOONE WATER AND WASTE CO., INC.

Contrary to a statement contained in the introductory paragraph of Applicant's Brief, the opposition of Intervenor BOONE WATER AND WASTE CO., INC. (hereinafter "BOONE") centered on the question of the economic feasibility of the Applicant's attempting to provide sewer service to the area presently certificated to BOONE.

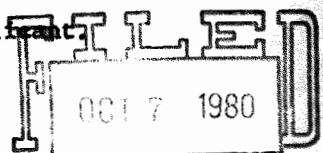
STATEMENT OF FACTS

As stated in its Application to Intervene in this case, contained in the Commission's case file, BOONE is opposed to the granting of Applicant's Application only insofar as it affects the area now being provided with sewer service by BOONE.

BOONE sets out the following Statement of Facts by way of addition to and qualification of the Statement of Facts contained in Applicant's Brief:

Dan Hagan, president of Applicant, testified that the usage projections for Lakewood Estates (now served by BOONE) allow for present usage of 109 dwelling units and provide for an additional 50 dwelling units over a five-year period. (T. 35, 36) These same figures appear in the Feasibility Study attached to Applicant's Application as Exhibit 4 (at Page 3 thereof) and in Applicant's Hearing Exhibit No. 2.

Kenneth Flood, president, shareholder and director of BOONE (T. 126), testified that he owns the remaining undeveloped areas of Lakewood (T. 125), and that he projects a total of 250 to 300 dwelling units in Lakewood when the subdivision is completed. (T. 127). There are presently 109 units in Lakewood. (T. 126) Thus, additional development in Lakewood is expected to be some 140 to 190 units, as compared with the 50 additional units projected by Applicant.



Mr. Hagan further stated that Applicant's financial projections call for a construction contribution from Lakewood in the amount of \$40,000 (T. 37). This amount is also shown at Page 5 of Exhibit 4 to Applicant's Application. Mr. Hagan stated he assumed the Lakewood developer would pay that contribution (T. 38).

Mr. Flood testified that his undeveloped lots in Lakewood are subject to a Deed of Trust (T. 131), that his agreement with the lender requires him to pay \$6,000 per lot for the release of a lot from the Deed of Trust (T. 132), that it will cost him from \$2,000 to \$3,000 per lot to provide utilities and streets (T. 132), and that the lots would sell for between \$8,000 and \$9,000 (T. 133). Therefore, Mr. Flood could not see any potential source for the \$40,000 payment to Applicant (T. 133). On the other hand, if BOONE built an expanded sewage treatment plant to serve its entire certificated area as Mr. Flood proposed (T. 128), he would expect to recoup the cost through service charges to present and future homeowners (T. 145).

Vernon Stump, an engineer testifying for BOONE who has extensive education and experience involving sewer systems (T. 110-112), testified that the entire Lakewood area cannot be served by gravity sewage flow to Applicant's proposed plant location, but rather a pump station costing approximately \$25,000 would have to be installed (T. 113). Therefore, he stated, the total cost of implementing Applicant's proposal, providing capacity for some 160 dwelling units in Lakewood, would be approximately \$60,000 for Lakewood (T. 114). On the other hand, a new sewage treatment facility which could serve the entire Lakewood area by gravity flow (T. 124) could be built for about \$60,000 and would have capacity for the 250 to 300 dwellings projected for Lakewood (T. 114).

Mr. Flood stated that his plans for constructing a new sewage treatment facility for Lakewood have been stymied both by the economic slowdown (T. 154) and by the uncertainty arising from Applicant's Application herein (T. 130). His plan, if permitted to build the plant, is to have it operated by Mid-Missouri Engineers (T. 130), Mr. Stump's firm which presently operates BOONE's plant (T. 111, 112).

Despite the testimony by witness Michael Logstan that the Missouri Department of Natural Resources would oppose construction of a new plant by BOONE "at this time" based on past experience (T. 65), Mr. Logstan acknowledged that Mid-Missouri Engineers does a good job operating BOONE's plant with the facilities available (T. 66, 67). He further acknowledged that DNR might reconsider its position if BOONE committed itself to hiring professional operators and providing sufficient funding and carte blanche to operate the plant in an efficient manner (T. 68).

Despite references by several witnesses to BOONE's existing plant being loaded to or over capacity, the record contains no specific data concerning measurements of the effluent from BOONE's plant.

ARGUMENT

As indicated by the foregoing Statement of Facts, BOONE is prepared to construct a sewage treatment plant costing about \$60,000 which will provide gravity flow sewer service for the entire 250-to-300-unit future development of Lakewood. In contrast, for approximately the same amount of money, Applicant's plan would provide sufficient capacity for only 159 dwelling units in Lakewood. Furthermore, BOONE's proposal provides a mechanism for recouping the cost through rates, whereas Mr. Flood sees no way to come up with the \$40,000 up-front money called for by Applicant's proposal. Obviously, if Applicant's proposed \$40,000 contribution from Lakewood were factored into Applicant's rate base, Applicant's rates would be much higher.

As a result of the foregoing considerations, it appears clear that the "promotion and conservation of the interests and convenience of the public," State ex rel. Crown Coach Co. v. Public Service Commission, 179 S.W.2d 123, 128 (K.C.Mo.App. 1944), would be best served by denying Applicant a Certificate of Convenience and Necessity with respect to BOONE's certificated service area. The Applicant is prepared to proceed with its plans even if BOONE's service area is excluded from its service area (T. 31-34).

The case of State ex rel. Public Water Supply District No. 8 v. Public Service Commission, 600 S.W.2d 147 (Mo.App., W.D. 1980), cited several times in Applicant's Brief, is factually distinguishable from the instant case. In the water district case, Cedar Hills Estate Water Co., Inc. sought to provide water service to a mostly undeveloped 250-acre tract comprising about 5% of the area of Water District No. 8. The Missouri Public Service Commission granted Cedar a certificate of convenience and necessity over the opposition of the water district. On appeal the Missouri Court of Appeals, Western District, upheld the PSC's action. The end result was that two utilities were allowed to compete to provide water service within the 250-acre tract. However, one point stressed by the appeals court was that the water district had shown no interest in serving the disputed area prior to Cedar's filing of an application with the PSC; in contrast, in the

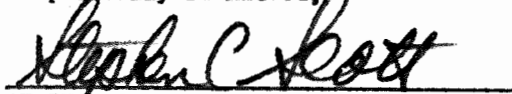
instant case BOONE has held itself ready to provide sewer service, and delays in constructing a new treatment plant were caused by the economic slowdown and the uncertainties generated by Applicant's Application herein. Further, in the water district case, the disputed 250-acre tract had little or no existing water service, and the appeals court placed great weight on the PSC's determination that there would be no duplication of facilities within the tract. In contrast, in the instant case, BOONE already operates a sewerage system serving 109 units. Necessarily, if Applicant herein is granted concurrent authority to provide sewer service in BOONE's area and seeks to serve those 109 units, and BOONE does not acquiesce in the use of its existing sewerage facilities by Applicant, Applicant will have to install duplicative facilities at great expense. This would be wasteful and contrary to the general public interest.

State ex rel. Electric Co. of Missouri v. Atkinson, 204 S.W. 897 (Mo. En Banc 1918), also cited by Applicant, also is distinguishable from the instant case because the crux of the case is providing utility service to an area not being served at all by the utility company already having authority to do so.

Another case cited by Applicant in support of the proposition that the PSC may permit competition between utility companies is State ex rel. Union Electric Light and Power Company v. Public Service Commission, 62 S.W.2d 742 (Mo. 1933). However, this case is off point because it involved an attempt by one of two competing electricity utilities to purchase a block of stock in the other. In affirming the PSC's denial of authority to purchase the stock, the Missouri Supreme Court made much of the potential for corporate management difficulties should the stock deal be consummated. Id. at 746. Indeed, the Court appeared to go out of its way to comment that another means of consolidating electricity service to the St. Louis area in one utility company might well be in the public interest. Id.

In summary, Applicant's Application should be denied with respect to BOONE's service area because BOONE can serve more dwelling units for the same expense and because allowing competition would permit wasteful duplication.

Respectfully submitted,


STEPHEN C. SCOTT

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on the 6 day of October, 1980, he mailed true copies of the foregoing BRIEF OF INTERVENOR BOONE WATER AND WASTE CO., INC., by first-class mail, postage pre-paid, to Mr. Raymond C. Lewis, Jr., 901 East Broadway, Columbia, Missouri 65201, attorney for Applicant; Mr. William C. Harrelson, P.O. Box 360, Jefferson City, Missouri 65102, Attorney for the Missouri Public Service Commission staff; and Mr. Thomas M. Schneider, City Counselor's Office, County-City Building, Columbia, Missouri 65201, attorney for Intervenor City of Columbia, Missouri.


STEPHEN C. SCOTT