BEFORE THE PUBLIC SERVICE COMMISSION OF MISSOURI

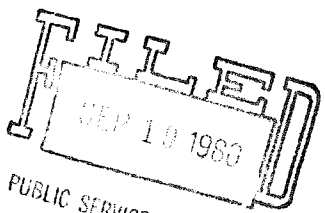
IN THE MATTER OF THE APPLICATION OF WATER'S EDGE SEWER COMPANY FOR PERMISSION AND APPROVAL AND FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY AUTHORIZING IT TO CONSTRUCT, INSTALL, OWN, OPERATE, CONTROL, MANAGE AND MAINTAIN A SEWER SYSTEM FOR THE PUBLIC LOCATED IN AN UNINCORPORATED AREA IN BOONE COUNTY, MISSOURI.	)	Case No. SA-80-208

APPLICANT'S BRIEF

This case involves the application of Water's Edge Sewer Company for a certificate of convenience and necessity for a sewer system in an unincorporated area in Boone County, Missouri. Hearing was had before the Hearing Examiner on May 30, 1980. Several days before the hearing two parties became intervenors. One was Boone Water and Waste Company, Inc., another sewer company, and one which already has a PSC certificate covering a small portion of the service area covered by the application in this case. The other intervenor was the City of Columbia. No other parties appeared or opposed the application. The intervention of the City of Columbia turned out not to be real opposition to the specific application; but rather centered on the city's concerns in respect to its long range sewer plans. The opposition of Boone County Sewer and Water Company (Kenneth Flood) centered on the question of whether that intervenor, which already had a certificate covering a small portion of the area, was in fact rendering adequate service or capable of rendering adequate service to its present customers. The application was favored by the PSC staff.

Statement of Facts

The applicant Water's Edge Sewer Company is a Missouri corporation in good standing, the Articles of which were officially noted by the Examiner (T 9, 10), and appeared at the hearing by Dan Hagan (T 9) who is the sole director and president and the owner of 79% of the shares of the corporation (T 11).



Mr. Hagan's testimony developed that there were four ownerships within the proposed service area: a subdivision which he was developing called Water's Edge Subdivision, consisting of approximately 110 acres; another ten acres owned by him individually; Lakeland Acres, a subdivision of about 150 acres owned by E. D. W. Incorporated which in turn was owned by one Ed Welch; and Lakewood Estates, a subdivision of about 50 acres being developed by one Kenneth Flood (T 13, 14). The last mentioned ownership under Kenneth Flood operates a sewer service under the name of Boone County Water and Waste Company which is one of the intervenors herein (T 14).

Mr. Hagan, of course, was able to consent to the application on behalf of Water's Edge Subdivision and on behalf of his own personal ownership (T 14, 15), and produced evidence that the third ownership, E.D.W. Incorporated, had also consented to the request (T 24; Applicant's Exhibit 1). The only objection to the application, therefore, insofar as parties within the service area is concerned, is on behalf of Mr. Flood and Boone County Water and Waste Company (T 25).

Mr. Hagan testified in respect to his subdivision, Water's Edge Subdivision, that the engineering and feasibility study work had been completed, a 25 acre lake built, and 161 half-acre lots laid out along approximately two miles of street (T 10). The sewers were approximately one-third in (T 15), the lake was completed, about half the roads were cut in, about a half-mile of curbs and gutters had been installed, and one-fourth to one-third of the lots were served with electricity, telephone and water by underground facilities (T 16). Sixteen lots had been sold off and eight houses were under construction, five of which had been sold (T 16, 17). No sewers of any type were available for the eight houses under construction although there was an urgent need for the same (T 17). The rest of his 161 lots are ready to be developed and sold (T 25).

Mr. Hagan testified that he submitted his application for a service area covering all four ownerships at the urging of and under pressure from the Missouri Department of Natural Resources, the Public Service Commission and the Boone County Sewer District Board of Trustees, and after being told that the City of Columbia could not provide sewer services. He testified

that he attended a meeting in November of 1979 with representatives of the Department of Natural Resources, the Boone County Sewer District Board of Trustees and lot owners in the area (T 18). The city was also present at the meeting through Ray Beck, Director of Public Works (T 21). Mr. Beck indicated that there were no trunk sewers in the area and no immediate plans to extend trunk sewers there. He also said that the city's treatment facilities were overloaded and the city was building a new large facility but one which would not be completed for several years. He also said that the city might jeopardize its funding if it attempted to bring in unincorporated areas (T 19). At a later meeting in January of 1980 the city's position remained the same (T 20), and Mr. Hagan was never notified of any changes in the city's position until receiving the intervention petition (T 20, 21).

Mr. Hagan had intended to establish a sewer service solely for his own subdivision, but as a result or urgings from the Missouri Department of Natural Resources, the Public Service Commission and the Boone County Sewer District Board of Trustees, submitted an application covering all four ownerships (T 22, 23).

The applicant corporation has now acquired a .195 acre tract for the proposed plant which is adequate and suitable (T 25, 26). James Busch, an engineering consultant, has made a feasibility study which was officially noted by the Examiner (T 26). The Boone County Court does not issue franchises, but applicant obtained a letter from the Court to that effect which was also officially noted by the Examiner (T 27). The applicant has now received a construction permit from the Department of Natural Resources on May 12, 1980 (T 28). No other person or party is rendering service in the service area except the Boone County Water and Waste Company, nor are there any plans for the same (T 28, 29). It is impossible to proceed with the development of subdivisions in the area without immediate provisions for sewer services (T 29).

Mr. Hagan testified that he would have a professional firm operate the facility and have the operator trained to obtain a permit (T 29); that the applicant would have a twenty-four hour phone number and a designated

place to pay bills (T 30); that the applicant would be willing to keep adequate records on the various lots (T 30, 31); that it was willing to submit its billing form to the PSC (T 31); that applicant was willing to use the Uniform System of Accounts for Public Utilities (T 33); and that it was ready, willing and able to service the proposed service area (T 31). The applicant in open hearing stated that it was willing to accept the temporary interim rates testified to by Mr. Merciel of the PSC (T 158).

Mr. Hagan testified that if the PSC did not want to include Lakewood Estates (the Flood property) within the proposed service area he would still be willing to serve the remainder of the area and would be willing to carry the cost of building the plant until such time as there were enough customers to pass on the cost (T 31 - 34). He believed that the plant would be able to take care of the various subdivisions until the city eventually extended its sewers (T 41), but indicated that if business were successful enough to require another plant, he would be happy to build one (T 37, 36, 42 and 43). Applicant's plan contemplated a contribution of $25,000 from Lakeland Acres (Welch) and $40,000 from Lakewood Estates (Flood) (T 37).

James Brush, a consulting engineer, also testified for the applicant (T 46). He had prepared the feasibility study in evidence (T 26, 48). He testified that he thought the consolidation of the systems and the avoidance of duplication would be beneficial and that based on his study and the desires of the Boone County Sewer District Board of Trustees, he recommended consolidation of all three discharges into one facility (T 52).

He was aware of the problems presently existing at Lakewood Estates, having personally observed effluent downstream (T 50, 51).

He estimated the cost of a 400 unit plant to be $85,000; the sewers for Water's Edge Subdivision to cost $46,100; the sewers to serve Lakeland Acres $15,002; and to serve Lakewood Estates $21,006 (T 54). In addition to his feasibility study he had provided additional backup data (T 45; Applicant's Exhibit 2).

Michael Logstan, a water engineer for the Missouri Department of Natural Resources, also testified in support of the application (T 58 - 60). He confirmed that both the Boone County Sewer District and the Department

of Natural Resources urged Mr. Hagan to develop a plan for all four ownerships and that Mr. Hagan cooperated fully with the DNR in this development (T 60, 61). Mr. Logstan had been familiar with the various properties for three years (T 61) and testified that Boone County Water and Waste Company (Mr. Flood) had never consistently met the discharge requirements and that his system was both hydraulically and organically overloaded (T 62). He testified that Mr. Flood had applied for a construction permit for a new facility on two occasions but the permits had expired when no construction was started (T 62). He testified that Flood's plant discharged effluent, that notices had been sent to Flood, but that the problems had continued over the three year period. It was his opinion that the plant could not be operated satisfactorily in its present size and condition (T 63, 64). He testified that the Flood plant had a 17,000 gallon capacity and an estimated flow of 40,000 gallons per day (T 71).

The other subdivision not owned by applicant Lakeland Acres, (Mr. Welch) has a single cell waste lagoon, but no valid discharge permit has been issued at present (T 64), nor does it have any PSC certification (T 65).

Mr. Logstan testified that he felt certain that the Department of Natural Resources would oppose any new construction application by Flood at the present time because of his demonstrated inability to provide proper service (T 65, 68, 70).

The Public Service Commission staff testified in support of the application. Bill L. Sankpill, a registered engineer and the manager of the Water and Sewer Department in the PSC (T 72, 73), testified that he had examined the application and believed it would serve the public need and necessity to grant the certificate. He testified that the planned facility was adequate to serve the area for several years and also testified that the last available manhole in Lakewood Estates (Flood) could be served by gravity flow (T 74). He testified that the Boone County Water and Waste Company facility was grossly overloaded and not acceptable (T 73).

Jim Merciel, an engineer with the PSC, testified that he had examined the proposed rate structure in the feasibility report and that it appeared

reasonable (T 74 - 77). He had prepared a proposed rate structure for eighteen months (T 77 - 78) which applicant accepted and agreed to abide by (T 158). He testified that if all of the subdivisions were included, the proposed rate could be $8.67 per month per customer and that if Lakewood Estates were excluded the equivalent cost would be $9.46 (T 84).

The intervenor City of Columbia appeared by its Director of Public Works, Ray Beck (T 87). He testified that the city had concerns about proper sizing and other health and safety factors (T 89) and that there was a city policy resolution allowing the city staff to negotiate with persons in a "201 area" for the operation of a sewer facility if approved by the city council (T 90).

Mr. Beck admitted that the applicant did ask if the city could bring trunk sewers into the area and that he did tell the applicant that the city policy was not to go outside the city, although the city had funds to build sewers to the city limit line (T 91). He also admitted that he told the applicant that the city's treatment plant was heavily loaded and that he had particular concerns about receiving the extra load from the Flood property (T 91, 92). On close examination, Mr. Beck admitted that there were still lagoons within the city and some areas still not served with sewers, that the city had a present lack of treatment capacity (T 93) and that he could not guarantee sewer services to the proposed service area by any particular date (T 95). He estimated that the new city treatment plant would be on line in January of 1982 (T 93).

He testified that he made an offer to the applicant that the city would operate and maintain a sewer facility for the service area but without specifying any date (T 98), but then admitted that what really occurred was that he indicated to Mr. Hagan that if Mr. Hagan would make a proposal he would take it to the city council for decision (T 108).

Pressured as to the time in which the city could supply services to the area, he indicated that the treatment facility could be ready in two years (T 105) and that the sewer line "could be built in two years if somebody got on it" (T 105), then changed this testimony to "three years to be safe" (T 105). He admitted that the city could not make adequate sewer service available to this service area at the present time (T 106, 107).

The intervenor Boone County Water and Waste Company presented its case through its plant operator, Vernon Stump, and its owner, Kenneth Flood. Mr. Stump through Mid-Missouri Engineers (T 111) has been operating the treatment plant for the intervenor Boone County Water and Waste Company (Flood) (T 112). He testified that one corner of Lakewood Estates cannot be served by gravity flow and would require a lift station (T 113) but he did not know how many lots could not be served by gravity (T 123). He admitted, however, that the last existing manhole in Lakewood Estates can be served by gravity (T 122).

He testified that he had been operating Flood's system for a year but had been aware of the problems there for three years, and testified that the problems continued even after he took over (T 115). He admitted that the present plant was overloaded and that the problem could only be cured by construction of a new plant (T 116). There had been no application for new construction while he had been operating the plant (T 116). While he believes Flood opposes the application for "cost factors" (T 117), he believes that "combining all the systems is a good, logical kind of approach" (T 118).

Kenneth Flood testified that he owns the remaining undeveloped land in Lakewood Estates and is also president of Boone County Water and Waste Company which has a PSC certificate (T 125, 126). He has 109 units built and plans for a total of 250 to 300 (T 126, 127). He testified that he knew the plant was overloaded and believed that resulted from installation of garbage disposals (T 127), although he later backed off of this testimony to some extent (T 140). He stated that he intended to build a new plant of 90,000 gallon capacity, but had been unable to get any "accord" from the PSC (T 128 - 130). He admitted that he had on two occasions obtained construction permits and let them expire (T 136, 137). He permitted these permits to lapse because he could not finance them (T 154). He testified he could not come up with the $40,000 contribution under the Hagan plan (T 133.

He testified that his proposed rate for the 90,000 gallon plant would be $13.50 per customer (T 141), but admitted that he wrote a letter to his

Home Owners Association in 1979 in which he indicated the charge would be $14.02 for only a 45,000 gallon plant (T 141, 143, Staff's Exhibit 3).

Mr. Flood's testimony at times indicated that he felt his plant was not overloaded but at other times admitted difficulties. On one occasion he admitted he was "pushing capacity" or perhaps a "little over" (T 139). At another place he indicated that his consultant had advised him that he was operating in a "gray area" (T 155), and he admitted that he had made the statement in Staff's Exhibit 3 Letter in 1979 that the "present plant is now over capacity and must be replaced. State and local agencies are requiring this." (T 154).

I.

THE APPLICANT FULLY PROVED ITS RIGHT TO A CERTIFICATE.

This point is not extensively briefed since applicant's case on the merits was never directly challenged at the hearing. Intervenor Boone County Water and Waste Company questioned only the inclusion of Lakewood Estates in the service area; and intervenor City of Columbia raised only the question of applicant's efforts in respect to long range city sewer planning.

All routine requirements such as corporate articles (T 9, 10), County position on franchises (T 27), feasibility study (T 26, 48), DNR construction permit (T 28), engineering backup data (T 45), consent of involved parties (T 14, 15, 24), availability of a suitable site (T 25, 26), plans for trained operation (T 29), willingness to meet service and bookkeeping requirements (T 30, 31), and other such matters were all met and were not contested. Applicant indicated in open hearing its willingness to accept proposed PSC interim rates (T 158).

The urgency of the public need can be seen from the fact that Mr. Hagan has 161 lots in active development with sixteen lots sold, eight houses being built with five of them sold (T 16, 17), and the remainder of the lots ready for development, but no sewers (T 17). The adjoining Lakeland Acres (Welch) has only a single cell lagoon with no valid discharge permit or PSC certificate (T 64, 65). The remaining property, Lakewood Estates (Flood),

plans to develop 60 to 110 more lots (T 126, 127) but its plant is already grossly overloaded (T 62-65, 68, 70, 71, 73, 115, 116, 154). It is impossible to proceed with development without sewers (T 29).

In short, homes are being built for the public with no sewers available. Great amounts of capital are tied up in lots in the process of development which development cannot proceed without sewers. Persons currently owning homes in the area are not being provided with adequate service. The general health and safety of the community is suffering from inadequacy of present facilities. None of this evidence has been directly contradicted or even seriously questioned. In fact it stands undisputed.

The evidence therefore demonstrates an urgency of need far in excess of that required by PSC law. The "necessity" which a PSC applicant must show is defined in State ex rel. Beaufort Transfer Company v. Clark, 504 S.W.2d 216 (K. C. Ct. App. 1973) as follows at l.c.219:

> "(T)he term 'necessity' does not mean 'essential' or 'absolutely indispensible,' rather, it requires that the evidence must show that the additional service would be an improvement justifying its cost and that the inconvenience of the public occasioned by the lack of a carrier is sufficiently great to amount to a necessity."

The points raised by the intervenors are covered in the following points of this brief.

II.

THE CERTIFICATE SHOULD BE GRANTED AS TO THE ENTIRE PROPOSED SERVICE AREA IN VIEW OF THE OVERWHELMING EVIDENCE THAT INTERVENOR BOONE COUNTY WATER AND WASTE COMPANY (KENNETH FLOOD) HAD CLEARLY DEMONSTRATED OVER A SUBSTANTIAL PERIOD OF TIME ITS INABILITY TO PROVIDE ADEQUATE SERVICE.

As covered in the Statement of Facts above, s small portion of the proposed service area covered by the application before this Commission is already covered by a PSC certificate. This is the certificate held by Boone County Water and Waste Company (Kenneth Flood) and is the basis for that company's intervention. Presumably it is the position of intervenor Boone

County Water and Waste Company that it has an exclusive franchise or monopoly that bars the granting of any competition within its service area regardless of the extent to which it may default in providing adequate service to the public. Such, however, is not the law. Adequacy of service to the public is the guiding star; and there was strong uniform evidence throughout the hearing from all witnesses who testified about it that the present service of intervenor is wholly inadequate. This testimony included the following:

1. James Brush, an enginner, testified he had personally observed effluent downstream from the Flood facility (T 50, 51).

2. Michael Logstan, an engineer with the Department of Natural Resources, testified that the Flood facility was hydraulically and organically overloaded (T 62) and could not be made to operate satisfactorily at its present size and condition (T 63, 64). He testified that the plant had a 17,000 gallon capacity and an estimated 40,000 gallon flow (T 71).

3. Logstan also testified that on the basis of past experience with Mr. Flood he believed that the Department of Natural Resources would oppose any new plant proposed by him (T 65, 68, 70).

4. Bill Sankpill, an engineer with the PSC, testified that the intervenor's plant was grossly overloaded and not acceptable (T 73).

5. Vernon Stump, the operator of intervenor's facility, although testifying for intervenor, stated that he had been aware of the problems there for three years, including the year that he had operated the plant (T 115).

6. Vernon Stump also testified that while Flood opposed the Hagan application on "cost factors" he believed that "combining all the systems is a good, logical kind of approach" (T 117, 118).

7. The intervenor's president, Kenneth Flood, admitted that he was "pushing capacity" or "a little over" (T 139) and that he was operating in a "gray area" (T 155). Of more significance, he admitted a letter he had written in 1979 in which he stated that his present plant is "now over capacity and must be replaced" (T 154; Staff Exhibit 3).

Of even more importance is the fact that during all of these critical years of difficulty, Mr. Flood never solved the problem. On two occasions he took out construction permits, but on both occasions let them expire (T 136, 137), giving as his reason the excuse that he could not finance the facility (T 154).

If applicant were shown to be seeking to intrude in a well run service area out of greed or cut throat competition, the situation might be different. But the evidence in this case is undisputed that Mr. Hagan set out to construct a facility only for his own subdivision but changed it to include all four ownerships at the strong urging of the Missouri Department of Natural Resources, the Public Service Commission and the Boone County Sewer District Board of Trustees (T 22, 23, 60, 61).

It is clear that Missouri law vests the Public Service Commission with the exclusive discretion to choose between monopoly and regulated competition among public utilities. State ex rel. Public Water Supply District No. 8 v. Public Service Commission, 600 S.W.2d 147, l.c. 153 (K. C. Ct. App. 1980). It is true that the courts have indicated that monopoly is favored where necessary to restrain cut throat competition which may be harmful to the public, but in a number of cases the Public Service Commission has chosen to favor competition rather than monopoly and these decisions have been supported by the courts. State ex rel. Union Electric Light and Power Company v. Public Service Commission, 62 S.W.2d 742 l.c. 745 (Mo 1933); State ex rel. Public Water Supply District No. 8 v. Public Service Commission, supra; and State ex rel Electric Company of Missouri v. Atkinson, 204 S.W. 897 l.c. 899 (Mo 1918).

The Courts have repeatedly stated that the ultimate interest is that of the public as a whole and that concern for the utility involved is only incidental. For example see: State ex rel. Public Water Supply District No. 8 v. Public Service Commission, supra at l.c. 156; State ex rel. Doniphan Telephone Company v. Public Service Commission, 377 S.W. 2d 469 l. c. 473 (K. C. Ct. App. 1964); and State ex rel Webb Tri-State Gas Company v. Public Service Commission, 452 S.W.2d 586 (K. C. Ct. App.

1970). In State ex rel. Crown Coach Company v. Public Service Commission, 179 S.W.2d 123 (K. C. Ct. App. 1944) the Court stated at l.c. 128:

> "It seems clear to us that the guiding star of Public Service Commission law and the dominating purpose to be accomplished by such regulation is the promotion and conservation of the interests and convenience of the public."

In the Crown Coach Company Case, supra, the Court also approved a PSC grant of a certificate of convenience and necessity to a company which wished to duplicate existing service provided by the protestant.

A case closely in point upon the facts is State ex rel. Ozark Electric Cooperative v. Public Service Commission, 527 S.W.2d 390 (K. C. Ct. App. 1975) in which the Court construed Chapter 393, the chapter involved in the present case. The Court found that the intent of the legislature was to provide "adequate" facilities and that the experience and capability of the applicant was a relevant consideration. The Court upheld the grant of a certificate by the PSC to a regulated electric utility within the territory of an unregulated electric cooperative as lawful and reasonable because based on competent and substantial evidence. The Court relied in part on a legislative intention that there be "adequate" service by citing Section 393.13 Revised Statutes of Missouri, which provides in relevant part:

> "Every gas corporation, every electrical corporation, every water corporation and every sewer corporation shall provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable."

In fact, the law of Missouri does not even require a finding of inadequate service on the part of the existing facility as is clearly shown to exist in this case. The case of State ex rel Public Water Supply District No. 8 v. Public Service Commission cited supra, reviewed the Ozark Electric Cooperative case and other cases, including cases from other states, and concluded that Missouri does not follow the view of some states which require the requesting facility to prove that the existing facility is inadequate and that the requesting facility would provide better service. Rather, Missouri's approach is to apply a balancing test with adequacy of

the existing facility being one important but not exclusive factor. In that case, the Court states l. c. 600 S.W.2d at 155:

> "Our own State's policy against competition is a flexible one created to protect the public first and concerning itself with the existing utility only in an incidental manner."

In the later case of State ex rel. Inman Freight System, Inc. v. Public Service Commission, 600 S.W.2d 650 (K. C. Ct. App. 1980) the Court noted protestants' argument that granting the certificate applied for would have a severe adverse econcomic impact upon them and stated, l.c. 655:

> "This fact was of course considered by the Commission and held not to overbalance the public need and convenience. That determination rested within the discretion and expertise of the commission."

It should be noted that the Inman case involved the motor carrier statute which contains a requirement that the effect on competitors be considered, a factor which is not required in considerations affecting sewer companies.

While applicant has indicated its willingness to proceed even if the intervenor's service area is deleted from the service area proposed by this application, it is apparent that the public interest would be served by granting the entire service area proposed. Intervenor's service has been inadequate for at least three years; it admittedly has not been remedied; there is admittedly no hard plan existing to remedy it; and past experience with intervenor is so unsatisfactory that the Department of Natural Resources would oppose such a plan. Past experience has been so unsatisfactory that the Public Service Commission, the Department of Natural Resources and the Boone County Sewer District Board of Trustees strongly urged the applicant to include intervenor's area in his service area. Under these circumstances there could be no doubt whatever that the Public Service Commission has the discretionary authority to grant the certificate covering the entire proposed service area and it is equally obvious that such a decision is required by the public interest.

III.

THE INTERVENOR CITY OF COLUMBIA OFFERED NO EVIDENCE WHATEVER JUSTIFYING OR REQUIRING DENIAL OF THE APPLICATION; AND IN FACT THE EVIDENCE OF SAID INTERVENOR CLEARLY ESTABLISHED THAT THE CITY OF COLUMBIA DID NOT HAVE THE ABILITY TO PROVIDE SEWER SERVICES TO THE PROPOSED SERVICE AREA.

The Intervenor City of Columbia appeared by its Director of Public Works, Ray Beck, (T 87) but there was no showing on the record that

the City of Columbia had authorized the city intervention or directed Mr. Beck's appearance by ordinance or resolution. Mr. Beck did not seem to oppose the application outright but rather was interested in discussing the problems of his department in connection with long range city sewer planning.

Mr. Hagan testified that Mr. Beck told him at a meeting in November of 1979 that the city had no trunk sewers in the area in question and no immediate plans to extend them there, that city treatment facilities were overloaded, and that the city could jeopardize its federal funding by extending sewers outside the city limits (T 18 - 21). This was confirmed at an additional meeting in January, 1980 (T 20) and Mr. Hagan was never notified of any change in the city's position until receipt of the intervening petition (T 20, 21).

Mr. Beck never specifically denied the Hagan testimony while on the stand and in fact admitted that Hagan asked him about extension and was told that it was city policy not to go outside the city limits. He first testified that he made an offer to the applicant that the city would operate and maintain a sewer facility for the service area without specifying any date for completion (T 98), but admitted on cross examination that what really occurred was that he indicated to Mr. Hagan that if Mr. Hagan would make a proposal, he would take it to the city council for consideration and decision (T 108). Pressed by the PSC staff and the applicant as to when city services could be available in the area, he indicated that the city's new treatment facility could be ready in two years (T 105) and that the necessary sewer line could be built in two years "if somebody got on it" (T 105) and then changed his testimony to "three years to be safe." (T 105). Regardless of any other testimony given or any other concerns that Mr. Beck may have in respect to the operation of his department, the only really significant testimony that he gave was contained in his final admission that the city could not make adequate sewer service available to the proposed service area at the present time (T 106, 107).

It seems incredible that the city could consistently maintain that it did not have the ability to service an area and then intervene to oppose an

application on the ground that one of its department heads was worried about the affect of the proposed sewer service on long range city planning. It is likewise incredible that the city would expect this Commission to deny sewer services to hundreds of home owners for a period of years, in the hope that some time in the future, city services might be available. In this regard it is important to note that even the two and three year estimates that Mr. Beck gave are estimates of what might be accomplished theoretically but the hard fact remains that there are no engineering plans completed, funding allocated, contracts bid or let, ordinances passed, or construction begun. The optimistic estimates of what might be done might therefore translate into a reality of five, ten or even fifteen years, a possibility not unlikely in view of Mr. Beck's admission that there are still lagoons inside the city limits and that there are still areas within the city limits not served by sewers (T 93).

Rather than throwing question upon the application in this case, the testimony of Mr. Beck is supportive of the application in demonstrating that the only large governmental body in the vicinity is incapable of providing the required service.

Since the applicant made a clear showing of its case on the merits and was supported by the PSC staff, since none of its evidence was disproved or challenged, and since the intervenors failed to offer any substantial credible evidence against the granting of the application, it is urged that the application be granted for the entire service area. If for any reason this Commission feels it is necessary to delete Lakewood Estates, the application should be granted for all of the service area except that portion covered by the prior certificate.

Respectfully submitted,

SMITH, LEWIS, ROGERS & BECKETT

By: Raymond C. Lewis, Jr.

Raymond C. Lewis, Jr.
901 East Broadway
Columbia, Missouri 65201

Attorney for Applicant