

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Approval )  
of Stoddard County Sewer Co., )  
Inc., for Permission, Approval )  
and a Certificate of Con- )  
venience 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 )  
Stoddard County, Missouri. )

Case No. SA-79-11

BRIEF OF PUBLIC COUNSEL

In Re Water & Waste Utilities Company, 16 No.

PSC (NS) 118 (1971) this Commission set the following three-part standard in reviewing applications for service certificates:

1. Is the Applicant qualified?
2. Does the Applicant have the financial ability to serve the area requested?
3. Is it economically feasible for the Applicant to serve the area requested?

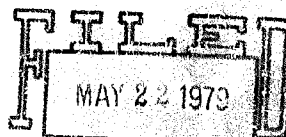
In this brief, Public Counsel will examine the question of economic feasibility and the proposed rates and connection fees of this Applicant:

Proposed rates and charges:

Monthly user fees	\$ 11.48 (Tr. 166)
Connection fee	\$1,035.00 (Tr. 173)

This case is much different than other certificate cases considered by this Commission. The area in question has existing homes which will use substantially all of the capacity of the proposed plant. In past cases, a prospective home buyer could "add-on" the cost of the connection fee to the purchase price of the house and borrow the additional funds.

In this case, it is the existing homeowners who will need to pay a \$1,000 charge. In addition, most of the homes already have septic tanks (Tr. 127); however,



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the Division of Natural Resources has suggested that the existing tanks are polluting the area.

The Public Counsel is concerned about the financial ability of the existing homeowners to meet a \$1,000 connection fee plus a relatively high monthly rate. At the public hearing numerous potential customers voiced their concern about the probable impact. (Tr. 71 and 74)

#### Connection Fee

The Public Counsel is opposed to the concept of connection fees which are involuntary capital contributions paid for by the ratepayers. Only if the Company owns the system over its useful life will the ratepayers be benefited by the contributions. However, sewer company owners have traditionally been in the business of real estate development rather than sewer company ownership. As such, sewer systems are being sold to entities which can better operate the systems. In such a transfer, the ratepayers who have contributed much, if not all, of the necessary capital lose the benefits of that contribution.

This system will be financed 80% by the ratepayers' connection fees and 20% by the owners. (Tr. 146) Normally, in a sale of the system the owner receives 100% of the sale price which is 100% of the original cost of the system.

This case may be different and this Commission should see to it that it is different.

Applicant Carl Bien testified at the public hearing that:

1. The rates as proposed are high - almost ridiculously high. (Tr. 84)
2. That a federally assisted sewer district did not seem possible. (Tr. 85)
3. That the proposed sewer system was for the community. (Tr. 87)
4. That he wants the system owned by the public (Tr. 87)
5. That the purpose of the sewer company is not to capitalize off anybody. (Tr. 88)

(Mr. Bien's testimony is reprinted and attached hereto)

If Mr. Bien is honestly concerned about the public's welfare and indeed wants the public to own and control the Company, then the Commission should encourage ownership rather than connection fees. Then, in the event a sewer district or some other governmental or quasi-governmental entity is able to take over the system, the people can give the system rather than have the system sold. A sewer system which is financed by connection fees and later sold forces rate payers to pay twice for the same system; once through connection fees and, secondly through the payment for revenue bonds.

Public Counsel is moved by Mr. Bien's sincerity, however, there is no reason to test anyone's sincerity which will be taxed as tens of thousands of dollars are involuntarily donated to the Company.

It is the Public Counsel's suggestion that no connection fees be granted, but if they are allowed then Applicant should be encouraged to sell stock in return for the "connection fee."

#### The Abstract

Special care should be taken in this case. Every purchaser in the proposed service area contracted not to install a private sewage disposal system and, more importantly, every purchaser in the proposed service area further contracted to connect to a central disposal system, built at no cost to the lot owner. (Tr. 165)

The contract was recorded in the abstract of each lot purchaser and required that the lot owners would be responsible for monthly service charges but not for connection fees. (Tr. 165)

As such, each purchaser of each lot was led to believe that the cost of the sewer was included in the price of the lot. (For example see Tr. 46, 51, 55, and 56.)



The original owner of the subdivision in question was a family named Tucker (Tr. 45), however, in 1974 Carl Bien and Van Gibbs, as individuals, purchased the subdivision and later sold it to their lumber company. (Tr. 17-22)

The Staff has suggested that a whole line of court decisions stand for the proposition that any contract between an individual and a company is void. (Tr. 163) The Public Counsel suggests that those cases stand for the proposition that a company cannot set rates with individuals for that is the province of the Public Service Commission. In this case, however, rates are not in question. Furthermore, it is ludicrous to believe that individuals cannot contract for the installation of a sewer system.

Obviously, the courts and not the Commission would be the proper forum for a suit for breach of contract. However, in setting rates, the Commission must take recognition of the fact that the lot purchasers, now the ratepayers have already paid for the sewer system.

#### Financial Hardship

It is the Public Counsel's position that no connection fees should be allowed. However, if such fees are ordered the Public Counsel suggests that the ratepayers be allowed to pay the connection fees in installments.

The Company has proposed that all customers be given a twelve month period to connect to the system before any additional finance charge is assessed. The homeowners in this area cannot afford a one time connection fee of \$1,035.

Since the Company is willing to wait twelve months before a finance charge is to be assessed, common sense suggests that an installment payment plan would reduce the Company's cost of financing the system. Without any other incentive, the ratepayers will wait eleven months and 29 days before paying a \$1,000 connection fee. However, on an installment plan the ratepayers would begin to pay immediately.

If connection fees are required, the Public Counsel would propose that an eighteen month period be allowed for those customers paying on an installment basis.

### Finance Charge

The Company has proposed that any customers who connect to the system after twelve months from the completion date of the system be assessed an additional 12%. The Company claims that this is the cost of their debt.

The Public Counsel is opposed to the finance charge. Normally, the shareholders assume some risk of doing business.

The planned capacity of the system is 105 customers. There are currently only 90 existing homes. To avoid a finance charge some "customers" will have to pay for a connection fee prior to the construction of a home. In addition, there are 270 lots in the subdivision. It is anticipated that there will soon be a need for an additional sewage system. As such, it is foreseeable that the 92nd or perhaps the 103rd, 104th or 105th customer will be required to pay a finance charge; yet, the 106th customer who hooks onto the next system will not be required to pay the finance charge. As such, it seems ludicrous to force future customers to pay for a system that they were not using and which will act as a disincentive as more customers approach the demand level for additional capacity.

### Conclusion

It is Public Counsel's position:

1. That Connection fees are involuntary contributions to capital which should not be required as a prerequisite to utility services.
2. That the potential ratepayers have already paid for the sewer system as an inclusion in the price of their lots.

3. That if connection fees are required the Company be encouraged to issue stock in exchange for the involuntary contribution to capital.

4. That if connection fees are required that the customers be allowed to pay these in installments.

5. That if connection fees are required the Company not be allowed to charge a finance charge.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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I hereby certify that  
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