

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the joint application of Ozark	)	
Water and Wastewater Management Co., Inc.	)	
(OWWM) and English Village Not-for-Profit	)	
Sewer Corporation for permission for OWWM	)	<u>Case No. SM-2004-0198</u>
to sell and transfer its waste water collection	)	
system assets to English Village Not-for-Profit	)	
Sewer Corporation	)	

**RECOMMENDATION FOR APPROVAL OF APPLICATION**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and for its Recommendation for Approval of Application and states the following:

**BACKGROUND**

1. On October 27, 2003, Ozark Water and Wastewater Management Co., Inc. (OWWM) and English Village Not-for-Profit Sewer Corporation (English Village) filed a joint Application with the Commission seeking approval for the sale and transfer of OWWM's sewer collection system assets to English Village.
2. OWWM is a Commission-regulated sewer utility operating under a certificate of convenience and necessity, which the Commission granted to OWWM in Case No. SM-91-316.
3. English Village is a not-for-profit sewer corporation formed pursuant to the provisions of Section 393.825 through 393.861, RSMo, for the purpose of acquiring OWWM's sewer collection system and operating that system for the benefit of its customers/members. Pursuant to the applicable statutory provisions, English Village will not be subject to Commission jurisdiction if the Commission approves the Application in this case. (A copy of English Village's Bylaws is attached to the Application as Exhibit C.)

4. As noted in the Application, OWWM also owns a wastewater treatment plant, in addition to the sewer collection system that it proposes to sell and transfer to English Village. Upon various actions being completed after the sale of the collection system to English Village, OWWM's wastewater treatment plant will be shut down and dismantled at OWWM's cost.

5. As noted in the Application, English Village has entered into a wastewater contract with the City of Springfield, Missouri (Springfield), whereby Springfield will provide wholesale sewage treatment for English Village subsequent to English Village's purchase of OWWM's sewer collection system and the completion of other related actions. (A copy of the wastewater contract is attached to the Application as Exhibit A.)

6. Pursuant to an asset purchase agreement between OWWM and English Village, English Village proposes to purchase OWWM's sewer collection system for the sum of \$155,000. (A copy of the asset purchase agreement is attached to the Application as Exhibit B.)

7. The operation of OWWM's sewer collection and treatment facilities is currently being carried out by a receiver appointed by the Circuit Court of Christian County, Missouri pursuant to a Joint Stipulation for Receivership and Order of Receivership (Receivership Stipulation & Order). The Receivership Stipulation & Order resulted from a lawsuit filed by the Missouri Attorney General's Office on behalf of the Missouri Department of Natural Resources (DNR) against OWWM and its owner. (A copy of the Receivership Stipulation & Order is attached to the Application as Exhibit D.)

8. Under the provisions of the above-referenced Receivership Stipulation & Order, the entirety of the proceeds of the sale of OWWM's sewer collection system to English Village (\$155,000) will be placed in escrow, with the distribution of those proceeds also being subject to certain provisions of the Receivership Stipulation & Order.

### **STAFF'S INVESTIGATION OF THE APPLICATION**

9. Staff members from the Commission's Water & Sewer Department, particularly Dale Johansen, Manager of the department, and the undersigned counsel directly participated in the Staff's investigation of the Application in this case. Staff members from the Commission's Auditing, Financial Analysis and Engineering & Management Services Departments assisted in the investigation as requested.

10. In addition to the investigation of the Application in this case, Mr. Johansen has been extensively involved in various events and discussions leading up to the proposed sale of OWWM's sewer collection system to English Village, which have taken place over an extended period of time.

11. The Staff's investigation in this case included a detailed review of the Application, and the Exhibits attached to the Application, as well as an analysis of various aspects of the proposed sale and the expected results of a successful sale of OWWM's sewer collection system to English Village. Specific aspects and results of the sale of OWWM's sewer collection system to English Village that were of particular interest to the Staff included the following: the sale price; the distribution of the proceeds of the sale; the formation of English Village; the manner in which sewer service will be provided to OWWM's customers if the sale is successful; options for the provision of sewer service to OWWM's customers other than the manner that will result from the sale; and the environmental impact of the sale.

### **STAFF'S FINDINGS AND CONCLUSIONS**

12. Regarding the sale price set out in the purchase agreement (\$155,000), the Staff notes that this price exceeds the ratemaking rate base for OWWM's assets by just over three (3) times. However, for various reasons that are discussed in the following paragraphs, and because

the system is being purchased by an entity that is not regulated by the Commission, the Staff does not have its normal concerns regarding this matter so far as an "acquisition premium" is concerned.

13. Regarding the distribution of the sale proceeds, which the provisions of the Receivership Stipulation & Order specify, the Staff notes that the entirety of the sale price is accounted for in the required distribution. The Staff further notes that the only sale proceeds that will flow to OWWM's owner is an amount of approximately \$17,700, which is earmarked for use in closing and dismantling OWWM's wastewater treatment plant and may only be used for that purpose. Additionally, any costs related to the closing of the plant that are in excess of this amount will be the responsibility of the owner.

14. A key component of this proposed sale was the formation of English Village as a not-for-profit sewer corporation, and the fact that English Village is a totally customer-controlled entity. In fact, a previously proposed sale to another not-for-profit sewer corporation was scrapped essentially because that entity was not a totally customer-controlled entity. (That sale was before the Commission in Case No. SM-2000-608, which was never acted on by the Commission). As noted previously, a copy of English Village's Bylaws is attached to the Application. In the course of its investigation of this case, and as a part of previous actions taken with regard to this proposed sale, the Staff reviewed those Bylaws and believes that they are in compliance with the applicable statutory provisions governing them. Additionally, the Staff notes that the customers that will be served by English Village, if the Commission approves the proposed sale, will also be members of the not-for-profit corporation.

15. If the Commission approves the proposed sale, sewer collection service to English Village's customers/members will be provided via the sewer collection system that English

Village is purchasing, with the treatment of the sewage collected being provided by Springfield pursuant to the English Village/Springfield wastewater contract.

16. There are very few viable options for providing sewer collection and treatment services for OWWM's customers, other than the manner in which these services will be provided pursuant to the proposed sale. In fact, the only other option available would require either OWWM or English Village to build a new wastewater treatment plant, as OWWM's existing treatment plant is significantly undersized for the number of customers now being served and is also in severe disrepair. Estimates pertaining to the construction of a replacement treatment plant indicate that constructing such a plant would result in costs of at least three (3) times the purchase price being paid for OWWM's collection system. In turn, the customer rates needed to support such a plant are estimated to be approximately 50% higher than the rates anticipated under the overall proposal at hand.

17. Regarding the environmental impact of the overall proposal for providing service to OWWM's certificated service area, there is no question that the impact will be positive. As noted previously, OWWM's current treatment plant is significantly undersized and it is an established fact that the current situation is causing significant damage to the environment. Treatment of the sewage generated by OWWM's customers by Springfield will obviously yield positive benefits for the environment, and will do so at a reasonable cost to the customers.

### **ADDITIONAL MATTERS**

18. In addition to its investigation regarding the Application in this case, the Staff has also reviewed OWWM's assessment payment and annual report filing histories, and notes the following regarding these matters.

Assessments: Based on a review of available electronic information maintained by the Commission's Budget & Fiscal Services Department, the Staff has determined that OWWM has unpaid assessments of \$2,373.81 for fiscal year 1996; \$1,119.11 for fiscal year 1997; \$1,782.26 for fiscal year 1998; \$3,890.29 for fiscal year 1999; \$5,592.22 for fiscal year 2000; \$3,515.31 for fiscal year 2001; \$3,800.48 for fiscal year 2002; \$3,838.05 for fiscal year 2003; and \$4,349.20 for fiscal year 2004. These unpaid assessments total \$30,260.73. Also, except for payments totaling \$1,000 toward its fiscal year 1997 assessment, OWWM has not made any payments on any of these assessments.

Annual Reports: Based on a review of available electronic information maintained by the Commission's Data Center covering calendar years 1997 through 2001, and a review of the annual report database for calendar year 2002 in the Commission's electronic filing and information system, the Staff notes that OWWM has apparently not filed an annual report for calendar years 1999, 2000, 2001 or 2002. (The calendar year 2003 annual report is due by April 15, 2004.)

19. With further regard to OWWM's past due assessments, the Staff notes that the provisions of the Receivership Stipulation & Order that pertain to the distribution of the proceeds of the proposed sale call for a payment of \$25,911.53 to the Commission. This amount represents the unpaid assessments for fiscal years 1996 through 2003. OWWM's assessment for fiscal year 2004 was not included in this payment, as it had not yet been issued to OWWM at the time the provisions regarding the distribution of the sale proceeds were established.

#### **STAFF'S RECOMMENDATIONS**

20. Based upon its investigation of the Application in this case, and its knowledge of the overall situation involving service to OWWM's customers, the Staff recommends that the Commission approve the Application before it in this case.

21. In light of OWWM's delinquent FY2004 assessment, which is not covered by the required distribution of the sale proceeds, and OWWM's numerous delinquent annual reports, the

Staff recommends that the Commission order clearly state that, by approving the Application, the Commission is not waiving its right to seek collection of the FY2004 assessment, or to seek the assessment of any applicable penalties related to these two matters, from OWWM.

22. Due to the complexity of the overall situation surrounding the subject Application, and in anticipation of Commission questions regarding that overall situation and the Application, the Staff recommends that the Commission establish a date for an on-the-record presentation by the parties to this case. If the Commission orders an on-the-record presentation for this case, the Staff recommends that the presentation be set as soon as possible so that this case may move forward without undue delay.

**WHEREFORE** the Staff respectfully submits this recommendation for the Commission's consideration and further respectfully requests that the Commission issue its order consistent with the recommendations herein.

Respectfully Submitted,

DANA K. JOYCE  
General Counsel

**/s/ Keith R. Krueger**

Keith R. Krueger  
Deputy General Counsel  
Missouri Bar No. 23857

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**Certificate of Service**

I hereby certify that copies of the foregoing have been mailed with first class postage, hand-delivered, transmitted by facsimile or transmitted via e-mail to all counsel and/or parties of record, as shown on the attached service list, this 30th day of January 2004.

**/s/ Keith R. Krueger**

Keith R. Krueger




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Sewer Corporation )

Case No. SM-2004-0198

STATE OF MISSOURI )  
 ) ss  
COUNTY OF COLE )

Dale W. Johansen, of lawful age, on his oath states: that he has participated in the Staff's investigation of the Application and related matters that are the subject of this case; that he has participated in the preparation of the Staff's foregoing Recommendation for Approval of Application (Recommendation) being presented in this case; that he has knowledge of the matters set forth in the Recommendation; and that such matters are true and correct to the best of his knowledge and belief.

  
**Dale W. Johansen**

Subscribed and sworn to before me this 30<sup>th</sup> day of January 2004.



**Notary Public**

DAWN L. HAKE  
Notary Public – State of Missouri  
County of Cole

My Commission Expires: \_\_\_\_\_

My Commission Expires Jan 9, 2005

