

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 25th
day of May, 2000.

In the Matter of the Application of North)
Suburban Public Utility Company, Inc., to)
acquire 72 shares of the Outstanding Capital)
Stock of Ozark Shores Water Company.)
Case No. WF-2000-519

ORDER APPROVING STOCK PURCHASE

On February 23, 2000, North Suburban Public Utility Company, Inc. (NSPUCI), filed its application seeking authority to acquire 72 shares of the outstanding capital stock of Ozark Shores Water Company. Thereafter, on May 1, 2000, the Commission issued its Order Directing Filing, requiring the parties to submit their status reports on or before May 30, 2000. NSPUCI filed its report on May 2, 2000. On May 12, 2000, the Commission issued its Order Shortening Time for Response, requiring the Staff of the Missouri Public Service Commission to file its status report on or before May 19, 2000. On May 19, 2000, Staff filed its Recommendation and Memorandum, recommending that the Commission grant the requested authority.

NSPUCI is an Illinois corporation in the business of owning and operating water and sewer utilities. Its principal place of business is located at 14881 Wren School Road, Hartsburg, Missouri. NSPUCI owns 85 percent of the outstanding shares of the Ozark Shores Water Company (Ozark Shores) and 100 percent of the outstanding shares of The Meadows

Water Company, both of which are public utilities regulated by this Commission. NSPUCI already owns a controlling interest in Ozark Shores, having acquired 765 shares in 1999 under authority granted in Case No. WM-2000-314. Now, NSPUCI proposes to acquire 72 more shares from Vernon Stump, its president, paying no more than Mr. Stump did to acquire the shares.

Staff states that the Commission may approve an application such as the present one so long as the proposed transaction is "not detrimental to the public interest." Commission Rule 4 CSR 240-2.060(12)(1)(C); City of St. Louis v. Public Service Commission, 73 S.W.2d 393 (Mo. banc 1934). Staff further states that it has analyzed the proposed transaction and finds no public detriment therein. Staff recommends that the Commission approve the application, reserving ratemaking treatment.

Section 393.190.2, RSMo 1994, provides, in pertinent part:

Save where stock shall be transferred or held for the purpose of collateral security, no stock corporation of any description, domestic or foreign, other than a gas corporation, electrical corporation, water corporation, sewer corporation or street railroad corporation, shall, without the consent of the commission, purchase or acquire, take or hold, more than ten percent of the total capital stock issued by any gas corporation, electrical corporation, water corporation or sewer corporation organized or existing under or by virtue of the laws of this state, except that a corporation now lawfully holding a majority of the capital stock of any gas corporation, electrical corporation, water corporation or sewer corporation may, with the consent of the commission, acquire and hold the remainder of the capital stock of such gas corporation, electrical corporation, water corporation or sewer corporation, or any portion thereof.

In considering such cases, the Commission must be mindful that the right to sell property is an important incident of the ownership thereof

(and that "[a] property owner should be allowed to sell his property unless it would be detrimental to the public." State ex rel. City of St. Louis v. Public Service Commission, 335 Mo. 448, 459, 73 S.W.2d 393, 400 (Mo. banc 1934). "The obvious purpose of [Section 393.190] is to ensure the continuation of adequate service to the public served by the utility." State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App., E.D. 1980). "[T]he Commission is unwilling to deny private, investor-owned companies an important incident of the ownership of property unless there is compelling evidence on the record tending to show that a public detriment will occur." In the Matter of the Joint Application of Missouri Gas Company et al., Case No. GM-94-252, *supra*, 3 Mo.P.S.C.3d at 221.

(Pursuant to Commission Rule 4 CSR 240-2.060(9)(C), the applicant for such acquisition authority must show why the proposed acquisition is not detrimental to the public interest. The Commission reads State ex rel. City of St. Louis v. Public Service Commission, *supra*, 335 Mo. at 459, 73 S.W.2d at 400, to require a direct and present public detriment. To that end, the Commission has previously considered such factors as the applicant's experience in the utility industry; the applicant's history of service difficulties; the applicant's general financial health and ability to absorb the proposed transaction; and the applicant's ability to operate the asset safely and efficiently. See In the Matter of the Joint Application of Missouri Gas Energy et al., Case No. GM-94-252 (Report and Order, issued October 12, 1994) 3 Mo.P.S.C.3d 216, 220.

Turning to the case at hand, the Commission first notes that the requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has asked permission to intervene or requested a hearing, the Commission may grant the relief requested based on the verified application. The record discloses no present detriment to the public and no one has opposed the transaction. In this circumstance, the Commission will approve the proposed transaction, reserving ratemaking treatment as recommended by Staff.

IT IS THEREFORE ORDERED:

1. That the application filed by North Suburban Public Utility Company, Inc., on February 23, 2000, is approved. The parties may undertake all lawful actions necessary to consummate the transaction therein described.

2. That nothing in this order shall be considered a finding by the Commission of the value for ratemaking purposes of the properties, transactions and expenditures herein involved. The Commission reserves the right to consider any ratemaking treatment to be afforded the properties, transactions and expenditures herein involved in a later proceeding.

3. That this order shall become effective on June 6, 2000.
4. That this case may be closed on June 7, 2000.

BY THE COMMISSION

A handwritten signature in dark ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, somewhat stylized script.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton and Drainer, CC.,
concur.

Murray and Schemenauer, CC., absent.

Thompson, Deputy Chief Regulatory Law Judge

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MAY 25 2000

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION