

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 3rd
day of February, 1998.

In the Matter of the Joint Application of)
Lake Carmel Development Co., Inc. and)
Capital Utilities, Inc. for Authority) Case No. WM-98-130
for Lake Carmel Development Co., Inc.)
to Sell and Transfer its Franchise, Works)
or System to Capital Utilities, Inc.)

**ORDER APPROVING SALE OF SYSTEM AND
GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

On September 22, 1997, Lake Carmel Development Co., Inc. (Lake Carmel) and Capital Utilities, Inc. (Capital Utilities), jointly referred to as Applicants, filed a joint application with the Commission requesting authority for Lake Carmel to sell and transfer its franchise, works or system located in Cole County to Capital Utilities. Applicants request an order granting Capital a new certificate of public convenience and necessity, or, in the alternative, authorizing the transfer of Lake Carmel's certificate of public convenience and necessity issued in Commission Case No. 17,718 to Capital. Lake Carmel is a regulated public utility which provides water and sewer services to the public in a portion of Cole County. Capital Utilities is a regulated utility which provides water and sewer services to the public in portions of Cole, Callaway and Pettis Counties.

Lake Carmel and Capital Utilities state in their joint application that the proposed sale is not detrimental to the public interest because Capital Utilities is an existing water and sewer corporation and public utility and is dedicated to the provision of safe

and adequate utility service to the public. Applicants state that Capital Utilities possesses the managerial, engineering and financial expertise to continue to provide good quality water and sewer service to the public currently served by Lake Carmel. Applicants state that because of its larger size, Capital Utilities may also be able to take advantage of certain economies of scale in its operation which has not been available to Lake Carmel.

Capital Utilities proposes to use its existing Cole County sewer rates and its existing Pettis County water rates for the proposed service. Applicants state that the proposed transaction should have no impact on the tax revenues of the political subdivision in which the facilities are located. Attached to the application are copies of Applicants' articles of incorporation, Applicants' certificates of incorporation, the Agreement for Sale of Water and Wastewater Systems, resolutions of the board of directors for each company and a pro forma income statement of Capital Utilities showing the results of the proposed acquisition.

On January 14, 1998, the Staff of the Missouri Public Service Commission (Staff) filed its memorandum in the official case file recommending that the Commission approve the sale and transfer of franchise. Staff stated that Lake Carmel provides service to 27 sewer customers and 26 water customers in Cole County and that Lake Carmel is certificated to provide sewer service but not water service. Staff indicated that Capital Utilities provides water and sewer service to over 1,200 customers in numerous areas of Cole, Callaway and Pettis Counties under its existing tariff rules and rates.

Staff provided the following comparison of the current and proposed rates.

Consumption	Lake Carmel	Capital Utilities
WATER		
1,000 gallons	\$ 4.50	\$ 4.40
3,000 gallons	\$ 8.00	\$ 7.30
6,000 gallons	\$10.80	\$11.65
SEWER		
Flat Monthly Rate	\$ 4.75	\$22.75

Staff notes that the current flat sewer rate of \$4.75 per month has not changed since the mid-seventies. Staff believes that the considerably higher sewer rate of \$22.75 per month is necessary to cover the expenses of maintaining the system, as well as to provide a reasonable level of customer service and emergency response capability. Staff notes that the sewer rate of \$22.75 is presently in effect for existing customers of Capital Utilities in Cole County, some of which are served by lagoon systems similar to the Lake Carmel system.

Staff reported that the president of Capital Utilities, Mr. Helms, informed Staff that he met with residents of Lake Carmel to discuss plans for the system. He indicated that customers were primarily concerned about future expansion of the system and who would have to pay for it. Mr. Helms stated he told residents attending the meeting that the expansion costs would be absorbed by CU on a company-wide basis. He also stated his belief that the proposed rate increase for sewer service was not a concern voiced by customers. Staff noted that two letters were sent by customers responding to the customer notice and that one telephone call was received by Staff. According to Staff, these customers expressed concern about the

difference in rates, but also seemed to understand the need for this sale to take place in order that good utility service continue into the future.

Based on Staff's review of the application and annual reports, Staff's interview with Mr. Helms, and Staff's inspection of the water and sewer systems, Staff believes that this sale and transfer of assets is not detrimental to the public interest. Staff recommends that the Commission: (1) approve the transfer of water and sewer system assets owned by Lake Carmel to Capital Utilities; (2) grant certificates to provide water and sewer service to Capital Utilities for the Lake Carmel area, with such service to be provided under existing Capital Utilities rates and tariffs, effective upon the effective date of tariffs to be filed by Capital Utilities; (3) order Capital Utilities to submit tariff sheets revising its water and sewer tariffs with a map and legal description of the Lake Carmel area; and (4) cancel the certificate and tariff of Lake Carmel upon approval of the tariffs to be filed by Capital Utilities.

The requirement of a hearing has been fulfilled when all those having a desire to be heard are offered an opportunity to be heard. If no proper party or governmental entity is granted intervention and neither the Commission's Staff nor the Office of the Public Counsel requests a hearing, the Commission may grant the relief requested based on the verified application. State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). No applications to intervene have been filed, and no party has requested a hearing. Therefore, the Commission determines that the relief requested in the verified application may be granted without a hearing.

The Commission has reviewed the verified application with attachments filed by Applicants and the memorandum filed by Staff. The Commission determines that the proposed sale of assets is not detrimental

to the public interest. Therefore, the Commission will approve the application and authorize Lake Carmel to sell, transfer and assign its franchise, works or system to Capital Utilities pursuant to the terms and conditions contained in the Agreement for Sale of Water and Wastewater Systems which is attached to the application as Appendix 3.

Applicants do not define their use of the term "franchise." In a narrow sense this term refers to the specific privilege granted from a political subdivision to operate a business or to provide a service, such as a municipal franchise. For example, Section 78.010(3), RSMo 1994, defines franchise as "every special privilege in the streets, highways and public places in the city, whether granted by the state or the city, which does not belong to the citizens generally by common right." More broadly stated, however, a "franchise" connotes a business entity or business assets. A franchise is defined as a "special privilege to do certain things conferred by government on individual or corporation, and which does not belong to citizens generally of common right." Black's Law Dictionary 658 (6th ed. 1990). The Commission determines that from the record presented in this case it is not clear whether Applicants intend to transfer a specific franchise granted from a municipality or other political subdivision, and, if so, whether the Commission has authority to transfer such a right. Therefore, the approval granted in this order for sale or transfer of "franchise" refers to the business assets of Lake Carmel which are to be sold and transferred to Capital Utilities.

The Commission will grant Certificates of Public Convenience and Necessity to Capital Utilities to provide water and sewer service as described in the application. Therefore, Capital Utilities shall file its tariff sheets consistent with this order containing a map and legal description of the Lake Carmel area. Upon approval of the tariff sheets

filed by Capital Utilities, the Commission will cancel the certificate and tariff of Lake Carmel.

IT IS THEREFORE ORDERED:

1. That the joint application filed by Lake Carmel Development Co., Inc. and Capital Utilities, Inc. on September 22, 1997, is approved.

2. That Lake Carmel Development Co., Inc. is authorized to sell, transfer and assign its franchise, works or system to Capital Utilities, Inc. pursuant to the terms and conditions contained in the Agreement for Sale of Water and Wastewater Systems which is attached as Appendix 3 to the application filed on September 22, 1997.

3. That Capital Utilities, Inc. is granted certificates of public convenience and necessity to own, operate, control, manage and maintain a sewer utility and water utility in an unincorporated portion of Cole County, Missouri, as described in the application filed on September 22, 1997.

4. That the certificate of public convenience and necessity referenced in ordered paragraph 3 shall become effective simultaneously with the effective date of the tariff sheets required to be filed and approved pursuant to ordered paragraph 5.

5. That Capital Utilities, Inc. shall file with the Commission tariff sheets showing the legal description and a map reflecting the service area authorized herein, and tariff sheets showing the rates to be charged as authorized herein.

6. That Capital Utilities, Inc. and Lake Carmel Development Co., Inc. are authorized to execute, enter into, deliver and perform any agreements, and to do any and all other things not contrary to law or the rules and regulations of the Commission incidental, necessary or

appropriate to the performance of any and all acts specifically authorized in this order.

7. That Lake Carmel Development Co., Inc. is authorized to discontinue providing sewer service and is directed to discontinue providing water service in its certificated area as of the date of the sale and transfer of the franchise, works or system to Capital Utilities, Inc., which sale and transfer shall not occur until the tariff sheets of Capital Utilities, Inc. are approved by the Commission and become effective pursuant to ordered paragraph number 5.

8. That this order shall become effective on February 13, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

G. George, Regulatory Law Judge