

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 11th day
of June, 2002.

In the Matter of the Application of Quail Run Water and)
Land Company to Sell Its Stock and Transfer Assets to) **Case No. WM-2002-394**
the Public Funding Corporation of the City of Ozark,)
Missouri.)

ORDER APPROVING SALE OF ASSETS

On February 26, 2002, Quail Run Water and Land Company and the Public Funding Corporation of the City of Ozark, Missouri, filed their Joint Application seeking authority for Quail Run to sell its stock and system to Public Funding and, upon completion of the transaction, for Quail Run to quit the business. The Joint Applicants state further that, if the transaction is approved, upon acquisition of the shares and system of Quail Run, Public Funding will immediately enter into a lease/purchase agreement with the City of Ozark, Missouri, for the purpose of transferring the system to that city. The City of Ozark will operate Quail Run's system and will do so as an unregulated municipal utility. The Joint Applicants state that the proposed transaction is not detrimental to the public interest in that the service provided will not change. Quail Run's customers will continue to receive water service at existing rates.

On April 4, 2002, the Commission issued its Order Directing Filing, directing its Staff to file a pleading, on or before April 19, advising the Commission of the date on which it would file its memorandum and recommendation in this case. On April 25, Staff advised

the Commission that it would file its memorandum and recommendation on or before May 24. Staff filed its Memorandum and Recommendation on May 24 as promised.

In its Memorandum and Recommendation, Staff states that the Commission may approve a transaction such as that proposed here upon a finding that it is not detrimental to the public interest. Staff states further that it has reviewed the proposed transaction and has concluded that it is not detrimental to the public interest and should be approved. Staff further explains that a Missouri municipality may sell water to nonresidents as a matter of voluntary contract, free from regulation by this Commission.¹ Staff advises the Commission to approve the transaction, to direct Public Funding to notify the Commission immediately upon execution of the lease/purchase agreement with the City of Ozark, and to cancel Quail Run's certificate of convenience and necessity and its tariff, effective upon Public Funding's execution of the lease/purchase agreement with the City of Ozark.

In its Memorandum, Staff states that its subject matter experts have reviewed the provisions of the Joint Application, the provisions of the sale/purchase agreement between Quail Run and Public Funding, the provisions of the lease/purchase agreement between Public Funding and the City of Ozark, as well as the responses provided to various data requests and information gained during informal conversations with representatives of Public Funding and the City of Ozark. The proposed transaction will transfer the stock of Quail Run to Public Funding. It will also transfer the assets of Quail Run to Public Funding and then, via a lease/purchase agreement, immediately retransfer the assets to the City of Ozark. The City of Ozark will operate the assets and provide water service to Quail Run's customers. Quail Run will cease the business of providing water service and will eventually

¹ Section 91.050, RSMo 2000; *Forest City v. City of Oregon*, 569 S.W.2d 330, 333 (1978); *AG Processing v. South St. Joseph Sewer*, 937 S.W.2d 319, 323 (Mo. App., W.D. 1996).

dissolve. The City of Ozark, in its operation of the water system, will not be subject to regulation by this Commission. Staff further states in its Memorandum that the proposed purchase price for the shares and system is \$335,000. Staff notes that Quail Run's rate base is approximately \$55,000. The City of Ozark has operated a municipal water system for many years. In the past, it has acquired other Commission-regulated water systems through Public Funding and now operates them as part of its municipal water utility. The City of Ozark also provides wholesale water service to another regulated utility. Staff states that Quail Run has provided notice of the proposed transaction to its customers. In response to that notice, Staff states it has received correspondence from one individual who opposes the sale. That individual did not provide any reason for opposition to the sale. Recently, Staff has also received a complaint about water pressure from one of Quail Run's customers; this issue has been resolved.

In its Memorandum, Staff notes that in a prior case involving the City of Ozark, the Commission retained jurisdiction over the City's provision of water service to customers located in an area previously served by a regulated utility. Staff states that that situation constitutes an exception to the Commission's normal practice. Because of the bad relationship between the City of Ozark and the customers of the former Finley Valley Water Company, the Commission required the City to file a tariff with the Commission as a condition of its approval of the transaction. Staff points out that the present proposed transaction does not include circumstances such as existed in the Finley Valley case. The Memorandum repeats Staff's recommendations that the Commission approve the proposed transaction, relieve Quail Run of its obligation to provide water service within its service area, and cancel Quail Run's certificate and tariff.

In the present case, Quail Run proposes to transfer its entire system. Section 393.190 requires the approval of this Commission in order for a regulated utility to dispose of all or any part of its system. The statute does not contain a standard to guide the Commission in the exercise of its discretion; that standard is provided by the Commission's own rules. An applicant for such authority must state in its application "[t]he reason the proposed sale of the assets is not detrimental to the public interest."² A court has said of Section 393.190, "The obvious purpose of this provision is to ensure the continuation of adequate service to the public served by the utility."³ 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 assets safely and efficiently.⁴

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.⁵ No person or other entity has requested a hearing in this matter; therefore, the Commission may grant the requested relief based upon the verified application and other material of

² Commission Rule 4 CSR 240-2.060(7)(D).

³ *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App., E.D. 1980).

⁴ 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.3rd 216, 220.

⁵ *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

record. The Commission has reviewed the Joint Application and Staff's Memorandum and Recommendation. Based on these materials, the Commission has determined that the proposed transaction is not detrimental to the public interest and should be approved. The City of Ozark is already in the business of providing public water service and is capable of operating Quail Run's system. Because the City is an unregulated municipality, the Commission need not consider the effect of the transaction on the City's financial health. Staff supports the proposed transaction and no party opposes it. There is little opposition to the proposed transaction from Quail Run's customers. "The Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest."⁶ No detriment to the public interest appears on the present record; therefore, the Commission will approve the proposed transaction.

In order to provide for as orderly a transfer as possible, the Commission will not cancel Quail Run's certificate and tariff, nor relieve Quail Run of its obligation to provide public water service in its designated service area, until the parties have notified the Commission that the transaction is complete.

IT IS THEREFORE ORDERED:

1. That the Joint Application filed on February 26, 2002, by Quail Run Water and Land Company and Public Funding Corporation of the City of Ozark, Missouri, is approved.

2. That the Public Funding Corporation of the City of Ozark, Missouri, and Quail Run Water and Land Company shall advise the Commission when the transaction

⁶ *Fee Fee Trunk Sewer*, 596 S.W.2d at 468.

approved above has been closed by filing a pleading in this case. At that time, the Commission will relieve Quail Run Water and Land Company of its obligation to provide water service to the public in its assigned service area and will cancel the certificate and tariff of Quail Run Water and Land Company.

3. That this order shall become effective on June 21, 2002.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Simmons, Ch., Murray, Lumpe,
Gaw, and Forbis, CC., concur.

Thompson, Deputy Chief Regulatory Law Judge