

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 27th
day of August, 1993.

Staff of the Missouri Public Service Commission)	
)	
Complainant,)	
)	
v.)	<u>Case No. SC-93-276</u>
)	
Joseph William Gold a.k.a. Bill Gold)	
d/b/a Bill Gold Investments, Inc.,)	
)	
Respondent.)	

ORDER APPROVING STIPULATION AND AGREEMENT

On April 4, 1993, a complaint was filed by the Staff of the Public Service Commission alleging that Respondent Joseph William Gold, a.k.a. Bill Gold Investments, Inc. (BGI) operates a sewer system in Greene County, Missouri, subject to the jurisdiction of the Commission pursuant to Section 386.250(4), RSMo. Supp. 1992, and per certificate of convenience and necessity granted by the Commission on March 30, 1978. The Staff alleged that BGI has the statutory obligation to provide safe and adequate service, but was currently unable or unwilling to do so. The Staff also alleged that there had been continuing service problems, including overflows, unacceptable quality of effluent, lack of routine sewer line cleaning, and other operational problems. Finally, the Staff alleged actual or constructive abandonment of the sewer company by its owner, Joseph William Gold, who, Staff alleged, was unable or unwilling to address the day-to-day operational and service problems which occur in connection with owning and operating a public utility.

The Commission issued notice in this matter to BGI on April 7, 1993, directing BGI to satisfy the Staff allegations or file answer. An answer by BGI was filed on April 23, 1993, denying the bulk of the allegations, and on May 4,

1993, the Commission issued an Order and Notice of Proceedings in this matter providing for appropriate notice by publication and service and setting a procedural schedule.

A public hearing was held in Springfield, Missouri, on May 20, 1993. On June 17, 1993, as the result of the prehearing conference, a request was made by all parties, on the record, to continue this matter to August 2, 1993, for the filing of a Stipulation and Agreement. Said Stipulation and Agreement, signed by the Staff, the attorney for BGI, and the Office of Public Counsel, was actually filed on August 16, 1993, which agreement is appended to this order as Attachment A and incorporated herein by reference.

In the Stipulation and Agreement, to which representatives from the Missouri Department of Natural Resources were also a part although not an official party to the case, the parties agreed in four specifics, as stated on the record at the prehearing conference. The parties agreed that:

"1. The Company shall contract and hire a management firm to tend to the daily operations of the sewer plant and sewer system. Joseph William Gold, a.k.a. Bill Gold (hereinafter "Mr. Gold") shall perform no duties in regard to the operation of the sewer plant or sewer system. The Company must submit its proposed contract with a management firm to the Commission by September 3, 1993, for Commission approval. The contract shall become effective, and it shall be contingent upon the approval of the loan application mentioned in Paragraph 2.

2. The Company shall file a loan application with the Missouri Environmental Improvement and Energy Resource Authority (EIERA) for the requisite funds to finance a lift station and other necessary improvements to the sewer system. Additionally, as part of the EIERA loan application, the Company will file a finance case with the Commission. Both the EIERA loan application and the Commission finance case must be filed by September 3, 1993.

3. The Company shall file a rate case with the Commission, as prescribed by the EIERA program. The Company must file its rate case with the Commission by September 3, 1993.

4. The Company shall submit engineering plans for its proposed construction of a lift station and other applicable construction to DNR for the requisite approval by DNR. The Company will also include any necessary fees with its proposal. The Company must submit its proposal and fees to DNR by September 3, 1993."

As the parties to this matter have reached agreement concerning the issues presented, the Commission finds that a hearing is not necessary.

The Commission has reviewed the Stipulation and Agreement in this matter. The Commission finds that, if performed properly and in a timely fashion by BGI, the terms of the Stipulation and Agreement are both reasonable and well-designed to provide safe and adequate service to the customers of BGI. The Commission would emphasize that BGI will be strictly held to the standards of performance and timeliness as agreed to by the parties in the Stipulation and Agreement and that no further delay past the September 3, 1993, deadline will be tolerated.

The Commission therefore finds the Stipulation and Agreement as filed and incorporated herein to be reasonable for the reasons as set out above and approves said agreement.

IT IS THEREFORE ORDERED:

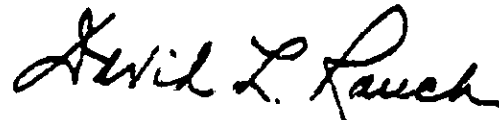
1. That the Stipulation and Agreement filed in this matter on August 16, 1993, and attached hereto as Attachment A is hereby approved.

2. That the Staff of the Commission is hereby ordered to notify the Commission no later than September 10, 1993, as to whether all terms and conditions of the instant agreement have been complied with in a timely fashion by Bill Gold Investments.

3. That Bill Gold Investments may not in any way alter, modify, or cancel the above authorized management contract or any terms or conditions thereof or in any way modify the terms and conditions of the above authorized loan arrangement without the approval of the Commission.

4. That this order shall become effective September 8, 1993.

BY THE COMMISSION



David L. Rauch
Executive Secretary

(S E A L)

Mueller, Chm., Kincheloe
and Crumpton, CC., Concur.
McClure, C., Dissents in separate opinion.
Perkins, C., Absent.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Staff of the Missouri Public)
Service Commission,)
Complainant,)
vs.)
Joseph William Gold a/k/a)
Bill Gold d/b/a Bill Gold)
Investments, Inc.,)
Respondent.)

Case No. SC-93-276

STIPULATION AND AGREEMENT

On April 6, 1993, the Staff of the Missouri Public Service Commission (hereinafter "Staff") filed a complaint against Joseph William Gold, a/k/a Bill Gold, d/b/a Bill Gold Investments, Inc. (hereinafter referred to as "Company"). The Company filed an Answer to Staff's Complaint on April 23, 1993. On May 4, 1993, the Missouri Public Service Commission (hereinafter "Commission") issued an Order and Notice of Proceedings which, among other things, set a prehearing conference for June 17, 1993.

Staff, Company and the Office of Public Counsel (hereinafter "Public Counsel") appeared at the prehearing conference and participated in the proceedings. The Missouri Department of Natural Resources (hereinafter "DNR"), although not an official party to the proceedings, was represented by Mr. Ed Sears. Mr. Sears is employed by DNR, Southwest Regional Office, as an Environmental Specialist and the Chief of the Water Pollution Control Unit. Mr. Sears had previously filed testimony in this proceeding.

FILED

AUG 16 1993

MISSOURI
PUBLIC SERVICE COMMISSION

As a result of the prehearing conference, the parties were able to resolve all areas of disagreement which had previously existed among them as evidenced by the Complaint, the Answer and the prefiled testimony. Consequently, Staff, Company and Public Counsel submit the following Stipulation and Agreement to the Commission.

1. The Company shall contract and hire a management firm to tend to the daily operations of the sewer plant and sewer system. Joseph William Gold, a/k/a Bill Gold (hereinafter "Mr. Gold") shall perform no duties in regard to the operation of the sewer plant or sewer system. The Company must submit its proposed contract with a management firm to the Commission by September 3, 1993, for Commission approval. The contract shall become effective and it shall be contingent upon the approval of the loan application mentioned in Paragraph 2.

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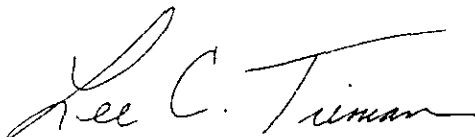
5. If any of the items mentioned in paragraphs 1 through 4, supra, are not performed by the aforementioned September 3, 1993 deadline, this Stipulation and Agreement is void. If this Stipulation and Agreement does become void, the parties request the Commission set this matter for hearing as soon thereafter as possible.

6. None of the parties to this Stipulation and Agreement shall be deemed to have approved of or acquiesced in any regulatory principle or any future rate increase.

7. The agreements in this Stipulation and Agreement have resulted from extensive negotiations among the parties and are interdependent. In the event the Commission does not approve and adopt this Stipulation and Agreement in its entirety, the parties agree that this Stipulation and Agreement shall be void and no party shall be bound by any of the agreements or provisions hereof.

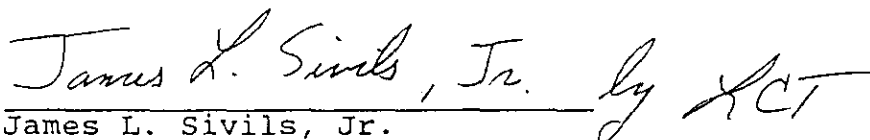
WHEREFORE, the undersigned parties respectfully request that the Commission accept this Stipulation and Agreement as a full disposition of Staff's Complaint docketed as Case No. SC-93-276.

Respectfully submitted,



Lee C. Tieman
Assistant General Counsel
P. O. Box 360
Jefferson City, MO 65102

Attorney for the Staff of the
Missouri Public Service
Commission



James L. Sivils, Jr.
901 St. Louis, Suite 701
Springfield, MO 65806

Attorney for Joseph William
Gold, a/k/a Bill Gold, d/b/a
Bill Gold Investments, Inc.

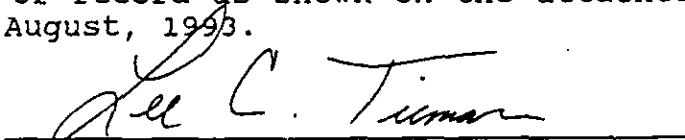


John Coffman
Assistant Public Counsel
P. O. Box 7800
Jefferson City, MO 65102

Attorney for the Office of the
Public Counsel

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 18th day of August, 1993.



Service List for Case No. SC-93-276

Mr. James L. Sivils, Jr.
Attorney at Law
901 St. Louis, Suite 404
Springfield, MO 65806

Mr. John Coffman
Office of Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

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DISSENTING OPINION OF COMMISSIONER KENNETH McCLURE

I must respectfully dissent from the order of the majority which adopts the Stipulation and Agreement in this case. The allegations made by Staff and customers, if found to be supported by competent and substantial evidence, are of such a serious nature that any agreement which leaves ownership of the Company with Mr. Gold will ultimately prove deficient. In my opinion, the receivership proceeding should be allowed to work its course to afford Staff an opportunity to present its case and Mr. Gold a forum to defend himself and his Company.

As an example of some of the allegations, residents of the area have complained of pollution from the sewer plant, nearby creeks becoming like cesspools, and manhole coverings overflowing. One individual stated that she saw used condoms, pieces of tampons, and other paper products on the ground adjacent to a manhole cover. Others have made note of the smell, their inability to make contact with Mr. Gold, and activity at the sewer at odd hours of the day. In filing its complaint, Staff claims that the Company has been effectively abandoned by its owner. Staff's testimony cites alleged deficiencies dating at least as far back as 1987. In addition, it was noted by Staff that Mr. Gold was found guilty in 1991 in Greene County Circuit Court for, among other things,

discharging excessive water contaminants into a state waterway (*State of Missouri v. Joseph William Gold*, Case No. 390CM1065).

Section 393.145 RSMo Supp. 1992 was enacted in 1991 to give the Commission a means of insuring that small water and sewer companies provide safe and adequate service to their customers. A portion of this section states that control of the utility is to remain with the receiver until such time as the utility "in the best interests of its customers, be returned to the owners." If, however, it is determined by the Court that the Company should not be returned to the owners, then the receiver shall liquidate the assets (Section 393.145.5 RSMo Supp. 1992). In my opinion, the provisions of this section should be followed. I commend the Commission for ordering that Bill Gold Investments may not alter or cancel the terms of the authorized management contract. Nevertheless, by accepting the Stipulation and Agreement, the Commission is insuring that ownership of the Company will remain with Mr. Gold. If, however, a receiver is appointed as provided by law, the Company may ultimately be liquidated if it is determined by the Court to be in the best interests of the customer. The lack of such provision in the Stipulation and Agreement is a serious omission.

This Commission has been, and should continue to be, judicious in its application of the provisions of Section 393.145. However, the severity of the charges leveled by Staff and the failure of the Stipulation and Agreement to allow for an ultimate sale of the Company if found to be warranted prevent me from supporting the Commission's decision.

Respectfully submitted,



Kenneth McClure
Commissioner

Dated: August 27, 1993