

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

In the Matter of the Application of L.W.)	
Sewer Corporation (Missouri), LLC for)	
Authority to Reorganize and Convert to)	<u>Case No. SA-2007-0105</u>
a Nonprofit Sewer Company)	

SUPPLEMENTAL RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and for its Supplemental Recommendation, states the following to the Missouri Public Service Commission (Commission):

1. On November 9, 2006, the Staff filed a recommendation in this case, with which it included an official case file memorandum (11/09/06 Case File Memo).

2. Included in the 11/09/06 Case File Memo were the following Staff conclusions:

With regard to the proposed conversion articles, the Staff has concluded that these articles adequately address the changes needed to LWS's original articles of incorporation to effectuate the Company's conversion to a nonprofit sewer company. However, the Staff notes that neither the proposed conversion articles nor the necessary shareholder consents have been executed.

With regard to the statutory provisions pertaining to the organization and operation of nonprofit sewer companies, the Staff notes that LWS's Application did not include the proposed by-laws under which the proposed nonprofit sewer company would operate. As a result, the Staff has concluded that it cannot determine whether the proposed nonprofit sewer company will be operating in compliance with the statutory provisions applicable to nonprofit sewer companies. In particular, the Staff believes it needs to be able to determine whether the provisions of Sections 393.839, 393.843, 393.845 and 393.849 will be met.

3. As a part of its 11/09/06 Case File Memo, the Staff recommended that the Commission issue an order directing LWS to file executed copies of the Articles of Conversion,

Amendment and Acceptance and the related shareholder consent, and directing LWS to file the proposed by-laws under which the proposed nonprofit sewer company would operate.

4. On November 27, 2006, the Commission issued an order directing L.W. Sewer Corporation, LLC (LWS) to file the documents referenced in the Staff's 11/09/06 Case File Memo.

5. On December 12, 2006, LWS filed its Motion Requesting Approval of Application to Reorganize, with which it included the documents referenced in the Staff's 11/09/06 Case File Memo.

6. On January 9, 2007, the Commission issued an order directing the Staff to file its recommendation, or a status report, no later than January 23, 2007.

7. The Staff has reviewed the documents that LWS filed on December 12, 2006 and has reached the following conclusions regarding those documents:

a. The executed copy of the Articles of Conversion, Amendment and Acceptance is the same as the previously-filed unexecuted copy of this document, which, as noted in Paragraph 2 herein, the Staff previously reviewed and found to be acceptable;

b. The executed copy of the shareholder consent is the same as the previously-filed unexecuted copy of this document, and adequately addresses the matters that it needs to address so far as the proposed reorganization and conversion are concerned; and

c. With one minor exception, the by-laws of the nonprofit sewer company adequately and properly address the specific Sections of Chapter 393 that were referenced in the Staff's 11/09/06 Case File Memo. This exception occurs in Section 4 of Article II of the by-laws, which deals with the matter of meeting notices that are to be sent to members of the company, and is related to the provisions of Section 393.839.5, RSMo. Section 393.839.5 requires that

meeting notices be sent "not less than ten nor more than twenty-five days" in advance of member meetings, but Section 4 of Article II of the by-laws states that meeting notices shall be sent "not less than ten nor more than fifty (50) days" in advance of member meetings.

8. Based upon information received from personnel in the wastewater enforcement section of the Department of Natural Resources (DNR) and the DNR's St. Louis Regional Office, the Staff notes that LWS is currently not subject to any DNR enforcement actions and that the DNR generally does not have any problems with LWS's facilities.

9. Based on a review of the annual report data base in the Commission's electronic filing and information system, the Staff notes that LWS is current on the submission of its Commission annual reports for calendar years 2002 through 2005.

10. Based on a review of readily available information maintained by the Commission's Budget & Fiscal Services Department, the Staff notes that LWS is current on the payment of its Commission assessments for fiscal years 2000 through 2006. Regarding the FY2007 assessment, the Staff notes that LWS has made the first two quarterly payments toward its FY2007 assessment, but has not yet made the third quarterly payment that was due on January 15, 2007.

11. The Staff notes that LWS currently has no other matters pending before the Commission, and that approval of the Application in this case would thus not affect any other matter before the Commission with regard to the Company.

12. Based upon information received from LWS's counsel, the Staff understands that one additional filing with the Secretary of State regarding the reorganization and conversion remains to be made if the Commission approves the Application that is the subject of this case.

13. Based upon the above, the Staff recommends that the Commission issue an order that: (a) Grants LWS the requested authority to reorganize and convert to a nonprofit sewer company; and (b) directs LWS to submit to the case file a notice that the final filing required to be made with the Secretary of State (SOS) regarding the reorganization and conversion has been made; provided, however, that the Commission's granting of the requested authority is subject to a showing that the by-laws issue noted herein has been corrected and the receipt of LWS's third quarterly payment for its FY2007 assessment.

14. The Staff further notes that the Commission should issue an order canceling LWS's tariff and LWS's certificate of convenience and necessity subsequent to a showing of compliance with any "approval conditions" established by the Commission and receipt of the notice regarding the final required SOS filing referenced above.

15. Attached hereto is an affidavit from Staff member Dale W. Johansen, Manager of the Commission's Water & Sewer Department, in which he verifies his participation in this case generally, and in the preparation of this Supplemental Recommendation specifically.

WHEREFORE, the Staff respectfully submits this Supplemental Recommendation for the Commission's consideration in this case.

Respectfully Submitted,

/s/ **Robert V. Franson**

Robert V. Franson
Senior Counsel
Missouri Bar No. 34643

Attorney for the Staff of the
Missouri Public Service Commission

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CERTIFICATE OF SERVICE

I hereby certify that copies of this Supplemental Recommendation 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 this 18th day of January 2007.

/s/ **Robert V. Franson**

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

AFFIDAVIT OF DALE W. JOHANSEN

STATE OF MISSOURI)

) SS

CASE NO. SA-2007-0105

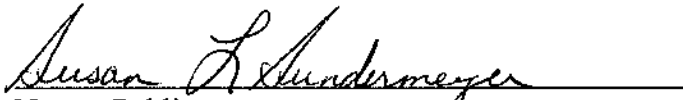
COUNTY OF COLE)

COMES NOW Dale W. Johansen, being of lawful age, and on his oath states the following: (1) that he is the Manager of the Missouri Public Service Commission's Water & Sewer Department; (2) that he participated in all phases of the Staff's investigation of the application that is the subject of the instant case; (3) that he participated in the preparation of the foregoing Supplemental Recommendation; (4) that he has knowledge of the matters set forth in the foregoing Supplemental Recommendation; and (5) that the matters set forth in the foregoing Supplemental Recommendation are true and correct to the best of his knowledge, information and belief.



Dale W. Johansen – Manager
Water & Sewer Department
Utility Operations Division

Subscribed and sworn to before me this 18th day of January 2007.


Notary Public



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086

My Commission Expires: 9-21-10