

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 5th day of
January, 2006.

In the Matter of the Application of Timber Creek Sewer)	
Company for Permission, Approval and a Certificate of)	
Convenience and Necessity Authorizing it to Construct,)	<u>Case No. SA-2005-0467</u>
Install, Own, Operate, Control, Manage and Maintain a)	
sewer System for the Public, Located in an)	
Unincorporated Area of Clay County, Missouri)	

**ORDER GRANTING CERTIFICATE OF
CONVENIENCE AND NECESSITY**

Issue Date: January 5, 2006

Effective Date: January 15, 2006

On June 6, 2005, Timber Creek Sewer Company filed an application for a certificate of convenience and necessity to construct and operate a sewer system in an unincorporated area of Clay County, Missouri in the Johnson Ridge subdivision. The company states that it is certificated to provide sewer service to areas of Platte County, Missouri and seeks to expand its service area. The company states in its application that although there are currently no homes located within the proposed service area, “[a] developer, Michael Johnson Development, LLC, has obtained the approval of the Clay County Planning and Zoning Commission for rezoning and preliminary plat approval for 104 residential lots.” The developer has requested that Timber Creek serve the proposed area. The company points out that the developer will finance the system. With its application, the company provided a map and description of the proposed service area and a feasibility study.

Staff Memorandum

On November 23, the Staff of the Commission filed its Memorandum recommending that the Commission approve the application. Staff states that the company was incorporated in 1994 and in 1995 was granted a certificate to provide sewer service in Platte County. Since then, the company has been granted certificates in other areas of Platte County.

Staff informs the Commission that the sewage collection system will utilize a grinder pump at each house and pressure mains. The wastewater will be treated using an extended aeration treatment plant. This is the same treatment used by the company at its main plant near Platte City, which has consistently produced effluent that meets environmental requirements. Staff also states that while the Department of Natural Resources has not issued a permit to the company, based on conversations with DNR, a permit will be issued soon.

Staff informs the Commission that the company's current Commission-approved rate is \$26.97 per month per customer and advises that this rate should also be used for the Johnson Ridge service area. Also, the developer will construct and transfer the sewer system at no cost to the company. Furthermore, although the company has not filed a revised tariff, Staff advises that the company's existing depreciation rates and service charges should be used. With regard to the company's tariff, Staff also suggests that the company submit new and revised tariff sheets or a complete new tariff consisting of the following:

[A] new rule on service via a pressure collection system, including details regarding the installation, operation, maintenance and replacement of the customers' service sewers, grinder pump stations and pumps, as may be applicable; a separate listing of the rates and charges by service area;

inspections of customer grinder pumps; service charges related to grinder pump service calls not covered by provided inspections; a designation of rules that apply statewide; new service area descriptions and maps; and, a new tariff sheet heading notations.

Finally, Staff suggests that the tariff be filed no later than 60 days after this order is issued and that the tariff should have an effective date at least 30 days from the date the tariff is submitted.

Staff opines that that there is a need for the proposed service, that the company is qualified, and that it has the financial ability to provide the proposed sewer service. The company has about 900 customers and is financially sound. Staff believes the company has demonstrated the technical and managerial ability to develop and operate sewer systems. The operations supervisor has several years experience operating the wastewater system near Platte City. The owner/manager also has extensive experience with sewer utility service, starting with a small system over ten years ago.

Staff further states that the proposed sewer service fulfills one of the requirements that make new home construction possible in this portion of unincorporated Clay County and concludes that this is in the public interest. Finally, Staff states that the company has a record of cooperation with Staff and DNR, and DNR has not issued any notice of violation to the company for any of its systems.

Additional Information Concerning Compliance Issues

The Commission directed Staff to file a pleading concerning the company's ability to comply with federally inspired DNR rules. In its pleading, Staff explains in detail that the company will be in compliance with DNR rule 10 CSR 20-7.015. Staff also stated that even if the company needs to immediately make changes to its plant to meet more stringent discharge limits, the developer, not the company, will have to bear the construction costs.

The only additional cost that the company would incur would be the nominal cost of some operational adjustments. Staff concludes that the company's proposed rates should be adequate.

Discussion

Section 393.170.3, RSMo 2000, authorizes the Commission to approve an application for a certificate to operate a sewer utility if it determines that such a certificate is "necessary or convenient for the public service." In the 1994 *Tartan Energy*¹ case, this Commission recognized five criteria that should be considered when making that determination:

- 1) There must be a need for the service;
- 2) The applicant must be qualified to provide the service;
- 3) The applicant must have the financial ability to provide the service;
- 4) The applicant's proposal must be economically feasible; and
- 5) The service must promote the public interest.

Staff concludes in its Memorandum that Timber Creek's application satisfies the *Tartan Energy* criteria.²

Conclusion

The company did not respond to Staff's recommendation. The Office of the Public Counsel has not voiced any concern with the company's proposal. Based on the application and the Staff's recommendation and memorandum, the Commission will approve Timber Creek's application. The Commission will also direct the company to file

¹ *In re Tartan Energy Company*, 3 Mo. P.S.C. 3d 173, 177 (1994).

² In its Memorandum, Staff modified the *Tartan Energy* test and added to the first criteria whether there is a need for the Company to provide the proposed services. Staff concludes that there is such a need.

new tariff sheets or a completely new tariff using its current depreciation rates and service charges.

The Commission notes, as suggested by Staff, that the company's existing contribution-in-aid-of-construction charge for the company's Platte County service area does not apply to the proposed service area, and that the company will need to establish a new CIAC charge prior to expanding its service into the proposed service area. Additionally, the company cannot provide service to the proposed service area until the company has obtained Commission approval of the required tariff revisions and the required DNR permits.

The Commission reminds the company that failure to comply with its regulatory obligations may result in the assessment of penalties against it. These regulatory obligations include, but are not limited to, the following:

A) The obligation to file an annual report, as established by Section 393.140(6), RSMo 2000. Failure to comply with this obligation will make the utility liable to a penalty of \$100 and an additional \$100 per day that the violation continues. Commission rule 4 CSR 240-3.360 requires water utilities to file their annual report on or before April 15 of each year. Commission rule 4 CSR 240-3.335 requires sewer utilities to file their annual report on or before April 15 of each year.

B) The obligation to pay an annual assessment fee established by the Commission, as required by Section 386.370, RSMo 2000. Because assessments are facilitated by order of the Commission, failure to comply with the order will subject the company to penalties ranging from \$100 to \$2,000 for each day of noncompliance pursuant to Section 386.570, RSMo 2000.

C) The obligation to provide safe and adequate service at just and reasonable rates, pursuant to Section 393.130, RSMo 2000.

D) The obligation to comply with all relevant state and federal laws and regulations, including, but not limited to, rules of this Commission, the Department of Natural Resources, and the Environmental Protection Agency.

E) The obligation to comply with orders issued by the Commission. If the company fails to comply it is subject to penalties for noncompliance ranging from \$100 to \$2,000 per day of noncompliance, pursuant to Section 386.570, RSMo 2000.

F) The obligation to keep the Commission informed of its current address and telephone number.

This certificate is granted conditioned upon the compliance of the company with all of these obligations.

Moreover, if the Commission finds, upon conducting a hearing, that the company fails to provide safe and adequate service, or has defaulted on any indebtedness, the Commission will petition the circuit court for an order attaching the assets, and placing the company under the control of a receiver, as permitted by Section 393.145, RSMo 2000, as amended by SB 462 (2005). As a condition of granting these certificates, the company hereby consents to the appointment of a temporary receiver until such time as the circuit court grants or denies the petition for receivership.

The company is also placed on notice that Section 386.310.1, RSMo 2000, provides that the Commission can, without first holding a hearing, issue an order in any case, “in which the commission determines that the failure to do so would result in the likelihood of imminent threat of serious harm to life or property.”

Furthermore, the company is reminded that, as a corporation, its officers may not represent the company before the Commission. Instead, the corporation must be represented by an attorney licensed to practice law in Missouri.

IT IS THEREFORE ORDERED:

1. That Timber Creek Sewer Company is granted a certificate of convenience and necessity to provide sewer service to the Johnson Ridge subdivision in Clay County, Missouri.

2. That Timber Creek Sewer Company's existing monthly rate of \$26.97, and the application of the general service charges and depreciation rates to the Johnson Ridge service area, is approved.

3. That Timber Creek Sewer Company's existing contribution-in-aid-of construction (CIAC) charge for its Platte County service area does not apply to the proposed service area, and that Timber Creek Sewer Company will need to establish a new CIAC charge before expanding its service in the vicinity of the proposed service area.

4. That Timber Creek Sewer Company shall submit new and revised tariff sheets for its existing tariff or a complete new tariff, including provisions consistent with the above discussions on this matter, within 60 days after the date this order is issued with the tariff sheets bearing an effective date that is at least 30 days from the date the tariff sheets are submitted to the Commission.

5. That Timber Creek Sewer Company shall submit, in this case file, copies of the required Department of Natural Resources construction and operating permits for the Oakbrook system within 15 days after DNR issues those permits.

6. That Timber Creek Sewer Company shall submit, in this case file, proof that it has obtained clear title to the collection and treatment facilities and the land upon which the treatment facilities are located, and that easements providing for the necessary access for the operation and maintenance of the collection system have been provided.

7. That Timber Creek Sewer Company shall submit annual reports to the Commission's Water & Sewer Department regarding the number of customers connected to the Oakbrook system, with the first report to be submitted 12 months after it starts providing service in the Johnson Ridge service area.

8. That Timber Creek Sewer Company shall maintain its books and records in a manner sufficient to allow for area-specific cost-of-service analyses to be performed for the proposed service area and the existing service area so that area-specific rates can be developed if needed in the future.

9. That Timber Creek Sewer Company shall not serve the Johnson Ridge subdivision in Clay County, Missouri until it has effective tariffs on file with the Commission to serve that area and has the required Department of Natural Resources construction and operating permits for that system.

10. That the Commission's grant of the certificate does not affect any ratemaking decisions that the Commission may make regarding Timber Creek Sewer Company in a later proceeding.

11. That this order shall become effective on January 15, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton,
and Appling, CC., concur.

Pridgin, Regulatory Law Judge