

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

In the Matter of the Application of Timber Creek )  
Sewer Company for a Certificate of Convenience and )  
Necessity Authorizing it to Construct, Install, Own, )  
Acquire, Operate, Maintain, Control and Manage a )  
Sewer System in Clay County, Missouri as an )  
expansion of its Existing Certificated Areas )

**File No. SA-2020-0013**

**STAFF RECOMMENDATION**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Commission”), by and through counsel, and recommends that the Commission issue a certificate of convenience and necessity (“CCN”) to Timber Creek Sewer Company (“Timber Creek”). In support of this *Staff Recommendation*, Staff states:

1. Timber Creek filed its *Application and Motion for Waiver* (“Application”) on July 24, 2019, requesting that the Commission issue it a CCN expanding its territory in order to provide sewer service to a single residence.
2. In its Application, Timber Creek also requested a waiver of the 60 day notice requirement of Commission Rule 4 CSR 240-4.017(1). Timber Creek verified that in the prior 150 days it had no Commission communication regarding any issue likely to be substantive in this case.
3. On July 25, 2019 the Commission set a due date of August 24, 2019 for intervention and ordered Staff to file a recommendation by September 6, 2019. No parties moved to intervene.
4. Pursuant to Section 393.170, RSMo, no sewer corporation shall provide service to consumers without first obtaining Commission approval. In determining whether to grant such approval, the Commission often applies the five “Tartan Energy

Criteria” established in *In the Matter of Tartan Energy Company, et al.*, 3 Mo. PSC 3d 173 (1994). These criteria examine (1) the need for service; (2) the applicant’s qualifications; (3) the applicant’s financial ability; (4) the economic feasibility of the proposal; and (5) promotion of the public interest. In addition to the Tartan Criteria, when considering applications involving existing water and/or sewer systems, the Commission analyzes the Technical, Managerial, and Financial capabilities (“TMF”) of the applicant.

5. As explained in the *Staff Memorandum*, attached as Appendix A, Staff investigated Timber Creek’s request. Based upon this review, Staff determined that Timber Creek’s Application meets the Tartan Energy Criteria, and accordingly, Staff opines that issuing this CCN to Timber Creek is necessary and convenient for the public service and is not detrimental to the public interest, and Staff recommends approval with conditions described in the *Staff Memorandum*.

6. Staff does not oppose Timber Creek’s request for a waiver of the 60 day notice requirement of 4 CSR 240-4.017(1).

7. The Commission need not hold a hearing if, after proper notice and opportunity to intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

**WHEREFORE**, Staff respectfully submits this *Staff Recommendation* for the Commission’s information and consideration. Staff requests the Commission issue a CCN to Timber Creek, with conditions, to provide sewer service to the requested service area.

Respectfully submitted,

**/s/ Karen E. Bretz**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been electronically mailed to all parties and/or counsel of record on this 28th day of August, 2019.

**/s/ Karen E. Bretz**

# MEMORANDUM

**TO:** Missouri Public Service Commission  
Case No. SA-2020-0013

**FROM:** Andrew Harris - Water and Sewer Department  
Daronn A. Williams – Water and Sewer Department

/s/ Curtis Gateley 8/28/19                      /s/ Karen Bretz 8/28/19  
Case Manager    Date                                      Senior Counsel    Date

**SUBJECT:** Recommend Approval of Application seeking Granting of Certificate of Convenience and Necessity

**DATE:** August 28, 2019

## **CASE BACKGROUND**

On July 24, 2019, Timber Creek Sewer Company (“TCS”) submitted its *Application and Motion for Waiver* (“Application”) requesting a Certificate of Convenience and Necessity (“CCN”) from the Public Service Commission (“Commission”). On July 25, 2019, the Commission issued its *Order Directing Notice and Setting Intervention Deadline* (“Order”).

In the Order, among other things, the Commission set August 24, 2019 as the due date for requests to intervene. No party sought to intervene. The Commission also directed Staff to file a recommendation in this case by September 6, 2019.

## **BACKGROUND OF TCS**

TCS originally obtained a CCN in Case No. SA-95-110 to provide sewer service in Platte County in an area adjacent to Platte City. It subsequently filed nine (9) additional CCN cases requesting additional service areas in Platte, Clay, and Clinton Counties.<sup>1</sup> TCS presently owns and operates four (4) sewage treatment facilities. In the Application, TCS states that it presently provides sewer service to 2,171 customers in Platte and Clay Counties.

## **REQUESTED SERVICE AREA**

The area proposed in this CCN case is located in Clay County, adjacent to TCS’ Oakbrook facility. The property owner at the proposed service area plans to construct a single-family residence. The property owner requests sewer service from TCS for the residence, as

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<sup>1</sup> Ref. Case Nos. SA-96-238, SA-99-202, SA-2002-404, SO-2002-1061, SA-2005-0297, SA-2005-0467, SA-2010-0063, SA-2010-0100, and SA-2019-0006. The Commission granted the requested service area in Clinton County (Case No. SA-2010-0100), but TCS requested it be rescinded after an agreement to provide service did not materialize.

documented by Appendix 3 of the Application. The property owner will be responsible for installing a grinder pump and building the necessary pressure collection line to the TCS system and then contributing that line to TCS per TCS's tariff.

TCS' Oakbrook facility is a 30,000 gallon per day extended air treatment facility. In its 2018 annual report filed with the Commission, TCS states that the Oakbrook facility is operating at approximately 20% of its capacity and has adequate capacity in the foreseeable future. Unlike gravity collecting sewers commonly used in many locations, the collecting sewers comprising the Oakbrook system are pressure sewers which require the use of an electric-powered pump unit at each customer's residence.

Construction of collecting sewer extensions will be undertaken by the terms of TCS's tariff *Rule 11- Extension of Collecting Sewers*. By the terms of this tariff rule, a property owner may either have TCS construct the sewer extension or the property owner may construct the extension and contribute the property to TCS. By the terms of tariff Rule 12 B., the customers, the subdivision developer or the homebuilder are responsible for the cost of installing the pump unit. There is no new direct investment required on the part of TCS if the Commission grants TCS' request for this additional service area.

### **STAFF'S INVESTIGATION**

This request is for the service area to be expanded to include a new single-family residence. There will be no new or expanded treatment facility constructing and no capital investment directly made by TCS for service in the proposed area. Rate base will not be directly affected, and there will be no changes in depreciation of plant accounts necessary. An audit was therefore not conducted by Staff.

### **Tartan Energy Criteria**

It is customary with most cases involving a new CCN for Staff to use criteria that was studied and analyzed by the Commission in a past CCN case, GA-94-127, filed by the Tartan Energy Company, to justify granting a CCN. The Tartan criteria and Staff's analysis of TCS' proposed additional service area are as follows:

#### **(1) Need for Service**

There is a need for service. A land owner intends to construct a residence which will require sewer service, and he has in fact requested service from TCS.

**(2) Applicant's Qualifications**

TCS is qualified to provide the service, as it has demonstrated by providing sewer service in its other nearby certificated areas. TCS has demonstrated in other service areas its capability of undertaking necessary capital improvements for continued operations including expansions, to provide safe and adequate service to its customers.

**(3) Applicant's Financial Ability**

TCS has demonstrated in its service areas that it has sufficient financial resources, such as debt, equity, and CIAC to be able to construct utility plant as needed. It is able to evaluate costs of alternatives when undertaking operations and capital improvements.

**(4) Economic Feasibility of Proposal**

With respect to financing and capital funding regarding this proposed new service area, TCS will not be required to provide new capital, since providing service in this proposed service area only consists of a relatively simple collecting sewer extension that will be funded by a landowner for a single residence. The new customer will be connected to existing collecting sewers of the Oakbrook sewer system, which has adequate capacity. The new customer will be provided sewer service under the same rules and rates applicable to existing customers.

**(5) Promotion of the Public Interest**

As the Commission determined in GA-94-127, positive findings with respect to the other four standards above will in most instances support a finding that an application for a certificate of convenience and necessity will promote the public interest. The granting of this requested CCN will result in additional revenue with no increased capital expense, benefiting existing customers in the long-term. For all of the reasons outlined throughout this memorandum, Staff asserts that TCS's request for a CCN in the proposed additional service area is not detrimental to the public interest.

Staff's conclusion is that the Application satisfies the Tartan Energy criteria.

**Tariff**

Should the Commission approve its Application, TCS's tariff will need to include a written description and a map of the new service area.

TCS included a metes and bounds written description as Appendix 1 with the Application. Staff has developed a revised description that eliminates the inclusion of lot descriptions, as lots are sometimes changed in the future. Staff proposes the following be the legal description to appear on the 1<sup>st</sup> Revised Sheet 3A:

Beginning at the Northeast corner of SW ¼ in Section 7, Township 52 North, Range 31 West in the Clay County, thence Southerly, along the East line of said Quarter Section, a distance of 1315.71 feet to the Southeast corner of said Quarter Section; thence Westerly along the South line of North ½ of the Southwest ¼ to a point, a

distance of 422.71 feet; thence North 00 degrees, to a point, a distance of 32.50 feet; thence North 66 degrees West, to a point, a distance of 184.30 feet; thence North 43 degrees West, to a point, a distance of 670.04 feet; thence South 59 degrees West, to a point, a distance of 524.7 feet; thence North 00 degrees, to a point, a distance of 264.90 feet; thence North 89 degrees West, to a point, a distance of 823.50 feet; thence North 00 degrees, to a point, a distance of 656.05 feet; thence South 89 degrees East, a distance of 2268.85 feet more or less to the Point of Beginning. Said tract of land contains 45.2 acres (1,968,912 square feet) more or less.

TCS could modify tariff Sheet No. 2A by adding the new service area map. Existing Sheet No. 2A shows the adjacent Oakbrook service area as Clay County Service Area 1, along with a neighboring TCS service area, Clay County Service Area 2. A replacement map with the new service area filed as a tariff sheet will need to be submitted by TCS. The current map can be significantly improved in detail and readability during this revision.

Other than the need for new service area depiction, TCS's existing tariff will be applicable to the new proposed service area. Specifically, TCS's approved rates for its Clay County service areas will apply to the new customer, and, as discussed, the existing rule for Extension of Collecting Sewers will also apply.

### **Customer Notice**

No existing customers will be directly impacted if this request is approved. The only entity impacted is the land owner who is requesting that sewer service be provided by the Oakbrook subdivision. Staff therefore asserts that notice to any existing customers is unnecessary. TCS will, of course, be required by established rules and procedures to communicate with new customers who construct homes and connect to the sewer system, thereby becoming new TCS customers.

### **OTHER ISSUES**

TCS is a corporation that is in "good standing," according to documentation on the Missouri Secretary of State (SOS) website. TCS is current on its annual report filings with the Commission through calendar year 2018, according to information posted on the Commission's Electronic Filing Information System. TCS is current on its annual assessments through the first quarter of fiscal year 2020, as posted internally by the Commission's Budget and Fiscal Services Department.

TCS has no other pending cases before the Commission.

### **SUMMARY AND CONCLUSIONS**

Staff recommends the Commission grant the CCN as requested. Staff's position is that providing service in the expanded service area is feasible and is not detrimental to the public

interest. Existing rates and rules will apply to the new service area. TCS's original tariff sheets 2A and 3A will need modification to reflect the addition of the new service area.

**Staff's Recommendations**

Based upon the foregoing, Staff recommends that the Commission:

1. Approve a new CCN, as requested in the Application;
2. Require TCS to file 1st Revised Sheets 2A and 3A, as 30-day filings, within ten (10) days after the effective date of an order from the Commission approving the CCN, with a metes and bounds description and a map depicting the new service area; and,
3. Make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded in any matters pertaining to utility plant constructed within the new service area, or providing service in the new service area, in any later proceeding.





