

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 7th  
day of July, 1993.

In the matter of the application of Rocky Ridge )  
Ranch Property Owners Association for an order )  
of the Public Service Commission authorizing ) Case No. WD-93-307  
cessation of PSC jurisdiction and regulation )  
over its operations. )

ORDER DENYING REQUEST FOR PUBLIC HEARING AND  
CANCELLING CERTIFICATE OF CONVENIENCE AND NECESSITY

On May 10, 1993, Rocky Ridge Ranch Property Owners Association  
(Applicant or POA) filed an Application requesting an order cancelling its  
certificate of convenience and necessity pursuant to Section 393.190 RSMo. POA  
is a provider of water service to property owners in Rocky Ridge Ranch, a  
subdivision of Ste. Genevieve County, Missouri. POA was a co-applicant in Case  
No. WM-93-136 involving the transfer of the assets and the certificate from the  
previous water company to the Property Owners Association. In that case, the  
Commission approved the sale of the assets, and transfer of the certificate to  
the POA but declined to release the POA from the jurisdiction of the Commission  
based upon a finding that the POA would continue to serve customers who were not  
members of the Association.

POA has now submitted an Application with documentation which reflects  
changes in the bylaws of the POA such that all Rocky Ridge Ranch lot owners are  
now eligible for membership in the Association without any requirement for  
membership dues. The provisions now state that any property owner who is a water  
customer is entitled to vote on matters pertaining to the water department of the  
Rocky Ridge Ranch Property Owners Association. POA is a not-for-profit  
corporation and as such does not distribute or sell water "for gain."

On May 18, 1993, the Commission issued an Order and Notice and an Order for Staff Investigation. This Order established an intervention date of June 14, 1993 and also established a deadline for the filing of a Staff investigation on June 16, 1993. The Commission received no applications for intervention.

On June 16, 1993, the Missouri Public Service Commission Staff (Staff) filed its Memorandum in which it recommended the cancellation of the certificate of convenience and necessity. The Staff Memorandum set out the criteria for a legitimate association as follows:

- 1) It must have as membership all of its utility customers, and operate the utility only for the benefit of its members;
- 2) It must base the voting rights regarding utility matters on whether or not a person is a customer, as opposed to, allowing one (1) vote per lot which would not be an equitable situation if one (1) person owned a majority of lots irrespective of whether each of those lots subscribed to the utility service; and
- 3) It must own or lease the utility system so that it has complete control over it.

The Staff Memorandum went on to state that the POA is an association which meets all of the Staff criteria for recognition as a legitimate association operating a utility strictly for the use of its own members. The Staff Memorandum did note that a number of individuals had signed a petition which arrived at the Commission offices on June 14, 1993 and in which the signatories requested a public hearing in this case. Pursuant to an evaluation of the evidence and testimony which was offered at the local public hearing in Case No. WM-93-136, the Staff has taken the position that the majority of the members of the Property Owners Association did indeed favor the proposal for the Property Owners Association to operate as a legitimate unregulated utility.

On June 21, 1993, the Office of Public Counsel (OPC) filed a Request for Local Public Hearing and in support of this request recited the receipt of the aforementioned petition. OPC further stated in its motion that if a local public hearing were scheduled in this case it would, inter alia, "hopefully serve the purpose of educating interested customers about the nature of Commission

jurisdiction and the specific changes made to the Property Owners Association bylaws."

On June 22, 1993, POA filed its Response to the Motion for Public Hearing in which it objected to the setting of a public hearing and stated that ordering a public hearing "to serve the purpose of educating interested customers about the nature of Commission jurisdiction and the specific changes made to the POA bylaws . . .", as asserted by OPC, was not justification to support an order for a public hearing. POA stated that it has complied with the requirements set out in the Order from WM-93-136. POA also stated that it had examined the petition and identified only thirty-five (35) signatories who might be water customers of POA. The Applicant stated that it had arrived at this number by the elimination of husband/wife duplicate signatures and signatures of non-customers. POA went on to state that these thirty-five (35) customers may well be among the same number who unsuccessfully voted against changing the bylaws so that POA would qualify for the cancellation of its certificate. Lastly, POA has indicated that the cover letter to the petition suggests that it is offered from the City of Rocky Ridge and reflects the date of June 9, 1993. However, it has been brought to the attention of the Commission that one (1) day earlier, on June 8, 1993, the voters of the City of Rocky Ridge voted to disincorporate the city and for that reason a trustee has been appointed to wind up the affairs of the city and dispose of its assets. This may raise some question about the continuing authority of the city clerk of a city which has ceased to exist. However, this issue is not dispositive of the motion before the Commission.

The Commission, having considered all of the competent and substantial evidence upon the whole record, finds that the POA has met its burden by qualifying as an association which does not require regulation under the rules and statutes of the state of Missouri. In Case No. WM-93-136, the Commission found it necessary to continue to retain jurisdiction over the Property Owners

Association based upon the finding that the Association would continue to serve customers who were not members of the Association. The Commission now finds changed circumstances due to the changes in the bylaws of the Property Owners Association. Pursuant to those changes, the Commission finds that the Property Owners Association does and will only provide water service to members of the Association. As such, POA does not qualify as a "water corporation" as defined by 386.020(51) RSMo 1992. For this reason, the Commission finds that it may no longer exercise jurisdiction over the POA. In the Report and Order which was issued in WM-93-136, the Commission stated that it exercises jurisdiction over entities which provide water to persons other than their members even if the entity provides the water "not for gain." The Commission retained jurisdiction on that basis and it was implicit in that order that the Commission would entertain a motion to cancel the Certificate for Convenience and Necessity once the POA could establish that it was only serving its members. The Commission now finds that the POA has satisfied that requirement. Having found that the POA no longer qualifies as a "water corporation" under the Missouri Statute(s) and having further found that the Commission no longer has jurisdiction over the POA water system, the Commission will cancel the certificate as requested. The Commission further makes the finding that it would not be detrimental to the public interest for the Certificate of Public Convenience and Necessity herein to be cancelled. The Commission will deny the Motion for Local Public Hearing and will order the Rocky Ridge Ranch Property Owners Association's Certificate of Public Convenience and Necessity, along with its accompanying tariff, to be cancelled.

**IT IS THEREFORE ORDERED:**

1. That the Motion of the Office of Public Counsel for a public hearing is hereby denied.

2. That the Certificate of Public Convenience and Necessity previously granted to Rocky Ridge Ranch Property Owners Association in Case No. WM-93-136, and the accompanying tariff, is hereby cancelled.

3. That, included in its next billing, Rocky Ridge Ranch Property Owners Association shall advise all of its customers affected thereby that Rocky Ridge Ranch Property Owners Association is no longer regulated by the Missouri Public Service Commission. Such notice shall state that "beginning (date), our rates and charges for water and other services will no longer be regulated by the Missouri Public Service Commission."

4. That this order shall become effective on the July 20, 1993.

BY THE COMMISSION

*Brent Stewart*

Brent Stewart  
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins,  
Kincheloe and Crumpton, CC., Concur.