

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 9<sup>th</sup> day of  
December, 2009.

In the Matter of RDG Development, LLC for a Certificate )  
of Convenience and Necessity Authorizing it to Own, ) **File No. SA-2010-0096**  
Operate, Maintain, Control and Manage a Sewer System )  
in Callaway County, Missouri )

**ORDER GRANTING CERTIFICATE OF CONVENIENCE AND  
NECESSITY**

Issue Date: December 9, 2009

Effective Date: December 18, 2009

**Procedural History**

On September 14, 2009, RDG Development, L.L.C. ("RDG") filed an application requesting the Commission grant it authority to own, operate, maintain, control and manage an existing sewer system that it acquired in Callaway County, Missouri.<sup>1</sup> The system serves approximately 33 residential customers in the Greenwood Hills Subdivision.

The Commission issued notice, set an intervention deadline and set a deadline for its Staff to file a recommendation. No person, group or entity sought intervention. No party requested a hearing.<sup>2</sup>

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<sup>1</sup> The application was filed pursuant to Sections 393.140 and 393.170, RSMo 2000, and Commission Rules 4 CSR 240-2.060 and 4 CSR 240-3.305.

<sup>2</sup> "The term 'hearing' presupposes a proceeding before a competent tribunal for the *trial of issues* between *adversary parties*, the presentation and the consideration of proofs and arguments, and determinative action by the tribunal with respect to the issues ... 'Hearing' involves an *opposite party*; ... it contemplates a listening to facts and evidence for the sake of *adjudication* ... The term has been held synonymous with 'opportunity to be heard'. The requirement for a hearing is met when the opportunity for hearing was provided and no proper party requested the opportunity to present evidence." *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Com'n of State of Mo.*, 776 S.W.2d 494, 495-496 (Mo. App. 1989).

## **Background on the Sewer System**

Greenwood Hills Subdivision, which consists of a total of 134 lots, was originally developed in the 1970's. RDG is not the original developer of the subdivision, but purchased the entire development in 2000. The purchase included the wastewater treatment lagoon, collection system, and the remaining unsold lots in the subdivision. The residents of the subdivision were not billed for sewer service by any entity until RDG, without the authority of a CCN, billed them for service in November of 2008.<sup>3</sup> RDG was not aware that a CCN was required and, upon learning of the requirement, it ceased billing customers immediately after its initial bill.<sup>4</sup>

The treatment facility consists of a two-cell lagoon with no aeration or disinfection, and operates under DNR Permit Number MO-0121274.<sup>5</sup> The service area is served by all-gravity collecting sewers that carry sewage from each customer's premises to the two-cell lagoon treatment facility. There are no mechanical components (grinder pumps or lift stations) on the collection system and there are no aerators or disinfection components on the lagoon. However, the current permit contains a Schedule of Compliance (SOC) that requires disinfection for the lagoon discharge by August of 2011 and the DNR will require a certified operator once a CCN is issued.

## **Standard for Granting a CCN**

Section 393.170.3 authorizes the Commission to grant a certificate of convenience

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<sup>3</sup> RDG billed each customer a "base rate" of \$20, plus \$5 for every 1,000 gallons of water use over 4,000 gallons, per month for the sewer service. (A partial discount was offered for customers who opted to pay for twelve months of service up front.)

<sup>4</sup> The Commission's Water and Sewer Department was made aware of RDG's operation as a utility in December of 2008 by the Department of Natural Resources (DNR).

<sup>5</sup> Water service is provided to the development and surrounding area by Callaway County Public Water District No. 2. The Water District does not currently operate any sewer utility.

and necessity when it determines, after due hearing, that the proposed project is "necessary or convenient for the public service."<sup>6</sup> The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost,"<sup>7</sup> and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.<sup>8</sup> It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.<sup>9</sup>

While Section 386.170 speaks to the Commission's authority to grant a CCN for the construction of facilities to provide sewer service, it offers little statutory guidance as to specific criteria that must be satisfied prior to the grant of such certificates. However, Section 393.170.3, does give the Commission the authority to impose the conditions it deems reasonable and necessary for the grant of a CCN. In the 1994 *Tartan Energy*<sup>10</sup> case, this Commission recognized five criteria that should be considered when determining if a CCN should be granted:

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<sup>6</sup> Section 393.170; *St. ex rel. Intercon Gas, Inc. v. Public Service Commission*, 848 S.W.2d 593, 597 (Mo. App. 1993); *State ex rel. Webb Tri-State Gas Co. v. Public Service Commission*, 452 S.W.2d 586, 588 (Mo. App. 1970); *In the Matter of the Application of Southern Missouri Gas Company, L.P., d/b/a Southern Missouri Natural Gas, for a Certificate of Public Convenience and Necessity Authorizing It to Construct, Install, Own, Operate, Control, Manage, and Maintain a Natural Gas Distribution System to Provide Gas Service in Lebanon, Missouri*, Case Number GA-2007-0212, et al., 2007 WL 2428951 (Mo. P.S.C.)

<sup>7</sup> *Id.*; *Intercon Gas, Inc.*, 848 S.W.2d at 597; *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973).

<sup>8</sup> *Id.* *Beaufort Transfer Co.*, 504 S.W.2d at 219; *State ex rel. Transport Delivery Service v. Burton*, 317 S.W.2d 661 (Mo. App. 1958).

<sup>9</sup> *In the Matter of the Application of Southern Missouri Gas Company, L.P., d/b/a Southern Missouri Natural Gas, for a Certificate of Public Convenience and Necessity Authorizing It to Construct, Install, Own, Operate, Control, Manage, and Maintain a Natural Gas Distribution System to Provide Gas Service in Lebanon, Missouri*, Case Number GA-2007-0212, et al., 2007 WL 2428951 (Mo. P.S.C.); *Intercon Gas, supra*, quoting *St. ex rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo. App. 1975).

<sup>10</sup> *In re Tartan Energy Company*, 3 Mo. P.S.C. 3d 173, 177 (1994).

- 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.

Additionally, Commission Rule 4 CSR 240-3.305 requires that applicants for a sewer CCN affirmatively plead these requirements in their application.

### **Staff's Recommendation**

On October 23, the Staff of the Commission filed its verified recommendation and memorandum recommending that the Commission approve the application. Staff states that RDG has satisfied the Tartan factors because:

(1) there is a need for service because the central sewer system is in place and serving the customers in the proposed service area, which is not located within a public sewer district's boundaries;

(2) the applicant is qualified to provide the service because the owner of the Company has demonstrated technical and managerial ability to develop and operate the sewer system in that (a) RDG has been doing so effectively for nine years; (b) the owner is an established property developer, and owns and operates a building contractor business, and thereby has experience in business operation; and (c) the owner will contract with an established certified operator to run the system, or will take steps to become certified to operate the facility himself, per DNR requirements;

(3) the applicant has the financial ability to provide the service because the initial investment in the sewer treatment facilities has been, and will continue to be, recouped in the sale of the lots and therefore does not represent a debt that remains to be paid, and RDG has the financial capability through bank financing and its owner's funding support and will be able to generate sufficient cash flow to remain viable, given the proposed rates;

(4) the proposal for the sewer system is economically feasible if Staff's proposed rates are adopted, and there is potential for numerous additional customers that the sewer system is adequately sized to accept, which would further add to the viability of the utility; and,

(5) RDG's proposal promotes the public interest because the existing central sewer system is desirable for a good living environment for the existing residential customers and potential additional customers as the subdivision expands, and because the other Tartan Energy Criteria have been met.

RDG also requested a waiver of Commission Rule 4 CSR 240-3.305(1)(A)5 that requires that “plans . . . for the utility system” be provided with an application for a certificated area. RDG states that it has provided the commission a general description of the system, and not having constructed the system it does not have any plans for the construction of the utility system and has no way to obtain such plans. Staff recommends that the waiver be granted, but requests that the Commission require RDG to submit a map of the subdivision showing, at minimum, the location of the manholes and sewer collection main lines.

#### **Response to Staff’s Recommendation**

On November 6, RDG and Public Counsel both filed objections to Staff’s recommendation. The Regulatory Law Judge convened a procedural conference on November 17, and directed the parties to file a status report after engaging in further discussions. On November 25, RDG and Public Counsel jointly filed an amended response to Staff’s recommendation stating they no longer have objections.

#### **Decision**

Based on RDG’s application and the Staff’s unopposed verified recommendation and memorandum, the Commission finds that RDG’s application satisfies the statutory and regulatory requirements for a grant of CCN. Staff has recommended a number of conditions be imposed upon the grant of RDG’s CCN and the Commission finds these

conditions to be reasonable and in the public interest. Those conditions will be encompassed in the ordered paragraphs below.

**THE COMMISSION ORDERS THAT:**

1. RDG Development, L.L.C. is granted a certificate of convenience and necessity and the authority to own, operate, maintain, control and manage the sewer system as more fully described in its September 14, 2009 application.

2. RDG Development, L.L.C. is granted a waiver of the requirement in Commission Rule 4 CSR 240-3.305(1)(A)5 to file construction plans of the sewer system.

3. RDG Development, L.L.C. shall use the schedule of depreciation rates attached to Staff's October 23, 2009 Memorandum.

4. RDG Development, L.L.C. shall submit a complete tariff specifying a monthly rate of \$40.06 for residential customers. The customers shall not be billed for service until such time as the tariff is approved and made effective.

5. RDG Development, L.L.C. shall commence a Small Company Rate Case pursuant to Commission Rule 4 CSR 240-3.050 no later than August 31, 2011, to address the costs associated with meeting the DNR disinfection requirement in the facility's current permit.

6. RDG Development, L.L.C. shall satisfy the DNR requirement of retaining a certified operator within 90 days of the effective date of this order.

7. RDG Development, L.L.C. shall submit, to the Manager of the Commission's Staff's Water and Sewer Department, a map of the Greenwood Hills Subdivision that shows, at a minimum, the location of the manholes and sewer collection main lines within 90 days of the effective date of this order.

8. Nothing in this order shall bind the Commission on any ratemaking issue in any future rate proceedings.

9. This order shall become effective on December 18, 2009.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'S. Reed', is positioned above the printed name of the Secretary.

Steven C. Reed  
Secretary

( S E A L )

Clayton, Chm., Davis, Jarrett, Gunn,  
and Kenney, CC., concur.

Stearley, Senior Regulatory Law Judge