

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 31st
day of January, 1995.

In the matter of the application of Coney Island Water System, Inc., to sell and transfer its franchise, works or system to the village of Coney Island, Stone County, Missouri.)
)
) Case No. WM-95-207
)
)

ORDER OF DISMISSAL

On January 9, 1995, Coney Island Water System, Inc. (Applicant) filed an application with the Commission seeking an order and decision of the Commission approving the sale and transfer of all of the franchise, works or system of Coney Island Water System, Inc., to the Village of Coney Island.

A copy of the proposed contract and agreement is attached to the application. The proposed contract provides that Applicant agrees to sell to the Public Building Corporation of the Village of Coney Island (the "Public Building Corporation") the waterworks system of Applicant, including any franchise rights. In the "Contingency of Sale" section, the proposed contract and agreement states that the sale is expressly conditioned upon

"each of the following events: (a) approval of the proposed transaction by the Missouri Public Service Commission, and approval by any other federal, state, or local governmental agency or body whose approval must legally be obtained, and (b) issuance of the debt instrument of the Public Building Corporation and receipt of funds therefrom."

The proposed contract and agreement further states:

"In the event that either of said conditions cannot be or are not met, then this preliminary agreement shall thereupon become null and void, neither party shall have any further liability hereunder."

Finally, in the "Closing and Risk of Loss" section, the proposed contract and agreement states, in relevant part:

"In the event that closing cannot take place within twelve (12) months from the date hereof, this preliminary agreement shall thereupon become null and void and neither party shall have any further liability hereunder."

The agreement was signed by David Clark, Authorized Representative of Coney Island Water System, Inc., on January 6, 1994.

Section 393.190, R.S.Mo. 1994, provides, in relevant part:

No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void. The permission and approval of the commission to the exercise of a franchise or permit under this chapter, or the sale, assignment, lease, transfer, mortgage or other disposition or encumbrance of a franchise or permit under this section shall not be construed to revive or validate any lapsed or invalid franchise or permit, or to enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or to waive any forfeiture.

Having reviewed the proposed contract and agreement, the Commission finds that the proposed contract and agreement is expressly conditioned upon approval of the proposed transaction by the Missouri Public Service Commission. The Commission further finds, due to Section 393.190.1, R.S.Mo. 1994, that the transfer of the franchise or assets could not have lawfully occurred within twelve months from the date of the contract and agreement. In addition, the Commission finds that the proposed contract and agreement became null and void, by its own terms, on or about January 6, 1995. Therefore, the underlying issue

of whether the Commission should authorize the transfer of utility assets is moot.

IT IS THEREFORE ORDERED:

1. That the application be hereby dismissed.
2. That this order shall become effective on the 10th day of February, 1995.

BY THE COMMISSION



David L. Rauch
Executive Secretary

(S E A L)

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