

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Staff of the Missouri Public Service Commission

Complainant,

v.

Joseph William Gold, a/k/a Bill Gold d/b/a
Bill Gold Investments, Inc.

Respondent.

CASE NO. SC-93-276

APPEARANCES: William K. Haas, Assistant General Counsel, P.O. Box 360,
Jefferson City, Missouri 65102, for Staff of the
Missouri Public Service Commission.

John B. Coffman, Assistant Public Counsel, P.O. Box 7800,
Jefferson City, Missouri 65102, for Office of the
Public Counsel and the Public.

Bill Gold, P.O. Box 555, Brookline, Missouri 65619, Pro Se.

HEARING EXAMINER: Mark A. Grothoff

REPORT AND ORDER

On April 6, 1993, the Staff of the Commission (Staff) filed a complaint against Joseph William Gold a/k/a Bill Gold d/b/a Bill Gold Investments, Inc. (Respondent). On April 21, 1993, Respondent filed its answer to Staff's complaint. On May 20, 1993, a local public hearing was held in Springfield, Missouri. On June 17, 1993, a prehearing conference was held and on August 16, 1993, the parties filed a Stipulation and Agreement (Stipulation) which was approved by the Commission on August 27, 1993.

On September 9, 1993, Staff filed a Motion to Schedule Hearing stating that the Stipulation was void because Respondent had not met certain criteria which was included in the Stipulation. Staff requested that a hearing in this matter be scheduled. On September 14, 1993, the Commission granted Staff's motion and scheduled a hearing in this matter. On September 30, 1993, a hearing was held as scheduled, and briefs were subsequently filed.

FINDINGS OF FACT

The Missouri Public Service Commission, having considered all of the

competent and substantial evidence upon the whole record, makes the following findings of fact.

Respondent was granted a certificate of convenience and necessity by the Commission on March 30, 1978. Respondent operates a sewer system serving approximately 109 customers in Greene County, Missouri.

On April 6, 1993, Staff filed a complaint against Respondent. The complaint generally describes Respondent's failure to provide safe and adequate service, and requests the Commission to authorize the General Counsel's Office to petition the Circuit Court to place Respondent under the control of a receiver and assess penalties.

On April 21, 1993, Respondent filed its answer to Staff's complaint. On May 20, 1993, a local public hearing was held in Springfield, Missouri, and on June 17, 1993, a prehearing conference was held.

On August 16, 1993, the parties filed a Stipulation which the Commission approved on August 27, 1993. The Stipulation required Respondent to: (1) submit a proposed contract with a management firm by September 3, 1993; (2) file a loan application with the Missouri Environmental Improvement and Energy Resource Authority (EIERA) and a Commission finance case by September 3, 1993; (3) file a rate case with the Commission, as prescribed by the EIERA program, by September 3, 1993; and (4) submit engineering plans for its proposed construction and any necessary fees to the Missouri Department of Natural Resources (DNR) by September 3, 1993.

On September 9, 1993, Staff filed a Motion to Schedule Hearing stating that the Stipulation was void because Respondent had not met the requirements of the Stipulation and requesting that a hearing be scheduled. On September 14, 1993, the Commission granted Staff's motion and a hearing was held on September 30, 1993.

The issue in question is whether Respondent is unable or unwilling to provide safe and adequate service, or has actually or effectively abandoned the system. Section 393.145, RSMo Supp. 1992. If so, then the Commission may authorize the General Counsel's Office to seek a receiver for the system.

The sewer system consists of a sewage collection system, a small lift station, and an activated sludge sewage treatment plant. The sewage treatment plant incorporates sand filtration and disinfection through the use of chlorine. The discharge from the sewage treatment plant flows to an unnamed tributary of Wilson's Creek. This creek has been determined by DNR's Division of Geology and Land Survey to be a losing stream, meaning that a significant part, or all, of the flow is lost from the surface to ground water.

Respondent has a waste water discharge permit which contains effluent limitations for biochemical oxygen demand, non-filterable residue, fecal coliform bacteria, and pH. Respondent is required to collect samples for analysis for these parameters on a specified schedule and to report the results to DNR.

Staff presented extensive evidence to support its claim that Respondent has failed to provide safe and adequate service. Staff's claims cover four areas: operations, manhole overflows, effluent discharges, and communications.

One Staff witness testified that he had observed specific operational deficiencies on fourteen separate occasions between April, 1987 and September, 1993. Examples of such operational deficiencies include one or both lift station pumps being out of service, solids collecting on the aerator grates, the grates not being locked, failure to skim the clarifier, failure to clean the weirs, the sand filter being out of service, the blower being out of service, and improper electrical wiring.

A DNR employee reported eight confirmed instances of raw sewage bypassing, or overflowing, the manhole west of the sewage treatment plant between May, 1980 and January, 1993. DNR received several more complaints concerning bypass of raw sewage, and another witness confirmed a ninth instance in January, 1991. The DNR employee also reported 21 violations where the effluent discharge exceeded the permit limitations between July, 1981 and December, 1992.

Furthermore, there was abundant evidence of continuing difficulties in communicating with Respondent to report problems. Staff maintains that Respondent's failure to provide comprehensive day-to-day operation has resulted in backed-up sewers, putrid odor, mosquitos, sludge in the receiving stream, and

blood worms in the sludge.

Respondent's testimony and evidence reviews the attempts made by Respondent to fix the problems with the sewer system, the various expenditures made by Respondent, and the amount of Respondent's investment in the sewer system.

Included in the evidence is a contract between Respondent and the Interstate Sewage Treatment Company, Inc. (Interstate). The contract would allow Interstate to operate the sewer system while Respondent would remain responsible for collecting the sewer bills. However, on its face, the contract is contingent on several events, including approval of the contract by the Commission. There is no evidence that any of the contingencies have occurred. Also, there is no evidence that Respondent could have made the payments due to Interstate under the contract.

The Commission acknowledges Respondent's willingness to operate the system and that Respondent has not abandoned the system. However, the evidence clearly shows that Respondent has been unable to provide safe and adequate service.

Respondent has a history of poor operations, poor plant effluent, and poor response to problems. Respondent's inability to meet the requirements of the voided Stipulation is further evidence of its failure to address the serious problems which exist. In view of the chronic nature of Respondent's inability to provide safe and adequate service, the Commission determines that the General Counsel's Office should be authorized to petition the Circuit Court for a receiver and penalties.

CONCLUSIONS OF LAW

The Missouri Public Service Commission has arrived at the following conclusions of law.

Respondent is a "sewer corporation" and a "public utility" under the general jurisdiction of the Commission pursuant to Sections 386.020 and 386.250, RSMo Supp. 1992. The Commission has the authority to make a determination in this case pursuant to Section 386.390, RSMo 1986.

Section 393.130.1, RSMo 1986, provides, in part, that "every sewer corporation shall furnish and provide such service instrumentalities and

facilities as shall be safe and adequate and in all respects just and reasonable."

Section 393.145, RSMo Supp. 1992, authorizes the Commission to petition the Circuit Court to appoint a receiver where a sewer corporation "having 1,000 or fewer customers is unable or unwilling to provide safe and adequate service or has been actually or effectively abandoned by its owners." Also, Sections 386.570, et seq., RSMo 1986, authorize the Commission to prosecute an action to recover a penalty of not less than \$100 nor more than \$2,000 for each violation by a public utility of the Public Service Commission law, or any order, decision, decree, rule, direction, demand, or requirement of the Commission.

The Commission may seek a receiver for Respondent if it finds that Respondent is unable to provide safe and adequate service. The Commission has so found and thus concludes that the General Counsel's Office should be authorized to petition the Circuit Court to appoint a receiver and to seek penalties against Respondent.

IT IS THEREFORE ORDERED:

1. That the General Counsel's Office of the Commission is hereby authorized to petition the Greene County Circuit Court for an order attaching the utility assets of Joseph William Gold a\k\a Bill Gold d\b\a Bill Gold Investments, Inc. and placing such assets under the control and responsibility of a receiver pursuant to Section 393.145, RSMo Supp.1992.

2. That the General Counsel's Office of the Commission is hereby authorized to seek penalties for the failure of Joseph William Gold a\k\a Bill Gold d\b\a Bill Gold Investments, Inc. to furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable pursuant to Section 393.130, RSMo 1986, and Section 386.570, RSMo 1986.

3. That this Report and Order shall become effective on November 16, 1993.

BY THE COMMISSION

A handwritten signature in cursive script that reads "David L. Rauch".

David L. Rauch
Executive Secretary

(S E A L)
Mueller, Chm., McClure, Perkins,
Kincheloe and Crumpton, CC., Concur.