

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Staff of the Missouri Public Service
Commission,

Complainant,

vs.

Richard G. Snoderly and Estelle Lea
Atkins d/b/a White Branch Water
Service, a/k/a White Branch Water
Company.

Case No. WC-92-131

APPEARANCES: Richard G. Snoderly and Estelle Lea Atkins, 2413 Park Avenue,
St. Joseph, Missouri 64503

John B. Coffman, Assistant Public Counsel, P.O. Box 7800,
Jefferson City, Missouri 65102

Thomas H. Luckenbill, Assistant General Counsel, P.O. Box 360,
Jefferson City, Missouri 65102

HEARING

EXAMINER: Janet L. Sievert

REPORT AND ORDER

Procedural History

On December 16, 1991, the Staff of the Missouri Public Service Commission (Staff) filed a complaint against Richard G. Snoderly and Estelle Lea Atkins, d/b/a White Branch Service, a/k/a White Branch Water Company, (Respondent), alleging that Respondent is unable or unwilling to provide safe and adequate service and that the water system in question has effectively been abandoned and that repairs and improvements necessary for safe and adequate service have not been performed. Staff requested that the Commission grant it authority to petition Benton County Circuit Court to place Respondent's water company under the control and responsibility of a receiver, pursuant to Section 393.145(1), RSMo Supp. 1991 (hereinafter referred to as Section 393.145(1)). On December 23,

1991, the Commission issued a notice of complaint. On February 14, 1992, the Office of Public Counsel (Public Counsel) filed a request for a local customer hearing. On March 2, 1992, Respondent, acting without counsel, late-filed a letter as its answer in this proceeding. On March 18, 1992, a prehearing conference was held. As a result of the prehearing conference, a procedural schedule was established. On May 11, 1992, a local customer hearing was held. Prefiled testimony was filed by all parties and an evidentiary hearing was held June 8, 1992. Closing statements were presented at the hearing in lieu of briefs.

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 is a public utility which provides water service in the White Branch Resort Subdivision in Benton County to approximately one hundred eighty (180) customers. Respondent purchased the water system in 1984. Respondent serves approximately ninety (90) full-time residents and ninety (90) seasonal or part-time residents. The main water system consists of four interconnected wells which is operated as three water systems. Valves can be opened to allow the water system to operate as one system for the entire subdivision. Well No. 1 has been out of service for approximately one year and the pump control for this well is inoperable.

Evidence presented by the Staff of the Missouri Public Service Commission (Staff) and the Department of Natural Resources (DNR) at the evidentiary hearing indicated that there have been ongoing problems with the operation of this water system since 1987. The evidence indicated that when Respondent purchased the

water system in 1984, it was basically in poor condition and, since then, the facilities have continued to deteriorate due to the aging of the water pipes and other parts of the system and the failure of Respondent to perform necessary and preventive maintenance. Except where Respondent has replaced water mains in recent years the water mains are old and in inferior condition. A substantial portion of the operating and production problems are caused by main breaks and the water system does not have any storage facility which contributes to pressure and outage problems.

The Commission's Water Department (Water Department) has made repeated recommendations to Respondent concerning improvements and operational strategies such as utilizing a good leak detection program, installing service and master meters, issuance of water conservation notices during peak usage periods, installing air release valves, implementing a water main replacement program, obtaining the services of an engineering firm for evaluation and consulting proposes, seeking financial assistance in order to drill a new well, construct sufficient storage facilities capable of adequately serving the entire subdivision, and requesting timely rate increases to establish a revenue stream that would be sufficient to allow operations and maintenance to be properly performed. Adoption of these recommendations by Respondent would have resulted in better service to the customers.

Additionally, an inspection of the water system was conducted by DNR on February 11, 1992, with follow-up inspections conducted on March 23, 1992, and April 8, 1992, because of numerous complaints of low or no water pressure, reports of failure to make repairs and occasional samples containing bacteria. DNR's inspection showed that the water system is improperly operated and deteriorating such that normal operating conditions and pressures cannot be

consistently maintained, there is no apparent routine program for maintenance or for repairs and that prior suggestions for repairs to prevent contamination of the water supply have not been completed. Even though some of the improvements suggested by the Water Department and DNR have been attempted, these attempts have not been successful or adequate. The water system continues to be plagued with water outages and repeated main breaks.

Furthermore, on April 1, 1992, DNR issued a boil order for Respondent's water system which remains in effect. A boil order is issued when it is recommended to the users of the water system that they boil the water before human consumption as there is a possibility of bacteria that may cause illness or other health effects.

A review of Respondent's evidence showed that Respondent did not purchase the water system as a money-making business, but as a good will gesture for the community. Even though Respondent is aware that normal ratemaking procedures allow for rate relief based on investment that has already been placed into the system, Respondent is unwilling to invest any financial resources in the water system for fear that the investment will not be recovered. Furthermore, due to financial difficulties Respondent is unable to make the required investment in the water system to accomplish the improvements needed. In the eight years Respondent has owned the water system only one rate increase has been filed. That application was dismissed for failure to file an annual report as required by 4 CSR 240-50.030(5). Currently, Respondent's customer payments are approximately \$2,800 in arrears which Respondent attributes to this proceeding. Respondent is having great difficulty in meeting the daily operating expenses of the water system with this amount of customer payments in arrears.

Respondent recognizes that there are problems with the water system, but is at a loss as how to correct the problems. Respondent believes that the water system is functioning adequately except for the south end of the system which constitutes an emergency situation. The south end of the water system has been plagued with problems for years with no solutions found to resolve the problems. Respondent has signed a contract with a private engineering firm to inspect and make recommendations concerning the water system. However, at this time Respondent does not have the financial resources to pay the firm to begin work.

Approximately three months ago, Respondent moved from the White Branch Service area to St. Joseph, Missouri. Since moving from the service area Respondent has returned at least once a month, if not more. Respondent has arranged for two maintenance men in the service area to respond to customer complaints, however, neither are paid. One is currently living in Respondent's home in exchange for providing water system maintenance and the other is on call with the expectation to be paid at some time in the future.

At the local customer hearing, testimony was presented by approximately twenty-seven (27) customers of Respondent's water system. The testimony generally alleged repeated problems with water pressure, discoloration, foul smells, repeated water outages, and the failure of Respondent to timely respond to, and repair, problems with the water system. Additionally, the testimony at the local customer hearing revealed that since Respondent has moved from the area it has become more and more difficult to contact anyone concerning problems with the water system and that frequently it takes several days to contact Respondent or his representative to register complaints. The testimony indicated that Well No. 3 received the major number of customer complaints, with the remaining two wells receiving fewer complaints.

Based on the evidence presented in this proceeding, the Commission finds that Respondent is unable to adequately operate the water system, as there have been ongoing operational problems since Respondent obtained ownership of the water system with no apparent effort to employ a routine program for maintenance or repair. The Commission finds that Respondent is unwilling and unable to adequately operate this water system and provide safe and adequate service due to the repeated failure of Respondent to invest in the system. The Commission recognizes that Respondent had no previous experience in operating a public water utility much less participating in the regulatory arena and that Respondent initially purchased the water system with all intentions to provide water to the community. However, the proper operation of the water system is vital to the health and welfare of the community it serves. The continuing boil water order from DNR indicates that Respondent is unable to adequately operate the water system and provide safe and adequate water service to the community it serves. Therefore, the Commission finds that the Staff should petition Benton County requesting that Respondent's water system be placed under the control and responsibility of a receiver.

Conclusions of Law

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

Respondent is a public water utility subject to the jurisdiction of this Commission pursuant to Chapters 386 and 393, RSMo 1991. The Commission has authority to petition a circuit court to place a water or sewer corporation under the control of a receiver pursuant to Section 393.145(1), RSMo Supp. 1991. This section states in relevant part:

"If the Commission shall determine that any water or sewer corporation having one thousand or fewer customers is unable or unwilling to provide safe and adequate service or has been actually or effectively abandoned by its owners or has defaulted on a bond note.....The Commission may petition the circuit court for an order attaching the assets of the utility and placing the utility under the control and responsibility of a receiver."

The Commission has found that the Staff should file a petition in the Benton County Circuit Court requesting that Respondent's water system be placed under the control and responsibility of a receiver. The Commission has found that Respondent is unwilling and unable to properly maintain and operate the water system to provide safe and adequate service to its customers. Respondent's water system has been under a DNR boil order since April 1, 1992. The Commission has found that Respondent is unwilling to make the necessary investment that is required to properly maintain the water system. Additionally, even though Respondent has attempted some improvements to supply safe and adequate water service to its customers, these attempts have been neither successful or adequate. The Commission concludes, based upon these findings, that the statutory requirements for placing the White Branch Water Company in receivership have been met.

The Commission further determines that all objections not heretofore ruled on should be overruled.

IT IS THEREFORE ORDERED:

1. The Commission finds that pursuant to Section 393.145(1), RSMo Supp. 1991, Richard G. Snoderly and Estelle Lea Atkins, d/b/a White Branch Water Service, a/k/a White Branch Water Company is unable and unwilling to provide safe and adequate water service.

2. That the Staff of the Missouri Public Service Commission be, and is, hereby authorized to petition the Benton County Circuit Court requesting that

Richard G. Snoderly and Estelle Lea Atkins d/b/a White Branch Water Service, a/k/a White Branch Water Company be placed under the control and responsibility of a receiver.

3. That all objections not heretofore ruled on be, and are, hereby dismissed.

4. That this order shall become effective on July 21, 1992.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

McClure, Chm., Mueller, Rauch,
Perkins and Kincheloe, CC.,
Concur and certify compliance
with the provisions of
Section 536.080, RSMo 1986.

Dated at Jefferson City, Missouri,
on this 10th day of July, 1992.