

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Joint Application of Ozark)	
Water and Wastewater Management Co., Inc.)	
(OWWM) and English Village Not-for-Profit)	
Sewer Corporation for Permission for OWWM)	Case No. SM-2004-0198
to Sell and Transfer Its Wastewater Collection)	
System Assets to English Village Not-for-)	
Profit Sewer Corporation)	

**MOTION TO CANCEL CERTIFICATE OF CONVENIENCE
AND NECESSITY AND ACCOMPANYING TARIFF**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and moves that the Commission cancel the certificate of convenience and necessity it granted to Ozark Water and Wastewater Management Company, Inc. (OWWM), as well as its tariff. In support of its Motion, Staff respectfully states as follows:

1. The Commission has previously held in this case “that Ozark Water and Wastewater Management Co., Inc. is authorized to discontinue providing wastewater collection and treatment in its certificated area as of the date following the closing of the sale and transfer of the collection system to English Village Not-for-Profit Sewer Corporation.” *Order Granting Authority to Transfer Assets*, Ordered paragraph 3 (February 17, 2004).

2. Attached to this pleading as Attachment A is a letter from counsel for OWWM, dated February 1, 2005 indicating that the proceeds from the sale were being distributed. Although the letter is stamped as “filed” with the Commission, it does not appear to have been submitted to this or any other case file. Based on the references in this letter, the sale of OWWM’s collection system has obviously been completed. Additionally, as is noted in the Affidavit attached as Attachment B, Staff member Dale Johansen has received correspondence from counsel for OWWM verifying that the closing of the asset transfer did in fact occur.

3. OWWM was a Missouri corporation. The corporation was administratively dissolved on September 4, 2002. Section 351.476(1) RSMo. (2000) states “A dissolved corporation continues its corporate existence but *may not carry on any business except that appropriate to wind up and liquidate its business and affairs....*”

4. Although the Commission’s authority to cancel a water or sewer certificate is not specifically set out in Chapter 393 of the Missouri statutes, the Commission has previously allowed regulated entities to discontinue operations in cases where cancellation was sought by the service provider and also where the service provider had ceased to exist.¹ The Commission’s authority to cancel certificates of convenience and necessity has been limited by the Missouri Supreme Court, where cancellation of one certificated entity’s authority is sought by another, potentially competing certificated entity (and against the will of the entity whose certificate is to be cancelled). *State ex rel. City of Sikeston v. Pub. Serv. Comm’n*, 82 S.W.2d 105 (Mo. 1935). The *Sikeston* court stated that “no provision was or ever has been made by the Legislature for the commission to eliminate competition between private companies already in existence and doing business in the same territory” other than through purchase. *Id* at 110. In this case, however, the certificated entity has legally ceased to exist and it is no longer providing sewer service; moreover, the Commission has already indicated that the company, at the company’s own request, may discontinue providing service.

5. Accordingly, Staff moves that the Commission now cancel the certificate of convenience and necessity held by OWWM, as well as its accompanying tariff.

¹ See 16 Mo. P.S.C. (N.S.) 142, *Burma Builders*; also see *In the Matter of Ozark Shores Water Company’s Application for an Order Canceling the Certificate of Public Convenience and Necessity*, Case No. WD-2001-701; *In the Matter of the Cancellation of the Certificate of Convenience and Necessity and Tariff of the Lake Hannibal Sewer Corporation*, Case No. SD-2004-0144.

6. The company has not submitted annual reports or paid assessments since the transfer of assets occurred.

7. The Commission need not hold a hearing, if, after proper notice and opportunity to intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. 1989).

WHEREFORE, the Staff requests that the Commission grant Staff's Motion and cancel the certificate of convenience and necessity it granted to Ozark Water and Wastewater Management Co., Inc., as well as the company's tariff, P.S.C. MO. No. 1.

Respectfully submitted,

/s/ David A. Meyer

David A. Meyer
Senior Counsel
Missouri Bar No. 46620

Attorney for the Staff of the
Missouri Public Service Commission
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david.meyer@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 1st day of June 2006.

/s/ David A. Meyer



Carnahan
Evans
Cantwell
& Brown
P. C.

SHAREHOLDERS

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ASSOCIATE

DAVID R. ADAIR

JOHN M. CARNAHAN, JR (1915-1998)

OFFICE ADMINISTRATOR
NANCY BRIGHT KAUFMAN

*ALSO ADMITTED IN FLORIDA

**ALSO ADMITTED IN OREGON

***ALSO ADMITTED IN TEXAS

****ALSO ADMITTED IN ARKANSAS AND KANSAS

February 1, 2005

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Dale Hardy Roberts
Executive Secretary
Missouri Public Service Commission
Governors Office Building
200 Madison St.
Jefferson City, MO 65102

FILED⁴

FEB 03 2005

**Missouri Public
Service Commission**

RE: Application of Ozark Water and Wastewater Management Company, Inc. to Sale its
Sewer Assets other than its Treatment Plant to the English Village Not-for-Profit Sewer
Corporation
Case No. SM-2004-0198

Dear Mr. Roberts:

Enclosed herewith find this firm's check drawn on its trust account in the amount of \$25,911.53 made payable to Missouri Public Service Commission which is a portion of the proceeds from the sale of the assets of Ozark Water and Wastewater Management Company, Inc. authorized under the Order of the Public Service Commission in the above matter. In that Order of the Public Service Commission, paragraph 2, it was provided that the purchase price for the sale of the assets is to be distributed in accordance with the terms of an Order of Receivership entered in the Circuit Court of Christian County, Missouri in Case No. CV197-4CC. That Order of Receivership provided that the amount referred above was to be distributed from the assets of the sale to the Missouri Public Service Commission by the undersigned as the Escrow Agent for distribution of the proceeds. Other checks are being distributed to other persons and parties in accordance with that same Order of the Circuit Court.

RECEIVED

FEB 03 2005

Yours truly,

Don G. Busch

DGB:alg

Encl.

cc: Missouri Budget & Fiscal SVCS
MO. P.S.C.

2805 S. Ingram Mill Road
P.O. Box 10009

Springfield, Missouri 65808-0009
(417) 447-4400 FAX: (417) 447-4401

E-Mail: cecb@cecb.com
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Attachment A

6114-01/17798.doc

3027 W. Highway 76, Suite B
Branson, Missouri 65616
(417) 332-3425
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AFFIDAVIT OF DALE W. JOHANSEN

STATE OF MISSOURI)

) ss

Case No. SM-2004-0198

COUNTY OF COLE)

Dale W. Johansen, of lawful age, on his oath states: (1) that he is a member of the Staff of the Missouri Public Service Commission; (2) that he participated in the preparation of the foregoing Motion; (3) that he has knowledge of the matters set forth in the foregoing Motion; (4) that he has knowledge of the document included with the foregoing Motion as Attachment A; (5) that the matters set forth in the foregoing Motion are true and correct to the best of his knowledge, information and belief; and (6) that he requested, and has received, both via e-mail correspondence, verification from counsel for Ozark Water & Wastewater Management that the closing of the asset transfer that is the subject of the instant case did in fact occur.



Dale W. Johansen – Manager
Water & Sewer Department
Utility Operations Division



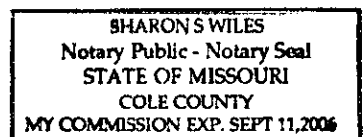
Subscribed and sworn to before me this 31st day of May 2006.



Notary Public

My Commission Expires:

September 11, 2006



Attachment B