

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

In the Matter of the Application of Jefferson County)  
Public Sewer District and Utility Management of     )  
Missouri in its Capacity as Court Appointed         )  
Receiver of P.C.B., Inc., for an Order Authorizing     )  
the Sale, Transfer and Assignment of Water and       )  
Sewer Assets to Jefferson County Public Sewer        )  
District and in Connection Therewith Certain         )  
Other Related Transactions                                 )

**File No. SM-2018-0131**

**STAFF RECOMMENDATION**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and recommends that the Commission grant to Utility Management of Missouri, LLC, in its capacity as court-appointed receiver of P.C.B., Inc. (“PCB” or “Company”) the authority to sell and transfer its water and sewer utility assets to the Jefferson County Public Sewer District (“JCPSD”). In support of this *Recommendation*, Staff states as follows:

1. On November 14, 2017, JCPSD and Utility Management of Missouri, LLC filed a joint application with the Commission seeking an order authorizing the sale, transfer, and assignment of assets relating to sewer services provided by PCB to customers in Jefferson County, Missouri.

2. On November 16, the Commission entered its order setting a deadline for intervention of December 6, 2017 and directing Staff to file a pleading no later than December 6, 2017 stating when it anticipates filing its recommendation. There have been no applications to intervene in this case.

3. On December 6, 2017, Staff filed its responsive pleading, and on December 19, 2017, the Commission ordered Staff to file its recommendation in this matter no later than January 10, 2018.

4. Pursuant to Section 393.190, RSMo (2013), no sewer corporation shall sell its franchise without having first secured from the Commission an order authorizing it to do so.

5. As explained in the Staff *Memorandum*, attached hereto as Appendix A, Staff conducted an investigation into the Company's request. Based upon this review, Staff has determined that the proposed sale and transfer of assets from the Company to JCPSD is not detrimental to the public interest. Accordingly, Staff recommends approval of the sale of PCB assets to JCPSD, subject to the conditions outlined in the Staff *Memorandum*. Following the completed transfers, Staff recommends the Commission cancel the CCN and tariffs for the Company.

**WHEREFORE**, Staff respectfully submits this Staff Recommendation for the Commission's information and consideration, and requests the Commission grant PCB, through Utility Management of Missouri, LLC, in its capacity as its court-appointed receiver, the authority to sell and transfer sewer utility assets to the Jefferson County Public Sewer District, subject to the conditions outlined in Appendix A. Staff further requests that after the transfer is complete, the Commission cancel PCB's certificate of convenience and necessity and cancel PCB's tariff.

Respectfully submitted,

**/s/ Marcella L Forck**

Marcella L. Forck  
Associate Staff Counsel  
Missouri Bar No. 66098

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**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing were served electronically to all counsel of record this 10th day of January, 2018.

**/s/ Marcella L. Forck**

## **MEMORANDUM**

TO: Missouri Public Service Commission Official Case File  
File No. SM-2018-0131  
P.C.B., Inc.

FROM: James A. Merciel, Jr. – Water and Sewer Department

<u>/s/ James A. Merciel, Jr.</u>	<u>January 10, 2018</u>
Case Coordinator	Date

<u>/s/ Marcella L. Forck</u>	<u>January 10, 2018</u>
Staff Counsel	Date

SUBJECT: Staff's Recommendation to Approve Transfer of Assets

DATE: January 10, 2018

### **CASE BACKGROUND**

On November 14, 2016, Jefferson County Public Sewer District (JCPSD), and Utility Management of Missouri, LLC (UMM) in its capacity as the court-appointed receiver of P.C.B., Inc. (PCB) submitted a *Joint Application for Approval of Transfer of Assets*, (Joint Application) in which PCB is seeking authority from the Commission to transfer its sewer utility assets to JCPSD. On December 22, 2017 JCPSD and UMM filed a *Motion to File Addendum to Joint Application*, for the purpose of including affidavits supporting the Joint Application.

On November 16, 2017, the Commission issued its *Order Directing Notice and Order Directing Filing*. By this order, the Commission required that information pertaining to this case be sent to the County Clerk and County Commission of Jefferson County, Missouri, members of the Missouri General Assembly representing the residents of Jefferson County, Missouri, and to the news media serving the residents of Jefferson County. Additionally, the Commission ordered that any interested person wishing to intervene in this case shall file an application to intervene no later than December 6, 2017. No party has sought to intervene. The Commission also required Staff to state a date by which it would file a recommendation.

On December 6, 2017 Staff submitted its *Staff Response to Commission Order* stating it anticipated filing a recommendation by January 10, 2018. On December 19, 2017, the Commission issued its *Order Directing Filing of Staff Recommendation* in which it directed Staff to submit its recommendation by January 10, 2018.

### **BACKGROUND OF THE UTILITIES, AND UTILITY SYSTEMS**

JCPSD is a public sewer district that is not subject to the jurisdiction of the Commission. Among a number of sewer systems it owns and operates, JCPSD acquired one sewer system from a regulated utility, Central Jefferson County Utilities, Inc., with approval of the Commission in Case No. SO-2007-0071; and, approximately a dozen sewer systems from another regulated utility, House Springs Sewer Company, Inc., with approval of the Commission in Case No. SM-2016-0204.

PCB, started by two business partners who worked as sewer system employee operators and contract operators, first obtained a Certificate of Convenience and Necessity (CCN) in two concurrent cases. One of those cases was SM-81-170, in which it acquired the assets of Stalwart Enterprises, Inc., a regulated sewer utility that was certificated to provide sewer service in Bel Air Estates, a mobile home park and subdivision near Cedar Hill, MO. The other case was SM-81-171, in which it acquired the assets of Sesame, Inc., also a regulated sewer utility that was certificated to provide sewer service in Sandia Heights, a mobile home park and subdivision near Mapaville, MO.

Shortly after these acquisitions, PCB began providing service in the Secluded Forest subdivision and the Sennawood Village subdivision, both located within its Bel Air service area. It later expanded its Bel Air service area in Case No. SA-87-53 to provide service to Wedgewood Village subdivision.

With these five (5) separate sewer systems, PCB provides sewer service to approximately 284 residential customers. Attachment A, included with this memorandum and incorporated by reference herein, provides a brief description of the five facilities, based on past inspection, Staff's observations during previous cases involving PCB and information provided by DNR.

Although PCB had adequately performed routine day-to-day operations of the facilities for many years, to a great extent their operations had only included minimal efforts to keep the treatment facilities running, and the owners of the utilities accomplished only repairs that were vital to operations. There has been little or no replacement or upgrade activity regarding plant components that are aging and degrading beyond repair, nor of treatment facilities that can no longer meet increasingly stringent environmental regulations. As a result, these decades-old systems generally have become run-down and even though all of the treatment facilities were originally constructed with appropriate design capacity and met approval standards of the day, they no longer function adequately. Two family members of one of the partners had been operating PCB before becoming frustrated with keeping the facilities and the business functional, and they essentially "walked away" from the responsibilities.

Because of the shortcomings of facility operations and corporation responsibilities including customer billing, Staff had filed Case No. SO-2014-0052 in which it requested the Commission appoint an interim receiver for PCB as well as for an affiliated sewer utility, M.P.B., Inc.<sup>1</sup> On September 7, 2013, the Commission appointed Johansen Consulting Services, LLC of Jefferson City as an interim receiver for both of these sewer utilities. On March 3, 2014, the Circuit Court of Cole County appointed Johansen Consulting Services, LLC as permanent receiver of PCB in Case No. 14AC-CC00020. After Staff had filed a *Motion for Change of Receiver for P.C.B., Inc.*, the Circuit Court issued its *Order Granting Motion for Change of Receiver for P.C.B., Inc.* effective on April 8, 2016, appointing the current receiver, UMM. After UMM filed a *Motion for Authority to Execute Asset Purchase Agreement to Sell Assets of P.C.B. Inc.*, on September 18, 2017, the Circuit Court issued an Order authorizing execution of the Asset Purchase Agreement that is included with the Application as Exhibit 7. DNR's filing in the Circuit Court of Jefferson County, seeking to enforce its water pollution regulations, is included with the Application as Exhibit 2.

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<sup>1</sup> Permanent receivership for M.P.B., Inc. was addressed separately, in Case No. 14AC-CC00019 in the Circuit Court of Cole County. Additionally, a sale of the assets of M.P.B., Inc. to a different buyer is presently being addressed before the Commission in a separate pending case, SM-2018-0117.

The above-mentioned court documents pertaining to receivership are included with the Application as Exhibits 3 through 6.

### **STAFF'S INVESTIGATION**

UMM, along with a contract operations company that is owned by the owner of UMM, is presently operating the facilities as best as possible utilizing available revenue. This contract operations company also works for JCPSD as a contract operator. Substantial capital improvements involving plant component rehabilitations, upgrades, and replacements are necessary. Staff, Johansen Consulting Services, LLC, UMM, and JCPSD have been working toward a sale of the PCB utility assets for several years.

Staff has reviewed the Asset Purchase Agreement that is attached to the Joint Application and agrees that the \$100 sale price to pay some past due receiver fees is not unreasonable. The Joint Application includes a request of the Commission to grant "...such other relief as may be deemed necessary to accomplish the purposes of the Purchase Agreement and the Application and to consummate the sale, transfer and assignment of the assets and related transactions pursuant to the executed Purchase Agreement." Staff asserts that PCB's request for authority to transfer its sewer utility assets would reasonably mean it intends to permanently cease providing sewer service; and, therefore, subsequent to the closing of the assets, the Commission should cancel PCB's Certificate of Convenience and Necessity (CCN) to provide sewer service, and cancel its current tariff on file with the Commission.

### **Rate Impact**

JCPSD states to Staff that it intends to utilize PCB's existing approved rates, service charges, and rules, for at least three (3) months following closing on the assets. As noted, Staff expects that JCPSD will be investing a substantial amount of capital into all of the PCB facilities. JCPSD anticipates evaluating the facilities, its cost of operations, and costs of necessary improvements after this three-month period and within two years, in order to analyze necessary revisions to the rates. PCB's existing flat residential rate is \$29.75 per month. This rate has been in effect since November 1, 2014.

### **Customer Notice/Customer Service**

UMM drafted verbiage for customer notice that was included on its December 15, 2017 billing post cards. Staff and OPC reviewed the draft verbiage. Since the time bills were sent out, Staff has received no customer comments.

### **OTHER ISSUES**

PCB is a corporation that is administratively dissolved with the Missouri Secretary of State as of May 18, 2012 for failure to file an annual registration report. PCB is current with annual report filings with the Commission through calendar year 2015, as documented on the Commission's Electronic Filing and Information System ("EFIS").

PCB has no other pending cases before the Commission. As noted, M.P.B., Inc. is an affiliated regulated sewer utility but its issues are being addressed separately from PCB. There are no other matters before the Commission that affect or would be affected by this filing, or of any pending or final unsatisfied decision against PCB from any state or federal court involving customer service or rates within the last three years that would affect or is affected by this filing.

## **STAFF'S RECOMMENDATIONS AND CONCLUSIONS**

Staff's position, based on its review as described herein, is that the proposal for the transfer of assets from PCB to JCPSD is not detrimental to the public interest. Since the Commission will be canceling PCB's CCN and tariff, Staff recommends that PCB notify the Commission after closing with JCPSD on the assets, and if there is any substantial delay regarding closing, that PCB submit status reports describing such delay. Staff therefore recommends approval with the conditions and actions as outlined herein.

## **STAFF'S RECOMMENDATIONS**

Based upon the above, Staff recommends that the Commission:

1. Approve the transfer of assets from PCB to JCPSD, as requested;
2. Require PCB to notify the Commission of closing on the assets within five (5) days after such closing;
3. If closing on the sewer system assets does not take place within thirty (30) days following the effective date of the Commission's order approving such, require PCB to submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until either PCB or JCPSD determines that the transfer of the assets will not occur;
4. Authorize PCB to cease providing sewer service immediately after closing with JCPSD on the assets;
5. After receiving notice of closing, cancel the CCN authorizing PCB to provide sewer service and cancel the current sewer tariff on file for PCB; and,
6. If PCB and/or JCPSD determine that the transfer of PCB's assets to JCPSD will not occur, require PCB to notify the Commission of such, along with an explanation regarding resolution of the Asset Purchase Agreement.
7. Make no ratemaking determination regarding any potential future regulatory oversight, if any.

Attachment A – Summary of PCB facilities

Staff Memorandum Attachment

File No. SM-2018-0131

Summary details and conditions of each PCB sewer system are as follows:

**Bel Air Estates**, DNR permit MO-0086576 (expired 3/8/12)

Prior to acquisition by PCB, this system was owned and operated by Stalwart Enterprises, Inc., which obtained a CCN in Case No. 18,187 in 1974. There are approximately 49 service connections, mostly mobile homes, although some are currently not occupied. The treatment facility is a 12,800 gallons per day (gpd) extended aeration facility. DNR imposed a compliance schedule that would include the addition of chlorination for effluent disinfection with dechlorination, which has not been met. The treatment facility is steel construction which has significant corrosion. Only one plant blower is installed, but there should be at least two blowers with a motor for each at a sewage treatment facility of this type. The access road requires grading and rock.

**Secluded Forest**, DNR permit MO-0105597 (expired 10/30/2013)

There are approximately 29 service connections, mostly mobile homes with a few single family residences, a few of which are unoccupied. The treatment facility is a 9,400 gpd extended aeration facility with chlorine disinfection although chlorine contact time may be inadequate. Only one functional blower/motor is installed. The access road requires grading and rock. DNR imposed a compliance schedule that was supposed to be completed by June 2011, which would have included de-chlorination.

**Sennawood**, DNR permit MO-0106577 (expired 2/5/14)

There are approximately 63 single family residential customer connections. The treatment facility is a 26,600 gpd extended aeration treatment facility with an ultraviolet disinfection system that is not functioning. Only one functional blower/motor is installed. The access road requires grading and rock.

**Wedgewood**, DNR permit MO-0105970 (expired 11/2/11)

There are approximately 61 single family residential customer service connections, but a few homes are vacant. The treatment facility is a 23,600 gpd extended aeration facility with an ultraviolet disinfection system that is not functioning. The collection system includes a lift station (pump station) that is likely degraded beyond permanent rehabilitation due to age. Lift station failures have caused numerous sewage overflows. The receiver had initially dealt with this lift station's problems by transporting sewage by tank truck every few days, which is quite expensive. Eventually, the current contract operator was able to install a new pump as a temporary installation so that the lift station is in operational status.

**Sandia Heights**, DNR permit MO-0087301 (expired in 2001)

This system is located approximately twelve (12) miles from the other four systems. Prior to acquisition by PCB, this system was owned and operated by Sesame, Inc., which obtained a CCN in Case No. 17,705 in 1973. There are approximately 82 mobile home and single family residential service connections. The treatment facility is a 26,600 gpd extended aeration facility and only one functional blower/motor is installed. The access road requires grading and rock. DNR has issued multiple NOV's and has denied renewal of the discharge permit because of failure of the treatment facility to meet discharge specifications. DNR has been pursuing enforcement action as of October 2011.



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**AFFIDAVIT OF JAMES A. MERCIEL, JR.**

State of Missouri        )  
                                  ) ss  
County of Cole         )

**COMES NOW** James A. Merciel, Jr., and on his oath declares that he is of sound mind and lawful age; that he contributed to the attached *Staff Recommendation*, and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

  
\_\_\_\_\_  
James A. Merciel, Jr.

**JURAT**

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 10th day of January, 2018.

  
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NOTARY PUBLIC

DIANNA L. VAUGHT Notary Public - Notary Seal State of Missouri Commissioned for Cole County My Commission Expires: June 28, 2019 Commission Number: 15207377
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