

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the joint application of 1) Maplewood)
Service Company for authority to sell and transfer its)
franchise, works or system to Capital Utilities, Inc.)
and 2) Capital Utilities, Inc. for authority to borrow)
money in order to finance said sale and transfer.)

CASE NO. WM-92-195

APPEARANCES: W. R. England, III, Attorney at Law, Brydon, Swearengen,
and England, P.C., P. O. Box 456, Jefferson City,
Missouri 65102, for Capital Utilities, Inc. and
Maplewood Service Company.

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

Thomas H. Luckenbill, Assistant General Counsel, P. O. Box
360, Jefferson City, Missouri 65102, for the Staff of the
Missouri Public Service Commission.

Hearing
Examiner: C. Gene Fee

REPORT AND ORDER

By a joint application filed February 13, 1992, and amended March 17, 1992, Maplewood Service Company (Maplewood) seeks permission to sell and transfer its sewage disposal system to Capital Utilities, Inc. (Capital) after which Capital intends to operate the system in providing sanitary sewage disposal service to the public, subject to this Commission's jurisdiction. Capital also seeks authority to borrow money in order to finance the contemplated sale and transfer.

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:

As the result of numerous discussions between the Applicants, the Public Counsel, and the Commission Staff, the parties, on April 7, 1992,

presented to the Commission a proposed Stipulation and Agreement recommending approval of the proposed sale and transfer. The Stipulation and Agreement is attached hereto as Appendix A and is incorporated by reference herein. In addition, the Commission makes the following findings of fact based on the verified applications, the exhibits offered in support thereof, and the Commission's records:

Maplewood is a water and sewer utility holding authority of this Commission authorizing the furnishing of utility service to the public to an unincorporated portion of eastern Pettis County, Missouri, approximately two miles east of Sedalia. Maplewood is a Missouri corporation with its principal office and place of business at 1609 South Limit, Sedalia, Missouri 65301.

Joint Applicant Capital is a Missouri corporation with its principal office and place of business at 312 Lafayette Street, Jefferson City, Missouri. Capital is engaged in providing sewer service to the public subject to this Commission's jurisdiction and is also a public utility as that term is defined in Section 386.020(32), RSMo Supp. 1991. Since Capital is an existing utility with a considerable amount of experience in the provision of service, the Commission finds that it possesses the managerial, engineering and financial expertise to continue the service of the water and sewer systems currently operated by Maplewood.

The application for financing, as amended, seeks permission to borrow \$280,000 for a period of ten years with an annual interest rate of two percent over the prime lending rate. By the amendment, the purchasers propose to furnish the remainder of the \$350,000 purchase price by an additional \$70,000 in paid-in capital.

Accompanying its regular billing of February 1, 1992, Maplewood gave notice of the proposed sale to all of its customers. The notice encouraged any of the customers with questions or comments regarding the transfer to contact the

Missouri Public Service Commission or the Office of Public Counsel. No comments have been received in response to the notice.

The Commission, upon consideration of the Stipulation and Agreement and the qualifications of the purchaser, is of the opinion that the Stipulation should be approved in disposition of this matter, subject to the conditions hereinafter recited.

The Commission is also of the opinion and finds that the money to be procured by the issue of the securities herein applied for is reasonably required for the purposes specified, and such purposes are not, in whole or in part, reasonably chargeable to operating expense or to income. The proceeds from the issue of the securities herein involved should be used for the acquisition of Maplewood's system and for no other purpose. Upon consideration of the purposes of the issue, the Commission also finds that the financing herein involved is subject to the statutory fees prescribed in Section 386.300, RSMo 1986.

Conclusions of Law

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

The Commission's jurisdiction in this matter is pursuant to Section 393.190, RSMo Supp. 1991, which prohibits a water or sewer corporation from selling or otherwise disposing of or encumbering any part of its works or system without first having secured from the Commission an order authorizing it to do so. Although the statutory section applicable does not require a hearing, extensive notice of the instant proposal has been given, and no one affected by the proposal has offered objection.

When the proposed transfer appears to be in the public interest, as in the instant case, and since the proposed transferee has a substantial body of experience in the operation of similar properties, the transfer should be approved.

The proposed financial arrangement should be approved since it appears that the operation of the proposed system is financially feasible with certain conditions attached which should provide adequate protection for the Company's customers.

IT IS THEREFORE ORDERED:

1. That Stipulation and Agreement filed herein on April 7, 1992, be approved in disposition of all issues presented.

2. That Maplewood Service Company be authorized to sell and Capital Utilities, Inc. be authorized to buy and thereafter operate all of Maplewood's works or system pursuant to the terms and conditions contained in the Agreement for Sale of Water and Wastewater Systems attached to the application as Exhibit 1.

3. That upon the effective date of the transfer herein authorized the certificate of public convenience and necessity issued by this Commission in Case Nos. 17,925 and 17,926 be transferred from Maplewood Service Company to Capital Utilities, Inc. and Maplewood shall be relieved of the obligation to provide any further public utility service.

4. That Capital Utilities, Inc. is hereby authorized to borrow \$280,000 from The Central Trust Bank in substantial accordance with the terms and conditions of the promissory note attached to the application as late-filed Exhibit 2.

5. That Maplewood Service Company is hereby authorized to distribute the proceeds of the sale herein authorized to its shareholders.

6. Capital Utilities, Inc. is authorized to give a security for the promissory note to The Central Trust Bank, a first mortgage upon the water and sewer facilities to be acquired from Maplewood Service Company in substantial accordance with the terms and conditions of the Mortgage Agreement attached to the First Amended Application as late-filed Exhibit 2.

7. Paragraphs (7), (8) and (9) of the Stipulation and Agreement are hereby specifically enumerated to bind Capital Utilities, Inc. as follows:

There shall be no dividend of any kind whatsoever paid on the equity of Capital Utilities, Inc. until the equity to total capital percentage (including short-term debt) of the corporation exceeds a level of thirty percent (30%);

Unless the Commission should approve otherwise in a subsequent proceeding, Capital Utilities, Inc. will not loan money to its stockholders or to any other person or entity until the equity to total capital percentage (including short-term debt) exceeds a level of thirty percent (30%); and

Unless the Commission should approve otherwise in a subsequent proceeding, after the equity to total capital (including short-term debt) ratio of Capital exceeds thirty percent (30%), Capital shall refrain from paying any dividend or making any loan which would cause the Corporation's equity to total capital (including short-term debt) ratio to fall below thirty percent (30%).

8. That within ten (10) days from the closing of the transactions herein authorized, Capital Utilities, Inc. shall notify the Commission of the time of its occurrence and of the assumption of service by Capital Utilities, Inc.

9. That within ten (10) days from the effective date of this Report and Order Capital Utilities, Inc. shall file new tariff sheets to include a metes and bounds description and a map of the service area acquired herein, and a rate sheet containing rates identical to current rates approved for Maplewood.

10. That within ten (10) days from the effective date of this Report and Order, Capital Utilities, Inc. shall file a complete new water tariff for the provision of water service to customers previously located in the certificated service area of Maplewood with rates identical to current rates approved for Maplewood.

11. That Capital Utilities, Inc. shall establish and maintain a bookkeeping system for water plant and records in accordance with the Uniform System of Accounts prescribed by this Commission.

12. On and after the effective date, acquisition herein approved, Capital Utilities, Inc. shall apply the depreciation rates which are currently approved for Maplewood Service Company to all utility assets owned by Capital Utilities, Inc.

13. That Maplewood Service Company and Capital Utilities, Inc. are hereby authorized to cause to be done and perform all such other acts or things as well as to make, execute and deliver any and all documents as it may be necessary, advise the proper effect the intent and purpose of the transaction herein authorized.

14. That this Report and Order shall become effective on the date hereof.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

McClure, Chm., Mueller, Rauch,
Perkins and Kincheloe, CC., Concur.

Dated at Jefferson City, Missouri,
on this 15th day of April, 1992.

FILED

BEFORE THE PUBLIC SERVICE COMMISSION

APR - 7 1992

OF THE STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

In the matter of the Joint Application)
 of 1) Maplewood Service Company for)
 authority to sell and transfer its)
 franchise, works or system to Capital) Case No. WM-92-195
 Utilities, Inc. and 2) Capital)
 Utilities, Inc. for authority to)
 borrow money in order to finance said)
 sale and transfer.)

STIPULATION AND AGREEMENT

Comes now the Staff of the Missouri Public Service Commission (Staff), the Office of Public Counsel (Public Counsel), Maplewood Service Company (Maplewood) and Capital Utilities, Inc. (Capital) and respectfully submit this Stipulation and Agreement to the Missouri Public Service Commission (Commission) in the above-captioned matter and state as follows:

1. On February 13, 1992, Maplewood and Capital filed with the Commission their application in the above-captioned matter.

2. Subsequent to February 13, 1992, several discussions were held among Staff members and representatives of Maplewood and Capital regarding the capital structure employed to finance the acquisition of the assets of Maplewood.

3. On March 17, 1992, Maplewood and Capital filed a First Amended Application to reflect that Capital will be investing Seventy Thousand Dollars (\$70,000) of paid in capital.

4. On March 26, 1992, Capital filed a promissory note, security agreement and first Deed of Trust, to be executed and delivered to Central Trust Bank. These documents were identified as late-filed Exhibit No. 2 in the Application.

5. The purchase price of the franchise, works and system involved herein is Three Hundred Fifty Thousand Dollars (\$350,000).

The parties hereto Stipulate and Agree as follows:

6. The Application filed by Maplewood and Capital on February 13, 1992, as amended by the First Amended Application filed on March 17, 1992, with this Stipulation and Agreement should be approved by the Commission.

7. There shall be no dividend of any kind whatsoever paid on the equity of Capital Utilities, Inc. until the equity to total capital percentage (including short-term debt) of the corporation exceeds a level of thirty percent (30%).

8. Unless the Commission should approve otherwise in a subsequent proceeding, Capital Utilities, Inc. will not loan money to its stockholders or to any other person or entity until the equity to total capital percentage (including short-term debt) exceeds a level of thirty percent (30%).

9. Unless the Commission should approve otherwise in a subsequent proceeding, after the equity to total capital (including short term debt) ratio of Capital exceeds thirty percent (30%), Capital shall refrain from paying any dividend or making any loan

which would cause the Corporation's equity to total capital (including short-term debt) ratio to fall below thirty percent (30%).

10. This Stipulation and Agreement represents a negotiated settlement and none of the signatories to this Stipulation and Agreement shall be prejudiced by or bound by the terms of this Stipulation and Agreement in any other proceeding, or in this proceeding, in the event the Commission does not approve this Stipulation and Agreement.

11. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties agree that a hearing on this matter is not necessary.

12. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties waive their respective rights pertaining to (1) the presentation of oral argument or filing of written briefs, pursuant to Section 536.080(1) RSMo 1986, as amended; (2) the reading of the transcript by the Commission, pursuant to Section 536.510 RSMo 1986, as amended; and (3) judicial review, pursuant to Section 386.510 RSMo 1986, as amended.

13. In the event the Commission does not approve or adopt this Stipulation and Agreement in total, this Stipulation and Agreement shall be void and no party shall be bound by any of the agreements or provisions hereof.

14. Staff shall have the right to submit to the Commission, in memorandum form, an explanation of its rationale for entering into this Stipulation and Agreement, and to provide the Commission whatever further explanation the Commission requests. The Staff's memorandum shall not become part of the record of this proceeding and shall not bind or prejudice the Staff in any future proceeding or in this proceeding in the event the Commission does not approve the Stipulation and Agreement. Any rationales advanced by Staff in such a memorandum are its own and not acquiesced in or otherwise adopted by the other parties stipulating hereto.

WHEREFORE, the parties respectfully request from the Commission the following:

1) Approval of the Application filed by Maplewood and Capital on February 13, 1992, as amended by the First Amended Application filed on March 17, 1992;

2) Approval of this Stipulation and Agreement in its entirety;

3) A Report and Order which incorporates the dividend and loan restrictions referred to in paragraphs (7), (8) and (9) of this Stipulation and Agreement;

4) A Report and Order which requires Capital to notify the Commission of the date of closing within 10 days after it has occurred;

5) A Report and Order which requires Capital to file new sewer tariff sheets to include a metes and bounds description


and a map of the service area acquired from Maplewood, and a rate sheet containing rates identical to current rates approved for Maplewood, within 10 days after the effective date of the Commission's Report and Order for sewer service provided to the customers previously located in the certificated service area of Maplewood;

6) A Report and Order which requires Capital to file a complete new water tariff for the provision of water service to customers previously located in the certificated service area of Maplewood with rates identical to current rates approved for Maplewood within 10 days after the effective date of the Commission's Report and Order;

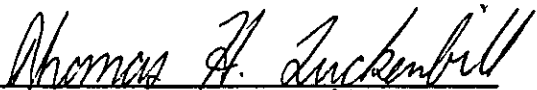
7) A Report and Order which requires Capital to establish and maintain a bookkeeping system for water plant and records in accordance with the Uniform System of Accounts;

8) A Report and Order which requires Capital to apply the depreciation rates which are currently approved for Maplewood to all utility assets owned by Capital.


Respectfully submitted,


W. R. England, III
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Attorney for CAPITAL
UTILITIES, INC. and MAPLEWOOD
SERVICE COMPANY

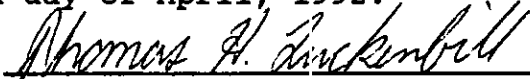

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Commission


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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been
mailed or hand-delivered to the Office of Public Counsel and to
W. R. England, III on this 7th day of April, 1992.


Thomas H. Luckenbill