

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

In the Matter of the Joint Application of)
West 16th Street Sewer Company, W.P.C. Sewer)
Company, Village Water and Sewer Company,)
Inc. and Raccoon Creek Utility Operating) File No. SM-2015-0014
Company, Inc., for Raccoon Creek to Acquire)
Certain Sewer Assets and, in Connection)
Therewith, Issue Indebtedness and Encumber)
Those Assets.)

RACCOON CREEK’S RESPONSE TO STAFF RECOMMENDATION

COME NOW Raccoon Creek Utility Operating Company, Inc. (“Raccoon Creek” or “Company”) and, in response to the Recommendation to Conditionally Approve the Transfer of Assets, and Issuance of a Certificate of Convenience and Necessity, states as follows to the Missouri Public Service Commission (“Commission”):

1. On September 30, 2014, the Staff of the Commission (Staff) filed its Recommendation to Conditionally Approve the Transfer of Assets, and Issuance of a Certificate of Convenience and Necessity (“Staff Recommendation”). Therein, the Staff recommended that the Commission approve Raccoon Creek’s proposed acquisition of the sewer assets of West 16th Street Sewer Company (“West 16th”), W.P.C. Sewer Company (“WPC”), and Village Water and Sewer Company, Inc. (“Village”), and Raccoon Creek’s proposed financing – subject to certain conditions.

2. While Raccoon Creek agrees with Staff’s general conclusion -- that the acquisitions and the proposed financing should be approved by the Commission – Raccoon Creek disagrees with and cannot voluntarily agree to certain of the conditions as proposed.

3. First, Raccoon Creek cannot agree to proposed Condition 4r. This condition proposes to allow Raccoon Creek to only collateralize up to \$690,000 of its assets to issue

secured debt. This limit will not allow Raccoon Creek to construct the known improvements that are necessary to bring these systems into compliance and provide safe and adequate service.

4. Second, Raccoon Creek cannot agree to proposed Condition 4s. This condition purports to require the company to capitalize itself with equity contributions in certain circumstances. How a utility chooses to capitalize itself is a matter within its own discretion and the Commission's authority to regulate does not give it the right to dictate a specific result without some evidence of abuse. This Commission has described this limitation as follows:

The Court, in the St. Joseph case [*State ex rel. City of St. Joseph v. Public Service Commission*, 30 S.W.2d 8 (Mo. 1930)], clearly holds that a utility's right to manage itself cannot be taken away simply because there is a possibility of abuse of discretion. The Commission's powers in regard to management are limited to correction of specific abuses of discretion.

"We agree with the statement in *State ex rel. City of St. Joseph v. Public Service Commission*, 325 Mo. 209, 30 S.W. 2d 8, 14, that 'It must be kept in mind that the Commission's authority to regulate does not include the right to dictate the manner in which the company shall conduct its business.'" *Id.*, at p. 11.

"Those powers (of the Commission) are purely regulatory. The dominating purpose in the creation of the Public Service Commission was to promote the public welfare. To that end the statutes provided regulation which seeks to correct the abuse of any property right of a public utility, not to direct its use. Exercise of the latter function would involve a property right in the utility. The law has conferred no such power upon the Commission." *State ex rel. Kansas City v. Public Service Commission of Missouri*, 301 Mo. 179, 257 S.W. 462. *Id.*, at p. 181.

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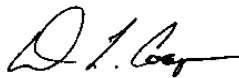
"The utility's ownership of its business and property includes the right of control and management, subject, necessarily, to state regulation through the Public Service Commission. The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. Those powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its own affairs and conduct its business as it may choose as long as it performs its legal duty, complies with lawful regulation and does no harm to public welfare." *Id.*, at pp. 181, 182.

In the Matter of General Telephone Company of the Midwest, 18 Mo. P.S.C. (N.S.) 141, 164-165 (1973).

5. Finally, Raccoon Creek disagrees with some of the factual assumptions utilized by the Staff in its memorandum. Most particularly, Raccoon Creek does not believe that Staff's use of a "cost of debt . . . based on the most recent 3 month average yield of 10 and 30 year bonds with a B rating" has any connection to the reality of a small sewer company with significant capital requirements. This is an issue that need not be adjudicated in this proceeding, as the Commission would "reserve the right to consider rate making treatment to be afforded these financing transactions, and their effect on cost of capital, in any later proceeding" (Staff Condition 4q). However, as Staff has indicated concerns in regard to certain matters, Raccoon Creek will do the same.

WHEREFORE, Raccoon Creek respectfully requests that the Commission consider this response and issue such orders as it should find to be reasonable and just.

Respectfully submitted,



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**ATTORNEYS FOR RACCOON CREEK
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CERTIFICATE OF SERVICE

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