

At a session of the Public Service Commission held at its office in Jefferson City on the 21st day of April, 2010.

File No. SA-2010-0063

Effective Date: May 3, 2010

Procedure

The commission shall have the power to grant the permission and approval herein specified whenever it shall after **due hearing** determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service.¹

Whether a hearing is “due” under that statute depends on opposition to the application.²

² *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

conditions. On November 3, 2009, Timber Creek filed its response to the recommendation agreeing with the recommendation. On April 14, 2010, the Office of Public Counsel (“OPC”) filed a statement that OPC sought no hearing.³ Thus, among those parties, there is no opposition to the application.

The only opposition to the application arose on September 9, 2009, when Platte County Regional Sewer District (“the District”) filed the only motion for intervention. On October 5, 2009, the Commission granted that motion.

The District’s intervention opposed the application. Therefore, on November 17, 2009, the Commission issued notice of a contested case and issued a procedural schedule on December 15, 2009. But on April 8, 2010, the District withdrew its intervention.

The statutory provision for a “due hearing”⁴ means that the Commission may grant the unopposed application without a hearing.⁵ Because the only opposition to the application is withdrawn, no hearing is due. Therefore, the Commission canceled the hearing. The Commission will dismiss the contested case “for good cause”⁶ and decide the application as a non-contested case. The Commission bases its findings of fact on the verified filings.

³ Under 4 CSR 240-2.010(11), OPC is a party to this action unless it elects to “file a notice of their intention not to participate within the period of time established for interventions by commission rule or order.” That date was September 23, 2009 under the order dated August 24, 2009. As of the date of this order, no notice of intention not to participate is on file. Hence, the Commission’s order dated April 8, 2010, set a deadline for any request for a hearing from OPC.

⁴ Section 393.170.3, RSMo 2000.

⁵ **Deffenderfer**, 776 S.W.2d at 496.

⁶ 4 CSR 240-2.116(4). Unlike a complaint or an application, the Commission’s regulations do not provide for voluntary dismissal of a motion to intervene. For that reason, the District filed a *Withdrawal of Intervention* rather than a notice of voluntary dismissal.

Standard

The application seeks the Commission's permission and approval to construct a sewer system and provide sewer service. Sewer facility construction⁷ and service⁸ require the Commission's prior permission and approval. Such permission and approval depend on Timber Creek showing:

. . . that the granting of the application is required by the public convenience and necessity[;⁹]

and the Commission determining:

. . . that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service[.¹⁰]

Further, the Commission may condition its approval and permission as follows:

The commission may by its order impose such condition or conditions as it may deem reasonable and necessary [. ¹¹]

"Necessary" and "necessity" relate to the regulation of competition, cost justification, and safe and adequate service.¹² On finding convenience and necessity, the Commission embodies its permission and approval in a certificate,¹³ to which the statutes refer as a certificate of convenience and necessity.¹⁴

Findings and Conclusions

The verified filings support the convenience and necessity of Timber Creek's proposed construction and service as follows:

⁷ Section 393.170.1, RSMo 2000.

⁸ Section 393.170.2, RSMo 2000, first sentence.

⁹ 4 CSR 240-3.205(1)(E).

¹⁰ Section 393.170.3, RSMo 2000.

¹¹ *Id.*

¹² ***State ex rel. Intercon Sewer, Inc. v. Public Serv. Comm'n of Mo.***, 848 S.W.2d 593, 597 (Mo. App., W.D. 1993).

¹³ Section 393.170.2, RSMo 2000, second sentence.

¹⁴ Section 393.170.3, RSMo 2000, third sentence.

1. Timber Creek is a Missouri corporation in good standing authorized to do business as a sewer corporation in the counties of Clay and Platte. Timber Creek is not overdue on any annual report or assessment fees and Timber Creek has no other action pending before this Commission. Timber Creek has no final unsatisfied judgments, or decisions against it from any state or federal agency or court within the past three (3) years that involve customer service or rates.
2. The area in which Timber Creek proposes to install sewer facilities and provide sewer service (“proposed service area”) consists of unincorporated regions of Platte County, one northeast of Platte City and one southeast of Platte City.¹⁵
3. No sewer service is available in the proposed service area. The proposed service area’s future development requires sewer service. The proposed service area’s residents have requested sewer service.
4. The proposed service area is contiguous with Timber Creek’s existing service area. Timber Creek’s current facilities already meet part of the proposed service area’s needs. Timber Creek is experienced in sewer construction and service, capable of financing such construction and service, and has plans for meeting the proposed service area’s increasing needs.
5. Subjecting sewer construction and service to Commission regulation will benefit customers in the proposed service area, and economies of scale will benefit customers in Timber Creek’s existing service area and the proposed service area.

¹⁵ The proposed service area’s legal description is in the application’s Appendix 2. A depiction is in the application’s Exhibit A.

On those grounds, the Commission independently finds and concludes that, with the agreed conditions as set forth below, Timber Creek's construction and service is necessary and convenient for the public service. Therefore, the Commission will grant the application subject to the conditions.

THE COMMISSION ORDERS THAT:

1. The contested case is dismissed.
2. The application is granted, and a certificate of convenience and necessity reflecting such permission and approval shall be issued to Timber Creek Sewer Company ("company") for the service area proposed in the application (proposed service area"), subject to the following conditions.
 - a. The company's existing monthly rate of \$34.74, general service charges, and depreciation rates shall apply to the proposed service area.
 - b. The company's contribution-in-aid-of-construction charge for the company's Platte County service area shall apply to the proposed service area.
 - c. No later than June 18, 2010, the company shall file new and revised tariff sheets, for its existing tariff, bearing an effective date not less than 30 days after filing.
 - d. In the company's annual reports, the company shall note the number of customers in each of its service areas separately.
 - e. The company shall maintain its books and records in a manner sufficient to allow the performance for area-specific cost-of-service analyses and area-specific rates for the proposed service areas separately from existing service areas.

f. The company shall file, under this file number, proof that it holds clear title to any new treatment facility and the land on which such facility is located, and easements for access to and maintenance of the collection system.

3. This file shall remain open for the filing of, Staff recommendation upon, and Commission decision as to, the tariff filings ordered.

4. Nothing in this order precludes the Commission from considering any ratemaking treatment of any future company expenditure, and any other matter, pertaining to the certificate of convenience and necessity.

5. This order shall become effective on May 3, 2010.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Davis, Jarrett, Gunn,
and Kenney, CC., concur.

Jordan, Regulatory Law Judge