

At a session of the Public Service Commission held at its office in Jefferson City on the 2nd day of December, 2009.

File No. SA-2010-0100

Effective Date: December 12, 2009

Procedure

The Commission's staff ("Staff") filed its recommendation, with a supporting affidavit, favoring the application subject to certain conditions, on November 13, 2009.

The Commission set a deadline for any responses to the recommendation. The Commission received one response from Timber Creek on November 20, 2009, agreeing with Staff's proposed conditions.

The statutory provision for a "due hearing"¹ means that the Commission may grant the unopposed application without a hearing,² so the Commission convened no hearing and bases its findings on the verified filings.

Standard

Sewer facility construction³ and service⁴ 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[;⁵]

and the Commission determining:

. . . that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service[.⁶]

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 [.⁷]

"Necessary" and "necessity" relate to the regulation of competition, cost justification, and safe and adequate service.⁸ On finding convenience and necessity, the

¹ Section 393.170.3, RSMo 2000.

² ***State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Com'n***, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989). For the same reason, the Commission need not separately state its findings of fact.

³ Section 393.170.1, RSMo 2000.

⁴ Section 393.170.2, RSMo 2000, first sentence.

⁵ 4 CSR 240-3.205(1)(E).

⁶ Section 393.170.3, RSMo 2000.

⁷ *Id.*

⁸ ***State ex rel. Intercon Sewer, Inc. v. Public Serv. Com'n of Mo.***, 848 S.W.2d 593, 597 (Mo. App., W.D. 1993).

Commission embodies its permission and approval in a certificate,⁹ to which the statutes refer as a certificate of convenience and necessity.¹⁰

Findings and Conclusions

The convenience and necessity of Timber Creek's proposed construction and service have support in the verified filings. Such filings show that:

1. Timber Creek is a Missouri corporation in good standing authorized to do business as a sewer corporation in the counties of Platte and Clay. Timber Creek is not overdue on any annual report or assessment fees. Timber Creek has another action pending before this Commission,¹¹ and that action does not affect the application.
2. Other than as described in the preceding paragraph, Timber Creek has no pending action or 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.
3. The area in which Timber Creek proposes to install sewer distribution facilities and provide sewer service ("proposed service area") is called Timber Springs Estates. Timber Springs Estates is a residential subdivision that will have 61 residences in 2010. Above that number there is room for 12 more residences at the most.
4. The proposed service area receives sewer service from Timber Springs Homes Association ("association"). The association's facilities consist of a

⁹ Section 393.170.2, RSMo 2000, second sentence.

¹⁰ Section 393.170.3, RSMo 2000, third sentence.

¹¹ File No. SA-2010-0063.

collection system and wastewater treatment plant. There is no other sewer system available to the proposed service area.

5. The association has voted to join Timber Creek's service area. The association has asked Timber Creek to assume ownership of the association's facilities and operation of the association's service. A transfer of assets from the association to Timber Creek is pending.

6. The association has also approved a contribution in aid of construction as part of the financing to upgrade the facilities.

On those grounds, the Commission independently finds and concludes that, with Staff's recommended conditions, 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 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 North ½ of the Northeast ¼ of section 22 and all of section 15 south of route Z Township 54 North Range 33 West in Clinton County, Missouri ("Timber Springs Estates").

2. The certificate of convenience and necessity described at ordered paragraph 1 is subject to the following conditions.

a. The contract to transfer the collection system and wastewater treatment plant, now owned by Timber Springs Homes Association, to the company shall be finalized.

- b. The tariffs in effect for the company's Platte County service area shall apply to Timber Springs Estates, including contributions in aid of construction for customers joining after issuance of this order, monthly customer rate, general service charges, and depreciation rates.
- c. In the company's annual reports, the company shall note the number of customers in each of its service areas separately.
- d. 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 Timber Springs Estates, and other service areas, if needed in the future.
- e. The company shall file the finalized contract transferring the collection system and wastewater treatment plant, now owned by Timber Springs Homes Association, to the company.
- f. The company shall file proof that it holds clear title to the wastewater treatment facility and the land on which such facility is located, and easements for access to and maintenance of the collection system, now owned by Timber Springs Homes Association.
- g. No later than 60 days from the date of this order, the company shall file tariff sheets, new or revised or both, for Timber Springs Estates bearing an effective date not less than 30 days from the filing date of such tariff sheets.

3. This file shall remain open for the filing of, Staff recommendation on, and Commission decision as to, the tariffs described at ordered paragraph 2.g.

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 issued under ordered paragraph 1.

5. This order shall become effective on December 12, 2009.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'S. Reed', is positioned above the printed name of the Secretary.

Steven C. Reed
Secretary

(S E A L)

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

Jordan, Regulatory Law Judge