

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

In the Matter of the Joint Application of Stoddard County )  
Sewer Company, Inc., R.D. Sewer Co., L.L.C. and the )  
Staff of the Missouri Public Service Commission for an ) **Case No. SO-2008-0289**  
Order Authorizing Stoddard County Sewer Co., Inc. to )  
Transfer its Assets to R.D. Sewer Co., L.L.C., and for an )  
Interim Rate Increase. )

**CONCURRENCE OF CHAIRMAN JEFF DAVIS  
TO THE ORDER DENYING PUBLIC COUNSEL'S APPLICATION FOR  
REHEARING AND REQUEST FOR STAY**

I concur fully with my colleagues in the reasoning and decision to deny Public Counsel's application for rehearing and request for a stay of the Commission's Report and Order that was issued on October 23, 2008. I write separately to discuss other issues in this case that do not affect the outcome of this proceeding, but are deserving of public scrutiny.

First, it is my hope that the Commission's interim order marks the beginning of the end of the ongoing saga that is Stoddard County Sewer Company – problems with this utility have plagued the Commission since before I joined the Commission in May 2004. Moreover, the problems faced by Stoddard County Sewer Company are emblematic of the problems faced by many other small water and sewer systems all over the state. Ownership questions, quality of service issues and environmental problems are nothing new to this Commission. When these issues are present, the Commission always faces a Hobson's choice: do we require the operator to fix the system before awarding a rate increase or do we raise the rates and require the operator to fix the system. It's a difficult question to be decided on a case-by-case basis.

In this case, the PSC's Water and Sewer Department under the leadership of Jim Busch stepped up to do the right thing. They've helped effectuate a transfer of ownership and made sure that the company has a minimum level of cash flow to continue operation. Even though this case is a long way from the finish line and not all the issues are decided, it is important to recognize the PSC staff is really making an effort to solve some very difficult problems affecting small groups of ratepayers. Those efforts should be applauded and encouraged even if we, as Commissioners, do not always agree with their positions.

In contrast, the Public Counsel opposed and, indeed, obstructed the public interest in this case. Public Counsel, at multiple times stated it did not oppose the approval of the transfer of assets that was requested and that it did not oppose an interim rate increase as long as it was subject to refund. Public Counsel only identified one issue it disputed when its witness, Ted Robertson, testified as follows:

Public Counsel supports the transfer, as I understand. We also support the Commission, if they so choose to allow an interim increase in rates subject to refund, subject to the requirement that the company come in within 30 days or so to begin the small rate case procedure so we can see what the actual accurate reasonable cost structure of this company is. **The only thing we really dispute is the amount of that interim increase that you allow.** (Emphasis added).<sup>1</sup>

Despite this acknowledgment, Public Counsel advocated for dismissal of this matter based upon Section 393.190.2, a non-applicable statutory provision concerning stock transfers not asset transfers, and has advocated multiple inconsistent positions on other material issues.<sup>2</sup>

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<sup>1</sup> Robertson testimony, Transcript p. 228, lines 19-25, p. 229, lines 1-3.

<sup>2</sup> See Report and Order, Findings of Fact 68-90, 117-124, 154, 174, 180, 190, 192, 257, 284, and 285; Footnotes 116, 128, and 204; EFIS Docket Number 39, *Office of the Public Counsel's Motion In Limine and Suggestions in Support*, filed August 6, 2008; EFIS Docket Number 44, *Office of the Public Counsel's Motion to Dismiss for Lack of Jurisdiction*, filed August 11, 2008; EFIS docket Number 46, *Order Denying Motion in Limine*, issued August 12, 2008.

For example: Public Counsel (1) maintained dual positions during the evidentiary hearing that the Annual Reports filed by the companies were somehow both inaccurate and presumed accurate; (2) advocated a double standard on verification of public documents by challenging the Commission's witnesses' use of such documents while denying its need to verify the same documents; (3) failed to produce documentation or to explain its own methodology to substantiate its position on various issues while challenging the expertise of the other subject matter experts; and, (4) advocated an interim rate increase subject to refund as being an adequate safeguard while also stating making it subject to refund was not an adequate safeguard. Ironically, Public Counsel even challenged the Commission's authority to consider the issue as to whether Stoddard County Sewer Company, Inc. was providing safe and adequate service to the public.<sup>3</sup>

Additionally, in its motion for rehearing, Public Counsel continues to raise specious claims of hearsay and bias in an attempt to block consideration of properly adduced testimony and reports that aided the Commission with its decision.<sup>4</sup> These contradictory and illusory positions are obstructionist in nature and do not promote the public interest.

Public Counsel's conduct in this case left me scratching my head as to what ultimate outcome is actually desired by the office charged with representing rank and file consumers in this state. What would Public Counsel have us do? Nothing? This Commission has a responsibility to act in a manner that promotes public health and welfare, albeit belatedly in this case. Certainly, the utility and the Commission bear the lion's share of the responsibility for the length of time it has taken to get to this point. The public should know

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<sup>3</sup> *Id.* See in particular EFIS Docket Number 39, *Office of the Public Counsel's Motion In Limine and Suggestions in Support*, filed August 6, 2008.

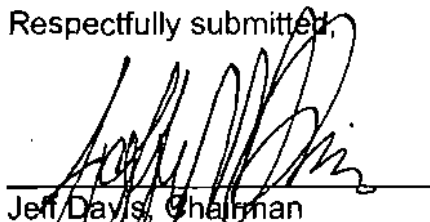
<sup>4</sup> *Id.*

this Commission and the employees who work here are endeavoring to correct those previous mistakes, to work diligently to solve problems affecting consumers and move forward in the public interest.

Public Counsel's constructive participation in proceedings like this could further that interest. So far, all this Commission has seen from Public Counsel in this case is what can be described as a whole lot of motion and very little progress.

The Commission's ultimate responsibility to the ratepayers in this matter requires us to have an eye towards the public interest, which in this case means an interim rate increase to fund the continued operation of the plant. The customers of this system should not be forced to wait another four years while Public Council plays games to try to get a little bit better deal, to avoid a precedent of setting interim rates that Public Counsel opposes on philosophical grounds or to further some other hidden agenda. In future proceedings I would hope that Public Counsel finds a more appropriate way to conduct itself and to help guide this Commission as to what's truly in the best interests of the consumers they are paid to represent.

Respectfully submitted,



Jeff Davis, Chairman

Dated at Jefferson City, Missouri  
On this 11<sup>th</sup> day of December, 2008.