

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 20th day of
October, 2010.

In the Matter of Application of RDG Development, LLC)	
For Authority to Sell Assets to Greenwood Hills)	<u>File No. SO-2011-0012</u>
Homeowners Association and, in Connection Therewith,)	
Certain Other Related Transactions.)	

ORDER APPROVING APPLICATION

Issue Date: October 20, 2010

Effective Date: October 30, 2010

Syllabus: This order approves the application of RDG Development, LLC (“RDG”) to sell its sewer system to Greenwood Hills Homeowners Association (“Greenwood Hills”).

Procedural History

On July 12, 2010,¹ RDG filed an application. That application requests, among other things, authority from the Commission for RDG to sell its sewer system to Greenwood Hills. RDG and Greenwood Hills entered into an agreement on June 22, in which Greenwood Hills agreed to purchase RDG’s sewer system.

The Commission issued notice of this application on July 14. In that notice, the Commission allowed anyone who wished to intervene until August 3 to request intervention. The Commission received no intervention requests.

¹ All calendar references are to 2010 unless otherwise noted.

Staff filed its Recommendation on October 5. Staff recommended that the Commission approve the transaction, with certain conditions. RDG replied on October 6, stating that it accepts Staff's Recommendation and conditions, and further stating that the Office of Public Counsel ("OPC") takes no position in this case.

Discussion

The application is within the Commission's jurisdiction to decide.² Because no party objects to the application, no evidentiary hearing is required.³ Thus, the Commission deems the hearing waived,⁴ and bases its findings on the verified filings, and makes its conclusions as follows.

The Commission issued RDG a certificate of convenience and necessity to provide sewer service on December 9, 2009 in File No. SA-2010-0096. RDG currently provides sewer service to 33 residential customers in Callaway County, Missouri.

Greenwood Hills is a Missouri non-profit corporation. It was formed on April 22, 2010, by residents of the Greenwood Hills Subdivision, to be the homeowners association for that subdivision, and to manage common property in the subdivision. The proposed sale should have negligible impact on the tax revenues of Callaway County, Missouri, as the assets will be assessed property tax at the same rate, regardless of whether RDG or Greenwood Hills owns them.

² Section 393.190 RSMo 2000.

³ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Com'n*, 776 S.W.2d 494 (Mo. App. 1989).

⁴ Section 536.060, RSMo 2000.

The Commission may approve of a sale of a sewer company if that sale is not detrimental to the public interest.⁵ Based on the verified pleadings, the Commission finds that granting the application for the sale of the sewer company would not be detrimental to the public interest.

After the sale, the sewer system will be operated by a homeowners association. The Commission has expressed its policy regarding jurisdiction over homeowners associations in File Numbers WD-93-307, WO-2003-0086, and more recently, WD-2006-0157. Through these cases, the Commission has established a policy of not asserting jurisdiction over a system if certain criteria are met. Those criteria, known as the “Rocky Ridge Criteria”, are reflected in the following factors:

- (a) The Association was organized as a not-for-profit corporation for the benefit of the property owners.⁶
- (b) All customers currently served by the subject utility assets are members of the Association.
- (c) Only members of the Association will be served by the subject utility assets.
- (d) The Association’s action regarding utility matters will be under the control of the members that are also the customers served by the subject utility assets.
- (e) The Association owns the subject assets and thus has control over such assets.

Consistent with its policy, the Commission concludes that Greenwood Hills meets the Rocky Ridge Criteria. Thus, the Commission will not assert jurisdiction over Greenwood Hills in this matter.

The application will be granted.

⁵ See Commission Rule 4 CSR 240-3.310(1)(D).

⁶ The Commission takes administrative notice that the Missouri Secretary of State lists the Association as a not-for-profit corporation in good standing.

THE COMMISSION ORDERS THAT:

1. The Application is granted.
2. The Commission will not assert jurisdiction over Greenwood Hills Homeowners Association.
3. RDG Development, LLC, is authorized to sell its sewer system to Greenwood Hills Homeowners Association as requested in the Application.
4. The Commission makes no ratemaking determination regarding any potential regulatory oversight, if any, over Greenwood Hills Homeowners Association.
5. The parties shall submit notice to the Commission regarding evidence of the transfer of assets to Greenwood Hills Homeowners Association within three business days after the transfer and Commission approval is effective.
6. After the above notice of transfer is received, the parties shall file a motion in this case requesting that the certificate of convenience and necessity held by, and sewer tariff YS-2010-0397 on file for, RDG Development, LLC be cancelled. Should such notice not be received within 60 days of the Commission Order granting the transfer of ownership, ownership of the utility and responsibility to provide sewer service shall revert back to RDG Development and this case shall be closed.
7. RDG Development is not authorized to cease providing sewer services to customers in its service area until the Commission issues an order cancelling its certificate of convenience and necessity and its associated tariff.

8. This order shall become effective on October 30, 2010.

BY THE COMMISSION

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

Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Davis, Gunn,
and Kenney, CC., concur;
Jarrett, C., concurs, with separate
concurring opinion to follow.

Pridgin, Senior Regulatory Law Judge