

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

In the Matter of the Application of Bear Creek	)	
Water & Sewer, LLC to Sell its Sewer System	)	
in Taney County, Missouri to Table Rock Lake	)	<b><u>Case No. SM-2010-0241</u></b>
Community Service, Inc., in Taney County,	)	
Missouri.	)	

**STAFF’S AMENDED RECOMMENDATION**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and for its *Amended Recommendation* states to the Missouri Public Service Commission (“Commission”) as follows:

1. On April 19, 2010, Bear Creek Water and Sewer, LLC filed with the Commission an *Amended Application* to sell and transfer its assets to Table Rock Lake Community Service, Inc., which will immediately transfer the assets to Ozarks Clean Water Company.

2. On May 15, 2010, Staff filed *Staff’s Recommendation* supporting the proposed sale and transfer of assets in this case and determined it was not detrimental to the public interest.

3. On May 19, 2010, Staff was notified that Ozarks Clean Water Company intends to increase sewer rates from \$20.00 to \$34.90, which differs from the information provided as attachments to the Amended Application.

4. On May 25, 2010, Staff filed *Staff’s Status Report and Request for Additional Time to Amend Recommendation*, requesting an additional sixty (60) days to investigate the impact of the proposed change in rates on the requested sale and transfer of assets in the case.

5. On June 1, 2010, the Commission issued its *Order Directing Filing*, requiring Staff to file an Amended Recommendation no later than August 2, 2010.

6. Staff has reviewed and investigated the Company's *Amended Application* and incorporates herein as Exhibit A the attached Memorandum prepared by Jerry Scheible, P.E., Utility Regulatory Engineer.

7. Staff recommends that the Commission grant Bear Creek Water and Sewer, LLC the authority to sell and transfer all of its sewer utility assets to Table Rock Lake Community Service, Inc., and subsequent immediate transfer by Table Rock Lake Community Service, Inc. to Ozark Clean Water Company as requested in the *Amended Application*.

8. Staff also recommends that the Commission make no ratemaking determination regarding any potential future regulatory oversight, if any.

9. Staff recommends the Commission order that the parties are required to submit notice to the Commission regarding evidence of transfer of assets to Table Rock Lake Community Service, Inc. and then to transfer to Ozark Clean Water Company within three (3) business days after the transfer to Ozark Clean Water Company.

10. Staff also recommends that the Commission require the parties, after the above notice of transfer is received, to file a motion requesting a Certificate of Convenience and Necessity held by, and sewer tariff JS-2002-0264 on file for, Bear Creek Water and Sewer, LLC be cancelled, and grant such request. Further, if such notice is not received within sixty (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 Bear Creek Water and Sewer, LLC and this case shall be closed.

11. Finally, Staff recommends that the Commission clarify that Bear Creek Water and Sewer, LLC 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 sewer tariff.

**WHEREFORE**, Staff respectfully requests that the Commission grant Bear Creek Water and Sewer, LLC the authority to sell and transfer all of its sewer utility assets to Table Rock Lake Community Service, Inc., and subsequent immediate transfer by Table Rock Lake Community Service, Inc. to Ozark Clean Water Company as requested in the *Amended Application*; Staff also respectfully requests the Commission grant all other recommendations in Exhibit A.

Respectfully submitted,

/s/ Rachel M. Lewis  
Rachel M. Lewis  
Missouri Bar No. 56073

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**Certificate of Service**

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record on this 30th day of July, 2010.

/s/ Rachel M. Lewis

**MEMORANDUM**

**Case No. SM-2010-0241– Bear Creek Water & Sewer, LLC  
Application to Sell Sewer System**

TO: Missouri Public Service Commission Official Case File

FROM: Jerry Scheible, P.E., Utility Regulatory Engineer- Water & Sewer Department

/s/ Jerry Scheible  
Project Coordinator

July 30, 2010

/s/ Rachel Lewis  
Staff Counsel's Office

July 30, 2010

SUBJECT: Amended Staff Recommendation Regarding the Application of Bear Creek Water & Sewer, LLC to Sell its Sewer System in Taney County, Missouri to Table Rock Lake Community Service, Inc., in Taney County, Missouri.

DATE: July 30, 2010

**CASE FILING SUMMARY**

On February 11, 2010 (unless noted otherwise, all dates herein refer to the year 2010), Bear Creek Water & Sewer, LLC (Bear Creek or Company) filed its *Application* with the Commission seeking to sell its sewer utility assets to Table Rock Lake Community Service, Inc. (TRLCS), which will in turn immediately transfer the assets to Ozarks Clean Water Company (OCWC). OCWC is a Chapter 393 RSMo non-profit sewer company and thereby exempt from Commission jurisdiction pursuant to § 393.847.3 RSMo (2009). The Commission originally assigned the application File No. WM-2010-0236, but because the application is for the sale of sewer assets and not water assets, the file designation number was changed to SM-2010-0241 on March 1.

A separate *Application* was filed by Bear Creek on February 11, to transfer the water assets to Public Water Supply District Number 3 of Taney County, Missouri (PWSD). That transfer of the water assets was authorized by the Commission on June 19 in case WM-2010-0239.

On February 17, the Commission issued its *Order Directing Notice and Setting Date for Submission of Intervention Requests* requiring that notice of the application be sent to the general public and interested parties in the affected area. This order set March 9 as an intervention deadline for interested parties. No applications to intervene were submitted by any party.

Bear Creek filed an *Amended Application to Sell Sewer System* on April 19 to clarify the purpose of the application and to provide vital information that was omitted in the original *Application*.

On May 14, Staff's Recommendation was filed, in which Staff recommended Commission approval to sell and transfer the sewer assets.

However, on May 19, Staff was notified that Ozark Clean Water Company intends to increase sewer rates from \$20.00 per month to \$34.90 per month, which differed from the information provided in the Application. Therefore, on May 25, Staff's Status Report and Request for Additional Time to Amend Recommendation was filed, in which Staff requested an additional sixty (60) days to investigate the impact of the proposed change in rates on the requested sale and transfer of assets in the case.

On June 1, the Commission issued its Order Directing Filing, requiring Staff to file an Amended Recommendation no later than August 2.

## **BACKGROUND**

A Certificate of Convenience and Necessity (CCN) was issued by the Commission to Bear Creek to provide both water and sewer service on August 1, 2000 (Case No. WA-2000-321). The sewer tariff currently on file is designated Tariff No. JS-2002-0264. The area served includes primarily the Whitetail Crossing subdivision in Taney County, Missouri. Bear Creek currently provides water service to forty-eight residential customers and sewer service to thirty-four residential customers.

Sewer service is provided by customer owned septic tanks and pump units and a centralized wastewater treatment facility consisting of a recirculating sand filter and an ultraviolet disinfection unit. The facility operates under Missouri Department of Natural Resources (DNR) Permit Number MO-0124923 and does not currently have any compliance-related issues.

The Company is current with regard to filing its annual reports and paying annual assessments with the Commission.

## **TRANSFER OF OWNERSHIP DETAILS**

The buyer, TRLCS, intends to purchase all of the assets of the sewer system from Bear Creek. The closing of the sale is to take place within thirty days after the effective date of a Commission Order approving the sale. Upon closing, TRLCS will immediately transfer ownership to OCWC. OCWC will then immediately begin the rendition of sewer service without interruption to the current customers. (This same scenario occurred and was approved by the Commission in Case No. SO-2008-0094 for the previously certificated sewer utility, Savannah Heights Industrial Treatment, Inc.)

OCWC, the proposed ultimate owner and operator of this sewer system, is registered as a Non-Profit Corporation in good standing with the Missouri Secretary of State (SOS). It was created in 2004 and organized as a non-profit sewer utility in accordance with §§ 393.825 to 393.861 of the Missouri Revised Statutes. After review of OCWC's creation filings with the SOS, Staff

believes that OCWC is lawfully created and is operating as a non-profit sewer utility. As a non-profit organization, OCWC is not subject to regulation by the Commission.

OCWC is currently providing sewer service to approximately 350 customers in various locations around the Branson, Missouri area under contract with White River Valley Environmental Services, an experienced operations firm. OCWC is recognized by the DNR as a legal entity that can own and operate wastewater collection and treatment systems.

### **AMENDED DUE TO REVISED INFORMATION**

Information in the original application indicated that OCWC proposed to continue to charge the current customers the rate for sewer service of \$20 per month as is currently effective in Bear Creek's Tariff No. JS-2002-0264. On May 19, however, the executive director of OCWC contacted Staff and reported that the intent of the new ownership is to charge the affected customers the same rate that all of their sewer customers are charged, \$34.90 per month.

Staff sent several data requests (DRs) to Bear Creek to gather information regarding the difference in proposed rates. The responses received indicate that Bear Creek has not initiated a rate increase request in its history of existence and is still charging the rate approved in the original tariff issued in 2000. Since that time, capital investment, including the construction cost of doubling the capacity of the treatment facility and fencing the facility perimeter, has been made by Bear Creek. The company claims to be operating at significant loss at the current rate and the owners claim there have not been funds available to compensate themselves for their operating, management, billing or mowing services, nor are they recouping any transportation costs incurred through the use of their own personal vehicles. (An audit to determine actual cost of service for the company was not performed by Staff.)

Staff also sent several DRs to OCWC regarding the proposed monthly charge of \$34.90 per month. OCWC responded that the rate of \$34.90 is the rate billed to its current customers with similar treatment facilities and is necessary to provide quality service by licensed professionals who are on call 24 hours per day. OCWC also claims that since it operates as a not-for-profit corporation, no dividends are paid to stockholders and any potential extra funds available, beyond a reserve kept for major repairs, are to be repaid to the customers.

After learning that OCWC actually plans to increase the rate paid by the customers affected by the proposed transfer of ownership, Staff required the company to notify each customer of that fact individually by mail. The only responses received were copies of a form letter signed by five customers. The letter states opposition to the magnitude of the proposed increase due to the fact that each customer connection includes a septic tank, but does not provide any specific information that causes Staff to question the cost to treat the septic tank effluent to meet the requirements of the facility Operating Permit issued by the DNR.

Finally, the proposed sale of assets will not impact the tax revenues in Taney County, Missouri, as stated by the County Office of the Assessor in a document dated January 12.

### **STAFF'S CONCLUSIONS**

The Staff, based upon its initial review and further investigation performed in response to the discovery of the proposed change in rates, believes that the proposed sale and transfer of assets is not detrimental to the public interest, and therefore recommends approval.

### **STAFF'S RECOMMENDATIONS**

Based upon the above, Staff recommends that the Commission issue an order that:

- 1) Grants Bear Creek Water and Sewer, LLC the authority to sell and transfer all of its sewer utility assets to Table Rock Lake Community Service, Inc., and subsequent immediate transfer by Table Rock Lake Community Service, Inc. to Ozark Clean Water Company as requested in the *Application*;
- 2) Makes no ratemaking determination regarding any potential future regulatory oversight, if any;
- 3) Requires the parties to submit notice to the Commission regarding evidence of the transfer of assets to Table Rock Lake Community Service, Inc. and then the transfer to Ozark Clean Water Company within three (3) business days after the transfer to Ozark Clean Water Company;
- 4) After the above notice of transfer is received, the parties are required to file a motion requesting the Certificate of Convenience and Necessity held by, and sewer tariff JS-2002-0264 on file for, Bear Creek Water and Sewer, LLC be cancelled, and grant such request. Should such notice not be received within sixty (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 Bear Creek Water and Sewer, LLC and this case shall be closed; and,
- 5) Clarify that Bear Creek Water and Sewer, LLC 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 sewer tariff.

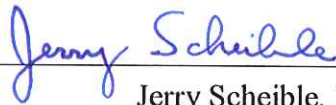
**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF MISSOURI**

**AFFIDAVIT OF JERRY SCHEIBLE, P.E.**

STATE OF MISSOURI     )  
                                  ) SS                    **CASE NO. SM-2010-0241**  
COUNTY OF COLE     )

**COMES NOW** Jerry Scheible, P.E., being of lawful age, and on his oath states the following:

(1) that he is a Utility Regulatory Engineer in the Missouri Public Service Commission's Water & Sewer Department; (2) that he participated in the preparation of the foregoing Amended Staff Recommendation Memorandum; (3) that he has knowledge of the information presented in the foregoing Amended Staff Recommendation Memorandum; and (4) that the information presented in the foregoing Amended Staff Recommendation Memorandum is true and correct to the best of his knowledge, information and belief.



Jerry Scheible, P.E.

Subscribed and sworn to before me this 30<sup>th</sup> day of July 2010.



Notary Public



SUSAN L. SUNDERMEYER  
My Commission Expires  
September 21, 2010  
Callaway County  
Commission #06942086

My Commission Expires: 9-21-10