

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

In the Matter of the Cancellation of the)
Certificate of Convenience and Necessity)
and Tariff of Southwest Village Water)
Company)

Case No. WD-2007-_____

**MOTION TO OPEN CASE AND CANCEL
CERTIFICATE OF CONVENIENCE AND NECESSITY AND TARIFF**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and moves that the Commission open a case and cancel the certificate of convenience and necessity it granted to Southwest Village Water Company to provide water service, as well as its tariff. In support of its Motion, Staff respectfully states as follows:

1. The Commission granted Southwest Village Water Company ("Southwest Village") a certificate of convenience and necessity to provide water service to the Southwest Village Subdivision in Greene County, Missouri, in Case No. 18,418 in December 1975 (see 20 Mo.P.S.C.(N.S.) 439). The company filed a tariff to provide water service, P.S.C. Mo. No. 1, in 1976. The last modification to that tariff was in 1980.

2. Southwest Village is a Missouri corporation in good standing according to the website of the Missouri Secretary of State. The records of the Secretary of State show that the company changed its registered agent address from the address reflected in the Commission's records to a new address in 2002.

3. In 2006, Staff became aware that the company had not been on the Commission's mailing lists for annual reports and statements of revenue for some time, although the company's certificate of convenience and necessity had not been cancelled. Accordingly, Staff returned the company to the Commission's mailing list and sent the appropriate forms to the address the

company provided to the Commission. Those forms were returned as undeliverable. See Appendix A.

4. Staff contacted counsel for the company, who indicated that the company had not been providing water service for some time and no longer wished to maintain its certificate of convenience and necessity.

5. In the attached affidavit, Staff provides the results of its investigation into the company's disposition. In light of the results of that investigation, Staff requests that the Commission cancel the certificate of convenience and necessity it granted to Southwest Village, as well as its tariff. See Appendix B.

6. The Commission has not assessed the company during the period that records are available. The company has not been on the Commission's mailing list for many years, although its certificate had not been cancelled. As a result, the company has not submitted an annual report to the Commission since at least 1997, in part because it may never have been provided the forms to complete; and during this period, Staff had knowledge that Southwest Village had no customers and no revenue with respect to providing regulated utility service.

7. To the best of the Staff's knowledge, the Board of Public Utilities of the City of Springfield d/b/a City Utilities of Springfield is now serving the entire area that Southwest Village was authorized to serve. In addition, to the best of the Staff's knowledge, all customers previously served by Southwest Village are now receiving safe and adequate water service from City Utilities of Springfield.

8. As the property used in providing water service has not been transferred, but rather has been abandoned, Staff does not believe it is necessary for the Commission to consider the effects of statutes governing the transfer of a public utility's franchise or property such as

Section 393.190 (1) RSMo. (2000), which requires that in the event an entity seeks to do so, it must file with the commission a statement as to the impact of the transfer on the tax revenues of the political subdivisions where its structures, facilities or equipment being disposed of are located. Should the Commission choose to address the requirements of this statute in this case, as Southwest Village ceased providing regulated water service before 1997, its cessation has had and will have no impact on the tax revenues of the political subdivisions where its assets are located.

9. The factual basis for seeking cancellation of Southwest Village's certificate is that the customers formerly served by Southwest Village are now served by another entity and the company has no objection to its certificate's cancellation.

10. Although the Commission's authority to cancel a water or sewer certificate is not specifically set out in Chapter 393 of the Missouri statutes, the Commission has previously allowed regulated entities to discontinue operations in cases where cancellation was sought by the service provider and also where the service provider had ceased to exist.¹ The Commission's authority to cancel certificates of convenience and necessity has been limited by the Missouri Supreme Court, where cancellation of one certificated entity's authority is sought by another, potentially competing certificated entity (and against the will of the entity whose certificate is to be cancelled). *State ex rel. City of Sikeston v. Pub. Serv. Comm'n*, 82 S.W.2d 105 (Mo. 1935). The *Sikeston* court stated that "no provision was or ever has been made by the Legislature for the commission to eliminate competition between private companies already in existence and doing

¹ See 16 Mo. P.S.C. (N.S.) 142, *Burma Builders*; also see *In the Matter of Ozark Shores Water Company's Application for an Order Canceling the Certificate of Public Convenience and Necessity*, Case No. WD-2001-701; *In the Matter of the Cancellation of the Certificate of Convenience and Necessity and Tariff of the Lake Hannibal Sewer Corporation*, Case No. SD-2004-0144; *In the Matter of the Cancellation of the Certificate of Service Authority of Woodland Heights Utilities, Inc.*, Case No. WD-2006-0393.

business in the same territory” other than through purchase. *Id* at 110. In this case, however, the certificated entity has no objection to the cancellation of its certificate.

11. The Commission need not hold a hearing, if, after proper notice and opportunity to intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. 1989).

12. This pleading will be served via certified mail Southwest Village Water Company’s Missouri registered agent, and a copy will also be provided to the company’s counsel.

WHEREFORE, the Staff requests that the Commission grant Staff’s Motion and cancel the certificate of service authority it granted to Southwest Village Water Company to provide water service in Case No. 18,418 and its corresponding tariff, entitled P.S.C. Mo. No. 1.

Respectfully submitted,

/s/ David A. Meyer

David A. Meyer
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to the following this 7th day of February 2007.

/s/ David A. Meyer

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Missouri Public Service Commission

Administration Division

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MO 419-2629 (4-01)

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JAN 24 2007

BUDGET & FISCAL
MO. P.S.C.

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ASSESSMENT

Southwest Village Water Company
1320 South Glenstone
Springfield, MO 65807

FIRST CLASS



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

STATE OF MISSOURI)
)
COUNTY OF COLE)

AFFIDAVIT OF JAMES A. MERCIEL, JR.

James A. Merciel, Jr., of lawful age, on his oath states:

1. I am employed by the Missouri Public Service Commission as Assistant Manager
– Engineering.

2. This affidavit supports the cancellation of the certificate of convenience and necessity (Certificate) granted by the Commission to Southwest Village Water Company (Southwest Village) in Case No. 18,418 in December 1975. Southwest Village's service area is a subdivision near Springfield in Greene County, Mo. Southwest Village was providing service to approximately 52 customers, but abandoned its system and no longer provides service.

3. During the processing of Case Nos. WC-89-138, a formal complaint case filed by Staff regarding service problems, and WO-89-187, a request for a consent order to seek an injunction against Southwest Village to prevent water service termination, the Board of Public Utilities of the City of Springfield d/b/a City Utilities of Springfield (Springfield), which is a public-owned water and sewer utility not subject to the jurisdiction of the Commission, took over provision of water service to all customers of Southwest Village by extending new water mains into the subdivision. Southwest Village effectively ceased providing water service after all of the customers in the certificated area disconnected from Southwest Village's system and connected to the City of Springfield's water mains.

4. Since approximately 1990, the company has had no revenue or customers with respect to water utility service regulated by this Commission.

5. In Staff's opinion, no viable means of continuing water service, or need for water service in the certificated area, remains for Southwest Village.

6. Currently, the former customers of Southwest Village are receiving service from Springfield, and to the best of the Staff's knowledge, all customers previously served by Southwest Village are now receiving safe and adequate water service from City Utilities of Springfield.

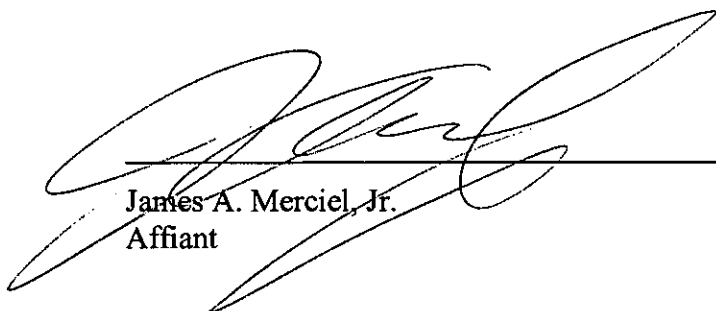
7. The City of Springfield did not acquire or use the assets of Southwest Village to provide service to Southwest Village's former customers, so no transfer of works or system necessary or useful in the performance of Southwest Village's duties to the public have ever been transferred.

8. The Commission has not assessed the company during the period that records are available. The company has not been on the Commission's mailing list for many years, although its certificate had not been cancelled. As a result, the company has not submitted an annual report to the Commission since at least 1997, in part because it may never have been provided the forms to complete; and during this period, Staff had knowledge that Southwest Village had no customers and no revenue with respect to providing regulated utility service.

9. I am aware that The Staff's counsel has contacted the company's counsel, who has indicated the company has no objection to the cancellation of its certificate.

10. Accordingly, I recommend that the Commission recognize that Southwest Village Water Company effectively abandoned its utility systems, that its former customers are receiving

water utility service by another means, and cancel its certificate of convenience and necessity and its tariff.


James A. Merciel, Jr.
Affiant

Subscribed and affirmed before me this 6th day of February 2007. I am commissioned as a notary public within the County of Callaway, State of Missouri, and my commission expires on 9-21-10.



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


NOTARY PUBLIC