

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 25th day of
August, 2010.

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

ORDER APPROVING APPLICATION

Issue Date: August 25, 2010

Effective Date: September 4, 2010

Syllabus: This order approves the application of Bear Creek Water and Sewer, LLC, to sell its sewer system to Table Rock Lake Community Service, Inc. which will immediately sell the same assets to Ozarks Clean Water Company.

Procedural History

On February 11, 2010,¹ Bear Creek Water and Sewer, LLC ("Bear Creek"), filed an application. That application requests, among other things, authority from the Commission for Bear Creek to sell its sewer system to Table Rock Lake Community Service ("TRLCS"), which will in turn immediately sell the system to Ozarks Clean Water Company ("OCWC"). Bear Creek and the TRLCS entered into an agreement on September 4, 2009, in which the TRLCS agreed to purchase Bear Creek's sewer system.

¹ All calendar references are to 2010 unless otherwise noted.

The Commission issued notice of this application on February 17. In that notice, the Commission allowed anyone who wished to intervene until March 9 to request intervention. The Commission received no intervention requests. Bear Creek then amended its application on April 19.

Staff filed its Recommendation on May 14. Staff recommended that the Commission approve the transaction. However, on May 19, Staff learned that OCWC intended to increase sewer rates from \$20.00 per month to \$34.90 per month, differing from the information included in the Application. Thus, Staff requested an additional 60 days to investigate the impact of the proposed change, which the Commission granted.

Staff filed its Amended Recommendation on July 30. Staff stated that it sent several data requests to Bear Creek and OCWC. Bear Creek replied that it is operating at a significant loss, and is still charging the same rates approved in its original tariff issued in 2000. OCWC states that \$34.90 per month is what it charges its current customers, is necessary to provide quality service by licensed professionals on call 24 hours a day, and that OCWC is a not-for-profit corporation, so that any potential extra funds available beyond a reserve kept for major repairs are to be repaid to customers. Staff ultimately recommended that the Commission approve the application.

Commission Rule 4 CSR 240-2.080(15) allows parties ten days to respond to pleadings unless otherwise noticed. No party has replied to the July 30 Staff Amended Recommendation.

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 Bear Creek a certificate of convenience and necessity to provide sewer service on August 1, 2000 in File No. WA-2000-321. Bear Creek currently provides sewer service to 34 residential customers in Taney County, Missouri.

TRLCS is a Missouri corporation. TRLCS, upon receipt of the sewer system, will immediately transfer it to OCWC, a not-for-profit sewer company created in 2004, organized as such in 2000, pursuant to §§ 393.825 to 393.861 RSMo. OCWC is thus not subject to Commission jurisdiction. OCWC currently provides service to approximately 350 customers in the Branson area. The proposed sale will not impact the tax revenues of Taney County, Missouri.

The Commission may approve of a sale of a water 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.

The application will be granted.

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.

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

THE COMMISSION ORDERS THAT:

1. The Application is granted.
2. Bear Creek Water and Sewer, LLC is authorized to sell its sewer system to Table Rock Lake Community Service, Inc., and that Table Rock Lake Community Service, Inc., shall immediately transfer said sewer system to Ozark Clean Water Company.
3. The Commission makes no ratemaking determination regarding any potential regulatory oversight, if any, over Bear Creek Water and Sewer, LLC, Table Rock Lake Community Service, Inc., and Ozark Clean Water Company.
4. The parties shall 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 business days after the transfer to Ozark Clean Water Company.
5. After the above notice of transfer is received, the parties are required to file a motion in this case 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. 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 Bear Creek Water and Sewer, LLC and this case shall be closed.
6. 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 tariff.

7. This order shall become effective on September 4, 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, Jarrett,
Gunn, and Kenney, CC., concur.

Pridgin, Senior Regulatory Law Judge