

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

In the Matter of the Application of Taney County)
Utilities Corporation for Authority to Transfer Certain)
Assets to Taney County Regional Sewer District)
And in Connection Therewith, Certain Other)
Related Transactions)

File No. SM-2017-0056

STAFF REPORT AND RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and that the Missouri Public Service Commission (“Commission”) authorize Taney County Utilities Corporation (“TCUC”) to sell certain assets and ultimate control of a wastewater system to Taney County Regional Sewer District (“District”), and states as follows:

1. On August 23, 2016, TCUC and the District (collectively “Applicants”) filed their *Joint Application* (“Application”) in which the parties seek to transfer certain assets and ultimate control of a wastewater system from TCUC to the District.

2. Also on August 23, 2016, the Commission issued its *Order Directing Notice* in which, among other things, it set an intervention deadline of no later than September 7, 2016.

3. On September 8, 2016, the Commission issued its *Order Directing Notice* requiring Staff to file a Recommendation or, in the alternative, a pleading stating when it plans to file its Recommendation, no later than October 11, 2016.

4. The Applicants submitted their *Supplement to Joint Application* on September 26, 2016, supplying certain information necessary to complete the Application.

5. On October 11, 2016, Staff filed its *Status Report*, stating that TCUC had failed to file annual reports for several years, and that the completion of the transaction was predicted to take a significant amount of time, and therefore, it would be in the best interest of all parties to delay the issuance of a Staff Recommendation until the Applicants met all filing requirements and a clear timeline for completion of the project had been obtained. On October 26, 2016, the Commission issued its *Order Directing Status Report*, ordering Staff to file monthly status reports beginning March 1, 2017, and thereafter until it filed its Recommendation.

6. On March 1, 2017, Staff filed its *Second Status Report* indicating that TCUC was now up to date on filing its annual reports with the Commission, had no outstanding assessments, the District had obtained a discharge permit to operate the new wastewater treatment facility, and that the Applicants anticipated that the Department of Natural Resources (“DNR”) would be issuing a construction permit in the near future.

7. Pursuant to Section 393.190.1, RSMo, no sewer corporation shall sell or transfer its assets or franchise without having first secured authorization from the Commission. “The standard governing the Commission’s review of an application for sale of assets is set forth in *Fee Fee Trunk Sewer, Inc. v. Litz*: ‘The Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest.’”¹

8. Since Staff’s *Second Status Report*, DNR has issued a construction permit that became effective March 9, 2017, and the District issued a “notice to proceed,”

¹ *Environmental Utilities, LLC v. Public Service Com’n*, 219 S.W.3d 256, 265 (Mo. App. W.D., 2007) citing *Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App., 1980).

providing for construction to take place beginning on or after April 15, 2017, and to be completed within 180 days (by October 11, 2017). Also, on March 8, 2017, the District sent letters to current TCUC customers, prepared with input from Staff, informing customers of the pending transfer of assets and construction of a new wastewater facility. The letter also informs the customers that they will become customers of the District, and identifies the new rates that they will be charged, which consist of a \$37.50 flat rate for residential customers. The District also requires a \$100 deposit for all residential customers, but also offers a reduced rate for part-time customers who do not occupy their residence year-round.

9. Staff notes that, pursuant to the *Agreement for Provision of Wastewater Collection and Treatment Services*, (“Sale Contract”) provided as a part of the *Application*, Applicants will not close on the transfer of assets, and transfer operation and control of the system to the District, until the wastewater treatment facility is completed, operating, and able to take sewage from the TCUC collection system and customers. Until that time, TCUC will continue to operate the existing reed bed wastewater treatment plant, and provide treatment services to customers in the service area.

10. As explained in the Staff Memorandum, attached hereto as Appendix A, Staff conducted an investigation in to the Applicants’ request. Based upon this review, Staff has determined that the proposed sale and transfer of assets from TCUC to the District is not detrimental to the public interest. Because the sale will not close and assets transfer until the above-described circumstances are met, any order from the Commission approving the transfer should not prohibit TCUC from continuing to operate

until such time the closing and final transfer can occur. Therefore, Staff requests that if the Commission authorizes this transfer of assets, that the Commission issue an order, and impose the following conditions:

- a. Approve the transfer of assets from TCUC to the District, as requested by the Applicants;
- b. Require TCUC to notify the Commission of closing on the assets within five (5) days after such closing;
- c. Authorize TCUC to cease providing sewer service immediately after closing with the District on the assets;
- d. After receiving notice of closing, cancel the CCN authorizing TCUC to provide sewer service;
- e. After receiving notice of closing, cancel the current sewer tariff on filed for TCUC; and,
- f. If TCUC and/or the District determine that the transfer of TCUC's assets to the District will not occur, require either or both parties to notify the Commission of such, along with an explanation regarding resolution of the Sale Contract.

11. Further, as closing will not occur for several months, Staff proposes submitting a status report on June 30, 2017, and second on September 29, 2017, to update the Commission regarding the status of construction of the wastewater treatment facility. Staff commits to submit additional status reports if relevant information surfaces prior to TCUC and the District closing on the assets, or if ordered by the Commission.

WHEREFORE, Staff recommends that the Commission approve the proposed transfer of assets; and grant such other and further relief as the Commission considers just in the circumstances.

Respectfully Submitted,

/s/ Mark Johnson

Mark Johnson
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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were served electronically to all counsel of record this 3rd day of April, 2017.

/s/ Mark Johnson

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
File No. SM-2017-0056
Taney County Utilities Corporation

FROM: James A. Merciel, Jr. – Water and Sewer Department
Kim Bolin – Auditing Department

/s/ James A. Merciel, Jr. April 3, 2017
Case Coordinator Date

/s/ Mark Johnson April 3, 2017
Staff Counsel Date

SUBJECT: Staff’s Recommendation to Approve Transfer of Assets

DATE: April 3, 2017

CASE BACKGROUND

On August 23, 2016, Taney County Utilities Corporation (“TCUC”) and the Taney County Regional Sewer District (“District”) filed a *Joint Application*, seeking authority for TCUC to sell and transfer its sewer utility assets to the District, and for the Commission subsequently to cancel TCUC’s Certificate of Convenience and Necessity (“CCN”) to provide sewer service, along with cancellation of its current tariff on file with the Commission. TCUC and the District filed a *Supplement to Joint Application* on September 26, 2016.

Also on August 23, 2016, the Commission issued its *Order Directing Notice* requiring that information pertaining to this case be sent to the County Commission of Taney County, the Missouri Department of Natural Resources (“DNR”), members of the Missouri General Assembly representing Taney County, and to the media serving Taney County. This order also set September 7, 2016, as the date by which interested persons should request to intervene in this matter. No party has sought to intervene.

On September 8, 2016, the Commission issued its *Order Directing Filing* in which it directed Staff to submit either its recommendation or a pleading stating when it plans to file its Recommendation no later than October 11, 2016. Staff has filed *Status Reports* on October 11, 2016 and March 1, 2017.

BACKGROUND OF THE UTILITIES, AND UTILITY SYSTEM

TCUC obtained a CCN to provide water and sewer service in an area known as Lakeway Village subdivision in Case No. WA-87-104. TCUC merged with another regulated water company, Taneycomo Projects, Inc., with the approval of the Commission in Case No. WM-89-199. TCUC sold its water utility assets to another regulated water utility, Taney County Water, LLC, with the approval of the Commission in Case No. WM-2011-0143. According to TCUC’s 2015 annual report submitted to the Commission, it was providing sewer service to 53 residential customers at the end of 2015. The sewage collection system consists of small diameter gravity pipelines, and septic tanks owned and maintained by TCUC for each customer. The septic tanks are used for pre-treatment and

solids retention. The sewage treatment facility is a constructed wetlands type of treatment facility called a “reed bed,” with a capacity of 5,625 gallons per day (“gpd”).

The District is a public sewer district that is not subject to the Commission’s jurisdiction. According to information on its internet site it has more than 2,300 customers, and is presently undertaking several capital projects that will allow it to be able to provide sewer service to 3,000 customers; a proposed new treatment facility to serve TCUC’s Lakeway Village area is among them.

STAFF’S INVESTIGATION

Proposed Improvements

TCUC’s treatment facility capacity of 5,625 gpd is not adequate for the approximately 53 customers served, and DNR has noted instances of exceeding permit discharge limits in recent years. The discharge permit for this facility is also expired. DNR has issued notices of violation for discharge violations and for failure to renew the discharge permit. Further, this facility is unable to meet the new limits for ammonia which is an issue that applies to many other sewer utilities in Missouri as well as in other states. Although TCUC is providing service to its customers as best it can with the assets that are in place, Staff’s opinion is that TCUC does not have the necessary resources to undertake adequate planning or capital investment necessary to keep up with needed plant capacity and to meet new environmental regulations.

TCUC and the District entered into an “*Agreement for Provision of Wastewater Collection and Treatment Services*,” which is included with the Joint Application as Exhibit C and referred to herein as the “Sale Contract.” As agreed in the Sale Contract, the District is in the planning process of constructing a completely new treatment facility. This facility will replace TCUC’s reed bed, and will provide more capacity to provide adequate treatment for the Lakeway Village area, as well as capacity for the District’s long-term goals for serving additional sewer customers in the area. In addition, the facility is designed to meet current ammonia limits and will have the capability to be upgraded for chemical phosphorus removal.¹ It will be located on land that will be provided by TCUC, and is adjacent to TCUC’s treatment facility. The District’s new facility is proposed to be a recirculating sand filter, with an on-site septic tank system, a moving bed biofilm reactor, and ultraviolet light disinfection. The new facility has a design flow capacity of 40,000 gallons per day. DNR issued a construction permit that became effective on March 9, 2017. The District has issued its “notice to proceed” to its engineer and contractor, providing for construction to take place beginning on or after April 15, 2017, and to be completed in 180 days which is by October 11, 2017.

Since the District is proceeding with a construction project in accordance with the Sale Contract, Staff is recommending the Commission approve the transfer of assets as soon as possible. However, the District will not be in a position to close on the assets and begin providing service until its treatment facility is completed, operating, and able to take sewage from the TCUC collection system and the customers, which is expected to be in October. Since closing will not occur for a considerable amount of time, Staff proposes to submit a status report on June 30, 2017, and another on September 29, 2017, updating information regarding the construction project. Staff will submit additional status reports if relevant information surfaces before TCUC and the District close on the assets, or if ordered by the Commission.

¹ DNR is holding stakeholder discussions about future more stringent ammonia discharge limits. It is also possible that there could be future requirements for phosphorus discharge into nearby Bull Shoals Lake.

According to the Sale Contract that was filed with the Joint Application, TCUC will continue to operate its existing sewage treatment facility while the District’s new treatment facility is under construction. Then, after construction is complete, TCUC will transfer the adjacent land and the collecting sewer system to the District.

Rate Impact

TCUC’s sewer rate is based on water usage, as follows:

Minimum Customer Charge	\$7.19 per month
Commodity Charge	\$4.90 per 1,000 gallons

Bill table:

Monthly Usage	Bill Amount
1,000 GALLONS	\$12.09
2,000 GALLONS	\$16.99
5,000 GALLONS	\$31.69
8,000 GALLONS or more	\$46.39

The commodity charge applies every month year-round, but there is a cap of 8,000 gallons monthly usage for the billing calculation.

TCUC’s rates have been in effect since 2004.

By comparison, the District has a flat rate for residential customers of \$37.50 per month. The District also has a required \$100 deposit for all residential customers; and it offers a reduced rate for part-time customers who will be away from the residence for several months, which could be of a benefit to some of the TCUC customers.

Customer Notice/Customer Service

On March 8, 2017, the District sent a letter to TCUC customers, which was prepared with the input of Staff. The letter informs customers of the plan to construct a new wastewater treatment facility, that they will become customers of the District and no longer be customers of TCUC, identifies the rates that they will be charged as District customers, and provides contact information for the District and the Commission. Staff has received no comments from customers at this time. The District has stated to Staff that it intends to continue TCUC’s practice of maintaining the septic tanks that are on customers’ property.

OTHER ISSUES

TCUC is a corporation currently in “good standing” with the Missouri Secretary of State, and is current with annual report filings with the Commission through calendar year 2015, as documented on the Commission’s Electronic Filing and Information System (“EFIS”). TCUC is current on its annual assessment quarterly payments through fiscal year 2017, as posted by the Commission’s Budget and Financial Services Department.

TCUC has no other pending cases before the Commission. Staff is not aware of any other matter before the Commission that affects or is affected by this filing, or of any pending or final unsatisfied decision against TCUC from any state or federal court involving customer service or rates within the

last three years that would affect or is affected by this filing.

STAFF'S RECOMMENDATIONS AND CONCLUSIONS

Staff's position, based on its review as described herein, is that the proposal for the transfer of assets from TCUC to the District is not detrimental to the public interest. Staff therefore recommends approval with the conditions and actions as outlined herein. Since it will still be several months before TCUC and the District will be able to close on the utility assets, Staff remains willing to file additional status reports and other information as necessary, until closing occurs, or until such time as TCUC or the District may determine that closing will not take place.

STAFF'S RECOMMENDATIONS

Based upon the above, Staff recommends that the Commission:

1. Approve the transfer of assets from TCUC to the District, as requested;
2. Require TCUC to notify the Commission of closing on the assets within five (5) days after such closing;
3. Authorize TCUC to cease providing sewer service immediately after closing with the District on the assets;
4. After receiving notice of closing, cancel the CCN authorizing TCUC to provide sewer service; and,
5. After receiving notice of closing, cancel the current sewer tariff on file for TCUC; and,
6. If TCUC and/or the District determine that the transfer of TCUC's assets to the District will not occur, require either or both parties to notify the Commission of such, along with an explanation regarding resolution of the Sale Contract.

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AFFIDAVIT OF KIMBERLY K. BOLIN

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW Kimberly K. Bolin and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing Staff Memorandum; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

Kimberly K. Bolin

Kimberly K. Bolin

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 3rd day of April, 2017.

DIANNA L. VAUGHT
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: June 28, 2019
Commission Number: 15207377

Dianna L. Vaught

Notary Public

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

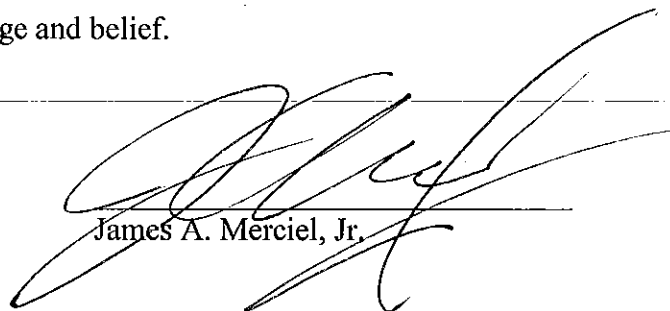
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AFFIDAVIT OF JAMES A. MERCIEL, JR.

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW James A. Merciel, Jr. and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing Staff Memorandum; and that the same is true and correct according to his best knowledge and belief.

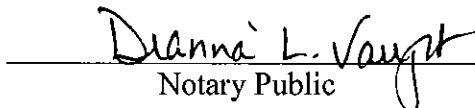
Further the Affiant sayeth not.


James A. Merciel, Jr.

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 3rd day of April, 2017.

DIANNA L. VAUGHT
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: June 28, 2019
Commission Number: 15207377


Notary Public