

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Petition for an)
Interim Receiver and for an)
Order Directing the General Counsel to)
Petition the Circuit Court for the Appointment)
of a Receiver for Mill Creek Sewers, Inc.)

File No. SO-2010-0237

NOTICE OF CONTESTED CASE AND HEARING, AND ORDER EXPEDITING PROCEDURE

Issue Date: February 16, 2010

Effective Date: February 16, 2010

The Missouri Public Service Commission is notifying the parties of the commencement of a contested case, setting a hearing on the merits of the petition, and expediting procedure.

A. Procedure

On February 11, 2010, the Commission's staff ("Staff") filed the petition.

In the petition, Staff asks for expedited treatment of the petition. The petition seeks an order appointing an interim receiver for Mill Creek Sewers, Inc. ("Mill Creek"). Staff also seek authority to file a receivership action in circuit court.

Such relief is within the Commission's authority as follows:

If the commission orders its general counsel to petition the circuit court for the appointment of a receiver under subsection 1 of this section, it may in the same order appoint an interim receiver for the sewer . . . corporation. [¹]

Subsection 1 of that section provides:

If, after hearing, the commission determines that any sewer . . . corporation that regularly provides service to eight thousand or fewer customer connections is unable or unwilling to provide safe and adequate service, has been actually or effectively abandoned by its owners, or has defaulted on [certain obligations], the commission may

¹ Section 393.145.2, RSMo Supp. 2009.

petition the circuit court for an order attaching the assets of the utility and placing the utility under the control and responsibility of a receiver[.^{2]}

An interim receiver has the same powers as a receiver:

The interim receiver shall have the authority generally granted to a receiver under subsection 6 of this section[;.^{3]}

which includes control of Mill Creek's assets and compensation for sewer service.⁴

B. Contested Case

The provisions allowing control of Mill Creek's assets after a hearing signify that this action is now a "contested case."⁵ A contested case is a formal hearing procedure, but it allows for waiver of procedural formalities⁶ and a decision without a hearing,⁷ including by stipulation and agreement.⁸ This notice does not require any party to file an answer.⁹ The Commission's discovery regulations are at 4 CSR 240-2.090.¹⁰

C. Hearing

Staff also seeks expedited treatment, including a hearing on February 25, 2010.

That date does not allow the ten days' notice ordinarily required by law.

No hearing in a contested case shall be had, except by consent, until a notice of hearing shall . . . be given a reasonable time before the hearing. Such reasonable time shall be at least ten days[.^{11]}

But the law also allows less than ten days' notice:

. . . in cases where the public morals, health, safety or interest may make a shorter time reasonable[.^{12]}

² Section 393.145.1, RSMo Supp. 2009.

³ Section 393.145.2, RSMo Supp. 2009.

⁴ Section 393.145.6, RSMo Supp. 2009.

⁵ Section 536.010(4), RSMo Supp. 2009.

⁶ Sections 536.060(3) and 536.063(3), RSMo 2000.

⁷ Sections 536.060, RSMo 2000.

⁸ 4 CSR 240-2.115.

⁹ Section 536.067(2)(d), RSMo 2000.

¹⁰ Section 536.067(2)(f), RSMo 2000.

¹¹ Section 536.067(4), RSMo 2000.

¹² *Id.*

The Commission concludes that the public health, safety and interest make a shorter time reasonable because the petition alleges that Mill Creek has abandoned service, failed to meet obligations, and jeopardized safe and adequate sewer service. Therefore, the Commission will expedite these proceedings.

THE COMMISSION ORDERS THAT:

1. The regulatory law judge assigned to this case ("RLJ") will convene an evidentiary hearing on February 25, 2010, at 1:00 p.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri.

2. The hearing described in this order will be held in a building that meets accessibility standards required by the Americans with Disabilities Act. Any person needing additional accommodations to participate in any hearing or conference shall call the Missouri Public Service Commission's Hotline at 800-392-4211 (voice) or Relay Missouri at 711 before the date of that event.

3. This order shall become effective immediately upon issuance.

(S E A L)

BY THE COMMISSION



Steven C. Reed
Secretary

Daniel Jordan, Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 16th day of February 2010.