


*Missouri Public Service Commission*  
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MAR 11 2010

Missouri Public  
Service Commission

Heartland Utilities, LLC  
Legal Department  
6825 E Tennessee Ave  
Denver, CO 80224

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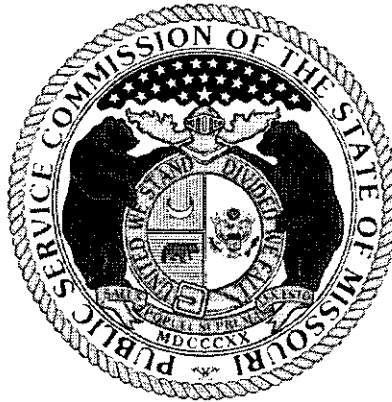
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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



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**

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**REPORT AND ORDER APPOINTING INTERIM RECEIVER AND DIRECTING  
ACTION FOR COURT-APPOINTED RECEIVER**

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**Issue Date: March 3, 2010**

**Effective Date: March 13, 2010**

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.

## REPORT AND ORDER APPOINTING INTERIM RECEIVER AND DIRECTING ACTION FOR COURT-APPOINTED RECEIVER

Effective Date: March 13, 2010

The Missouri Public Service Commission is granting the relief sought in the petition of the Commission's staff ("Staff"). Staff asks the Commission to appoint an interim receiver, and seeks authority to petition for a court-appointed receiver, for Mill Creek Sewers, Inc., ("Mill Creek"). Staff also seeks expedited treatment, which the Commission has granted. Staff filed the petition on February 11, 2010. On February 25, 2010, the Commission convened a hearing. Legal Counsel Jennifer Hernandez represented Staff. Though notified of the time, place, and matter involved, Mill Creek made no appearance.

1. Mill Creek is a Missouri general business corporation. Mill Creek's principal place of business was 1208 Mead Drive, St. Louis, MO 63137. Since 1973, Mill Creek has held a certificate of convenience and necessity to operate a sewer system in St. Louis County, Missouri.

2. In March 2009, Charles L. Stroud bought Mill Creek and has since been Mill Creek's sole shareholder and president.

3. Mill Creek owns a sewer system ("system"). The system provides sewer service to approximately 76 residential customers in Castlereagh Estates subdivision, St. Louis County, Missouri. To operate the system, Mill Creek has contracted with Testing-Analysis & Control, Inc. ("TAC").

#### Earlier Commission Action

4. In Case No. SR-2005-0116 ("the earlier action"), Staff monitored Mill Creek for continued inability or unwillingness, or both, to provide safe and adequate service to its customers, and for effective abandonment of the sewer system.

5. Since March 2008—a year before Stroud bought Mill Creek—Staff has been discussing the system's needs with Stroud. Staff has offered advice on billing and guidance on providing safe and adequate service. In March, June, July and August, Stroud failed to produce records as requested by Staff. On July 31, 2009, Stroud stated that receivership was the appropriate disposition for Mill Creek.

6. Counsel for Staff sent a letter by certified mail on October 23, 2009, to Mill Creek and Mr. Stroud. The letter asked mill Creek and Staff to discuss Mill Creek's issues and gave until November 13, 2009, before Staff sought receivership. That date passed with no response.

7. On December 8, 2009, Staff filed a petition and motion seeking the same relief as in this action. On December 9, 2009, the Commission granted expedited treatment and set a hearing date. On December 31, 2009—five days before the evidentiary hearing—Stroud contacted Staff's counsel seeking resolution of Mill Creek's issues without litigation.

8. On January 4, 2010—the day before the evidentiary hearing—Stroud and Staff met. Stroud stated that he had quit managing Mill Creek in the spring of 2009 out of

frustration. On that same day, Stroud and Staff reached an agreement and, based on the agreement, Staff filed a *Motion to Stay Evidentiary Hearing* on behalf of itself and Mill Creek. The Commission granted that motion.

9. The agreement included paying certain creditors. At the January 4, 2010 meeting, Stroud said he was mailing Mill Creek's payment to TAC. TAC received no such payment.

10. The agreement included Mill Creek producing certain financial documents by January 19, 2010, but Mill Creek did not to produce the requested documents on that date.

11. Mill Creek did not comply with other terms of the agreement.

12. Mill Creek's communication with the Staff has again ceased. Staff's recent certified correspondence to Mill Creek was returned unclaimed. Mill Creek has also ceased communication with customers.

#### Operations

13. In July 2008, Mill Creek's operating permit from the Missouri Department of Natural Resources (DNR) expired.

14. In calendar year 2009, for the service months of February, March, April, September, October, November, and December, Mill Creek failed to bill its customers. As a result, Mill Creek received no income for those periods. Consequently, Mill Creek's revenues fell short of its operating expenses.

15. The system includes pumps and a treatment facility that run on electricity. Operation includes electrical repairs, pump motor maintenance, clearing clogs, sludge removal, and oxygenation to support the aerobic treatment. Unless someone performs those tasks, the pumps could cease and the treatment plant could stagnate and overflow,

polluting the waters of the state. Mill Creek has not paid TAC to operate the system since September 2009.

16. The treatment facility is aerobic, requiring a continuous feed of oxygen. If Union Electric Company d/b/a AmerenUE ("AmerenUE") disconnects Mill Creek, as it may for failure to pay, the treatment facility will cease to function. If that happens, sewage collected from the customers will stand untreated. Mill Creek's electric service account with AmerenUE is past due.

17. Mill Creek has closed its office and its customer service number is disconnected. Without such contacts, customers cannot notify Mill Creek of service issues like sewage back-ups. Sewage back-ups require attention within a few hours to prevent property damage and pollution to the waters of the state.

18. Mill Creek is also past due on DNR permit fees, property taxes, its telephone bill, and the Commission's fiscal year 2010 assessment.

19. Mill Creek's failure to meet its obligations and maintain its system constitutes a threat to safe and adequate service.

#### Interim Receiver and Compensation

20. If Mill Creek can begin collecting the revenues, it can pay its bills and provide safe and adequate service.

21. Heartland Utilities, LLC ("Heartland") is a Missouri limited liability company. Heartland's president, Jason Williamson, has 16 years of experience in the operation of sewer systems. Since March 2009 Heartland has provided safe and adequate sewer service as receiver for Gladlo Water & Sewer Co., Inc.

22. A monthly fee of \$800 is just and reasonable compensation for Heartland to operate the system.

### **Conclusions of Law**

The Commission has jurisdiction over public utilities generally<sup>1</sup> and sewer corporations specifically.<sup>2</sup> Those terms include Mill Creek.<sup>3</sup> Staff has the burden of proof because it asks the Commission to take control of the system from Mill Creek.<sup>4</sup>

#### A. Court-Appointed Receiver

Staff cites the receivership provisions applicable to:

... any sewer ... corporation that regularly provides service to eight thousand or fewer customer connections[. <sup>5</sup>]

That provision includes Mill Creek because Mill Creek regularly provides service to 75 customer connections.

Under that provision, Staff asks the Commission for authority to:

... 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[. <sup>6</sup>]

Such authority is available if Mill Creek:

... is unable or unwilling to provide safe and adequate service [or] has been actually or effectively abandoned by its owners[. <sup>7</sup>]

Under that standard, Staff has carried its burden of proof as follows.

Staff has shown that Mill Creek has failed to conduct operations fundamental to conducting business. Such operations include keeping records, collecting revenue, and

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<sup>1</sup> Section 386.250(5), RSMo 2000; Section 386.020(43), RSMo Supp. 2009.

<sup>2</sup> Sections 386.250(4) and 393.140(1), RSMo 2000.

<sup>3</sup> Sections 393.120, RSMo 2000; and 386.020(48) and (49), RSMo Supp. 2009.

<sup>4</sup> *Heidebur v. Parker*, 505 S.W.2d 440, 444 (Mo. App., St.L.D. 1974).

<sup>5</sup> Section 393.145.1. All citations to Section 393.145 are in the 2009 Supplement to the 2000 Revised Statutes of Missouri.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

paying bills. Also, such bills include services essential to operation like its DNR permit, electricity bills, telephone bills, the Commission's assessment, and a DNR operation permit. Further, such matters were the subject of the earlier action, which sought the same relief. Mill Creek delayed that action but did not remedy its failures.

Mill Creek's cessation of business—and Stroud's own words—show unwillingness to provide safe and adequate service, constitute abandonment of the system, and threaten the public health and safety. For example, without billing, Mill Creek cannot collect revenue. Without revenue, Mill Creek cannot pay for electricity. Without electricity, Mill Creek's pumps and treatment plant will shut down.

Therefore, the Commission will order its General Counsel to file an action in circuit court for a court-appointed receiver.

#### B. Interim Receiver

Staff also seeks an order appointing an interim receiver. 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. [<sup>8</sup>]

Staff has shown that safe and adequate sewer service to the residence of Castlereagh Estates is in jeopardy, which threatens the public health and safety. Therefore, the Commission will appoint an interim receiver.

An interim receiver's authority includes control of, and responsibility for, Mill Creek's assets.<sup>9</sup> A receiver must be responsible and knowledgeable in the operation of utilities<sup>10</sup>

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<sup>8</sup> Section 393.145.2.

<sup>9</sup> *Id.* and Section 393.145.3.

<sup>10</sup> Section 393.145.2 and .5.



and must operate the utility in its customers' best interests.<sup>11</sup> Staff showed that Heartland has those qualifications.

Therefore, the Commission will appoint Heartland as interim receiver.

C. Interim Receiver's Compensation

The Commission must also set the interim receiver's compensation.<sup>12</sup> Staff showed that a monthly fee of \$800 is a just and reasonable amount for operating the system. Therefore, the Commission will order compensation in that amount.

**THE COMMISSION ORDERS THAT:**

1. Heartland Utilities, LLC, is appointed interim receiver of Mill Creek Sewers, Inc., with compensation of \$800.00 per month.
2. The Commission's General Counsel shall petition the circuit court for an order attaching the assets of Mill Creek Sewers, Inc., and placing Mill Creek Sewers, Inc., under the control and responsibility of a receiver.
3. This order shall become effective ten days from issuance.

( S E A L )

**BY THE COMMISSION**



Steven C. Reed  
Secretary

Clayton, CC., Davis, Jarrett, Gunn,  
and Kenney, CC., concur;  
and certify compliance with the  
provisions of Section 536.080, RSMo.

Jordan, Regulatory Law Judge

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<sup>11</sup> Section 393.145.2 and .6.

<sup>12</sup> Section 393.145.2.

**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 3rd day of March 2010.**



  
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**Steven C. Reed**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**March 03, 2010**

**File No. SO-2010-0237**

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***Enclosed find a certified copy of an ORDER in the above-numbered matter(s).***

**Sincerely,**

A handwritten signature in black ink, appearing to read 'S. Reed', is positioned above the printed name of the signatory.

**Steven C. Reed  
Secretary**