

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 7th  
day of September, 1993.

In the matter of the application of Progress	)	
Unlimited, Inc. d/b/a Hill-Shine Community	)	
Water and Sanitation Company to transfer its	)	<u>CASE NO. SM-93-147</u>
franchise, works and/or system to The Calvey	)	
Creek Public Sewer District of Franklin	)	
County, Missouri.	)	

ORDER APPROVING SALE AND TRANSFER OF ASSETS

On November 2, 1992, Progress Unlimited, Inc., d/b/a Hill-Shine Community Water and Sanitation Company (Hill-Shine) and The Calvey Creek Public Sewer District of Franklin County, Missouri, (Calvey Creek) filed a joint application pursuant to Section 393.190, RSMo 1986, seeking authorization of the Commission: (1) approving the transfer of all of the franchise, sewer works, or sewer system of Hill-Shine to Calvey Creek; (2) authorizing Hill-Shine to discontinue providing sewer service in its service area; and (3) granting such other relief as is necessary to complete the transfer.

On November 13, 1992, the Commission issued an order giving notice, and setting an intervention deadline. The Commission also ordered Hill-Shine and Calvey Creek to submit an amended application containing proper verification of the application, and additional information. On August 12, 1993, the Joint Applicants filed an amended application containing the requested additional information, and on August 23, 1993, counsel for Calvey Creek filed a verification of the application. Since there were no applications to intervene and neither the Staff of the Commission (Staff) nor the Office of the Public Counsel requested a hearing, the Commission will allow the Joint Applicants to submit evidence by verified application and attachments. State ex rel. Rex

Deffenderfer Enterprises, Inc. vs. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989).

Hill-Shine is a sewer corporation and public utility as defined in Section 386.020, RSMo 1986, and as such is authorized to furnish sewer treatment services in its service area located in Franklin County, Missouri, which includes the residents of the Hillside Acres and Sunshine Acres subdivisions. Calvey Creek is a public sewer district organized and existing under Chapter 249 of the Revised Statutes of Missouri for the purpose of operating a sewer system, and presently provides sewer service to residents of certain portions of Franklin County, Missouri.

Hill-Shine and Calvey Creek state in their joint application for sale and transfer of Hill-Shine's sewer system that the proposed transaction is not detrimental to the public interest in that Calvey Creek is in a better position to provide future maintenance and sewer service to Hill-Shine's customers. In addition, Joint Applicants state that Calvey Creek has grants and loan monies available for supplying central sewage treatment to the entire watershed, including Hill-Shine's territory, and that it is in the best interest of the citizens of Franklin County as a whole that sewage be treated in central collection systems and not in satellite lagoons. Further, Joint Applicants state that Calvey Creek is a public sewer district with sufficient local personnel to effectively handle the day-to-day operations of Hill-Shine's sewer system, and has retained Brunjes and Associates to act as a consultant to Calvey Creek for purposes of performing water tests required by the Missouri Department of Natural Resources. Hill-Shine and Calvey Creek also state that Calvey Creek will operate the sewer system in accordance with Missouri statutes governing the regulation of public sewer districts, and in observance of all rules and regulations of any and all regulatory agencies affecting the operation of sewer collection systems,

including the Missouri Department of Natural Resources and the U.S. Environmental Protection Agency.

Attached to the original joint application is an Agreement To Purchase Assets which, *inter alia*, proposes to transfer from Hill-Shine to Calvey Creek all sewer lines, mains, manholes, fittings, appurtenances, lagoons, treatment facilities, and sewer collection systems; all easements for or relating to the sanitary sewer system; the tract of land upon which the sanitary sewage treatment lagoons are located; and all right, title and interest into all easements and appurtenances pertaining to this property in any way. The purchase price for the sewer system as provided in the agreement is \$1,000. A legal description of the real property involved is incorporated in the agreement. Also attached to the original joint application is a certificate of corporate good standing for Progress Unlimited, Inc. (Hill-Shine), and a certified statement of unanimous consent to action taken in lieu of a special meeting of the board of directors and shareholders of Progress Unlimited, Inc., d/b/a Hill-Shine Community Water and Sanitation Company. In addition, a certified copy of the resolution of Calvey Creek's board of directors authorizing the proposed transaction is attached to the amended joint application.

On August 26, 1993, the Commission's Staff filed a memorandum recommending approval of the joint application. Staff indicates that the owner of Hill-Shine, Mr. Bill Summers, acquired the Hill-Shine water and sewer utility systems from a developer, made some necessary improvements, and obtained a certificate from the Commission to operate as a water and sewer utility. Although Mr. Summers has been adequately managing and operating the utility, he has other non-utility business interests, and desires to transfer the utility assets to other parties. The water utility assets were transferred to another regulated company in Case No. WM-92-312. Hill-Shine provides sewer service to approximately 23 residential and two commercial customers in the Sunshine Acres

and Hillside Acres subdivisions in Franklin County. The sewage is treated utilizing two lagoons.

Staff notes that Calvey Creek is organized as a public sewer district and as such is not subject to regulation by the Public Service Commission. Calvey Creek has planned to construct a new treatment facility, with new trunk sewers that will carry waste from the various portions of its service area to the new facility, at which time the lagoons serving the Hill-Shine area will be eliminated. Initial steps for the construction of the new facility are expected to take place in October, 1993. Staff states that Calvey Creek will initially operate the Hill-Shine system as it exists, under Hill-Shine's approved flat monthly rate of \$13.86. After the new treatment plant is on line, however, it is expected that the rate will be increased to approximately \$21.00 per month. Staff contends that for the higher rates, the customers will have a better treatment facility at a remote location, and will no longer have lagoons in their neighborhood. Staff points out that Calvey Creek is an entity that exists for the purpose of providing sewer service now and in the future, will have a professional operator, and, as a public body, the customers of Calvey Creek are represented by a board of directors elected by the public.

Staff maintains that, contrary to a statement made in paragraph 10 of the original and amended joint applications, the transfer will have some tax impact on the political subdivision in which Hill-Shine is located. According to the records of the water and sewer department, Hill-Shine has been paying property tax associated with the sewer system in an amount of between \$50.00 and \$100.00 per year. Since the transfer is to a public sewer district, which is a political subdivision and usually non-taxable, there will be some tax impact.

Upon review of the verified amended application and the verified attachments attached to the original application and the amended application, and Staff's recommendation, the Commission finds that Calvey Creek possesses the

expertise to provide good quality sewer service to Hill-Shine's current customers; that the anticipated construction of a new treatment facility by Calvey Creek will provide Hill-Shine's customers with better sewer treatment and will allow for the eventual elimination of neighborhood sewer lagoons; that the loss of regulatory oversight by the Missouri Public Service Commission will not be harmful to Hill-Shine's customers, as the transfer to a public sewer district will permit the customers to be represented by a board of directors elected by the public; and that the sale and transfer of Hill-Shine's sewer system to Calvey Creek is in the public interest and is not detrimental to the public interest. The Commission agrees with Staff that the transfer is likely to have some tax impact on the political subdivision in which Hill-Shine is located, but is of the opinion that the copy of the joint application which was sent to the Franklin County Clerk by the Commission's Executive Secretary on November 2, 1992, was sufficient to advise of any impact on tax revenues.

**IT IS THEREFORE ORDERED:**

1. That the sale and transfer of all of the franchise, works, or sewer system of Progress Unlimited, Inc., d/b/a Hill-Shine Community Water and Sanitation Company to The Calvey Creek Public Sewer District of Franklin County, Missouri, in accordance with the Agreement To Purchase Assets attached to the original joint application is hereby approved, subject to the terms and conditions set forth in this Order.

2. That Progress Unlimited, Inc., d/b/a Hill-Shine Community Water and Sanitation Company is hereby authorized to take any and all other actions necessary to effectuate the transaction contemplated by the joint application and this Order.

3. That Progress Unlimited, Inc., d/b/a Hill-Shine Community Water and Sanitation Company shall file a pleading notifying the Commission of the

closing date of the sale and transfer of assets within five (5) days after its completion.

4. Upon receipt of the pleading described in Ordered Paragraph 3 above, the Commission shall issue an order canceling the certificate of convenience and necessity held by Progress Unlimited, Inc., d/b/a Hill-Shine Community Water and Sanitation Company, and canceling its current tariff on file with the Commission.

5. That this Order shall become effective on September 17, 1993.

BY THE COMMISSION

A handwritten signature in black ink, reading "David L. Rauch". The signature is written in a cursive, flowing style.

David L. Rauch  
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins,  
Kincheloe and Crumpton, CC., Concur.