

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

**In the Matter of the Joint Application)
of Stoddard County Sewer Company,)
Inc., R.D. Sewer Co., L.L.C. and the)
Staff of the Missouri Public Service)
Commission for an Order Authorizing)
Stoddard County Sewer Co., Inc. to)
Transfer its Assets to R.D. Sewer Co.,)
L.L.C., and for an Interim Rate)
Increase.)**

Case No. SO-2008-0289

**BRIEF OF STODDARD COUNTY
SEWER COMPANY, INC, AND R.D.SEWER CO., LLC,
PRIVATE JOINT APPLICANTS**

COMES NOW the Private Joint Applicants and submit the following Brief in support of their position in the above case:

INTRODUCTION

These Applicants along with the Staff of the Missouri Public Service Commission filed a Joint Application for the transfer of assets, an interim rate increase, a tariff providing for late fees and monthly payment of bills. The Public Counsel informed the Commission that they are not opposed to the transfer but believed that the interim rate increase as offered by the staff and these Applicants was too high even if subject to refund and even if the transferee was required to apply for a small company rate increase within thirty days of any order of the Commission. The Public Counsel also objected to the proceedings herein on the basis of jurisdiction claiming that Mrs. Carl Bien could not transfer stock in Stoddard County Sewer Company to R.D.Sewer Co., LLC (a Missouri limited liability company) without prior approval of the Commission and therefore Mrs. Bien had to be a necessary party to this case. Additionally, the Public Counsel objected to

the testimony of witnesses Rodger Williams, Smith & Co. and Randall Shepard, The Bonadio Group who had contracted to provide a financial evaluation and testimony.

Everyone knows from the evidence that Arlie Smith of the PSC staff invited Rodger Owens to take over and run SCSC after Mr. Bien died in 2000 and SCSC had no other suitor. We know that there have been no rate increases since the inception of SCSC despite inflation, maintenance and equipment issues, effluent issues DNR, and the willingness of R.D. Sewer Co., LLC to run SCSC, make repairs, file assessments and reports with the PSC, spend all the time needed to protected and serve the public. No one has questioned the credibility of Rodger Owens. He knows the business; he is competent, experienced, and hard working. He is not trying to strong arm anyone and we suspect much like the author of this brief totally amazed that this matter has caused such concern for the Public Counsel in that but for R.D.Sewer Co, LLC and Rodger Owens, the likelihood is that we would have had a bunch of mad consumers whose interest has been detrimentally affected and whose service would have been far more inadequate. There is no evidence to suggest that Owens is not a man of his word and he has agreed to return any monies not needed if the interim rate is too much. But who will return to him monies if the interim rate is too little? Granted he knows very little about the rate making process other than in July 2008, the electric bill exceeded the customer receipts. But he is learning.

ISSUES

1. Should a transfer of assets be granted in this case?
2. Should there be an interim rate subject to refund, and if so how much?
3. Should the Commission void all possible liens recited in the Joint application and unapproved by the Commission?
4. Should tariffs be modified to allow for monthly billings and for late fees as alleged?

5. Does the Commission have jurisdiction wherein Mrs. Bien transferred the entire stock in SCSC to R.D.Sewer Co. LLC?

6. Should the certificate of convenience and necessity to SCSC be canceled and a new Certificate issued to R.D. Sewer Co, LLC?

7. And very simply what is in the best interest of the public, not detrimental to that interest and provides a safe and adequate service?

ARGUMENT

ISSUE 1. The most important thing that this Commission can do is to grant the Joint Application to Transfer under Section 393.190 RSMo. and provide for an adequate interim rate. Public Counsel does not disagree. No witness before the Commission disagrees. There is no need to summarize the evidence as the only substantial and competent evidence on the record supports this conclusion.

ISSUE 2: No one disputes the need for an adequate interim rate. Public Counsel would have the rate at one half of what Staff and Bonadio Group witnessed. No one argues that there should be a refund provision. No one argues that with thirty days of an order to transfer in this case R. D. Sewer Co. LLC should be required to ask for a permanent rate fully audited. And no one argues that there are maintenance, equipment, and DNR issues as the Public Counsel points out the service is not safe and adequate currently given these important issues. But what will it take to protect the public interest and provide safe and adequate service? The one who knows is Rodger Owens and he testified under oath what he needs to best serve the interest of the public in a safe and adequate manner. Either the proposed staff interim rate or that of the Bonadio Group

is needed to make sure that there is no detrimental effect on the public and the services is safe and adequate.

With due respect to Mr. Robertson, the Public Counsel's expert, while they complain that he was not given access to Bonadio or Smith & Co and they didn't come to the Public Counsel for input, neither did he or public counsel journey to Stoddard County and seek out the true problems and issues faced daily by a small Sewer Company, those issues that Rodger Owens testified to without impeachment. But it seems much simpler to testify as Robertson did that there was no recent audit so there in essence has to be something wrong with the figures, so he prepares his own figures, right down to suggesting that Owens didn't need attorneys to champion his cause in what is a complicated and unique case. Shepard said the Company figures are reasonable. That is they are not out of line. We understand Robertson's concern and believe that he is genuinely concerned. But, the reality of this case is that even doubling the rate in the interim after over two decades of the same rate in an amount that on its face appears reasonable should not be a subject of challenge when considering all the facts from the stipulations and evidence in this case. Additionally, Owens testified to a \$17,000 bill pending with MACO that is waiting the outcome in this case.

ISSUE 3: As to the unwarranted Security Interests in the Joint Application paragraphs 42-43, everyone agrees that they are void and should be formally declared so by this Commission.

ISSUE 4: Surely, everyone agrees that the tariff should be clear to allow for late fees and monthly billings if it does not. Where is the dissent on this matter?

ISSUE 5: As to the question of Jurisdiction in light of the assignment of stock or business interest by Mrs. Bien to R.D. Sewer Co, Inc, the Public Counsel is simply wrong as the Statute

does not pertain to Limited Liability Companies on its face. Section 393.190.2 RSMo 2000 does not include Limited Liability Companies only stock corporations and R.D. Sewer Co. LLC is a Limited Liability Company. Commissioner Jarrett queried witness Ted Robertson who acknowledged the difference between stock corporations and limited liability companies. Rules of Statutory Construction in Chapter 1.090 RSMo support the proposition that laws are given their plain and ordinary meaning. There is no reference to Limited Liability Companies in Section 393.190.2. Further the doctrine of *expressio unius e clicusio alterius* is well established in Missouri. See *Columbia v. Public Service Commission*, 329 Mo 38, 43 SW2d 813 (Mo. 1931) Section 393.190.2, supra, was last amended in 1984 and the Missouri Limited Liability law was adopted in 1993, effective December 1, 1993. When the latter was passed and signed into law, Section 393.190.2 supra remained unchanged. For a very clear discussion of the differences in these entities, please consider 63 **UMKC L. Rev.** 701, Summer 1995, “A *Symposium Issue: Missouri Focus, Missouri Limited Liability Companies: An Innovative and Developing Business Choice*”. Stock corporations and limited liability companies are two totally different critters. The Missouri PSC has complete and full jurisdiction in this case and Mrs. Bien is not a necessary party to this proceeding.

ISSUE 6: No one disagrees with that the certificate should be cancelled and a certificate issued to R.D. Sewer Co, Inc.

ISSUE 7: This issue was added to highlight the goal of the Commission as the Missouri Legislature has declared the public policy is such cases as this to be what is in the best interest of the public in terms of what is not detrimental to the public and how best to provide safe and adequate service. In humility, Mr. Owens, R.D. Sewer Co, LLC, has taken on the task of caring for the sewer needs of the customers in the service area of SCSC. He doesn't know much about

the rate process but he does know how to run a small sewer company if given adequate financial tools to do so. These are his neighbors and friends and some have even traded off. He asked for forbearance by Maco on a \$17,000 debt to keep the service going. He has put himself and his good name on the line. He is willing, ready and able to continue doing so. But he asked for the help of the PSC and that help is within its statutory mandate as reflected in the public policy as expressed above. We respectfully submit that the Missouri Public Service Commission should answer the Joint Application herein fully and completely granting said application in all respects.

WHEREFORE, these Joint Applicants asked that all relief requested in the Joint Application be granted.

Respectfully Submitted,

Terry C. Allen Mo Bar No 19894
Allen Law Offices, LLC
314 Monroe, P.O. Box 1702
Jefferson City, Mo. 65102
terry@tcallenlawoffices.com
Tele 573 636 9667
Fax 573 636 4667

ATTORNEY FOR PRIVATE JOINT APPLICANTS

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or e-mailed to all counsel of record as shown on the attached service list this the 18th day of September, 2008, and to the Hearings Judge.

Terry C. Allen