

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

In the Matter of the Certificates of)
Convenience and Necessity of Southwest)
Sewer Corporation and Accompanying)
Tariff)

Case No. SD-2006-_____

**MOTION TO OPEN CASE AND CANCEL OR DEEM NULL AND VOID
CERTIFICATES OF CONVENIENCE AND NECESSITY
AND CANCEL ACCOMPANYING TARIFF**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and moves that the Commission open a case and deem null and void or cancel the certificates of convenience and necessity it granted to Southwest Sewer Corporation to provide sewer service, as well as cancel the company's tariff. In support of its Motion, Staff respectfully states as follows:

1. In a series of cases in 1979 and 1980, the Commission granted Southwest Sewer Corporation certificates of convenience and necessity to provide sewer service to several subdivisions in southwestern Missouri, specifically: Airport North, Airport South, and Airport West (Case No. SA-80-13); Twin Hills (Case No. SA-80-230); Lake County Manor (Case No. 81-36); and Roaring River Village (Case No. SA-81-236). The Commission also approved a tariff for Southwest Sewer Corporation, P.S.C. MO. No. 1, which did not contain any rates or charges for customers.

2. Southwest Sewer Corporation was a Missouri corporation. The corporation was dissolved on October 6, 1982. Section 351.476(1) RSMo. (2000) states "A dissolved corporation continues its corporate existence but *may not carry on any business except that appropriate to wind up and liquidate its business and affairs....*"

3. In the affidavit attached to this pleading as Attachment A, the former president of Southwest Sewer Corporation indicates that the company has no sewer systems and customers and has no objection to the cancellation of his former company's certificate.

4. In the Staff Memorandum attached to this pleading as Attachment B, Staff provides the results of its investigation into the company's disposition. In light of the results of that investigation, Staff requests that the Commission deem null and void or cancel the certificates of convenience and necessity it granted to Southwest Sewer Corporation.

5. To the best of the Staff's knowledge, based on observation, the residents residing in areas where Southwest Sewer Corporation had received certificates of convenience and necessity to provide sewer service are presently either receiving sewer service from public entities or homeowners' associations, or utilize individual on-site treatment units. As such, cancellation of Southwest Sewer Corporation's certificates of convenience and necessity will not negatively impact anyone located in any of the company's certificated service areas.

6. The company owes the Commission no assessments. The Commission's records do not reflect receipt of any annual reports from the company.

7. The factual basis for seeking cancellation of Southwest Sewer Corporation's certificates or for them to be deemed null and void is that the corporate entity that was granted the certificates no longer exists, and the certificated utility does not and never provided sewer service and therefore never exercised its certificate; further, its former president has indicated no objection to cancellation.

8. Section 393.170.3 RSMo. (2000) states that "[u]nless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void." Based on Staff's investigation and

the company's representations, the company never provided sewer service to customers, and should be deemed null and void.

9. Should the Commission choose not to deem the company's certificate null and void, it may cancel the company's certificate instead. Although the Commission's authority to cancel a water or sewer certificate is not specifically set out in Chapter 393 of the Missouri statutes, the Commission has previously allowed regulated entities to discontinue operations in cases where cancellation was sought by the service provider and also where the service provider had ceased to exist.¹ The Commission's authority to cancel certificates of convenience and necessity has been limited by the Missouri Supreme Court, where cancellation of one certificated entity's authority is sought by another, potentially competing certificated entity (and against the will of the entity whose certificate is to be cancelled). *State ex rel. City of Sikeston v. Pub. Serv. Comm'n*, 82 S.W.2d 105 (Mo. 1935). The *Sikeston* court stated that "no provision was or ever has been made by the Legislature for the commission to eliminate competition between private companies already in existence and doing business in the same territory" other than through purchase. *Id* at 110. In this case, however, the certificated entity has legally ceased to exist and its former president has indicated no objection to the cancellation of its certificate.

10. The Commission need not hold a hearing, if, after proper notice and opportunity to intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. 1989).

11. This pleading will be served via certified mail upon the address provided by Southwest Sewer Corporation to the Commission, as well as upon its Missouri registered agent.

¹ See 16 Mo. P.S.C. (N.S.) 142, *Burma Builders*; also see *In the Matter of Ozark Shores Water Company's Application for an Order Canceling the Certificate of Public Convenience and Necessity*, Case No. WD-2001-701; *In the Matter of the Cancellation of the Certificate of Convenience and Necessity and Tariff of the Lake Hannibal Sewer Corporation*, Case No. SD-2004-0144.

WHEREFORE, the Staff requests that the Commission grant Staff's Motion and deem Southwest Sewer Corporation's certificates of convenience and necessity to provide sewer service granted in Case Nos. SA-80-13, SA-80-230, SA-81-36, and SA-81-236 null and void, or alternatively, cancelled; and further, cancel the company's tariff, P.S.C. MO. No. 1.

Respectfully submitted,

/s/ David A. Meyer

David A. Meyer
Senior Counsel
Missouri Bar No. 46620

Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
(573) 751-8706 (Telephone)
(573) 751-9285 (Fax)
david.meyer@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to the following this 22nd day of May 2006.

/s/ David A. Meyer

Office of the Public Counsel
P. O. Box 7800
Jefferson City, MO 65102

Southwest Sewer Corporation
1212 East Industrial Park Drive
Mt. Vernon, MO 65712

Paul Heath
Registered Agent for Southwest Sewer Corporation
c/o Interstate Sewage Treatment Company, Inc.
1212 East Industrial Park Drive
Mt. Vernon, MO 65712
(via certified mail)

AFFIDAVIT OF PAUL L. HEATH

STATE OF MISSOURI)
) ss
COUNTY OF LAWRENCE)

RECEIVED
MAY 10 2006

Paul Heath, of lawful age, on his oath states:

UTILITY OPERATIONS
DIVISION

(1) that he was involved with the creation of Southwest Sewer Corporation and the granting of Certificates of Convenience and Necessity by the Public Service Commission to Southwest Sewer Corporation for authority to operate as a public sewer utility in certain areas;

(2) that Southwest Sewer Corporation does not own or operate any sewer systems, has no customers, and is not likely to begin providing sewer service to any customers;

(3) that Southwest Sewer Corporation has forfeited its corporate status with the Missouri Secretary of State;

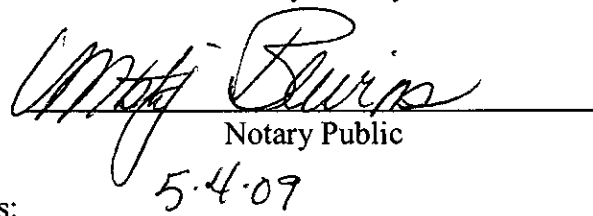
(4) that he has discussed with the Public Service Commission Staff the status of Southwest Sewer Corporation and its certificated service areas; and,

(5) that he has no objection to the cancellation by the Public Service Commission of Southwest Sewer Corporation's Certificates of Convenience and Necessity and its associated approved tariff.


Paul Heath

Southwest Sewer Corporation

Subscribed and sworn to before me this 5 day of May 2006.


Notary Public
5.4.09

My Commission Expires: _____

MISTY BLEVINS
Notary Public - Notary Seal
STATE OF MISSOURI
Lawrence County - Comm.#05405881
My Commission Expires May 4, 2009

Attachment A

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Southwest Sewer Corporation

FROM: Dale Johansen – Water & Sewer Department
Jim Merciel – Water & Sewer Department
Bill Nickle – Water & Sewer Department

<u>/s/ Dale W. Johansen</u>	<u>05/22/06</u>
Project Coordinator	Date

<u>/s/ David A. Meyer</u>	<u>05/22/06</u>
General Counsel's Office	Date

SUBJECT: Staff's Recommendation Supporting Cancellation of
Certificates of Convenience and Necessity and Tariff

DATE: May 22, 2006

General Background

Southwest Sewer Corporation (SSC) sought and received Certificates of Convenience and Necessity (Certificate or Certificates) from the Commission for several separate service areas in 1979 and 1980. SSC has never constructed or acquired any sewer systems, has never provided service to any customers, and has never collected any revenue. Further, after conducting an investigation of SSC's overall situation, the Staff does not believe that SSC will ever actually provide service to customers in any of its existing service areas.

SSC's business plan was to acquire and operate centralized sewer collection and treatment systems (hereafter referred to as central sewer systems) that were to be constructed by subdivision developers. No central sewer systems were planned to be constructed until homes actually existed upon a pre-determined number of lots in SSC's service areas, as per agreements between the Missouri Department of Natural Resources (DNR) and the developers, with the earliest homes to be served by individual septic tanks before sewer construction.

The status of each of SSC's certificated service areas is set out below.

Airport North, Airport South, and Airport West

The Commission granted SSC Certificates to provide service in these three adjacent subdivisions, all of which are located in Barry County, in Case No. SA-80-13.

Airport North has 48 lots, and a central sewer system was to be constructed once ten (10) homes were built. Although 14 homes were built by 1991, the developer is deceased, there is no further activity in this area now, and the DNR is not pursuing the construction of a centralized sewer system.

Airport South has 48 lots, and similar to Airport North a central sewer system was to be constructed once ten (10) homes were built. Six (6) homes currently exist in this service area.

Airport West has 37 lots, and a central sewer system was to be constructed once seven (7) homes were built. By 1991, nine (9) homes had been built, but similar to Airport North the DNR is not pursuing the construction of a central sewer system.

Notably, for all of these subdivisions it would have been the responsibility of the developers to construct the central sewer system before exceeding the prescribed number of homes, and SSC is thus not the party accountable for failure to construct central sewer systems in the Airport North and Airport West subdivisions. Additionally, there are also homeowners associations in these subdivisions that possibly could oversee centralized sewer utility service in the future.

Twin Hills

The Commission granted SSC a Certificate to provide service in the Twin Hills subdivision, which is located in Jasper County, in Case No. SA-80-230. This subdivision, which was originally located in a rural area, has since been annexed by the City of Joplin, and sewer service in this area is now provided by the City of Joplin. As a result, there clearly is no longer a need for SSC to provide service in this area.

Lake County Manor

The Commission granted SSC a Certificate to provide service in the Lake County Manor subdivision, which is located in Stone County, in Case No. SA-81-36. This area, or perhaps a portion of it, is also known as Branson Bluff. A sewage treatment plant that is owned and operated by a condominium association is in service, with no involvement by SSC.

Roaring River Village

The Commission granted SSC a Certificate to provide service in the Roaring River Village subdivision, which is located in Barry County, in Case No. SA-81-236. This subdivision has 213 lots, and a central sewer system is to be constructed when homes are built on 30% of the lots (64 lots). At present, there are only approximately ten (10) homes in the subdivision and there is no apparent development activity taking place.

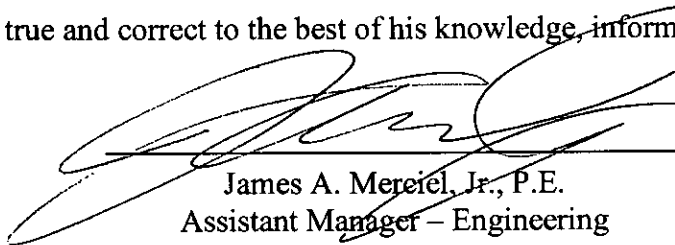
CONCLUSIONS AND RECOMMENDATIONS

Since SSC has never exercised its authority to provide sewer service to the public in that it has never acquired, constructed, owned or operated any sewer systems and has never provided sewer service to any customers, and since it appears unlikely that SSC will exercise its authority as a public sewer utility in the future, the Staff recommends that the Commission either determine that SSC's Certificates are null and void, or cancel the Certificates that were granted to SSC in the above-mentioned cases, and that the Commission cancel SSC's tariff. The Staff believes that such actions would not be detrimental to the public interest since, as noted above, SSC has no utility systems or customers.

AFFIDAVIT OF JAMES A. MERCIEL, JR.

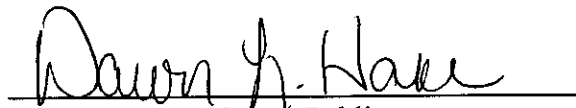
STATE OF MISSOURI)
) ss
COUNTY OF COLE)

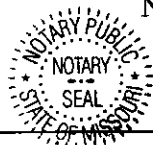
James A. Merciel, Jr., of lawful age, on his oath states: (1) that he is a member of the Staff of the Missouri Public Service Commission; (2) that he participated in the preparation of the foregoing MOTION TO OPEN CASE AND CANCEL OR DEEM NULL AND VOID CERTIFICATES OF CONVENIENCE AND NECESSITY AND CANCEL ACCOMPANYING TARIFF (Motion) and the Staff's Official Case File Memorandum (Staff Memorandum) that is included herewith in Attachment B; (3) that he has knowledge of the matters set forth in the foregoing Recommendation and the attached Staff Memorandum; and (4) that the matters set forth in the foregoing Motion and the attached Staff Memorandum are true and correct to the best of his knowledge, information and belief.



James A. Merciel, Jr., P.E.
Assistant Manager – Engineering
Water & Sewer Department
Utility Operations Division

Subscribed and sworn to before me this 19th day of May 2006.





Notary Public
DAWN L. HAKE
My Commission Expires
March 16, 2009
Cole County
Commission #05407643

My Commission Expires: