

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Case No. SA-85-103

In the matter of the application of M.P.B., Inc., for permission, approval and a certificate of convenience and necessity authorizing it to own, operate, install, reconstruct, control, manage and maintain a sewer system for the public located in an unincorporated area in Jefferson County, Missouri.

Case No. SA-85-134

In the matter of the application of House Springs Sewer Company, Inc., for permission, approval and a certificate of convenience and necessity authorizing it to own, operate, install, reconstruct, control, manage and maintain a sewer system for the public located in an unincorporated area in Jefferson County, Missouri.

APPEARANCES: Cara L. Detring, Attorney at Law, West First and South Jefferson, Farmington, Missouri, 63640, for M.P.B., Inc.

Willard C. Reine, Attorney at Law, 314 East High Street, Jefferson City, Missouri, 65101, for House Springs Sewer Company, Inc.

Gary W. Duffy, Attorney at Law, Hawkins, Brydon & Swearengen, P.C., P.O. Box 456, Jefferson City, Missouri, 65102, for Intervenor.

Daniel Maher, Assistant Public Counsel, P.O. Box 7800, Jefferson City, Missouri, 65102, for Office of the Public Counsel and The Public.

Linda K. Malinowski, Assistant General Counsel, P.O. Box 360, Jefferson City, Missouri, 65102, for Staff of the Missouri Public Service Commission.

REPORT AND ORDER

On October 25, 1984 M.P.B., Inc. (MPB) filed its application seeking permission, approval, and a certificate of public convenience and necessity to install, own, acquire, construct, operate, control, manage and maintain two (2) sewer systems for the public in two (2) unincorporated areas in Jefferson County, Missouri.

By Order dated November 1, 1984 the Commission directed its Secretary to send notice of this Order to the publisher of each newspaper located in Jefferson County as listed in the Newspaper Directory of the current Official Manual of the State of Missouri and to each State Representative and each State Senator whose district includes any portion of the proposed service area, and to the county court of Jefferson County. The Commission set a deadline of December 3, 1984 for any interested party to file an application to intervene in this matter. On November 30, 1984 House Spring Sewer Company, Inc. filed its Application to Intervene in this matter. By Order dated December 17, 1984 the Commission set Case No. SA-85-103 for hearing.

On November 30, 1984 House Spring Sewer Company, Inc. (House Spring) filed its application seeking permission, approval, and a certificate of public convenience and necessity to install, own, acquire, construct, operate, control, manage and maintain a sewer system for the public in an area in Jefferson County, Missouri. By Order dated December 14, 1984 the Commission directed its Secretary to send notice of this Order to the publisher of each newspaper located in Jefferson County on the proposed service areas of the Applicant as listed in the Newspaper Directory of the current Official Manual of the State of Missouri, to each State Representative and each State Senator whose district includes any portion of the proposed service area, and to the county court of Jefferson County. The Commission also set a deadline of January 11, 1985 as the date upon which any interested party wishing to intervene in Case No. SA-85-134 should file its Application to Intervene.

On January 9, 1985 an Application to Intervene and Motion to Consolidate was filed in Case Nos. SA-85-103 and SA-85-134 by Green Acres Mobile Home Park, Weber Hill Mobile Home Park, Crest Manor Mobile Home Park, Elderly Housing Partnership of House Springs, Dave Bush Ranch Club Mobile Home Park, Pine Grove Manor Apartments, Dave Bush, William O. Moss and Tom W. Dudeck (Intervenors). Responses to the motion were filed by various parties. On January 25, 1985 the Commission issued its Order

Consolidating Cases for Hearing. Hearings were held on March 7, 1985 and May 21, 1985. The parties waived the reading of the record pursuant to Section 536.080(2), RSMo 1978. On July 1 and 2, parties filed Initial Briefs and on July 19, July 22, and July 23, the parties filed Reply Briefs.

Findings of Fact

The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, make the following findings of fact:

The parties in these cases include two (2) applicants, MPB and House Springs. Both are seeking a certificate of public convenience and necessity to provide sewer service to areas in Jefferson County, Missouri. House Springs is requesting the entire Heads Creek Watershed for its certificated area while MPB is requesting two (2) areas: Dulin Creek Estates and Echo Valley Estates within the Heads Creek Watershed for its certificated area. The Staff of the Missouri Public Service Commission (Staff) is recommending that House Springs' application be approved since they favor a centralized watershed approach to sewage treatment over individual treatment facilities. The Intervenor consisting of Green Acres Mobile Home Park, Weber Hill Mobile Home Park, Crest Manor Mobile Home Park, Elderly Housing Partnership of House Springs, Dave Bush Ranch Club Mobile Home Park, Pine Grove Manor Apartments, Dave Bush, William O. Moss and Tom W. Dudeck, oppose House Springs' application. They state that House Springs has failed to demonstrate it has adequate financial ability to provide the service it proposes, House Springs has not shown public need, House Springs' feasibility studies have all the "...probative value of a fairy tale..." and House Springs' proposed facilities will duplicate existing facilities that are operating adequately. The Office of Public Counsel supports the watershed approach of House Springs.

MPB is a Missouri Corporation duly organized and existing under the laws of the State of Missouri with its principal office and place of business located at 761 Pine Haven, Fenton, Missouri 63026. MPB's application for a certificate of

public convenience and necessity is Exhibit 14. Exhibits 15 and 16 are MPB's feasibility studies for its two proposed service areas: Echo Valley Estates and Dulin Creek Estates. Both of these subdivisions have existing sewage treatment facilities but there are no public utilities or governmental entities rendering sewer service in the proposed area. MPB proposes to make certain improvements to the facilities upon receiving a certificate from the Commission. Robert Zeman, Chief of Water Enforcement and the Permits Unit at the St. Louis Regional Office for the Department of Natural Resources, testified that the Echo Valley Estates' and Dulin Creek Estates' sewage facilities are operating properly.

MPB proposes an interim rate of \$16.69 per customer per month for its proposed service area.

MPB stated in its feasibility studies that the purchase of the sewage treatment facilities will be financed by stock sales to the stockholders' and shareholders' loans to the corporation. MPB further stated that outside financing will be utilized when necessary. MPB has contracts to purchase both treatment plants for \$1.00 each with an additional \$10,000 being paid for the land at Echo Valley.

Melvin Pfeffer and Patrick Boos are the officers and stockholders of MPB. At the time of the hearing they had maintained the sewage treatment facilities at Echo Valley Estates and Dulin Creek Estates for over a year. Mr. Pfeffer and Mr. Boos have been partners in MELKAT Services for the past five (5) years. They have operated and maintained sewage treatment facilities for nineteen (19) to twenty (20) plants in Jefferson, Franklin, St. Charles and St. Louis counties. Melvin Pfeffer worked for St. Louis County Sewer Company for seven (7) years. Patrick Boos also is the president, owner and operator of P.C.B. Inc. which is a regulated sewer company. Mr. Boos has worked for the Metropolitan Sewer District for seven (7) years and Fee Fee Trunk Sewer for almost four (4) years. He is a licensed B treatment plant operator.

Based upon Mr. Pfeffers' and Mr. Boos' experience and MPB's proposed financing the Commission finds that MPB is properly qualified and capable of serving the proposed service area. Further, the Commission is of the opinion that MPB's feasibility studies are economically feasible. The issue of public need is a difficult one to address. Certainly, there exists a need for the proper maintenance of the facilities located in MPB's proposed service areas. However, a larger issue exists here, that of whether the entire watershed should be certificated. Prior to considering that issue, the Commission must consider the qualifications and capability of House Springs to operate within its proposed service area and the economic feasibility of its facility studies.

House Springs is a Missouri Corporation duly organized and existing under the laws of the State of Missouri with its principal place of business located at 9843 Sunset Greens Drive, St. Louis, Missouri 63127. House Springs filed an application with this Commission for a certificate of public convenience and necessity. Exhibits 1, 2 and 3 are copies of schedules attached to its application. Exhibit 4 is House Springs' facility plan for its proposed service area: the Heads Creek Watershed. House Springs proposes to construct a major sewage treatment facility near the intersection of Highway 30 and Heads Creek which would be designed initially for 50,000 gallons per day (gpd) and would later be expanded to treat approximately 250,000 gpd. House Springs proposes to construct its gravity trunk and collector sewers in three (3) phases initially to serve the House Springs business district, and ultimately to serve nearly all of the Bear Creek Watershed which is part of the Heads Creek Watershed. Potential customers located in the area to be served in the first three (3) phases include four hundred thirty eight (438) mobile homes, three hundred fifty nine (359) single family homes, twenty-two (22) apartments, twenty-five (25) commercial customers, one (1) elementary school and one (1) high school.

There are no public utilities or governmental entities rendering sewer service in the area. The residential areas of House Springs' proposed service area are presently being served by septic tanks or aerators with drainfields. The mobile home parks and apartment areas of House Springs' proposed service area are presently being served by treatment plants.

Phase I of the Plan consists of the construction of facilities to serve Lakehurst Mobile Home Park, Dulin Creek Estates and the House Springs' business district. House Springs plans to construct a two-cell aerated lagoon for the ninety-seven (97) customers in that area. Construction according to the Plan could start in the fall of 1985 and be complete by the spring of 1986. Phase I construction would include construction of plants to serve both Phase I and Phase II since according to the Plan construction of a plant to treat 26,100 gpd of waste water and subsequent expansion in Phase II to treat 50,000 gpd was not cost effective. During Phase III the plants will be converted to an oxidation ditch utilizing the extended aeration activated sludge process. During Phase I, hypalon liners will be installed for each lagoon to prevent migration of wastewater through the soil, the lift station will be sized to accommodate a flow of 250,000 gpd and the disinfection facilities will be sized to accommodate a flow of 250,000 gpd.

Phase II construction would include approximately 7,055 lineal feet of a central sewer system to serve the Old Town of House Springs, Green Acres Mobile Home Park and both schools located on Bear Creek.

Phase III construction would include the conversion of the plants and construction of six (6) miles of 8", 10" and 12" poly vinyl chloride gravity central sewers. The Plan includes serving the Dave Bush Ranch Club Mobile Home Park and the Weber Hill Mobile Home Park by a lift station pumping to a force main extending 1,100 feet to the gravity central sewers in Crest Manor Mobile Home Park.

Estimated construction costs and expenses for each phase are as follows:

	Construction Costs	Operating Expenses
Phase I	\$189,745	\$790 per month
Phase II	\$208,430	*\$594 per month
Phase III	\$919,800	*\$3,785 per month

*increment only, not accumulative

According to the Plan, House Springs' and its customers would share the construction costs as follows:

	Total Costs		House Springs Customers		Company
Phase I	\$189,745	-	\$125,000	=	\$64,745
Phase II	\$208,430	-	\$175,000	=	\$133,430
Phase III	\$919,800	-	\$517,800	=	\$402,000

Construction costs in all three (3) phases include the possibility of hitting rock and take into account the soil. Various cost shares for the customers in each Phase were shown on Exhibit 4 pages 31, 32 and 33 as part of the Plan. House Springs in its Plan states that it is planning to invest in facilities to the extent allowed by the difference between revenue and operating expenses. House Springs states that this amount will be used to make payments on the Company's construction loans. No cost shares according to House Springs will be charged to customers who have functional sewer systems and sewage treatment facilities. In the event a number of potential customers would not hook onto House Springs' sewer system the cost shares would increase. Mr. Fribis testified that House Springs would need participation in the range of 75% to 80% before the company would be willing to extend sewers to service areas. Mr. Fribis held a public meeting on February 28, 1985 in the Weber Hill Manor area which would be covered by Phase III and explained that cost shares for customers would be \$1,200 unless fewer potential customers hook onto the system, \$16 for monthly fees and \$6 a foot for fifty (50) to seventy (70) feet for the house service sewers.

The proposed monthly interim rates to be charged by House Springs and agreed to by Staff and Public Counsel are as follows:

Single Family Dwelling	\$16.00
Mobile Homes in Mobile Home Parks	\$15.00
Multiple Family Rental Unit	\$13.00
Commercial Establishments	\$2.84/1,000 gallons with minimum of \$16.00.

The Plan includes construction of sewers as development intensifies in the Heads Creek Valley in five (5) to ten (10) years. Though Mr. Fribis stated after a public meeting held in March, 1985 he would probably revise his schedule to four (4) to seven (7) years. Existing potential customers in the Heads Creek Valley include: Woodridge Estates Mobile Home Park (80 units), House Springs Middle School, Echo Valley Estates (76 mobile homes) plus 175 single family residences. According to the plan approximately five (5) miles of sewer would need to be constructed to serve this valley. House Springs estimates the cost to build these sewers and provide treatment for an extra 115,000 gpd of wastewater is \$775,000. House Springs estimated that it could invest between \$200,000 - \$250,000 for construction resulting in an average cost share for homeowners of approximately \$3,000 each if revenues generated were \$67,000 per year.

Development at the time of the hearing was scattered and sparse in the Dulin Creek Valley. If development does occur, House Springs would consider extending sewers or providing temporary treatment facilities as the need dictates.

Little development is expected in the Bourne Creek Valley and no specific plans have been made by House Springs to provide service.

Eugene A. Fribis testified that where to locate the treatment plant

gets to be such a complex engineering issue that takes literally months and months to resolve that I used the facility there at Lakehurst Mobile Home Park because of its convenience, relative ease for me to determine cost here for the feasibility study.

But there are -- technically there are other methods to treat sewage. There are certainly many other locations in that valley to put sewage treatment facilities. And I would look at those other alternatives when we get into the detailed design.

Mr. Fribis plans to serve customers in an area where a central sewer system has not been installed by small treatment plants at the same rate as customers with a central sewer system. Mr. Fribis testified that Mercantile Bank in St. Louis has given him a loan commitment for all of House Springs' cost in Phase I which is \$125,000. It would be a construction loan with interest only being paid until the end of the construction at which time the loan would be converted to a ten (10) year loan. The rate will be prime rate plus 1½%. Financing for the other two (2) phases would be sought at that time depending on the interest rate and other factors. Mr. Fribis testified earlier that it was his plan to put in equity and to borrow money to try to have a good mixture of equity and borrowed capital to finance the system.

Mr. Eugene A. Fribis is President of House Springs and he and his wife are the sole stockholders. Mr. Fribis has a Master of Science degree from the University of Missouri at Rolla in civil engineering majoring in sanitary and environmental sub-areas. He has a Bachelor of Science degree from the University of Missouri at Columbia in civil engineering. He is the President of Colton, Lester, Fribis Associates located in Arnold, Missouri and Vice-President of Colton Lester Corporation located in Chesterfield, Missouri. He is also a registered engineer. He is presently managing and providing operation and maintenance for two (2) regulated utilities: Imperial Utility Corporation and Godfrey Gardens Utilities, Inc.

Based upon Mr. Fribis' education and experience, the Commission finds that House Springs is properly qualified to serve the proposed service area.

Mr. Robert Zeman, testified that Mr. Fribis' plan showed that House Springs would be meeting the requirements of the Department of Natural Resources for discharge into a gaining stream.

Mr. Jim Merciel, Assistant Manager of Engineering in the Commission's Water and Sewer Department testified on behalf of the Staff. Mr. Merciel who has been employed by the Commission for eight (8) years spent two (2) days in the field observing the proposed service areas of both MPB and House Springs.

Staff stated that it felt that House Springs' proposal was feasible based upon the costs submitted in its study. The biggest problem House Springs has according to Staff is getting customers to connect to the system and getting the extensions paid for. There is the possibility that new customers would offset customers who might not connect since House Springs' study did not include any growth.

Staff stated it did not favor the Commission granting both MPB's and House Springs' applications since if MPB was granted a certificate it would make it rather futile for House Springs to try to serve the whole watershed.

Dr. Vernon Stump who received his Ph.D. in sanitary engineering at the University of Missouri testified for the Intervenor. He has an operating firm that operates sewage and water facilities and he owns one (1) water and five (5) sewage companies. Locations in Missouri where he owns or operates sewage or water facilities include Boone County, Henry County, St. Clair County, St. Charles County, Lake St. Louis and the City of O'Fallon.

Dr. Stump testified that the study was accurate but that he had problems with some of the assumptions made. He stated that because of the opposition to House Springs application that the assumption that most of the existing customers would connect is not likely to occur. He noted that cost shares or contributions-in-aid of construction were fairly extensive and hard to collect. He stated that septic tank areas are expensive to serve and since you're dealing with lots of individuals it's hard to do especially when they're not having any problems with their septic tanks. Debt service for House Springs, according to Dr. Stump, appears to be fairly high for the number of customers and the amount of money that is going to have to be put in the system with respect to operation and maintenance costs. He stated that in his experience that any time debt service was over about 50% versus operation and maintenance costs he had a problem getting bond companies to finance them. Debt service for House Springs according to Dr. Stump appeared to be in the neighborhood

of 60-65% of overall revenues. Dr. Stump thought the operation and maintenance expenses were too low. He stated that in his experience it was difficult to get mobile home parks to connect to a sewer system. Further, he stated that he found construction costs such as easements had been escalating - \$4.00 a foot in St. Charles County while House Springs' study showed \$1.00 a foot.

Dr. Stump testified that House Springs' Plan was feasible but it's a hard project to do and he didn't think it could be done at the cost presented. He thought the Plan would be more workable if more of the details were worked out and some arrangements made with the parties involved.

The Intervenor, the school district and Lakehurst Mobile Home Park (Lakehurst) testified that they have treatment facilities which are operating properly and do not wish to connect to House Springs at this time.

Mr. Harvey Leroy Luck, president of the corporation that owns Lakehurst Mobile Home Park testified that he was not willing to sell his land for \$5,000 or \$10,000 for Fribis' treatment plant since he sold 28 acres for \$73,000 and it was 5 feet lower. He also testified that the expansion required in Phase III of House Springs would expand into his mobile home lots and streets.

Mr. Fribis testified that even if the Intervenor do not hook onto the system that he is of the opinion that his Phase I and II would be feasible. If the Intervenor do not connect to the system, Phase III would have to be subdivided into additional phases.

Mr. Merciel of the Staff testified that if half of the potential customers do not connect that House Springs' proposal would still be feasible since the costs will be picked up by the customers receiving the service.

The Department of Natural Resources (DNR), Regional Administrator for St. Louis, Mr. Donald Maddox, testified that when DNR permits a small treatment facility for operation a standard clause in the permit states that the operator of

the facility has ninety (90) days to connect to a central system if one becomes available.

Mr. Zeman testified that the definition of the word "available" in that clause results in a case-by-case evaluation. He stated that if the regional sewer system were brought to a point within fifty (50) to one hundred (100) feet of an existing treatment facility, DNR would consider that available. It would depend on the size of the treatment facility and what it would take to connect. DNR's regulations provide according to Mr. Zeman that if a regulated company exists DNR cannot issue permits to anyone other than that entity if they're going to discharge in that watershed unless some other entity can show that there is some legal impediment to the regulated company being able to serve them.

Mr. Zeman testified that there has been no waiver of the clause requiring connection to a regional sewer system within ninety (90) days. If the problem cannot be resolved then the matter would be brought to the Clean Water Commission and addressed at a hearing before the Commission. The Clean Water Commission establishes policy and rules and regulations for DNR on water pollution control. The Clean Water Commission can grant variances.

Jim Merciel testified that DNR has two (2) rules, one for treatment plants with discharge permits and one for a building that says if sewers are within 150 feet the structure is supposed to be connected to sewers. If it's prohibitively expensive for a building then it's on a case-by-case basis also according to Mr. Merciel.

The Commission finds that House Springs' facility study is based upon an accurate assessment of potential customers, construction plans that are adequately sized and designed for a sewage treatment facility located in the proposed service area and sewers in that area and construction costs that appear to be reasonable.

The Commission finds that it is reasonable to assume that DNR will enforce its rules and regulations, which would be important to the feasibility of the House Springs' proposal. The Commission, therefore, finds that the facility study

presented by House Springs is reasonable; however, certain conditions need to be met before the Commission can approve it. Mr. Fribis' uncertainty during the hearing as to what type of facility he is going to construct, where it is to be located, and what type of financing he intends to use affects the viability of this proposal. The Commission cannot approve a plan with the expectation that it may be changed completely and then implemented at considerable cost to the ratepayers. Therefore, if House Springs implements the three (3) phases, proposed in its Facility Plan without the total cost for each phase including changes becoming greater than the original estimates of each phase in Exhibit 4, then the Commission should authorize it to construct the three (3) phases. In the event House Springs decides to make changes to a phase of its Facility Plan and the total cost for the phase including changes is greater than the original estimate of the phase but is less than a 25% increase, House Springs should submit an updated feasibility study to the Commission's Water and Sewer Department for approval prior to construction. If the Water and Sewer Department does not grant approval then House Springs must either change its study in accordance with the Water and Sewer Department's recommendations or submit the study to the Commission for approval. In the event House Springs decides to make changes to a phase of its Facility plan and the total cost for each phase including changes is 25% of the original estimate of the phase or greater then an updated feasibility study must be submitted to the Commission for approval. In addition, the Commission notes that prior to each phase of the three (3) phases of construction a financial application must be submitted and approved by the Commission prior to that phase of construction beginning as an additional condition of the construction certificate. Since approval of the financing for each Phase is a condition of the construction in this case, House Springs should include a brief summary of the construction to be financed with its financial application.

Mr. Fribis testified to the public need for the proposed service area. He stated that it was exhibited by the number of failing drainfields resulting from a

combination of small residential lots and the inability of the soil to absorb waste water. According to Mr. Fribis, this causes waste water to pond in yards and in the streets with a potential for causing health problems. Mr. Fribis stated that the surfacing of the effluent is a nuisance in its appearance and smell, it causes people not to be able to cut their grass and small lot owners are not able to develop their property. In addition, Mr. Fribis stated that it's costly rehabilitating drainfields and replacing septic tanks.

Ralph Krodinger, the Presiding Judge of the Jefferson County Commission testified that he supported the watershed approach since it would eliminate the problem of where there are three (3) or four (4) companies with their own area and there are areas between that cannot get connected as they develop. He said that his office receives three (3) or four (4) complaints a week usually after people have taken their problems to the building commissioner. He stated that his office tries to advise and persuade the complainants to do what is necessary to correct the problem but in a lot of cases a central sewer system is the only remedy since the ground is saturated and no additional land is available. In addition, Mr. Krodinger stated that establishing a regional sewer district will help some of the subdivisions that are having trouble maintaining their own systems in compliance with DNR's effluent standards.

The building commissioner, Alvin Marschel, testified that he had rejected requests for building permits on lots less than 15,000 square feet in House Springs' proposed service area because the county ordinance requires 15,000 square feet for a minimum size lot when there is public water available. If there is a well, the minimum size is 20,000 square feet. To build on smaller lots, a central sewer system is required. He has rejected building permits in the Weber Hill Manor subdivision because of size. County ordinance requires that every sewage system have percolation tests run and there is a certain range which each system must meet. If the rate is over forty (40) minutes per inch then the ordinance requires another method of

treatment. Mr. Marschel testified that their inspector was working on thirty (30) complaints in the proposed service area of House Springs with the majority of the complaints being failing drain fields. Weber Hill Manor, Weber Hill Terrace, the area behind the Post Office in the town of House Springs and an area up Carol Park Road are all areas where the county has had sewage problems or complaints. Mr. Marschel testified that based upon his experience that there is a great need for House Springs to serve the entire Heads Creek Watershed. Some of the same problems exist for people located in an area served by companies with a watershed area according to Mr. Marschel.

Harold F. Helmkamp, part owner of House Springs Shopping Center which leases space to eight (8) to ten (10) businesses, testified. He also provides sewage service for Wal Mart Center. He has a septic tank system with a drainfield which does not operate adequately. To recondition his sewage system it will cost \$28,000-\$30,000. Mr. Helmkamp testified that he would pay double the cost share or \$40,000 to connect to a central sewer system.

Roger A. Day lives in Weber Hill Manor Subdivision in the Bear Creek Watershed. He testified that there are sixty (60) houses in the Weber Hill area with septic tank sewer disposal systems. If it rains he can't do laundry at his house for three (3) or four (4) days because it doesn't have any place to drain. In the summer it smells on occasion. He talked to eleven (11) people in his area and nine (9) were interested in connecting to the system the other two (2) understood the need but did not have a problem with their systems. He also has problems with sewage backing up into his basement area. He has spent approximately \$700-\$800 in the four (4) years he's lived in the subdivision on his septic tank. If the cost share doubled to \$2,400 connecting to the system would not be worthwhile for him.

Ronald Gween lives on Carol Park Road in the northeastern part of Bear Creek Watershed. He is a partner in David Weiss Hauling & Excavating which does contracting or construction work on septic tanks in Jefferson County. He and Dave

Weiss developed Hawthorn Meadows, a mobile home park, which is halfway between the treatment plant and Echo Valley. DNR rejected their initial feasibility study which proposed fifteen (15) units with individual systems and approved eleven (11) units with a special drainfield system with filter sand. He testified that the Heads Creek area has grown ten-fold in the past five (5) to seven (7) years and that the condition of the sewage disposal systems in House Springs' proposed service area is atrocious. He state that he would connect to a central sewer system.

David Weiss is a partner in David Weiss Hauling & Excavating. He agreed that the sewage disposal systems in the area are atrocious. He testified that he would connect to the central sewer system as long as costs were under \$3,000 for a cost share and \$25.00 per month.

Donald Maddox of DNR testified that the Clean Water Commission has a department policy which favors a watershed or regional development. He stated that DNR's regulations require central sewer systems if a subdivision is developed with fifteen (15) units and the lot size is 15,000 square feet or less. He further stated that DNR favors a watershed approach because of economies of scale and it makes it easier to regulate.

Robert Zeman of DNR testified that in his region they receive three hundred (300) complaints a year and over 50% of those are from Jefferson County and the majority of those complaints include the Heads Creek Watershed. Mr. Zeman testified that a central treatment facility is better than isolated facilities from a water quality basis since it helps eliminate waste water effluent in small streams, reduces potential ground water contamination hazards and reduces potential health hazards. DNR is concerned about the potential groundwater contamination of the Heads Creek Watershed because it is a losing stream. In 1982 DNR studied the sewage disposal in the Heads Creek Watershed and determined there was a need for a regional approach to waste water treatment there, also in Bear Creek Watershed and the lower parts of Dublin Creek Watershed.

Mr. Zeman discussed the Intervenor's compliance with DNR regulations. He stated that Green Acres Mobile Home Park's treatment plant has been operating reasonably well, though there have been some instances of non-compliance. He had no first hand knowledge whether Weber Hill Mobile Home Park's plant was operating reasonably. He testified that Crest Manor Mobile Home Park, and the Elderly Housing Partnership of House Springs were operating properly. He believed that Dave Bush Ranch Club Mobile Home Park was operating properly. Pine Grove Manor Apartment has recently installed a new treatment plant and has submitted an application for a permit to operate it. He testified that Lakehurst Mobile Home Park's lagoon system is leaking into the subsurface and DNR is concerned with the effect it is having on the groundwater in the area.

Jim Merciel of the Staff testified that the most obvious reason for a sewer system is that there are a great number of residential homes that have septic tank effluent running into ditches or lakes. Staff favors sewer companies going into business on a watershed basis if there is a customer basis and a need for service. Staff stated that:

If you have a watershed such as this one, you often have developments that get started in various areas around the watershed. And if you have an authority who can oversee the watershed, that authority can develop the sewer system to where someday there will be a central sewer treatment facility. Developments can be consolidated; in other words, if you have two separate developers who live right next door to each other, instead of building two treatment plants, you can build one treatment plant to serve both of these.

He also stated that other advantages are one point of discharge rather than two (2) or more, better assurance of competent operators, of good service throughout the watershed and of better emergency response. One of the problems of watershed certification is maintaining good developer relations though central sewers seem to be more conducive to development of an area.

The Superintendent of Schools for Northwest R-I School District of Jefferson County, John Gibson, testified that the School Board is of the opinion that

its sewer system was adequate. Mr. Gibson stated that it has three (3) schools which would be in House Springs' proposed service area: Northwest High School, House Springs Elementary School and House Springs Middle School. According to Mr. Gibson, the school district is in extreme financial constraints and cost shares of \$94,625 for the high school and elementary school would be a major item in the budget. At the time of hearing, the treatment plant for two (2) of these schools was in need of repairs and an engineering study was underway. The school district was not an intervenor in this case.

Roland Hubbard, property manager for Reality Asset Management which manages the Elderly Housing Partnership of House Springs testified that there aeration treatment plant cost \$40,000 in 1981. It costs no more than \$200 a month to operate and maintain the system. Mr. Hubbard testified that the Elderly Housing Partnership did not plan to connect to the central sewer system unless it was absolutely required. He stated that an increase in rent to the forty-eight (48) units of \$15 per month would create a hardship on the residents. He opposes central sewer systems.

Donald Strange testified on behalf of the Pine Grove Manor Apartments which just installed a new treatment plant in December of 1984 for \$11,000 with additional expenses of \$7,000-\$8,000 more expected. Cost to operate and maintain the plant is approximately \$185 per month. Mr. Strange stated that an increase in sewer costs and resulting increase in rent would cost the tenants more money than they could afford. He said that if the price was decent and the conditions different he might not oppose a central sewer system. If it was cheaper to connect to the central sewer system he would do so.

Clarence J. Moehl, Jr., and his wife are owners of Weber Hill Mobile Home Park in House Springs. Mr. Moehl testified that five (5) years ago a new treatment plant and sewer system were installed for \$65,000. It has cost \$6.50 to \$6.60 per unit per year to maintain and operate the plant according to Mr. Moehl, but that does

not include the cost of the initial system. Mr. Moehl is not against the concept of a central sewer system but at this time the economics makes him oppose a central sewer system.

The manager of Crest Manor Mobile Home Estates, (Crest Manor) Bruce O. Turner, testified on behalf of Mr. John App the owner. He testified that their treatment plant was installed in 1969 and replacement costs were in excess of \$200,000. Mr. Turner testified that Crest Manor was a HUD controlled park and could not raise its rent at this time. Mr. Turner stated that they were not in favor of House Springs' application at the terms it projected.

Harvey Leroy Luck, president of the corporation that owns Lakehurst Mobile Home Park (Lakehurst), testified that he supported House Springs' application but did not want House Springs to locate its lagoon in his mobile home park and the cost \$15 per unit per month is too high so he wouldn't connect to the central sewer system. Lakehurst has an evaporation pit for a treatment plant which doesn't require a DNR permit but is allowed a certain amount of percolation by DNR. Mr. Luck was not an intervenor.

One of the owners of the Green Acres Mobile Home Park (Green Acres) and Dave Bush Ranch Club Mobile Home Park, Phase I, Lots 1-46, Ed Fleming, testified. Dave Bush owns the Dave Bush Ranch Club Mobile Home Park treatment plant and Ed Fleming has an option to purchase it.

The treatment plant at Green Acres has a replacement cost of \$40,000-\$50,000 according to Mr. Fleming. It costs \$6.81 per customer per year to operate and maintain the facility however that amount does not include any return or investment on the plant. The treatment plant at Dave Bush Ranch Club would cost \$60,000-\$80,000 to replace. Mr. Fleming is presently paying Mr. Bush \$10 a month for use of the plant. Mr. Fleming would consider connecting to House Springs' central sewer system if he was paid an adequate price for his sewer treatment plant.

Vernon Stump testified that after reading the feasibility study submitted by House Springs he thought there was a need for service in House Springs' proposed service area. He also stated that he favored a watershed approach to sewage treatment.

The Intervenor, the school district and Lakehurst opposed House Springs' proposed service since they have already installed their own treatment plants and incurred those expenses and House Springs' plan for a central sewer system would probably cost them more than they are now paying for sewer operation and maintenance. The Commission notes that the Intervenor's and the school district's operating permits from DNR contain a clause that if a central sewer system becomes available they have to connect to it.

There is evidence in this case that the watershed approach to certifying a sewer company is better than a piecemeal approach to certifying the same area. The Commission finds that a central treatment facility for a watershed is better than many isolated facilities since it would help eliminate waste water effluent in small streams which reduces potential ground water contamination and reduces potential health hazards. The Commission is of the opinion that all developments in a watershed can be overseen by the certificated company so that a sewer system can be developed with plans for a central sewer facility, instead of many treatment plants. The Commission believes that economies of scale, ease of regulation and better assurance of competent operators, better service and emergency response are also factors that support a watershed approach.

The Commission is of the opinion that many of the sewage treatment problems that exist today in the House Springs' proposed service area may be eliminated by installment of a central sewer system. Because of the conditions in the House Spring's area including the inability of the soil to absorb water, layers of rock and many losing streams, waste water or effluent collects in yards, streets, lakes, ditches and possibly the groundwater. The Commission is concerned over the potential

health problems, the unpleasing appearance and odor of the effluent and the problems accompanying any type of standing water on property. The Commission finds that the number of complaints regarding sewage treatment in the House Springs' proposed service area: three (3) to four (4) a week received by the Jefferson County Commission, thirty (30) complaints being worked on at the time of the hearing by the county building commissioner and a majority of the one hundred fifty (150) complaints received by DNR which include the Heads Creek Watershed, also show the need for a central sewer system and a certificated company.

The Commission finds that the testimony of the residents and the businessmen of House Springs' proposed service area wherein they state a desire to connect to a central sewer system because of the cost of maintaining present systems, lack of experience as treatment plant operators, inability to do laundry, sewage backups, restrictions on the size of lots developed and the types of sewage treatment systems required, shows a public need for this service. The Commission notes that both its Staff and DNR have recommended a watershed approach to this area.

Having evaluated the watershed approach and the public need within the watershed in this case, the Commission finds that the public convenience and necessity mandates a watershed approach to the Heads Spring Watershed. Therefore, the Commission finds that House Springs should be granted a certificate of public convenience and necessity for the entire Heads Creek watershed. Because the Commission has determined a watershed approach is needed for this area, it cannot grant a certificate of public convenience and necessity to MPB for Dulin Creek or Echo Valley. The Commission notes that granting even a partial certificate to MPB would result in duplication of facilities by House Springs as it extends its central sewer system around that area, lack of one company supervising the development of the entire watershed, more discharge points and a negation of all the other reasons discussed for a watershed approach to certification.

Dulin Creek is included in Phase I of House Springs Facility Plan. Echo Valley is in the Heads Creek Watershed which House Springs planned to serve by central sewers in four (4) to seven (7) years.

Therefore, the Commission finds that MPB should be denied a certificate of public convenience and necessity for Dulin Creek and Echo Valley.

The Commission believes that the Intervenor's, the school district's and Lakehurst's convenience and necessity will be promoted from being in a certificated watershed since their treatment facilities will need to be repaired and replaced as well as the other reasons the Commission stated in its discussion of public need and the watershed approach. The Commission notes that because of the time span involved in the construction of a central sewer system that there may be no detriment to these Intervenor's, the school district or Lakehurst as it may be more costly for them to replace or repair their treatment plant at that time than to connect to the central sewer system. The Commission weighed the potential detriment to these Intervenor's, the school district or Lakehurst and the detriment to MPB in considering whether there was a public need for the watershed approach. However, the public need for a central sewer system in the Heads Creek Watershed is greater than the potential detriment to these Intervenor's, the school district or Lakehurst and the detriment to MPB.

Conclusions

The Missouri Public Service Commission has arrived at the following conclusions:

Both Applicants, House Springs and MPB propose to provide sewer service to the public as public utilities subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo Supp. (1984).

Section 393.170, RSMo 1978 provides that:

1. No...sewer corporation shall begin construction of a ...sewer system without first having obtained the permission and approval of the Commission.

2. No such corporation shall exercise any right or privilege under any franchise hereafter granted, without first having obtained the permission and approval of the Commission.
3. The Commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The Commission may by order impose such condition or conditions as it may deem reasonable and necessary.

The Commission pursuant to Section 393.170, RSMo 1978 is empowered to determine whether it is in the public convenience and necessity for any new company to begin business anywhere in the state. State ex rel. Harline v Pub. Serv. Comm'n, 343 SW2d 177,182 (Mo. App. 1960).

The court in State ex rel. Public Water Supply District No. 8 of Jefferson County v. Pub. Serv. Comm'n., 600 SW2d 147, 154 (Mo. App. 1980) stated:

The determination of what is necessary and convenient has long been, and continues to be a matter of debate. From analysis of court decisions on this subject, the general purpose of what is necessary and convenient encompasses regulated monopoly for destructive competition, prevention of undesirable competition and prevention of duplication of service. The underlying public interest is and remains the controlling concern, because cut-throat competition is destructive and the public is the ultimate party which pays for such destructive competition.

In determining whether a certificate of public convenience and necessity should be granted, the Commission has focused on the public need for the proposed service, the applicant's qualifications, the financial ability of the applicant to provide the service and the economic feasibility of the applicant's plant to provide service. The Commission has determined in these cases that the public convenience and necessity will be promoted by granting a certificate to House Springs for the entire Heads Creek Watershed. Since the Commission has decided that public convenience and necessity requires a watershed approach, it cannot grant a certificate to MPB.

It is, therefore,

ORDERED: 1. That House Springs Sewer Company, Inc., 9843 Sunset Greens Drive, St. Louis, Missouri 63127 be, and hereby is granted permission, approval and a certificate of public convenience and necessity to install, own, acquire, construct, operate, control, manage and maintain a sewer system for the public located in Jefferson County, Missouri in an area described in Appendix A attached hereto. This permission, approval and certificate of convenience and necessity are subject to the conditions as set out in Ordered 2 and Ordered 3.

ORDERED: 2. That in the event House Springs Sewer Company, Inc., decides to make changes to a phase of its Facility Plan, Exhibit 4, such that the total cost for that phase including changes is greater than the original estimate for the phase but is less than a 25% increase, then the Company shall submit an updated feasibility study to the Commission's Water and Sewer Department for approval prior to construction. If the Water and Sewer Department does not grant approval then the Company must either change its study in accordance with the Water and Sewer Department's recommendations or submit the study to the Commission for approval. In the event the Company decides to make changes to a phase of its Facility Plan, Exhibit 4, such that the total cost of the phase including changes is 25% of the original estimate for the phase or greater, then the Company shall submit an updated feasibility study to the Commission for approval.

ORDERED: 3. That prior to each phase of the three (3) phases of construction, a financial application shall be submitted and approved by the Commission prior to that phase of construction beginning. The financial application shall include a brief summary of the construction to be financed.

ORDERED: 4. That M.P.B., Inc.'s application be, and hereby is, denied.

ORDERED: 5. That Exhibit 4 be, and hereby is, received into evidence except for the study by Edwin Lutzen quoted on pages 3, 4 and 5. The objection relating to Lutzen's study is sustained. That any objections or motions not

specifically ruled on in Case Nos. SA-85-103 and SA-85-134 be, and hereby are, overruled or denied.

ORDERED: 6. That within sixty (60) days of the effective date of this Report and Order, House Springs Sewer Company, Inc. shall file subject to the approval of the Commission, a complete tariff containing a map of the Company's authorized service area and prescribing charges and rules and regulations.

ORDERED: 7. That House Springs Sewer Company, Inc., be, and hereby is, directed to abide by all Commission rules and regulations pertaining to the operation and maintenance of sewer systems.

ORDERED: 8. That House Springs Sewer Company, Inc., shall maintain its books and records in accord with the Uniform System of Accounts.

ORDERED: 9. That nothing contained herein shall be construed as a finding by the Commission for ratemaking purposes of the value of the properties herein involved, nor as an acquiescence in the value placed upon said properties by House Springs Sewer Company, Inc.

ORDERED: 10. That this Report and Order shall become effective on the 17th day of December, 1985.

BY THE COMMISSION

Harvey G. Hubbs
Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Chm., Musgrave, Mueller,
Hendren and Fischer, CC., Concur.

Dated at Jefferson City on this 15th
day of November, 1985.

Appendix A

Beginning at the NW 1/4 of the NE 1/4 of the NE 1/4 of Section 29, Township 42 North, Range 4 East, which point is also on the eastern line of the Cedar Hill Utility Company, Inc. boundary; thence northward and westward along the northeast boundary of the Cedar Hill Utility Company as follows: directly north to the NW 1/4 of the NE 1/4 of the NE 1/4 of section 20; thence northwest to the center of section 17; thence northwestward to the center of the NE 1/4 of section 18; thence directly north to the center of the SE 1/4 of section 7; thence northeastward approximately 15,000 feet along the highest point of the ridge dividing the Dulin Creek and Big River watersheds to Missouri State Highway W; thence northwestward 2000 feet more or less along the centerline of said Highway W to the center of the Big River; thence 6000 feet more or less to the northwest corner of section 34 of Township 43 North, Range 4 East; thence directly east along the north line of said section 34 to the centerline of Missouri State Highway 30; thence northeastward 6300 feet more or less along the centerline of said Highway 30 to the intersection of Gravois Road, also known as Old Missouri State Highway 30; thence northeastward following Old Missouri State Highway 30 8000 feet more or less to the intersection of Old Missouri State Highway 30 and Missouri State Highway P; thence southeastward following said Highway P and Rock Creek Road 9000 feet more or less to the intersection of Rock Creek Road with West Four Ridge Road; thence and now adjoining the boundary of the Imperial Utility Corporation 22,000 feet more or less following West Four Ridge Road to its intersection with Missouri State Highway 21; thence leaving the adjoining boundary of the Imperial Utility Corporation and following Missouri State Highway 21 southward 28,000 feet more or less to its intersection with Tower Road; thence along a meandering course 25,000 feet more or less following the highest point of the ridge dividing the Heads Creek and Belew Creek watersheds to the place of beginning.