

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 11<sup>th</sup> day of  
July, 2011.

In the Matter of Emerald Pointe Utility Company for a     )  
Certificate of Convenience and Necessity Authorizing     )  
It to Construct, Install, Own, Operate, Control, Manage     )  
and Maintain a Sewer System and Sewer Line in Taney     )  
County, Missouri     )

**File No. SA-2012-0362**

**ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: July 11, 2012

Effective Date: July 21, 2012

On May 1, 2012, Emerald Pointe Utility Company (“Emerald”) filed an application with the Missouri Public Service Commission (“Commission”) requesting that the Commission grant it a Certificate of Convenience and Necessity (“CCN”) to construct, install, own, operate, control, manage and maintain a sewer system and sewer line in Taney County, Missouri. The requested CCN would allow Emerald to obtain access to an alternate wastewater treatment plant owned and operated by the City of Hollister, Missouri. On May 2, 2012, the Commission directed notice and set a deadline for persons to request intervention. The Commission received no intervention requests.

On June 22, 2012, the Commission’s Staff filed a recommendation that asks the Commission to approve the application, subject to certain conditions relating to depreciation rates. The Commission subsequently ordered Emerald to respond to the Staff’s conditions, and on June 29, 2012, Emerald filed its response stating that it does not object

to the conditions in the Staff recommendation. The Office of Public Counsel states that it has no opposition to Staff's recommendation and its suggested conditions.

Emerald is a sewer corporation operating a sewer system and is, therefore, subject to the jurisdiction of the Commission.<sup>1</sup> Missouri law requires a sewer corporation to obtain a certificate from this Commission in order to operate as such.<sup>2</sup> The Commission may grant a sewer corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either "necessary or convenient for the public service."<sup>3</sup> The Commission has stated five criteria that it will use in making that determination:

- 1) There must be a need for the service;
- 2) The applicant must be qualified to provide the proposed service;
- 3) The applicant must have the financial ability to provide the service;
- 4) The applicant's proposal must be economically feasible; and
- 5) The service must promote the public interest.<sup>4</sup>

In its recommendation, Staff concludes that Emerald's application satisfies the five criteria stated above. Emerald's existing sewage treatment facility is operating near capacity and will soon need to be expanded. However, it is more desirable to eliminate the facility and instead use the available treatment facility operated by the City of Hollister. The proposed pipeline project to deliver sewage to the City's facility and the additional service area would benefit Emerald's current and future customers. Emerald has the financial ability to complete the project, and the plan is economically feasible. Emerald's proposal as stated in the application is beneficial to current customers, future customers, and other residents of the Table Rock Lake area.

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<sup>1</sup> Sections 386.020(49) and (50), and 386.250(4) RSMo.

<sup>2</sup> Section 393.170, RSMo.

<sup>3</sup> *Id.*

<sup>4</sup> *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

Based on the Commission's independent and impartial review of the verified application and the verified recommendation of Staff, the Commission finds that granting Emerald's application for a certificate of convenience and necessity to provide sewer service would be in accordance with the above-listed criteria.<sup>5</sup> Consequently, the application will be granted, subject to the schedule of depreciation rates attached to the Staff recommendation in Attachment A.

The Commission reminds Emerald that failure to comply with its regulatory obligations may result in the assessment of penalties against it. These regulatory obligations include, but are not limited to, the following:

A) The obligation to file an annual report, as established by Section 393.140(6), RSMo 2000. Failure to comply with this obligation will make the utility liable for a penalty of \$100 and an additional \$100 per day that the violation continues. Commission Rule 4 CSR 240-3.335 requires sewer utilities to file their annual report on or before April 15 of each year.

B) The obligation to pay an annual assessment fee established by the Commission, as required by Section 386.370, RSMo 2000. Because assessments are facilitated by order of the Commission, failure to comply with the order will subject the company to penalties ranging from \$100 to \$2,000 for each day of noncompliance pursuant to Section 386.570, RSMo 2000.

C) The obligation to provide safe and adequate service at just and reasonable rates, pursuant to Section 393.130, RSMo Supp. 2010.

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<sup>5</sup> The requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence. No party requested a hearing in this matter; thus, no hearing is necessary. *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

D) The obligation to comply with all relevant state and federal laws and regulations, including but not limited to, rules of this Commission, the Department of Natural Resources, and the Environmental Protection Agency.

E) The obligation to comply with orders issued by the Commission. If the company fails to comply it is subject to penalties for noncompliance ranging from \$100 to \$2,000 per day of noncompliance, pursuant to Section 386.570, RSMo 2000.

F) The obligation to keep the Commission informed of its current address and telephone number.

The certificate is granted conditioned upon the compliance of the company with all of these obligations, as well as the obligations listed below in the ordered paragraphs.

If the Commission finds, upon conducting a hearing, that the company fails to provide safe and adequate service, or has defaulted on any indebtedness, the Commission shall petition the circuit court for an order attaching the assets, and placing the company under the control of a receiver, as permitted by Section 393.145, RSMo. As a condition of granting this certificate, the company hereby consents to the appointment of a temporary receiver until such time as the circuit court grants or denies the petition for receivership.

The company is also placed on notice that Section 386.310.1, RSMo, provides that the Commission can, without first holding a hearing, issue an order in any case “in which the commission determines that the failure to do so would result in the likelihood of imminent threat of serious harm to life or property.”

Furthermore, the company is reminded that, as a corporation, its officers may not represent the company before the Commission. Instead, the corporation must be represented by an attorney licensed to practice in Missouri.

**THE COMMISSION ORDERS THAT:**

1. Emerald Pointe Utility Company is granted permission, approval, and a certificate of convenience and necessity to construct, install, own, operate, control, manage and maintain a sewer system and sewer line in Taney County, Missouri, as more particularly described in its application.

2. This certificate of convenience and necessity is granted upon the conditions set out in the body of this order, including Emerald's compliance with the schedule of depreciation rates described in Attachment A to the Staff recommendation and incorporated herein by reference in its entirety.

3. Emerald Pointe Utility Company must submit amended tariff sheets describing its revised service areas within 30 days after the date of this order, with the tariff sheets to bear an effective date that is at least 30 days from the date the tariff sheets are submitted to the Commission.

4. Emerald Pointe Utility Company shall maintain utility plant, customer account, and plant property records in accordance with the Uniform System of Accounts, version 1973 for water, as revised in 1976, and version 1976 for sewer.

5. Emerald Pointe Utility Company shall comply with all Missouri statutes and Commission rules.

6. Nothing in the Staff recommendation or this order shall bind the Commission on any ratemaking issue in any future rate proceeding.

7. This order shall become effective on July 21, 2012.
8. This matter may be closed on July 22, 2012.

**BY THE COMMISSION**

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

Steven C. Reed  
Secretary

( S E A L )

Gunn, Chm., Jarrett, Kenney,  
and Stoll, CC., concur.

Bushmann, Regulatory Law Judge