

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

In the Matter of Cedar Green Land)
Acquisition, LLC for a Certificate of)
Convenience and Necessity Authorizing it) File No. WA-2013-0117
to Own, Operate, Maintain, Control and)
Manage Water Systems in Camden)
County, Missouri.)

In the Matter of Cedar Green Land)
Acquisition, LLC for a Certificate of)
Convenience and Necessity Authorizing it) File No. SA-2013-0354
to Own, Operate, Maintain, Control and)
Manage Sewer Systems in Camden)
County, Missouri.)

**THE OFFICE OF THE PUBLIC COUNSEL'S RESPONSE
TO STAFF'S RECOMMENDATION**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Response to Staff's Recommendation states as follows:

1. On September 25, 2012, and January 15, 2013, Cedar Green Land Acquisition, LLC (Cedar Green LA) filed Applications with the Missouri Public Service Commission (Commission) seeking a Certificate of Convenience and Necessity (CCN) for water systems and sewer systems, respectively.
2. On February 26, 2013, the Staff of the Missouri Public Service Commission (Staff) filed its Recommendation asking that the Commission approve the Applications subject to recommendations attached as Appendix A.

3. After a thorough review of the Applications and Staff's work papers, as well as discussion with several members of Staff, Public Counsel now states that it objects to Staff's Recommendation.

4. After reviewing the available documentation, Public Counsel believes the ownership and control of the water and sewer systems are in question. For example, the Department of Natural Resources (DNR) operating permit for the sewer system (Attachment 1) lists Cedar Green Condominium Owner's Association as the continuing authority. The document entitled Original Sales Certificate (Attachment 2) and the document entitled Exhibit I - Declaration of Covenants, Conditions and Restrictions (Attachment 3), which was filed with the Camden County Recorder of Deeds, specifically state that the duty to maintain, repair and improve sewer system is given to the Association.

5. A recent filing by Mr. Meyers with the Missouri Secretary of State (Attachment 4) indicates that on December 10, 2011, Mr. Meyers made a voluntary turnover of Cedar Green Condominium Owners Association, Inc, resigned from the Board of Directors and is not an authorized party to act on the Association's behalf. Therefore, Cedar Green Condominium Owner's Association, Inc. has no representation in this case.

6. If Cedar Green LA is not the continuing authority and has no duty to maintain, repair and improve the sewer system, Public Counsel questions how Cedar Green LA can be awarded a CCN for that sewer system. The documentation causes similar concerns regarding the water system. Therefore, without further documentation and the presence of Cedar Green Condominium Owner's Association, Inc. as a party, Public Counsel objects to Staff's recommendation that a water and sewer CCN be awarded to Cedar Green LA at this time.

7. Public Counsel also believes the cost of service reflected in Staff's Recommendation is overstated. For example, Staff's Recommendation fails to list the water and sewer systems as contributed plant. Attachment 2 and Attachment 3 clearly indicate that the water and sewer systems are paid for by the unit owners in the purchase of the condominium as a common element of construction. Attachment 3 states "Condominium: means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of these portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners". According to both Attachment 2 and Attachment 3, the purchase of a condominium provides the unit owner three "allocated interests" in the condominium including Common Elements Interests, Common Expense Assessments and votes in the Association.

8. Article V in Attachment 3 states that Common Elements include "each and every service facility now or hereafter erected, constructed or installed on or in the property, including without limiting the generality of the foregoing, all common utility installations including pipes, wires, chutes, flues, ducts, conduits, bearing walls, bearing columns or any other connections for electricity, light, water and plumbing and other utilities, except those which are exclusively within or for the benefit of the condominium unit and not used to service any unit other than the particular condominium unit."

9. Attachment 3 defines Common Expenses as on-going expenditures related to the Common Elements including but not limited to: "(c) The installations, consisting of the equipment and materials making up central services such as power, light, hot and cold water, central heating and air conditioning, storm and sanitary sewer mains, sewage treatment plant(s), well(s), water line(s) with respect to condominium common areas, as now or hereafter located

and constructed and submitted to the Condominium and the Act by Declarant; (d) The tanks, pumps, motors, fans, compressors, ducts, lines, pipes, and in general all apparatus and installations now or hereafter located, constructed and existing for common use;”

10. Just as the purchase price includes the cost of the parking lot as a Common Element, the purchase price also includes the cost of water and sewer system as a Common Element. It is unjust and unreasonable for the unit owners to be asked to pay again for the costs of the water and sewer plant or to be asked to pay a return on plant they themselves paid for. Public Counsel has other such concerns regarding the cost of service reflected in Staff’s Recommendation. Therefore, Public Counsel objects to Staff’s cost of service calculations and the resultant rates proposed in Staff’s Recommendation.

11. Public Counsel asks that the Commission make a determination on whether Cedar Green Condominium Owner’s Association, Inc. is a necessary party to this case and schedule an evidentiary hearing to determine the actual ownership of the water and sewer systems and to determine a just and reasonable cost of service for those systems.

WHEREFORE, Public Counsel respectfully submits its Response to Staff’s Recommendation.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Christina L. Baker

By: _____

Christina L. Baker (#58303)
Deputy Public Counsel
P O Box 2230
Jefferson City, MO 65102
(573) 751-5565
(573) 751-5562 FAX
christina.baker@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 8th day of March 2013:

Missouri Public Service Commission

Service List for Case No. **WA-2013-0117** Last Updated: **9/27/2012**

Missouri Public Service Commission

Meghan McClowry
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Meghan.McClowry@psc.mo.gov

Missouri Public Service Commission

Office General Counsel
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Cedar Green Land Acquisition, LLC

Gary F. Myers
Managing Member
50 Notch Lane, Branson West, MO 65737
garyfmyers2010@gmail.com

Missouri Public Service Commission

Service List for Case No. **SA-2013-0354** Last Updated: **1/15/2013**

Missouri Public Service Commission

Meghan McClowry
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Meghan.McClowry@psc.mo.gov

Missouri Public Service Commission

Office General Counsel
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Cedar Green Land Acquisition, LLC

Robert R Paulson
101 State Drive, Hollister, MO 65672
P.O. Box 6422, Branson, MO 65615
Branson, MO 65615
bobpaulson58@gmail.com

County of Camden, Missouri

County Commission Clerk
1 Court Circle, Ste. 2
Camdenton, MO 65020

Missouri Department of Natural Resources

Legal Department
Harry Bozoian
1101 Riverside Drive
P.O. Box 176
Jefferson City, MO 65102-0176
harry.bozoian@dnr.mo.gov

/s/ **Christina L. Baker**
