

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 24th day of
November, 2014.

In the Matter of the Joint Application of West)
16th Street Sewer Company, W.P.C. Sewer)
Company, Village Water and Sewer Company,)
Inc. and Raccoon Creek Utility Operating)
Company, Inc., for Raccoon Creek to Acquire)
Certain Sewer Assets and, in Connection)
Therewith, Issue Indebtedness and Encumber)
Those Assets.)

File No. SM-2015-0014

**ORDER REGARDING STIPULATION AND AGREEMENT
AND CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: November 24, 2014

Effective Date: December 24, 2014

On July 14, 2014, West 16th Street Sewer Company, W.P.C. Sewer Company, Village Water and Sewer Company, Inc., and Raccoon Creek Utility Operating Company, Inc. (collectively, "Applicants") filed an joint application with the Missouri Public Service Commission ("Commission") seeking authority for Raccoon Creek Utility Operating Company, Inc. ("Raccoon Creek") to purchase substantially all of the sewer assets of the other Applicants and to issue up to \$1,600,000 of secured indebtedness. The Commission ordered that notice of the joint application be given to the public and interested parties. The Commission did not receive any requests to intervene. On September 30, 2014, the Commission's Staff recommended that the Applicants' joint application be approved, subject to a number of conditions. At the request of the Office of the Public Counsel, a local public hearing was conducted in Sedalia, Missouri on November 19, 2014.

On November 13, 2014, Raccoon Creek and the Commission's Staff filed a Non-Unanimous Stipulation and Agreement ("Agreement"). The Commission may resolve any part of this proceeding on the basis of a stipulation and agreement. Since no party filed a timely objection to the Agreement, the Commission will treat the Agreement as a unanimous stipulation and agreement.¹ After reviewing the Agreement, the Commission independently finds and concludes that the Agreement is a reasonable resolution of the issues addressed by the Agreement and that such Agreement should be approved.

The Commission may grant a sewer corporation a certificate of convenience and necessity ("CCN") to operate after determining that the construction and operation are either "necessary or convenient for the public service."² The Commission articulated the specific criteria to be used when evaluating applications for utility CCNs in the case *In Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991). The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria: (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.³

Based on the Commission's independent and impartial review of the verified filings, the Commission determines that Raccoon Creek has satisfied all necessary criteria for the grant of the applied-for CCN. Raccoon Creek's provision of sewer service to the service

¹ Commission Rule 4 CSR 240-2.115(1)(B).

² Section 393.170.3, RSMo 2000.

³ The factors have also been referred to as the "Tartan Factors" or the "Tartan Energy Criteria." See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, *3 (Mo. P.S.C.).

area described in the joint application is in the public interest. The Commission will authorize the sale of assets, permit Raccoon Creek to incur debt, grant the request for the certificate of convenience and necessity, and approve the Agreement.

THE COMMISSION ORDERS THAT:

1. Raccoon Creek Utility Operating Company, Inc. is authorized to acquire the assets of the other Applicants identified in the joint application, and the other Applicants are authorized to sell the assets identified in the joint application.

2. Raccoon Creek Utility Operating Company, Inc. is granted a certificate of convenience and necessity to provide sewer service in the other Applicants' existing service areas, to be exercised upon closing of the respective Applicants' assets, subject to the conditions described in the Agreement.

3. Raccoon Creek Utility Operating Company, Inc. is authorized to enter into, execute and perform in accordance with the terms described in the agreement attached to the joint application and to take any and all other actions which may be reasonably necessary and incidental to the performance of the acquisition.

4. Raccoon Creek Utility Operating Company, Inc. is authorized to enter into, execute and deliver loan agreements with Fresh Start Ventures LLC to incur indebtedness.

5. Raccoon Creek Utility Operating Company, Inc. is authorized to create and make effective a first lien on all of the franchises, certificates of convenience and necessity, plant and system of Raccoon Creek, to secure its obligations under the loan.

6. Raccoon Creek Utility Operating Company, Inc. is authorized to enter into, execute, deliver and perform the necessary promissory notes, loan agreements and other documents necessary to effectuate the financing transaction.

7. Raccoon Creek Utility Operating Company, Inc. is prohibited from closing on assets or operating as a sewer utility unless it has operation, billing, and emergency answering arrangements (contracts) that can be in place and exercised immediately, respective of the assets of each of the Applicants, upon closing.

8. Raccoon Creek Utility Operating Company, Inc. shall notify the Commission of closing on the assets of each of the Applicants within five (5) days after such closings.

9. West 16th Street Sewer Company, W.P.C. Sewer Company, and Village Water and Sewer Company, Inc. may cease providing service immediately after closing on the respective assets. Upon notification to the Commission of the closing, the respective Applicant's existing certificate of convenience and necessity shall be canceled.

10. The Non-Unanimous Stipulation and Agreement is approved and incorporated herein as if fully set forth. The signatories to the Agreement are ordered to comply with that Non-Unanimous Stipulation and Agreement.

11. Nothing in this order shall bind the Commission on any ratemaking issue in any future rate proceeding.

12. This order shall be effective on December 24, 2014.

BY THE COMMISSION



Morris L. Woodruff
Secretary



R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur.

Bushmann, Senior Regulatory Law Judge