

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 6th day of April, 2022.

In the Matter of the Application of TUK,)
LLC to Sell its Sewer Assets to Seven)
Springs Sewer & Water LLC) **File No. SM-2022-0131**

**ORDER GRANTING TRANSFER OF ASSETS AND GRANTING
CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: April 6, 2022

Effective Date: May 6, 2022

On November 10, 2021, TUK, LLC (TUK) and Seven Springs Sewer & Water LLC (Seven Springs) submitted a joint *Application and Motion for Waiver* (Application) to the Commission. In their Application, TUK requests Commission authority to sell, and Seven Springs requests authority to acquire, pursuant to a sale agreement, all or substantially all of the assets of TUK. The Application also includes a request to transfer the applicable certificate of convenience and necessity (CCN) from TUK to Seven Springs, or alternatively, grant a new CCN to Seven Springs for the service area. The applicants also ask the Commission to waive the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017.

The Commission issued notice of the application and set a deadline for the filing of applications to intervene, but no parties sought to intervene. The Commission ordered its staff (Staff) to file a recommendation as to the application and Staff did so on March 16, 2022, recommending that the Commission approve the sale, subject to 13 conditions. Staff also recommends that the Commission grant Seven Springs a new CCN to provide sewer service in the territory currently served by TUK, and that TUK's

CCN be cancelled. On March 22, 2022, TUK and Seven Springs jointly filed a *Response to Staff Recommendation* in which they stated that they did not object to the 13 conditions recommended by Staff. No other responses or objections to Staff's recommendation were filed.

No party requested a hearing and the requirement for a hearing is met when the opportunity for a hearing has been provided.¹ Accordingly, the Commission will rule on the Application.

TUK provides retail sewer utility services in Jefferson County, Missouri, to approximately 26 residential customers and one mobile home park. TUK is a certificated sewer corporation, subject to the Commission's jurisdiction.²

Seven Springs is a limited liability company formed on October 26, 2021, whose principal, Lawrence Harrison, recently purchased the water system (unregulated), mobile home park, and three duplex units that account for over half of the customers currently served by TUK's sewer system.

As a regulated utility, TUK must obtain the Commission's authorization before selling its assets.³ In evaluating the proposed sale by TUK, the Commission may not withhold approval of the sale unless the sale would be detrimental to the public interest.⁴

Mr. Harrison has never owned a regulated utility. However, Seven Springs intends to utilize the current contract operator for plant operations. Seven Springs also intends to continue to utilize the current office manager/bookkeeper, who is a full-time employee of

¹ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

² Section 386.020(49), RSMo 2016; TUK was granted a CCN in File No. WA-2015-0169.

³ Section 393.190, RSMo 2016.

⁴ *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980) (citing *City of St. Louis v. Public Serv. Comm'n of Missouri*, 73 S.W. 2d 393, 400 (Mo banc 1934)).

the mobile home park, to handle customer inquiries, produce customer bills, and post payments. TUK currently has an office in the city of Eureka just north of the service area of the sewer system that Seven Springs intends to continue to utilize.

Seven Springs is purchasing TUK with equity in the form of a \$25,000 cash payment at closing, and will have no debt. The purchase price is less than the system's net book value of \$31,192 calculated by Staff, and Seven Springs is not requesting recovery of any acquisition premium. By owning over half of the sewer system customer base, Mr. Harrison has the largest single interest in maintaining the sewer system and providing safe and adequate service. Staff's position is that Seven Springs has the technical, managerial, and financial capacities to acquire and operate the TUK sewer system.

Seven Springs proposes to adopt the existing tariffs and rates of TUK. Staff supports that proposal. Staff recommends the use of the depreciation rates ordered by the Commission in TUK's CCN case, File No. WA-2015-0169, and Seven Springs agrees to adopt those rates. In addition, the transaction should not have any material effect on the tax revenues of any political subdivision where TUK's sewer system is located.

The Commission may grant a water or 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."⁵ 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

⁵ Section 393.170.3, RSMo 2016.

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.⁶ These criteria are also sometimes known as the Tartan Factors.⁷

There is a need for the service because current TUK customers both desire and need sewer service, and there is a need for repairs to the system as proposed by Seven Springs. By continuing to utilize the current contract operator, office manager/bookkeeper, and office, Seven Springs is qualified to provide the service. By its cash purchase of the system, with no debt, Seven Springs demonstrates the financial ability to acquire the system. Mr. Harrison, the principal of Seven Springs, is the largest sewer consumer and has the largest single interest in maintaining the sewer system and continuing safe and adequate service. In addition, Mr. Harrison has over \$250,000 of equity in the acquired properties, and has planned improvements and financial commitments to ensure his properties remain in good working order. Therefore, Seven Springs has also demonstrated the financial ability to provide continued service. The proposed transaction is economically feasible, as no rate change is requested. The proposed transaction is highly important to continuing safe and adequate sewer service to these captive customers, and will provide stability and continuity of service to those customers, and therefore promotes the public interest.

⁶ 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.).

⁷ *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

The Commission finds that Seven Springs has the technical, managerial, and financial capacities to acquire and operate the sewer system it wishes to purchase from TUK. The Commission finds that the factors for granting a CCN to Seven Springs have been satisfied and that it is in the public interest for Seven Springs to provide sewer service to the service area currently served by TUK. The Commission will authorize the transfer of assets and grant Seven Springs a CCN to provide sewer service within the current TUK service area, subject to the conditions listed in the *Memorandum* attached to the March 16th *Staff Recommendation*.

Seven Springs and TUK also seek a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1)(D). Seven Springs and TUK certify that neither has had communication with the Office of the Commission regarding any substantive issue likely to be in this case during the 150 days prior to the filing of their application. The Commission finds that Seven Springs and TUK have demonstrated good cause for the waiver of the 60-day notice requirement.

THE COMMISSION ORDERS THAT:

1. Seven Springs and TUK are granted a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1).
2. The Commission grants the application of TUK for authority to sell to Seven Springs the assets described in the Contract for Purchase and Sale attached to the joint application filed by Seven Springs and TUK on November 10, 2021.
3. Seven Springs is granted a Certificate of Convenience and Necessity to install, acquire, build, construct, own, operate, control, manage, and maintain a sewer system in the area currently served by TUK.

4. Upon closing of the asset transfer, TUK is authorized to cease providing service and Seven Springs is authorized to begin providing service.
5. Seven Springs shall adopt the currently effective tariffs of TUK.
6. The transactions are subject to the following conditions:
 - A. Seven Springs shall file notice to adopt the TUK sewer tariffs as P.S.C. MO No. 1 to become effective before closing on the assets;
 - B. Seven Springs shall file notice in the Commission's Electronic Filing and Information System (EFIS) of closing on the assets within five days after such closing;
 - C. If closing on the sewer assets does not take place within 30 days following the effective date of the Commission's order approving such, Seven Springs shall submit a status report within five days after this 30-day period regarding the status of the closing, and additional status reports within five days after each additional 30-day period, until closing takes place, or until Seven Springs determines that the transfer of the assets will not occur;⁸
 - D. If Seven Springs determines that a transfer of the assets will not occur, Seven Springs shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and Seven Springs shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to TUK's service area in its sewer tariff, and rate and charges tariff sheets applicable to customers in the service area in the sewer tariff;
 - E. Seven Springs shall keep its financial books and records for plant-in-service and operating expenses in accordance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts;
 - F. Seven Springs shall adopt the depreciation rates ordered in File No. WA-2015-0169 and as outlined in Attachment A of the Staff *Memorandum* attached to the *Staff Recommendation* filed on March 16, 2022;
 - G. Seven Springs shall file in EFIS monthly financial reports for the first two years following the closing on the sewer assets;

⁸ The Staff *Memorandum* attached to the *Staff Recommendation* filed on March 16, 2022, contains the language, ". . . or until Seven Springs determines that the transfer of the assets will occur." In response to an inquiry from the presiding judge, the parties verified that the language should be, ". . . will *not* occur."

H. Seven Springs shall distribute to its customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its sewer service, consistent with the requirements of Commission Rule 20 CSR 4240-13, within 30 days of closing on the assets;

I. Seven Springs shall file in EFIS, within ten days after closing on the assets, an example of its actual communication with the sewer customers of the acquired company regarding its acquisition and operations of the sewer system assets, and how customers may reach Seven Springs;

J. Seven Springs shall file in EFIS a sample of five billing statements from the first month's billing for Seven Springs within ten days after the initial bill;

K. Seven Springs shall maintain timesheets for the office manager/bookkeeper tracking the activities and time attributable to functions performed for Seven Springs; and

L. Seven Springs shall file in EFIS in this case outlining completion of the above-recommended customer brochure, communications, and billing for Seven Springs within ten days after such communications and notifications.

7. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters in any later proceeding.

8. This order shall be effective on May 6, 2022.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeier CC., concur.

Seyer, Regulatory Law Judge


STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission,
at Jefferson City, Missouri, this 6th day of April, 2022.





Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

April 6, 2022

File/Case No. SM-2022-0131

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.