

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

In the Matter of the Joint Application of)	
Stoddard County Sewer Company, Inc., R.D.)	
Sewer Co., L.L.C. and the Staff of the)	
Missouri Public Service Commission for an)	<u>Case No. SO-2008-0289</u>
Order Authorizing Stoddard County Sewer Co.,)	
Inc. to Transfer its Assets to R.D. Sewer Co.,)	
L.L.C., and for an Interim Rate Increase.)	

OFFICE OF THE PUBLIC COUNSEL’S POSITION STATEMENT

COMES NOW the Office of the Public Counsel (Public Counsel) and states its position on the issues in this case as follows:

A. Is the proposed transfer of assets detrimental to the public?

It is Public Counsel’s position that, overall, the proposed transfer of Stoddard County Sewer Co., Inc. (Stoddard County) assets to R.D. Sewer Co., L.L.C. (R.D. Sewer) is not detrimental to the public. However, Public Counsel is greatly concerned regarding the evidence of multiple encumbrances which have been placed on the Stoddard County assets. Public Counsel is concerned that while some encumbrances may be known, there is a possibility that encumbrances may exist which are at this time unknown. Public Counsel is also concerned that these encumbrances may not have been for the benefit of the customers and the cloud of encumbrances, known and unknown, is a detriment to the public.

B. Did Stoddard County or any other entity, at any time since Stoddard County acquired the real and personal assets described in Paragraphs 42 and 43 of the Application in this case, secure from the Commission an order authorizing it to sell, assign, lease, transfer, mortgage, or otherwise dispose of or encumber any of the assets that are described in Paragraphs 42 and 43 of the Application in this case?

It is Public Counsel's position that there is no evidence to support an argument that Stoddard County or any other entity secured from the Missouri Public Service Commission (Commission) an order authorizing it to sell, assign, lease, transfer, mortgage, or otherwise dispose of or encumber any of the assets that are described in Paragraphs 42 and 43 of the Application in this case.

C. Are any and all purported transfers of any security interest in the assets described in Paragraphs 42 and 43 of the Application in this case therefore void?

It is Public Counsel's position that all of the purported transfers of any security interest in the assets described in Paragraphs 42 and 43 of the Application in this case are void pursuant to the provisions of § 393.190.1, RSMo 2000.

As stated above, Public Counsel is concerned that while some encumbrances may be known, there is a possibility that encumbrances may exist which are at this time unknown. Public Counsel is also concerned that these encumbrances may not have been for the benefit of the customers and the cloud of encumbrances, known and unknown, is a detriment to the public.

D. Should the Commission approve an interim rate increase for the customers who are now served by Stoddard County?

The Commission has the authority to grant emergency interim rate increases which are requested by a regulated utility and also to order emergency interim rate increases it deems necessary after investigation or hearing.

The Commission in previous cases has determined an interim rate increase is appropriate if (1) the evidence shows the utility is operating at a deficit and (2) to disallow the interim rate relief would result in damage to the company's financial integrity and ability to render safe and

adequate service.¹ It is Public Counsel's position that current operating and maintenance costs are likely being met by current revenues, the only exception being that the current operator is not receiving a salary. Therefore, Public Counsel does not oppose an interim rate increase subject to refund, as long as that amount is reasonable given the current revenues.

It is also Public Counsel's position that if an interim rate increase subject to refund is approved by the Commission, the Commission should also order R.D. Sewer to submit, within 30 days after the effective date of the Commission's order, a revenue increase request pursuant to Commission Rule 4 CSR 240-3.330, and that it order R.D. Sewer to diligently prosecute such request to a conclusion, even if it results in a permanent rate that is lower than R.D. Sewer's initial rates, as requested in Paragraph 57 of the Application.

E. If the Commission determines that a rate increase for the customers who are now served by Stoddard County should be approved, how much should the rate increase be?

It is Public Counsel's position that any rate increase approved by the Commission in this case must be an interim rate increase in an amount sufficient to allow the utility to operate without a deficit so as not to damage the company's financial integrity and its ability to render safe and adequate service. Public Counsel does not oppose an interim rate increase subject to refund, as long as that amount is reasonable given the current revenues.

F. If the Commission determines that a rate increase for the customers who are now served by Stoddard County should be approved, should the Commission make the increased revenues subject to refund?

It is Public Counsel's position that any rate increase approved by the Commission in this case must be an interim rate increase which is subject to refund.

¹ *In the matter of Terre Du Lac Utilities Corporation*, 25 Mo. P.S.C (N.S.) 327 (1982)

G. Is the utility providing safe and adequate service to its customers?

This issue was added by the Commission in its August 1, 2008 Order Adopting List of Issues, Order of Opening Statements, List and Order of Witnesses and Order of Cross-Examination, and Notice Advising Parties of Witnesses Regarding How to Participate in the Evidentiary Hearing by Phone. Public Counsel states that it has made a good faith effort to provide a position statement on this issue, but the Commission added it a mere twelve days before the scheduled start of the evidentiary hearing and Public Counsel is concerned that due to the time frame, it is not able to take a definite position.

At this time, it is Public Counsel's position that there is sufficient evidence to support an argument that Stoddard County is not providing safe and adequate sewer service to its customers. Public Counsel makes no statement regarding its position on this issue in the future.

H. If the utility is not providing safe and adequate service to its customers, should the Commission issue an order for General Counsel to go to Circuit Court to seek penalties?

This issue was also added by the Commission in its August 1, 2008 Order. Public Counsel is concerned that this time frame limits its ability to take a definite position on this issue.

At this time, Public Counsel is not requesting that the Commission issue an order for General Counsel to go to Circuit Court to seek penalties. Public Counsel makes no statement regarding its position on this issue in the future.

WHEREFORE, Public Counsel respectfully submits its Position Statement on the issues in this case.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Christina L. Baker

By: _____

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CERTIFICATE OF SERVICE

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