

In the Matter of the Rescission of Waiver)
of Commission Rule and Statute by) File No. IE-2014-0332
Oregon Farmers Mutual Telephone Company)

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2. For the reasons stated herein, Townes Missouri disputes that the Commission has primary jurisdiction to award the relief sought by Oregon Farmers. Further, Townes Missouri requests that the Commission recite in any order or notice issued in response to Oregon Farmers' Notice that, contrary to the assertion of Oregon Farmers, the Commission is not making a determination that it has or intends to assert jurisdiction to review and authorize any assignment, sale, or transfer of the Oregon Farmers' assets under the circumstances of this case.

3. Townes Missouri is fully owned by Townes Tele-Communications, Inc., which also owns and operates Missouri incumbent local exchange carriers Choctaw Telephone Company and MoKan Dial Inc. As such, they are experienced local exchange carrier operators and are able to immediately operate the services currently provided by Northwest Missouri Holdings, Inc.; Oregon Farmers Mutual Telephone Company; Oregon Farmers Mutual Long Distance, Inc.; and South Holt Cablevision, Inc. (collectively "Oregon Farmers and its affiliates"). At present, Townes Missouri is involved in litigation against Oregon Farmers and its affiliates in the Circuit Court of Holt County, Missouri to secure the assets of Oregon Farmers and its affiliates, pursuant to the terms of a Loan Agreement.

BACKGROUND OF DISPUTE

4. On March 21, 2014, Townes Missouri, Inc. filed judicial foreclosure proceedings in Holt County Missouri, being Circuit Court Case No. 14-HO-CC 0001, against Oregon Farmers and its affiliates. On April 8, 2014 Townes filed an Amended Petition seeking ejectment and trespass in addition to foreclosure. As a result, the Circuit Court of Holt County has jurisdiction of the dispute between Townes Missouri and Oregon Farmers and its affiliates.

5. On April 28, 2014, Townes Missouri filed a letter with the Secretary and Chief Regulatory Law Judge Morris L. Woodruff informing the Commission of the existence of

certain litigation between Townes Missouri and Oregon Farmers and its affiliates that is currently pending before the Circuit Court of Holt County, Missouri. This April 28, 2014 letter has been placed in this file as part of a Notice of Communication filed on May 5, 2014.

6. As explained in the April 28, 2014 letter, in 2004 the parent of Oregon Farmers, Northwest Missouri Holdings, Inc., entered into a Loan Agreement with the Rural Telephone Finance Cooperative (RTFC). Oregon Farmers Mutual Telephone Company and South Holt Cablevision, Inc. entered into Guaranty Agreements to guaranty the payments due under the Loan Agreement. After failure of Northwest Missouri Holdings, Inc. to make loan payments, in 2011 RTFC issued a Notice of Default. After six forbearance agreements, on October 8, 2013 RTFC assigned the Loan Agreement and accompanying rights to Townes Tele-Communications Inc. Townes Tele-Communications, Inc. issued an additional Notice of Default on October 10, 2013 and subsequently assigned the Loan Agreement and accompanying rights to an entity incorporated to operate the Missouri property, Townes Missouri.

7. Despite demand for payment and notice of default, Oregon Farmers and its affiliates have failed to make any payments under the Loan Agreement for at least one year. At the same time, Oregon Farmers and its affiliates have made substantial payments of management fees to its affiliates which has been done in violation of the Loan Agreement and despite demands that the management fees be ceased.

8. In addition to demand for payment and demand that the management fees be ceased, Townes Missouri, Inc. also demanded possession of the property on April 8, 2014 pursuant to the Loan Agreement. Oregon Farmers and its affiliates have refused to comply with the Loan Agreement, have refused to turn over possession to Townes Missouri, Inc., and have continued to pay their affiliates substantial management fees.

9. The Holt County foreclosure and ejectment proceedings are necessary for Townes Missouri, Inc. to complete the acquisition and to halt Oregon Farmers and its affiliates' bleeding the telephone companies of assets through the payment of management fees in violation of the Loan Agreement.

**THE COMMISSION HAS PREVIOUSLY FOUND THAT IT LACKED
JURISDICTION UNDER ANALOGOUS CIRCUMSTANCES**

10. In two recent orders, the Commission has dismissed applications by a judgment creditor and a political subdivision which were seeking to dispose of the assets of a regulated public utility under Section 393.190 RSMo.² *See Order Dismissing Application And Initiating Investigation, Re Application of Old National Bank for Authority to Seize the Assets of Tri-States Utility, Inc.*, File No. WM-2012-0314 (issued October 18, 2012)³; *Order Dismissing Case For Lack Of Jurisdiction, Re Application of Jefferson County, Missouri for Authority to Sell the Utility Assets of Meramec Sewer Company*, File No. SM-2012-0423 (issued June 20, 2012)(attached). In both cases, the Commission found that the applications should be dismissed since Section 393.190 prohibits a utility from selling its assets without Commission approval. However, the Commission found that this statute was inapplicable when a third party sought to seize the assets and sell them in satisfaction of a judgment or lien. Similarly, neither Townes Missouri nor Townes Tele-communications, Inc. is a “telecommunications company” within the meaning of Section 392.300(1).

11. Contrary to the allegations of Oregon Farmers in its Notice, for the same reasons

² Section 393.190(1) states in part: No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do.

³ At the request of the parties, the effective date of the referenced Order was extended, and this Order was ultimately withdrawn on January 29, 2013.

stated in the Commission's orders in the *Old National Bank* and *Jefferson County* cases, the Commission does not have jurisdiction under the companion statute, Section 392.300 RSMo., to review and authorize any assignment, sale, or transfer of Oregon Farmers and its affiliates' Missouri assets pursuant to a foreclosure action. Townes Missouri respectfully suggests that the appropriate jurisdiction to review this matter is already lodged in the Circuit Court of Holt County.

12. In the event that the Commission finds that it should have a monitoring role in the transition of the assets from Oregon Farmers and its affiliates to Townes Missouri to ensure a seamless transfer of control, Townes Missouri stands ready to discuss its transition plans with the Commission, Commission Staff, and Public Counsel, when appropriate.

WHEREFORE, Townes Missouri respectfully files its response to the Oregon Farmers' Notice filed on May 2, 2014, and requests that the Commission recite in any order or notice issued in response to Oregon Farmers' Notice that the Commission is not making a determination that it has or intends to assert jurisdiction to review and authorize any assignment, sale, or transfer of the Oregon Farmers' assets under the circumstances of this case.

Respectfully submitted,

/s/ James M. Fischer

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ATTORNEYS FOR TOWNES MISSOURI, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been hand-delivered, emailed or mailed, postage prepaid, by U.S. Mail, First Class, this 7th day of May, 2014, to counsel for all parties of record.

/s/ James M. Fischer

James M. Fischer

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in Jefferson City
on the 18th day of October, 2012.

In the Matter of the Application of)	
Old National Bank for Authority to)	File No. WM-2012-0314
Seize the Assets of Tri-States Utility, Inc.)	

**ORDER DISMISSING APPLICATION
AND INITIATING INVESTIGATION**

Issue Date: October 18, 2012

Effective Date: November 17, 2012

The Missouri Public Service Commission is dismissing the application because the facts alleged do not support the relief sought under the authority cited. The Commission may dismiss any action for good cause,¹ which means reasonableness and good faith.² Dismissal for failure to cite law or fact in support of requested relief is within that standard.

Old National Bank ("Old National") filed the application.³ Tri-States Utility, Inc. ("Tri-States") filed a response.⁴ The Commission's staff ("Staff") filed a recommendation on the application.⁵ Tri-States and Old National each filed a reply to the recommendation.⁶ No law requires a hearing, and no party has requested one, so the

¹ 4 CSR 240-2.116(4).

² *American Family Ins. Co. v. Hilden*, 936 S.W.2d 207, 210 (Mo. App., W.D. 1996).

³ March 21, 2012.

⁴ July 6, 2012.

⁵ September 7, 2012.

⁶ September 27, 2012.

Commission will decide the application as a noncontested case⁷ without separately stating its findings of fact.

Old National seeks the Commission's authorization for the sheriff of any county in which Tri-States' assets are located ("sheriffs") to seize those assets and sell them in satisfaction of a judgment. In support, Old National cites Section 393.190⁸ ("the statute"). The statute bars a public utility from disposing of system assets without Commission authorization, provides a procedure to gain such authorization, and requires the application to include certain information:

No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do.

* * *

Any person seeking any order under this subsection authorizing the sale, assignment, lease, transfer, merger, consolidation or other disposition, direct or indirect, of any gas corporation, electrical corporation, water corporation, or sewer corporation, shall, at the time of application for any such order, file with the commission a statement, in such form, manner and detail as the commission shall require, as to what, if any, impact such sale, assignment, lease, transfer, merger, consolidation, or other disposition will have on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the corporations involved in such disposition are located.

⁷ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

⁸ RSMo 2000.

The statute describes only a gas, electric, water, or sewer corporation “secur[ing] from the commission an order authorizing it” to dispose of assets. That plain language provides for an application from the public utility only because it forbids and permits action by a public utility only. Also, the application must include tax information, which means that the nature of the transaction must already be known. That does not describe the fact situation that Old National alleges.

Old National alleges that Tri-States is a water company, but Tri-States is not making the application. Old National is making the application but alleges that it is not a gas, electric, water, or sewer corporation seeking to dispose of its assets. Instead, Old National is a banking association seeking authority for the sheriffs to dispose of Tri-States’ assets. Those allegations do not support any relief under the statute so the Commission will dismiss the application.

However, the dismissal of the application does not end the Commission’s duty to the public. The parties suggest that, even after dismissing the application, the Commission should facilitate discussion among the parties. The Commission agrees. The existence of an outstanding judgment may constitute a threat to the continued financial health of Tri-States Utility, Inc. which is a matter within the Commission’s jurisdiction. Therefore, the Commission will direct Staff to investigate that matter and discuss it with the parties to this action, and file a report with the Commission setting forth Staff’s recommended course of action.

THE COMMISSION ORDERS THAT:

1. The application is dismissed.
2. This order shall become effective on November 17, 2012.

3. This file shall remain open, for the filing of the report described in the body of this order, which is due no later than November 15, 2012.

BY THE COMMISSION

(S E A L)

Steven C. Reed
Secretary

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

Jordan, Senior Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 20th day
of June, 2012.

In the Matter the Application of Jefferson County,)
Missouri for Authority to Sell the Utility Assets of)
Meramec Sewer Company)

File No. SM-2012-0423

**ORDER DISMISSING CASE
FOR LACK OF JURISDICTION**

Issue Date: June 20, 2012

Effective Date: July 19, 2012

On June 14, 2012, Jefferson County, Missouri filed an application to sell the assets of Meramec Sewer Company. Jefferson County informs the Commission that the Meramec Sewer owes \$72,000 in back taxes and seeks to collect such taxes through a sale of the company's assets.

In support of its application, Jefferson County cites to §140.150, which provides that a county may sell real estate for the purpose of discharging a lien resulting from delinquent and unpaid taxes. That section goes on to state that no such sale may occur without judicial proceedings. As an administrative body, the Commission has only that jurisdiction which is expressly conferred by statute.¹ The statute cited by the County does not confer such power to the Commission.

Concerning the sale of utility assets, §393.190 prohibits *a utility* from selling its assets without Commission approval. Through this application, Jefferson County, not the utility, is seeking to sell the utility's assets. Section 393.190 is therefore inapplicable.

¹ *State ex rel. Kansas City Transit, Inc. v. Public Service Comm'n*, 406 S.W.2d 5, 8 (Mo. 1966).

Because Jefferson County has cited no law supporting the Commission's power to grant this application, the Commission will dismiss the application for lack of jurisdiction.

THE COMMISSION ORDERS THAT:

1. The Application for Sale of Utility Assets, filed by Jefferson County, Missouri, is dismissed for lack of jurisdiction.
2. This order shall become effective on July 19, 2012.
3. This case shall be closed on July 20, 2012.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

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

Jones, Senior Regulatory Law Judge