

**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 April, 2013.

In the Matter of the Joint Application of Moore Bend )  
Water Company, Inc. and Moore Bend Water Utility, )  
LLC for Authority of Moore Bend Water Company, )  
Inc. to Sell Certain Assets to Moore Bend Water )  
Utility, LLC )

**File No. WM-2012-0335**

**ORDER AUTHORIZING TRANSFER OF ASSETS**

Issue Date: April 24, 2013

Effective Date: May 4, 2013

**The Application**

On February 11, 2012, Moore Bend Water Company, Inc. and Ozark International, Inc. entered into an Asset Purchase Agreement through which Ozark would purchase substantially all of the assets of Moore Bend Water Company that are used to provide water service to the public. On March 30, 2012, Ozark assigned its interest in the Agreement to Moore Bend Water Utility. On April 11, 2012, Moore Bend Water Company, Inc. (Transferor) and Moore Bend Water Utility (Transferee) filed this application seeking authority to transfer assets.

Transferor is an administratively dissolved corporation providing water service to approximately 90 customers near Kissee Mills, Missouri. As a water corporation, it is subject to the Commission's jurisdiction. Transferee is a limited liability company owned by Ozark International, Inc.; a Missouri corporation. The Applicants have agreed on a purchase price of \$20,000.

In support of the application, Applicants state that the proposed transaction is not detrimental to the public interest but will rather support the public interest for the following reasons:

(a) After the transfer is complete, Transferee will be subject to the Commission's jurisdiction.

(b) The manager of Transferee, Hollis H. "Bert" Brower, Jr., has considerable experience in providing water service to residents in Southwest Missouri.

(c) Transferee will be fully qualified to own and operate the system and to provide safe reliable and affordable water service.

(d) Until modified by law, customers will continue to pay the same rates.

### **Staff Recommendation**

On July 9, 2012, the Staff of the Commission filed its Memorandum, recommending that the Commission approve the transfer. Staff states, and the parties agree,<sup>1</sup> that Transferee has adequate technical, managerial, and financial capacity to operate the water system. Upon further investigation, Staff determined that Transferor's Rate Base is \$10,726. And, for this reason, Staff recommends that the rate base valuation for future rate cases should not include the full purchase price of \$20,000. Staff specifically recommends that the Commission:

1. Approve the sale and transfer of assets.
2. Require Transferor to transfer all books and records, including, but not limited to, purchase orders, invoices, contracts and agreements relating to its operations, drawings and blueprints of the water system, plant records, operations records, and

---

<sup>1</sup> See Joint Stipulation of Non-Disputed Facts.

expense records and all customer billing records to Transferee upon closing of the asset transfer;

3. Require Transferee to adopt the individual plant-in-service and depreciation reserve utilized by the Audit Staff valued as of March 31, 2012, for purposes of determining the appropriate rate base in this proceeding as a starting point for plant-in-service, and depreciation reserve for Transferee, to be recorded in the books and records of Transferee, and require Transferee to maintain and retain proper plant-in-service, depreciation reserve, cost of removal, and salvage records on a going-forward basis;

4. Order no recovery of acquisition adjustment or acquisition premium in this case;

5. Require Transferee to file adoption notice tariff sheets, and revised index sheets, as a 30-day tariff filing, within 5 days after closing the asset transfer, and authorize Transferee, upon closing, to provide water service under the existing tariffs of Transferor on an interim basis until the effective date of such adoption notice tariff sheets;

6. On the effective date of the tariff sheets, cancel the Certificate granted to the Transferor for the provision of water service, and grant a Certificate to the Transferee for the provision of water service for the described service areas;

7. Require the Transferee to use the schedule of depreciation rates set out in the Staff's Attachment A to its Memorandum that were prescribed by the Commission and used by the Transferor, from the date of the transfer forward, until changed by any future order of the Commission;

8. Require Transferee to maintain utility plant records and all customer account records as acquired from Transferor, and to keep all books and records, including plant

property records, in accordance with the Uniform System of Accounts as described in this memorandum; and

9. Make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters, including future expenditures by the Transferee, in any later proceeding.

### **The Office of the Public Counsel's Response**

On July 19, the Office of the Public Counsel filed its response to Staff's recommendation. Public Counsel informs the Commission that the property on which the water supply wells are located is not owned by either applicant. Public Counsel further states that there is no documentation showing that Transferee will have legal access to the supply wells. Public Counsel therefore asserts that absent legal certainty that Transferee will have access to the supply wells, the transfer is detrimental to the public interest. Public Counsel also requests a hearing to address this concern.

Public Counsel also takes issue with Staff's proposed condition #4, above, concerning acquisition adjustments or acquisition premiums. Staff recommends that the Commission "[o]rders no recovery of acquisition adjustment or acquisition premium in this case." Public Counsel posits that the Commission should instead restrict this language to any acquisition premium; omitting acquisition adjustment.

### **Discussion**

Section 4 CSR 240-2.117 allows the Commission to make determinations on the pleadings when it is not otherwise contrary to law or the public interest. Because there is no genuine issue as to material fact, the Commission has the discretion to hold a hearing

but a hearing is not required.<sup>2</sup> The parties have filed legal briefs exhausting the issue of Transferee's legal access to the supply wells. A hearing on this issue is therefore unnecessary. The parties have also filed a Joint Stipulation of Non-Disputed Facts. The Commission herein adopts the agreed-upon facts and incorporates those facts by reference.

Additionally, through their pleadings,<sup>3</sup> Public Counsel and Staff set out their disagreement on how acquisition adjustments and acquisition premiums should be treated in rate cases. Staff recommends that the Commission include in this order a statement that there will be no recovery of an acquisition premium or acquisition adjustment. Public Counsel posits that this statement should only address any "acquisition premium" not "acquisition adjustment." Although the parties have stated no more than conclusory statements on this issue, it is clear that there is an acquisition premium.<sup>4</sup> The Commission will therefore restrict its language as suggested by Public Counsel.

The Commission appreciates Public Counsel's concern regarding property rights and agrees that Transferee's securing of legal access to the supply wells is in the public interest. However, Transferor has been an administratively dissolved corporation since 2010.<sup>5</sup> Further, as shown on the Missouri Secretary of State's website, Transferor has, since 1996, been progressively irresponsible in its administrative duties.<sup>6</sup> Although

---

<sup>2</sup> *State ex rel Laclede Gas Company v. Public Service Com'n of State* \_S.W.3d\_ 2012 WL 6129787, Mo. App. W.D. 2012.

<sup>3</sup> See Paragraph 9 of The Office of the Public Counsel's Response to Staff Recommendation and Paragraph 9 of Staff's Response thereto. Item numbers 8 and 9 in the docket.

<sup>4</sup> Paragraph 9, Joint Stipulation of Non-Disputed Facts.

<sup>5</sup> Joint Application and The Missouri Secretary of State's website.

<sup>6</sup> See History of Annual Report filings on the Missouri Secretary of State's website.

Transferor is current with filing its Annual Reports with the Commission,<sup>7</sup> it appears as though the owner has lost interest in operating the water company. The Commission must therefore act to approve this application to avoid foreseeable circumstances that may be adverse to the public interest.

The Applicants have complied with the Commission's filing requirements. The parties agree that Transferee has the managerial, technical and financial ability to operate the water system.<sup>8</sup> Given that Transferor is an administratively dissolved corporation and is progressively lacking in its administrative duties, the Commission finds that it would be detrimental to the public interest to allow Transferor to continue providing service to the public. Conversely, it is in the public interest to immediately authorize the transfer of assets to Transferee, who is better able and apparently willing to provide such service.

However, in approving the transfer, the Commission will direct that Transferee act to secure legal rights to the property on which the supply wells are located and to file documents supporting its efforts and the securing of those rights in this case file.

Finally, Staff recommends that a Certificate of Convenience and Necessity be granted to Transferee upon the effective date of its tariff and that the Certificate held by Transferor be cancelled. However, the closing date of the transfer will precede the effective date of the tariff. During that interim period, Transferee will be operating without a Certificate from this Commission. The Commission will therefore condition the effectiveness of this transfer on Transferor having secured, through an application, a Certificate of Convenience and Necessity to operate a water company.

---

<sup>7</sup> Paragraph 4, Joint Stipulation of Non-Disputed Facts.

<sup>8</sup> Paragraph 7, Joint Stipulation of Non-Disputed Facts.

**THE COMMISSION ORDERS THAT:**

1. The transfer of assets from Moore Bend Water Company, Inc. to Moore Bend Water Utility, LLC is approved.
2. There will be no recovery of the acquisition premium.
3. Upon closing the asset transfer, Moore Bend Water Company, Inc. shall transfer to Moore Bend Water Utility, LLC, all books and records, including, but not limited to, purchase orders, invoices, contracts and agreements relating to its operation, drawings and blue prints of the water system, plant records, operations records, and expense records and all customers billing records.
4. Moore Bend Water Utility, LLC shall adopt the individual plant-in-service, and depreciation reserve utilized by the Audit Staff valued as of March 31, 2012, for purposes of determining the appropriate rate base in this proceeding as a starting point for plant-in-service, and depreciation reserve for Moore Bend Water Utility, LLC, to be recorded in its books and records, who shall maintain and retain proper plant-in-service depreciation reserve, cost of removal, and salvage records on a going-forward basis.
5. Moore Bend Water Utility, LLC shall file adoption notice tariff sheets, and revised index sheets, as a 30-day tariff filing, within 5 days after closing the asset transfer.
6. Moore Bend Water Utility, LLC shall use the schedule of depreciation rates set out in Attachment A to Staff's Memorandum.
7. Moore Bend Water Utility, LLC shall maintain utility plant records and all customer account records as acquired from Moore Bend Water Company and shall keep all books and records, including plant property records, in accordance with the Uniform System of Accounts as described in Staff's Memorandum.

8. In order to ensure access to its supply wells, Moore Bend Water Utility, LLC shall, within the next six months, secure legal rights to the property on which the supply wells are located.

9. Moore Bend Water Utility, LLC shall file documentation supporting its efforts to secure legal rights to its supply wells and documentation showing that it has successfully complied with the Commission's directive in ordered paragraph #8, above.

10. The authority to transfer assets granted in this order shall become effective concurrently with the effective date of an order from this Commission granting to Moore Bend Water Utility, LLC a Certificate of Convenience and Necessity.

11. This order shall become effective on May 4, 2013.

12. This case will remain open to facilitate Moore Bend Water Utility, LLC's filing of documentation concerning its legal right to access its supply wells.

**BY THE COMMISSION**



Joshua Harden  
Secretary

R. Kenney, Chm., Jarrett, Stoll,  
and W. Kenney, CC., concur.

Jones, Senior Regulatory Law Judge