

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 7th day of
August, 2007.

In the Matter of the Transfer of Assets of)	
Hillcrest Utilities Company from Blomeyer)	<u>Case No. WM-2007-0261</u>
Investments, Inc. to Brandco Investments, LLC)	Tariff No. YW-2008-0072

**ORDER APPROVING PROPOSED TRANSFER OF WATER UTILITY
ASSETS**

Issue Date: August 7, 2007

Effective Date: August 31, 2007

On January 5, 2007,¹ Blomeyer Investments, Inc. (“Blomeyer”; f/k/a M & W Development Co.) filed an application with the Missouri Public Service Commission requesting authority to transfer ownership of all the water utility assets of Hillcrest Utilities Company (“Hillcrest”) from Blomeyer to Brandco Investments, LLC (“Brandco”). On January 22, the Commission issued a Notice of Deficiency regarding that filing, to which Blomeyer responded on February 21 by supplying certain verified information as directed. On March 1, the Commission joined Hillcrest and Brandco as parties, issued notice, and established March 21 as the deadline for submission of requests to intervene. There were no requests for a hearing or to intervene, nor have any been filed since then.²

On March 23, the Commission directed its Staff to file a recommendation on Blomeyer’s application. On June 6, Brandco filed an affidavit indicating, among other

¹ All dates specified in this order refer to the calendar year 2007.

² Since no one has requested a hearing and the requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence, the Commission may grant Blomeyer’s request based on its application and Staff’s recommendation after affording notice and an opportunity to be heard to all proper parties. See *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. W.D. 1989).

things, that if the Commission approved the proposed transfer of ownership, Brandco would own, operate, and maintain all the water utility assets of Hillcrest, which were previously owned, operated, and maintained by Blomeyer. The affidavit also indicated that Brandco was requesting its own certificate of convenience and necessity to replace the one Hillcrest currently holds, and that, at a later date, Brandco intended to file a notice adopting Hillcrest's current tariff for water service. After requesting and receiving several extensions of time, Staff filed its Recommendation Regarding Proposed Transfer of Utility Assets on June 11, which was favorable and to which no party filed any objection. Finally, on June 22, the Commission issued an order directing Brandco to file a notice adopting Hillcrest's current tariff for water service with at least a 30-day effective date and directing Staff to file a recommendation regarding approval of the tariff. After initially submitting a deficient adoption notice on July 10, Brandco subsequently filed a revised adoption notice and tariff (Tariff No. YW-2008-0072, which bears an effective date of August 31) in the form recommended by Staff on July 20.

According to the application, the verified additions thereto, and the verified Official Case File Memorandum prepared by Staff, including the documentation accompanying them and the Commission's own records, Hillcrest has been in business as a certificated water utility since April 1974, when, in Case No. 17938, it was granted a certificate of convenience and necessity to construct, operate, and maintain a water supply and distribution system. Hillcrest currently provides water to over 200 homes in its service area, a subdivision in Cape Girardeau County known as Hillcrest Manor.

Blomeyer, a Missouri corporation formed in June 1973, is the sole shareholder of all the stock of Hillcrest, a Missouri corporation also formed in June 1973. Brandco, which was organized as a Missouri limited liability company in August 2006, intends to serve as a

“hands on” owner/operator of Hillcrest’s water utility assets. To effectuate that intent, Brandco will rely on the expertise of Bob’s Economy (a wholly-owned subsidiary of Brandco which is in the business of providing service, repair, and maintenance for water and sewer facilities and has been performing such work for Hillcrest over the past several years in an exemplary fashion) and SRW Accounting (which developed the accounting software for Hillcrest and has been serving Hillcrest’s billing and collection department for the past 15 years). Moreover, according to the written asset purchase agreement, which was executed by Blomeyer and Brandco in September 2006, Blomeyer is obligated to provide “reasonable assistance” to Brandco in operating Hillcrest for a period of up to 90 days after the closing date.³

Staff’s review of the Commission’s inspection records and available information from the Missouri Department of Natural Resources demonstrated that Hillcrest is not experiencing any capacity or water quality compliance issues and is current on its assessments and annual report filings. Staff also reviewed the asset purchase agreement between Blomeyer and Brandco, as well as Hillcrest’s books and records regarding its net plant-in-service (rate base) balances, to determine whether the proposed transfer involved an acquisition premium. In this regard, Staff found that the purchase price to be paid by Brandco is less than the net book value of the utility assets it will receive. However, as Staff also discovered that certain water system account balances included in Hillcrest’s recent annual reports were incorrect, Staff recommended that the Commission require Brandco to use, from the date of the transfer forward, the revised account balances

³ The contract states that the transfer is “subject to the Regulatory Approval of Sale by the Missouri Public Service Commission,” and that if such approval is not obtained, Brandco is entitled to a refund of its \$5,000 deposit.

compiled by Staff.⁴ Finally, after reviewing Hillcrest's existing depreciation rates to ascertain if they continue to be appropriate, Staff filed a new water system depreciation schedule⁵ and recommended that the Commission require Brandco to use it from the date of the transfer forward.

Based on all these considerations, Staff concluded that granting Blomeyer's application for approval of the proposed transfer of ownership of all Hillcrest's water utility assets to Brandco (which meets the requirements of the relevant Commission Rules⁶ and Section 393.190, RSMo 2000) would "not [be] detrimental to the public interest."⁷ Therefore, Staff recommends that the Commission authorize the proposed transfer of Hillcrest's water utility assets to Brandco, subject to the conditions mentioned above. Staff also recommends that the Commission grant Brandco a certificate of convenience and necessity⁸ and approve the water service tariff it filed on July 31 (Tariff No. YW-2008-0072), which has an effective date of August 31.

After considering Blomeyer's application, the verified additions thereto, Staff's recommendations, and the verified accompanying Official Case File Memorandum prepared by Staff, including the documents accompanying them, which are hereby admitted into evidence, the Commission will approve the application to transfer Hillcrest's water utility assets to Brandco, grant Brandco's request for a certificate of convenience and necessity, and approve Brandco's water service tariff with an effective date of August 31.

⁴ See Attachment 1 to Staff's recommendation.

⁵ See Attachment 3 to Staff's recommendation.

⁶ See, e.g., 4 CSR 240-2.060 and 4 CSR 240-3.605.

⁷ *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980).

⁸ Section 393.170.3, RSMo 2000, authorizes the Commission to grant a certificate to operate a water utility if it determines that such a certificate is "necessary or convenient for the public service." In the case of *In re Tartan Energy Company*, 3 Mo. P.S.C. 3d 173, 177 (1994), the Commission recognized five criteria that should be considered when making that determination: (1) There must be a need for the service; (2) The applicant must be qualified to provide the 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.

The Commission will also direct Brandco to utilize the account balances and depreciation rate schedule as shown in Attachments 1 and 3 to Staff's recommendation until further order of the Commission.

The Commission reminds Brandco that failure to comply with its regulatory obligations may result in the assessment of penalties against it. These obligations include, but are not limited to, the following:

A) The obligation to file an annual report, as established by Section 393.140(6), RSMo 2000. Failure to comply with this obligation will make the utility liable to a penalty of \$100 and an additional \$100 per day that the violation continues. Commission Rule 4 CSR 240-3.640 requires water utilities to file their annual report on or before April 15 of each year.

B) The obligation to pay an annual assessment fee established by the Commission, as required by Section 386.370, RSMo 2000. Because assessments are facilitated by order of the Commission, failure to comply with the order will subject the company to penalties ranging from \$100 to \$2,000 for each day of noncompliance pursuant to Section 386.570, RSMo 2000.

C) The obligation to provide safe and adequate service at just and reasonable rates, pursuant to Section 393.130, RSMo 2000.

D) The obligation to comply with all relevant state and federal laws and regulations, including, but not limited to, the rules of this Commission, the Department of Natural Resources, and the Environmental Protection Agency.

E) The obligation to comply with orders issued by the Commission. If Brandco fails to comply it is subject to penalties for noncompliance ranging from \$100 to \$2,000 per day of noncompliance, pursuant to Section 386.570, RSMo 2000.

F) The obligation to keep the Commission informed of its current address and telephone number.

The certificate granted herein is conditioned upon Brandco's compliance with all of these obligations. Moreover, if the Commission finds, upon conducting a hearing, that Brandco has failed to provide safe and adequate service, or has defaulted on any indebtedness, the Commission will petition the circuit court for an order attaching the assets, and placing the company under the control of a receiver, as permitted by Section 393.145, RSMo Cum. Supp. 2005. As a further condition of granting the certificate, Brandco hereby consents to the appointment of a temporary receiver until such time as the circuit court grants or denies the petition for receivership.

Brandco is also placed on notice that under Section 386.310.1, RSMo 2000, the Commission can, without first holding a hearing, issue an order in any case "in which the commission determines that the failure to do so would result in the likelihood of imminent threat of serious harm to life or property." Furthermore, Brandco is reminded that, as a corporate entity, its officers may not represent the company before the Commission. Instead, Brandco must be represented by an attorney licensed to practice law in Missouri.

IT IS ORDERED THAT:

1. Blomeyer Investments, Inc. is hereby authorized to sell the water utility assets of Hillcrest Utilities Company to Brandco Investments, LLC, pursuant to the terms and conditions contained in the Asset Purchase Agreement dated September 19, 2006, and submitted to the Commission on January 5, 2007.

2. Before ownership of the water utility assets of Hillcrest Utilities Company is transferred from Blomeyer Investments, Inc. to Brandco Investments, LLC, Hillcrest shall issue appropriate written notice to all customers in its service area informing them of the

impending change in ownership and operation. Hillcrest shall also provide a copy of this notice to the Commission.

3. Brandco Investments, LLC is granted a certificate of convenience and necessity to provide water service to the Hillcrest Manor subdivision in Cape Girardeau County, Missouri.

4. Brandco Investments, LLC's water service tariff, Tariff No. YW-2008-0072, is approved to become effective on August 31, 2007. The tariff approved is:

Mo. PSC No. 2

Original Adoption Notice
Original Sheet Nos. 1-10
First Revised Sheet No. 11, Replacing Original Sheet No. 11
Original Sheet Nos. 12-16
First Revised Sheet Nos. 17-18, Replacing Original Sheet Nos. 17-18
Original Sheet Nos. 19-34

5. Brandco Investments, LLC shall not serve the Hillcrest Manor subdivision in Cape Girardeau County, Missouri until its water service tariff becomes effective, Brandco has obtained the required Department of Natural Resources operating permits for that system, and Hillcrest Utilities Company's former customers have received appropriate written notice of the change in ownership and operation.

6. Once the sale of Hillcrest Utility Company's water utility assets to Brandco Investments, LLC is complete, Brandco's water service tariff becomes effective, Brandco has obtained the required Department of Natural Resources operating permits, and Hillcrest Utilities Company's former customers have received appropriate written notice of the change in ownership and operation, Blomeyer Investments, Inc. shall, as quickly as is practicable, file a notice in this case informing the Commission of the completion of the transaction. At that time, Hillcrest Utility Company is authorized to cease providing water to customers in its service area, and the Commission will entertain a motion by any party for

the Commission's issuance of an order canceling the certificate of convenience and necessity currently held by Hillcrest Utility Company and canceling the associated water service tariff currently on file, which is Tariff No. JW-2002-0020.

7. Until further order of the Commission, Brandco Investments, LLC shall utilize the account balances and depreciation rate schedule as shown in Attachments 1 and 3 to Staff's Recommendation Regarding Proposed Transfer of Utility Assets, which was filed on June 11, 2007.

8. This order shall become effective on August 31, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton,
and Appling, CC., concur.

Lane, Regulatory Law Judge