

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

In the Matter of the Application of the)	
Receiver for Ridge Creek Water Company,)	
LLC and Ridge Creek Development)	<u>Case No. WM-2019-0079</u>
Company, LLC to Sell Its Water System)	
Located in Pulsaki County to the City)	
Of St. Robert, Missouri)	

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through undersigned counsel, and for its *Staff Recommendation* in this matter hereby states:

1. On September 24, 2018, the Receiver for Ridge Creek Water Company, LLC ("RCWC") and Ridge Creek Development Company, LLC ("RCDC") filed an Application for approval of a transfer of assets from RCWC and RCDC to the City of St. Robert, Missouri ("City"), and the cancellation of the Certificate of Convenience and Necessity ("CCN") authorizing RCWC to provide water service to the public.

2. On September 28, 2018, the Commission issued its *Order Directing Notice* in which it set an intervention deadline of October 10, 2018, and ordered Staff to file its *Recommendation* by November 5, 2018.

3. No parties have filed to intervene in this matter.

4. Pursuant to Section 393.190 RSMo, no water or sewer corporation shall sell or transfer its assets without having first secured authorization from the Commission.

5. When deciding whether to approve a regulated entity's request to transfer assets pursuant to § 393.190 RSMo, the Commission must determine that the transfer

is “not detrimental to the public interest.”¹ As part of that consideration, a “detriment [to the public interest] is determined by performing a balancing test where attendant benefits are weighed against direct or indirect effects of the transaction that would diminish the provision of safe or of adequate service or that would tend to make rates less just or reasonable.”²

6. RCWC and RCDC have been in receivership since July 20, 2017, due to significant operational and managerial problems, including the previous owners effectively abandoning the utilities. On September 22, 2017 the Cole County Circuit Court issued an *Order Directing the Receiver to Pursue Sale or Liquidation of Utility*.

7. Pursuant to § 386.250 RSMo and *City of Columbia v. State Public Service Commission*,³ the jurisdiction of the Public Service Commission does not extend over the operations of municipalities. Because the City is a municipality, if the Commission approves the transfer of assets and after the sale is completed, the Commission would no longer regulate the operations of RCWC and RCDC.

8. As more fully detailed in the attached *Staff Memorandum*, based on its investigation, Staff recommends that the transfer of assets to the City is not detrimental to the public interest, and the sale should be approved, and the CCN and tariff for RCWC should be canceled after the sale is completed.

WHEREFORE, Staff respectfully submits this *Staff Recommendation* for the Commission’s information and consideration, and requests the Commission grant the

¹ *State ex rel. City of St. Louis v. Public Service Comm’n of Missouri*, 335 Mo. 448, 457-60, 73 S.W.2d 393, 399-400 (Mo. Banc 1934).

² *In the Matter of Union Electric Company, d/b/a AmerenUE*, 2005 WL 433375 (Mo. P.S.C. Feb. 10, 2005); and see *In the Matter of Great Plains Energy, Inc., Kansas City Power & Light Company and Aquila, Inc.*, 266 P.U.R.4th 1 (Mo. P.S.C. July 1, 2008).

³ 329 Mo. 38, 47, 43 S.W.2d 813, 817 (Mo. 1931)

Receiver for Ridge Creek Water Company, LLC and Ridge Creek Development Company, LLC the authority to sell and transfer water utility assets to the City of St. Robert, Missouri, and cancel the Certificate of Convenience and Necessity authorizing Ridge Creek Water Company, LLC to provide water service to the public.

Respectfully Submitted,

/s/ Travis J. Pringle

Travis J. Pringle
Missouri Bar No. 71128
Legal Counsel for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Mo 65102-0360
(573) 751-4140 (Telephone)
(573) 751-9285 (Facsimile)
(Email) travis.pringle@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand delivered, transmitted by facsimile or electronically mailed to all counsel of record this 1st day of November, 2018.

/s/ Travis J. Pringle

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
File No. WM-2019-0079
Ridge Creek Water Company, LLC/Ridge Creek Development Company, LLC

FROM: Curtis Gateley, Utility Policy Analyst II, Water and Sewer Department
Trevor Rucker, Utility Operations Technical Specialist II
Water and Sewer Department

/s/ Curtis Gateley 11/01/2018 /s/ Travis Pringle 11/01/2018
Customer Experience Department/Date Staff Counsel's Office / Date

SUBJECT: Staff's Recommendation to Approve Application for Authority to Sell Assets

DATE: November 1, 2018

Case Background

On September 24, 2018, the Receiver for Ridge Creek Water Company, LLC ("RCWC") and Ridge Creek Development Company, LLC ("RCDC") filed an *Application and Request for Waiver* ("Application") for approval of a transfer of assets from RCWC and RCDC to the City of St. Robert, Missouri ("City"), and the cancellation of the Certificate of Convenience and Necessity ("CCN") authorizing RCWC to provide water service to the public.

On September 28, 2018, the Commission issued its *Order Directing Notice* in which it set an intervention deadline of October 10, 2018. No parties filed to intervene in this matter. On October 11, 2018, the Commission issued its *Order Directing Filing* in which it set November 5, 2018 as the deadline for Staff to file its Recommendation.

Background

RCWC was created in response to a complaint¹ filed by Staff due to the water system being operated without a certificate. The Commission issued a CCN on September 12, 2015.² The Ridge Creek water system serves approximately 138 customers³ in two separate but nearby service areas, and includes 22 wells, with an average of 5-7 homes connected directly to each well. The wells themselves were of varying quality construction. There is no centralized distribution system. In many locations, the service pipelines between the wells and residences were too shallow, leading to pipes and meters freezing. The well houses were dilapidated, suffering from poor initial construction. There was no certified operator of the water system, and when issues such as pipe breaks occurred customers often went for extended periods of time without water. No bacteriological sampling was being conducted to

¹ See Case No. WC-2015-0011

² See Case No. WA-2015-0182

³ See Case No. WR-2017-0042

determine the safety of the water, but previous sampling had suggested that some wells may be contaminated.

Staff was made aware of numerous water quality violations and water service reliability issues at Ridge Creek in 2016 and early 2017, which are detailed in the petition for appointment of an interim receiver.⁴ During its investigation, Staff discovered that the owners had failed to transfer the assets and operation of the water system to the RCWC. The result was that RCDC was providing water service without a certificate. Staff also determined during their investigation that the owners had effectively abandoned the water system.

Terry M. Jarrett was named interim Receiver by order of the Commission⁵ on May 3, 2017, in response to Staff petition in case number WO-2017-0236. Permanent receivership was approved by the Cole County Circuit Court on July 20, 2017, and on September 22, 2017 an order was issued directing the Receiver to sell or liquidate the assets of the utility in a manner provided by law.⁶

The Receiver completed a rate case, WR-2017-0042, and hired a contract operator. Upon resumption of sampling, it was determined that some wells were contaminated with *E. coli*. Customers previously connected to contaminated wells were then connected to wells which tested clean. The City took over operation and maintenance of the system, under the supervision of the receiver, in October of 2017.

One phase of the Ridge Creek subdivision abuts portions of the City, which currently provides water service across a street from the development. Being a municipality, the City is not regulated by the Commission, but has demonstrated the ability to operate their water system as well as the Ridge Creek system. No complaints have been received by Staff from customers since the City assumed operation and maintenance. As detailed in the application, the City and the Receiver have completed negotiations and are requesting authorization from the Commission and cancellation of the certificate.

If the Commission approves the sale, nothing would initially change operationally with the system. The City plans to extend water service to the homes in the various subdivision phases and construct a distribution system. The existing poorly constructed wells will then be abandoned and properly closed.

4 See Case No. WO-2017-0236

5 See Case No. WO-2017-0236

6 Cole County Circuit Court Case No. 17AC-CC00322

Communications with Customers

Since the information meeting Staff held for the customers pursuant to the petition for a receiver, the City and the Receiver have held public meetings on October 11, 2017 and November 9, 2017. The City also held two public hearings on the annexation of the Ridge Creek subdivision on August 22, 2018 and September 11, 2018. As of October 1, 2018, the City stated that most of the 138 customers had already been voluntarily annexed into the City. Due to annexation and the City currently operating and maintaining the Ridge Creek water system on behalf of the Receiver, the customers are residents of the City of St. Robert and are able to address day-to-day service issues by contacting the City.

Tariff Impacts

Currently, the customers within the Ridge Creek subdivision are paying significantly higher rates than other City of St. Robert customers: \$33.02 monthly customer charge and \$5.30 per 1,000 gallons commodity charge. City of St. Robert customers are paying \$15.16 for the first 5,000 gallons and \$4.14 for each additional 1000 gallons. The rates will remain unchanged until the City connects the Ridge Creek customers to the City's water system. The Receiver states that the City intends to initiate engineering design after the purchase is finalized, and connection of customers within the Ridge Creek subdivision to the City's water system will be completed within three years.

Other Matters

RCWC is current on annual reports and assessments and has no other pending cases before the Commission.

STAFF'S RECOMMENDATIONS AND CONCLUSIONS

Staff's position, based on its review as described herein, is that the proposal for the transfer of assets from RCWC to the City is not detrimental to the public interest. Since, if approved, the Commission will be canceling RCWC's CCN and tariff, Staff recommends that RCWC notify the Commission after closing with the City on the assets, and if there is any substantial delay regarding closing, that RCWC submit status reports describing such delay. Staff therefore recommends approval with the conditions and actions as outlined herein.

STAFF'S RECOMMENDATIONS

Based upon the above, Staff recommends that the Commission:

1. Approve the transfer of assets from RCWC to the City, as requested;
2. Require RCWC to notify the Commission of closing on the assets within five (5) days after such closing;
3. If closing on the water system assets does not take place within thirty (30) days following the effective date of the Commission's order approving such, require RCWC to submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until either RCWC or the City determines that the transfer of the assets will not occur;
4. Authorize RCWC to cease providing water service immediately after closing with the City on the assets;
5. After receiving notice of closing, cancel the CCN authorizing RCWC to provide water service and cancel the current water tariff on file for RCWC; and,
6. If RCWC and/or the City determine that the transfer of RCWC's assets to the City will not occur, require RCWC to notify the Commission of such, along with an explanation regarding resolution of the Asset Purchase Agreement.

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

In the Matter of the Application of the)
Receiver for Ridge Creek Water Company,)
LLC, and Ridge Creek Development)
Company, LLC to sell Its Water System)
Located in Pulaski County to the City of)
St. Robert, Missouri)


Case No. WM-2019-0079

AFFIDAVIT OF CURT B. GATELEY

State of Missouri)
) ss
County of Cole)

COMES NOW Curt B. Gateley, and on his oath declares that he is of sound mind and lawful age; that he contributed to the attached *Staff Recommendation*; and that the same is true and correct according to his best knowledge and belief.

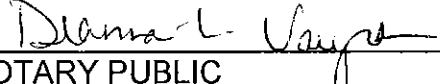
Further the Affiant sayeth not.



Curt B. Gateley

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 31st day of October, 2018.



NOTARY PUBLIC

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

In the Matter of the Application of the)
Receiver for Ridge Creek Water Company,)
LLC, and Ridge Creek Development)
Company, LLC to sell Its Water System)
Located in Pulaski County to the City of)
St. Robert, Missouri)


Case No. WM-2019-0079

AFFIDAVIT OF TREVOR RUCKER

State of Missouri)
) ss
County of Cole)

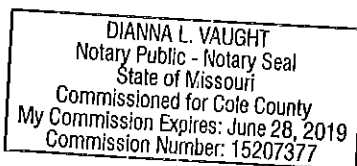
COMES NOW Trevor Rucker, and on his oath declares that he is of sound mind and lawful age; that he contributed to the attached *Staff Recommendation*; and that the same is true and correct according to his best knowledge and belief.

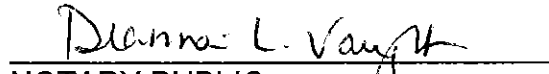
Further the Affiant sayeth not.


Trevor Rucker

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 31st day of October, 2018.




NOTARY PUBLIC