

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

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| In the Matter of the Joint Application of |) | <u>Case No. WM-2011-0143</u> |
| Taney County Utilities Corporation and |) | |
| Taney County Water, LLC for authority of |) | |
| Taney County Utilities Corporation to sell |) | |
| certain assets to Taney County Water, LLC |) | |

STAFF’S STATUS REPORT AND RESPONSE TO ORDER

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and for its *Status Report and Response to Order* states to the Missouri Public Service Commission (Commission) as follows:

1. On April 4, 2011, the Commission issued an *Order Directing Filing (Order)* ordering that Staff shall file a report on the status of the parties’ negotiations, and ordering that any proposed disposition of the application on the merits filed with the Commission shall address the timing issue described in the body of the *Order*.

2. Staff hereby reports that the parties have continued discussions and Staff anticipates that representatives of Taney County Water, LLC, (TCW) will file information in this case that will allow the parties to come to an amicable resolution in the near future.

3. Staff will provide a brief explanation of its position on the “timing issue” raised in the Commission’s *Order* even though there is not a proposed disposition at this time. Staff is able to provide a more detailed legal analysis with regard to the “timing issue” should the Commission request it to be filed with the proposed disposition of this matter.

4. Staff states that the facts involved in this matter are distinguishable from those in *State ex rel. Cass County v. Public Serv. Comm’n*, 259 S.W.3d 544, which the Commission cited

in its *Order*¹. That case involved a utility that built a power plant without obtaining zoning approval from the county or prior permission. *Id.* at 546. The county contested the utility's behavior. *Id.* Here, a regulated utility, Taney County Utilities, (TCU) transferred its water assets to a new entity, TCW, that is owned by an individual who already operates two other regulated water facilities, Midland Water Company, Inc. and Riverfork Water Company. Here, there is no opposition to the sale and purchase of the water assets, the Office of the Public Counsel only raised issues with the financial treatment of some of the property included in the transfer. As represented in this pleading, the parties are believed to have reached an amicable resolution regarding this *Joint Application*, so there is no anticipated dispute at this point.

5. Further, in the case cited by the Commission, the Court looked to the reasonableness of the Commission's decision. *Id.* at 547. In this case it is reasonable for the Commission to approve the *Joint Application* involved in this case even though the transaction has already occurred. Here, TCU, a company that has been regulated by the Commission since 1987, in an effort to separate its water and sewer businesses, sold its water utility assets to TCW. TCW has been successfully operating the system since the time of closing in August 2010. To date, the only complaints received by Staff relate to customer deposits and have been addressed in Staff's *Recommendation*. There have been no service related complaints as a result of the transfer. As stated in its *Recommendation*, Staff is familiar with the owner of TCW since he operates two other regulated water utilities.

6. The Commission shall have power "to require every person, corporation, municipal gas system and public utility to maintain and operate its line, plant, system, equipment, apparatus, and premises in such manner as to promote and safeguard the health and

¹ The Commission's footnote correctly identifies the name of the case but includes a typographical error in the case reference, as it is found in S.W. 3d, rather than S.W. 2d.

safety of its employees, customers and the public...” Section 386.310.1 RSMo (2000). “[E]very water corporation, and every sewer corporation shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.” Section 393.130.1 RSMo (Supp. 2010).

7. Both utilities acknowledge in the *Joint Application* that they were unaware of the requirements of Section 393.190.1. RSMo. (2000). No outside entity or party has raised an issue with the sale itself, and parties are close to resolving the matter, so the matter will not be contested. To prohibit this transaction at this point would abdicate the Commission’s obligation to ensure that the water customers are receiving safe and adequate service.

8. Should the Commission deny approval of the *Joint Application*, the consequences are significant. TCW will then continue to be unlawfully operating a utility. One consequence is that the system would return to the prior owner, a company that is seemingly no longer interested in providing water service to the customers, which brings into question whether the customers would continue to receive safe and adequate service. If safe and adequate service is not continued, then the Commission could file an injunction and begin the process of appointing a receiver to oversee the water utility operations. Staff may also then have an obligation to file a complaint against one, or both, of the utilities involved in this matter. Another consequence, though extreme and unlikely, could be that the facility would be shut down which would be detrimental to the public health and safety and the customers would not be receiving safe and adequate service. These results appear extreme and burdensome given that the company inadvertently failed to seek approval prior to the sale’s closing, no outside entity or party objects to the transfer of assets, and the parties are amicably resolving the issues without requiring a contested hearing before the Commission.

9. Staff states that it is in the public interest for the Commission to approve this *Joint Application*. Staff further states that such approval is reasonable given the facts of this case.

10. Staff anticipates filing a Notice of Agreement or Request for Procedural Schedule no later than May 20, 2011.

WHEREFORE, Staff respectfully submits this *Status Report and Response to Order* for the Commission's information and consideration.

Respectfully submitted,

/s/ Rachel M. Lewis
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record on this 29th day of April, 2011.

/s/ Rachel M. Lewis