

**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

A handwritten signature in black ink, appearing to read 'S. Reed', is positioned above the printed name of the Secretary.

Steven C. Reed
Secretary

(S E A L)

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

Jordan, Senior Regulatory Law Judge