

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 5th day of
May, 2005.

In the Matter of the Application of Emerald Pointe)	
Utility Company for Permission, Approval and a)	
Certificate of Convenience and Necessity Authorizing)	
It to Construct, Install, Own, Operate, Control, Manage)	<u>Case No. WA-2005-0306</u>
and Maintain a Water and Sewer System for the Public)	<u>Case No. SA-2005-0307</u>
as an Expansion of its Certificated Area in Taney)	
County, Missouri)	

**ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

Syllabus: This order grants Emerald Pointe Utility Company a Certificate of Public Convenience and Necessity to enlarge and extend its service area, and to construct, install, own, operate, control, manage and maintain a water system and a sewer system in an unincorporated portion of Taney County, Missouri.

Procedural History

On March 16, Emerald Pointe applied to the Commission requesting permission, approval and a certificate of public convenience and necessity to operate, control, manage and maintain a water system and a sewer system. Emerald Pointe asked to serve the public in an unincorporated area in Taney County, Missouri. This area is immediately adjacent to the service territory it recently acquired in Commission Case No. WA-2004-0581. In addition to a map and metes and bounds description of the proposed area, Emerald Pointe filed the feasibility study it filed in Case No. WA-2004-0581, and stated in

its application that no other utility, regulated or unregulated, currently operates a sewer system in the proposed area.

On March 21, the Commission issued an Order and Notice and directed interested parties to file an application to intervene no later than April 7. No applications to intervene were filed.

In that same Order and Notice, the Commission ordered the Staff of the Missouri Public Service Commission to file a Recommendation or Memorandum no later than April 18.

Staff Recommendation

On April 18, Staff filed its Recommendation. Staff stated that it believes the certificate is necessary or convenient for the public service, and recommended that the Commission grant the certificates.

In addition to an order that grants Emerald Pointe water and sewer certificates, Staff recommends that the Commission order Emerald Pointe to:

- 1) Submit revised water and sewer tariff sheets that depict the new service area, and modified index sheets reflecting the new sheets, with such described service area to include the area proposed in this case and the area approved in WA-2004-0581, as well as pre-existing area;
- 2) Properly book all new utility plant placed into service, including proper booking of contributed plant and contributions-in-aid-of-construction;
- 3) Continue to use existing approved depreciation accrual rates;
- 4) Recognize that nothing in Staff's Memorandum or any Commission order in this case shall bind the Commission on any ratemaking issue in any future rate proceeding.

Emerald Pointe did not respond to Staff's Recommendation. The Office of the Public Counsel, although a party, filed no pleadings.

Decision

The Commission may permit a water corporation or a sewer corporation to operate after determining that the construction and operation are either "necessary or convenient for the public service."¹ The Commission has stated five criteria that it will use:

- 1) There must be a need for the service;
- 2) The applicant must be qualified to provide the proposed 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.²

Staff stated that Emerald Pointe meets those five criteria, and that the Commission recently determined that Emerald Pointe met them in Case No. WA-2004-0581. The Commission finds it is in the public interest for Applicant to construct, install, own, operate, control, manage and maintain sewer facilities and to render sewer service for the public located in the unincorporated area of Taney County as described by the map and metes and bounds description in Emerald Pointe's application.

Obligations

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

¹ Section 393.170, RSMo 2000.

² In re Tartan Energy Company, 3 Mo.P.S.C. 173, 177 (1994).

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. 4 CSR 240-3.640 requires water utilities to file their annual report on or before April 15 of each year. 4 CSR 240-3.335 requires sewer 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 \$2000 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, 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 the company fails to comply it is subject to penalties for noncompliance ranging from \$100 to \$2000 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.

This certificate is granted conditioned upon the compliance of the company with all of these obligations.

Moreover, if the Commission finds, upon conducting a hearing, that the company fails to provide safe and adequate service, or has defaulted on any indebtedness, the Commission shall 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 2000. As a condition of granting this certificate, the company hereby consents to the appointment of a temporary receiver until such time as the circuit court grants or denies the petition for receivership.

The company is also placed on notice that Section 386.310.1, RSMo 2000, provides that 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, the company is reminded that, as a corporation, its officers may not represent the company before the Commission. Instead, the corporation must be represented by an attorney licensed to practice in Missouri.

IT IS THEREFORE ORDERED:

1. That Emerald Pointe Utility Company is granted a certificate of public convenience and necessity to construct, install, own, operate, control, manage and maintain water facilities and to render water service for the public located in the unincorporated area of Taney County as described by the map and metes and bounds description attached to its application.

2. That Emerald Pointe Utility Company is granted a certificate of public convenience and necessity to construct, install, own, operate, control, manage and maintain sewer facilities and to render sewer service for the public located in the

unincorporated area of Taney County as described by the map and metes and bounds description attached to its application.

3. That this certificate is granted upon the conditions listed in this order.

4. That Emerald Pointe Utility Company is ordered to comply with all Missouri statutes and Commission rules.

5. That Emerald Pointe Utility Company shall submit revised water tariff sheets that depict the new service area, and a modified index sheet reflecting the new sheets, with such described service area to include the area proposed in this case and the area approved in WA-2004-0581, as well as pre-existing area.

6. That Emerald Pointe Utility Company shall submit revised sewer tariff sheets that depict the new service area, and a modified index sheet reflecting the new sheets, with such described service area to include the area proposed in this case and the area approved in WA-2004-0581, as well as pre-existing area.

7. That Emerald Pointe Utility Company shall properly book all new utility plant placed into service, including the proper booking of contributed plant and contributions-in-aid-of-construction.

8. That Emerald Pointe Utility Company shall continue to use existing approved depreciation accrual rates.

9. That the certificates of convenience and necessity referenced in ordered paragraph 1 and 2 shall become effective on the effective date of this order; however, Emerald Pointe Utility Company shall not serve customers in the proposed service area until the Commission approves of its revised tariffs referenced in ordered paragraphs 5 and 6.

10. That nothing in this order shall be considered a finding by the Commission of the reasonableness of the expenditures herein involved, nor of the value for ratemaking purposes of the properties herein involved, nor as an acquiescence in the value placed on said property.

11. That the Commission reserves the right to consider the ratemaking treatment to be afforded the properties herein involved, and the resulting cost of capital, in any later proceeding.

12. That this order shall become effective on May 15, 2005.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Pridgin, Regulatory Law Judge