

**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 June, 2007.

In the Matter of the Application of Bilyeu Water Co., )  
LLC for a Certificate of Convenience and Necessity )  
Authorizing It to Construct, Install, Operate and ) **Case No. WA-2007-0270**  
Maintain a Water System and to Supply and Render )  
Water Service to the Public Located in and around an )  
Unincorporated Area in Christian County, Missouri )

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

Issue Date: June 5, 2007

Effective Date: June 15, 2007

**Syllabus:** This order grants Bilyeu Water Company, LLC (“Bilyeu”) a Certificate of Public Convenience and Necessity to build, construct, operate and maintain a water system and all other facilities, including the acquisition of easements, rights of way and land necessary for the purpose of furnishing water services to the public in and around an unincorporated area in Christian County, Missouri.

**Procedural History**

On January 17, 2007,<sup>1</sup> Bilyeu filed an application with the Missouri Public Service Commission, pursuant to Section 393.170, RSMo 2000, requesting that the Commission grant it authority to construct, operate and maintain a water system as described in the

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<sup>1</sup> All dates throughout this order refer to the year 2007 unless otherwise noted.

caption of this order. Specifically, the water service is to be provided to Bilyeu Ridge Hills (“Subdivision”), a subdivision south of Nixa, Missouri that is now being developed.

In compliance with Commission Rule 4 CSR 240-3.600, Bilyeu provided a full legal description of its proposed water district, plat maps, a tariff feasibility study, and the names and addresses of all the residents and property owners of the proposed service area. Bilyeu also asserts that there are no municipalities, public utilities or other government entities operating or rendering service within its proposed service area.

On January 18, the Commission issued an Order and Notice and directed any interested parties to file applications to intervene no later than February 6. No requests to intervene were filed. On April 19, Staff filed its verified recommendation and memorandum supporting approval of Bilyeu’s application. On May 2, finding Staff’s initial investigation to be incomplete, the Commission directed Staff to further investigate and file an updated report and recommendation. Staff filed its Second Report and Recommendation on May 16, supplementing its original findings and further supporting its recommendation that the Commission approve Bilyeu’s application.

### **Background**

Bilyeu’s owners are the original developers of the Subdivision. The owners have been operating the water system as a non-regulated utility. There are currently 53 residential customers on the water system and the owners are expecting all 77 lots of the Subdivision to be fully developed within the next three years.

The water system consists of a groundwater well and well house, a pair of 6,700 gallon storage tanks, six small pressure tanks, two pressure booster pumps and distribution

pipng, with the majority of these facilities being put into service in 1992. Bilyeu intends to replace the existing storage facilities with larger facilities within the next couple of years.

The Subdivision residences are served by individual on-site septic systems for sewage disposal. To Staff's knowledge, there are no compliance-related issues involving the Missouri Department of Natural Resources.

Bilyeu originally did not charge for water service, but beginning in August of 1996 it charged its customers a flat fee of \$12 per month. In November of 2002, Bilyeu changed the rate to a \$12 per month minimum, which included the first 1000 gallons of water, plus an additional \$1.80 for each additional 1000 gallons of water used. Bilyeu provided its customers notice prior to its billing changes; however, it has not provided notice that it is seeking a certificate from the Commission.

Staff observes that Bilyeu has been operating as a developer, whose primary business is the construction and sale of homes. It has not dedicated its private property, the water system, to the public service, but rather only to the homeowners in the Subdivision it has developed to further its underlying business. Additionally, it is unclear if Bilyeu's charges generate a profit for the service it is providing. As such, Staff notes that it is unclear as to whether Bilyeu has been operating as a "water corporation" or a "public utility" as statutorily defined, and it appears that Bilyeu is not currently subject to the jurisdiction of the Commission.<sup>2</sup>

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<sup>2</sup> Section 386.020(42), and (58), RSMo 2000; *Osage Water Co. v. Miller County Water Authority, Inc.*, 950 S.W.2d 569, 574-575 (Mo. App. 1997); *State ex rel. M.O. Danciger and Company v. Public Service Commission*, 205 S.W. 36, 40 (Mo. Banc 1918). For these same reasons, Bilyeu is not subject to any penalties pursuant to Section 393.170, RSMo 2000, which only applies to water corporations.

What is certain is that Bilyeu sought, and was issued, a Certificate of Organization by the Missouri Secretary of State on September 12, 2006 defining itself as a newly created water company. Bilyeu did notify its customers of the change of its corporate entity. Its articles of organization state that the purpose of this newly created entity is to own and operate a water company. Consistent with this organization, Bilyeu now seeks a certificate from the Commission.

### **Staff's Recommendation**

Staff believes the certificate is necessary and/or convenient for the public service, and recommends the Commission grant the certificate. In reaching that conclusion, Staff's investigation included a review of Bilyeu's submitted feasibility study and on-site field visits. Staff also prepared audit and rate design evaluations.

The Staff's "ratemaking worksheet," attached to its recommendation and memorandum as Attachment 1, includes Staff's calculation of Bilyeu's rate base and contribution-in-aid-of-construction, as well as, the expenses used by the Staff in calculating Bilyeu's initial customer rates. Water rates are proposed to consist of a monthly customer charge of \$11.56 per customer equivalent and a commodity/usage charge of \$2.39 per 1,000 gallons. Under these rates, a residential customer using 6,000 gallons of water per month would have a monthly bill of \$25.93.

In addition to these monthly rates, Staff also proposes a connection charge of \$610.00 for new customers where a service pipe and a meter setting do not exist. That charge is based upon the cost of making a tap on the water main and installing and connecting a service pipe to the property line along with a meter setting. Bilyeu will cover the cost of the meter and its cost will be included in the company's rate base.

Staff also analyzed Bilyeu's ability to meet the five criteria outlined by the Commission in the case *In re Tartan Energy Company*.<sup>3</sup> Staff stated that Bilyeu meets those five criteria. Staff further states that the public interest favors the grant of the certificate of convenience and necessity because Bilyeu's customers would gain the additional protections that Commission regulation confers.

Based upon its investigation, Staff recommends that the Commission grant Bilyeu a water certificate subject to the following conditions:

- 1) Bilyeu must submit a complete tariff for water service that includes the customer rates described in Staff's recommendation and memorandum.
- 2) Bilyeu must submit semi-annual customer number reports to the Commission's Water and Sewer Department until such time that it submits its first rate increase request.
- 3) Bilyeu must keep its books and records in accordance with the Uniform System of Accounts.
- 4) Bilyeu must recognize that nothing in Staff's recommendation or memorandum or in any Commission order in this case shall bind the Commission on any ratemaking issue in any future rate proceeding.

Bilyeu did not respond or object to Staff's recommendation and the proposed conditions for granting the certificate within the time period directed by the Commission. The Office of the Public Counsel, although a party, filed no pleadings in this matter.

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<sup>3</sup> 3 Mo. P.S.C. 173, 177 (1994).

## **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.”<sup>4</sup> The Commission has stated five criteria that it will use in making this determination:

- 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.<sup>5</sup>

Staff has stated that Bilyeu meets these five criteria and supports the grant of the certificate. After a complete review of Bilyeu’s application and Staff’s verified recommendations and memorandum, which are hereby admitted into evidence, the Commission finds it is in the public interest for Bilyeu to build, construct, operate and maintain a water system and all other facilities, including the acquisition of easements, rights of way and land necessary for the purpose of furnishing water services to the public in and around an unincorporated area in Christian County, Missouri as described by the maps and metes and bounds description in Bilyeu’s application.

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<sup>4</sup> Section 393.170, RSMo 2000.

<sup>5</sup> *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

## **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:

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 for 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 \$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 ORDERED THAT:**

1. Bilyeu Water Company, LLC is granted a certificate of public convenience and necessity to build, construct, operate and maintain a water system and all other facilities, including the acquisition of easements, rights of way, land, etc. necessary for the purpose of furnishing water services to the public in and around an unincorporated area in Christian



County, Missouri as described by the map and metes and bounds description attached to its application.

2. This certificate is granted upon the conditions delineated in the body of this order.

3. Bilyeu Water Company, LLC is ordered to comply with all Missouri statutes and Commission rules.

4. No later than thirty days following the issue date of this order, Bilyeu Water Company, LLC shall submit a complete tariff for water service depicting its complete service area and including the customer rates described in Staff's recommendation and memorandum.

5. Bilyeu Water Company, LLC shall submit semi-annual customer number reports to the Commission's Water and Sewer Department until such time that it submits its first rate increase request.

6. Bilyeu Water Company, LLC shall keep its books and records in accordance with the Uniform System of Accounts.

7. 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.

8. 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.

9. This order shall become effective on June 15, 2007.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written in a cursive style.

Colleen M. Dale  
Secretary

( S E A L )

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

Stearley, Regulatory Law Judge