

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

In the Matter of the Application of Oakbrier )  
Water Company, Inc., for Certificate of )  
Convenience and Necessity authorizing it to )  
enlarge and extend its service area and to )  
construct, install, own, operate, control, )  
manage, and maintain a Water System for )  
the public located in the unincorporated area )  
of Butler County, Missouri. )

Case No. WA-2009-0406

**STAFF RECOMMENDATION**

**COMES NOW** the Staff of the Missouri Public Service Commission ("Staff"), by and through the undersigned counsel, and respectfully submits this *Staff Recommendation* to the Missouri Public Service Commission ("Commission") stating the following:

1. On May 12, 2009, Oakbrier Water Company, Inc. ("Company") filed an *Application and Motion to Expedite Application* to expand its current service territory in and around a subdivision known as Oakbrier Estates, in Butler County, Missouri. The Commission initially granted a Certificate of Convenience and Necessity ("CCN") for the Oakbrier subdivision in Commission Case No. WA-88-128.

2. The Company requested an expedited procedure because customers in the proposed expanded service area are currently included in an ongoing small utility rate case WR-2009-0229. The Staff Recommendation in WR-2009-0229 is due June 1, 2009, thus Staff is additionally asking the Commission to expeditiously Order in this matter.

3. On May 13, 2009 the Commission issued an *Order and Notice* that identified the last date to intervene in this application case was May 22, 2009. To this date, no party or individual has intervened in this matter. The Commission also established a deadline of May 27, 2009 for any party to object to Oakbrier's request for expedited treatment.

4. Staff is recommending that the Commission approve the *Application* for the expanded Certificate for Convenience and Necessity. See *Staff Recommendation* attached hereto as Exhibit 1.

5. According to Section 393.170.3 RSMo (2000), the Commission has the “power to grant [a certificate of convenience and necessity]. . . whenever it shall after due hearing determine that such construction or such exercise of the right, [or] privilege . . . is necessary or convenient for the public service. The Commission may by its order impose such condition or conditions as it may deem reasonable and necessary.”

6. The Commission established five criteria in *In re Tartan Energy Company*, 3 Mo. P.S.C. 3d 173, 177 (1994) that should be considered when making a determination in an application case; (1) there must be a need for the service; (2) the applicant must be qualified to provide the 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.

7. In the *Staff Recommendation* attached hereto, Staff has determined that the Company has met all five criteria set forth in *In re Tartan Energy Company*, thus establishing a need for a CCN for the expanded service area.

8. The Commission need not hold a hearing, if, after proper notice and opportunity to intervene, no party request such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. W.D. 1989). No party or individual has requested a hearing, thereby the Commission need not hold a hearing to grant a CCN to the Company.

**WHEREFORE**, Staff respectfully requests the Commission issue an expedited order granting Oakbrier Water Company, Inc. a certificate of convenience and necessity to provide water service to the service area described in the *Staff Memorandum* attached hereto.

Respectfully Submitted,

/s/ Jaime N. Ott

Jaime N. Ott

Missouri Bar No. 60949

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-8700 (Telephone)  
(573) 751-9285 (Fax)  
[jaime.ott@psc.mo.gov](mailto:jaime.ott@psc.mo.gov) (e-mail)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this Recommendation has been provided, either by first-class mail, by electronic mail, by facsimile transmission or by hand-delivery, to each attorney and/or party of record for this case on this 27<sup>th</sup> day of March 2009.

/s/ Jaime N. Ott

## **MEMORANDUM**

TO: Missouri Public Service Commission Official Case File  
Case No. WA-2009-0406  
Oakbrier Water Co., Inc.

FROM: Jim Merciel – Water & Sewer Department

<u>/s/ Jim Merciel</u>	<u>5/27/09</u>
Project Coordinator	Date

<u>/s/ Jaime Ott</u>	<u>5/27/09</u>
General Counsel's Office	Date

SUBJECT: Staff's Recommendation for Granting a Certificate of Convenience and Necessity

DATE: May 27, 2009

### **BACKGROUND**

On May 12, 2009, Oakbrier Water Co, Inc. (Oakbrier or Company) filed an *Application and Motion to Expedite Application* (Application), in which it seeks a certificate of convenience and necessity (certificate) to provide water service to an expanded area in and around a subdivision known as Oakbrier Estates, in Butler County, northeast of Poplar Bluff. Oakbrier requests expedited treatment of approval of the expanded service area because there are customers located within the area proposed to be certificated, and Oakbrier has a pending rate case that is intended to apply to the proposed area as well as the existing area, and the Company desires to fix the service area problem before the rate case is finalized.

On May 13, 2009 the Commission issued an *Order and Notice*, in which it directed the Commission's Data Center and Public Information Office to send notices regarding the Application to the Pulaski County Commission, the local media in the area, and members of the General Assembly serving the area; established a deadline of May 22, 2009 for interested parties to submit requests to intervene in the cases, established a deadline of May 27, 2009 for any party to object to Oakbrier's request for expedited treatment; and for the Staff to file a recommendation by May 29, 2009 if it does not object to expedited treatment. No requests to intervene in either of these cases were submitted to the Commission, and no objections to expedited treatment have been filed as of the date of this memorandum. The Staff does not object to expedited treatment, and this memorandum is intended to comply with the Commission's Order and Notice.

Oakbrier was incorporated on July 10, 1987. The Commission granted the Company a Certificate to provide water service to the currently existing service area in Case No. WA-88-128.

### **STAFF'S INVESTIGATION, FINDINGS AND CONCLUSIONS**

The Staff learned that a previous owner of Oakbrier had a plan to develop land in an area that was outside of the Company's service area some years ago. This particular area consists of approximately 60 acres and the Staff believes that five (5) customers exist within this area. In addition, there is farm land along the two county roads extending south from Oakbrier Estates where one (1) existing customer is located. Oakbrier proposes to include 120 acres to accommodate this one customer and possibly other future customers along the two county roads, or development that could occur off of either of these roads. The existing service area and proposed expansion is shown in Exhibit A of the Company's Application. The Staff's information on the customers is based on observation and information provided by the Company. The Company, in its Exhibit B as a part of its Application, lists seven (7) customers that are outside of its existing authorized service area, however the Staff believes that one of those customers is within the existing service area. Although additional individual customers could connect in the future, both within the existing service area and within the proposed service area addition, there are no firm development plans at present.

Oakbrier's water system consists of a single well with a hydro pneumatic tank, distribution pipelines and meters for each of the customers. Oakbrier presently has approximately 55 residential customers and two (2) commercial customers. The Staff believes that rates, rules, service charges and depreciation accrual rates that apply to water service provided within the existing service area should also properly apply to the expanded portion of the Company's service area.

The Staff's position with regard to the feasibility of Oakbrier serving the proposed expanded area is that the addition of the proposed area will have no direct impact upon system operations, or on revenue and expenses. The reason is that the affected customers within the proposed area are already provided water service, the water system has adequate capacity to provide service to the existing customers, and the granting of the additional area will not have any direct or immediate impact upon a need to expand the water system.

The Staff analyzed the Company's ability to meet the "Tartan Energy Criteria," as slightly modified by the Staff, which are the criteria historically used by the Commission in evaluating service area certificate applications. The Staff's positions on the Tartan Energy Criteria, with Criterion No. 1 modified by the Staff, are set out within this Memorandum, below.

Oakbrier has a small utility rate case pending, filed on November 26, 2008 as Case No. WR-2009-0229 and tracking No. YW-2009-0766.

Subsequent to the Commission granting Oakbrier a certificate for the expanded service area, Oakbrier will need to file tariff sheets for its existing water tariff to reflect the service area description and map as expanded.

### **THE TARTAN ENERGY CRITERIA**

#### **Is there a need for the proposed services, and is there a need for the Company to provide the proposed services?**

The Staff believes that a need for the proposed service clearly exists, since customers exist within the proposed service area. Although a public water supply district exists nearby, it does not have distribution facilities within the area that Oakbrier is proposing.

#### **Is the Company qualified to provide the proposed service?**

Based on its investigation and its familiarity with Oakbrier, the Staff believes that Oakbrier has the technical, managerial and financial capacities necessary to provide water service. The owners of Oakbrier also operate other water and sewer utilities and have extensive experience with regard to day-to-day utility management and plant operations. Oakbrier relies on consultants for legal and engineering assistance.

#### **Does the Company have the financial ability to provide the proposed services?**

The Staff believes that since Oakbrier is a financially stable utility operation. Its operation is also combined with other utilities with which its owners are involved, reinforcing its resources. Its owners would need to rely on bank financing for extensive capital improvements.

#### **Is the Company's proposal economically feasible?**

The Staff believes that the pending proposal has no affect upon economic feasibility, since it will not result in any immediate substantial change with regard to plant capacity, nor on revenue and expense.

#### **Does the Company's proposal promote the public interest?**

The Staff believes that approval of the proposed area is in the public interest because it “fixes” a shortcoming in that Oakbrier already has customers within the area, and the inclusion of the proposed service area legitimately makes home construction possible in the expanded service area for future customers. Additionally, the presumption in these types of cases is that if the other four criteria are met, then this criterion is also met.

### **ADDITIONAL INFORMATION**

The Staff has reviewed Oakbrier's history regarding the submittal of its Commission annual reports and the payment of its Commission assessments, and finds no deficiencies in this regard. For annual reports the Staff reviewed the Commission's EFIS system records for the calendar years 2002 through 2008, and the Adjudication Division Data Center's records, as posted on the Commission's intranet site, for the calendar years 1989 through 2001. For assessments the Staff reviewed the Administration Division's records, as posted on the intranet site, for the fiscal years 2000 through 2009. The annual report and assessment reviews were conducted by Jim Merciel.

Oakbrier has the aforementioned rate case pending before the Commission. Oakbrier has no other matters pending before the Commission, and the approval of the Application in this case will not affect any other matter before the Commission.

Oakbrier has no outstanding matters with respect to the Missouri Department of Natural Resources.

#### **STAFF'S RECOMMENDATIONS**

Based upon the above, the Staff recommends that the Commission issue an order that:

- Grants Oakbrier a certificate for the provision of water service to the expanded area as requested in its Applications, such a certificate to be effective on the same date as the effective date of the Company's revised tariff sheets to be submitted, as described herein;
- Approves the Company's existing tariff, water rates and service charges, and depreciation accrual rates, to be applicable to the new service area, noting that a rate case is pending that could affect rates and rules within both the existing and expanded service area;
- Directs Oakbrier to revised tariff sheets for its existing water tariff to include a map and written description of its existing and expanded service area, within 30 days after the date the Commission issues its order granting the certificate, with the tariff sheets to bear an effective date that is at least 30 days from the date the tariff sheets are submitted to the Commission; and,
- Makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the requested certificate, including future expenditures by Oakbrier, in any later proceeding.

The Water & Sewer Department Staff will file a further recommendation regarding approval of the tariff sheets that Oakbrier will be submitting in accordance with the Commission's order granting the certificate.

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

In the Matter of the Application of Oakbrier Water )  
Company, Inc., for a Certificate of Convenience )  
and Necessity Authorizing it to Enlarge and Extend )  
its Service Area and to Construct, Install, Own, )  
Operate, Control, Manage and Maintain a Water )  
System for the Public Located in the )  
Unincorporated Area of Butler County, Missouri )

Case No. WA-2009-0406

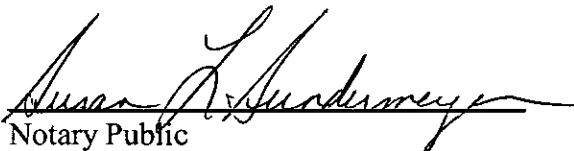
**AFFIDAVIT OF JAMES A. MERCIEL, JR., P.E.**

STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF COLE     )

James A. Merciel, Jr., of lawful age, on his oath states: (1) that he is the Assistant Manager – Engineering in the Water and Sewer Department of the Missouri Public Service Commission; (2) that he participated in the preparation of the foregoing *Memorandum*; (3) that he has knowledge of the matters set forth in the foregoing *Memorandum*; and (4) that the matters set forth in the foregoing *Memorandum* are true and correct to the best of his knowledge, information and belief.

  
James A. Merciel, Jr., P.E.

Subscribed and sworn to before me this 27<sup>th</sup> day of May 2009.

  
Notary Public