

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

In the Matter of the Application of Holtgrewe Farms)
Water Company, LLC, for a Certificate of Convenience)
and Necessity Authorizing it to Construct, Install, Own,) **Case No. WA-2010-0281**
Operate, Control, Manage, and Maintain a Water)
System for the Public, Located in an Unincorporated)
Area of Franklin County, Missouri.)

In the Matter of the Application of Holtgrewe Farms)
Sewer Company, LLC, for a Certificate of Convenience)
and Necessity Authorizing it to Construct, Install, Own,) **Case No. SA-2010-0282**
Operate, Control, Manage, and Maintain a Sewer)
System for the Public, Located in an Unincorporated)
Area of Franklin County, Missouri.)

STAFF RESPONSE TO ORDER DIRECTING FILING

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and submits the following information at the request of the Missouri Public Service Commission (“the Commission”):

1. On April 8, 2010, Holtgrewe Farms Water Company, LLC and Holtgrewe Farms Sewer Company, LLC (collectively referred to hereinafter as “Holtgrewe Farms”) filed two applications with the Commission, seeking authority to own, operate, maintain, control and manage a water system and a sewer system in Franklin County, Missouri. These matters have been designated by the Commission as Case Nos. WA-2010-0281 and SA-2010-0282, respectively.

2. On September 7, 2010, the Commission issued an *Order Directing Staff to File Additional Information* (“the Commission’s *Order*”), directing Staff to file information in response to multiple Commission inquiries.

3. In response to the Commission’s *Order* Staff participated in discussions with the owner of Holtgrewe Farms, an engineer and the utilities supervisor of the City of Washington

("the City"), and a manager and an operations supervisor employed by the firm that is a contract operator for the Water Supply District No. 1 of Franklin County ("the District"). Based upon these discussions, Staff's responses to the Commission's *Order* are contained below. With the exception of the below-listed response to question 5, which is purely legal analysis, Staff has provided in support of these responses the affidavit of Jim Merciel, Utility Regulatory Engineer in the Commission's Water and Sewer Department. To be clear, these responses, while true and accurate to the best of Staff's knowledge and belief, are Staff's interpretation and reiteration of the representations made to Staff by Holtgrewe Farms, the City, and the District. Should the Commission require additional clarification; all entities have indicated a willingness to participate in a future Commission Agenda discussion.

QUESTION 1

Are there any alternatives to certification, including joining the systems with [those] of the City of Washington or the Public Water Supply District No. 1 of Franklin County?

RESPONSE 1

These alternatives are not practical at the present time, due primarily to distance and easement acquisition.

In respect to the water system, Holtgrewe Farms is located approximately 3,000 to 4,000 feet from the District's current water supply system. An extension of this length could easily cost anywhere from \$80,000 to \$200,000 depending on property restoration and easement acquisition costs. In addition, the developer of the Holtgrewe Farms subdivision has a concern that the District's water main at that location, even if accessed, may not be sufficient to meet Holtgrewe Farms' peak demand. If that were to be the case

it would be necessary to modify a portion of the District's existing system at an unknown, but potentially substantial cost. If Holtgrewe Farms were to obtain a connection from the District, such connection would eliminate the need for construction of the currently-proposed Company-owned well, well-house, well pump, storage tank, high service pumps, and land for these facilities, the estimated cost of which is approximately \$150,000. Under this arrangement the Holtgrewe Farms residents would have been customers of the District. In addition to economic feasibility concerns, some easements necessary to enter into this arrangement are reportedly unobtainable at present.

In respect to sewer service, according to the Company, a connection to the City's sewer system would require construction of a lift station and installation of an approximately 1,500-foot force main, through which sewage would be pumped. The cost of this installation has been estimated by Staff, based upon verbal information, to be between \$130,000 and \$175,000, depending on property restoration and easement acquisition costs. If such a lift station and force main would have been constructed, and an agreement had been reached between the City and Holtgrewe Farms for a connection to the City's sewer system, such construction would have eliminated the need for construction of the currently-proposed Company-owned treatment facility located within the subdivision, the Company's estimated cost of which is approximately \$125,000. Under this arrangement Holtgrewe Farms residents would have been sewer customers of the City. The developer of the Holtgrewe Farms subdivision stated that the City also required annexation into the City in order to enter into this arrangement, but that annexation attempts were not successful. Employees of the City stated to the Staff, however, that the City sometimes provides retail sewer service to customers outside the

city limits at a higher monthly rate. The City's employees also stated that the City had agreed to provide wholesale sewer service to the District, whereby the Holtgrewe residents would be sewer customers of the District. The City's employees also stated that the City could consider providing sewer services under wholesale arrangement to the Company, whereby the residents of the subdivision would still be customers of the Company but sewage treatment would be done at the City's treatment facility instead of a small treatment facility within the subdivision.

The City's employees also stated that water distribution facilities currently exist at the City's sewage lift station, and that water service from the City may be available at some time in the future from that location. Staff also understands, based on a conversation with the District, that there was also consideration of the District obtaining wholesale water service from the City at this location, along with the above-mentioned arrangement for the District to obtain wholesale sewer service, to serve the resident of Holtgrewe Farms as District customers.

QUESTION 2

[What is] [t]he likelihood of the City of Washington, at some point in the future, acquiring the sewer system and what obstacles might hamper this effort [?]

RESPONSE 2

Acquisition will likely depend on the cost and the allocation of construction of the plant required for connection, as well as future new development in the area. The City employees are not currently aware of specific obstacles that would hamper such an acquisition, subject to the factors listed above. Besides acquisition, as indicated in

Response 1, a wholesale service arrangement could be a possible alternative to future sewer treatment plant upgrades.

QUESTION 3

[What is] [t]he likelihood of The Public Water Supply District No. 1 of Franklin County acquiring the water system and what obstacles might hamper this effort[?]

RESPONSE 3

Acquisition will likely depend on the ability to interconnect the systems by a main extension, and operability of the Holtgrewe Farms facilities in conjunction with operation of the existing water district system (i.e. compatibility of the well and high service pumps with the District's pressure gradient). The District's management contractor employees stated the adequacy and condition of the system at the time of acquisition may also be a factor.

QUESTION 4

Whether someone from the City and whether the developer will be able to talk to the Commission by telephone or in person at an agenda or hearing?

RESPONSE 4

All entities have indicated a willingness to participate, subject to availability.

QUESTION 5

Should information from the City or from the developer be produced in an agenda or should there be a hearing?

RESPONSE 5

Section 393.170, RSMo (2000) requires water and/or sewer corporations to obtain approval from the Commission prior to construction of water and/or sewer system facilities. Section 393.170(3), RSMo (2000) provides a standard for granting these requests:

The Commission shall have the power to grant the permission and approval herein specified whenever it shall after **due hearing** determine that such construction or such exercise of the right, privilege or franchise 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.

Emphasis added. The meaning of “due hearing” as contained in Section 393.170(3) was specifically explored by the Missouri State Court of Appeals in the frequently cited case of *State ex re. Rex Defenderfer Enters., Inc. v. Pub. Serv. Comm’n*, 776 S.W.2d 494 (Mo. App. W.D. 1989). In *Defenderfer*, the Commission issued an order establishing an intervention deadline and stating that if no requests for a hearing were received by such date that the applicant would be permitted to submit evidence in support of its request via a verified statement. *Id.* at 496. No party requested a hearing and the Commission ultimately issued an order approving the application based upon the verified statement. *Id.* Upon review, the Court stated as follows:

In its Report and Order the Commission correctly determined that the requirement for a hearing contained in §393.170 was met when the **opportunity** for a hearing was provided and no proper party requested the opportunity to present evidence. **There were no adverse parties and under the circumstances of the case at bar it was proper for the Commission to grant appellant’s Certificate on the basis of the appellant’s verified Application after affording notice and an opportunity to be heard to all proper parties.**

Id. (emphasis added).

The same analysis applies in this case. Although the *Order and Notice* issued by the Commission on April 9, 2010, does not require that a party request a hearing by a date certain, no party has requested the opportunity to present additional evidence. In addition, based upon Staff's current recommendation for conditional approval, there are no parties currently adverse to any position expressed in the case. For these reasons, and according to the precedent provided in *Defenderfer*, it is likely that no hearing is necessary in the event the Commission finds the requests to be necessary and convenient for the public interest.

In the event that the Commission denies the applications without a hearing it is likely that such action would not be upheld on appeal. In the event that the applicant seeks subsequent review of any Commission order(s) denying its applications, such order(s) will be reviewed in order to determine whether they are both lawful and reasonable. Section 386.510, RSMo (2000). In order to satisfy the "reasonableness" prong of this review it is clear that such orders must be supported by competent and substantial evidence of record. *State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm'n*, 289 S.W.3d 240, 246 (Mo. App. W.D. 2009). Staff is concerned that such evidence does not exist at present and will not exist absent an evidentiary hearing.

QUESTION 6

Can some sort of notice be provided to homeowners when they contract to purchase, informing them of the size of the system, number of customers, and potential problems that are specific to small water and sewer companies?

RESPONSE 6

Holtgrewe Farms has indicated to Staff that an acknowledgement is contained in the standard home purchase contract language. Staff has not received a copy of this language, despite its request. Staff will attempt to obtain and review this language prior to any evidentiary hearing or Agenda discussion concerning these matters.

QUESTION 7

What are the system specifications? Are there fire hydrants? Is there a lake nearby? How will water be transported to the scene of a fire?

RESPONSE 7

Neither Holtgrewe Farms nor the District possess fire protection capability. Holtgrewe Farms has installed a “dry hydrant” at the subdivision lake, which may be used to draw water from an existing lake with the fire department’s pumping equipment for filling a portable tank, and which serves an alternative to traveling a greater distance into the City for additional water. A municipal level of fire protection could become available in the future if water service is extended from the City of Washington via a water main of sufficient flow capacity and the subdivision’s distribution system is upgraded to provide fire flows.

QUESTION 8

Will there be sufficient water pressure for all homes if the developer sells all of the lots?

RESPONSE 8

Yes. The water system is designed to maintain a pressure of 50 to 70 pounds per square inch at the source, and to serve all of the lots in the subdivision, with a peak hour flow of 87 gallons per minute (to be pumped from the ground storage tank). In addition,

the system is designed for an estimated max customer use of 100 gallons per person per day, and a one-day storage volume supply. The system plans meet the Department of Natural Resources design guide.

QUESTION 9

What would be an appropriate time frame to conduct rate reviews?

RESPONSE 9

Staff recommended in its *Staff Recommendation* filed on August 13, 2010, as a condition of certification, that Staff conduct a rate review no later than two (2) years after the effective date of the Order granting approval of Holtgrewe Farms' applications. Staff would be willing to make alternative and/or additional reviews at the direction of the Commission.

WHEREFORE, Staff submits this information as directed in the Commission's *Order*.

Respectfully submitted,

/s/ Eric Dearmont

Eric Dearmont
Assistant General Counsel
Missouri Bar No. 60892

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 16th day of September, 2010.

/s/ Eric Dearmont

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

AFFIDAVIT OF JAMES A. MERCIEL, JR.

STATE OF MISSOURI)

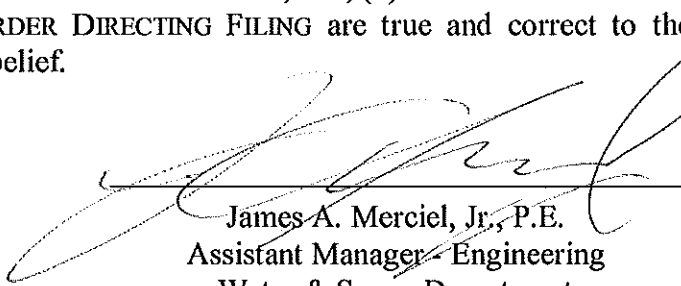
Case No. WA-2010-0281

) ss

COUNTY OF COLE)


Case No. SA-2010-0282

James A. Merciel, Jr., P.E., 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 STAFF RESPONSE TO ORDER DIRECTING FILING; (3) that he has knowledge of the matters set forth in the foregoing STAFF RESPONSE TO ORDER DIRECTING FILING; and, (4) that the matters set forth in the foregoing STAFF RESPONSE TO ORDER DIRECTING FILING are true and correct to the best of his knowledge, information and belief.



James A. Merciel, Jr., P.E.
Assistant Manager - Engineering
Water & Sewer Department
Utility Operations Division

Subscribed and sworn to before me this 16th day of September 2010.


Notary Public

SHARON S. WILES
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: October 23, 2010
Commission Number: 06429091