

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

In the Matter of the Joint Application of Jerry Reed,)
d/b/a Woodland Acres Water System, and)
Woodland Acres Property Owners Association, Inc.,)
for Authority for Woodland Acres Property Owners)
Association, Inc., to Acquire the Assets of)
Woodland Acres Water System.)

File No. WO-2011-0112

STAFF RECOMMENDATION TO APPROVE JOINT APPLICATION

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through the undersigned attorney, and for its recommendation respectfully states the following to the Commission:

1. On October 26, 2010, Jerry Reed d/b/a Woodland Acres Water System and Woodland Acres Property Owners Association, Inc. (Association), collectively known herein as the “Joint Applicants,” filed a *Joint Application For Transfer Of Assets* (“*Joint Application*”). The Joint Applicants seek to transfer the assets of Woodland Acres Water System from Mr. Reed to the Association.

Background of Joint Applicants

2. On July 24, 2009, the Commission granted Mr. Reed a Certificate of Convenience and Necessity (CCN) to provide water service for the public in Woodland Acres Subdivision, St. Clair County, Missouri. The system’s tariff became effective on October 2, 2009, and set forth the rules and regulations for the provision of water service.

3. Woodland Acres Property Owner’s Association, Inc., was created in 2006 as a non-profit corporation and is in good standing with the Missouri Secretary of State (SOS). The original Articles of Incorporation and Bylaws were amended, approved and filed with the SOS in September 2010. The Articles of Incorporation now reflect the ownership and operation of water

supply facilities for drinking and other general uses, a requirement of organization under Section 355.025, RSMo (2000).

Applicable Law

4. Section 393.190.1, RSMo (2000) states that “[n]o...water 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...without having first secured from the commission an order authorizing it so to do....”

5. The standard for the Commission’s decision in this matter is “not detrimental to the public interest.” “The Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest.” *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980).

6. Commission Case No. WD-93-307, established a policy of not asserting jurisdiction over property owner associations if the association met certain criteria, now known as the “Rocky Ridge Criteria”. The criteria for an association are:

- 1) It must have as membership all of its utility customers, and operate the utility only for the benefit of its members;
- 2) It must base the voting rights regarding utility matters on whether or not a person is a customer, as opposed to, allowing one (1) vote per lot which would not be an equitable situation if one (1) person owned a majority of the lots irrespective of whether each of those lots subscribed to the utility service; and
- 3) It must own or lease the utility system so that it has complete control over it.

Orler v. Folsom Ridge, LLC, 2007 WL 2066385 at 17 (Mo. P.S.C.).

7. 4 CSR 240-3.605 contains the filing requirements for water utility applications for authority to sell, assign, lease or transfer assets.

Analysis

8. The Staff has worked extensively with the Association to ensure that the governing Bylaws are in compliance with the Rocky Ridge Criteria. The Association adopted the Bylaws and recorded them in Saint Clair County, Missouri, on August 20, 2010.

9. On November 5, 2010, the Staff sent notification letters to each customer of the water system that informed the customer of the subject case and gave specific directions on how to look up information regarding the case on the Commission's internet site. (See Attachment A). The Staff requested that the customers direct any questions or comments to the Staff by November 19, 2010. The Staff has received no comments or questions on the transfer to date.

10. On December 4, 2010, the Association sent ballots to the utility customers to vote on the transfer of the water system from Mr. Reed to the Association, stating the cost for water service and maintenance will remain the responsibility of the members receiving the service. (See Attachment B). The Association's President, Mr. Larry Smith, has advised the Staff that the customers unanimously approved the transfer of the water system.

11. The Staff finds the transfer requested by the *Joint Application* not detrimental to the public interest. In addition to the customers' approval, such transfer is beneficial as Mr. Reed sold his home at the subdivision in September 2009, moved to the St. Louis area and no longer has ties to the water system. In December 2009, the Missouri Department of Natural Resources (MDNR) sent a letter to Mr. Reed explaining that since he no longer owned any property in the subdivision, the agency could no longer consider him as the continuing authority for the water system. MDNR then deferred to the Association as the continuing authority. At that point, Mr. Reed voluntarily relinquished control of the water system to the Association. The Joint

Applicants have been cooperative and water service has continued since December 2009 without incident.

12. Also, such transfer is not detrimental to the public interest because the customers will pay substantially less for the same service. Mr. Reed is currently authorized by tariff to charge full-time residential customers \$140.34 per quarter, and \$106.27 per quarter for part-time residential customers. The Association intends to charge each residence \$50.00 per quarter, regardless of whether a full or part-time customer.

13. The Staff remains concerned with the nature of ownership of the two wells and supporting infrastructure that provide service to the Association's customers. (See Well Easement Attachment C). The Well Easement recorded in 2004 indicates that Mr. Reed and two other individuals, Raymond and Brenda Eslick, have interest in the property where the wells are located. Mr. and Mrs. Eslick have transferred all interest in the well easement, well, pump, and related equipment to the Association effective March 1, 2010. (See Attachment D). To date, Mr. Reed has not transferred his interest, if any, to the Association.

14. While the MDNR has stated that Mr. Reed no longer owns any property within the Woodland Acres Subdivision, the Commission is without the authority to declare or enforce any principle of law or equity. *Straube v. Bowling Green Gas Co.*, 227 S.W.2d 666 (Mo.1950). It remains unclear to the Staff whether Mr. Reed has any remaining interest in the Well Easement. As Mr. Reed has expressed to the Staff that he is not averse to relinquishing any remaining interest, the Staff recommends that the Commission condition the approval of the transfer on the receipt of an agreement similar to that of Attachment D, between Mr. Reed and the Association, within thirty days after the effective date of a Commission Order allowing the transfer.

WHEREFORE, the Staff requests that the Commission issue an order that conditions any transfer on the receipt of a document similar to that of Attachment D, between Mr. Reed and the Association, that transfers any and all remaining interest in the well easement, well, pump, and related equipment to the Association within thirty days after the effective date of the Commission Order; and

- 1) Grants Jerry Reed, d/b/a Woodland Acres Water System, the authority to transfer all of its water utility assets to Woodland Acres Property Owners Association, Inc., as requested in the Joint Application;
- 2) Makes no ratemaking determination regarding any potential regulatory oversight, if any;
- 3) Cancels the Certificate of Convenience and Necessity previously issued by the Commission to Jerry Reed d/b/a Woodland Acres Water System;
- 4) Cancels the tariff of Jerry Reed d/b/a Woodland Acres Water System, Tariff File No. YW-2010-0134; and
- 5) Closes the subject case.

Respectfully submitted,

/s/ Jennifer Hernandez

Jennifer Hernandez
Associate Staff Counsel
Missouri Bar No. 59814

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751- 8706 (Telephone)
(573) 751-9285 (Fax)
jennifer.hernandez@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by first class U.S. postal mail, postage prepaid, electronic mail, or facsimile on Jerry Reed, Woodland Acres Water System, 2146 Duddler Street, Arnold, MO 63010; Larry Smith, President, Woodland Acres Property Owners Association, Inc., 6432 McGee Street, Kansas City, MO 64113; Woodland Acres Property Owners Association, Inc., Legal Department, 7037 NE 1051 Private Road, Lowry City, MO 64763; and The Office of Public Counsel at opcservice@ded.mo.gov this 5th day of January, 2011.

/s/ Jennifer Hernandez

MEMORANDUM

Case No. WO-2011-0112

**Jerry Reed, d/b/a Woodland Acres Water System, and Woodland
Acres Property Owners Association, Inc.
Joint Application to Transfer Water Assets**

TO: Missouri Public Service Commission Official Case File

FROM: Jerry Scheible, P.E., Utility Regulatory Engineer- Water & Sewer Department

/s/ Jerry Scheible January 5, 2011
Project Coordinator

/s/ Jennifer Hernandez January 5, 2011
Staff Counsel's Office

SUBJECT: Staff Recommendation Regarding the Matter of the Joint Application of Jerry Reed, d/b/a Woodland Acres Water System, and Woodland Acres Property Owners Association, Inc., for Authority for Woodland Acres Property Owners Association, Inc., to Acquire the Assets of Woodland Acres Water System in St. Clair County, Missouri.

DATE: January 5, 2011

CASE FILING SUMMARY

On October 26, 2010 (unless noted otherwise, all dates herein refer to the year 2010), Jerry Reed, d/b/a Woodland Acres Water System (Reed or Company), and Woodland Acres Property Owners Association, Inc. (Woodland Acres POA or POA) filed a Joint Application with the Commission seeking to transfer the water utility assets from the Company to Woodland Acres POA. Woodland Acres POA is organized in a manner consistent with the association that was the subject of Commission Case No. WD-93-307, "Rocky Ridge," in which the Commission established a policy of not asserting jurisdiction over a system if the system met certain criteria, known now as the "Rocky Ridge Criteria".

On October 29, the Commission issued its *Order and Notice*, allowing until November 18 for applications to intervene. The Commission did not receive any intervention requests.

On November 22, the Commission issued its *Order Directing Staff Counsel to File a Status Report*, in which it issued Staff a deadline of December 6, to file a pleading informing the Commission of a date by which Staff will file a recommendation. Staff responded on December 6, with a *Status Report* requesting until January 5, 2011, to file a recommendation in this matter.

BACKGROUND

The Commission issued a Certificate of Convenience and Necessity (CCN) to the Company to provide water service, effective August 3, 2009 (Case No. WA-2009-0031). The area served is the Woodland Acres subdivision in St. Clair County, Missouri. The Company currently provides water service to approximately twelve (12) residential customers, several of which are part-time/seasonal customers. The water tariff currently on file is designated Tariff No. YW-2010-0134.

Water service is provided by two inter-connected groundwater wells, each with a 60-gallon pressure tank and liquid chlorination components for disinfection, and distribution piping. The water supply is permitted by the Missouri Department of Natural Resources (MDNR) as Water System Number MO5252862. There have been no MDNR compliance issues regarding the system since the MDNR permit was issued in 2007. The Company is current with regard to filing its annual reports and annual assessments with the Commission.

The CCN case was initiated in response to an informal complaint filed by a resident of the subdivision. It was determined that Reed was acting as a utility without knowledge that a CCN was required. Staff worked with Reed and the POA, prior to and during the CCN case, to investigate the possibility of the existing POA taking control of the utility. The parties were amiable to the notion at that time, however, there were six lots being served by the water system that were not members of the POA, as well as specific issues with the POA by-laws, that prevented the POA from being a legitimate “non-regulated” utility. The six lots in question have since been inducted into the POA and the by-laws have been revised, correcting the prior issues.

TRANSFER OF OWNERSHIP DETAILS

The Company and the POA agree to, and have filed jointly for, the transfer of all the assets of the water system from the Company to the POA. Reed, who was one of the original developers of Woodland Acres Subdivision, sold his home in September of 2009, moved to the St. Louis area, and therefore no longer has ties to the system. In December of 2009, MDNR sent a letter to Reed explaining that since he no longer owned any property in the subdivision, he no longer could be considered the continuing authority for the water system. MDNR then deferred to the POA as the continuing authority. At that point, Reed effectively and voluntarily relinquished control of the water system to the POA. The tariff issued to the Company was effective on October 2, 2009, but due to the tariff allowing for quarterly billing, an entire billing cycle was not completed prior to MDNR’s change in continuing authority. Consequently, Reed never billed or collected any fees for the water service provided under the newly certificated utility.

Staff, Reed, and the POA have been working together in an effort to reach a solution that allows the POA to take over the provision of water to the subdivision. The parties have been cooperative and water service has continued without incident during this process, although it has proved to be lengthy.

Woodland Acres POA was created in 2006 as a non-profit corporation and is in good standing with the Missouri Secretary of State (SOS). The Articles of Incorporation and Association Bylaws were amended, approved and filed with the SOS in September 2010. Staff now believes that the POA is organized in a manner consistent with "Rocky Ridge Criteria," and the Commission may refrain from exerting jurisdiction over the POA.

Staff has worked closely with the President of the POA, Mr. Larry Smith, who assures Staff that all of the customers of the water system are in agreement with the proposed transfer. The customers received official notice, in a POA newsletter dated September 13, of the POA's intent to acquire the water system. The fact that there are only twelve customers on the water system allowed Staff to send a notification letter to each customer as well (Attachment A). The letters, dated November 5, informed the customers of the subject case and gave specific directions on how to look up information regarding the case on the PSC internet site. Any comments or questions were requested in the letter by November 19. No comments or questions have been received to date, which seems to indicate that the customers are not opposed to the requested transfer of assets.

Reed is currently authorized by tariff to charge residential water customers \$140.34 per quarter for full-time residences and \$106.27 per quarter for part-time residences. The POA is proposing to charge each residence \$50 per quarter, regardless of whether it is a full or part-time customer.

The transfer of assets in this case will be official upon the effective date of a Commission Order approving the transfer. Upon Commission approval, the POA will continue the rendition of water service, without interruption, to the current customers.

The impact upon the tax revenues in St. Clair County, Missouri by the proposed sale of assets are unknown at this time, but will be minimal if any.

STAFF'S CONCLUSION

The Staff, based upon its review, believes that the proposed transfer of assets is not detrimental to the public interest and therefore, recommends approval.

STAFF'S RECOMMENDATIONS

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

- 1) Grants Jerry Reed, d/b/a Woodland Acres Water System the authority to transfer all of its water utility assets to Woodland Acres Property Owners Association, Inc., as requested in the Joint Application;
- 2) Makes no ratemaking determination regarding any potential regulatory oversight, if any;

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January 5, 2011— Page 4 of 4 Pages

- 3) Cancels the Certificate of Convenience and Necessity previously issued by the Commission to Jerry Reed d/b/a Woodland Acres Water System;
- 4) Cancels the tariff of Jerry Reed d/b/a Woodland Acres Water System, Tariff File No. YW-2010-0134; and
- 5) Closes the subject case.

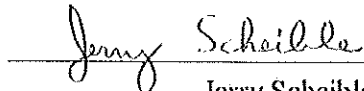
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

AFFIDAVIT OF JERRY SCHEIBLE, P.E.

STATE OF MISSOURI)
) SS CASE NO. WO-2011-0112
COUNTY OF COLE)

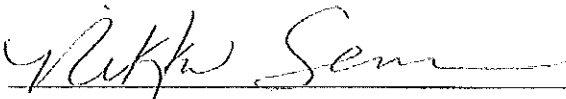
COMES NOW Jerry Scheible, P.E., being of lawful age, and on his oath states the following:

(1) that he is a Utility Regulatory Engineer in the Missouri Public Service Commission's Water & Sewer Department; (2) that he participated in the preparation of the foregoing Staff Recommendation Memorandum; (3) that he has knowledge of the information presented in the foregoing Staff Recommendation Memorandum; and (4) that the information presented in the foregoing Staff Recommendation Memorandum is true and correct to the best of his knowledge, information and belief.



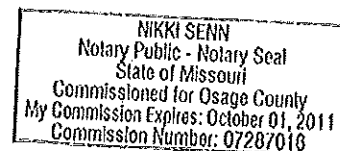
Jerry Scheible, P.E.

Subscribed and sworn to before me this 5th day of January 2011.



Notary Public

My Commission Expires: Oct 1, 2011





Commissioners
ROBERT M. CLAYTON III
Chairman
JEFF DAVIS
TERRY M. JARRETT
KEVIN GUNN
ROBERT S. KENNEY

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

WESS A. HENDERSON
Executive Director
DANA K. JOYCE
Director, Administration and
Regulatory Policy
ROBERT SCHALLENBERG
Director, Utility Services
NATELLE DIETRICH
Director, Utility Operations
STEVEN C. REED
Secretary/General Counsel
KEVIN A. THOMPSON
Chief Staff Counsel

November 5, 2010

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
Lowry City, MO 64763

XXXXXXXXXXXXX:

A case has been filed before the Missouri Public Service Commission requesting a transfer of ownership of the drinking water utility in Woodland Acres Subdivision from **Jerry Reed d/b/a Woodland Acres Water System** to the **Woodland Acres Property Owners Association**. Documents filed in the case may be viewed by accessing the Public Service Commission website at www.psc.mo.gov and then selecting the option of **EFIS/Case Filings** located on the left side of the page. Scroll down to the section titled **View Information on a Specific Case** and click on **Docket Sheet**. Type in the Case Number assigned to the transfer request, **WO-2011-0112**, and hit Enter.

Larry Smith, the President of the Association, has provided me with a list of the property owners in the subdivision. I am sending this letter to each property owner to offer the opportunity to ask questions or voice any opposition to the transfer of ownership.

If you have any questions or comments regarding this matter, contact me directly by phone at (573) 526-6029 or by email at jerry.scheible@psc.mo.gov on or before November 19, 2010.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Jerry Scheible".

Jerry Scheible, P.E.
Utility Regulatory Engineer
Water and Sewer Department

Attachment A

Date: December 4, 2009

To: Member—Woodland Acres Property Owners Association, Inc.

From: Board of Directors

Re: Approve Transfer of Water System

According to the enclosed Agreement, dated November 28, 2009, the water system, i.e., well water previously serviced by Jerry Reed, may be transferred to the Woodland Acres Property Owners upon a 51% approval by the property owners. The cost for water service and maintenance will remain the responsibility of only those members receiving this service.

Please indicate your approval/disapproval and return your response to the Board of Directors no later than **December 15, 2009**.

_____ Yes

_____ No

Mail this response to:

Woodland Acres Property Owners Association, Inc.
7037 NE 1051 Pvt. Rd.
Lowry City, MO 64763

Your Name (*please print*): _____

Address: _____

Signature: _____

Attachment B

No. 20040220 Book 614 Page 26
State of Missouri, St. Clair County
Recorded in Book 614 Page(s) 26 - 27
Mar 2, 2004 12:31 PM Fees \$27.00

Pat Terry, Recorder of Deeds

Pat Terry



WELL EASEMENT

THIS EASEMENT, made and entered into this 25th day Of February, A.D., Two Thousand Four, by and between Raymond Eslick and Brenda Eslick, husband and wife, Grantors; and Jerry Reed and Rachel Reed husband and wife, and Raymond Eslick and Brenda Eslick husband and wife, Grantees: (Grantee's address is 7210 NE 1031 pvt rd. Lowry City Missouri 64763)

Witnesseth: that the said Grantors, for and in consideration of the sum of ten dollars and other valuable considerations paid by the said grantees, the receipt of which is hereby acknowledged, does or do by these presents Grant, Bargain, Convey and Confirm, unto the said Grantees, the following described easement.

A tract of land located in the northwest Quarter and the Southeast Quarter of section 20, township 39 north, range 24 west of the 5th principal meridian, st. clair county missouri, described as, beginning at a 1/2" iron bar and cap at the northeast corner of lot 6 of Reed & Schumaker addition, An addition to st. clair county, missouri as recorded in plat book A at page 152, Thence N81°11'58"E, A distance of 20.00 feet, thence S02°02'00"W, A distance of 20.00 feet, thence S81°11'58"W, A distance of 20.00 feet to the east line of said lot 6, Thence N02°02'00"E Along the east line of said lot 6, A distance of 20.00 feet to the point of beginning. Containing 393 square feet of land, more or less.

Easement for ingress and egress for a Well to be shared by Reed and Eslick. Either party may have the right to install the well at any time at their own expence, But if the other party should decide to conect onto the Well at a later date, that party must first pay one half 1/2 of the Cost of the Well and Pump before that party will be allowed to conect to the Well.

Attachment C

AGREEMENT

This Agreement made and entered into this 1ST day of March, 2010, by and between **Raymond and Brenda Eslick**, husband and wife, First Party, and **Woodland Acres Property Owners Association, Inc.**, a nonprofit corporation, Second Party.

The First Party is owner of a well easement as described by the Recorder of Deeds for St. Clair County, Missouri as No.20040389 in Book 514 on Pages 26-27 and recorded on Mar. 2, 2004 at 12:31 PM and a part owner of a well, pump and related equipment situated on said easement that serves the property owners in the **Woodland Acres Subdivision** and the **Reed and Schumaker Addition in St. Clair County, Missouri**, and has the authority to transfer same free and clear of any claims, liens or other encumbrances. The First Party desires to dispose of said well easement, and its partial ownership of the well, pump, and related equipment situated on said easement, and the Second Party is willing to accept same "as is" and operate same for benefit of members of the Association.

Therefore, the First Party agrees to transfer and convey to the Second Party all interest in said well easement, well, pump, and related equipment effective **March 1, 2010**. All made and entered into the day and year first above written.

Raymond Eslick
Raymond Eslick

Brenda Eslick
Brenda Eslick

WOODLAND ACRES PROPERTY OWNERS ASSOCIATION, INC.

By: Larry Smith
Larry Smith, President/Director

Jim Tate
Jim Tate, Vice-President/Director

Loren Close
Loren Close, Secretary-Treasurer/Director

Attachment D

MISSOURI ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS.
 COUNTY OF Jackson)

On this 24 day of March, 2010, before me, the undersigned Notary Public in and for said county and state, this day personally appeared Raymond Eslick and Brenda Eslick, husband and wife, personally known to be the persons who executed the foregoing document and being first duly sworn, acknowledged they are over 18 years of age, acknowledged reading in full and fully understanding the foregoing document, acknowledged the facts therein stated to be true and correct, and who further acknowledged the execution of the same as a voluntary act.



 Notary Public

My Commission Expires:

NOTARY SEAL

____ R.H. Cunha, Notary Public
 Jackson County, State of Missouri
 My Commission Expires 5/01/2012