

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

In the Matter of the Joint Application of)	
Woodland Manor Water Company, LLC)	
and Woodland Manor Water Utility, LLC)	<u>File No. WO-2015-0077</u>
for Authority of Woodland Manor Water)	
Company, LLC to Sell Assets to Woodland)	
Manor Utility, LLC)	

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through counsel, and states that it cannot at this time, support a recommendation for the transfer of assets requested, and requests that the Missouri Public Service Commission ("Commission") allow the Applicant's parent company, Ozark International, Inc., time to file rate cases on its other regulated utilities¹ and time to address compliance concerns from the Department of Natural Resources. Staff has been in contact with the Applicant regarding the rate cases and the Applicant has indicated that it is willing to file these cases soon. A Staff Recommendation, in memorandum form, is attached to this pleading as Exhibit A. In support of its position, Staff states as follows:

1. On September 24, 2014, Woodland Manor Water Company, LLC and Woodland Manor Water Utility, LLC filed a *Joint Application* ("*Application*") with the Commission, wherein Woodland Manor Water Company, LLC seeks to sell assets, and Woodland Manor Water Utility, LLC, seeks to acquire all of the issued and outstanding interests of Woodland Manor Water Company, LLC, which provides water service to the public near the city of Kimberling City, Stone County, Missouri. This *Application* was

¹ In order to address sufficiency of revenues issues.

given Commission Case No. WO-2015-0077.

2. On September 25, 2014 the Commission issued its *Order Directing Staff to File Status Update* in which it ordered Staff to file a pleading, no later than October 6, 2014, informing the Commission of a date by which Staff will file a recommendation. On September 29, 2014, Staff filed *Staff's Notification of Date Upon Which Staff's Recommendation Shall Be Filed* the stating that Staff's Recommendation would be filed with the Commission on January 15, 2015. Staff subsequently filed a motion for extension of time on January 9, 2015, seeking until February 6, 2015, in which to file its recommendation. The Commission granted that extension on the same day. This filing complies with that Order.

3. Staff is unable to submit a positive recommendation regarding the request in this instant case without further extensive study. The Applicant is a corporation that has a number of affiliates, among them six (6) regulated utilities, five (5) providing water service and one (1) providing both water and sewer service, to a total of approximately 932 water customers and 32 sewer customers. The addition of Woodland Manor would add approximately 166 water customers, totaling nearly 1100 customers, making Applicant one of the largest regulated providers of water and sewer services in the state. These businesses are operated under a parent corporation, Ozark International, Inc. ("Ozark"). The majority stockholder is Mr. Hollis H. "Bert" Brower, Jr., who oversees all of the business activities and conducts a substantial amount of the hands-on operations work. In this instant case, where the addition of the new assets will significantly expand Ozark's regulated utility business operations, Staff is studying the capabilities of Ozark and Mr. Brower to effectively manage and operate all of the regulated utility entities while at the same time undertaking Ozark's non-regulated business activities.

4. Staff points out several concerns with Ozark and Mr. Brower's prior dealings with the Commission in Exhibit A. Among them are customer complaints about quality of service as well as complaints about inadequate response from the utility when the customers call the utility with a question or a problem; some of the affiliates' poor handling of matters with previous cases before the Commission involving sale cases similar to this current case as well as rate cases; and issues involving DNR regulations sometimes resulting in water boil orders and notices of violations. There are 10 matters showing in the Commission's EFIS's system related to customer service matters with Mr. Brower's regulated utilities and 8 active matters under review and compliance with the Department of Natural Resources.

5. Given Staff's overall concerns about Mr. Brower's ability to properly operate his current regulated utilities, it is Staff's opinion that adding another regulated utility now would not be in the public interest, absent significant changes.² In determining whether a transaction is in the public interest, the Commission is guided by §393.190.1 RSMo. The purpose of § 393.190.1, RSMo., is to ensure the continuation of adequate service to the public. The Commission typically considers such factors as the applicant's experience in the utility industry; the applicant's history of service difficulties, if any; the applicant's general financial health and ability to absorb the proposed transaction; and the applicant's ability to operate the assets safely and efficiently.³ With these factors in mind, it is Staff's opinion that the Applicant has failed to meet his burden in showing that the transfer of

² ***State ex rel. City of St. Louis v. P.S.C.***, 73 S.W.2d 393, 400 (Mo. Banc 1934) "It is not their (P.S.C.) province to insist that the public shall be benefited, as a condition to change of ownership, but their duty is to see that no such change shall be made as would work to the public detriment. 'In the public interest,' in such cases, can reasonably mean no more than 'not detrimental to the public'"

³ See ***In the Matter of the Joint Application of Missouri Gas Energy, et al.***, Case No. GM-94-252 (*Report and Order*, issued October 12, 1994), 3 Mo. P.S.C.3rd 216, 220.

assets in this case would not be a detriment to the public interest.⁴ Given the lengthy list of concerns of Staff, as well as documented violations in front of the Department of Natural resources, a public detriment is likely to occur if this transfer were to be approved.

WHEREFORE, Staff respectfully submits this *Staff Recommendation* for the Commission's information and consideration and hereby states to the Commission that it cannot recommend that the proposed transfer of assets be approved at this time.

Respectfully submitted,

/s/ Cydney D. Mayfield
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Attorney for Staff of the
Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by First Class United States Mail, postage prepaid, on this **6th day of February, 2015**, to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case, a copy of which is attached hereto and incorporated herein by reference.

/s/ Cydney D. Mayfield

⁴ *In the Matter of Union Electric Company, d/b/a AmerenUE*, 13 MoPSC3d 266, 293 (2005); and see *In the Matter of Great Plains Energy, Inc., Kansas City Power & Light Company and Aquila, Inc.*, 17 Mo.P.S.C.3d 338, 541 (2008), "the Commission may not withhold its approval of the proposed transaction unless the Applicants fail in their burden to demonstrate that the transaction is not detrimental to the public interest, and detriment is determined by performing a balancing test where attendant benefits are weighed against direct or indirect effects of the transaction that would diminish the provision of safe or adequate of service or that would tend to make rates less just or less reasonable."

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. WO-2015-0077
Woodland Manor Water Company, LLC and
Woodland Manor Water Utility, LLC

FROM: Jim Merciel – Water and Sewer Unit; Case Coordinator
Lisa Kremer – Engineering and Management Services Unit

SUBJECT: Staff Recommendation

DATE: February 6, 2015

EXECUTIVE OVERVIEW

On September 24, 2014, Woodland Manor Water Company, LLC (Seller) and Woodland Manor Water Utility, LLC (Buyer) filed a *Joint Application* (Application) with the Commission seeking authority for the Seller to sell and transfer water utility assets to the Buyer. The proposed transfer of assets would also involve cancellation of a Certificate of Convenience and Necessity (CCN) of the Seller, and issuance of a CCN to the Buyer.

The Buyer is a corporation that has a number of affiliates, among them 6 regulated utilities, 5 providing water service and 1 providing both water and sewer service, to a total of approximately 932 water customers and 32 sewer customers as reported in the utilities' respective annual reports filed with the Commission for calendar year 2013. The addition of the Seller's assets would add approximately 166 water customers for a total of 1,098 water customers. Also among the affiliate utility corporations are business ventures that primarily involve drinking water services such as laboratory testing, contract system operations, and sales of consumer-used water treatment systems such as water softeners and point-of-use filters and treatment devices. These businesses are operated under a parent corporation, Ozark International, Inc. (Ozark) and include: North American Dioxide, Water Technology of the Ozarks, Lakeland Laboratories and Missouri Valley Environmental. The majority stockholder is Mr. Hollis H. "Bert" Brower, Jr. (Mr. Brower), who is the person who oversees all of the business activity, conducts a substantial amount of the hands-on operations work, and is Staff's primary contact person for regulated utility matters.

In this instant case, where the addition of the Seller's assets will significantly expand Ozark's regulated utility business operations, Staff is studying the capabilities of Ozark and Mr. Brower to effectively manage and operate all of the regulated utility entities while at the same time undertaking the other business activities. Overall, and generally, the regulated utility activities include the following:

- Utility plant day-to-day operations, including regular maintenance, by technicians and licensed operators for the 6 regulated utilities, performed in addition to work for other non-regulated systems under contract operation, which could total approximately 45 water and/or sewer systems involving variable levels of time commitment in the scope of contract work;

- Monitoring of water and wastewater quality in accordance with regulatory requirements of state and federal agencies, meeting with regulatory agencies, and formulating plans necessary to address increasingly stringent standards and noncompliance issues;
- Major and minor repairs to water or sewer system components when failures occur or normal wear warrants such work, some events being emergencies requiring immediate response, for both the regulated utilities and contract operations clients;
- Upgrades to system components, some of which involve major construction projects, either undertaken directly or overseen, for the regulated utilities and contract operation clients;
- Customer billing and handling of customer accounts both for customers of the regulated utilities and customers of the other business ventures;
- Handling customer complaints and inquiries, which may be made by telephone, email, regular mail and walk-in office visits; customer service also includes field work to investigate questions, complaints, service turn-on and turn-off, and bill collection enforcement.
- Responding to customer requests for service initiations and discontinuances.

Staff's experiences with and observations of the regulated utility affiliates of the Buyer include: customer complaints about quality of service as well as complaints from customers about inadequate response from the utility when the customers call the utility with a question or a problem; some of the affiliates' poor handling of matters with previous cases before the Commission involving sale cases similar to this current case, and rate cases; and issues involving the Missouri Department of Natural Resources (DNR) regulations sometimes resulting in water boil orders and notices of violations (NOV)¹. Staff and DNR have addressed these items with Mr. Brower over the years, and Staff has also undertaken studies regarding this operation as a part of the review of the request in this current case.

¹ Among complaints logged by PSC Staff on the Commission's Electronic Filing and Information System (EFIS) during the past two years, those involving quality of service and/or company contact issues include eight (8) from customers in the Taney County Water, LLC service area, and two (2) from the Valley Woods Utility, LLC service area. Among the issues with DNR: 1) NOV 15071SW issued on 11/14/13 to Moore Bend Water Utility, LLC for failure to address a preexisting contamination and noncompliance with a bilateral compliance agreement addressing correction (follow up to NOV 14845SW issued on 8/12/13 to Moore Bend Water Company, Inc., the previous owner); 2) NOV 14488SW issued on 11/27/12 to Valley Woods Utility, LLC pertaining to sewer effluent limits, work was still under way at the time; 3) A boil order issued to customers of Taney County Water, LLC on 1/3/14 because of low pressure or outage situation, no chlorine residual, and lack of action by company, the boil order was in effect for a month, includes complaints to Staff; 4) Email from DNR to Staff about water outage on 5/4/14 at Valley Woods Utility, LLC with company contact problems, same date as a complaint to Staff; 5) Email from DNR to Staff about a customer complaint at Riverfork Water Company on 5/16/14 on low pressure, odor, and poor company response; 6) NOV 15387SW issued on 5/19/14 to Valley Woods Utility, LLC pertaining to sewer effluent limits; 7) NOV 15593SW issued on 8/21/14 to Riverfork Water Company about failure to comply with a bilateral compliance agreement, low pressure, and customer notification issues; 8) NOV 15980SW issued on January 21, 2015 to Taney County Water, LLC for failure to comply with a bilateral compliance agreement, failure to undertake adequate sampling, failure to meet coliform maximum contaminant levels, inadequate notification and reporting to DNR, and failure to address system deficiencies. In addition to quality of service and customer service matters, Staff has experienced three (3) case compliance issues with respect to WM-2013-0329 (Bilyeu Ridge Water Company, LLC); WM-2012-0335 (Moore Bend Water Utility, LLC) and WM-2011-0143 (Taney County Water, LLC). Staff does not wish to portray these issues as all inclusive, and also does not wish to imply that management of these regulated utilities was undertaking no action with respect to these issues.

In summary, Staff is unable to submit a positive recommendation regarding the request in this instant case without further extensive study that could be performed during a rate case process. Staff has recommended to Mr. Brower that rate cases should be filed as soon as possible for all of the involved regulated utility affiliates, which does not include the current system in question presently owned by the Seller. Such rate cases would allow Staff to fully analyze the existing financial state of Ozark and Mr. Brower, and potentially include rate relief for the regulated entities as determined necessary, that might permit the addition of operational resources to attain adequate Technical, Managerial, and Financial Capacities needed to successfully operate multiple regulated systems. Staff informed Mr. Brower of its position by telephone, and he indicated willingness to undertake such rate cases, and acknowledgement that such cases are warranted. He later followed up by emailing Staff inquiring about necessary details to submit rate cases, and further discussed the filing of rate cases with Staff during its site visit on February 2nd and 3rd of this year. Staff's intent is to utilize the structured events of rate cases to properly and timely study Ozark's and Mr. Brower's utility operations in totality and the related financial and allocation matters that presently exist and determine if they should be adjusted for present operations.

CASE BACKGROUND

On September 25, 2014, the Commission issued its *Order Directing Staff to File Status Update* in which it directed Staff to file a pleading, no later than October 6, 2014, informing the Commission of a date by which Staff will file a recommendation. On September 29, 2014 Staff filed its *Staff's Notification of Date Upon Which Staff's Recommendation Shall Be Filed* in which Staff stated its intent to submit a recommendation by January 15, 2015. On January 9, 2015 Staff filed a *Motion for Extension of Time* in which it requested an extension of its date to file a recommendation to February 6, 2015, which the Commission granted by its *Order Granting Staff's Request for Additional Time* Issued on January 9, 2015. This request is being submitted to comply with Staff's ordered obligation to submit a filing by February 6, 2015.

TECHNICAL, MANAGERIAL, AND FINANCIAL CAPACITY

To evaluate proposed water and sewer utility operations, Staff often studies, among other items, criteria known as technical, managerial and financial capacities of the proposed operation, referred to as "TMF." These fundamental review criteria points were developed by the United States Environmental Protection Agency, and are utilized by DNR for new water systems, however Staff finds the concepts of TMF useful in studying situations involving existing water and/or sewer systems as well.

Technical Capacity

The Buyer must be able to undertake the technical aspects of existing utility plant operations, repairs and upgrades at reasonable levels that will ensure safe and adequate service, before spending additional technical resources on additional systems.

The following is a summary of current issues that Mr. Brower is failing to address, which is not all inclusive:

- a) Bilyeu Ridge Water Company, LLC (BRWC), 55 customers, has some relatively minor operating and system deficiencies that were observed by Staff on its recent visit. The master meter is not working properly, and the well pump controls do not appear to be calibrated such that the storage tanks are filling.
- b) Midland Water Company (MWC), 94 customers, has a storage tank that has been inspected and found to be in poor condition. It should be rehabilitated or replaced, possibly requiring substantial capital investment. The wellhouse is also in poor condition.
- c) Moore Bend Water Utility, LLC (MBWU), 86 customers, acquired assets of a previously regulated water utility that was under directive from DNR to construct disinfection systems for each of its two wells. The previous owner had failed to undertake the necessary work, and in Case No. WM-2012-0335 effective October 19, 2013, MBWU had agreed to undertake construction of the disinfection systems after closing on the assets. However, it did not undertake the disinfection project in a timely manner, and did not complete the project until approximately a year later. DNR had issued NOV 14845SW to MBWU for failure to address the need for disinfection. A boil order has been in effect for 2 years (since prior to the MBWU acquisition), and contrary to Staff indicating in Case No. WC-2015-0010 that the boil order had been lifted, according to DNR the boil order remains in effect at present because MBWU is not monitoring and reporting chlorine disinfection operations. In addition, during its recent visit, Staff observed that one of the two chlorine disinfection system was non-operational because the chlorine solution container was empty. MBWU has expended capital funds on the disinfection systems but is not yet recovering the funds; and additionally customers are not fully realizing the benefit of the disinfection systems because of the operations and monitoring deficiencies.
- d) Riverfork Water Company (RWC), 143 customers, is under a bilateral compliance agreement with DNR to address low water pressure along with failing to meet customer notification requirements. Although the pressure issue is not new, DNR's NOV 15593SW is relatively recent. RWC has been communicating with DNR regarding resolution. This remains an active service problem and resolution of this pressure issue will likely require capital investment although exactly what would be cost effective has not yet been determined. Staff believes that whatever else may be necessary, RWC needs to address what appears to be a problem with the currently-used well pump because production has been decreasing over the past several years.
- e) Taney County Water, LLC (TCU), 512 customers, is under a bilateral compliance agreement with DNR to address several items, and currently is failing to undertake some of the operational tasks. Some of the items are failure to operate and monitor its chlorine disinfection systems, failure to meet compliance issues including cross-connection control and water quality testing/reporting, and addressing system deficiencies including tank

maintenance, well-house condition, well-head corrosion, and electrical component corrosion, and system security.

- f) Valley Woods Utility, LLC (VWU), 42 water customers and 32 sewer customers, is failing to meet sewage treatment effluent limits. DNR issued NOV 15387SW and informs Staff that the issues with this treatment facility, and its operations, are not improving. Staff observed that some past deficiencies with maintenance of the facility have been addressed, but not only does the facility fail to meet current water pollution regulations, there may be more stringent regulations for ammonia and phosphorus in the future. Capital resources will likely be needed for this facility. The VWU water system has some system deficiencies, some of which are being addressed, and some of which are not.

Many of the deficiencies that are noted by DNR and/or by Staff are extremely significant items, the correction of which are critical with respect to DNR drinking water regulatory requirements, and also necessary in order to provide safe and adequate service to the customers. Staff, during its recent inspections of all of the regulated utility systems that are under Mr. Brower's management, observed common operating and recordkeeping deficiencies at many of the systems, such as: failure to operate chlorine disinfection systems; poor condition and/or non-operation of system components including tanks, pumps, and disinfection systems; and, inadequate recordkeeping that is important for operations and for compliance with DNR drinking water regulatory requirements. The frequency and ongoing nature of the issues, involving both day-to-day operations and extraordinary matters, not only demonstrate a need for improvement, but also indicates a question as to whether or not some of these utilities are meeting their responsibilities to provide safe and adequate service. During an on-site visit by Staff December 11, 2014, Mr. Brower expressed recognition that additional resources were needed by his utility operations and further indicated his intentions to hire personnel in upcoming months to assist the Company's operational needs. In Staff's opinion, the Buyer and Mr. Brower do not have adequate personnel resources necessary to accomplish the tasks associated with safe and adequate operation of the Seller's water system, from a technical capacity perspective.

Managerial Capacity

Much of Staff's concerns about issues of the Buyer relate not only to the operations tasks themselves, but also the ability of Mr. Brower to oversee the operations, office management, and adequate handling of extraordinary projects related to the regulated utilities. Staff has engaged in discovery, and has made one site visit to review Ozark's office work. The focus of Staff's office visit was on the regulated utilities and how office management is combined with other business activity.

Staff conducted interviews of Mr. Brower as well as two office support personnel during its on-site work on December 11, 2014, which resulted in significant concerns regarding the ability of existing personnel to support service to an additional 166 customers of the Seller. Current office personnel are part-time employees, with one having substantial accounting and book keeping responsibilities for Mr. Brower's other non-regulated businesses. Such part time personnel are able to only offer limited business office hours for the entire body of regulated systems that currently serve nearly 1000 existing customers, without the addition of the Seller's operation. These personnel perform all

billing, applications for service, requests for service orders and handle all customer inquiries and complaints for the current customers of the 6 existing regulated utilities. Interviews conducted indicated that both of the part-time employees frequently are required to work beyond their normal work hours in order to complete work necessary for the regulated utilities. One part-time office personnel spends the majority of her time answering the telephone and returning phone calls left from the prior day on the Company's answering machine.

Mr. Brower stated to Staff that he estimates he works 50 to 60 hours per week on both his regulated and non-regulated holdings, but receives no salary for the portion of his time spent on the regulated utilities. Staff's observations of such office work, as well as observations of Mr. Brower's handling of regulatory utility operations and upgrade needs for improvement, result in a conclusion that the Buyer does not have the ability, from a managerial capacity perspective, to undertake the additional workload associated with Seller's water system.

Financial Capacity

The financial capacity of the buyer is not a front concern of Staff at this time, but a study of technical and managerial capacities will also allow Staff to study the financial capacity and be able to arrive at a good recommendation on this matter. Financial capacity could demonstrate itself to become an issue if Mr. Brower were to undertake all capital improvements that appear to be necessary to accomplish repairs, rehabilitations and upgrades to meet drinking water and water pollution requirements, and to build an adequate operations and office staff needed to provide safe and adequate service. Staff also suggests that utilizing capital resources on existing utility plant needs is far more important than utilizing them on acquisition of additional systems. Staff fully recognizes that current rates of some or all of the involved utilities likely would not support such improvements.

STAFF RECOMMENDATION

Staff does not recommend that the Commission authorize Seller to sell and transfer its utility assets to Buyer at this time.

However, in the interest of safe and adequate service for all customers involved, Staff recommends Mr. Brower file rate cases for all of Ozark's existing regulated utility entities. In the meantime, Mr. Brower should manage the businesses, utilize hired employees and contract agents to undertake the day-to-day tasks under his management, and work with Staff and DNR to address outstanding issues.

BEFORE THE PUBLIC SERVICE COMMISSION
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Woodland Manor Water Company, LLC and)
Woodland Manor Water Utility, LLC For)
Authority of Woodland Manor Water)
Company, LLC to Sell Assets to Woodland)
Manor Water Utility, LLC)

File No. WO-2015-0077

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

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

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 Unit of the Missouri Public Service Commission; (2) that he participated in the preparation of the foregoing *Staff Recommendation*, in memorandum form; (3) that information in the *Staff Recommendation* was provided by him; (4) that he has knowledge of matters set forth in the *Staff Recommendation*; and (5) that such matters set forth in the *Staff Recommendation* 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 6th day of February 2015.



Notary Public

SUSAN L. SUNDERMEYER Notary Public - Notary Seal State of Missouri Commissioned for Callaway County My Commission Expires: October 28, 2018 Commission Number: 14942086
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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

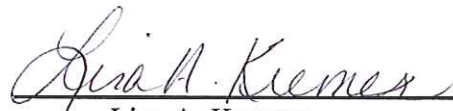
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File No. WO-2015-0077

AFFIDAVIT OF LISA A. KREMER

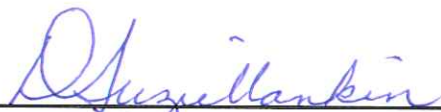
STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Lisa A. Kremer, of lawful age, on her oath states: (1) that she is the Manager – Engineering and Management Services Unit of the Missouri Public Service Commission; (2) that she participated in the preparation of the foregoing *Staff Recommendation*, in memorandum form; (3) that information in the *Staff Recommendation* was provided by her; (4) that she has knowledge of matters set forth in the *Staff Recommendation*; and (5) that such matters set forth in the *Staff Recommendation* are true and correct to the best of her knowledge, information and belief.



Lisa A. Kremer

Subscribed and sworn to before me this 6th day of February 2015.



Notary Public

