

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

IN THE MATTER OF THE APPLICATION)
OF CAMELOT ESTATES ASSOCIATION,)
TO SELL AND TRANSFER ITS WATER)
FRANCHISE, WORKS OR SYSTEM TO)
CAMDEN COUNTY PWSD#3, A WATER)
DISTRICT ORGANIZED PURSUANT TO)
SECTION 247.010 ET SEQ., OF THE)
REVISED STATUTES OF MISSOURI)

Case No. WM-2006-0310

**RECOMMENDATION FOR APPROVAL OF TRANSFER OF ASSETS AND CANCELLATION OF
CERTIFICATE OF CONVENIENCE AND NECESSITY**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through Counsel, and for its Recommendation for Approval of Transfer of Assets and Cancellation of Certificate of Convenience and Necessity (Recommendation) states the following to the Missouri Public Service Commission (Commission):

1. On January 27, 2006, Camelot Estates Association and Camden County PWSD #3 filed a *Joint Application for Sale of Water Supply System and Cancellation of Certificate of Convenience and Necessity* (Joint Application) seeking authority from the Commission for Camden County PWSD #3 to purchase the water and sewer utility assets of Camelot Estates Association, a subsequent owner of assets formerly owned by Camelot Utilities Company, a regulated water utility, and to cancel the Certificate of Convenience and Necessity that was issued to Camelot Utilities Company. Neither of the joint applicants holds a certificate of convenience and necessity from this Commission, although the Commission's records currently reflect Camelot Utilities Company as holding a certificate of convenience and necessity to provide water service granted in Case No. WA-89-1.

2. The sale of utility assets is governed by Section 393.190, RSMo. (2000), and applications to the Commission for approval of utility asset sales are governed by Commission

rules 4 CSR 240-2.060 and 4 CSR 240-3.310. Relevant case law provides that the Commission may approve an asset transfer if it is “not detrimental to the public interest”. See *State ex. Rel Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980).

3. Section 393.190 (1) RSMo. (2000) requires regulated water and sewer companies to obtain the approval of the Commission prior to transferring their facilities or system to another entity. If Camelot Utilities Company was the owner of the water system when they were sold to Camelot Estates Association, then Camelot Utilities Company should have obtained Commission approval before the sale occurred.

4. Prior approval for the transfer of the system was not sought by Camelot Utilities Company. As a result, the statutory violation could give rise to cause for a complaint under the provisions of Section 393.190. However, in Staff’s view, the reality is that Camelot Utilities Company has ceased to function and ceased to exist as a legal entity; the facilities are now being operated by Camelot Estates Association; and Missouri customers are receiving safe, adequate and continued water and sewer service from Camelot Estates Association, who now proposes to transfer the assets used to provide service into the hands of a public water supply district. Moreover, the statute of limitations to seek penalties for any illegal transfer has long since expired, as the transfer in this case took place in 2001 and a two-year statute of limitations applies to the Commission’s claims.¹

5. Staff further notes the last sentence of Section 393.170.3 RSMo. (2000), which states that “[u]nless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be

¹ "If the penalty is given in whole or in part to the state, or to any county or city, or to the treasury thereof, a suit therefor may be commenced, by or in behalf of the state, county or city, at any time within two years after the commission of the offense, and not after." Section 536.390 RSMo. (2000); see also *Division of Labor Standards, Department of Labor and Industrial Relations, State of Missouri v. Walton Construction Management Co., Inc., and Quick Electric, Inc.*, 984 S.W.2d 152 (Mo.App. W.D. 1998).

null and void.” Camelot Utilities Company received its certificate of convenience and necessity in Case No. WA-89-1, effective September 8, 1989. Although the Commission approved rates for Camelot Utilities Company to charge its customers in that case, the company never filed a tariff and, accordingly, never charged its customers for the service had the authority to provide.

6. The definition of “water corporation” at Section 386.020(58) RSMo. (Supp. 2005) includes entities that own, operate, control or manage properties used in the distribution or sale or supply any water “for gain.” The Missouri Court of Appeals has found that a company is “a ‘water corporation,’ as defined by the Missouri legislature, because it is incorporated and is in the business of operating, managing and providing water service to the public for compensation.” *Osage Water Co. v. Miller County Water Auth.*, 950 S.W.2d 569, 574 (Mo. Ct. App. 1997).

7. As the facts presented in the attached Appendix so indicate, Camelot Utilities Company fails the test of being a water corporation. The company never sold or supplied water to residents in its service area for gain, and thus failed to exercise its certificate of convenience and necessity within two years of the Commission’s grant of authority of September 8, 1989. Accordingly, the Commission has the authority to find the certificate of convenience and necessity it granted to Camelot Utilities Company is null and void.

8. In the past, the Commission has found certificates null and void when presented with similar facts. See, e.g., *Staff of the Missouri Public Service Commission, Movant, vs. Briarwood Utility Co., Inc., Respondent*, 26 Mo. P.S.C. (N.S.) 530 (January 26, 1984) (no systems were built, no tariffs established, and certificated entity not operating a system). In construing a statute with identical language to that of Section 393.170.3 regarding becoming null and void if not exercised within two years, the Commission has indicated: “Upon reading the statute and giving effect to the meaning of the words therein, it can be seen that the holding of oneself out to the public as a common carrier coupled with the willingness and the ability of such

common carrier to make a proper haul constitutes the exercise of the Certificate of Convenience and Necessity, which is required within the two year period.” *Transport Delivery Company, a corporation, and John Groner Motor Carrier, Inc., a corporation, complainants, vs. W. M. Kersting, Respondent*, 10 Mo. P.S.C. (N.S.) 473, 476 (December 17, 1962). Drawing a parallel with the situation presented in this case, Camelot Utilities Corporation has failed to hold itself out to the public to provide the services it received a certificate to provide by failing to file a tariff, and thus has failed to exercise its certificate.

9. Should the Commission determine that Camelot Utilities Company’s certificate is not null and void, the Staff has also reviewed the Joint Application for approval of the proposed asset transfer and has concluded that the transaction will not be detrimental to the public interest.

10. Included in the document that is attached hereto and identified as Appendix A is the Staff’s Official Case File Memorandum, in which the Staff summarizes its review of the Joint Application and the history of Camelot Utilities Company, and recommends that if the Commission determines it is not appropriate to determine that Camelot Utilities Company’s certificate of convenience and necessity is null and void, the Commission enter an Order approving the Joint Application in this case.

WHEREFORE, the Staff respectfully submits its Recommendation in this case for the Commission's consideration.

Respectfully submitted,

/s/ David A. Meyer

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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 7th day of April 2006.

/s/ David A. Meyer