

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 27<sup>th</sup> day  
of June, 2012.

In the Matter of Lincoln County Sewer & Water, LLC for )  
a Certificate of Convenience and Necessity Authorizing ) **File No. WA-2012-0018, et al.**  
it to Own, Operate, Maintain, Control and Manage Water )  
Systems in Lincoln County, Missouri )

**ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT,  
APPROVING TRANSFER OF ASSETS AND GRANTING CERTIFICATES  
OF CONVENIENCE AND NECESSITY**

Issue Date: June 27, 2012

Effective Date: July 6, 2012

**Background**

On July 19, 2011, Lincoln County Sewer & Water, L.L.C. (“LCSW”) filed two applications with the Commission seeking certificates of convenience and necessity (“CCNs”) to own, operate, maintain, control and manage water and sewer systems in Lincoln County, Missouri.<sup>1</sup> The areas generally encompassed by the requested CCNs would require approving a transfer of assets of the systems serving two existing developments (Rockport and Bennington) to LCSW. Those water and sewer systems are not currently regulated by the Commission.<sup>2</sup> The combined water and sewer systems serve approximately 112 residential customers.<sup>3</sup>

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<sup>1</sup> File Numbers WA-2012-0018 and SA-2012-0019 were consolidated on August 3, 2011.

<sup>2</sup> The applications were apparently filed in response to two complaint actions filed by the Commission’s Staff on February 10, 2011, alleging the entities and individuals operating those systems were unlawfully operating as water and sewer entities that should be under the jurisdiction of the Commission (File Numbers WC-2011-0253 and SC-2011-0254). LCSW was created as a Limited Liability Company for the purpose of receiving the transfer of the water and sewer assets.

The Commission issued notice and set a deadline for intervention requests. No person or entity sought to intervene. At Staff's request, the Commission held a Local Public Hearing on August 25, 2011.

On February 10, 2012, Staff filed its recommendation to approve the transfer of assets and to grant LCSW the CCNs subject to certain conditions. LCSW and the Office of the Public Counsel opposed Staff's recommendation. The parties attempted to negotiate a settlement, but eventually requested a procedural schedule culminating with an evidentiary hearing to be held on August 16-17, 2012. However, on June 7, 2012, the parties filed a Unanimous Stipulation and Agreement ("Agreement") purporting to resolve all issues in this matter.

### **The Agreement**

The parties agree that LCWS has satisfied all legal requirements for the Commission to approve the transfer of assets and grant the CCNs for the water and sewer systems serving the areas described in the Agreement. The parties have also agreed to the systems' rate base, rate base exclusions, rates for customers, depreciation rates, records maintenance, provisions for outdoor water usage, documentation of insurance coverage and computer equipment, a meter installation plan, and for the use of time sheets. Additionally, there are provisions addressing future rate adjustments, follow-up reviews, a deadline for filing tariffs, and requiring compliance with the Commission's rules.<sup>4</sup>

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<sup>3</sup> The systems are described in complete detail in Staff's Recommendation filed on February 10, 2012.

## **Analysis and Decision**

The legal standards for approving a transfer of assets and for granting CCNs are fully articulated in Commission File Number WM-2012-0288, and the Commission incorporates the discussion of those standards by reference in this order.<sup>5</sup> And, while the procedural posture of this case evolved into that of a contested nature, contested matters may be resolved informally by agreement.<sup>6</sup> The parties have now retracted their request for an evidentiary hearing and this matter is now of the nature of a non-contested case. Because this is a non-contested case, the Commission acts on discretion or on evidence that is not formally adduced and preserved.<sup>7</sup> There is no evidentiary record.<sup>8</sup> Consequently, the Commission bases its decision on the parties' verified filings.

Based on the Commission's independent and impartial review of the verified filings, the Commission finds and concludes that all legal requirements for approving the requested transfer of assets and granting the requested CCNs have been satisfied. The

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<sup>4</sup> Staff has also agreed to dismiss, with prejudice, its outstanding complaint actions referenced in Footnote No. 2.

<sup>5</sup> See File Number WM-2012-0288, Order Approving Transfer Of Assets And Granting Certificate Of Convenience And Necessity, issued on May 9, 2012 and effective on May 18, 2012.

<sup>6</sup> The Agreement waives procedural requirements that would otherwise be necessary before final decision. Section 536.060, RSMo 2000. Pursuant to 536.010(4), a contested case "means a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing." Section 393.190, governing the transfer of assets, does not require a hearing prior to the Commission rendering a decision. While Section 393.170, governing the grant of a CCN, contemplates a Commission decision following "due hearing," the term "hearing" "presupposes a proceeding before a competent tribunal for the *trial of issues* between *adversary parties*, the presentation and the consideration of proofs and arguments, and determinative action by the tribunal with respect to the issues ... 'Hearing' involves an *opposite party*; ... it contemplates a listening to facts and evidence for the sake of *adjudication* ... The term has been held synonymous with 'opportunity to be heard'." *State ex rel. Rex Defenderfer Enterprises, Inc. v. Public Service Comm'n of State of Mo.*, 776 S.W.2d 494, 495-496 (Mo. App. 1989). The requirement for a hearing was met in this matter when the opportunity for a hearing was provided and no party requested the opportunity to present evidence. *Id.* Ultimately, the parties agreed to forego a contested case proceeding after being provided the opportunity for an evidentiary hearing.

<sup>7</sup> *State ex rel. Public Counsel v. Public Service Comm'n*, 210 S.W.3d 344, 353-355 (Mo. App. 2006).

<sup>8</sup> *Id.* The competent and substantial evidence standard of Article V, Section 18, does not apply to administrative cases in which a hearing is not required by law." *Id.*

Commission further finds and concludes that it is in the public interest for LCSW to provide water and sewer service to the customers currently being served in the Rockport and Bennington developments subject to the conditions set forth in the Agreement.<sup>9</sup> And, without further discussion, the Commission incorporates all provisions of the Agreement, as if fully set forth, into this order.

**THE COMMISSION ORDERS THAT:**

1. The Unanimous Stipulation and Agreement (“Agreement”), filed by the parties on June 7, 2012, is approved. The provisions of the Agreement are incorporated into this order, as if fully set forth, unconditionally and without modification. The signatory parties shall comply with the terms of the Agreement. A copy of the Agreement shall be attached to this order as “Attachment A.”

2. The transfer of assets and certificates of convenience and necessity requested by Lincoln County Sewer & Water, L.L.C. are granted.

3. Lincoln County Sewer & Water, L.L.C. shall file its tariffs per the schedule delineated in the Agreement.

4. Nothing in this order constitutes a finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters by Lincoln County Sewer & Water, L.L.C. in any later proceeding.

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<sup>9</sup> Also, because the settlement being approved disposes of this action, the Commission need not separately

5. This order shall become effective on July 6, 2012.

**BY THE COMMISSION**

( S E A L )



Steven C. Reed  
Secretary

Gunn, Chm., Jarrett, Kenney, and  
Stoll, CC., concur.

Stearley, Deputy Chief Regulatory Law Judge

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state its findings of fact. Section 536.090, RSMo 2000.