

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 1st day of
July, 2009.

In the Matter of the Application of Dale Whiteside and)
Whiteside Hidden Acres, L.L.C. for a Certificate of)
Convenience and Necessity Authorizing It to Own,)
Control, Manage, Improve, and Maintain a Water and) **File No. WA-2009-0261**
Sewer System for the Public, in an Unincorporated)
Area of Hickory County, Missouri.)

**ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT
AND GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: July 1, 2009

Effective Date: July 11, 2009

On January 14, 2009,¹ pursuant to Section 393.170, RSMo 2000, and Commission Rules 4 CSR 240-2.060, 4 CSR 240-3.305, and 4 CSR 240-3.600, Dale Whiteside and Whiteside Hidden Acres, L.L.C, (hereafter "WHA") filed two applications with the Missouri Public Service Commission.² WHA requests that the Commission grant it authority to own, operate, control, manage, improve and maintain a water system for the public in Hickory County, Missouri.

The Commission ordered that notice of the application be given to the public and interested parties. The Commission did not receive any requests to intervene.

On May 21, the Commission's Staff filed a recommendation advising the Commission to approve the application. On June 8, the Office of the Public Counsel

¹ Unless otherwise stated, all calendar references are to 2009.

² On March 24, the Commission granted leave to Whiteside Hidden Acres, L.L.C., to file an amended application. The sole applicant is now Whiteside Hidden Acres, L.L.C. Also, Whiteside Hidden Acres, L.L.C. voluntarily dismissed its application for a certificate to provide sewer service.

(hereafter “OPC”) filed a response to Staff’s recommendation. OPC objected to Staff’s recommendation due to disagreements it had with Staff over Contribution in Aid of Construction (CIAC), the lack of a requirement for a rate case in the near future, and the lack of a refund/credit provision pending the outcome of the future rate case.

On June 22, WHA, Staff and OPC filed a Unanimous Stipulation and Agreement (hereafter “Agreement”). The parties agreed that it is in the public interest for WHA to receive a certificate, subject to the agreed-upon conditions in the Agreement.

The Commission may grant a water corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either “necessary or convenient for the public service.”³ The Commission has stated five criteria that it will use:

- 1) There must be a need for the service;
- 2) The applicant must be qualified to provide the proposed service;
- 3) The applicant must have the financial ability to provide the service;
- 4) The applicant’s proposal must be economically feasible; and
- 5) The service must promote the public interest.⁴

Based on the verified application, the verified recommendation of Staff, the responses filed by Public Counsel, and the Agreement, the Commission finds that granting WHA’s application for a certificate of convenience and necessity to provide water service meets the above listed criteria. The application will be granted, and the Agreement will be approved.

³ Section 393.170, RSMo 2000.

⁴ *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

The Commission reminds WHA that failure to comply with its regulatory obligations may result in the assessment of penalties against it. These regulatory obligations include, but are not limited to, the following:

A) The obligation to file an annual report, as established by Section 393.140(6), RSMo 2000. Failure to comply with this obligation will make the utility liable to a penalty of \$100 and an additional \$100 per day that the violation continues. Commission Rule 4 CSR 240-3.640 requires water utilities to file their annual report on or before April 15 of each year. Commission Rule 4 CSR 240-3.335 imposes the same requirement on sewer utilities.

B) The obligation to pay an annual assessment fee established by the Commission, as required by Section 386.370, RSMo 2000. Because assessments are facilitated by order of the Commission, failure to comply with the order will subject the company to penalties ranging from \$100 to \$2,000 for each day of noncompliance pursuant to Section 386.570, RSMo 2000.

C) The obligation to provide safe and adequate service at just and reasonable rates, pursuant to Section 393.130, RSMo Supp. 2008.

D) The obligation to comply with all relevant state and federal laws and regulations, including but not limited to, rules of this Commission, the Department of Natural Resources, and the Environmental Protection Agency.

E) The obligation to comply with orders issued by the Commission. If the company fails to comply it is subject to penalties for noncompliance ranging from \$100 to \$2,000 per day of noncompliance, pursuant to Section 386.570, RSMo 2000.

F) The obligation to keep the Commission informed of its current address and telephone number.

This certificate is granted conditioned upon the compliance of the company with all of these obligations.

Moreover, if the Commission finds, upon conducting a hearing, that the company fails to provide safe and adequate service, or has defaulted on any indebtedness, the Commission shall petition the circuit court for an order attaching the assets, and placing the company under the control of a receiver, as permitted by Section 393.145, RSMo Supp. 2008. As a condition of granting this certificate, the company hereby consents to the appointment of a temporary receiver until such time as the circuit court grants or denies the petition for receivership.

The company is also placed on notice that Section 386.310.1, RSMo 2000, provides that the Commission can, without first holding a hearing, issue an order in any case “in which the commission determines that the failure to do so would result in the likelihood of imminent threat of serious harm to life or property.”

Furthermore, the company is reminded that, as a corporation, its officers may not represent the company before the Commission. Instead, the corporation must be represented by an attorney licensed to practice in Missouri.

THE COMMISSION ORDERS THAT:

1. Whiteside Hidden Acres, L.L.C., is granted permission, approval, and a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain water and sewer systems for the public in Hickory County, Missouri,

as more particularly described in its application and in the parties' Unanimous Stipulation and Agreement.

2. The Unanimous Stipulation and Agreement is approved, and the parties are ordered to comply with that Unanimous Stipulation and Agreement.

3. This certificate of convenience and necessity is granted upon the conditions set out in the body of this order and the conditions listed in the Unanimous Stipulation and Agreement.

4. Whiteside Hidden Acres, L.L.C. shall comply with all Missouri statutes and Commission rules.

5. Nothing in this order shall bind the Commission on any ratemaking issue in any future rate proceeding.

6. The certificate of convenience and necessity granted to Whiteside Hidden Acres, L.L.C., in this order shall become effective at that same time as the new or revised implementing tariffs to be submitted by the company become effective.

7. This order shall become effective on July 11, 2009.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Clayton, Chm., Davis, Jarrett,
and Gunn, CC., concur.

Pridgin, Senior Regulatory Law Judge