

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 3rd day of
August, 2006.

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| In the Matter of the Application of Hickory Hills Water |) | |
| & Sewer Co., Inc., the Staff of the Missouri Public |) | |
| Service Commission, and the Office of the Public |) | |
| Counsel for Approval of Their Unanimous Stipulation |) | <u>Case No. WO-2007-0036</u> |
| and Consent Order for Appointment of Interim |) | |
| Receiver and Order to General Counsel to Petition |) | |
| the Circuit Court of Cole County for the Appointment |) | |
| of a Receiver. |) | |

**ORDER APPROVING UNANIMOUS STIPULATION
AND CONSENT ORDER**

Issue Date: August 3, 2006

Effective Date: August 13, 2006

Syllabus: This order approves the Unanimous Stipulation and Consent Order for Appointment of Interim Receiver and Order to General Counsel to Petition the Circuit Court of Cole County for the Appointment of a Receiver. This order also directs the Commission's Staff to file a petition in circuit court seeking the appointment of a receiver to take charge of the water and sewer system of Hickory Hills Water & Sewer Co., Inc., and appoints an interim receiver to immediately take charge of that system while Staff's action is pending in the circuit court.

PROCEDURAL HISTORY

On July 25, 2006, the Staff of the Missouri Public Service Commission, the Office of the Public Counsel, and Hickory Hills Water & Sewer Co., Inc., filed a Unanimous Stipulation and Consent Order for Appointment of Interim Receiver and Order to General

Counsel to Petition the Circuit Court of Cole County for the Appointment of a Receiver (“Unanimous Stipulation and Consent Order”). That filing resulted in the Commission opening this case to review the Unanimous Stipulation and Consent Order. A copy of the Unanimous Stipulation and Consent Order is attached to this order as Attachment A.

The Missouri Public Service Commission conducted an on-the-record presentation in this case on July 31, 2006, to address Commission questions regarding the Unanimous Stipulation and Consent Order for Appointment of Interim Receiver and Order to General Counsel to Petition the Circuit Court of Cole County for the Appointment of a Receiver. Mr. Randy Clifford, owner of Hickory Hills, submitted an affidavit into the record that stated he was aware of his right to a hearing in this case and waived that right. He also restated his support for the Unanimous Stipulation and Consent Order and reaffirmed the statements made in his affidavit attached thereto as Exhibit G.

The representative from the Office of the Public Counsel was unable to participate in the on-the-record presentation due to an unanticipated injury. Accordingly, the Commissioners’ questions for the Public Counsel could not be answered during the on the record presentation. On July 31, 2006, the Commission issued an order requiring the Public Counsel to file written answers to the questions listed in that order no later than Tuesday, August 1, 2006. The Public Counsel timely filed its Response to the Questions of the Commission (“Public Counsel’s Response”).

STIPULATED AGREEMENT

The Unanimous Stipulation and Consent Order, to which Mr. Randy Clifford was a signatory, states that Mr. Clifford, the sole owner, officer, and director of Hickory Hills, is unable or unwilling to continue to provide safe and adequate service to the customers of

Hickory Hills. The Unanimous Stipulation and Consent Order asks the Commission to order its General Counsel to petition the Circuit Court of Cole County for an order attaching the assets of Hickory Hills in the manner provided by law, and appoint an interim receiver for the company as authorized under Section 393.145., RSMo Supp. 2005. The parties jointly recommend appointment of Gary Cover of Clinton, Missouri as interim receiver for the company, and state that Mr. Cover is a responsible person knowledgeable in the operations of utilities.

CONCLUSIONS OF LAW

The Missouri Public Service Commission has reached the following conclusions of law.

Hickory Hills is a public utility as defined by Section 386.020(42), RSMo 2000. Furthermore, Hickory Hills is a sewer corporation and a water corporation, as those terms are defined in Subsections 386.020(48) and (58), RSMo 2000. As such, Hickory Hills is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

Subsection 393.145.1, RSMo Supp. 2005, provides as follows:

If, after hearing, the commission determines that any sewer or water corporation that regularly provides service to eight thousand or fewer customer connections is unable or unwilling to provide safe and adequate service, has been actually or effectively abandoned by its owners, or has defaulted on a bond, note or loan issued or guaranteed by any department, office, commission, board, authority or other unit of state government, the commission may petition the circuit court for an order attaching the assets of the utility and placing the utility under the control and responsibility of a receiver. The venue in such cases shall, at the option of the commission, be in the circuit court of Cole County or in the circuit court of the county in which the utility company has its principal place of business.

Furthermore, Subsection 393.145.2, RSMo Supp. 2005, provides as follows:

If the Commission orders its general counsel to petition the circuit court for the appointment of a receiver under subsection 1 of this section, it may in the

same order appoint an interim receiver for the sewer or water corporation. The interim receiver shall have the authority generally granted to a receiver under subsection 6 of this section, except that the commission cannot authorize the interim receiver to transfer by sale or liquidate the assets of the utility. The interim receiver shall be compensated in an amount to be determined by the commission. The interim receiver shall serve until a judgment on a petition for writ of review of the commission's order, if any, is final and unappealable, and until the circuit court thereafter determines under subsection 5 of this section whether to grant the commission's petition for appointment of receiver.

In addition, Subsection 393.145.3, RSMo Supp. 2005, provides as follows:

When the commission files its petition for appointment of receiver in the circuit court, it shall attach to its petition an official copy of its determination under subsection 1 of this section. The commission shall not file such action until its determination under subsection 1 of this section is final and unappealable.

Subsection 393.145.7, RSMo Supp. 2005, provides as follows:

Control of and responsibility for the utility shall remain in the receiver until the utility can, in the best interests of its customers, be returned to the owners. However, if the commission or other interested party petitions and the court determines, after hearing, that control of and responsibility for the utility should not, in the best interests of its customers, be returned to the owners the court shall direct the receiver to transfer by sale or liquidate the assets of the utility in the manner provided by law.

Subsection 393.145.5, RSMo Supp. 2005, requires that a receiver appointed under that section be "a responsible person, partnership, or corporation knowledgeable in the operation of utilities."

The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of the issues raised in this case.¹ Furthermore, Section 536.090, RSMo Supp. 2005, provides that when accepting a stipulation and agreement, the Commission does not need to make either findings of fact or conclusions of

¹Section 536.060, RSMo Supp. 2005.

law. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence.² Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the stipulation and agreement.

DECISION

The Commission has reviewed the Unanimous Stipulation and Consent Order, the transcript of the on-the-record presentation, Mr. Clifford's affidavit, and Public Counsel's Response. Based on the agreement of the parties and the explanations received in Public Counsel's Response and the on-the-record presentation, the Commission believes that the parties have reached a just and reasonable settlement.

There is a clear and immediate need for the appointment of a receiver to take charge of Hickory Hills to ensure that its customers are able to receive safe and adequate water and sewer service. There is also a need for the appointment of an interim receiver to take immediate control of the operation of this water and sewer system. The person identified and recommended by Staff to serve as interim receiver is a responsible person knowledgeable in the operation of utilities, and will be appointed as interim receiver.

It is also clear that the best interests of the customers dictate that control of the water and sewer system should not be left to Mr. Clifford and Hickory Hills. Therefore, Staff will be authorized to seek a finding from the circuit court that control of and responsibility for Hickory Hills should not be returned to its current owner. Instead, Staff will be directed to

² *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

seek an order from the circuit court directing the receiver to proceed to transfer by sale or liquidate the assets of the company.

The Unanimous Stipulation and Consent Order, as well as Subsection 393.145.2, RSMo Supp. 2005, state that the Commission shall determine the compensation to be paid to the interim receiver. The Commission does not believe there is sufficient evidence in the record to determine what would constitute reasonable compensation for Mr. Cover's duties as interim receiver. The Commission believes time is of the essence in this case and does not want to delay this proceeding unnecessarily. Accordingly, the Commission will order its Staff to submit a proposed compensation agreement for consideration, and the Commission will make its determination on this issue in a subsequent order.

IT IS ORDERED THAT:

1. The General Counsel of the Commission is directed to petition the Circuit Court of Cole County for an order attaching the assets of Hickory Hills Water & Sewer Co., Inc., and placing that company under the control and responsibility of a receiver.

2. The General Counsel of the Commission is directed to seek a finding from the Circuit Court of Cole County that control of and responsibility for Hickory Hills Water & Sewer Co., Inc., should not, in the best interest of the company's customers, be returned to the owners of the company and that the receiver should be directed to transfer by sale or liquidate the assets of the company in the manner provided by law.

3. Gary Cover of Clinton, Missouri is appointed as interim receiver for Hickory Hills Water & Sewer Co., Inc. As interim receiver, Mr. Cover shall operate the Company so as to preserve the assets of the Company and to serve the best interests of its customers, pursuant to the law.

4. The Commission Staff will file with the Commission a proposed compensation agreement for Mr. Cover's services as interim receiver on or before August 18, 2006.

5. This order shall become effective on August 13, 2006.

BY THE COMMISSION

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

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Gaw, Clayton,
and Appling, CC., concur.
Murray, C., concurs, with separate
concurring opinion to follow.

Voss, Regulatory Law Judge