

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 2nd
day of September, 2015.

In the Matter of the Application of Ridge Creek Water)	
Company, LLC for a Certificate of Convenience and)	
Necessity Authorizing it to Construct, Install, Own,)	<u>File No. WA-2015-0182</u>
Operate, Control, Manage, and Maintain a Water)	
System for the Public Located in an Unincorporated)	
Area in Pulaski County, Missouri.)	

**ORDER APPROVING NONUNANIMOUS STIPULATION AND
AGREEMENT**

Issue Date: September 2, 2015

Effective Date: September 12, 2015

On February 4, 2015, Ridge Creek Water Company, LLC ("Ridge Creek") filed an application with the Missouri Public Service Commission seeking a certificate of convenience and necessity ("CCN") authorizing it to construct, install, own, operate, control, manage, and maintain a water system in an unincorporated area in Pulaski County, Missouri. The Commission directed notice be provided of Ridge Creek's application and set a deadline for the filing of applications to intervene.

The Missouri Department of Natural Resources ("DNR") applied and was granted authority to intervene. A local public hearing was held on April 29. At the request of Ridge Creek and Staff, the Commission issued a procedural schedule with an evidentiary hearing scheduled for September 16. On August 5, DNR filed Direct Testimony stating that Ridge Creek and DNR had entered into an Administrative Order

on Consent.¹ Staff filed a motion requesting the Commission suspend the procedural schedule, since an agreement had been reached between Ridge Creek and Staff. The Commission granted Staff's request and suspended the procedural schedule.

On August 17, Ridge Creek, DNR and Staff (collectively, "Signatories") filed a *Non-Unanimous Stipulation and Agreement*. Pursuant to Commission Rule 4 CSR 240-2.115(2), if a party fails to object to a nonunanimous stipulation and agreement within seven days, the Commission may deem it a full waiver of that party's right to a hearing and treat the agreement as a unanimous stipulation and agreement. On August 24, the Office of the Public Counsel ("OPC") filed a response to the non-unanimous agreement. OPC stated that while it may not agree with the annual revenue requirement used as a basis for the proposed rates, it will not oppose the *Non-Unanimous Stipulation and Agreement*.

Since there are no objections to the agreement, the Commission may decide this matter without convening a hearing.² The Commission is not required to separately state its findings of fact or conclusions of law.³

Section 393.170 requires a water corporation receive Commission approval to operate a water system. The Commission may grant a 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."⁴ The Commission has stated five criteria that it will use:

¹ EFIS Item No. 34.

² Section 536.060, RSMo Cum.Supp.2013. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

³ Section 536.090, RSMo Cum.Supp.2013. All statutory references are to the Missouri Revised Statutes as cumulatively supplemented unless indicated otherwise.

⁴ Section 393.170.3

- 1) There must be a need for the service;
- 2) The applicant must be qualified;
- 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.⁵

Based on the verified application, the recommendation of Staff, the testimony provided at the local public hearing, DNR's direct testimony, and the *Nonunanimous Stipulation and Agreement*, the Commission finds that granting Ridge Creek's application for a certificate of convenience and necessity to provide water service meets the above-listed criteria. The application will be granted.

The Commission reminds Ridge Creek 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 for 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.

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).

⁵ *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

C) The obligation to provide safe and adequate service at just and reasonable rates, pursuant to section 393.130.

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 § 386.570, RSMo (2000).

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

The certificate is granted conditioned upon the compliance of the company with all of these obligations, as well as the obligations listed below in the ordered paragraphs.

Moreover, if the Commission finds, upon conducting a hearing, that Ridge Creek 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 § 393.145. As a condition of granting this certificate, the company hereby agrees that in the future, should the Commission determine a receiver process is appropriate, the company consents to the appointment of an interim receiver until such time as the circuit court grants or denies the petition for receivership.

Ridge Creek is also placed on notice that § 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.

After reviewing the record and the unopposed *Nonunanimous Stipulation and Agreement*, the Commission will approve the agreement and order all parties to comply with its terms. Since Ridge Creek's application is unopposed, the Commission finds good cause exists for this order to take effect less than thirty days after issuance.

THE COMMISSION ORDERS THAT:

1. Ridge Creek Water Company, LLC is granted permission, approval, and a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain a water system for the public in an unincorporated area in Pulaski County, Missouri, as more particularly described in its application.

2. The certificate of convenience and necessity is granted upon the conditions set out in the body of this order.

3. The *Nonunanimous Stipulation and Agreement*, filed on August 17, 2015, is approved and incorporated into this order as if fully set forth herein. The parties shall comply with the terms of the agreement. A copy of the agreement is attached to this order as Attachment 1.

4. Ridge Creek shall submit for Commission approval a complete tariff for water service, as a 30-day filing, within 20 days after the effective date of this order.

5. Ridge Creek shall file a general rate case within 30 days of the first anniversary of the effective date of this order.

6. The evidentiary hearing scheduled for September 16, 2015 is canceled.

7. This order shall be effective on September 12, 2015.



BY THE COMMISSION

Morris L. Woodruff

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney
Rupp, and Coleman, CC., concur.

Kim Burton, Regulatory Law Judge.