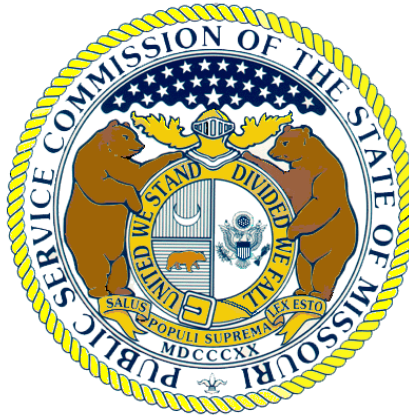


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the Application of Peaceful)
Valley Service Company's Request for Increase)
In Sewer Operating Revenues)
)
)

File No. SR-2014-0153
Tracking No. YS-2014-0425

In the Matter of the Application of Peaceful)
Valley Service Company's Request for Increase)
In Water Operating Revenues)
)
)

File No. WR-2014-0154
Tracking No. YW-2014-0426

REPORT AND ORDER

Issue Date: October 8, 2014

Effective Date: October 18, 2014

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

In the Matter of the Application of)	
Peaceful Valley Service Company's Request)	<u>File No. SR-2014-0153</u>
For Increase in Sewer Operating Revenues)	Tracking No. YS-2014-0425
In the Matter of the Application of)	
Peaceful Valley Service Company's Request)	<u>File No. WR-2014-0154</u>
For Increase in Water Operating Revenues)	Tracking No. YW-2014-0426

REPORT AND ORDER

APPEARANCES

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REGULATORY LAW JUDGE: Kim S. Burton

Procedural History

On November 20, 2014, Peaceful Valley Service Company (“Peaceful Valley” or “Company”) initiated a small water and sewer company rate increase action, pursuant to Commission Rule 4 CSR 240-3.050. Peaceful Valley requested an increase of approximately 139% (\$93,840) in its annual sewer system operating revenues in order to upgrade its treatment facilities. No increase in water system operating revenues was requested.

Staff of the Public Service Commission and Company filed a disposition agreement with the Commission on April 21, 2014. On April 24th¹ Peaceful Valley filed tariffs consistent with the terms of the disposition agreement. In order to allow forty-five days’ notice, the effective date of the tariffs was June 15th. The Office of the Public Counsel requested the Commission suspend the tariffs and hold a local public hearing. The Commission suspended the tariffs until August 22nd and set a local public hearing for June 15th in Owensville, Missouri.

At the local public hearing, customers testified in opposition to Staff and Company’s disposition agreement, complaining that the disposition agreement’s sewer rate increase needed to be much higher in order to cover the cost of the improvements required by the Missouri Department of Natural Resources (“DNR”). Those testifying at the hearing expressed frustration that while one state agency was mandating system improvements, another state agency was not authorizing the funding for those improvements. On the 10th of July, Staff filed a notice of a corrected and updated disposition agreement (“Disposition Agreement”) between Staff and Company for both

¹ All calendar references are to 2014 unless otherwise noted.

the water and sewer systems, which updated the Disposition Agreement to reflect the new assessment amounts and made other minor corrections. The Disposition Agreement provides for an increase of 9.6% (\$2,335) in operating revenues for the sewer system. It also provides for a decrease of 2.55% (\$965) in operating revenues for the water system.

The Office of the Public Counsel filed a position statement indicating that while it did not agree with the Disposition Agreement, it would not oppose its approval by the Commission. The Commission directed Staff to submit a report concerning Peaceful Valley's plans to comply with DNR's ammonia limits and further suspended the tariffs until October 13th.

An evidentiary hearing was held on September 23rd. No post-hearing briefs were submitted.

Findings of Fact

1. Peaceful Valley Lake is located in a rugged, picturesque area in Gasconade County.² Peaceful Valley is a for-profit public utility that provides water and sewer service to residents who live around Peaceful Valley Lake.³ Peaceful Valley was issued Certificates of Convenience and Necessity by the Commission on April 18, 1975, to operate a water and sewer system.⁴ The Company currently provides water service to approximately 181 customers and sewer service to approximately 171 customers.⁵

² Attachment C to Ex. 13.

³ Id. Tr. pg. 138, ln 14-25. Peaceful Valley is owned by a property owners association in which all customers of Peaceful Valley are members.

⁴ Ex. 12, pg. 84.

⁵ Id. and Ex. 13, pg. 1.

2. Peaceful Valley's water system consists of: a well with no treatment; a master meter at the wellhead; a ground storage tank; and a distribution system.⁶ There are no customer meters.⁷ Residential and small commercial customers currently pay a flat rate of \$29.24 per quarter. In addition, 340 customers located next to a water main who do not receive water service pay a water availability fee of \$8.16 per quarter.⁸ The water system is in good physical condition and operating properly.⁹

3. For its sewer system, Peaceful Valley uses a single-cell lagoon.¹⁰ Customers pay a flat fee of \$33.53 per quarter.¹¹ The facility operates properly and discharges treated waste water into a nearby receiving stream which is a tributary of Cedar Branch, a waterway of the State of Missouri.¹² This discharge by Peaceful Valley is authorized by a Missouri State Operating Permit ("Operating Permit") issued by DNR.¹³ Company's Operating Permit must be periodically renewed by DNR.¹⁴

4. Peaceful Valley's Operating Permit was renewed by DNR on January 1, 2014 and expires on December 31, 2018.¹⁵ The Operating Permit contains a schedule for compliance¹⁶ with DNR's current limits on the amount of ammonia¹⁷ discharged by

⁶ Ex. 12, pg. 84.

⁷ Ex. 12, pg. 85

⁸ Ex. 12, pg. 85.

⁹ Ex. 12, pg. 87.

¹⁰ Ex. 12, pg. 85.

¹¹ Ex. 12, pg. 77.

¹² Ex. 2.

¹³ Ex. 13, pg. 1.

¹⁴ Id.

¹⁵ Attachment A to Ex. 13.

¹⁶ Ex. 13, pg. 9.

¹⁷ Ex. 7, Ammonia is toxic to early stages of aquatic life.

Peaceful Valley's treatment facility. Pursuant to Peaceful Valley's Operating Permit, it will not have to meet the state effluent limits for ammonia until January 1, 2018.

5. The Operating Permit requires monitoring of ammonia through December 31, 2017.¹⁸ But by January 1, 2018, the Operating Permit requires specified effluent limitations on ammonia.¹⁹ While Peaceful Valley is not currently in violation regarding ammonia discharge, it will not be able to meet the standards set forth in the permit by January 1, 2018, absent a change in operation or additional construction.²⁰

6. On August 22, 2013, the U.S. Environmental Protection Agency ("EPA") finalized new, more restrictive, fresh water quality criteria for ammonia based on toxicity studies of mussels.²¹ Missouri's current ammonia criteria, while based on toxicity testing of several species, do not include data for mussels or gill breathing snails.²² When new water quality criteria are established by the EPA, states must adopt them into their regulations in order to keep their authorization to issue permits under the National Pollutant Discharge Elimination System.²³ DNR has yet to adopt the more stringent EPA ammonia standards and it may be years before the new ammonia criteria are incorporated into DNR's regulations.²⁴

7. In 2013, Peaceful Valley employed Integrity Engineering, Inc. ("Integrity"), a consulting engineer firm, to perform an engineering evaluation and plan for upgrading

¹⁸ Attachment A to Ex. 13, DNR Operating Permit, pg. 5 of Fact Sheet.

¹⁹ *Id.*

²⁰ Tr. pg. 116; ln. 24 – pg. 117; ln. 20.

²¹ Ex. 13, pg. 22.

²² *Id.*

²³ Ex. 13, pg. 22.

²⁴ Tr., pg. 113, ln. 3-7. It took almost six years for DNR to adopt the current ammonia standards. Tr., pg. 112, ln. 16-22).

Peaceful Valley's waste water treatment facility.²⁵ Integrity's engineering report discussed five available options and the costs associated with each. The option deemed the most feasible by Integrity is a recirculating biofilter system.²⁶ Integrity's recommendation of a recirculating biofilter system has an estimated capital cost of \$1,114,880.00, with a twenty year life cycle.²⁷ This option would require a monthly cost of \$46.12 per month, per customer.²⁸

8. When DNR renewed Peaceful Valley's Operating Permit, it recommended the Company construct a treatment system that could attain effluent quality that supports not only DNR's current guidelines, but also the EPA ammonia criteria.²⁹ The engineering report prepared by Integrity evaluated options that could meet the more stringent EPA ammonia limits.³⁰

9. On November 20, 2013, Peaceful Valley sent a letter to the Commission seeking a sewer rate increase of \$93,840.00 per year in order to finance the recommended improvements to the sewer system.³¹ Peaceful Valley has not finalized a plan for improvements to its sewer system.³² It is undisputed that the Disposition

²⁵ Attachment C to Ex. 13.

²⁶ Id. The options evaluated by Integrity include upgrading the current lagoon, land application of treated waste water, and mechanical treatment plants. These other options were not deemed viable due to issues with geography, land acquisition costs, operation and maintenance expense, or potential odor issues.

²⁷ Attachment C to Ex. 13.

²⁸ Ex. 13, pg. 5-6.

²⁹ Ex. 13, pg. 22.

³⁰ Tr., pg. 121, ln. 2 – pg. 122, ln. 8

³¹ Tr. pg. 9, ln. 10-16.

³² Tr., pg. 17. Ln. 15- pg. 18, ln. 5.

Agreement does not include sufficient funds to cover future improvements or changes in operation to meet ammonia limits.³³

10. The Company informed the Commission that it reluctantly signed the Disposition Agreement filed with the Commission but chose to sign it rather than consume more legal fees by going to hearing to push the issues related to complying with the DNR Operating Permit.³⁴

11. Under the terms of the water service Disposition Agreement, Staff and Peaceful Valley agreed to a revenue requirement decrease of \$965 from the previous revenue level, for an annual revenue of \$36,822.³⁵ For the sewer service Disposition Agreement, Staff and Peaceful Valley agree to a revenue requirement increase of \$2,335 to the previous revenue level, for an annual revenue of \$26,740.³⁶

12. Attempts by Peaceful Valley to obtain a bank loan to finance improvements to the sewer system were unsuccessful due to a lack of an income stream or collateral.³⁷ Peaceful Valley attempted to obtain a low interest loan from DNR and the U.S. Department of Agriculture, but was informed it did not qualify since both agencies only offer loans to non-profit entities.³⁸ Peaceful Valley is currently considering a change to nonprofit status in order to obtain a low interest loan from the Department of Agriculture.³⁹

³³ Tr. pg. 9, ln. 17-23.

³⁴ Ex. 12, pg. 4 – July 7, 2014 letter from Peaceful Valley to Commission.

³⁵ Appendix A to this Report and Order, filed on July 10, 2014.

³⁶ Appendix B to this Report and Order, filed on July 10, 2014.

³⁷ Tr. pg. 14, ln. 12 – pg. 15, ln. 5.

³⁸ Ex. 13, pg. 5.

³⁹ Tr. pg. 8, ln. 18- pg. 9, ln. 2.; Ex. 12, pg. 4 – July 7, 2014 letter from Peaceful Valley to Commission.

Conclusions of Law

Peaceful Valley is a public utility subject to the Commission's jurisdiction and supervision under Chapters 386 and 393 of the Missouri Revised Statutes.⁴⁰ The Commission is tasked with setting just and reasonable rates, which may result in a revenue increase that is more or less than the increase originally sought by a utility.⁴¹ Peaceful Valley initially sought Commission approval for an increase in sewer rates to fund the DNR mandated waste water treatment improvements. The Disposition Agreement between Staff and the Company, which is currently before the Commission for approval, does not provide for recovery of those expenditures. The Commission must therefore determine if it will approve, reject or alter the Disposition Agreement.⁴²

The Commission's authority is limited to that which is specifically granted by statute or warranted by clear implication as necessary to effectively render a specifically granted power.⁴³ Sections 393.130 and 393.140, RSMo 2000, mandate that the Commission ensure all utilities are providing safe and adequate service and that all rates set by the Commission are just and reasonable.

Although the Disposition Agreement does not provide a recovery mechanism for future improvements to Peaceful Valley's sewer system, the Commission is not prohibited from considering alternative funding and accounting mechanisms, such as a surcharge, to fund the required improvements. Unlike the statutory prohibition against an electrical corporation charging for construction costs on property before it is fully

⁴⁰ All statutory references are to the 2013 Cumulative Supplement of the Missouri Revised Statutes, unless indicated otherwise. Section 386.020(43),(49),(59) and Section 386.250, RSMo 2000.

⁴¹ §393.150 and 4 CSR 240-3.050(25)

⁴² 4 CSR 240.3.050(25).

⁴³ *State ex re. Int'l Telecharge, Inc. v. Mo. Pub. Serv. Comm'n*, 806 S.W.680, 686 (Mo.App. W.D. 1991).

operational and used for service, no such statutory restriction applies to water or sewer systems.⁴⁴ Section 386.040 vests the Commission with all powers necessary and proper to carry out fully and effectually its statutory duties. Accordingly, all parties agree that the Commission has the legal authority to implement a surcharge to cover construction costs prior to the additional plant being used and useful.

As part of its duties, the Commission must also consider the “public interest” when it makes its determination.⁴⁵ The public interest is a matter of policy to be determined by the Commission.⁴⁶ It is in the public interest for public utilities to comply with water quality standards established by DNR, even if it requires improvements to an operational system. It is also in the best interest of Peaceful Valley and its ratepayers to have an identifiable source of funding for those improvements.

The Commission can consider adjustments, such as a surcharge, for events that are known and measurable, certain to occur, and the impact of which can be calculated with a high degree of accuracy. Peaceful Valley’s current system does not comply with DNR’s current ammonia limits, nor will it meet the more stringent 2013 EPA guidelines that are expected to be adopted. Based on the unique facts presented, it is known that the Company must make improvements to its system in order to comply with stringent water quality standards. However, at this time, Peaceful Valley is uncertain as to its future corporate status or the method by which it will improve the sewer system. While a Commission-approved surcharge may provide the reliable source of income needed for Peaceful Valley to obtain a bank loan, the level of funding that would be needed and the

⁴⁴ § 393.135, RSMo 2000.

⁴⁵ *Missouri Public Service Co. v. City of Trenton*, 509 S.W.2d 770, 775 (Mo.App. 1974).

⁴⁶ *State ex rel. Public Water Supply District v. Public Service Com’n of Missouri* 600 S.W.2d 147, 154 (Mo.App.1980).

actual system improvements cannot be calculated with a any degree of accuracy at this time. Absent a clearly presented plan to implement the system improvement, the Commission finds it just and reasonable to not include sewer system improvement costs in customer rates.

Integrity provided various options to the Company on the more stringent 2013 EPA guidelines, rather than the current DNR standards. No evidence was presented as to whether a less expensive option exists that may permit system upgrades in phases, so the Company could comply with the current DNR standards before the 2018 deadline and then incorporate additional improvements when the 2013 EPA guidelines are adopted. While it may be in the public interest to ensure funding for improvements mandated by a regulating agency, in this specific instance, insufficient evidence was presented as to Peaceful Valley's plan for compliance. An obvious cause for Peaceful Valleys' lack of a definitive plan is insufficient funds to either initiate Integrity's recommendation or conduct another engineering report.

While not routinely implemented or approved by the Commission in the past, the Commission will consider alternative funding mechanisms, such as a surcharge, in very limited and unique circumstances.⁴⁷ The situation in which Peaceful Valley currently finds itself – ordered by a regulating agency to improve its system and an inability to finance the improvements under its current rate schedule – could present such a unique circumstance that consideration of alternative funding mechanisms is warranted.

⁴⁷ See File No. WR-2009-0418, *In the Matter of the Application of Gladlo Water & Sewer Company, Inc., for an Increase in Annual Sewer and Water Operating Revenues*, EFIS Document No. 16 – *Order Approving Small Company Rate Increase and Approving Tariff*, issued on November 23, 2009. File No. WR-2013-0259; *In the Matter of a Request for Increases in Annual Sewer and Water System Operating Revenues*, EFIS document No. 21 *Order Approving Unanimous Stipulation and Agreement and Tariff*, issued on July 31, 2013.

Section 393.847.3 removes the Commission’s jurisdiction over the “construction, maintenance or operation of the wastewater facilities, service, rates, financing, accounting or management of any nonprofit sewer company.” Should Peaceful Valley follow through with its plan to become a nonprofit sewer company, it will no longer be subject to the Commission’s jurisdiction and will be entitled to set whatever rates it deems sufficient.⁴⁸

The Commission has reviewed the Disposition Agreement for the water and sewer services, Staff’s recommendation, the Office of Public Counsel’s comments and the testimony and evidence offered at hearing. Based on the facts presented, the Commission finds the rates and terms agreed upon by Staff and the Company to be just and reasonable. The Commission has authority to approve tariff sheets under sections 393.140(11) and 393.150, RSMo 2000. The Commission finds the tariff sheets submitted by Peaceful Valley conform to the terms of the Disposition Agreement as intended by the parties, and should be approved to become effective on October 18th.

Although the Commission will not approve funding for the sewer system improvements at this time, should Peaceful Valley wish to remain a Commission regulated utility and desire a source of income for planned sewer system improvements – such as a surcharge – the Commission may consider the request, if a definitive improvement plan and funding structure are presented.

THE COMMISSION ORDERS THAT:

1. The terms of the Updated Company/Staff Disposition Agreement in File No. WR-2014-0154 are approved.

⁴⁸ This decision is certainly within Peaceful Valley’s right as a company to decide.

2. The terms of the Updated Company/Staff Disposition Agreement in File No. SR-2014-0153 are approved.

3. The signatories shall comply with the terms of the Company/Staff Disposition Agreement submitted in File No. WR-2014-0154 on July 10, 2014. A copy of the Water Disposition Agreement is attached to this order as Appendix A.

4. The signatories shall comply with the terms of the Company/Staff Disposition Agreement submitted in File No. SR-2014-0153 on July 10, 2014. A copy of the Sewer Disposition Agreement is attached to this order as Appendix B.

5. No later than April 13, 2015, Peaceful Valley shall inform the Commission of the status of any change in its for-profit corporate structure.

6. Should Peaceful Valley desire Commission-approval of a surcharge to finance improvements to its sewer system, it shall submit a letter to the Commission no later than April 13, 2015, which also details the proposed improvements and the cost and timeframe for the improvements.

7. The following revised sewer service tariff sheets filed by Peaceful Valley Service Company on April 24, 2014, and assigned Tariff File No. YS-2014-0425, are further suspended until October 18, 2014, and approved to become effective on October 18, 2014:

P.S.C. MO No. 4

Canceling P.S.C. MO No. 3

8. The following revised water service tariff sheets filed by Peaceful Valley Service Company on April 24, 2014, and assigned Tariff File No. YW-2014-0426, are further suspended until October 18, 2014, and approved to become effective on October 18, 2014:

P.S.C. MO No. 3

Canceling P.S.C. MO No. 2

9. Peaceful Valley shall file the information required by Section 393.275, RSMo, 2000 and Commission Rule 4 CSR 240-10.060 no later than November 3, 2014.

10. All objections not ruled on are overruled and all pending motions not otherwise disposed of are hereby denied.

11. This Report and Order shall become effective on October 18, 2014.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

R. Kenney, Chm., concurs with separate concurring opinion to follow,
Stoll, W. Kenney, Hall, and Rupp, CC., concur;
and certify compliance with the
Provisions of Section 536.080, RSMo

Burton, Regulatory Law Judge