

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 7th day of  
June, 2007.

The Staff of the Missouri Public Service  
Commission, )  
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 )  
Complainant, )  
 )  
v. )  
 )  
Franklin County Service Company, Melody )  
Lake Water & Sewer, LLC, Melody Lake )  
Ranch Associates, Inc., and Gerald Johnston, )  
 )  
Respondents. )

**Case No. WC-2006-0363**

**ORDER ADOPTING STAFF RECOMMENDATION  
AND DISPOSING OF COMPLAINT**

Issue Date: June 7, 2007

Effective Date: June 17, 2007

Syllabus: In this order the Commission: (1) recognizes that the assets formerly owned and operated by Franklin County Service Company were transferred to Melody Lake Water & Sewer, LLC; (2) recognizes that Melody Lake Water & Sewer, LLC is owned and controlled by its utility customers; (3) approves cancellation of the Certificate of Convenience and Necessity and tariffs of Franklin County Service Company; and (4) takes notice that Staff dismisses its complaint against Gerald Johnston.

**Background<sup>1</sup>**

In 1968, the Missouri Public Service Commission granted Franklin County Service Company the authority to serve as a water and sewer company. As such, the company

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<sup>1</sup> The Commission notes that the facts of this matter are undisputed.

was subject to the jurisdiction of the Commission.<sup>2</sup> The owner and operator of FCSC was Mr. Harold Horsely. Due to his declining health, the operation of the company began to suffer with the last annual report being filed for the year 1997. He died in 2002.

After his death, the homeowners in Melody Lake Ranch subdivision took over the operation of the system and, in 2005, sold the assets of the company to Melody Lake Water & Sewer, LLC, which is a corporation formed by the homeowners of Melody Lake Ranch subdivision. Gerald Johnston was the registered agent of the LLC and of Melody Lake Ranch Associates, the subdivision homeowners' association. He signed the Asset Purchase Agreement on behalf of both the LLC (buyer) and the FCSC (seller). The sale of assets was made without Commission approval. Although it remains certificated, FCSC was administratively dissolved in 2004.

In 2006, several residents of Melody Lake Ranch filed a complaint with the Commission against the LLC. The complaints were consolidated as Case No. WC-2006-0128 and generally allege:

- 1) That the LLC was set up in an unauthorized manner by officers of Melody Lake Ranch Associates.
- 2) That the LLC acquired the assets of a regulated utility, Franklin County Service Company, without authority to do so.
- 3) That the LLC has raised rates for water and sewer service with no authority to do so.
- 4) That the LLC has created issues that have caused non-compliance with Department of Natural Resources regulations.

While reviewing the consolidated complaints, the Commission directed its Staff to file a separate complaint against all those having to do with the unauthorized transfer of assets. Staff filed its complaint on March 22, 2006. After an investigation into this matter and discussions with the above-named Respondents, Staff filed a recommendation on

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<sup>2</sup> RSMo Section 386.250 (3) and (4).

August 8, 2006. Thereafter, Respondents filed a pleading stating that they agree with Staff's recommendation. In February of 2007, Staff filed a supplement to its recommendation to which there has been no response.

### **Staff Recommendation**

Staff filed its first recommendation in this matter on August 8, 2006. In that recommendation, Staff suggested that changes be made to the LLC's Operating Agreement that would allow it to be operated without Commission regulation. Specifically, Staff suggested that the changes: give more power to the LLC's board; provide that persons serving on the LLC's board be customers of the utility; and provide for utility customers to have complete control over the selection of the LLC's board members.

After Staff filed its first recommendation, the LLC submitted an Amended Operating Agreement that now, in Staff's opinion, shows that the LLC is legitimately controlled by its customers and that it may operate without being subject to the Commission's jurisdiction. In its second memorandum, Staff points out that with the changes to the Operating Agreement, the LLC's operation will be consistent with the standards set by the Commission in "Rocky Ridge Ranch"<sup>3</sup> and thus not subject to the Commission's jurisdiction.

Staff also recommends that the Commission cancel the certificate of service authority granted to FCSC. Finally, because Gerald Johnston is no longer involved in the management of the LLC's assets, Staff dismisses its complaint against him.

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<sup>3</sup> *In the matter of the application of Rock Ridge Ranch Property Owners Association for an order of the Public Service Commission authorizing cessation of PSC jurisdiction and regulation over its operations*, Commission Case No. WD-93-307.

## Discussion

Because FCSC is dissolved but still certificated, the Commission will cancel the Certificate of Convenience and Necessity and tariffs of FCSC. This is reasonable in light of the fact that FCSC no longer exists. The transfer of assets from FCSC to the LLC was made without the necessary Commission approval and was therefore void.<sup>4</sup> It is as if the transfer never occurred. However, if the Commission treats this situation as if the transfer never occurred, then a non-existent entity would still own the assets. Further, as a practical matter, the LLC has possession of the assets and has been operating the water service for some time. Hence, although void, the Commission will recognize that the transfer occurred.

With regard to the Commission's jurisdiction over the homeowner's association under its amended by-laws, the Commission generally has jurisdiction over homeowner's associations operating as water corporations.<sup>5</sup> However, the Commission's past practice has been to not assert its jurisdiction over associations organized as is Melody Lake Ranch Associates. The Commission has expressed its policy regarding jurisdiction over homeowners' associations<sup>6</sup> as is reflected in the following factors:

- (a) The Association was organized as a not-for-profit corporation for the benefit of the property owners.
- (b) All customers currently served by the subject water utility assets are members of the Association.
- (c) Only members of the Association will be served by the subject water utility assets.

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<sup>4</sup> Section 393.190.1 RSMo 2000.

<sup>5</sup> Section 393.140 (1) and Section 386.020 (58) RSMo 2000.

<sup>6</sup> Commission Case Nos. WD-93-307 (Rocky Ridge), WO-2003-0086 (Wilden Heights), WD-2006-0157 (Summer Set Property Owners Association) and WM-2006-0310 (Camelot Estates).

(d) The Association's action regarding water utility matters will be under the control of the members that are also the customers served by the subject water utility assets.

(e) The Association owns the subject water assets and thus has control over such assets.

Uncertain that these factors are satisfied in this case, the Commission issued an order directing its Staff to file a pleading assuring the Commission that each of the above factors is satisfied. On May 15, Staff filed a pleading setting out those portions of the Melody Lake's Operating Agreement that satisfy the above requirements.

Finally, Staff dismisses its complaint against Gerald Johnston. Because there has been no prefiled testimony in this matter, Commission rule 4 CSR 240-2.116(1) allows Staff to dismiss its complaint against Mr. Johnston without an order from the Commission. The Commission therefore takes note that Staff dismisses its complaint against Mr. Johnston.

### **Conclusion**

The Commission has reviewed the pleadings in this case and, realizing that this is the only practical solution of this matter, shall issue this order consistent with Staff's recommendations. The Commission shall: (1) recognize that the assets formerly owned and operated by FCSC were transferred to Melody Lake Water & Sewer, LLC; (2) recognize that Melody Lake Water & Sewer is owned and controlled by its utility customers and will not be subject to the Commission's jurisdiction; (3) approve the cancellation of the Certificate of Convenience and Necessity and tariffs of FCSC; and (4) take notice that Staff dismisses its complaint against Gerald Johnston.

### **IT IS ORDERED THAT:**

1. The Missouri Public Service Commission shall recognize that the assets formerly owned and operated by Franklin County Service Company have been transferred, without Commission approval, to Melody Lake Water & Sewer, LLC.

2. The Missouri Public Service Commission shall recognize that Melody Lake Water & Sewer, LLC is owned and controlled by its utility customers.

3. In light of ordered paragraph #2, the Missouri Public Service Commission shall not exercise its jurisdiction over Melody Lake Water & Sewer, LLC.

4. The Certificate of Convenience and Necessity issued by the Missouri Public Service Commission to Franklin County Service Company is canceled.

5. Franklin County Service Company's tariffs, Tariff File Nos. JW-2002-0120 and JS-2002-0121, are canceled.

6. The Missouri Public Service Commission shall take notice that the Staff of the Commission dismisses its complaint against Gerald Johnston.

7. This order shall become effective on June 17, 2007.

8. This case may be closed on June 18, 2007.

**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 )

Davis, Chm., Murray, Gaw, Clayton,  
and Appling, CC., concur.

Jones, Senior Regulatory Law Judge