

**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 March, 2011.

In the Matter of the Joint Application of Jerry Reed)
d/b/a Woodland Acres Water System, and Woodland)
Acres Property Owners Association, Inc., for)
Authority for Woodland Acres Property Owners)
Association, Inc., to Acquire the Assets of Woodland)
Acres Water System)

File No. WO-2011-0112

ORDER APPROVING TRANSFER OF ASSETS

Issue Date: March 2, 2011

Effective Date: March 17, 2011

On October 26, 2010, Jerry Reed d/b/a Woodland Acres Water System along with Woodland Acres Property Owners Association, Inc. filed a joint application for a transfer of property from Mr. Reed to the Association. The Commission issued notice of the application but received no requests to intervene. The Staff of the Commission filed its Memorandum on January 5, 2011, and recommends that the Commission approve the application.

Application

The Joint Applicants filed this application on October 26, 2010, under Section 393.190, RSMo and Commission rules 4 CSR 240-2.060 and 3.605. Under Missouri law, Reed's company is defined as a water corporation¹ and the Association is indicated as a corporation. The application, however, was not filed by an attorney. Under

¹ Section 386.020(58), RSMo.

Commission rule 4 CSR 240-2.040(5), persons may only represent themselves, and not corporations, when filing applications with the Commission. This is consistent with Missouri law² and supported by *Reed v. Labor & Indus. Relat. Comm'n*, 789 S.W.2d 19, 23 (Mo. banc 1990).

Additionally, the application is not supported by affidavit, which is required by Commission rule 4 CSR 240-2.060 (1)(M). Because of these defects, the Commission will not consider as facts those statement set out in the application. The Commission will instead rely wholly on the verified statements included in the Staff of the Commission's Memorandum and authorize the transfer of the water system as recommended by Staff.

Staff's Memorandum

Staff states that the Commission granted Jerry Reed a Certificate of Convenience and Necessity on August 3, 2009, in Case No. WA-2009-0031, to serve Woodland Acres subdivision in St. Clair County. The Certificate case stemmed from a resident's informal complaint. During the investigation of the complaint, Staff discovered that Mr. Reed was operating without knowledge that a certificate was required. Staff then began working with Mr. Reed and the Property Owners' Association toward the Association taking over the water system. Although the parties were amenable to a transfer, there were residents who were not members of the Association that have since joined.

Staff goes on to say that in September of 2009, one month after being granted a certificate, Mr. Reed moved away from St. Clair County and in December, the Missouri Department of Natural Resources (DNR) explained to Mr. Reed that because he no longer owned any property in the subdivision, he was no longer considered the authority over the

² Section 484.010, defining the practice of law; and, Section 484.202, limiting the practice of law by those licensed to do so.

water system. Rather, DNR considered the Property Owners' Association as having authority over the system. Since then, the Association has been operating the water system.

Staff informs the Commission that Woodland Acres Property Owners' Association was created in 2006 as a non-profit corporation and is in good standing with the Missouri Secretary of State. With regard to the transfer of assets from Mr. Reed, Staff states that on November 5, it sent notice to each customer of the Association and invited comments or questions from them. Staff did not receive any responses.

Staff also had concerns regarding any remaining interest Mr. Reed may have had in a well easement, the associated well of which provides supporting infrastructure to the water system serving the Association's customers. Staff reports that a well easement recorded in 2004 indicated Mr. Reed and two others, Raymond and Brenda Eslick, had an interest in property where the well is located. The Eslicks transferred their interest to the Association. And, on February 17, 2011, Staff filed a quit claim deed, submitted by Mr. Reed, regarding his interest in the well.

Staff states that Mr. Reed and the Association agree to a transfer of all of the assets of the water system from Mr. Reed to the Association. Upon review, Staff opines that the proposed transfer is not detrimental to the public interest. Particularly, Staff states that as a result of the transfer the rates will decrease by more than half. Staff also states that the tax impact of this transfer on the revenues of St. Clair County is unknown, but will be minimal if any. Staff recommends that the Commission approve the transfer and refrain from exercising jurisdiction over the Association because it is organized in a manner consistent

with the “Rocky Ridge Criteria.”³ Staff further suggests that the Commission cancel the certificate of convenience and necessity issued to Mr. Reed as well as the associated tariff.

Decision

Section 393.190.1 requires that water corporations secure authorization from this Commission prior to transferring any property necessary or useful in the performance of its duties to the public. Further, the statute voids any transfers not authorized by the Commission. The Commission recognizes that the Association has been operating the water system since 2009. Although the Association has been acting as the owner of the water system, any assumed transfer of the water assets from Mr. Reed to the Association was void under Missouri law.⁴

The Commission will not consider the application because it was not filed by an attorney and without verification of the facts set out therein. The Commission could order the applicants to refile its application through an attorney, with verifying affidavits. However, requiring the applicants to satisfy these ministerial acts would be futile in light of Staff’s memorandum and the history of this case.

Requiring the applicants to hire an attorney will frustrate the applicants’ efforts; particularly because the Association has been operating the water system for some time and Mr. Reed has not lived in the area for almost 18 months and likely has no practical interest in this matter. The Commission, however, will not rely on the application in order to authorize the transfer. Staff’s verified memorandum provides the Commission with the

³ The “Rocky Ridge” criteria is that the Commission will not exercise jurisdiction over a system owned by a property owners’ association if: (1) the association’s membership is comprised of all of its utility customers and the utility serves only the membership; (2) each customer has only one vote; and, (3) the association has complete control over the system.

⁴ Section 393.190.1, RSMo.

necessary information and support for the approval. Further, the law⁵ allows parties an opportunity to seek rehearing of Commission orders. If the applicants do not agree with this Commission order, the Commission encourages them to seek rehearing through an attorney. Such a request must be made prior to the effective date of this order. The Commission usually sets its effective dates 10 days after an order is issued. However, the Commission will set an extended effective date to better afford the applicants an opportunity to oppose this order.

Staff also recommends that the Commission, after authorizing the transfer, not exercise jurisdiction over the Association because it is organized in a manner consistent with the criteria set out in “Rocky Ridge.”⁶ In this regard, the Commission finds that the association is operating for the sole benefit of its members, has complete control over the water system, all members are served by the system and each member has a vote equal to that of all others. Therefore, the Commission will not exercise jurisdiction over the Association.

Upon review of Staff’s Memorandum and Recommendation, the Commission finds that the transfer of the water system from Mr. Reed to the Association is not detrimental to the public interest. Also, as suggested by Staff, the Commission will cancel the certificate of service authority granted to Mr. Reed and the associated tariff.

⁵ Section 386.500, RSMo.

⁶ *In the Matter of the Application of Rocky Ridge Ranch Property Owners Association for an Order of the Public Service Commission Authorizing Cessation of the PSC Jurisdiction and Regulation over its Operations*, Commission Case No. WD-93-307.

THE COMMISSION ORDERS THAT:

1. The transfer of the Woodland Acres Water System from Jerry Reed d/b/a Woodland Acres Water System to the Woodland Acres Property Owners Association, Inc. is authorized.
2. The Certificate of Convenience and Necessity issued to Jerry Reed d/b/a Woodland Acres Water System, in Case No. WA-2009-0031, is cancelled.
3. The tariff of Jerry Reed d/b/a Woodland Acres Water System, Tariff File No. YW-2010-0134, is cancelled.
4. This order shall become effective on March 17, 2011.
5. This case shall be closed on March 18, 2011.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

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

Jones, Senior Regulatory Law Judge