

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 11<sup>th</sup> day of December, 2008.

In the Matter of the Joint Application of Stoddard County )  
Sewer Company, Inc., R.D. Sewer Co., L.L.C. and the )  
Staff of the Missouri Public Service Commission for an )      **Case No. SO-2008-0289**  
Order Authorizing Stoddard County Sewer Co., Inc. to )  
Transfer its Assets to R.D. Sewer Co., L.L.C., and for an )  
Interim Rate Increase. )

**ORDER REGARDING THE OFFICE OF THE PUBLIC COUNSEL'S  
APPLICATION FOR REHEARING AND REQUEST FOR STAY**

Issue Date: December 11, 2008

Effective Date: December 11, 2008

On October 23,<sup>1</sup> the Commission issued its Report and Order ("Order") in this matter. On December 8, R.D. Sewer Co., L.L.C. ("R.D. Sewer") filed the last of several required compliance filings necessary to satisfy the initial conditions placed upon the Commission-approved transfer of assets. Having established its intent to comply with the Commission's conditional Order and proceed with the transfer of assets, it is now appropriate for the Commission to consider post-Order motions.

**Public Counsel's Application for Rehearing**

The Office of the Public Counsel ("Public Counsel") timely filed an application for rehearing and a request to stay the Report and Order pending appeal. Public Counsel's application for rehearing merely restates arguments it raised during the pendency of this case. All of these arguments were addressed in prior interlocutory orders issued by the

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<sup>1</sup> All dates throughout this order refer to the year 2008 unless otherwise noted.

Commission or in the October 23 Order. Consequently, the Commission need not re-rule on these matters.

The Commission will address one item of Public Counsel's motion simply as a matter of clarification. Public Counsel incorrectly states that because "approval was not received for the transfer of all of the stock of Stoddard County Sewer Company., Inc. (Stoddard County) from Ms. Bien to R.D. Sewer Co., L.L.C. (R.D. Sewer), the transfer was in violation of Section 393.190.2 and is void per Section 393.190.3." As the Commission concluded in its Order, Section 393.190.2 is not relevant to the Commission's approval of the transfer of assets. Approval of the requested transfer of Stoddard County assets is unrelated to who owns, or who owned, the stock of the company.

The Commission further determined that Section 393.190.2 could not apply to the transfer of stock that occurred between Mrs. Carl Bien (the prior owner of Stoddard County's stock and assets) and R. D. Sewer because R. D. Sewer is not a stock corporation subject to Section 393.190.2. However, to the extent that this statutory provision, or any other law, requires the Commission's approval of the stock transfer, the Commission granted that approval in its Order. Unlike Section 393.190.1, that has a temporal requirement that the Commission grant approval for a transfer of assets prior to the actual transfer, Section 393.190.2 has no such temporal requirement. The Commission may grant approval of a stock transfer, when required pursuant to Section 393.190.2, at any time.

Stoddard County, R.D. Sewer and the Commission's Staff offered into evidence a validly executed and notarized Assignment of Stoddard County's stock to R. D. Sewer. This evidence was admitted into the record without objection. Mrs. Bien's presence was

not required for the Commission to receive this uncontroverted evidence, and to the extent that Section 393.190.2, or any other law, may require Commission approval of the stock transfer (which the Commission does not believe is necessary), it was so granted.

### **Public Counsel's Request to Stay, or Alternatively, Segregate Funds**

Public Counsel also requests the Commission to issue a Stay Order during the appeal process, or, in the alternative, to order R. D. Sewer to record the approved interim rate increase in a separate fund and make it subject to refund. Public Counsel's request is contrary to the public interest and contrary to Public Counsel's previously stated positions in this matter.

The Commission found competent and substantial evidence to support the requested transfer of assets and to authorize an interim rate increase for R. D. Sewer once the transfer was formalized. The Commission concluded the increase in rates was necessary to ensure the provision of safe and adequate service. In its conditional Order, the Commission directed that the interim rate increase would be subject to refund based upon an earnings review. Consequently, the Commission finds no basis for staying its Order and is unsure of what additional measures Public Counsel may be requesting in terms of its alternative request for relief.

R. D. Sewer is a small sewer company serving approximately 172 customers. The record indicates that its customer count has remained unchanged since its inception. All of the parties to this action are fully aware of the changes to be implemented by the interim rate increase and R. D. Sewer has complied with the condition of filing a formal rate case pursuant to the Commission's small company rate increase rule.<sup>2</sup> The Commission sees

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<sup>2</sup> Commission Rule 4 CSR 240-3.050.

no need for a separate accounting apart from what the company will already have ongoing, and R. D. Sewer's customers are sufficiently protected by the subject-to-refund condition already imposed by the Commission.<sup>3</sup> In fact, the earnings review contemplated by the Order has essentially been initiated with the filing of the formal rate case.<sup>4</sup> Additionally, the Commission shall not require sequestration of the funds from the interim rate increase so these funds may be immediately utilized to improve the waste water treatment facility to ensure the delivery of safe and adequate service.

Public Counsel fails to demonstrate that any irreparable harm could result from the transfer of assets or from the interim rate increase to warrant a stay of the Commission's Order. In fact, the opposite is true. As is evidenced in the record, staying the Order, or in any way restricting the use of the funds from the interim rate increase, would pose an imminent threat to R. D. Sewer's customers and jeopardize the provision of safe and adequate service. Granting Public Counsel's request to stay would not only put the public at risk, but is contrary to the positions Public Counsel maintained throughout this proceeding.<sup>5</sup>

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<sup>3</sup> Refunds can take the form of reimbursed funds, reduced rates or credits should it be determined that R. D. Sewer over-earned as a result of the interim rate increase.

<sup>4</sup> R. D. Sewer initiated a formal small company rate increase request on November 26, as was required by the October 23 Order. The Commission will have ample opportunity to review R. D. Sewer's revenue requirement and the company's earnings pursuant to the interim rate increase during that matter. See Case Number SR-2009-0226.

<sup>5</sup> Indeed, Public Counsel, at multiple times stated that it did not oppose the transfer of assets and did not oppose an interim rate increase as long as it was subject to refund. Public Counsel's witness testified that the only thing Public Counsel disputed was the amount of the interim rate increase to be approved. Transcript p. 228, lines 19-25, p. 229, lines 1-3. Public Counsel has advocated multiple inconsistent positions on other material issues as well. For example: Public Counsel (1) maintained dual positions during the evidentiary hearing that the Company's Annual Reports (filed with the Commission) were both inaccurate and presumed accurate; (2) advocated a double standard on verification of public documents by challenging the Commission's witnesses' use of such documents while denying its need to verify the same documents; (3) failed to produce supporting documentation or to explain its own methodology to substantiate its position on various issues while challenging the expertise of the other subject matter experts; (4) acknowledged the Commission's statutory duty to ensure safe and adequate service while at the same time claiming the

## **Decision**

The Commission concludes that Public Counsel has failed to demonstrate a sufficient reason for granting its application for rehearing or its request for a stay of the October 23 Report and Order.<sup>6</sup> Public Counsel's requests shall be denied.

### **THE COMMISSION ORDERS THAT:**

1. The Office of the Public Counsel's Application for Rehearing is denied.
2. The Office of the Public Counsel's Request for a Stay Order Pending Appeal is denied.
3. This order shall become effective immediately upon issue.

### **BY THE COMMISSION**

( S E A L )



Colleen M. Dale  
Secretary

Murray, Clayton, Gunn, CC., concur;  
Davis, Chm., concurs with separate concurring opinion attached;  
Jarrett, C., absent

Stearley, Senior Regulatory Law Judge

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Commission had no right to exercise that duty; and, (5) advocated an interim rate increase subject to refund as being an adequate safeguard while also stating making it subject to refund was not an adequate safeguard. See Report and Order, Findings of Fact 68-90, 117-124, 154, 174, 180, 190, 192, 257, 284, and 285; Footnotes 116, 128, and 204; EFIS Docket Number 39, *Office of the Public Counsel's Motion In Limine and Suggestions in Support*, filed August 6, 2008; EFIS Docket Number 44, Office of the Public Counsel's Motion to Dismiss for Lack of Jurisdiction, filed August 11, 2008; EFIS docket Number 46, Order Denying Motion in Limine, issued August 12, 2008.

<sup>6</sup> See Section 386.500, RSMo 2000.