

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

In the matter of the Application of)	
Ozark Shores Water Company, North)	
Suburban Public Utility Company)	
and Camden County Public Water)	
Supply District Number Four for)	
an order authorizing the Sale,)	File No.WM-2015-0231
Transfer and Assignment of Water)	
Assets to Camden County Public Water)	
Supply District Number Four and in)	
connection therewith certain other)	
related transactions.)	

**OBJECTION TO
THE MISSOURI ATTORNEY GENERAL'S
APPLICATION TO INTERVENE OUT OF TIME**

Come now Ozark Shores Water Company ("Ozark Shores" or "Company"), North Suburban Public Utility Company ("North Suburban") and Camden County Public Water Supply District Number Four (the "District") (sometimes collectively referred to as "Applicants") and for their objection to the Missouri Attorney General's late filed application to intervene submit the following:

1. On April 8, 2015, the Commission issued its *Order Directing Notice and Setting Time for Filing*. This order established a deadline of April 27, 2015 for applications to intervene.
2. On May 20, 2015, the Attorney General filed an *Application Intervene Out of Time* ("Application") more than three weeks after the intervention deadline set by the Commission.
3. The Commission should deny the Application. Good cause is not appearing and additionally, the suggestions asserted by the office of Attorney General in support of its intervention are refuted by the record already developed in this matter. Furthermore, the Commission cannot serve as an alternate forum for quo warranto actions or contested matters that resemble actions

challenging the decisions of elected officials or divesting elected officials of their offices or their duties.

Absence of Good Cause

4. Commission Rule 4 CSR 240-2.075(10) allows the Commission to grant a motion to intervene after the deadline only if there is a showing of good cause.¹ The Attorney General's Application fails to show good cause for its failure to intervene timely, and for its additional delay beyond the deadline in this case. Except in those cases where an application to intervene out of time is unopposed, the Commission has consistently found lack of good cause for late intervention where the applicant or its counsel is aware, or should be aware, of the Commission's procedures, actions and rules.

5. The Commission has denied late intervention to applicants who failed to show good cause for missing the deadline, even if good cause would have otherwise existed to grant intervention, especially if the applicant or its counsel is involved in Commission cases and should be aware of Commission procedure.² The Commission has particularly emphasized in its recent orders

¹ "Motions to intervene or add new member(s) filed after the intervention date may be granted upon a showing of good cause." 4 CSR 240-2.075(10).

² See *Joint Application of Southern Union Company d/b/a Missouri Gas Energy and Laclede Gas Company*, Case No. GM-2013-0254, *Order Regarding Motion for Reconsideration Issued May 29, 2013* (late intervention denied where application was three months past the deadline and discovery and exploration of issues had advanced even though procedural schedule is not yet adopted; applicant "is a sophisticated party that is well aware of filings and proceedings at the Commission."). See also *Missouri Gas Energy*, Case No. GR-2006-0422, *Order Denying Application to Intervene Issued August 28, 2006* ("Were the Commission to accept 'we just found out' as good cause for filing a request to intervene almost two months out of time, 'good cause' as used in the Commission's rule, would have no substance. This is particularly so when it is a proposed intervenor's business to know what is going on in its environment.") cited in *Kansas City Power & Light Company*, Case No. ER-2012-0135, *Order Denying Application to Intervene* (February 27, 2013) (Commission did not find good cause in applicant's assertion that it only recently became aware of proceedings' impact and additional time was needed for customer group to authorize intervention; "consistent, rather than arbitrary rulings, will serve the expectations of those practicing before the Commission."); see also *Kansas City Power & Light Company*, Case No. EU-2014-0077, *Order Granting Application to Intervene Issued November 26, 2013* (applicant acknowledged overlooking order setting intervention deadline; the Commission found applicant's declaration "specious" because applicant was a sophisticated litigant cognizant of the Commission's regulations).

the importance of compliance with its intervention deadlines for the reason that “consistent, rather than arbitrary rulings, will serve the expectations of those practicing before the Commission.”³

6. As good cause for allowing its late intervention the Attorney General offers that it was first made aware of the proposed sale on May 18, 2015. The Commission has rejected “we just found out” as good cause for allowing late intervention.

7. Additionally, the office the Attorney General is no visitor to proceedings before this Commission. Its appearances before this body intensified in the decade of the 1980’s when AT&T Communications commenced the divestiture of its regional operating companies and rates for subscribers were dramatically increased. The Attorney General, as advocate, actively and regularly represents the Department of Natural Resources in proceedings before this Commission involving regulated water systems and those seeking authority to provide regulated water service. The Attorney General’s office is the largest law office of the state and the chief enforcement arm of Missouri. Its level of sophistication and knowledge of Commission procedures is unquestionably high. Good cause does not appear for the Attorney General’s untimely request to intervene and the Application should be denied.

Absence of Factual Basis for Intervention

8. In paragraph 4 of its Application the Attorney General asserts that it,

learned that there may be a conflict of interest for certain members of the [District], who may hold a pecuniary interest in the outcome of the sale of Ozark Shores Water Company’s assets. This concern was magnified by the apparent premium the PWSD was paying for the assets of the Ozark Shores. The Attorney General also learned that the sale of Ozark Shores was being financed by \$5.5 million dollars of bonds.

9. On May 7, 2015 the joint Applicants filed their verified Response To Staff Recommendation and Motion For Expedited Treatment (Verified Response). The facts attested to in

³ See *Kansas City Power & Light Company*, Case No. ER-2012-0135, *Order Denying Application to Intervene Issued February 27, 2013*.

the Verified Response have not been disputed by the Staff and have not been referred to by the Attorney General in its Application. As established by the Verified Response,

- a. The members of the District's board of directors have no statutory conflict of interest,⁴ and there is no appearance of a conflict of interest, with respect the transaction with Ozark Shores. Suggestions to the contrary are inventions.
- b. The transaction with Ozark Shores does not involve an "acquisition premium" because the District does not set rates for service like a regulated utility. The proposed purchase price for Ozark Shores was evaluated by an independent consulting firm that concluded the price was reasonable. The rate base multiple criticized by Staff in this case *is less* than those the Staff has recommended, and the Commission has approved, in other cases with little delay. The "premium" falls within a range which the Commission has historically approved for other utility asset sales. A duly elected and serving District board of directors approved the purchase agreement in compliance with standards of prudence and discretion, and duties of diligence, expected of those in their office.
- c. Delay in approving this asset sale could mean an increase in interest expense related to the certificates of participation to be issued in this transaction, thus putting unnecessary upward pressure on District rates for service at a later date. Swift approval of this application is in the public interest.

10. In responses to recent data requests submitted by the Staff, the District pointed out that *this is not* the first time the purchase of Ozark Shores' assets was under consideration by the District. Ozark Shores offered to sell the assets to the District in October 2007. The District board retained Stann Financial LLC to determine: a) the acquisition value of Ozark Shores; b) the value of

⁴ See Sections 105.450 to 105.496, RSMo 2000.

the offer from the owners of Ozark Shores; and c) discuss changes to the offer to improve it from the District's perspective. Among other findings, Stann Financial concluded that:

- Ozark Shores' acquisition value based on publicly traded companies is **\$2.8 to \$7.3 million**, or with a mid-point value of **\$5.4 million** based on price/earnings.
- Ozark Shores' narrow acquisition value range is **\$5.1 to \$6.4 million**.

11. A copy of the Stann Financial LLC Presentation to the Board of Directors is attached as Exhibit 1.

12. The Board has employed independent financial experts *twice* to evaluate an offer to buy the Ozark Shores' assets, and *twice* the experts concluded that the price the District has agreed to pay for the purchase of those assets (\$5,200,000.00) is well within a reasonable range.

13. Regarding the transaction under review, there is a complete absence of any evidence that members of the District board forsake their loyalty to the District in favor of some individual interest. The concerns about the transaction expressed by the Attorney General in its Application are non-existent.

Commission Jurisdiction

14. In paragraphs 5, 6 and 7 of the Application, the office of the Attorney General describes its general enforcement powers and particularly its power to institute actions against elected officials accused of abusing their offices. In paragraph 7, the Attorney General argues that "[a]llowing the Missouri Attorney General to intervene before the commission will also preserve overall judicial and administrative resources," which implies that the office apparently intends to exercise its powers of quo warranto as part of its requested participation in this Commission.

15. It is so elementary an axiom that it requires no citation of authority that the Commission is a creature of the legislation that enables it and it has no powers beyond what are

granted by statute. Although the Public Service Commission Law is classified as a remedial enactment, it cannot be validly interpreted to give the Commission powers beyond those expressed therein.

Since it is purely a creature of statute, the Public Service Commission's powers are limited to those conferred by the [Public Service Commission Law], either expressly, or by clear implication as necessary to carry out the powers specifically granted, *State ex rel. City of West Plains v. Public Service Comm'n*, 310 S.W.2d 925, 928 (Mo. banc 1958). Thus, while these statutes are remedial in nature, and should be liberally construed in order to effectuate the purpose for which they were enacted, “neither convenience, expediency or necessity are proper matters for consideration in the determination of” whether or not an act of the commission is authorized by the statute, *State ex rel. Kansas City v. Public Service Comm'n*, 301 Mo. 179, 257 S.W. 462 (banc 1923).

State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Commission, 585 S.W.2d 41, 49 (Mo. 1979); *see also, State ex rel. Cass County v. Public Service Commission*, 259 S.W.3d 544, 547 -548 (Mo.App. W.D., 2008). Additionally,

The Public Service Commission is not a court and has no power to declare or enforce any principle of law or equity. *American Petroleum Exchange v. Public Service Comm.*, Mo.Sup., 172 S.W.2d 952, 955. *See also Bell v. City of Fayette*, 325 Mo. 75, 28 S.W.2d 356, and *May Department Stores Co. v. Union Electric Light & Power Co.*, 341 Mo. 299, 107 S.W.2d 41.

Bd. of Pub. Works of Rolla v. Sho-Me Power Corp., 362 Mo. 730, 736, 244 S.W.2d 55, 59 (1951).

16. The Commission has no power or authority to render judgments or decrees concerning the acts or omissions of elected officials. The Commission may sit in a quasi-judicial capacity but only with respect to the regulatory issues assigned to it by the legislature. The regulatory issue in this matter is whether the transaction proposed is detrimental to the public interest. By unassailable proof the joint Applicants have established that the District's purchase of Ozark Shores' assets as proposed herein is not detrimental to the public interest.

WHEREFORE, based upon the above and foregoing, Applicants respectfully request that the Commission enter the following relief:

- A. Deny the Attorney General's *Application to Intervene Out of Time*; and
- B. Issue its order authorizing the sale, transfer and assignment of Ozark Shores' assets to Camden County Public Water Supply District Number Four as described and proposed in this matter.

Respectfully submitted,

/s/ Mark W. Comley

Mark W. Comley #28847
Newman, Comley & Ruth P.C.
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, MO 65102
(573) 634-2266
(573) 636-3306 FAX

ATTORNEYS FOR OZARK SHORES WATER COMPANY
AND NORTH SUBURBAN PUBLIC UTILITY COMPANY

/s/ Robert W. Pohl

Robert W. Pohl
Pohl & Pohl, P.C.
2806 Horseshoe Bend Parkway
Suite 100
Lake , MO 65049
573-365-3350
Fax: 573-365-3358
ATTORNEYS FOR THE DISTRICT

TOGETHER, THE JOINT APPLICANTS

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 22nd day of May, 2015, to Cydney D. Mayfield at cydney.mayfield@psc.mo.gov; General Counsel's Office at staffcounsel@psc.mo.gov; and Office of Public Counsel at opcservice@ded.mo.gov and Brian T. Bear at Brian.Bear@ago.mo.gov.

/s/ Mark W. Comley