

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 1st day of
May, 2012.

In the Matter of Application of Canyon Treatment)	
Facility, LLC for Permission, Approval and a)	
Certificate of Convenience and Necessity)	
Authorizing it to Acquire, Construct, Install, Own,)	<u>File No. SA-2010-0219</u>
Operate, Control, Manage, and/or Maintain a Sewer)	
System for the Public Located in Stone County,)	
Missouri)	

**ORDER GRANTING CONDITIONAL
CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: May 1, 2012

Effective Date: May 31, 2012

Syllabus: In this order, the Commission grants a conditional Certificate of Convenience and Necessity to Canyon Treatment Facility, LLC. The effectiveness of the certificate is conditioned upon the Staff of the Commission securing a receiver to temporarily manage the company or upon a Commission-approved purchase of the company.

Background

The Staff of the Commission filed a complaint¹ against Canyon Treatment Facility, LLC because the company is operating as a public utility but does not have the required certificate. In an effort to resolve the complaint case, the company filed an application for a certificate; creating this file. Staff has been working with the company in this regard.

¹ Commission Case No. SC-2010-0161.

Upon investigation, Staff found that the company, as it is being operated, is a sewer corporation and should fall under the jurisdiction of this Commission. Staff further states that the company serves approximately 277 customers in Stone County. However, the current owner does not have the business acumen, technical knowledge or funding to operate a regulated sewer system. Staff therefore recommends that the company be granted a certificate on the “condition that a receiver be appointed to take over the day-to-day operations of the system . . . and continue discussions with potential purchasers of the system”

Canyon Treatment disagrees with Staff’s characterization that the current owner does not have the necessary business acumen or technical knowledge. The company does not request a hearing, but agrees that it would be in the best interest of the customers for the system to be transferred to a receiver with the goal in mind of finding an entity that is able to permanently operate the company. The company also informs the Commission that negotiations for purchase are in place with Stone County Sewer District No. 1.

The Office of the Public Counsel also has concerns about Canyon being granted a certificate, but agrees with Staff’s recommended course of action.

Discussion

Canyon is a sewer corporation operating a sewer system and is therefore subject to the jurisdiction of the Commission.² Missouri law requires a sewer corporation to obtain a certificate from this Commission to operate as such.³ The law also charges the Commission with the power to grant such approval upon a determination that it is

² Sections 386.020(48) and (49) and 386.250(4) RSMo.

³ Section 393.170.1, RSMo.

necessary and convenient for the public service.⁴ The Commission may also impose conditions upon the certificates it grants.

The certificate is evidence of the company's right to operate as such.⁵ The certificate also serves as a statement from this Commission that the company has certain qualifications, discussed below, that ensure safe and adequate service to the public. It is the nature of its business that subjects it to the Commission's jurisdiction, not whether it has a certificate. By operating without a certificate, Canyon has violated the law. The Staff of the Commission filed a complaint⁶ and the parties to that complaint now agree that the violation may be remedied by the company applying for a certificate. This file reflects that effort.

The Commission may grant a certificate of convenience and necessity after determining that the construction and operation are either "necessary or convenient for the public service."⁷ The Commission has stated five criteria that it uses in making this determination:

- 1) There must be a need for the service;
- 2) The applicant must be qualified to provide the proposed service;
- 3) The applicant must have the financial ability to provide the service;
- 4) The applicant's proposal must be economically feasible; and
- 5) The service must promote the public interest.⁸

The Commission finds that because there are currently 277 customers being served by the system, there is a need for service. However, based on Staff's recommendation,

⁴ Section 393.170.3, RSMo.

⁵ Section 393.170 RSMo.

⁶ See Commission File No. SC-2010-0161.

⁷ Section 393.170 RSMo.

⁸ *In re Tartan Energy Company*, 3 Mo. P.S.C. 173, 177 (1994).

there are questions concerning Canyon's qualifications and financial ability. Although the company does not agree, it does not request a hearing⁹ and agrees with Staff's recommended course of action.

Questions remain regarding Canyon's qualifications and financial ability. However, the Commission realizes that to burden a potential receiver or purchaser of the company with the task of applying for a certificate, may hamper efforts in that regard. Based on Staff's verified statements, the Commission finds that sewer service is both necessary and convenient for the public and will therefore grant a conditional certificate to the company; the effectiveness of which is dependent upon a receiver being appointed or upon a Commission-approved purchase of the company. The suitability of a receiver or purchaser will be appropriately determined in those separate dockets.

THE COMMISSION ORDERS THAT:

1. A certificate of convenience and necessity is granted to Canyon Treatment Facility, LLC.
2. The effectiveness of the certificate is conditioned on either the appointment of a receiver to oversee the daily operations of the company or upon a Commission-approved purchase of the company.
3. The General Counsel of the Commission is authorized to petition the Circuit Court for the appointment of a receiver.

⁹ *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n*, 776 S.W.2d 494, 495-496 (Mo. App. 1989)

4. This order shall become effective on May 31, 2012.
5. This case shall be closed on June 1, 2012.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

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

Jones, Senior Regulatory Law Judge