

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

In the Matter of EMC of St. Charles)	
County, LLC for a Certificate of)	
Convenience and Necessity Authorizing)	
it to Participate in the Ownership,)	Case No. SA-2007-0373
Operation, Maintenance, Removal,)	
Replacement, Control and Management)	
of a Sewer System in St. Charles County,)	
Missouri.)	

PUBLIC COUNSEL’S RESPONSE TO STAFF RECOMMENDATION

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Response to Staff Recommendation states as follows:

1. Public Counsel is concerned that the Staff of the Missouri Public Service Commission (Staff) Recommendation and Memorandum regarding the EMC of St. Charles County, LLC (EMC) request for a Certificate of Convenience and Necessity points out many uncertainties which may cause significant problems in future rate cases.

Unknown, Confidential Contract Between Developer And EMC

2. Staff states facilities provided by the developer will be offset by recording a contribution that will be later offset by utility payments to the developer through a future cost recovery mechanism. Staff indicates that a confidential contract will determine this cost recovery between EMC and the developer; however, it appears that the confidential contract has not been reduced to a final written agreement executed by any party and the terms of condition for payments and operation is undefined and in doubt. Staff’s Recommendation has no requirement that the confidential contract between EMC and the developer be reviewed and approved by the Missouri

Public Service Commission (Commission) and Staff states that it is not bound by the terms of this confidential contract in future rate cases.

3. Public Counsel is concerned that this unknown and undefined confidential contract has the potential to cause significant problems in future rate cases. Since the developer is unregulated, the Staff will have no opportunity to audit the books and records of the developer to determine if the costs of the sewer treatment plant design and construction are reasonable and prudent. Without a mechanism to ensure reasonable and prudent costs by the developer, Public Counsel is concerned that there is insufficient accountability.

4. Public Counsel's concern also stems from the lack of any indication of what the confidential contract entails or what the future cost recovery mechanism will be. A written agreement has not been produced regarding what facilities provided by the developer will be subject to utility payments. There is no statement of whether the utility payments to the developer will come from money collected by EMC, its parent company or the future ratepayers. Public Counsel is concerned that this information is not available to the Commission at this time and it will be left to future rate cases to determine after-the-fact whether the cost recovery mechanisms agreed to in the confidential contract were reasonable, prudent and acceptable to the Commission.

Unknown Affiliate Contracts

5. Staff also indicates there will be other affiliates who will provide service or charge costs to the utility. There is no indication of whom the affiliates might be, what services they would provide or what costs might be charged to the utility. There are no written signed agreements executed between EMC and the other affiliates or any requirement that these contracts be reviewed and approved by the Commission.

6. Public Counsel is concerned that there is no indication of what the affiliate contracts entail or what the future cost recovery mechanism will be. There is no statement of whether the utility payments to the affiliate will come from money collected by EMC, its parent company or the future ratepayers. Public Counsel is concerned that this information is not available to the Commission at this time and it will be left to future rate cases to determine after-the-fact whether the affiliate contracts were reasonable, prudent and acceptable to the Commission.

Unknown Control of Developer

7. Staff's Recommendation states EMC is to own the sewer treatment facility, but the home owners' association will own the sewer collection system. Staff also states that water service is to be unregulated through the home owners' association and services are to be contractually provided by an affiliate of EMC. Public Counsel is concerned that, although a home owners' association may someday be viable, there will be no homeowners for some time to come. The developer will be the homeowner until the water and sewer infrastructure is in place to allow the home to be sold. Therefore, the control over the unregulated water system and the unregulated sewer collection system will be in the hands of the developer. Given that there will be a confidential agreement between the developer and EMC, the developer will also have an unknown amount of control over the sewer treatment system.

Depreciation

8. Staff agrees with EMC proposed rate of \$30/month for operation of the treatment facility. Public Counsel is concerned that depreciation accrual will begin at the time utility service begins, without a clear indication of how that depreciation is to be included in the \$30/month rate.

EMC's Uncertain Financial Capability

9. The Staff Recommendation points out that this is a start-up operation with uncertain expenses and investment and initially there will not be sufficient revenue for this system to be financially viable on a stand-alone basis. Staff indicates there will be a financial relationship between EMC and its parent, Environmental Management Corporation. But, the Staff hedges a bit by noting that EMC may be supported by the parent corporation. The lack of a written agreement between EMC and its parent Environmental Management Corporation gives no assurance that EMC has the financial capability to provide safe and adequate service to the customers.

10. Public Counsel has stated its concern that there is no indication of what the confidential contract between EMC and the developer entails or what the future cost recovery mechanism will be. By the time EMC comes in for its rate case, the developer costs will already have been incurred and it will take significant resources and time to determine if they were reasonable and prudent. Also, there is no indication of how the confidential contract will treat costs that are determined not to be prudent. Without the mechanism of recovery of costs from ratepayers, EMC itself could be liable for those costs. This could have a detrimental affect on EMC's ability to be financially capable of providing safe and adequate service to the customers.

11. Public Counsel has also stated its concern that there are no affiliate contract mechanisms to ensure reasonable and prudent costs. These determinations will cause significant problems in future rate cases. By the time EMC comes in for its rate case, the affiliate costs will already have been incurred and it will take significant resources and time to determine if they were reasonable and prudent. Also, there is no indication of how the affiliate contracts will treat costs that are determined not to be prudent. Without the mechanism of recovery of costs from ratepayers,

EMC itself could be liable for those costs. This could also have a detrimental affect on EMC's ability to be financially capable of providing safe and adequate service to the customers.

Conclusion

12. As a result of the lack of well defined answers to Public Counsel's concerns raised here, the Commission should be aware that this may cause significant problems in future rate cases.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 9th day of November 2007:

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