

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

In the Matter of the Application of	)	
Peaceful Valley Service Company for	)	<b><u>Case No. SA-2016-0030</u></b>
Authority to Reorganize and Convert to a	)	
Nonprofit Water and Sewer Company.	)	<b><u>Case No. WA-2016-0031</u></b>

**STAFF'S RECOMMENDATION**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Recommendation* to **APPROVE** the *Applications* pending herein, states as follows:

1. On August 10, 2015, Peaceful Valley Service Company ("PVSC") filed its *Applications for Authority to Reorganize and Motion for Expedited Treatment*, in which it explained that it has converted to a nonprofit water and sewer company under §§ 393.825-393.861, RSMo., effective April 21, 2015.

2. PVSC thereby fulfilled an intention first announced to the Commission and its Staff in the course of processing Case Nos. SR-2014-0153 and WR-2014-0154. In July 2014, in a letter accompanying the signed Company-Staff Disposition Agreement, the president of PVSC stated:

I have reluctantly signed the attached Company/Staff agreements. Since our only alternative is a costly court hearing which would consume more in legal fees than our entire years income, we had no choice but to sign it. The agreement also requires us to conduct Engineering Studies which are not funded by the proposed rate structure. We have instructed our attorney, Mary Weston, to pursue the changing of our status from a "For Profit" company to a "Not for Profit" company which we believe will remove us from the control of the MPSC. We will keep you informed of developments.

3. PVSC was certificated by the Commission to provide sewer and water service in Gasconade County, Missouri, in April 1975, in Case Numbers 18,124 and

18,125. PVSC acquired its utility assets from Peaceful Valley Lake Corporation, which was authorized in 1968 to provide water service in Case No. 16,511, and to provide sewer service in Case No. 16,512. PVSC's water and sewer utility systems were constructed by the developer of Peaceful Valley Lake Estates subdivision, a recreational lake development near Owensville, Missouri. PVSC provides sewer and water service to approximately 176 sewer customers and 188 water customers in its certificated area. In addition, the Company has about 431 water availability customers who have access to water services from PVSC.<sup>1</sup> There has been minimal change in the number of customers over the past three years and little growth is anticipated.<sup>2</sup> PVSC is wholly-owned by the Peaceful Valley Property Owners Association, Inc.

4. PVSC provides wastewater treatment using a single-cell lagoon. This facility has been operating properly and discharging treated wastewater into a nearby receiving stream in accordance with its Operating Permit issued by MoDNR. PVSC's sewer operating permit was most recently renewed on January 1, 2014. This permit contains a schedule for PVSC to comply with an ammonia discharge limit by January 1, 2018. Prior to the current permit, there was no ammonia discharge limit. The new ammonia discharge limit is due to revised water quality criteria established by the United States Environmental Protection Agency on August 22, 2013. Lagoons, like the one operated by PVSC, are deemed "unlikely to meet ammonia limitations" according to MoDNR. Therefore, PVSC will be required to build a new treatment facility in order to meet the new ammonia discharge limit.

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<sup>1</sup> These are the owners of unimproved lots in the Peaceful Valley Lake Estates subdivision, who pay an availability fee to PVSC, but do not currently take utility service.

<sup>2</sup> One new home per year is the expected rate of growth.

5. On December 1, 2013, PVSC submitted an engineering evaluation and plan for upgrading its facility. The engineering report was prepared by Integrity Engineering, Inc. (Integrity), a consulting engineer, in October 2013.<sup>3</sup> This study recommended a recirculating biofilter wastewater treatment system as the most cost-effective alternative for upgrading PVSC's lagoon; its projected cost is \$1.1 million.

6. Section 393.827, RSMo., provides that "[a]ny corporation organized under the laws of this state for the purpose of, among others, wastewater disposal, or wastewater treatment, may be converted into a nonprofit sewer company and become subject to sections 393.825 to 393.861 and section 393.175 with the same effect as if originally organized under sections 393.825 to 393.861 and section 393.175," by filing a copy of the Articles of Conversion with the Missouri Secretary of State, following approval by majority vote of the board and the shareholders. Section 393.835.2, RSMo., provides that the conversion is effective upon the Secretary of State's acceptance and filing of the articles. Sections 393.825 to 393.861, RSMo., do not specify any role for the PSC in the conversion process. Section 393.847.3, RSMo., provides, "[t]he public service commission shall not have jurisdiction over the construction, maintenance or operation of the wastewater facilities, service, rates, financing, accounting or management of any nonprofit sewer company."

7. Section 393.829, RSMo., provides that a nonprofit sewer company "shall have power . . . (15) [t]o provide all services and assume all responsibilities authorized to a nonprofit water company organized under sections 393.900 to 393.954, when approved by its members, provided that no domestic water services may be provided

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<sup>3</sup> This is the engineering study referred to in the letter quoted in ¶ 2, above.

within the boundaries of an existing public water supply district, municipal utility, or within the certificated area of a water corporation as defined in section 386.020.” Thus, PVSC is authorized under the law to operate both the sewer and water utility systems previously regulated by this Commission.

8. Staff is aware of one other for-profit sewer company that sought the Commission’s approval for reorganization to a nonprofit sewer company, Case No. SA-2007-0105. In that former case, Staff acknowledged that it was the first time a sewer company had submitted an application to the Commission to reorganize as a nonprofit sewer company under Sections 393.190, 393.250, 393.827-861 RSMo. 2002. The statute denoted at the time as Section 393.847.2, RSMo. 2002 contained the same provision as the current Section 393.847.3, RSMo. “[t]he public service commission shall not have jurisdiction over the construction, maintenance or operation of the wastewater facilities, service, rates, financing, accounting or management of any nonprofit sewer company.” Yet, Staff recommended in SA-2007-0105 that the company seeking reorganization needed to submit a copy of the by-laws that would govern the newly organized nonprofit. The company acquiesced, and the Commission granted its approval of that company’s reorganization to a nonprofit sewer company in SA-2007-0105. However, it is Staff’s current belief that the Commission, being subject to Section 393.847.3, RSMo., does not have the authority to require PVSC to submit additional documents beyond the already submitted Articles of Conversion. Staff believes the Commission’s jurisdiction ceased once the Secretary of State accepted PVSC’s Articles of Conversion.

9. Out of an abundance of caution, PVSC has requested approval by the Commission under §§ 393.190 and 393.250, RSMo., the former relating to transfer by a utility of all or any part of its franchise, works or system, the latter relating to reorganizations of gas, electrical, water, and sewer corporations. It is Staff's view that conversion under §§ 393.825 to 393.861, RSMo., does not require approval by the Commission; however, in the event that approval by the Commission under §§ 393.190 and 393.250, RSMo., is required, then Staff recommends that approval be granted.

**WHEREFORE**, having fully considered the *Application* and such other information concerning the Applicant as is known, it is Staff's recommendation that the *Application* be **APPROVED**, that PVSC's existing water and sewer tariffs be cancelled, and that the Commission grant such other and further relief as is just in the circumstances.

Respectfully submitted,

**/s/ Kevin A. Thompson**

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing has been served, by hand delivery, electronic mail, or First Class United States Mail, postage prepaid, to all parties of record on the Service List, on this 8<sup>th</sup> day of September, 2015.

**/s/ Kevin A. Thompson**

## **MEMORANDUM**

TO: Missouri Public Service Commission Official Case File  
Case Nos. WA-2016-0031 and SA-2016-0030  
Peaceful Valley Service Company

FROM: Jim Merciel – Water and Sewer Unit

/s/ Jim Merciel                      August 31, 2015  
Case Coordinator                      Date

/s/ Kevin Thompson                      August 31, 2015  
Staff Counsel                      Date

SUBJECT: Staff's Recommendation to Cancel Certificate of Convenience and Necessity

DATE: August 31, 2015

### **CASE BACKGROUND**

On August 10, 2015, Peaceful Valley Service Company (PVSC), which holds a Certificate of Convenience and Necessity (CCN) to be a regulated utility authorized to provide water and sewer service to the public, filed an *Application for Authority to Reorganize and Motion for Expedited Approval* (Application) with the Commission, creating these two pending cases. In these two cases, PVSC seeks authority from the Public Service Commission (Commission) to be converted from a regulated utility to a nonprofit water and sewer utility that is not subject to the Commission's jurisdiction, as authorized by state statutes, specifically §393.825 to §393.861, and for the Commission to cancel its CCN to provide water and sewer service.

On August 12, 2014, the Commission issued its *Order Directing Notice, Setting Deadline for Intervention and Directing Staff to File a Recommendation*. This Order directed the Commission's Data Center and Public Information Office to send out notices regarding the Application, and also established the date August 28, 2015 by which interested parties should submit requests to intervene in the case. No applications to intervene in this case were received by the prescribed date. The Order also directed Staff to file a recommendation no later than September 8, 2015.

### **BACKGROUND OF THE UTILITY SYSTEMS**

The involved water and sewer utility systems were constructed by the developer of Peaceful Valley Lake Estates subdivision, a recreational lake development near Owensville, MO. Peaceful Valley Lake Corporation obtained a CCN to provide water service in Case No. 16,511, effective March 4, 1969; and a CCN to provide sewer service in Case No. 16,512, effective

**APPENDIX A**

November 29, 1973. PVSC acquired utility assets along with a CCN to provide water and sewer service in Case Numbers 18,124 and 18,125, both effective on April 18, 1975. Records in the Commission's files indicate that PVSC was in receivership in approximately the late 1970s or early 1980s<sup>1</sup>. According to information pertaining to stock ownership in PVSC's annual reports, the property owners association became the owner of PVSC in 1982, but as it remained a for-profit corporation entity it also remained a regulated water and sewer utility. PVSC provides service, using approved flat rates for both water and sewer service, to approximately 179 water customers, 9 water customers who only have yard hydrants for recreational use and no permanent structures on their lots, and 176 sewer customers. In addition, PVSC has an availability charge stated in its water tariff, which applies to 431 lot owners who do not have utility connections<sup>2</sup>.

### **STAFF'S INVESTIGATION**

Nonprofit sewer utilities are authorized to be created and provide sewer service by state statutes §393.825 to §393.861. Conversion of an existing wastewater corporation to become a nonprofit sewer utility is provided for in §393.827, which PVSC has recently exercised. Nonprofit water utilities are similarly authorized by separate state statutes, §393.900 to §393.954, for the provision of water service. However, §393.829(15) authorizes nonprofit sewer utilities to also assume responsibilities of nonprofit water utilities and provide water service, with limitations, which PVSC is also now exercising.

By the provisions of the statutes, a nonprofit water/sewer utility is not subject to the jurisdiction of the Commission. Rather, all customers are members of the nonprofit utility corporation, and the members select at least five (5) persons to serve on a board of directors who undertake the business operations of the nonprofit utility on behalf of the members. This structure is similar to utility operations undertaken by a board of directors of a homeowners' association, a board of directors of a public water or sewer district, or a public works board of directors or a city council of a municipal-owned utility operation, none of which are regulated by the Commission and all of which have directors that are selected by citizens or corporation members who are utility customers.

As was noted in PVSC's most recent rate increase request before the Commission, WR-2014-0154 and SR-2014-0153, PVSC is dealing with a requirement contained in its wastewater discharge permit issued by the Missouri Department of Natural Resources that will require it to meet a new limit for ammonia. This issue was discussed extensively on the record in an evidentiary hearing held by the Commission on September 23, 2014<sup>3</sup>. The matter was also addressed in a Staff Report filed on August 15, 2014<sup>4</sup> that was filed in response to a Commission order, to address PVSC's plan to comply with the treatment requirement. It was also addressed

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<sup>1</sup> Receivership of the utility corporation was not sought by the Commission; it was likely a result of bankruptcy, foreclosure, or other similar action involving this or perhaps other corporations owned by a developer.

<sup>2</sup> These numbers are as Staff used for audit and rate design purposes in WR-2014-0154 and SR-2014-0153.

<sup>3</sup> The transcript of the evidentiary hearing in WR-2014-0154 is EFIS item No. 29.

<sup>4</sup> EFIS item No. 18 in WR-2014-0154.

in the reports attached to a Company-Staff Disposition Agreement filed on April 21, 2014<sup>5</sup> and an Updated Company-Staff Disposition Agreement filed on July 9, 2014<sup>6</sup>. In response to a Commission order, Staff submitted a Status Report on June 12, 2015<sup>7</sup> to report the status of either PVSC seeking to include the cost of financing in rates prior to new plant being placed into service, or of PVSC's intention to convert to a nonprofit utility. To summarize the issue, PVSC's sewage treatment facility must be upgraded or replaced to meet recently imposed discharge limits for ammonia by January 1, 2018. PVSC's estimated cost to upgrade its sewage treatment capability to meet this requirement is approximately \$2million. In its rate case, PVSC was requesting an annual increase of sewer revenue of \$93,840 to reflect financing the cost of the upgrade. However, since the plant was not yet in service and PVSC did not yet have financing in place, Staff recommended against including the funds in rates as is its normal policy for such matters. The Commission's orders pertaining to the aforementioned Staff Reports prescribed the inclusion of information regarding both PVSC's ability to obtain financing for the project, and to PVSC's possible decision to convert to a nonprofit utility in order that as a nonregulated entity it could obtain financing and set rates on its own for its member-customers in such a manner as it deems appropriate, without regulatory oversight.

In its Application, PVSC references not only the aforementioned nonprofit utility statutes, but also §393.190 which addresses transfers of utility assets and the need for Commission approval before doing so; and also §393.250 which addresses corporate reorganization. Staff takes the position that since PVSC was converted from a for-profit corporation to a nonprofit utility as specifically authorized by statutes, that there is no transfer of assets from one entity to another and thus §393.190 does not apply. Staff takes the position at this time that a corporate reorganization as contemplated in §393.250 does not apply because the corporation conversion, even if considered to be a reorganization, took place as authorized by other statutes, specifically §393.827.

However, by the filing of the Application by PVSC, Staff believes it is appropriate for the Commission to recognize the conversion from a for-profit corporation to a nonprofit utility, and grant approval if the Commission deems this action to be necessary. Staff specifically recommends that the Commission cancel PVSC's CCN, and cancel the water and sewer tariffs that are currently in effect for PVSC.

### **OTHER COMPANY ISSUES**

Staff received one public comment for this case; from a customer who supports the conversion of PVSC and operation as a nonprofit utility.

PVSC is current with submitting annual reports to the Commission through calendar year 2014. It has paid its annual assessments through fiscal year 2015. The Commission's Administration Division has posted a balance due of \$431.12 for fiscal year 2016 on its section of the intranet

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<sup>5</sup> EFIS item No. 7 in WR-2014-0154.

<sup>6</sup> EFIS item No. 14 in WR-2014-0154.

<sup>7</sup> EFIS item No. 54 in WR-2014-0154.

site, however as PVSC has converted to a nonprofit sewer (and water) utility as of April 21, 2015, and will no longer be regulated, the Commission's Administration Division will waive payment of the fiscal year 2016 assessment amount. PVSC's corporation status is listed as Good Standing on the Secretary of State's website.

### **STAFF'S FINDINGS & CONCLUSIONS**

Staff has reviewed corporation documents and takes the position that the board of directors of PVSC has properly caused the corporation to be converted to a nonprofit sewer (and water) utility, as of April 21, 2015. As such, it is no longer subject to the jurisdiction of the Commission. To the extent it may be necessary for the Commission to approve the conversion, Staff recommends the Commission approve the conversion; and also that the Commission cancel the CCN held by PVSC, and cancel the water and sewer tariffs that are currently in effect and posted for PVSC. PVSC's current water tariff is PSC MO No. 3, and the current sewer tariff is PSC MO No. 4.

### **STAFF'S RECOMMENDATIONS**

Based upon the above, the Staff recommends that the Commission take the following action:

- a. Recognize that PVSC was converted to a nonprofit utility on April 21, 2015, and approve that action if deemed necessary;
- b. Cancel the CCN held by PVSC to provide water and sewer service; and,
- c. Cancel the water tariff and sewer tariff currently in effect for PVSC.

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

In the Matter of the Application of Peaceful )  
Valley Service Company for Authority to )  
Reorganize and Convert to a Nonprofit ) Case No. SA-2016-0030  
Water and Sewer Company )

In the Matter of the Application of Peaceful )  
Valley Service Company for Authority to )  
Reorganize and Convert to a Nonprofit ) Case No. WA-2016-0031  
Water and Sewer Company )

**AFFIDAVIT OF JAMES A. MERCIEL, JR.**

State of Missouri )  
 ) ss.  
County of Cole )

**AFFIDAVIT**

**COMES NOW** James A Merciel, Jr. and on his oath declares that he is of sound mind and lawful age; that he contributed to the attached Staff Recommendation to Cancel Certificate of Convenience and Necessity that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

  
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**James A. Merciel, Jr.**

**JURAT**

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 31<sup>st</sup> day of August, 2015.

  
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NOTARY PUBLIC

LAURA DISTLER  
Notary Public, Notary Seal  
State of Missouri  
Cole County  
Commission # 15203914  
My Commission Expires June 21, 2019