

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

In the matter of the Application of)	
Lake Region Water & Sewer Company)	
and Camden County Public Water)	
Supply District Number Four for)	
an order authorizing the Sale,)	File Nos. WM-2017-0186
Transfer and Assignment of Water and)	and SM-2017-0187
Sewer Assets to Camden County Public)	
Water Supply District Number Four and)	
in connection therewith certain other)	
related transactions.)	

**RESPONSE TO STAFF RECOMMENDATION AND
MOTION FOR EXPEDITED TREATMENT**

Come now Lake Region Water & Sewer Company (“Lake Region” or “Company and Camden County Public Water Supply District Number Four (the “District”) (sometimes collectively referred to as “Applicants”) and submit this response to the Staff Recommendation.

RESPONSE TO STAFF RECOMMENDATION

I. Introduction

In a previous transfer of assets case involving Ozark Shores Water Company (Ozark Shores) and the District, the Staff filed a recommendation to deny the same which is substantially similar to the Staff Recommendation filed in this matter on February 24, 2017. See *Staff Recommendation To Deny Transfer Of Assets And Request For Local Public Hearing*, filed May 15, 2015, Case No. WM-2015-0231. The District and Ozark Shores filed a lengthy response to Staff’s recommendation in Case No. WM-2015-0231 and the Commission will observe that much of that earlier response has been loaned to the present one.

II. Staff Recommendation

At page 3 of its recommendation filed February 24, 2017, the Commission Staff recommends against approval of the transaction because it cannot state there is no detriment to the public interest in the form of increased rates. Staff assumes that the price paid by the District above the approved rate base for Lake Region will be recovered in higher rates charged to District customers. Staff's assumption is further explained in a memorandum annexed to Staff's Recommendation.

The price the parties have agreed on for purchase of Lake Region's assets is not a factor which justifies delay in approving the Application in this matter. Staff's recommendation should be rejected by the Commission and the application should be approved with dispatch.

III. Commission Jurisdiction and Authority

At the outset, the nature of this action, the relationship of the parties and the Commission's jurisdiction should be underscored. As set out in the application, Lake Region is a "water" corporation as that term is defined in Section 386.020 RSMo. 2000¹ and constitutes a public utility subject to the jurisdiction of the Commission. The District on the other hand is a public water supply district organized under the provisions of Chapter 247 and an independent political subdivision of the State of Missouri. Staff's recommendation depends in part on the false predicate that the Commission may: 1) superimpose its will on that of the District's board of directors; and in general, 2) materially intrude upon the authority, judgment and discretion of another legislatively created body politic which is not subject to the jurisdiction, control or regulation of the Commission.

Section 393.190 provides, in pertinent part:

¹ Statutory citations herein are to RSMo 2000 or its current supplement.

No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do.

As the Commission has explained and determined in previous cases involving a public utility's bulk sale of its assets, Section 393.190 does not set forth a standard for the Commission's approval of the proposed transfer. The standard has been fashioned by the appellate courts however. The standard for the Commission's approval of an asset transfer is whether the transaction is not detrimental to the public interest. *State ex rel. City of St. Louis v. Public Service Commission of Missouri*, 73 S.W.2d 393, 400 (Mo. banc 1934). This standard is reflected further in the Commission's rules, which require an applicant for such authority to state in its application "[t]he reason the proposed sale of the assets is not detrimental to the public interest." "The Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest." *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. 1980).

The Applicants submit that to be adequate and substantial the proof of detriment to the public interest must be based on more than mere assumptions. In its recommendation, Staff assumes, without reference to any supporting data, the District may increase customer rates as a result of this transaction. Staff served no data requests on the Applicants in connection with the transaction. It is entirely speculative for Staff to predict that District rates for service will be altered as a consequence of this purchase.

IV. The Price for Lake Region's System

The Staff questions a price above the amount of Lake Region's rate base. It labels the amount paid above the company's rate base as an "acquisition premium." Staff did not ask how the price for Lake Region's system was agreed upon.

Applicants note first that Paragraph 2.1.1 of the purchase contract filed as Appendix 1 to the Joint Application for Approval of Transfer of Assets provides that that the District will issue a bond for the purchase price. The bonds will have 4.45% coupon rate and the debt service shall be level payments in the amount of \$185,776.93 (\$371,553.86 annually) for a thirty year period. Per Article III of the same agreement the parties have agreed that the risk associated with the issuance of the bond(s) will be borne by Lake Region; not by the customers of the District.

A. Boone Partners Engagement Report

As part of the due diligence required by Missouri state and other auditing standards, the District retained Boone Partners, LLC of St. Louis Missouri, an independent third party consultant, to provide an Engagement Report ("the BP Report") with respect to the reasonableness of acquiring the assets, obligations, and customer base of Lake Region. The BP Report concluded that an acquisition price of \$6.4 million was reasonable. A copy of the BP Report is attached to this response as Appendix A.

The BP Report additionally concluded that both the free cash flow of the business (\$391,587 annually) and EBITDA (\$380,080 annually) would exceed the associated debt service of the transaction. Boone Partners is the same group the District engaged to analyze the Ozark Shores transaction approved by the Commission in Case No. WM-2015-0231 cited previously. The Commission should know that the previous Ozark Shores' customers are paying today the same rates they were paying when the District acquired the assets and began serving those

customers in 2015. Therefore, the District anticipates with some confidence that the rates charged to existing Lake Region customers will not be increased as a result of the transaction.

MOTION TO EXPEDITE

No Company or District customer has sought intervention in this case. Interest rates are trending upward at a steady pace. The Applicants urge immediate approval of this application so that the bonds to finance the transaction can be obtained at their lowest possible rate. Swift approval of this application is in the public interest.

CONCLUSION

Over the years, the owner(s) of Lake Region have received numerous inquiries from private parties interested in acquiring the Company through either a stock transaction or a purchase of assets. Had such overtures been accepted, each would have resulted in absentee ownership and regulated rates containing a component for both a return on investment as well as an income tax component. Each would also have resulted in an “acquisition premium.”

The District strongly believes that the customers and future customers residing within the District boundaries will be better served by their elected board of directors, who are also residents, voters and customers of the District, rather than by an entity owned by individuals residing in other states or regions who are unfamiliar with Camden County and the Lake area.

Based upon the above and foregoing, Applicants respectfully request the Commission to reject Staff’s Recommendation filed February 24, 2017 and approve the instant application on an expedited basis.

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 LAKE REGION WATER &
SEWER COMPANY

/s/ Robert W. Pohl

Robert W. Pohl
Pohl & Pohl, P.C.
2806 Horseshoe Bend Parkway
Suite 100
Lake Ozark, 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 1st day of March, 2017, to General Counsel's Office at staffcounservice@psc.mo.gov; and Office of Public Counsel at opcservice@ded.mo.gov.

/s/ Mark W. Comley