

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

In the Matter of the Application of Quail)
Run Water and Land Company to Sell Its)
Stock and Transfer Assets to the Public) Case No. WM-2002-394
Funding Corporation of the City of Ozark,)
Missouri)

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through one of its attorneys, and for its Recommendation, states as follows:

1. On February 26, 2002, Quail Run Water and Land Company (Quail Run or Company) and the Public Funding Corporation of the City of Ozark, Missouri (PFC) filed a Joint Application for Approval and Authority to sell and transfer Quail Run’s stock and assets to the PFC. The Application also sought approval and authority for a subsequent lease/purchase agreement between the PFC and the City of Ozark, Mo, authorization for Quail Run to discontinue providing service in its service area after the sale, and the immediate continuance/resumption of service by the City of Ozark, without further jurisdictional oversight by the Commission.

2. The sale of assets is governed by § 393.190 RSMo 2000 and 4 CSR 240-2.060(7) and 4 CSR 240-2.060(12). Relevant case law provides that the Commission may approve an asset transfer if it is “not detrimental to the public interest”. See State ex. rel Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W. 2d 466, 468 (Mo. App. E.D. 1980).

3. Staff has reviewed the Application for approval of the asset transfer and has summarized its findings in the attached Memorandum, which is labeled Appendix A, and incorporated by reference. The Staff concluded in its review that it believes the proposed transaction would not be detrimental to the public interest.

4. Staff counsel has reviewed the jurisdictional implications of this transaction. Specifically, in Forest City v. City of Oregon, 569 S.W. 2d 330, 333 (1978), the Court held that the Commission did not have jurisdiction to regulate the rates charged by Oregon to the residents of Forest City. A more recent appellate case, Ag Processing v. South St. Joseph Sewer, 937 S.W. 2d 319, 323 (Mo. App. W.D. 1996) cited the Forest City case approvingly for the principle that “the sale of water by a city to non-residents is a matter of voluntary contract, free from regulation.” Also §91.050 RSMo 2000 provides, in part, that any city in Missouri that owns and operates its own waterworks, is authorized to supply water to persons beyond the corporate limits of the city upon such terms as may be agreed upon by the contracting parties.

5. In light of the above, Staff counsel believes that if the Commission approves the proposed transaction, relinquishment of jurisdiction after the sale and lease back, would not be inappropriate, and would be supported by both statutory authority and relevant case law.

WHEREFORE, based upon the foregoing, the Staff recommends that the Commission enter an Order which:

- A. Approves the PFC and Quail Run Joint Application and grants the authority requested therein.
- B. Directs the PFC to notify the Commission immediately after it executes the asset lease/purchase agreement with the City of Ozark, Missouri.

- C. Cancels the Certificate of Convenience and Necessity held by Quail Run, and the Company's water tariff, effective upon the PFC's execution of the asset lease/purchase agreement with the City of Ozark.

Respectfully submitted,

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/s/ Cliff Snodgrass

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 24th day of May, 2002.

/s/ Cliff Snodgrass
