

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

In the matter of the Application of Ozark Shores Water Company, North Suburban Public Utility Company and Camden County Public Water Supply District Number Four for an order authorizing the Sale, Transfer and Assignment Water Assets to Camden County Public Water Supply District Number Four and in connection therewith certain other related transactions.)
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)
) **Case No. WM-2015-0231**
)
)
)

**STAFF RECOMMENDATION TO DENY TRANSFER OF ASSETS
AND REQUEST FOR LOCAL PUBLIC HEARING**

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Recommendation to Deny Transfer of Assets and Request for Local Public Hearing*, states as follows:

Introduction:

1. On March 25, 2015, Ozark Shores Water Company (“Ozark Shores”), North Suburban Public Utility Company (“Suburban”) and Camden County Public Water Supply District No. 4 (“PWSD”), collectively the “Joint Applicants,” filed their *Joint Application* seeking authority to transfer Ozark Shore’s water system assets used in the provision of regulated utility services to the public to PWSD for \$5,252,781. The transaction also includes the sale by Suburban to PWSD of certain tracts of land and buildings used by Ozark Shores for \$165,000, a transaction that does not require the authority of the Commission.¹ The *Joint Application* was assigned Case Number WM-2015-0231.

2. On March 26, 2015, the Commission ordered a supplemental filing from Ozark Shores seeking a list of each county wherein an affected political subdivision is located. On April 7, 2015, Ozark Shores responded that its property is entirely located

¹ Suburban, which is not a Missouri regulated utility, owns all of the outstanding shares of Ozark Shores.

within Camden County.

3. On April 8, 2015, the Commission issued its *Order and Notice* regarding the *Joint Application*. The Commission directed the Commission's Data Center and Public Information Office to send out notices regarding the *Joint Application* to the clerks of Camden and Miller Counties; established a deadline of April 27, 2015, for interested parties to submit requests to intervene in the case and established May 4, 2015, as the date for Staff to file its *Recommendation*. To date, no parties have sought intervention.

4. On April 29, 2015, Staff requested additional time in which to file its recommendation to permit final calculation and correction to company plant records and to review depreciation reserve and rate base items. The Commission initially granted Staff's request on April 29, 2015; however, on May 1, 2015, in response to Joint Applicants' *Motion for Reconsideration*, the Commission directed Staff to explain further why it needs additional time to complete its investigation and prepare its recommendation by May 5, 2015.

Staff's Response to the Order of May 1, 2015:

5. In response to the Commission's Order of May 1, 2015, Staff states that it has serious concerns regarding the proposed transaction that it has not been able to resolve in the limited time it has been afforded to investigate this matter. These concerns, which are set out in detail in the attached *Staff Memorandum*, include:

- The agreed purchase price for Ozark Shore's system is **more than twice the value of its rate base**;
- Relationships exist between Ozark Shores, Suburban and PWSD such that Staff doubts that this is an arm's length transaction;
- The very large acquisition premium is likely to cause customers' rates to

increase significantly.

6. Pursuant to Section 393.190.1, RSMo., the Commission is charged with evaluating whether or not an asset sale or transfer is detrimental to the public interest. In the lead case on this statute, the Court explained:

Before a utility can sell assets that are necessary or useful in the performance of its duties to the public it must obtain approval of the Commission. § 393.190, RSMo. (1969). The obvious purpose of this provision is to ensure the continuation of adequate service to the public served by the utility. 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.²

Staff's investigation, therefore, has been directed at determining whether or not the proposed transaction would be detrimental to the public interest.

Staff's Recommendation:

7. Because Staff has been unable to fully investigate this matter in the time allowed, Staff has not resolved its concerns. In sum, the circumstances presented are that a PWSD proposes to purchase a water system for twice its value; the boards of the PWSD and owners of the water system are personally entangled; and a significant rate hike is likely to be required to pay the proposed acquisition premium. Staff suggests that a rate increase that is not required to offset increased costs of providing service is itself a detriment to the public interest. For these reasons, Staff recommends that the *Joint Application* be **DENIED**.

Request for Local Public Hearing:

8. Staff has not been provided any information on whether or not the PWSD has notified its existing customers of the proposed acquisition. Staff believes that the members of the PWSD should be advised of the terms of the proposed transaction. Staff

² *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App., E.D. 1980).

is also concerned that Ozark Shore's customers have also not been properly notified of the pending transfer and its potential impact on rates. Staff also believes that affording customers the opportunity to speak to the Commission at a hearing is a critical part of the Commission's process to ensure that a proposed transfer of assets is just and reasonable and not detrimental to the public interest. As a result, Staff requests that the Commission schedule a local public hearing regarding the *Joint Application*.

WHEREFORE, Staff respectfully requests that the Commission issue an order denying the *Joint Application for Transfer of Assets*. Staff further respectfully requests that the Commission order a Local Public Hearing to be held as soon as practicable.

Respectfully submitted,

/s/ Kevin A. Thompson

Kevin A. Thompson
Missouri Bart Number 36288
Chief Staff Counsel

Cydney D. Mayfield
Missouri Bar Number 57569
Senior Counsel

Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
573-751-4227 (Voice)
573-526-6969 (Fax)
cydney.mayfield@psc.mo.gov

Attorneys for Staff of the
Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by First Class United States Mail, postage prepaid, to all counsel of record this 5th day of May, 2015.

/s/ Kevin A. Thompson

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. WM-2015-0231 Ozark Shores Water Company

FROM: Curt Gateley, Martin Hummel, Jim Merciel, Water and Sewer Department; Kim
Bolin, Auditing Department

<u>/s/ Curt Gateley</u>	<u>5-5-15</u>
Water and Sewer Department	Date
<u>/s/ Martin Hummel</u>	<u>5-5-15</u>
Water and Sewer Department	Date
<u>/s/ Jim Merciel</u>	<u>5-5-15</u>
Water and Sewer Department	Date
<u>/s/ Kim Bolin</u>	<u>5-5-15</u>
Auditing Department	Date
<u>/s/ Cydney Mayfield</u>	<u>5-5-15</u>
Staff Counsel's Office	Date

SUBJECT: Staff's Recommendation to Deny Sale of Assets

DATE: May 5, 2015

CASE BACKGROUND

On March 25, 2015, the Ozark Shores Water Company (Ozark Shores), North Suburban Public Utility Company (North Suburban) and Camden County Public Water Supply District Number 4 (herein after "PWSD") filed a *Joint Application for Approval of Transfer of Assets* (Application) seeking to sell and transfer water system assets and associated tracts of land and buildings presently owned and/or operated by Ozark Shores and North Suburban to the PWSD. On March 26, 2015 the Commission ordered a supplemental filing from Ozark Shores seeking a list of each county where an affected political subdivision is located. On April 7, 2015, Ozark Shores filed a response to the Commission's Order that attested to Ozark Shores property being entirely included within, and affecting only, Camden and Miller Counties.

On April 8, 2015 the Commission issued its *Order and Notice* (Order) regarding the Application. The Order directed the Commission's Data Center and Public Information Office to send out notices regarding the Application to the clerks of Camden and Miller Counties. The Order also established a

deadline of April 27, 2015 for interested parties to submit requests to intervene in the case, and for a Staff Recommendation to be filed by May 4, 2015. On April 29, 2015, Staff requested and was granted a motion for extension due to the complexity and unusual nature of this case. On April 30, 2015 the other parties filed a Motion for Reconsideration of the extension. On May 1, 2015, the Commission ordered Staff to file a response to the Motion for Reconsideration by May 5, 2015. No parties sought to intervene in this case.

BACKGROUND OF THE WATER SYSTEM AND UTILITY ENTITIES

At present, Ozark Shores has a certificate of convenience and necessity (CCN) that was issued by the Commission in 1992 authorizing it to purchase and acquire the water system assets from Four Seasons Lakesites Water and Sewer Company (Case No. WM-93-24). It has since expanded its service area several times as authorized by the Commission in various CCN cases. Four Seasons Lakesites Water and Sewer Company itself was, and remains, a regulated water utility, having been issued a CCN by the Commission in 1973 in Case No. 17,954. Four Seasons Lakesites Water and Sewer Company, now operating under the name Lake Region Water & Sewer Co., no longer provides water service within Ozark Shore's service area but it does provide sewer service within the service area, and also provides both water and sewer service elsewhere.

The PWSD was formed on May 7, 2002 by the Camden County Circuit Court, Case No. CV101-703CC. At present it operates utility facilities in conjunction with Ozark Shores, in that it owns certain water utility assets that Ozark Shores uses to provide water service to its customers.

The water system provides water service generally to the Village of Four Seasons, in an area at the Lake of the Ozarks known as Horseshoe Bend in Camden and Miller Counties, with 1,861 single-family residential, condominium, and commercial customers, and a population of approximately 4,500 people. Water is supplied via four wells and three storage facilities. Well #1 was drilled in 1971, and has an 86,000 gallon standpipe adjacent to it. Well #2 was drilled in 1979, with a 750,000 gallon storage tank. Well #3 was drilled in 1984, and pumps water to a 500,000 gallon storage tank owned by the PWSD. Well #4 was drilled in 1991 and pumps water directly into the distribution system. Water produced is chlorinated and is fluoridated. All customers are metered.

STAFF'S INVESTIGATION

As a result of Staff's investigation of the Company's plant records, Staff has calculated the Ozark Shores rate base as of December 31, 2014 to be \$2,571,024. If Ozark Shores was selling its assets to another regulated utility for the same price that the Public Water Supply District is paying for the assets (\$5,252,781), then an acquisition premium of \$2,681,757 would exist. An acquisition premium occurs when an acquiring utility purchases the assets of a utility property for more than the rate base value of the assets. It has been the policy of the Commission that acquisition premiums

should not be allowed to be included in rate base. For this reason, in such a transaction between two regulated utilities, Staff would recommend that an acquiring regulated utility only reflect a rate base of \$2,571,024 as of December 31, 2014 for the Ozark Shores assets. The acquiring utility would also not be able to include the acquisition premium in rate base. However, in this acquisition, the acquiring entity is not a regulated utility and the impact of the acquisition adjustment may be included in the determination of the rates to be charged to customers if the Public Water Supply District chooses.

North Suburban, which is a registered foreign corporation based in Illinois, owns all of the Ozark Shore's stock, and in addition owns the real estate and buildings used by Ozark Shores to provide water service. North Suburban, as sole shareholder, has authorized Ozark Shores to sell its assets to the PWSD.

The PWSD and Ozark Shores share an unusual business relationship. Vernon Stump and Roger Sallee were business partners who were instrumental in setting up the PWSD. Roger Sallee was formerly the president of Ozark Shores, and is now the president of the board of directors of the PWSD. Ozark Shores stock is owned by North Suburban, and North Suburban is owned by Robert Schwermann and Sally Stump. Ozark Shores lists Vernon Stump and Brian Schwermann as officers. Currently, employees of the PWSD operate both the Ozark Shores and PWSD systems through a joint labor contract. The intense interrelatedness between the ownership of Ozark Shores and the Board of Directors of the PWSD, combined with the very large acquisition premium, create the appearance of a conflict of interest. Staff is still investigating how the former business partners arranged for an acquisition premium of more than 100% or \$2.6 million, and how this amount will be paid off over time.

Under Ozark Shores' current approved tariff, residential customers with 5/8" meters are subject to a "Minimum Bill Charge of \$9.73 per month, which includes 2,000 gallons of water; then water usage greater than 2,000 gallons is subject to a "Usage Charge" of \$1.71 per 1,000 gallons. Thus a typical residential customer using 5,000 gallons of water per month would be charged \$14.86. Lot owners who are not active customers are subject to a Commission-approved availability fee of \$12.00 per month. These rates have remained unchanged since December 11, 1998. In addition to the rates charged on the tariff, the Ozark Shores customers also pay \$4.23 per month to the PWSD (this includes 7,290 gallons usage). After 7,290 gallons they are charged \$0.58 per thousand gallons. This charge was approved by the voters in the Horseshoe Bend area in 2001 to help pay for expansion, a water tower and well to help serve water customers on Horseshoe Bend. Staff has not yet learned how the funds collected from Ozarks Shores customers are specifically applied, but it appears that it is to pay for PWSD-owned assets that Ozark Shores utilizes to provide water service, in addition to its own assets. This arrangement, involving two separate rates from two different water utilities for water utility service to each customer, appears to be in place of a lease whereby Ozark Shores leases assets and includes the cost of the lease and perhaps direct operations costs as a part of its cost of service. Further investigation of this situation appears warranted.

The PWSD has stated it “anticipates” making an annual adjustment to rates based on changes to the Consumer Price Index as it does with other PWSD customers, but does not “anticipate” making other changes to rates. Staff has questions as to how the PWSD will recover the large acquisition premium that is proposed (as discussed below) to be paid to Ozark Shores if rates are not raised. The PWSD is a publicly-owned entity and as such is not subject to regulation by the Public Service Commission. The PWSD does not maintain a website with information about its rates or other operational details.

A September 26, 2012, inspection by the Department of Natural Resources (DNR) listed one violation (failure to institute a formal lead plumbing ban) and twelve deficiencies. Staff conducted an inspection on April 23, 2015, and found Ozark Shores had still failed to institute a formal lead plumbing ban, but had resolved all of the deficiencies except the lack of an approved Wellhead Protection Program. Staff advised that these issues be resolved, and because the PWSD and Ozark Shores share the same employees it was discussed that one lead plumbing ban and one Wellhead Protection Program will likely be submitted to DNR for approval. The facility is scheduled to be inspected again by DNR in September of this year.

Ozark Shores currently pays property tax to Camden County. For the calendar year 2014, Ozark Shores paid Camden County \$6,540 for property tax. As a result of this acquisition, if approved, Camden County will no longer collect property tax for these assets.

STAFF'S FINDINGS AND CONCLUSIONS

Per 4 CSR 240-3.605 Staff is charged with evaluating whether or not an asset sale or transfer is not detrimental to the public interest. The Commission, under its authority, ordered its Staff to conduct an investigation into this matter and to provide the Commission with a recommendation. In this case, a very unusual proposed business transaction and a lack of time allowed for investigation has left many unanswered questions. Responses to Data Requests and investigations have generated additional questions. At this time, without further information, Staff cannot affirm that the asset transfer is indeed not detrimental to the public interest for the reasons listed above. Indeed, based on presently-available information, Staff believes that the transfer would be detrimental to the public interest.

Staff has significant concerns about the impact to both Ozark Shores and the PWSD’s customers. Without raising rates, how will the PWSD afford to pay the debt on the \$5.2 million purchase? Why would the PWSD buy Ozark Shore’s system for twice its value? Due to time constraints, Staff was unable to determine the PWSD’s rates for its existing customers, or the current number of customers. Staff is uncertain of the exact financial arrangement for the funds currently collected from Ozark Shores for the PWSD. It is not known whether or not the PWSD held an election to approve the acquisition of Ozark Shores and the resulting debt. It is not known whether or not the PWSD notified

its existing customers of the acquisition in any capacity. And again, it is not known how the \$2.6 million acquisition premium was determined or who will pay for it.

Staff believes, based on its knowledge of the water system and on information filed in *Ozark Shores Application*, that the PWSD will be capable of operating the water system. Ozark Shores is current on filing of annual reports, as shown on the Commission's EFIS records, and is current on annual assessment amounts, as posted by the Commission's Administration Division on its intranet site. Approval of the transfer of assets will have no impact upon any other matter pending before the Commission.

STAFF'S RECOMMENDATIONS

Based on the above reasons, Staff recommends that the Commission issue an order denying the transfer of assets. The Parties have not satisfied the filing requirement of 4 CSR 240-3.605(1)(D), in that the Parties have not shown why the sale of the assets are not detrimental to the public interest.

Staff also recommends that if the case continues to go forward, that the Commission order a Local Public Hearing as soon as practical.

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In the Matter of the Application of Ozark)
Shores Water Company, North Suburban)
Public Utility Company and Camden)
County Public Water Supply District)
Number Four for an Order Authorizing the)
Sale, Transfer and Assignment of Water)
Assets to Camden County Public Water)
Supply District Number Four and in)
Connection Therewith Certain other Related)
Transactions)

Case No. WM-2015-0231

AFFIDAVIT OF JAMES MERCIEL

State of Missouri)
) ss.
County of Cole)

AFFIDAVIT

COMES NOW James Merciel and on his/her oath declares that he/she is of sound mind and lawful age; that he/she contributed to the attached Staff Recommendation and that the same is true and correct according to his/her best knowledge and belief.

Further the Affiant sayeth not.



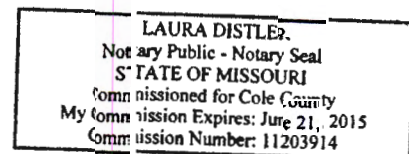
James Merciel

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 5th day of May, 2015.



NOTARY PUBLIC



My commission expires: June 21, 2015

**BEFORE THE PUBLIC SERVICE COMMISSION
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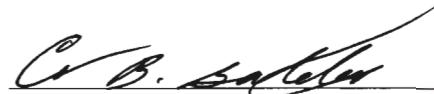
AFFIDAVIT OF CURTIS GATELEY

State of Missouri)
) ss.
County of Cole)

AFFIDAVIT

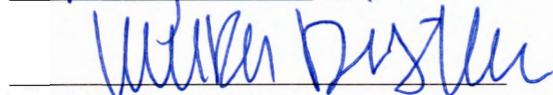
COMES NOW Curtis Gateley and on his/her oath declares that he/she is of sound mind and lawful age; that he/she contributed to the attached Staff Recommendation and that the same is true and correct according to his/her best knowledge and belief.

Further the Affiant sayeth not.


Curtis Gateley

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 5th day of May, 2015.


NOTARY PUBLIC

My commission expires: June 21, 2015

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Case No. WM-2015-0231

AFFIDAVIT OF MARTIN HUMMEL

State of Missouri)
) ss.
County of Cole)

AFFIDAVIT

COMES NOW Martin Hummel and on his/her oath declares that he/she is of sound mind and lawful age; that he/she contributed to the attached Staff Recommendation and that the same is true and correct according to his/her best knowledge and belief.

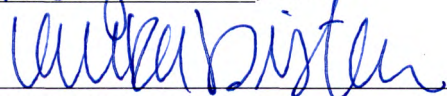
Further the Affiant sayeth not.



Martin Hummel

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 5th day of

May, 2015.


NOTARY PUBLIC

My commission expires: June 21, 2015.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Ozark Shores)
Water Company, North Suburban Public Utility)
Company and Camden County Public Water)
Supply District Number Four for an Order)
Authorizing the Sale, Transfer and Assignment)
of Water Assets to Camden County Public Water)
Supply District Number Four and in Connection)
Therewith Certain other Related Transactions)

File No. WM-2015-0231

AFFIDAVIT OF KIMBERLY K. BOLIN

STATE OF MISSOURI)
)
COUNTY OF COLE) ss.

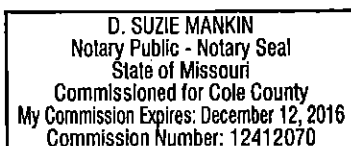
COMES NOW Kimberly K. Bolin and on her oath declares that she is of sound mind and lawful age; that she contributed to the attached Staff Recommendation in Memorandum form; and that the same is true and correct according to her best knowledge and belief.

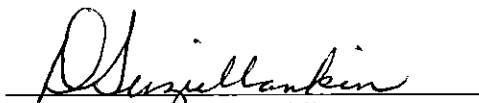
Further the Affiant sayeth not.


KIMBERLY K. BOLIN

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 5th day of May, 2015.




Notary Public