

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

In the Matter of the Application of Lake Region)	
Water & Sewer Co. and Camden County Public)	<u>File No. WM-2017-0186</u>
Water Supply District #4 for an Order)	
Authorizing the Sale, Transfer, and Assignment of)	
Water and Sewer Assets to Camden County Public)	
Water Supply District #4 and in Connection)	
Therewith Certain Other Related Transactions.)	

In the Matter of the Application of Lake Region)	
Water & Sewer Co. and Camden County Public)	<u>File No. SM-2017-0187</u>
Water Supply District #4 for an Order)	
Authorizing the Sale, Transfer, and Assignment of)	
Water and Sewer Assets to Camden County Public)	
Water Supply District #4 and in Connection)	
Therewith Certain Other Related Transactions.)	

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and for its Staff Recommendation, states the following:

1. On December 28, 2016, Lake Region Water & Sewer Company (LRWC) and Camden County Public Water Supply District Number 4 (District) (together, Joint Applicants), filed their joint application for approval from the Missouri Public Service Commission (Commission) for the transfer of assets from LRWC to the District.

2. On December 29, 2016, the Commission issued its *Order Directing Notice, Setting Deadline for Intervention and Directing Staff to File a Recommendation* (Order), which set an intervention deadline of January 20, 2017, and ordered Staff to file its Recommendation by February 24, 2017.

3. No parties have filed to intervene in this matter.

4. Pursuant to Section 393.190 RSMo, no water or sewer corporation shall sell or transfer its assets without having first secured authorization from the Commission.

5. As explained in the Staff Memorandum, attached hereto as Appendix A, Staff reviewed the Company's request. Based upon this review, Staff has concerns that the total purchase price suggests a \$3.7 million acquisition premium that, were the purchaser to be a Commission-regulated entity, would not be allowed to be recovered in customer rates. However, because the Commission does not regulate the District, the District may choose to recover the acquisition premium cost in customer rate increases.

6. In approving the transfer, the Commission must determine that the sale is "not detrimental to the public interest."¹

7. In analyzing this transfer statute, the Missouri Supreme Court, in 1934, concluded that:

This section must be read with the other provisions of the Public Service Commission Act, so that the whole act may be construed to affect the purpose for which it was enacted. *The whole purpose of the act is to protect the public. The public served by the utility is interested in the service rendered by the utility and the price charged therefore; the investing public is interested in the value and stability of the securities issued by the utility.*²

¹ See, ***State ex rel. City of St. Louis. v. Public Service Comm'n of Missouri***, 335 Mo. 448, 457-60, 73 S.W.2d 393,399-400 (Mo. 1934)

² *Id.*, at 499.

(Emphasis added). Therefore, Staff does not recommend that the Commission approve the sale, because the Staff cannot state there is no detriment to the public interest, in the form of possible increased rates, as a result of the 155% acquisition premium.

8. If the Commission authorizes this transfer of assets, Staff requests that the Commission impose the following conditions:

- a. Require LRWS to notify the Commission of closing on the assets within five (5) days after such closing;
- b. Authorize LRWS to cease providing water and sewer service immediately after closing on the assets;
- c. After receiving notice of closing, cancel the CCN authorizing LRWS to provide water and sewer service; and,
- d. After receiving notice of closing, cancel the current water and sewer tariffs on file for LRWS.

WHEREFORE, Staff does not recommend the Commission approve the proposed transfer of assets; however, if the Commission does approve the transfer, Staff recommends the Commission require the proposed conditions and grant such other and further relief as the Commission considers just in the circumstances.

Respectfully submitted,

/s/ Jacob T. Westen

Jacob T. Westen
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record on this 24th day of February, 2017.

/s/ Jacob T. Westen

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
File Nos. WM-2017-0186 and SM-2017-0187
Lake Region Water & Sewer Co.

FROM: James A. Merciel, Jr. – Water and Sewer Department
Kim Bolin – Auditing Department

<u>/s/ James A. Merciel, Jr.</u>	<u>February 24, 2017</u>
Case Coordinator	Date

<u>/s/ Jacob Westen</u>	<u>February 24, 2017</u>
Staff Counsel	Date

SUBJECT: Staff's Recommendation Regarding Case Disposition

DATE: February 24, 2017

SUMMARY OF RECOMMENDATION

The purchase price of the regulated utility by the nonregulated Camden County Public Water Supply District Number Four includes an acquisition premium of approximately \$3.7 million. Because the purchaser is a public entity, the Public Service Commission does not regulate it, and the purchaser can recover the premium in customer rate increases. Based on its review of the application, Staff does not recommend the Commission approve the proposed transfer of assets, because Staff cannot state there is no detriment to the public interest.

CASE BACKGROUND

On December 28, 2016, Lake Region Water & Sewer Co. (LRWS) and Camden County Public Water Supply District Number Four (the District) filed a *Joint Application for Approval of Transfer of Assets* (Application) with the Commission, seeking authorization for LRWS to sell, and the District to acquire, the water and sewer utility assets of LRWS.

On December 29, 2016, the Commission issued its *Order Directing Notice, Setting Deadline for Intervention and Directing Staff to File a Recommendation* (Order), in which it directed that notice be sent to the Camden County Commission, the Miller County Commission, local newspapers serving the area, members of the General Assembly representing citizens in Camden and Miller Counties, and to General Counsel for the Missouri Department of Natural Resources. This Order also prescribed that any person wishing to intervene in this case should submit an application requesting such by January 20, 2017, and for the Staff to submit a recommendation regarding this matter no later than February 24, 2017. No party has sought to intervene in this matter.

BACKGROUND OF THE UTILITY, AND UTILITY SYSTEMS

LRWS, as a corporation and a regulated utility, dates to the early 1970s. Originally, its name was Four Seasons Lakesites Water and Sewer Company. The Commission granted a CCN to this utility in 1973 in Case No. 17,954, to provide water and sewer service within an area at the Lake of the Ozarks locally known as Horseshoe Bend. LRWS has undertaken several name changes over the

years. It has also added service area with Commission approval in various cases, and sold water utility assets to another regulated utility, Ozark Shores Water Company, in Case No. WM-93-24. LRWS continues to provide sewer service in the Horseshoe Bend area along State Highway HH near the town of Lake Ozark, MO. Among the various CCN cases under a previous name, LRWS obtained a CCN from the Commission in Case No. WA-95-164 to provide water and sewer service in an area locally known as Shawnee Bend. This new service area, a substantial addition, is across the lake to the south from the Horseshoe Bend area. It is generally along State Highway MM near the town of Sunrise Beach, MO. At the end of 2015, according to its annual report, LRWS provided water service to 677 customers, all of whom are in the Shawnee Bend area, and sewer service to 909 customers who are in the Shawnee Bend area or Horseshoe Bend area.

The District was formed on May 7, 2002 by the Camden County Circuit Court, Case No. CV101-703CC.

STAFF'S INVESTIGATION

Staff reviewed the Application and attachments including an Asset Purchase Agreement. Staff also reviewed rate base information contained in LRWS's annual report, and information from LRWS's most recent rate case, WR-2013-0461.

The purchase price for LRWS's assets is Six Million Eighty-four Thousand Dollars (\$6,084,000), as stated in the Application and in the Asset Purchase Agreement. Staff notes that LRWS's combined rate base reflected in its 2015 annual report filed with the Commission for its water and sewer systems is \$2,376,692. Based on LRWS's current rate base of \$2,376.692, as per its 2015 annual report filed with the Commission, and that there have been no major additions to plant in service or changes in operation, the total purchase price suggests an acquisition premium of approximately \$3.7 million, or about 155% over the value of rate base. 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, and Staff agrees, that acquisition premiums should not be allowed to be included in rate base, and thus not permitted for recovery in rates by purchasing entities that are regulated by the Commission. However, in this acquisition, the acquiring entity is not a regulated utility, so the impact of the acquisition adjustment may ultimately be included in the determination of the rates, if the District chooses.

LRWS and the District have common background and operations. LRWS is operated and managed by the District by a contract, which Staff reviewed in LRWS's rate cases before the Commission. This means the District currently already provides all of the maintenance, repair, day-to-day operations and management of the facilities owned by LRWS, and all of the involved people who undertake LRWS's operations tasks – the manager, office assistants, billing and bookkeeping staff, and plant operations staff – are employees of the District, but do work for LRWS by the terms of the contract.

Staff notes that in a prior transfer of assets case involving similar facts between the District and another private entity, Staff recommended denying the application. That case involved Ozark Shores Water Company, which was a regulated water utility with the same officers as LRWS, and which sold assets to the District in Case No. WM-2015-0231. Similar to LRWS, Ozark Shores Water Company had an operations and management contract with the District. Staff had concerns regarding the acquisition premium associated with the sale of the water system that was the subject

of that case, as well as what appeared to be less than arm's length dealing, all of which was outlined in the *Staff Recommendation To Deny Transfer Of Assets And Request For Local Public Hearing* filed on May 5, 2015¹.

OTHER ISSUES

LRWS is a corporation in "good standing" with the Missouri Secretary of State. It is current with annual report filings with the Commission through calendar year 2015, as documented on the Commission's Electronic Filing and Information System (EFIS). LRWS has paid its annual assessments through the fiscal year 2017. Neither LRWS nor the District has any other pending cases before the Commission.

STAFF'S RECOMMENDATIONS AND CONCLUSIONS

In a transfer of assets case, the Commission may approve the transfer if it determines that the sale is not detrimental to the public interest. Staff is concerned that the 155% acquisition premium will create a significant rate increase impact for the LRWS customers when they become District customers, as well as other future District customers.

The purchaser is a public entity and is not regulated by the Public Service Commission. Based on Staff's review, the similarities of this proposed transaction to the Ozark Shores Water Company transaction, and the relationships between Ozark Shores Water Company, LRWS, and the District, Staff does not recommend the Commission approve the proposed transfer of assets, because Staff cannot state there is no detriment to the public interest.

If the Commission approves the transfer of assets, then Staff recommends a requirement for LRWS to notify the Commission of closing on the assets within five (5) days of such closing. Then, after such notification, the Commission would cancel the CCN held by LRWS, and cancel LRWS's current water tariff and sewer tariffs.

STAFF'S RECOMMENDATIONS

Based upon the above, Staff does not recommend the Commission approve the proposed transfer. However, if the Commission does approve the proposed transfer, Staff recommends that the Commission:

1. Require LRWS to notify the Commission of closing on the assets within five (5) days after such closing;
2. Authorize LRWS to cease providing water and sewer service immediately after closing on the assets;
3. After receiving notice of closing, cancel the CCN authorizing LRWS to provide water and sewer service; and,
4. After receiving notice of closing, cancel the current water and sewer tariffs on file for LRWS.

¹ Staff's filing recommending denial is EFIS 9 in WM-2015-0231; there were numerous subsequent filings in that case before the Commission approved the sale.

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[illegible]

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

Kimberly Bolin
Kimberly Bolin

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 the City of
Jefferson City, on this 24th day of February, 2017.



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AFFIDAVIT OF JAMES A. MERCIEL, JR.

State of Missouri)
County of Cole) ss.
County of Cole)

AFFIDAVIT

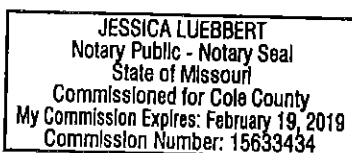
COMES NOW James A. Merciel, Jr. and on his oath declares that he is of sound mind and lawful age; that he contributed to the attached *Staff Recommendation* and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.


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 the City of Jefferson City, on this 24th day of February, 2017.




NOTARY PUBLIC