

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

In the Matter of the Application of Kimberling)
City Water Company for Authority to Transfer)
Certain Assets to Upper White River Basin)
Foundation, Inc. and, in Connection Therewith,)
Certain Other Related Transactions)

Case No. WO-2015-0113

STAFF RECOMMENDATION TO APPROVE SALE OF ASSETS

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and,
for its recommendation in the above styled matter, states:

1. Kimberling filed its Application on November 4, 2014 requesting the authority to transfer certain of its assets to Upper White River Basin Foundation, Inc. ("UWRB"), which is associated with the Ozarks Clean Water Company ("OCWC").

2. Kimberling and UWRB entered into an agreement November 3, 2014, in which Kimberling agreed to donate all of its assets, property and easements connected with its water company operation in Stone County to UWRB.

3. UWRB states in the agreement that there will be no material changes to operations or business of the Kimberling City Water Company system following the transfer; nor any damage, destruction or loss affecting the assets.

4. Staff has reviewed the corporate documents of both UWRB and OCWC and finds that OCWC is outside the regulation of the Commission, and that at present does not have a history of major or unusual problems with its operations.

WHEREFORE, Staff prays that the Commission will approve the requested sale of assets, and further prays that the Commission enter an Order that grants Kimberling City Water Company the authority to donate its water utility assets, property and

easements to Upper White River Basin, as requested in its Application and in accordance with the attached Memorandum.

/s/ Whitney Payne

Whitney Payne

Legal Counsel

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Missouri Public Service Commission

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 3rd day of December, 2014, to all counsel of record.

/s/ Whitney Payne_____

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. WO-2015-0113
Kimberling City Water Company

FROM: Jim Merciel – Water and Sewer Unit

/s/ Jim Merciel

Case Coordinator

December 3, 2014

Date

/s/ Kevin Thompson

Staff Counsel

December 3, 2014

Date

SUBJECT: Staff's Recommendation to Approve Sale of Assets

DATE: December 3, 2014

CASE BACKGROUND

On November 4, 2014, Kimberling City Water Company (KCWC) filed its *Application and, if Necessary, Motion for Waiver* (Application) with the Commission. KCWC seeks to sell and transfer its water utility assets to the Upper White River Basin Foundation, Inc. (UWRBF), which in turn will immediately transfer the assets to the Ozarks Clean Water Company (OCWC), according to the Application. KCWC also seeks, after the transfer of assets is accomplished, to cancel its Certificate of Convenience and Necessity (Certificate) and its current tariff to provide water service, thereby relieving it of its obligation to provide water service.

On November 6, 2014 the Commission issued its *Order and Notice* (Order) regarding KCWC's Application. The Order directed the Commission's Data Center and Public Information Office to send out notices regarding the Application to the Stone County Commission, the Missouri Department of Natural Resources (DNR), members of the Missouri General Assembly from the affected area, and local news media. The Order also established a deadline of November 25, 2014 for interested parties to submit requests to intervene in the case. On November 25, 2014 DNR submitted a request to intervene. Staff will hold itself out to respond to any further filings by DNR in this case, if it becomes necessary.

DESCRIPTION OF THE UTILITY SYSTEM AND THE INVOLVED PARTIES

The Commission granted a Certificate to KCWC in Case No. WA-82-4, by an order effective July 27, 1982. KCWC provides service to approximately 94 commercial customers and condominium

APPENDIX A

units in its service area which is within the city of Kimberling City, MO. The water system consists of one deep well as the source of supply with a submersible pump that provides production of 90 gallons per minute; chlorine disinfection to treat for potential bacteriological contamination; an elevated storage tank with volume of 85,000 gallons that enables chlorine disinfection contact time, supplements well production during peak water-use times, and serves as a one-day reserve for times that the well pump is temporarily out of service; one high service pump along with a series of bladder pressure tanks that transfer water from the storage tank into the distribution system and maintain system pressure; a distribution system of galvanized iron pipe of various sizes to transport water from the storage tank and high service pump to customers; water meters for commercial customers to measure usage (some customers' usage is not measured and they pay a flat rate); and an interconnection with a neighboring water system so that either system can provide water to the other during outages due to system failure.¹

UWRBF is a charitable nonprofit corporation that exists for the purpose of promoting water quality in the White River watershed, affecting Table Rock Lake and other lakes and streams in the area. Its business activities includes public education, research, promoting public policy and undertaking or coordinating improvement projects that enhance water quality in the area. OCWC, which is proposed to be the owner and operator of the water system, is a member nonprofit corporation in good standing. It was created in 2004 under the provisions of Chapter 355 RSMo, and organized originally as a nonprofit sewer utility within the parameters of section 393.825, RSMo through section 393.861, RSMo. Among several other sewer systems it owns and operates OCWC acquired three (3) of its systems from regulated sewer utilities with approval of the Commission: S.T. Ventures, LLC (SO-2011-0020), Bear Creek Water & Sewer, LLC (SM-2010-0241), and Savannah Heights Industrial Treatment, Inc. (SO-2008-0094).

Under the provisions of section 393.829(15), RSMo, nonprofit sewer utilities may also provide services and assume responsibilities of nonprofit water utilities. In addition to the sewer systems it owns and operates and the proposed acquisition of KCWC's system, OCWC presently owns and operates one other water system, and is currently involved with the acquisition of another water system that is not regulated by the Commission.

STAFF'S INVESTIGATION

Although KCWC's water system generally has adequate capacity to serve existing customers, there are deficiencies with respect to the water system that, in order to be properly addressed, require some capital improvements, major rehabilitation, and relatively minor repairs that would enhance reliability and day-to-day operations.

The storage tank is in poor condition, and an inspection and rehabilitation of that facility is the most critical of all issues pertaining to the water system. The tank was placed in service in 1979 but has not been inspected or painted since that time. For most normal operations, storage tanks should be

¹ Customer information and system information reported in this memorandum is as per information in KCWC's annual report, Staff's inspection findings, and information provided to Staff by the Missouri Department of Natural Resources.

inspected every few years with minor repairs addressed as needed, and repainted inside and out every 12 to 15 years. Water storage tank inspections include: checking for degradation that can affect water quality such as interior corrosion; checking the condition and correct functioning of air vents and overflow piping that both protects the integrity of the tank during normal operations and protects against contamination; and checking for structural integrity.

The single high-service pump is not adequate for reliability, there should be at least two high-service pumps installed each with sufficient pumping capacity to meet peak hourly demand. Installation of a second high-service pump, along with associated plumbing and electrical modifications, is desirable but is a somewhat costly improvement. Simply having a second pump on hand that is kept in the wellhouse or other convenient nearby location and immediately available for installation, should the need arise, would be an improvement. Other relatively minor items such as operable valves in the wellhouse, adequate sampling points, and disinfection system improvements, along with improved operations, are also desirable.

Although KCWC has been in business and operating for a number of years with no major service issues, it no longer has adequate technical, managerial and financial capacity to address the issues that pertain to operation and maintenance of the water system, as well as undertaking of desired improvements and rehabilitation of some of the water system components.

Staff has reviewed the corporate documents of UWRBF and OCWC and believes that OCWC is legitimately created and operating as a nonprofit sewer utility and nonprofit water utility under state statutes. As such, OCWC is not subject to regulation by the Commission. The Staff is familiar with OCWC through the above-mentioned previous cases, and is also familiar with one of the organizers and officers of OCWC. This person has been involved for a number of years with other regulated water and sewer utilities either as an owner or contract operator, including as an owner and operator of a water and sewer utility that is currently regulated by the Commission, Foxfire Utility Company. DNR has indicated to Staff no major or unusual problems with OCWC's operations.

OCWC states to Staff that it intends to initially adopt existing KCWC rates. The current rates approved by the Commission for KCWC are:

Metered customers: \$15 per month for the first 5,000 gallons,
 plus \$1.69 for each additional 1,000 gallons

Unmetered customers: \$15 per month flat rate

These rates have been in effect since September 1, 1982 when the Commission granted KCWC its Certificate. KCWC has never filed a request to increase its rates. Staff has not undertaken any audit or study to determine what KCWC's rates should be, if it were to remain in business and continue providing service into the future. KCWC states to Staff that although there has been no written notice sent to customers, the owner of KCWC has verbally discussed this proposed sale to OCWC with the Kimberling City mayor and municipal board of aldermen, and several of its individual

customers including one who is a member of the board of alderman, and several condominium owners.

OCWC has undertaken a preliminary technical study of the needs of KCWC's water system including cost estimates for rehabilitations, repairs and improvements. OCWC has not yet formulated a specific schedule to undertake the work. Its board of directors has not yet approved any expenditure of funds, put any plan in place to proceed with any work, nor decided on any change in rates. However, OCWC states to Staff that it expects rates could approximately double the existing Commission-approved rates, and it is also considering applying a temporary surcharge that would be used to pay for the storage tank inspection and rehabilitation work. Assuming the Commission approves this proposal and the sale occurs, OCWC would need to undertake its own evaluation of rate needs based on actual costs it incurs in undertaking rehabilitation and repair work as well as meeting ongoing operating expenses. Further, OCWC will need to communicate with its customers, and approve funding and rate changes through approval of its board of directors, as it does for its existing customers.

Staff also notes that regardless of whether KCWC's water system is acquired by OCWC, or if it alternatively were to be acquired by some other water utility entity or if KCWC were to remain in business, the aforementioned repairs, improvements and rehabilitations are necessary. As such there is most definitely a need for any possible system owner to undertake the capital improvements, and implement corresponding rate adjustments to support the capital investments and current operations costs.

KCWC and UWRBF have entered into an *Agreement for Donation of Water System*, which provides that KCWC will donate its water system assets and some money that is intended to be used for immediate system repairs and upgrades.

After its review, the Staff believes that OCWC is capable of providing good service to the involved customers, and will be able to undertake rate adjustments as it ordinarily would with its other existing customers. Staff also recognizes that DNR has an interest in seeing the aforementioned improvements accomplished, as stated by DNR in its intervention request. Staff believes that OCWC has demonstrated its ability to work with DNR and has the ability to comply with wastewater and drinking water regulations. Staff therefore takes the position that the proposed transaction is not detrimental to the public interest.

OTHER ISSUES

KCWC has no delinquencies with regard to filing its annual reports through calendar year 2013, as documented on the Commission's Electronic Filing and Information System (EFIS). KCWC has paid annual assessments through fiscal year 2015, as posted by the Commission's Administration Division on its assessment ledgers. KCWC is also held in good standing with the Missouri Secretary of State.

STAFF'S FINDINGS & CONCLUSIONS

The Staff, based on its review as described herein, believes that the proposed sale and transfer of assets from KCWC to UWRBF and then to OCWC is not detrimental to the public interest, and therefore recommends approval. After the Commission approves this transfer of assets, and following the completed transfers to UWRBF and then to OCWC, the Commission should cancel the Certificate and the tariff for KCWC.

STAFF'S RECOMMENDATIONS


Based on the above reasons, Staff recommends that the Commission issue an order:

- a. Granting KCWC the authority to transfer its assets and to cease providing service, as requested;
- b. That makes no ratemaking determination regarding any potential future regulatory oversight, if any;
- c. Requiring KCWC and/or UWRBF or OCWC to submit notice to the Commission regarding evidence of the transfer of assets to UWRBF and the subsequent transfer to OCWC, within five (5) days after the transfer to OCWC;
- d. That, should closing not take place within thirty (30) days following the effective date of the Commission's order, requires KCWC to submit a status report within five (5) days after this 30-day period regarding the status of closing, and additional status reports within five (5) days after each additional 30-day period, until closing takes place, or until KCWC determines that closing will not occur;
- e. Requiring KCWC, if it determines that closing will not occur, to notify the Commission of such within five (5) days of the determination; and,
- f. That after the above notice of transfer to OCWC is received, cancels the Certificate held by KCWC and the tariff on file for KCWC.

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[illegible]

James A. Merciel, Jr., P.E.


Notary Public

