

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

In the Matter of the Application of Dale Whiteside)
and Whiteside Hidden Acres, L.L.C. for a)
Certificate of Convenience and Necessity) Case No. WA-2009-0261
Authorizing it to Own, Control, Manage, Improve)
and Maintain a Water and Sewer System for the)
Public, Located in an Incorporated Area of Hickory)
County, Missouri)

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff), through the undersigned counsel, and respectfully submits this *Staff Recommendation* to the Missouri Public Service Commission (Commission) stating the following:

Procedural History

1. On June 19, 2008, Staff filed a *Complaint*, assigned Case No. WC-2008-0405 (complaint case), asserting Dale Whiteside and Whiteside Hidden Acres, L.L.C. (Respondents) are water corporations, and thus, public utilities subject to the jurisdiction, regulation and control of the Commission.
2. On September 8, 2008, the Commission ordered the evidentiary hearing in the complaint case be held on January 20-21, 2009.
3. On January 13, 2009, Respondents filed an *Application* for a certificate of convenience and necessity (CCN) for water and sewer systems located in Hickory County, Missouri. The *Application* was assigned File Nos. WA-2009-0261 and SA-2009-0262 (application cases).
4. On January 15, 2009, the Commission issued its *Order Directing Notice And Setting Date For Submission Of Intervention Requests*, allowing applications to intervene until February 17, 2009. No date, no person has applied to intervene.

5. On January 14, 2009, Staff filed a motion in the complaint case, requesting the Commission continue the hearing, with Staff to file a status report in 30 days. On January 15, 2009, the Commission granted Staff's motion in the complaint case, ordering a status report be filed in the complaint case on February 17, 2009. On February 17, 2009, Staff filed a status report in the complaint and application cases stating it was seeking a feasibility study from the Respondents.
6. On January 27, 2009, Staff sent a request to the Respondents to provide additional feasibility information for the water and sewer application, to assist the Staff in preparation of its recommendation.
7. On March 13, 2009, Staff received the feasibility study within the Respondents *Amended Application* for WA-2009-0261. Additionally, the *Amended Application* removed "Dale Whiteside" as an applicant, and only requested authority to "own, operate, control, manage, improve, and maintain a *water system* for the public, located in an [un]incorporated area of Hickory County, Missouri." (emphasis added).
8. On April 7, 2009, Staff filed a status report stating it had additional data requests for Respondents and continued working on a rate base determination.
9. On May 7, 2009, Staff filed a status report requesting until May 21, 2009, to file a recommendation in this case. Attached is the *Staff Recommendation*, labeled as Appendix A.

Statutory Authority and Case Law

10. Pursuant to Section 393.170.3 RSMo (2000), the Commission has the "power to grant [a certificate of convenience and necessity]...whenever it shall after due hearing determine that such construction or such exercise of the right, [or] privilege...is necessary or

convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary.”

11. In the 1994 case of *In re Tartan Energy Company*, 3 Mo. P.S.C. 3d 173, 177 (1994), the Commission recognized five criteria that should be considered when making a determination in an application case: there must be a need for the service; the applicant must be qualified to provide the service; the applicant must have the financial ability to provide the service; the applicant's proposal must be economically feasible; and the service must promote the public interest.
12. The Commission need not hold a hearing, if, after proper notice and opportunity to intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

Recommendation

13. On February 3, 2009, Staff conducted an on-site investigation of the service area. Additionally, the Staff reviewed Whiteside Hidden Acres, L.L.C.'s overall plans for providing service to the area, its technical, managerial and financial capacities, and the applicable depreciation rates for the system.
14. While the Staff's investigation found several areas in need of improvement, Whiteside Hidden Acres, L.L.C., meets all the Tartan Energy Criteria, and recommends the Commission grant Whiteside Hidden Acres, L.L.C., a CCN to provide water service with the order containing the following conditions:
 - Grants Whiteside Hidden Acres, L.L.C., a certificate of convenience and necessity for the provision of water service to the Cedar Haven, Holly Court, Sportsman Retreat subdivisions, and the commercial campground areas as requested in its *Application*, with the CCN to be effective on the same date as the effective date of the Company's new tariff sheets to be submitted, as described herein;

- Approves for Whiteside Hidden Acres, L.L.C., the proposed depreciation rates (Attachment 1), service charges of \$25 per returned check, \$25 disconnect/reconnect fee with shutoff valve available, \$360 disconnect/reconnect fee when installation of meter setting is necessary to establish a shutoff valve, a late fee of \$5 per month, residential unmetered rate of \$48.00/quarter, and a metered rate of \$15.66/quarter plus \$2.39/1000 gallons;
- Directs Whiteside Hidden Acres, L.L.C., to include a rule in its tariffs that requires commercial customers to install a company approved meter as a condition of service;
- Directs Whiteside Hidden Acres, L.L.C., to submit a tariff within 30 days after the date the Commission issues its order granting the CCN, including a map and written description of the service area, and customer rates and miscellaneous service charges, and a requirement that commercial customers install meters as a condition of service, with the tariff sheets to bear an effective date that is at least 30 days from the date the tariff sheets are submitted to the Commission;
- Authorizes the Staff to conduct a review on Whiteside Hidden Acres, L.L.C.'s operations fourteen (14) months from the effective date of the approved tariffs;
- Requires Whiteside Hidden Acres, L.L.C., to install meters on Whiteside Hidden Acres Campground and Cedar Haven Campground within thirty (30) days of the Commission's order approving a CCN. Confirmation of commercial meter installation shall be submitted to the Manager of the Water and Sewer Department within fourteen (14) days of meter installation.
- Requires Whiteside Hidden Acres, L.L.C., to have a certified operator within thirty (30) days of the Commission's order approving a CCN in this case, to make weekly on site observations of the well and system, make weekly recordings of the well master meter, complete monthly bacteriological sampling, and to be in compliance with DNR regulations;
- Directs Whiteside Hidden Acres, L.L.C., to evaluate the feasibility of installing residential meters with a written evaluation to be submitted to the Manager of the Water and Sewer Department by January 31, 2010;
- Directs Whiteside Hidden Acres, L.L.C., to develop a distribution system map showing pipe by size, valves, and service connections by January 31, 2010. Provide a copy of this map to the Manager of the Water and Sewer Department by January 31, 2010;
- Directs Whiteside Hidden Acres, L.L.C., to install flush valves capable of flushing the system pipes at 3 feet per second by May 31, 2010;
- Directs Whiteside Hidden Acres, L.L.C., to submit meter reading data quarterly, beginning with the date of the Commission's order approving a CCN and continuing for two full years of operation, to the Manager of the Water and Sewer Department;

- Directs Whiteside Hidden Acres, L.L.C., to commence and maintain accounting records starting with the effective date of the Commission's order granting a CCN, including but not limited to, customer billing, employee time, invoices and receipts,
- Makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the requested CCN, including future expenditures by Whiteside Hidden Acres, L.L.C., in any later proceeding.

WHEREFORE, Counsel for Staff files this *Staff Recommendation*, recommending the Missouri Public Service Commission issue an order granting Whiteside Hidden Acres, L.L.C., a certificate of convenience and necessity to provide water service to the service area described in the *Staff Recommendation* attached hereto, with the order containing the specific conditions listed in paragraph fourteen (14) above.

Respectfully submitted,

/s/Jennifer Hernandez
Jennifer Hernandez
Legal Counsel
Missouri Bar No. 59814

Jaime N. Ott
Legal Counsel
Missouri Bar No. 60949

Attorneys for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751- 8706 (Telephone)
(573) 751-9285 (Fax)
jennifer.hernandez@psc.mo.gov
jaime.ott@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on Lisa C. Henderson, attorney for the Respondents, P.O. Box 1141, 303 South Maple, Buffalo, MO 65622, hendersonatlaw@yahoo.com ; and the Office of Public Counsel, 200 Madison Street P.O. Box 2230, Jefferson City, MO 65102, opcservice@ded.mo.gov this 21st day of May, 2009, either by hand delivery, electronic mail or First Class United States Mail, postage prepaid.

/s/ Jennifer Hernandez

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. WA-2009-0261
Whiteside Hidden Acres

FROM: Martin Hummel – Water & Sewer Department
Paula Mapeka – Auditing Department
Shana Atkinson– Financial Analysis Department
David Williams- Engineering & Management Services

<u>/s/ Martin Hummel</u>	<u>5/21/2009</u>
Project Coordinator	Date

<u>/s/ Jennifer Hernandez</u>	<u>5/21/2009</u>
General Counsel's Office	Date

SUBJECT: Staff's Recommendation for Granting a Certificate of Convenience and Necessity

DATE: May 21, 2009

BACKGROUND

On June 19, 2008, the Staff of the Missouri Public Service Commission (Staff) filed a formal *Complaint* against Whiteside Hidden Acres LLC (WHA LLC or Company) and Dale Whiteside (Mr. Whiteside), together know as Respondents, for owning, controlling, or managing a water system and providing service for gain to customers without a Commission approved Certificate of Convenience and Necessity (CCN). The *Complaint* was assigned Case No. WC-2008-0405. On August 18, 2008, the Staff, Respondents, and the Office of Public Counsel participated in a prehearing conference, at which time the parties discussed the Respondents filing an application for a certificate of convenience and necessity from the Commission. On January 13, 2009¹, the Respondents filed an *Application* for Commission authority to own, operate, control, manage, improve, and maintain a water and sewer system in Hickory County, Missouri. The *Application* was assigned Case Nos. WA-2009-0261 and SA-2009-0262.

On February 3, 2009, Staff made an on-site visit to the service area. Staff with Mr. Whiteside observed the well, wellhouse, proximity of the homes and general service area. This included visible surface features of the distribution system and two smaller wells that are not in service. Additional items reviewed during Staff's investigation of WHA LLC's *Application* included the Company's overall plans for providing service to the area, the applicable depreciation rates to the system and the Company's technical, managerial and financial capacities.

¹ Unless noted otherwise, all dates herein refer to the year 2009.

After conducting its on-site investigation, Staff concluded that the sewer system operated by WHA LLC does not qualify at this time as a Section 386.020 (49) RSMo (Supp. 2008) “sewer corporation”, as it has less than twenty-five outlets. Sewer service is provided to Whiteside Hidden Acres, a recreational vehicle park, owned by Mr. Whiteside. WHA LLC does not intend to become a “sewer corporation” in the future. Thus, the application in Case No. SA-2009-0262 is not needed and a **CCN should not be granted for the sewer system**. Staff addressed this matter with Mr. Whiteside. While Staff believes the intent of the *Amended Application*, filed March 13, was an implicit withdrawal of the sewer *CCN Application*, a voluntary withdrawal was filed on May 21.

The *Amended Application* received by the Commission on March 13, was filed on the behalf of WHA LLC solely, for a CCN to provide water service to the Holly Court, Sportsman's Retreat, and Cedar Hills subdivisions, and adjacent area in Hickory County, Missouri. At Staff's request, the *Amended Application* included a feasibility study for the water system. The *Amended Application* also removed the terms “sewer system” and “Dale Whiteside” from the case heading.

The proposed service area has approximately 44 residences, two RV parks (200 total sites) and a restaurant. It is located near Pomme De Terre Lake and Pomme De Terre State Park. The Department of Natural Resources (DNR) has issued a permit to dispense for the water system, and the system is currently providing service.

Throughout the complaint and application cases, WHA LLC has expressed an interest in other alternatives to Commission regulation for providing water service. Staff has made extensive efforts toward identifying any other alternatives for water service to this area. However, there is not a Public Water Supply District available or willing to operate the facilities. There is not a homeowners association or similar body located in the service area and the service area is not located in a municipality.

Staff has also spoken by phone with the DNR's Southwest Regional Office to verify that DNR requirements are being met. There have been violations in the past that have not been responded to by the Company. Followup by DNR apparently has not happened for lack of personnel time at the DNR. It is not clear to Staff the number or severity of past violations, but the violations appear to primarily be lack of submitting samples on time. It is anticipated, from phone discussions with DNR, that DNR will be doing an additional inspection of the WHA LLC facilities within the next few weeks.

Staff has reviewed WHA LLC's current operations and found that the operation of its facilities is in need of improvement as reflected in the recommendations below. There has been considerable discussion between Staff and WHA LLC concerning observed conditions. The following items are observations made during Staff's investigation:

- A certified operator has not been overseeing the facilities. A certified operator (a requirement of DNR) has formal training and experience in the proper operation of the facilities. Besides recording operating conditions, an important part of what the operator does is to make regular observations of sanitary operating conditions.
- A record of well master meter readings has not been kept. This record assists the understanding of water use and demand. As consequence, a sound evaluation of the capacity and adequacy of the well and storage is very difficult.
- Some of the recent monthly bacteriological samplings were missed or were late.
- There is no map of the piping system and there is not a clear understanding of the location of the water mains and service connections. Most service connections can not be shutoff and there may even be unrecognized customers on the system. There may not be adequate flush valves and therefore the system cannot be flushed if contaminated water were in the system. such as following a main break or an unusual event at the source of supply.
- The RV parks' usage is not metered. As a consequence, proper allocation of costs is difficult, and leak detection even more difficult. However, the owner has stated that he will have meters installed for the RV parks within a couple weeks. At this time there is no plan for the installation of residential meters.

As noted above, there are a number of suboptimum aspects to this water utility operation and the facilities. Also, the regulatory process is new to the owner, Mr. Whiteside. Staff has spent a large amount of time listening to customers and working with the owner to develop a sound understanding of options and needs of drinking water provision for the area in question. There has been considerable discussion with Mr. Whiteside both about the physical facilities and about operating a regulated utility. Staff has made various suggestions to Mr. Whiteside, for which he has taken considerable time to evaluate and pursue. The process of attempting to find someone else to take the system, or contract operate, or provide some contract services, has been time consuming.

STAFF'S FINDINGS AND CONCLUSIONS

WHA LLC does not have rates that were approved by the Commission. Prior to the Staff's Complaint, WHA LLC was charging \$240 per year to most of its residential customers. Some customers continued to pay a previous rate of \$125 per year, as they disagreed with the increase. WHA LLC has ceased charging customers pending the outcome of this case. Staff is proposing quarterly billing that will result in an annual amount of \$192 for a residential home. Staff does not anticipate a significant change in residential customer numbers in the next three years.

Subsequent to the Commission granting WHA LLC a certificate for the subject service area, WHA LLC will need to file a tariff with the Commission for its approval. The tariff sheets will need to include a map, a written description of the service area, rules of service and customer rates.

THE TARTAN ENERGY CRITERIA

Is there a need for the proposed services, and is there a need for the Company to provide the proposed services?

The Staff believes that a need for the proposed service clearly exists, as the service has been in place for several years, though unregulated. Customers are currently being provided service. Further, there are no other water systems in close proximity to the proposed service area that could provide water service to the existing customers.

Is the Company qualified to provide the proposed service?

While Staff believes that WHA LLC has the technical, managerial and financial capacities necessary to provide the proposed service, the Staff does not have records available from WHA LLC showing actual company and system performance, even though this Company has been operating for several years. Records of water production (Master meter readings), customer comments, outages, repairs, or maintenance are not available. Staff believes that a certified operator needs to be hired to give regular oversight to the system and to be in compliance with DNR rules, including records on production. Likewise, adequate customer billing and employee timesheets are needed.

Does the Company have the financial ability to provide the proposed services?

At this time, Staff believes that the Company does have the financial ability to provide service to the proposed service area. Also, there are no plans or immediate needs for large capital expenditures.

Is the Company's proposal economically feasible?

Yes. At current operating expenses, this Company's operation would be economically feasible upon adoption of Staff's proposed recommendations. With better record keeping, WHA LLC will be able to support the costs of operating the system, allowing the Company an opportunity to recover those costs by filing a small company rate increase request.

Does the Company's proposal promote the public interest?

Yes, this proposal promotes the public interest. A company providing service needs to have Commission regulation in order to provide its customers adequate protections based on Commission approved rates that are just and reasonable and established rules that the company must follow. Additionally, the presumption in these types of cases is that if the other four criteria are met, then this criterion is also met.

STAFF'S RECOMMENDATIONS

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

- Grants Whiteside Hidden Acres, LLC a certificate of convenience and necessity for the provision of water service to the Cedar Haven, Holly Court, Sportsman Retreat subdivisions, and the commercial campground areas as requested in its *Application*, with the CCN to be effective on the same date as the effective date of the Company's new tariff sheets to be submitted, as described herein;
- Approves the proposed depreciation rates (Attachment 1), service charges of \$25 per returned check, \$25 disconnect/reconnect fee with shutoff valve available, \$360 disconnect/reconnect fee when installation of meter setting is necessary to establish a shutoff valve, a late fee of \$5 per month, residential unmetered rate of \$48.00/quarter, and a metered rate of \$15.66/quarter plus \$2.39/1000 gallons;
- Approve a tariff rule that requires commercial customers to install a company approved meter as a condition of service;
- Directs Whiteside Hidden Acres, LLC to submit a tariff including a map and written description of the service area, and customer rates and miscellaneous service charges, and a requirement that commercial customers install meters as a condition of service, within 30 days after the date the Commission issues its order granting the CCN, with the tariff sheets to bear an effective date that is at least 30 days from the date the tariff sheets are submitted to the Commission;
- Authorizes the Staff to conduct a review on Whiteside Hidden Acres, LLC's operations 14 months from the effective date of the approved tariffs;

Appendix A

- Require Whiteside Hidden Acres, LLC to install meters on Whiteside Hidden Acres Campground and Cedar Haven Campground within thirty (30) days of the Commission's order approving a CCN. Confirmation of commercial meter installation shall be submitted to the Manager of the Water and Sewer Department within fourteen (14) days of meter installation.
- Require Whiteside Hidden Acres, LLC to have a certified operator within thirty (30) days of the Commission's order approving a CCN in this case, to make weekly on site observations of the well and system, make weekly recordings of the well master meter, complete monthly bacteriological sampling, and to be in compliance with DNR regulations;
- Direct Whiteside Hidden Acres, LLC to evaluate the feasibility of installing residential meters with a written evaluation to be submitted to the Manager of the Water and Sewer Department by January 31, 2010;
- Develop a distribution system map showing pipe by size, valves, and service connections by January 31, 2010. Provide a copy of this map to the Manager of the Water and Sewer Department by January 31, 2010;
- Install flush valves capable of flushing the system pipes at 3 feet per second by May 31, 2010;
- Submit meter reading data quarterly, beginning with the date of the Commission's order approving a CCN and continuing for two full years of operation, to the Manager of the Water and Sewer Department;
- Commence and maintain accounting records starting with the effective date of the Commission's order granting a CCN, including but not limited to, customer billing, employee time, invoices and receipts,
- Makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the requested CCN, including future expenditures by Whiteside Hidden Acres, LLC, in any later proceeding.

The Water & Sewer Department Staff will file a further recommendation regarding approval of the tariff sheets that WHA LLC will be submitting in accordance with the Commission's order granting the CCN. This case should thus remain open for consideration of those tariff sheets and the Staff's recommendation thereon.

MO PSC Case No. WA-2009-0261
Official Case File Memorandum
May 18, 2009 – Page 7 of 7 Pages

List of Attachments

Attachment 1 – depreciation rate sheet

Whiteside Hidden Acres, LLC

DEPRECIATION RATES (WATER)

Case No. WA-2009-0261

<u>ACCOUNT NUMBER</u>	<u>ACCOUNT DESCRIPTION</u>	<u>DEPRECIATION RATE</u>	<u>AVERAGE SERVICE LIFE (YEARS)</u>	<u>NET SALVAGE</u>
311	Structures & Improvements	2.5%	40	0%
314	Wells & Springs	2.0%	50	0%
325	Electric Pumping Equipment	10.0%	10	0%
332	Water Treatment Equipment	2.9%	35	0%
342	Distribution Reservoirs & Standpipes	2.5%	40	0%
343	Transmission & Distribution Mains	2.0%	50	0%
346	Meters	10.0%	10	0%
347	Meter Installations	2.5%	40	0%
391	Office Furniture & Equipment	5.0%	20	0%
391.1	Office Computer Equipment	20.0%	5	0%
392	Transportation Equipment	13.0%	7	9%
394	Tools, Shop, Garage Equipment	5.0%	20	0%
395	Laboratory Equipment	5.0%	20	0%
396	Power Operated Equipment	6.7%	13.5	10%

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

AFFIDAVIT OF MARTIN HUMMEL

STATE OF MISSOURI)
) ss CASE NO. WA-2009-0261
COUNTY OF COLE)

· **COMES NOW** Martin Hummel, being of lawful age, and on his oath states the following: (1) that he is a Utility Engineering Specialist in the Missouri Public Service Commission's Water & Sewer Department ; (2) that he participated in the preparation of the foregoing Staff's Recommendation for Granting a Certificate of Convenience and Necessity; (3) that he has knowledge of the information presented in the foregoing Recommendation; and (4) that the information presented in the foregoing Recommendation is true and correct to the best of his knowledge, information and belief.



Martin Hummel

Subscribed and sworn to before me this 20th day of May, 2009.



Notary Public



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086

