

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 23rd day  
of August, 2005.

In the Matter of the Application of Southtown Utilities	)	
Company, Inc., for a Certificate of Convenience and	)	
Necessity Authorizing it to Construct, Install, Operate	)	
and Maintain a Sewer System and to Supply and	)	
Render Sewer Service and Construct, Install, Operate	)	<b><u>Case No. WA-2005-0268</u></b>
and Maintain a Water System and to Supply and	)	consolidated with
Render Water Service to the Public Located In and	)	SA-2005-0269
Around an Unincorporated Area Near Bolivar, Polk	)	
County, Missouri.	)	

**ORDER APPROVING APPLICATIONS FOR CERTIFICATES OF  
CONVENIENCE AND NECESSITY**

Issue Date: August 23, 2005

Effective Date: August 23, 2005

**Syllabus:** This order approves both water and sewer certificates of convenience and necessity for Southtown Utilities Company, Inc., and directs the company to file tariffs as described in the Staff of the Commission's memorandum.

**Background**

On February 8, 2005, Southtown Utilities Company, Inc., filed an application for a certificate of convenience and necessity to construct a sewer system and to provide service to customers in Polk County, Missouri. In the same application, the company also requested a certificate to supply water to the same area. Although initially opened as two separate cases, the Commission consolidated the matters.

On February 18, 2005, the Commission issued its Order and Notice, directing that certain entities be informed of this proceeding and setting March 10, 2005, as the deadline

for intervention requests. There were no requests to intervene. Staff filed its recommendation and memorandum on July 11, 2005.

### **Staff's Memorandum**

#### Land Area

In its memorandum, Staff informed the Commission that the area proposed to be served is a small subdivision consisting of a couple of houses, and a commercial area with a restaurant and other commercial and light industrial customers. The area also consists of other undeveloped land owned by the owner of Southtown Utilities. The owner is uncertain of what will be done with the additional land.

The service area, as proposed in the application, is composed of disconnected pieces of property. Staff thought it would be reasonable, and the company agreed, that the service area should be modified to be contiguous and thus slightly larger than what was proposed.

#### Service Capacity

Staff stated that the water facilities are adequate to reliably serve the equivalent of 160 residential customers and to provide fire protection for residential and commercial development. The sewer system, a portion of which is still under construction, will have the capacity of serving the equivalent of 174 residential customers.

#### Staff's Conclusions

Staff opines that under the guidelines of the "Tartan Energy Criteria," the proposed certificates are in the public interest and should be granted. Staff also believes that because the construction costs of the water and sewer systems are high in relation to the number of customers to be served, the owner of Southtown Utilities should absorb more of

the capital investment than developers normally do. This is necessary for rates to be set at a reasonable level.

The rates calculated by Staff reflect a capital investment by the owner of 50% in the water system and 68% is the sewer system. Also, there are 14 fire hydrants on the developed property, the cost of which will be \$23.19 per month, per hydrant, resulting in an annual amount of \$5,009.80. This amount will be paid by the Property Owners Association, not the individual utility customers.

As calculated by Staff, the rate for water service should be \$7.47, plus \$2.94 per 1,000 gallons of usage. The typical resident using 6,000 gallons of water would be billed \$25.11 per month. With regard to sewer rates, residential customers will be billed a flat rate of \$33.56. Commercial sewer rates are proposed to be \$13.63 per month plus \$3.32 per 1,000 gallons of water usage.

Additionally, Staff stated that the company will need to: (1) keep its books and records in accordance with the Uniform System of Accounts; (2) apply depreciation rates as is shown on Staff's schedules in Attachments 3 and 4 of Staff's memorandum; and (3) prepare and file for approval separate tariffs for water and sewer service. Staff also suggested that the Commission direct the company to submit semiannual customer number reports until the company submits its first rate increase request.

## **Discussion**

Section 393.170.3, RSMo 2000, authorizes the Commission to approve an application for a certificate to operate a water and sewer utility if it determines that such a certificate is "necessary or convenient for the public service." In the 1994 *Tartan Energy*<sup>1</sup>

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<sup>1</sup> *In re Tartan Energy Company*, 3 Mo. P.S.C. 3d 173, 177, 1994.

case, this Commission recognized five criteria that should be considered when making that determination:

- 1) There must be a need for the service;
- 2) The applicant must be qualified to provide the service;
- 3) The applicant must have the financial ability to provide the service;
- 4) The applicant's proposal must be economically feasible; and
- 5) The service must promote the public interest.

Staff concludes in its Memorandum that Southtown Utilities' application satisfies the *Tartan Energy* criteria. Staff states that there is a need for service because there are existing customers and room for additional development. Staff also believes the company has demonstrated the technical and managerial ability to develop and operate the water and sewer systems. Staff states that its opinion in this regard is supported by the fact that the systems are running. Also, the owner of the systems is a business person with an interest in the development of the area.

With regard to the company's financial ability, Staff states that through bank financing and the owner's funding, the system will be viable and will generate sufficient cash flow to repay any bank loans. Staff states that if its proposed rates are adopted and that if further developments are supported by a similar level of rate base, then the proposal is economically feasible. Finally, Staff states that the proposal will promote the public interest because the central water and sewer systems, as well as fire protection, are desirable for the involved customers. Staff also states that having met the other criteria, the company's proposal is in the public interest.

### The On-the-Record Presentation

Recently, the Commission has been faced with failing water and sewer companies and owners who fail to appreciate the vital services they have committed to provide. In an attempt to actively address the issues that have surrounded failing companies and irresponsible owners, the Commission held a hearing to determine the owner of Southtown's ability to run water and sewer companies and his level of commitment.

Richard Fink is the owner of Southtown. Through his testimony, the Commission concludes that he is both willing and able to own and operate water and sewer companies. The Commission also concludes that Mr. Fink intends to provide safe and adequate water and sewer service well into the future and will not abandon the customers.

### **Conclusion**

The company did not respond to Staff's recommendation. The Office of the Public Counsel has not voiced any concern with the company's proposal. Based on the application, Staff's recommendation and memorandum, and Richard Fink's testimony the Commission will approve Southtown Utilities' applications.

The Commission reminds the company that failure to comply with its regulatory obligations may result in the assessment of penalties against it. These regulatory obligations include, but are not limited to, the following:

A) The obligation to file an annual report, as established by Section 393.140(6), RSMo 2000. Failure to comply with this obligation will make the utility liable to a penalty of \$100 and an additional \$100 per day that the violation continues. Commission rule 4 CSR 240-3.360 requires water utilities to file their annual report on or before April 15 of each year. Commission rule 4 CSR 240-3.335 requires sewer utilities to file their annual report on or before April 15 of each year.

B) The obligation to pay an annual assessment fee established by the Commission, as required by Section 386.370, RSMo 2000. Because assessments are facilitated by order of the Commission, failure to comply with the order will subject the company to penalties ranging from \$100 to \$2,000 for each day of noncompliance pursuant to Section 386.570, RSMo 2000.

C) The obligation to provide safe and adequate service at just and reasonable rates, pursuant to Section 393.130, RSMo 2000.

D) The obligation to comply with all relevant state and federal laws and regulations, including, but not limited to, rules of this Commission, the Department of Natural Resources, and the Environmental Protection Agency.

E) The obligation to comply with orders issued by the Commission. If the company fails to comply it is subject to penalties for noncompliance ranging from \$100 to \$2,000 per day of noncompliance, pursuant to Section 386.570, RSMo 2000.

F) The obligation to keep the Commission informed of its current address and telephone number.

This certificate is granted conditioned upon the compliance of the company with all of these obligations.

Moreover, if the Commission finds, upon conducting a hearing, that the company fails to provide safe and adequate service, or has defaulted on any indebtedness, the Commission will petition the circuit court for an order attaching the assets, and placing the company under the control of a receiver, as permitted by Section 393.145, RSMo 2000. As a condition of granting these certificates, the company hereby consents to the appointment of a temporary receiver until such time as the circuit court grants or denies the petition for receivership.

The company is also placed on notice that Section 386.310.1, RSMo 2000, provides that the Commission can, without first holding a hearing, issue an order in any case, “in which the commission determines that the failure to do so would result in the likelihood of imminent threat of serious harm to life or property.”

Furthermore, the company is reminded that, as a corporation, nonattorneys may not represent the company before the Commission. Instead, the corporation must be represented by an attorney licensed to practice law in Missouri.

**IT IS THEREFORE ORDERED:**

1. That Southtown Utilities Company, Inc., is granted a Certificate of Convenience and Necessity to construct, install, operate and maintain a sewer system in Polk County, Missouri, more particularly as shown on Attachment 5 and described in Attachment 6 of the Staff of the Commission’s memorandum.

2. That Southtown Utilities Company, Inc., is granted a Certificate of Convenience and Necessity to supply and render water service to Polk County, Missouri, more particularly as shown on Attachment 5 and described in Attachment 6 of the Staff of the Commission’s memorandum.

3. That these certificates are granted upon the conditions set out in the body of this order.

4. That Southtown Utilities Company, Inc., shall to comply with all Missouri statutes and Commission rules.

5. That Southtown Utilities Company, Inc., shall submit separate sewer and water tariff sheets, comprised of the rates and service area description as described in the Staff of the Commission’s memorandum, reflected in the body of this order. The Commis-

sion informs the company it can not provide service unless it is operating under a tariff approved by this Commission.

6. That Southtown Utilities Company, Inc., shall submit semiannual customer number reports until such time that it submits its first rate increase request.

7. That nothing in this order should be considered as a finding by the Commission of the reasonableness of the expenditures involved with Southtown Utilities Company, Inc.'s provision of service in the subject service area, of the value for ratemaking purposes of the properties involved, or as an acquiescence to any method of cost determination, cost allocation or ratemaking principles.

8. That Southtown Utilities Company, Inc., shall keep its books and records in accordance with the Uniform System of Accounts, as is required of all regulated utilities.

9. That the depreciation rates for utility plant in service shown on the schedules included with the Staff of the Commission's memorandum as Attachments 3 and 4 are approved by the Commission and shall be used by Southtown Utilities Company, Inc.

10. That this order shall become effective on August 23, 2005.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Gaw, Clayton,  
and Appling, CC., concur.

Jones, Regulatory Law Judge