

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 24<sup>th</sup> day of  
June, 2015.

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    ) File No. WM-2015-0231  
Water Assets to Camden County Public Water Supply        )  
District Number Four and in connection therewith certain    )  
other related transactions.                                        )

**ORDER GRANTING APPLICATION**

Issued: June 24, 2015

Effective: July 3, 2015

The Commission grants the application for transfer of assets and the motion for expedited treatment.

Applicants

The assets at issue are those of Ozark Shores Water Company (“the Company”),<sup>1</sup> a Missouri corporation,<sup>2</sup> a public utility and a water company,<sup>3</sup> whose sole owner is North Suburban Public Utility Company (“Owner”), an Illinois corporation.<sup>4</sup> The buyer is Camden County Public Water Supply District Number Four (“the District”), a

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<sup>1</sup> Electronic Filing and Information System (“EFIS”) No. 9 (May 5) *Staff Recommendation to Deny Transfer of Assets and Request for Local Public Hearing*, Memorandum, first page. All dates are in 2015.

<sup>2</sup> EFIS No. 1 (March 25) *Joint Application for Approval of Transfer of Assets*, Exhibit 2.

<sup>3</sup> EFIS No. 9 (May 5) *Staff Recommendation to Deny Transfer of Assets and Request for Local Public Hearing*, Memorandum, page 2 first and third paragraphs.

<sup>4</sup> EFIS No. 1 (March 25) *Joint Application for Approval of Transfer of Assets*, Exhibit 2.

public water supply district.<sup>5</sup> The Owner, the Company, and the District are the applicants.<sup>6</sup> The purchase price is \$5,252,781.<sup>7</sup> The transaction also includes the Owner selling to the District certain tracts of land and buildings used by the Company.<sup>8</sup>

### Filings and Issuances

The applicants filed the application<sup>9</sup> and supplemented the application with a list of affected counties.<sup>10</sup>

The Commission gave notice of the application and set a time for filing an application to intervene.<sup>11</sup> The Commission received one application to intervene: that of the Missouri Attorney General (“Attorney General”).<sup>12</sup> The applicants filed a response<sup>13</sup> and the Attorney General filed a reply.<sup>14</sup> The Commission granted intervention to the Attorney General, stayed proceedings pending the Attorney General’s investigation, and set a date for the Attorney General to file a status report.<sup>15</sup>

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<sup>5</sup> EFIS No. 9 (May 5) *Staff Recommendation to Deny Transfer of Assets and Request for Local Public Hearing*, Memorandum, first page.

<sup>6</sup> EFIS No. 1 (March 25) *Joint Application for Approval of Transfer of Assets*, page 5 to 6.

<sup>7</sup> EFIS No. 9 (May 5) *Staff Recommendation to Deny Transfer of Assets and Request for Local Public Hearing*, Memorandum, page 2 last paragraph.

<sup>8</sup> EFIS No. 9 (May 5) *Staff Recommendation to Deny Transfer of Assets and Request for Local Public Hearing*, Memorandum, page 2 last paragraph.

<sup>9</sup> EFIS No. 1 (March 25) *Joint Application for Approval of Transfer of Assets*.

<sup>10</sup> EFIS No. 3 (April 7) *Response to Order*. Any county containing any part of any political subdivision in which any asset subject to the transaction is located.

<sup>11</sup> EFIS No. 4 (April 8) *Order Directing Notice and Setting Time for Filing*.

<sup>12</sup> EFIS No. 15 (May 20) *Attorney General's Application to Intervene Out of Time*.

<sup>13</sup> EFIS No. 17 (May 22) *Objection to Missouri Attorney General's Application to Intervene Out Of Time*.

<sup>14</sup> EFIS No. 20 (June 1) *Missouri Attorney General's Reply in Support of His Application to Intervene Out of Time*.

<sup>15</sup> EFIS No. 21 (June 2) *Order Granting Intervention, Directing Filing, and Staying Proceedings*.

The Attorney General filed the status report, stating that his concerns about the propriety of the transaction have been resolved.<sup>16</sup>

The Commission granted<sup>17</sup> Staff's request for more time<sup>18</sup> to file a recommendation, and the applicants sought reconsideration of that order.<sup>19</sup> Staff filed its recommendation,<sup>20</sup> the applicants filed a response to the recommendation,<sup>21</sup> and Staff filed a reply including a motion for a pre-hearing conference.<sup>22</sup> Staff filed a motion for an evidentiary hearing and supporting suggestions. The applicants filed the affidavits resulting from the Attorney General's investigation as prepared testimony and renewed their motion for expedited treatment.<sup>23</sup> The Commission lifted the stay for that filing and any responses.<sup>24</sup> Staff filed a response to the testimony.<sup>25</sup> Staff's response to the prepared testimony renews its request for a pre-hearing conference.

### Procedure

The Commission has jurisdiction to rule on the application under the following provision:

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<sup>16</sup> EFIS No. 30 (June 9) *Status Report of the Missouri Attorney General*.

<sup>17</sup> EFIS No. 6 (April 29) *Order Extending Time For Recommendation*.

<sup>18</sup> EFIS No. 5 (April 29) *Status Report and Motion for Extension of Time to File Staff Recommendation*.

<sup>19</sup> EFIS No. 7, (April 30) *Motion for Reconsideration of Order Approving Extension of Time*.

<sup>20</sup> EFIS No. 9 (May 5) *Staff Recommendation to Deny Transfer of Assets and Request for Local Public Hearing*.

<sup>21</sup> EFIS No. 11 (May 7) *Response to Staff Recommendation and Motion for Expedited Treatment*.

<sup>22</sup> EFIS No. 14 (May 15) *Staff's Motion for Prehearing Conference and Renewed Motion for Local Public Hearing*.

<sup>23</sup> EFIS No. 22 (June 4) *Joint Applicants' Motion to Lift Stay for Purposes of Receiving Written Testimony* page 2 paragraph 5.

<sup>24</sup> EFIS No. 29 (June 5) *Order Lifting Stay and Directing Expedited Response*.

<sup>25</sup> EFIS No. 31 (June 11) *Response to Testimony*.

No . . . water corporation . . . shall hereafter sell . . . its . . . works or system . . . without having first secured from the commission an order authorizing it so to do. [<sup>26</sup>]

The statutes governing the Commission's actions are to be construed with a view to:

. . . the public welfare, efficient facilities and substantial justice between patrons and public utilities. [<sup>27</sup>]

That standard, in the context of the transaction, equates to the public interest, and requires the Commission to:

. . . see that no such change shall be made as would work to the public detriment. 'In the public interest,' in such cases, can reasonably mean no more than 'not detrimental to the public [<sup>28</sup>]

The Commission's regulations codify that standard:

[A]pplications for authority to sell, assign, lease or transfer assets shall include:

\* \* \*

(D) The reasons the proposed sale of the assets is not detrimental to the public interest [<sup>29</sup>]

The burden of proof is with the applicants.<sup>30</sup>

Staff seeks a hearing and a pre-hearing conference based on Staff's argument that this action is a contested case. In support, Staff cites State ex rel. Yarber,<sup>31</sup> which relies on the statutory definition of contested case:

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<sup>26</sup> Section 393.190.1, RSMo 2000).

<sup>27</sup> Section 386.610 RSMo 2000.

<sup>28</sup> State ex rel. City of St. Louis v. Public Service Comm'n of Missouri, 73 S.W.2d 393, 400 (Mo.1934).

<sup>29</sup> 4 CSR 240-3.605(1).

<sup>30</sup> Love 1979 Partners v. Pub. Serv. Comm'n of Missouri, 715 S.W.2d 482, 489-90 (Mo. banc 1986).

<sup>31</sup> State ex rel. Yarber, 915 S.W.2d 325, 328 (Mo. banc 1995).

. . . a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing [. <sup>32</sup>]

State ex rel. Yarber holds that the law requiring a pre-decision hearing includes not only the explicit directives in statutes but also implicit directives in the constitutional provision for due process. <sup>33</sup> Because Missouri law created a substantive property interest in a semester of high school credit of sufficient magnitude, before a school district could adversely affect a significant amount—a semester—of that interest, the due process of law required an evidentiary hearing. <sup>34</sup>

An evidentiary hearing is not required before the Commission grants the application. <sup>35</sup> The statute that governs the application does not require a hearing <sup>36</sup> and Staff cannot assert a right to due process, such as would require a hearing. Staff cites the applicants' property interests—to buy and sell the Company's assets— as a basis for its claimed right to a hearing, but the applicants' interests suffer no adverse effect under this order. <sup>37</sup> Also, neither Yarber, nor any other authority cited by Staff, provides that any party is entitled to a hearing by asserting someone else's interests. That holding must apply even more so when Staff asserts those interests to adversely affect the interests of a party that has not requested a hearing.

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<sup>32</sup> Section 536.010(4), RSMo Supp. 2013.

<sup>33</sup> State ex rel. Yarber, 915 S.W.2d 325, 328 (Mo. banc 1995).

<sup>34</sup> State ex rel. Yarber, 915 S.W.2d 325, 328 (Mo. banc 1995).

<sup>35</sup> A contested case commences when someone, including the Commission, “seeks such action as by law can be taken by the [Commission] only after opportunity for hearing [.]” Section 536.063(1), RSMo Supp. 2013. The application seeks the Commission's approval of the transaction.

<sup>36</sup> Section 393.190.1, RSMo 2000).

<sup>37</sup> Also, the Commission may commence a contested case to make a record for judicial review. Section 536.063(1), RSMo Supp. 2013.

On the contrary, under Yarber, standing to seek a hearing depends on movant's possession of an interest.

In order to be entitled to a hearing under due process of law, a plaintiff must have either a life, liberty, or property interest protected by the Constitution.”<sup>[38]</sup>

Unlike the applicants, Staff possesses no substantive interest of its own,<sup>39</sup> Nor is Staff an agency statutorily charged to advocate an interest like the Office of the Public Counsel.<sup>40</sup> On the contrary, Staff's unique—and crucial—value to the Commission is that Staff is above any specific interest. Staff provides the Commission with neutral, yet expert, advice on public interest and detriment. But the statutes delegate the decision on the application to the Commission,<sup>41</sup> and thus delegate the determination of a public interest and detriment to the Commission.<sup>42</sup>

Staff cites State ex rel. Rex Deffenderfer Ent., Inc.<sup>43</sup> for the proposition that the Commission must convene a hearing unless Staff waives a hearing. In Deffenderfer, no party requested any hearing of any kind and the Court of Appeals held that the Commission did not err in deciding an application based on verified pleadings. As to who would have been entitled to institute a contested case, the opinion is silent.

Therefore, the Commission concludes that this action is not a contested case. The Commission may, on its own motion, dispose of a case on the pleadings whenever

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<sup>38</sup> State ex rel. Yarber, 915 S.W.2d 325, 328 (Mo. 1995)

<sup>39</sup> This is the reason that Staff cannot apply for a rehearing under Section 386.500, RSMo 2000, and cannot appeal under Section 386.500, RSMo Supp. 2013.

<sup>40</sup> The Office of the Public Counsel (“OPC”) is a party to this action but has exercised its discretion to enter no appearance.

<sup>41</sup> Section 393.190.1, RSMo 2000).

<sup>42</sup> State ex rel. City of St. Louis v. Public Service Comm’n of Missouri, 73 S.W.2d 393, 400 (Mo.1934).

<sup>43</sup> State ex rel. Rex Deffenderfer Ent., Inc., 776 S.W.2d 494 (Mo. App., W.D. 1989).

such disposition is not otherwise contrary to law or contrary to the public interest.<sup>44</sup> Such is the case here: disposition on the pleadings is not contrary to law and is in the public interest. The Commission will deny Staff's motions for an evidentiary hearing, a pre-hearing conference, and a local public hearing; and will decide this action based on the verified filings<sup>45</sup> as a non-contested case without separately stating its findings of fact.

### The Application's Merits

Staff's recommendation argued that the Commission should deny the application. In support, Staff expressed concern over suspected self-dealing among leadership of the applicants, which made Staff apprehensive of an inflated purchase price, a possible future rate increase in the District, and the issuance of weak District bonds. The Attorney General intervened to investigate the suspected self-dealing among leadership of the applicants.

In the course of the investigation, the Attorney General procured the affidavits that the applicants filed as their prepared testimony.<sup>46</sup> The affidavits support a finding that the District board members had no financial or familial conflict of interest related to the approval of the transaction,<sup>47</sup> and that the former general manager of the Company and the District did not participate in the valuation analysis and did not attempt to influence the final price of the assets.<sup>48</sup> That testimony is "sufficient to allay the conflict

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<sup>44</sup> 4 CSR 240-2.117(2).

<sup>45</sup> *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

<sup>46</sup> EFIS No. 30 (June 9) *Status Report of the Missouri Attorney General* page 2 paragraph 4.

<sup>47</sup> EFIS No. 30 (June 9) *Status Report of the Missouri Attorney General* page 2 paragraph 4.

<sup>48</sup> EFIS No. 30 (June 9) *Status Report of the Missouri Attorney General* page 3 paragraph 5.

of interest concerns raised in”<sup>49</sup> the Attorney General’s motion to intervene. Staff’s response to the affidavits is that “Staff is not opposed to” the transaction.<sup>50</sup>

Nevertheless, Staff continues to express concern that approval of the application may cause a public detriment. Staff alleges the potential for a Hancock Amendment violation and a rate increase in the District. But Staff cites no authority showing that the Commission has any authority over those events when they occur within a public water supply district. On those bases, and on the basis of the other filings, the Commission independently concludes that the application is not detrimental to the public. Therefore, the Commission will grant the application.

#### Expedited Treatment and Effective Date

The applicants seek expedited treatment. In support, applicants cite the timing of the financing for the transaction. The Commission will set an effective date ten days from the issuance of this order.<sup>51</sup>

#### **THE COMMISSION ORDERS THAT:**

1. *Staff’s Motion for Evidentiary Hearing* and requests for a pre-hearing conference and a local public hearing are denied.

2. The *Joint Application for Approval of Transfer of Assets* (“application”) is granted and the transaction described in the application is authorized.

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<sup>49</sup> EFIS No. 30 (June 9) *Status Report of the Missouri Attorney General* page 2 to 3 paragraph 3 and 4.

<sup>50</sup> EFIS No. 31 (June 11) *Response to Testimony* page 1 paragraph 1.

<sup>51</sup> Section 386.490.2, RSMo Supp. 2013; *Harter v. Missouri Pub. Serv. Comm’n*, 361 S.W.3d 52, 58 (Mo. App., W.D. 2011).



3. This order shall be effective on July 3, 2015.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

R. Kenney, Chm., Stoll, Hall, and Rupp, CC., concur;  
W. Kenney, C., absent