

At a session of the Public Service Commission held at its office in Jefferson City on the 18<sup>th</sup> day of June, 2009.

## ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Effective Date: June 28, 2009

On May 15, the Commission's Staff filed a recommendation advising the

Commission to approve Highway H's application. Staff also recommended that the Commission require Highway H to charge its existing water and sewer rates in the expanded service area. Staff explained that Highway H has small water and sewer rate cases pending before the Commission and indicated appropriate rates could best be established through those cases.

Staff also recommended that the Commission approve specified depreciation accrual rates for Highway H. Additionally, Staff advised the Commission to require Highway H to submit copies of permits and approvals issued by the Department of Natural Resources for construction of necessary wells, treatment facilities, or other utility plant. If the company does not obtain any necessary DNR permits by August 1, 2009, Staff asked the Commission to require the company to submit status reports detailing its progress in obtaining those permits.

On May 21, the Office of the Public Counsel filed a response to Staff's recommendation. Public Counsel did not object to Staff's recommendation to grant Highway H's application. Public Counsel also accepted Staff's recommendation that Highway H be ordered to charge its existing rates in the expanded service area, but recommended that those rates for service to the expanded service area be made interim, subject to refund, based on the results of the pending small company rate cases. Public Counsel also recommended that the Commission direct Highway H to submit monthly status report regarding its efforts to obtain necessary DNR reports.

On June 1, Staff and Highway H replied to Public Counsel's response. Staff opposed making the rates in the expanded service area interim and subject to refund.

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<sup>1</sup> The Commission assigned separate file numbers for the water and sewer applications. Subsequently, File No. SA-2009-0317 was consolidated into File No. WA-2009-0316.

Highway H was willing to accept making those rates interim and subject to refund, but only if the rates were made subject to surcharge if the pending rate case revealed that the company was under-earning.

In light of the disagreement among the parties, the Commission scheduled a prehearing conference for June 16. However, on June 9, Public Counsel filed an amended response to Staff's recommendation. Public Counsel now indicates its acceptance of Staff's rate recommendation and no longer seeks to treat those rates as interim and subject to refund. Accordingly, the Commission canceled the prehearing conference.

On June 17, Staff filed a supplement to its recommendation informing the Commission that the Department of Natural Resources has recently issued a Notice of Violation to Highway H regarding the effluent from its existing wastewater treatment facility. Staff indicated its recommendation to approve Highway H's application has not changed.

Based on the verified application submitted by Highway H, as well as the verified recommendation of its Staff, and the responses filed by Public Counsel, the Commission finds that granting Highway H's application for a certificate of convenience and necessity to provide water and sewer service to an expanded service area will serve the public interest. That application will be granted.

The Commission reminds Highway H 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

240-3.640 requires water utilities to file their annual report on or before April 15 of each year. Commission Rule 4 CSR 240-3.335 imposes the same requirement on sewer utilities.

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 \$2000 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 (Supp. 2008).

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 \$2000 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 shall 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 Supp. 2008. As a condition of granting this certificate, 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, its officers may not represent the company before the Commission. Instead, the corporation must be represented by an attorney licensed to practice in Missouri.

**THE COMMISSION ORDERS THAT:**

1. Highway H Utilities, Inc. is granted permission, approval, and a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain water and sewer systems for the public in Pulaski County, Missouri, as more particularly described in Appendix 1 to its application.
2. This certificate of convenience and necessity is granted upon the conditions set out in the body of this order.
3. Highway H. Utilities, Inc. shall comply with all Missouri statutes and Commission rules.
4. Highway H Utilities, Inc. shall charge its existing water and sewer rates to customers located in the newly certificated service area.

5. Highway H. Utilities, Inc. shall submit, no later than July 28, 2009, new or revised tariff sheets for its existing water and sewer tariffs to include a map and written description of the expanded Northern Heights Subdivision service area, with the tariff sheets to bear an effective date that is at least thirty days from the date the tariff sheets are submitted to the Commission.

6. The depreciation rates recommended by Staff within attachments A and B to its recommendation are approved for use by Highway H Utilities, Inc. for its existing and newly certificated service areas.

7. Highway H Utilities, Inc. shall submit to the manager of the Commission's water and sewer department, and to the Office of the Public Counsel, copies of permits and approvals issued by the Department of Natural Resources for the construction of wells, tanks, treatment facilities, or other utility plant contemplated by plans approved by the Department of Natural Resources, within thirty days after such approval.

8. In the event Highway H Utilities, Inc. does not obtain and forward any necessary Department of Natural Resources permits by August 1, 2009, Highway H Utilities, Inc. shall submit a status report to the manager of the Commission's water and sewer department and to the Office of the Public Counsel, describing the company's good faith attempts to obtain the necessary permits, including, but not limited to, the preparation and submission of information required by the Department of Natural Resources for approval and issuance of such permits.

9. After August 1, 2009, Highway H. Utilities, Inc. shall provide any additional status reports requested by either the manager of the Commission's water and sewer

department or the Office of the Public Counsel, without the necessity of an additional order from this Commission.

10. Nothing in this order shall bind the Commission on any ratemaking issue in any future rate proceeding.

11. The certificate of convenience and necessity granted to Highway H Utilities, Inc. in this order shall become effective at that same time as the new or revised implementing tariffs to be submitted by the company become effective.

12. This order shall become effective on June 28, 2009.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is positioned above the printed name.

Colleen M. Dale  
Secretary

( S E A L )

Clayton, Chm., Davis, Jarrett,  
and Gunn, CC., concur.

Woodruff, Deputy Chief Regulatory Law Judge