

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 3rd day of February, 2010.

In the Matter of the Transfer of Assets of)
Swiss Villa Utilities, Inc., to the Black Oak)
Mountain Resort Property Owners Association.)

File No. WO-2007-0410

**ORDER APPROVING TRANSFER OF ASSETS
AND CANCELING CERTIFICATES AND TARIFFS**

Issue Date: February 3, 2010

Effective Date: February 13, 2010

This order approves the transfer of utility assets from Swiss Villa Utilities, Inc., Quannah Corporation, S.V. Holding, Inc., and Stone County to the Black Oak Mountain Water Company and the Black Oak Mountain Sewer Company. It also cancels the certificates of convenience and necessity previously issued by the Commission to Swiss Villa Utilities, Inc., cancels the tariffs of Swiss Villa Utilities, Inc., and relieves Staff of the obligation to file monthly status reports.

Procedural History

On April 20, 2007, the Staff of the Missouri Public Service Commission filed its *Motion to Approve Transfer of Assets of Swiss Villa Utilities, Inc. to the Black Oak Mountain Resort Property Owners Association* (“original motion”) requesting that the Commission approve a transfer of the assets of Swiss Villa Utilities, Inc., to the Black Oak Mountain Resort Property Owners Association (“Black Oak POA”). In the alternative, Staff requested permission to appoint a system receiver. The Commission issued notice and set a date for

intervention requests. The Commission also joined as necessary parties Swiss Villa, Black Oak POA, S.V. Holding, Inc., Quannah Corporation, and the County Commission of Stone County, all of which had some interest in the matter. There were no requests for a hearing or to intervene.

In its original motion, Staff related that some of the essential requirements supporting the asset transfer were not in place and that it was working with Black Oak POA to remedy those deficiencies. Thus, the Commission directed Staff to file monthly status reports of its progress and notify the Commission when all the necessary requirements had been met. Staff subsequently filed numerous status reports. In addition, on October 1, 2009, the Commission joined Black Oak Mountain Water Company (“Black Oak Water”) and Black Oak Mountain Sewer Company (“Black Oak Sewer”) as parties.

On December 30, 2009, Staff filed the current motion in this matter, *Motion to Approve a Transfer of Utility Assets from Quannah Corporation, S.V. Holding, Inc., Swiss Villa Utilities, Inc., and the County Commission of Stone County to the Black Oak Mountain Water Company and the Black Oak Mountain Sewer Company*. As the title suggests, Staff’s motion requests that any interest the listed parties may have in Swiss Villa be transferred to the newly created Black Oak Water and Black Oak Sewer.

Corporate Entities

1. Swiss Villa Utilities, Inc. was a “public utility,” a “water corporation,” and a “sewer corporation,” as those terms are defined in Section 386.020, RSMo 2000.¹

¹ All statutory references are to the Missouri Revised Statutes 2000, unless otherwise noted.

2. On June 28, 1983, the Commission granted Swiss Villa certificates of public convenience and necessity to provide water and sewer services in a portion of Stone County, Missouri.²

3. Swiss Villa was formerly owned by Capital Services and Investments, Inc., which entered Chapter 11 Bankruptcy proceedings.

4. In July 1994, Quanah obtained the assets of Swiss Villa, including those related to providing utility service.

5. Subsequently, the stock of Swiss Villa was transferred to S.V. Holding (a not-for-profit corporation), as assignee of Quanah, with Quanah retaining some interest in the real property associated with the system.

6. In February 2004, the Board of Directors of Swiss Villa (“the Board”) resigned without replacement. At that time, the Board incorrectly and independently determined that because Swiss Villa was owned by a not-for-profit corporation, it was no longer regulated by the Commission.

7. Since the Board resigned, Deal & Associates of Springfield, Missouri, has collected system revenues, though indicating that it is largely operating “without direction.” An operator has continued to do basic maintenance on the system, but is similarly proceeding without guidance.³

8. On September 9, 2005, Swiss Villa was administratively dissolved by the Office of the Missouri Secretary of State for failure to file its annual report.

² See File Nos. WA-83-75 and SA-83-76.

³ Staff includes greater detail about the operations of the company in Appendix A to the current motion.

9. On January 5, 2006, S.V. Holding was administratively dissolved by the Office of the Missouri Secretary of State for failure to file its annual report.

10. Quanah is currently listed as in “Good Standing” with the Office of the Missouri Secretary of State.

11. The Commission currently has an outstanding judgment against Swiss Villa in the amount of \$84,600, related to its failure to file annual reports with this Commission and to submit its Commission assessments.

12. The system is currently operating with a Missouri Department of Natural Resources (“DNR”) discharge permit which expired in 2008. DNR is in the process of mandating system improvements, which will likely result in an upgrade to the sewage treatment plant.

13. In October 2006, Staff was informed by the members of the Black Oak POA that it had voted to “take over” the utility system. Staff filed its original motion to assist with that objective.

14. Over the course of completing the necessary steps to transfer the utility assets to the Black Oak POA, the concept of creating nonprofit corporations under the control of the Black Oak POA emerged. Thus, individuals involved with Black Oak POA initiated an effort to form separate nonprofit water and sewer entities to be operated under the authority of the Black Oak POA, with the intent to have the resulting entity serve as the transferee of the system assets.

15. On July 10, 2009, the incorporators of Black Oak Water and Black Oak Sewer filed with the Office of the Missouri Secretary of State the documents necessary to incorporate Black Oak Water and Black Oak Sewer.

16. Both corporations are currently listed as in “Good Standing” with the Office of the Missouri Secretary of State.

17. Staff recommended in its current motion that the Commission approve the transfer to Black Oak Water and Black Oak Sewer.

18. Prior to and including the time in which the not-for-profit corporations were formed, Stone County established a neighborhood improvement district (“NID”) and constructed publicly-funded improvements to the water and sewer systems in the Swiss Villa service territory. In exchange for these improvements, a Quit Claim deed was executed on December 18, 2003, purporting to transfer the real estate used in providing water and sewer service from Quanah to Stone County to hold in trust until the bonds issued to pay for the improvements are retired, and as trustee for the property owners within the NID itself.⁴

19. On July 21, 2007, Quanah also executed a Quit Claim Deed to “Black Oak Mountain Utility Board” purporting to grant any remaining interest in the utility system property.

20. Due to the nature of the NID, and the conveyance of interests resulting from its establishment, Staff had concerns about the ability of any entity receiving the assets to demonstrate it had access to the real property. For this reason, the Black Oak POA and Stone County entered into a Non-Exclusive Lease of Real Property, Sanitary Sewer Collection and Treatment System, and Water Supply System (“lease”). The lease was

⁴ Although the Quit Claim deed executed by Quanah to Stone County purports to release any interest in the utility systems previously held by Quanah, Staff included Quanah in its current motion, and the Commission includes it in this order, as a named asset transferor in order to be certain that all necessary approvals for the transfer of this system are granted.

approved by Stone County on April 24, 2007, and executed by Black Oak POA on May 26, 2007.

21. After formation and incorporation of Black Oak Water and Black Oak Sewer, a sublease from Black Oak POA to Black Oak Water and Black Oak Sewer was approved by Stone County on October 6, 2009, and executed by Black Oak POA and the water and sewer Companies on October 31, 2009.

22. Although Staff included in its current motion a request for authority to transfer the assets of Stone County to Black Oak Water and Black Oak Sewer, it is unclear what Stone County's interests are. As contained in the lease, drafted by Stone County, "[t]he County's interests in some of the Systems were conveyed to it, and the County does not know the nature or quality of those interests[.]"⁵ Under the terms of the lease and the sublease, however, Stone County will convey its interests to Black Oak Water and Black Oak Sewer upon discharge of the NID debt. Therefore, included in this order is authority to transfer any interest held from Stone County to the water and sewer companies.

23. Staff has recommended from the beginning of this case that a capable entity be placed in charge of this water and sewer system. As stated in the Memorandum attached to the current motion, "[u]nder the facts presented in this case, Staff believed, and continues to believe, that some action needs to be taken in an attempt to reach a solution to the problems facing the [water and sewer] systems, and more importantly, [their] customers."

⁵ Attachment H to Appendix A of the Motion to Approve a Transfer of Utility Assets from Quana Corporation, S.V. Holding, Inc., Swiss Villa Utilities, Inc., and the County Commission of Stone County to the Black Oak Mountain Water Company and the Black Oak Mountain Sewer Company, filed December 30, 2009.

24. Staff further stated that it believes the transfer of assets from Swiss Villa, Quannah, S.V. Holding, and Stone County to Black Oak Water and Black Oak Sewer would not be detrimental to the public interest. In addition, Staff believes that Black Oak Water and Black Oak Sewer are in a “position to modify customer rates in an equitable manner, as may be required in the future.”

Applicable Law

1. Section 393.190.1. provides in relevant part as follows:

No . . . water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do

2. Relevant case law provides that the Commission may approve an asset transfer if it is “not detrimental to the public interest.”⁶

3. Section 393.900 provides that certain nonprofit, membership corporations may be organized only for the purpose of supplying water for distribution, for wholesale, and for treatment services within the State of Missouri. Section 393.933.2 provides that “[t]he public service commission shall not have jurisdiction over the construction, maintenance or operation of the water facilities, service, rates, financing, accounting or management of any nonprofit water company”

4. Similarly, Section 393.825.1 provides that certain nonprofit, membership corporations may be organized only for the purpose of supplying wastewater disposal and

⁶ See *State ex Rel Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980).

treatment services within the State of Missouri. Section 393.847.2 provides that “[t]he public service commission shall not have jurisdiction over the construction, maintenance or operation of the wastewater facilities, service, rates, financing, accounting or management of any nonprofit sewer company.”

5. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence.⁷ Therefore, the Commission may grant the request based on the verified motions after affording notice and an opportunity to be heard.

Decision

After considering the verified motions of Staff and their attachments, including the recommendation of Staff, and the lack of opposition from any of the parties, the Commission concludes that the proposed transfers will “not [be] detrimental to the public interest.”⁸ In fact, the Commission determines that having a stable and concerned nonprofit corporation controlled by the homeowners association is in the public interest. The transfers are approved.

The Commission also orders that the certificates of service authority held by Swiss Villa along with the tariffs on file pertaining to that system shall be canceled. In addition, Staff is relieved of its obligation to file monthly status reports.

Finally, because this system has a history of issues with DNR, the Commission will direct that a courtesy copy of this order be sent to DNR.

⁷ See State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. W.D. 1989).

⁸ State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980).

THE COMMISSION ORDERS THAT:

1. The *Motion to Approve a Transfer of Utility Assets from QuanaH Corporation, S.V. Holding, Inc., Swiss Villa Utilities, Inc., and the County Commission of Stone County to the Black Oak Mountain Water Company and the Black Oak Mountain Sewer Company* filed by the Staff of the Missouri Public Service Commission on December 30, 2009, is granted.

2. The transfer of utility assets from Swiss Villa Utilities, Inc., QuanaH Corporation, S.V. Holding, Inc., and Stone County to the Black Oak Mountain Water Company and the Black Oak Mountain Sewer Company is approved.

3. All parties are authorized to execute, enter into, deliver and perform any agreements, and to do any and all other things not contrary to law or the rules and regulations of the Commission incidental, necessary or appropriate to consummate these transactions.

4. The certificates of convenience and necessity previously issued by the Commission to Swiss Villa Utilities, Inc., in Case Nos. WA-83-75 and SA-83-76 are canceled.

5. The tariffs of Swiss Villa Utilities, Inc., are canceled. Those tariffs are: P.S.C.MO. No. 1 (Water), Tariff File No. JW-2002-0089; and P.S.C.MO. No. 1 (Sewer), Tariff File No. JS-2002-0090.

6. The Staff of the Missouri Public Service Commission is relieved of its obligation to file monthly status reports.

7. The Data Center of the Missouri Public Service Commission shall send a courtesy copy of this order to the Missouri Department of Natural Resources.

8. This order shall become effective on February 13, 2010.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'S. Reed', written over a faint, illegible background.

Steven C. Reed
Secretary

(S E A L)

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

Dippell, Deputy Chief Regulatory Law Judge