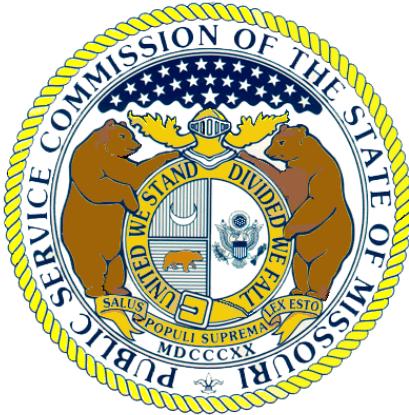


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the Petition for an Interim)
Receiver and for an Order Directing the)
General Counsel to Petition the Circuit)
Court for the Appointment of a Receiver)
For Ridge Creek Water Company, LLC,)
And for Ridge Creek Development, L.L.C.)

File No. WO-2017-0236

REPORT AND ORDER

Issue Date: May 3, 2017

Effective Date: May 13, 2017

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File No. WO-2017-0236

APPEARANCES

Jacob Westen, Deputy Staff Counsel, 200 Madison Street, Ste. 800, Jefferson City, Missouri 65102-0360.

For the Staff of the Missouri Public Service Commission.

Ryan Smith, Counsel, 200 Madison Street, Suite 650, Jefferson City, Missouri 65102-2230.

For the Office of the Public Counsel and the Public.

Chief Regulatory Law Judge: **Morris L. Woodruff**

REPORT AND ORDER

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The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered

by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

On March 14, 2017, the Commission's Staff filed a Petition asking the Commission to direct its General Counsel to petition the Circuit Court of Cole County to appoint a receiver to take control of Ridge Creek Water Company, LLC and Ridge Creek Development Company, LLC. That petition also asked the Commission to appoint an interim receiver to take control of those companies pending the Circuit Court's appointment of a receiver. The Commission conducted an evidentiary hearing on May 2. The members and owners of Ridge Creek Water and Ridge Creek Development did not appear at the hearing, but on April 14, filed their signed consent to the appointment of an interim receiver and a receiver for both companies.

Findings of Fact

1. Ridge Creek Water Company, LLC is a member-managed Missouri certificated water corporation as defined by Section 386.020(59), RSMo 2016. It holds a certificate of service authority to provide water service to an unincorporated area of Pulaski County, Missouri, which the Commission issued to Ridge Creek Water on September 2, 2015, in File No. WA-2015-0182.

2. Ridge Creek Development, LLC is a Missouri limited liability company. It is not certificated by the Commission to provide water service to the public. However, Ridge Creek Development is, in fact, providing water service to an unincorporated area of Pulaski County, Missouri, and therefore meets Section 386.020(59)'s definition of a water corporation.

3. Both Ridge Creek Water and Ridge Creek Development are owned by a married couple, Michael Stoner and Denise Stoner.

4. The water system operated by Ridge Creek Water and Ridge Creek Development serves 390 people through 130 service connections.

5. Previously, in File No. WC-2015-0011, Staff brought a complaint before the Commission against Ridge Creek Development for operating a public water system without a certificate from the Commission. That complaint was dismissed when Ridge Creek Water was formed and granted a certificate in 2015.

6. Ridge Creek Water issues bills to its customers, but does not own the water distribution system that is used to serve those customers. Further, Ridge Creek Water does not own, or otherwise control, the water wells that supply water to the water system. Those water wells are owned by Ridge Creek Development.

7. Customer payments for water service are deposited into a bank account owned by Ridge Creek Development and those water customer-generated funds are comingled with the funds of Ridge Creek Development and other corporate entities owned by Michael and Denise Stoner.

8. Although most, or all, of the funds going into the Ridge Creek Development owned bank account come from the customers of Ridge Creek Water for water service, payments go out of that account to the benefit of other corporate entities. Ridge Creek Water does not maintain its own financial records.

9. The limited maintenance and repairs done on the water system are frequently performed by an employee of Ridge Creek Development.

10. Ridge Creek Water and Ridge Creek Development do not provide safe and adequate service to their water customers. The water system relies on 22 separate water wells scattered around the residential subdivisions served. Although the water system is

less than ten years old, no one knows which houses are served from which water well because there is no map of the water distribution system. This is a problem because one of the 22 wells, well number 7, has been found by the Missouri Department of Natural Resources (DNR) to be contaminated by E. coli and residents served by that well are to boil their water before consumption. Since the water company does not know which houses are served by well number 7, it cannot be sure who should be boiling their water. In addition, the other 21 wells serving the system are built in the same manner and draw water from the same source. If well number 7 is contaminated, the others may be as well, and perhaps the entire system should be subject to a boil order. But since Ridge Creek Water and Ridge Creek Development have not performed required tests on their system since April 1, 2016, there is no way to know if the other wells are also contaminated.

11. Further, the lack of knowledge of the details of the water distribution system makes it difficult to maintain the system. In January 2017, a customer was left without water for 14 days while Ridge Creek Water and Ridge Creek Development failed to identify the source of the problem. Ultimately, it was determined that the customer was the only customer served by a well far from his home rather than from a nearby well. Once that was discovered, the customer's service was quickly restored when a ruptured valve was repaired.

12. The water system is in a state of disrepair. The well houses protecting the wells are rotting and are not maintained. In addition, the water mains are shallowly buried and are prone to freeze and rupture in cold weather.

13. The water system has not had a required certified operator in place since April 1, 2016. If something goes wrong with the system, there is no one capable of making repairs. Equally as important, there is no one to collect necessary water samples to ensure the safety of the water system. Such samples have not been taken for more than a year.

14. The Ridge Creek Water and Ridge Creek Development water system is out of compliance with multiple DNR regulations. An affidavit prepared by Lance Dorsey, Chief of the Compliance & Enforcement Section of the Public Drinking Water Branch of the Missouri Department of Natural Resources indicated the following violations:

- The Ridge Creek Entities are in violation of 10 CSR 60-4.020(7)(8) for failure to meet the maximum contaminant level (MCL) for *E.coli* bacteria during the sampling periods of November 2015 and January 2016;
- The Ridge Creek Entities are in violation of 10 CSR 60-4.020(7)(A) for failure to meet the MCL for total coliform bacteria during the sampling periods of October, November and December of 2015 and January and February of 2016;
- The Ridge Creek Entities are in violation of 10 CSR 60-14.010(4)(A) and 10 CSR 60-14.010(4)(A)1, since April 2016 and continuing, for failure to place the direct supervision of the System under the responsible charge of a chief operator that possesses a valid certificate equal to or greater than the classification of the System;
- The Ridge Creek Entities are in violation of 10 CSR 60-3.030(3)(A)3 for failure to have a sufficient number of operators to provide proper operation and maintenance of all source, treatment, storage and distribution facilities so that the System meets all requirements of Sections 640.100-640.140, RSMo and regulations promulgated thereunder;
- The Ridge Creek Entities are in violation of 10 CSR 60-4.022(3) for failure to collect routine drinking water samples for the testing of total coliform bacteria during the sampling periods of April through December of 2016 and for January through March of 2017;
- The Ridge Creek Entities are in violation of 10 CSR 60-8.010(2)(8)(3) for failure to repeat and recertify biweekly performance of public notification for the continuing Boil Water Order beginning June 17, 2016;
- The Ridge Creek Entities are in violation of 10 CSR 60-7.010(10) and 10 CSR 60-8.010(2) for failure to certify public notice for failure to meet the maximum MCL for *E.coli* bacteria during the sampling periods of November 2015 and January 2016; and

- The Ridge Creek Entities are in violation of 10 CSR 60-3.010(1)(D) for failure to submit an application for or obtain a Permit to Dispense water from the Department.

15. Four experienced Commission Staff inspectors offered their expert opinions that Ridge Creek Water and Ridge Creek Development are unable, or unwilling to provide safe and adequate service to their water customers.

16. Staff recommends the Commission appoint attorney Terry Jarrett as interim receiver and that it recommend to the circuit court that Mr. Jarrett be appointed as receiver. The Commission finds that Mr. Jarrett is knowledgeable about regulatory matters and will be an appropriate interim receiver to take control of these companies.

17. Michael and Denise Stoner have consented to the appointment of an interim receiver and receiver to take over Ridge Creek Water and Ridge Creek Development to provide service to their water customers. Their willingness to consent to the appointment of a receiver indicates their desire to cease providing service to their customers and raises the possibility that if a receiver is not quickly appointed, they may abandon the water system.

Conclusions of Law

A. Subsection 386.020(59), RSMo 2016 defines “water corporation” as including:

every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water.

B. Subsection 393.145.1, RSMo 2016 provides in relevant part:

If, after hearing, the commission determines that any sewer or water corporation that regularly provides service to eight thousand or fewer customer connections is unable or unwilling to provide safe and adequate service, has been actually or effectively abandoned by its owners, ... the commission may petition the circuit court for an order attaching the assets of the utility and placing the utility under the control and responsibility of a receiver. ...

C. Subsection 393.145.2, RSMo 2016 gives the Commission authority to appoint an interim receiver in the same order in which it authorizes its general counsel to pursue appointment of a receiver in circuit court as provided in subsection 1 of that statute.

D. Subsection 393.145.3, RSMo 2016 requires the Commission to attach an official copy of its determination under subsection 1 of that statute when it files its petition in circuit court for appointment of a receiver. The Commission may not file its petition in circuit court until that determination is final and unappealable.

E. Subsection 386.490.2, RSMo 2016 provides that Commission orders take effect 30 days after they are issued, unless some other effective date is established by the Commission.

F. The Missouri Court of Appeals has held that any shortening of the effective date of a Commission order to less than ten days is presumptively unreasonable. To overcome that presumption if challenged, the Commission would need to demonstrate that the circumstances surrounding the case are so extraordinary as to clearly warrant further encroachment on the time provided to the parties to exercise their right to apply for rehearing and/or appeal.¹

Decision

The Commission has found that Ridge Creek Water and Ridge Creek Development are water corporations as that term is defined by statute. They provide water service to fewer than 8,000 customer connections and are subject to the provisions of Section 393.145.1, RSMo 2016. Further, the Commission has found that Ridge Creek Water and Ridge Creek Development are unable or unwilling to provide safe and adequate service to their customers.

¹ *State ex rel. Office of Public Counsel v. Public Serv. Com'n*, 409 S.W.3d 522 (Mo. App. W.D. 2013).

In these circumstances, the Commission will grant Staff's Petition for an order directing its general counsel to petition the circuit court to appoint a receiver. The Commission will also appoint an interim receiver as contemplated by statute.

Normally, the Commission directs that its orders take effect at least ten days after they are issued to allow parties an opportunity to request rehearing and subsequently appeal its orders. In this case, the evidence demonstrates that the public health is at risk until an interim receiver is appointed to take charge of this water system and begin to provide safe and adequate water service. The Office of the Public Counsel, the only other party to appear at the evidentiary hearing, urges the Commission to appoint an interim receiver to protect the public. Further, the owners of Ridge Creek Water and Ridge Creek Development have indicated their consent to the appointment of an interim receiver for both companies and have chosen to not appear at the evidentiary hearing. In addition, there is a danger that if an interim receiver is not quickly appointed, the current owners may abandon the water system. For those reasons, and in these unusual circumstances, the Commission will make its order effective on May 13, 2017. That means if someone wants to request rehearing in this case, they will have ten days to request rehearing. However, the Commission will make its appointment of Terry Jarrett as interim receiver effective immediately, thus immediately protecting the public from the threat of unsafe and inadequate water service and the risk that the water system will be abandoned.

THE COMMISSION ORDERS THAT:

1. The Commission's General Counsel is directed to petition the Circuit Court of Cole County to appoint Terry Jarrett as receiver for Ridge Creek Water Company, LLC and for Ridge Creek Development, LLC.

2. Terry Jarrett, Healy Law Offices, LLC, 514 E. High Street, Suite 22, Jefferson City, Missouri 65101, is appointed as interim receiver for Ridge Creek Water Company, LLC and for Ridge Creek Development, LLC.

3. Terry Jarrett shall be paid as provided in the fee schedule attached to this order as attachment A.

4. This report and order shall become effective on May 13, 2017, except for the appointment of Terry Jarrett as interim receiver, which shall be effective immediately.

BY THE COMMISSION



A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Rupp, and Coleman, CC., concur;
Kenney and Stoll, CC., abstain,
and certify compliance with the
provisions of Section 536.080, RSMo

Dated at Jefferson City, Missouri,
on this 3rd day of May, 2017.