

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

In The Matter of The Joint Application of )  
South Jefferson County Utility Company and )  
the Summer Set Property Owners Association for ) Case No. \_\_\_\_\_  
Cancellation of a Certificate of Convenience and )  
Necessity and Associated Tariff Sheets. )

**APPLICATION TO CANCEL CERTIFICATE OF CONVENIENCE  
AND NECESSITY**

**COMES NOW** South Jefferson County Utility Company (“Company” or “SJCU” hereafter) and the Summer Set Property Owners Association (“Association”) pursuant to Commission rule 4 CSR 240-2.060 and jointly request the Missouri Public Service Commission (“Commission”) to cancel the Certificate of Convenience and Necessity issued to the Company for provision of water and sewer services to the Summer Set Subdivision Development, located in Jefferson County, Missouri, (“Summer Set”) and associated tariff sheets, and to approve the assumption and provision of water and sewer services by the Association, on a going-forward basis, within the Summer Set development for the exclusive benefit of the residents of Summer Set. In support thereof, the Applicants state as follows:

1. SJCUC is a Missouri corporation with its principal office and place of business at 43 Monte Rosa Drive, DeSoto, Missouri, 63020. SJCUC is qualified to conduct business in Missouri. In accordance with Commission Rule 4 CSR 240-2.060(1)(B), a Certificate from the Missouri Secretary of State which confirms that SJCUC is in good standing is attached hereto as Appendix 1. SJCUC is engaged, generally, in the business of

maintaining and operating a public water and sewer system for the sole benefit of residents of Summer Set. Effective April 3, 1974, this Commission granted SJCU a Certificate of Public Convenience and Necessity to provide a water system and sanitary sewage disposal system in a specified area of Jefferson County, Missouri (Summer Set), which area is more specifically described in the Commission's Report and Order in Case No. 17,787, attached hereto as Appendix 2. As such, SJCU's operations have been subject to the jurisdiction of the Commission as provided by law.

2. This information is current and correct. SJCU has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court that involve customer service or rates. SJCU's annual report and assessment fees are not overdue.

3. All pleadings, notices, orders and other correspondence and communications concerning this application should be addressed to the undersigned counsel.

4. The Association was organized in 1977 as a Missouri Not for Profit Corporation with its current principal office and place of business at 43 Monte Rosa Drive, DeSoto, Missouri, 63020. The Association is qualified to conduct business in Missouri. In accordance with Commission Rule 4 CSR 240-2.060(1)(B), a Certificate from the Missouri Secretary of State which confirms that the Association is in good standing is attached hereto as Appendix 3. The Association was organized generally for the purpose of operating a property owners association at the Summer Set development for the benefit of all members of the Association and their property. The Association is also authorized, by its Articles of Incorporation, "to take, acquire, hold, develop, sell, or any way deal with or dispose of any type of real estate or real property, or any type of personal property, chattel,

etc., without limit to the amount, within the State of Missouri . . .”, and to “do all and every thing necessary and suitable and proper for the accomplishment of these purposes . . .”. In accordance with 4 CSR 240-2.060(1)(J), a list of all members of the Association is attached hereto as Appendix 4. All members of the Association are owners of real property within the Summer Set development and are served by the water and sewer service provided therein.

5. This information is current and correct. The Association has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court. The Association’s annual report and assessment fees are not overdue.

6. On or about August 28, 1979, the Association purchased all outstanding shares of SJCU, and SJCU continued operation of the water and sewer service for Summer Set. Since that time, SJCU has managed and operated the water and sewer service for all Summer Set property owners, and thus for all members of the Association. Also since that time, SJCU has had no regulated water or sewer service customers outside Summer Set. The Association has not, as of the filing of this Application, received transfer of the physical assets of SJCU, nor operated the water and sewer service. However, the Association has, as the sole shareholder of SJCU, directed the operation and maintenance of the water and sewer service through the SJCU officers and board of directors.

7. Since directing operation of Summer Set’s water and sewer service, the Association has remained subject to the regulatory jurisdiction of this Commission, despite being operated solely for the private use and benefit of the Association’s members, and despite the fact that the Association has never operated this service “for gain,” but

operates the service only for the use and benefit of Association members and no others<sup>1</sup>.

8. The Association desires to assume full responsibility for the operation and assets of the water and sewer service. Because the Association proposes to operate the referenced water and sewer service only for private purposes, i.e. for Association members/property owners within Summer Set, and because the Association does not operate the service for gain or profit and takes no profit from the operation thereof, the Association is not properly subject to the regulatory jurisdiction of the Commission, and herein requests the Commission's approval to henceforth operate Summer Set's water and sewer service independent of any regulatory oversight by the Commission, and without the need for Commission approval prior to setting or modifying water or sewer service rates or otherwise administering its service being provided solely to Association members.

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<sup>1</sup>Section 386.250, RSMo. Supp. 2005, states that the jurisdiction of the Public Service Commission shall extend . . . "[t]o all water corporations, and to the land, property, dams water supplies, or power stations thereof and the operation of same within this state . . ." and "[t]o all sewer systems and their operations within this state and to persons or corporations owning, leasing, operating or controlling the same." Further, Section 386.020, RSMo. Supp. 2005 includes within the definition of "sewer corporation" and "water corporation" a requirement that such entities be engaged in the operation, control, or management of a water or sewer system **"for gain."** Thus, any water or sewer system which is operated solely for the private purposes and benefit of those using the system, and whose services are not being sold to the public for gain or profit, is outside of the Commission's regulatory jurisdiction. See *State ex rel. M. O. Danciger & Co. v. Public Service Comm'n.*, 205 S.W. 36 (Mo. 1918); *Khulusi v. Southwestern Bell Yellow Pages, Inc.*, 916 S.W.2d 227 (Mo. App. W.D. 1995).

9. The Association is qualified and capable of providing safe and reliable water and sewer service to its members, and in fact has been doing so since 1979.

10. Upon approval by the Commission of the relief requested herein, Applicants further agree that the Association shall be transferred all remaining physical assets of SJCU, including all pipes, lines, sewers, and all other physical assets necessary for the continued safe and reliable provision of water and sewer services to the Association's members.

**WHEREFORE,** For the above reasons, Applicants jointly request that the Commission cancel the Certificate of Convenience and Necessity issued in its Case No. 17,787 and associated tariffs; and, that it approve the Association's operation of the referenced water and sewer service solely for private purposes independent of the Commission's regulatory jurisdiction; and, for such other orders and relief as may be deemed necessary and appropriate in the circumstances.

Respectfully submitted,  
/s/ Gregory C. Mitchell  
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Attorneys for Joint Applicants South Jefferson County  
Utility Company and the Summer Set Property  
Owners Association

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by electronic mail, first class mail or by hand delivery, on this 19<sup>th</sup> day of July 2005 to the following:

General Counsel  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102-0360  
gencounsel@psc.mo.gov

Office of the Public Counsel  
200 Madison Street, Suite 650  
P.O. Box 2230  
Jefferson City, MO 65102  
opcservice@ded.mo.gov

/s/ Gregory C. Mitchell

VERIFICATION

STATE OF MISSOURI     )  
                                      ) ss  
COUNTY OF Jefferson)

I, Buford Dale Hunter, having been duly sworn upon my oath, state that I am President of South Jefferson County Utility Company; that I am duly authorized to make this Affidavit on behalf of South Jefferson County Utility Company; and that the matters and things stated in the foregoing Application are true and correct to the best of my information, knowledge and belief.

Buford D. Hunter  
Buford D. Hunter

Subscribed and sworn to before me this 5<sup>th</sup> day of October, 2005.

Shirley M. Boyer  
Notary Public

My Commission expires:

Feb 08, 2007

STATE OF MISSOURI )

) ss

COUNTY OF )  
Jefferson

I, Robert F. Avery, having been duly sworn upon my oath, state that I am President of the Summer Set Property Owners Association; that I am duly authorized to make this Affidavit on behalf of the Summer Set Property Owners Association; and that the matters and things stated in the foregoing Application are true and correct to the best of my information, knowledge and belief.

Robert F. Avery  
Robert F. Avery

Subscribed and sworn to before me this 5<sup>th</sup> day of October, 2005.

Shirley M. Boyer  
Notary Public

My Commission expires:

Feb 08, 2007