

**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. WD-2006-0157
Cancellation of a Certificate of Convenience and)	
Necessity and Associated Tariff Sheets.)	

**RESPONSE OF JOINT APPLICANTS
TO ORDER DIRECTING FILING**

COMES NOW South Jefferson County Utility Company (“Company” or “SJCU” hereafter) and the Summer Set Property Owners Association (“Association”) and, for their Response to the Commission’s “Order Directing Filing” with an issue/effective date of February 7, 2006, set forth the following:

1. On October 11, 2005, Joint Applicants SJCU and the Association filed their Joint Application to cancel the Certificate of Convenience and Necessity (“Application”) originally issued to SJCU for operation of a water and sewer service utility for residents of the Summer Set property development, and simultaneously requested this Commission to approve the transfer of SJCU’s assets to the Association in order to allow the Association to assume full authority to operate the water and sewer service henceforth without being subject to the Commission’s jurisdiction. Joint Applicants assert that the Association will not, under the circumstances set forth, be acting as a “water corporation” or “sewer corporation” under the relevant definitions in section 386.020, RSMo., and thus will not be subject to the Commission’s jurisdiction.

2. On November 1, 2005, the Commission Staff filed its recommendation in support of the Application, noting several factors weighing in favor of the relief sought by Joint Applicants. On November 23, 2005, the Commission issued its first "Order Directing Filing", which sought additional input from the parties concerning whether the Association operates the disputed water and sewer utility "for gain." Joint Applicants and Staff subsequently filed their responses to this first Order Directing Filing, each agreeing in essence that the conclusion in this matter should be governed by the prior Commission decision in *In re the Application of Rocky Ridge Ranch Property Owners Association*, Case Nos. WM-93-136 and WD-93-307 (in which the applying POA was found not to be operating the disputed utility "for gain", based on three specific factors first enunciated in that case). The parties also agreed that the facts surrounding the instant Application are distinguishable from the facts and holding of the Missouri Court of Appeals, Southern District, in the case of *Osage Water Co. v. Miller County Water Authority, Inc.*, 950 S.W.2d 569 (Mo. App. S.D. 1997).¹

3. Following review of the parties' pleadings in response to its first Order Directing Filing, the Commission issued its second "Order Directing Filing" with an issue and effective date of February 7, 2006, in which the Commission requested information concerning the potential tax impact of the relevant "political subdivision." This Order was premised on the Commission's determination that the parties' Joint Application in this docket should be treated as a "transfer [of assets] case", rather than purely a "certificate cancellation" case. By Response filed on February 24,

¹See "Response of Joint Applicants to Order Directing Filing", filed on or about December 19, 2005, and "Response to Order Directing Filing", filed by Staff on or about December 30, 2005.

2006, Joint Applicants advised the Commission that there would be no tax impact to Jefferson County, Missouri, in which the subject utilities are situated.

4. The Commission has now entered its third Order Directing Filing, with an issue and effective date of February 27, 2006. In the instant Order, the Commission reiterates its determination that this matter should be treated as a “transfer case,” and accordingly states that “. . . Commission rules 4 CSR 240-3.310 and 3.605 require, among other things, a copy of the contract or agreement of sale . . . [u]pon receiving the required statement, the Commission will proceed expeditiously with this application.”

Response

In response to the Commission’s Order, Joint Applicants hereby advise that the contemplated transfer of assets from the South Jefferson County Utility Company to the Summer Set Property Owners Association has not been embodied within an Asset Purchase Agreement or any other formal contract between the Company and the Association. Thus, under the language of the Commission’s rules, there is no “contract or agreement of sale” of which to provide a copy.

This is primarily because there will be no money changing hands as a result of the “transfer” of the physical assets of the water and sewer utilities from the Company to the Association. Under these circumstances such a sale would be akin to the Association “selling” the assets to itself. The transfer contemplated herein would merely conclude a process initiated in 1979, at which time all of the stock of the Company was sold to the Association, and after which time the Association has, for all intents and purposes, operated as the water and sewer utility provider solely for residents of the Summer Set development. The Company does not expect or request any compensation for what

will essentially be a "paper" transfer of the water/sewer physical assets. Neither would the Association's customers, i.e. its members/property owners, be served by such a transaction, which could result in the necessity of higher water/sewer assessments in order to recoup whatever purchase price would have been paid by the Association in securing transfer of the assets.

Attached hereto as Attachment A are copies of the relevant portions of documents entered into between the Company and the Association regarding the Association's purchase of the Company's stock, which, broadly construed, evince an intent by the parties for the Association to assume control of the Company's assets at that time as well. An example is Paragraph 1 of the "Assurance and Release" executed in August, 1979, in which the Company warrants to the Association that:

"... at the time of the transfer of [the stock of the Company] ... [the Company] owned full title to all water lines, sewer lines, all water wells, water pumping equipment, water storage facilities and all other items of equipment used in the delivery of water through the system, all sewage treatment facilities and all easements for all water lines and sewer lines, sewage treatment facilities and other appurtenances engaged in the provision of water or the treatment of sewage, and that same were completed in good operating condition as of the date of transfer."

See Attachment A. By this warranty, the Company was clearly contemplating the Association's use and control of the water and sewer physical assets following the sale of stock to the Association. And that, in fact, is what has occurred over the intervening years. It is now simply the Joint Applicants' intent and desire that the Association be permitted to complete the process of assuming full control of these utility services, thereby removing itself from the Commission's regulatory jurisdiction. Accordingly, the Company will be dissolved following cancellation of its original Certificate and entry of the other relief sought by Joint Applicants herein.

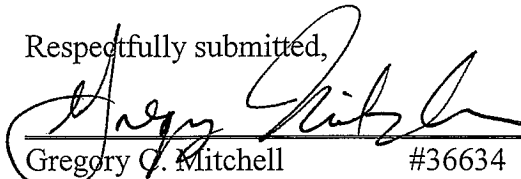
In addition, attached hereto as Attachment B are the Minutes of the Association's Board Meetings of January 20, 2005 and September 15, 2005, during which the Board voted to pursue the filing of the present Application and to take the necessary action required for its removal from the Commission's jurisdiction. These Minutes reflect a Board member's communication with a person who was apparently a member of the Commission's Staff concerning "how to get out of the Commission," along with Board's ultimate decision to retain the undersigned to assist in this matter. These Minutes are being provided in observance of paragraph (1)(C) of 4 CSR 240-3.310 and 3.605, and constitute evidence of the Association's formal approval of the request and relief being sought in this matter. Owing to the sale of all stock by the Company to the Association many years ago, to the fact that the Company has conducted no operations of any kind since such stock sale, and to the fact that the Association has operated the water and sewer utilities over the course of those intervening years and has maintained control and possession of the water and sewer assets throughout, there was no further action taken by the Company itself to "formally" approve the filing of this matter. However, the Commission will note Mr. Hunter's signature on each pleading filed herein to date, as President of the Company.

Therefore, under the circumstances as described above, Joint Applicants have not entered, and do not intend to enter, any formal written contract or agreement for the transfer or sale of the physical assets of the water and sewer utilities from the Company to the Association.

WHEREFORE, Applicants jointly request that the Commission cancel the Certificate of Convenience and Necessity issued in its Case No. 17,787 and associated tariffs; that it approve the transfer of water and sewer utility assets from the South Jefferson County Utility Company to the

Summer Set Property Owners Association; 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,



Gregory C. Mitchell #36634
BRYDON, SWEARENGEN & ENGLAND, P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
(573) 635-7166 Phone
(573) 634-7431 Fax

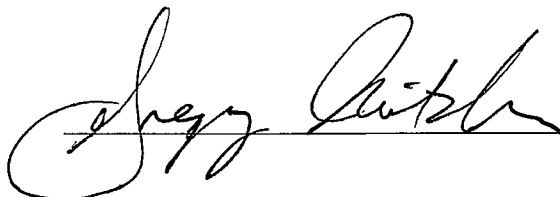
Attorneys for Joint Applicants South Jefferson County Utility
Company and the Summer Set Property Owners Association

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 14 day of March, 2006 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

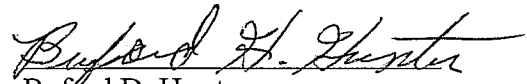
Office of the Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov



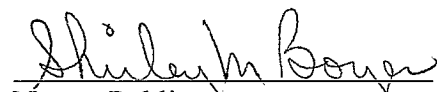
VERIFICATION

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

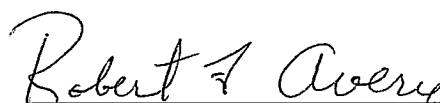
Subscribed and sworn to before me this 10th day of MARCH, 2006.


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

Subscribed and sworn to before me this 10th day of MARCH, 2006.

Shirley M Boyer
Notary Public

My Commission expires:

Feb 08, 2007