

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

In the Matter of the Application of Central)	
Jefferson County Utilities, Inc. for an)	
Order Authorizing the Transfer and)	
Assignment of Certain Water and Sewer)	Case No. SO-2007-0071, et al.
Assets to Jefferson County Public Sewer)	
District and in Connection Therewith,)	
Certain Other Related Transactions.)	

**RAINTREE PLANTATION
PROPERTY OWNERS ASSOCIATION, INC.'s
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

SUMMARY

In this Order, the Commission approves the application of Central Jefferson County Utilities, Inc. (Central Jefferson) for authority to transfer and assign its water and sewer assets to Jefferson County Public Sewer District subject however, to conditions which the Commission deems in the public interest.

PROCEDURAL HISTORY

[This section is being omitted by Raintree with the understanding that the applicant, if not other parties to the proceeding, will supply this history in their separate proposals.]

FINDINGS OF FACT

The Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The Commission in making this decision has considered the positions and arguments of all of the parties. 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.

The Parties

1. Central Jefferson is a Missouri corporation in good standing engaged generally in providing water and sewer services in service areas certificated by this Commission. It is a regulated public utility under the jurisdiction of the Commission.

2. Jefferson County Public Sewer District (the “Sewer District” or “District”) is a political subdivision of the state of Missouri with powers and authority conferred by Missouri statute. It was created by order and resolution of the County Commission of Jefferson County, Missouri filed on June 20, 2000.

3. Environmental Management Corporation (EMC) is also a Missouri Corporation and engages generally in the business of managing water and wastewater facilities under contract with owners of those facilities. It has engaged in this business for over twenty-five years.

The Tri Party Agreement

4. Central Jefferson, the District and EMC have entered an agreement (the “Tri-Party Agreement” or “Purchase Agreement”) whereby the water and sewer assets owned by Central Jefferson for provision of service in and around Raintree Plantation Subdivision, Jefferson County, Missouri, shall be transferred to the District. EMC and the District are in negotiations on an agreement in which EMC agrees to operate and maintain those systems and make upgrades and improvements to those systems so that they achieve compliance with applicable regulations of the Missouri Department of Natural Resources (DNR) and the US Environmental Protection Agency (EPA). The *Utility Operation, Maintenance and Capital Improvement Agreement* has not been finalized between the District and EMC.

5. There are approximately 3,500 lots in Raintree Plantation Subdivision (the “Subdivision”). Approximately 670 of those lots are presently served by Central Jefferson’s water and sewer systems.

6. Currently, no additional connections may be made by persons needing sewer service in the Subdivision by reason of orders issued by DNR and EPA. No additional connections to the sewer system can be made until such time as the wastewater treatment plant operated by Central Jefferson is expanded. Because of the inability to obtain sewer connections for their lots, current owners of undeveloped lots in the Subdivision have lost a substantial portion of the value of their investment in their lots because of the building moratorium.

7. The water system operated by Central Jefferson in the Subdivision is undersized for the demand in the area. An expansion of the water system is necessary to provide adequate water service to current and future residents. Furthermore, one of the wells serving the Subdivision exceeds the current state and Federal Action Level for lead.

8. The capacity of the wastewater treatment plant and the inadequate potable water storage and lead content of one of the wells in the water system are subjects of a proposed Compliance Agreement between DNR, the District and EMC.

9. Central Jefferson has no funding available by which to expand the wastewater treatment plant, expand the water distribution system and address the lead content in one of the wells.

10. Under the terms of the *Utility Operation, Maintenance and Capital Improvement Agreement*, EMC will provide up to \$1.8 Million in capital improvements for expansion of the wastewater treatment plant and for the expansion of the water system and otherwise for

improvements which would bring those facilities into compliance with DNR and EPA regulations.

11. After the assets are transferred, operation and management of the sewer and water distribution systems in the Subdivision will vest in the District. The District proposes to increase rates for service immediately at the following rates: a flat rate of \$37 per month for sewer service and \$6.30 per thousand gallons of water used. The District has proposed these rates in order to comply with the proposed *Utility Operation, Maintenance and Capital Improvement Agreement* now under consideration by the District and EMC. The District has not yet approved these rates and at this time they constitute proposed rates. The proposed rates have been designed to cover the capital improvement investment EMC expects to make in the facilities plus its operation and maintenance costs and expenses.

12. The District's proposed rate for water service was developed by using an average monthly water usage of 5,000 gallons per customer. The Staff concluded that the average monthly usage per customer was 6,250 gallons per month. If this average usage is employed the rate for water service can be calculated at \$5.04 per thousand gallons.

13. As part of the expansion of the sewer treatment facilities and the water distribution facilities, the District will need to acquire property from the Association. Property for the expansion of the sewer treatment plant is already available. The location for the proposed expanded storage facilities and other water facilities has not yet been identified. The District has not contacted the Association about the property it may need from the Association to construct or install these facilities.

DISCUSSION

14. The Commission judges the applications in this matter under criteria set forth in 4 CSR 240-3.310 (applying to sewer corporations) and 4 CSR 240-3.605 (applying to water corporations). The Commission must approve the proposed sale of the assets if it is not detrimental to the public interest.

15. The parties identified two issues in this case: 1) Would the proposed transfer of the Company's water and sewer assets to the District be detrimental to the public interest; and 2) If the transfer of assets, as proposed, would be detrimental to the public interest, could the Commission impose conditions such that the transfer, as approved, would not be detrimental to the public interest?

16. After thoughtful consideration of the evidence the Commission finds and determines that absent the conditions described hereinafter the transaction as proposed would be detrimental to the public interest.

17. In its Statement of Position on the Issues Intervener Raintree Plantation Property Owners Association, Inc. (the Association or POA) listed a series of conditions which it argued should be imposed on the transaction. During the hearing, Mr. Toma, witness for the District testified that the District would agree to and accept several of the Association's conditions and accordingly, the Commission sees no reason why they should not be imposed. Those conditions, which are referred to and lettered in the sequence found in the Association's Statement of Position, are as follows:

- f. The POA and its members shall have the ability to participate in the process by which the District adjusts rates, fees and charges related to water and sewer service.
- g. EMC and the District shall establish a schedule and funding device under which wastewater treatment capacity and water distribution and storage capacity are increased to accommodate projected growth in Raintree Plantation.

- h. The transfer of assets shall not close until the "Compliance Agreement" between the District, EMC and the Missouri Department of Natural Resources is executed.
- i. The transfer of assets shall not close until the Operation and Maintenance Agreement (also referred to in the evidence as *Utility Operation, Maintenance and Capital Improvement Agreement*) between the District and EMC is executed. Moreover, the Operation and Maintenance Agreement must cover timely response and repair of blocked collection lines and leaking or otherwise faulty transfer stations.¹
- j. The potable water supply of Raintree is increased to the capacity suggested in the "Compliance Agreement" and the lead content is reduced to the minimal levels set by federal and state regulation.

18. The Association also submitted for Commission consideration other conditions that it argued must be included as part of the transfer. The first condition was:

The water and sewer rates proposed by the District should not be effective until milestones have been established and met; for example, when scheduled improvements are in service and operational. Furthermore, at the end of the improvements phase, recurring monthly rates should not exceed \$37.00 per month for sewer and \$5.04² per 1,000 gallons for water.

The Commission agrees with this condition. The parties are directed to amend their agreement such that after closing the District shall be authorized to make effective half of the increase in rates for water and sewer. The other half of the increase may not go into effect until after EMC completes the Utility Asset Improvements referred to on page B-1 of Exhibit 5. At that time the rates shall be set at \$37.00 per month for sewer services and \$5.04 per thousand gallons of water. These rates shall be locked in for the term of the EMC operation and maintenance agreement, a period of twenty years.

¹ The Commission understands that the conditions in h. and i. have been complied with already.

² The rate for water service the Association originally included in this condition was \$6.30 per thousand gallons. This rate was analyzed by staff witness Dale Johansen who testified that it was not based on a correct average monthly usage figure. He recommended a rate of \$5.04 per thousand, (Tr. 552) and the Association agrees with the recommendation.

19. The Association proposed that

Connection fees, including tap on fees, reserves for future growth and the "Real estate contract utility system connection fees", per agreement between the District and Raintree Plantation, Inc. (the developer), do not exceed \$3,000.

In its brief, the Association modified this condition and agreed that the charge set by the District for connection fees, tap fees and reserves could be as high as \$3,600 which is the highest amount the District intends to charge for new connections to both the water and sewer system. However, with respect to the reserves, the District must restrict those reserves exclusively for capacity additions or repairs to the water and wastewater systems serving the Subdivision. Additionally, at the time the wastewater treatment plant is built out to serve 2,400 customers, --- its maximum capacity-- any balance of the reserves collected by the District should be returned to the customers either as a credit on prospective billings or as some sort of patronage dividend. The Commission agrees that these conditions should be imposed on the parties

20. Another condition proposed by the Association was:

Any portion of EMC's initial investment of \$1.8 Million that is not used in or needed for the expansion of the wastewater treatment and potable water facilities, shall be used to fund the recommended improvements contained in the Sanitary Sewer Study and Improvement Plan (SSSIP) that will be completed by EMC following completion of the expansion project pursuant to the Compliance Agreement.

The Compliance Agreement requires EMC and the District to prepare and submit a Sanitary Sewer Study and Improvement Plan within a year of the transfer of the assets. The parties will need a source of funding for the study and construction of the improvements contained in the SSSIP. If there is a balance of the \$1.8 Million remaining after the Utility Asset

Improvements are constructed that balance should be earmarked for funding the SSSIP and the improvements to the system called for in that study. Also, the Commission notes that the proposed increased rates for service are based upon EMC's expenditure of \$1.8 Million toward system improvements. As an alternative to the above, if the Utility Asset Improvements can be satisfactorily installed and constructed for less than \$1.8 Million, the rates for service should be reduced proportionately.

21. The Association contended that

In the event funding above EMC's initial investment of \$1.8 Million is needed to complete the wastewater treatment plant expansion and the recommendations of the SSSIP, and the District intends to charge customers to obtain that additional funding, such charges shall be designed to collect the additional funds in phases and not in a special one time charge, rate or assessment.

Mr. Toma, witness for the District, explained that in his negotiations with EMC, the parties have apparently reached a verbal understanding that if EMC believes it requires funds in excess of \$1.8 Million to complete the contracted for improvements, EMC must appear before the District Board of Trustees and demonstrate the need. Thereafter the contract would be amended to include those extra amounts net of profit or overhead. If such a situation developed the ratepayers would be surcharged a fixed dollar amount for a limited period of time and it was consistent with the expectations of the District that the surcharge would appear as a separate line item on the billing. It appears to the Commission that the District has also agreed to this condition and therefore it should be incorporated into the operation and maintenance agreement between the District and EMC if it is not incorporated already.

22. Since the location of the water system improvements referred to Exhibit B of the *Utility Operation, Maintenance and Capital Improvement Agreement* is not presently known, and the property on which those improvements will eventually be constructed is titled in the

Association, the Association contends that the location of the additional potable water pump house and storage tank, if any, must be approved by the Association. The Commission agrees. In locating those facilities, factors such as noise, frequency of maintenance and access as well as aesthetics should be taken into account. The Association is the best suited to judge the effects of those factors on its membership, and as a condition on the transfer of assets, the location of the pump house and water storage/mixing facility should be approved by the Association in advance.

23. The final Association proposed condition to be considered is that the Commission find and determine that the District and EMC have the capabilities of designing, constructing and operating the new water and wastewater facilities, and have the ability to forecast with reasonable accuracy and prepare for the subdivision's future potable water distribution and wastewater collection and treatment requirements. The Commission so finds.

IT IS THEREFORE ORDERED

1. Central Jefferson is granted permission, approval and authorization to transfer and assign the water and sewer assets identified in the Purchase Agreement identified as Appendix 1 to its application in this case subject, however, to the conditions agreed to by the District during hearing and the conditions identified by the Commission in the discussion above.

2. Effective upon closing of the transaction, Central Jefferson's certificate shall be deemed cancelled and it shall terminate its service and responsibility as a public utility in the state of Missouri.

3. Central Jefferson is further authorized to enter into, execute and perform in accordance with the terms of all other documents which may be reasonably necessary and incidental to the performance of the transactions which are the subject of the Purchase

Agreement and this Application as well as the conditions on those transactions imposed by this Order.

4. That any pending motions the Commission has not specifically ruled upon are denied.

5. That this report and order shall become effective on _____, 2007.

BY THE COMMISSION

Secretary/Chief Regulatory Law Judge