

**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 Assets to )  
Jefferson County Public Sewer District )  
and in Connection Therewith, Certain )  
Other Related Transactions. )

**Case No. SO-2007-0071**

**POST HEARING BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL**

Central Jefferson County Utilities, Inc. (Central Jefferson) proposes to transfer the water and sewer assets to the Jefferson County Sewer District (Sewer District) with capital improvements and operations and maintenance to be provided by Environmental Management Corporation (EMC). Neither the Sewer District nor EMC is regulated by the Missouri Public Service Commission (Commission).

The Commission's Rules 4 CSR 240-3.310(D) and 4 CSR 240-3.605(D) requires applications for transfer of a public utility's assets to include a showing that the transfer is not detrimental to the public interest. In its pretrial position statement, the Office of the Public Counsel (Public Counsel) stated its position that the proposed transfer would be detrimental to the public interest. Public Counsel also stated its position that the Commission has the authority to impose conditions on the proposed transfer which are designed to remove the aspects of the transfer that are detrimental to the public interest.

After cross-examination of the witnesses and consideration of the entire evidentiary record, Public Counsel argues that the Commission should allow the transfer, but only if the Commission imposes conditions which remove aspects of the transfer that are detrimental to the public interest.

**IS THE TRANSFER, AS PROPOSED, DETRIMENTAL**  
**TO THE PUBLIC INTEREST?**

Prior the evidentiary hearing, the parties (other than EMC) agreed that there were only two “Ultimate Issues of Fact” that needed to be resolved in order for the Commission to make its decision in this case. The first ultimate issue of fact centered on the determination of whether the proposed transfer would be detrimental to the public interest. After cross-examination of the witnesses and consideration of the entire evidentiary record, Public Counsel argues that the Commission should find that the transfer, as proposed, is detrimental to the public interest.

**1. The proposed transfer is detrimental to the public interest because it removes the Commission’s rate supervision and protection of the customer at a time when Public Counsel alleges overearnings under existing rates.**

A. The Tri-Party Agreement states that rates will increase beyond current rates already alleged as overearnings.

Public Counsel has pending complaints with the Commission against Central Jefferson which allege that Central Jefferson’s current water and sewer rates and charges are unjust and unreasonable and produce overearnings reflecting a rate of return in excess of that authorized by the Commission. This complaint was filed as a result of a Public Service Commission Staff (Staff) audit of Central Jefferson which determined that both the water and sewer operations were overearning. (Tr. 737) In spite of this alleged overearning, the Tri-Party Agreement between Central Jefferson, the Sewer District and EMC states that the Sewer District will approve an increase in rates and allows that increase immediately on day one after the transfer is complete. (Tr. 154-155) The Sewer

District stated that EMC would receive a profit of 12% as well as an interest rate of 6% above and beyond the portion of the rates they would receive. (Tr. 274) EMC's compensation would begin immediately upon transfer of the assets. (Tr. 108) Mr. Thomas of EMC stated that EMC would not recoup any costs it incurred prior to the transfer. (Tr. 150) So, rates may go up even before EMC has any costs it needs to recoup. (Tr. 155) Mr. Toma stated that there would not be a large amount of capital outflow on the first day, but agreed that there would be a rate increase on the first day. (Tr. 278) It has been estimated that there will be approximately 1½ years before sewage could be treated by the improved wastewater treatment plant and 2 years before water improvements would be completed. (Tr. 105-106) Therefore, customers will be required to begin paying higher rates at a time when overearnings are already alleged. Also, payment of this higher rate will begin long before the owners at Raintree Subdivision see any significant benefits.

B. There is no finalized document saying how much the rates will increase or how often the rates may be increased.

The Tri-Party Agreement among Central Jefferson, the Sewer District and EMC states that the Sewer District will approve an increase in rates. However, the agreement does not state the exact increase the ratepayers will have to bear. The charges to the customer will include fees for EMC, the Sewer District and Raintree Plantation, Inc. But, over and over again, EMC and the Sewer District stated that the amount customers would have to pay was not set yet. The proposed fees specific to EMC were stated to be: \$37 flat fee for sewer; \$5.80/1000 gallons for water; and a tap-on fee of \$1500. (Tr. 107) But, at the hearing, Mr. Thomas of EMC stated he did not know whether the exact fees

for establishing service would be \$1500, \$2000 or even \$2500. (Tr. 20-23) Mr. Toma of the Sewer District stated that the Sewer District had not made a decision on what fees it was going to collect for water and sewer service. (Tr. 202, 230 & 255) Mr. Toma stated at the hearing, that the rate amounts were changing and dynamic. (Tr. 273) Also, Mr. Toma stated that even if the proposed rates would become permanent, they would be subject to change in the future. (Tr. 202-203)

During the hearing, the rate study provided by the Sewer District showed money being collected from the ratepayers for a reserve fund for capital improvements. However, there is no set agreement whether the reserve fund would be collected and no documentation on exactly what the money in the reserve fund would be used for. Mr. Toma stated that only preliminary conversations with the board had occurred as to whether money would be pledged to a capital improvement fund. (Tr. 217) Mr. Toma also stated that there was an intention of the Sewer District to set aside the \$1000 connection fee for capital improvements, but said that the Sewer District could not commit to setting it aside. (Tr. 220-221) Therefore, there is no finalized agreement that any money collected by the Sewer District would go into a capital improvement reserve fund, nor is there any guidance on how the money would be used.

C. The rate study provided by the Sewer District has no documentation for the numbers used and is not realistic based on the hearing testimony.

The Sewer District is purporting to base the rates for utility service on numbers it received in a rate study by EMC. However, no sufficient documentation was given to support the numbers contained in that rate study. Mr. Toma of the Sewer District stated that he did not know whether any audit was performed on the numbers and stated that the

Sewer District did not have any way of knowing whether they were accurate. (Tr. 221-212) The Sewer District did not review any documentation beyond the rate study pages provided by EMC. (Tr. 275-276) No documentation was provided by the Sewer District or EMC which would allow a thorough review of the reasonableness of the proposed fees. (Tr. 740)

A noticeable problem with the rate study revolves around the calculation of the depreciation. The depreciation numbers used in the rate study are based on \$1.8 million in plant. (Tr. 741) However, the maximum that EMC must spend is \$ 1.8 million minus the amount paid for the water tower debt minus “customary and reasonable fees”. (Tr. 165-166) Therefore, the actual amount that EMC is required to spend on actual plant equipment which is to be depreciated is much lower than \$1.8 million. This makes the depreciation amount actually much less than what the rate study suggests. (Tr. 742)

Another problem with the rate study revolves around the rate calculation based on the monthly gallons of water usage. The rate study performed by EMC used 5000 gallons per month for the calculation of proposed rates. However, actual usage was calculated by OPC and Staff to be closer to 6250 gallons per month. (Tr. 551, 738-740) Mr. Toma of the Sewer District agreed that, if the actual usage was closer to 6250 gallons per month, the estimated monthly household charge would be increased beyond that shown in the rate study. (Tr. 210-211)

**2. The proposed transfer is detrimental to the public interest because the Tri-Party Agreement is not specific enough to provide the Commission with assurance the public will not be harmed.**

A. The Tri-Party Agreement relies on other factors which have not been finalized.

The Tri-Party Agreement states that the Sewer District will increase rates but it does not state what those rates will be, nor does it state what the money will be used for. Mr. Toma of the Sewer District stated that the Sewer District had not made a decision on what fees it was going to collect for water and sewer service. (Tr. 202, 230 & 255) Mr. Toma stated at the hearing, that the rate amounts were changing and dynamic. (Tr. 273)

Testimony was given at the hearing relating to collecting money from the ratepayers for a reserve fund for capital improvements. The rate study provided by the Sewer District and EMC showed money being collected for a reserve fund. However, there is no set agreement whether the reserve fund would be collected and no documentation on exactly what the money in the reserve fund would be used for. Mr. Toma stated that there had only been preliminary conversations with the board as to whether money would be pledged to a capital improvement fund. (Tr. 217) Also, Mr. Toma stated that there was an intention of the Sewer District to set aside the \$1000 connection fee for capital improvements, but said that the Sewer District could not commit to setting it aside. (Tr. 220-221) Therefore, there is no finalized agreement that any money collected by the Sewer District would go into a capital improvement reserve fund.

The agreement between the Sewer District and Raintree Plantation, Inc. provides for a portion of the money collected from the ratepayers to be given to Raintree Plantation, Inc. (Tr. 205) According to this agreement with Raintree Plantation, Inc., the Sewer District will pay \$1100 or \$800/\$550 to Raintree Plantation, Inc. of the money

collected from the customer. According to the agreement, Raintree Plantation, Inc. is to be allowed to recoup there costs up to a certain maximum amount. However, there is no agreement between the Sewer District and Raintree Plantation, Inc. setting the maximum amount Raintree Plantation, Inc. will be entitled to recoup from the ratepayers. (Tr. 268-269)

- B. The Tri-Party Agreement does not contain a minimum amount EMC is required to spend and is not specific on exactly how much EMC will spend on the capital improvements.

The Tri-Party Agreement provides for only the maximum that EMC will spend on capital improvements. Mr. Thomas of EMC agreed that there was no specified minimum amount that EMC must spend on upgrades at Raintree Plantation Subdivision. (Tr. 75) Therefore, EMC is not bound by the Tri-party Agreement to spend anything on capital improvements. According to the agreement, EMC could spend nothing and still receive a security interest in all the money paid by the ratepayers. (Tr. 152-153)

Even though the Tri-Party Agreement states that EMC must spend a maximum of \$1.8 million on the capital improvements, EMC does not actually have to spend that amount on plant or equipment improvements. The maximum that EMC must spend is \$1.8 million minus the amount paid for the water tower debt minus “customary and reasonable fees”. (Tr. 165-166) What are “customary and reasonable fees” is to be determined by EMC and the Sewer District. Therefore, the actual amount that EMC is required to spend on upgrading the utility equipment is much lower than \$1.8 million.

- C. There are no specifics on how the Sewer District and/or EMC will address the remaining phases of the Raintree Plantation Subdivision development.

The Tri-Party Agreement lacks any agreement between the parties for continued improvements to the utility to accommodate all planned phases of Raintree Plantation. The maximum amount set in the agreement will only provide the utility with enough capacity to meet current needs plus a small expansion of lots that can be connected. Mr. Thomas of EMC stated that there were no plans for future expansion beyond this current expansion, but said that planning needs to be done. (Tr. 143) The existing Raintree Plantation plan contains many more lots than is accounted for in the agreement. Planning for this known expansion should be done in order to prevent the owners at Raintree Plantation Subdivision from finding themselves in this same situation in the future.

**3. The proposed transfer is detrimental to the public interest because the same parties will still be in the background, collecting money from the ratepayers and retaining control over service, but they will no longer be regulated by the Public Service Commission.**

A. The same parties that were involved the situation at Raintree Plantation Subdivision will still be involved.

Even though the Commission is being asked to approve the transfer of assets of Central Jefferson to the Sewer District, the principals of Central Jefferson will still be profiting and controlling the utility. There are assets or rights to the utility which Central Jefferson itself does not own. (Tr. 260-261) The Sewer District believes Raintree Plantation, Inc. owns some assets or rights pertaining to recouping some of Raintree Plantation, Inc.'s costs and a settlement agreement with AquaSource. (Tr. 261-262) Since the principals who own Raintree Plantation, Inc. are the same principals who own Central Jefferson, the same people will continue to collect money from the ratepayers of



Raintree Subdivision. Only now, these people will no longer have to concern themselves with the requirements of the Commission.

Mr. Toma has also played many roles throughout the problematic history of Raintree Plantation Subdivision and this transfer means that he will continue to play a significant role. Mr. Toma was previously the Vice President of Essex Contracting. (Tr. 280) Essex Contracting was owned by two of the principals of Central Jefferson and Raintree Plantation, Inc. (Tr. 234) During his time at Essex Contracting, Mr. Toma had managerial duties at Central Jefferson. (Tr. 233) These managerial duties included managing the field work at the utility for Central Jefferson. (Tr. 279) Mr. Toma was a Project Manager of the sales program for Raintree Plantation, Inc. (Tr. 279) Currently, Mr. Toma is not only the Chairman of the Sewer District but also is the Director of the Department of Land Use & Code Enforcement for Jefferson County.

B. The principals of Central Jefferson will continue to collect money from the ratepayers through Raintree Plantation, Inc.

The agreement between the Sewer District and Raintree Plantation, Inc. states that a portion of the money collected from the ratepayers will be given to Raintree Plantation, Inc. According to this agreement with Raintree Plantation, Inc., the Sewer District will pay \$1100 or \$800/\$550 to Raintree Plantation, Inc. of the money collected from the new customer. Also, according to the agreement, the money collected and given to Raintree Plantation, Inc. could mean that ratepayers would be subsidizing costs directly related to liability for the problems at Raintree Plantation. Ratepayers could be asked to fund for Raintree Plantation, Inc. costs of inquiries to DNR or EPA, two agencies that have alleged violations connected with Raintree Subdivision. (Tr. 265-266) Ratepayers could

be asked to fund for Raintree Plantation, Inc. attorneys' fees incurred fighting against the alleged violations connected with Raintree Subdivision. (Tr. 266-267) There is no agreement between the Sewer District and Raintree Plantation, Inc. setting the maximum amount Raintree Plantation, Inc. will be entitled to recapture from the ratepayers. (Tr. 268-269) So, given that the same principals own Raintree Plantation, Inc. and Central Jefferson, the same people will continue to collect money from the ratepayers.

C. The principals of Central Jefferson will continue to have control over service determinations through money collected by the Sewer District on behalf of Raintree Plantation, Inc.

The Sewer District has an agreement with Raintree Plantation, Inc. which will pay \$1100 or \$800/\$550 to Raintree Plantation, Inc. of the money collected from the customer. This money is a connection fee which must be paid in order for a customer to receive utility service. If a person believes Raintree Plantation, Inc. doesn't deserve, or is not owed, the connection fee and they refuse to pay, they will not be allowed to connect and EMC would be authorized to deny service. (Tr. 157 & 263) So, given that the same principals own Raintree Plantation, Inc. and Central Jefferson, the same people will retain control over who is allowed water and sewer service.

**COULD THE COMMISSION IMPOSE CONDITIONS SUCH THAT  
THE TRANSFER, AS APPROVED, WOULD NOT BE DETRIMENTAL  
TO THE PUBLIC INTEREST?**

The second ultimate issue of fact agreed to by the parties (other than EMC) prior to the evidentiary hearing centered on the determination of whether, if the transfer of assets, as proposed, is detrimental to the public interest, the Commission could impose

conditions such that the transfer, as approved, would not be detrimental to the public interest.

As stated above, Public Counsel argues is that the Commission should find that the transfer, as proposed, is detrimental to the public interest. However, the Commission does have the authority to impose conditions on the proposed transfer which are designed to remove the aspects of the transfer that are detrimental to the public interest. Therefore, after cross-examination of the witnesses and consideration of the entire evidentiary record, Public Counsel argues that the Commission should allow the transfer, but only if the Commission imposes conditions which remove aspects of the transfer that are detrimental to the public interest.

Conditions should be required in the agreement among Central Jefferson, the Sewer District and EMC, as well as required of each party, that will provide the Commission with assurance that the proposed transfer will not harm the public. Public Counsel recommends the following conditions :

1. The Commission should place conditions on the amount and timing of any rate increase.

Since the sewer utility is under an Environmental Protection Agency (EPA) moratorium preventing additional connections to the sewer system, it would be in the public interest for the Commission to require any rate increases be postponed until the EPA moratorium is lifted. In this manner, ratepayers would pay for utility service at the current rate, but they would be assured that their payments are used for the upgrade of the system. Because of the overearnings allegations, EMC will be recouping a portion of its capital improvement costs even at the current rates. Once

the EPA moratorium is lifted, the Sewer District would be able to raise rates which would then allow EMC to recoup its remaining costs for the capital improvements.

2. The Commission should set a minimum amount or percentage of the maximum that EMC must spend on capital improvements.

The ratepayers should be given an assurance that, if the transfer is approved, at least a minimum amount of money will be spent on the capital improvements. EMC should not be allowed to spend nothing and still meet its contractual obligations, thereby receiving a security interest in the money to be collected.

3. The Commission should require a preliminary plan on how the Sewer District will address the remaining phases of the Raintree Plantation Subdivision development.

Raintree Plantation Subdivision contains many more phases beyond the capacity of the proposed capital improvements. Owners should not have to accept such a short term solution, only to find themselves back in the same situation due to lack of planning. Since Raintree Plantation Subdivision would be moving out of the control and protection of the Public Service Commission, owners would have even less protection than they do now.

4. The Commission should remove control of who gets service from Raintree Plantation, Inc./Central Jefferson.

Since Raintree Plantation, Inc. is owned by the same principals who own Central Jefferson, the same people would retain control over the utility but would no longer be regulated by the Commission. The Commission should require that connection to service not be dependent on customers paying the connection fee collected to allow Raintree Plantation, Inc. to recoup costs pertaining to Raintree Plantation Subdivision. If Raintree

Plantation, Inc. believes that they are owed money from the owners of Raintree Plantation Subdivision, they should have to go through the proper legal channels to prove their case and collect what they are owed.

5. The Commission should impose any other conditions that the Commission deems necessary and proper and which will ensure that the transfer is less likely to be detrimental to the public interest.

Respectfully submitted,

OFFICE OF THE Public Counsel

**/s/ Christina L. Baker**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 19<sup>th</sup> day of January 2007:

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