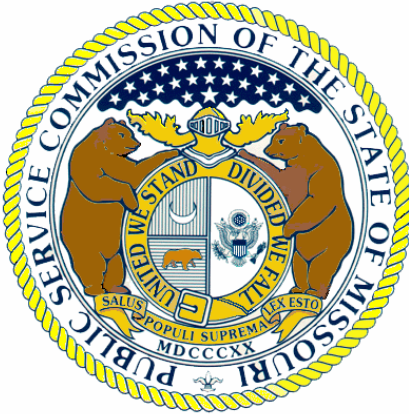


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



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

REPORT AND ORDER

Issue Date: February 8, 2007

Effective Date: February 28, 2007

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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) **Case No. SO-2007-0071, et al.**
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REGULATORY LAW JUDGE: **Harold Stearley, Judge**

REPORT AND ORDER

Procedural History

On August 15, 2006,¹ Central Jefferson County Utilities, Inc. (“Central Jefferson”) filed applications seeking authorization to transfer and assign certain assets of its water and sewer operations to the Jefferson County Public Sewer District (“Sewer District”), Case Nos. SO-2007-0071 and WO-2007-0072. The applications included a copy of a proposed “Tri-Party Purchase and Sale Agreement” involving the transfer of the assets to the Sewer District, and the Sewer District entering into a long-term operation, maintenance and capital improvements agreement with Environmental Management Corporation (“EMC”). To facilitate the proceedings, the Commission consolidated these cases, designating Case No. SO-2007-0071 as the lead case.

On August 17, the Commission issued notice and joined the Sewer District and the Missouri Department of Natural Resources (“DNR”) as parties to the action. The Commission also set an intervention deadline for September 6. On September 19, after filing a timely motion to intervene, Raintree Plantation Property Owners Association (“POA”) was granted intervention. EMC was joined as a party on December 4, in response to the Office of the Public Counsel’s unopposed motion to add EMC as a party. John Kolisch filed a late request to intervene on December 14, which was denied.

The parties identified two primary issues in this case: 1) Would the proposed transfer of Central Jefferson’s water and sewer assets to the Sewer 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

¹ All dates in this order refer to the year 2006 unless otherwise noted.

approved, would not be detrimental to the public interest? The proceedings culminated with an evidentiary hearing to address these issues on December 19-20.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

1. Central Jefferson is a Missouri corporation engaged in providing water and sewer service in the areas of Missouri certificated to it by the Commission, specifically the provision of these services to the Raintree Plantation Subdivision (“Subdivision”).²

2. Central Jefferson’s principal office and place of business is located at 1519 McNutt Road, Herculaneum, Missouri 63048.³

3. Central Jefferson is owned equally in one-third shares by Jeremiah Nixon, Kenneth McClain and the trust of Norville McClain, Kenneth McClain’s father.⁴

4. Raintree Plantation, Inc. (“Raintree”) is a Missouri corporation and is the developer of the Subdivision.⁵

5. Raintree was incorporated at approximately the same time as Central Jefferson and is owned by the same three individuals.⁶

² Hearing Exhibit 2, Application p. 1, para. 1, Appendix 1 Tri-Party Purchase and Sale Agreement, Article I; Transcript p. 26, lines 6-12.

³ Hearing Exhibit 2, Application p. 1, para. 1; Hearing Exhibit 3, Interim Operation and Maintenance Agreement, p.1, para. 1 (Proprietary and Confidential); Hearing Exhibit 9, Letter from DNR to Central Jefferson, August 12, 1997; Transcript p. 323, lines 24-25, p. 324, lines 1-4.

⁴ Transcript p. 300, lines 3-17, p. 304, lines 1-4, p. 381, lines 17-25, p. 382, lines 1-6, p. 386, lines 22-25, p. 387, lines 1-10, p. 446, lines 1-11.

⁵ Hearing Exhibit 8, Sewer and Water Service Fee Agreement; Hearing Exhibit 10, Connection Fee Agreement; Transcript p. 26, lines 6-12, p. 261, lines 15-24, p. 386, lines 22-25, p. 387, lines 1-10.

⁶ Transcript p. 26, lines 6-12, p. 300, lines 3-17, p. 386, lines 22-25, p. 387, lines 1-10, p. 446, lines 1-11.

6. The Subdivision is a planned development consisting of approximately 3,400 lots located in Jefferson County, Missouri.⁷

7. Raintree installed water mains to serve all of the 3,400 lots in the Subdivision, and has installed sewer mains to serve about 3,000 of the lots; however, 400 lots do not yet have access to sewer mains.⁸

8. Pursuant to the Lot Reservation Agreement executed by Raintree with each lot purchaser, all water and sewer lines were to have been completed by 1983.⁹

9. Raintree donated the water and sewer mains to Central Jefferson.¹⁰

10. To recover its costs from installing the water and sewer mains, Raintree requires the buyers of each lot to pay a connection fee for connecting to the water and sewer mains.¹¹

11. Raintree's connection fee is collected pursuant to an "Intrastate Exemption Statement" executed by Raintree and the purchaser of the lot.¹²

12. Raintree's connection fee totals \$1,100.00 and is composed of a \$700.00 fee for sewer service, \$300.00 fee for water service and a \$100.00 fee for fire hydrant connection.¹³

⁷ Hearing Exhibit 2, Application p. 3, para. 8; Transcript p. 26, lines 6-10, p. 32, lines 17-23, p. 115, lines 14-18, p. 182, lines 6-13, p. 184, lines 18-25, p. 185, lines 1-7, p. 586, lines 9-16, p. 702, lines 23-25.

⁸ Transcript p. 29, lines 14-18, p. 145, lines 2-24, p. 182, lines 6-13, p. 184, lines 18-25, p. 185, lines 1-7, p. 601, lines 17-25, p. 602, lines 1-12.

⁹ Local Public Hearing Exhibit 3 submitted by Tom Kenefick.

¹⁰ Transcript p. 387, lines 19-24, p. 419, lines 14-25. p. 420, lines 1-5.

¹¹ Hearing Exhibit 12, Interstate Exemption Statement; Transcript p. 402, lines 12-25, p. 403, lines 1-23.

¹² *Id.*

¹³ Hearing Exhibit 10, Sales Agreement; Hearing Exhibit 12, Intrastate Exemption Statement; Transcript p. 262, lines 3-8, p. 402, lines 12-25, p. 403, lines 1-23.

13. Raintree invested approximately four million dollars in the water and sewer facilities in the Subdivision.¹⁴

14. Raintree has sold all but approximately 30 lots in the Subdivision.¹⁵

15. The Subdivision currently has approximately 681 fully constructed homes that receive water and wastewater services from Central Jefferson.¹⁶

16. Central Jefferson utilizes two wells for the Subdivision's water supply.¹⁷

17. The water from Well No. 1 contains lead in excess of the 15 parts per billion that is permitted in drinking water by the Missouri Department of Natural Resources ("DNR") and; consequently, when water is used from this well it must be mixed with water from Well No. 2 to have an acceptable lead content.¹⁸

18. Water from Well No. 2 is used exclusively, except on days of high demand; however, this well has only one pump, and should this pump fail then only water from Well No. 1 would be available for drinking.¹⁹

19. The water system currently has a storage tank with the capacity of 50,000 gallons, but the DNR states that the Subdivision should have a storage tank with a capacity

¹⁴ Transcript p. 404, lines 24-25, p. 405, lines 1-16, p. 602, lines 13-25.

¹⁵ Transcript p. 388, lines 24-25, p. 389 lines 1-2.

¹⁶ Hearing Exhibit 2, Application p. 3, para. 8; Transcript p. 32, lines 17-23, p. 115, lines 14-18, p. 182, lines 6-13, p. 184, lines 18-25, p. 185, lines 1-7, p. 187, lines 9-13.

¹⁷ Transcript, p. 27, lines 1-10, p. 33, lines 4-12, p. 148, lines 22-25, p. 149, lines 1-15.

¹⁸ Hearing Exhibit 9, Letter from DNR to Central Jefferson, August 12, 1997; Transcript p. 148, lines 22-25, p. 149, lines 1-15, p. 172, lines 6-23, p. 429, lines 19-25, p. 430, lines 1-25, p. 431, lines 1-25, p. 432, lines 1-25, p. 433, lines 1-3, p. 440, lines 6-22.

¹⁹ Hearing Exhibit 9, Letter from DNR to Central Jefferson, August 12, 1997; Transcript p. 186, lines 2-13, p. 432, lines 1-24.

to hold at minimum one day's water supply, which is 200,000 gallons.²⁰ Average daily demand for the Subdivision in 2005 was 202,560 gallons, with peaks of 300,000 gallons in the summer months.²¹

20. Central Jefferson's sewage treatment plant was originally constructed with an inflow capacity of 32,000 gallons per day, which was subsequently increased to 64,000 gallons per day.²² The 64,000 gallon per day design flow was for a design population equivalent to 636 people.²³

21. As a result of continued construction of homes in the Subdivision, the sewage inflow to the treatment plant exceeds its design capacity by averaging an inflow of 100,019 gallons per day or 56% over its daily design flow.²⁴ Based on this inflow, the Subdivision currently has a population equivalent of 2320 people, which is 265% over its design population equivalent.²⁵

22. The wastewater treatment facility has exceeded its average design flow every month since July 2000, and this is dry weather flow.²⁶

²⁰ Hearing Exhibit 9, Letter from DNR to Central Jefferson, August 12, 1997; Staff's Brief, Appendix B, Compliance Agreement, p. 2; Missouri Department of Natural Resources' Statement of Compliance filed September 6, 2006; Transcript p. 41, lines 10-14, p. 140, lines 13-19, p. 140, lines 20-23, p. 174, lines 9-15, p. 269, lines 15-21, p. 717, lines 9-25, p. 718, lines 1-12.

²¹ Missouri Department of Natural Resources' Statement of Compliance filed September 6, 2006.

²² Transcript p. 33, lines 4-18, p. 323, lines 3-8, p. 622, lines 14-25, p. 623, lines 1-17, p. 462, lines 16-25, p. 463, lines 1-25, p. 464, lines 1-21, p. 659, lines 17-25, p. 660, lines 1-2.

²³ Missouri Department of Natural Resources' Statement of Compliance filed September 6, 2006.

²⁴ Staff's Brief, Appendix B, Compliance Agreement page 3; Transcript p. 33, lines 4-18, p. 462, lines 16-25, p. 463, lines 1-25, p. 464, lines 1-21, p. 622, lines 14-25, p. 623, lines 1-17, p. 659, lines 17-25, p. 660, lines 1-2.

²⁵ Missouri Department of Natural Resources' Statement of Compliance filed September 6, 2006.

²⁶ Missouri Department of Natural Resources' Statement of Compliance filed September 6, 2006; Transcript p. 622, lines 24-25, p. 623, lines 1-17, p. 650, lines 23 -25, p. 651, line 1.

23. Central Jefferson failed to submit its Discharge Monitoring Reports in a timely manner 85% of the time between 2000 and 2004.²⁷

24. Central Jefferson did not make reasonable efforts to eliminate or prevent the entry of surface or ground water into its sanitary sewer system, and has been unable to eliminate or prevent the entry of surface or ground water into its sanitary sewer system. In fact, Central Jefferson abandoned efforts to resolve this defect in its system.²⁸

25. The Norville McClain Trust, a one-third owner of Central Jefferson's common stock, refuses to invest additional money in the water and sewer systems for the Subdivision, and consequently, it is impossible for the remaining owners to provide the necessary improvements and expansion of the water and sewer facilities.²⁹

26. On September 27, 2004, the DNR issued a Notice of Violation to Central Jefferson finding it had violated the Missouri Clean Water Law, Sections 644.051(1) and (2) and 644.076.1, RSMo,³⁰ and 10 CSR 20-7.031(3)(A),(B), and (C) for having caused pollution of Galligher Creek.³¹

27. On August 4, 2005, the DNR issued a Notice of Violation to Central Jefferson finding it had violated the Missouri Clean Water Law, Section 644.076.1, and 10 CSR 20-

²⁷ Missouri Department of Natural Resources' Statement of Compliance filed September 6, 2006.

²⁸ Transcript p. 435, lines 13-16; p. 450, lines 8-25, p. 451, lines 1-25, p. 452, lines 1-7, p. 462, line 24, p. 464, lines 5-11, p. 473, lines 17-25, p. 474, lines 1-8; p. 622, lines 17-23, p. 623, lines 14-17. Transcript Volume 2, Local Public Hearing, p. 21, lines 11-18, p. 85, lines 20-25, p. 86, lines 1-7. Central Jefferson has not demonstrated that it made any attempt to address the issue of potential breaks in the system's extension lines, or even made an effort to fully identify the source of the leaks into its system. There is no evidence to support Mr. McClain's position that the addition of a clarifier would alleviate this problem, and if that was in fact the solution, there is no excuse for Central Jefferson's abandonment of correcting this defect simply because it was frustrated with permitting process to install the clarifier.

²⁹ Transcript p. 441, lines 4-23, p. 443-449.

³⁰ All statutory references are to RSMo 2000 unless otherwise noted.

³¹ Hearing Exhibit 19, September 27, 2004 DNR Notice of Violation; Transcript p. 624, lines 1-25, p. 625, lines 1-11, p. 631, lines 9-25, p. 632, lines 1-25.

7.015(9)(A)(1) and 9.020(2) for failing to retain a certified operator to supervise the operation and maintenance of the wastewater treatment facility and for failing to submit complete or timely Discharge Monitoring Reports for May and June 2005.³²

28. On October 26, 2005, the DNR issued a Notice of Violation to Central Jefferson finding it had violated the Missouri Clean Water Law, Sections 644.051(1) and (2) and 644.076.1, and 10 CSR 20-6.010(1)(A) and 5(A) for having discharged wastewater into an unnamed tributary of Galligher Creek without a Missouri State Operating Permit, and for having caused pollution to the same tributary.³³

29. In total, the DNR has issued Central Jefferson a dozen Notices of Violation in connection with its operations in the Subdivision.³⁴

30. While Central Jefferson would not concede the violations charged by DNR, it did concede that it has been operating its sewer system above its design capacity and that it has failed to control ground and surface water entry into its system.³⁵

³² Hearing Exhibit 20, August 4, 2005 DNR Notice of Violation; Transcript p. 625, lines 20-25, p. 626, lines 1-11.

³³ Hearing Exhibit 21, October 26, 2005 DNR Notice of Violation; Transcript p. 626, lines 20-25, p. 627, lines 1-18.

³⁴ Hearing Exhibits 19, 20, 21; Transcript p. 622-632, p. 650-651, p. 655 and p. 656, lines 1-14.

³⁵ Response of Central Jefferson County Utilities, Inc. to Missouri Department of Natural Resources Statement of Compliance, filed September 18, 2006; Response of Central Jefferson County Utilities, Inc. to Order Directing Response from Central Jefferson County Utilities, filed December 11, 2006; Transcript p. 434, lines 15-25, p. 435, lines 1-16; p. 450, lines 8-25, p. 451, lines 1-18; p. 462, lines 16-25, p. 462, lines 1-16., p. 464, lines 1-21, p. 473, lines 17-25, p. 474, lines 1-8; Transcript Volume 2, Local Public Hearing, p. 21, lines 11-18, p. 85, lines 20-21, p. 86, lines 1-7. On cross examination, Mr. McClain admitted that the wastewater treatment facility was operating above its maximum daily permitted flow for a number of years. He also stated that daily flow was only exceeded during flood conditions. He also stated the system's compliance varied, "It (daily flow) goes up, it goes down. You know it's not always consistent." When asked by DNR's counsel Mr. Schmid, "So are you saying sometimes it's above 64,000 gallons per day and sometimes it's not," he replied: "Sure, right, at night's it not." He further stated "Theoretically, the plant is out of compliance, but the standards are still met." See Transcript p. 462-464. The Commission will deem Mr. McClain's initial statement as an admission against interest, and his qualifying testimony as being self-serving, unreliable and lacking in credibility.

31. Central Jefferson does not presently satisfy the DNR's safe drinking water standards or sewage discharge standards.³⁶

32. On November 30, 2005, the United States Environmental Protection Agency ("EPA") issued a Finding of Violation and Order of Compliance, Docket No. CWA-07-2006-0060, finding that Central Jefferson discharged pollutants into the waters of the United States in violation of Section 301 of the Clean Water Act, 33 U.S.C. Section 1311 and Section 402 of the Clean Water Act, 33 U.S.C. Section 1342.³⁷

33. As part of the November 30, 2005 Order of Compliance, the EPA imposed a moratorium on connections to the sewage treatment facilities until the facilities were expanded and improved.³⁸

34. The EPA's ordered moratorium prohibits all new sewer connections to the wastewater treatment plant "unless and until a professional engineer registered and in good standing in the State of Missouri certifies in advance that the new connection to the sewage collection system will not result in the wastewater treatment plant exceeding its existing design average daily hydraulic capacity limit of 64,000 gallons per day."³⁹

35. On March 2, 2006, the EPA issued a second Finding of Violation and Order of Compliance, Docket No. CWA-07-2006-0060, finding that Central Jefferson discharged pollutants into the waters of the United States in violation of Section 301 of the Clean Water

³⁶ Hearing Exhibits 19, 20, 21; Transcript p. 622-632, 650-651, p. 655, lines 1-25, p. 656, lines 1-14.

³⁷ Hearing Exhibit 22, EPA Finding of Violation and Order for Compliance, CWA-07-2006-0060, issued November 30, 2005, effective upon receipt and served on December 1, 2005.

³⁸ Hearing Exhibit 22, EPA Finding of Violation and Order for Compliance, CWA-07-2006-0060, issued November 30, 2005, effective upon receipt and served on December 1, 2005; Transcript p. 27, lines 7-10, p. 33, lines 19-23, p. 34, lines 14-20, p. 61, lines 12-17, p. 142, lines 19-25, p. 188, lines 2-9, p. 427, lines 5-25, p. 428, lines 1-25, p. 429, lines 1-18, p. 474, line 25, p. 475, lines 1-7, p. 479, lines 3-9, p. 658, lines 19-25, p. 659, lines 1-25, p. 660, lines 1-25.

³⁹ *Id.* at ordered paragraph 2, page 9 of the Order of Compliance; Transcript p. 33, lines 4-12, p. 323, lines 3-8, p. 462, lines 16-25, p. 463, lines 1-16, p. 622, lines 14-25, p. 623, lines 1-21, p. 658, lines 19-25, p. 659, lines 1-25, p. 660, lines 1-2,

Act, 33 U.S.C. Section 1311 and Section 402 of the Clean Water Act, 33 U.S.C. Section 1342.⁴⁰

36. At the local public hearing held in conjunction with this matter on November 6, 2006, the home and property owners in the Subdivision provided sworn testimony expressing numerous complaints involving the quality and safety of the water and sewer service provided by Central Jefferson. Those complaints/problems include, but were not limited to:

- a. infrastructure deterioration and lack of maintenance of that infrastructure;
- b. inadequate trunk lines;
- c. ineffective straining system for nonorganic waste;
- d. micro-bacterial and inorganic contamination of the drinking water;
- e. unsafe lead level in Well 1;
- f. inadequate water storage capacity;
- g. inadequate sewer capacity resulting in the need to haul sludge out of the subdivision;
- h. homeowners having to clean manhole covers and collection boxes by hand to prevent the backup of sewage into their homes, three or four times a year since 1998;
- i. pump grinders that burn up;
- j. backflow of sewage into basements;
- k. raw sewage contaminating lawns, creeks and lakes;
- l. Central Jefferson's failure to flush out fire hydrants; and,

⁴⁰ Hearing Exhibit 22, Finding of Violation and Order for Compliance, CWA-07-2006-0060, issued March 2, 2006, effective upon receipt and served on March 2, 2006.

- m. Central Jefferson's failure to provide safe and adequate water and sewer service.⁴¹

37. Central Jefferson responded to the complaints raised at the local public hearing, generally denying all allegations; however, it did not deny that its sewer treatment facility was operating beyond its daily inflow capacity, that it had less than one day's storage capacity for drinking water, or that it was unable to control ground and surface water entry into its sewer system. Central Jefferson also did not deny that the homeowners in the Subdivision were having to maintain the collection boxes to prevent sewage from backing up into their homes.⁴²

38. Central Jefferson does not provide safe and adequate water and sewer service.⁴³

39. Unable or unwilling to invest in improvements to the water and sewer facilities, Central Jefferson's owners have attempted to sell the companies' assets.⁴⁴

40. Central Jefferson and Aquasource Utility, Inc. ("Aquasource") executed a Stock Purchase Agreement whereby Aquasource was to acquire Central Jefferson's assets.⁴⁵

⁴¹ Transcript, Volume 2, Local Public Hearing, November 6, 2006. See p. 80, lines 9-21 and p. 94-100, p. 101, lines 102 for specific comments concerning collection boxes.

⁴² Response of Central Jefferson County Utilities, Inc. to Order Directing Response from Central Jefferson County Utilities, filed December 11, 2006.

⁴³ Transcript p. 172, lines 6-25, p. 173, lines 1-25, p. 174, lines 1-23, p. 432, lines 1-25, p. 433, lines 1-17, p. 650, lines 7-25, p. 652, lines 1-20, p. 657, lines 15-25, p. 658, lines 1-18, p. 749, lines 15-24.

⁴⁴ Hearing Exhibit 13, Central Jefferson's Expansion Activities Timeline; Transcript p. 27, lines 16-22; p. 427, lines 14-25, p. 428, lines 1-12.

⁴⁵ Hearing Exhibit 10, Connection Fee Agreement; Transcript p. 29, lines 8-18, p. 397, lines 5-14. Note: No copy of the Stock Purchase Agreement was offered into evidence.

41. Aquasource is a Delaware corporation, and its affiliate Aqua Missouri, Inc., is a Missouri corporation, engaged in providing water and sewer service in the areas of Missouri.⁴⁶

42. On June 17, 1999, Raintree, Central Jefferson, and Aquasource executed a second agreement (“Connection Fee Agreement”) in addition to, or as a part of, the Stock Purchase Agreement whereby Aquasource agreed to construct the remaining sewer mains that were needed in the Subdivision and Raintree would assign to Aquasource its rights to the connection fees paid to Raintree by the purchasers of those lots.⁴⁷

43. On February 14, 2000, Aquasource terminated its Stock Purchase Agreement with Central Jefferson by letter; however, the Connection Fee Agreement concerning constructing the remaining lines remained in dispute.⁴⁸

44. On May 15, 2001, Raintree, Central Jefferson, and Aquasource executed a Settlement Agreement and Amendment (“Settlement Agreement”) in an attempt to settle a lawsuit arising from a claim of breach of the Connection Fee Agreement.⁴⁹

45. The Settlement Agreement reaffirms the obligations imposed by the Connection Fee Agreement pertaining to the installation of new sewer lines and collection of connection fees, provides for the dismissal of Count II of the lawsuit, and provides that all

⁴⁶ Hearing Exhibit 8, Sewer and Water Service Fee Agreement.

⁴⁷ Hearing Exhibit 10, Connection Fee Agreement; Transcript p. 156, lines 15-25, p. 217, lines 4-8, p. 236, lines 6-25, p. 237, line 4-13, p. 238, lines 17-20, p. 239, lines 20-25, p. 240, lines 1-23, p. 257, lines 7-20, p. 261, lines 2-7, p. 391, lines 10-22, p. 400, lines 12-25, p. 401, lines 1-25.

⁴⁸ Hearing Exhibit 14, Letter for Aquasource to Central Jefferson Dated February 14, 2000; Transcript p. 467 lines 3-25, p. 468, lines 1-25, p. 469, lines 1-12, p. 558, lines 7-25, p. 559, lines 1-16, p. 580, lines 1-25, p. 581, lines 1-8, p. 695, lines 3-25, p. 696, lines 1-4.

⁴⁹ Hearing Exhibit 11, Settlement Agreement and Amendment; p. 400, lines 12-25, p. 401, lines 1-25, p. 467, lines 3-25, p. 468, lines 1-25, p. 469, lines 1-12.

disputes arising under the terms of the Connection Fee Agreement be submitted to arbitration.⁵⁰

46. By virtue of the Connection Fee Agreement and the Settlement Agreement, Aquasource is responsible for installing the remaining 400 sewer lines.⁵¹

47. Aquasource and Raintree still have an ongoing dispute regarding who will pay for the engineering costs associated with the installation of the remaining sewer lines.⁵²

48. On July 13, 2006, Central Jefferson, the Sewer District and EMC executed a “Tri-Party Purchase and Sale Agreement, whereby Central Jefferson would transfer certain assets of its sewer and water operations to the Sewer District in return for the Sewer District paying Central Jefferson’s debt or approximately \$102,000.00 owed on the water tower serving the water system.”⁵³

49. The Sewer District is a countywide sewer district formed by the Jefferson County Commission in June of 2000, pursuant to Sections 249.430 to 249.668.⁵⁴

50. The Sewer District Trustees are appointed by the County Commission, and the County Commission exercises control over the Sewer District, which has powers to

⁵⁰ Hearing Exhibit 11, Settlement Agreement and Amendment; p. 400, lines 12-25, p. 401, lines 1-25.

⁵¹ Hearing Exhibits 10 and 11; Transcript p. 146, lines 5-12, p. 147, lines 5-10, p. 182, lines 6-13, p. 215, lines 4-18, p. 216, lines 5-11, p. 237, lines 1-25, p. 391, lines 10-22, p. 400, lines 12-25, p. 401, lines 1-25.

⁵² Hearing Exhibit 2, Appendix 1, Tri-Party Purchase and Sale Agreement, Article V, paragraph 5.1(i); Hearing Exhibit 8, Sewer and Water Service Fee Agreement, para. 2; Transcript p. 413, lines 2-25; p. 414, lines 1-13, p. 433, lines 18-25, p. 434, lines 1-14.

⁵³ Hearing Exhibit 2, Application p. 2 para. 5, Appendix 1; Transcript p. 73, lines 4-25, p. 74- 77, p. 78, lines 1-2, p. 311, lines 7-22, 452, lines 18-24, p. 541, lines 20-25, p. 542, lines 104.

⁵⁴ Hearing Exhibit 2, Application p. 5, para. 14; Hearing Exhibit 5, Utility Operations, Maintenance and Capital Improvement Agreement; Hearing Exhibit 7, Bylaws of the Board of Trustees for Jefferson County Public Sewer District.

“pass all necessary rules and regulations for the proper management and conduct of the business of the sewer district.”⁵⁵

51. EMC is a Missouri corporation that partners with municipalities to manage water and wastewater systems.⁵⁶

52. EMC’s principal office and place of business in Missouri is located at 1001 Boardwalk Springs Place, O’Fallon, Missouri 63368.⁵⁷

53. EMC has the necessary experience and capabilities with designing, constructing, operating and maintaining water and wastewater facilities to take over Central Jefferson’s assets, bring the current water and wastewater systems into compliance with environmental regulations and expand these systems to accommodate current and expected future growth in the Subdivision.⁵⁸

54. As part of the Tri-Party Purchase and Sale Agreement, EMC will construct improvements to the water and sewer systems at a cost up to \$1.8 million, and will operate, improve, and maintain the water and sewer facilities for a period of 20 years.⁵⁹

55. As part of the Tri-Party Purchase and Sale Agreement, the Sewer District and EMC entered into a long-term operation, maintenance and capital improvement agreement

⁵⁵ Hearing Exhibit 2, Application, p. 5 para. 14; Section 249.515; Transcript p. 84, line 8.

⁵⁶ Hearing Exhibit 1, EMC Corporate Description; Transcript p. 65, lines 9-15, p. 66- 67, p. 68, lines 1-15.

⁵⁷ Hearing Exhibit 1, EMC Corporate Description; Hearing Exhibit 3, Interim Operation and Maintenance Agreement, p. 1, para. 1; (Proprietary and Confidential); Hearing Exhibit 5, Operation, Draft Maintenance and Capital Improvement Agreement, p. 1, para. 1.

⁵⁸ Hearing Exhibit 1, EMC Corporate Description; Transcript p. 65, lines 9-15, p. 66- 70, p. 71, lines 1-4, p. 556, lines 3-11, p. 644, lines 17-25. See the testimony of Forrest Todd Thomas generally, Transcript p. 65-192.

⁵⁹ Hearing Exhibit 2, Application p. 2 para. 5, Appendix 1; Transcript p. 73, lines 4-25, p. 74-77, p. 78, lines 1-2.

whereby the Sewer District will compensate EMC and provide sufficient revenue to compensate EMC for capital improvements to the water and sewer systems.⁶⁰

56. Paragraph 5.4 of Article V, Contingencies, of the Tri-Party Purchase Agreement, referred to as the PSC Approval Contingency, provides that: “Central Jefferson shall have one-hundred eighty (180) days following the Effective Date to obtain the consent of the Public Service Commission to Sewer District’s acquisition of the Facility and the other property, if such approval is required.”⁶¹

57. Paragraph 5.4 of Article V, Contingencies, of the Tri-Party Purchase Agreement provides: “In the event the PSC Approval Contingency is not satisfied, there shall be no obligation on the part of Sewer District or EMC to close the transaction contemplated by this Agreement.”⁶²

58. On August 31, 2006, Central Jefferson and EMC entered into an interim Agreement for Operation and Maintenance of Water and Water Treatment Facilities, whereby Central Jefferson engaged EMC to provide for the maintenance and operation of its water and wastewater systems beginning on September 1, 2006, to such date as the Tri-Party Purchase and Sale Agreement closed or was dissolved.⁶³

59. At the time of hearing, the Sewer District and EMC intended to execute a permanent operation and maintenance agreement that would become effective at the time

⁶⁰ Hearing Exhibit 2, Application p. 2 para. 5, Appendix 1; Hearing Exhibit 5, Draft Utility Operation, Maintenance and Capital Improvement Agreement; Staff’s Post Hearing Brief, Appendix A, Permanent Utility Operation, Maintenance and Capital Improvement Agreement, executed 1-17-07; Transcript p. 73, lines 4-25, p. 74-77, p. 78, lines 1-2, p. 200, lines 7-23.

⁶¹ Hearing Exhibit 2, Application, Appendix 1, Tri-Party Purchase Agreement, Paragraph 5.4 of Article V, Contingencies; Transcript p. 182, lines 23-25, p. 183, lines 1-25, p. 184, lines 1-12.

⁶² *Id.*

⁶³ Hearing Exhibit 3, Interim Agreement for Operation and Maintenance of Water and Wastewater Treatment Facilities (Proprietary and Confidential); Transcript p. 79, line 8-25, p. 80, line 1.

Central Jefferson's assets were transferred to the Sewer District. A copy of the proposed agreement was admitted into evidence as Exhibit 5.⁶⁴

60. The Sewer District and EMC executed the permanent Utility Operation, Maintenance and Capital Improvement Agreement ("Permanent O & M Agreement") on January 16, 2007. The contract has a term of 20 years.⁶⁵

61. The Permanent O & M Agreement provides, *inter alia*, that EMC will operate and maintain the Sewer District's water and sewer facilities in the Subdivision and that the Sewer District would compensate EMC in the amounts of \$37.00 per home per month for sewer service, fixed rate for 20 years; \$6.30 per 1000 gallons of water, comprised of a charge of \$5.80 per 1000 gallons and a 50 cent per 1000 gallons administration charge for the Sewer District; and a tap-on fee of \$1,500.00 per new home construction.⁶⁶

62. EMC's compensation arrangement in the Permanent O & M Agreement is identical to EMC's draft pricing proposal for water and sewer rates presented at hearing that were to take effect upon implementation of the Tri-Party Agreement.⁶⁷

63. EMC's draft pricing proposal also includes an additional \$1,000.00 tap-on fee paid to the Sewer District to create a capital reserve fund. The capital reserve fund would be used for new construction for plant expansion or replacement of existing facilities.⁶⁸

⁶⁴ Hearing Exhibit 5, Draft Utility Operation, Maintenance and Capital Improvement Agreement; Transcript p. 200, lines 7-23.

⁶⁵ Staff's Post Hearing Brief, Appendix A, Permanent Utility Operation, Maintenance and Capital Improvement Agreement.

⁶⁶ *Id.*

⁶⁷ Hearing Exhibit 4, EMC Draft Pricing Proposal for Raintree Plantation Subdivision, p.1; Transcript p.120-126, p. 127, lines 1-5, p. 142, lines 4-25, p. 143, lines 21-25, p. 144-145, p. 146, lines 1-11, p. 177, lines 6-10, p. 210, lines 14-25, p. 211, lines 1-25, p. 212, lines 1-24.

⁶⁸ Hearing Exhibit 4, EMC Draft Pricing Proposal for Raintree Plantation Subdivision p.1; Transcript p. 209, lines 8-25, p. 210, lines 1-4 , p. 220, lines 18-25.

64. To the extent that the Sewer District's 50 cent per 1000 gallons administration charge is not required for administrative expenses, the remaining amount would also go into the Sewer District's capital reserve fund.⁶⁹

65. EMC's draft pricing proposal also allows the Company to recover 6% return on capital investment and a 12% operating profit.⁷⁰

66. The Permanent O & M Agreement does not fix the rates that the Sewer District will charge its customers in the Subdivision.⁷¹

67. On July 13, 2006, the Sewer District and Raintree executed a Sewer and Water Service Fee Agreement.⁷²

68. The Sewer and Water Service Fee Agreement delineates the specific connection fees that the Sewer District will collect that will then be paid through to Raintree.⁷³

69. The Sewer and Water Service Fee Agreement provides, *Inter alia*:

a. For each of the 400 lots that lack access to sewer mains, which Aquasource is required to construct, the Sewer District will pay Raintree \$1,100.00.⁷⁴

⁶⁹ Hearing Exhibit 4, EMC Draft Pricing Proposal for Raintree Plantation Subdivision; Transcript p. 121, lines 5-25, p. 122, lines 1-4, p. 242, lines 2-25, p. 243, lines 1-2.

⁷⁰ Hearing Exhibit 4, EMC Draft Pricing Proposal for Raintree Plantation Subdivision p.1. Transcript p. lines 3-10.

⁷¹ Staff's Post Hearing Brief, Appendix A; Transcript p. 208, lines 14-25, p. 209, lines 1-25, p. 210, lines 1-13.

⁷² Hearing Exhibit 8, Sewer and Water Service Fee Agreement; Transcript p. 204, lines 17-25, p. 205, lines 1-19.

⁷³ Hearing Exhibit 8, Sewer and Water Service Fee Agreement; Transcript p. 215, lines 4-25, p. 216-217, p. 218, lines 1-3, p. 237-240, p. 241, lines 1-3, p. 254, lines 16-25, p. 255-258, p. 262, lines 3-25, p. 263-268, p. 269, lines 1-12, p. 389, lines 18-25, p. 390-392, p. 393, lines 1-19, p. 405, lines 17-25, p. 406, lines 1-16, p. 422, lines 2-25, p. 423, lines 1-18.

⁷⁴ *Id.*

b. For each lot that is currently served by the existing water and sewer system, the Sewer District will pay Raintree \$800.00 until such time that Raintree's expenses, identified in paragraph 4 of the agreement, are paid. These expenses include: (1) engineering expenses already incurred; (2) engineering expenses for the new water and sewer systems to be completed by Aquasource; (3) cost of satisfaction of contingencies required for the Sewer District to take control of Central Jefferson's assets; (4) costs related to the closing and transfer of Central Jefferson's assets; (5) costs of responding to any investigative inquiries from any governmental entity within 5 years of the effective date of the agreement; and, (6) current and future attorney's fee related to the above mentioned expenses. Engineering expenses to date are \$61,705.36 and attorney's fees to date are \$65,031.73. This payment will absolve the lot owner's obligation to pay \$1,100.00 to Raintree pursuant to the Intrastate Exemption Statement.⁷⁵

c. For each lot that is currently served by the existing water and sewer system, after the expenses listed in (b) are paid, the Sewer District will pay Raintree \$550.00. This payment will absolve the lot owner's obligation to pay \$1,100.00 to Raintree pursuant to the Intrastate Exemption Statement.⁷⁶

d. Payments to Raintree, or its designee, from the Sewer District shall cease on the 15th year anniversary of the effective date of the agreement.⁷⁷

70. A breakdown of the various known connection fees a new customer in the Subdivision would pay is as follows:

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

a. A new customer would pay \$1,500.00 to the Sewer District, which it would pass through to EMC pursuant to the Permanent O & M Agreement.⁷⁸

b. A new customer would pay \$1,000.00 to the Sewer District, which would be deposited into the Sewer District's capital reserve fund.⁷⁹

c. A new customer would pay \$1,100.00, \$800.00 or \$550 to the Sewer District, which it would pass through to Raintree. Raintree would pass through \$1,100.00 to Aquasource for each of the 400 lots for which Aquasource is required to construct sewer mains, and would keep all of the payments of \$800.00 or \$550.00 as determined by Sewer and Water Service Fee Agreement.⁸⁰

71. A new customer in the Subdivision would pay minimum connection fees of \$3,050.00, or \$3,300.00, or \$3,600.00.⁸¹

72. None of the various agreements before the Commission establishes the exact connection fee that the Sewer District will charge each new customer; they only establish what connection fees will be collected by EMC, paid by the Sewer District to Raintree, or which pass through to Aquasource.⁸²

73. The payment of connection fees to Raintree by the Sewer District, as described in the Sewer and Water Service Fee Agreement will absolve the lot owner's current obligation to pay \$1,100.00 to Raintree pursuant to the Intrastate Exemption Statement.⁸³

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Hearing Exhibit 8, Sewer and Water Service Fee Agreement.

⁸² Hearing Exhibit 8, Sewer and Water Service Fee Agreement; Transcript, p. 208, lines 14-23.

⁸³ Transcript p. 390, lines 1-25, p. 391, lines 1-25, p. 392, lines 1-24, p. 405, lines 17-25, p. 406, lines 1-16.

74. While the Sewer District has determined what connection fees will be collected and paid to EMC and Raintree, and what connection fees will go into its capital reserve fund, the actual total amount for connection fees the Sewer District will charge each new customer has not yet been determined.⁸⁴

75. Currently, the Sewer District plans to charge each customer \$6.30 per 1000 gallons of water, comprised of a charge of \$5.80 per 1000 gallons and a 50 cent per 1000 gallons administration charge for the Sewer District.⁸⁵

76. The Sewer District based its pricing on a predicted average use of 5000 gallons per month per household, which would result in a minimum bill of \$31.50 per month at the rate of \$6.30 per thousand gallons.⁸⁶

77. The Staff of the Missouri Public Service Commission testified that an average household would use 6250 gallons per month, resulting in a minimum monthly bill of \$39.38 at the rate of \$6.30 per thousand gallons.⁸⁷

78. The Office of the Public Counsel's witness, Ted Robertson, testified that average customer usage would be approximately 7000 gallons per month.⁸⁸

⁸⁴ Transcript, p. 208, lines 14-23.

⁸⁵ Hearing Exhibit 4, EMC Draft Pricing Proposal for Raintree Plantation Subdivision; Transcript p. 30, lines 17-23, p. 35, lines 18-23, p. 36, lines 7-12, p. 121, lines 5-25, p. 122, lines 1-4, p. 330, lines 14-25, p. 331, lines 1-3, p. 552, lines 4-18, p. 563, lines 14-25, p. 564, lines 1-14, p. 704, lines 9-25, p. 705-706, p. 724, lines 20-25, p. 725, lines 1-9.

⁸⁶ *Id.*

⁸⁷ Transcript p. 550, lines 17-25, p. 551-552, p. 553, lines 1-23, p. 561- 563, p. 564, lines 1-14, p. 572, lines 18-15, p. 573, lines 1-8, p. 671, line 25, p. 672, lines 1-25, p. 673, lines 1-4, p. 692, lines 14-25, p. 693, lines 1-15; Staff's Post Hearing Brief p. 12, paragraph 44.

⁸⁸ Transcript p. 738, lines 16-25, p. 739, lines 1-25, p. 740, lines 1-14.

79. Utilizing Staff's average water usage calculation of 6250 gallons per month, EMC's commodity rate that it charges the Sewer District could be reduced to \$5.04 per 1000 gallons of water without jeopardizing EMC's profitability.⁸⁹

80. The Sewer District will charge each customer in the Subdivision \$37.00 per home per month for sewer service, fixed rate for 20 years.⁹⁰

81. The Sewer District's proposed rates would take effect immediately upon the transfer of Central Jefferson's assets.⁹¹

82. John Kolisch does not live in the Subdivision, but he is a customer of Central Jefferson. Mr. Kolisch paid the full cost of extending Central Jefferson's water and sewer lines to connect his neighboring business to Central Jefferson's water and sewer services.⁹²

83. Central Jefferson's Water Service Tariff, P.S.C. Mo. No. 1, Sheet 15, Rule 15(A)(3), Extension of Water Mains provides: Refunds of cost of extension shall be made to applicant(s) as follows:

- a. Should the actual cost of extension be less than the estimated cost, the Company shall refund the difference as soon as the actual cost has been ascertained.

⁸⁹ Transcript p. 561, lines 1-25, p. 563, lines 1-25, p. 564, lines 1-14,

⁹⁰ Transcript p. 30, lines 17-23, p. 35, lines 18-23, p. 36, lines 7-12, p. 107, lines 8-19, p. 121, lines 12-21, p. 123, lines 5-10, p. 186, lines 14-19, p. 207, lines 22-24, p. 331, lines 21-25, p. 332, lines 1-2, p. 494, lines 7-14, p. 704, lines 19-22, p. 705, lines 19-24, p. 724, lines 21-25, p. 725, line 1.

⁹¹ Hearing Exhibit 4, EMC Draft Pricing Proposal for Raintree Plantation Subdivision; Hearing Exhibit 5, Draft Utility Operation, Maintenance and Capital Improvement Agreement; Staff's Post Hearing Brief, Appendix A; Transcript, p. 156, lines 6-10, p. 744, lines 8-18.

⁹² Hearing Exhibit 26, Letters and Plat Maps from John Kolisch; Transcript p. 205, lines 23-25, p. 206, lines 1-17, p. 221, lines 20-25, p. 295, lines 21-25, p. 296, lines 1-25, p. 297, lines 1-20, p. 332, lines 10-25, p. 333 - 368, p. 369, lines 1-16, p. 393, lines 20-25, p. 394 - 396, p. 397, lines 1-4, p. 557, lines 11-25, p. 558, lines 1-6, p. 582, lines 20-25, p. 583, lines 1-12, p. 692, lines 18-24, p. 693, lines 16-20.

b. Company shall divide the actual cost of the extension by the number of lots abutting said extension to obtain the per lot extension cost. When counting lots, corner lots which abut an existing main shall be excluded. As additional customers are directly attached to the extension, these additional customers shall pay to the applicant the per lot construction cost for the lot being connected.

c. Each refund shall be paid directly to initial applicant(s) or their assigns, based upon the percentage of the actual extension cost contributed by each applicant.⁹³

84. Central Jefferson's Sewer Service Tariff, P.S.C. Mo. No. 1, Sheet 10.1, Rule 10(A)(3), Extension of Collecting Sewers provides: Refunds of cost of extension shall be made to applicant(s) as follows:

a. Should the actual cost of extension be less than the estimated cost, the Company shall refund the difference as soon as the actual cost has been ascertained.

b. Company shall divide the actual cost of the extension by the number of lots abutting said extension to obtain the per lot extension cost. When counting lots, corner lots which abut an existing main shall be excluded. As additional customers are directly attached to the extension, these additional customers shall pay to the applicant the per lot construction cost for the lot being connected.

⁹³ Central Jefferson's Water Service Tariff, P.S.C. Mo. No. 1 Sheet 15, Rule 15(A)(3), Extension of Water Mains, Effective Date: May 14, 1982.

c. Each refund shall be paid directly to initial applicant(s) or their assigns, based upon the percentage of the actual extension cost contributed by each applicant.⁹⁴

85. The extensions paid for by John Kolisch about 9 lots that can connect to Central Jefferson's sewer system and 12 lots that can connect to Central Jefferson's water system.⁹⁵

86. The lots which would be required to make pro rata payments to Mr. Kolisch for connection to the water system are Lot Nos. 126 through 137 of Section 5 (a total of twelve (12) lots). The lots which would be required to make pro rata payments to Mr. Kolisch for connection to the sewer system are Lot Nos. 129 through 134 of Section 5 and Lot Nos. 46, 47 and 49 of Section 1 (a total of nine (9) lots).⁹⁶

87. Pursuant to Central Jefferson's Tariffs, the refund that Mr. Kolisch should receive for each sewer connection to the extension is \$2,783.11 per lot and the refund Mr. Kolisch should receive for each water connection is \$799.83.⁹⁷

88. If the Commission approves the transfer of assets, Central Jefferson's Certificate of Convenience and Necessity and its Tariffs shall be canceled.

⁹⁴ Central Jefferson's Sewer Service Tariff, P.S.C. Mo. No. 1 Sheet 10.1 Rule 10(A)(3), Extension of Collecting Sewers, Effective Date: March 4, 1982.

⁹⁵ Hearing Exhibit 26, Letters and Plat Maps from John Kolisch; Central Jefferson's Response to Filing of Mr. John Kolisch filed on January 8, 2007; Transcript p. 205, lines 23-25, p. 206, lines 1-17, p. 221, lines 20-25, p. 295, lines 21-25, p. 296, lines 1-25, p. 297, lines 1-20, p. 332, lines 10-25, p. 333 -368, p. 369, lines 1-16, p. 393, lines 20-25, p. 394 – 396, p. 397, lines 1-4, p. 557, lines 11-25, p. 558, lines 1-6, p. 582, lines 20-25, p. 583, lines 1-12, p. 692, lines 18-24, p. 693, lines 16-20.

⁹⁶ *Id.*

⁹⁷ *Id.*

89. Once Central Jefferson's Tariffs are canceled, Central Jefferson's obligation to reimburse Mr. Kolisch will be extinguished.⁹⁸

90. Central Jefferson agrees with conditioning the transfer upon an amendment to the Sewer and Water Service Fee Agreement between Raintree and the Sewer District to ensure that Mr. Kolisch remains in the same position contractually as he does now for receiving his refunds from Central Jefferson's Tariffs.⁹⁹

91. The Sewer District agrees to condition the transfer on six of the thirteen conditions suggested by the POA,¹⁰⁰ which are:

- a. The POA and its members shall have the ability to participate in the process by which the Sewer District adjusts rates, fees and charges related to water and sewer service.
- b. EMC and the Sewer 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 the Subdivision.
- c. The transfer of assets shall not close until the "Compliance Agreement" between the District, EMC and the DNR is executed.
- d. The transfer of assets shall not close until the Permanent O & M Agreement between the District and EMC is executed. Moreover, the Permanent O & M Agreement must cover timely response and repair of blocked collection lines and leaking or otherwise faulty transfer stations.

⁹⁸ Transcript p. 24, lines 18-22, p. 341, lines 8-25, p. 347, lines 20-25, p. 348, lines 1-25, p. 349, lines 1-17, p. 361, lines 19-24.

⁹⁹ Transcript p. 557, lines 11-25, p. 558, lines 1-6, p. 582, lines 20-25, p. 583, lines 1-13.

¹⁰⁰ Transcript p. 289, lines 9-25, p. 290-291, p. 292, lines 1-14.

- e. 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.
- f. The expanded potable water and wastewater treatment facilities are designated for the exclusive use of Raintree Subdivision's present and future homeowners.¹⁰¹

¹⁰¹ The POA listed the conditions it wished to have imposed on the sale in its Statement of Position, filed on December 8, 2006. The Association listed a total of 13 lettered conditions. The conditions listed in Finding of Fact number 91, that were agreed to by the Sewer District, were re-lettered and correspond with the Association's originally listed conditions of: f, g, h, i, j, and k. The Association's complete list of requested conditions is as follows:

- a. The water and sewer rates proposed by the Sewer 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 those proposed at \$37.00 per month for sewer and \$6.30 per 1,000 gallons for water.
- b. 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.
- c. Any portion of Environmental Management Corporation's (EMC) 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.
- d. Any connection fees collected by the District on behalf of Raintree Plantation, Inc., (the developer) shall be held in escrow pending the results of the SSSIP and shall be used to fund as much as possible the cost of repairs and improvements recommended in that plan.
- e. In the event funding above the 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.
- 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.

92. DNR, EMC and the Sewer District have complied with condition (c) in Finding of Fact number 91, having executed a Compliance Agreement on January 17, 2007.¹⁰²

93. The Compliance Agreement provides,¹⁰³ *inter alia*:

a. EMC and the Sewer District have agreed to add storage capacity and achieve compliance with Well 1, or modify Well 1, or contract a new well to achieve compliance with Chapter 640 with regard to the drinking water facility as soon as it can reasonably be achieved after the transfer of assets, and per an agreed-upon a compliance schedule included in the agreement.

b. EMC and the Sewer District have agreed to upgrade and/or replace the current wastewater treatment facility in order to achieve compliance with the Missouri Clean Water Law as soon as it can reasonably be achieved after the transfer of assets, and per an agreed upon a compliance schedule included in the agreement.

c. EMC and the Sewer District have agreed to submit a Sanitary Sewer Study and Improvement Plan (SSSIP) containing a priority-based schedule for

i. The transfer of assets shall not close until the Operation and Maintenance 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.

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.

k. The expanded potable water and wastewater treatment facilities are designated for the exclusive use of Raintree Subdivision's present and future homeowners.

l. The location of the wastewater treatment plant expansion, and the additional potable water pump house and storage tank, if any, are approved by the POA.

m. The Commission finds and determines 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.

¹⁰² Staff's Post-Hearing Brief, Appendix B.

¹⁰³ *Id.*

implementation of improvements and upgrades to the DNR's Regional Office within 365 days of the transfer.

d. EMC and the Sewer District have stipulated to a schedule of penalties should EMC and/or the Sewer District fail to meet any deadline set forth in the compliance schedules included in the agreement.

94. EMC and the Sewer District have complied with condition (d) in Finding of Fact number 91, having executed a Permanent O & M Agreement on January 16, 2007.¹⁰⁴

95. Should the Commission approve the transfer, that approval will have no effect on any civil penalties for which Central Jefferson may be liable to the DNR or the EPA.¹⁰⁵

96. Should the Commission approve the transfer, that approval will have no effect on any civil penalties the Commission may seek against Central Jefferson in relation to its provision of water and sewer services while under the jurisdiction of the Commission.¹⁰⁶

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

Jurisdiction and Authority

Central Jefferson is a "water corporation," a "sewer corporation" and a "public utility" as defined in Section 386.010(58), (48) and (42), and is subject to the jurisdiction, control and regulation of the Commission. The Jefferson County Public Sewer District is a countywide sewer district formed by the Jefferson County Commission in June of 2000,

¹⁰⁴ Staff's Post-Hearing Brief, Appendix A.

¹⁰⁵ Staff Brief, Appendix A, Permanent O & M Agreement, Exhibit C, Paragraph 1(a); Transcript p. 656, lines 1-14.

¹⁰⁶ Staff's Report on the Effect an Order Approving Asset Transfer would have on the Commission's Ability to Seek Penalties, filed December 13, 2006.

pursuant to Sections 249.430 to 249.668, as such is not subject to the jurisdiction, control and regulation of the Commission.

Standard for Approval for the Transfer of Assets

Section 393.190 provides, in pertinent part:

No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do.

Section 393.190 does not set forth a standard or test for the Commission's approval of the proposed transfer of assets. However, the Missouri Supreme Court in *State ex rel. City of St. Louis v. Public Service Commission of Missouri* determined that Section 393.190's predecessor, Section 5195, RSMo 1929, recognized the standard for Commission's approval to be if the transaction so described is not detrimental to the public interest.¹⁰⁷

This standard is further cemented by the Commission's own rules, which require an applicant for such authority to state in its application "[t]he reason the proposed sale of the assets is not detrimental to the public interest."¹⁰⁸ "The Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest."¹⁰⁹

¹⁰⁷ 73 S.W.2d 393, 400 (Mo. banc 1934). See also *State of Missouri ex rel. Ag Processing, Inc., v Public Service Commission of the State of Missouri and Aquila, Inc., f/k/a Utilicorp United, Inc.*, 2003 WL 1906385*6 (Mo. App. 2003) (overruled on other grounds).

¹⁰⁸ Commission Rules 4 CSR 240-3.310(1)(D) (applying to sewer corporations) and 4 CSR 240-3.605(1)(D) (applying to water corporations).

¹⁰⁹ *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. 1980).

The Missouri Court of Appeals has stated of Section 393.190: “The obvious purpose of this provision is to ensure the continuation of adequate service to the public served by the utility.”¹¹⁰ “To that end, the Commission has previously considered such factors as the applicant’s experience in the utility industry; the applicant’s history of service difficulties; the applicant’s general financial health and ability to absorb the proposed transaction; and the applicant’s ability to operate the assets safely and efficiently.”¹¹¹

Provision of Safe and Adequate Service

Section 393.130.1 provides, in pertinent part: “Every gas corporation, every electrical corporation, every water corporation, and every sewer corporation shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.”¹¹² While the safe and adequate service standard has not been articulated with particularity, and while the following list is not intended to be exhaustive, the Commission routinely examines regulated water and sewer companies with the following criteria in mind when assessing whether this standard has been met. Any water or sewer corporation must demonstrate, on an on-going basis, that:

- a. it has the technical, financial and managerial resources and ability to develop, operate and maintain a water and sewer system;

¹¹⁰ *Id.*

¹¹¹ See *In Re the Matter of the Joint Petition of Frimel Water System, Inc. and Lake Lorraine Property Owners' Association for Authority for Frimel Water System, Inc., to Transfer Its Assets and Cease Operations*, Case No. WM-2006-0459 (Report and Order issued November 7, 2006, 2006 WL 3371567 (Mo. P.S.C.)); See also *In the Matter of the Joint Application of Missouri Gas Energy, et al.*, Case No. GM-94-252 (Report and Order, issued October 12, 1994), 3 Mo. P.S.C.3rd216, 220.

¹¹² See also *In re Bill Beeny, d/b/a Shady Oaks Water Association*, Case No. WC-92-77 (Order issued, December 27, 1991) 1991 WL 472580 (Mo.P.S.C.)

- b. its drinking water facility has been appropriately engineered, designed and constructed, and is properly licensed to provide sufficient capacity to meet the demands of the service area;
- c. its water supply and storage facilities do in fact have sufficient capacity to meet the demands of the service area;
- d. its drinking water quality is in compliance with DNR, EPA and all state and local Department of Health regulations with regard to inorganic, organic and bacterial contaminants, and with all public health standards;
- e. its sewer treatment facilities has been appropriately engineered, designed and constructed, and is properly licensed to provide sufficient capacity to meet the demands of the service area;
- f. its sewer treatment facilities do in fact have sufficient capacity to meet the demands of the service area, thus adequate capacity to accommodate and appropriately treat the daily influent and effluent of the service area;
- g. its sewer treatment facility is in compliance with DNR, EPA and all state and local Department of Health regulations with regard to contaminants, inflow and discharge capacity, safe discharge of effluent, and with all public health standards;

- h. its infrastructure is of sufficient quality, is compliant with all relevant statutes and regulations, and is sufficiently maintained as to ensure the continuous delivery of water and/or sewer service to its service area.¹¹³

Moreover, with regard to sewer utilities, Commission Rule 4 CSR 240-60.020 provides, in pertinent part:

(1) Each sewer utility shall maintain and operate a sewage treatment facility of adequate capacity and properly equipped to treat the sewage and discharge effluent of the quality required by the laws of the state of Missouri and in other respects shall comply with the laws and regulations of the state and local health authority.

(2) The design and construction of a utility's system of sewers, treatment facility and all additions and modifications shall conform to the requirements prescribed by law except that any rule contained in this chapter shall apply which is more stringent than those prescribed by the Clean Water Commission.

(3) The sewer utility shall make reasonable efforts to eliminate or prevent the entry of surface or ground water into its sanitary sewer system. It may request assistance from the appropriate state, county or municipal authorities, but such a request does not relieve the sewer utility of its responsibility to prevent the entry of such surface or ground water.

¹¹³ Commission Rules 4 CSR 240-3.305, 4 CSR 240-3.600, and 4 CSR 240-60.020; *In the Matter of the Application of Tartan Energy Corporation, L.C., d/b/a Southern Missouri Gas Company*, 3 Mo. P.S.C. 3d 173, 177 (1994)(citing *In Re Intercon Gas, Inc.*, 30 Mo. P.S.C. 554, 561 (1991); *In the Matter of the Application of Timber Creek Sewer Company for Permission, Approval and a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage and Maintain a Sewer System for the Public, Located in an Unincorporated Area of Clay County, Missouri*. Case No. SA-2005-0297, Order issued January 5, 2006, 2006 WL 64589 (Mo. P.S.C.); *In the Matter of the Application of Central Rivers Wastewater Utility, Inc, for a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage and Maintain a Sewer System for the Public, Located in an Unincorporated Area in Clay County, Missouri*. Case No. SA-2005-0302, Order issued November 8, 2005, 2005 WL 3009732 (Mo. P.S.C.); *In the Matter of the Application of Lake Region Water and Sewer Company for a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage and Maintain a Water and Sewer System for the Public Located in an Unincorporated Area in Camden County, Missouri*, Case No. WA-2005-0463, et al. (Order issued, October 26, 2006) 2006 WL 3163715 (Mo. P.S.C.) *The Staff of the Missouri Public Service Commission v. Hurricane Deck Holding Company, Chelsea Rose Land Owners Association, Inc., Gregory D. Williams, Debra J. Williams, and Charles H. Williams*, Case No. WC-2006-0303 (Order issued, August 31, 2006) 2006 WL 2528005 (Mo. P.S.C.).

Penalties

Section 386.570 provides:

1. Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.
2. Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.
3. In construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.

Section 386.600 authorizes the Commission to seek such penalties in the circuit court. It provides, in pertinent part:

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission.

These statutes together authorize the Commission to seek penalties for failing to provide safe and adequate service.¹¹⁴ However, the Commission may only initiate such a lawsuit seeking penalties after holding a contested hearing.¹¹⁵

Moreover, as another possible action by the Commission, Section 393.145.1 provides:

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, or has defaulted on a bond, note or loan issued or guaranteed by any department, office, commission, board, authority or other unit of state government, 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. The venue of such cases shall, at the option of the commission, be in the circuit court of Cole County or in the circuit court of the county in which the utility company has its principal place of business.

Consequently, the Commission could, after hearing and after making a determination that Central Jefferson has not provided, or is unable or unwilling to provide, safe and adequate service, or has actually or effectively abandoned its operations, seek penalties or order its general counsel to petition the circuit court for the appointment of a receiver.

Decision

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

¹¹⁴ See *State v. Davis*, 830 S.W.2d 27 (Mo. App. 1992), where the court held that the Commission's petition seeking penalties for violations of the law or refusals to follow orders of the Commission stated a claim upon which relief could be granted. The petition in the *Davis* case stated that the defendants failed to maintain a safe and adequate water supply, failed to install adequate storage capacity and overcharged customers.

¹¹⁵ *State ex rel. Sure-Way Transp., Inc. v. Division of Transp., Dept. of Economic Development, State of Mo.*, 836 S.W.2d 23, 27 (Mo. App. W.D. 1992) (relying on *State v. Carroll*, 620 S.W.2d 22 (Mo. App. 1981)); see also *State ex rel. Cirese v. Ridge*, 138 S.W.2d 1012 (Mo. banc 1940).

decision. After applying the facts, as it has found them, to its conclusions of law, the Commission has reached the following decision.

The Commission concludes that there is substantial and competent evidence on the record as a whole that Central Jefferson does not provide safe and adequate water service. The sworn testimony of Todd Thomas, civil engineer and vice president and general manager of EMC; Kenneth McClain, President and one of the owners of Central Jefferson; the witnesses at the local public hearing held in this matter, and the DNR Report of Compliance, all support this conclusion. Even though Lance Dorsey, environmental specialist for the DNR, testified that there were no outstanding compliance or enforcement actions against Central Jefferson with regard to its provision of drinking water, this is not the sole criteria for determining if safe and adequate service is being provided.

Given the lead contamination of Well 1, the lack of adequate water storage capacity for uncontaminated water or even for a blend of water from Wells 1 and 2, and the fact that no back up equipment or plans are in place should the pump on Well 2 fail, the residents of the Subdivision are situated in a precarious position. When asked what Central Jefferson would do if the pump failed on Well 2 failed, Mr. McClain's stated:

If No. 2 does go offline, then they have – there's supposed to be notice sent out, signed in front of Raintree and however they notify the people. If it goes out, not to drink the water. **It's usable, just not to drink it.**¹¹⁶

Providing a warning to residents that they only have contaminated drinking water in the event of equipment failure is not adequately providing for the continuous delivery of safe and adequate water service. Lacking sufficient storage capacity to provide even one day's worth of water usage for the service area is not consistent with the provision of safe

¹¹⁶ Transcript p. 432, lines 20-24.

and adequate water service. One only need look to the recent storm related electrical outages in Union Electric's service areas to appreciate the threat of not having adequate storage or contingency plans, and, having to rely on Central Jefferson's established track record for the operation and maintenance of the water system is simply not comforting to this Commission. Central Jefferson has proved that it no longer has the technical and managerial ability to develop, operate and maintain a water system.

Additionally, the Commission concludes that there is substantial and competent evidence on the record as a whole that Central Jefferson fails to provide safe and adequate sewer service. The sewer system is continually operating beyond its design capacity and sewage from this system is reported to be contaminating surrounding lakes, creeks, yards and basements. The EPA's findings of violation and moratorium on new connections to the sewer system, as well as the numerous DNR violations, speak for themselves. Additionally, it would appear that Central Jefferson is in violation of Commission Rule 4 CSR 240-60.020, not only for exceeding the system's design capacity and for failure to comply with environmental and health regulations, but also for its failure to control the surface and ground water that drains into its system.

Clearly, Central Jefferson has allowed its water and sewer system to decay, and its owners have expressed a lack of willingness or lack of capacity to bring these systems into compliance with environmental regulations or to expand and improve the system to provide safe and adequate service to its current and future customers. Bearing this in mind, the Commission concludes that it is not detrimental to the public interest to approve the transfer of Central Jefferson's assets and operations to the Sewer District, which has contracted with a competent company, EMC, to operate, maintain and expand the current facilities.

The current proposal for transfer of Central Jefferson's assets, however, shall be conditioned. The conditions imposed will include those the Sewer District has consented to at hearing and the condition Central Jefferson has consented to with regard to placing Mr. Kolisch in the same legal position as he now stands in relation to his ability to collect reimbursement for the extensions to the system that he has provided. The Commission might prefer to add additional conditions to this transfer; however, the Commission recognizes its need to show measured restraint to ensure that the property and home owners in the Subdivision receive safe and adequate service as expeditiously as possible and that the current facilities are expanded to accommodate future growth in the Subdivision.

While the Commission lacks jurisdiction and authority over the Sewer District and Raintree, and has no standing to challenge the "side dealings" surrounding this transaction, the Commission expresses its extreme displeasure with the Sewer and Water Service Fee Agreement executed between these parties. This agreement funnels connection fees from the property owners back to Raintree for the questionable consideration of enforcing a contract with Aquasource, a duty Raintree already has, and for ill defined contributions that Raintree has made to Central Jefferson for various engineering and legal expenses. Simply put, this transaction does not pass the "smell test." Perhaps another party with standing will have the opportunity to challenge this transaction considering the proximity of the corporate entities and owners of Raintree and Central Jefferson.

Nevertheless, the Commission has the authority to seek penalties against Central Jefferson for any violations of state statutes, Commission Rules, and the Company's tariff provisions. The hearing held in this matter was a contested hearing, and the issues

identified by the parties and adopted by the Commission clearly contemplated that Central Jefferson's compliance with the statutes and regulations surrounding the operation and maintenance of its water and sewer facilities were at issue when determining if the transfer of assets was in the public interest. In addition, the Commission specifically ordered DNR's compliance report and the DNR presented live testimony concerning environmental and capacity issues. Central Jefferson was provided adequate time to prepare its responses and to present evidence and cross-examine the witnesses in this case. Central Jefferson also was represented at the local public hearing, and had adequate opportunity to cross-examine the witnesses testifying at that hearing.

While Central Jefferson would not concede to the violations charged by DNR, or to numerous complaints raised at public hearing, it did concede that it has been operating its water system without adequate storage capacity, that it has been operating its sewer system above its design capacity and that it has failed to control ground and surface water entry into its system. Central Jefferson failed to controvert the overwhelming evidence supporting its substandard operation of its water and wastewater treatment facilities.

Consequently, the Commission shall order its General Counsel to seek the maximum amount in penalties from Central Jefferson for the following violations:

a. Every violation of the Missouri Clean Water Act, Sections 644.051(1) and (2), and Section 644.076.1, as found by the DNR, is a violation of Commission Rule 4 CSR 240-60.020.1, in that Central Jefferson failed to maintain and operate a sewage treatment facility of adequate capacity and properly equipped to treat the sewage and discharge effluent of the quality required by the laws of the state of Missouri and in other respects failed to comply with the laws and regulations of the state and local health authority. Each

violation is a separate and distinct offense, and each day forward from the date that DNR found the violation, and Central Jefferson failed to bring its system into compliance, is a separate and distinct offense.

b. Every violation of 10 CSR 20-6.010(1)(A) & 5(A), 10 CSR 20-7.015(9)(A)(1), 10 CSR 20-7.031(3)(A), (B), & (C), and 10 CSR 20-9.020(2), as found by the DNR, is a violation of Commission Rule 4 CSR 240-60.020.1, in that Central Jefferson failed to maintain and operate a sewage treatment facility of adequate capacity and properly equipped to treat the sewage and discharge effluent of the quality required by the laws of the state of Missouri and in other respects failed to comply with the laws and regulations of the state and local health authority. Each violation is a separate and distinct offense, and each day forward from the date that DNR found the violation, and Central Jefferson failed to bring its system into compliance, is a separate and distinct offense.

c. Each day that the capacity of Central Jefferson wastewater treatment facility was exceeded was a failure of Central Jefferson to maintain and operate its sewage treatment facility with adequate capacity and is a violation of Commission Rule 4 CSR 240-60.020.1 and Section 393.130.1. Central Jefferson's sewer treatment facility capacity has been exceeded every day since on or about July 1, 2000, each day thereafter being a separate and distinct offense.

d. Each day that Central Jefferson failed to make reasonable efforts to eliminate or prevent the entry of surface or ground water, and each day that Central Jefferson did in fact fail to eliminate or prevent the entry of surface or ground water, into its sanitary sewer system is a violation of Commission Rule 4 CSR 240-60.020.3 and Section 393.130.1.

This problem was identified as arising on or about December 1, 2003,¹¹⁷ each day forward being a separate and distinct offense.

e. Each day that Central Jefferson has been unable to provide adequate storage of uncontaminated drinking water, to ensure the safe and adequate provision of water services is a violation of Section 393.130.1. DNR documented annual water consumption figures exceeding the demand of Central Jefferson's storage capacity in 2005. Consequently, each day forward from on or about January 1, 2005 when adequate reserves were unavailable is a separate and distinct offense.

Should the General Counsel wish to develop additional factual support for the violations found in this contested hearing, or to support additional violations for which a penalty is authorized, then it shall file a complaint with the Commission against Central Jefferson asserting any allegations the General Counsel wishes to pursue.

IT IS ORDERED THAT:

1. 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, filed on August 15, 2006, is approved, subject to the conditions outlined in the body of this order, specifically delineated in Findings of Fact numbers 90 and 91.

2. Central Jefferson County Utilities, Inc., is authorized to take any and all lawful actions necessary to carry out the proposed sale of assets.

¹¹⁷ Transcript p 450-451.

3. Central Jefferson County Utilities, Inc., shall file a report in this case stating the status of the transactions no later than March 9, 2007, and continuing every 30 days until it has notified the Commission that all the transactions have been completed.

4. After the transactions have been completed, in an additional order, the Commission will relieve Central Jefferson County Utilities, Inc., of its obligation to provide water and sewer service to the public in its assigned service area and will cancel its certificate and tariff.

5. The General Counsel of the Missouri Public Service Commission is hereby authorized to seek penalties against Central Jefferson County Utilities, Inc., pursuant to Section 386.570, RSMo 2000, in the Circuit Court of appropriate venue, for any and all violations of state statutes, Commission Rules, or the Company's tariff provisions as identified in the body of this order.

6. The General Counsel of the Missouri Public Service Commission shall file its action seeking penalties before the effective date of this order.

7. The General Counsel of the Missouri Public Service Commission is further authorized to file a complaint action against Central Jefferson County Utilities, Inc., as described in the body of this order. Should the General Counsel elect to pursue a complaint, it shall file that action before the effective date of this order.

8. The Commission does not waive its right to seek penalties under Sections 392.210 and 386.570, RSMo, for failure to timely file annual reports or pay assessments.

9. All objections not ruled on are overruled and all motions not granted are denied.

10. This order shall become effective on February 28, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC.,
concur and certify compliance with the provisions
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 8th day of February, 2007.