

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

In the Matter of Kenneth Jaeger and Blue)
Lagoon Sewer Corp.) **Case No. SO-2008-0358**

**STAFF'S RESPONSE TO ORDER DIRECTING RESPONSE TO
MOTION FOR APPOINTMENT OF A RECEIVER**

COMES NOW the Staff of the Missouri Public Service Commission and for its response to the Order Directing Response to Motion for Appointment of a Receiver states as follows:

1. On May 5, 2008, the Missouri Public Service Commission issued its Order Directing Response to Motion for Appointment of a Receiver in which it ordered the Staff and the Office of the Public Counsel to file pleadings explaining how the automatic stay created by the Bankruptcy Code may affect the Commission's actions regarding Public Counsel's Motion for Appointment of a Receiver.

2. The Bankruptcy Code, at 11 U.S.C. § 362(a), provides that the filing of a bankruptcy petition operates as an automatic stay on the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor. The Bankruptcy Code further provides several exceptions to the automatic stay, the most relevant to the present case being 11 U.S.C. § 362(b)(4), which provides that an exception is made for an action or proceeding by a governmental unit to enforce that governmental unit's police and regulatory power. This exception would apply to an administrative agency's action, as is interpreted in *Eddleman v. United States Department of Labor*, 923 F.2d 782, 790 (10th Cir. 1991) *See also Chao, Secretary of Labor, United States Department of Labor v. Mike & Charlie's Inc.* (Jan 4, 2006) (available at 2006 WL 18467).

3. The Court in *Eddleman* constructed a two-prong test to ascertain if an agency action would qualify under the § 362(b)(4) exception. *Eddleman*, 923 F.2d at 791. Under the first prong, the “pecuniary purpose” test, the court asks whether the government's proceeding relates primarily to the protection of the government's pecuniary interest in the debtor's property, and not to matters of public policy. If it is evident that a governmental action is primarily for the purpose of protecting a pecuniary interest, then the action should not be excepted from the stay. *Id.* In this case, the Commission would not be protecting a pecuniary interest or purpose in attempting to appoint a receiver for the purposes of effectuating the goal of providing customers of public sewer systems with safe and adequate sewer service.

4. The second prong, the “public policy” test, distinguishes between government proceedings aimed at effectuating public policy and those aimed at adjudicating private rights. Under this second test, actions taken for the purpose of advancing private rights are not excepted from the stay. *Id.* Under the second prong, the Commission’s goal of appointing a receiver is truly aimed at effectuating public policy. As stated above, the ultimate goal of the Commission by appointing a receiver is to help further the interest of the public by providing customers of public sewer systems with safe and adequate sewer service. In addition, contained within the general principle of providing safe and adequate sewer service is the provision that the public sewer system meet all relevant environmental regulations. There is no indication that the appointment of a receiver should be construed as a proceeding aimed at adjudicating private rights.

5. Staff submits that since the appointment of a receiver involves a proceeding of a governmental unit to enforce that governmental unit’s police and regulatory power to effectuate

public policy, the action of an appointment of a receiver falls under the exception to the automatic stay.

WHEREFORE the Staff of the Commission respectfully submits its Response to the Order Directing Response to Motion for Appointment of a Receiver.

Respectfully submitted,

/s/ Keith R. Krueger

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 27th day of May 2008.

/s/ Keith R. Krueger