

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

In The Matter of The Joint Application of)
South Jefferson County Utility Company and)
the Summer Set Property Owners Association for) Case No. WD-2006-0157
Cancellation of a Certificate of Convenience and)
Necessity and Associated Tariff Sheets.)

RESPONSE OF JOINT APPLICANTS
TO ORDER DIRECTING FILING

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

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

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

3. Following review of the parties' pleadings in response to its first Order Directing Filing, the Commission issued its second "Order Directing Filing" with an issue and effective date of February 7, 2006, to which the instant pleading responds. In its Order, the Commission states as follows:

"Because this matter resembles a transfer of assets, rather than a certificate cancellation, the Commission will treat it as a transfer case. As such, Section 393.190, RSMo. 2000, requires the applicants to make a statement as to the impact, if any, that this transfer will have on the tax revenues of the political subdivision where the assets are located. The Commission will therefore direct the applicants to file a pleading in compliance with Section 393.190 . . . [i]t is ordered that [Joint

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

Applicants] shall file a statement as to the impact, if any, the transfer of assets will have on the tax revenues of the political subdivision where the assets are located.”

Response

In response to the Commission’s Order, Joint Applicants hereby advise that the contemplated transfer of assets from the South Jefferson County Utility Company to the Summer Set Property Owners Association will have no impact on the tax revenues of the political subdivision in which the relevant water and sewer utility assets are located. All of the disputed assets are located in Jefferson County, Missouri, which county would be the “political subdivision” whose tax revenues would be impacted by the contemplated transfer of assets, if indeed any political subdivision’s revenues stood to be impacted by the transfer.

Attached hereto as Attachments A & B are documents confirming the non-assessed status of property held by South Jefferson County Utility Company and Summer Set Property Owners Association. Attachment A is a copy of a letter from Association/Company counsel indicating that there was a successful application for tax exemption for the property of both entities completed in 1985. Attachment B is a copy of a statement from the Jefferson County Assessor’s Office from 1988 which confirmed the “non-assessed property” status of the Association’s property as of that time.


This information has not changed – i.e. since originally obtaining their exempt status, neither the Company nor the Association have been subject to any *ad valorem* tax assessment by the political subdivision of Jefferson County, Missouri, based on property or assets owned by either entity.²

²The only exception to the exemption for Association property involves two subdivision lots recently acquired for use as common property. The Association has not yet requested “exempt” status for these lots, and therefore has paid a total of \$92.00 in county property taxes assessed on these lots for the current year.

Therefore, there will be no impact on the tax revenues of Jefferson County, Missouri, or any other "political subdivision", as a result of the contemplated transfer of water and sewer utility assets from the Company to the Association.

WHEREFORE, Applicants jointly request that the Commission cancel the Certificate of Convenience and Necessity issued in its Case No. 17,787 and associated tariffs; that it approve the transfer of water and sewer utility assets from the South Jefferson County Utility Company to the Summer Set Property Owners Association; that it approve the Association's operation of the referenced water and sewer service solely for private purposes independent of the Commission's regulatory jurisdiction; and, for such other orders and relief as may be deemed necessary and appropriate in the circumstances.

Respectfully submitted,



Gregory C. Mitchell

#36634

BRYDON, SWEARENGEN & ENGLAND, P.C.

312 East Capitol Avenue

P.O. Box 456

Jefferson City, MO 65102

(573) 635-7166 Phone

(573) 634-7431 Fax

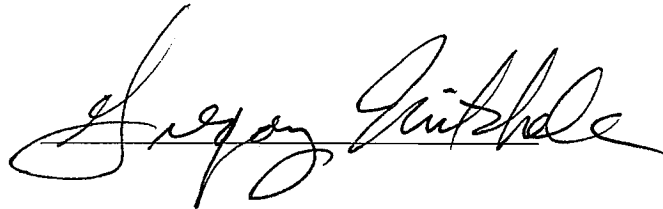
Attorneys for Joint Applicants South Jefferson County Utility Company and the Summer Set Property Owners Association

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by electronic mail, first class mail or by hand delivery, on this 24 day of February, 2006 to the following:

General Counsel
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102-0360
gencounsel@psc.mo.gov


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



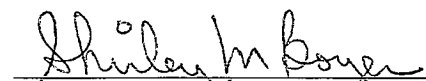
VERIFICATION

STATE OF MISSOURI)
) ss
COUNTY OF Jefferson)

I, Buford Dale Hunter, having been duly sworn upon my oath, state that I am President of South Jefferson County Utility Company; that I am duly authorized to make this Affidavit on behalf of South Jefferson County Utility Company; and that the matters and things stated in the foregoing Application are true and correct to the best of my information, knowledge and belief.


Buford D. Hunter

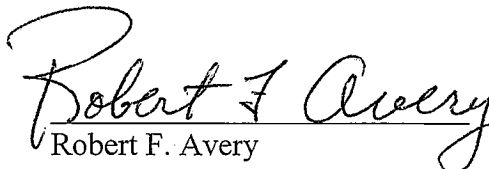
Subscribed and sworn to before me this 22 day of February, 2006.


Notary Public

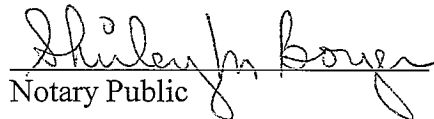
My Commission expires: Feb 08, 2007

STATE OF MISSOURI)
) ss
COUNTY OF Jefferson)

I, Robert F. Avery, having been duly sworn upon my oath, state that I am President of the Summer Set Property Owners Association; that I am duly authorized to make this Affidavit on behalf of the Summer Set Property Owners Association; and that the matters and things stated in the foregoing Application are true and correct to the best of my information, knowledge and belief.


Robert F. Avery

Subscribed and sworn to before me this 22 day of February, 2006.


Notary Public

My Commission expires:

Feb 08, 2007

WEIER, SHERBY, HOCKENSMITH & SCHOENE

ATTORNEYS AT LAW

P.O. BOX 578 - COURTHOUSE SQUARE
HILLSBORO, MISSOURI 63050

(314) 789-3368

(314) 942-3979

G. WILLIAM WEIER
DANA HOCKENSMITH
JAMES W. SHERBY
C. ALAN SCHOENE
CLAUDE P. ROSSER, JR.
CAROL KENNEDY BADER
PHILIP M. HESS
HEATHER S. HEIDELBAUGHHARRY L. C. WEIER
OF COUNSEL

August 20, 1985

ST. LOUIS OFFICE:
12801 FLUSHING MEADOW DRIVE
P.O. BOX 31158
ST. LOUIS, MISSOURI 63131
(314) 965-2255ATTACHMENT AMr. Ron Metzler
Summer Set P.O.A.
P. O. Box 219
DeSoto, Missouri 63020

Re: Reassessment

Dear Ron:

Please be advised that our request for exemption of the common property at Summer Set has been granted. This includes the property owned by South Jefferson County Utility Company as well as the common property owned by the Property Owners Association. We did have some problem with exemption of Lots 464, 465 and 466 as the land records show this property owned by Summer Set Services. In searching the title, I found that a quit claim deed from Klondike to Summer Set Property Owners Association for these three pieces of property was given in 1979. Another quit claim deed was recorded in 1980 purportedly giving these three pieces of property to Summer Set Services Corporation. The second quit claim deed is very confusing, lists a great deal of property and it is questionable whether 464, 465 and 466 are even included. Further, I spoke with Linda at Summer Set Services Corporation and she indicates to me that they do not consider themselves the owners of these three lots. Therefore, the assessor's office has indicated to me that they will list these lots as owned by Summer Set Property Owners Association and they will be afforded an exemption.

The bottom line is that all of the property requested was exempted. If you have any questions regarding the exemption or any of the property, please feel free to give me a call.

Very truly yours,


Carol Bader

CB/ft

**Jefferson County Assessor's Office**

P.O. Box 100

Hillsboro, Mo. 63050

314-789-3911

314-942-4300 (St. Louis)

Ronald J. Dougherty
County Assessor

ATTACHMENT BDate Mar 22, 1988

TO WHOM IT MAY CONCERN,

Please be advised that the property owned by

Summer Set Property Owners

is non-assessed property on the tax rolls of Jefferson County under Section 137.100 (5).

RONALD J. DOUGHERTY
ASSESSOR, JEFFERSON COUNTY
HILLSBORO, MO 63050

Ron Dougherty, Assessor, Jefferson County