

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 24th day of
April, 2007.

In the Matter of the Application of Central Jefferson)
County Utilities, Inc. for an Order Authorizing the)
Transfer and Assignment of Certain Water and Sewer)
Assets to Jefferson County Public Sewer District)
and in Connection Therewith, Certain Other Related)
Transactions.)

Case No. SO-2007-0071, et al.

ORDER DENYING APPLICATION FOR REHEARING

Issue Date: April 24, 2007

Effective Date: April 24, 2007

The Missouri Public Service Commission issued its Report and Order in this matter on February 8, 2007. In that order, the Commission approved Central Jefferson County Utilities, Inc.'s ("Central Jefferson") application to transfer certain water and sewer assets to the Jefferson County Public Sewer District ("District"). Additionally, the Commission authorized its General Counsel to seek penalties in the circuit court of appropriate venue for any and all violations of state statutes, Commission rules, or the Central Jefferson's tariff provisions that were identified in the order.

On February 27, Central Jefferson timely filed an application for rehearing. Central Jefferson does not contest any portion of the Commission's order with regard to its conditional approval of the transfer of its assets. Rather, Central Jefferson seeks rehearing solely on the portion of the Report and Order that authorizes the General Counsel to seek penalties.

The gravamen of Central Jefferson's application is that it was denied procedural due process with respect to the authorization to seek penalties. Central Jefferson asserts that because the case it initiated concerned the transfer of assets, and because the adopted list of issues in this matter did not specify that the Commission would be making a determination concerning violations of statutes, rules or tariffs, that it did not receive sufficient notice and opportunity to defend against any alleged violations.

The Commission is authorized to grant rehearing "if in its judgment sufficient reason therefore be made to appear."¹ Having granted rehearing, "[i]f . . . the commission shall be of the opinion that the original order or decision **or any part thereof** is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change or modify the same."²

The Court of Appeals has stated, "When a rehearing is granted by the PSC, the case stands as if it had not been previously heard."³ **However, the Commission may also grant rehearing for the limited purpose of reconsidering a particular issue or taking more evidence on it:**

Under § 386.500.1, rehearing may be granted on the order in its entirety **or on any matter contained in the order**. Upon rehearing, if the Commission determines its original order **to be in any part** unjust, unwarranted or in need of change, then the Commission may abrogate, change or modify the original order or decision. Section 386.500.4. **The order on rehearing does not affect any portion of the original order not abrogated, changed or modified by the order on rehearing.** Section 386.500.4.⁴

¹ Section 386.500.1, RSMo 2000.

² Section 386.500.4, RSMo 2000.

³ *State ex rel. AG Processing v. Thompson*, 100 S.W.3d 915, 921 (Mo. App. 2003); *State ex rel. State Highway Comm'n v. Pub. Serv. Comm'n*, 459 S.W.2d 736, 739 (Mo. App. 1970).

⁴ *St. ex rel. Capital City Water Co. v. Pub. Serv. Comm'n*, 850 S.W.2d 903, 912 (Mo. App. 1993).

Additionally, Section 536.063.3 of Missouri's Administrative Procedures Act provides:

Reasonable opportunity shall be given for the preparation and presentation of evidence bearing on **any issue raised or decided** or relief sought or granted. **Where issues are tried without objection or by consent, such issues shall be deemed to have been properly before the agency.** Any formality of procedure may be waived by mutual consent.⁵

In its February 8 Report and Order, the Commission stated:

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.⁶

⁵ Section 536.063.3 RSMo 2000 is applicable to the Public Service Commission. *Friendship Village of South County v. Public Service Comm'n*, 907 S.W.2d 339, 346 (Mo. App. 1995).

⁶ *In the Matter of the Application of Central Jefferson County Utilities, Inc. for an Order Authorizing the Transfer and Assignment of Certain Water and Sewer Assets to Jefferson County Public Sewer District and in Connection Therewith, Certain Other Related Transactions*, Report and Order Issued February 8, 2007, Case No. SO-2007-0071, et al.

The issues list adopted by the Commission for this matter on December 5, 2006 was as follows:

A. Ultimate Issues of Fact.

1. Would the proposed transfer of the Company's water and sewer assets to the Sewer District be detrimental to the public interest?
2. If the transfer of assets, as proposed, would be detrimental to the public interest, could the Commission impose conditions such that the transfer, as approved, would not be detrimental to the public interest?

At hearing, Central Jefferson did not object to the taking of evidence regarding operating its water system without adequate storage capacity, operating its sewer system above its design capacity and failing to control ground and surface water entry into its system. In fact, Central Jefferson conceded these failures. These issues were integrally related to determining the issue if the transfer of assets was detrimental to the public interest, and given the procedural history of this case, Central Jefferson was clearly on notice that these issues were interrelated. As such, it is difficult to comprehend Central Jefferson's belated objections with regard to the Commission's determination on these issues.

It is true that Central Jefferson did not concede violations identified by the Missouri Department of Natural Resources ("DNR"); however, substantial evidence was provided to

B. Preliminary Issues of Fact.

1. What connection fees and recurring rates does the Sewer District anticipate that the residents of Raintree Plantation Subdivision will have to pay for water and sewer services immediately after transfer of the assets to the Sewer District?
2. Would such fees and rates thereafter be increased according to a schedule, or upon the occurrence of some event, and if so, how would the amount of such increase be determined?
3. What ability would the residents of Raintree Plantation Subdivision have to control the operation, management, services and rates associated with the water and sewer services that the Sewer District provides to them?
4. If EMC's initial investment of up to \$1.8 million is not sufficient to build and operate the facilities that are, or will be, needed to provide service to the residents of Raintree Plantation Subdivision, how will the Sewer District fund additional facilities and insure that they are built and available for service when they are needed?
5. What are the terms of the agreement between the Sewer District and EMC for the operation and maintenance of, any improvements to, and the investment in, the water and sewer facilities that serve Raintree Plantation Subdivision?
6. Will the Company transfer to the Sewer District all of the assets, including real property that are necessary to provide water and sewer services to Raintree Plantation Subdivision?
7. Will the owners of lots in Raintree Plantation Subdivision be obliged, by their Lot Sales Agreements, to pay a water and sewer connection fee of approximately \$1100? If so, identify the entity to whom this obligation is owed and state whether all or part of it will be paid to Raintree Plantation, Inc.
8. What is the status of, and what are the terms of, the "Compliance Agreement" between the DNR, the Sewer District, and EMC, with regard to the facilities serving Raintree Plantation Subdivision?
9. What are the qualifications of the Sewer District and its contractor, EMC, to operate, maintain, and improve the water and sewer facilities that serve Raintree Plantation Subdivision?
10. Once the moratorium on sewer connections is lifted, who will decide which property owners shall be given priority in connecting to the Raintree Plantation sewer system, and how will that priority be established?

support these violations.⁷ Central Jefferson had the opportunity at various stages throughout this proceeding to address these issues and rebut the evidence received on these issues.

Section 386.430 provides:

In all trials, actions, suits and proceedings arising under the provisions of this chapter or growing out of the exercise of the authority and powers granted herein to the commission, the burden of proof shall be upon the party adverse to such commission or seeking to set aside any determination, requirement, direction or order of said commission, to show by clear and satisfactory evidence that the determination, requirement, direction or order of the commission complained of is unreasonable or unlawful as the case may be.

In its motion for rehearing, Central Jefferson merely recites the general statutory language requiring a proper hearing before the Commission reaches a determination in any contested case. Central Jefferson offers no affirmative statement or demonstration of the existence of any alleged evidence that would be offered in a subsequent proceeding to rebut the findings of the Commission which provide the basis for authorizing the General Counsel to seek penalties. Central Jefferson's claim that it lacked sufficient notice of these issues is belied by the procedural history of this matter.

It would appear to the Commission that these issues were tried without objection or with the consent of Central Jefferson and as such were properly before the agency. Central Jefferson fails to meet its burden to show by clear and satisfactory evidence that the February 8, 2007 Report and Order in this matter is unreasonable or unlawful. Consequently, the motion for rehearing shall be denied.

⁷ The record also contains evidence that the United States Environmental Protection Agency found Central Jefferson violated the Clean Water Act. These violations, *inter alia*, had resulted in a moratorium being placed on additional connections to the sewer system. These violations, however, did not serve as the basis for authorizing the General Counsel to seek penalties.

IT IS ORDERED THAT:

1. Central Jefferson County Utilities, Inc.'s February 27, 2007 Motion for Rehearing is denied.

2. This order shall become effective on April 24, 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

Stearley, Regulatory Law Judge