BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Central Jefferson County Utilities, Inc. for an order authorizing the transfer and assignment of certain water and sewer assets to Jefferson County Public Sewer District and in connection therewith, certain other related transactions.	)))))))	Case Nos. SO-2007-0071 et al.

POST-HEARING BRIEF OF STAFF

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STAFF'S BRIEF

COMES NOW the Staff of the Missouri Public Service Commission and, for its Brief, states to the Missouri Public Service Commission as follows:

SUMMARY AND OVERVIEW

Applicant Central Jefferson County Utility Company ("CJCU" or "the Company") requests the Commission's approval of its agreement to transfer all of its water and sewer assets to the Jefferson County Public Sewer District ("Sewer District"). In asset transfer cases such as this, the ultimate question for the Commission is whether the proposed transfer would be "not detrimental to the public interest." If the Commission finds that it would be "not detrimental," it must approve the transfer.

Although there is only one ultimate issue that the Commission must resolve, there are a great many complex and interrelated facts and agreements that bear on the resolution of that question. The Staff therefore discusses the Facts and Background at length, on pages 4-15 of this Brief, in order to make it easier for the Commission to understand the arguments that follow.

At pages 15-19 of this Brief, the Staff will persuasively argue that the transfer of CJCU's assets to the Sewer District, as presently proposed, is detrimental to the public interest, because,

if implemented, the customers now served by CJCU would have to pay excessively high water rates for a period of 20 years, without any regulatory oversight, and without any recourse for seeking a reduction in their water rates.

The Commission can, however, impose conditions on the transfer. Even though the Commission cannot compel the parties to amend their sale agreement, or other related agreements, in any particular way, and even though the Commission does not have jurisdiction over two of the parties to the sale agreement, the Commission can deny CJCU's Application unless and until the parties do amend the sale agreement or other related agreements. The Commission should therefore impose conditions that would make the transfer "not detrimental to the public interest." The Staff describes these conditions in its response to the second Ultimate Issue of Fact, at pages 19-26.

At pages 26-37, the Staff addresses each of the ten Preliminary Issues of Fact that the parties identified, and one other issue that was not included on the List of Issues that the parties filed in this case.

FACTS AND BACKGROUND

The Development of Raintree Plantation Subdivision.

Raintree Plantation, Inc. ("the Developer" or "Raintree Plantation") is a Missouri general business corporation, which was formerly owned by Jeremiah Nixon, Kenneth McClain, and Kenneth's father, Norville McClain. Each of the shareholders owned a one-third interest in the corporation. Raintree Plantation's principal business was the development of a subdivision near Hillsboro, known as Raintree Plantation Subdivision ("the Subdivision"). The Subdivision consists of approximately 3400 residential lots.

In developing this subdivision, the Developer constructed various facilities to make the Subdivision more marketable, including water and sewer mains and water and sewer treatment facilities, as well as other amenities. The Developer has installed water mains to serve all of the 3,400 lots in Raintree Plantation, and has installed sewer mains to serve about 3,000 of the lots; however 400 lots do not yet have access to sewer mains. Staff witness Dale W. Johansen testified that the Developer had invested approximately four million dollars in the water and sewer facilities in the Subdivision.[1]

In order to recoup a portion of those costs, the Developer required the buyers of each lot to pay a "connection fee" for connection to the water and sewer facilities. The connection fee was initially established at $300 for water service plus $700 for sewer service (a total of $1,000), but this was subsequently increased to $1,100 by adding a fee of $100 for connection to fire hydrants that the Developer provided. The connection fee was not included in the price of the lots. Instead, the lot buyers executed a document entitled "Intrastate Exemption Statement," a sample of which was admitted into evidence in this case as Exhibit 12. By this agreement, the lot buyers were able to postpone the payment of the connection fee; however, they did agree to pay this connection fee before they commence construction of a residence on the lot.

CJCU is a Missouri general business corporation, which was incorporated at about the same time as Raintree Plantation, Inc., and which was also owned by the same three individuals, in equal shares.[2] CJCU was formed to own, maintain, and operate the water and sewer utilities in the Subdivision. It is a public utility, and it holds certificates of convenience and necessity issued by the Commission to provide water and sewer service to the Subdivision and a small amount of additional territory.

[1] See Transcript, page 602.
[2] See Trancript, page 446.

Raintree Plantation, Inc. has sold virtually all of the lots in the Subdivision, but it still retains ownership of about 30 lots. Various developers have purchased and own a large number of lots, and some buyers have bought two or three lots with the intention of constructing only one residence thereon. Many of the lots remain vacant; 681 residences have been constructed in the Subdivision. However, the U.S. Environmental Protection Agency ("EPA") has imposed a moratorium on connections to the sewage treatment facilities until the facilities are expanded and improved. There is no new construction in the Subdivision at this time.

The Existing Water Utility Service.

CJCU obtains its water supply from two wells. The water from Well No. 1 contains lead in excess of 15 parts per billion, which is the maximum level that the Missouri Department of Natural Resources ("DNR") permits in drinking water, so this well is seldom used. The primary source of water is Well No. 2, which does not contain an excessive amount of lead. In fact, Well No. 2 is used exclusively, except on days of high demand, when water from Well No. 1 is mixed with water from Well No. 2, so that the lead level is kept below the maximum limit of 15 parts per billion.[3]

Well No. 2 has only one pump. If the pump from Well No. 2 goes out of service for some reason, problems would ensue, because then the lead-contaminated water from Well No. 1 would be the only source of water for the Subdivision. CJCU can address this problem by providing adequate storage. The water system includes a storage tank with a capacity of 50,000 gallons, but according to the DNR, Raintree needs a storage tank with a capacity of 200,000 gallons.

Thus, there are two main problems with the water system at Raintree Plantation: the excessive lead levels in the water from Well No. 1, and inadequate storage capacity.

[3] See Transcript, page 429.

The Existing Sewer Utility Service. The sewage treatment plant in the Subdivision was initially constructed with a capacity of 32,000 gallons per day.[4] This plant was subsequently expanded to a capacity of 64,000 gallons per day. As more residences were built, CJCU's owners could see that they would need to again expand the capacity of the treatment plant. They sought DNR approval to construct new facilities but did not obtain it. Mr. McClain testified that there was a sudden "building boom," and that lot owners in the Subdivision were building up to 100 new homes per year.[5] As a result, the sewage flow to the treatment plant increased dramatically and exceeded the design capacity.

Environmental Management Corporation ("EMC") witness Todd Thomas testified that an engineering "rule of thumb" assumes that each residence will have an average of 2.5 residents, and that the sewage flow from each resident will average 100 gallons per day.[6] When the number of residences in Raintree Plantation reached 680, the expected sewage flow would therefore be 170,000 gallons per day.[7] But CJCU's treatment plant had a capacity of only 64,000 gallons per day, so it was seriously undersized. Still, the owners of CJCU failed to expand the size of the plant. (With regard to the required capacity for the sewage treatment plant, the DNR's design standards are based upon an assumed population of 3.7 residents per household and an assumed water usage of between 75 and 100 gallons per day.)

The EPA then issued its moratorium, prohibiting any new connections to CJCU's sewage system. This effectively brought the construction of new homes in the Subdivision to a halt. It disrupted the housing market in the Subdivision, and left the owners of unimproved lots with a stranded investment, as they were unable to build homes. One family, the Tuckers, had

[4] See Transcript, page 462.
[5] See Transcript, page 506.
[6] See Transcript, page 126.
[7] 680 residences * 2.5 persons per residence * 100 gpcpd = 170,000 gallons.

completed construction of their home, but was unable to connect to the sewage system, until very recently, when they were granted permission to connect.[8]

CJCU's Failure to Invest in Needed Improvements.

Norville McClain, one of three owners of CJCU, died about three years ago, and his interest in CJCU passed first to his estate and then to a trust. The trust now owns one-third of CJCU's common stock.

Kenneth McClain testified that the Norville McClain Trust refuses to invest any additional money in the water and sewer systems at Raintree Plantation Subdivision. The trust also refuses to guarantee repayment of a bank loan. Consequently, according to Kenneth McClain, it is impossible for CJCU to provide the necessary improvements to the water and sewer facilities in the Subdivision.[9]

Whether that is true or not, the evidence in this case makes it clear that the owners of CJCU most certainly will not take steps to improve the facilities. Consequently, the water and sewer service in the Subdivision has continued to deteriorate. The DNR has issued a dozen Notices of Violation to CJCU in connection with its operations in the Subdivision.[10] In the opinion of OPC witness Ted Robertson, the utility service is no longer safe and adequate.[11] Kenneth McClain, the president of CJCU, has acknowledged that CJCU does not presently satisfy the DNR's safe drinking water standards or sewage discharge standards.[12]

Efforts to Sell the Company's Assets.

The owners of the Company claim they have suffered vast financial losses as a result of the operation of the utility systems at Raintree Plantation. Frustrated by these losses, and unable

[8] See Transcript, page 660.
[9] See Transcript, pages 441-447.
[10] See Transcript, pages 622-631, 650-651, and 655.
[11] See Transcript, page 749.
[12] See Transcript, page 450.

or unwilling to invest in improvements to the systems, the owners have made various efforts to sell its assets, which are briefly summarized on Exhibit 13. They made agreements with, or seriously negotiated with, AquaSource, the Raintree Plantation Property Owners Association ("the POA"), Aqua Missouri, Inc., Ricky and Melissa Avila, and Missouri-American Water Company, for the sale of CJCU's assets.

Most notably, CJCU made an agreement with AquaSource to sell the Company's stock for $600,000. But that purchase price included an "acquisition premium" in the amount of about $244,345. However, after the Staff informed AquaSource that it would not recommend that the Commission allow AquaSource to recover this acquisition premium from ratepayers, AquaSource backed out of the deal. CJCU was apparently not willing to reduce the asking price for its stock, and the transaction fell through.[13] However, as a result of that transaction and related events, AquaSource does now have the obligation to extend sewer mains to the 400 or so lots that do not yet have them.[14]

The Tri-Party Agreement.

Last summer, the Company made an agreement to sell its assets to the Sewer District. The Sewer District does not have bonding capacity, however, and thus has no funds with which to finance the construction of the extensive improvements that are so urgently needed at Raintree Plantation. So CJCU and the Sewer District brought in a third party, EMC, which has the ability to design, build, and operate the needed facilities. Most importantly, EMC also has the ability to finance the needed improvements.

On July 13, 2006, these three parties executed the Tri-Party Purchase and Sale Agreement, a copy of which is attached to CJCU's Application in this case, which was admitted

[13] See Transcript, page 695.
[14] See Exhibits 10 and 11.

into evidence in this case as Exhibit 2. Under this "Tri-Party Agreement," EMC will assume CJCU debt in the amount of about $102,000, but neither the Sewer District nor EMC will pay any cash to CJCU. As a result, the sale price for the Company's assets is approximately $102,000. The Company will transfer all of its water and sewer utility assets to the Sewer District. And EMC will construct improvements at a cost of up to nearly $1.7 million, and will operate, improve, and maintain the water and sewer facilities for a period of 20 years.

The Company now seeks Commission approval of the transfer of its assets in accordance with the terms of the "Tri-Party Agreement."

Operation and Maintenance Agreements.

On August 31, 2006, while this case was pending, CJCU entered into an agreement with EMC, entitled "Agreement for Operation and Maintenance of Water and Wastewater Treatment Facilities" (sometimes known as the "Interim O&M Agreement"), a copy of which was admitted into evidence in this case as Exhibit 3. By the terms of this agreement, EMC agreed to operate and maintain the Company's water and sewer facilities until the closing of the Tri-Party Agreement, or until that transaction failed to close. However, even as this Brief is being written, the Staff has been advised that EMC has canceled the Interim O&M Agreement, and is thus no longer involved in the day-to-day operations of the Company's water and sewer systems.

The Sewer District and EMC intended to execute a permanent agreement, which would become effective at such time as CJCU's assets were transferred to the Sewer District. A draft copy of this proposed permanent agreement, in near-final form, was admitted into evidence in this case as Exhibit 5. However, the Permanent O&M Agreement had not been executed at the time of the hearing. The Staff has now been informed that the Sewer District and EMC have

executed this agreement ("the Permanent O&M Agreement"). Counsel for the DNR provided copies of the executed document to Staff and to all of the other parties in this case.

The Permanent O&M Agreement provides that EMC will operate and maintain the Sewer District's water and sewer facilities in the Subdivision, and that the Sewer District will compensate EMC therefor in the amount of $37.00 per month for each sewer customer at Raintree Plantation, plus $5.80 per 1000 gallons of water used by each water customer at Raintree Plantation. In addition, EMC will receive a "New Customer Tap Service Fee" of $1,500 for each new utility customer who begins to take service after the commencement date of the contract. The contract has a term of 20 years. A copy of this Permanent O&M Agreement is attached hereto as Appendix A.

The rates specified in the Permanent O&M Agreement coincide exactly with the rates that were included in a Draft Pricing Proposal that EMC provided to the Sewer District, which was admitted into evidence in this case as Exhibit 4.

Rate Impacts Upon Customers Served by the Facilities.

The Permanent O&M Agreement does not tell what rates the Sewer District must charge its customers, and the Sewer District still has some freedom in setting those rates. The agreement does provide, however, that the Sewer District shall set rates that are sufficient for the Sewer District to recover from its customers the amounts mentioned in the second preceding paragraph hereof, plus an additional charge of not less that 50 cents per 1,000 gallons of water used by customers of the Sewer District.[15]

The Sewer District will use this additional 50-cent charge to pay administrative expenses. The Sewer District will deposit any monies that remain after its administrative expenses have been paid into its capital reserve fund.

[15] See Paragraph 3.d of the Permanent O&M Agreement.

The only source of funds that the Sewer District will have to pay its obligations to EMC is the revenues that it receives from its customers. Therefore, unless the terms of the Permanent O&M Agreement are modified, customers of the Sewer District will have to pay the Sewer District at least the following sums:

- $37.00 per month for sewer services (all of which the Sewer District will pay to EMC), plus
- $6.30 per thousand gallons of water used (consisting of $5.80, which the Sewer District will pay to EMC, plus $0.50 for administrative expenses).

Connection Fees.

New customers of the Sewer District will also have to pay a New Customer Tap Service Fee in the amount of $1,500 (all of which the Sewer District will pay to EMC).

In addition, new customers of the Sewer District may have to pay a second connection charge, in the amount of $1,000.[16] The Sewer District would not have to pay this to EMC, however, but would retain it for deposit to the Sewer District's capital reserve fund. The capital reserve fund would be used for new construction at some future date, perhaps for plant expansions, or for replacement of existing facilities.[17]

There is a third agreement that is also very significant, which also affects the amounts that new customers of the Sewer District will have to pay when they atart taking service from the District. This agreement is the Sewer and Water Service Fee Agreement ("the Service Fee Agreement") that the Sewer District and the Developer executed on July 13, 2006. A copy of the Service Fee Agreement was admitted into evidence in this case as Exhibit 8.

[16] See Transcript, page 209.
[17] See Transcript, page 220.

The Service Fee Agreement provides that for each of the 400 or so lots that do not yet have access to sewer mains (which AquaSource is required to construct), the Sewer District will pay to the Developer a fee of $1,100 when the Sewer District begins to provide service to the lot.[18] The Service Fee Agreement also provides that for all other lots (which already have access to both water and sewer mains), the Sewer District will pay to the Developer a fee of either $800 or $550 when the Sewer District begins to provide service to the lot.[19] The Sewer District's obligation to pay these fees will terminate at the end of 15 years.[20]

For this second group of lots (the ones for which the Sewer District will pay the Developer either $800 or $550), the amount that the Sewer District must pay to the Developer will be resolved as follows. The Sewer District will have to pay $800 per lot, for as long as it takes to pay to the Developer a sum of money equal to the expenses that are described in Subparagraphs (a) through (f) of Paragraph 4 of the Service Fee Agreement (see Exhibit 4). Once that sum has been paid, the amount that the Sewer District will have to pay to the Developer will be reduced to $550 per lot.[21]

The Service Fee Agreement does not tell where the Sewer District will get the money that it must pay to the Developer. However, the Sewer District has no source of funds other than the money that it receives from its customers, who must, therefore, be the source of the payment. And Sewer District representative Toma testified that the customers must pay this money to the Sewer District, which will then pay it to the Developer.

With respect to the 400 or so lots where sewer mains do not now exist, the Developer will, in turn, pay this $1,100 fee to AquaSource, as compensation for construction of the needed

[18] See Paragraph 3 (a) of the Service Fee Agreement.
[19] See Paragraph 3 (b) of the Service Fee Agreement.
[20] See Paragraph 3 (d) of the Service Fee Agreement.
[21] See Paragraph 3 (b) of the Service Fee Agreement.

sewer mains. With respect to all other lots, the Developer will retain the full amount that the Sewer District pays to it.

Sewer District witness Martin Toma testified that the Sewer District may require all of its new customers to pay the full sum of $1,100 – even including the ones for which the Sewer District will only have to pay the Developer either $800 or $550. In such case, the excess that the Sewer District receives would be deposited to the Sewer District's capital reserve fund.[22] Mr. Toma stated that the Sewer District's board of trustees has not yet decided how much to charge these customers; but he did say that he would prefer to charge them only the amount that the Sewer District must pass along to the Developer.[23]

It is important to note that each of the customers who would be required to make these payments to the Sewer District (so that the Sewer District could, in turn pay the Developer), has executed an Intrastate Exemption Statement, which, as noted above, requires the lot owner to pay $1,100 to the Developer before the lot owner begins construction of a residence. CJCU witness Kenneth McClain testified that the lot owner's obligation under the Intrastate Exemption Statement would be discharged at such time as the Sewer District makes its payment to the Developer for the subject lot. This is true, regardless of whether the payment to the Developer is $1,100, or $800, or $550. It is also true, regardless of whether the Sewer District requires the lot owner to pay $1,100, or $800, or $500 to the Sewer District.[24]

The whole issue of the connection fees that the residents of the Subdivision will have to pay was a complex and confusing subject in this case. It appears that the very idea of paying connection fees is or may be nettlesome and burdensome to many of the lot owners in the

[22] See Transcript, page 216.
[23] See Transcript, page 256.
[24] See Transcript, pages 390 and 405.

Subdivision. This is especially true with regard to the payments that the Developer seeks to exact from the residents, who do not see that they receive anything in return for their payment.

To summarize and clarify the issue of connection fees, a new customer in the Subdivision would have to pay the following connection fees:

- $1,500 to the Sewer District, which would in turn pay it over to EMC, pursuant to the Permanent O&M Agreement; plus
- $1,000 to the Sewer District, which would deposit the payment into the Sewer District's capital reserve fund; plus
- Either $1,100, or $800, or $550 to the Sewer District, which would pay either $1,100, or $800, or $550 to Raintree Plantation. If the payment is $1,100, Raintree Plantation would pay the money to AquaSource; if the payment is $800 or $550, Raintree Plantation would retain the payment. The exact amount of the customer's payment to the Sewer District is yet to be determined; the Sewer District will make the decision regarding the amount of this payment.

Thus, a new customer of the Sewer District would make total payments of either $3,050, or $3,300, or $3,600.

Additional facts will be provided, as needed, in the Argument portion of this Brief.

ARGUMENT

Ultimate Issues of Fact

1. Would the proposed transfer be detrimental to the public interest?

The issue in this case is whether the proposed sale can be found to be "not detrimental to the public interest." But what does "detrimental" mean? The Staff does not know of any case where this has been concisely defined.

Safe and Adequate Service.

The mission of the Commission is to see that the utilities it regulates provide safe and adequate service at just and reasonable rates. The Staff believes that the question of whether an asset transfer is detrimental depends upon whether, on balance, the new utility provider would be expected to do a better job of providing safe and adequate service at just and reasonable rates than the present provider – or at least no worse than the existing provider.

The present ownership of CJCU is a very poor provider of utility service. The service that the Company provides is clearly not "safe and adequate." On the other hand, if the District becomes the owner of the assets and EMC operates the facilities, there is every reason to believe that the District, through its contractor, EMC, could and would provide safe and adequate service.[25]

Just and Reasonable Rates.

But the other part of the analysis is more troubling. Would the District provide the water and sewer service at just and reasonable rates?

The Staff believes that the minimum water rates that the District would have to charge, pursuant to the Permanent O&M Agreement, would not be just and reasonable. This is because the proposed water rates are based on faulty data; specifically, EMC's Draft Pricing Proposal (Exhibit 4) relies upon the mistaken premise that the average water customer in the Subdivision uses only about 5,000 gallons per month, when, in fact, the average water customer in the Subdivision uses about 6,250 gallons per month, and arguably even more.[26]

According to the Permanent O&M Agreement between EMC and the District, the amount that EMC charges the Sewer District for water would be essentially fixed for a period of 20

[25] See the discussion under Preliminary Factual Issue No. 9, below.
[26] See Transcript, page 739.

years. These fixed rates could be a benefit or a detriment, depending upon how high they are set. If the rates are set low enough, the fact that they are fixed at a low level would obviously not be a detriment to the customers in the Subdivision; but if the rates are set too high, then the customers would be continually subjected to excessive rates for 20 years.

This would not matter so much if the money that the customers pay for their services would stay with the Sewer District, a public body, and thus would be held and maintained for the benefit of the public. But under the facts in this case, nearly all of the money that the customers will be paying for their services will be going into the hands of a private entity, where it would remain without any chance that it could be returned to the customers or applied for their benefit. It would be profit to EMC, and the customers would not ever be able to get a refund of the excessive charge.

The Staff does not have a similar concern regarding the sewer service rates proposed by the Sewer District and EMC.

Balancing the Objectives.

As noted, the Staff believes that the Sewer District's service would be safe and adequate, whereas the present service that CJCU provides is not. This fact supports a finding that the proposed transfer is not detrimental to the public interest, and that the transfer should be approved. But the Sewer District's charges, as currently proposed, would not be just and reasonable fees. This fact supports a finding that the proposed transfer is detrimental to the public interest.

The key question that confronts the Commission is the following: Do the benefits of the better service that the customers in the Subdivision would receive after the transfer exceed the detriment that they would suffer as a result of excessive rates?

Other factors should also be considered.

The Commission should still seek penalties, as the Staff pointed out in the Report on the Effect an Order Approving Asset Transfer Would Have on the Commission's Ability to Seek Penalties, which it filed in this case on December 13, 2006. The authority to seek penalties is a valuable tool, regardless of whether CJCU's assets are transferred to the Sewer District or not.

A key question is whether there are any alternatives to the transfer as proposed by the Company, or whether the Commission must choose between approving the proposed transfer or leaving the utility assets in the control and under the unsatisfactory management of CJCU. If these were the Commission's only options – approving the transfer as proposed and leaving the assets in the hands of CJCU, with no change in management, ownership or practices – the Staff might still find that the transfer of assets, under the currently existing conditions, is detrimental.

Alternatives to the Sale.

The Staff believes that other potential buyers for CJCU's assets might be found. The fact that AquaSource was willing to buy CJCU's stock, and to pay $600,000 for it, suggests that there may be other buyers who would also pay at least as much as the District has agreed to pay, which is approximately $102,000.

For example, Fred Rommel, who testified on behalf of the POA, said that if the proposed sale to the District falls through for some reason, the POA might be interested in purchasing the assets on terms similar to those in the currently pending transaction.[27]

The Commission would also have the option of seeking the appointment of a receiver for the Company. One drawback to this option is that a receivership can only succeed if the appointed receiver is able to eventually sell the assets. If a receivership is to succeed, a potential buyer would have to be identified. Another drawback to this option is that it would clearly result

[27] See Transcript, pages 730-731.

in a delay in the construction of the system improvements that will occur under the Sewer District's ownership. Although the appointment of a receiver has shortcomings, it might still be a viable option, if the Commission does not approve the sale to the Sewer District.

The most attractive option, however, is for the Commission to approve the sale of the assets to the Sewer District, but to impose conditions on the transfer. This is discussed in more detail in the next section of this Brief.

Because there are several viable alternatives available, and the Commission is not limited to the "Hobson's choice" of approving the transfer, as proposed, or leaving the water and sewer utility service to the Subdivision in the hands of the present management of CJCU, the Staff believes that the transfer as proposed *is detrimental* to the public interest. However, as shown in the following section, the transfer can become *not detrimental* to the public interest, if certain conditions are imposed.

2. If the transfer as proposed would be detrimental, could the Commission impose conditions that would make it not detrimental?

Support for Transfer of Assets.

All of the parties to this case support the transfer of assets in some form.

The Company is the applicant; and it obviously supports the transfer as proposed.

The District and EMC are reluctant parties to this case. They were not represented by counsel, and accordingly they have not filed any pleadings in this case. It is clear, though, from the agreements they have signed and the testimony of their representatives, that they also support the transfer as proposed.

The DNR did not take any official position on the transfer, but clearly showed it would prefer to see another party, such as EMC, operate the water and sewer facilities in the Raintree Plantation Subdivision.

As explained in more detail below, the Staff also supports the transfer, provided that certain conditions are imposed.

The Office of the Public Counsel ("OPC") supports the transfer, but with a set of conditions that differs slightly from the Staff's proposed conditions.[28]

And the POA supports the transfer, with a rather extensive list of fully developed conditions.[29]

Selection of Conditions to Impose.

In considering whether to impose conditions, it is important for the Commission to bear in mind that it cannot impose conditions on the parties and then compel the parties to accept them. If the parties would find the Commission's conditions acceptable, they could, of course, carry them into effect. But if they would find the conditions to be too onerous, the parties could simply reject them and walk away from the deal. In that case, the residents of the Subdivision would be stuck, for the time being at least, with a very unsatisfactory and reluctant provider of utility services. The challenge, then, is for the Commission to devise a set of conditions that is likely to be accepted, without jeopardizing the transferee's ability to provide safe and adequate service at just and reasonable rates.

The Commission should bear in mind that Sewer District witness Toma testified that the Sewer District should not have even been made a party to this case, that the Sewer District insists

[28] See Transcript, pages 746-747.
[29] See the Statement of Position of Raintree Plantation Property Owners Association, Inc., filed in this case on December 8, 2006, and the testimony of Frederick Rommel, at pages 669-734 of the Transcript.

on exercising its right to set its own rates,[30] and that imposing conditions on the Sewer District is bad policy.[31] If the Commission imposes conditions on the transfer, it would only be saying that assets should not be transferred to the District if the transfer results in rates that are not just and reasonable. The Commission would not be "setting the District's rates" any more than EMC is "setting the District's rates" through its Permanent O&M Agreement.

District witness Toma states that the District tries to serve the public interest. And there is no reason to doubt that it does seek to do that. But the mere fact that it tries to do that, does not necessarily mean that it always achieves its objective. The Commission might be able to devise a better solution than the Sewer District has currently devised – even though the Sewer District sought only to serve the public interest.

If the Commission unnecessarily imposes conditions that turn out to be "deal breakers," so that CJCU's assets are not transferred, but remain in the control of the present management of CJCU, *that* would be detrimental to the public interest.

The Commission should therefore only impose conditions that are important, and that are likely to be accepted by the three parties to the "Tri-Party Agreement."

Furthermore, the Sewer District, through Mr. Toma, has expressed its resentment about being in this case at all,[32] so the Commission needs to be mindful that the District may reject conditions, merely to demonstrate its independence.

The Staff believes that there are three conditions that are of paramount importance. They are: the rates that EMC charges for the water it provides should be reduced to $5.04 per thousand gallons; the Sewer District should submit a Compliance Agreement executed by the

[30] See Transcript, pages 235 and 243.
[31] See Transcript, page 317.
[32] See Transcript, page 282.

District, DNR and EMC; and the District and EMC should submit a Permanent O&M Agreement.

Reduction of Rates for Water Service.

The first of these conditions is by far the most tenuous, because it would substantially reduce the rates that EMC could charge for water. It would not, however, reduce the total revenue that EMC receives from the sale of water, as explained in the following paragraphs, and it would thus not impair EMC's profitability. As a result, imposition of this condition should not be so onerous as to cause either the Sewer District or EMC to back out of the deal.

Under EMC's pricing proposal, all of the water service revenues would come from the sale of water through the enactment of a "commodity charge." That is, EMC proposes to charge a fixed amount per 1,000 gallons of water that it sells; there would be no "customer charge," as there is with many water utilities.

EMC's Draft Pricing Proposal (Exhibit 4) is based upon the premise that the average customer uses 5000 gallons of water per month. So that EMC can recover its anticipated operating expense at this level of customer usage, the Permanent O&M Agreement between EMC and the Sewer District provides that EMC will be paid $5.80 per 1,000 gallons of water sold..

In fact, though, it is clear that the customers use more than 5,000 gallons per month. The average usage was 6,250 gallons per month for residential customers during 2005, according to Staff witness Dale W. Johansen.[33] And this usage was typical of the residential usage in the preceding four years. CJCU does also serve a few commercial customers, but their usage exceeds the usage of residential customers. It is therefore reasonable to conclude that the average customer usage will be at least 6,250 gallons per month. According to OPC witness Ted

[33] See Transcript, pages 561-564.

Robertson, the average customer usage is even greater, at approximately 7,000 gallons per month.[34]

If we conservatively assume that the average customer usage is 6,250 gallons per month, EMC's commodity rate that it charges the Sewer District could be reduced to $5.04 per 1000 gallons, without jeopardizing EMC's profitability, as explained by Staff witness Dale W. Johansen.

The POA's List of Conditions.

The POA's list of proposed conditions is the best starting point for a discussion of the other conditions that might be imposed.[35] These conditions (with the letter designation that the POA assigned to them) include the following:

> a. Increases in water and sewer rates should not be effective until certain milestones have been met; and monthly rates should not exceed $37.00 per month for sewer and $6.30 per 1000 gallons for water.
>
> b. Connection fees should not exceed $3,000.
>
> c. Any part of EMC's initial $1.8 million investment that is not used for treatment facilities should be used to fund a Sanitary Sewer Study and Improvement Plan ("SSSIP").
>
> d. Connection fees that the Sewer District collects for the Developer should be held in escrow pending the results of the SSSIP, and used to fund needed repairs and improvements.
>
> e. If EMC's initial $1.8 million investment is not sufficient to complete the plant expansion and implement the SSSIP, the Sewer District should phase in any needed rate increase.
>
> f. The POA and its member should be allowed to participate in the Sewer District's rate-setting process.
>
> g. EMC and the Sewer District should establish a plan for funding plant expansions that are needed to accommodate future growth.

[34] See Transcript, page 739.
[35] See the Statement of Position of Raintree Plantation Property Owners Association, Inc., filed in this case on December 8, 2006, and the testimony of Frederick Rommel, at pages 669-734 of the Transcript.

h. The transfer of assets should not close until the Compliance Agreement is executed.

i. The transfer of assets should not close until the Permanent O&M Agreement is executed.

j. Water storage capacity should be increased and the lead content of the water reduced, as suggested in the Compliance Agreement.

k. The water and sewer plant expansions should be designated for use only by residents of the Subdivision.

l. The sites for the water and sewer plant expansions should be approved by the POA.

m. The Commission must find that the District and EMC are capable of designing, constructing and operating the expanded plant facilities.

The POA's list of conditions somewhat resembles the Christmas list of a child. The POA has wishes for a great many things, many of which would be valuable and desirable; but it should not reasonably expect that every wish will be granted.

The Compliance Agreement and Permanent O&M Agreement.

But two of the conditions on the POA's list are vital. They are the execution of the Compliance Agreement (Condition h) and the execution of the Permanent O&M Agreement (Condition i).

All witnesses who testified about the Compliance Agreement agreed that execution of this document is essential. Although the Company's witness did not express a view on this matter, the execution of the Compliance Agreement would not seem to impose any burden on the Company, and the Staff knows of no reason why the Company would oppose it. The Compliance Agreement has now been executed, and a copy is attached hereto as Appendix B. The Staff believes this agreement is satisfactory; however, Staff has not had sufficient time to fully review the terms of this document.

Likewise, all witnesses who testified about the Permanent O&M Agreement agreed that execution of this document is also essential. Although the Company's witness did not express a view on this agreement, the execution of the Permanent O&M Agreement would not seem to impose any burden on the Company, and the Staff knows of no reason why the Company would oppose it. As noted above, the Sewer District and EMC have now executed this agreement (see Appendix A). The Staff believes this agreement is satisfactory; however, Staff has not had sufficient time to fully review the terms of this document. But the Staff does note that it has been advised by representatives of both the Sewer District and EMC that the provisions of Item 4 of Exhibit B to the Permanent O&M Agreement are different from the corresponding provisions in the draft of the Initial O&M Agreement, which was admitted into evidence in this case as Exhibit 5, and that these differences could be considered significant.

Other Possible Conditions.

The Sewer District's representative, Martin Toma, testified that several of the other conditions on the POA's list would be acceptable to the District, specifically: Conditions f, g, j, and k.[36] There is no evidence or other reason to believe that these conditions would not be acceptable to EMC or the Company, the other two parties to the "Tri-Party Agreement." The Staff supports each of these conditions, and the Commission should impose them.

The Staff also believes, that Condition c and Condition e would be beneficial to the public interest.[37] However, District representative Martin Toma testified that these two conditions would not be acceptable to the District.[38] The Staff believes that, although these conditions are good, they are not important enough to be "deal breakers." As a result, the Commission should only impose these conditions if it is confident that the conditions are of great

[36] See Transcript, page 290.
[37] See Transcript, page 581.
[38] See Transcript, page 290.

importance – with full recognition that there is a risk that imposing them might be a "deal breaker," so that the utility assets in the Subdivision would remain in the hands of the Company.

The Staff believes that the Commission should not impose the other conditions that are on the POA's "wish list," because they are not important enough, and might turn out to be "deal breakers."

See, for example, the suggestion that the assets that EMC constructs and installs would have to meet certain milestones before the Sewer District could recover the costs of these assets from the residents of the Subdivision (Condition a. on the POA's list). The idea that assets should be "used and useful" before a utility can recover their cost in rates is reasonable, and it is certainly well-established in utility regulation. But it is by no means mandatory, so far as publicly owned systems are concerned, and the Staff submits it would not have to be applied in this case.

The Staff does not recommend that it be made a condition, but urges the Commission to encourage the Sewer District to not require its new customers to pay the connection fee payment to the Developer (described in the Service Fee Agreement) as a condition of service.[39]

Preliminary Issues of Fact

1. What connection fees and recurring rates does the Sewer District anticipate that the residents of Raintree Plantation will have to pay immediately after transfer of the assets to the Sewer District?

Sewer District representative Toma made it very clear that the Sewer District has not yet set its rates. And he is reluctant to permit the impression that the Commission has any control over them.

[39] See Transcript, page 556.

He did testify, however, that the Sewer District's charges will include an administrative fee of 50 cents per 1,000 gallons of water sold. When added to the $5.80 per 1,000 gallons that the Sewer District must pay to EMC for water, this results in a rate of $6.30 per 1,000 gallons. To the extent that the 50-cent charge is not required to cover administrative expenses, it would go into a capital reserve fund.

Based on an average use of 5,000 gallons per month, this total rate would result in a bill of $31.50 per month for water. However, the Staff believes the average customer uses at least 6,250 gallons per month. If that latter figure is accurate, the $6.30 rate would result in an average bill of $39.38 per month.

Sewer services would be charged at a flat rate of $37.00 per month.

New customers would also have to pay a connection fee of $1,500 to the Sewer District, which would pay the money over to EMC.

In addition, new customers would also have to pay a connection fee of $1,000 the first time service is provided to the address where they live. This would be deposited into the Sewer District's capital reserve fund.

Finally, there is a connection fee of up to $1,100 that the District would collect, essentially as a collection agent for the Developer. Customers who are in an area that does not now have sewer lines would pay $1,100, which the Sewer District would pay to the Developer. Customers who are in an area where sewers already exist would have to pay either $1,100, $800 or $550, depending upon the circumstances at the time they connect and the final decision of the Sewer District with regard to these charges. See the "Facts and Background" section, above, for a fuller discuss of these fees.

2. Would the rates and fees thereafter be increased according to a schedule, or upon the occurrence of some event, and how would the amount of such increase be determined?

As proposed, the full rates would go into effect immediately upon transfer of the assets to the Sewer District. There is no provision for a phase-in of the new rates.

The Sewer District is jealous of its authority to set rates, and has made it clear that it reserves the right to change the rates in the future.[40]

District representative Toma did testify, however, that the rates would be based on the prices the Sewer District pays. Those prices would be passed on to the customers.[41]

It is important to note that the rates that EMC charges would not change, except in certain specific circumstances. The main such circumstance is if the $1.8 million is not sufficient to cover the cost of the initial capital improvements that EMC, as well as the Sewer District, have committed to make. In that case, EMC could incur additional expenses only upon the approval of the District, and could pass those costs on to the District, but without collecting any overhead and profit.[42]

Costs could also increase as a result of changes in regulatory requirements, but not for increases in the cost of materials, chemical, labor costs, or the general rate of inflation.[43]

3. What ability would the residents of Raintree Plantation Subdivision have to control the operation of the Sewer District and the rates that it charges for services?

[40] See Transcript, page 203.
[41] See Transcript, page 207.
[42] See Transcript, pages 102, 199, and 244.
[43] See Transcript, page 186.

Residents would not have any ability to directly control the operation of the Sewer District. The only control they could exercise is through the election of members of the county commission of Jefferson County.[44]

The voters in Jefferson County elect the three members of the county commission. The county commission, in turn, appoints the five people who comprise the board of trustees for the Sewer District. The board of trustees then manages not only the utility services to the Subdivision, but also to all other parts of the district, which consists of perhaps 65,000 people.

There are about 680 customers in the Subdivision. If there is an average of three residents per house, there would be approximately 2,000 residents in the Subdivision. These residents account for about one percent of the population of Jefferson County, which is approximately 200,000. They therefore have very limited electoral control over the county commission.

4. If EMC's initial investment of $1.8 million is not sufficient to build and operate the necessary facilities, how will the Sewer District fund additional facilities and services?

If EMC spends more than $1.8 million, they would be paid back, but without overhead and profit.

Sewer District representative Toma said the Sewer District would pass these costs along to the customers.

These costs would be imposed as a temporary surcharge.

5. What are the terms of the agreement between the Sewer District and EMC for the operation, maintenance and improvement of the water and sewer facilities?

[44] See Transcript, pages 195, 220, and 287.

Until sometime very recently, perhaps within the last day or two, EMC was providing services to CJCU under the terms of an Interim O&M Agreement. See Exhibit 3.

The Sewer District and EMC have now executed a Permanent O&M Agreement (see Appendix A), which will go into effect if CJCU's application is approved and its assets are transferred to the Sewer District.

6. Will the Company transfer to the District all of the assets that are needed to provide water and sewer service to Raintree Plantation Subdivision?

Various parties testified that under the proposed agreement, all assets necessary to provide service to the residents of the Subdivision will be transferred to the Sewer District. No one testified to the contrary, and there is no evidence or reason to believe that this would not be the case. See also Exhibit 1. The Commission should find that all assets that are needed for the provision of water and sewer service to the Subdivision will be transferred.

7. Will the owners of lots in Raintree Plantation Subdivision be obliged to pay a water and sewer connection fee of approximately $1,100? If so, to whom is this obligation owed? Will all or part of this fee be paid to Raintree Plantation, Inc.?

When a developer, such as Raintree Plantation, develops a subdivision, it typically buys land, surveys it, subdivides it, plats it, clears and landscapes it, constructs certain improvements upon it, such as streets, curbs, and gutters, arranges for the provision of utility services, markets the property, and eventually sells it. With regard to water and sewer services, the developer typically constructs the water and sewer mains, and either "contributes" them to a privately owned utility or, occasionally, provides the utility service itself. Even though a developer may

"contribute" these assets, it is not like the developer is giving the assets or money to a charity; the developer certainly hopes to recover the cost of these "contributed" assets.

The developer tries to sell the developed lots at a price that will enable it to recover all of the costs associated with these activities, including the "contributed" assets. Although the cost of the "contributed" assets may not be itemized for the buyer, the cost is usually included in the sales price of the lot. In the case of the Subdivision, the Developer separated these costs out and clearly identified them for the lot buyer on the Intrastate Exemption Statement, which each lot buyer signed.

The lot buyers thus had the advantage of knowing how much they were paying to connect to the water and sewer systems. They enjoy an additional advantage, in that they did not have to make this $1,000 or $1,100 payment when they bought the lot, but they can defer the payment until they begin construction of their home. The lot owners who have not yet begun construction of their homes have never paid this sum, and they remain obligated, by the terms of their Intrastate Exemption Statement, to make this payment to Raintree Plantation.

The Service Fee Agreement alters this arrangement somewhat – but not to the disadvantage of the lot owner. The Service Fee Agreement essentially casts the Sewer District into the role of an agent for the Developer, for the purpose of collecting the money that the lot owner does now owe to the Developer.[45] The Sewer District then pays it over to the Developer.

What the lot owners gain from this is the discharge of their obligation to pay $1,100 to the Developer. Approximately 400 of these lot owners[46] will have to pay $1,100 for the discharge of their $1,100 obligation. But the other lot owners may have to pay as little as $800

[45] According to the Permanent O&M Agreement, EMC will (at least initially) collect the water and sewer fees on behalf of the Sewer District, it may be said that EMC is acting as the Sewer District's agent, as well. Thus, the connection fee that the customer must pay goes first to EMC, then to the Sewer District, then to Raintree Plantation, and then, in many cases, to AquaSource.

[46] The owners of the 400 lots that do not presently have access to sewer mains.

or even $550 for the discharge of their $1,100 obligation; for them, this arrangement could amount to a small windfall.

All of the lot owners do benefit from this transaction. Kenneth McClain testified that if the Commission imposed a condition which prevented Raintree Plantation from enforcing the Sewer District's obligation to make this payment to Raintree Plantation, the lot owners' obligations would not be discharged.[47] In that case, the Developer would still be free to seek enforcement of the promise contained in the Intrastate Exemption Statement, and the lot owners might have to pay more than they would have to pay to the Sewer District if the Service Fee Agreement is enforced.

Some features of this Service Fee Agreement are not easily explained or understood, however. For example, the agreement states, in Paragraph 3, that the Sewer District is making these payments in exchange for the Developer's agreement to enforce AquaSource's promise to install sewer mains for $1,100 per lot served. There was testimony that this is a good price, and that this construction work would cost more than $1,100 per lot served if it is performed by someone other than AquaSource.[48] But the Staff submits that the Sewer District would have the right to require AquaSource to perform this work for $1,100 per lot served even if the Service Fee Agreement had never been executed.[49]

Furthermore, it is difficult (or impossible) to understand why the Developer should collect from the Sewer District for the monies that the Developer advanced to its affiliate, Central Jefferson County Utilities Company. CJCU may have become indebted to the Developer as a result of these transactions; but that does not explain why the *Sewer District* should make payments to the Developer. This arrangement looks like a scam, but it may be just the business

[47] See Transcript, page 392.
[48] See Transcript, page 215.
[49] See Exhibits 10 and 11.

of these two affiliates, who are passing money back and forth for no discernible reason. Most importantly, there was no evidence that these payments work to the disadvantage of the residents of the Raintree Plantation Subdivision.

The more troubling aspect of this arrangement is the suggestion that if lot owners fail to pay the connection fee to the Sewer District, the Sewer District could prevent the lot owners from receiving service. The Service Fee Agreement does not require the Sewer District to refuse connection to lot owners who fail to pay; but it does state, in Paragraph 3 (c), that the Sewer District "shall collect its charge … contemporaneously with initiating service." As Raintree Plantation is not the utility provider, the Staff submits that it should not be permitted to prevent the Sewer District from connecting lot owners who fail to pay a debt that is not related to the provision of sewer service.

8. W hat are the status and the terms of the "Compliance Agreement" between the DNR, the District, and EMC?

If a Compliance Agreement is not executed and in place, DNR could, and probably would, hold the Sewer District and EMC liable for any violation of DNR requirements that occurred prior to the transfer and still exist after the transfer. Understandably, this would not be acceptable to either the Sewer District or EMC. The Sewer District and EMC need assurance they will not be held responsible for CJCU's prior violations. The transfer therefore could not occur unless a Compliance Agreement is executed.

As noted previously, the DNR, the District, and EMC have now executed a Compliance Agreement, which protects the Sewer District and EMC (see Appendix B) and which includes

specific timetable for the completion of the much-needed water and sewer system capital improvements.

9. Are the Sewer District and its contractor, EMC, qualified to operate, maintain, and improve the water and sewer facilities?

EMC presented ample documentary evidence that it is qualified to design, build, operate, and maintain the water and sewer systems at Raintree Plantation. See Exhibit 1.

DNR witness Lance Dorsey testified that the DNR's experience with EMC has been positive.[50]

And EMC has already demonstrated good management of CJCU's facilities. For example, EMC representative Todd Thomas testified that EMC has already cleaned out half of the Company's "collection boxes."[51]

There was no evidence, whatsoever, that EMC is in any way not qualified to provide the required services.

It appears that there is no dispute that the Sewer District and EMC are qualified to operate, maintain, and improve the water and sewer facilities, and the Commission should so find.

10. Once the moratorium on sewer connections is lifted, who will decide which property owners get priority in connection to the sewer system?

The question of who decides which property owners get priority in hookups is probably a moot point.

[50] See Transcript, page 644.
[51] See Transcript, page 490.

There are presently 681 customers in the Raintree Plantation Subdivision who are served by CJCU. So long as the moratorium exists, no new homes will are being constructed there, and there is thus no new demand for hookups to the sewer system.

The moratorium will remain in effect until the expansion of the sewage treatment plant is complete. When that occurs, the sewage treatment plant will have sufficient capacity, based upon the DNR's design criteria and the planned capacity of the plant (400,000 gallons per day) to serve up to 1,441 customers. The day before the sewage treatment plant goes on line, it is not capable of serving *any* new customers. On the day that it goes on line, it will suddenly be capable of serving up to 760 new customers (1,441 – 681).

Sewer District representative Toma testified that there would be no priority system for hookups. However, that is of no importance, since the expanded system would easily be able to serve all of the customers who then "immediately" desire service.

11. The John Kolisch Issue.

There is one final issue, which was not included in the list of issues that the parties filed in this case, but which merits some attention – the claims and concerns that were expressed by John Kolisch. Mr. Kolisch does not reside in the Subdivision, but he is a customer of CJCU. He filed an untimely application to intervene in the case, which was properly denied, but the Commission permitted him to testify as a witness at the evidentiary hearing.[52]

In accordance with CJCU's filed tariff sheets, Mr. Kolisch sought and obtained water and sewer service at his place of business. Pursuant to CJCU's line extension policy, Mr. Kolisch had to pay the full cost of extending these lines to his service address, but he is entitled to a pro

[52] See the testimony of John Kolisch, at pages 333-381 of the Transcript.

rata reimbursement of a part of this construction cost from other customers who hook onto the mains that he paid for.

Mr. Kolisch's testimony on this matter was very hard to follow. It appears, though, that he recognizes that he does not have, and never did have, a right to seek reimbursement from CJCU or from any of the parties to this case. He seems to recognize that the tariff only gives him a right to collect from other customers, and only at such time as they connect to the water and sewer mains that he paid for. To date, only one other customer has done so. The water main that Mr. Kolisch paid for would serve 12 additional lots, and the sewer main that he paid for would serve nine additional lots.

However, Mr. Kolisch apparently became unnerved when CJCU agreed to sell its assets to the Sewer District, and perhaps for good reason. Trip England, counsel for CJCU acknowledged that once the asset transfer is approved, the tariffs will be canceled, and Mr. Kolisch's right to be paid under the tariff will go away.

Mr. Kolisch claims that he is entitled to a total reimbursement of about $30,000. The language in the document that he relied on is very confusing, and is impossible to parse. Mr. Kolisch did also submitted late-filed Exhibit 61, but this also fails to shed light on exactly how much reimbursement he is entitled to, or even the lots to which his claim of reimbursement applies.

The Company filed a response to Mr. Kolisch's exhibit, in which it identified the lots to which Mr. Kolisch's claim for reimbursement applies. No party objected to the Company's statement, and the Staff has no reason to believe it is not accurate. The Company also stated that the Developer and the Sewer District are willing to amend the Service Fee Agreement so as to put Mr. Kolisch in the same position after the asset transfer as he is presently in. This is all that

he should hope for. The Commission should require, as a condition of the transfer, that the Service Fee Agreement be amended as described.

CONCLUSION

The sale of CJCU's assets to the Sewer District, as presently structured and proposed, would be detrimental to the public interest. The reason for this is that if the sale is approved as proposed, the Sewer District's customers in the Subdivision would be paying excessively high rates for water service. This is because EMC's pricing proposal to the Sewer District, and the rates specified in the Permanent O&M Agreement, are based upon the faulty premise that the customers in the Subdivision use only 5,000 gallons of water per month, whereas in fact they use about 6,250 gallons of water per month (and arguably even more). Because these rates would not be subject to review for 20 years and are not subject to regulatory oversight or refund, EMC's excessive earnings would pass into the private sector and would not inure to the benefit of the customers in the Subdivision.

However, the transfer of the assets would not be detrimental to the public interest if the Commission imposes appropriate conditions on the transfer. The foremost condition that the Commission should impose is a requirement that the Sewer District and EMC amend the Permanent O&M Agreement, to reduce the rate for water service that the Sewer District will pay to EMC to $5.04 per thousand gallons. The other two vital conditions – the execution of the Compliance Agreement, and the execution of the Permanent O&M Agreement – have already been met.

The Commission should also impose Conditions f, g, j, and k from the POA's proposed list of conditions, because the Sewer District has indicated that they would be accepted. If the

Commission concludes that Conditions c and e from the POA's list would not be "deal breakers," it should also impose those two conditions.

Finally, the Commission should encourage the Sewer District to not require its new customers to pay the connection fee payment that will be passed on to the Developer as a condition of receiving utility service from the Sewer District.

WHEREFORE, the Staff respectfully submits its Brief for the Commission's consideration in this case.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronic mail to all counsel of record this 19th day of January, 2007.

/s/ Keith R. Krueger