

**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)	Case No. SO-2007-0071, et al.
Assets to Jefferson County Public Sewer)	
District and in Connection Therewith,)	
Certain Other Related Transactions.)	

**BRIEF OF RAINTREE PLANTATION
PROPERTY OWNERS ASSOCIATION, INC.**

Introduction.

On August 15, 2006, Central Jefferson County Utilities, Inc. (“Central Jefferson”) filed two identically captioned applications seeking the authorization to transfer and assign certain assets of its water and sewer operations to the Jefferson County Public Sewer District (“Sewer District” or “District”). The proposed “Tri-Party Purchase and Sale Agreement” (the “Purchase Agreement”) attached to the applications involves the transfer of the assets to the Sewer District, and the Sewer District entering into a long-term operation, maintenance and capital improvements agreement with Environmental Management Corporation (“EMC”). The Commission consolidated the cases on August 17, 2006. The Sewer District was also joined as a necessary party on that same date.

Raintree Plantation Property Owners Association, Inc. (the “Association” or the “POA”) submitted a request to intervene on September 9, 2006. If the transaction is approved, residents in Raintree Plantation Subdivision (the Subdivision) will be the only customers of the Sewer District for some time and they will also be the principal source of revenue for the Sewer District. (Tr. 230) The members of the Association are owners of lots in Raintree Plantation

Subdivision (the “Subdivision”). At the current time, no additional connections may be made by persons needing sewer service in the Subdivision because of a building moratorium imposed by the Missouri Department of Natural Resources and the US Environmental Protection Agency. (Exhibit 2, ¶9) The Association has approximately 2,300 members and is managed by a nine member board of directors. (Tr. 702). The Board created a Sewer and Water Committee to address the quality of water and sewer service issues in Raintree Plantation. (Tr. 702) The Association’s request to intervene was granted by the Commission on September 19, 2006.

The Commission conducted an evidentiary hearing on December 19 and 20, 2006.

The Issues:

There are two issues in this case:

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?

Although Central Jefferson’s proposed transfer of assets to the Sewer District is not perfect, it does provide a welcome prospect that 1) the wastewater collection and treatment facilities and the water distribution facilities serving the Subdivision will be improved to the degree that the building moratorium imposed by state environmental authorities can be lifted; 2) the systems will be operated in compliance with the rules, regulations, restrictions and limitations of federal and state environmental agencies; and 3) operation, maintenance and service to customers will dramatically improve. Even so, the Association contends that unless

the Commission imposes conditions on the transfer of assets the proposal would be detrimental to the public interest.

The Association enumerated thirteen conditions in its Statement of Position. All but one involve only the District and EMC after the transaction closes and accordingly, the District and EMC are the parties most directly affected by them if approved. During the questioning of witnesses for the District and for the Staff by the parties and the Commission itself, it became clear that several of those conditions were acceptable. In its brief, the Association will first identify which of the Association's conditions the District and other parties have already accepted. The remainder of the brief will discuss the remaining conditions that the Association contends will eliminate any detriment to the public.

The Acceptable Conditions

During examination by Commissioner Clayton, Martin Toma, witness for the District, testified that at least five of the Association's conditions were acceptable in some form.¹ (Tr. 292) Those conditions are:

- f. The POA and its members shall have the ability to participate in the process by which the District adjusts rates, fees and charges related to water and sewer service.
- g. EMC and the District shall establish a schedule and funding device under which wastewater treatment capacity and water distribution and storage capacity are increased to accommodate projected growth in Raintree Plantation.
- h. The transfer of assets shall not close until the "Compliance Agreement"² between the District, EMC and the Missouri Department of Natural Resources is executed.

¹ Mr. Toma qualified his acceptance of these conditions with the statement that "I think the question will have to do with our interpretation of the meaning of these words." The Association understands this to mean that a condition might need more detail or specificity but in general all of these conditions are satisfactory to the District.

² See Exhibit 23.

- i. The transfer of assets shall not close until the Operation and Maintenance Agreement³ between the District and EMC is executed. Moreover, the Operation and Maintenance Agreement must cover timely response and repair of blocked collection lines and leaking or otherwise faulty transfer stations.⁴
- j. The potable water supply of Raintree is increased to the capacity suggested in the "Compliance Agreement" and the lead content is reduced to the minimal levels set by federal and state regulation.

At a minimum, the Commission's report and order should impose these conditions on approval of the application.

Remainder of the Conditions.

Another eight conditions were part of the Association's statement of position. They should be imposed on the transfer of the assets in this case as set forth below:

- a. The water and sewer rates proposed by the Sewer District should not be effective until milestones have been established and met; for example, when scheduled improvements are in service and operational. Furthermore, at the end of the improvements phase, recurring monthly rates should not exceed \$37.00 per month for sewer and \$5.04⁵ per 1,000 gallons for water.

At hearing, the Association called Mr. Fred Rommel, a member of the board of directors and chairman of the Sewer and Water Committee of the Board, to address the conditions which the Association sought to impose on this transaction. Regarding the first, Mr. Rommel explained that phasing in the rate increases as milestone markers are reached was important to the Association. The Association did not consider permit acquisition or an engineering report as a

³ Exhibit No. 5 titled "Utility Operation, Maintenance and Capital Improvement Agreement."

⁴ Recent advice from attorneys for the Missouri Department of Natural Resources indicates that the Compliance Agreement and the "Utility Operation, Maintenance and Capital Improvement Agreement" (the Operation and Maintenance Agreement) have been executed.

⁵ The rate for water service the Association originally included in this condition was \$6.30 per thousand gallons. This rate was analyzed by staff witness Dale Johansen who testified that it was not based on a correct average monthly usage figure. He recommended a rate of \$5.04 per thousand, (Tr. 552) and the Association agrees with the recommendation.

significant event that merited a change in rates. He testified that actually increasing the capacity of the sewer plant or water storage would be considered milestones by the Association, so too, the drilling of a new well. (Tr. 704-705)

It is the position of the Association that increased customer rates for service should be phased in. This condition continues to be of high importance to the Association. The Association does not oppose a plan whereby half of the increase would go into effect upon closing of the transaction but the other half of the increase would not be effective until all improvements to the sewer and water systems required under the Compliance Agreement (Exhibit 23) are operational and approved. With half of the rate increase in place at closing, EMC would have revenue available to cover its immediate assumption of Central Jefferson's debt of approximately \$100,000, if not more of its pre-construction costs and expenses. Since EMC's payment for construction of the improvements to each system will likely be made after the improvements are constructed and not before, it is not unfair to defer the second half of the rate increase until EMC has incurred the costs of constructing the improvements.

The Association is not opposed to the rates proposed for sewer, and prefers the rate for water service recommended by Mr. Johansen of \$5.04 per thousand gallons. The District rates should be locked in for a 20 year period as part of this condition.

- b. Connection fees, including tap on fees, reserves for future growth and the "Real estate contract utility system connection fees", per agreement between the District and Raintree Plantation, Inc. (the developer), do not exceed \$3,000.

Mr. Toma explained at hearing that for any lot there would not be a charge of more than \$3,600 as a connection fee to the water and sewer systems. The Association's proposal was that connection fees, including tap on fees and reserves, not be more than \$3,000. This difference is not significant to the Association and provided the District will annually account for the revenue

it acquires from connection or tap on fees, the Association has no objection to the District's not to exceed charge of \$3,600. However, with respect to the reserves, the District must restrict those reserves exclusively for capacity additions or repairs to the water and wastewater systems serving the Subdivision. Finally, at the time the wastewater treatment plant is built out to serve 2,400 customers, ---its maximum capacity-- any balance of the reserves collected by the District should be returned to the customers either as a credit on prospective billings or as some sort of patronage dividend.

- c. Any portion of Environmental Management Corporation's (EMC) initial investment of \$1.8 million that is not used in or needed for the expansion of the wastewater treatment and potable water facilities shall be used to fund the recommended improvements contained in the Sanitary Sewer Study and Improvement Plan (SSSIP) that will be completed by EMC following completion of the expansion project.

This continues to be a condition of high priority for the Association. At hearing, Mr. Rommel explained that the Compliance Agreement (Exhibit 23) calls for the submission of a Sanitary Sewer Study and Improvement Plan (SSSIP) that will address specific improvements and upgrades to the wastewater system. (Exhibit 23, page 8) It is obvious that if the parties execute the Compliance Agreement, funding must be available for preparation and submission of the study and construction of the improvements contained in the SSSIP. If there is a balance of the \$1.8 Million remaining after the Utility Asset Improvements are constructed (Exhibit 5, Page B-1) that balance should be earmarked for funding the SSSIP and the improvements to the system called for in that study.

The proposed increased rates for service are based upon EMC's expenditure of \$1.8 Million toward system improvements. As an alternative to the above, if the Utility Asset

Improvements can be satisfactorily installed and constructed for less than \$1.8 Million, the rates for service should be adjusted downward accordingly.

- d. Any connection fees collected by the District on behalf of Raintree Plantation, Inc. (the developer) shall be held in escrow pending the results of the SSSIP and shall be used to fund as much as possible the cost of repairs and improvements recommended in that plan.

This condition is now withdrawn.

- e. In the event funding above the initial investment of \$1.8 million is needed to complete the wastewater treatment plant expansion and the recommendations of the SSSIP, and the District intends to charge customers to obtain that additional funding, such charges shall be designed to collect the additional funds in phases and not in a special one time charge, rate or assessment.

During cross examination, Mr. Toma explained that in his negotiations with EMC, the parties have apparently reached a verbal understanding that if EMC believes it requires funds in excess of \$1.8 Million to complete the contracted for improvements, EMC must appear before the District Board of Trustees and demonstrate the need. Thereafter the contract would be amended to include those extra amounts net of profit or overhead. If such a situation developed the ratepayers would be surcharged a fixed dollar amount for a limited period of time and it was consistent with the expectations of the District that the surcharge would appear as a separate line item on the billing. (Tr. 245) It appears to the Association that the District has also agreed to this condition and it should be part of the Commission's report and order.

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

The Association is prepared to withdraw this condition as it appears from the record that any District customers outside of the Subdivision who are connected to the wastewater treatment

facilities will pay the same tap or connection fees and the same monthly rates as residents in the Subdivision.

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

The evidence suggests that the location for the wastewater treatment plant expansion is already fairly well decided and property is available for that purpose. However, nothing in the record shows the location of or property description for the new water storage/mixing facility. The Association expects that the District will require rights in Association property to install and construct the necessary improvements to the water distribution system. In locating those facilities, factors such as noise, frequency of maintenance and access as well as aesthetics should be taken into account. As a condition on the transfer of assets, the location of the pump house and water storage/mixing facility should be approved by the Association.

- m. The Commission finds and determines that the District and EMC have the capabilities of designing, constructing and operating the new water and wastewater facilities, and have the ability to forecast with reasonable accuracy and prepare for the subdivision's future potable water distribution and wastewater collection and treatment requirements.

The Association appeals to the Commission's superior expertise in this field and believes that it is important for the Commission to make this finding before it approves the transaction.

Conclusion

The Association's board of directors is faced with its own challenge in advancing the position of more than 2,000 members. Those members may have conflicting viewpoints on the appropriate form of relief in this case. It is the Board's position after consideration of all the evidence, and its canvas of the membership, that Central Jefferson's application is in the public

interest and should be approved subject to the conditions to which the District has agreed already, and subject to as many of the conditions the Association continues to propose above. However, the Association will not oppose the Commission's application of its proposed conditions in a manner that avoids an irretrievable break down of the transaction

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 19th day of January, 2007, to Michael Schmid at mjs@srfblaw.com; Keith Krueger, General Counsel's Office at keith.krueger@psc.mo.gov; Christina Baker, Office of Public Counsel at christina.baker@ded.mo.gov; Martin Toma at mtoma@jeffcomo.org; and Dean Cooper at dcooper@brydonlaw.com.

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