

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 16th day
of September, 2008.

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)	<u>Case No. SO-2007-0071</u>
assets to Jefferson County Public Sewer District)	consolidated with
and in connection therewith, certain other related)	WO-2007-0072
transactions.)	

ORDER OF CORRECTION

Issue Date: September 16, 2008, 2008

Effective Date: September 26, 2008

On February 8, 2007, the Commission issued its Report and Order (“Order”) in this matter. The Order bore an effective date of February 28, 2007. On February 27, 2007, Central Jefferson County Utilities, Inc. (“CJCU”) filed its application for rehearing. The Commission denied that motion on April 24, 2007, and on May 21, 2007, CJCU filed a petition for a writ of review in the Circuit Court of Cole County.¹

CJCU only alleged one error in its application for rehearing in SO-2007-0071, claiming that the portion of the Order authorizing General Counsel to seek penalties was unlawful. That single contention was further qualified when CJCU stated that it sought rehearing “to eliminate those provisions in the Report and Order purporting to find basis for, or authorize, the General Counsel to seek penalties against Central Jefferson.”² This is the

¹ That case was docketed as Case No. 07AC-CC00444.

² Section 386.500.2, provides, in pertinent part, that an “applicant shall not in any court urge or rely on any ground not so set forth in its application for rehearing.” In order to properly preserve an issue for review by the courts, that issue must be pled in the application for rehearing. *State ex rel. Missouri Gas*

only point of alleged error that was preserved for review by the Circuit Court in the writ of review proceeding.

On June 30, 2008,³ the Circuit Court issued its “Findings of Fact, Conclusions of Law and Judgment in the writ of review proceeding, wherein it remanded this case to the Commission with instructions to delete certain conclusions of law. The Court’s specific language is as follows:⁴

The court therefore finds the Case No. SO-2007-0071 *findings* of statutory violation to be unlawful, having been achieved by procedure not authorized by law. The Report and Order is reversed in these respects and remanded to the Commission with the direction to delete such *findings*. (Emphasis added).

The Commission can only assume the Circuit Court was referencing the Commission’s *conclusions of law*,⁵ on pages 37-39 of the Order, where the following specific *conclusions* regarding *statutory violations* were delineated:⁶

Consequently, the Commission shall order its General Counsel to seek the maximum amount in penalties from Central Jefferson for the following violations:

a. Every violation of the Missouri Clean Water Act, Sections 644.051(1) and (2), and Section 644.076.1, as found by the DNR, is a violation of Commission Rule 4 CSR 240-60.020.1, in that Central Jefferson failed to maintain and operate a sewage treatment facility of adequate capacity and properly equipped to treat the sewage and discharge effluent of the quality required by the laws of the state of Missouri and in other respects failed to comply with the laws and regulations of the state and local health authority. Each violation is a separate and distinct offense, and each day forward from

Energy v. Public Service Com’n, 186 S.W.3d 376, 390 (Mo. App. 2005).

³ All dates further referenced in this order refer to the year 2008 unless otherwise specified.

⁴ *Findings of Fact, Conclusions of Law and Judgment*, Case No. 07AC-CC00444, In the Circuit Court of Cole County State of Missouri, June 30, 2008.

⁵ There were no “findings of fact” that specifically referenced “statutory violations.”

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*, Case No. SO-2007-0071, Report and Order, issued February 8, 2008, effective February 28, 2008.

the date that DNR found the violation, and Central Jefferson failed to bring its system into compliance, is a separate and distinct offense.

b. Every violation of 10 CSR 20-6.010(1)(A) & 5(A), 10 CSR 20-7.015(9)(A)(1), 10 CSR 20-7.031(3)(A), (B), & (C), and 10 CSR 20-9.020(2), as found by the DNR, is a violation of Commission Rule 4 CSR 240-60.020.1, in that Central Jefferson failed to maintain and operate a sewage treatment facility of adequate capacity and properly equipped to treat the sewage and discharge effluent of the quality required by the laws of the state of Missouri and in other respects failed to comply with the laws and regulations of the state and local health authority. Each violation is a separate and distinct offense, and each day forward from the date that DNR found the violation, and Central Jefferson failed to bring its system into compliance, is a separate and distinct offense.

c. Each day that the capacity of Central Jefferson wastewater treatment facility was exceeded was a failure of Central Jefferson to maintain and operate its sewage treatment facility with adequate capacity and is a violation of Commission Rule 4 CSR 240-60.020.1 and Section 393.130.1. Central Jefferson's sewer treatment facility capacity has been exceeded every day since on or about July 1, 2000, each day thereafter being a separate and distinct offense.

d. Each day that Central Jefferson failed to make reasonable efforts to eliminate or prevent the entry of surface or ground water, and each day that Central Jefferson did in fact fail to eliminate or prevent the entry of surface or ground water, into its sanitary sewer system is a violation of Commission Rule 4 CSR 240-60.020.3 and Section 393.130.1. This problem was identified as arising on or about December 1, 2003, each day forward being a separate and distinct offense.

e. Each day that Central Jefferson has been unable to provide adequate storage of uncontaminated drinking water, to ensure the safe and adequate provision of water services is a violation of Section 393.130.1. DNR documented annual water consumption figures exceeding the demand of Central Jefferson's storage capacity in 2005. Consequently, each day forward from on or about January 1, 2005 when adequate reserves were unavailable is a separate and distinct offense.

Should the General Counsel wish to develop additional factual support for the violations found in this contested hearing, or to support additional violations for which a penalty is authorized, then it shall file a complaint with the Commission against Central Jefferson asserting any allegations the General Counsel wishes to pursue.

The Commission must also assume, although the Circuit Court did not state such,

that if the process was defective for rendering the conclusions of law regarding statutory violations, that the process must have also been defective for reaching the conclusions regarding the violations of the code of regulations. Having so remanded on the basis that the Commission's conclusions of law regarding "violations" were achieved by a procedure not authorized by law, the Commission shall correct the pertinent portion of its February 8, 2007 Report and Order striking all of the language quoted above currently appearing on pages 37-39 of the Order. Additionally, the last sentence in that passage shall be replaced with the following language:

Should the General Counsel wish to develop additional factual support for any potential statutory and rule violations unearthed in this contested hearing, that may ultimately result in a penalty action, then it shall file a complaint with the Commission against Central Jefferson asserting any allegations the General Counsel wishes to pursue.

Also, in keeping with the Circuit Court's decision and the need to conform the entire Order to its ruling, the Commission shall strike the following Ordered Paragraphs from the Order:

5. The General Counsel of the Missouri Public Service Commission is hereby authorized to seek penalties against Central Jefferson County Utilities, Inc., pursuant to Section 386.570, RSMo 2000, in the Circuit Court of appropriate venue, for any and all violations of state statutes, Commission Rules, or the Company's tariff provisions as identified in the body of this order.

6. The General Counsel of the Missouri Public Service Commission shall file its action seeking penalties before the effective date of this order.

7. The General Counsel of the Missouri Public Service Commission is further authorized to file a complaint action against Central Jefferson County Utilities, Inc., as described in the body of this order. Should the General Counsel elect to pursue a complaint, it shall file that action before the effective date of this order.

The Commission emphasizes that none of the findings of fact delineated in its February 8, 2007, Report and Order were disturbed by the judgment of the Circuit Court of Cole County

when it issued its decision in the Writ of Review of Case No. SO-2007-0071, Circuit Court Docket 07AC-CC00444, Judgment issued June 30, 2008.

IT IS ORDERED THAT:

1. The Commission amends and corrects its February 8, 2007 Report and Order in this matter as fully described in the body of this order.
2. This order shall become effective on September 26, 2008.
3. This case shall be closed on September 27, 2008.

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, Clayton, Jarrett,
and Gunn, CC., concur.

Harold Stearley, Senior Regulatory Law Judge