

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

ORDER DIRECTING FILING

Issue Date: November 23, 2005

Effective Date: November 23, 2005

On October 11, 2005, the Summer Sea Property Owners Association and South Jefferson County Utility Company, its wholly-owned subsidiary, filed their Joint Application for authority for South Jefferson County to transfer its water and sewer systems to Summer Sea and for cancellation of South Jefferson County's certificates of convenience and necessity. Thereafter, according to the application, Summer Sea will operate the water and sewer systems and South Jefferson County will be dissolved.

Summer Sea takes the position that it will not be subject to regulation by this Commission, and thus does not itself need certificates of convenience and necessity, to own and operate the water and sewer systems at issue. Staff's Memorandum and Recommendation, filed on November 1, advises the Commission to approve the joint application and to cancel South Jefferson County's certificates; however, Staff provides no comment on or evaluation of the Applicants' legal theory. That theory is based upon two points: first, that Summer Sea will serve only its members, the property owners of Summer Sea subdivision, and not the general public. Second, that Summer Sea will not operate the

systems for "gain," that is, profit. For these reasons, the Applicants assert, Summer Sea will not be a public utility and will not be subject to regulation by this Commission.

Under Missouri law, the term "[p]ublic utility" includes "every . . . water corporation . . . and sewer corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter."¹ The definition of "[w]ater corporation," in turn, "includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water."² The definition of "sewer corporation" is substantially similar.³ In its application, Summer Sea states that it is a Missouri not-for-profit corporation in good standing. The Missouri Court of Appeals has held that a not-for-profit corporation that supplied water service to the residents of two subdivisions – and only to the residents of those two subdivisions – was a water corporation and thus a public utility.⁴ As for the Applicants' contention that they do not supply water and sewer services for "gain," the Court of Appeals held that "gain" is equivalent to "compensation."⁵ The Applicants state that they render regular water and sewer service bills to their customers and the Commission infers that those services are

¹ Section 386.020(42), RSMo Supp. 2005.

² *Id.*, at (58).

³ *Id.*, at (48).

⁴ *Osage Water Co. v. Miller County Water Authority, Inc.*, 950 S.W.2d 569, 574-75 (Mo. App., S.D. 1997).

⁵ *Id.*, at 574.

compensated. For these reasons, it appears that Summer Sea, as operator of a water and sewer system, will itself be a public utility and thus subject to regulation by this Commission.

The legislature has created an entity called the "nonprofit water company."⁶ This entity is not subject to regulation by the Commission.⁷ There is a similar entity referred to as a nonprofit sewer company that is also not subject to Commission regulation.⁸ Regulated water and sewer corporations may transform themselves into such unregulated entities.⁹ It is not clear on the present record whether or not South Sea is such an unregulated nonprofit water and sewer corporation. Accordingly, the Commission will direct the parties to supplement the record in this regard.

IT IS THEREFORE ORDERED:

1. That the Summer Sea Property Owners Association and South Jefferson County Utility Company shall supplement the record, on or before December 31, 2005, by filing a verified statement indicating whether or not Summer Sea Property Owners Association is a nonprofit water corporation or a nonprofit sewer corporation as discussed above.

⁶ Section 393.900, RSMo Supp. 2005, *et seq.*

⁷ Section 393.933.2, RSMo Supp. 2005.

⁸ Section 393.825, RSMo Supp. 2005, *et seq.*; § 393.847.2, RSMo Supp. 2005, confers freedom from Commission regulation.

⁹ Sections 393.903 (water corporations) and 393.827 (sewer corporations), RSMo Supp. 2005.

2. That this Order shall become effective on November 23, 2005.

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)

Kevin A. Thompson, Deputy Chief
Regulatory Law Judge, by delegation
of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 23rd day of November, 2005.