

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Joint Application of )  
CAT-PAC Waterworks, Inc. and Public )  
Water Supply District No. 3 of Franklin )  
County, Missouri for Approval of Transfer )  
of Assets. )

Case No. WM-2003-0185

**UNANIMOUS STIPULATION AND AGREEMENT**

COME NOW CAT-PAC Waterworks, Inc. (CAT-PAC), Public Water Supply District No. 3 of Franklin County, Missouri (District), the Staff of the Missouri Public Service Commission (Staff) and the Office of the Public Counsel (OPC) [collectively, the Parties], by and through counsel, and for their **Unanimous Stipulation and Agreement** state the following to the Missouri Public Service Commission (Commission):

**PROCEDURAL HISTORY**

1. On November 19, 2002, CAT-PAC and the District (Joint Applicants) filed their "Joint Application for Approval of Transfer of Assets" (Joint Application) with the Commission.
2. On November 21, 2002 the Commission issued its "Notice of Tax Impact" wherein it noted that CAT-PAC paid \$22.50 in property taxes in for 2001, with prior years' payments amounting to less than \$15 per year, and directed its Data Center to send a copy of that notice to the County Clerk of Franklin County.
3. Also on November 21, 2002, the Commission issued its "Order and Notice" for this case, wherein it directed its Data Center and Information Office to send out their standard notice regarding the Joint Application and set an intervention deadline of December 11, 2002.

4. No requests to intervene in this case were filed by the established deadline, nor have any been filed since that time.

5. On December 24, 2002, the Commission issued its "Order Directing Filing" wherein it directed the Staff to file a status report on or before January 10, 2003, with the status report to indicate when the Staff expected to file its recommendation.

6. On January 10, 2003, the Staff filed its required "Status Report" wherein it advised the Commission that it planned to file its recommendation on or before March 17, 2003.

7. On January 21, 2003, the Joint Applicants filed the "Notarized Verification of Stephen J. Unnerstall", which had been unavailable at the time they filed their Joint Application (Mr. Unnerstall is the President of CAT-PAC).

8. On March 17, 2003, the Staff filed a "Request for Extension of Time" wherein it requested an extension to March 28, 2003 for the filing of its recommendation, or a Stipulation and Agreement.

9. On March 21, 2003, the Commission issued its "Order Granting Extension of Time" wherein it granted the Staff's March 17 request.

10. On March 27, 2003, the Joint Applicants filed a "Motion for Extension of Time to Permit Customer Notice" wherein they requested an extension of time until May 1, 2003 for the filing of a Stipulation and Agreement, or the Staff's recommendation, so that there would be time for a notice to be sent to CAT-PAC's customers regarding the proposed transfer of assets.<sup>1</sup>

11. On April 9, 2003, the Commission issued its "Order Granting Motion for Extension of Time to Permit Customer Notice" wherein it granted the Joint Applicants' March 27 Motion.

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<sup>1</sup> A copy of the agreed-upon customer notice was attached to this Motion.

12. On May 1, 2003, the Staff filed a "Request for Brief Extension of Time to File Stipulation" wherein it requested an extension until May 5 for the filing of a Stipulation and Agreement for this case.

13. On May 2, 2003, the Commission issued its "Order Granting Motion for Extension of Time" wherein it granted the Staff's May 1 request for extension, but also further extended the due date for filing a Stipulation in this case until May 9, 2003.

### **THE JOINT APPLICATION**

14. The Joint Applicants filed their Joint Application in this case pursuant to the provisions of Section 393.190, RSMo 2000, and the provisions of Commission rule 4 CSR 240-2.060, sections (1) and (7).<sup>2</sup>

15. In their Joint Application, the Joint Applicants requested that the Commission approve the transfer of all of CAT-PAC's water utility system assets and its customers to the District. Attached to the Joint Application was a copy of the Asset Purchase Agreement between the Joint Applicants, which more fully described the proposed transaction and the affected assets.

16. In their Joint Application, the Joint Applicants also requested that the Commission authorize CAT-PAC to take all actions necessary and proper to effectuate the proposed transaction. Additionally, the Joint Applicants requested that the Commission cancel CAT-PAC's certificate of public convenience and necessity and its tariff upon notice to the Commission that the proposed transaction has been completed.

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<sup>2</sup> Effective April 30, 2003, the proper citations to the applicable Commission rules are 4 CSR 240-2.060(1) and 4 CSR 240-3.605(1).

17. In their Joint Application, the Joint Applicants stated that the proposed asset and customer transfer would meet the standard of being "not detrimental to the public interest" for the following reasons:<sup>3</sup>

- a. CAT-PAC's existing system will be consolidated with a larger system, thereby better ensuring safe and quality service to customers;
- b. The District is well qualified to provide service and is staffed with full-time, professional and experienced system operators who have a history of providing high quality service to the public;
- c. CAT-PAC's customers will be permitted to vote for the governing Board of the District, thereby insuring accountability to customers as new members of the District; and
- d. The District has the financial capacity and capabilities to insure that any necessary improvements and modifications to CAT-PAC's existing utility plant can be made to insure quality of service and compliance with applicable state and federal clean water regulations.

### **THE CUSTOMER NOTICE**

18. As previously noted, the Joint Applicants attached a copy of the notice to be sent to CAT-PAC's customers to their Motion for Extension of Time to Permit Customer Notice. The Staff of the Commission drafted this customer notice, and the Joint Applicants and the OPC reviewed and approved the notice.

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<sup>3</sup> The referenced standard is set forth in *State ex. rel Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980)

19. The above-referenced customer notice was sent to CAT-PAC's customers in two separate mailings, the first of which was sent on April 4, 2003 and the second of which was sent on April 7, 2003.

20. Neither the Staff nor the OPC have received any comments from CAT-PAC's customers in response to the customer notice.

### **CUSTOMER RATES**

21. As detailed in the customer notice, CAT-PAC's customers will experience an increase in their rates of approximately 65% if they become customers of the District. However, as noted in Paragraphs 24 and 25 below, the District will be making certain needed capital improvements to CAT-PAC's system after the transfer of assets occurs. Additionally, as it is the District's policy that all customers pay the same rates, the customers served by CAT-PAC's system will not experience any additional "stand-alone" rate increases as a result of the capital improvements that the District will be making to that system. Also, absent the transfer to the District, CAT-PAC would need to increase its rates if it were to undertake the needed capital improvements.

22. Set out on Attachment A hereto is a billing comparison between the Company's current customer rates and the District's current customer rates. This comparison is based upon a quarterly bill for a customer using 18,000 gallons of water per quarter (6,000 gallons per month). Even though the comparison is shown on a quarterly basis, since that is the way the Company bills, it should be noted that the District bills on a monthly basis.

## AGREEMENTS

23. The Parties agree that the Joint Application meets the requirements of the applicable Commission rules.

24. The Parties agree that certain capital improvements to CAT-PAC's water supply, storage and distribution facilities are needed, with such improvements including:

(a) Replacement of the meters in the system;

(b) Enhancements to the system's storage capacity, as needed to bring the capacity up to the applicable standards of the Department of Natural Resources; and

(c) Replacement of certain distribution mains, specifically including the main extending from the system's source of supply to the existing booster station, and the main extending from that booster station to the portion of the system that is located on the east side of State Route HH.

25. Regarding the above-referenced capital improvements, the District agrees that the improvements will be made as soon as is reasonably possible, and that it will make all reasonable efforts to complete the improvements no later than December 31, 2004. Consistent with its previously noted rate setting policy, the District further agrees that the completion of the improvements will not result in a "stand-alone" increase in the rates for CAT-PAC's customers.

26. The Parties agree that CAT-PAC's certificate of convenience and necessity and its tariff should be canceled immediately upon completion of the actions necessary to effectuate the proposed transaction.

27. The Parties agree that the standard to be met in this case is that the proposed transaction be found to be "not detrimental to the public interest" and further agree that this standard has been met, based in part on the agreements set forth in Paragraphs 24 and 25 above.

## **GENERAL PROVISIONS**

28. The Staff shall file suggestions or a memorandum in support of this Stipulation and Agreement, and the other Parties shall have the right to file responsive suggestions or a responsive memorandum within five (5) business days after the Staff's filing.

29. The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests; provided that the Staff shall, to the extent reasonably practicable, provide the other Parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any protective order issued in this case.

30. The provisions of this Stipulation and Agreement have resulted from negotiations among the signatories and are interdependent. In the event the Commission does not approve and adopt the terms of this Stipulation in total, it shall be void and no party hereto shall be bound, prejudiced, or in any way affected by any of the stipulations, agreements or provisions hereof. The stipulations, agreements and provisions herein are specific to the resolution of this proceeding, and are all made without prejudice to the rights of the parties to take other positions in other proceedings.

31. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the signatories waive, with respect to the above-settled issues: (a) their respective rights to cross-examine witnesses; (b) their respective rights to present oral argument and written briefs pursuant to Section 536.080.1 RSMo; (c) their respective rights to the reading of the

transcript by the Commission pursuant to Section 536.080.2 RSMo; and (d) their respective rights to judicial review pursuant to 386.510 RSMo. These waivers apply only to a Commission order respecting this Stipulation issued in this proceeding and do not apply to matters raised in any subsequent Commission proceeding, or to any matters not explicitly addressed by this Stipulation. Further, the Parties agree that an evidentiary hearing is not necessary in this instance in order for the Commission to make sufficient findings of fact and conclusions of law to support its issuance of an order granting the relief requested in the Joint Application and herein.

**WHEREFORE**, the Parties respectfully request that the Commission issue an Order that:

- (a) Approves the proposed transfer of CAT-PAC's water utility system assets to the District;
- (b) Authorizes CAT-PAC and the District to take all actions necessary and proper to effectuate the proposed transaction;
- (c) Directs CAT-PAC or the District to notify the Commission when the actions effectuating the proposed transaction have been completed;
- (d) Acknowledges that the Commission will cancel CAT-PAC's certificate of convenience and necessity and its tariff subsequent to receiving notice that the actions necessary to effectuate the proposed transaction have been completed; and
- (e) Contains any other provisions that the Commission deems just and reasonable in the premises.



Respectfully Submitted,

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**Billing Comparison for CAT-PAC and PWSD No. 3**

<u>Billing Components</u>	<u>Company Bill</u>	<u>District Bill</u>
Quarterly Minimum Charge (see note 1 below)	\$29.10	\$31.50
Usage Charge (see note 2 below)	\$27.84	\$62.25
Total Quarterly Bill (see note 3 below)	\$56.94	\$93.75

Increase in Quarterly Bill = \$36.81 (64.65%)  
(see note 3 below)

(1) The Company's minimum charge includes the first 6,000 gallons of usage. The District's minimum charge includes the first 3,000 gallons of usage (on a monthly basis the District's minimum charge is \$10.50, which includes the first 1,000 gallons of usage).

(2) The Company's usage charge is \$2.32/1,000 gallons for usage over 6,000 gallons, which is 12,000 gallons in this example. The District's usage charge is \$4.15/1,000 gallons for usage over 3,000 gallons, which is 15,000 gallons in this example (on a monthly basis the District's usage charge would apply to usage over 1,000 gallons, which would be 5,000 gallons in this example). (both of these calculations are premised upon a usage of 6,000 gallons per month)

(3) Quarterly comparison shown since this is the way the Company bills. The District actually bills on a monthly basis. (effective monthly increase is \$12.27)

**ATTACHMENT A**