

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

**STAFF’S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

COMES NOW the Staff of the Missouri Public Service Commission and submits the following Proposed Findings of Fact and Conclusions of Law.

PROPOSED FINDINGS OF FACT

1. 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.

2. 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. The Developer invested approximately four million dollars in the water and sewer facilities in the Subdivision.¹

3. 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.

4. Central Jefferson County Utilities, Inc. (“CJCU”), the Applicant in this case, 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.

5. Raintree Plantation 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. Six hundred eighty-one residences have

¹ See Transcript, page 602.

² See Transcript, page 446.

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. No new homes are being built in the Subdivision at this time.

6. CJCUC 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

7. 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. CJCUC could address this problem by providing adequate storage. The water system presently 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.

8. 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.

9. 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, CJCUC’s owners could see that they

³ See Transcript, page 429.

⁴ See Transcript, page 462.

would need to again expand the capacity of the treatment plant. They sought DNR approval to construct new facilities but did not obtain it. There was a sudden “building boom,” and 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.

10. 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 CJCUC’s treatment plant had a capacity of only 64,000 gallons per day, so it was seriously undersized. Still, the owners of CJCUC 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.

11. A couple of years ago, the EPA issued a moratorium, prohibiting any new connections to CJCUC’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.

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

13. 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

⁵ See Transcript, page 506.

⁶ See Transcript, page 126.

⁷ 680 residences * 2.5 persons per residence * 100 gpcpd = 170,000 gallons.

of a bank loan. Consequently, the owners of CJCUC believe it is impossible for CJCUC to provide the necessary improvements to the water and sewer facilities in the Subdivision.⁸

14. The owners of CJCUC will not take the necessary steps to improve the water and sewer facilities at Raintree Plantation Subdivision. Consequently, the water and sewer service in the Subdivision has continued to deteriorate. The DNR has issued a dozen Notices of Violation to CJCUC in connection with its operations in the Subdivision.⁹

15. CJCUC does not presently satisfy the DNR's safe drinking water standards or sewage discharge standards.¹⁰

16. The utility service that CJCUC provides to its customers is no longer safe and adequate.

17. 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 or unwilling to invest in improvements to the systems, the owners have made various efforts to sell the Company's assets.¹¹ 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 CJCUC's assets.

18. Most notably, CJCUC made an agreement with AquaSource to sell the Company's stock for \$600,000, including 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,

⁸ See Transcript, pages 441-447.

⁹ See Transcript, pages 622-631, 650-651, and 655.

¹⁰ See Transcript, page 450.

¹¹ See Exhibit 13.

AquaSource backed out of the deal. CJCUC was apparently not willing to reduce the asking price for its stock, and the transaction fell through.¹² However, as a result of that transaction and related events, AquaSource is now obliged to extend sewer mains to the 400 or so lots that do not yet have them.¹³

19. 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 CJCUC 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.

20. On July 13, 2006, these three parties executed the Tri-Party Purchase and Sale Agreement, a copy of which was attached to CJCUC's Application in this case. Under this "Tri-Party Agreement," EMC will assume CJCUC debt in the amount of about \$102,000, but neither the Sewer District nor EMC will pay any cash to CJCUC. 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.

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

22. On August 31, 2006, while this case was pending, CJCUC entered into an agreement with EMC, entitled "Agreement for Operation and Maintenance of Water and Wastewater

¹² See Transcript, page 695.

¹³ See Exhibits 10 and 11.

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.

23. The Sewer District and EMC intended to execute a permanent agreement, which would become effective at such time as CJC’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. The Sewer District and EMC have now executed this agreement (“the Permanent O&M Agreement”). Although the Permanent O&M Agreement was not admitted into evidence in this case, a copy of the executed document was attached to the Staff’s Brief in this case.

24. 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.

25. The rates that EMC charges the Sewer District 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 Sewer District, and could pass those costs on to the Sewer District, but without collecting

any overhead and profit.¹⁴ These costs would be passed along to the Sewer District customers as a temporary surcharge.

26. 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.¹⁵

27. 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.

28. The amount that EMC charges the Sewer District for water would be essentially fixed for a period of 20 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.

29. 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 Paragraph 24, above, plus an additional charge of not less than 50 cents per 1,000 gallons of water used by customers of the Sewer District.¹⁶ When this 50-cent charge is 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.

¹⁴ See Transcript, pages 102, 199, and 244.

¹⁵ See Transcript, page 186.

¹⁶ See Paragraph 3.d of the Permanent O&M Agreement.

30. 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.

31. 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).

32. 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).

33. In addition, new customers of the Sewer District may have to pay a second connection charge, in the amount of \$1,000.¹⁷ 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.¹⁸

34. There is a third agreement, which also affects the amounts that new customers of the Sewer District will have to pay when they start taking service from the District. This agreement is the Sewer and Water Service Fee Agreement ("the Service Fee Agreement") that the Sewer

¹⁷ See Transcript, page 209.

¹⁸ See Transcript, page 220.

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.

35. 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.¹⁹ 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.²⁰ The Sewer District's obligation to pay these fees will terminate at the end of 15 years.²¹

36. 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.²²

37. Sewer District customers will have to pay the sums mentioned in Paragraphs 35 and 36, above, to the Sewer District, which will then pay them to the Developer. According to the terms of the Service Fee Agreement, the Sewer District could refuse connection to lot owners who fail to pay these connection fees.

¹⁹ See Paragraph 3 (a) of the Service Fee Agreement.

²⁰ See Paragraph 3 (b) of the Service Fee Agreement.

²¹ See Paragraph 3 (d) of the Service Fee Agreement.

²² See Paragraph 3 (b) of the Service Fee Agreement.

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

39. The Sewer District will be free to require all of its new customers to pay the full sum of \$1,100 – even including the customers 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.²³ The Sewer District’s board of trustees has not yet decided how much to charge these customers.

40. Each of the customers who would be required to make these payments under the Service Fee Agreement 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. 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

41. 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 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.

²³ See Transcript, page 216.

²⁴ See Transcript, pages 390 and 405.

42. 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 for a lot that does not presently have access to a sewer main, Raintree Plantation would pay the money (\$1,100) to AquaSource; if the payment is for any other lot, Raintree Plantation would retain the payment it receives from the Sewer District (\$800 or \$550). 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.

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

44. Based on an average use of 5,000 gallons per month, the minimum amount that customers would have to pay for water (\$6.30 per thousand gallons) would result in a bill of \$31.50 per month for water. However, the Staff testified, and the Commission finds that the average customer uses at least 6,250 gallons per month. Consequently, the \$6.30 rate would result in an average bill of \$39.38 per month for water services.

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

46. 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.

47. 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.²⁵ They would have very limited control over the action of the Sewer District.

48. The Commission finds that, under the Tri-Party Agreement, all assets that are needed for the provision of water and sewer service to the Subdivision will be transferred from CJCUC to the Sewer District.

49. The DNR, the District, and EMC have now executed a Compliance Agreement, which protects the Sewer District and EMC and includes a specific timetable for the completion of the much-needed water and sewer system capital improvements.

50. There is no dispute that the Sewer District and EMC are qualified to operate, maintain, and improve the water and sewer facilities. EMC has already demonstrated good management of CJCUC's facilities under the Interim O&M Agreement. The Commission finds that EMC is qualified to design, build, operate, and maintain the water and sewer systems at Raintree Plantation.

51. There are presently 681 customers in the Raintree Plantation Subdivision who are served by CJCUC. So long as the EPA's moratorium remains in effect, no new homes are being constructed there, and there is thus no new demand for hookups to the sewer system. When the moratorium is lifted, 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 expanded system would easily be able to serve all of the customers who then "immediately" desire service.

²⁵ See Transcript, pages 195, 220, and 287.

52. John Kolisch does not reside in the Subdivision, but he is a customer of CJCUC. In accordance with CJCUC's filed tariff sheets, Mr. Kolisch several years ago sought and obtained water and sewer service at his place of business. Pursuant to CJCUC'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 rata reimbursement of a part of this construction cost from other customers who hook onto the mains that he paid for. 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.

53. However, if the Commission approves the transfer of CJCUC's assets to the Sewer District, the Company's tariff will be canceled, and Mr. Kolisch's right to be paid under the line extension policy will go away.

54. The Company filed a pleading, in which it identified the lots to which Mr. Kolisch's claim for reimbursement applies, and the Commission finds that it is 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.

55. Under the Tri-Party Agreement, 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.

56. The Sewer District's service would be safe and adequate, whereas the present service that CJCUC provides is not.

57. Other potential buyers for CJCUC's assets might be found. The fact that AquaSource was willing to buy CJCUC'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. The POA might be interested in purchasing the assets on terms similar to those in the currently pending transaction.²⁶

58. The Commission would also have the option of seeking the appointment of a receiver for the Company. 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.

59. 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.

60. Because there are several viable alternatives available, the transfer as proposed is *detrimental* to the public interest. However, the transfer can become *not detrimental* to the public interest, if certain conditions are imposed.

61. All of the parties to this case support the transfer of assets in some form, either as proposed or with conditions of their choosing.

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

63. 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

²⁶ See Transcript, pages 730-731.

condition should not be so onerous as to cause either the Sewer District or EMC to back out of the deal.

64. 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.

65. 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.

66. 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.²⁷ 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 Robertson, the average customer usage is even greater, at approximately 7,000 gallons per month.²⁸

67. 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

²⁷ See Transcript, pages 561-564.

²⁸ See Transcript, page 739.

1000 gallons, without jeopardizing EMC's profitability, as explained by Staff witness Dale W. Johansen.

PROPOSED CONCLUSIONS OF LAW

1. The Commission may not withhold its approval of the sale of the assets of a utility unless it can be shown that such disposition is detrimental to the public interest. *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, (Mo. App. 1980), 596 S.W.2d 466.

2. The mission of the Commission is to see that the utilities it regulates provide safe and adequate service at just and reasonable rates. The question of whether an asset transfer is detrimental depends upon whether, on balance, the new utility provider would be expected to be as able, or more able, to provide safe and adequate service at just and reasonable rates than the present provider is.

3. The minimum water rates that the District would have to charge, pursuant to the Permanent O&M Agreement, would not be just and reasonable.

4. The sale of CJCUC'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. 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.

5. However, the transfer of the assets would not be detrimental to the public interest if the Commission imposes appropriate conditions on the transfer.

6. The Commission will require, as a condition of the asset transfer, 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.

7. The Commission will require, as a condition of the asset transfer, that the Sewer District submit a statement showing that the POA and its members will be allowed to participate in the Sewer District's rate-setting process.

8. The Commission will require, as a condition of the asset transfer, that EMC and the Sewer District submit an agreement to establish a plan for funding plant expansions that are needed to accommodate future growth.

9. The Commission will require, as a condition of the asset transfer, that the Sewer District and EMC submit an agreement to take steps to increase the water storage capacity and to reduce the lead content of the water supply, as suggested in the Compliance Agreement.

10. The Commission will require, as a condition of the asset transfer, that the Sewer District and EMC submit an agreement that future water and sewer plant expansions will be designated for use only by residents of the Subdivision.

11. Finally, the Commission encourages 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 Proposed Findings of Fact and Conclusion of Law 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 and/or parties of record this 22nd day of January 2007.

/s/ **Keith R. Krueger**