

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

|  |                       |
|--|-----------------------|
| In the matter of the Application of Central )    |                       |
| Jefferson County Utilities, Inc. for an order )  |                       |
| authorizing the transfer and assignment )        | Case No. SO-2007-0071 |
| of certain water and sewer assets to Jefferson ) |                       |
| County Public Sewer District and in connection ) |                       |
| therewith, certain other related transactions. ) |                       |

**CENTRAL JEFFERSON’S APPLICATION FOR REHEARING**

Comes now Central Jefferson County Utilities, Inc. (Company), pursuant to Section 386.500 RSMo 2000 and 4 CSR 240-2.160, and, for its Application for Rehearing, respectfully states as follows to the Missouri Public Service Commission (Commission):

1. On February 8, 2007, the Commission issued a Report and Order in this case approving Central Jefferson’s application to transfer certain water and sewer assets to Jefferson County Public Sewer District, subject to certain conditions. In addition to approving the application that initiated this case, the Commission further purported to authorize its General Counsel to “seek penalties” 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.”

2. The Report and Order is unlawful, unjust, unreasonable, arbitrary, and not supported by competent and substantial evidence, all in material matters of fact and law, individually or cumulatively, or both, as indicated below.

**MAY NOT AUTHORIZE PENALTIES OR SUPPORT FACTS CONCERNING  
SUCH PENALTIES IN THIS PROCEEDING**

3. That portion of the Report and Order that purports to authorize the General Counsel to seek penalties is unlawful.

4. In *State v. Carroll*, 620 S.W.2d 22 (Ct. App. S.D. 1981), the Court of Appeals found that the Commission must first determine that person is acting unlawfully before the courts should be called upon to act. This determination must be made after “proper hearing.”

5. Section 536.063, RSMo states, in part, as follows:

(1) . . . a “contested case shall be commenced by the filing of a writing by which the party or agency instituting the proceeding seeks such action as by law can be taken by the agency only after opportunity for hearing . . . .”

(2) “Any writing filed whereby affirmative relief is sought shall state what relief is sought or proposed and the reason for granting it . . . .”

(3) “Reasonable opportunity shall be given for the preparation and presentation of evidence bearing on any issue raised or decided or relief sought or granted. . . .”

6. This proceeding was initiated by Central Jefferson’s filing of applications seeking authorization to transfer and assign certain assets of the Central Jefferson water and sewer operations to the Jefferson County Public Sewer District pursuant to a Tri-Party Purchase and Sale Agreement.

7. Those applications did not provide notice of, or imply that, any alleged violations of state statutes, Commission rules or the Company’s tariffs will be at issue in this case.

8. Additionally, prior to the hearing in this case, the parties filed with the Commission a Proposed List of Issues, Order of Witnesses and Order of Cross-Examination on December 4, 2006. That document described the following two Ultimate Issues of Fact for the Commission's decision – "1) Would the proposed transfer of Central Jefferson's water and sewer assets to the Sewer District be detrimental to the public interest; and 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?" Those issues were cited by the Commission on pages 2-3 of the Report and Order. Neither of these issues provided Central Jefferson with notice that the Commission would be making a determination concerning alleged violations of statutes, rules or tariffs and of underlying facts related thereto.

9. The applications and issues identified do not provide sufficient notice for the Commission to consider possible penalty actions in this case or any related facts. The Commission's attempt to make findings in this regard violates Section 536.063, RSMo and the right to due process provided by the Missouri and United States Constitutions.

10. Accordingly, the Commission should grant a rehearing of its Report and Order in order 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.

WHEREFORE, Central Jefferson asks that the Commission rehear this matter and issue an order that addresses the concerns expressed herein.

Respectfully submitted,



---

William R. England III #23975  
Dean L. Cooper #36592  
BRYDON, SWEARENGEN & ENGLAND, P.C.  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102  
(573) 635-7166 Phone  
(573) 634-7431 Fax  
[dcooper@brydonlaw.com](mailto:dcooper@brydonlaw.com)

Attorneys for Central Jefferson County Utilities,  
Inc.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was sent via U.S. Mail or electronic mail on this 27<sup>th</sup> day of February, 2007, to:

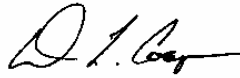
Michael Schmid  
Schreimann, Rackers, Francka & Blunt, LLC  
2316 St. Mary's Boulevard, Suite 130  
Jefferson City, MO 65109

Stanley D. Schnaare  
The Schnaare Law Firm  
321 Main Street, P.O. Box 440  
Hillsboro, MO 63050

Keith Krueger  
General Counsel's Office  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

Mark Comley  
Newman, Comley & Ruth  
P.O. Box 537  
Jefferson City, MO 65102

Christina Baker  
Office of the Public Counsel  
P.O. Box 2230  
Jefferson City, MO 65102



---