

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

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|--|---|-----------------------|
| 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 COUNTY
UTILITIES, INC.'S**

BRIEF

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| William R. England, III | MBE#23975 |
| Dean L. Cooper | MBE#36592 |
| BRYDON, SWEARENGEN & ENGLAND P.C. | |
| 312 E. Capitol Avenue | |
| P. O. Box 456 | |
| Jefferson City, MO 65102 | |
| 573/635-7166 (phone) | |
| 573/635-0427 (facsimile) | |
| dcooper@brydonlaw.com (e-mail) | |

ATTORNEYS FOR CENTRAL JEFFERSON
COUNTY UTILITIES, INC.

**CENTRAL JEFFERSON COUNTY UTILITIES, INC.
CASE NO. SO-2007-0071**

**BRIEF
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Comes now Central Jefferson County Utilities, Inc. (Central Jefferson), and states the following to the Missouri Public Service Commission (Commission) as its Brief:

I. INTRODUCTION

On August 15, 2006, Central Jefferson filed with the Commission an application seeking the Commission's approval to transfer and assign to the Jefferson County Public Sewer District (Sewer District) all physical assets comprising the Central Jefferson water and sewer businesses subject to the terms and conditions of a Tri-Party Purchase and Sale Agreement by and between Central Jefferson, the Sewer District and Environmental Management Corporation (EMC).

In return, the Sewer District will pay Central Jefferson's debt in the approximate amount of \$105,000.00 on the water tower serving the water system. This debt was previously authorized by the Commission in Case No. WF-97-568. Central Jefferson will receive no payment by reason of this transfer and assignment.

The Sewer District has entered into a long-term operation, maintenance and capital improvements agreement, for which the Sewer District will compensate EMC, and additionally the Sewer District will provide sufficient revenue to compensate EMC for certain capital improvements.

The evidence in this matter shows that the proposed transfer will not be detrimental to the public interest and will, in fact, benefit the public interest as it is the best opportunity available to address the needs of these water and sewer systems.

II. STANDARD

Section 393.190.1, RSMo provides that a public utility may not sell certain assets without the Commission's authorization. The Missouri Supreme Court has stated that the right to sell property, to include public utility property, is an "incident important to ownership." *State ex rel. City of St. Louis v. Public Service Commission*, 73 S.W.2d 393, 400 (Mo. banc 1934). Therefore, in the context of public utilities, the Court has found that a "property owner should be allowed to sell his property unless it would be detrimental to the public." *Id.*

The courts have further said of Section 393.190 that "[t]he obvious purpose of this provision is to ensure the continuation of adequate service to the public served by the utility." *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App., E.D. 1980).

To that end, the Commission has previously considered such factors as the applicant's experience in the utility industry; the applicant's history of service difficulties; the applicant's general financial health and ability to absorb the proposed transaction; and the applicant's ability to operate the assets safely and efficiently. See *In the Matter of the Joint Application of Missouri Gas Energy, et al.*, Case No. GM-94-252 (Report and Order, issued October 12, 1994), 3 Mo. P.S.C.3rd 216, 220.

III. SYSTEM ISSUES TO BE ADDRESSED AND COMPANY EFFORTS.

DNR does not have any enforcement or compliance actions against Central Jefferson pertaining to its drinking water operations and does not consider Central

Jefferson in regard to its drinking water operations to be in significant noncompliance or a threat to public health or the environment. Tr. 658.

The Department of Natural Resources (DNR) and the Environmental Protection Agency (EPA) have made allegations of violations by Central Jefferson in the operation of the waste water treatment system. Tr. 623-630. Central Jefferson has denied the alleged violations. However, transfer of the assets as requested herein and construction of an expansion to the waste water treatment system will prevent and avoid allegations of future violations by DNR and EPA, and will aid in the protection of the environment.

DNR witness Lance Dorsey testified that Central Jefferson's over capacity problems date back about five years. Tr. 622. Central Jefferson has made many attempts to find financing to expand the facilities or, in the alternative, to find a willing party with the necessary resources to own, operate, maintain and improve the subject water and sewer systems prior to and during that period of time. Exh. 13. The efforts included an agreement to sell the systems to AquaSource, offers to transfer the systems to the property owners, proposed connection fees to fund expansion, a letter of intent with Aqua Missouri, an agreement with Rick Avila and a letter of intent with Missouri-American Water Company. *Id.* All of these efforts were all unsuccessful.

The proposal that is now before the Commission is the last available option to address the issues facing the Central Jefferson water and sewer systems. Tr. 441, 444-445.

IV. ULTIMATE ISSUES

The parties agreed, as evidenced by the Proposed List of Issues, Order of Witnesses and Order of Cross-Examination in this case, that there are two “Ultimate Issues of Fact” that need to be resolved in order for the Commission to make its decision in this case. Those two issues are as follows:

Would the proposed transfer of the Company’s water and sewer assets to the Sewer District be detrimental to the public interest?

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?

A. NO DETRIMENT

Subject to the terms and conditions of a Tri-Party Purchase and Sale Agreement by and between Central Jefferson, the Jefferson County Public Sewer District (Sewer District) and Environmental Management Corporation (EMC), dated July 13, 2006, Central Jefferson proposes to transfer and assign to the Sewer District and the Sewer District will acquire from Central Jefferson, all physical assets comprising the Central Jefferson water and sewer businesses. Exh. 2; Tr. 384-386. The proposed transfer will not be detrimental to the public interest and will, in fact, benefit the public interest.

The purchaser is a political subdivision of the State of Missouri. The Sewer District is a countywide sewer district formed by the Jefferson County Commission in June of 2000, pursuant to Sections 249.430 to 249.668, RSMo. Exh. 6. In creating this entity, the County Commission found that the delivery of sanitary sewer service to the unincorporated areas of the County of Jefferson not . . . served by sewer districts is of vital importance to the health, safety and welfare of the residents of [the] county.” *Id.*

The Sewer District Trustees are appointed by the County Commission, a publicly elected governmental body. The elected County Commission has ultimate control over the Sewer District, having various powers, to include the “power to pass all necessary rules and regulations for the proper management and conduct of the business of the sewer district.” Section 249.515, RSMo. Thus, the rates and conditions of service will be developed and administered by a political subdivision controlled by a publicly-elected Commission.

The Sewer District’s ownership should not result in any reduced level of service or reliability for the involved customers presently being served by Central Jefferson. Nor will the customers see any interruption in their day-to-day utility service due to the transaction.

Pursuant to the Tri-Party Agreement, the Sewer District has entered into a long-term operation, maintenance and capital improvements agreement with EMC. EMC is a Missouri corporation, in good standing, that has over twenty-five years of experience in managing water and wastewater systems. Exh. 1, 2. No party to this case has questioned EMC’s ability to operate and maintain the subject water and sewer systems based on the collective education, training and experience of EMC personnel. Likewise, no party has questioned EMC’s ability to finance the improvements it has agreed to make in the Tri-Party Agreement.

The improvements identified in the Tri-Party Agreement are an extremely important factor for the Commission to consider. Expansion of the water and sewer systems is necessary to provide service to future, as well as current, residents. There are approximately 3500 lots in Raintree Plantation Subdivision which is served by

Central Jefferson's water and sewer system. Exh. 2. Approximately 670 of those lots are currently served by the water and sewer system. Tr. 288.

At the current time, no additional connections may be made by persons needing sewer service in Raintree Plantation Subdivision by reason of orders issued by DNR and EPA. Exh. 2, 22, 24; Tr. 659. No additional connections to the sewer system can be made until such time as the waste water treatment plant, operated by Central Jefferson, and to be conveyed by this transfer, is expanded. *Id.*

Central Jefferson has been unable to finance certain capital projects that would be a benefit to the Central Jefferson customers. Exh. 2. EMC, on the other hand, has the ability and will provide up to \$1,800,000.00 in capital improvements for a waste water treatment plant expansion and for a water system expansion. *Id.* These improvements will provide more reliable service to existing customers and will enable future customers to connect to the water and sewer system.

These improvements will provide more reliable service to existing customers and will enable future customers to connect to the water and sewer system. There are many lot owners who are waiting to build homes at Raintree Plantation Subdivision but cannot do so until the wastewater treatment plant is expanded and the prohibition against obtaining new sewer service connections is terminated. Exh. 2.

Well #1 currently being used in Central Jefferson's water system produces water with a higher lead content than Well #2. *Id.* Transfer of the assets and improvement of the water system as proposed by the Sewer District and EMC will permit either drilling of a new well or improvement of Well #1 to remove or reduce lead and promote a reduction in the lead content of water used at Raintree Plantation Subdivision. *Id.*

The Sewer District, through EMC, will have significant experience in the operation of water and waste water systems. Neither EMC nor the Sewer District has a history of service difficulties. These entities have the financial wherewithal to absorb the proposed transaction and to make the investment necessary to operate the systems in compliance with applicable statutes and regulations and to make the necessary expansions. Lastly, they have the ability to operate the assets safely and efficiently.

It is clear from this record that the proposed transfer will “not [be] detrimental to the public interest.” *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980).

B. CONDITIONS.

1. General Items.

In considering the various conditions that have been proposed by parties in this case, the Commission should keep in mind that it will have no continuing jurisdiction over non-regulated entities. In particular, the Commission does not have jurisdiction over the rates and charges imposed by a public water supply district. Section 247.110.1 RSMo (2000). Further, a public water supply district is not included in the definition of a “water corporation”, over which the Commission has been granted jurisdiction.

2. Staff Conditions.

Staff suggested that certain conditions be associated with any approval of this proposed transfer. Staff proposed: 1) that a compliance agreement and an operation and maintenance agreement be executed in substantially the same form as the drafts that were available at the time of hearing (Tr. 697-698); and, 2) that Mr. Kolisch’s situation be clarified (Tr. 692). Additionally, the Staff recommended that the Sewer

District take a close look at the average usage provided for in the rate calculations. Tr. 577, 692. However, it was not clear whether or not this was a proposed “condition.”

As described in greater detail in this Brief (Sections V.D and V.G), the referenced compliance and operation and maintenance agreements have been executed and there is no need for a condition related to these documents. Central Jefferson further believes that it is the intent of the parties to the Water and Sewer Service Fee Agreement (Exh. 8) to amend that agreement in such a way that Mr. Kolisch’s position is not changed by the proposed transfer (See Section V.J herein).

Any condition related to future rates is much more problematic. As stated above, Central Jefferson does not believe that the Commission has the jurisdiction or authority to impact future rates to be charged by a public sewer district. Moreover, there is a much more practical reason for Central Jefferson’s opposition. The Sewer District is not interested in giving up its statutory ability to set rates for the district. Tr. 235, 289-291, 317. A condition concerning future rates will prevent a proposed transfer that would otherwise be in the public interest.

3. Association Conditions.

The Raintree Plantation Property Owners Association (Association) proposed a list of thirteen (13) conditions (identified A-M) that were found in its Statement of Position. These conditions represented an umbrella list that attempted to cover the various basic issues of the Association’s approximately 2,300 members. Tr. 722, 730.

Mr. Martin Toma, testifying on behalf of the Water District, stated that the Water District would find the Association’s conditions F, G, H, I, J and K to be acceptable. Tr.

289-292. The Commission grant of any of the other conditions would jeopardize this transaction and not be in the public interest. Ultimately, Mr. Frederick Rommel, testifying on behalf of the Association, seemed to recognize this fact when he stated that the Association wants the transfer to go through. Tr. 724.

V. PRELIMINARY ISSUES OF FACT.

In the Proposed List of Issues, Order of Witnesses and Order of Cross-Examination the parties further identified a number of other factual issues that they believed the Commission might want to address in considering how to resolve the two ultimate issues. Those issues are addressed by Central Jefferson in the following paragraphs:

A. RATES AND FEES.

What connection fees and recurring rates does the Sewer District anticipate that the residents of Raintree Plantation Subdivision will have to pay for water and sewer services immediately after transfer of the assets to the Sewer District?

Would such fees and rates thereafter be increased according to a schedule, or upon the occurrence of some event, and if so, how would the amount of such increase be determined?

The Sewer District has the authority to set rates for the District and is required to conduct a public hearing prior to making any change to its rates.

As to the Central Jefferson properties, the Sewer District has not yet set rates. Tr. 202. However, it has discussed what rates it would anticipate based on a set of circumstances. *Id.* Those rates are \$37.00 per month for wastewater services and \$6.30 per thousand gallons for water. Exh. 4.

While these rates would represent an increase from the current Central Jefferson rates, they contemplate the construction of various improvements that will greatly benefit the public interest. The Staff's investigation projects that at a minimum a 57 to 60% percent increase in sewer rates would be necessary to fund the sewer plant expansion, if the properties remained under Commission jurisdiction. Tr. 596-597; Exh. 25. The Staff earnings review did not project rates based upon the other capital improvements that will be made by the Sewer District and EMC. If they had, one would assume that the rates would also further increase. It would therefore be misleading to compare the rates the Sewer District's anticipated rates with existing Central Jefferson rates.

B. SEWER DISTRICT GOVERNANCE.

What ability would the residents of Raintree Plantation Subdivision have to control the operation, management, services and rates associated with the water and sewer services that the Sewer District provides to them?

As stated above, the Sewer District Trustees are appointed by the County Commission, a publicly elected governmental body. The elected County Commission has ultimate control over the Sewer District, having various powers, to include the "power to pass all necessary rules and regulations for the proper management and conduct of the business of the sewer district." Section 249.515, RSMo. Thus, the rates and conditions of service will be developed and administered by a political subdivision controlled by a publicly-elected Commission.

The Sewer District Board provides for five trustees. Tr. 195. Currently, there is a vacancy. *Id.* The Association would have the opportunity now, or in the future, to

request that the Jefferson County Commission appoint an additional resident to the Sewer District Board.

The Sewer District's purpose is to protect the waters of the district through providing water and wastewater treatment services to the customers of the district. Tr. 203. Its goal is to accomplish that purpose efficiently and at the best possible rates. *Id.*

The Sewer District must operate in accordance with the Missouri Sunshine law and conduct its business, within the requirements of that law, in open meetings. Additionally, the Sewer District must conduct a public hearing before approving rates. Tr. 203-204.

The Sewer District's primary responsibility is to the citizens it serves and it must answer to the elected officials of the county. Tr. 220. The Commission must assume that these responsibilities will be carried out by the Sewer District and that if, for some reason, they are not, that there is an elected board (the County Commission) in place to address the situation.

C. ADDITIONAL CAPITAL INVESTMENT.

If EMC's initial investment of up to \$1.8 million is not sufficient to build and operate the facilities that are, or will be, needed to provide service to the residents of Raintree Plantation Subdivision, how will the Sewer District insure that such facilities are built and available for service when they are needed?

The Water District and EMC have reached a Utility Operation, Maintenance and Capital Improvement Agreement as of January 16, 2007. The final Agreement provides that EMC will provide additional capital up to 3% (or \$54,000) beyond the \$1.8 million

previously identified in the Tri-Party Agreement. If amounts in excess of this figure are necessary, EMC will work with the Water District to obtain those additional funds.

D. SEWER DISTRICT AND EMC O & M AGREEMENT

What are the terms of the agreement between the Sewer District and EMC for the operation and maintenance of, and the investment in, the water and sewer facilities that serve Raintree Plantation Subdivision?

The Water District and EMC have reached a Utility Operation, Maintenance and Capital Improvement Agreement as of January 16, 2007.

No party has questioned EMC's ability to operate and maintain the water and wastewater systems.

E. FACILITIES TRANSFERRED.

Will the Company transfer to the Sewer District all of the assets that are necessary to provide water and sewer services to Raintree Plantation Subdivision?

Central Jefferson proposes to transfer and assign to the Sewer District and the Sewer District will acquire from Central Jefferson, all physical assets comprising the Central Jefferson water and sewer businesses. Tr. 384-386. At the conclusion of this matter, Central Jefferson will have no further need for the certificates of convenience and necessity that have been granted to it by this Commission. *Id.*

To the extent that there is an issue or dispute as to any real property issues, the Tri-Party Agreement provides that Owners Policy of Title Insurance must be provided by Central Jefferson at closing insuring good and marketable fee simple title to and

ownership of the Property in the Sewer District, as well as access, ingress and egress rights to the property. Exh. 2, Tri-Party Purchase and Sale Agreement, p. 10-11.

F. WATER AND SEWER SERVICE FEE.

Will the owners of lots in Raintree Plantation Subdivision be obliged, by their Lot Sales Agreements, to pay a fee of approximately \$1100 when they connect to the sewer system? If so, identify the entity to whom this obligation is owed and state whether all of part of it will be paid to Raintree Development Company?

The lot fee referenced by this issue is a result of an agreement between Raintree Plantation, Inc. and the purchasers of the lots in the development. It has been in place for many years and was previously addressed by this Commission in 1983. At that time, the Commission found that the Commission had no jurisdiction over developer charges “whether those charges are admittedly for the construction costs of a water or sewer system or plant, unless the entity so charging is a water or sewer corporation.” Report and Order, *Harter v. Raintree Plantation, Inc. and Central Jefferson County Utilities, Inc.*, Case No. WC-82-230 (September 20, 1983).

In this case, the construction costs of the water and sewer systems for which Raintree sought recovery amounted to almost \$4 million dollars. Tr. 584-585. This amount is reflected in Central Jefferson’s reports and records as contributions in aid of construction and is an amount upon which Central Jefferson does not receive either a return or a depreciation expense/allowance. *Id.* By multiplying the number of lots connected to the system, or customers, (670) by \$1,100, it can be seen that the developer has, in fact, recovered less than a fourth of its costs over the last twenty plus years through this fee.

On a going forward basis, Raintree has entered into a Sewer and Water Service Fee Agreement (Exh. 8) with the Sewer District for collection of future amounts. This agreement maintains the \$1,100 fee for lots where infrastructure must still be constructed by Aqua Source. However, it compromises the amount that Raintree could lawfully charge to \$800 for all other lots, and then to \$550 dollars, after certain expenses have been paid. No fees shall be paid 15 years after the effective date of the Service Fee Agreement has passed.

In exchange, the Sewer District received assignment of Raintree's rights under the Settlement Agreement and Amendment between Raintree and Central Jefferson and AquaSource, whereby AquaSource is responsible for constructing additional sewer connections for \$1,100 per lot. Exh. 10, 11. The value of this agreement can be seen by a comparison of this amount to the per lot construction fees calculated for the construction of Mr. Kolisch's lines - \$2,783.11 per lot for sewer connections. Tr. 334.

G. COMPLIANCE AGREEMENT.

What is the status of, and what are the terms of, the "Compliance Agreement" between the DNR, the Sewer District, and EMC, with regard to the facilities serving Raintree Plantation Subdivision?

Both the Sewer District and EMC stated at the hearing that they were willing to enter into a compliance agreement with DNR and EPA concerning these properties. Tr. 94; 201-202; 253. In fact, both entities stated that they were unwilling to close on the proposed purchase unless such a Compliance Agreement was in place. Tr. 141-142; 254.

A Compliance Agreement between DNR, EPA, EMC and the Sewer District has been executed as of January 17, 2007. This Agreement has been provided to the parties as of January 18, 2007. The Compliance Agreement, in addition to providing some interim regulatory protection for the Sewer District and EMC, also provides a timeline requiring upgrades and improvements to the Central Jefferson systems.

As a result, there is now no need to condition the Commission's order on the existence of an executed Compliance Agreement between the referenced parties.

H. PURCHASER QUALIFICATIONS.

What are the qualifications of the Sewer District and its contractor, EMC, to operate, maintain, and improve the water and sewer facilities that serve Raintree Plantation Subdivision?

EMC has a great amount of experience in operating water and wastewater facilities in Missouri and in the Midwest. Exh. 1. Its personnel are trained and have specific experience and knowledge of the Central Jefferson water and sewer systems in that as of September 1, 2006, they began to provide operation and maintenance services to Central Jefferson. Exh. 3.

Central Jefferson is unaware of any evidence that indicates the Sewer District and its contractor, EMC, are not qualified to operate, maintain and improve the subject water and sewer facilities.

I. CONNECTION PRIORITY.

Once the moratorium on sewer connections is lifted, who will decide which property owners shall be given priority in connecting to the Raintree Plantation sewer system, and how will that priority be established?

The Sewer District intends to provide services to those that are entitled to it and who apply on a first-come, first-served basis. Tr. 218. Mr. Toma testified that the Sewer District believes that the expanded capacity of the Raintree plant should initially be available to the property owners of Raintree exclusively. Tr. 219.

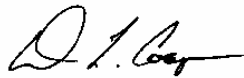
J. KOLISCH.

Mr. Kolisch constructed and contributed to Central Jefferson water and sewer lines outside the boundaries of the Raintree development. A provision in Central Jefferson's current tariffs requires that persons connecting to those lines contributed by Mr. Kolisch pay him a connection fee of \$2,783.11 per sewer connection and \$799.83 per water connection. Mr. Kolisch's late filed exhibit, provided to the Commission on December 27, 2006, combined with Central Jefferson's response filed with the Commission on January 8, 2007, establish the lots to which this connection fee applies. If the proposed transfer is approved, the tariff provision which establishes this obligation will cease to be effective.

The Sewer and Water Service Fee Agreement (Exh. 8) between the Sewer District and Raintree Plantation, Inc. contains a provision that attempts to address Mr. Kolisch's situation. During the hearing of this case, it became apparent that some confusion may exist in regard to this provision. As a result, Staff indicated its desire that a condition be imposed requiring that the language in the Service Fee Agreement be rewritten such that Mr. Kolisch is in the same position after the sale as he would have been before. Tr. 557-558; 582-583. Central Jefferson also believes that the described amendment is a reasonable solution to this issue.

WHEREFORE, Central Jefferson respectfully requests that the Commission consider this Brief and, thereafter, issue its order granting such relief as is consistent with the foregoing.

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

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 19th day of January, 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

