

**CENTRAL JEFFERSON COUNTY UTILITIES, INC.'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
January 19, 2007**

FINDINGS OF FACT

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

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.

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 proposed operator, 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. The Commission finds that EMC has extensive experience in the water and wastewater industries. Exh. 1. The record does not show that the Water

District or EMC have any history of service difficulties. No party has challenged the Water District or EMC's general financial health or their ability to absorb the proposed transaction. The Commission finds that the Water District is able to operate Central Jefferson's water and wastewater systems safely and efficiently and that approval of the proposed acquisition will not result in any discontinuation of service to Central Jefferson's customers.

The improvements identified in the Tri-Party Agreement are an extremely important factor for the Commission. 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.

EMC and the Sewer District have further agreed to a time line associated with these improvements. A Compliance Agreement between DNR, EPA, EMC and the Sewer District has been executed. The Compliance Agreement, in addition to providing some interim regulatory protection for the Sewer District and EMC, provides a time line requiring upgrades and improvements to the Central Jefferson systems. Exh. 23.

CONCLUSIONS OF LAW

Section 393.190 requires approval by the Commission before a regulated utility disposes of all or any part of its system. 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.*

A court has said of Section 393.190: “The 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.

The Commission has reviewed the evidence that has been presented by the parties. “The Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest.” *Fee Fee Trunk Sewer*, 596 S.W.2d at 468.

The proposed transaction will promote the public interest rather than detract from it. EMC is an experienced operator of water and wastewater systems. While it is unclear what rates will be in the future, those rates will be set by a public water supply district that serves subject to the direction of an elected body – the Jefferson County Commission. The involvement of the Water District and EMC will improve the ability for the systems to attract needed capital.

No detriment to the public interest appears on the present record; therefore, the Commission will approve the proposed sale of assets.

IT IS ORDERED THAT:

1. The application for transfer of assets filed on August 15, 2006, by Central Jefferson County Utilities, Inc. is approved, subject to the conditions outlined in the body of this order.
2. Central Jefferson County Utilities, Inc. is authorized to take any and all lawful actions necessary to carry out the proposed transfer of assets.
3. Central Jefferson County Utilities, Inc. shall notify the Commission within ten (10) days after all the transactions have been completed.

4. After the transactions have been completed, the Commission will relieve Central Jefferson County Utilities, Inc. of its obligation to provide water and sewer service to the public in its assigned service area and will cancel its certificate and tariff.

5. This order shall become effective on _____, 2007.