

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
vs.)	<u>Case No. WC-2007-0394</u>
)	
Central Jefferson County Utilities, Inc., et al.,)	<u>Case No. SC-2007-0396</u>
)	
Respondents.)	

STAFF’S MOTION FOR PARTIAL SUMMARY DETERMINATION

COMES NOW the Staff of the Missouri Public Service Commission, by and through the Commission’s General Counsel as authorized by §§ 386.071, 386.390.1, RSMo 2000, and Commission Rule 4 CSR 240-2.070(1), and for its Motion for Partial Summary Determination pursuant to Commission Rule 4 CSR 240-2.117, states as follows:

1. On February 8, 2007, the Commission granted the Application of Central Jefferson County Utilities, Inc. (“CJCU”) for authority to transfer its water and sewer system assets to Central Jefferson County Public Sewer District. *In the Matter of Central Jefferson County Utilities, Inc.*, Case No. SO-2007-0071 (*Report & Order*, issued February 8, 2007). Staff hereby moves the Commission to take administrative notice of said *Report & Order* pursuant to Rule 4 CSR 240-2.130(2), the relevant and material portions of which are specified below, and incorporates said *Report & Order* herein by reference as though the same were fully set out.

2. In the *Report & Order* issued in Case No. SO-2007-0071, the Commission made detailed findings of fact and conclusions of law following extensive contested case proceedings, including an evidentiary hearing, convened on adequate notice, that lasted for two days and which offered every opportunity for the parties to confront and cross-examine witnesses and to object to the receipt of evidence. The Commission's findings and conclusions included determinations that CJCUC had violated Commission Rule 4 CSR 240-60.020, 1 and 3, in several respects, and § 393.130.1, RSMo 2000, and the Commission directed its General Counsel to seek penalties from CJCUC pursuant to § 386.570, RSMo 2000. Staff hereby moves the Commission to take administrative notice of the record of the proceedings in Case No. SO-2007-0071 pursuant to Rule 4 CSR 240-2.130(2), the relevant and material portions of which are specified below, and incorporates said record herein by reference as though the same were fully set out.

3. On April 13, 2007, Staff initiated these actions by filing its Complaints against CJCUC as well as its affiliate, Raintree Plantation, Inc., and their common owners, Norville McClain, Kenneth McClain, Jeremiah Nixon, and the Norville McClain Trust.

4. Commission Rule 4 CSR 240-2.117(1) provides for summary determination as follows:

(1) Summary Determination.

(A) Except in a case seeking a rate increase or which is subject to an operation of law date, any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a case by summary determination at any time after the filing of a

responsive pleading, if there is a respondent, or at any time after the close of the intervention period. However, a motion for summary determination shall not be filed less than sixty (60) days prior to the hearing except by leave of the commission.

(B) Motions for summary determination shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts. Each motion for summary determination shall have attached thereto a separate legal memorandum explaining why summary determination should be granted and testimony, discovery or affidavits not previously filed that are relied on in the motion. The movant shall serve the motion for summary determination upon all other parties not later than the date upon which the motion is filed with the commission.

(C) Not more than thirty (30) days after a motion for summary determination is served, any party may file and serve on all parties a response in opposition to the motion for summary determination. Attached thereto shall be any testimony, discovery or affidavits not previously filed that are relied on in the response. The response shall admit or deny each of movant's factual statements in numbered paragraphs corresponding to the numbered paragraphs in the motion for summary determination, shall state the reason for each denial, shall set out each additional material fact that remains in dispute, and shall support each factual assertion with specific references to the pleadings, testimony, discovery, or affidavits. The response may also have attached thereto a legal memorandum explaining why summary determination should not be granted.

(D) For good cause shown, the commission may continue the motion for summary determination for a reasonable time to allow an opposing party to conduct such discovery as is necessary to permit a response to the motion for summary determination.

(E) The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest. The commission may order summary determination against the moving party. An order granting summary determination shall include findings of fact and conclusions of law.

(F) If the commission grants a motion for summary determination, but does not dispose thereby of the entire case, it shall hold an evidentiary hearing to resolve the remaining issues. Those facts found in the order granting partial summary determination shall be established for purposes of the hearing.

(G) The commission may hear oral argument on a motion for summary determination.

5. This is not a case seeking a rate increase or which is subject to an operation of law date.

6. This Motion is not filed less than sixty (60) days prior to the hearing.

7. To the extent that a separate Memorandum of Law is required, Staff directs the Commission to its Reply And Suggestions In Opposition To Respondents' Affirmative Defenses And Motions To Dismiss, filed this date.

8. With respect to Respondent CJCUC, the allegations in Staff's Complaints are founded upon, and are substantially identical to, the Commission's findings of fact in its *Report & Order* issued in Case No. SO-2007-0071, and Staff contends that summary determination therefore lies against Respondent CJCUC, as demonstrated in the following Statement of Undisputed Material Facts, to-wit:

Statement of Undisputed Material Facts

9. Respondent Central Jefferson County Utilities, Inc. ("CJCUC"), is Missouri general business corporation in good standing, with its principal place of business located at 1519 McNutt Road, Herculaneum, Missouri 63048. (*Record of Case No. SO-2007-0071*, Application; Answers ¶ 3).

10. Respondent CJCUC is a water corporation, a sewer corporation, and a public utility within the intendments of Chapters 386 and 393, RSMo, and is thus subject to the jurisdiction, regulation and control of this Commission. (*Record of Case No. SO-2007-0071*, Application; Answers ¶ 9).

11. Respondent CJCUC is, or formerly was, in the business of providing water and sewer services to the public for gain pursuant to Certificates of Convenience and Necessity issued by this Commission. In particular, Respondent CJCUC provides, or formerly provided, water and sewer services to approximately 681 residents of the Raintree Plantation Subdivision (“the Subdivision”) in Jefferson County, Missouri. (*Record of Case No. SO-2007-0071*, Application; Answers ¶ 12).

12. The Subdivision is a planned development consisting of approximately 3,400 lots. All but approximately 30 lots had been sold as of February 8, 2007; however, only 681 homes have been constructed in the Subdivision (*Report & Order* ¶ 6; *Record of Case SO-2007-0071*, Hearing Exhibit 2, Application p. 3, para. 8; Transcript p. 26, lines 6-10, p. 32, lines 17-23, p. 115, lines 14-18, p. 182, lines 6-13, p. 184, lines 18-25, p. 185, lines 1-7, p. 388, lines 24-25, p. 389 lines 1-2, p. 586, lines 9-16, p. 702, lines 23-25; Answers ¶ 13).

13. Respondent Raintree, at least, is one of the developers of the Subdivision (Answer ¶ 14).

14. The Developers installed water mains to serve all 3,400 lots in the Subdivision and sewer mains to serve approximately 3,000 lots in the Subdivision (*Report & Order* ¶ 7; *Record of Case SO-2007-0071*, Transcript p.

29, lines 14-18, p. 145, lines 2-24, p. 182, lines 6-13, p. 184, lines 18-25, p. 185, lines 1-7, p. 601, lines 17-25, p. 602, lines 1-12; Answers ¶ 15).

15. The Developers contributed the water and sewer mains to CJCUC (Report & Order ¶ 9; Record of Case SO-2007-0071, Transcript p. 387, lines 19-24, p. 419, lines 14-25. p. 420, lines 1-5; Answers ¶ 16).

16. The Developers are recovering their costs of approximately \$4 million incurred in constructing water and sewer mains in the Subdivision through a connection fee paid to them by the purchaser upon the purchase of a lot in the Subdivision pursuant to an agreement styled the Intrastate Exemption Statement. This connection fee of \$1,100 includes \$700 for sewer service connection, \$300 for water service connection, and a \$100 fire hydrant fee (Report & Order ¶¶10-13; Record of Case SO-2007-0071, Hearing Exhibit 10, Sales Agreement, Hearing Exhibit 12, Interstate Exemption Statement; Transcript p. 262, lines 3-8, p. 402, lines 12-25, p. 403, lines 1-23, p. 404, lines 24-25, p. 405, lines 1-16, p. 602, lines 13-25; Answers ¶ 16).

17. Respondent CJCUC obtains, or formerly obtained, water from two wells that it uses in serving its customers in the Subdivision (Answers ¶ 18).

18. The water from Well No. 1 contains lead in excess of the limit of 15 parts per billion allowed by the Missouri Department of Natural Resources ("DNR") and this water must therefore be mixed with water from Well No. 2 in order to produce water for human consumption with an acceptable lead content (Report & Order ¶ 17; Record of Case SO-2007-0071, Hearing Exhibit 9, Letter from DNR to Central Jefferson, August 12, 1997; Transcript p. 148, lines 22-25,

p. 149, lines 1-15, p. 172, lines 6-23, p. 429, lines 19-25, p. 430, lines 1-25, p. 431, lines 1-25, p. 432, lines 1-25, p. 433, lines 1-3, p. 440, lines 6-22).

19. Respondent CJCUC uses, or formerly used, water from Well No. 2 exclusively except on days of high demand when water from Well No. 1 also had to be used (Answers ¶ 20).

20. Well No. 2 only has a single pump; consequently, if that pump were to fail, only water from Well No. 1 would be available to serve the Subdivision (*Report & Order* ¶ 18; *Record of Case SO-2007-0071*, Hearing Exhibit 9, Letter from DNR to Central Jefferson, August 12, 1997; Transcript p. 186, lines 2-13, p. 432, lines 1-24).

21. Average daily demand for water in the Subdivision in 2005 was 202,560 gallons, peaking to 300,000 gallons per day in the summer months (*Report & Order* ¶ 19; *Record of Case SO-2007-0071*, Missouri Department of Natural Resources' Statement of Compliance filed September 6, 2006).

22. Respondent CJCUC has, or formerly had, a storage tank with a capacity of only 50,000 gallons (*Report & Order* ¶ 19; *Record of Case SO-2007-0071*, Hearing Exhibit 9, Letter from DNR to Central Jefferson, August 12, 1997; Staff's Brief, Appendix B, Compliance Agreement, p. 2; Missouri Department of Natural Resources' Statement of Compliance filed September 6, 2006; Transcript p. 41, lines 10-14, p. 74, lines 13-19, p. 140, lines 20-23, p. 174, lines 9-15, p. 269, lines 15-21, p. 717, lines 9-25, p. 718, lines 1-12).

23. DNR requires that Respondent CJCUC have storage capacity equal to a minimum of one day's water supply, which is 200,000 gallons (*Report & Order* ¶

19; *Record of Case SO-2007-0071*, Hearing Exhibit 9, Letter from DNR to Central Jefferson, August 12, 1997; Staff's Brief, Appendix B, Compliance Agreement, p. 2; Missouri Department of Natural Resources' Statement of Compliance filed September 6, 2006; Transcript p. 41, lines 10-14, p. 74, lines 13-19, p. 140, lines 20-23, p. 174, lines 9-15, p. 269, lines 15-21, p. 717, lines 9-25, p. 718, lines 1-12).

24. Respondent CJCU's sewage treatment plant was originally constructed with an inflow capacity of 32,000 gallons per day, which was subsequently increased to 64,000 gallons per day, a capacity sufficient to serve 636 people (*Report & Order* ¶ 20; *Record of Case SO-2007-0071*, Transcript p. 33, lines 4-18, p. 323, lines 3-8, p. 622, lines 14-25, p. 623, lines 1-17, p. 462, lines 16-25, p. 463, lines 1-25, p. 464, lines 1-21, p. 659, lines 17-25, p. 660, lines 1-2, Missouri Department of Natural Resources' Statement of Compliance filed September 6, 2006).

25. As of December 2006, the sewage inflow to Respondent CJCU's treatment plant averaged 100,019 gallons per day, which is 156% of daily design flow. Based on this inflow, the Subdivision currently has a population equivalent of 2,320 people, which is 265% of its design population (*Report & Order* ¶ 21; *Record of Case SO-2007-0071*, Staff's Brief, Appendix B, Compliance Agreement page 3; Transcript p. 33, lines 4-18, p. 462, lines 16-25, p. 463, lines 1-25, p. 464, lines 1-21, p. 622, lines 14-25, p. 623, lines 1-17, p. 659, lines 17-25, p. 660, lines 1-2, Missouri Department of Natural Resources' Statement of Compliance filed September 6, 2006).

26. Respondent CJCUC's wastewater treatment facility has exceeded its average design flow every day since July 2000, and this is dry weather flow (*Report & Order* ¶ 22; *Record of Case SO-2007-0071*, Missouri Department of Natural Resources' Statement of Compliance filed September 6, 2006; Transcript p. 622, lines 24-25, p. 623, lines 1-17, p. 650, lines 23 -25, p. 651, line 1).

27. Respondent CJCUC failed to submit its Discharge Monitoring Reports in a timely manner 85% of the time between 2000 and 2004 (*Report & Order* ¶ 23; *Record of Case SO-2007-0071*, Missouri Department of Natural Resources' Statement of Compliance filed September 6, 2006).

28. Respondent CJCUC did not make reasonable efforts to eliminate or prevent the entry of surface or ground water into its sanitary sewer system, and has been unable to eliminate or prevent the entry of surface or ground water into its sanitary sewer system and has abandoned efforts to resolve this defect in its system (*Report & Order* ¶ 24; *Record of Case SO-2007-0071*, Transcript p. 435, lines 13-16; p. 450, lines 8-25, p. 451, lines 1-25, p. 452, lines 1-7, p. 462, line 24, p. 464, lines 5-11, p. 473, lines 17-25, p. 474, lines 1-8; p. 622, lines 17-23, p. 623, lines 14-17. Transcript Volume 2, Local Public Hearing, p. 21, lines 11-18, p. 85, lines 20-25, p. 86, lines 1-7).

29. Respondents refuse to invest money in necessary improvements and expansions to the water and sewer systems for the Subdivision (*Report & Order* ¶ 25; *Record of Case SO-2007-0071*, Transcript p. 441, lines 4-23, p. 443-449).

30. On September 27, 2004, DNR issued a Notice of Violation to Respondent CJCUC finding it had violated the Missouri Clean Water Law, §§

644.051(1) and (2) and 644.076.1, RSMo 2000, and Regulation 10 CSR 20-7.031(3)(A),(B), and (C), by causing pollution of Galligher Creek (*Report & Order* ¶ 26; *Record of Case SO-2007-0071*, Hearing Exhibit 19, September 27, 2004 DNR Notice of Violation; Transcript p. 624, lines 1-25, p. 625, lines 1-11, p. 631, lines 9-25, p. 632, lines 1-25).

31. On August 4, 2005, DNR issued a Notice of Violation to Respondent CJCUC finding it had violated the Missouri Clean Water Law, § 644.076.1, RSMo 2000, and Regulations 10 CSR 20-7.015(9)(A)(1) and 10 CSR 20-9.020(2) for failing to retain a certified operator to supervise the operation and maintenance of its wastewater treatment facility and for failing to submit complete or timely Discharge Monitoring Reports for May and June 2005 (*Report & Order* ¶ 27; *Record of Case SO-2007-0071*, Hearing Exhibit 20, August 4, 2005 DNR Notice of Violation; Transcript p. 625, lines 20-25, p. 626, lines 1-11).

32. On October 26, 2005, DNR issued a Notice of Violation to Respondent CJCUC finding it had violated the Missouri Clean Water Law, §§ 644.051, (1) and (2), and 644.076.1, RSMo 2000, and Regulation 10 CSR 20-6.010(1)(A) and (5)(A) for having discharged wastewater into an unnamed tributary of Galligher Creek without a Missouri State Operating Permit, and for having caused pollution to the same tributary (*Report & Order* ¶ 28; *Record of Case SO-2007-0071*, Hearing Exhibit 21, October 26, 2005 DNR Notice of Violation; Transcript p. 626, lines 20-25, p. 627, lines 1-18).

33. In total, DNR had by December 2006 issued a dozen Notices of Violation to Respondent CJCUC in connection with its operations in the

Subdivision (*Report & Order* ¶ 29; *Record of Case SO-2007-0071*, Hearing Exhibits 19, 20, 21; Transcript p. 622-632, p. 650-651, p. 655 and p. 656, lines 1-14).

34. In a hearing before this Commission in December 2006, Respondent CJCU admitted that it had been operating its sewer system above its design capacity and that it has failed to control ground and surface water entry into its system (*Report & Order* ¶ 30; *Record of Case SO-2007-0071*, Response of Central Jefferson County Utilities, Inc. to Missouri Department of Natural Resources Statement of Compliance, filed September 18, 2006; Response of Central Jefferson County Utilities, Inc. to Order Directing Response from Central Jefferson County Utilities, Inc. filed December 11, 2006; Transcript p. 434, lines 15-25, p. 435, lines 1-16; p. 450, lines 8-25, p. 451, lines 1-18; p. 462, lines 16-25, p. 462, lines 1-16, p. 464, lines 1-21, p. 473, lines 17-25, p. 474, lines 1-8; Transcript Volume 2, Local Public Hearing, p. 21, lines 11-18, p. 85, lines 20-21, p. 86, lines 1-7).

35. As of December 2006, Respondent CJCU was not in compliance with either DNR's safe drinking water standards or sewage discharge standards (*Report & Order* ¶ 31; *Record of Case SO-2007-0071*, Hearing Exhibits 19, 20, 21; Transcript p. 622-632, 650-651, p. 655, lines 1-25, p. 656, lines 1-14).

36. On November 30, 2005, the United States Environmental Protection Agency ("EPA") issued a Finding of Violation and Order of Compliance, Docket No. CWA-07-2006-0060, finding that Respondent CJCU discharged pollutants into the waters of the United States in violation of § 301 of the Clean Water Act,

codified at 33 U.S.C. § 1311, and in violation of § 402 of the Clean Water Act, codified at 33 U.S.C. § 1342 (*Report & Order* ¶ 32; *Record of Case SO-2007-0071*, Hearing Exhibit 22, EPA Finding of Violation and Order for Compliance, CWA-07-2006-0060, issued November 30, 2005, effective upon receipt and served on December 1, 2005).

37. As part of the November 30, 2005, Order of Compliance, the EPA imposed a moratorium on connections to the sewage treatment facilities at the Subdivision until the facilities were expanded and improved (*Report & Order* ¶ 33; *Record of Case SO-2007-0071*, Hearing Exhibit 22, EPA Finding of Violation and Order for Compliance, CWA-07-2006-0060, issued November 30, 2005, effective upon receipt and served on December 1, 2005; Transcript p. 27, lines 7-10, p. 33, lines 19-23, p. 34, lines 14-20, p. 61, lines 12-17, p. 142, lines 19-25, p. 188, lines 2-9, p. 427, lines 5-25, p. 428, lines 1-25, p. 429, lines 1-18, p. 474, line 25, p. 475, lines 1-7, p. 479, lines 3-9, p. 658, lines 19-25, p. 659, lines 1-25, p. 660, lines 1-25).

38. The EPA's ordered moratorium prohibits all new sewer connections to the Subdivision wastewater treatment plant "unless and until a professional engineer registered and in good standing in the State of Missouri certifies in advance that the new connection to the sewage collection system will not result in the wastewater treatment plant exceeding its existing design average daily hydraulic capacity limit of 64,000 gallons per day" (*Report & Order* ¶ 34; *Record of Case SO-2007-0071*, Hearing Exhibit 22, EPA Finding of Violation and Order for Compliance, CWA-07-2006-0060, issued November 30, 2005, effective upon

receipt and served on December 1, 2005, at ordered paragraph 2, page 9 of the Order of Compliance; Transcript p. 33, lines 4-12, p. 323, lines 3-8, p. 462, lines 16-25, p. 463, lines 1-16, p. 622, lines 14-25, p. 623, lines 1-21, p. 658, lines 19-25, p. 659, lines 1-25, p. 660, lines 1-2).

39. On March 2, 2006, the EPA issued a second Finding of Violation and Order of Compliance, Docket No. CWA-07-2006-0060, finding that Respondent CJCU discharged pollutants into the waters of the United States in violation of § 301 of the Clean Water Act, codified at 33 U.S.C. § 1311, and in violation of § 402 of the Clean Water Act, codified at 33 U.S.C. § 1342 (*Report & Order* ¶ 35; *Record of Case SO-2007-0071*, Hearing Exhibit 22, Finding of Violation and Order for Compliance, CWA-07-2006-0060, issued March 2, 2006, effective upon receipt and served on March 2, 2006).

40. This Commission convened a Local Public Hearing on November 6, 2006, in Case No. SO-2007-0071, at which hearing certain residents of the Subdivision provided sworn testimony expressing numerous complaints involving the quality and safety of the water and sewer service provided to them by Respondent CJCU, to-wit (*Report & Order* ¶ 36; *Record of Case SO-2007-0071*, Transcript, Volume 2, Local Public Hearing, November 6, 2006. See p. 80, lines 9-21 and p. 94-100, p. 101, lines 102 for specific comments concerning collection boxes):

- a. infrastructure deterioration and lack of maintenance of that infrastructure;
- b. inadequate trunk lines;

- c. ineffective straining system for non-organic waste;
- d. micro-bacterial and inorganic contamination of the drinking water;
- e. unsafe lead level in Well 1;
- f. inadequate water storage capacity;
- g. inadequate sewer capacity resulting in the need to haul sludge out of the Subdivision;
- h. homeowners having to clean manhole covers and collection boxes by hand to prevent the backup of sewage into their homes, three or four times a year since 1998;
- i. pump grinders that burn up;
- j. backflow of sewage into basements;
- k. raw sewage contaminating lawns, creeks and lakes;
- l. failure to flush out fire hydrants; and,
- m. failure to provide safe and adequate water and sewer service.

41. While Respondent CJCU generally denied all of the allegations raised at the Local Public Hearing referred to in Paragraph 38, above, Respondent CJCU did not deny that its sewer treatment facility was operating beyond its daily inflow capacity, that it had less than one day's storage capacity for drinking water, that it was unable to control ground and surface water entry into its sewer system, and that the homeowners in the Subdivision had to personally maintain the collection boxes to prevent sewage from backing up into their homes (*Report & Order* ¶ 37; *Record of Case SO-2007-0071*, Response of Central Jefferson

County Utilities, Inc. to Order Directing Response from Central Jefferson County Utilities, filed December 11, 2006).

42. The Respondents have attempted to sell, or have sold, Respondent CJCU's water and sewer service assets (*Report & Order* ¶ 38; *Record of Case SO-2007-0071*, Hearing Exhibit 13, Central Jefferson's Expansion Activities Timeline; Transcript p. 27, lines 16-22; p. 427, lines 14-25, p. 428, lines 1-12; Answers ¶ 43).

43. Pursuant to an attempted sale of Respondent CJCU's water and sewer system assets to Aquasource Utility, Inc. ("Aquasource"), and its affiliate Aqua Missouri, Inc., the Respondents have assigned to Aquasource their right to receive connection fees on the sale of the remaining lots in the Subdivision and Aquasource has assumed responsibility for constructing sewer mains to serve the 400 lots in the Subdivision that are not yet served by sewer mains (*Report & Order* ¶¶ 40-47; *Record of Case SO-2007-0071*, Hearing Exhibits 10 and 11; Transcript p. 146, lines 5-12, p. 147, lines 5-10, p. 182, lines 6-13, p. 215, lines 4-18, p. 216, lines 5-11, p. 237, lines 1-25, p. 391, lines 10-22, p. 397, p. 400, lines 12-25, p. 401, lines 1-25).

44. On July 13, 2006, Respondent CJCU entered into a contract styled "Tri-Party Purchase and Sale Agreement," whereby Respondent CJCU agreed to transfer certain assets of its sewer and water operations to the Jefferson County Public Sewer District ("District") and the District agreed to pay a liability of approximately \$102,000 owed by Respondent CJCU on the water tower serving the Subdivision water system. The Tri-Party Purchase and Sale Agreement

further provided that Environmental Management Corporation (“EMC”) would operate the Subdivision water and sewer systems for a 20-year period upon transfer of title to the District and that the District would provide funds to EMC in order to permit necessary improvements and expansions of the water and sewer facilities. Pursuant to an interim agreement, EMC took over the operation of the Subdivision water and sewer systems on September 1, 2006 (*Report & Order* ¶¶ 48-58 and portions of the Record of Case SO-2007-0071 cited therein).

45. On August 15, 2006, Respondent CJCU and the District jointly applied for Commission approval of the transaction contemplated in the Tri-Party Purchase and Sale Agreement described above, Cases SO-2007-0071 and WO-2007-0072 (Answers ¶ 46).

46. This Commission approved the transaction by its Report and Order issued on February 8, 2007, in consolidated Case No. SO-2007-0071. Therein, the Commission directed the undersigned to bring this Complaint against the Respondents (Answers ¶ 47; *Report & Order*, Ordered Paragraphs 1, 5-7).

47. Central Jefferson does not provide safe and adequate water and sewer service (*Report & Order* ¶ 38; *Record of Case SO-2007-0071*, Transcript p. 172, lines 6-25, p. 173, lines 1-25, p. 174, lines 1-23, p. 432, lines 1 -25, p. 433, lines 1-17, p. 650, lines 7-25, p. 652, lines 1-20, p. 657, lines 15-25, p. 658, lines 1-18, p. 749, lines 15-24).

48. In its *Report & Order* issued in Case No. SO-2007-0071, the Commission determined (*Report & Order* at 37-39):

a. Every violation of the Missouri Clean Water Act, Sections 644.051(1) and (2), and Section 644.076.1, as found by the DNR, is a violation of Commission Rule 4 CSR 240-60.020.1, in that Central Jefferson failed to maintain and operate a sewage treatment facility of adequate capacity and properly equipped to treat the sewage and discharge effluent of the quality required by the laws of the state of Missouri and in other respects failed to comply with the laws and regulations of the state and local health authority. Each violation is a separate and distinct offense, and each day forward from the date that DNR found the violation, and Central Jefferson failed to bring its system into compliance, is a separate and distinct offense.

b. Every violation of 10 CSR 20-6.010(1)(A) & 5(A), 10 CSR 20-7.015(9)(A)(1), 10 CSR 20-7.031(3)(A), (B), & (C), and 10 CSR 20-9.020(2), as found by the DNR, is a violation of Commission Rule 4 CSR 240-60.020.1, in that Central Jefferson failed to maintain and operate a sewage treatment facility of adequate capacity and properly equipped to treat the sewage and discharge effluent of the quality required by the laws of the state of Missouri and in other respects failed to comply with the laws and regulations of the state and local health authority. Each violation is a separate and distinct offense, and each day forward from the date that DNR found the violation, and Central Jefferson failed to bring its system into compliance, is a separate and distinct offense.

c. Each day that the capacity of Central Jefferson wastewater treatment facility was exceeded was a failure of Central Jefferson to maintain and operate its sewage treatment facility with adequate capacity and is a violation of Commission Rule 4 CSR 240-60.020.1 and Section 393.130.1. Central Jefferson's sewer treatment facility capacity has been exceeded every day since on or about July 1, 2000, each day thereafter being a separate and distinct offense.

d. Each day that Central Jefferson failed to make reasonable efforts to eliminate or prevent the entry of surface or ground water, and each day that Central Jefferson did in fact fail to eliminate or prevent the entry of surface or ground water, into its sanitary sewer system is a violation of Commission Rule 4 CSR 240-60.020.3 and Section 393.130.1. This problem was identified as arising on or about December 1, 2003, each day forward being a separate and distinct offense. Transcript p 450-451.

e. Each day that Central Jefferson has been unable to provide adequate storage of uncontaminated drinking water, to ensure the safe and adequate provision of water services is a violation of Section 393.130.1. DNR documented annual water consumption figures exceeding the demand of Central Jefferson's storage capacity in 2005. Consequently, each day forward from on or about January 1, 2005 when adequate reserves were unavailable is a separate and distinct offense.

WHEREFORE, Staff prays that the Commission will issue its Order granting Partial Summary Determination herein on all Counts of the Complaints against Respondent CJCUC, finding that it has as alleged in Count I, violated Section 393.130.1 by its conduct with respect to the Subdivision water and sewer systems and, further, find that each day of operation in violation of Section 393.130.1 constitutes a separate violation, finding that it has as alleged in Count II, violated Commission Rule 4 CSR 240-60.020 by its conduct with respect to the Subdivision sewer system and, further, find that each day of operation in violation of Commission Rule 4 CSR 240-60.020 constitutes a separate violation, and, as requested in Count III, authorize and direct the General Counsel to seek penalties for these violations against Respondent CJCUC in the Circuit Court, and set a procedural schedule herein whereby the remaining issues, being the liability of the remaining Respondents, may be speedily determined; and grant such other and further relief as is just in the premises.

Respectfully Submitted,

/s/ KEVIN A. THOMPSON

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Missouri Public Service Commission

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **15th day of June, 2007**, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

s/ Kevin A. Thompson