

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

The Staff of the Missouri Public Service Commission,	)	
	)	
	)	Case No. SC-2007-0396
v.	)	WC-2007-0394
	)	
Central Jefferson County Utilities, Inc., et al.	)	

**CENTRAL JEFFERSON’S RESPONSE IN OPPOSITION  
TO MOTION FOR PARTIAL SUMMARY DETERMINATION**

Comes now Central Jefferson County Utilities, Inc. (Central Jefferson), by and through its counsel, and, pursuant to 4 CSR 240-2.117(1)(C), respectfully states the following to the Missouri Public Service Commission (Commission) in opposition to the Commission Staff’s (Staff) Motion for Partial Summary Determination:

**INTRODUCTION**

On June 15, 2007, Staff filed its Motion for Partial Summary Determination (Motion). The Motion alleges that forty-eight statements of fact (plus some sub-parts) are not in dispute. Central Jefferson agrees that some of those facts are not in dispute. However, many are still in dispute. Moreover, because Staff did not provide a “separate legal memorandum explaining why summary determination should be granted” (4 CSR 240-2.117(1)(B)), it is difficult to determine what conclusions should be drawn from the alleged facts.<sup>1</sup>

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<sup>1</sup> Staff directed the Commission to look to its Reply and Suggestions in Opposition to Respondents’ Affirmative Defenses and Motion to Dismiss, “to the extent that a separate Memorandum of Law is required.” Motion , para. 7.

## **STANDARD**

Staff “bears the burden of establishing both a legal right to judgment and the absence of any genuine issue of material fact required to support the claimed right to judgment.” See *Lewis v. Biegel*, 204 S.W.3d 354, 356 (Mo.App.W.D. 2006). The facts and entitlement at law are (to be) reviewed in the light most favorable to the party against whom summary judgment is sought or, in this case, Central Jefferson. *In the matter of the Application of MCImetro Access Transmission Services, Inc. for determination of no jurisdiction over a sale of assets*, 4 Mo. P.S.C. 3d 324, 328 (1996), citing *Bishop v. United Missouri Bank of Carthage*, 647 S.W.2d 625, 626 (Mo.App. S.D. 1983).

## **NO COLLATERAL ESTOPPEL**

Staff states that “with respect to Respondent [Central Jefferson], the allegations in Staff’s Complaints are founded upon, and are substantially identical to, the Commission findings of fact in its *Report & Order* issued in Case No. SO-2007-0071, and Staff contends that summary determination therefore lies against Respondent [Central Jefferson], as demonstrated in the following Statement of Undisputed Facts.” Motion, para. 8.

This statement seems to suggest that collateral estoppel will apply as to the Commission’s Report & Order in Case No. SO-2007-0071 and this case. In some respects (specifically the use of notices of violation and findings of violation), Staff’s approach assumes not just one, but two, layers of collateral estoppel. No discussion or explanation of why Staff believes that the “findings” in Case No. SO-2007-0071 can be used in this fashion is contained in its Motion.

Collateral estoppel only may apply when four elements are satisfied: (1) Where the issue at stake is identical to the one alleged in the prior action; (2) Where the issue was “actually litigated” in the prior action; (3) Where the issue was critical and necessary to the prior action; and, (4) where the estopped party had a “full and fair opportunity” to litigate the issue in the earlier proceeding. See *City of Bismarck v. Toltze, King, Duvall, Anderson and Assocs., Inc.*, 855 F2d 580, 582 (8<sup>th</sup> Cir. 1988); *Sunshine Realty Corp. v. Killian*, 702 S.W.2d 95, 98-99 (Mo. App. S.D. 1985).

An attempt to use the Commission’s decision from Case No. SO-2007-0071 to prove matters in this action fails each of the elements necessary for collateral estoppel to apply:

1) The issues alleged in Case No. SO-2007-0071 were those found in Central Jefferson’s Application and later agreed to by the parties. Those issues are not identical to the issues raised by this complaint case. The Commission was asked to authorize the transfer of water and sewer assets from Central Jefferson to the Jefferson County Public Sewer District in accordance with Section 393.190, RSMo

As pointed out in the Case No. SO-2007-0071 Report and Order, “the Missouri Court of Appeals has stated 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.’” Report and Order, p. 29; *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. 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.” Report and Order, Case No. SO-2007-0071, p. 29. Here the “applicant” referred to would be the Jefferson County Public Sewer District.

The Commission gratuitously chose to make its own findings of fact and conclusion of law related to the matters alleged by this complaint. Such findings were unrelated to the issues presented and the remedy sought in the prior case and, thus, not identical to the issues alleged in Case No. SO-2007-0071;

2) The issues on which Staff seeks summary determination in this case were not “actually litigated” in the prior action. The list of issues presented by the parties in Case No. SO-2007-0071, and adopted by the Commission, contained no mention of an effort to seek authority to pursue penalties or to prove issue that would justify the Commission to grant such authority. Case No. SO-2007-0071, Proposed List of Issues, Order of Witnesses, and Order of Cross Examination filed December 4, 2006, and Order Granting Leave to File Out of Time and Adopting Joint Sponsors’ Proposed List of Issues, Order of Witnesses and Order of Cross-Examination issued December 5, 2006.

The opening statements did not include any statement that such authority was being sought in the transfer case. Tr.<sup>2</sup> 24-64. Central Jefferson’s opening referred only to the question of whether the proposed transaction was not detrimental to the public. Tr. 24-25. Staff’s opening emphasized the issues described in the list adopted by the Commission. Tr. 28. Moreover, the Staff made a fairly clear statement of what issue it believed was being presented to the Commission – “The question for the Commission is whether the public interest would be served by transferring these assets to the new provider, the sewer district, even though the customers would have to pay more for their

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<sup>2</sup> All references to “Tr.” refer to the transcript in Commission Case No. SO-2007-0071.

utility service.” Tr. 31.

Similarly, the briefs of the parties make no request for authority to seek penalties or to make findings of fact in support thereof. Case No. SO-2007-0071, Central Jefferson County Utilities, Inc.’s Brief and Proposed Findings of Fact and Conclusions of Law (L.F. 277), Post Hearing Brief of the Office of the Public Counsel (L.F. 303), Missouri Department of Natural Resources Legal Brief and Suggested Findings of Fact, Conclusions of Law (L.F. 324), Brief of Raintree Plantation Property Owners Association Inc. (L.F. 334), Raintree Plantation Property Owners Association Inc.’s Proposed Findings of Fact and Conclusions of Law (L.F. 343), and, Staff’s Brief (L.F. 353), all filed on January 19, 2007. The parties’ proposed findings of fact and conclusions of law also contain no reference to a complaint or facts to support an authorization to seek penalties. *Id.*; Case No. SO-2007-0071, Staff’s Proposed Findings of Fact and Conclusions of Law filed on January 22, 2007 (L.F. 431).

3) For the same reasons stated above, the findings of fact identified by the Staff were not “critical and necessary” to SO-2007-0071, because the only matter at issue was whether the Commission would authorize the transfer of Central Jefferson’s water and sewer assets.

4) As identified above, the issues concerning violations were not a part of the application filed by Central Jefferson in Case No. SO-2007-0071, were not identified in the issue list, were not mentioned in the parties’ opening statements, were not argued in the brief of the parties and were not found in the proposed findings of fact and conclusions of law filed by the parties. Moreover, Central Jefferson was not provided knowledge of the claims or a full opportunity to be heard, defend, enforce and protect its

rights as required by statute and the constitution. See Section 536.063, RSMo and *Brawley & Flowers, Inc. v. Gunter*, 934 S.W.2d 557, 560 (Mo.App. S.D. 1996). Central Jefferson cannot be said to have had a “full and fair opportunity” to litigate the issue in the earlier proceeding.

As mentioned previously, the Staff’s approach goes one step further and attempts to use collateral estoppel within collateral estoppel. That is, some of the alleged findings of violation from Case No. SO-2007-0071 recited in this case concern the existence of Notices of Violation issued by the Department of Natural Resources and Findings of Violation issued by the United States Environmental Protection Agency.

The use of these documents as the basis for a finding of violation in a Commission case also fails the collateral estoppel test. Most obviously, the issues identified in those documents have never been litigated. Both a notice of violation and a finding of violation are allegations issued unilaterally by administrative bodies. They are not the result of any litigation or hearing. Tr. 661-62 (DNR witness Dorsey).

Only as of May 1, 2007, did the Department of Natural Resources file suit in order to pursue the allegations contained in the Notices of Violation. This suit is pending in the Circuit Court of Jefferson County (Case No. 07JE-CC00554). See First Amended Petition for Preliminary and Permanent Injunction and for the Assessment of Civil Penalties attached hereto as **Appendix A**.

Because litigation associated with these documents is barely underway and has certainly not been completed, there can be no finding that an issue was critical and necessary to the prior action and there can be no “full and fair opportunity” to litigate the issue in the earlier proceeding.

The Commission's findings and conclusion in Case No. SO-2007-0071 and the statements found in the notices of violation and findings of violation cited by the Staff do not and may not form the basis for collateral estoppel and have no import in this proceeding.

### **RESPONSE TO FACTS ALLEGED**

Commission Rule 4 CSR 240-2.117(C) requires that Central Jefferson's response admit or deny each of Staff's factual statements "in numbered paragraphs corresponding to the numbered paragraphs in the motion for summary determination . . . ." Accordingly, the following paragraphs will start with paragraph 9, as do the Staff's alleged facts:

9. Central Jefferson admits the allegations contained in paragraph 9.

10. Central Jefferson admits that it is a water corporation, sewer corporation and public utility subject to the general jurisdiction of the Commission, as provided by law. Central Jefferson is unaware of what statute provides for "regulation" and "control" (nor is one cited) and therefore denies the same.

11. Central Jefferson admits that it formerly was in the business of providing water and sewer services to the public pursuant to certificates of convenience and necessity issued by the Commission. Central Jefferson further admits that it formerly provided water and sewer services to the residents of the Raintree Plantation Subdivision in Jefferson County, Missouri. Central Jefferson states that neither of the documents cited by the Motion support a finding that there were 681 residents in Raintree Plantation.

12. Central Jefferson denies the allegations contained in paragraph 12.

However, Central Jefferson further states that Raintree Plantation Subdivision consists of approximately 3152 lots (Tr. 420, 586), that all of these lots were initially sold (but that 30 lots were reacquired by Raintree through foreclosure (Tr. 389, 414)) and that approximately 681 homes have been constructed in the subdivision. Answer, para. 13.

13. Central Jefferson admits that Raintree Plantation, Inc. developed the Raintree Plantation Subdivision.

14. Central Jefferson admits that Raintree Plantation, Inc. installed water and sewer mains in Raintree Plantation Subdivision. Central Jefferson denies the remaining allegations contained in paragraph 14. See paragraph 12 above.

15. Central Jefferson admits that Raintree Plantation, Inc. contributed utility plant to Central Jefferson. Central Jefferson denies that there was more than one developer. Tr. 387.

16. Central Jefferson admits that Raintree Plantation, Inc. contributed approximately \$4 million of water and sewer plant to Central Jefferson. Central Jefferson admits that Raintree Plantation, Inc. had a right to receive the identified fees. Central Jefferson denies the remaining allegations contained in paragraph 16. Raintree Plantation had a single developer. Tr. 387. The identified fees were not paid upon the purchase of a lot, but at the time of home construction. Exh.<sup>3</sup> 12, Tr. 404

17. Central Jefferson admits the allegations contained in paragraph 17.

18. Central Jefferson admits that Well No. 1 produces water that contains lead and that the water from Well No. 1 is only used when necessary and, then, is only used by mixing the water with water produced by Well No. 2. Central Jefferson further states

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<sup>3</sup> All references to "Exh." refer to exhibits in Commission Case No. SO-2007-0071.



that the described mixing has been “recommended” by the Missouri Department of Natural Resources and that monitoring has shown this to be an effective lead level control mechanism. Case No. SO-2007-0071, Missouri Department of Natural Resources’ Statement of Compliance filed September 6, 2006, p. 3; Exh. 9, Letter from DNR to Central Jefferson, August 12, 1997; Response of Central Jefferson County Utilities, Inc. to Missouri Department of Natural Resources of Compliance, filed September 18, 2006, p. 4.

19. Central Jefferson admits the allegations contained in paragraph 19. Central Jefferson further states that the described mixing has been “recommended” by the Missouri Department of Natural Resources and that monitoring has shown this to be an effective lead level control mechanism. Case No. SO-2007-0071, Missouri Department of Natural Resources’ Statement of Compliance filed September 6, 2006, p. 3; Exh. 9, Letter from DNR to Central Jefferson, August 12, 1997; Response of Central Jefferson County Utilities, Inc. to Missouri Department of Natural Resources of Compliance, filed September 18, 2006, p. 4.

20. Central Jefferson denies the allegations contained in paragraph 20. Central Jefferson states that the system also has storage capability that would remain available for some period of time. Tr. 718. Further, even if storage was depleted, water would remain available for purposes other than drinking. Tr. 432. Since EMC began looking at the systems, there was never a time when people were not able to get adequate water when they wanted it. Tr. 174; Case No. SO-2007-0071, Response of Central Jefferson County Utilities, Inc. to Missouri Department of Natural Resources of Compliance, filed September 18, 2006, p. 4-5.

21. Central Jefferson denies the allegations contained in paragraph 21, as they do not appear to be based on records of use, but rather the unsworn DNR Statement of Compliance. The Statement of Compliance is not competent and substantial evidence of the matter alleged.

22. Central Jefferson admits that it had a water storage tank with a capacity of 50,000 gallons. Central Jefferson denies that citations to opening statements of party opponents are competent and substantial evidence. See Staff Motion cite to Tr. 41.

23. The allegations contained in paragraph 23 are legal conclusions to which the Staff has provided no citation of authority. Further, DNR itself refers to the 200,000 gallon storage capacity as a “recommendation,” not a requirement. Case No. SO-2007-0071, Missouri Department of Natural Resources’ Statement of Compliance filed September 6, 2006, p. 4. Central Jefferson denies that Staff’s citation to an opening statement of Central Jefferson’s party opponent represents competent and substantial evidence. See Staff Motion cite to Tr. 41. Central Jefferson further states that none of the Staff’s citations indicate that DNR “requires” any specific level of storage capacity. DNR itself describes only a “design population equivalent.” It does not address what “capacity” would be “sufficient.” Case No. SO-2007-0071, Missouri Department of Natural Resources Statement of Compliance filed September 6, 2006, p. 2.

24. Central Jefferson admits that its sewage treatment plant was originally constructed with a rated inflow capacity of 32,000 gallons per day, which was subsequently increased to 64,000 gallons per day. Central Jefferson denies the remaining allegations contained in paragraph 24. Central Jefferson denies that Staff’s citation to an opening statement of Central Jefferson’s party opponent constitutes

competent and substantial evidence. See Staff Motion cite to Tr. 33. Central Jefferson further states that none of Staff's citations establish what population could be sufficiently served by the available capacity.

25. Central Jefferson denies the allegations contained in paragraph 25. It is unclear to what period of time the cited average is alleged to apply. While the Staff states "as of December 2006," it is unclear whether the daily average is computed over a one month, one year or multiple year basis. Central Jefferson further denies that an opening statement of Central Jefferson's party opponent is competent and substantial evidence. See Staff Motion cite to Tr. 33. Central Jefferson denies that the unsworn DNR statement of Compliance is competent and substantial evidence of the information contained therein. None of the transcript references contain the figures alleged by Staff in paragraph 25.

26. Central Jefferson denies the allegations contained in paragraph 26. Central Jefferson denies that the unsworn DNR statement of Compliance is competent and substantial evidence. Staff's citations do not indicate that Central Jefferson has exceeded design flow "every day since July 2000." At best, they indicate average flows, but do not show what flow may have been experienced on any given day as flow rates are not always consistent. Tr. 462-63.

27. Central Jefferson denies the allegations contained in paragraph 27. Central Jefferson denies that the unsworn DNR statement of Compliance is competent and substantial evidence of the matters contained therein.

28. Central Jefferson denies the allegations contained in paragraph 28. Central Jefferson conducted an infiltration and inflow study and began to undertake

improvements as a consequence of that study. Tr. 414-415. Central Jefferson authorized an infiltration program and additional manpower was hired for this purpose. Tr. 527-28.

29. Central Jefferson denies the allegations contained in paragraph 29. Central Jefferson has made investments in necessary improvements and expansions to the water and sewer systems. The size of the sewage treatment plant was increased after its initial construction. Tr. 323. Central Jefferson also constructed a water tower. Case No. SO-2007-0071, Application, paragraph 5; see also Commission Case No. WF-97-568. Further, Central Jefferson made other efforts to fund investments in system expansion. Exh. 13, May 17, 2004 and October 31, 2005; Tr. 442-44, 507-08 and 534-35. Central Jefferson has no funds and no method to finance the costs of additional construction and expansion of the waste water treatment plant or water system. Case No. SO-2007-0071, Application, para. 9, 10. Further, Central Jefferson is not aware of any provision of law that requires a shareholder to invest in a corporation, nor is one cited. Section 351.275.1, RSMo states, in part, that “a holder or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which said shares were issued . . . .”

30. Central Jefferson admits that the Department of Natural Resources issued a Notice of Violation to Central Jefferson on September 27, 2004. Central Jefferson denies the allegations contained in the Notice. Case No. SO-2007-0071, Application, para. 12. Central Jefferson further denies that there has been any “finding” or final determination after litigation and specifically denies the allegations contained in the

referenced Notice of Violation and that a notice of violation is proof of anything other than the fact that it was issued. Tr. 661-62; See the above discussion concerning collateral estoppel. Only as of May 1, 2007, did the Department of Natural Resources file suit in order to pursue the allegations contained in the Notices of Violation. This suit is pending in the Circuit Court of Jefferson County (Case No. 07JE-CC00554). See First Amended Petition for Preliminary and Permanent Injunction and for the Assessment of Civil Penalties attached hereto as **Appendix A**.

31. Central Jefferson admits that the Department of Natural Resources issued a Notice of Violation to Central Jefferson on August 4, 2005. Central Jefferson denies the allegations contained in the Notice. Case No. SO-2007-0071, Application, para. 12. Central Jefferson further denies that there has been any “finding” or determination after litigation and specifically denies the allegations contained in the referenced Notice of Violation and that a notice of violation is proof of anything other than the fact that it was issued. Tr. 661-62; See the above discussion concerning collateral estoppel. Only as of May 1, 2007, did the Department of Natural Resources file suit in order to pursue the allegations contained in the Notices of Violation. This suit is pending in the Circuit Court of Jefferson County (Case No. 07JE-CC00554). See First Amended Petition for Preliminary and Permanent Injunction and for the Assessment of Civil Penalties attached hereto as **Appendix A**.

32. Central Jefferson admits that the Department of Natural Resources issued a Notice of Violation to Central Jefferson on October 26, 2005. Central Jefferson denies the allegations contained in the Notice. Case No. SO-2007-0071, Application, para. 12. Central Jefferson further denies that there has been any “finding” or determination after litigation and

specifically denies the allegations contained in the referenced Notice of Violation and that a notice of violation is proof of anything other than the fact that it was issued. Tr. 661-62; *See* the above discussion concerning collateral estoppel. Only as of May 1, 2007, did the Department of Natural Resources file suit in order to pursue the allegations contained in the Notices of Violation. This suit is pending in the Circuit Court of Jefferson County (Case No. 07JE-CC00554). *See* First Amended Petition for Preliminary and Permanent Injunction and for the Assessment of Civil Penalties attached hereto as **Appendix A**.

33. Central Jefferson denies the allegations contained in paragraph 33. The Complaint and this Motion allege the existence of three Notices of Violation. However, no others are set forth in either the Complaint or the Motion. The DNR testimony in Case No. SO-2007-0071 alleged a total of twelve (12) individual violations. Tr. 631. However, the testimony does not specify the number of notices of violation that contained these allegations. Central Jefferson further denies the allegations contained in the notices of violation. Case No. SO-2007-0071, Application, para. 12. Moreover, Central Jefferson denies that there has been any “finding” or determination after litigation in regard to matters contained in notices of violation and specifically denies any allegations contained in such notices and that a notice of violation is proof of anything other than the fact that it was issued. Tr. 661-62; *See* the above discussion concerning collateral estoppel.

34. Central Jefferson admits that there was a hearing before the Commission in December of 2006, concerning Central Jefferson’s proposed transfer of its water and sewer systems to Jefferson County Public Sewer District. Central Jefferson denies the remaining allegations contained in paragraph 34. It is unclear what standard is

associated with the allegation “failed to control.” Central Jefferson conducted an infiltration and inflow study and began to undertake improvements as a consequence of that study. Tr. 414-415. Central Jefferson authorized an infiltration program and additional manpower was hired for this purpose. Tr. 527-28. Additional Central Jefferson efforts to address infiltration were thwarted by DNR. Tr. 450-51.

35. Central Jefferson denies the allegations contained in paragraph 35. The Department of Natural Resources agreed in December of 2006 that it did not have any enforcement or compliance actions against Central Jefferson pertaining to its water operations and did not consider Central Jefferson to be in significant non-compliance or a threat to public health or the environment in regard to drinking water. Tr. 651, 658; Case No. SO-2007-0071, Missouri Department of Natural Resources’ Statement of Compliance filed September 6, 2006, p. 1. Central Jefferson contends there are also no sewage discharge violations as of December of 2006. Tr. 434-35, 450, 463-64.

36. Central Jefferson admits that the United States Environmental Protection Agency issued a document titled Findings of Violation and Order for Compliance on November 30, 2005. Central Jefferson denies the allegations contained in the Finding. Case No. SO-2007-0071, Application, para. 12. Central Jefferson further denies that there has been any “finding” or final determination after litigation and specifically denies the allegations contained in the referenced Findings of Violation and Order for Compliance that a finding of violation is proof of anything other than the fact that it was issued. See the above discussion concerning collateral estoppel.

37. Central Jefferson admits the allegations contained in paragraph 37.

38. Central Jefferson admits the allegations contained in paragraph 38.

39. Central Jefferson admits that the United States Environmental Protection Agency issued a document titled Findings of Violation and Order for Compliance on March 2, 2006. Central Jefferson denies the allegations contained in the Finding. Case No. SO-2007-0071, Application, para. 12. Central Jefferson further denies that there has been any “finding” or final determination after litigation and specifically denies the allegations contained in the referenced Findings of Violation and Order for Compliance that a finding of violation is proof of anything other than the fact that it was issued. See the above discussion concerning collateral estoppel.

40. Central Jefferson admits that the Commission convened a local public hearing on November 6, 2006, in Commission Case No. SO-2007-0071, concerning Central Jefferson’s proposed transfer of the water and sewer systems to the Jefferson County Public Sewer District. Central Jefferson denies the complaints and allegations referenced in paragraph 41 and its subparts and incorporates by reference its responses as reflected in Case No. SO-2007-0071, Response of Central Jefferson County Utilities, Inc. to Order Directing Response from Central Jefferson County Utilities filed December 11, 2006. Central Jefferson further states that many of the referenced public comments do not provide specific examples or facts related to the cited “complaints.” Tr. Volume 2.

41. Central Jefferson admits that it generally denied the allegations that were raised at the local public hearing held in Case No. SO-2007-0071. Central Jefferson further states that a failure to deny, as alleged in paragraph 41, is proof of nothing. Central Jefferson alleges that its sewer treatment plant was meeting its required effluent levels, that it had sufficient water capacity to serve the existing customers at Raintree,



that it took reasonable steps to control infiltration and that it took steps to clean out collection boxes when alerted to this problem. Tr. 435, 463-64; Case No. SO-2007-0071, Response of Central Jefferson County Utilities, Inc. to Order Directing Response from Central Jefferson County Utilities filed December 11, 2006; response to paragraph 28 above

42. Central Jefferson admits that it has in the past attempted to sell its water and sewer service assets. Central Jefferson further states that as of June 1, 2007, it has transferred those assets to the Jefferson County Public Sewer District. Case No. SO-2007-0071, Central Jefferson's Final Status Report filed June 7, 2007; Order Cancelling Certificates and Tariffs issued June 18, 2007.

43. Central Jefferson admits that it entered into an Agreement (and a Settlement Agreement and Amendment) with Raintree Plantation, Inc. and Aquasource Utility, Inc. whereby Raintree assigned the right to receive certain fees to Aquasource and Aquasource agreed to be responsible for constructing sewer lines to certain lots specified in the Agreement. Central Jefferson denies that it ever had a right to receive the referenced fees. Exh. 10 and 11.

44. Central Jefferson admits that on July 13, 2006, it entered into a Tri-Party Purchase and Sale Agreement with the Jefferson County Public Sewer District and Environmental Management Company (EMC). Central Jefferson further admits that Central Jefferson agreed to transfer certain water and sewer assets to the Jefferson County Public Sewer District and that the Sewer District agreed to pay a Central Jefferson liability authorized by the Commission in Case No. WF-97-568. Application, Case No. SO-2007-0071. Central Jefferson denies that these are the only terms

contained in the Agreement. Case No. SO-2007-0071, Exh. 2. Central Jefferson admits that it entered into an Agreement for Operation and Maintenance of Water and Wastewater Treatment Facilities with EMC whereby EMC agreed to operate Central Jefferson's water and sewer systems beginning September 1, 2006. Central Jefferson further states that this agreement was later terminated by EMC.

45. Central Jefferson admits that on August 15, 2006, it filed an Application with the Commission seeking approval of the transaction contemplated by the Tri-Party Purchase and Sale Agreement and that this Application was assigned Cases Nos. SO-2007-0071 and WO-2007-0072. Central Jefferson denies the Jefferson County Public Sewer District was a party to that application. See Case No. SO-2007-0071, Application, generally.

46. Central Jefferson admits that the Commission approved the transaction contemplated by the Tri-Party Purchase and Sale Agreement in its Report and Order issued on February 8, 2007, in Case No. SO-2007-0071, as consolidated. Central Jefferson denies the Report and Order directed the General Counsel to bring the complaint that is the subject of this proceeding. The Commission's Report and Order in Case No. SO-2007-0071 directed that any such Complaint be filed prior to February 28, 2007. This Complaint was filed on April 13, 2007.

47. Central Jefferson denies the allegations contained in paragraph 47. See the above responses to specific allegations. Central Jefferson does not provide any water or sewer service at this time. Further, the question as to whether Central Jefferson provides safe and adequate service is a legal conclusion. The specific facts upon which the Motion bases this conclusion are not provided in paragraph 47. Central

Jefferson further states that its customers received safe and adequate water and sewer service during the time the systems were owned by Central Jefferson. Tr. 174; Case No. SO-2007-0071, Response of Central Jefferson County Utilities, Inc. to Order Directing Response from Central Jefferson County Utilities filed December 11, 2006.

48. Central Jefferson admits that the Commission's Report and Order in Case No. SO-2007-0071 contains the recited statements. Central Jefferson denies that these statements are proof of any substantive fact or have any import. See the above discussion concerning collateral estoppel and the responses to specific allegations contained herein. Central Jefferson further states that the Report & Order and identified findings have been appealed and that such appeal is currently pending before the Cole Circuit Court, Case No. 07AC-CC00444. See the Writ of Review in Case No. 07AC-CC00444 attached hereto as **Appendix B**.

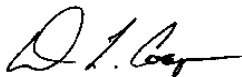
#### **AFFIRMATIVE DEFENSES**

Central Jefferson incorporates by reference the affirmative defenses contained in its Answer and Affirmative Defenses.

WHEREFORE, Central Jefferson respectfully requests the Commission deny the

Staff's Motion for Partial Summary Determination.

Respectfully submitted,



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### **CERTIFICATE OF SERVICE**

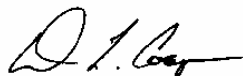
The undersigned hereby certifies that a true and accurate copy of the foregoing was sent via electronic mail on this 23<sup>rd</sup> day of July, 2007, to:

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