

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

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| The Staff of the Missouri Public Service Commission, |) | |
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| 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 RENEWED MOTION
FOR PARTIAL SUMMARY DETERMINATION**

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

1. On February 8, 2007, by a vote of 5-0, 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).

2. In the aforesaid *Report & Order* issued in Case No. SO-2007-0071, the Commission made detailed findings of fact and conclusions of law, including determinations that CJCU had violated Commission Rule 4 CSR 240-60.020, 1 and 3, in several respects, and § 393.130.1, RSMo 2000.

3. In the aforesaid *Report & Order* issued in Case No. SO-2007-0071, the Commission also directed its General Counsel to seek penalties from CJCUC pursuant to § 386.570, RSMo 2000.

4. In accordance with settled precedent, Staff filed this complaint case on April 13, 2007, and thereafter on June 15, 2007, moved for partial summary determination pursuant to Commission Rule 4 CSR 240-2.117(1).

5. On October 4, 2007, by a vote of 5-0, the Commission denied Staff's motion for partial summary determination, stating "the Commission finds that under the circumstances present here, it would *not* be in the public interest to grant the relief requested by Staff in the instant complaint cases by summary determination based solely on the record developed in Case No. SO-2007-0071." This statement appears to be at odds with the following finding made by the Commission in the same order: "The Commission has already found that CJCUC was not denied procedural due process as to its findings regarding regulatory or statutory violations in Case No. SO-2007-0071 since evidence of the claimed violations was admitted without objection and the issue was tried by implied consent."

6. In its aforesaid Order Denying Staff's Motion for Partial Summary Determination, the Commission was referring to its order of April 24, 2007, in Case No. SO-2007-0071 in which, by a vote of 5-0, the Commission denied CJCUC's application for rehearing. CJCUC sought rehearing only of "the portion of the Report and Order that authorizes the General Counsel to seek penalties" and its asserted basis for rehearing was that it had been denied due process in Case

No. SO-2007-0071 in connection with the several findings of violations. In the light of CJCUC's systematic failure to object to the evidence showing violations, the Commission in denying rehearing stated that "it is difficult to comprehend Central Jefferson's belated objections with regard to the Commission's determination on these issues." In denying rehearing, the Commission concluded that the violations were tried by consent in Case No. SO-2007-0071 and that CJCUC was not denied adequate notice and a meaningful opportunity to defend itself.

7. The applicable limitation statute to penalties under Chapter 386, RSMo, is § 516.390, RSMo, which provides: "If the penalty is given in whole or in part to the state, or to any county or city, or to the treasury thereof, a suit therefor may be commenced, by or in behalf of the state, county or city, at any time within two years after the commission of the offense, and not after."

8. The two-year limitation period is not tolled by the pendency of administrative proceedings pursuant to § 516.103, RSMo, which provides:

The time for commencement of any suit provided for in sections 516.380, 516.390 and 516.400, shall not be tolled by the filing or pendency of any administrative complaint or action and no such suit may be brought or maintained unless commenced within the time prescribed by said sections. An administrative order authorizing the commencement of any such suit shall not be considered as evidence of the violations alleged in any such suit.

9. Several of the violations found by the Commission in its *Report & Order* in Case No. SO-2007-0071 are already time-barred under § 516.390, RSMo.

10. Staff incorporates by reference herein its Motion for Partial Summary

Judgment filed in these cases on June 15, 2007, and all attachments thereto.

WHEREFORE, Staff prays that the Commission will grant partial summary determination herein against CJCJ as prayed in Staff's Motion for Partial Summary Determination, filed herein on June 15, 2007, authorize the General Counsel to seek penalties; and grant such other and further relief as is just in the premises.

Respectfully Submitted,

/s/ KEVIN A. THOMPSON

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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 **6th day of August, 2008**, 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