

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

**In the Matter of the Request of the Staff )  
of the Missouri Public Service )  
Commission for an Order Directing the )  
General Counsel to Petition the Circuit )  
Court of Cole County for the )  
Appointment of a Receiver for Rogue )  
Creek Utilities, Inc., and for the )  
Appointment of an Interim Receiver. )**

**Case No. WO-2007-0344**

**STIPULATION AND AGREEMENT  
OF ALL PARTIES NOT IN DEFAULT  
AND CONSENT FOR APPOINTMENT OF INTERIM RECEIVER  
AND FOR ORDER DIRECTING THE GENERAL COUNSEL  
TO PETITION THE CIRCUIT COURT OF COLE COUNTY  
FOR THE APPOINTMENT OF A PERMANENT RECEIVER**

**COME NOW** the Staff of the Missouri Public Service Commission, the Office of the Public Counsel, William J. Rummel, Joe Coleman, and Rita Coleman, being all of the parties to this case who are not in default, and stipulate and agree as follows.

1. On March 21, 2007, the Staff filed its Application for an Order Directing the General Counsel to Petition the Circuit Court of Cole County for the Appointment of a Receiver for Rogue Creek Utilities, Inc., and Appointing an Interim Receiver (“the Application”). The Commission served notice of the Application upon Respondent Rogue Creek Utilities, Inc., and informed it that its failure to respond to the Application by no later than April 23, 2007, might result in the Commission granting all of the Staff’s requests for relief. Rogue Creek has failed to file any response to the Application, and is in default. Accordingly, pursuant to the said notice and to Rule 4 CSR 240-2.070 (9), the Commission may enter its order granting all of the Staff’s requests for relief.

2. Rogue Creek is a “public utility,” a “water corporation,” and a “sewer corporation,” as those terms are defined in § 386.020, RSMo.<sup>1</sup> Rogue Creek regularly provides service to fewer than eight thousand customers. Rogue Creek’s principal place of business or corporate headquarters of record is at 10019 Simmental Lane, Potosi, Washington County, Missouri 63664.

3. William J. Rummel is the sole officer and director of Rogue Creek, owns all of Rogue Creek’s outstanding stock, and is responsible for the overall management of Rogue Creek.

4. Rogue Creek has the duty, pursuant to § 393.130, to provide safe and adequate service to its customers. § 393.130.1 provides, in part, as follows:

Every gas corporation, every electrical corporation, every water corporation, and every sewer corporation shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.

5. Section 393.145.1 authorizes the Commission to seek the appointment of a receiver for a water corporation or a sewer corporation in certain circumstances. It provides as follows:

If, after hearing, the commission determines that any sewer or water corporation that regularly provides service to eight thousand or fewer customer connections is unable or unwilling to provide safe and adequate service ... the commission may petition the circuit court for an order attaching the assets of the utility and placing the utility under the control and responsibility of a receiver. The venue of such cases shall, at the option of the commission, be in the circuit court of Cole County or in the circuit court of the county in which the utility company has its principal place of business.

6. William J. Rummel’s doctors have advised him that he is in the early stages of Alzheimer’s Disease, a progressive and debilitating disease. His physical and mental limitations make it increasingly difficult for him to continue to properly manage Rogue Creek. If he remains responsible for the overall management of Rogue Creek, Rogue Creek will soon become unable to provide safe and adequate service to its customers. See the Affidavit of William J.

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<sup>1</sup> Unless otherwise indicated, all statutory references are to RSMo 2000, as currently supplemented.

Rummel, which was executed on October 30, 2006, and was attached to the Application that the Staff filed in this case, as Exhibit C.

7. The parties hereto unanimously agree that the appointment of a receiver is necessary, in order for Rogue Creek to continue to provide safe and adequate service to its customers. The parties further unanimously agree that if the circuit court appoints a receiver for Rogue Creek, control of, and responsibility for, Rogue Creek should not, in the best interests of its customers, be returned to its owner, and they agree to recommend that the circuit court direct the receiver to transfer by sale or to liquidate Rogue Creek's assets in the manner provided by law.

8. The parties agree that Joe Coleman is a responsible person knowledgeable in the operations of utilities, and recommend that the Commission appoint him as the interim receiver for Rogue Creek, as authorized by § 393.145.2, and that the Commission recommend to the circuit court that Joe Coleman be appointed as the permanent receiver for Rogue Creek.

9. The parties further recommend that the Commission establish the interim receiver's compensation at one thousand dollars (\$1,000) per month; provided that all other "direct" operating and maintenance expenses will be paid first.

10. The foregoing agreed and stipulated facts evidence that Rogue Creek is unable to continue to provide safe and adequate service to its customers. Pursuant to § 393.145, the Commission is vested with the authority to:

a. Determine, after hearing, that Rogue Creek is a sewer or water corporation that regularly provides service to eight thousand or fewer customer connections;

b. Determine, after hearing, that Rogue Creek is unable to continue to provide safe and adequate service to its customers;

c. Determine, after hearing, that control of and responsibility for Rogue Creek should not, in the best interests of its customers, be returned to its sole office and director;

d. Order the Commission's general counsel to petition the Circuit Court of Cole County for an order attaching the assets of Rogue Creek and placing the company under the control and responsibility of a receiver and direct the receiver to transfer by sale or to liquidate the assets of Rogue Creek in the manner provided by law;

e. Appoint an interim receiver for Rogue Creek; and

f. Determine the compensation of the interim receiver and require the interim receiver to give bond, and to operate Rogue Creek so as to preserve the assets of Rogue Creek and to serve the best interests of its customers, pursuant to law.

11. The parties hereto unanimously waive their right to a hearing, as provided in § 393.145, and request that the Commission promptly enter orders consistent with this Stipulation without conducting a hearing.

12. The parties understand and expressly agree that this Stipulation shall not be construed as a consent to any Commission action against William J. Rummel individually, shall not result in the imposition of any obligation, duty, or penalty upon William J. Rummel individually, and shall not constitute a consent to the Commission to take any action in the circuit court that seeks a remedy of any kind from William J. Rummel individually.

13. So long as any circuit court proceeding does not name William J. Rummel, individually, as a party, and does not seek any remedy from William J. Rummel, the parties consent to the Commission filing a petition for the appointment of a receiver in the Circuit Court of Cole County, Missouri. Furthermore, William J. Rummel agrees that he will not oppose the Commission's action in circuit court seeking the appointment of a receiver.

14. In the event the Commission accepts the specific terms of this Stipulation and enters the consent order as requested, the parties hereto unanimously waive (but only with respect to the issues explicitly resolved herein) the following rights pursuant to §§ 536.070, 536.080, and 386.500: to call and examine witnesses; to cross-examine opposing witnesses; to introduce exhibits other than those attached hereto; to present oral arguments or written briefs; and to seek rehearing. The parties hereto unanimously agree to cooperate with each other in presenting this Stipulation to the Commission for final approval, and will take no action, direct or indirect, in opposition to final approval of this Stipulation.

15. The Staff shall have the right to provide, at any Agenda meeting at which this Stipulation is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties hereto with advance notice of the date of said Agenda meeting. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any protective order issued in this case.

16. This Stipulation is the result of extensive communication between the Staff, the Public Counsel, William J. Rummel, Joe Coleman, and Rita Coleman, and the terms of this Stipulation are interdependent; however the agreements expressed herein are limited solely to the issues described herein.

17. If the Commission does not approve this Stipulation and enter the consent order as requested, this Stipulation shall become null and void, and the parties hereto shall not be bound by the terms hereof.

18. The parties hereto respectfully submit that this Stipulation is presented to the Commission with the intent of lawfully resolving a matter that might otherwise consume

considerable time and resources to obtain a substantially similar result. Therefore, the parties hereto respectfully request that the Commission docket this matter for discussion and decision at the earliest possible Agenda meeting.

**WHEREFORE**, the Staff, the Public Counsel, William Rummel, Joe Coleman, and Rita Coleman respectfully request that the Commission issue an order approving this Unanimous Stipulation and Agreement and enter appropriate orders in accordance herewith.

Respectfully submitted,

Office of the Public Counsel

/s/ **Keith R. Krueger**

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/s/ **Joe Coleman**

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/s/ **Rita Coleman**

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## **Certificate of Service**

I hereby certify that copies of this Stipulation and Agreement have been mailed with first-class postage, hand-delivered, transmitted by facsimile or transmitted via e-mail to all counsel and/or parties of record this 11th day of June 2007.

*/s/ Keith R. Krueger*