

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

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

**STAFF'S NOTICE OF VOLUNTARY DISMISSAL**

**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 Notice of Voluntary Dismissal, 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. On June 7, 2007, CJCU advised the Commission that "The transactions authorized by the Commission's Report and Order were completed and the transfer closed on June 1, 2007."

3. On June 14, 2007, Staff advised the Commission that “all assets have been transferred as authorized,” and recommended that the Commission “cancel Central Jefferson’s tariffs and its certificates of convenience and necessity.”

4. On June 15, 2007, Staff filed its Supplemental Report and Recommendation, further advising the Commission as to CJCUC’s certificates, tariffs and service area.

5. On June 18, 2007, the Commission cancelled CJCUC’s certificates and tariffs and relieved it of its obligation to provide water and sewer services to the public within its assigned service area.

6. 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 and determined that CJCUC had violated Commission Rule 4 CSR 240-60.020, 1 and 3, in several respects, as well as § 393.130.1, RSMo 2000, and the Commission therefore directed its General Counsel to seek penalties from CJCUC pursuant to § 386.570, RSMo 2000.

7. Section 386.570, RSMo, provides for penalties as follows:

1. Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

2. Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct

offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

3. In construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.

8. Section 386.600, RSMo, provides:

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission. No filing or docket fee shall be required of the general counsel. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order or decision of the commission the defendant was actually and in good faith prosecuting a suit to review such order or decision in the manner as provided in this chapter, the court shall remit the penalties or forfeitures incurred during the pendency of such proceeding. All moneys recovered as a penalty or forfeiture shall be paid to the public school fund of the state. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

9. Section 516.390, RSMo, 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.

10. Section 516.103, RSMo, 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.

11. Pursuant to the direction of the Commission in the *Report & Order* issued in Case No. SO-2007-0071, Staff brought this complaint against CJCJ and others on April 13, 2007. Staff decided to file this complaint before the Commission, rather than attempting to seek penalties in Circuit Court based on the findings of violations in the *Report & Order* issued in Case No. SO-2007-0071, in order to foreclose the defense that, in fact, eventually resulted in the Circuit Court's reversal of the findings of violations in the *Report & Order* issued in Case No. SO-2007-0071.

12. Mindful that the limitation period applicable to an action for penalties is only two years pursuant to § 516.390, RSMo, and that the two-year period is not tolled by the pendency of an administrative proceeding pursuant to § 516.103, RSMo, Staff on June 15, 2007, sought partial summary determination herein with respect to the very violations already found by the Commission in the *Report & Order* issued in Case No. SO-2007-0071, relying upon the very same record.

13. 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."

14. Staff interpreted the Commission's denial of its motion for partial summary determination herein as an indication that the Commission no longer desired Staff to pursue penalties against CJCJ. This impression was

strengthened by the fact that the Regulatory Law Judge took no action whatsoever to move this case to resolution between October 4, 2007, and July 29, 2008. Staff notes that it is the general practice of the Adjudication Division to promptly require the filing of proposed procedural schedules in pending complaint cases in order to move such cases to resolution.

15. CJCUC timely sought rehearing of the *Report & Order* issued in Case No. SO-2007-0071 and pursued a Writ of Review as authorized by Chapter 386, RSMo. On June 30, 2008, the Circuit Court of Cole County, Missouri, reversed and remanded to the Commission the *Report & Order* issued in Case No. SO-2007-0071, on the ground that the “findings of statutory violation [are] unlawful, having been achieved by procedure not authorized by law.” That judgment is now final and unappealable.

16. In response to the Commission’s request for a status report by August 8, 2008, Staff renewed its motion for partial determination on August 6, 2008.

17. On August 21, 2008, the Commission denied Staff’s renewed motion for partial summary determination.

18. Many of the acts and omissions relied on by the Commission in finding the violations included in the *Report & Order* in Case No. SO-2007-0071 are now time-barred under § 516.390, RSMo. As to the others, insufficient time remains to prosecute a contested complaint case to conclusion and to file a petition for penalties in the Circuit Court.

19. CJCUC has transferred its assets as authorized in Case No. SO-2007-0071 and is no longer in the water and sewer business. No ratepayers are

depending upon it for essential water and sewer services. On information and belief, Staff states that CJCUC now lacks significant assets and any judgment for penalties actually obtained would go unpaid unless the General Counsel can successfully pierce the corporate veil and recover from CJCUC's officers, directors or shareholders.

20. Commission Rule 4 CSR 240-2.116(1) provides:

An applicant or complainant may voluntarily dismiss an application or complaint without an order of the commission at any time before prepared testimony has been filed or oral evidence has been offered, by filing a notice of dismissal with the commission and serving a copy on all parties.

21. Prepared testimony has not yet been filed in this case; neither has oral evidence been offered herein.

**WHEREFORE**, on account of all the foregoing, Staff hereby notifies the Commission and all parties that it voluntarily dismisses this Complaint.

Respectfully Submitted,

/s/ KEVIN A. THOMPSON

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Attorney for the Staff of the  
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 **8<sup>th</sup> day of September, 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