

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

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	Case No. WC-2007-_____
v.)	
)	
Joe Hybl, Oakview Estates Homeowners Association, Jack Hybl, and James Scott Hybl)	
)	

Respondents.

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission (Staff), pursuant to Section 386.390, RSMo 2000, and for its Complaint respectfully states as follows:

Introduction

1. This Complaint concerns Respondents’ unlawful provision of water services to the public, for gain, without certification or other authority from the Missouri Public Service Commission (Commission).

Complainant

2. Complainant is the Staff of the Missouri Public Service Commission (Staff), acting through the Commission’s General Counsel as authorized by Commission Rule 4 C.S.R. 240-2.070(1). A “Complaint may be made. . .in writing, setting forth any act or thing done or omitted to be done by any corporation. . .in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the Commission. . . .” Section 386.390.1 RSMo (2000).

Respondents

3. Respondent Joe Hybl is the owner of the majority of the lots in the Oakview Estates subdivision located in Warren County, Missouri. Respondent is also an officer and member of the Board of Directors of Respondent Oakview Estates Homeowners Association, Inc. His Missouri address is 2312 Highway F, Wright City, MO 63390.

4. Respondent Oakview Estates Homeowners Association is a Missouri not-for-profit mutual benefit corporation in good standing, incorporated on February 20, 2000. Its principal place of business is 2312 Highway F, Wright City, MO 63390. Its registered agent is Donald A. Baerveldt, Jr., 566 First Capitol Drive, St. Charles, MO 63301.

5. Respondent Jack Hybl is an officer and member of the Board of Directors of Oakview Estates Homeowners Association. His address is 241 Alameda de las Pulgas, Atherton, CA 94027.

6. Defendant James Scott Hybl is a member of the Board of Directors of Oakview Estates Homeowners Association. His address is 16888 Southeast Woodland Heights, Boring, OR 97009.

Allegations Common to All Counts

7. Respondent Joe Hybl purchased the lots in the Oakview Estates Subdivision from Bill Beene, the original developer. Bill Beene installed the original water system in the subdivision and provided water service to residents.

8. The water system established by Bill Beene provided water service to Susan D. Jaeger, Lonnie Markham, and Mark Liesenfeld. The named individuals are residents of the Oakview Estates Subdivision.

9. Respondent Joe Hybl undertook improvements to the water system in order to bring the system in compliance with Missouri Department of Natural Resources (MDNR) standards. The improvements included replacement of the water main serving the homes of the individuals.

10. After completion of the improvements, water service was not restored to the homes of the individuals named in Paragraph 8. Those individuals have been without water service from Respondents' water system since May 4, 2006.

11. Susan D. Jaeger filed an informal complaint with the Missouri Public Service Commission on May 18, 2004. The informal complaint did not result in a resolution or restoration of Ms. Jaeger's water service.

12. Ms. Jaeger filed a formal complaint with the Commission on June 27, 2006. That complaint was assigned Case No. WC-2006-0550 and is currently pending before the Commission.

13. Mark S. Liesenfeld filed a formal complaint with the Commission on June 28, 2006. That complaint was assigned Case No. WC-2007-0015 and is currently pending before the Commission.

Count I

Respondents are Subject to Regulation by the Commission

14. Complainant hereby adopts by reference and re-alleges the allegations set forth in Paragraphs 1 through 13, above.

15. Section 386.020(58) RSMo (2000) (Supp. 2005) provides:

“Water corporation” includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling or managing any plant or property, dam or water supply, canal, power station, distributing or selling for distribution, or selling or supplying for gain any water[.]

16. Respondents own, operate, control or manage a water system serving Oakview Estates Subdivision in Warren County, Missouri.

17. On or about March 17, 2003, Respondent Oakview Estates Homeowners Association sent a letter to residents of the subdivision through counsel proposing a “tap-on” fee of \$71.25 per month for 60 months for each homeowner in order to pay for the cost of the water system. The letter also proposed charging a fee of \$56.01 per month for water service on a going-forward basis. The letter stated that if terms for the provision of water service could not be negotiated, the homeowner’s tap on to the fresh water system would be removed. Attached hereto as Attachment A and incorporated herein by reference is a true and correct copy of the letter sent to the residents of Oakview Estates Subdivision.

18. The letter demonstrates an intention by Respondents, or some of them, to sell or supply water for gain within the meaning of Section 386.020(58), RSMo because Respondents have expressed an intention to recover the costs of the water system and to collect money for the provision of water service on a monthly basis.

19. Section 386.020(42) RSMo provides:

“Public utility” includes every. . .water corporation. . .as [this] term [is] defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter[.]

20. With respect to the Oakview Estates Subdivision, Respondents, or some of them, are a public utility within the meaning of Section 386.020(42), and are subject to the jurisdiction, control and regulation of the Commission.

WHEREFORE, Staff prays that the Commission will give notice to Respondents as required by law and, after hearing, find that Respondents, or some of them, are a water corporation within the meaning of Section 386.020(58) RSMo with respect to their operation of the water system serving the Oakview Estates Subdivision. Staff further prays that the Commission find that Respondents, or some of them, are a public utility within the meaning of Section 386.020(42) RSMo and are subject to the jurisdiction, regulation and control of this Commission.

Count II

Unauthorized Provision of Water and Sewer Services to the Public

21. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 20 above.

22. Section 393.170 RSMo provides:

1. No . . . water corporation. . . shall begin construction of a gas plant, electric plant, water system or sewer system without first having obtained the permission and approval of the commission.

2. No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.

3. The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such

construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void.

23. None of the Respondents possesses a Certificate of Convenience and Necessity issued by this Commission authorizing them to exercise any right, privilege or franchise by providing water services to the public for gain in the Oakview Estates Service Area.

24. With respect to the Oakview Estates Subdivision water system, Respondents, or some of them, have violated Section 393.170 RSMo by the conduct described in Paragraphs 1 through 23.

WHEREFORE, Staff prays that the Commission will give notice to Respondents as required by law and, after hearing, find that Respondents, or some of them, have violated Section 393.170 RSMo by their conduct with respect to the Oakview Estates Subdivision water system and, further, find that each day of operation in violation of Section 393.170 RSMo constitutes a separate violation.

Count III

Authority to Seek Penalties

25. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 24 above.

26. No specific statutory penalty is provided for failure to obtain a certificate of service authority. Section 386.570 RSMo provides:

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.

27. 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.

WHEREFORE, Staff prays that the Commission will give such notice to Respondents as is required by law and, after hearing, in the event that any of the conduct herein described is determined to be a violation of any law of the State of Missouri or of any order, decision, or rule of this Commission, deem each day that such violation existed to be a separate offense and authorize its General Counsel to proceed in Circuit Court to seek such penalties as are authorized by law.

Conclusion

WHEREFORE, Staff prays that the Commission will give notice to Respondents as required by law and, after hearing, find that Respondents, or some of them, are a water corporation within the meaning of Section 386.020(58) RSMo with respect to their operation of the water system serving the Oakview Estates Subdivision. Staff further prays that the Commission find that Respondents, or some of them, are a public utility within the meaning of Section 386.020(42) RSMo and are subject to the jurisdiction, regulation and control of this Commission.

WHEREFORE, Staff prays that the Commission will give notice to Respondents as required by law and, after hearing, find that Respondents, or some of them, have violated Section 393.170 RSMo by their conduct with respect to the Oakview Estates Subdivision water system and, further, find that each day of operation in violation of Section 393.170 RSMo constitutes a separate violation.

WHEREFORE, Staff prays that the Commission will give such notice to Respondents as is required by law and, after hearing, in the event that any of the conduct

herein described is determined to be a violation of any law of the State of Missouri or of any order, decision, or rule of this Commission, deem each day that such violation existed to be a separate offense and authorize its General Counsel to proceed in Circuit Court to seek such penalties as are authorized by law.

Respectfully submitted,

/s/ Jennifer Heintz

Jennifer Heintz
Assistant General Counsel
Missouri Bar No. 57128

Attorney for the Staff of the
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel and parties of record this 28th day of August 2006.

/s/ Jennifer Heintz

Joe Hybl (MO)
2312 Highway F
Wright City, MO 63390

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* ALSO LICENSED IN ILLINOIS

March 17, 2003

Mr. Michael Yaeger
124 Kit Drive
Warrenton, MO 63383

EXHIBIT "A"

Re: Oakview Estates / Water Useage

Dear Mr. Yaeger:

I represent Oakview Estates, Inc., a subdivision in Warren County, in which you reside. I am conveying this letter to you, as well as other homeowners, in regard to the fresh water system installed and operated by Oakview Estates, Inc.

As I am sure you are aware, you have been receiving fresh water service but have not been paying for the service provided by Oakview Estates, Inc. The fresh water system was installed at great cost to my clients and is operated at an additional cost for the fresh water provided. The ownership of Oakview Estates, Inc. has requested that I contact each of the homeowners currently accessing the fresh water system to negotiate repayment over a period of five (5) years of the apportioned cost of the fresh water system and the cost of current usage on a monthly basis. My client has authorized me to waive any past usage fees up to and through April 1, 2003, if an agreement can be negotiated on or before that date.

The apportioned costs for each lot of the subdivision is approximately \$4,275.00. My client has proposed repayment of the apportioned costs as a "tap-on" fee of \$71.25 per month, payable over a period of 60 months secured by a second deed of trust on the respective homeowners' real estate. The current fresh water usage fee each month would be an additional \$56.01 per month. You will be billed by a private service in regard to both charges.

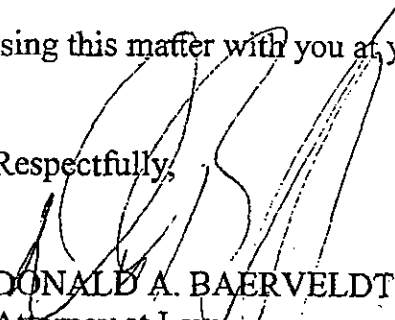
Finally, as part of the negotiated resolution of the water usage and water installation as set forth herein, each homeowner will be required to submit to the Declaration & Covenants of Oakview Estates Subdivision, a copy of which is enclosed with this letter.

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If we are not able to negotiate the above matters on or before **April 1, 2003**, my client will have no recourse but to remove your tap on to the fresh water system. You will thereafter be responsible for provision of fresh water for your property.

I will look forward to discussing this matter with you at your earliest convenience prior to April 1, 2003.

Respectfully,



DONALD A. BAERVELDT, JR.
Attorney at Law

DAB:pt - enclosure

cc: David Fierge