

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

FILED²

JAN 23 2006

Missouri Public
Service Commission

The Staff of the Missouri Public Service)
Commission,)

Complainant,)

v.)

Case No. WC-2006-_____

Hurricane Deck Holding Company, Chelsea)
Rose Land Owners Association, Inc., Gregory)
D. Williams, Debra J. Williams, and Charles)
H. Williams,)

Respondents.)

COMPLAINT

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

Introduction

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

Complainant

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Commission's General Counsel as authorized by Commission Rule 4 CSR 240-2.070(1). Section 386.390.1 provides that "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 . . ."

Respondents

3. Respondent Hurricane Deck Holding Company ("HDHC") is a Missouri general business corporation in good standing, incorporated on June 6, 1988. Its principal place of business is located at P.O. Box 431, Sunrise Beach, MO 65079.

4. Respondent Chelsea Rose Land Owners Association, Inc. ("CRLOA"), is a Missouri non-profit corporation in good standing, incorporated on December 12, 2005. Its principal place of business is located at P.O. Box 431, Sunrise Beach, MO 65079.

5. Respondent Gregory D. Williams is the president, sole director, and registered agent of Respondent HDHC, and the incorporator, a member of the Board of Managers, and the registered agent of Respondent CRLOA. Respondent Gregory D. Williams maintains a law office at P.O. Box 431, Sunrise Beach, MO 65079.

6. Respondent Debra J. Williams is the secretary of Respondent HDHC and a member of the Board of Managers of Respondent CRLOA. Her address is P.O. Box 431, Sunrise Beach, MO 65079.

7. Respondent Charles H. Williams is a member of the Board of Managers of Respondent CRLOA. His address is P.O. Box 431, Sunrise Beach, MO 65079.

Allegations Common to All Counts

8. Osage Water Company ("OWC") is a Missouri general business corporation in good standing. Its registered agent is William P. Mitchell and its registered office is at 328 Frontage Road, Osage Beach, MO 65065.

9. Pursuant to Certificates of Convenience and Necessity issued by this Commission, OWC is in the business of providing water and sewer services to the public for gain. OWC is thus is a "public utility," a "water corporation," and a "sewer corporation" within the intendments of Section 386.020, RSMo, and subject to regulation by this Commission.

10. OWC operates in seven separate service areas in the vicinity of Lake of the Ozarks, Missouri, one of which is the Chelsea Rose Service Area, where water and sewer service is provided to the residents of the Chelsea Rose Estates, Chelsea Rose Estates First Addition, Zane's Addition to Chelsea Rose Estates, Cinnamon Hollow Subdivision, Cinnamon Hollow Addition, Cinnamon Ridge Subdivision, and Cinnamon Ridge Addition subdivisions.

11. On October 21, 2005, the Circuit Court of Camden County, Missouri, at the request of this Commission, appointed Gary V. Cover of Clinton, Missouri, as receiver for OWC pursuant to Section 393.145, RSMo. The Court's order appointing the receiver stated, in pertinent part, "Osage Water Company and its officers, agents and representatives, and specifically it's past contractual agent and representative Environmental Utilities, LLC, employees and successors, and all other persons in active concert and participation with them, are directed to cooperate with Mr. Cover . . . to promptly transfer control of Osage Water Company to the appointed receiver; and to deliver to him all records and assets."

12. The Circuit Clerk of Camden County, Missouri, mailed a certified copy of the order appointing the receiver to Respondent Gregory D. Williams and all of the Respondents, consequently, have actual knowledge of its contents.

13. Despite actual knowledge of the contents of the order appointing the receiver, Respondents, or some of them, have failed and refused to turn over to the receiver the system assets, books and records pertaining to the Chelsea Rose Service Area.

Count I

Respondents are Subject to Regulation by the Commission

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

15. Section 386.020(58), RSMo, 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, or power station, distributing or selling for distribution, or selling or supplying for gain any water[.]

16. Section 386.020(48), RSMo., provides:

"Sewer corporation" includes every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain, except that the term shall not include sewer systems with fewer than twenty-five outlets[.]

17. Since September 22, 2005, Respondents, or some of them, have operated or controlled or managed the water and sewer systems serving the Chelsea Rose Service Area within the intendments of Section 386.020, (48) and (58), RSMo, and have provided water and sewer service to OWC's customers in that service area.

18. On or about December 30, 2005, Respondent Debra J. Williams on behalf of Respondent HDHC sent a letter regarding "Water and Sewer Issues" to homeowners in the Chelsea Rose Service Area. Attached hereto and incorporated herein by reference as Attachment A is a true and correct copy of Respondent HDHC's letter of December 30, 2005.

19. Included with the letter of December 30, 2005, referred to above was a bill for \$52.48 entitled "HDHC Quarterly Water & Sewer Assessment" due on January 22, 2006, and payable to HDHC. Attached hereto and incorporated herein by reference as Attachment B is a

true and correct copy of Respondent HDHC's Quarterly Water & Sewer Assessment.

20. By billing OWC's customers in the Chelsea Rose Service Area for water and sewer services, Respondents, or some of them, are selling water, or supplying water for gain, within the intendments of Section 386.020, (48) and (58), RSMo.

21. The sewer system in the Chelsea Rose Service Area has 25 or more outlets.

22. With respect to the Chelsea Rose Service Area water and sewer systems, Respondents, or some of them, are a water corporation and a sewer corporation within the intendments of Section 386.020, (48) and (58), RSMo.

23. Section 386.020(42), RSMo, provides:

"Public utility" includes every . . . water corporation, . . . and sewer corporation, as these terms are 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[.]

24. With respect to the Chelsea Rose Service Area water and sewer systems, Respondents, or some of them, are a public utility within the intendments of Section 386.020(42), RSMo, and thus subject to the jurisdiction, control and regulation 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, with respect to their operation of the Chelsea Rose Service Area water and sewer systems, are a water corporation and a sewer corporation within the intendments of Section 386.020, (48) and (58), RSMo, and thus a public utility within the intendments of Section 386.020(42), RSMo, and subject to the jurisdiction, regulation and control of this Commission.

Count II

Unauthorized Provision of Water and Sewer Services to the Public

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

26. Section 393.170, RSMo, provides:

1. No . . . water corporation or sewer corporation shall begin construction of a . . . 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.

27. None of the Respondents possesses Certificates of Convenience and Necessity issued by this Commission authorizing them to exercise any right, privilege or franchise by providing water or sewer services to the public for gain in the Chelsea Rose Service Area.

28. With respect to the Chelsea Rose Service Area water and sewer systems, Respondents, or some of them, have violated Section 393.170, RSMo, by the conduct described in Paragraphs 1 through 27.

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 Chelsea Rose Service Area water and sewer systems and, further, find that each day of operation in violation of Section 393.170, RSMo, constitutes a separate violation.

Count III

Provision of Unsafe Sewer Services to the Public

29. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 28, above.

30. None of the Respondents currently holds a permit from the Missouri Department of Natural Resources ("DNR") authorizing the operation of a sewer system in the Chelsea Rose Service Area.

31. Rule 10 CSR 20-6.010(5)(A) provides that "Persons who . . . operate, use or maintain any . . . wastewater treatment facility which discharges to waters of the state shall obtain an operating permit from the department before any discharge occurs."

32. Commission Rule 4 CSR 240-60.020(1) provides that "Each sewer utility . . . shall comply with the laws and regulations of the state and local health authority."

33. Commission Rule 4 CSR 240-60.010(J) provides that a "sewer utility" is "every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment or disposal of sewage anywhere within the state for gain; provided, that the provisions of this order shall not apply to sewer systems with fewer than twenty-five (25) outlets[.]"

34. With respect to their operation of the Chelsea Rose Service Area sewer system, Respondents, or some of them, are a "sewer utility" within the intendments of Commission Rule 4 CSR 240-60.010(J).

35. Respondents, or some of them, are thus in violation of Commission Rule 4 CSR 240-60.020(1) in that they are operating the Chelsea Rose Service Area sewer system in violation of Rule 10 CSR 20-6.010(5)(A).

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 Chelsea Rose Service Area water and sewer systems and, further, find that each day of operation in violation of Section 393.170, RSMo, constitutes a separate violation.

Count IV

Unauthorized Transfer of Water and Sewer Systems

36. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 35, above.

37. In the letter referred to in Paragraph 18, above, Respondent Debra J. Williams stated that "we have determined the best course of action at this point is to turn the systems over to the homeowners. Articles of Incorporation have already been filed with the Secretary of State[.]" Attached hereto and incorporated herein by reference as Attachment C is a true and correct copy of said Articles of Incorporation.

38. Complainant is without knowledge as to whether or not an attempt to transfer the Chelsea Rose Service Area water and sewer systems to Respondent CRLOA has already occurred. However, in a letter dated January 20, 2006, Respondent Gregory D. Williams stated,

"The water and sewer system serving the Chelsea Rose development is owned by Hurricane Deck Holding Company." Attached hereto and incorporated herein by reference as Attachment D is a true and correct copy of said letter.

39. Section 393.190.1, RSMo, provides:

No . . . water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void. The permission and approval of the commission to the exercise of a franchise or permit under this chapter, or the sale, assignment, lease, transfer, mortgage or other disposition or encumbrance of a franchise or permit under this section shall not be construed to revive or validate any lapsed or invalid franchise or permit, or to enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or to waive any forfeiture. Any person seeking any order under this subsection authorizing the sale, assignment, lease, transfer, merger, consolidation or other disposition, direct or indirect, of any gas corporation, electrical corporation, water corporation, or sewer corporation, shall, at the time of application for any such order, file with the commission a statement, in such form, manner and detail as the commission shall require, as to what, if any, impact such sale, assignment, lease, transfer, merger, consolidation, or other disposition will have on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the corporations involved in such disposition are located. The commission shall send a copy of all information obtained by it as to what, if any, impact such sale, assignment, lease, transfer, merger, consolidation or other disposition will have on the tax revenues of various political subdivisions to the county clerk of each county in which any portion of a political subdivision which will be affected by such disposition is located. Nothing in this subsection contained shall be construed to prevent the sale, assignment, lease or other disposition by any corporation, person or public utility of a class designated in this subsection of property which is not necessary or useful in the performance of its duties to the public, and any sale of its property by such corporation, person or public utility shall be conclusively presumed to have been of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser of such property in good faith for value.

40. This Commission has not authorized any transfer, sale, assignment, mortgage,

encumbrance, or disposition by any other means of all or any part of the Chelsea Rose Service Area water and sewer systems.

41. Any purported transfer, sale, assignment, mortgage, encumbrance, or disposition by any other means of all or any part of the Chelsea Rose Service Area water and sewer systems is both void and a violation of Section 393.190.1, RSMo.

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 393.190.1, RSMo, in the event that there has been any purported transfer, sale, assignment, mortgage, encumbrance, or disposition by any other means of all or any part of the Chelsea Rose Service Area water and sewer systems.

Count V

Authority to Seek Penalties

42. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 41, above.

43. 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.

44. 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 the 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/ Robert V. Franson

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