

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

GERALD & JOANNE REIERSON	)	
Complainants	)	
	)	
vs.	)	Case # SC-2005-0083
	)	
KENNETH JAEGER & BLUE	)	
LAGOON SEWER CORPORATION	)	
Respondents	)	

**STATEMENT OF POSITION**

COMES NOW, Respondents, by and through their attorney James F. Lemon, of LEMON and MORROW, LLC and pursuant to the order of the Commission dated April 27, 2007, states as follows:

1. In regards to issue one, Respondents admit that they qualify to be regulated by the Missouri Public Service Commission. Respondents state however, that upon being made aware of said fact, that they immediately created a not for profit corporation, and submitted it as a proposed continuing authority to the Department of Natural Resources. This Authority was ultimately rejected on the grounds that it did not meet the requirements of Section 393, and further on the grounds that Respondent Jaeger was to be involved in the running of the corporation as drafted. Respondents are currently attempting to get the Cannon Water Supply District #1 to accept the system and to act as a continuing authority in compliance with the requests of the office of the Missouri Attorney General. Respondents have also drafted a not for profit corporation pursuant tot the provisions of Section 393 of the Revised Statutes of Missouri. This corporation was filed and rejected for filing errors. Such errors were corrected, but at the request of the Missouri Attorney General's Office, that filing has not been completed in anticipation of the determination

of Cannon Water Supply District. Based upon this, Respondents would believe that a determination by the PSC that Respondents are subject to PSC regulation is unnecessary as the ultimate goal of all parties involved is for the ownership to be conveyed to an appropriate not for

2. In regard to issue two, Respondents believe that they have provided service which is safe and adequate within their ability and as they have been allowed to do so. This system was originally designed and built by a third party who was foreclosed upon by his lender. Respondents then acquired the system as it sat, not understanding the problems with the system, nor the need for upgrades, or the procedure to get authorization to make such upgrades. Respondents admit that there was an unauthorized release of effluent by this system. However, this release occurred because of substantial rains which caused the system to overflow. Respondents well prior to this release had made application to the Department of Natural Resources to upgrade the system in such a manner as to prevent exactly this occurrence. Despite filing of a proposed continuing authority, DNR did not notify Respondents of the unacceptability of that continuing authority. As no construction permit could be authorized without such an approved authority, Respondents were unable to upgrade the system in the manner required. As a result of the foregoing, it is Respondent's position that they ran the system to the best of their ability and provided sewer service to complainants in the best manner available to them.

3. In regards to issue three, Respondents do not agree that upgrades should be ordered by the Public Service Commission. Upgrades to the system have been made and are currently progressing pursuant to the case of State of Missouri v. Jaeger Case #CV805-12CC , in the circuit court of Ralls County, Missouri. As the circuit court of Ralls County has taken jurisdiction of this issue, an order of the public service commission in regard to this issue would

therefore be unnecessary, and further would be a violation of Respondents due process rights as to double jeopardy.

4. In regard to issue 4, state that Respondent accepted voluntary fees paid to help support the system, and that such fees were reasonable, as they were based upon the water bills charged to each recipient of sewer service, stating however that such fees were not authorized by the commission, as Respondents were not aware of the process required to get such fees authorized.

In regard to any fees charged after the filing of the complaint, state that Respondents met with PSC staff, and an agreement was made that Respondent could continue to charge fees at the then current rate during the pendency of this action. Respondent further states that in regards to the residential homes attached to this system, no enforcement was ever used other than to send bills to the sewer recipients.

5. In regard to issue 5, state that Respondents have no objection to such an order, and would welcome such an order except to the extent that such issues involve the action filed in the circuit Court of Ralls County, and that an order of the public service commission in regard to this issue would be a violation of Respondents due process rights as to double jeopardy. Respondents further note that the Cannon Water Supply District is not currently offering sewer service to customers although they are authorized to do so, and may therefore not qualify under Section 393.146 RsMO. Respondents also note that they have offered this system to the Public Water Supply district at no cost, and it has been rejected, although Respondents are currently still attempting to get them to take the system.

6. In regard to issue 6, Respondents note that the Commission has not specified which laws of the state or orders of the Commission it believes that Respondents have violated, and to such extent state that they do not have sufficient information to defend such charge. However, to the

extent that the Commission believes fines should attach for violations regarding alleged violations of the law as to violations of the Clean Water Act, state that these matters are all covered by the action filed in Ralls County Missouri by the State of Missouri, and that assessment of fines in regard to such issues would therefore be a violation of Respondents due process rights as to double jeopardy. In regard to a violation of an order of the Commission, state that Respondent is not aware of any order which it has violated. In regard to a violation of the laws of Missouri regarding collection of fees, state that it is Respondents position that such fees were voluntary and acceptance of them should not be construed as a violation of the law, stating however, that if such acceptance was a violation, that their acceptance was made without knowing that such was a violation of the law, and therefore should not warrant fines.

7. In regard to issue 7, Respondents do not agree that a receiver should be appointed, noting once again that this is an issue which has been taken up in the Circuit Court of Ralls County. Respondents further note that a portion of the State of Missouri's request, as well as the order of the judge is for Respondents to continue negotiating with the Public Water Supply district to get them to take the sewer system, and failing that to establish a Not for Profit Sewer Corporation under section 393 of RsMO. Respondents therefore believe that if the Public Service Commission were to order appointment of a receiver, this would be a violation of Respondent's due process rights, subject them to double jeopardy, and possibly usurp the authority of the Circuit court of Ralls County, and interfere with Respondents ability to comply with that court's order.

Respectfully submitted,

LEMON AND MORROW, LLC

*/James F. Lemon/*

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ATTORNEY FOR RESPONDENT

**CERTIFICATE OF SERVICE**

I, James F. Lemon, attorney for the Defendant, do hereby certify that a true copy of the above and foregoing MOTION was served upon all parties of record via email, mail or hand delivery this 9<sup>th</sup> day of May, 2007.

*/James F. Lemon/*

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James F. Lemon