

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

Susan D Jaeger,

Complainant,

v.

Joe Hybl,

Respondent.

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Case No. WC-2006-0550

RESPONSE TO ORDER DIRECTING STAFF INVESTIGATION

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through counsel, and for its Response to Order Directing Staff Investigation ("Response") states the following to the Missouri Public Service Commission ("Commission").

1. On July 5, 2006 (unless noted otherwise, all dates herein refer to the year 2006), the Commission issued its **Order Directing Staff Investigation** in the instant case, wherein it directed the Staff to investigate the issues set out in the subject Complaint and to file a verified report regarding its findings on or before August 4. Additionally, the Commission directed the Staff to address the Commission's jurisdiction over the allegations and relief requested in the subject Complaint.

2. On August 3, the Commission issued its **Order Granting Extension of Time in Which to File Answer**, wherein, among other things, it extended the date for the Staff's required filing to August 23.

3. Included in Appendix A attached hereto is the *Staff Report of Investigation*, prepared by the Commission's Water & Sewer Department, which is being submitted in compliance with the above-referenced Commission orders.

4. Staff recommends that the Commission immediately order Respondent to reestablish Respondent's water service and to apply for a certificate of convenience and necessity. Staff believes that Respondent's request to the Commission to order Complainant to pay for past water services places him within the Commission's jurisdiction. Staff is in the process of preparing a formal complaint alleging that Respondent is operating a water corporation without a certificate of convenience and necessity as required by Section 393.170 RSMo.

WHEREFORE, the Staff respectfully submits this Response for the Commission's information and consideration in this case.

Respectfully Submitted,

/s/ Peggy A. Whipple

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CERTIFICATE OF SERVICE

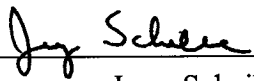
I hereby certify that copies of the foregoing have been mailed with first class postage, hand-delivered, transmitted by facsimile or transmitted via e-mail to all counsel and/or parties of record this 23rd day of August 2006.

/s/ Peggy A. Whipple

AFFIDAVIT OF JERRY SCHEIBLE

STATE OF MISSOURI)
) ss **Case No. WC-2006-0550**
COUNTY OF COLE)

Jerry Scheible, of lawful age, on his oath states: (1) that he is a member of the Staff of the Missouri Public Service Commission; (2) that he participated in the preparation of this Response to Order Directing Staff Investigation ("Response") and the *Staff Report of Investigation* ("Report") included in the attached appendix; (3) that he has knowledge of the matters set forth in this Response and the Report included in the attached appendix; and (4) that the matters set forth in this Response and the Report included in the attached appendix are true and correct to the best of his knowledge, information and belief.



Jerry Scheible, P.E.
Utility Regulatory Engineer
Water & Sewer Department
Utility Operations Division

Subscribed and sworn to before me this 23rd day of August 2006.



Notary Public
DAWN L. HAKE
My Commission Expires
March 16, 2009
Cole County
Commission #05407643

My Commission Expires:



APPENDIX A

STAFF REPORT OF INVESTIGATION

Case No. WC-2006-0550

August 23, 2006

Staff Report of Investigation

Case No. WC-2006-0550

Susan D. Jaeger v. Joe Hybl

Prepared By:

**Jerry Scheible, P.E.
Utility Regulatory Engineer
Water & Sewer Department**

Approved By:

**Dale W. Johansen – Manager
Water & Sewer Department**

August 23, 2006

INTRODUCTION

On May 18, 2006 (unless noted otherwise, all dates herein refer to calendar year 2006), Susan Jaeger submitted an informal consumer complaint, which was assigned complaint number C200609764, against Joe Hybl and the Oakview Estates Homeowners Association ("Association"). Ms. Jaeger initiated her informal complaint due to the water service to her residence being terminated on May 4.

Jim Merciel of the Water & Sewer Department handled the informal complaint with Ms. Jaeger, which included a review of past informal complaint activity related to the subject system, and the fact that the owner (Mr. Hybl) claims that the water system is controlled by the Association, which is not subject to the Commission's jurisdiction. After discussions about the possible options regarding the actions that could be taken with regard to this matter, Mr. Merciel forwarded Ms. Jaeger the proper documents to file a Formal Complaint with the Commission. On June 27, Ms. Jaeger did file a Formal Complaint, which resulted in the subject case being opened, in which she requests restoration of her water service and the regulation of the water system by the Commission.

The owner of the water supply in question, Joe Hybl, filed his Answer to Complaint ("Answer") with the Commission on August 18 through an attorney. Hybl claims he is not the original developer of Oakview Estates Subdivision and therefore is not responsible for providing water service to residences in the original subdivision. Hybl requests the Complaint be dismissed and that

Ms. Jaeger be ordered to pay a reasonable connection fee and reasonable monthly charge for use of water.

During a telephone conversation with Ms. Jaeger today, she confirmed that she is still not receiving water service from Mr. Hybl's system at her residence.

WATER & SEWER DEPT. STAFF'S INVESTIGATION AND FINDINGS

I attempted to contact Joe Hybl, who is both the subdivision developer and is in charge of the water service, on May 18 and left a message stating the PSC would likely get involved if the issue was not resolved.

I then called Ms. Jaeger on May 23. She confirmed that she has been without water since May 4. She further stated she had contacted Mr. Hybl regarding the outage several times, but had gotten no positive responses. Ms. Jaeger believes that Mr. Hybl desires to sell or develop more lots in the subdivision, but could not do so due to ongoing problems with the drinking water system. Mr. Hybl performed upgrades on the water supply and replaced the existing water main, which served the three residences on the water system. However, the customers being served by the main that was replaced, Susan Jaeger, Lonnie Markham and Mark Liesenfeld, were not reconnected to the new main, leaving them without water service on May 4.

Mr. Hybl left me a voice mail message on May 25, directing me to contact his attorney, Don Baerveldt, in regard to the situation. I called and spoke to Mr. Baerveldt on the same day. He said that Bill Beeny, the original developer of the subdivision, installed the original water supply system. He further stated that Mr. Hybl had recently completed upgrades to the well and main line to meet Missouri Department of Natural Resources regulations, and that the water system is now to be operated under the control of the "not-for-profit" company of Oakview Estates Homeowners Association, Inc. I have verified that the Articles of Incorporation of said association are indeed on file with the Missouri Secretary of State. There are currently no paying customers on the system and Mr. Hybl reports that the homes that had been disconnected from service had been "stealing" water service since they had not been submitting any payment for service. I questioned Mr. Baerveldt as to under what circumstances the customers would be reconnected. He stated that the customers would be connected to the new main if they would agree to pay a connection charge, which would include the installation of a meter, and on-going charges for water service. He could not identify what amount those charges would be. Mr. Baerveldt further reported that a sewer treatment facility has been constructed by Mr. Hybl for the subdivision as well, although no connections have been made to it to date. I informed him that the Staff would be investigating the sewer situation as well.

On May 26, I performed a site visit of the subdivision. There are a total of five residences currently in the subdivision, with Ms. Jaeger's being the only one south of Highway F. The main runs on the other side of Kit Drive from the Jaeger residence, as evidenced by recent excavation. There is significant earthwork, road cuts, and water and sewer piping and manhole components throughout the subdivision on both sides of Highway F. I also visited with Ms. Jaeger at her home that day. Mr. Jaeger stated she would be willing to pay Mr. Hybl a reasonable connection fee and reasonable monthly fee for dependable water service. Further, I confirmed that a newly constructed extended air wastewater treatment facility is indeed in place in the subdivision, though it appears that it is neither receiving nor treating wastewater.

I spoke to Joe Hybl on the phone on May 31. He claims to have no obligation to provide water to the existing residences because they bought their property from Bill Beeny. Mr. Hybl has since replaced the water system that was put in place by Beeny for the original subdivision and feels the existing residences do not have a right to access the new water system. I asked Mr. Hybl if he would be willing to hook up the existing residences if they agreed to pay a connection fee and usage fees and he stated that he would rather not because he is wanting to "clean up" the area so that he can develop the subdivision. (Ms. Jaeger resides in an older model mobile home and the Markham and Liesenfeld residences are later model double-wide manufactured homes.) When I asked if the homes without water were part of the Oakview Estates Subdivision, he said they were not because those lots were not included in the property he purchased, and for which he established the Association.

I visited the Warren County Courthouse on June 1 in an attempt to obtain information regarding the Association and property ownership in the subdivision. I determined the residences that were recently disconnected from the water system are on the following lots: Jaeger #52, Liesenfeld #67, and Markham #68. The *Covenants, Conditions, Reservations and Restrictions* dated March 16, 2000, under the signature of Joe Hybl, President of Oakview Estates Homeowners Association, Inc., states "WHEREAS, Declarant is the owner in fee simple title to lots 5 - 31, 34 - 37, 39 - 42, 46 - 50, 53, and 55-56 shown and recorded . . . " – thus excluding the lots of the residences in question, among others. However, the original plat map of the subdivision as recorded on March 23, 1983, shows lots 1 - 68 as part of "Oak View Estates." It may be worthy of note additionally that the original *Articles of Restrictions* for the subdivision dated July 8th, 1983, as well as the original plat map of the subdivision on file at the county, lists the name of the subdivision as "Oak View Estates." The latest *Covenants, Conditions, Reservations and Restrictions* for the subdivision on file by Joe Hybl, lists the name of the subdivision losing the space between the first two words and changed to "Oakview Estates." I have not been able to determine if this was intentional on Mr. Hybl's part, or just a typographical error. Ms. Jaeger, the Markhams and the Liesenfelds have all confirmed that they are not a part of, nor have any say in, any homeowners association. Furthermore, the *Conditions, Reservations and Restrictions* for the subdivision, Section 4.4. Voting Rights, states, "There shall be one (1) vote for each Lot at meetings of the members of the Association." Importantly, Mr. Hybl owns a substantial majority of the lots in the subdivision.

Ms. Jaeger had reported earlier that she had gone to court with Bill Beeny ten years ago regarding the issue of whether water service was included in the original purchase price of her property and that the judge had ruled in her favor. While at the Warren County Courthouse, I found CV0591-000319ACX *Oakview Water Assoc. vs. Michael Jaeger et al*, which from what I could decipher, was actually Bill Beeny suing Jaeger for payment of past water usage, although no set monthly charge was specified. Ms. Jaeger then filed a counter-suit saying the water was unfit for use, citing various MDNR violations. The judge ruled that no past due payment should be made by the Jaegers due to the water quality problems. I did not see anything that said that water service was to be provided at no cost.

On June 2, I spoke to Lonnie Markham on the phone. He originally bought his property from Bill Beeny and was told water service was included in the price of the real estate. At a later date, Mr. Hybl approached him and told him he owed \$10/month for water service, both past due and going forward. Mr. Markham said he would not pay the past due but would pay going forward, but did not have an address to mail payment to, so never made any payments. After the recent outage, Mr. Hybl told Mr. Markham that he would reconnect him to the water system for a fee of \$5,000 and a \$50/month payment going forward. Mr. Markham refused.

On June 2, I received a fax from the Liesenfelds. They claim that \$5,000 was paid to Mr. Hybl for establishing water service when they purchased their property, which they bought from Conseco Finance, not directly from Mr. Hybl. The fax reads as follows: "I Chris Gardner, of Conseco Finance Servicing Corp. hereby agree that Conseco will pay any invoices submitted by Joe Hybl or Jack Hybl on behalf of Oakview Estates Subdivision regarding water connection fee in the amount of \$5,000.00 on property located at 207 Hybl Dr., Wright City, MO. And to hold Troy Title Company harmless from any charges or liens which might arise regarding said property." The original document is dated July 26, 2000.

The Liesenfelds have since drilled a private well and have also allowed the Markhams access to service from that well, therefore leaving only Ms. Jaeger's residence without water service.

On May 4, Mark Liesenfeld also filed a formal complaint (Case Number WC-2007-0015) regarding the discontinuance of water service, in which he requests reimbursement for the cost of drilling the well. Mr. Hybl has failed to timely respond to that complaint. The Staff has been ordered to file a report with the Commission no later than September 11 in that case.

WATER & SEWER DEPT. STAFF'S CONCLUSIONS

The Water & Sewer Dept. Staff believes that Mr. Hybl has and is operating the water system in the Oakview Estates subdivision in a manner such that it meets the definition of "water corporation", "water system" and "public utility" found in Section 386.020, RSMo, thus making the system subject to the Commission's jurisdiction, for the following reasons.

- * Charges have been made and paid on behalf of the Liesenfelds for connection to the water system.
- * Mr. Hybl, through his attorney, has notified several of the existing residents of the subdivision, including Ms. Jaeger, that a monthly fee of \$56.01 would be billed for ongoing water usage. This is evidenced by "EXHIBIT A" attached to Mr. Hybl's Answer.

- * The *Covenants, Conditions, Reservations and Restrictions* on file at Warren County for the Association do not meet the criteria of a legitimate association providing water service as established in PSC Case Number WD-93-307, *Rocky Ridge Ranch Property Owners Association* ("Rocky Ridge Ranch"), in that the voting rights are designated as one vote per lot, which gives the owner of the majority of the lots, that being Mr. Hybl, control over the majority of the votes. In turn, in the Staff's opinion this means that the system should not be exempted from regulation by the Commission.
- * Mr. Hybl's Answer requests that Ms. Jaeger be ordered to pay a reasonable amount each month for her use of water supplied, and that she be ordered to pay a reasonable amount for the cost of the hook-up of her residence onto the water supply system including the cost of a water meter. Additionally, Mr. Hybl's Answer states that the installation of the new system and the supplying of water service were never intended to be a free service, and that he has never represented such to any lot owner.
- * The Association clearly is not organized under the provisions of Chapter 393, RSMo, that provide for the formation of nonprofit water companies, which are not subject to the Commission's jurisdiction.

WATER & SEWER DEPT. STAFF'S RECOMMENDATIONS

The Water & Sewer Dept. Staff recommends that Mr. Hybl be ordered to immediately reestablish water service to the Jaeger residence. Additionally, since the Association does not meet the criteria set out in Rocky Ridge Ranch and is not organized as a Chapter 393 nonprofit water company, the Water & Sewer Dept. Staff recommends that Mr. Hybl be ordered to apply for a Certificate of Convenience and Necessity to provide water service, so that any necessary connection fees and usage charges may be properly established under the Commission's jurisdiction. Lastly, further investigation is required to determine if Mr. Hybl should also be required to apply for a Certificate of Convenience and Necessity to provide sewer service, and the Water & Sewer Dept. Staff thus recommends that the Commission grant it the authority to conduct that investigation.