

**GREGORY D. WILLIAMS**  
**LAW FIRM**

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Gregory D. Williams  
Andrew W. Renken  
Dana L. Martin

August 15, 2006

Colleen M. Dale  
Secretary  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102-0360

**FILED<sup>3</sup>**

AUG 16 2006

Attn: Filing Desk

Re: Case No. WC-2006-0303

Missouri Public  
Service Commission

Dear Sirs:

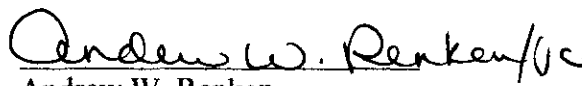
Please find enclosed for filing in the above referenced matter the original and 8 copies of the following:

1. Affidavit in Support of Respondent's Response to Staff's Motion for Summary Disposition
2. Respondent's Response to Staff's Motion for Summary Disposition
3. Respondent's Suggestions in Opposition of Staff's Motion to Summary Disposition

An additional copy is enclosed to be stamped "filed" and returned to me in the enclosed envelop.

If you have any questions regarding this matter, please contact me at your earliest convenience.

Sincerely Yours,

  
Andrew W. Renken

AWR/jc  
enclosures

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>3</sup>

AUG 16 2006

Missouri Public  
Service Commission

The Staff of the Missouri Public Service  
Commission,

Complainant,

v.

Case No. WC-2006-0303

Hurricane Deck Holding Company, et al.,

Respondents.

RESPONDENT'S SUGGESTIONS IN OPPOSITION  
TO STAFF'S MOTION FOR SUMMARY DISPOSITION

Come Now the Respondents in the above captioned matter and for their  
Suggestions in Opposition to Staff's Motion for Summary Disposition state:

ARGUMENT

**A. Respondent Hurricane Deck Holding Company is not a "water corporation."**

Staff's brief ignores the complete language of Section 386.020(58). While HDHC concedes that it is the owner of a water system, the statute does not subject every owner of a water system to the jurisdiction of this Commission. In order to be subject to regulation by this Commission, it is necessary that the "corporation ... owning ... plant or property ... distributing ... or selling or supplying *for gain* any water." Staff has failed to allege any uncontroverted material fact which would establish that HDHC has distributed, sold, or supplied any water "for gain." Further, Staff has failed to allege any material uncontroverted material fact which would establish that HDHC has distributed, sold, or supplied any water "for gain" "for public use." Although not expressly set out in the statutory definition, the requirement that utility service must be for the use of the public, rather than for a limited group of private individuals, has long been established and recognized under Missouri Law. See State ex rel. M.O. Danciger & Co. v. Public

Service Commission of Missouri, et al., 205 S.W. 36 (Mo. 1918); Osage Water Company v. Miller County Water Authority, Inc., 950 S.W.2d 569, 574 (Mo. App. S.D. 1997).

Because Staff has failed to provide any evidentiary basis upon which this Commission could find an offer by HDHC to provide water utility service to the public at large, as opposed to service by private contract and covenant through subdivision restrictions, Staff has failed to establish that HDHC is a “water corporation.”

Because the receipt of “gain” by HDHC is a controverted material fact as set forth in the Response filed herein by Respondents, this Commission cannot make a summary determination that HDHC is a “water corporation” as asserted by Staff.

This Commission may, however, make a partial summary determination that HDHC is the “owner” of the water system at issue, as that fact is uncontroverted.

**B. Respondent Hurricane Deck Holding Company is not a “sewer corporation.”**

For the same reasons that HDHC is not a “water corporation”, it is also not a “sewer corporation” under Missouri Law. Respondents incorporate their citations and arguments under A above on this point.

**C. Respondent Hurricane Deck Holding Company does not provide water or sewer services to the public, and does not need a certificate of convenience and necessity from this Commission.**

The requirement to obtain a certificate arises only for public utilities. Since HDHC is not a “water corporation” or a “sewer corporation” in that it does not provide “water utility service” or “sewer utility service” because it does not provide “service to the general public” Danciger, supra; Osage Water Company, supra “for gain”, it does not fall within the regulatory jurisdiction of this Commission, and does not require a certificate of

convenience and necessity simply because it is the owner of a water and sewer system. There are literally hundreds of water and sewer systems in the State of Missouri which are not subject to the regulatory jurisdiction of this Commission, because they do not provide water and/or sewer utility service to the general public for gain.

**D. Lack of an MDNR Permit does entitle Staff to any relief.**

Staff's argument on this point assumes that HDHC is a "public utility" subject to regulation by the Commission, and that it must therefore comply with the regulations adopted by the Commission for such public utilities. Because HDHC is not a "public utility" the regulations adopted by this Commission for public utilities simply do not apply to it, and whether or not it is in compliance with those regulations does not provide Staff with a basis for any relief. 4 C.S.R. 60.010(J) does not apply to entities not subject to the regulatory jurisdiction of the Commission. Staff's argument further assumes, without proof or evidence, the provision of water and sewer services "to the public." Staff's argument further assumes that the sewer system owned by HDHC has more than twenty-five (25) outlets, a material relevant fact in dispute for which Staff has provided no evidentiary basis.

**E. Commission authorization of a transfer to a homeowners association from an unregulated entity is not required.**

Staff's argument is again premised upon a determination that HDHC is providing water and/or sewer utility service to the general public for gain. In the absence of evidence of provision of utility service to the *general public*, rather than to members of a homeowners association, and in the absence of evidence that HDHC derived a financial gain therefrom, there is no basis for a determination that HDHC is subject to the

provisions of Chapter 393 RSMo., and the consent of this Commission to the transfer of its utility assets is not required by any law or regulation.

**F. No statutes or regulations have been violated by any of the respondents.**

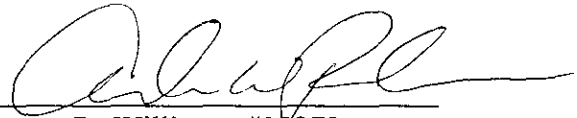
Staff has wholly failed to support its assertion of any violations of any statute or regulation by Chelsea Rose Land Owners Association, Inc., Gregory D. Williams, Debra J. Williams, or Charles H. Williams. In fact, Staff has failed to provide any evidentiary basis from which this Commission could conclude that it has regulatory authority over a not-for-profit mutual benefit corporation or the named individuals. All of Staff's evidence set forth in its Motion for Summary Disposition is clearly premised upon the actions of HDHC and the homeowners association. There is no factual basis provided from which this Commission could conclude that any of the named individuals, whether collectively or severally, are a "public utility". There is no factual basis provided from which this Commission could conclude that any mutual benefit not-for-profit corporation could ever be a public utility, if operating within the scope of its statutory authority, as its statutory authority is limited to service to its members, not to the general public. There is no factual basis from which this Commission could conclude that Chelsea Rose Land Owners Association, Inc. is a public utility.

Finally, Staff's argument that HDHC has violated numerous statutes and regulations is premised upon HDHC's status as a public utility, which it clearly is not, in that it does not offer water or sewer utility service to the general public for gain.

## CONCLUSION

Not only has the Staff failed to provide an uncontroverted factual basis from which this Commission could make a summary disposition of this case, Staff has clearly failed to establish, and cannot establish, that this Commission has any jurisdiction over the respondents herein. As a result, Summary Disposition must be denied in this matter, and the case should be dismissed as improvidently filed.

WHEREFORE, Respondents move for an Order denying Staff's Motion of Summary Disposition and dismissing the Complaint filed herein, and for their costs, expenses, and attorney's fees herein incurred.



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## CERTIFICATE OF SERVICE

I hereby certify that on the <sup>15</sup>~~8~~ day of August, 2006 a true copy of the foregoing was served on all parties of record by depositing the same in first class mail, postage prepaid, and addressed as follows:

General Counsel's Office, P.O. Box 360, 200 Madison Street, Suite 800, Jefferson city, MO 65102; Lewis R. Mills, Jr., P.O. Box 2230, 200 Madison Street, Suite 650, Jefferson City, MO 65102.



Andrew W. Renken