

**GREGORY D. WILLIAMS  
LAW FIRM**

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

**FILED**<sup>2</sup>

FEB 24 2006

Missouri Public  
Service Commission

February 22, 2006

Secretary of the Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102-0360

FAX: 573-751-1847

Re: Staff v. Hurricane Deck Holding Company, et al.  
WC-2006-0303

Dear Secretary:

Please find enclosed for filing in the above referenced matter the original and 9 copies of the following:

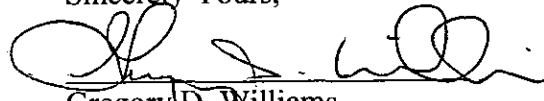
1) Motion to Dismiss.

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

A copy has been mailed to counsel of record.

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

Sincerely Yours,

  
Gregory D. Williams

cc: Office of General Counsel  
Office of Public Counsel

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>

FEB 24 2006

The Staff of the Missouri Public Service  
Commission,

Complainant,

v.

Hurricane Deck Holding Company, et al.,

Respondents.

Missouri Public  
Service Commission

Case No. WC-2006-0303

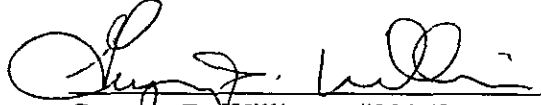
MOTION TO DISMISS

Come Now the Respondents in the above captioned matter and move for an Order  
Dismissing the Complaint filed herein, and in support thereof state:

1. Said complaint fails to state a claim upon which relief may be granted.
2. This Commission lacks jurisdiction over the Respondents in that Chelsea Rose Land Owners Association, Inc. is a not-for-profit corporation authorized by the Declaration of Restrictions for Chelsea Rose Subdivision filed of record in Camden County, Missouri, to own and operate a water and sewer system to provide not-for-profit water and sewer services only to a limited number of residents whose properties are subject to said restrictions, as such is not within the jurisdiction of this Commission in that it does not offer water or sewer utility service to the public, and does not offer water or sewer utility service for gain, but it authorized by the Declaration of Restrictions to assess residents within the development project for their share of the costs and expenses of the association, including the costs and expenses association with operating the water and sewer utility systems located within said development project.

3. Hurricane Deck Holding Company is a Missouri Corporation and is the original owner of all of the various properties subject to the Declaration of Restrictions for Chelsea Rose Subdivision, and is authorized by said Declaration to act on behalf of the subdivision association prior to the formation and organization of said association. It does not now and has not ever offered to provide water or sewer utility service to the public for gain.
4. The individual respondents named herein do not own or operate and water or sewer utility systems providing service to the public for gain, and the complaint does not allege such individual ownership or operation.
5. This Commission has heretofore commenced an action in the Circuit Court of Camden County, Missouri in Case No. 06CM-CC00014 which is presently pending involving the same issues and parties as the Complaint herein and arising out of the same transactions or occurrences described in the complaint herein, such that this action could result in determinations and judgments inconsistent with such Circuit Court action, such that the issues raised in said Complaint should properly have been joined in said Circuit Court proceeding under the "first filed" rule. See *State ex rel. General Dynamics Corp. v. Luten*, 566 S.W.2d 452 (Mo. banc 1978); *Blechle v. Goodyear Tire & Rubber Company*, 23 S.W.3d 484 (Mo. App. E.D. 2000).
6. This Commission may not concurrently proceed with an administrative complaint action while seeking relief from the Circuit Court for the same transactions and occurrences.

WHEREFORE, Respondents move for an Order dismissing the Complaint filed herein, and for their costs, expenses, and attorney's fees herein incurred.

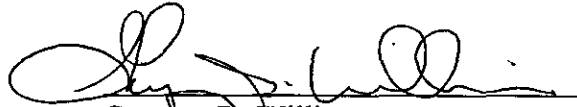


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#### **CERTIFICATE OF SERVICE**

I hereby certify that on the 22 day of February, 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.



Gregory D. Williams