

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

SUMMIT INVESTMENT, LLC,)		
Complainant)		
)		
vs.)	File No.:	SC-2014-0214
)		SC-2014-0215
OSAGE WATER COMPANY)		
Respondent)		

COMPLAINANT'S BRIEF

FOLLOWING HEARING

Complainant is a developer and residential home builder at Eagle Woods Subdivision. Complainant had applied for and received the original Certificate of Convenience and Necessity for Eagle Woods Subdivision for 53 lots in 1998. Complainant filed for and received appropriate permits to build and operate a sewage treatment facility and additionally to provide water, for 25 of the 53 residential lots. Greg Williams, the owner at that time of Respondent, was developing Golden Glade subdivision adjacent to Complainant. Respondent approached Complainant about establishing a single treatment and water facilities for both development projects. Subsequently Complainant and Respondent entered into a contract in 1999 wherein Complainant provided land, equipment, existing services, existing permits, existing customers and all the funding for all expansion that occurred prior to 2005, along with other consideration, all in exchange for Respondent's agreement to provide ongoing water and sewer services to Complainant and the entire Eagle Woods Subdivision for all 53 residential lots including the original 25 lots for which Complainant already had approval. Complainant transferred the Certificate of Convenience and Necessity along with all permits to Respondent and has fully complied with all of the requirements of the contract. To date, Complainant has 25 remaining lots that have no service for water or sewer.

A question regarding an application by Complainant or Eagle Woods Home Owners Association filed in about March 2003 for a construction permit to expand the sewage treatment facility on its own and was denied by MDNR. The question was regarding MDNR's position on the denial being based upon not receiving a continuing authority waiver from Respondent and why that was not pursued or what happened. Please keep in mind that application was now more than 10 years ago and much of the

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communication was oral and not documented. However, further investigation found that in fact Complainant had made a request to Respondent for the waiver. Respondent was in negotiations to sell all assets and contracts to American Water Company at that time and was unwilling to provide a waiver due to having a potential negative impact of the sale of the assets. Whether that information was relayed back to MDNR is not clear.

A second question was discussed regarding the need for a contractual obligation between the customer and the company to provide services under the Tariff. The fact at this point is this; a contract exists between the customer (Complainant) and the company (Respondent) to provide services under the tariff. There is no dispute as to this fact and both parties acknowledge this contract. Respondent has taken the position the contract is unenforceable due to a statute of limitations argument and therefore has no obligation under the Tariff. However, unless and until the Court enters an Order indicating the contract to be unenforceable, the contract stands. Respondent has presented his statute of limitations argument to the Court in the pending Camden County proceeding. At this time, the Court has not ruled the contract to be unenforceable or I believe it would have simply dismissed the action as having no further subject matter jurisdiction to hear the dispute. Instead, the Court Stayed further proceedings until this Commission has an opportunity rule on the merits of the case and enter any further orders or opinions. Therefore, Complainant believes there is a contractual obligation to provide services by the Respondent under the terms of the Tariff.

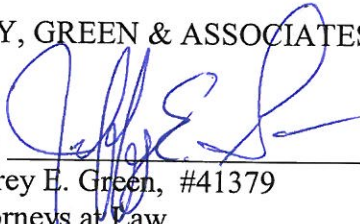
A Third issue arose regarding the Complainant/Developers financial contribution to the construction and expansion of the sewer and water services. It is Complainant's position that Complainant provided all of the financial resources to develop, install, expand and establish all of the existing services and infrastructure for both sewage treatment and water services, with the exception of the well identified by Respondent which was owned by Greg Williams, which was eventually abandoned by Respondent due to being poor quality water. The current well being used by Eagle Woods, which by Respondent's own words was "re-energized" was originally owned, developed and installed by Complainant. Under the terms of the 1999 contract that well, equipment and infrastructure was transferred to Respondent. Under the terms of all the construction permits and operating permits granted by MDNR to Respondent, of which Complainant paid the construction of, there was enough capacity to fully supply and meet all the obligations under the terms of the contract between Complainant and Respondent. To put some actual numbers to this, Complainant expended approximately \$250,000.00 for the original installation and subsequent expansions of the sewage treatment and water services, which Respondent was the benefactor.

What occurred resulting in the current litigation in Camden County and this complaint to the Commission is simply this: Complainant has been fighting for services for which it has already paid for more than 10 years. After Complainant paid for and completed all the installation and expansion of the facilities, Respondent diverted and allocated at least 25 of the connections for sewage and water authorized by the various permits to lots in the Golden Glade subdivision and Greg Williams, to the exclusion of Eagle Woods Subdivision and Complainant. However, Greg Williams and Golden Glade Subdivision provided no funds to install or expand the water or sewage treatment facility. Therefore, the shortfall in funding necessary to meet the obligations to provide the services for the Eagle Woods Subdivision is due solely to the failure of Respondent to require Greg Williams and the Golden Glade Subdivision development to provide funding to support the allocation and use of the facilities by the Golden Glade Subdivision.

Complainant believes the acts and actions of Respondent and Greg Williams prior to the receivership are tantamount to criminal or fraudulent actions; at a minimum the actions were a taking of Complainant's resources without due consideration to Complainant. What is requested of the Commission by Complainant is an Order to Respondent to provide the services required under the Tariff and pursuant to the terms of the contract between Complainant and Respondent for the remaining 25 lots of Complainant, that any funds necessary for any expansion be the Respondent's obligation and not the obligation of Complainant. Whether Respondent chooses to pursue further action against any third party, pursue a rate increase against those in the Golden Glade Subdivision and Greg Williams, or to obtain funding in some other manner to support any expansion of sewage treatment facilities or expansion of any capacity for well water, should be the responsibility and obligation of Respondent and that said funding is not the obligation of Complainant.

Respectfully Submitted,

KAY, GREEN & ASSOCIATES, L.L.C.

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ATTORNEYS FOR COMPLAINANT

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CERTIFICATE OF SERVICE

I hereby certifies that a true and correct copy of the foregoing was served electronically on this 28th day of August, 2014, on the parties of record as set out on the official Services List maintained by the Data Center of the Missouri Public Service Commission for this case.



Jeffrey E. Green