

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

The Staff of the Missouri Public Service Commission,	)	
	)	
	)	
Complainant,	)	
	)	<u>Case No. WC-2007-0088</u>
v.	)	
	)	
Joe Hybl, Oakview Estates Homeowners Association, Jack Hybl, and James Scott Hybl	)	
	)	
Respondents.	)	

**STAFF’S RESPONSE TO RESPONDENTS’ MOTION TO SET ASIDE DEFAULT JUDGMENT**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff) and for its Response to Respondents’ Motion to Set Aside Default Judgment respectfully states as follows:

1. Staff began an investigation into Respondents’ actions in June of 2006, following reports from customers that their water service had been disconnected.
2. On August 25, 2006, Staff filed its Petition for Preliminary and Permanent Injunction and Motion for Temporary Restraining Order in Warren County Circuit Court. Staff’s Petition was set for hearing on August 29, 2006.
3. On August 28, 2006, Staff filed a Complaint before the Missouri Public Service Commission (Commission) against Respondents alleging that they were operating a water corporation without a certificate of convenience and necessity in violation of Section 393.170 RSMo (2000).
4. On August 29, 2006, undersigned counsel met with Respondent Joe Hybl and Mr. Hybl’s attorney. The parties agreed to enter into a consent order whereby

Respondents would agree to restore water service to the customers who had been disconnected. Respondents also agreed not to disconnect any customers until they were in compliance with Commission rules and to apply for the necessary certificates of convenience and necessity. This Order was signed by the parties and Judge Sullivan on August 29, 2006.

5. Although the Consent Order as written and signed by the parties and approved by the judge contains no promises or assertions made by undersigned counsel, counsel verbally agreed that if the disconnected customers had service restored and if the necessary certificates were applied for, Staff would move to dismiss the Complaint pending before the Commission.

6. Since entry of the Consent Order, water service was restored to disconnected customers and counsel for Respondents has had regular contact with undersigned counsel about the progress of the certificate applications. Staff has no reason to believe that Respondents were being dilatory in their attempts to comply with the Commission's rules regarding applications.

7. The Commission entered a default judgment against Respondents for failing to file an answer on November 21, 2006.

8. Staff concurs that the reasons for Respondents' failure to file an answer and their delay in filing applications, as stated in their Request to Set Aside Default Judgment constitute good cause within the meaning of 4 C.S.R. 240-2.070(8).

9. Respondents filed applications for certificates of convenience and necessity on November 28, 2006.

**WHEREFORE**, Staff concurs with Respondents' Motion to Set Aside Default Judgment.

Respectfully submitted,

/s/ Jennifer Heintz

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#### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel and parties of record this 29th day of November 2006.

/s/ Jennifer Heintz

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