

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

The Staff of the Missouri Public	)	
Service Commission,	)	
	)	
Complainant,	)	
	)	Case No. WC-2007-0394
v.	)	
	)	Case No. SC-2007-0396
Central Jefferson County Utilities,	)	
Inc., et al.	)	
	)	
Respondents.	)	

**RESPONSE OF RAINTREE PLANTATION, INC. TO STAFF'S REPLY AND  
SUGGESTIONS IN OPPOSITION TO RESPONDENT'S AFFIRMATIVE DEFENSES  
AND MOTIONS TO DISMISS**

COMES NOW Respondent, Raintree Plantation, Inc., ("Raintree") and in response to the Staff's Reply and Suggestions in Opposition to Respondent's Affirmative Defenses and Motions to Dismiss state as follows:

**RESPONSE TO INTRODUCTION AND PROCESS OF DEVELOPMENT**

The Introduction and Process of Development sections of the Staff's reply are an attempt by the Staff to use a broad brush to paint this Respondent as a villain by association with what the Staff believes is a corrupt system of land development. But, even the Staff admits that development of commercial and residential properties is "right and proper and are generally considered to confer many benefits upon the people of the State of Missouri." The motives of the Staff in presenting this completely irrelevant, and also substantially inaccurate, view of land development, and the land development process in the State of Missouri, must be questioned. These two sections, as does the Reply in general, contain many inaccuracies and blatantly false statements, and this Respondent denies all of the allegations of the Response not specifically admitted.

The statements of the Staff in these sections, as well as the Reply in general, demonstrate the Staff's lack of understanding of the processes of land development and the current situation of operation in the State of Missouri. For instance, the Staff states: "Any entrepreneur will tell you that you maximize profits by reducing expenses." Any good entrepreneur will tell you that you maximize profits by increasing sales and revenues, not by reducing expenses. There is no limit to increasing sales and revenues, but additional profit from the reduction of expenses is severely limited because expenses can only be reduced so much.

The Staff seems to assume that all of the relevant facts necessary for it to succeed have already been determined. The Staff ignores the fact that there has been no final determination, in any form, that this Respondent failed to provide safe and adequate water and sewer service. These issues were not part of the Transfer Case; **this Respondent was not party to the Transfer Case**; even in the Transfer Case, the issues of safe and adequate service were not issues of which Central Jefferson County Utilities, Inc. had notice; Central Jefferson County Utilities, Inc. did not provide evidence to litigate those issues in the Transfer Case because of this lack of notice; there has been no determination by the Missouri Department of Natural Resources or the United States Environmental Protection Agency of any violations; and, the position by the Staff that there was a determination in the Transfer Case on the issues of safe and adequate water and sewer service is on appeal in the case of State of Missouri ex rel. Central Jefferson County Utilities v. Public Service Commission of The State of Missouri, Case No. 07AC-CC00444, in the Circuit Court of Cole County.

Central Jefferson County Utilities, Inc. provided safe and adequate water and sewer service to the residents of Raintree for over 26 years. There were no violations of either the United States Environmental Protection Agency or the Missouri Department of Natural

Resources' rules and regulations affecting service to the residents. Central Jefferson County Utilities, Inc.'s attempts to expand the water and sewer systems, or to sell the water and sewer systems, were substantially impaired by the processes of the Missouri Public Service Commission and its Staff, which would not permit Central Jefferson County Utilities, Inc. to obtain necessary financing for such expansions. Further, the Missouri Department of Natural Resources failed to act promptly and within a reasonable period of time to approve necessary plans for the expansion of the sewer system to permit Central Jefferson County Utilities, Inc. to obtain necessary financing and/or to sell the facilities to prospective purchasers.

The Respondent requests the Commission to ignore the Staff's interjection of irrelevant and incorrect speculations, comments and opinions of the Staff. The use by the Staff of these deceptions points out the fallaciousness of the Staff's positions.

This Respondent will not respond to the Staff's argument relating to the Affirmative Defenses. This Respondent should never have to address the Affirmative Defenses because the Motion to Dismiss filed herein should be granted. Nonetheless, Affirmative Defenses will be addressed at the appropriate time, if necessary.

#### RESPONSE TO ARGUMENT

In order to precede against Raintree, this Commission must have jurisdiction. This Respondent's Motion to Dismiss is not based on an inartful drafting of the complaints by the Staff; rather it is based on a complete lack of any pleading which would demonstrate jurisdiction in this Commission over Raintree. The only allegations against Respondent Raintree are found in Paragraph No. 11 of the Complaint. It alleges that Raintree is an "affiliate" of Central Jefferson County Utilities, Inc. "Affiliate" is not defined. It alleges jurisdiction is pursuant to Sections 386.250(7) and 393.140(12), but it makes no allegations that would bring Raintree

within the provisions of either of those sections. The Complaint in no way provides Raintree with notice of what matters, if any, within the jurisdiction of the Commission relating to Raintree are being presented to the Commission for a determination. While there are numerous allegations against multiple Respondents, there is absolutely no way for Raintree to determine which of the allegations and purported offenses are alleged against it. Surely Raintree is entitled to be appraised of which allegations and penalties will be sought against it. The fact is, there are no matters presented relating to Raintree over which this Commission has jurisdiction.

That Staff's argument against Raintree should fail is demonstrated by the nature of Staff's Response. The first paragraph is merely attacking Raintree's position that in order to be liable, under either of the statutory sections cited, certain allegations would have to be made. The second paragraph of their Response is merely to fall back to the general language of the pleading cases without making any argument or demonstrating as to how they have satisfied the general language of those cases and provided appropriate notice to Raintree.

WHEREFORE, the Complaints against Raintree Plantation, Inc. should be dismissed for lack of jurisdiction.

Respectfully submitted,

HOCKENSMITH TATLOW MCKINNIS, P.C.



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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was sent, either electronically or by hand delivery or by first class, United States mail, postage prepaid, on this 22<sup>nd</sup> day of June, 2007, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

Katung M. Widman