

**FILED**  
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Missouri Public  
Service Commission

Case No. SC-2007-0396  
WC-2007-0394

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4. The Complaints allege in paragraph 4 that Respondent Raintree Plantation, Inc. ("Raintree") is a Missouri corporation in good standing.

5. The Complaints allege in paragraphs 14 through 17 that Raintree along with Respondents Nixon and McClain, as well as Norville McClain, who is deceased, and Respondent The Norville McClain Trust, acted as Developers of Raintree Plantation subdivision.

6. The Complaints allege in paragraph 5 that Respondent Nixon owned a one-third share of both Central Jefferson and Raintree. The Complaints do not allege what owning a "one-third share" means. It does not explain whether it is as a stock holder or in some other form of ownership. In fact, Respondent Nixon does not own a one-third share of either Central Jefferson or Raintree. Instead, The Jeremiah Nixon Revocable Living Trust is owner of one-third of the common stock of both Central Jefferson and Raintree.

7. The Complaints allege in paragraph 6 that Respondent McClain owned a one-third share of both Central Jefferson and Raintree. The Complaints do not allege what owning a "one-third share" means. It does not explain whether it is as a stock holder or in some other form of ownership. In fact, Respondent McClain does not own a one-third share of either Central Jefferson or Raintree. Instead, The Norville Kenneth McClain, Jr. Trust is the owner of one-third of the common stock of both Central Jefferson and Raintree.

8. The Complaints allege in paragraph 9 that Respondent Central Jefferson is a water corporation, sewer corporation and a public entity and is subject to the jurisdiction of the Commission.

9. The Complaints allege in paragraph 10 as follows:

Respondents Jeremiah Nixon, Kenneth McClain, Norville McClain, and the Trust own, operate, control, or manage Respondent CJCUC and are therefore each a water corporation, a sewer corporation and a public utility subject to the jurisdiction of this Commission pursuant to § 386.020(2), (48) and (58), RSMo 2006.

10. The Complaints allege in paragraph 11 as follows:

Respondent Raintree is an affiliate of Respondent CJCUC in a business carried on by Respondents Jeremiah Nixon, Kenneth McClain, Norville McClain, and the Trust in addition to the regulated business that those Respondents conduct by and through Respondents CJCUC and Respondent Raintree is thus subject to the jurisdiction of this Commission pursuant to §§ 386.250(7) and 393.140(12).

11. Complainant's allegations in paragraph 10 against Respondents Nixon and McClain rely upon subsections § 386.020 as cited above. Those subsections provide as follows:

(42) **"Public Utility"** includes every pipeline corporation, gas corporation, electrical corporation, telecommunications company, water corporation, heat or refrigerating corporation, and sewer corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the provisions of this chapter;

(48) **"Sewer corporation"** includes every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain, except that the term shall not include sewer systems with fewer than twenty-five outlets;

(52) **"Water corporation"** includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water.

12. The definition of "Pubic Utility" in subsection 42 relies upon the definitions of sewer corporation and water corporation defined in subsections 48 and 58. Both subsections 48, relating to sewer corporations, and 58, relating to water corporations, require that any "person," as are Respondents Nixon and McClain, actually own, operate, control or manage "any plant or property, dam or water supply," or as to the sewer system, it requires that the "person" own, operate, control, or manage "any sewer system, plant or property for the collection, carriage, treatment, or disposal of sewage." In other words, to be a water corporation, the "person" must actually own, operate, or manage the water system, **not an entity which owns, operates, controls or manages the water system.** The same is true for a sewer corporation: the "person" must actually own, operate, control or manage the sewer system and plant, **not another entity that owns, operates, controls or manages the sewer plant and system.**

There are no allegations that Respondents Nixon and McClain own, operate control or manage any water or sewer plant or property. Rather the allegation is that they are owners of Central Jefferson, which owns, operates, controls and manages the water and sewer system. Therefore, neither Respondents Nixon or McClain are water and sewer corporations or public utilities as alleged, and consequently, the Commission has no jurisdiction over Respondents Nixon and McClain. To allege that the owners of stock in a water or sewer corporation are, by the fact of the ownership, themselves a sewer or water corporation is patently absurd.

Subsections 48 and 58 to § 386.020 also require that the operation of the water and sewer systems be "for gain." There are absolutely no allegations in the Complaints that Respondents Nixon and McClain are operating any water or sewer systems for gain.

Again, therefore, Respondents Nixon and McClain are not subject to the jurisdiction of the Commission.

13. The lack of jurisdiction is supported by the Commission's decision in the matter of *Staff v. Hurricane Deck Holding Company, et al.*, Case Number WC-2006-0303 (August 31, 2006). The Commission may take cognizance of the entirety of its determination in that case. In relevant part, however, the Commission determined on a motion for summary determination that there were insufficient "facts to establish that any of [the owners], **as individuals**, rather than as corporate officers on behalf of Hurricane Deck Holding Company, are offering water or sewer service to the public." (emphasis added). The clear implication of this statement is that facts must be pled and offered, showing that the individuals were offering water and sewer service to the public, for gain. In these Complaints, there are no allegations that they, as individuals, offered any water or sewer service to the public, for gain. The only allegation is that they were one-third owners of Central Jefferson and Raintree Plantation.

14. Further, Missouri clearly recognizes that corporations are separate and distinct legal entities from their shareholders, officers and directors. Ownership alone does not make the shareholders as individuals responsible for the acts of the corporation. *Thomas Berkeley Consulting Engineers, Inc. v. Zerman*, 911 S.W.2d 692, 695 (Mo. App. ED 1995).

15. There is no allegation that Respondents Nixon and McClain have ever sought or been granted certificates of convenience and necessity to operate water and sewer systems, nor that, up until now, they are water and sewer corporations subject to Commission jurisdictions. If Respondents Nixon and McClain are water and sewer

corporations, why did the staff not require their individual applications for transfer of the water and sewer system to the Jefferson County Public Sewer District? Because they are not water or sewer corporations!

16. There are no allegations that Respondents Nixon and McClain have been granted permits by the Missouri Department of Natural Resources to operate water and sewer systems in the State of Missouri.

17. There are no allegations in the Complaints that these individuals undertook any acts resulting in any violations alleged in the Complaints for which penalties are now sought. The Complaints do allege in paragraphs 14 through 17 that Respondents Nixon and McClain were part of "the Developers" of Raintree subdivision. They allege in paragraph 17 that there was a "connection fee of \$1,100.00" which is being collected by "the Developers" to recover their costs incurred to construct the water and sewer mains in the subdivision. The allegations of paragraph 17 have previously been resolved by the Commission in the matter of *Charles A. Harter, Complainant v. Raintree Plantation, Inc. and Central Jefferson County Utilities, Inc.*, Case Number WC-82-230. In that case, Mr. Harter alleged that the fee being charged by Raintree Plantation, Inc. was a connection fee subject to the jurisdiction of this Commission. The Commission found against the Complainant, ruling:

The Complaint directly concerns charges levied for a building permit in Raintree Plantation. This Commission has no jurisdiction over charges made by a developer for a building permit, whether those charges are admittedly for the construction of a water or sewer system or plant, unless the entity so charging is a water and sewer corporation as defined in § 386.020, RSMo 1978. Since Raintree Plantation, Inc. is not engaged in owning or operating a water or sewer system or plant for gain, the Commission has no jurisdiction over Raintree's actions. Consequently, the Commission is of the opinion that the Complaint filed herein should be dismissed as against both Respondents.


Respondents Nixon and McClain cannot be deemed water and sewer corporations for owning a one-third interest in Raintree Plantation, Inc. which has been found by this Commission not to be engaged in owning or operating a water or sewer system or plant for gain. The allegations of paragraphs 14 through 17 form no basis for jurisdiction of this Commission over Respondents Nixon and McClain.

18. The Complaints against Respondents Nixon and McClain are frivolous and are not brought by the Complainant in good faith or with reasonable cause.

19. For the above reasons, Respondents Nixon and McClain request the Commission to dismiss the Complaints against them because the Complaints fail to state a claim upon which the relief requested may be granted.

Respectfully submitted,

HOCKENSMITH TATLOW MCKINNIS, P.C.

  
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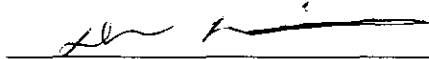
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was sent via mail or hand delivered on this 21<sup>st</sup> day of May, 2007, to:

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A handwritten signature in black ink, appearing to be "D. Cooper", is written over a horizontal line.