

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

**FILED**

**MAY 21 2007**

**Missouri Public  
Service Commission**

The Staff of the Missouri Public Service Commission, )  
)  
)

v. )

Case No. SC-2007-0396

WC-2007-0394

)  
)  
Central Jefferson County Utilities, Inc., )  
et al. )

**MOTION TO DISMISS COMPLAINTS AGAINST RAINTREE PLANTATION,  
INC.**

COMES NOW Respondent Raintree Plantation, Inc. ("Raintree"), by and through its undersigned counsel, and pursuant to 4 CSR 240-2.070(6), and moves the Missouri Public Service Commission ("Commission") to dismiss the above-referenced Complaints because said Complaints fail to state a claim upon which the relief requested may be granted. In support of said Motion, Raintree states as follows:

1. The Complaints allege generally in paragraph 1 that the Respondents in the Complaints provided unsafe and inadequate water and sewer services to the public.

2. The Complaints allege in paragraph 2 that Central Jefferson County Utilities, Inc. ("Central Jefferson") is a Missouri corporation in good standing.

3. The Complaints allege in paragraph 12 that Central Jefferson is in the business of providing water and sewer services to the public for gain pursuant to certificates of convenience and necessity issued by the Commission. These water and sewer services are provided to residents of the Raintree Plantation subdivision.

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

5. Paragraph 11 of the Complaint alleges that Raintree is “an affiliate of Respondent CJCUC.” The Complaint does not explain what being “an affiliate” means. The only allegation in the Complaint is that both Raintree and Central Jefferson have common ownership.

6. 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.

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

8. 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).

9. The allegations of paragraph 11 purport to establish jurisdiction of this Commission through § 386.250(7) and § 393.140(12). Section 386.250(7) simply holds that the jurisdiction and powers of the Commission shall extend:

(7) To such other and further extent, and to all such other and additional matters and things, in such further respects as may herein appear, either expressly or impliedly.

No attempt is made to make any allegations showing that the Commission has either expressed or implied jurisdiction over Raintree. No facts are alleged to show that

any actions of Raintree would bring into play any expressed or implied jurisdiction of this Commission. No reference is made to the first six subsections of § 386.250 to show how jurisdiction of the Commission over Raintree may be implied.

10. Section 393.140(12) simply does not apply to this situation. The first sentence makes clear that this section applies when a utility corporation has other business operations. This section provides that “the Public Utilities other business shall not be subject to any of the provisions of this chapter.” There are no allegations that Central Jefferson, as the public utility, operates the other business of Raintree. In fact, just the opposite is alleged: that Raintree and the other Respondents conduct business “by and through” Central Jefferson. Even if it were alleged that Central Jefferson had “other business,” the remaining provisions of § 393.140(12) set forth the restrictions imposed upon this Commission in governing the other business. Other than alleging that Raintree is an “affiliate” of Central Jefferson, there are no allegations that either Raintree or Central Jefferson are businesses of the other subject to this statute. The Complaint makes no allegations under § 393.140(12) that the business operations of Raintree are not “substantially kept separate and apart from the owning, operating, managing or controlling” of a water or sewer system.

11. That this Commission has no jurisdiction over Raintree is supported by the Commission’s decision in *Staff v. Cass County Telephone Company Limited Partnership and Local Exchange Company, LLC*, Case Number TC-2005-0357 (June 28, 2005). In that matter, this Commission held that a partner in a partnership with a public utility was not a necessary or proper party to a complaint against the public utility. This is true even though the partner may have some resulting obligations for payment of any penalties or

finances levied against the public utility. It is important to note that Raintree is not itself alleged to be a public utility, water corporation or sewer corporation. It is merely through its purported "affiliation" with Central Jefferson that jurisdiction is sought.

12. Further, Missouri clearly recognizes that corporations owned and controlled by the same people remain wholly distinct legal entities. *S. R. v. S. M. R.*, 709 S.W.2d 910, 914 (Mo. App. – E.D. 1986). The allegations here are merely of "affiliation." There are no allegations that support the Commission's ignoring this rule and assuming jurisdiction over Raintree.

13. There is no allegation that Raintree has ever sought or been granted certificates of convenience and necessity to operate water and sewer services.

14. There is no allegation that Raintree has been granted permits by the Missouri Department of Natural Resources to operate water and sewer systems in the State of Missouri.

15. There are no allegations that Raintree 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 Raintree was one 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.

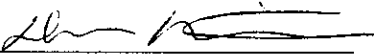
Raintree cannot be subject to the jurisdiction of the Commission by reason of these allegations when it was previously determined by this Commission not to be engaged in owning or operating a water or sewer system or plant for gain. The allegations of paragraphs 14 through 17 form no basis for jurisdiction of this Commission over Respondent Raintree.

16. The Complaints against Raintree are frivolous and are not brought by the Complainant in good faith or with reasonable cause.

17. As stated above, the Commission has no jurisdiction over Raintree, and the Complaints against Respondent Raintree Plantation, Inc. should be dismissed because they fail to state a claim upon which the relief requested may be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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