

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

| | | |
|--|---|------------------------|
| The Staff of the Missouri Public Service Commission, |) | |
| |) | |
| |) | |
| Complainant, |) | |
| |) | Case No. SC-2009-_____ |
| v. |) | |
| |) | |
| Rodney Glenn Construction, Inc.; RDG Development LLC; and Rodney Glenn, a natural person |) | |
| Respondents. |) | |

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, pursuant to Section 386.390 RSMo (Supp. 2007), and for its Complaint respectfully states as follows:

Introduction

1. This Complaint concerns Respondents' unlawful provision of sewer services to the public, for gain, without certification or other authority from the Missouri Public Service Commission.

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Commission's General Counsel, as authorized by Commission Rule 4 CSR 240-2.070(1). Section 386.390.1 RSMo (Supp. 2007) provides a "[c]omplaint may be made by the commission of its own motion....in writing, setting forth any act or thing done or omitted to be done by any....person....in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission...." Rule 2.070(1) provides that the commission staff through the general counsel may file a complaint.

Respondents

3. Respondent Rodney Glenn Construction, Inc. (Glenn Construction) is a corporation, organized under the laws of the State of Missouri, designated in good standing by the Missouri Secretary of State, owning, operating, controlling, or managing a sewer system in Greenwood Hills Subdivision, County of Callaway, with a principal place of business at 5050 County Road 404, Fulton, Missouri 65251-6234. The registered agent for Glenn Construction is Mick Wilson, 305 West Broadway, Ashland, Missouri, 65010.

4. The President of Glenn Construction, as well as the secretary, as indicated on the company's 2008 Annual Registration Report with the Secretary of State, is Rodney Glenn. See attached Exhibit A.

5. Respondent RDG Development LLC (RDG) is a Limited Liability Company, organized under the laws of the State of Missouri, designated as "active" by the Missouri Secretary of State, owning, operating, controlling, or managing a sewer system in Greenwood Hills Subdivision, County of Callaway, with a principal place of business at 5050 County Road 404, Fulton, Missouri 65251-6234. The registered agent for RDG is Mick Wilson, 305 West Broadway, Ashland, Missouri, 65010.

6. The Organizer of RDG, as indicated on the company's Articles of Organization filed with the Missouri Secretary of State, is Rodney Glenn. See attached Exhibit B.

7. Respondent Rodney Glenn is a natural person owning, operating, controlling, or managing a sewer system in Greenwood Hills Subdivision, County of Callaway, with a principal place of business at 5050 County Road 404, Fulton, Missouri 65251-6234.

8. Pursuant to 4 CSR 240-2.070 (5)(E), Staff states that it has contacted Mr. Glenn on several occasions regarding the subject of this complaint.

Count I

Respondents are Subject to Regulation by the Commission

9. Section 386.020(49) RSMo (Supp. 2007) provides that a “[s]ewer corporation” includes every corporation, company... ..or person... ..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[.]”

10. Section 386.020(50) RSMo (Supp. 2007) provides that a “[s]ewer system” includes all pipes, pumps, canals, lagoons, plants, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate the collection, carriage, treatment and disposal of sewage for municipal, domestic or other beneficial or necessary purpose[.]”

11. Respondents, independently or collectively, operate, control, and manage the sewer system serving approximately 35 residences in or around the Greenwood Hills Subdivision in Callaway County, Missouri.

12. On or about November 20, 2008 Rodney Glenn, on RDG Development LLC letterhead, sent a letter to the sewer customers stating that:

All of the homes within Greenwood Hills Subdivision are attached to a lagoon privately owned and maintained by Rodney Glenn Construction, Inc.... ..It is at this time that the cost to maintain the lagoon has become too great for Rodney Glenn Construction, Inc. to absorb and these costs must be passed on to you the homeowners who are using this system.... ..RDG Development, LLC will be managing the collection of lagoon fees for Rodney Glenn Construction Inc.

See Exhibit C, attached.

13. The November 20, 2008 letter also describes the fee schedule Respondents prescribed for this sewer service. Specifically, Greenwood Hills residents were billed based on the prior year's water usage reported for each homeowner by the "Callaway 2 Water District" at a base rate of \$20.00 per month for an average water usage of 4,000 gallons, and \$5.00 per every additional 1,000 gallons. Alternatively, customers were given the "option of paying a year of lagoon fees at one time." The letter stated that for customers electing an annual payment "Rodney Glenn Construction, Inc. will give you 2 months free, so you only have to pay for 10 months by taking the annual payment plan."

14. Also, included with the November 20, 2008 letter was an invoice for "Greenwood Hills Monthly Lagoon Fee," as well as an alternative annual payment option "Greenwood Hills Yearly Lagoon Fee," both due on or before December 20, 2008. See Exhibit D, attached.

15. By billing customers for sewer services, Respondents, independently or collectively, own, operate, control, or manage a sewer system for the collection, carriage, treatment, or disposal of sewage for gain, within the intent of Section 386.020(49) RSMo (Supp. 2007).

16. With respect to Greenwood Hills Subdivision, Respondents, independently or collectively, are a sewer corporation within the intent of Section 386.020(49) RSMo (Supp. 2007). Section 386.020(43) RSMo (Supp. 2007) provides that a "[p]ublic utility" includes every....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 jurisdiction, control and regulation of the commission and to the provisions of this chapter[.]"

WHEREFORE, Staff prays the Commission will give notice to Respondents as required by law and, after hearing, find that Respondents, with respect to the operation of providing sewer

services for gain to the Greenwood Hills Subdivision, are a sewer corporation within the intent of Section 386.020(49) RSMo (Supp. 2007), and thus a public utility within the intent of Section 386.020(43) RSMo (Supp. 2007), and subject to the jurisdiction, regulation and control of this Commission.

Count II

Unauthorized Rates

17. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs one through sixteen above.

18. Section 393.120 RSMo (Supp. 2007) provides “[t]he provisions of Section 386.020 RSMo, defining words, phrases and terms, shall apply to and determine the meaning of all such words, phrases or terms as used in sections 393.110 to 393.290.” Thus, Respondents are a sewer corporation and public utility for a Chapter 393 analysis.

19. Section 393.130.1 RSMo (Supp. 2007) provides “[a]ll charges made or demanded by any such....sewer corporation....for....sewer or any service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of the commission.”

20. Section 393.140(11) RSMo (Supp. 2007) provides:

[t]he commission shall [h]ave power to require every....sewer corporation to file with the commission and to print and keep open to public inspection schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used, and all general privileges and facilities granted or allowed by such....sewer corporation; but this subdivision shall not apply to state, municipal or federal contracts.

21. Section 393.150 provides that the Commission may, with or without complaint, enter upon a hearing to determine the propriety of Respondents’ sewer rates.

WHEREFORE, Staff prays the Commission will give notice to Respondents as required by law, and after hearing, find that Respondents 1) are subject to the Commission's authority to set rates and 2) determine the just and reasonable rates to charge for Respondents' sewer services.

Count III

Authority to Seek Penalties for Unauthorized Provision of Sewer Service

22. Complainant hereby adopts by reference and re-alleges the allegations set out in paragraphs one through twenty-one, above.

23. Section 386.570 RSMo (Supp. 2007) provides:

1. [a]ny corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

2. [e]very violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

3. [i]n construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.

24. Respondents, independently or collectively, have failed to comply with the law by failing to obtain a certificate under section 393.170 and failing to obtain Commission approval of its rates under section 393.130, 393.140 and 393.150. Each day's failure to comply with the law respecting the provision of sewer as a sewer corporation and public utility since November 20,

2008, is a continuing violation and constitutes a separate and distinct offense.

WHEREFORE, Staff prays the Commission will give such notice to Respondents as is required by law, and after hearing, in the event that any of the conduct herein described is determined to be in violation of any law of the State of Missouri or of any order, decision, or rule of the Commission, deem each day that such violation existed to be a separate offense, and authorize its General Counsel to proceed in Circuit Court to seek such penalties as are authorized by law.

Respectfully submitted

/s/ Sarah Kliethermes
Sarah L. Kliethermes
Legal Counsel
Missouri Bar No. 60024

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-6726 (Telephone)
(573) 751-9285 (Fax)
sarah.kliethermes@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to the following this 25th day of February, 2009.

Rodney Glenn
5050 County Road 404
Fulton, Missouri 65251-6234

RDG Development LLC
P.O. Box 932
Fulton, MO 65251

Rodney Glenn
c/o Rodney Glenn Construction, Inc.
5050 County Road 404
Fulton, Missouri 65251-6234

Mick Wilson, Registered Agent
c/o Rodney Glenn Construction, Inc.
c/o RDG Development LLC
305 West Broadway
Ashland, MO 65010

Rodney Glenn
c/o RDG Development LLC
5050 County Road 404
Fulton, Missouri 65251-6234

Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102

/s/ Sarah Kliethermes

Robin Carnahan Secretary of State
2008 ANNUAL REGISTRATION REPORT
BUSINESS

File Number: 200812390355

00455507

Date Filed: 05/02/2008

Robin Carnahan
Secretary of State

REPORT DUE BY: 04/30/2008

ANNUAL REPORT MONTH:
January

00455507
RODNEY GLENN CONSTRUCTION, INC.
MICK WILSON
305 WEST BROADWAY
ASHLAND, MO 65010

PRINCIPAL PLACE OF BUSINESS OR
CORPORATE HEADQUARTERS:

County Road 404, Box 5050 (Required)

STREET

Fulton, MO

65251

CITY/STATE

ZIP

If changing the registered agent and/or registered office address, please check the appropriate box(es) and fill in the necessary information.

☐

The new registered agent

**IF CHANGING THE REGISTERED AGENT, AN ORIGINAL WRITTEN CONSENT FROM THE NEW
REGISTERED AGENT MUST BE ATTACHED AND FILED WITH THIS REGISTRATION REPORT.**

☐

The new registered office address

Must be a Missouri address, PO Box alone is not acceptable. This section is not applicable for Banks, Trusts and Foreign Insurance.

OFFICERS

NAME AND PHYSICAL ADDRESS (P.O. BOX ALONE NOT
ACCEPTABLE). (MUST LIST PRESIDENT AND SECRETARY BELOW)

PRES Rodney D. Glenn (Required)

STREET/RT County Road 404, Box 5050

CITY/STATE/ZIP Fulton, MO 65251

V-PRES

STREET/RT

CITY/STATE/ZIP

SECY Rodney D. Glenn (Required)

STREET/RT County Road 404, Box 5050

CITY/STATE/ZIP Fulton, MO 65251

TREAS

STREET/RT

CITY/STATE/ZIP

NAMES AND ADDRESSES OF ALL OTHER OFFICERS AND DIRECTORS ARE ATTACHED

BOARD OF DIRECTORS

NAME AND PHYSICAL ADDRESS (P.O. BOX ALONE NOT
ACCEPTABLE). (MUST LIST AT LEAST ONE DIRECTOR BELOW)

NAME Rodney D. Glenn (Required)

STREET/RT County Road 404, Box 5050

CITY/STATE/ZIP Fulton, MO 65251

NAME

STREET/RT

CITY/STATE/ZIP

NAME

STREET/RT

CITY/STATE/ZIP

NAME

STREET/RT

CITY/STATE/ZIP

The undersigned understands that false statements made in this report are punishable for the crime of making a false
declaration under Section 575.060 RSMo. Photocopy or stamped signature not acceptable.

Authorized party or officer sign here

Rodney G Glenn

(Required)

Please print name and title of signer:

Rodney G Glenn

/

President

NAME

TITLE

REGISTRATION REPORT FEE IS:

___ \$20.00 If filed on or before 4/30

___ \$35.00 If filed on or before 5/31

___ \$50.00 If filed on or before 6/30

___ \$65.00 If filed on or before 7/31

**WHEN THIS FORM IS ACCEPTED BY THE SECRETARY OF STATE,
BY LAW IT WILL BECOME A PUBLIC DOCUMENT AND ALL
INFORMATION PROVIDED IS SUBJECT TO PUBLIC DISCLOSURE**

E-MAIL ADDRESS (OPTIONAL)

REQUIRED INFORMATION MUST BE COMPLETE OR THE REGISTRATION REPORT WILL BE REJECTED

MAKE CHECK PAYABLE TO DIRECTOR OF REVENUE

RETURN COMPLETED REGISTRATION REPORT AND PAYMENT TO THE SECRETARY OF STATE - P.O. BOX 1366, JEFFERSON CITY, MO 65102

Exhibit A

State of Missouri
Matt Blunt, Secretary of State
Corporations Division
P.O. Box 778 / 600 W. Main Street, Rm. 322
Jefferson City, Missouri 65102

Articles of Organization

(Submit in duplicate with filing fee of \$105)

1. The name of the limited liability company is:

RDG Development, L.L.C.

(Must include "Limited Liability Company," "Limited Company," "LC," "L.C.," "L.L.C.," or "LLC")

2. The purpose(s) for which the limited liability company is organized:

"To own and lease real estate and to engage in any other lawful business permitted under the
Missouri Limited Liability Company Act as contained within Sections 347.010 through 347.187
RSMo., as it is from time to time in effect, including any amendments thereto, supplements thereto
or additions thereto."

3. The name and address of the limited liability company's registered agent is Missouri is:

Mick Wilson, Attorney at Law 305 West Broadway Ashland, Missouri 65010-9787

Name

Street Address: May not use P.O. Box unless street address also provided

City/State/Zip

4. The management of the limited liability company is vested in one or more managers. ☒ Yes ☐ No

5. The events, if any, on which the limited liability company is to dissolve or the number of years the limited liability company is to continue, which may be any number or perpetual:

On the date December 31, 2085

(The answer to this questions could cause possible tax consequences, you may wish to consult with your attorney or accountant)

6. The name(s) and address(es) of each organizer (Post Office box alone not acceptable):

Rodney Glenn, 7159 Silver Drive, Fulton, Missouri 65251

Jim Glenn, 3505 E. McGee Rd., Columbia, Missouri 65202

PMW

7. For tax purposes, the limited liability company is a corporation? ☐ Yes ☒ No

8. The effective date of this document is the date it is filed by the Secretary of State of Missouri, unless you indicate a future date, as follows: The date filed by Secretary of State

In affirmation thereof, the facts stated above are true:

[Signature]

(Organizer Signature)

Rodney Glenn

(Printed Name)

3/17/04

(Date)

State of Missouri
Creation - LLC/LP 1 Page(s)



T0407841640

Exhibit B

State of Missouri



Matt Blunt
Secretary of State

CERTIFICATE OF ORGANIZATION

WHEREAS,

RDG Development, L.L.C.
LC0575634

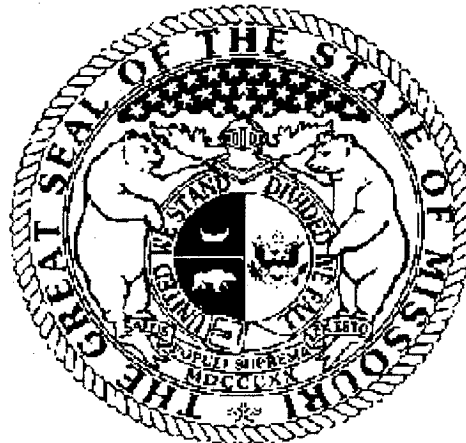
filed its Articles of Organization with this office on the 18th day of March, 2004, and that filing was found to conform to the Missouri Limited Liability Company Act.

NOW, THEREFORE, I, MATT BLUNT, Secretary of State of the State of Missouri, do by virtue of the authority vested in me by law, do certify and declare that on the 18th day of March, 2004, the above entity is a Limited Liability Company, organized in this state and entitled to any rights granted to Limited Liability Companies.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 18th day of March, 2004.

Matt Blunt

Secretary of State



RDG Development LLC

P.O. Box 932

Fulton, MO 65251

November 20, 2008

Homeowners

Greenwood Hills Subdivision

Fulton, MO 65251

Re: Greenwood Hills Lagoon

Dear Homeowners:

All of the homes within Greenwood Hills Subdivision are attached to a lagoon privately owned and maintained by Rodney Glenn Construction, Inc. The lagoon receives its operating permit from the Department of Natural Resources. Over the years, Rodney Glenn Constructions, Inc. has absorbed the cost to maintain this lagoon however due to calls being made to DNR, the cost to maintain this system has risen significantly with DNR requiring quarterly testing. It is at this time that the cost to maintain the lagoon has become too great for Rodney Glenn Construction, Inc. to absorb and these costs must be passed on to you the homeowners who are using this system.

Since DNR uses the water usage of the homeowners to determine the permit fees and requirements, I have asked and received the water usage for each homeowner from Callaway 2 Water District to determine a fee schedule. The current fees will be based on the average monthly water usage for the year 2007 and will be adjusted every year. The base rate

Exhibit C

will be \$20.00 per month for an average water usage of 4,000 gallons and will go up \$5.00 for every 1,000 gallons over the 4,000 base to be paid monthly by the 20th of each month. There is the option of paying a year of lagoon fees at one time. If you choose to take this option, Rodney Glenn Construction, Inc. will give you 2 months free, so you only have to pay for 10 months by taking the annual payment plan. A complete fee schedule is attached for your reference.

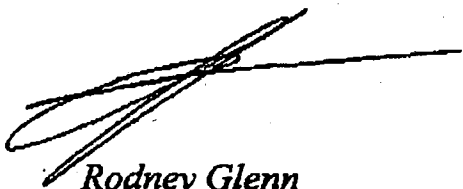
The first payment will be due on December 20th and if not paid by January 1, 2009, Rodney Glenn Construction, Inc. have no choice but to disconnect your home from the lagoon.

RDG Development, LLC will be managing the collection of lagoon fees for Rodney Glenn Construction Inc. Therefore, all payments need to be made payable and mailed to the following:

*RDG Development LLC
P.O. Box 932
Fulton, MO 65251*

If you have any questions, please contact me at (573)864-4402.

Thank You,

A handwritten signature in black ink, appearing to read 'Rodney Glenn', with a long horizontal line extending to the right.

*Rodney Glenn
RDG Development LLC
(573)864-4402*

RDG Development, LLC

P.O. Box 932
Fulton, MO 65251

Invoice

| Date | Invoice # |
|------------|------------|
| 11/20/2008 | [REDACTED] |

| |
|------------|
| Bill To |
| [REDACTED] |

| P.O. No. | Terms | Project |
|----------|------------------|---------|
| | Duc by Dec. 20th | |

| Quantity | Description | Rate | Amount |
|--------------------------------|---|------------|------------|
| 1 | Greenwood Hills Monthly Lagoon Fee - Average Monthly Water Usage [REDACTED] Gallons 2007 Water Usage [REDACTED] gallons/12 = [REDACTED] average monthly usage or Greenwood Hills Yearly Lagoon Fee - [REDACTED] less discount of 2 months [REDACTED] [REDACTED] due on or before December 20, 2008 | [REDACTED] | [REDACTED] |
| Please remit to above address. | | Total | [REDACTED] |

Exhibit D