

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

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	Case No. WC-2008-_____
v.)	
)	
Dale Whiteside and Whiteside Hidden Acres, L.L.C.)	
)	
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 water 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 corporation, [or] 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.

Respondent

3. Respondent Dale Whiteside is a natural person owning, operating, controlling and managing a water system in Pittsburg, Missouri, County of Hickory, with a principal place of business at HC 77 Box 754, Pittsburg, Missouri, 65724.
4. Respondent Whiteside Hidden Acres, L.L.C., is a limited liability company created in June of 2003, owning, operating, controlling and managing a water system in Pittsburg, Missouri, County of Hickory, and listed as active with the Missouri Secretary of State's Office.
5. Whiteside Hidden Acres' registered agent listed on the Missouri Secretary of State's webpage is Justin A. Harris, 901 St. Louis Street, 20th Floor, Springfield, MO 65806.
6. For this Complaint, Respondent Dale Whiteside and Respondent Whiteside Hidden Acres, L.L.C. will be known together as Respondents.

Count I

Respondents are Subject to Regulation by the Commission

7. Section 386.020(58) RSMo (Supp. 2007) provides a "[w]ater corporation" includes every corporation....and person....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."
8. Since about June 10, 2003, Respondents have operated or controlled or managed the water system serving approximately 150 sites in Whiteside Hidden Acres, Holly Court, Cedar Haven, Sportsman Retreat, Western Trails Resort, surrounding permanent homes, and other areas (the Service Area) in Hickory County, Missouri.
9. On or about August 19, 2003, Respondents sent a letter to the customers thanking them for their patience and understanding during the transition to new ownership. The August 19th letter also states the new rate will be \$240.00 per year, due on September 1st of each year. See Exhibit A attached.

10. On or about October 4, 2003, Respondents sent a letter to the customers describing the state of the water system. The October 4th letter also summarizes that state regulation of the system will be “expensive,” and Respondents state “[i]f I receive the balance of unpaid water dues, or arrangements are made with me by October 20, 2003 we will continue as it is. If one person does not do so, we will regulate.” See Exhibit B attached.
11. Customer bills, sent in 2003 and 2007, are attached as Exhibit C. By billing customers for water services, Respondents are selling water, or supplying water for gain, within the intent of Section 386.020(58) RSMo (Supp. 2007).
12. With respect to the Service Area, Respondents are water corporations within the intent of Section 386.020(58) RSMo (Supp. 2007).
13. Section 386.020(42) RSMo (Supp. 2007) provides a “[p]ublic utility” includes every....water 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[.]”
14. A public hearing in Pittsburg, Missouri, or a location that is convenient to the Service Area’s ratepayers will allow the Commission to hear testimony from customers of the Service Area.

WHEREFORE, Staff prays the Commission will 1) give notice to Respondents as required by law and, after hearing, find that Respondents, with respect to the operation of supplying water for gain to the areas of Whiteside Hidden Acres, Holly Court, Cedar Haven, Sportsman Retreat, and Western Trails Resort, surrounding permanent homes, and other areas, are water corporations within the intent of Section 386.020(58) RSMo (Supp. 2007), and thus public utilities within the intent of Section 386.020(42) RSMo (Supp. 2007), and subject to the jurisdiction, regulation and control of this Commission; and 2) order a public hearing in Pittsburg, Missouri, or a location determined convenient to the Service Area’s ratepayers.

Count II

Unauthorized Rates

15. Complainant hereby adopts by reference and re-alleges the allegations set out in paragraphs one through fourteen above.
16. 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 water corporations and public utilities for a Chapter 393 analysis.
17. Section 393.130.1 RSMo (Supp. 2007) provides “[a]ll charges made or demanded by any such....water corporation....for....water,....shall be just and reasonable and not more than allowed by law or by order or decision of the commission.”
18. Section 393.140(11) RSMo (Supp. 2007) provides

[t]he commission shall [h]ave power to require every water 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....water corporation,....but this subdivision shall not apply to state, municipal or federal contracts.
19. Section 393.150 provides that the Commission may, with or without complaint, enter upon a hearing to determine the propriety of Respondents’ water 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’ water services.

Count III

Authority to Seek Penalties for Unauthorized Provision of Water Service

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

21. 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.

22. Respondents have failed to comply with the law by failing to obtain certificates under section 393.170 and failing to obtain Commission approval of rates under section 393.130, 393.140 and 393.150. Each day's failure to comply with the law respecting the provision of water as water corporations and public utilities since June 10, 2003, is a continuing violation and constitutes a separate and distinct offense that carries a penalty of \$100 to \$2000 per day.

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/Jennifer Hernandez

Jennifer Hernandez

Legal Counsel

Missouri Bar No. 59814

Steven C. Reed

Chief Litigation Counsel

Missouri Bar No. 40616

Attorneys for the Staff of the

Missouri Public Service Commission

P. O. Box 360

Jefferson City, MO 65102

(573) 751- 8706 (Telephone)

(573) 751-9285 (Fax)

jennifer.hernandez@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, via certified U.S. mail, postage prepaid on this 19th day of June, 2008 to the following:

**Dale Whiteside
Whiteside Hidden Acres
HC 77, Box 754
Pittsburg, MO 65724**

**Justin A. Harris
Registered Agent
901 St Louis Street, 20th Floor
Springfield, MO 65804**

/s/ Dawn M. Carafeno

ATTN. MARTIN HUMMEL

August 19, 2003

Dear Water Customers:

I would like to start off by saying thank you for your patience and understanding during the transaction of new ownership. We have been working very hard to make your water supply as uninterrupted as possible and feel we have accomplished it though we do still have some hurdles to jump. In order to maintain this size of a system it becomes quite costly. So therefore to be able to continue providing you good water service we have no choice but to increase the prices. I have checked with several sources to come up with a fair water rate, and am pleased to tell you we do not need to charge the amount most recommended we should for unlimited usage, but we do however have to increase considerably in comparison to what the charges have been. These funds will be used to continue improvements on the system and to repair water leaks, which seem to occur frequently. The only thing we can do is fix them when they break. We also monitor the system several times daily and test the water a minimum of once a month. Your new rate will be \$240.00 per year due September 1st. Monthly rates can be arranged but will be considerably higher. There shouldn't be any more increases for a long time provided quantity of water usage doesn't increase a lot. Which would cause us to restructure the system to accommodate the usage.

Sincerely,

Dale Whiteside

Remit to : Dale Whiteside / Whiteside Hidden Acres
H C 77 Box 754
Pittsburg, Mo. 65724

NEMO BRIDGE RESORT
417 852 4201

ATT
MARTIN
HAMMEL

October 4, 2003

Dear Water Customers:

I would like to begin this letter by thanking all the water customers who paid the correct requested water dues in a timely manner, more specifically with the exception of a few, in the Sportman Retreat Subdivision. To those and the few others who have cooperated I also want to apologize for any extreme additional expenses, which may be enforced by the state when we become regulated.

It is always unfortunate when there is a controversy, and the hand full initiating it create more expense for others. Sadly, that is what we are faced with. After many stressful hours of hard work and determination and out personal pocket expense to keep the water in an uninterrupted state, having to deal with people who refuse to pay their water bill, which combined with everyone else's part, does not even cover what I have already spent to date. This has exhausted me and I am tired of trying to do right. I feel I have been more than fair. After the way the small portion of the community has treated me and the additional hours I have invested in making a decision I have decided to do what is best for me. Which will be having my water system regulated by the state.

Due to poor conditions of the existing system, it requires many man-hours to baby-sit to keep it from malfunctioning. The tank is set up on a pressurized system, which simply does not work very well. If we do not monitor it regularly and it fills with air we simply have no water. So after the many hours spent getting it on track, now you have all that surge creating leaks in the poor conditioned water lines, creating more expense of man hours, parts, and equipment used to fix the leaks. If the tank fills full of water the tank surges, which affects the water pressure some, but does not interrupt service. However, it does cause the pump to continually kick off and on, which is very hard on it.

In addition to this, because the waterlines are in such poor condition, (some not even underground) there are constant repairs to the lines. Due to the unlimited use of the water, people who take advantage of the water put a lot of stress on the system to keep up. I have asked for a small percentage of the actual cost from the community for what it costs to maintain this system. I am a very fair, reasonable person and when the chips were down, I asked no one to help. I even paid one customer over \$1,100.00 for problems created from the system and even he chose not to pay his water bill.

By having the state come in and regulate this system, they will treat it as a business. The things they will base the water rate on, is by as follows; purchase price (all expenses), man hours for repairs and to monitor the system (this will have to be done by a certified operator), all equipment to maintain and repair back hoe, etc., and expenses to operate and maintain the system. In addition, hours spent to take water samples and expense to take to Springfield, Attorney fees to become regulated, expense to purchase and install meters (approx. \$500.00 per house), (this will be done by my choice to help control water usage.), will also be factors. Any and every expense involved will be figured. Then they will figure a percentage of profit, yes profit, I will be allowed to make for my business. At this point, this is only my opinion, but if you think water rates are bad now just wait.

In addition, by being regulated, and on a meter, there will be monthly billings with minimums for small usage. There will also be fees for connecting and reconnecting water service. For those who do not want to pay their bill, all I have to do is send you a notice and if you do not pay, I get to shut you off and then charge you to turn you back on. (Kind of like the electric co.) All and all this is going to get very expensive.

You, the community, are going to share that expense. One of the things I am required by the state to do, is to give them the number of homes on my system and the number of homes, which will drop using my water if the rate increases. This is very important so the state can divide the expense properly for the actual number of homes on my system.

Those who reply they will stay on the system if the rate increases will be held to their agreement. I also would like to say if the state decides my system is not capable of servicing what areas it needs to successfully, they could require additional changes or even wells which would really affect the cost.

There are some people who have sent me checks for \$125.00, and marked water for one year, nice try. We are currently holding all those checks and show no payment made. A late fee of 1.5 percent per month is being applied to all unpaid accounts.

With all this being said, I'm going to give one last easy option because I want you all to pay what I have asked. I do not want to spend all these hours and paperwork to come to this alternative creating more expense for all the good people who paid what I have asked.

If I receive the balance of unpaid water dues, or arrangements are made with me by October 20, 2003 we will continue as it is. If one person does not do so, we will regulate. For late charges, balance dues, or payment arrangements you can call or write for an updated balance.

This form must be returned by October 20, 2003. No reply will be interpreted as you agree to any additional increases the state may regulate and will continue service with our system.

Name _____

Address _____

Phone Number _____

I agree to stay on the system if the states new regulated rates were to increase:	Initial and date one box
Up to \$25.00 per month	
Up to \$30.00 per month	
Up to \$35.00 per month	
Up to \$40.00 per month	
Up to \$45.00 per month	
Up to \$50.00 per month	
\$50.00 and Up per month	

A copy of this letter and this form will be sent to Martin Hummel, in Jefferson City Public Service Commission.

Exhibit B

12/01/03 water bill for 9/01/03 thru 9/01/04

1 1/2 % Interest

\$240.00

Sept 3.60

Oct. 3.65

Nov. 3.71

RECEIVED⁵

250.96

.38 postage

251.34 total bal due

DEC 24 2003

Whiteside Hidden Acres

Records
Public Service Commission

HC 77, Box 754

Pittsburg, Missouri 65724

Due upon recut

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Whiteside Hidden Acres

Whiteside Hidden Acres

8/5/2007

Date

Date

8/6/2007

Lot #

54-035

House #

4-04

Name

54-035

House #

Water Billing Statement

Water Charge \$240.00

8/6/07

Balance \$240.00

Amount Due \$240.00

remmit billing with payment

Thank you for your business!

checks payable to: Whiteside Hidden Acres

Water Billing Statement

Yearly Water Charge \$240.00

Date Due 8/6/07

Current Balance \$240.00

Total Balance Due \$240.00

Please remmit billing with payment

Thank you for your business!

Make checks payable to: Whiteside Hidden Acres

Ann Marie Hunsel

573 751-1847

08/07/2007 05:34 PM 91 220226-9