

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE:**

**HURRICANE DECK HOLDING COMPANY, APPELLANT,**

**v.**

**PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,  
RESPONDENT.**

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DOCKET NUMBER WD69643

DATE: June 23, 2009

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Appeal From:

COLE COUNTY CIRCUIT COURT

THE HONORABLE JON EDWARD BEETEM, JUDGE

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Appellate Judges:

Division One: Alok Ahuja, P.J., Thomas H. Newton, C.J., and Harold L. Lowenstein, J.

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Attorneys:

Gregory David Williams, Esq., Sunrise Beach, MO., **for appellant.**

Jennifer Leigh Heintz, Esq., Jefferson City, MO, **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY  
COURT OF APPEALS – WESTERN DISTRICT

HURRICANE DECK HOLDING COMPANY,

APPELLANT,

V.

PUBLIC SERVICE COMMISSION OF THE STATE  
OF MISSOURI,

RESPONDENT.

WD69643

Cole County

Before Division One Judges: Alok Ahuja, P.J., Thomas H. Newton, C.J., and Harold L. Lowenstein, J.

Appellant Hurricane Deck Holding Company developed residential subdivisions in Camden County. In developing these residential areas, Hurricane Deck constructed water and sewer systems, which it owned. Initially, the Osage Water Company, a public utility that had obtained a certificate of convenience and necessity from the Public Service Commission (“PSC”), operated these systems and provided water and sewer services to Chelsea’s residents. However, a receiver was appointed for Osage on October 21, 2005, at the PSC’s request. Hurricane Deck thereafter billed subdivision residents for providing continued water and sewer services from September 22 through December 30, 2005.

The PSC Staff filed a complaint before the PSC, alleging that Hurricane Deck had engaged in the “unlawful provision of water and sewer services to the public, for gain, without certification or other authority from the Missouri Public Service Commission.” The crux of the Complaint was that, “[b]y billing [Osage’s] customers . . . for water and sewer services,” Hurricane Deck was functioning as a public-utility water and sewer company, and was thus subject to Commission regulation.

The PSC issued an order on August 31, 2006, which concluded that “by sending out bills to the residents, Hurricane Deck Holding Company offered service to all residents of the given subdivisions,” and therefore “has made itself subject to regulation as a public utility.”

Hurricane Deck sought review of the PSC’s Order in the Circuit Court of Cole County, which affirmed. Hurricane Deck now appeals to this Court.

**AFFIRMED.**

**Division One holds:**

Although Hurricane Deck argues that its actions were solely a private matter, pursuant to Missouri law Hurricane Deck could constitute a regulated “public utility,” even though its services were limited to the two subdivisions in which its water and sewer systems were located, where it offered service indiscriminately to all persons located within that service area.

Hurricane Deck further argues that the PSC’s order was unlawful, because it was not providing services “for gain” within the meaning of §§ 386.020(49) or (59). According to Hurricane Deck, the requirement that a public utility operate “for gain” “must mean that the collections received or intended by the operation of the systems are in excess of the expenditures necessary to operation of those systems.” To the contrary, an entity satisfies the “for gain” criterion where it offers its services for compensation.

Here, Hurricane Deck’s December 2005 letter “enclosed [] an accounting for the past two (2) months which itemize[d] a portion of the actual costs for [the] systems for that period,” which was divided by Chelsea’s thirty customers to obtain the amount each homeowner was “bill[ed] [] for.” The attachment identified Hurricane Deck as the party making the assessment, and specified that payment should be made to it. Under these circumstances, and the governing legal standards, we find no error in the Commission’s decision that Hurricane Deck operated its water and sewer systems “for gain.”

**Opinion by: Alok Ahuja, Judge**

June 23, 2009

**THIS SUMMARY IS UNOFFICIAL AND  
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