

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

MISSOURI PUBLIC SERVICE COMMISSION

RESPONDENT,

**v.
HURRICANE DECK HOLDING COMPANY**

APPELLANT.

DOCKET NUMBER WD70299

DATE: February 9, 2010

Appeal From:

Cole County Circuit Court
The Honorable Jon E. Beetem, Judge

Appellate Judges:

Division Four: Thomas H. Newton, Chief Judge, Presiding, Lisa White Hardwick and Cynthia L. Martin, Judges

Attorneys:

Elizabeth A. Marr, Lone Jack, MO, for appellant.

Jennifer L. Heintz and Eric Dearthmont, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
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MISSOURI PUBLIC SERVICE COMMISSION,

RESPONDENT,

v.

HURRICANE DECK HOLDING COMPANY,

APPELLANT.

No. WD70299

Cole County

Before Division Four Judges: Thomas H. Newton, Chief Judge, Presiding, Lisa White Hardwick and Cynthia L. Martin, Judges

Hurricane Deck Holding Company appeals the trial court's judgment imposing a penalty of \$20,000 pursuant to section 386.570 for a previously determined violation of public utility regulatory laws. Hurricane Deck contends that the trial court erred in assessing a penalty for the period from September 22, 2005, through December 30, 2005. Hurricane Deck also contends that the penalty imposed was excessive and disproportionate.

AFFIRMED.

Division Four holds:

(1) The underlying conclusion that Hurricane Deck violated the law by holding itself out as a public utility was not before the trial court for determination, having already been determined by the PSC and affirmed by this court. To the extent Hurricane Deck's objection to the assessed penalty expressly or impliedly seeks review of the underlying determination that it held itself out as a public utility, the doctrine of law of the case precludes such review.

(2) The trial court's finding that Hurricane Deck held itself out illegally as both a water utility and a sewer utility from September 22, 2005, to December 30, 2005, is supported by substantial evidence and is not against the weight of the evidence.

(3) As the penalty assessed against Hurricane Deck is within the range permitted by section 386.570 and is, in fact, the lowest amount permitted by the statute, the penalty assessed by the trial court is not so disproportionate as to shock the moral sense of all reasonable men. The only arguments advanced by Hurricane Deck to suggest that the penalty assessed was grossly disproportionate are arguments either previously waived or determined unfavorably to Hurricane Deck. The trial court did not erroneously declare or apply the law in imposing a penalty authorized by statute.

Opinion by: Cynthia L. Martin, Judge

February 9, 2010

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