

IN THE SUPREME COURT OF MISSISSIPPI

HAROLD GREEN

APPELLANT

V.

CASE NO. 2008-CC-01618

**CLEARY WATER,
SEWER AND FIRE DISTRICT**

DEFENDANT

REPLY BRIEF OF APPELLANT

**APPELLANT
HAROLD GREEN
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TABLE OF AUTHORITIES

Mississippi Public Service Commission

Public Utilities Rules of Practice and Procedure

Rule - 2

Rule - 3

Rule - 7.....

Certificate Proceedings

Appendix 'A' Area Certificates/All Utilities Schedule

Schedule '2' (Exhibit - Q14)

In the records presented by the Public Service Commission to the Trial Court
(Volume I - pg. 109 - 110). (File no. 57085). (Exhibit - 3 / 4).

Exhibits

- M4
- D1-2-3
- B
- F1-2-3-4
- (1) Info
- M8-M13-M14
- M12-pg.3
- Q2-Q14
- V11

Most of the exhibits listed above can be found in our Brief of February 4, 2008. Some may be a direct quote without an exhibit number.

STATEMENT OF THE CASE

Our complaint (Exhibit - M4) states in part false statements were made by Cleary Water, Sewer and Fire District to obtain the certificate they now hold. We listed one (1) of these false statements as being, Cleary had not constructed a Sewage Treatment Plant within (48) months after receiving this certificate. The following are more of these false statements made by Cleary. We will commence with Cleary's application (Exhibit- D1-2-3- Ex. B) and end with the Public Service Commission issuing Cleary a certificate (Exhibit-F1-2-3-4).

STATEMENT OF THE FACTS

CWSFD knew one (1) year before applying for this certificate they were not going to construct this Sewage Treatment Plant (Exhibit - (1) Info) (Exhibits - M8-M13-M14). (Our Brief of February 4, 2008).

(1) (a) Cleary's application quote "Application of Cleary Water, Sewer and Fire District to enlarge its certificated area for Sewer Service to make said area "identical" to its certificated area for water and fire protection" (Exhibit - D1). This is a false statement made by Cleary.

(b) Item (5) of this application (Exhibit - D2) we find no financial reports in the presented documents. Also in item (5), Cleary states they can financially afford to construct this proposed sewage treatment plant. Both of these statements are false. (Exhibits - M8-M13-M14).

(c) Item (6) of (Exhibit - D2). Cleary did not list the Property Owners as "Interested Persons" as required by (Rule 2K) (Ex. B).

(d) Item (7) testimony to be relied upon (Exhibit - D3 - item 17-18) states all items of application are true. This testimony is not reliable and is a false statement.

(e) Item (8) of this application is completely untrue. More than (96) months have passed without CWSFD constructing this Sewage Treatment Plant, so as to furnish Sewer

Service to the residents of this area. This is a false statement by Cleary. (Exhibit - D2).

(2) (a) On September 18, 2000 the Public Service Commission granted CWSFD a supplemental certificate of convenience and necessity (Exhibit - F1-2-3-4). This certificate stated no less than (5) times the purpose thereof, to "construct, operate and maintain a Sewer System in this additional area" so as to furnish sewer service to the residence there of." Cleary has not complied with this order. The question must be asked, why has the Public Service Commission not revoked this certificate?

(b) The answer to that question is found in the Public Utilities Rules of Practice and Procedure. The application of CWSFD was passed to the Public Utilities Staff for investigation and advisory as is their function (Rule 3-F) to see that all required documentation is included in Cleary's application to be eligible for a certificate. CWSFD did not furnish (10) of these required items (Exhibit 2K3) (Appendix "A" - Schedule "2"- items 6-7-8-9-10-11-13-14-15) (Exhibit - Q14). The Public Utilities Staff approved CWSFD's application and recommended that the Public Service Commission grant a certificate (Exhibit -F1-2-3-4), in direct violation of the purpose for which the Public Utilities Staff was created (Rule 3-E-F). They knew before their recommendation that CWSFD was not going to construct this new Sewage Treatment Plant (Exhibit - M12-pg.3) (Exhibit - (1) Info. Item 4). The Public Utilities Staff did conspire with Cleary Water, Sewer and Fire District to deny our rights to participate in the certificate proceedings (Rule 2K) (Rule 7-F6). Also, Cleary was not eligible to receive a certificate.

(c) The Public Service Commission also knew that CWSFD was not eligible for the certificate issued, for the reasons above and the fact it was stated quote "Be it remembered that Cleary Water, Sewer and Fire District filed its application, along with the required exhibits and documentation, on June 13, 2000." (Exhibit - Volume I - pg. 109-110 of court records). Both the attorneys for the Public Service Commission and the CWSFD knew this was a false statement.

(d) The CWSFD, Public Utilities Staff and the Public Service Commission did conspire to deny the property owners in the Water and Fire District of CWSFD their rights under the constitution.

(e) These three (3) agencies in their defense briefs, depend on laws that can be applied only after a legal certificate has been issued by the Public Service Commission. Our complaint was and is, that false statements were made to obtain a certificate.

(f) As stated above, CWSFD did not meet the mandatory requirements to be eligible for a certificate. The Law governing as to the eligibility of Cleary to receive a certificate is quote "Incomplete Filings: Petitions for certificates that fail to comply with the requirements of these rules or that do not have attached to them the required supporting data will be docketed and assigned an identifying number, but the Commission may decline to consider said petition or dismiss it, Sua Sponte, until compliance is achieved." (Rule 7-F6).

(g) The Public Service Commission did not use either of these legal options but did

issue Cleary Water, Sewer and Fire District a certificate without the Statutory Authority to do so. (Rule 2K) (Rule 7-F6).

(h) We respectfully submit the actions we have taken to protect the rights of the citizens of this District and the State of Mississippi is not time barred but is consistent with due process of the laws governing the eligibility of an applicant to receive a certificate, and the fact that Cleary Water, Sewer and Fire District did deny the District's "Water Only Customers", their rights to participate in these certificate proceedings by not being listed as interested persons. (Exhibit - Q2Rule 2K).

SUMMARY

We respectfully submit the following.

(1) "Cleary Water, Sewer and Fire District" petitioned for and received a certificate from the "Public Service Commission" to "construct, operate and maintain a Sewage Treatment and Disposal Plant" in a specified area of Rankin County Mississippi. "CWSFD" made many false statements to obtain that certificate. Evidence of this statement can be found in our (Brief of February 4, 2008) (Brief January 26, 2009) (This Reply Brief).

(2) (a) Cleary Water, Sewer and Fire District had no "Statutory Authority" to deny the "Water Only Customers" their "Civil Rights", as set forth in the Constitutions, to participate in the certificate proceeding.

(b) Or to determine their eligibility requirements for a certificate. (Rule - 2 - K3) (Appendix "A" Schedule 2).

(3) The Public Service Commission had no "Statutory Authority" to issue Cleary Water, Sewer and Fire District a certificate, under these governing laws (Rule - 2 - K3) (Appendix "A" Schedule 2) (Rule - 7 - F6).

(4) There is no "Statutory Time Barred Limitation" on this case. (Rule - 2 - K3) (Rule - 7 -F6).

(5) We the "Water Only Customers", utilize Individual onsite wastewater Disposal Systems, have not and are not polluting the ground, the lakes, the potable water source of Cleary. (Exhibit - 1 - last page) (Exhibit - V - 11) can be found in our (Brief of February 4, 2008).

(6) The "Laws" presented by "Cleary Water, Sewer and Fire District", the "Public Service Commission" and the "Trial Court", in defense of their actions, rely on the premises of a legally obtained certificate. Those "Laws" have no merit in these proceedings. Only the "laws" governing the eligibility of an applicant to receive a certificate rule in these proceedings and are presented in our "Table of Authorities" in evidence as to the truth of this statement. These "Laws" apply in two distinctly different applications.

In the "Public Interest" we the people ask this "Honorable Court" for justice under the laws of this great State and Nation.

RESPECTFULLY SUBMITTED,

By 160 Petitioners

Harold L. Green

CERTIFICATE OF SERVICE

I, Harold Green, Petitioner/Appellant, do certify that I have on this day sent 1st class mail, postage prepaid, a copy of the Reply Brief of Appellant, to the following counsel of record:

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This the 9 day of April.

Respectfully Submitted by

Harold L. Green and

160 Petitioners.