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FEB 26 2004

Missouri Public
Service Commission

Kansas City Executive Suites, Inc.
Legal Department
2405 Grand Ave., Ste 300
Kansas City, MO 64108

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2-20-04 TC-2004-0408

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Kansas City Executive Suites, Inc.
Legal Department
2405 Grand Ave., Ste. 500
Kansas City, MO 64108

2. Article Number

(Transfer from service)

7001 1940 0002 6942 6188

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

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3. Service Type

☒ Certified Mail

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4. Restricted Delivery? (Extra Fee)

☐ Yes

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

The Staff of the
Missouri Public Service Commission,

Complainant,

v.

Kansas City Executive Suites, Inc.,

Respondent.

Case No. TC-2004-0408

NOTICE OF COMPLAINT

Kansas City Executive Suites, Inc.
2405 Grand Ave., Suite 500
Kansas City, Missouri 64108

Norris E. Greer
120 W. 12th
Kansas City, Missouri 64105

CERTIFIED MAIL

On February 17, 2004, the Staff of the Missouri Public Service Commission filed a complaint with the Commission against Kansas City Executive Suites. A copy of the complaint is enclosed. Under Commission Rule 4 CSR 240-2.070, Kansas City Executive Suites has 30 days from the date of this notice to file an answer or to file notification that the complaint has been satisfied. Kansas City Executive Suites is reminded that, as a corporation, it cannot appear before the Commission unless it is represented by an attorney licensed to practice law in Missouri. Therefore, its answer must be signed by a Missouri attorney.

All pleadings must be mailed to:

Secretary of the Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102-0360

A copy must be served upon the Staff of the Commission at the address listed within the enclosed complaint.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive style with a large initial "D".

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(S E A L)

Dated at Jefferson City, Missouri,
on this 20th day of February, 2004.

Pridgin, Regulatory Law Judge

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

| | | |
|--|---|-------------------|
| The Staff of the Missouri Public Service Commission, |) | |
| |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | Case No. TC-2004- |
| |) | |
| Kansas City Executive Suites, Inc. |) | |
| |) | |
| Respondent. |) | |

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and initiates its complaint pursuant to Section 386.390 and 4 CSR 240-2.070, against Kansas City Executive Suites, Inc. (the "Company") for violation of the Commission's statutes and rules relating to annual report filings and annual assessment payments. In support of its complaint, Staff respectfully states as follows:

GENERAL ALLEGATIONS

1. Respondent Kansas City Executive Suites, Inc. is a "telecommunications company" and "public utility" as defined in Section 386.020 RSMo (2000) and is subject to the jurisdiction of the Missouri Public Service Commission pursuant to Section 386.250. The Commission granted the Company a certificate of service authority to provide shared tenant services in Case No. TA-94-59 on November 18, 1993. The Company has provided the following contact information to the Commission:

Kansas City Executive Suites, Inc.
2405 Grand Ave., Suite 500
Kansas City, MO 64108

The Company's registered agent according to the records of the Missouri Secretary of State's Office is:

Norris E. Greer
120 W. 12th
Kansas City, MO 64105

2 According to the Office of the Secretary of State of Missouri official website, the Secretary of State notified the Company by letter on November 12, 2003 of its failure to file its 2003 annual report, and has advised the Company it is subject to administrative dissolution as permitted by Sections 351.484 and 351.486. The Company was subsequently administratively dissolved on February 13, 2004.

3. Section 386.390.1 authorizes the Commission to entertain a complaint "setting forth any act or thing done or omitted to be done by a public utility in violation of any law, or of any rule, order or decision" of the Commission.

4. Commission practice Rule 4 CSR 240-2.070(1) provides that the Commission's Staff, through the General Counsel, may file a complaint.

5. The Missouri courts have imposed a duty upon the Public Service Commission to first determine matters within its jurisdiction before proceeding to those courts. As a result, "[t]he courts have ruled that the Division cannot act only on the information of its staff to authorize the filing of a penalty action in circuit court; it can authorize a penalty action only after a contested hearing." *State ex rel. Sure-Way Transp., Inc. v. Division of Transp., Dept. of Economic Development, State of Mo.*, 836 S.W.2d 23, 27 (Mo.App. W.D. 1992) (relying on *State v. Carroll*, 620 S.W.2d 22 (Mo. App. 1981)); see also *State ex rel. Cirese v. Ridge*, 138 S.W.2d 1012 (Mo.banc 1940). If the Commission determines after a contested hearing that the Company failed, omitted, or neglected to file its annual report and/or pay its annual assessment, the Commission may then authorize its General Counsel to bring a penalty action in the circuit court as provided in Section 386.600.

COUNT ONE

6. Section 392.210.1 states that telecommunications companies must "file an annual report with the Commission at a time and covering the yearly period fixed by the commission."

7. Commission Rule 4 CSR 240-3.540(1) requires all telecommunications companies to file their annual reports on or before April 15 of each year.

8. On February 3, 2003, the Executive Director of the Commission sent all regulated utilities, including Kansas City Executive Suites, Inc., a letter notifying them of the requirement to file an annual report covering the calendar year 2002, together with the appropriate form for the Company to complete and return to the Commission and instructions on how the Company may complete its filing electronically. The letter was sent to the address that was current in the Commission's Electronic Filing and Information System ("EFIS") at that time, and the letter was not returned.

9. The Company never returned a completed form, nor did it file its annual report electronically; and as of the date of this pleading, has not filed its 2002 Annual Report. See Affidavit of Janis Fischer, attached to this Complaint as Exhibit A.

10. Section 392.210.1 provides that "[i]f any telecommunications company shall fail to make and file its annual report as and when required or within such extended time as the commission may allow, such company shall forfeit to the state the sum of one hundred dollars for each and every day it shall continue to be in default with respect to such report...."

COUNT TWO

11. Section 386.370 authorizes the Commission to determine the amount of an annual assessment for expenses of the Commission to be collected from public utilities operating in this state. This statute provides that the public utility shall pay the amount assessed by July 15 or may at its election pay the assessment in four equal installments not later than July 15, October 15, January 15 and April 15.

12. Pursuant to Section 386.370, the Commission promulgated its *Assessment Order for Fiscal Year 2003* in Case No. AO-2002-1156, "In the Matter of the Assessment Against the Public Utilities in the State of Missouri for the Expenses of the Commission for the Fiscal Year Commencing July 1, 2002."

13. As called for by the *Assessment Order* in Case No. AO-2002-1156, the Budget and Fiscal Services Department calculated the amount of the 2003 Fiscal Year annual assessment for the Company and the Commission's Director of Administration rendered the statement of its assessment on behalf of the Commission by letter on June 26, 2002.

14. Also in the *Assessment Order*, the Commission directed "[t]hat each public utility shall pay its assessment as set forth herein."

15. If the Company elected to pay on a quarterly basis, quarterly installments were due on July 15, 2002; October 15, 2002; and January 15, 2003. The Company is delinquent on the entire amount of its 2003 annual assessment.

16. On January 29, 2003, the Executive Director of the Commission sent a letter to an address that the Company had provided and that was contained in the EFIS system, informing the Company of its unpaid assessment for Fiscal Year 2003.

17. The Company, as of the date of this pleading, has not paid its Fiscal Year 2003 assessment and therefore has not complied with the Commission's *Assessment Order*. See Affidavit of Helen Davis, attached to this Complaint as Exhibit B.

18. Any public utility that fails, omits, or neglects to obey an order of the Commission "is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars" for each offense, if there is no penalty otherwise provided. Section 386.570.1. The statute further states that "in the case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense." Section 386.570.2. No

penalty for failing to pay annual assessments is otherwise provided in Chapter 386 or elsewhere in the Commission's statutes.

19. As part of the Commission *Order* in this case, the Staff requests that the Commission formally find that it may publicly release the amount of the overdue assessment. As the assessment is derived from statements of revenue provided by regulated utilities and thus subject to the provisions of Section 386.480 ("No information furnished to the commission by a ... public utility ... shall be open to public inspection or made public except on order of the commission ..."), Staff is concerned that in the absence of a Commission order directing its release, the revelation of the assessment amounts in circuit court or elsewhere may be improper.

COUNT THREE

20. The Commission has the authority to cancel a certificate of service authority if not against the wishes of the certificate holder. *State ex rel. City of Sikeston v. Public Serv. Comm'n*, 82 S.W. 2d 105, 109 (Mo. 1935). Thus, the Commission has the authority to cancel a telecommunications company certificate pursuant to Section 392.410.5, which provides that "[a]ny certificate of service authority may be altered or modified by the commission after notice and hearing, upon its own motion or upon application of the person or company affected." However, the Commission need not hold a hearing, if, after proper notice and opportunity to intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494 (Mo.App.W.D. 1989).

21. If the Company fails to respond to this Complaint in a timely manner as required by 4 CSR 240-2.070(8), Staff requests that the Commission find that the Company's default constitutes its consent for the Commission to cancel its certificate, and therefore cancel the certificate of service authority of Kansas City Executive Suites, Inc., to provide shared tenant services.

PRAYER FOR RELIEF

WHEREFORE, Staff now requests that the Commission open a complaint case pursuant to Section 386.390; and, after hearing, find that Kansas City Executive Suites, Inc. failed, omitted, or neglected to file its 2002 Annual Report with the Commission as required by Missouri statute and Commission orders; for failure to pay its FY 2003 annual assessment as so required; authorize its General Counsel to bring a penalty action against the Company in the circuit court as provided in Section 386.600, based on the statutory penalties set forth in Section 392.210.1 (for failing to file annual reports) and 386.570 and 386.590 (for failing to pay assessments); and order that the amount of the overdue assessment may be publicly released.

Moreover, if the Company fails to respond to this Complaint in a timely manner as required by 4 CSR 240-2.070(8), in addition to a finding in default under 4 CSR 240-2.070(9), Staff requests that the Commission find that the Company's default constitutes its consent for the Commission to cancel its certificate, and therefore cancel the certificate of service authority of Kansas City Executive Suites, Inc. to provide shared tenant services.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ Bruce H. Bates

Bruce H. Bates
Associate General Counsel
Missouri Bar No. 35442

Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
(573) 751-7434 (Telephone)
(573) 751-9285 (Fax)
bruce.bates@psc.mo.gov (E-Mail)

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 17th day of February 2004.

/s/ Bruce H. Bates

Kansas City Executive Suites, Inc.
2405 Grand Ave., Suite 500
Kansas City, MO 64108

Norris E. Greer (Registered Agent)
120 W. 12th
Kansas City, MO 64105

John Coffman, Esq.
Office of the Public Counsel
P. O. Box 7800
Jefferson City, MO 65102

AFFIDAVIT

STATE OF MISSOURI }

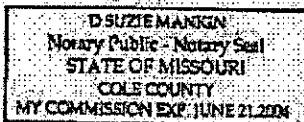
COUNTY OF COLE }

I, Janis E. Fischer, Utility Regulatory Auditor IV, of the Commission's Auditing Department, first being duly sworn on my oath state that the Public Service Commission's records do not reflect the receipt of the 2002 Annual Report from Kansas City Executive Suites, Inc.

Janis E. Fischer

Janis E. Fischer

Subscribed and sworn to before me this 17th day of February, 2004.



D. Suzie Mangin

NOTARY PUBLIC

Exhibit A

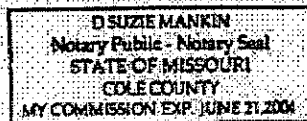
AFFIDAVIT

STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Helen Davis, Accountant II in the Commission's Budget and Fiscal Services Department, first being duly sworn on my oath state that the Public Service Commission's records do not reflect the receipt of the Fiscal Year 2003 annual assessment from Kansas City Executive Suites, Inc.

Helen Davis
Helen Davis

Subscribed and sworn to before me this 17th day of February, 2004.



D. Suzie Mankin
NOTARY PUBLIC

Exhibit B

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

**I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 20th day of Feb. 2004 .**

Dale Hardy Roberts

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

MISSOURI PUBLIC SERVICE COMMISSION

February 20, 2004

Case No. TC-2004-0408

Dana K Joyce
P.O. Box 360
200 Madison Street, Suite 800
Jefferson City, MO 65102

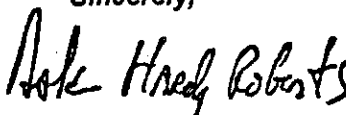
John B Coffman
P.O. Box 7800
200 Madison Street, Suite 640
Jefferson City, MO 65102

Norris Greet
120 W. 12th
Kansas City, MO 64105

Kansas City Executive Suites, Inc.
Legal Department
2405 Grand Ave., Ste. 500
Kansas City, MO 64108

Enclosed find a certified copy of a NOTICE in the above-numbered case(s).

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**