

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

The Office of the Public Counsel,  
An agency of the State of Missouri  
COMPLAINANT

v.

The Tranquility Group, LLC d/b/a  
Branson Cedars Resort,  
Branson Cedars Resort Utility  
Company LLC,  
A Missouri water and sewer corporation,  
RESPONDENTS

**Case No. WC-2015-0288**

**Case No. SC-2015-0289**

**THE TRANQUILITY GROUP, LLC & BRANSON CEDARS  
RESORT UTILITY COMPANY, LLC'S ANSWER TO THE  
OFFICE OF PUBLIC COUNSEL'S COMPLAINT**

COME NOW Respondents The Tranquility Group, LLC and Branson Cedars Resort Utility Company, LLC, by and through undersigned counsel, and for their Answer to the Office of Public Counsel's Complaint, state as follows:

1. Paragraph 1 of Complainant's Complaint is a legal conclusion for which no response is required.
2. Paragraph 2 of Complainant's Complaint is a legal conclusion for which no response is required; by way of further answering, Respondents deny the allegations contained in Paragraph 2 of Complainant's Complaint.
3. Respondents admit the allegations contained in Paragraph 3 of Complainant's Complaint.
4. Respondents admit the allegations contained in Paragraph 4 of Complainant's Complaint.
5. Respondents deny the allegations contained in Paragraph 5 of Complainant's Complaint.

6. Paragraph 6 of Complainant's Complaint is a legal conclusion for which no response is required.

7. Paragraph 7 of Complainant's Complaint is a legal conclusion for which no response is required.

8. Paragraph 8 of Complainant's Complaint is a legal conclusion for which no response is required.

9. Paragraph 9 of Complainant's Complaint is a legal conclusion for which no response is required.

### **COUNT 1**

10. As for Paragraph 10 of Complainant's Complaint, Respondents restate and reallege their responses to the allegations contained in Paragraphs 1-9 of Complainant's Complaint.

11. Respondents are without sufficient information to form a belief as to the truth of the allegations and averments contained in Paragraph 11 of Complainant's Complaint and, therefore, deny the same.

12. Paragraph 12 of Complainant's Complaint is a legal conclusion for which no response is required.

13. Paragraph 13 of Complainant's Complaint is a legal conclusion for which no response is required.

14. Paragraph 14 of Complainant's Complaint is a legal conclusion for which no response is required.

15. Paragraph 15 of Complainant's Complaint is a legal conclusion for which no response is required.

16. Paragraph 16 of Complainant's Complaint is a legal conclusion for which no response is required.

17. Paragraph 17 of Complainant's Complaint is a legal conclusion for which no response is required.

18. Paragraph 18 of Complainant's Complaint is a legal conclusion for which no response is required.

19. Paragraph 19 of Complainant's Complaint is a legal conclusion for which no response is required.

20. Paragraph 20 of Complainant's Complaint is a legal conclusion for which no response is required.

21. Paragraph 21 of Complainant's Complaint is a legal conclusion for which no response is required.

22. Paragraph 22 of Complainant's Complaint is a legal conclusion for which no response is required.

23. Paragraph 23 of Complainant's Complaint is a legal conclusion for which no response is required.

24. Respondents admit the allegations contained in Paragraph 24 of Complainant's Complaint.

25. Respondents deny the allegations contained in Paragraph 25 of Complainant's Complaint.

### **AFFIRMATIVE DEFENSES**

COME NOW Respondents The Tranquility Group, LLC and Branson Cedars Resort Utility Company, LLC, and for their Affirmative Defenses, state as follows:

1. Complainant's claims are moot and/or barred because Respondents contacted the Staff of the Public Service Commission and voluntarily applied for Certificates of Convenience and Necessity in order to seek approved tariffs and to comply with Missouri law with respect to both

water and sewer systems and thus any requested relief within the Commission's authority has already been initiated; moreover, throughout the application process, Respondents were instructed that they must continue to provide water and sewer services to the lot owners at the subdivision.

2. The relief requested by Complainant would provide no benefit to the State of Missouri or the public at large.

3. Complainant's claims are barred by the doctrine of laches as Complainant has been aware of this issue for many months, and the property owners in Respondents' development have accepted the benefit of the water and sewer service for years, and no one has voiced objection until now.

4. Pursuant to the applicable covenants and restrictions placed upon the real property at issue by the previous owners, Respondents were contractually and legally required to provide water and sewer services to the lot owners at the subdivision; moreover, without contribution from lot owners, Respondent did not have the necessary funds to provide water and sewer services as requested by the lot owners.

5. At all times relevant thereto, lot owners of the subdivision needed and demanded water and sewer services; as such, because all lot owners were complicit in any alleged illegal activity of Respondents in providing water and sewer services, such lot owners are necessary parties to this action who should equally share in any penalties assessed under the law; moreover, the complicit lot owners are not entitled to refunds for any amounts contributed towards the water and sewer operations due to their involvement in the activities.

6. Any and all funds paid to Respondents by lot owners pursuant to water and sewer services were paid voluntarily; Respondents never cut off a lot owner's water or sewer service and never brought legal action against any lot owner due to a lot owner failing to contribute to the water and sewer service operations.

7. Complainant has waived its claims as the property owners in Respondents' development have accepted the benefit of the water and sewer service and voluntarily provided monetary contributions for such services.

8. Complainant is barred from requesting relief in which the Public Service Commission would award money damages or order refunds as the Commission is without authority to grant such relief.

9. Complainant is estopped from requesting that the Commission seek penalties or order refunds to be issued as the property owners in Respondents' development have accepted the benefit of the water and sewer service.

10. Any award of penalties or fines against Respondents or ordering a refund for services benefitting lot owners deprives Respondents of property without due process of law since the basis for an award of such damages is vague and indefinite and is not the basis of any consistent standard to be applied to conduct subjecting Respondents to such damages, all in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Bill of Rights, §21 of the 1945 Constitution of Missouri.

11. Any award of penalties or fines against Respondents or ordering a refund for services benefitting lot owners subjects such Respondents to multiple jeopardy or punishments for the alleged commission of a single act in violation of the Eighth Amendment to the United States Constitution and Article I, Bill of Rights, §19 of the 1945 Constitution of Missouri.

12. Any award of penalties or fines against Respondents or ordering a refund for services benefitting lot owners subjects Respondents to excessive fines and unusual punishment in violation of the Eighth Amendment to the United States Constitution and Article I, Bill of Rights, §21 of the 1945 Constitution of Missouri.

13. Any award of penalties or fines against Respondents or ordering a refund for

services benefitting lot owners deprives Respondents of property without due process of law in violation of Respondents' rights under the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, Bill of Rights, §10 of the 1945 Constitution of Missouri because the standard for determining whether to impose such damages is vague and indefinite and does not provide adequate guidance to the trier of fact, and the law fails to explain in comprehensible terms the conduct prohibited, thus requiring speculation as to what conduct is prohibited.

14. Any award of penalties or fines against Respondents or ordering a refund for services benefitting lot owners deprives Respondents of property without due process of law in violation of Respondents' rights under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Bill of Rights, §21 of the 1945 Constitution of Missouri by permitting unconstitutionally excessive punishment.

15. Any award of penalties or fines against Respondents or ordering a refund for services benefitting lot owners deprives Respondents of property without due process of law in violation of Respondents' rights under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Bill of Rights, §10 of the 1945 Constitution of Missouri by permitting the trier of fact to impose damages without requiring a greater burden of proof.

16. Any award of penalties or fines against Respondents or ordering a refund for services benefitting lot owners deprives Respondents of property without due process of law in violation of Respondents' rights under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Bill of Rights, §§10 and 13 of the 1945 Constitution of Missouri by imposition of a retroactive standard governing the liability for and the amount of the penalty.

17. Any award of penalties or fines against Respondents or ordering a refund for services benefitting lot owners deprives Respondents of property without due process of law in violation of the Bills of Attainder and Ex Post Facto Clauses of the United States Constitution, Art.

I, §10 CL.1, and Article I, Bill of Rights, §13 of the 1945 Constitution of Missouri by imposition of a retroactive standard governing liability for such damages and the amount.

18. Any award of penalties or fines against Respondents or ordering a refund for services benefitting lot owners deprives Respondents of property without due process of law in violation of Respondents' rights under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Bill of Rights, §§10 and 2 of the 1945 Constitution of Missouri since Missouri law erroneously permits arbitrary, capricious, and discriminatory enforcement.

19. Any award of penalties or fines against Respondents or ordering a refund for services benefitting lot owners deprives Respondents of property without due process of law in violation of Respondents' rights under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Bill of Rights, §§10 and 19 of the 1945 Constitution of Missouri because such an award results in multiple punishments for a single act or course of conduct.

20. Any award of penalties or fines against Respondents or ordering a refund for services benefitting lot owners deprives Respondents of property without due process of law and puts it in jeopardy more than once, in violation of Respondents' rights under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Bill of Rights, §§10 and 19 of the 1945 Constitution of Missouri.

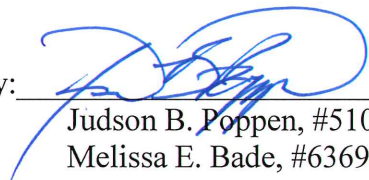
21. Any award of penalties or fines against Respondents or ordering a refund for services benefitting lot owners deprives Respondents without due process of law by imposing excessive fines and cruel and unusual punishment, in violation of Respondents' rights under the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Bill of Rights, §§10 and 21 of the 1945 Constitution of Missouri.

22. Any award of penalties or fines against Respondents or ordering a refund for services benefitting lot owners deprives Respondents of property without due process of law in

violation of Respondents' rights under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Bill of Rights, §§10, 18(a) and 22(a) of the 1945 Constitution of Missouri, because the procedures utilized in a hearing on the issue of these damages fail to provide adequate guarantees of a presumption of innocence.

WHEREFORE, having fully answered, Respondents pray for an Order of the Missouri Public Service Commission dismissing Complainant's Complaint and for such other and further orders and relief as the Court may deem proper under the circumstances.

Respectfully Submitted,

By:   
Judson B. Poppen, #51070  
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ATTORNEYS FOR THE TRANQUILITY  
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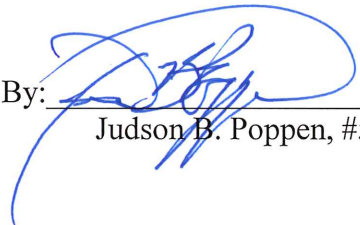
**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 5<sup>th</sup> day of June 2015:

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