**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF Missouri**

Michael R. Brower )

Complainant, )

Vrs. ) **Case No. WC-2017-0207**

)

Branson Cedars Resort Utility Company, LLC )

Respondent. )

**RESPONSE TO RESPONDENT’S**

**MOTION FOR SUMMARY DISPOSITION**

**COMES NOW**, Michael R. Brower (Complainant), submits this response to the Motion for Summary Disposition filed August 14, 2017 by Branson Cedars Resort Utility Company, LLC.

This response is based upon and supported by the following Memorandum of Points, the PSC Staff Report, and any argument that the Commission may allow at the time of hearing.

Dated this 21 day of August, 2017

Respectfully submitted by:

Michael R. Brower

Complainant

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**MEMORANDUM OF POINTS**

1. The Respondent claims the structure is a duplex. If so It still meets the definition of a “unit” or “Living Unit” in their own tariff. The tariff further explains it is or is not treated as a multi-tenant structure by the way it is **USED.**  Rule 1-R states “..each rental unit of a multi-tenant rental property are considered as separate units for each single family or firm occupying same as a residence or place of business”. (Emphasis added). The separate levels of this structure have never been rented separately.
2. The Respondent claims the original intent of the structure was a duplex. You can argue original intent all day long but it is not, has not, and will not be utilized as a duplex. Our business plan changed many times for this structure from inception to implementation due to unseen circumstances or changes in business environment. Additionally, most nightly rental units in the vacation rental industry that are considered multi-tenant units, even units with lockouts, are actually deeded and sold as separate units. They have separate utility hookups etc. This structure is deeded as one structure and has one utility hookup and more importantly, in this case, is being used as a single structure for business purposes. As it is, this structure could not be deeded or sold as anything other than one whole, single structure.
3. The respondent claims this structure is being advertised and rented as (2) separate units. This is totally false. Since July 5, 2016 which is the start date of business for this cabin, this cabin has not been rented as anything other than a single unit. During the initial start-up period, basically the month of July 2016, we made many changes to our advertising and website before settling on Owls Nest Cabin as the only name to be used in advertising this structure.
4. The Respondent claims there are no guarantees that the Complainant will not rent out the upper level and the lower level separately. The upper level and lower level of this structure cannot be rented to separate groups because it does not have adequate soundproofing between the two levels. Any attempt to do so would result in a multitude of complaints and most probable bad reviews, which would be extremely detrimental if not fatal to our business.

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1. The Respondent claims the Complainant has “pleaded” with Branson Cedars Resort Utility Company, LLC, to install a meter to charge for usage. I **Do Not** care if a meter is ever installed. The meter would be more for the company’s benefit than mine. I am perfectly content to continue to pay for one customer service the same as every other customer in their service area. Charging for what is actually used, is a fair and accurate way to charge for service rendered and benefits the company and customers alike. The issue in this case is that the company is in violation of its own tariff. The Respondents own tariff states in rule 11-A, “All new service connections shall be metered.” This is not left to interpretation. It is clear and means any new service connection made after November 1, 2015 shall be metered. If metered rates are established and approved and meters installed per the tariff, we would not be in dispute right now. A meter has not been installed because the company, to my knowledge, has still not established an approved rate for customer billing.
2. The respondent claims they will not install a meter because the complainant has not reimbursed them for an invoice that they authorized work for and then tried to charge me. That has no bearing whatsoever on this case. The meter would be owned, installed and maintained by Branson Cedars Resort Utility Company, LLC. per rule 11-A. There is no provision for the company to charge the customer for the meter or its installation unless the customer requests a meter change due to a change in flow requirements. They did not follow the rules and regulations of their own tariff in supplying the service connection to 310 Heavy Timber Dr., then tried to charge me an unauthorized bill. The tariff has provisions to protect the customer, in effect, from the company spending the customers money without the customers authorization. Unacceptable and again, has **NO** bearing on this case. If necessary, another case will be filed to address this issue.

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**SUMMARY AND CONCLUSION**

We have not tried to put a dress on the pig. Let us just say, in this case, the pig is or is not a pig **not** by the way it looks, but by how it is being used. When all the accusations, hearsay, innuendos, insults, false statements and other smoke has cleared, the fact remains that the company is in direct violation of its own tariff by not installing a meter. Aside from that, the entire argument from both sides of this issue hinges on the interpretation of Rule 1-R of the Company Tariff.

**The word “UNIT” or “LIVING UNIT” shall be used herein to define the premises or property of a single water consumer, whether or not that consumer is the Customer. It shall pertain to any building whether multi-tenant or single occupancy, residential or commercial, or owned or leased. Each mobile home in a mobile home park and each unit of a multi-tenant rental property are considered as separate units for each single family or firm occupying same as a residence or place of business.** (Emphasis added)

The interpretation of the phrase “are considered as separate units for **each** single family or firm occupying **same (*separate unit)*** as a residence or place of business”, (Emphasis added), is the key in deciding whether the (2) two levels of 310 Heavy Timber Dr. are considered separate units. There is no question the structure meets the definition of a “UNIT” **even if** it is considered to be multi-tenant as stated in the first sentence of this rule. The second sentence which states “…are considered separate units” can then be interpreted, if **each** is occupied by a single family or firm at the same time. If it cannot be interpreted as such, then why does the rule start out by saying a multi-tenant structure is a “unit” then go on to say it is “separate units”. To understand this rule there must by necessity be a difference. The only logical explanation is that it depends on how it is used thus the statement “..for each single family or firm occupying same”. Logically then, it would make sense why a multi- tenant building would be included with a mobile home in a mobile home park. They certainly do not look alike. What else could possibly explain the comparison other than, like each mobile home in a mobile home park, each unit of a multi-tenant building is considered a separate unit **“IF”** each is being occupied by a single family or firm as a residence or place of business. The separate levels of this structure have never been rented to (2) single families or firms at the same time nor will it ever be rented that way due to the soundproofing issue discussed previously.

Dated this 21st day of August, 2017

Respectfully submitted by:

Michael R. Brower

Complainant

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