

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 12th
day of August, 2009.

THE STAFF OF THE MISSOURI PUBLIC,
SERVICE COMMISSION

Complainant,

v.

COMMUNICATE TECHNOLOGICAL
SYSTEMS, L.L.C.

Respondents.

File No. TC-2009-0440

**ORDER OF DEFAULT AND AUTHORIZING GENERAL COUNSEL
TO SEEK PENALTIES**

Issue Date: August 12, 2009

Effective Date: August 22, 2009

Syllabus: The Missouri Public Service Commission concludes that Communicate Technological Systems, L.L.C. ("CTS") is in default for failure to answer Staff's complaint alleging failure to submit annual reports. The Commission further concludes that CTS is in violation of Section 386.570 for failing to comply with Commission orders. The Commission will authorize its General Counsel to seek penalties in Circuit Court.

Procedural History

On June 17, 2009,¹ the Commission's Staff filed a complaint against CTS. CTS was given notice and directed to answer no later than July 23.² As of the date of this

¹ All dates throughout this order refer to the year 2009 unless otherwise noted.

² The certified mail receipt was signed by CTS's registered agent on June 25th and returned to the Commission on June 29th.

order, CTS has filed no answer, nor has it responded to the Commission's July 24 show cause order.

"If the Respondent in a complaint case fails to file a timely answer, the complainant's averments may be deemed admitted and an order granting default entered."³ Therefore, the Commission grants a default on the complaint and deems CTS to admit the complaint's allegations, now findings of fact, as follows.

Findings of Fact

1. CTS is a Delaware L.L.C. and is listed by the Missouri Secretary of State as an active L.L.C. providing long distance telecommunications in Missouri.

2. In Case No. TA-99-537, the Commission granted CTS a certificate of service authority to provide intrastate interexchange telecommunications services in Missouri, effective June 11, 1999.

3. On January 19, 2007, January 15, 2008, and January 30, 2009 (for each of the prior calendar year's reporting requirement) the Executive Director of the Commission e-mailed or mailed to CTS a message notifying the Company of the requirement to file an annual report covering the calendar years 2006, 2007 and 2008, respectively.

4. Enclosed with each letter the Executive Director sent the appropriate form for the CTS to complete and return to the Commission along with instructions on how the CTS could complete its filing electronically.

5. This correspondence was sent to the address provided by CTS that was current in the Commission's Electronic Filing and Information System ("EFIS").

6. In addition to the correspondence sent in January for each year's annual report, on April 19, 2007, May 27, 2008, October 14, 2008, and May 4, 2009, respectively, the General Counsel of the Commission mailed CTS a letter notifying CTS that the Commission had not yet received its annual report for the appropriate year and CTS would be subject to legal action under state law for failure to submit an annual report on time.

7. CTS never filed its 2006, 2007 or 2008 annual reports.

8. CTS failed to respond to the Commission's June 23 order directing it file an answer to Staff's Complaint.

9. CTS failed to respond to the Commission's July 24 show cause order.

Conclusions of Law

Because CTS is a "telecommunications company"⁴ and "public utility"⁵ subject to the Commission's jurisdiction,⁶ the Commission may hear Staff's complaint.⁷ Section 386.390 authorizes Staff to bring this complaint, and "[i]n cases where a complainant alleges that a regulated utility is violating a law, its own tariff, or is otherwise engaged in unjust or unreasonable actions, the complainant has the burden of proof."⁸ In order to

³ Commission Rule 4 CSR 240-2.070(9), as authorized by §§ 386.410.1 and 536.067(2)(d). Sections are in the 2000 Revised Statutes of Missouri except as noted otherwise.

⁴ Section 386.020(52), RSMo Supp. 2008.

⁵ Section 386.020(43), RSMo Supp. 2008.

⁶ Section 386.250(2).

⁷ Section 386.390.1 and 4 CSR 240-2.070.

⁸ *David A. Turner and Michele R. Turner, Complainants, v. Warren County Water and Sewer Company, Respondent*, 9 Mo. P.S.C. 3d 548 (Mo. PSC 2001), citing to, *Margolis v. Union Electric Company*, 30 Mo. P.S.C. (N.S.) 517, 523 (1991); *Michaelson v. Wolf*, 261 S.W.2d 918, 924 (Mo. 1953); *Farnham v. Boone*, 431 S.W.2d 154 (Mo. 1968).

meet its burden of proof, Staff must convince the Commission it is “more likely than not” that CTS acted unlawfully when failing to file its annual reports.⁹

Section 392.210.1 requires every telecommunications company to file annual reports with the Commission, and Commission Rule 4 CSR 240-3.540(1) requires these reports be submitted before April 15 of each year. Section 392.210.1 provides that if any telecommunications company fails to make and file its annual report as required it 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. Additionally, Section 386.570 provides that any corporation or public utility failing to comply with any order of the Commission is subject to penalty, and each day’s continuing violation is a separate and distinct offense.¹⁰

CTS’s deemed admissions establish that Staff has met its burden of proving CTS has violated Section 392.210 and Commission Rule 4 CSR 240-3.540. CTS’s failure to comply with the Commission’s orders issued in this complaint action are separate violations of Section 386.570.

The Commission’s General Counsel, when authorized, must commence and prosecute to final judgment all action seeking penalties for violations of the Commission’s rules or seeking enforcement of the Commission’s power.¹¹ Having concluded that CTS has committed multiple violations of the Commission’s governing

⁹ The preponderance of the evidence standard is the minimum standard in civil disputes. *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 109 -111 (Mo. banc 1996); *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

¹⁰ Section 386.570.

¹¹ Section 386.600

statutes and the Commission's rules, the Commission shall authorize its General Counsel to bring any and all appropriate penalty actions in circuit court.

THE COMMISSION ORDERS THAT:

1. Communicate Technological Systems, L.L.C. ("CTS") is in default on the complaint.

2. The allegations made by the Staff of the Missouri Public Service Commission against CTS are deemed to be admitted by CTS.

3. CTS is in violation of Section 392.210 and Commission Rule 4 CSR 240-3.540 for failing to file the annual reports delineated in the body of this order.

4. CTS is in violation of Section 386.570 for failing to comply with the Commission's orders outlined in the body of this order.

5. The Missouri Public Service Commission authorizes its General Counsel to pursue any and all appropriate penalty actions in circuit court.

6. When prosecuting the authorized penalty actions, the General Counsel shall seek the maximum penalties allowed by law.

7. This order shall become effective on August 22, 2009.

8. This file shall close on August 23, 2009.

(S E A L)

BY THE COMMISSION



Steven C. Reed
Secretary

Clayton, Chm., Davis, Jarrett,
and Gunn, CC., concur.

Stearley, Senior Regulatory Law Judge