

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

The Office of the Public Counsel,	)	
An agency of the State of Missouri,	)	<b><u>Case No. WC-2015-0288</u></b>
COMPLAINANT	)	
	)	
v.	)	
	)	
The Tranquility Group, LLC d/b/a	)	
Branson Cedars Resort,	)	
Branson Cedars Resort Utility	)	<b><u>Case No. SC-2015-0289</u></b>
Company LLC,	)	
A Missouri water and sewer corporation,	)	
RESPONDENTS	)	

**THE OFFICE OF THE PUBLIC COUNSEL’S OBJECTION AND REQUEST FOR  
COMMISSION ORDER TO FILE INTERIM/EMERGENCY TARIFFS**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Objection and Request for Commission Order to File Interim/Emergency Tariffs, states as follows:

**Objection to Staff’s Motion**

1. On May 5, 2015, Public Counsel filed the above-stated complaints with the Missouri Public Service Commission (Commission) alleging that Respondents have charged and currently charge for water service and sewer service in violation of Missouri Statute.
2. On June 5, 2015, Respondents filed Answers to Public Counsel’s Complaints.
3. On June 29, 2015, the Staff of the Missouri Public Service Commission (Staff) filed a Motion to Hold Cases in Abeyance.
4. Public Counsel objects to Staff’s Motion and states that Staff is erroneous in its assertion that there is no need or public benefit by taking action in Public Counsel’s complaints.

5. Staff's totally premature request that the Commission refuse to order relief in this case and hold these complaints in abeyance pending the completion of the associated CCN case is unjust, unreasonable and contrary to the law.

6. Respondents admit in their Answer, and Staff is aware, that Respondents have provided and are continuing to provide water and sewer services without authorization from this Commission, and are both billing for those services and collecting payments despite having no Commission-approved tariffs.

7. Merely seeking a CCN does not provide Respondents the statutory authority to charge for water and sewer service.

Request for Commission Order to File Interim/Emergency Tariffs

8. Public Counsel notes that the CCN case has been pending since August 15, 2014, - almost an entire year. All the while, customers are being charged in violation of Missouri statute.

9. Public Counsel understands that financial stability is crucial to a utility's ability to provide safe and adequate service to its customers. Public Counsel believes an emergency situation exists in this case because financial stability through the charging of just and reasonable rates is statutorily prohibited unless those rates are contained in a Commission-approved tariff. As a result, Public Counsel believes that it is necessary for this utility to have Commission-approved tariffs in place as soon as possible.

10. Therefore, Public Counsel asks the Commission to issue an order to Respondents to file interim/emergency tariffs for its review and approval on an expedited basis pending the outcome of the utility's current CCN case, WA-2015-0049, when final tariffs for this utility are expected to be filed for review and approval by the Commission.

11. Public Counsel made a similar request for another water corporation in Case No. WC-2015-0290, which the Commission denied saying: “The Commission has the authority to grant interim rate relief, which is implied from the “file and suspend” statutes. However, this authority presupposes that the entity requesting an interim rate tariff possesses a certificate of convenience and necessity at the time the tariff becomes effective.”<sup>1</sup>

12. Public Counsel respectfully disagrees that the authority of the Commission to grant interim rate relief presupposes the requesting entity possesses a CCN at the time the tariff becomes effective.

13. Per Missouri statute, the possession of a CCN is not a condition precedent to Commission jurisdiction over a water or sewer corporation such as Respondents, nor is a CCN statutorily linked to the power of the Commission to approve interim/emergency tariffs.

14. Pursuant to Section 386.020(43), RSMo., water and sewer corporations are public utilities and are subject to the jurisdiction, control and regulation of this Commission.

15. Delineation as a public utility is defined by statute and does not require an affirmative action by the MO Public Service Commission. Missouri courts have held that entities act as public utilities when they sell water and/or sewer services to the public for compensation and have undertaken the responsibility to provide water and/or sewer services to all members of the public within their capability. *Hurricane Deck Holding Co. v. Public Service Commission*, 289 S.W.3d 260, 264-5 (Mo. App., W.D. 2009); *Osage Water Co. v. Miller County Water Authority, Inc.*, 950 S.W.2d 569, 573-5 (Mo. App., S.D. 1997). To do so means the entity has acted as a public utility as contemplated in Section 386.020, RSMo., and is automatically subject to the jurisdiction, control and regulation of this Commission per Section 386.020(43), RSMo., whether or not the entity possesses a CCN.

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<sup>1</sup> *Order Denying Motions*, Case No. WC-2015-0290, Electronic Filing Information System (EFIS) Item No. 14.

16. Section 393.170.2, RSMo., forbids a water or sewer corporation from acting as a public utility without prior authorization from the Commission in the form of a CCN. However, nothing in this statute or any other statute prevents the Commission from acting under its statutorily granted jurisdiction if a water or sewer corporation does act as a public utility without a CCN.

17. Thus, it is clear that it is the action of the water or sewer corporation as a public utility that creates Commission jurisdiction over a water or sewer corporation – not the existence of a CCN.

18. Section 393.140(11) provides that "[n]o corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedules filed and in effect at the time."

19. The Missouri Supreme Court has determined that the Commission has the power to deal with an emergency situation that could lead to a utility financial crisis or the impairment of safe and adequate service by approving just and reasonable interim rates in a Commission-approved tariff. *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561 (Mo. App. 1976).

20. As a result, the Commission has jurisdiction over Respondents because Respondents are a water corporation and a sewer corporation and have acted as a public utility. The jurisdiction of the Commission is not lessened in any way because Respondents do not possess a CCN.

21. A Commission determination that it is just and reasonable to utilize its jurisdiction to adopt interim/emergency tariffs is not a decision to pre-judge a CCN and such a determination by the Commission is not foreclosed by the CCN statute.

22. In fact, to adopt the position in this case which the Commission adopted in the WC-2015-0290 case, deprives the Commission of an important tool to protect consumers in situations like this and only exacerbates the likely damages a non-compliant utility will face.

23. The Commission has the power under its jurisdiction over Respondents to issue an order to Respondents to file interim/emergency tariffs for review and approval by the Commission, and it is just and reasonable for the Commission to exercise that power in this case.

**WHEREFORE**, Public Counsel submits its objection to Staff's Motion and requests the Commission issue an order to Respondents to file interim/emergency tariffs.

Respectfully submitted,

THE OFFICE OF THE PUBLIC COUNSEL

**/s/ Christina L. Baker**

By: \_\_\_\_\_

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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 9<sup>th</sup> day of July, 2015:

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