

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

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

Case No. WC-2015-

v.)

Case No. SC-2015-

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

THE OFFICE OF THE PUBLIC COUNSEL’S COMPLAINT

COMES NOW the Office of the Public Counsel and for its Complaint, pursuant to
Section 386.390, RSMo, states as follows:

INTRODUCTION AND STATEMENT OF JURISDICTION

1. Complainant, the Office of the Public Counsel, is an agency of the State of Missouri and pursuant to the statutory authority in Sections 386.700 and 386.710, RSMo, represents the public in all proceedings before the Missouri Public Service Commission and on appeal before the courts. The mailing and business address is the Office of the Public Counsel, PO Box 2230, Governor Office Building, 200 Madison Street, Suite 650, Jefferson City, Missouri, 65102. The Office of the Public Counsel is authorized to file complaints against public utilities for the violation, or claimed violation, of any provision of law, or of any rule or order or regulation, or decision of the Missouri Public Service Commission, including the unauthorized rates or charges of any water corporation or sewer corporation. Section 386.390, RSMo, and 4 CSR 240-2.070.

2. Respondents, The Tranquility Group, LLC d/b/a Branson Cedars Resort and/or Branson Cedars Resort Utility Company LLC, is a water corporation as defined by Section 386.020(59), RSMo., and a sewer corporation as defined by Section 386.020(49), RSMo.
3. The Tranquility Group, LLC d/b/a Branson Cedars Resort is a Missouri limited liability company duly organized and existing under the laws of the State of Missouri with its principal office and place of business located at 769 State Highway 86, Ridgedale, Missouri, 65739.
4. Branson Cedars Resort Utility Company LLC is a Missouri limited liability company duly organized and existing under the laws of the State of Missouri with its principal office and place of business located at 769 State Highway 86, Ridgedale, Missouri, 65739.
5. The Tranquility Group, LLC d/b/a Branson Cedars Resort purchased water and sewer utility assets from Guaranty Bank in 2010, and formed Branson Cedars Resort Utility Company LLC in 2013 to own, operate and manage the water and sewer systems as a regulated utility.
6. The Missouri Public Service Commission is a state administrative agency with the power and duty to regulate public utilities, including water and sewer corporations under Chapters 386 and 393, RSMo, and has jurisdiction in this complaint case to hear and decide the Office of the Public Counsel's allegations of unauthorized rates or charges of any water corporation or sewer corporation. Section 386.250, RSMo, relates to the jurisdiction of the Missouri Public Service Commission over water systems and sewer systems; Section 393.130, RSMo., relates to the requirement for just and reasonable charges for water services and sewer services; Section 393.140, RSMo, relates to the general powers of the Missouri Public Service Commission with respect to water services and sewer services; and Section 393.270, RSMo, provides for notice and hearing and the fixing of prices for water services and sewer services. The mailing address

of the Missouri Public Service Commission is PO Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri, 65102.

7. This Complaint is filed pursuant to Section 386.390, RSMo, and the Missouri Public Service Commission's rule regarding complaint cases, 4 CSR 240-2.070. Section 386.390.1, RSMo., authorizes the Missouri Public Service Commission to hear and determine this complaint:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission

Missouri Public Service Commission Rule 4 CSR 240-2.070 authorizes the Office of the Public Counsel to file this complaint:

(1) Any person or public utility who feels aggrieved by an alleged violation of any tariff, statute, rule, order, or decision within the commission's jurisdiction may file a complaint. A complaint may also be filed by the commission on its own motion, the commission staff through the staff counsel, or the Office of the Public Counsel.

8. Section 386.570.1, RSMo., provides for a penalty of no less than one hundred dollars (\$100.00) but no more than two thousand dollars (\$2,000.00), per offense, for "[a]ny corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission..." Each day that a continuing violation persists is to be counted as a separate offense. Section 386.570.2, RSMo. In the case of a corporate

respondent, the acts and omissions of its officers, agents and employees are deemed to be the acts and omissions of the corporation. Section 386.570.3, RSMo. All penalties are cumulative. Section 386.590, RSMo.

9. Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the Missouri Public Service Commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of for each offense. Section 386.570.1, RSMo.

COUNT I

ALLEGATIONS OF CHARGING FOR WATER AND SEWER SERVICES WITHOUT AN APPROVED TARIFF

10. The Office of the Public Counsel restates the allegations set forth in paragraphs 1 through and including 9 of its Complaint.

11. Based on its information, knowledge and belief, the Office of the Public Counsel states that Tranquility Group, LLC d/b/a Branson Cedars Resort and/or Branson Cedars Resort Utility Company LLC has charged and currently charges for water service and sewer service in the amount of \$60 per month for combined water and sewer service, and \$50 per month for water service for those commercial customers that do not have sewer service.¹

12. Section 386.020(60) defines "water system" to include "all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to

¹ See Case No. WA-2015-0049, Staff Recommendation, Appendix A - Official Case File Memorandum, pg. 6, Electronic Filing Information System (EFIS) Item No. 19.

facilitate the diversion, development, storage, supply, distribution, sale, furnishing or carriage of water for municipal, domestic or other beneficial use.”

13. Section 386.020(59), RSMo., defines “water corporation” to include “every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers . . . owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water[.]”

14. Pursuant to Section 386.250, RSMo., a water corporation is a public utility and is subject to the jurisdiction, control and regulation of the Missouri Public Service Commission.

15. Section 386.020(50), RSMo., defines "sewer system" to include “all pipes, pumps, canals, lagoons, plants, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate the collection, carriage, treatment and disposal of sewage for municipal, domestic or other beneficial or necessary purpose[.]”

16. Section 386.020(49), RSMo., defines “sewer corporation” to include “every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain, except that the term shall not include sewer systems with fewer than twenty-five outlets[.]”

17. Pursuant to Section 386.250, RSMo., a sewer corporation is a public utility and is subject to the jurisdiction, control and regulation of the Missouri Public Service Commission.

18. 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 water corporation and/or a sewer corporation and a public utility, as provided by Section 386.020, RSMo.

19. Section 393.130.1, RSMo., states “Every unjust or unreasonable charge made or demanded for gas, electricity, water, sewer or any such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited.”

20. Section 393.140(11), RSMo., also states “No 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.”

21. The filed rate doctrine precludes a public utility from collecting any rates other than those properly filed with the appropriate regulatory agency. *State ex rel. Associated Natural Gas Co. v. PSC*, 954 S.W.2d 520, 531 (Mo. Ct. App. 1997).

22. Missouri Public Service Commission Rule, 4 CSR 240-3.010 (28) states specifically:

Tariff means a document published by a public utility, and approved by the commission, that sets forth the services offered by that utility and the rates, terms and conditions for the use of those services.

23. Therefore, only a tariff which is approved by the Missouri Public Service Commission may set out the lawful rates for a public utility. Any charge made or demanded by a public

utility for gas, electricity, water, sewer or any such service, without a Missouri Public Service Commission approved tariff is statutorily prohibited.

24. Neither The Tranquility Group, LLC d/b/a Branson Cedars Resort nor Branson Cedars Resort Utility Company LLC have tariffs approved by the Missouri Public Service Commission for rates and charges relating to water service or sewer service.

25. As a result, The Tranquility Group, LLC d/b/a Branson Cedars Resort and/or Branson Cedars Resort Utility Company LLC has violated, and currently is violating, Missouri statute.

WHEREFORE, the Office of the Public Counsel submits its Complaint, pursuant to Section 386.390, RSMo, and Missouri Public Service Commission Rule 4 CSR 240-2.070, and prays that:

26. the Missouri Public Service Commission issue an order to provide the statutory notice of the filing of this Complaint and, thereafter, hold an evidentiary hearing on this Complaint in accordance with Missouri statutes and Missouri Public Service Commission Rules, and;

27. the Missouri Public Service Commission issue an order in favor of the Office of the Public Counsel and against The Tranquility Group, LLC d/b/a Branson Cedars Resort and/or Branson Cedars Resort Utility Company LLC on this Complaint, and;

28. the Missouri Public Service Commission make findings of fact accompanied by conclusions of law that the current charges for water service and sewer service of The Tranquility Group, LLC d/b/a Branson Cedars Resort and/or Branson Cedars Resort Utility Company LLC's are unjust and unreasonable in that these charges are prohibited by Missouri statute, and;

29. the Missouri Public Service Commission issue an order directing The Tranquility Group, LLC d/b/a Branson Cedars Resort and/or Branson Cedars Resort Utility Company LLC to refund any and all unlawful charges for water service and sewer service, and;
30. the Missouri Public Service Commission issue an order authorizing its General Counsel to seek in Circuit Court any and all penalties allowed by law; and;
31. the Missouri Public Service Commission grant such further and additional relief as it deems appropriate and necessary.

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 5th day of May, 2015:

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