

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
v.)	<u>Case No. WC-2015-0330</u>
)	
Fawn Lake Water Corp. and Rachel Hackman,)	
)	
Respondents)	

STAFF RENEWED MOTION FOR DEFAULT DETERMINATION

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and for its *Renewed Motion for Default Determination* pursuant to Commission Rule 4 CSR 240-2.070(10), states as follows:

1. Respondents own and operate a “water corporation” as defined by Section 386.020(59), RSMo, and a “public utility” as defined by Section 386.020(43), RSMo, and thus is subject to the jurisdiction of this Commission pursuant to Section 386.250(3), RSMo.

2. Section 386.390.1, RSMo authorizes the Commission to entertain a complaint “setting forth any act or thing done or omitted to be done by any...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.”

Procedural History

3. On June 11, 2015, Staff filed its *Complaint*,¹ asserting that Respondents Fawn Lake Water Corp. and its owner and registered agent, Ms. Rachel Hackman, own and operate an unauthorized water corporation, in violation of § 393.170.2, RSMo.

4. On June 12, 2015, the Commission issued its *Notice of Complaint* in Case No. WC-2015-0330, directing Respondents to answer by July 13, 2015.

5. On June 23, 2015, the Commission's Data Center received return receipts showing successful delivery of its *Notice of Complaint* in Case No. WC-2015-0330 to Rachel Hackman as Registered Agent for Respondent Fawn Lake Water Corp. and to Rachel Hackman as an individual respondent. Rachel Hackman signed the return receipts.²

6. Respondents did not file an answer by July 13, 2015.

7. On September 2, 2015, Staff filed a motion for default determination due to Respondents' failure to answer the *Complaint*.

8. On September 16, 2015, the Commission issued its *Order Granting Motion for Default Determination*. As provided for by regulation, the *Order* allowed Respondents until September 30, 2015 to set aside the *Order*.

9. On September 30, 2015, counsel retained by Respondents filed a *Motion to Set Aside the Default Judgment and to File Answer to Complainants' Petitions Out Of Time*.

¹ Staff notes that OPC filed a similar complaint against Respondents on June 19, 2016, and that a *Motion to Consolidate* was subsequently filed and denied. Therefore, Staff's reference to the *Complaint* herein is only to Staff's *Complaint*, and not the pending OPC action.

² See, EFIS Items 3, 4.

10. Staff agreed to the Respondents' counsel's motion. Accordingly, on October 8, 2015, the Commission set aside the *Order Granting Motion for Default Determination*.

11. Generally, when a default determination is set aside, the movants file an answer. Respondents, however, did not file an Answer to the *Complaint*, but filed a *Motion to Stay Cases*. Staff did not object to that *Motion*.

12. The *Motion to Stay* was granted on November 3, 2015.

13. On November 4, 2015, the Missouri Secretary of State formally administratively dissolved Respondent Fawn Lake Water Corp. for failing to file necessary registration documentation.

14. Through various *Status Reports* filed with the Commission, Staff had the understanding that Respondents were either attempting to sell the unauthorized water corporation to an authorized public utility, or reorganize their unauthorized water corporation into an entity falling outside of Commission jurisdiction.³ Staff hoped to resolve the *Complaint* amicably by providing Respondents ample time and opportunity to complete a transition or sale.

15. In order to encourage parties to resolve the case after nearly a year of inaction, on July 27, 2016, the Commission ordered Respondents to file an answer no later than September 26, 2016.

16. On September 26, 2016, counsel for Respondents requested to withdraw from the action. The request was granted on September 27, 2016.

17. Due to concerns about clear communication, Staff sought for Respondents an extended opportunity to file a missing answer to the *Complaint*.

³ See, *Status Reports*. EFIS Items, 27, 28, 30, 32, 33, 35, and 39.

18. On November 9, 2016, the Commission sent its *Order Sending Final Notice and Setting Time for Filing Answer* to known addresses previously used by Respondents. The *Order Sending Final Notice* provided a deadline to Respondents of December 7, 2016 by which to file an answer to the *Complaint*.

19. On January 5, 2017, Staff filed a *Motion for Default Determination*

20. Due to various concerns regarding adequate service of the Commission's orders, the Commission directed the use of a special process server on May 19, 2017. On June 21, 2017, Staff filed a *Notice of Return Receipt* indicating service was achieved both through personal service and through signed mail receipts.

Renewed Motion for Default

21. More than 30 days have elapsed since the date the Respondents received service,⁴ but at the time of this filing, Respondents have neither filed an answer, nor filed any other type of responsive pleading. Respondents continue to charge for service.

22. Staff remains concerned about the safety and adequacy of service, as well as the system's continued operation without the protections for the company or the customers afforded by regulation.

23. Commission Rule 4 CSR 240-2.070(10) provides, "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."

24. Section 386.600, RSMo provides, "an action to recover a penalty...under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall

⁴ The *Order Directing Use of a Special Process Server*, filed on May 19, 2017, granted Respondents 30 days from the date of service in which to file an *Answer*.

be commenced and prosecuted to final judgment by the general counsel to the commission.”

25. The original “Wherefore” clauses of Staff’s *Complaint* sought an order from the Commission to “authorize its General Counsel to seek in Circuit Court the penalties allowed by law; *and grant such other and further relief as is just in the circumstances.*” Emphasis added.

26. Staff’s January 5, 2017 *Motion for Default Determination* suggested that in addition to directing the General Counsel to seek civil penalties for the ongoing violations, that “other and further relief as is just in the circumstances” in this matter should include injunctive relief pursuant to § 386.360, RSMo., to (1) prohibit Respondents from any operations as a water corporation; or alternatively, and (2) prohibit Respondents from receiving any further remuneration from the customers, as Respondents continued to charge for service while operating unlawfully as a water corporation, without a certificate of convenience and necessity from the Commission.

27. Staff renews its request for this “other and further relief as is just in the circumstances.”

WHEREFORE, the Staff prays that the Commission will grant default determination of its Complaint filed herein and enter its order (1) finding that the Respondents own and operate unauthorized water corporation in violation of § 393.170.2 RSMo, and (2) authorizing the General Counsel’s Office to bring an action for civil penalties and injunctive relief against Respondents in an appropriate circuit

court as provided in Sections 386.600, 393.140(6), and 386.570 RSMo; and granting such other and further relief as the Commission deems just.

Respectfully submitted,

/s/ Marcella L. Forck

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was hand delivered by hand, U.S. Mail, or served electronically on this 14th day of September, 2017, to the parties of record.

/s/ Marcella L. Forck