

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office  
in Jefferson City on the 19<sup>th</sup>  
day of May, 2016.

The Office of the Public Counsel,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
The Tranquility Group, LLC, d/b/a Branson	)	
Cedars Resort, Branson Cedars Resort	)	
Utility Company, LLC,	)	
	)	
Respondents.	)	

**File Nos. WC-2015-0288  
SC-2015-0289**

**ORDER GRANTING MOTION TO DISMISS**

Issue Date: May 19, 2016

Effective Date: June 18, 2016

**Procedural History**

On May 5, 2015, the Office of the Public Counsel ("OPC") filed the above-styled complaint. That complaint alleged that The Tranquility Group, LLC, d/b/a Branson Cedars Resort, Branson Cedars Resort Utility Company, LLC ("Respondents") provided and charged for water and sewer services without an approved tariff.

OPC asked the Commission to order its Staff to pursue penalties. OPC also asked the Commission to order Respondents to refund the money Respondents collected without an approved tariff. Respondents answered on June 5, 2015, generally denying all of OPC's allegations, and raising several equitable and constitutional affirmative defenses.

The Staff of the Commission responded on May 19, 2015. Staff asked the Commission to consolidate these cases with other similar cases.<sup>1</sup> In particular, Staff stated that all of those cases involve small water and sewer companies operating without certificates that also have certificate cases pending before the Commission.<sup>2</sup>

Staff further stated that Respondents' pending certificate cases would moot OPC's complaint. Also, Staff stated that it would not seek penalties because such penalties might ultimately drive Respondents out of business, to no one's benefit. Finally, Staff argued that the Commission has no authority to order refunds.

Staff filed a motion to hold the cases in abeyance on June 16, 2015. OPC objected to Staff's May 19, 2015 response and to Staff's June 16, 2015 motion.

On March 9, 2016, Staff reiterated its position in a motion to dismiss. OPC objected on March 17, 2016.

### **Decision**

The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto.<sup>3</sup> The Commission has no authority to require reparation or refund; cannot declare or enforce

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<sup>1</sup> Commission File Nos. WC-2015-0290, WC-2015-0291, SC-2015-0292. Those cases were completed on a different procedural schedule and are now closed. Thus, Staff's motion to consolidate is denied as moot.

<sup>2</sup> The Commission granted water and sewer certificates to Respondents in WA-2015-0049 on August 26, 2015.

<sup>3</sup> See, e.g., *State ex. rel. City of St. Louis v. Missouri Public Service Comm'n*, 73 S.W.2d 393, 399 (Mo. banc 1934); *State ex. rel. Kansas City Transit, Inc. v. Public Service Comm'n*, 406 S.W.2d 5, 8 (Mo. 1966).

any principle of law or equity; and as a result, cannot determine damages.<sup>4</sup> The Commission also cannot grant equitable relief.<sup>5</sup>

The Commission has no authority to order refunds. And the Commission sees no benefit in ordering penalties against a utility that recently obtained a certificate, especially when those penalties might put the utility out of business. Thus, the Commission will dismiss OPC's complaint.

**THE COMMISSION ORDERS THAT:**

1. The complaint is dismissed.
2. All other requests for relief not otherwise granted are denied.
3. This order shall become effective on June 18, 2016.



**BY THE COMMISSION**

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Hall, Chm., Stoll, Kenney,  
Rupp, and Coleman, CC., concur.

Pridgin, Deputy Chief Regulatory Law Judge

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<sup>4</sup> See, e.g., *Straube v. Bowling Green Gas Co.*, 227 S.W.2d 666,668-669 (Mo. 1950). See also *In re Request for an Increase in Sewer Operating Revenues of Emerald Pointe Utility Co.* 438 S.W.3d 482, 490 fn. 8 (Mo. App. W.D. 2014) (in which the Court held that even if OPC had proven its complaint case, the Commission would not have had authority to order a refund.)

<sup>5</sup> See, e.g., *State ex. rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 695 (Mo. App. 2003); *American Petroleum Exchange v. Public Service Comm'n*, 172 S.W.2d 952, 955 (Mo. 1943).