

**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.)	

The Office of the Public Counsel, An agency of the State of Missouri,)	
)	
)	
Complainant,)	
)	
v.)	<u>Case No. WC-2015-0340</u>
)	
Fawn Lake Water Corp.,)	
Rachel Hackman,)	
A Missouri Water Corporation,)	
)	
Respondents.)	
)	
CERTIFIED MAIL)	

**SECOND ORDER SENDING FINAL NOTICE
AND SETTING TIME FOR FILING ANSWER**

Issue Date: March 1, 2017

Effective Date: March 1, 2017

The Commission has attempted to serve this Complaint on several occasions. On November 9, 2016, the Commission issued an Order Sending Final Notice and Setting Time for Filing Answer. Additional mailing issues occurred with that notice. On February 23, 2017, the Staff of the Missouri Public Service Commission (Staff) filed a

motion notifying the Commission of an error in the address of the latest attempt to mail the notice. Thus, the Commission will resend the notice and set a date for an answer to the complaint. Failure to answer the complaint may result in a default order being issued.

THE COMMISSION ORDERS THAT:

1. The Commission's Data Center shall send a copy of the complaints originally beginning these cases by certified mail to:

Rachel Hackman
c/o Fawn Lake Water Corporation
3910 Old Highway 94 South, Suite 100
Saint Charles, Missouri 63304

2. The respondents, Rachel Hackman and Fawn Lake Water Corporation have until March 30, 2017, in which to file an answer in each of the above-captioned files.

3. This order shall be effective when issued.



BY THE COMMISSION

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

Morris L. Woodruff
Secretary

Nancy Dippell, Senior Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 1st day of March, 2016.

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

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

v.)

Case No. WC-2015-

)
Fawn Lake Water Corp.,)
Rachel Hackman,)
A Missouri water 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. Section 386.390, RSMo, and 4 CSR 240-2.070.
2. Respondents, Fawn Lake Water Corp., and/or Rachel Hackman, is a water corporation as defined by Section 386.020(59), RSMo.

3. Respondent Fawn Lake Water Corp. is a Missouri general business corporation in good standing, formed on March 4, 2015. Its registered agent and incorporator is Rachel Hackman, 824 Ridgestop Circle, Saint Charles, Missouri, 63304.
4. Respondent Rachel Hackman is a natural person residing at 824 Ridgestop Circle, Saint Charles, Missouri, 63304. On information and belief, she is the owner of Respondent Fawn Lake Water Corp.
5. According to the records of the Missouri Secretary of State, the current Fawn Lake Water Corp. is the third and latest entity named Fawn Lake Water Corp. Its immediate predecessor was a Missouri general business corporation formed on December 4, 2013, and its registered agent was Rachel Hackman, 201 Hawkesbury Drive, St. Louis, Missouri, 63121. Its incorporators were Rachel Hackman and Sharon Upchurch. It was terminated voluntarily on October 3, 2014, upon the filing of Articles of Termination. The original Fawn Lake Water Corp. was a Missouri general business corporation created on July 3, 1990. Its final registered agent was Rachel Hackman, 1234 Raintree Pass, O'Fallon, Missouri, 63366, and its incorporator was Jack J. Bachmann. It was dissolved on August 27, 2008, for failure to file a registration report.
6. The Missouri Public Service Commission is a state administrative agency with the power and duty to regulate public utilities, including water 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. Section 386.250, RSMo, relates to the jurisdiction of the Missouri Public Service Commission over water systems; Section 393.130, RSMo., relates to the requirement for just and reasonable charges for water services; Section 393.140, RSMo, relates to the general powers of the Missouri Public Service Commission with respect to water services; and Section 393.270, RSMo, provides for

notice and hearing and the fixing of prices for water 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 SERVICES WITHOUT A CERTIFICATE OF CONVENIENCE AND NECESSITY OR 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 Fawn Lake Water Corp., and/or Rachel Hackman, has charged and currently charges for water service in the amount of at least \$40 to \$45 for the first 3,000 gallons of water usage \$3.00 per 1,000 gallons of water use thereafter, late fees in the amount of \$5.00 with a potential additional amount of \$10.00, and reconnection fees in the amount of \$50.00.¹

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. WC-2015-0330, Staff Complaint including Exhibit A, a copy of water bills received by a customer from Respondents, Electronic Filing Information System (EFIS) Item No. 1.

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. Missouri courts have held that entities act as public utilities when they sell water services to the public for compensation and have undertaken the responsibility to provide water 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 a public utility, as provided by Section 386.020, RSMo.

16. Section 393.170.2, RSMo., states “[n]o such corporation shall exercise any right or privilege under any franchise hereafter granted, or under an franchise heretofore granted but not heretofore actually exercised . . . without first having obtained the permission and approval of the commission.”

17. 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.”

18. 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."

19. 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).

20. 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.

21. 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.

22. Neither Fawn Lake Water Corp., nor Rachel Hackman, have or have ever sought a Certificate of Convenience and Necessity from the Missouri Public Service Commission to authorize it to act as a water corporation and a public utility.

23. Neither Fawn Lake Water Corp., nor Rachel Hackman have tariffs approved by the Missouri Public Service Commission for rates and charges relating to water service.

24. As a result, Fawn Lake Water Corp., and/or Rachel Hackman, 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:

25. 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;

26. the Missouri Public Service Commission issue an order in favor of the Office of the Public Counsel and against Fawn Lake Water Corp., and/or Rachel Hackman on this Complaint, and;

27. the Missouri Public Service Commission make findings of fact accompanied by conclusions of law that the current charges for water service of Fawn Lake Water Corp., and/or Rachel Hackman are unjust and unreasonable in that these charges are prohibited by Missouri statute, and;

28. the Missouri Public Service Commission issue an order directing Fawn Lake Water Corp., and/or Rachel Hackman to immediately apply for and obtain a Certificate of Convenience and Necessity, and;

29. the Missouri Public Service Commission issue an order directing Fawn Lake Water Corp., and/or Rachel Hackman to refund any and all unlawful charges for water 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: _____
Christina L. Baker (#58303)
Deputy Public Counsel
P O Box 2230
Jefferson City, MO 65102
(573) 751-5565
(573) 751-5562 FAX
christina.baker@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 19th day of June, 2015:

General Counsel Office
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounselservice@psc.mo.gov

Kevin Thompson
General Counsel Office
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Kevin.Thompson@psc.mo.gov

Fawn Lake Water Corp.
P.O. Box 1563
O'Fallon, MO 63366

Rachel Hackman
824 Ridgestop Circle
Saint Charles, MO 63304

/s/ Christina L. Baker

[illegible]

3. Respondent Fawn Lake Water Corp. is a Missouri General Business corporation in good standing, formed on March 4, 2015. Its registered agent and incorporator is Rachel Hackman, 824 Ridgestop Circle, Saint Charles, MO 63304. According to the records of the Missouri Secretary of State, this is the third and latest

corporation named Fawn Lake Water Corp. Its immediate predecessor was a Missouri general business corporation formed on December 4, 2013; its registered agent was Rachel Hackman, 201 Hawkesbury Drive, St. Louis, MO 63121. Its incorporators were Rachel Hackman and Sharon Upchurch. It was terminated voluntarily on October 3, 2014, upon the filing of Articles of Termination. The original Fawn Lake Water Corp. was a Missouri general business corporation created on July 3, 1990. Its incorporator was Jack J. Bachmann and its final registered agent was Rachel Hackman, 1234 Raintree Pass, O'Fallon, MO 63366. It was dissolved on August 27, 2008, for failure to file a registration report.

4. Respondent Rachel Hackmann is a natural person residing at 824 Ridgestop Circle, Saint Charles, MO 63304. On information and belief, she is the owner of Respondent Fawn Lake Water Corp.

Jurisdiction

5. On information and belief, Respondents are engaged in the business of selling potable water for gain using property and facilities that they own, operate and control. Respondents are thus a water corporation pursuant to § 386.020(59), RSMo., and a public utility pursuant to § 386.020(43), RSMo.

6. As a water corporation and a public utility, Respondents are subject to the jurisdiction, regulation and control of this Commission. Section 386.020(43), RSMo., and Chapters 386 and 393, RSMo., the *Public Service Commission Law*.

7. Section 386.390.1, RSMo., authorizes the Commission to hear and determine complaints:

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

8. By its Rule 4 CSR 240-2;.070(1), the Commission has authorized the Staff Counsel's Office to bring complaints on behalf of the Staff: "A complaint may also be filed by . . . the commission staff through the staff counsel"

9. Section 386.570.1, RSMo., provides for a penalty between \$100.00 to \$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"

10. Pursuant to § 386.570.2, RSMo., each day that a continuing violation persists is counted as a separate offense.

11. Section 386.570.3, RSMo., provides that, 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 386.590, RSMo., provides that all penalties are cumulative.

Count I

Unauthorized Operation of a Public Utility

12. On information and belief, Staff states that Respondents are providing potable water for gain, using facilities that they own, operate and control, to approximately 90 customers near Wright City in Warren County, Missouri. Attached as **Exhibit A**, and incorporated herein by reference, is a copy of water bills received by a customer from Respondents.

13. Missouri courts have held that entities act as water corporations and public utilities when they sell water to the public for compensation and have undertaken the responsibility to provide water service to all members of the public within their capability.¹

14. Pursuant to § 393.170.2, RSMo., “[n]o such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised . . . without first having obtained the permission and approval of the commission.”

15. Respondents do not have and have never sought authorization from this Commission to act as a water corporation and a public utility.

16. By their conduct described in Paragraph 12, above, and in Paragraph 15, above, Respondents have violated § 393.170.2, RSMo., by acting as water corporations and public utilities without authorization from this Commission in the form of a Certificate of Convenience and Necessity.

¹ *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).

WHEREFORE, Staff prays that the Commission will give due notice to the Respondents and, after hearing, determine that Respondents have violated Missouri statutes as set out above, and thereupon 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.

Count II

Failure to Provide Safe and Adequate Service and Violation of Commission Regulations

17. Staff repeats the allegations contained in Paragraphs 1 through 16, above, as though the same were set out at length herein.

18. Conversations with the Missouri Department of Natural Resources (“DNR”) and with customers indicate that Respondents have many service quality issues, including possibly contaminated water.

19. Section 393.130.1, RSMo., requires every water corporation to “furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.”

20. By their conduct described in Paragraph 18, above, Respondents have violated § 393.130.1, RSMo., by failing to provide safe and adequate service.

WHEREFORE, Staff prays that the Commission will give due notice to the Respondents and, after hearing, determine that Respondents have violated Missouri statutes as set out above, and thereupon 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.

Count III

Protection of the Public Health:

21. Staff repeats the allegations contained in Paragraphs 1 through 20, above, as though the same were set out at length herein.

22. Section 386.310.1, RSMo., authorizes the Commission “after a hearing had upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise, to require every . . . corporation . . . and public utility to maintain and operate its line, plant, system, equipment, apparatus, and premises in such manner as to promote and safeguard the health and safety of its employees, customers, and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety and other devices or appliances, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employees, customers or the public may demand”

23. The circumstances set out in Count II, being Paragraphs 17 through 20, above, namely, the possibility of contaminated water, constitute a threat to the public health and safety.

WHEREFORE, Staff prays that the Commission will give due notice to the Respondents and, after hearing, order that the Respondents forthwith make necessary and desirable improvements to the system in order to safeguard the public health and safety; and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ Kevin A. Thompson

Kevin A. Thompson

Missouri Bar Number 36288

Chief Staff Counsel

Missouri Public Service Commission

P.O. Box 360

Jefferson City, MO 65102

573-751-6514 (Voice)

573-526-6969 (Fax)

kevin.thompson@psc.mo.gov

Attorney for the Staff of the

Missouri Public Service Commission

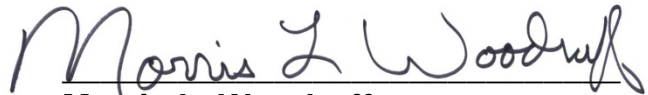
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 1st day of March 2017.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

March 1, 2017

File/Case No. WC-2015-0330 and WC-2015-0340

**Missouri Public Service
Commission**

Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel

Hampton Williams
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opc@psc.mo.gov

Fawn Lake Water Corp.

Legal Department
P.O. Box 1563
O'Fallon, MO 63366

**Missouri Public Service
Commission**

Kevin Thompson
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
kevin.thompson@psc.mo.gov

Rachel Hackman

Rachel Hackman
824 Ridgestop Circle
Saint Charles, MO 63304

Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.