

In the Matter of:

A REQUEST FOR A RATE INCREASE BY BRANSON CEDARS RESORT UTILITY CO., LLC

June 29, 2018



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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Pre-Hearing Conference

June 29, 2018

Jefferson City, Missouri

Volume 1

In The Matter Of A Request For A)
Rate Increase by Branson Cedars) File No. WR-2018-0356
Resort Utility Company, LLC)

NANCY DIPPELL, Presiding
SENIOR REGULATORY LAW JUDGE

REPORTED BY:
Beverly Jean Bentch, CCR No. 640
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P R O C E E D I N G S

JUDGE DIPPELL: Let's go ahead then and go on the record. My name is Nancy Dippell. I'm the Regulatory Law Judge assigned to this case. This is Case No. WR-2018-0356. This is In the Matter of a Request for a Rate Increase by Branson Cedars Resort Utility Company, LLC.

We came here today because the parties wanted to meet and discuss the procedure going forward in this case. I'm going to begin by asking the attorneys to make their entries of appearance. We'll start with Staff?

MR. WESTEN: Thank you, Judge. My name is Jacob Westen. I am Deputy Counsel for the staff of the Commission. My contact information has already been provided to the court reporter.

JUDGE DIPPELL: Office of Public Counsel?

MR. SMITH: My name is Ryan Smith with the Office of the Public Counsel. I'm Senior Counsel here. I'm joined with --

MR. HALL: Caleb Hall, Associate Counsel with the Office of the Public Counsel.

MR. SMITH: Both of our information has been provided.

JUDGE DIPPELL: And Branson Cedars Resort?
Page

1 MR. POPPEN: Judd Poppen over at Neale &
2 Newman in Springfield representing Branson Cedars Resort
3 Utilities. I also have with Michael Hyams and Patsy
4 O'Keefe.

5 JUDGE DIPPELL: Okay. So when we usually have
6 formal proceedings on the record, usually just the
7 attorneys speak on the record. However, in this case,
8 Mr. Poppen, I didn't know if you wanted to continue that
9 or if you were wanting Mr. Hyams to speak freely or how
10 you wanted to handle that.

11 MR. POPPEN: Your Honor, and I appreciate
12 that, I certainly do not have a problem with Mr. Hyams
13 doing most of the talking. He's been doing the heavy
14 lifting. I've not been receiving notification but with
15 some of the recent goings on he asked that I get a
16 little more involved. He probably has a lot more
17 knowledge as to where we sit than I do. Michael will be
18 fine speaking if he needs to, if that's okay with you.

19 JUDGE DIPPELL: That's perfectly fine. So I
20 will ask just for the ease of the court reporter if you
21 are on the phone and you are speaking, if you could just
22 identify yourself. That way she knows who's speaking.
23 And since, Mr. Smith, you were the original person that
24 asked that we get together, I'm going to ask you to kind
25 of start things off if you don't mind.

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1 MR. SMITH: Sure. I asked that we get
2 together because there was a filing to all the parties
3 -- well, I shouldn't call it a filing. There was a
4 letter sent to the Judge which cc'd the parties which
5 could be interpreted as sort of an amended request. And
6 I thought we might get together to talk about what that
7 filing consisted of, what the consequences of that
8 filing are, what the status -- Well, as part of the
9 consequences of that filing, I think it could affect the
10 procedural schedule. So that's why I sent an e-mail out
11 to all the parties requesting this. And I think OPC's
12 position would be to treat it as an amended filing and
13 to have it filed, you know, in the case.

14 What OPC was not aware of, we did get some
15 communications from the utility through Mr. Poppen
16 recently, like I think maybe yesterday or the day before
17 is whether notice has gone out. June 20 was the target
18 day 20, which is the day the utility is supposed to send
19 notice. And I've seen some communications but it's
20 still kind of unclear to me what actually went out, you
21 know, whether that deadline was met and if not, I think
22 OPC would be open to getting the right notice out and
23 also I understand that there could be a local public
24 hearing already scheduled, which OPC was not aware of
25 until yesterday.

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1 So I guess I'd like some clarification on
2 that, and I'm not sure maybe who the best party is.
3 Maybe, Mr. Poppen, do you want to step in?

4 JUDGE DIPPELL: Let me jump in. This is Judge
5 Dippell again. Did someone else join us on the phone?
6 Okay. Let me jump in there really quickly and tell you
7 a couple of additional items. So the rule on small
8 company -- Did someone join us or did someone leave us?
9 No one is claiming credit. I keep hearing noises.

10 So the rule for small company rate cases such
11 as this actually changed at the end of May.

12 MR. WESTEN: Yes.

13 JUDGE DIPPELL: And so this case was filed
14 under the new rule, which has a few different deadlines,
15 and so forth, especially with regard to the local public
16 hearing. So when I received this case under the new
17 rule which says that the local public hearing will be
18 held by the 60th day, I immediately had my assistant
19 start figuring out and she I know was in communication
20 with Mr. Hyams about setting a date for a local public
21 hearing.

22 So we received -- Although that's all still
23 tentative.

24 MR. SMITH: Okay.

25 JUDGE DIPPELL: So with that being said, until
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1 -- I assumed that the notice of the local public hearing
2 would also go out with the notice that's contemplated
3 under the rule.

4 MR. SMITH: And that was OPC's hope. However,
5 we received a communication suggesting that notice had
6 gone out with a July 27 6:00 p.m. date. Do you know if
7 that has been scheduled, Judge?

8 JUDGE DIPPELL: I don't know. So then let me
9 ask, Mr. Hyams, has any customer notice gone out at this
10 point?

11 MR. HYAMS: Yes. This is Michael Hyams with
12 Branson Cedars Resort. And again, I apologize to
13 everyone on this call if I have misconstrued dates or
14 timelines or not hit certain deadlines and stuff. I've
15 been hit with so many different e-mails from so many
16 different parties. I apologize if I didn't keep
17 everything straight.

18 Here's what we did do. Initially we got a
19 notification of a draft that was specific to our
20 request, and in that draft unfortunately the way it was
21 worded it looked as though we were asking, which we are
22 stating the water portion of a \$78,000 increase and a
23 sewer portion of a \$26,000 increase. But the way the
24 notice read, it appeared that we were asking for that as
25 an annual increase which would have raised the

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1 consumers' rates that are our clients by over \$137 per
2 month.

3 So that actual notice I did not feel
4 comfortable sending out because our customers, and again
5 we are really a very small utility, we only have 11
6 customers. And they would have literally had a
7 conniption had they seen that their rates were going up
8 by \$137 a month. So when I got the notification last
9 week that we needed to pick a date sometime between the
10 week of the 23rd through the 27th, I think is what it
11 was, Monday through Friday, I selected the Friday date
12 because it would be easier for our clients. All of them
13 own property at our resort but none of them live in
14 Missouri. So it would make it easier for them to come
15 into town.

16 So we picked a date, sent out the notice
17 stating July 27, a Friday, at 6:00 p.m. So that was
18 asked in the notification that I got to do either do it
19 at noon or sometime either 5:00 or 6:00 p.m. 6:00 p.m.
20 was the time that made it easiest for the people to get
21 into town, because a lot of them come from Oklahoma,
22 from Texas, Louisiana, some come from Kansas, and we did
23 send out a notice to all of our owners, which they have
24 replied they are in receipt of it. I asked them
25 specifically if they could attend themselves, if not

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1 could they send a person on their behalf. And if
2 between now and then they wanted additional information
3 as to what this was about, because I did refer to the
4 fact that it is about a possible rate increase and also
5 about the potential sale of our utility to Liberty, the
6 Canadian conglomerate that is buying our actual utility
7 from us and we are in contract negotiations with them
8 presently and hope to close sometime this year.

9 So a notice has been sent. It has been
10 received by all parties. As to who's attending, I can't
11 tell you because I've not gotten that confirmation yet.
12 On our end, we have at least let everybody know of a
13 date, July 27, of a time 6:00 p.m., and the location is
14 actually at our resort because we have multiple meeting
15 facilities that can handle it.

16 JUDGE DIPPELL: Okay. And then have staff and
17 OPC now received that notice?

18 MR. HYAMS: I sent a copy of it to Mr. Smith
19 yesterday.

20 MR. SMITH: Right.

21 MR. WESTEN: This is Jacob Westen. Yes, Mr.
22 Hyams, we received what you forwarded via e-mail.
23 Unfortunately the notice that's contemplated by the
24 regulation that we're following, our procedure requires
25 that whatever notice goes out both about the LPH and the
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1 pending rate case has to be approved by staff and OPC
2 both. That's the reason why we sent you the draft back
3 in the beginning of June that we did.

4 We did not receive communication from you that
5 the numbers were inaccurate, and I actually have an
6 e-mail from Mr. Barnes, who is our staff case
7 coordinator, asking you exactly what the rate increase
8 that you were requesting is so he can make sure the
9 numbers in the notice draft that we provided were
10 accurate. He never received a reply from you about
11 that. What he received from you was the increase is in
12 addition to the existing amount. So he took that to
13 mean that the numbers that you were asking were a total
14 increase and not what you're describing today on the
15 phone.

16 MR. HYAMS: Yeah, I think -- I'm sorry.

17 MR. WESTEN: My suggestion or recommendation
18 would be that if that notice was inaccurate that you
19 needed to reach out to Mr. Barnes and OPC and identify
20 what the numbers should have been so we could have sent
21 the notice or that so that you could have sent a correct
22 notice.

23 JUDGE DIPPELL: So this is Judge Dippell
24 again. So are you saying, Mr. Westen, that the notice
25 that went out was incorrect?

1 MR. WESTEN: The notice that we have a copy of
2 that Mr. Hyams sent is his e-mail as he's described, but
3 it does not -- it is not the draft notice of the local
4 public hearing of a rate case that Office of Public
5 Counsel and staff have prepared and reviewed and
6 provided to Branson Cedars. I don't necessarily --

7 MR. HYAMS: Your Honor --

8 JUDGE DIPPELL: Hang on. Let Mr. Westen
9 finish real quick.

10 MR. WESTEN: I don't necessarily have an issue
11 with the information that was provided. I don't think
12 that's a problem. I am concerned that it seems like
13 we're just maybe having a communication issue and I
14 think we're just making sure that Mr. Hyams feels
15 comfortable to reach out to Mr. Barnes and address
16 concerns. You're always welcome to do that, Mr. Hyams,
17 to reach out to Mr. Barnes.

18 MR. HYAMS: Thank you. Can I speak now, Your
19 Honor?

20 JUDGE DIPPELL: Yes, go ahead.

21 MR. HYAMS: This is Michael Hyams again. And
22 again, it is fully on my shoulders, I take the blame for
23 this. I was confused. When I responded back to
24 Matthew, what I was in, in essence, stating was that
25 what our request was was for a total of \$78,450 and some

1 change for the water side and I believe it was 26,996
2 and some change for the sewer side. What was in error,
3 and I apologize because I guess I didn't specify it
4 clearly enough to Mr. Barnes, was that we're not trying
5 to ask that for an annual increase. When initially I
6 was asked what is it you're asking for, that is the
7 total of everything that we've expended over and above
8 November 1 of 2015, when we got our initial certificate
9 to operate, the improvements that are needed to be made
10 to the system and then the increases in ongoing
11 maintenance and upkeep that we are now incurring due to
12 a higher level of phosphorus containment that the DNR is
13 requesting from us.

14 Those totals are based on just numbers that we
15 thought, again I'm in error on this, was then to be a
16 discussion of okay, you're asking for 78,000 for water
17 and you're asking for 26,000 for sewer, let's get to the
18 nitty-gritty of what it's for. And then when you
19 decided basically that I'm providing you the correct
20 information, that's then what we would tell our
21 customers and say okay, we've now met with the PSC,
22 we've requested this, they said no to this or yes to
23 this or well, let's adjust that a little bit. That way
24 then when we had a meeting with our clients we could say
25 to them here's why we're asking for the rate increase

1 because of the following, because we're having to add an
2 increased amount of chemicals that cost more to mitigate
3 the phosphorous levels, because we've had extensive
4 repair work that had to be done because lightning hit
5 the well and we had to extend it down 300 feet to get to
6 a new aquifer level. I apologize.

7 Again, it's my fault that this information has
8 come across as I guess just very remedial, and it was
9 not my intention. I'm absolutely happy to send out that
10 actual draft in the wording the way you have it as long
11 as it's not looked at as though it's an annual increase.
12 Again, this is my fault because from the beginning when
13 we started with the PSC with Jim Merciel and Curt
14 Gateley and everybody, they said Mike, when you apply
15 for a rate increase, if you're asking for specific costs
16 to be covered like a new sand pipe or new distribution
17 lines or new meters and stuff, you can't just ask for it
18 all back in one year.

19 The PSC will look at the financial condition
20 of your company and then try to determine whether it's a
21 30-year amortization, a 10-year amortization or
22 something to that effect. So that's what we were
23 waiting for is that this is the total of what we've
24 expended and what we're hoping to put in to the utility.
25 We were just simply waiting for an answer back from you

1 guys, we assumed, erroneously obviously now, that then
2 we would tell our clients okay, this is why we're having
3 the meeting because we're going to be increasing your
4 rates by \$1.82 a month, something to that effect.

5 MR. HALL: Michael, this is Caleb with the
6 OPC. I understand the concern with the phrasing of the
7 annual versus a monthly increase, but can you tell us
8 right now like what is the total amount of operating
9 expenses that you are asking for for Branson Cedars
10 Utility? Are you asking for 180,000 or 105,000?

11 MR. HYAMS: Our total request is 105,000.
12 That is to be determined by you guys as to whether that
13 is annualized or over five years or part of it is
14 annualized and the other part -- if you don't mind, let
15 me break down one part.

16 MR. HALL: 105 in addition?

17 JUDGE DIPPELL: Hang on just a second, Mr.
18 Hyams. Mr. Hall.

19 MR. HALL: So 105 in addition to your current
20 operating budget or an additional amount to your current
21 budget to equal 105?

22 MR. HYAMS: No. In addition to our current,
23 in addition to. Not to equal 105 but in addition to.
24 But not annually. We're by no means asking for an
25 increase of \$105,000 per year. We are simply stating

1 that because of the expenses we've incurred since
2 November 1 to repair and maintain the system we
3 presently have, for increases in new equipment that has
4 to be purchased like a new sand pipe, a 20,000 gallon
5 sand pipe because of the growth of the utility and the
6 demand on our water system we need to increase the sand
7 pipe and holding capacity and because of the increases
8 in the sewer side for phosphorous removal and the fact
9 that because our system is set up, we have an agreement
10 with the DNR that we pump out the 25,000 gallon
11 containment tanks basically as needed which is usually
12 on an annual basis to make sure that we have plenty of
13 capacity for holding the effluent prior to it being
14 treated and put out through the outflow. Yes, 105,000
15 is the total but not in an annual additions.

16 JUDGE DIPPELL: Mr. Westen, did you have
17 another question?

18 MR. WESTEN: Just one for you, Mr. Hyams.
19 This is Jacob Westen. When you said from November 1, I
20 think I heard you say earlier you meant from November 1,
21 2015, right?

22 MR. HYAMS: That is correct, sir.

23 MR. WESTEN: So the amount that you are asking
24 for, this 105 number, that is the expenses that you have
25 incurred for the past several years total, correct?

1 MR. HYAMS: That is not correct, sir. That
2 includes expenses that we have incurred, but it also
3 includes improvements that we plan to make.

4 MR. WESTEN: Okay. Mr. Hyams, I'm sorry to
5 interrupt. I actually think this conversation would
6 probably be much more productive off line, not with the
7 court reporter, because this sounds like more like a
8 conversation that staff and you and OPC need to have
9 about the information that we're asking for to help us
10 do our audits to help identify what we believe the rate
11 should be, and I think that a conversation between all
12 of us about that would probably be more productive and
13 is probably more appropriate for not this procedural
14 conference, but I thank you for answering our questions
15 and helping us understand what your request is. I think
16 that will help make an off line conversation go much
17 quicker.

18 MR. HYAMS: We agree. I agree 100 percent.

19 JUDGE DIPPELL: This is Judge Dippell again.
20 Then what I want to get before we do go off the record,
21 though, I want to get clear exactly -- So Mr. Hyams sent
22 a notice to his customers setting out a date for a
23 public hearing, and I'm still unclear as to whether the
24 information about the cost increase was correct or not
25 correct because I don't know what that notice was. But

1 to get this back on a procedural track, where do you all
2 see this going forward from here? Can we -- Do you
3 think we can make a public hearing on the 27th work if
4 one is necessary?

5 MR. HALL: Does the regulation speak to like
6 what -- if we can give supplemental notice or if the
7 price increase had to be included?

8 JUDGE DIPPELL: The regulation just requires a
9 ten-day notice for the hearing. So if a different
10 notice needs to go out with correct amounts or whatever
11 compromise you all come up with or anything like that,
12 that can still be accomplished. Or if you all reach
13 some agreement and decide a public hearing isn't
14 necessary given the nature of the small amount of
15 customers, the nature of this system, perhaps that's not
16 even necessary, but I'll let you all decide that amongst
17 yourselves.

18 MR. WESTEN: Judge, if I might. This is Jacob
19 Westen speaking again. Just by way of background about
20 the revised letter that Mr. Hyams sent, when staff was
21 evaluating and looking at the initial request and trying
22 to put together the notice, we realized that the first
23 letter he sent did not mention sewer, the sewer system
24 which is also a part of this case or which he would like
25 to have a part of this case, which is why we recommended

1 and I recommended that he send in the letter that you
2 received asking to identify that the case is about both
3 water and sewer. We thought -- Staff believed that that
4 was at least one appropriate way to try to make sure
5 that both utilities were captured. I have no opinion as
6 to procedurally how that should work. It could operate
7 to amend either the current schedule and just include
8 the sewer operations. Staff doesn't have any issue with
9 that. If there are other proposals, I think that would
10 be probably okay.

11 The only consideration that we ask is that we
12 don't open two simultaneous cases.

13 JUDGE DIPPELL: That's fine.

14 MR. WESTEN: And that's our only
15 recommendation.

16 JUDGE DIPPELL: That's fine. I'm not
17 concerned from my side as to how the procedure goes
18 forward as long as we meet the few statutory deadlines
19 or regulation deadlines. So I will let you all discuss,
20 you know, how you want to modify the timeline that's set
21 out and then if you can come back and file an amended
22 timeline if you need or whatever, then I would suggest
23 that you do that and I will actually issue then perhaps
24 a set order adopting that timeline as we go forward.

25 MR. SMITH: Before we go off the record,

1 Judge, I think OPC would want that amended letter made
2 as a filing in the case file because right now the
3 request essentially only asks for water. So this really
4 would be more than just a supplement. It wouldn't
5 change the nature of the request.

6 I don't know if Mr. Poppen wanted to file that
7 possibly on EFIS, but that would be our preference. We
8 agree with staff that we would not want to have two
9 simultaneous different cases for the same utility over
10 the same cost of service. That's just a waste of
11 judicial resources and everyone's resources.

12 JUDGE DIPPELL: Okay.

13 MR. POPPEN: Yeah, and this is -- Go ahead,
14 Judge. I'm sorry.

15 JUDGE DIPPELL: Go ahead, Mr. Poppen.

16 MR. POPPEN: I was just going to say we would
17 be more than happy to do that. I think -- this is Judd
18 Poppen speaking -- I'm of the same feeling that I would
19 like to keep it in the same one just for convenience and
20 the way we've been going. I know that the original
21 request does specifically talk about water but also in
22 the body of it talks about increased expenses on water
23 and sewer systems. So we could file the amended letter.
24 I would probably want to make sure that you guys have
25 your call to discuss what's all included in that so that

1 if there are other things that pop up when staff and OPC
2 and Michael talk about this a little bit more, that if
3 we do need to change the request letter, that we get
4 that done in final form and I understand that's our job
5 to do it. If there are issues that pop up, then I'd
6 just like to make that amendment. If you all talk and
7 everything looks good, I'd be happy to file that and get
8 that going.

9 JUDGE DIPPELL: Okay. I think that's --

10 MR. HYAMS: Your Honor --

11 JUDGE DIPPELL: Yes, Mr. Hyams.

12 MR. HYAMS: -- this is Mr. Michael Hyams
13 again. Guys, I am more than happy to drive to Jefferson
14 City and do this at a face-to-face opportunity if that
15 will help expedite as well. Would you guys want me to
16 actually come to Jefferson City with all of our data
17 stuff that we've been requested to provide? We will
18 have that and complete that and then you can go through
19 it and review it. That's I think what we assumed was
20 the next step before we had this public hearing. So
21 that's I think where my confusion came in is that I
22 assumed we were going to discuss what I'm requesting and
23 you were going to tell me yes or no and then at that
24 time we would announce to our clients that we had come
25 to this new rate increase and it's based on the

1 following criteria. If that helps, please just let me
2 know and you pick a date and I'll come to Jefferson
3 City.

4 JUDGE DIPPELL: You all can discuss that a
5 little more. What we'll do if there's nothing further
6 that anybody thinks needs to actually be on the record,
7 you know, we can go off the record and then you all can
8 discuss a little further and make sure everybody has
9 what they need from today and set up how you think we
10 should go forward here and who's going to file what and
11 all of that kind of stuff and proceed with -- make sure
12 you guys are all on the same page.

13 But I think I have what I need on the record.
14 Is there anything else that anyone else wants to put on
15 the record before we conclude the formal part of this?

16 MR. SMITH: Nothing from OPC.

17 MR. WESTEN: Nothing from staff, Judge.

18 MR. POPPEN: Nothing from BCR, Your Honor.

19 JUDGE DIPPELL: All right then. With that
20 being said, I appreciate you all coming together quickly
21 this morning so that we can get these things resolved.
22 The processes that we go through here at the PSC are
23 sometimes confusing and complicated, especially if
24 you're not used to doing them on a day-to-day basis. So
25 it's perfectly understandable for there to be some

1 confusion and especially when --

2 MR. HYAMS: Thank you, Your Honor.

3 JUDGE DIPPELL: -- and especially when we have
4 a brand new rule procedure that this, I believe, is the
5 first case that was filed under that new procedure. So
6 if we seem like we don't know what we're doing, that's
7 kind of part of that, too. We're kind of doing this for
8 the first time as well under this new rule.

9 So with that being said, we'll go ahead then
10 and conclude the on-the-record portion of this and I'll
11 leave you all to further discussions in private. We can
12 go off the record. Thank you.

13 (Off the record.)

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CERTIFICATE OF REPORTER

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Beverly Jean Bentch, RPR, CCR No. 640

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