

The Staff of the Missouri Public Service Commission,

Complainant,

vs.

Fawn Lake Water Corp. and Rachel Hackman,

Respondents

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Case No. WC-2015-

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

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