

**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 MOTION TO RESEND FINAL NOTICE
AND TO CORRECT SERVICE ADDRESS**

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and for its *Motion to Resend Final Notice and to Correct Service Address* hereby states as follows:

Introduction

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 are subject to the jurisdiction of this Commission pursuant to Section 386.250(3), RSMo. Respondent Rachel Hackman is also the registered agent for Respondent Fawn Lake Water Corp.

2. On June 11, 2015, pursuant to § 386.390.1 and Rule 4 CSR 240-2.070(1), Staff filed the above captioned complaint against Respondents for, among other things, operating a public utility without a certificate of convenience and necessity from the Missouri Public Service Commission (“Commission”), in violation of § 393.170.2, RSMo.

Relevant Case History

3. 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.

4. 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.¹

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

6. The Commission granted Staff's motion for a default determination on September 16, 2015, but it set aside that default at the request of Respondents on October 8, 2015, and ordered Respondents to file an answer to Staff's complaint by October 22, 2015.

7. Rather than answer Staff's complaint, on October 22, 2015, Respondents filed a motion requesting the Commission stay the complaint to allow time to negotiate an amicable resolution. Staff did not oppose Respondents' request for a stay, and on November 3, 2015, the Commission stayed the proceedings and directed the parties to file status reports regarding the negotiations.

8. On July 27, 2016, the Commission again ordered Respondents to file an answer to Staff's complaint, no later than September 26, 2016.

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

¹ See EFIS items 3 and 4.

10. Out of an abundance of caution, and due to concerns about clear communication, Staff sought for Respondents an extended opportunity to file an answer to its *Complaint*.

11. On September 29, 2016, the Commission issued its *Second Order Directing Respondents to File an Answer*, in which it ordered an answer to be filed no later than October 31, 2016. This order was sent to an address at which Rachel Hackman had previously signed return receipts in this case,² but at which the Commission has since received returned mail.³ It was returned as not deliverable and unable to forward on October 11, 2016.

12. On November 9, 2016, the Commission issued its *Order Sending Final Notice and Setting Time for Filing Answer* directing the Data Center to mail a copy to known addresses previously used by Respondents in this case, at which it had received successful service.⁴ The *Order Sending Final Notice* provided a deadline to Respondents of December 7, 2016 by which to file an answer to the *Complaint*.

13. Despite the November 9 *Order*, service was still sent to the previous address, and the mailing was returned as not deliverable and unable to forward on December 5, 2016. Staff contacted the Data Center to confirm that the November 9, 2016, *Order* was sent to the appropriate addresses. EFIS item 46 was subsequently updated with a supplemental service list, dated December 6, 2016, and the Data Center indicated it would re-send service to both addresses contained in the November 9 *Order*.

² See EFIS items 3 and 4.

³ See EFIS items 12, 14, 16, and 17.

⁴ See EFIS item 7.

14. On January 11, 2017, the *Order* was returned as not deliverable and unable to forward at the O'Fallon address.

15. It appears that service was not actually sent to the second of the two addresses until January 24, 2017.⁵ According to tracking information on usps.com, the *Order* arrived on January 26, 2017, but no authorized recipient was available to sign for the package, so notice was left for Respondents.

16. Staff has since determined that the address used in the January 24, 2017, filing contains an error. The correct known address is:

3910 Old Highway 94 South, Suite 100

St. Charles, Missouri 63304.

Motion Regarding Service

17. Section 386.390.4 RSMo provides that "[s]ervice in all hearings, investigations, and proceedings pending before the commission may be made upon any person upon whom summons may be served in accordance with the provisions of the code of civil procedure of this state, and may be made personally or by mailing in a sealed envelope with postage prepaid."⁶

18. Initial service of the case was successfully completed via certified mail on June 23, 2015.⁷

19. Service copies of filings must be served upon every party to a case. 4 CSR 240-2.080(15). 4 CSR 240-2.080(16) provides that service may be made on an

⁵ See EFIS item 46, Certified Service List.

⁶ Missouri Rule of Civil Procedure 54.18 provides, "Where a statute contains provisions for a method of service, service may be made pursuant to the provisions of the statute or as provided by these rules." Therefore, § 386.390.4 RSMo dictates what counts as appropriate initial service of process of a pending contested case before the Commission.

⁷ See, EFIS Items 3, 4.

unrepresented party by mailing it to the party's last known address, and service is complete upon mailing.⁸

20. Although Staff believes service was complete upon mailing to Respondents' last known addresses, Staff recognizes the numerous complications that have arisen regarding appropriate service to those addresses. Accordingly, Staff respectfully requests the Commission: (1) issue a new order that updates the time for Respondents to file their answer, and (2) send the order to the address listed in paragraph 16 above. Finally, Staff respectfully requests that the Commission deem service of such order complete upon mailing, in accordance with 4 CSR 240-2.080(16).

WHEREFORE, the Staff prays that the Commission will issue one final order (1) granting the Respondents additional time to file their answer, (2) directing its Data Center to send service to the corrected address listed in paragraph 16, above, and (3) deeming service of the order complete upon mailing; and granting such other and further relief as the Commission deems just.

Respectfully submitted,

/s/ Marcella L. Forck

Marcella L. Forck
Associate Counsel
Missouri Bar No. 66098
Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
573-751-4140 (Voice)
573-526-6969 (Fax)
marcella.forck@psc.mo.gov

⁸ This regulation is consistent with Missouri Rule 43.01(c)(2), which allows service copies to be made upon a party by mailing a copy to the party, and part (d) states that service by mail is complete upon mailing. The regulation is also consistent with Rule 43.01(e), which allows service to be shown by written certificate of the person making such service, which shall state the name of each person served, date of service, method of service, and address of service.

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 23rd day of February, 2017, to the parties of record.

/s/ Marcella L. Forck