

FILED  
August 14, 2017  
Data Center  
Missouri Public  
Service Commission

**Case No. WC-2017-0207**

## Page 1

## **MEMORANDUM OF POINTS**

The following facts are not in dispute:

1. Michael and Darla Brower contracted to build and are the sole owners of a two story structure on lot 7 of Branson Cedars Resort which was completed in June 2016. This structure has (1) one service connection for water and (1) one service connection for sewer affluent connected to Branson Cedars Resort Utility Company main utility lines.
2. Branson Cedars Resort Utility Company, LLC Issued its Rules and Regulations Governing Rendering of Water Service on September 25, 2015 to become effective November 1, 2015. This structure was completed after the effective date and is therefore subject to the Company Rules and Regulations as approved by the Missouri Public Service Commission. Reference Rule 2-D. on sheet 9.
3. This structure is a commercial structure rented on a nightly basis in compliance with all state and county regulations. It is advertised and rented as a (8) bedroom (6) bathroom log cabin capable of accommodating a single group up to 24 people. The first paid rental was made to a single party on July 5, 2016. Since then it has only been rented to single party customers. We have no business plan that allows this structure to be rented as anything other than a single party structure.
4. On April 7, 2017 a staff report was issued by the Missouri Public Service Commission outlining all of the applicable rules and regulations in the Company Tariff and concluded that, "...based on its investigation and review of the tariff, that there is sound basis in fact and in the tariff for the Commission to determine that the Company should bill Mr. Brower for only one customer charge for the cabin at 310 Heavy Timber Drive".

## **STANDARD FOR SUMMARY JUDGMENT**

NRCP 56(c) states in relevant part that "[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

## **Argument**

In the present case, there is no genuine issue of material fact, as discussed below, and the Complainant is entitled to judgment as a matter of law because:

1. The Respondents claim that Michael and Darla Brower are not the owners of the cabin located at 310 Heavy Timber Drive has been withdrawn.
2. The Respondent states that this structure is a multi-tenant structure. This structure meets the definition of a "Unit" or "Living Unit" in the Company Tariff. There is no definition or description of a multi-tenant structure in the Company Tariff other than a reference in rule 1 -R. stating that "each rental unit of a multi-tenant rental property are considered as separate units for each single family or firm occupying same as a residence or place of business." This Structure is advertised and only rented as a single customer occupant.
3. The Respondent claims if they only charge 1(one) bill to this structure, it will set precedent for any future construction and raise concerns among other customers in the community. This is a single unit with a single service connection, advertised and rented as a single unit. The Company Tariff has no provision for charging more than a single standard rate for any structure based on size, square feet, number of rooms, number of entrances, the location of a stairway or any other physical characteristic of any structure within its service area. Within the Branson Cedars Resort Utility Company service area there are (2) bedroom, (3) bedroom, (4) bedroom and (6) bedroom cabins, some with hot tubs and some without, all being charged the same flat rate for water and sewer service. The only fair way to charge for utility service is to charge by usage which is why the Company Tariff, approved by the Commission, states on sheet 27, Rule 11-A. "All new service connections shall be metered." There is no meter on the service connection made in May 2016 at 310 Heavy Timber Drive.

## **CONCLUSION**

Accordingly, the complainant, Michael R. Brower, is entitled to judgment in his favor and should only be billed (1) one service charge for the structure located at 310 Heavy Timber Drive.

DATED this 14 day of August, 2017

Respectfully submitted by:

Michael R. Brower

Complainant