

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

Michael Brower)	
)	
Complainant,)	
)	
v.)	<u>Case No. WC-2017-0207</u>
)	
Branson Cedars Resort Utility Company, LLC)	
)	
Respondent.)	

STAFF REPORT

COMES NOW, the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and for its Staff Investigation Report (*Report*), states the following:

1. On February 1, 2017, Michael Brower (Mr. Brower) filed a formal complaint (*Complaint*) with the Missouri Public Service Commission (Commission) against Branson Cedars Resort Utility Company, LLC (BCUC). Mr. Brower's *Complaint* alleges that BCUC is incorrectly billing Mr. Brower two customer charges, when Mr. Brower believes he should be billed only one customer charge.
2. On February 2, 2017, the Commission issued a *Notice of Complaint*, directing Respondent BCUC to file an answer by March 4, 2017.¹
3. On March 7, 2017, the Commission issued an *Order Directing Staff Investigation*, granting Staff until April 7, 2017, to complete and file its *Report*.
4. Staff reviewed all the information filed in this case to date and has conducted an independent investigation. Having concluded its investigation, Staff offers

¹ On March 8, 2017, Respondent BCUC filed its *Answer*, and a *Motion for Leave to File Answer Out of Time*. Staff has no objection to the Commission accepting BCUC's *Answer*.

its *Report*, which details Staff's investigation and analysis, and is attached hereto as Appendix A.

5. Ultimately, the question before the Commission in this matter relies on the interpretation of the definition of "Unit" and "Living Unit" in BCUC's tariffs.² The definition of living unit is clear that "each rental unit of a multi-tenant rental property are considered as separate units...." However, what is not completely clear is the effect on billing by the language "the premises or property of a single water consumer, whether or not that consumer is the Customer...."

6. In summary, Staff concludes that there is sound basis in fact and basis in the tariff for the Commission to determine that BCUC should bill Mr. Brower for only one customer charge. Staff's *Report* more fully explains the findings. Moreover, Staff further concludes that BCUC violated its tariff, P.S.C. MO No. 1, Sheet No. 27, Rule 11.A, and the Commission *Order Granting a Certificate of Convenience and Necessity*, in Case No. WA-2015-0049, by failing to install a water meter on the water service line.

WHEREFORE, Staff hereby tenders its *Staff Report* for the Commission's information and consideration.

² P.S.C. MO No. 1, Sheet No. 8, Rule 1.R defines "Unit" or "Living Unit" as "the premises or property of a single water consumer, whether or not that consumer is the Customer. It shall pertain to any building whether multi-tenant or single occupancy, residential or commercial, or owned or leased. Each mobile home in a mobile home park and 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."

Respectfully submitted,

/s/ Jacob T. Westen

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile, or electronically mailed to all parties and or counsel of record on this 7th day of April, 2017.

/s/ Jacob T. Westen

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. WC-2017-0207
Michael Brower, Complaint, v. Branson Cedars Resort Utility Company, LLC

FROM: David Spratt – Water and Sewer Unit; Utility Operation Technical Specialist II

<u>/s/ David Spratt</u>	<u>April 7, 2017</u>	<u>/s/ Jacob Westen</u>	<u>April 7, 2017</u>
Case Coordinator /	Date	Staff Counsel /	Date

SUBJECT: Staff's Investigation of Small Formal Complaint filed by Michael Brower

DATE: April 7, 2017

History of Branson Cedars Description of System:

Branson Cedars Resort Utility Resort Company LLC (Company) is a regulated public utility that received Certificates of Convenience and Necessity (CCN) from the Missouri Public Service Commission (Commission) on September 5, 2015. The Company's water and sewer systems serve the Branson Cedars Resort development (Development) in an unincorporated area of Taney County, south of the city of Hollister. The Development consists primarily of short-term rental cabins. The Development currently includes 48 rental cabins owned by individuals and four (4) owned by the development company, and twelve (12) commercial customers, eight (8) of which are also sewer customers. Tranquility intends to construct and own all future residential cabin units.

Complaint

Mr. Brower, a customer of Company, built a cabin to be used for rental purposes at 310 Heavy Timber Dr. in Ridgedale, MO within the certificated area of Branson Cedars. He previously filed an informal complaint (C201700059) and an inquiry (I201601638), which did not result in a resolution with the Company. In his complaint, Mr. Brower states that the Company bills him for two service charges to his rental structure, and that he believes that the Company should only bill him for one service charge. Mr. Brower contends that the structure has only one service connection and should only receive one water bill and one sewer bill. Mr. Brower also states that he is only offering the unit as single rental and not two separate units.

The Company responds that Mr. Brower's structure is a duplex that should be billed for two water services and two sewer services. The Company states that the only access between the upper and lower units is an outside staircase.

Applicable Rules:

There are several definitions and rules within the Company's tariff, effective November 1, 2015, that appear to apply in this matter.¹

Rule 1.D defines "CUSTOMER" as "any person, firm, corporation or governmental body which has contracted with the Company for water service or is receiving service from Company, or whose facilities are connected for utilizing such service, and except for a guarantor is responsible for payment for service."²

Rule 1.I defines "METER" as "a device, owned by the Company, used to measure and record the quantity of water that flows through the service line, and is installed in the outdoor meter setting, or inside the Customer's building where the water service line enters through a foundation wall."³

Rule 1.R defines " 'UNIT' or 'LIVING UNIT' " as "the premises or property of a single water consumer, whether or not that consumer is the Customer. It shall pertain to any building whether multi-tenant or single occupancy, residential or commercial, or owned or leased. Each mobile home in a mobile home park and 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."⁴

Rule 11.A states that "[a]ll new service connections shall be metered. When water meters are utilized for billing, the Company shall furnish and install a suitable meter for each Customer, and the Company's installed meter shall be the standard for measuring water used to determine the bill. All meters shall be furnished, installed, maintained and removed by the Company and shall remain its property."⁵

¹ The following tariff rules are for water operations. Sewer operation tariffs and rate designs are functionally identical.

² P.S.C. MO No. 1, Sheet No. 6.

³ P.S.C. MO No. 1, Sheet No. 7.

⁴ P.S.C. MO No. 1, Sheet No. 8. Staff notes that the interpretation of this definition is the key item at issue in this case.

⁵ P.S.C. MO No. 1, Sheet No. 27.

Rule 11.C states: “Domestic water service to any one Customer at a single premises shall be furnished through a single service connection. Individual units of a multi-unit building may have separate connections and meter installations only if each unit has separate plumbing, ground-level space, an individual service connection and meter installation location, and frontage to a Company-owned main. For multi-unit buildings with one service connection and meter installation, the inside piping may be rearranged at the Customer's own expense so as to separate the units and meter tenants, then divide the bill accordingly.”⁶

The Company tariff provides a flat monthly rate for residential customers and a breakdown of commercial classes in the Schedule of Rates. The residential water rate is \$56.29 and the commercial rate for most applications is also \$56.29.⁷ The residential and applicable commercial sewer rates are both \$48.26.⁸ Because the majority of the cabins in the Development are nightly rental cabins, the Company charges the owners of the rental cabins as the customers of the water and sewer service, rather than the nightly or weekly renters. This could be treated as a residential service since the cabins are generally styled as single family homes, or the charge could be treated as a commercial service, since the structures are being used for revenue as part of a rental business. In either case, the regarding residential or commercial rates, the tariff is not specific about the number of units being served.

Finally, also applicable are conditions from the Commission Order granting a CCN:

“[The Company] shall file new complete tariffs for water service and sewer service within 20 days after the effective date of this order. The provisions of the tariffs shall include the following.

a. Monthly residential flat rates of \$56.29 for water service and \$48.26 for sewer service, with factored flat rates for various commercial customers; and a metered rate consisting of \$37.14 monthly customer charge and \$13.79 per 1,000 gallons commodity charge for one specific existing customer with established historical water usage; all as shown on Attachment B to the revised recommendation described in the body of this order;

* * *

c. A master meter on each of BCRU’s two wells, and water meters for all commercial customers, within six months after the effective date of this order; monthly meter reading; retaining meter plant records; and maintenance of meter read records for each metered customer;”

⁶ P.S.C. MO No. 1, Sheet No. 27.

⁷ The only customers who are receiving a higher bill are the sales office (\$84.44), the pool / bath (\$84.44), and the Pond (\$225.16).

⁸ P.S.C. MO No. 2, Sheet 4.

Staff Investigation:

On July 21, 2016 Staff members David Spratt and Jonathan Dallas conducted a site visit as a part of the informal complaint originally filed by Mr. Brower. During the visit, Staff spoke with Mr. Brower, and Mike Hyams, a member of The Tranquility Group, LLC which owns the utility operating company, and observed the location in question. Staff has subsequently contacted the parties to confirm its understanding of the facts of the case.

Mr. Brower completed building the structure, and it received water and sewer service connections, in May of 2016, after the effective date of the Company tariff. The structure has one address: 310 Heavy Timber Drive. The structure has the potential for two separate rental spaces, one on the lower floor, and one on the upper floor. There is no internal stairwell. The structure is located on an incline so that both the upper and lower floors walk out onto the ground. The only access between the floors is by an external stairwell. The structure has a total of eight bedrooms, two kitchens, and two living areas; with four bedrooms, a kitchen, and living area, on each level. Mr. Brower states that the ceiling is not sound proof enough to rent the upper and lower units separately, and therefore he rents the entire cabin as one single unit. His company website lists the structure as only able to be rented as a single unit.

The Company has not installed a water meter onto the service line. The Company asserts that it has not installed a meter because it believes this structure is a duplex and should have two separate meters. There is only one water service connection and one sewer service connection to the structure.

The plumbing arrangements of this structure do not allow for two meters to be installed for each floor to be metered separately. It is not uncommon for a multi-family unit to only have one meter if the customer is the owner of the entire unit.

Staff's Conclusion:

Because Mr. Brower completed construction after the Company tariff went into effect, pursuant to Rule 11.A, and Commission Order, the Company was required to install a meter on the water service line when the service connection was connected to the Company's main. The Company did not install a water meter. A meter is installed to measure the amount of water being used by a structure and collectively by all of the customers being provided water service by a utility.

Once a metered rate became effective, a meter would allow the Company to determine how much water is being used at the structure and bill Mr. Brower for the total use of the rental structure.⁹ According to the Company tariff Rule 1.D, Mr. Brower is the only “Customer” for the building. No other person or entity related to the structure “has contracted with the Company for water service.” It is common practice in the industry for a Company to charge one customer charge per meter where a single meter serves multiple units. The customer is Mr. Brower, not the consumers renting the space.

Had the Company installed a meter onto the service line, should Mr. Brower have rented the building as two separate units, the increased water usage would be eventually captured as a volumetric rate charge, once metered rates were implemented in a subsequent rate case.

Staff concludes, 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.

⁹ One important purpose for the installation of water meters is to enable both the Company and Staff, at the next rate case, to establish metered rates based upon the data the installed meters would collect. *See*, Case No. WA-2015-0049, EFIS Item #34, *Staff’s Revised Recommendation*, p. 4-5. However, based on Staff’s investigations and observations, it appears the Company has installed few, if any meters. Moreover, the Commission’s *Order* in WA-2015-0049 required the Company to come in for a rate case within 18 months. *See*, WA-2015-0049, EFIS Item #40, *Order Granting a Certificate of Convenience and Necessity*, p. 2. That deadline has passed without the filing of a case.

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Michael Brower

Complainant,

v.

Branson Cedars Resort Utility Company, LLC

Respondent.

Case No. WC-2017-0207

AFFIDAVIT

State of Missouri

) ss.

County of Cole

COMES NOW Jonathan Dallas and on his oath declares that he is of sound mind and lawful age; that he contributed to the attached Staff Memorandum; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.


Jonathan Dallas

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 7th day of April, 2017.

JESSICA LUEBBERT
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: February 19, 2019
Commission Number: 15633434


NOTARY PUBLIC

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

Michael Brower

Complainant,

v.

Branson Cedars Resort Utility Company, LLC

Respondent.

Case No. WC-2017-0207

AFFIDAVIT

State of Missouri)
) ss.
County of Cole)

COMES NOW David A. Spratt and on his oath declares that he is of sound mind and lawful age; that he contributed to the attached Staff Memorandum; and that the same is true and correct according to his best knowledge and belief.

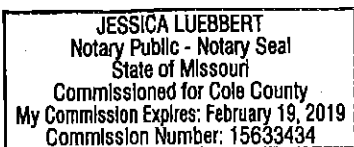
Further the Affiant sayeth not.



David A. Spratt

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 7th day of April, 2017.





NOTARY PUBLIC