

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

The Office of the Public Counsel,)
An agency of the State of Missouri,)
COMPLAINANT)

Case No. WC-2015-0288

v.)

Case No. SC-2015-0289

The Tranquility Group, LLC d/b/a)
Branson Cedars Resort,)
Branson Cedars Resort Utility)
Company LLC,)
A Missouri water and sewer corporation,)
RESPONDENTS)

**THE OFFICE OF THE PUBLIC COUNSEL’S RESPONSE
IN OPPOSITION TO STAFF’S MOTION TO DISMISS AND
REQUEST FOR PROCEDURAL CONFERENCE**

COMES NOW the Office of the Public Counsel (“Public Counsel”) and for its Response in Opposition to the Missouri Public Service Commission’s Staff’s (“Staff”) Motion and request for procedural conference, states:

1. On May 5, 2015, Public Counsel filed the above-captioned complaints with the Missouri Public Service Commission (“Commission”) alleging Tranquility Group, LLC and Branson Cedars Resort Utility Company, LLC (“Respondents”) had charged and currently charge for water service and sewer service in violation of Missouri Statute.
2. Since the time Public Counsel filed its complaint, Respondents have received Certificates of Convenience and Necessity (“CCN”) from the Commission and now lawfully charge for water and sewer service (*See* File No. WA-2015-0049).
3. On March 9, 2016, the Staff filed its motion to dismiss asserting the CCN case resolved all issues in the complaints. However, contrary to Staff’s assertion, not all of the issues identified

in Public Counsel's complaint are resolved. Primarily, the Respondents have not refunded any and all unlawful charges for water service and sewer service.

Background

4. Shortly after Public Counsel filed its complaints, Staff filed its Response to Public Counsel's complaint against Respondents.

5. In its Response, Staff states: "Staff agrees that these Respondents are providing water services or water and sewer services without authorization from this Commission and are both billing for those services and collecting payments despite having no Commission-approved tariffs." (Doc. No. 6).

6. On June 5, 2015, Respondents filed their answer to said complaint. (Doc. No. 9).

7. In their Answer, Respondents state they "are without sufficient information to form a belief as to the truth of the allegations and averments contained in Paragraph 11 of Complainant's Complaint and, therefore deny the same." (Doc. No. 9, p. 2). Paragraph 11 of Public Counsel's complaint alleges, in pertinent part, Respondents "charged and currently charges for water service and sewer service in the amount of \$60 per month for combined water and sewer service, and \$50 per month for water service for those commercial customers that do not have sewer service." (Doc. No. 1, p. 4). It is unclear whether Respondents deny awareness they were charging for water or sewer service or they deny knowledge as to the amounts charged. However, later in their answer, Respondents assert "[a]ny and all funds paid to Respondents by lot owners pursuant to water and sewer services were paid voluntarily[.]" (Doc. No. 9, p. 4).

8. As mentioned earlier, the Commission recently granted the Respondent's CCN in another case docket. In its *Order Granting Certificates of Convenience and Necessity with Conditions*,

the Commission found “BRCU [Branson Cedars Resort Utility Company, LLC] proposes to serve an area ...that includes 52 rental cabins and 12 commercial customers[.]”(File. No. WA-2015-0049, Doc. No. 40, p. 2). The Staff’s recommendation in that case found “[t]ranquility or BCRU currently charges flat rates of \$60 per month for combined water and sewer service, and \$50 per month for water service for those commercial customers that do not have sewer service.” (See File No. WA-2015-0049, Doc. No. 19, Staff Recommendation, Appendix A, p. 6).

Unlawful charges

9. Section 393.130.1, states “Every unjust or unreasonable charge made or demanded for gas, electricity, water, sewer or any such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited.”

10. Section 393.140(11) also states “No corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedules filed and in effect at the time.”

11. The filed rate doctrine precludes a public utility from collecting any rates other than those properly filed with the appropriate regulatory agency. *State ex rel. Associated Natural Gas Co. v. PSC*, 954 S.W.2d 520, 531 (Mo. Ct. App. 1997).

12. Missouri Public Service Commission Rule, 4 CSR 240-3.010 (28) states specifically:

Tariff means a document published by a public utility, and approved by the commission, that sets forth the services offered by that utility and the rates, terms and conditions for the use of those services.

13. Therefore, only a tariff approved by the Commission may set out the lawful rates for a public utility. This is a requirement independent of the establishment of a franchise in a CCN

case. Any charge made or demanded by a public utility without a Commission-approved tariff is statutorily prohibited.

14. Neither The Tranquility Group, LLC d/b/a “Branson Cedars Resort” nor Branson Cedars Resort Utility Company, LLC had tariffs approved by the Commission for rates and charges relating to water service or sewer service from the period of time beginning with incorporation (May 21, 2013) to the effective date of tariffs in File No. WA-2015-0049 (November 1, 2015) (*See* File No. WA-2015-0049, Doc. No. 8, Appendix 1; File No. WA-2015-0049, Doc. No. 46). That time period would likely include twenty-nine (29) billing months.

15. Fifty-two customers paying \$60 per month for water and sewer service for twenty-nine months totals \$90,480.¹ Twelve (12) commercial customers paying \$50 per month for water service for 29 months totals \$17,400.² Combined, the Respondents have unlawfully collected up to \$107,880 before receiving CCNs or having Commission-approved tariffs.

Unresolved issues

16. In part, Public Counsel’s complaints requested the Commission order refunds of unlawfully collected money. Staff suggests this is not possible. However, in a recent complaint case, the Commission approved a stipulation and agreement that required a water and sewer company to refund unlawfully collected revenues to its customers through a sewer bill credit for customers that receive both water and sewer service (*See* File Nos. WC-2015-0291 and SC-2015-0292, Doc. No. 15). Customers only receiving water service received a refund by check. *Id.*

17. In its complaints, Public Counsel asked the Commission grant such relief as it deems appropriate and necessary. After hearing, the Commission may determine returning unlawfully collected money through a bill credit may be an appropriate, just, and reasonable resolution in

¹ 52 lot owners X \$60 = \$3120 collected per month. 29 months X \$3120 = \$90,480.

² 12 commercial users X \$50 = \$600 collected per month. 20 months X \$600 = \$17,400.

this case. The Commission should not allow companies to operate with impunity and should not leave the public with the opinion that anyone can charge for these services without going through the necessary, regulatory steps to do so lawfully.

Request for Procedural Conference

18. Because it is unclear whether Respondents dispute they unlawfully charged for water and sewer services or they dispute only the amounts charged, Public Counsel's previous request for an evidentiary hearing remains necessary. Public Counsel requests the Commission convene a prehearing conference to discuss a procedural schedule for this case. Commission Rule 4 CSR 240-2.090(4) provides that any party may petition the Commission to hold a pre-hearing conference. At a prehearing conference, parties may consider procedural and substantive matters that may aid in the disposition of the issues. Commission Rule 2 CSR 240-2.090(6).

WHEREFORE, Public Counsel submits its Response in Opposition to Staff's Motion and requests that the Commission convene a procedural conference in order to adjudicate the remaining issues in this complaint.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 17th day of March 2016:

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