

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 30th
day of August, 2017.

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

**ORDER DENYING MOTIONS FOR SUMMARY DISPOSITION AND
DIRECTING FILING**

Issue Date: August 30, 2017

Effective Date: August 30, 2017

The Complainant, Michael Brower, filed a complaint against Branson Cedars Resort Utility Company, LLC (BCRU) alleging that in accordance with the tariff, his building should be charged for water and sewer service as a single unit, rather than as two separate units. BCRU responded asserting that the structure should be considered two units under the tariff. The Staff of the Missouri Public Service Commission (Staff) has also filed a report indicating that the issue for Commission determination is the interpretation of the language of the tariff. The parties have each filed a motion for summary disposition and responses to those motions. Staff has also filed *Staff Suggestions Narrowing the Issues*.

Commission Rule 4 CSR 240-2.117(A) states, in part, that “any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a case

by summary determination at any time after the filing of a responsive pleading” Subsection (B) of 4 CSR 240-2.117 goes on to say that “[m]otions for summary determination shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts.” BCRU has objected to Mr. Brower’s motion for summary determination because Mr. Brower did not comply with the requirement to cite with specificity the facts that support his motion.

According to Missouri court rules and cases, summary determination is appropriate, “in cases in which the movant can establish that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law.”¹ The movants agree, as does Staff, that the issue for the Commission to determine is a matter of law, specifically, the definition of “Unit’ or ‘Living Unit’” as set out in Rule 1.R of P.S.C. MO No. 1, Sheet No. 8.

Any validly adopted tariff “has the same force and effect as a statute, and it becomes state law.”² Thus, BCRU’s tariff is governing law in this case. However, the Commission cannot interpret the law and make a summary determination without sufficient material facts before it.

As pointed out by BCRU, Mr. Bower’s motion does not contain specific citations to the record for the facts that support his motion. He also does not provide affidavits or other verification of the facts he alleged in his complaint. BCRU, on the other hand, provides the required citations and supports its motion with affidavits. Even so, there

¹ *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 377 (Mo. 1993).

² *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm’n*, 210 S.W.3d 330, 337 (Mo. App., W.D. 2006), *Public Service Comm’n of State v. Missouri Gas Energy*, 388 S.W.3d 221, 227 (Mo. App., W.D. 2012).

remain significant facts missing from this record that are material in the Commission's application and interpretation of the tariff.

Specifically, in order to interpret this tariff, the Commission must know: whether the rental of this structure is a business venture or merely incidental to Mr. Browers' own use of the property; the nature of the area that BCRU serves and whether there are any relevant real estate covenants that control the owners' use or rental of the property; and whether there is "ground-level space . . . and frontage to a Company-owned main . . ."³ for each of the upper and lower parts of the building. Additionally, it would be helpful in determining the public interest in this matter for the Commission to know: whether there are other customers of BCRU similarly situated to Mr. Bower and how those customers are being charged; and whether there are other tariffs in the state with similar provisions that could be affected by an interpretation of the language by the Commission.

Without all of the necessary material facts before it, the Commission cannot make a determination disposing of this case as a matter of law. The motions for summary determination are denied.

The Commission will direct the filing of proposed dates for hearing. In lieu of filing proposed dates for a hearing, the parties may file a stipulation and agreement as to the facts of this case, answering the above questions, agreeing to allow the Commission to accept the pleadings as if verified by the parties, waiving rights to a hearing and cross examination, and requesting that the Commission make a ruling on this matter based on the pleadings. The parties may also propose for consideration

³ P.S.C. MO No. 1, Sheet No. 27.

hearing procedures different than those set out in the Commission's rules, such as appearance by telephone.

THE COMMISSION ORDERS THAT:

1. The *Motion for Summary Judgment* filed by Michael R. Brower on August 14, 2017, is denied.

2. The *Respondent's Motion for Summary Disposition and Statement of Uncontroverted Material Facts* filed by Branson Cedars Resort Utility Company, LLC, on August 14, 2017, is denied.

3. No later than September 15, 2017, the parties shall file a joint proposed procedural schedule setting out dates for the filing of testimony or agreeing to less formal hearing procedures and setting out dates for an evidentiary hearing.

4. In lieu of filing the proposed procedural schedule set out in Ordered Paragraph #3, the parties may file a stipulation and agreement of facts as set out above.

5. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney,
Rupp, and Coleman, CC., concur.

Dippell, Senior Regulatory Law Judge

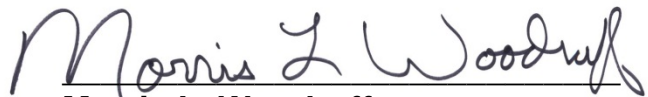
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 30th day of August 2017.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

August 30, 2017

File/Case No. WC-2017-0207

**Missouri Public Service
Commission**

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.