

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

The Staff of the Missouri Public Service
Commission,)
)
)
Complainant,)
)
v.)
)
Branson Cedars Resort Utility Company LLC,)
and The Tranquility Group, LLC,)
)
Respondents)

Case No. WC-2018 -

STAFF COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission and for its
Complaint, states as follows:

Introduction:

1. This matter concerns violations by Respondents Branson Cedars Resort Utility Company LLC (“BCRU”) and The Tranquility Group, LLC (“Tranquility Group”) of its water and sewer tariffs and the Disposition Agreement in Case No. WA-2015-0049.

Complainant:

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Chief Staff Counsel as authorized by Commission Rule 4 CSR 240-2.070(1).

Respondents:

3. BCRU is a Missouri limited liability company with active status. The registered office is 769 State Highway 86, Ridgedale, Missouri 65739.

4. BCRU’s registered agent is Ms. Patsy Kay O’Kieffe, 769 State Highway 86, Ridgedale, Missouri 65739.

5. Tranquility Group is a Missouri limited liability company with active status. The registered office is 769 State Highway 86, Ridgedale, Missouri 65739.

6. Tranquility Group's registered agent is Ms. Patsy Kay O'Kieffe, 769 State Highway 86, Ridgedale, Missouri 65739.

Jurisdiction:

7. Section 386.390.1, RSMo., authorizes the Commission to hear and determine complaints:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission

8. The Commission has by rule authorized the Staff Counsel's Office to bring complaints on behalf of the Staff: "A complaint may also be filed by . . . the commission staff through the staff counsel" ¹

9. Section 386.570.1, RSMo., provides for a penalty between \$100.00 to \$2,000.00, per offense, for "[a]ny corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission"

10. Each day that a continuing violation persists counts as a separate offense. ²
In the case of a public utility respondent, the acts and omissions of its officers, agents and

¹ Rule 4 CSR 240-2.070(1).

² Section 386.570.2, RSMo.

employees are deemed to be the acts and omissions of the public utility.³ All penalties are cumulative.⁴

Relevant Background

11. Section 386.020(59), RSMo., defines “water corporation” to include “every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers . . . owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water[.]”

12. Pursuant to § 386.020(43), RSMo., a water corporation is a public utility and is subject to the jurisdiction, control and regulation of this Commission.

13. Section 386.020(50), RSMo., defines "sewer system" to include “all pipes, pumps, canals, lagoons, plants, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate the collection, carriage, treatment and disposal of sewage for municipal, domestic or other beneficial or necessary purpose[.]”

14. Section 386.020(49), RSMo., defines “sewer corporation” to include “every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain, except that the term shall not include sewer systems with fewer than twenty-five outlets[.]”

15. Pursuant to § 386.020(43), RSMo., a sewer corporation is a public utility and is subject to the jurisdiction, control and regulation of this Commission.

³ Section 386.570.3, RSMo.

⁴ Section 386.590, RSMo.

16. BCRU is a water corporation as that term is defined at § 386.020(59) RSMo.
17. BCRU is a sewer corporation as that term is defined at § 386.020(59) RSMo.
18. Upon information and belief, Respondent Tranquility Group owns both the water and sewer plant assets, and the real estate whereupon the water and sewer plant are located.
19. Upon information and belief, Respondent Tranquility Group maintains the utility assets operated by BCRU, which BCRU uses to sell water and sewer service to the public.
20. On August 26, 2015, the Commission granted by *Report and Order* BCRU's applications for Certificates of Convenience and Necessity ("CCN") to operate water and sewer public utilities within Taney County.
21. The effective date of the Report and Order was September 5, 2015.
22. The *Report and Order's* approval of the water and sewer CCNs was "conditioned on BCRU's compliance with paragraphs 2 and 3 of [the] order."⁵ The *Report and Order* is attached as Exhibit 1, and incorporated fully by reference.
23. On October 22, 2015, the Commission approved BCRU's water and sewer utility tariffs. The water and sewer tariffs are attached as Exhibit 2, and Exhibit 3, respectively, and are herein incorporated fully by reference.
24. Any validly adopted tariff "has the same force and effect as a statute, and it becomes state law."⁶

⁵ WA-2015-0049, Electronic Filing and Information System (EFIS) Item 40, p. 1.

⁶ ***State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n***, 210 S.W.3d 330, 337 (Mo. App., W.D. 2006); ***Public Service Com'n of State v. Missouri Gas Energy***, 388 S.W.3d 221, 227 (Mo. App., W.D. 2012).

25. BCRU's water tariff (Exhibit 2) Rule 1.B defines "Company" as "Branson Cedars Utility Company LLC, acting through its officers, managers, or other duly authorized employees or agents."⁷

26. BCRU's water tariff Rule 1.B 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 of service."⁸

27. BCRU's sewer tariff (Exhibit 3) Rule 1.E defines "Company" as "Branson Cedars Utility Company LLC, acting through its officers, managers, or other duly authorized employees or agents."⁹

28. BCRU's sewer tariff Rule 1.F 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 of service."¹⁰

**Count I – Violation of the Commission's Report and Order-
Paragraph 2.c. Commercial Customer Meters**

29. Staff repeats the allegations contained in Paragraphs 1 through 27, as though the same were set out at length herein.

30. The Commission's Report and Order, Paragraph 2.c. requires that BCRU install water meters for all commercial customers within six months of the effective date of the order.

31. Six months from the effective date of the report and order was March 5, 2016.

⁷ WA-2015-0049; YW-2016-0096. P.S.C. MO No. 1, Sheet No. 6, Rule 1.B.

⁸ P.S.C. MO No. 1, Sheet No. 6, Rule 1.D.

⁹ WA-2015-0049; YW-2016-0096. P.S.C. MO No. 2, Sheet No. 7, Rule 1.E.

¹⁰ P.S.C. MO No. 2, Sheet No. 7, Rule 1.F.

32. BCRU has stated to Staff, and Staff has verified through investigation, that meters have not been installed at all commercial customers.

33. By the conduct described above, Respondents have failed to comply with the *Report and Order*.

WHEREFORE, Staff prays that the Commission will give due notice to Respondents and, after hearing, determine that Respondents have violated the Commission's *Report and Order*, as set out above, and thereupon authorize its General Counsel to seek in Circuit Court the penalties allowed by law; and grant such other and further relief as is just in the circumstances.

Count II – Violation of the Commission's Report and Order - Paragraph 3

34. Staff repeats the allegations contained in Paragraphs 1 through 27, as though the same were set out at length herein.

35. The Commission's Report and Order, Paragraph 3 states that "BCRU shall file general rate actions, which may be small utility rate actions *between 12 and 18 months after the effective date of this order*" (emphasis added).

36. 18 months from the effective date of the Report and Order was March 5, 2017.

37. On information and belief, Staff states that Respondents have not filed general rate actions or small utility rate actions as required by the *Report and Order*, Paragraph 3.

38. By the conduct described above, Respondents have failed to comply with the *Report and Order*.

WHEREFORE, Staff prays that the Commission will give due notice to Respondents and, after hearing, determine that Respondents have violated the Commission's *Report and Order*, as set out above, and thereupon authorize its General Counsel to seek in Circuit

Court the penalties allowed by law; and grant such other and further relief as is just in the circumstances.

Count III – Violation of Company's Tariff

43. Staff repeats the allegations contained in Paragraphs 1-27, as though they were set out at length herein.

44. According to the Company's tariff:

All 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.¹¹

45. BCRU has stated to Staff, and Staff has verified through investigation, that meters have not been installed at all new service connections.

46. By the conduct described above, Respondents have failed to comply with their Commission-approved tariff.

WHEREFORE, Staff prays that the Commission will give due notice to Respondents and, after hearing, determine that Respondents have violated their Commission-approved tariff, as set out above, and thereupon authorize its General Counsel to seek in Circuit Court the penalties allowed by law; and grant such other and further relief as is just in the circumstances.

¹¹ P.S.C. MO No. 1, Sheet No. 27, Rule 11.A.

Respectfully submitted,

/s/ Jacob T. Westen

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