

**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

File No. WC-2018-0250

ORDER GIVING NOTICE OF CONTESTED CASE AND DIRECTING ANSWER

Issue Date: March 15, 2018

Effective Date: March 15, 2018

On March 14, 2018, the Staff of the Missouri Public Service Commission (“Complainant”), P.O. Box 360, Jefferson City, Missouri 65102-0360, filed a complaint with the Missouri Public Service Commission (“Commission”) against Branson Cedars Resort Utility Company LLC and The Tranquility Group, LLC (“Respondents”). A copy of the complaint accompanies this notice. This is a contested case¹ pursuant to Section 386.390, RSMo 2016. This case will not proceed under the small formal complaint process.²

This 30-day notice is being given as required by Section 536.067, RSMo 2016, and the Commission will set a deadline for Respondents to file an answer or answers. As required by Section 536.067(2)(f), RSMo 2016, the Commission informs the parties

¹ A “[c]ontested case” means a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing.” Section 536.010.4, RSMo 2016.

² 4 CSR 240-2.070(15).

that the Commission's provisions governing procedures before the Commission, including provisions relating to discovery, are found at Commission Rule 4 CSR 240-2.090.

THE COMMISSION ORDERS THAT:

1. The Commission's Data Center shall send, by certified mail, a copy of this notice and order and a copy of the complaint to:

Patsy Kay O'Kieffe
Registered Agent for Branson Cedars Resort Utility Company LLC
769 State Highway 86
Ridgedale, Missouri 65739

and

Patsy Kay O'Kieffe
Registered Agent for The Tranquility Group, LLC
769 State Highway 86
Ridgedale, Missouri 65739

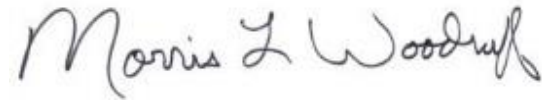
2. Branson Cedars Resort Utility Company, LLC, and The Tranquility Group, LLC, shall file an answer or answers to this complaint or request for mediation no later than March 29, 2018, and serve a copy upon the Complainant. All pleadings (the answer, the notice of satisfaction of complaint or request for mediation) shall be mailed to:

Secretary of the Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102-0360

or filed using the Commission's electronic filing and information service (EFIS).

3. This order shall be effective when issued.

BY THE COMMISSION



Morris L. Woodruff
Secretary



Nancy Dippell, Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 15th day of March, 2018.

**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

Jacob T. Westen

Deputy Counsel

Missouri Bar No. 65265

Attorney for the Staff of the

Missouri Public Service Commission

P.O. Box 360

Jefferson City, MO 65102

573-751-5472 (Voice)

573-751-9285 (Fax)

jacob.westen@psc.mo.gov

**BEFORE THE PUBLIC SERVICE COMMISSION
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 -

STIPULATION AND AGREEMENT

COMES NOW, the Staff of the Missouri Public Service Commission (Staff) and the Branson Cedars Resort Utility Company, LLC. (BRCU), and The Tranquility Group, LLC (Tranquility LLC; hereinafter referenced together as "the Utility"), by and through respective counsel, pursuant to Commission regulation 4 CSR 240-2.115, respectfully request that the Commission approve this *Stipulation and Agreement* (Agreement) as a complete resolution of the issues specifically addressed herein, and issue an order adopting and incorporating the term herein. In support of this Agreement, reached as the result of negotiations between, the Utility and Staff (collectively, the signatories), the signatories state and agree as follows:

SPECIFIC PROVISIONS

1. **Issues Settled:** Upon the completion of all terms of this Stipulation and Agreement, including the completion of all schedules of compliance and payment of any penalties due under the terms of this Agreement, the signatories agree and intend this Agreement to settle all issues and allegations raised within the above captioned case. Staff and the Utility recommend that the Commission accept this Agreement as a just

and fair compromise of their respective positions.

2. **Admission of Violations:** The Utility acknowledges and admits that it violated:

- a. Paragraph 2.c of the Commission's August 25, 2015, *Report and Order*,
- b. Paragraph 3 of the Commission's August 25, 2015, *Report and Order*, and
- c. BRCU Tariff P.S.C. MO No. 1, Sheet No. 27, Rule 11.A.

3. The Utility acknowledges and admits the period of time for these three violations from the dates alleged within Staff's Complaint captioned the same as this matter, until the filing of this Agreement.

4. If the Utility fails to perform under the terms of this Agreement or any subsequent Commission order approving this Agreement, the General Counsel of the Commission may at its discretion pursue any civil penalties allowable under § 386.590 RSMo, for violations admitted herein. Should Utility's fail to perform, the Utility further admits and consents to the finding and entry of civil penalties against BRCU and Tranquility LLC for the violations admitted herein, as found by a circuit court.

5. **Remedial Relief:** The Utility agrees to complete the following remedial actions within the time provided below, beginning from the effective date of any Commission order approving the Agreement:

- a. BRCU must file a rate case with the Commission in 15 days; and
- b. BRCU must install water meters on all commercial customers within 30 days of the approval of this Agreement by the Commission.
- c. Within 30 days of the approval of this Agreement by the Commission, BRCU must install water meters on all customer connections that

occurred after November 1, 2015 to the present.

General Provisions

6. This *Stipulation and Agreement* is being entered into for the purpose of disposing of the issues that are specifically addressed herein. In presenting this *Stipulation and Agreement*, none of the signatories shall be deemed to have approved, accepted, agreed, consented or acquiesced to any procedural principle, and none of the signatories shall be prejudiced or bound in any manner by the terms of this *Stipulation and Agreement*, whether approved or not, in this or any other proceeding, other than a proceeding limited to the enforcement of the terms of this *Stipulation and Agreement*, except as otherwise expressly specified herein. The signatories further understand and agree that the provisions of this *Stipulation and Agreement* relate only to the specific matters referred to in this *Stipulation and Agreement*, and no signatory waives any claim or right which it otherwise may have with respect to any matter not expressly provided for in this *Stipulation and Agreement*.

7. This *Stipulation and Agreement* has resulted from negotiations and the terms hereof are interdependent. If the Commission does not approve this *Stipulation and Agreement* in total, or approves it with modifications or conditions to which a signatory objects, then this *Stipulation and Agreement* shall be void and no signatory shall be bound by any of its provisions. The agreements herein are specific to this proceeding and are made without prejudice to the rights of the signatories to take other positions in other proceedings except as otherwise noted herein.

8. If the Commission does not unconditionally approve this *Stipulation and Agreement* without modification, and notwithstanding its provision that it shall become

void, neither this *Stipulation and Agreement*, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any signatory has for a decision in accordance with Section 536.080, RSMo 2000, or Article V, Section 18, of the Missouri Constitution, and the signatories shall retain all procedural and due process rights as fully as though this *Stipulation and Agreement* had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this *Stipulation and Agreement* shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

9. If the Commission unconditionally accepts the specific terms of this *Stipulation and Agreement* without modification, the signatories waive, with respect to the issues resolved herein: their respective rights (1) to call, examine and cross-examine witnesses pursuant to Section 536.070(2), RSMo 2000; (2) their respective rights to present oral argument and/or written briefs pursuant to Section 536.080.1, RSMo 2000; (3) their respective rights to the reading of the transcript by the Commission pursuant to Section 536.800.2, RSMo 2000; (4) their respective rights to seek rehearing pursuant to Section 386.500, RSMo 2000; and (5) their respective rights to judicial review pursuant to Section 386.510, RSMo Supp. 2011. These waivers apply only to a Commission order respecting this *Stipulation and Agreement* issued in this above-captioned proceeding and do not apply to any matters raised in any prior or subsequent Commission proceeding, or any matters not explicitly addressed by this

Stipulation and Agreement.

10. This *Stipulation and Agreement* contains the entire agreement of the signatories concerning the issues addressed herein.

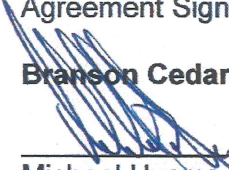
11. The intent of the signatories to this *Stipulation and Agreement* has been fully and exclusively expressed in this document and the attachments appended hereto.

12. Acceptance of this *Stipulation and Agreement* by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigative or other power which the Commission presently has. Thus, nothing in this *Stipulation and Agreement* is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information, or any statutory obligation.

SIGNATURES

Agreement Signed and Dated:

Branson Cedars Resort Utility Company, LLC



Michael Hyams
Managing Member

Feb 25, 2018
Date

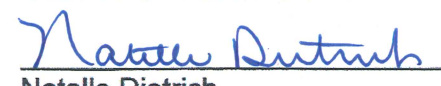
The Franquility Group, LLC



Michael Hyams
Managing Member

Feb 25, 2018
Date

Staff of the Missouri Public Service Commission



Natelle Dietrich
Staff Director, Staff of the Missouri Public Service Commission

3/1/18
Date

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

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
v.)	<u>Case No. WC-2018-</u>
)	
Branson Cedars Resort Utility Company LLC,)	
and The Tranquility Group, LLC,)	
)	
Respondents)	

**MOTION FOR EXPEDITED TREATMENT FOR THE APPROVAL OF
THE STIPULATION AND AGREEMENT**

COMES NOW the Staff of the Missouri Public Service Commission and for its *Motion for Expedited Treatment for the Approval of the Stipulation and Agreement* ("Motion") respectfully states as follows:

1. On February 25, 2018, the Branson Cedars Resort Utility Company, LLC (BRCU) and The Tranquility Group, LLC (Tranquility LLC; herein reference together as "the Utility") and on March 1, 2018, the Staff of the Missouri Public Service Commission (Staff), by and through respective counsel, executed a *Stipulation and Agreement* (*Agreement*), resolving all the issues raised in a Complaint prepared by Staff.

Because the Utility and Staff have reached an agreeable *Agreement* on March 1, 2018, and because the *Agreement* requires an Order of the Commission approving the contents therein, and because the terms of the *Agreement* further function as a result of an order of the Commission, pursuant to 4 CSR 240-2.080(14) Staff requests the Commission approve the *Agreement* no later than March 30, 2018. This pleading was filed as soon as practical given the Staff's schedule.

WHEREFORE, Staff prays that the Commission will approve the *Agreement* the Utility and Staff agreed on March 1, 2018.

Respectfully submitted,

/s/ Ron Irving

Ron Irving
Legal Counsel
Missouri Bar No. 56147
Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
573-526-4612(Voice)
ron.irving@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record this 14th day of March, 2018.

/s/ Ron Irving

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 15th day of March 2018.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

March 15, 2018

File/Case No. WC-2018-0250

**Missouri Public Service
Commission**

Staff Counsel Department
200 Madison Street, Suite 800
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Branson Cedars Resort

Legal Department
769 State Highway 86
Ridgedale, MO 65739

**Branson Cedars Resort Utility
Company LLC**

Legal Department
769 State Highway 86
Ridgedale, MO 65739

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.