

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

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	Case No. WC-2008-0405
v.)	
)	
Dale Whiteside and Whiteside Hidden Acres, L.L.C.)	
)	
Respondents.)	

**STAFF’S RESPONSE TO RESPONDENTS’ ENTRY OF APPEARANCE,
ANSWER, AND MOTION TO DISMISS**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), through Counsel, and for its Response respectfully states to the Missouri Public Service Commission (Commission) as follows:

Procedural History

1. On June 19, 2008, Staff filed a Complaint against Respondents, concerning Respondents unlawful provision of water services to the public, for gain, without certification or other authority from the Commission.
2. On June 23, 2008, the Commission issued its Notice of Complaint allowing Respondents thirty days to file an answer.
3. On July 21, 2008, Respondents’ counsel filed an Entry of Appearance, Answer, and Motion to Dismiss (Pleading). In one paragraph, Respondents’ pleading contains a general denial of Staff’s Complaint, and asserts the Complaint should be dismissed “for failure to state a cause of action against these Respondents.”

4. On July 22, 2008, the Commission issued its Order Setting Prehearing Conference and Requiring Filing of Procedural Schedule. A prehearing conference was ordered for August 7, 2008, at 10:00 a.m., and the parties are to file a joint procedural schedule.

Respondents' Answer is Insufficient

5. Respondents' pleading states counsel "hereby denies each and every allegation and averment contained in Counts I, II, and III of the Complaint filed herein."
6. 4 CSR 240-2.070 (8) provides "[t]he respondent shall file an answer to the complaint within the time provided. All grounds of defense, both of law and of fact shall be raised in the answer. If the respondent has no information or belief upon the subject sufficient to enable the respondent to answer an allegation of the complaint, the respondent may so state in the answer and assert a denial upon that ground."
7. As per the Commission's rule, Respondents' Answer should be drawn so as to specifically admit or deny the allegations set forth in Staff's Complaint, and set forth facts and law upon which any defenses are based.
8. Additionally, Rule 55.07 of the Missouri Rules of Civil Procedure provides
[i]f a responding party has knowledge or information sufficient to form a belief as to the truth of an averment, the party shall admit or deny the specific averment. If the responding party is without knowledge or information sufficient to form a belief as to the truth of a specific averment, the party shall so state, and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a party intends in good faith to deny only a part or a qualification of an averment, the party shall specify so much of it as is true and shall deny only the remainder. A party shall respond to all specific averments as provided in this Rule 55.07 and shall not generally deny all the specific averments.
9. As with the Commission's rule, general denials are insufficient under Rule 55.07, and are prohibited. *See Everest Reinsurance Co. v. Kerr*, 253 S.W.3d 100, 105 (2008), and *Jordan v. Willens*, 937 S.W.2d 291, 295 (1996).

Respondents' Motion to Dismiss is Insufficient for the Commission to Rule Upon

10. Respondents' Pleading moves for the Commission to dismiss Staff's Complaint for failure to state a cause of action against Respondents.
11. However, Respondents fail to state any facts, case law, or statutory basis upon which the Commission can consider and issue a finding.
12. While the Commission's Order Setting Prehearing Conference and Requiring Filing of Procedural Schedule effectively denies Respondents' Motion to Dismiss, Staff respectfully requests a finding as such.

WHEREFORE, Counsel for Staff respectfully requests the Missouri Public Service Commission to issue an order: 1) which requires Respondents to file an answer drawn so as to specifically admit or deny the allegations set forth in Staff's June 19, 2008 Complaint, and state the facts and law upon which any defense is based; and 2) which denies Respondents' Motion to Dismiss.

Respectfully submitted,

/s/ Jennifer Hernandez

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was sent via US Mail, electronic mail, or facsimile to all counsel of record this 28th day of July, 2008.

/s/ Dawn M. Carafeno