

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

The Staff of the Missouri Public Service)
Commission,)
)
Complainant,)
)
v.)
)
Taney County Utilities Corporation)
Richard E. Scott)
P.O. Box 177)
116 Laughing Lane)
Rockaway Beach, MO 65740,)
)
Respondent.)

Case No. SC-2016-0343

**MOTION TO DEEM NOTICE
AS SUFFICIENT AND REQUEST FOR RELIEF**

COMES NOW the Staff of the Missouri Public Service Commission, by and through the undersigned counsel, and hereby respectfully states as follows:

1. Section 536.067(1) RSMo requires an agency to mail notice of institution of a case to all necessary parties.
2. Section 351.380.1 RSMo, regarding rules concerning corporations, allows notice to be served on the registered agent of a corporation.
3. Due process generally requires a governmental agency to provide “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections.”¹

¹ *Prescott v. Missouri Department of Social Services*, 464 S.W.3d 560, 570 (2015) (citing *Jones v. Flowers*, 547 U.S. 220, 226 (2006) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314(1950)))

4. On December 3, 2015, Staff filed a complaint against Respondent (“TCUC” or “Company”) in case no. SC-2016-0135 alleging Respondent failed to submit its 2013 and 2014 annual reports and that Respondent failed to pay its fiscal year 2014 assessment.

5. Notice of that complaint was sent to TCUC at 116 Laughing Lane, Rockaway Beach, MO 65740, and the certified mail receipt was filed in EFIS on December 17, 2015.

6. Owner, president, sole board member and Registered Agent for Respondent TCUC, Mr. Richard E. Scott, signed the return receipt.²

7. Respondent did not answer the complaint in SC-2016-0135, so the Commission granted default determination on March 9, 2016, and issued its *Order Authorizing General Counsel to Seek Penalties* on March 23, 2016.

8. File SC-2016-0135 was closed on May 2, 2016.

9. On June 20, 2016, Staff filed a second complaint against Respondent in the above captioned case (SC-2016-0343) alleging Respondent failed to submit its 2015 annual report.

10. The Commission’s July 5, 2016, *Order Giving Notice of Contested Case and Directing Respondent to File Answer* was sent to TCUC at P.O. Box 177, 116 Laughing Lane, Rockaway Beach, MO 65740.³

² Case No. SC-2016-0135, Electronic Filing and Information System (EFIS) Item 3.

³ <https://www.certifiedmaillabels.com/questions-about-usps-certified-mail/> states that when Certified Mail arrives at the delivery Post office, the carrier will place a delivery notification inside the P.O. Box that instructs the person to present the delivery slip to the window clerk. After signing the delivery receipt, the letter is given to the recipient. <http://pe.usps.com/text/dmm300/507.htm>, exhibit 1.4.1, indicates that “unclaimed” mail means the addressee abandoned or failed to call for mail. When an item is identified as “refused” the item was delivered, but the addressee refused to accept the item.

11. On July 6, 2016, Mr. Scott filed TCUC's 2016 Annual Registration Report with the Missouri Secretary of State, in which he confirmed the previously-filed physical address at 116 Laughing Lane, Rockaway Beach, MO 65740, with the same mailing address, at P.O. Box 177.⁴

11. The Commission's July 5, 2016 *Order* was returned as unclaimed on July 29, 2016.

12. The Commission sent a subsequent *Order Directing Notice and Extending Deadline for Filing Answer* on July 29, 2016, to TCUC at 116 Laughing Lane, P.O. Box 18, Rockaway Beach, MO 65740. In that *Order*, the Commission extended the deadline for TCUC to file its answer to August 29, 2016.

13. On August 10, 2016, Staff counsel received an email from Honey Pickren, who claimed to be the daughter of Richard Scott. Ms. Pickren indicated that it had come to her attention that there were "several complaints from the PSC regarding the failure of TCU to file their annual reports." Accordingly, it was not until the notice of the second returned mail was filed in EFIS on August 23, 2016, that Staff became aware that Respondents had not acknowledged service of notice of this Complaint.

14. On August 23, 2016, the same day Staff received notice that the *Order* was returned as unclaimed, Taney County Regional Sewer System ("District") filed an application to acquire the TCUC assets in case no. SM-2017-0056. Mr. Scott signed the *Joint Application* and the *Agreement for Provision of Wastewater Collection and Treatment Services* as president of Respondent TCUC, attached as exhibit C in the acquisition case.

⁴ False statements made in this report are punishable for the crime of making a false declaration under Section 576.060 RSMo.

15. Also on August 23, 2016, the Commission issued its *Third Order Directing Notice and Setting Deadline for Filing Answer*, in which the deadline for TCUC to file an answer to Staff's *Complaint* was further extended to September 23, 2016.

16. On August 29, 2016, Staff Counsel received further communication from Ms. Pickren, and Staff Counsel took that opportunity to inform Ms. Pickren that Staff is still awaiting the filing of the 2013, 2014 and 2015 annual reports. Staff Counsel also informed Ms. Pickren of the complaint that has been filed and for which notice has thus far been unclaimed, and Staff Counsel asked Ms. Pickren if she would verify the address. Ms. Pickren confirmed the address on file with the Commission as correct.

17. On September 7, 2016, the Commission's August 23, 2016 *Order* was returned as refused.

18. Although the US Supreme Court has held that when certified mail is returned unclaimed in a civil matter, due process requires the state to take additional reasonable steps to provide notice,⁵ case law does not address when certified mail is returned as refused in an administrative matter. In the present case, Ms. Pickren has confirmed the address is valid, Ms. Pickren has acknowledged that the Company is aware of the complaint against it, and the third notice was not simply left unclaimed but was instead actively refused.

19. Staff has taken actions reasonably calculated to serve notice on Respondents. Based on the information known to Staff, the Company is aware that it is in violation of the Missouri Statutes and Commission's rules and is willfully refusing to be served process in this *Complaint* case. Staff therefore respectfully requests the

⁵ *Schlereth v. Hardy*, 280 S.W.3d 47 (2009), citing *Jones v. Flowers*, 547 U.S. 220 (2006).

Commission deem the notice already sent to be sufficient and not grant further extensions of the deadline to file an answer.

WHEREFORE, Staff respectfully requests the Commission deem notice sufficient, and order such further relief as the Commission deems necessary.

Respectfully submitted,

/s/ Marcella L Forck
Assistant Staff Counsel
Missouri Bar No. 66098
Attorney for the Staff of the
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-4140 (Telephone)
(573) 751-9265 (Fax)
Marcella.forck@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were mailed, electronically mailed, or hand-delivered to all counsel of record this 16th day of September, 2016.

/s/ Marcella L. Forck