

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

The Office of the Public Counsel,)
An agency of the State of Missouri,)
COMPLAINANT)

Case No. WC-2015-0288

v.)

Case No. SC-2015-0289

The Tranquility Group, LLC d/b/a)
Branson Cedars Resort,)
Branson Cedars Resort Utility)
Company LLC,)
A Missouri water and sewer corporation,)
RESPONDENTS)

**THE OFFICE OF THE PUBLIC COUNSEL’S STATEMENT
IN OPPOSITION TO STAFF’S RESPONSE**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Statement in Opposition to Staff’s Response, states as follows:

1. On May 5, 2015, Public Counsel filed the above-stated complaints with the Missouri Public Service Commission (Commission) alleging that Respondents have charged and currently charge for water service and sewer service in violation of Missouri Statute.
2. On May 19, 2015, the Staff of the Missouri Public Service Commission (Staff) filed its Response.
3. In its Response, Staff states: “Staff agrees that these Respondents are providing water services or water and sewer services without authorization from this Commission and are both billing for those services and collecting payments despite having no Commission-approved tariffs.”

4. Staff also states: “Staff has not brought a complaint against The Tranquility Group, doing business as Branson Cedars Resort (“Branson Cedars”), because no inducement was required to incent Branson Cedars to comply with the law by seeking a CCN from this Commission.”

5. Staff indicates that because Respondents have sought a Certificate of Convenience and Necessity (CCN) from the Commission, the Commission should refuse any relief requested by Public Counsel. However, in making this conclusion Staff skips an important component in this matter – the rate payers’ due process right to be heard before the Commission. The above utility has not even filed its Answer to Public Counsel’s complaint as of the time of this filing, much less has discovery started or the utility been offered an opportunity to defend itself.

6. Staff also indicates its belief that it is reasonable for the Commission to consolidate these complaints with other complaints Public Counsel filed involving completely different Respondents.¹

7. To be clear, merely seeking a CCN does not provide Respondents the statutory authority to charge for water and sewer service. And, Staff at least concurs the Respondents are charging for utility services.

8. Section 393.130.1, RSMo., states “Every unjust or unreasonable charge made or demanded for gas, electricity, water, sewer or any such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited.”

9. Section 393.140(11), RSMo., also states “No corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedules filed and in effect at the time.”

¹ Case Nos. WC-2015-0290, WC-2015-0291 & SC-2015-0292.

10. The filed rate doctrine precludes a public utility from collecting any rates other than those properly filed with the appropriate regulatory agency. *State ex rel. Associated Natural Gas Co. v. PSC*, 954 S.W.2d 520, 531 (Mo. Ct. App. 1997).
11. Missouri Public Service Commission Rule, 4 CSR 240-3.010 (28) states specifically:

Tariff means a document published by a public utility, and approved by the commission, that sets forth the services offered by that utility and the rates, terms and conditions for the use of those services.
12. Therefore, only a tariff which is approved by the Missouri Public Service Commission may set out the lawful rates for a public utility. This is a requirement independent of the establishment of a franchise in a CCN case. Any charge made or demanded by a public utility for gas, electricity, water, sewer or any such service, without a Missouri Public Service Commission approved tariff is statutorily prohibited.
13. Neither The Tranquility Group, LLC d/b/a Branson Cedars Resort nor Branson Cedars Resort Utility Company LLC have tariffs approved by the Missouri Public Service Commission for rates and charges relating to water service or sewer service.
14. The affirmative requirements of a statute cannot be waived, even if consented to by the parties. *Westerman v. Supreme Lodge K. P.*, 196 Mo. 670 (Mo. 1906). As a result, Respondents cannot charge for water and sewer service without violating Missouri statute. The fact that the Respondents consented to seek a CCN, or that Staff does not seem to mind that customers are being charged without a Commission-approved tariff, does not change or negate the fact that customers are being charged for utility service in violation of the law right now.
15. Staff's totally premature request that the Commission refuse to order relief in this case and hold these complaints in abeyance pending the completion of the associated CCN cases, and then dismiss them, is unjust, unreasonable and contrary to the law.

16. Additionally, Public Counsel believes that Staff's discussion regarding the Commission's ability to order refunds is erroneous, incomplete and premature. In its Complaints, Public Counsel asked that the Commission grant such relief as it deems appropriate and necessary. Should the Commission ultimately determine that it cannot order refunds; the Commission has the ability to issue an order authorizing its General Counsel to seek in Circuit Court any and all refunds allowed by law – and the Commission should do so if determined to be just and reasonable in this case. The Commission also has the ability to stop the illegal conduct of the public utility by requiring the submission of interim or emergency tariffs or another form of relief.

17. Finally, Public Counsel opposes Staff's request asking the Commission to consolidate these complaints with other complaints Public Counsel recently filed. While Public Counsel would agree that all of the complaints involve charging for utility services without a Commission-approved tariff, the complaints involve completely different Respondents, completely different charges and completely different factual circumstances. Therefore, it is not just and reasonable that complaints involving different Respondents be consolidated and to do so may hinder the individual Respondents' due process rights.

18. Public Counsel has no objection to the Commission consolidating the above-stated water and sewer complaints, as they involve the same Respondents and similar factual circumstances.

WHEREFORE, Public Counsel submits its opposition.

Respectfully submitted,

THE OFFICE OF THE PUBLIC COUNSEL

/s/ Christina L. Baker

By: _____

Christina L. Baker (#58303)

Deputy Public Counsel

P O Box 2230

Jefferson City, MO 65102

(573) 751-5565

(573) 751-5562 FAX

christina.baker@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 21st day of May, 2015:

Missouri Public Service Commission

Marcella Mueth

200 Madison Street, Suite 800

P.O. Box 360

Jefferson City, MO 65102

Marcella.Mueth@psc.mo.gov

Missouri Public Service Commission

Office General Counsel

200 Madison Street, Suite 800

P.O. Box 360

Jefferson City, MO 65102

staffcounsel@psc.mo.gov

Branson Cedars Resort

Melissa E Bade

1949 East Sunshine, Ste 1-130

PO Box 10327

Springfield, MO 65808

mbade@nmlaw.com

Branson Cedars Resort

Judson Poppen

1949 E. Sunshine, Ste. 1-130

P.O. Box 10327

Springfield, MO 65808-0327

jpoppen@nmlaw.com

**Branson Cedars Resort Utility Company,
LLC**

Judson Poppen

1949 E. Sunshine, Ste. 1-130

P.O. Box 10327

Springfield, MO 65808-0327

jpoppen@nmlaw.com

**Branson Cedars Resort Utility Company,
LLC**

Melissa E Bade

1949 East Sunshine, Ste 1-130

PO Box 10327

Springfield, MO 65808

mbade@nmlaw.com

/s/ Christina L. Baker