

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

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
v.)	
)	
Whiteside Hidden Acres, L.L.C.,)	<u>Case No. WC-2014-</u>
Dale Whiteside)	
HC77, Box 899 C)	
Pittsburg, MO 65724)	
)	
Respondent.)	
)	

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission (hereinafter “Staff”), through the undersigned counsel, and pursuant to Section 386.390 RSMo (2000) ¹ and 4 CSR 240-2.070(1), files this Complaint with the Missouri Public Service Commission (hereinafter “Commission”), against Respondent, Whiteside Hidden Acres, L.L.C., (hereinafter “Respondent” or “Company”), for violation of the Commission’s statutes and rules relating to the filing of annual reports and payment of annual assessments. In support of its Complaint, Staff respectfully states the following:

Introduction

1. This matter concerns Respondent’s failure to timely file an annual report as required by Section 393.140(6), RSMo, and Commission Rule 4 CSR 240-3.640.

Parties

2. Complainant is the Staff of the Missouri Public Service Commission, acting

¹ All statutory references are to RSMo 2000, as currently supplemented.

through the Staff Counsel's Office as authorized by Commission Rule 4 CSR 240-2.070(1).

3. Respondent is Whiteside Hidden Acres, LLC, a Missouri limited liability corporation in good standing. Respondent's registered agent is Craig F. Lowther, 901 St. Louis Street, 20th Floor, Springfield, MO 65806. This Commission granted Respondent a Certificate of Convenience and Necessity ("CCN") authorizing Respondent to provide water service to the public for gain in Hickory County, Missouri, on July 11, 2009, in Case No. WA-2009-0261. Pursuant to that CCN, Respondent provides water service to 39 residential customers near Pittsburg in Hickory County, Missouri.²

General Allegations Common To Both Counts

4. Respondent is a "water corporation" as defined by Section 386.020(59), RSMo, a "public utility" as defined by Section 386.020(43), and thus subject to the jurisdiction of this Commission pursuant to Section 386.250(3), RSMo.

5. Section 386.390.1, RSMo., authorizes the Commission to entertain a complaint "setting forth any act or thing done or omitted to be done by any...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."

6. Section 386.600, RSMo., provides that "an action to recover a penalty...under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall

² *In the Matter of Whiteside Hidden Acres, LLC*, Case No. WR-2011-0024 (***Order Approving Disposition Agreement and Tariff***, issued March 30, 2011) at p. 1.

be commenced and prosecuted to final judgment by the general counsel to the commission.”

COUNT ONE

Respondent has failed to submit its 2012 annual report

7. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs one (1) through six (6) above.

8. Section 393.140(6) requires every water corporation to file with the Commission an annual report and Rule 4 CSR 240-3.640(1) requires the annual report to be filed with the Commission on or before April 15th of each year.

9. On July 12, 2013, Staff mailed a letter to the Company notifying Respondent that the Commission had not received the Company's 2012 Annual Report and that the Respondent would be subject to legal action if the Company did not file its 2012 Annual Report by August 2, 2013.

10. Respondent did not file its 2012 Annual Report by August 2, 2013.

11. As of the date of this filing, Respondent has failed, omitted, or neglected to file its calendar year 2012 Annual Report.

12. Section 393.140(6), states that “[a]ny such person or corporation which shall neglect to make any such report or which shall fail to correct any such report within the time prescribed by the commission shall be liable to a penalty of one hundred dollars and an additional penalty of one hundred dollars for each day after the prescribed time for which it shall neglect to file or correct the same...”

WHEREFORE, Staff respectfully requests the Commission give notice to the Respondent as required by law and, after the opportunity for hearing, issue an order for Count I that finds the Respondent failed, omitted, or neglected to file an annual report for 2012 and authorizes the General Counsel's Office to bring a penalty action against the respondent in circuit court as provided in Sections 386.600 and 393.140(6).

COUNT TWO

Respondent has failed to pay its fiscal year 2013 assessment

13. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs one (1) through twelve (12) above.

14. On June 20, 2012, the Commission, in Case No. AO-2012-0424, issued its Assessment Order for Fiscal Year 2013 (Assessment Order) pursuant to Section 386.370 RSMo.

15. The Assessment Order fixed the amount allocated to public water corporations at \$1,894,982.

16. Section 386.370.5 RSMo provides: "In order to enable the commission to make the allocations and assessments herein provided for, each public utility subject to the jurisdiction of the commission...shall file...on or before March thirty-first of each year, a statement under oath showing its gross intrastate operating revenues for the preceding calendar year..."

17. Respondent filed its 2011 Statement of Revenue with the Commission on May 17, 2012.

18. Section 386.370.2 RSMo, states: "The Commission shall allocate to each group of public utilities the gross intrastate operating revenues of such group during the preceding calendar year. The Commission shall then assess the amount allocated to each public utility in proportion to their respective gross intrastate operating revenues during the preceding calendar year."

19. Section 408.020 allows "creditors to receive interest at the rate of nine percent per annum, when no other rate is agreed upon....on accounts after they become due and demand of payment is made[,]" and Complainant is statutorily entitled to prejudgment interest on Respondent's delinquent assessment amount.

20. On May 6, 2013, the Commission's Budget and Fiscal Services sent Respondent notice stating no payment on the assessment amount had been received to date.

21. As of the date of this filing, Respondent has failed, omitted, or neglected to pay its 2013 fiscal year assessment.

22. Section 386.570.1 RSMo provides that,

Any...public utility which violates or fails to comply with any...law, or which fails to comply with any order, decision, decree, rule direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such...public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

23. Section 386.570.2, RSMo., provides that "...in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense."

WHEREFORE, the Staff respectfully requests the Commission give notice to the Respondent as required by law and, after the opportunity for hearing, issue an order for Count II that finds the Respondent has failed to pay the fiscal year 2013 assessment and authorizes the General Counsel's Office to bring a penalty action against the Respondent in circuit court as provided in Sections 386.600 and 386.570 RSMo for the collection of the assessment, penalties, and interest on the assessment amount.

Respectfully submitted,

/s/ Alexander Antal_____

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 18th day of November, 2013.

/s/ Alexander Antal_____