

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

The Staff of the Missouri Public Service Commission,

Complainant,

v.

Aspen Woods Apartment Associates, LLC, Barry Howard, Aspen Woods Apartments, Sapal Associates, Sachs Investing Co., Michael Palin, Jerome Sachs, and National Water & Power, Inc.

Respondents.

Case No. WC-2010-0227

**NATIONAL WATER & POWER
SUGGESTIONS IN OPPOSITION TO STAFF'S MOTION TO FILE
AMENDED COMPLAINT**

COMES NOW Respondent National Water & Power, Inc. (NWP), in response to Staff's October 5, 2010 Motion (for Leave) to File an Amended Complaint, and in opposition thereto NWP states as follows:

1. In both the original Complaint and Amended Complaint, Staff attempts to extend PSC jurisdiction to include apartment complexes, wherein the landlord divides the utility bill for the tenants' premises between the tenants, as regulated public utilities.

2. The Commission has never before attempted to regulate, or to assess, owners of apartments in Missouri. The ramifications of making apartment owners regulated utilities are large. It could have a significant impact upon thousands of apartment owners, and upon hundreds of thousands of apartment tenants.

3. Any such extension of PSC jurisdiction should be accomplished through the legislative process, or through the PSC's rulemaking process, so that interested stakeholders would have proper notice, equal opportunity for participation.

4. Instead, the original Complaint, and the Amended Complaint, would pursue such an extension of PSC jurisdiction against Aspen Woods, a single apartment complex owner, and NWP, its vendor. This attempt at extending the Commission's jurisdiction and assessment base by Complaint against only one of thousands of apartment owners singles out one of thousands of apartment owners. It also creates a disparate competitive impact upon Aspen Woods and NWP, which must stand the expense of defending this action, while other landlords and billing vendors do not.

5. A key legal issue in this case, unaddressed and unresolved to date, is whether the Respondents meet the legal definition of water utilities or sewer utilities that have devoted their facilities to public use. NWP believes that addressing this issue first is the most efficient utilization of the resources of the parties, and of the Commission. NWP has begun the process of preparing a motion on this issue.

6. Staff's original complaint was filed herein on January 29, 2010.

7. On March 30, 2010 the parties filed a joint proposed procedural schedule providing for discovery completion by July 31, 2010. That filing stated that any party could move for an extension of discovery if discovery proves much more extensive than any party could have anticipated. No party did so.

8. The discovery responses from NWP to Staff, upon which Staff's Motion for Leave is based, were provided to Staff by NWP on June 30, 2010.

9. On September 3, 2010 the parties filed a proposed procedural schedule, which the Commission, by Order of September 7, 2010, adopted with modifications. Pursuant to that order, this matter is set for specific testimony deadlines and a specific hearing date.

10. Staff's Motion for Leave does not explain why it waited from June 30 until October 5, after discovery ended, and after a hearing schedule has been established, to file an amended complaint. It appears the amended complaint would not change parties, but would add two additional apartment complexes to the existing litigation.

11. NWP disagrees that leave will not harass or prejudice the existing parties.

12. The threshold issue in this proceeding is whether apartments, wherein the landlord passes on its utility expense to tenants, are subject to regulation by this Commission.

13. By adding two additional compartment complexes to the present Complaint, the amended complaint would add absolutely nothing to the threshold issue, except possibly "up the stakes" for Aspen Woods and NWP. But the amended complaint would increase the factual complexity, and possible need for additional discovery.

14. Adding two apartment complexes at different locations will inject additional facts with respect to different apartment complex facility, different water and wastewater suppliers, and different distribution facilities. Attempting to litigate these issues will create additional expense to NWP. Attempting to litigate do so within the confines of the current hearing schedule will prejudice NWP.

WHEREFORE, on the basis of the foregoing, NWP respectfully requests that the Commission enter an order denying Staff's Motion (for Leave) to file an Amended Complaint.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading was electronically mailed to the following attorneys of record in this proceeding this 11th day of October, 2010:

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