

**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

JOINT MOTION FOR SUMMARY DETERMINATION

COME NOW Respondent Aspen Woods Apartment Associates, LLC (Aspen Woods), and Respondent National Water & Power, Inc. (NWP), pursuant to 4 CSR 240-2.117, and for their Joint Motion for Summary Determination, state as follows:

Introduction

By its Complaint herein, the MoPSC Staff attempts to extend the PSC’s jurisdiction over utilities to include apartments where the landlord divides its utility bill between tenants. The Commission has never attempted to regulate owners of apartments in Missouri, or to assess them for the costs of the Commission resources dedicated to regulating apartments. 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.

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, and equitable, competitively-neutral sharing of the benefits and burdens of such regulation.

Instead, the Commission Staff seek to obtain such an extension of jurisdiction by a complaint against Aspen Woods, a single apartment complex owner, and NWP, its billing and collection vendor. This attempt at extending the Commission's jurisdiction by Complaint against only one of thousands of apartment owners is inappropriate. It 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.

Aspen Woods and NWP recognize that there could be disputes of fact as to whether Aspen Woods and NWP, its tenant utility billing and collection vendor, meet the statutory definitions of a water corporation¹, a sewer corporation², or a public utility³. Aspen Woods and NWP recognize that there could be disputes of fact as to whether Aspen Woods own facilities that meet the statutory definitions of a water system⁴ or sewer system⁵. Therefore this Motion for Summary Determination does not focus upon those statutory definitions.

The Missouri courts, and ensuing decisions of this Commission, have recognized that, in addition to meeting statutory definitions giving rise to PSC jurisdiction, the service in question must be "devoted to public use". Aspen Woods and NWP do not believe a private apartment complex can be considered devoted to a public use.

This Motion for Summary Determination is directed to the lack of the devotion to public use element. This Motion is accompanied by the affidavit of James Mathes of Aspen Woods. This Motion is also accompanied by a memorandum or suggestions in support hereof.

¹ 386.020 (59) RSMo

² 386.020 (49) RSMo

³ 386.020 (43) RSMo

⁴ 386.020 (60) RSMo

⁵ 386.020 (50) RSMo

Material Facts for which there is No Genuine Issue

1. Aspen Woods owns the Aspen Woods Townhouse and garden Apartment complex (hereinafter “Aspen Woods Apartments Complex”) located in Florissant, Missouri.

2. The Aspen Woods Apartments Complex includes in excess of 400 individual apartments.

3. The Aspen Woods Apartments Complex consists of several separate structures, with separate individual structure containing multiple apartment units.

4. The Aspen Woods Apartments Complex is located on approximately 3-6 square blocks located near the intersection of Santiago Drive and New Halls Ferry Road, Florissant, St. Louis County, Missouri.

5. At the Aspen Woods Apartments Complex water service is supplied to the complex by the Missouri American Water Company.

6. At the Aspen Woods Apartments Complex sewer or wastewater service is provided to the complex by the Metropolitan St. Louis Sewer District.

7. The water service for the Aspen Woods Apartments Complex from Missouri American Water is metered at 38 separate water meters located adjacent to structures located within the complex. Missouri American water owns the 38 meters. The customer of Missouri American Water is Aspen Woods. Aspen Woods receives 38 separate bills from Missouri American Water for water service supplied to the Aspen Woods Apartments Complex.

8. The sewer or wastewater service for the Aspen Woods Apartments Complex from Metropolitan St. Louis Sewer District is metered at 39 separate meters located adjacent to structures located within the complex. Metropolitan St. Louis Sewer District owns the sewer meters. The customer of Metropolitan St. Louis Sewer District is Aspen Woods. Aspen Woods

receives 39 separate bills from Metropolitan St. Louis Sewer District Missouri American Water for sewer or wastewater service water service supplied to the Aspen Woods Apartments Complex.

9. There are no meters measuring individual apartment water usage or wastewater usage at individual apartments in the Aspen Woods Apartments Complex.

10. In its leases with its tenants at the Aspen Woods Apartments Complex, Aspen Woods makes contractual arrangements for the tenants to reimburse Aspen Woods for the tenants' share of Aspen Woods' water and wastewater service bills.

11. Aspen Woods and NWP have a contractual relationship in which NWP provides services with respect to allocating individual tenants' share of water and wastewater bills for the Aspen Woods Apartments Complex.

12. NWP takes the monthly water bills of Aspen Woods, subtracts Aspen Woods' usage for irrigation, swimming pools, and common areas, and allocates the remaining amount to individual apartment tenants. The allocation basis for Aspen Woods Apartments Complex is square footage.

13. NWP takes the monthly wastewater or sewer service bills of Aspen Woods, subtracts Aspen Woods' usage for irrigation, swimming pools, and common areas, and allocates the remaining amount to individual apartment tenants. The allocation basis for Aspen Woods Apartments Complex is square footage.

14. Individually allocated amounts for water and sewer service are billed by NWP to the tenants, collected by NWP from the tenants who remit payment to NWP, or collected by Aspen Woods from tenants paying Aspen Woods in person. Amounts collected by NWP are remitted to Aspen Woods.

15. NWP charges tenants a monthly fee for its services.

16. This arrangement whereby NWP bills and collects from tenants their allocated share of Aspen Woods' utility bills, and the tenants pay NWP for this service, is set forth in the terms of the lease between the tenants and Aspen Woods.

17. Aspen Woods only leases individual apartments at Aspen Woods Apartments Complex to persons who sign a lease agreeing to the arrangements set forth in paragraphs 10-16 above.

18. Aspen Woods only obtains reimbursement for water and sewer bills, as set forth above, from tenants at the Aspen Woods Apartments Complex.

19. The Aspen Woods Apartments Complex is private property belonging to Aspen Woods, subject to the leasehold interests of tenants.

20. With respect to leasing individual apartments at the Aspen Woods Apartments Complex, Aspen Woods does not offer the apartments to the general public indiscriminately. Aspen Woods only leases individual apartments at the Aspen Woods Apartments Complex to persons meeting eligibility criteria of Aspen Woods. This eligibility criteria includes a credit/financial responsibility check of applicants, a background check, employment verification for verification of ability to pay for the lease term, payment of an advance month's rent and a security deposit equal to one month's rent, and entering into a lease contract in a form approved by or acceptable to Aspen Woods, wherein the tenant agrees to the terms and conditions of leasing an apartment from Aspen Woods. Copies of Aspen Woods' eligibility criteria are attached to the affidavit of James Mathes.

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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 26th day of October, 2010:

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