

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

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
v.)	<u>Case No. WC-2010-0227</u>
)	
Aspen Woods Apartment Associates, LLC, and)	
National Water & Power, Inc.)	
)	
Respondents.)	

**STAFF'S MOTION FOR LEAVE
TO FILE AFFIDAVIT OF JAMES A. MERCIEL, JR.**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the undersigned counsel, and respectfully files this Motion with the Commission stating as follows:

1. On November 22, 2010¹, the Staff submitted its *Response To Respondents' Joint Motion For Summary Determination (Response)*. To develop the *Response*, the Staff relied in part on the supporting discovery attached to its previously filed *Complaint* and *Amended Complaint*, pursuant to 4 CSR 240-2.117(C).

2. By this Motion, the Staff seeks to file the *Affidavit of James A. Merciel, Jr.*, (*Affidavit*) in support of and to supplement its November 22 *Response*, pursuant to 4 CSR 240-2.117(C) and to set forth the material facts that remain in dispute and to support each factual assertion. The *Affidavit* is attached to this Motion.

¹ All dates stated hereafter refer to the calendar year 2010.

3. This Motion for leave is not intended to cause undue prejudice, burden, or delay upon any party. The Staff points out that on December 15 the Respondents filed a motion for leave to supplement their October 26 *Joint Motion For Summary Determination*.

WHEREFORE, the Staff submits its *Motion For Leave To File Affidavit Of James A. Merciel, Jr.*, to the Commission and respectfully requests that the Commission issue an order that grants Staff's Motion and accepts the *Affidavit* as part of the *Staff's Response To Respondents' Joint Motion For Summary Determination*; and any and all other relief the Commission deems necessary and proper.

Respectfully submitted,

/s/ Jennifer Hernandez

Jennifer Hernandez

Associate Staff Counsel

Missouri Bar No. 59814

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360

Jefferson City, MO 65102

(573) 751- 8706 (Telephone)

(573) 751-9285 (Fax)

jennifer.hernandez@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above was served upon the attorneys/parties of record via electronic mail to Lowell D. Pearson, attorney for Aspen Woods Apartment Associates, LLC, at lowell.pearson@huschblackwell.com; Craig S. Johnson, attorney for National Water & Power, Inc., at craigsjohnson@berrywilsonlaw.com; Paul A. Boudreau and John J. McDermott, attorneys for the National Apartment Association at paulb@brydonlaw.com and jmcdermott@naahq.org; and the Office of the Public Counsel at opcservice@ded.mo.gov this 27th day of December 2010.

/s/ Jennifer Hernandez