

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

The Office of Public Counsel)	
)	
Complainant,)	
)	
vs.)	<u>Case No. WC-2016-</u>
)	
Moore Bend Water Utility, LLC,)	
)	
Respondent.)	

COMPLAINT

COMES NOW the Office of Public Counsel (“OPC”) and for its *Complaint*, states as follows:

Introduction

1. This matter concerns the failure of Respondent Moore Bend Water Utility, LLC (“the Company”), to provide safe and adequate service in violation of Section 393.130 RSMo. (Cum. Supp. 2013) and its violation of statutes, Public Service Commission (“the Commission”) rules, and Commission orders relating to (1) the bacterial contamination of its water supply; (2) its failure to provide adequate documentation concerning chlorination; and (3) its failure to take remedial efforts and monitoring of lead pipe corrosion. OPC takes this action at this time because, despite repeated assurances from the Company over an extended period of time that the Company would correct the deficiencies in its system, no corrective action has in fact occurred.

The Parties

2. Complainant is the OPC and is authorized to make such complaint under Section 386.390.1 RSMo. as well as Regulation 4 CSR 240-2.070(4) and (5).

3. The Company is a regulated public utility providing water service to approximately 90 customers in Moore Bend Subdivision near the villages of Cedar creek and Kissee Mills, Taney County, Missouri. Its principal place of business is located at 786 Croley Blvd. in Nixa, Christian County, Missouri 65714. The Commission granted a Certificate of Convenience and Necessity to the Company on October 9, 2013, in Case No. WM-2012-0335, authorizing the Company to operate the water system assets and facilities it had acquired from Moore Bend Water Company, Inc. According to the records of the Missouri Secretary of State, the Company is a domestic limited liability corporation in good standing. Its registered agent is David L. Wieland, 1548 East Primrose, Springfield, Greene County, Missouri 65804.

4. The Company is a wholly-owned subsidiary of Ozark International, Inc., a Missouri general business corporation in good standing, located at 786 Croley Blvd. in Nixa, Missouri 65714. Its registered agent is Scott Roberts, 1531 East Bradford Parkway, Suite 205, Springfield, MO 65804. Ozark International, Inc., is the sole member of the Company. Ozark International, Inc., also owns certain other regulated water utilities, to-wit: Taney County Water, L.L.C., Riverfork Water Company, Midland Water Company, Inc., and Valley Woods Utility, L.L.C.; and also conducts unregulated business enterprises under the registered fictitious names Missouri Valley Environmental, Water Technology of the Ozarks, and Lakeland Laboratories.

Jurisdiction

5. The Company is engaged in the business of selling potable water for gain using property and facilities that it owns, operates and controls. The Company is thus a water corporation pursuant to Section 386.020(59) RSMo., and a public utility

pursuant to Section 386.020(43) RSMo.

6. As a water corporation and a public utility, the Company is subject to the jurisdiction, regulation and control of this Commission. See Chapters 386 and 393, RSMo., commonly referred to as the *Public Service Commission Law*.

7. Section 386.390(1) RSMo., authorizes the Commission to hear and determine complaints:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or 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

8. Section 386.570 RSMo provides for a penalty between \$100.00 to \$2,000.00, per offense, for “[a]ny corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission” Each day that a continuing violation persists is counted as a separate offense. In the case of a corporate respondent, the acts and omissions of its officers, agents and employees are deemed to be the acts and omissions of the corporation. All penalties are cumulative.

Count I

Failure to Provide Safe and Adequate Service and Violations of Commission Regulations:

9. Complainant repeats the allegations contained in Paragraphs 1 through 8, as though the same were set out at length herein.

10. As a result of investigations regarding its water supply, the Company's property has been under a Boil Water Order ("BWO") issued by the Department of Natural Resources ("DNR") since February 5, 2013 due to the presence of *E coli* – or fecal bacteria-in two of the wells providing water to the Company's customers.

11. On November 14, 2013, after months of noncompliance, DNR entered into a Bilateral Compliance Agreement ("BCA") with the Company that contained specific requirements, including a timetable for the design and construction of necessary improvements to the system.

12. To the information and belief of Complainant, the terms of the BCA have not been honored by the Company and the property remains under this BWO.

13. Further, it was revealed in March of 2016 that the Company has a water system comprised of cast-iron pipes and said pipes are causing a dis-colorization of the drinking water.

14. Additionally, Complainant learned from its communication with DNR that the Company isn't providing physical chlorination monitoring as required by DNR regulations, and there is a potential for lead infiltration into the water supply due to the cast iron pipes.

15. 10 CSR 60-15.010(4)(a) pertaining to DNR's Safe Water Drinking Commission states "(a)ll water systems shall install and operate optimal corrosive control treatment" that includes requirements such as "source water treatment, lead

service line replacement, and public education” as outlined further by complimenting regulation 10 CSR 60-15.010(2).

16. Further, the Company is in violation of 10 CSR 60-7.010(5) requiring that “(d)isinfaction information must be reported within ten (10) days after the end of each month the system serves water to the public.”

17. The Complainant has also been made aware the Company has failed to make those reports.

18. By the conduct set out in Paragraphs 13 through 17, above, the Company violated numerous DNR regulations as well as Commission regulation 4 CSR 240-10.030(32) and Section 393.130.1 RSMo. requiring every water corporation to “furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.”

WHEREFORE, the OPC prays that the Commission will give due notice to the Company and, after hearing, determine that the Company has violated Missouri statutes and Commission rules and orders as set out above, and thereupon authorize its General Counsel to seek in Circuit Court the penalties allowed by law; and grant such other and further relief as is just in the circumstances

Count II
Protection of the Public Health

19. Complainant repeats the allegations contained in Paragraphs 1 through 18, as though the same were set out at length herein.

20. Section 386.310.1, RSMo., authorizes the Commission “after a hearing had upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise, to require every . . . corporation . . . and public utility to maintain and operate its line, plant, system, equipment, apparatus, and premises in

such manner as to promote and safeguard the health and safety of its employees, customers, and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety and other devices or appliances, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employees, customers or the public may demand”

21. The circumstances set out in Count I, being Paragraphs 9 through 18, above, namely, the contamination with *E. coli* of the sources of the water supplied to the public by the Company, the potential lead contamination into the water supply due to the cast-iron pipes employed on the system, the Company’s failure to timely and properly record lead and copper reporting, and the Company’s lack of diligence and urgency in making the necessary improvements as required by DNR to mitigate the contamination, constitute a threat to the public health and safety.

WHEREFORE, the OPC prays that the Commission will give due notice to the Respondent and, after hearing, order that Respondent forthwith make necessary and desirable improvements to its system in order to safeguard the public health and safety; and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ James M. Owen

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **31st day of March, 2016**, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/ James M. Owen