

**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,  
and National Water & Power, Inc.

Respondents.

**Case No. WC-2010-0227**

**AFFIDAVIT**

I, James A. Merciel, Jr., P.E., Utility Regulatory Engineering Supervisor of the Water and Sewer Operations Department, Missouri Public Service Commission, hereby verify that I am over the age of twenty-one, duly sworn, and upon my oath, state that the following facts are true to the best of my knowledge, information, and belief.

1. I am the Utility Regulatory Engineering Supervisor of the Water and Sewer Operations Department with the Missouri Public Service Commission (Commission), and began employment with the Commission in the Water and Sewer Department in 1977.

2. I have held my current supervisory position since 1979. My duties include the oversight and development of recommendations with regard to certification of new water and sewer utilities including development of rates and rules, formal complaint cases and technical issues associated with water and sewer utility rate cases including quality of service matters, utility plant utilization, costs incurred for providing utility service, and tariff rules. I also conduct inspections and evaluations of water and sewer utility systems, and informally assist water and sewer utility companies with respect to day-to-day operations, planning, and customer service issues. I am a Professional Engineer registered in the State of Missouri. For approximately the

past twelve years I have served on the National Association of Regulatory Utility Commissioners Staff Subcommittee on Water.

3. In my capacity as a Utility Regulatory Engineering Supervisor, I have conducted an on-going investigation of the parties and matters to this case, and I am personally familiar with the facts underlying this affidavit.

4. I conducted an onsite investigation at the Aspen Woods Apartment Complex (sometimes referred to herein as "Aspen Woods"), on August 25, 2009. In so doing, I observed and recorded the location of water meters along with representatives from Missouri-American Water Company (Missouri-American), visited with tenants, and observed building plumbing within the tenants' apartments.

5. I have conducted a review of the Missouri-American and Metropolitan Saint Louis Sewer District (MSD) water and sewer service account records for Aspen Woods for the period described in the Staff's *Complaint*. (See attached).

6. Missouri-American provides water service to Aspen Woods, not to individual tenants. Water service to Aspen Woods consists of thirty-eight (38) accounts, each with one (1) water meter.

7. At the time the Staff was conducting investigations of Aspen Woods and NWP, Missouri-American was sending billings for water service to Aspen Woods Apartments for some accounts and to Sapal and Associates for some accounts, both to an address in Philadelphia, PA. I was informed verbally within the past month by a representative of Missouri-American that billings for water service to Aspen Woods are currently being sent to Aspen Woods Apartments, c/o Advantage IQ-MS-1970, Jennifer Thompson, with an address in Spokane, Washington.

8. MSD provides sewer or wastewater service to the Aspen Woods Apartment Complex, not to individual tenants. Sewer service to Aspen Woods consists of thirty-nine (39) accounts.

9. Upon information and belief, it has been determined that Aspen Woods Apartment Associates, LLC, (Aspen Associates) is the owner of Aspen Woods. Aspen Associates and National Water & Power, Inc. (NWP) are operating conjunctively and similar to that of a wholesale purchaser and reseller of utility service to the tenants of Aspen Woods Apartment Complex, in that the Respondents set up customer accounts and create utility charges for various aspects of utility service.

10. Missouri-American owns the 38 water meters located at Aspen Woods.

11. MSD does not own any meters located at the Aspen Woods Apartment Complex, but creates bills based on water usage data received from Missouri-American.

12. Not all of the charges NWP bills to Aspen Woods tenants are set forth in the lease agreement between the tenant and Aspen Associates. The lease agreement sets forth that a late fee will be assessed to an account if the bill is paid after the NWP due date, however the amount of the late fee is not set forth in the lease. NWP also charges a returned check insufficient fund fee, and an expedited payment fee. These fees, as well as an account set-up charge and a monthly service charge, which are set forth in the lease agreement, are utility charges and go beyond those charges incurred by Aspen Associates for water service and sewer service received from Missouri-American and MSD.

13. Based on the account information reviewed, the Staff cannot verify that NWP's billing is accurate in removing common usage amounts from individual apartment tenants' bills, or that bills are mathematically divided accurately among tenants.

14. NWP determines the tenants' billing due date and the date by which a payment is considered late.

15. The tenants have no control over Aspen Associates' imposition nor over NWP's imposition of new utility charges or changes in the current utility charges billed. The tenants do not have oversight capability or input concerning the utility related charges, and are held subject to the monopoly provider of the utility service, Aspen Associates and/or NWP.

16. NWP's bill resembles utility billing, in that it creates a customer account number, a billing period, an amount of money that is owed, and a due date. NWP's bill creates line items for "water service" and "sewer service" charges, plus administrative service fees and other applicable charges. The bill also instructs a customer to call NWP's customer service department to speak with a representative concerning account information, inquiries and billing disputes.

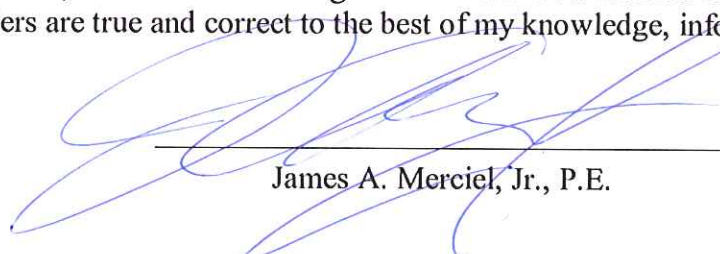
17. According to information on copies of bills from NWP, tenants have 45 days to dispute a bill with NWP, otherwise the tenant is considered to agree with NWP's billing amount. The tenants are directed to air concerns with regard to utility billing to NWP, the company creating the charges, if there is a problem with the billing or a question about the bill including the dollar amount being charged. Although other recourses are available to NWP customers in at least one other state, Florida, through a Consumer Protection Division, in Missouri if a customer is not satisfied with the resolution there is no other recourse for them to pursue the matter such as through some government agency, or an elected council or association board that can represent them and provide oversight of utility billings.

18. Based on my several years of experience in studying various types of utility operations, review of the Missouri-American and MSD water and sewer service account records

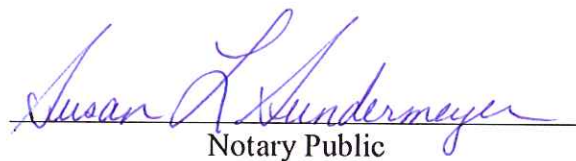
for Aspen Woods, and the NWP billings, it appears by observation that Aspen Associates and National Water & Power, Inc. (NWP) are operating conjunctively and similar to that of a wholesale purchaser and reseller of utility service to the tenants of Aspen Woods Apartment Complex, and not simply as a landlord dividing utility costs among tenants.

STATE OF MISSOURI     )  
                                      ) ss  
COUNTY OF COLE     )

I, James A. Merciel, Jr., of lawful age, on oath state: that I participated in the preparation of the foregoing affidavit; that I have knowledge of the matters set forth in the foregoing affidavit; and that such matters are true and correct to the best of my knowledge, information and belief.

  
James A. Merciel, Jr., P.E.

Subscribed and sworn to before me this 27<sup>th</sup> day of December 2010.

  
Notary Public

