

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

In the Matter of the Joint Application of)	
Brandco Investments, LLC and)	
Hillcrest Utility Operating Company, Inc., for)	File No. WO-2014-0340
Hillcrest to Acquire Certain Water and Sewer)	
Assets of Brandco and, in Connection Therewith,)	
Issue Indebtedness and Encumber Assets.)	

**HILLCREST RESPONSE TO STAFF RECOMMENDATION
AND MOTION FOR EXPEDITED SETTING OF PREHEARING CONFERENCE**

COME NOW Hillcrest Utility Operating Company, Inc. (“Hillcrest”) and, in response to the Recommendation to Conditionally Approve the Transfer of Assets, and Issuance of a Certificate of Convenience and Necessity, states as follows to the Missouri Public Service Commission (“Commission”):

RESPONSE

1. On August 26, 2014, the Staff of the Commission (Staff) filed its Recommendation to Conditionally Approve the Transfer of Assets, and Issuance of a Certificate of Convenience and Necessity (Staff Recommendation). Therein, the Staff recommended that the Commission approve Hillcrest’s proposed acquisition of the water and sewer assets of Brandco Investments, LLC, and Hillcrest’s proposed financing – subject to certain conditions.

2. While Hillcrest agrees with Staff’s general conclusion – that the acquisition and the proposed financing should be approved by the Commission – Hillcrest disagrees with and cannot voluntarily agree to certain of the conditions as proposed.

3. First, Hillcrest cannot agree to proposed Condition 4p. This condition proposes to allow Hillcrest to only collateralize up to \$790,000 of its assets to issue secured debt. This limit will not allow Hillcrest to construct the known improvements that are necessary to bring these

systems into compliance and provide safe and adequate service.

4. Second, Hillcrest cannot agree to proposed Condition 4q. This condition purports to require the company to capitalize itself with equity contributions in certain circumstances.

How a utility chooses to capitalize itself is a matter within its own discretion and the

Commission's authority to regulate does not give it the right to dictate a specific result without some evidence of abuse. This Commission has described this limitation as follows:

The Court, in the St. Joseph case [*State ex rel. City of St. Joseph v. Public Service Commission*, 30 S.W.2d 8 (Mo. 1930)], clearly holds that a utility's right to manage itself cannot be taken away simply because there is a possibility of abuse of discretion. The Commission's powers in regard to management are limited to correction of specific abuses of discretion.

"We agree with the statement in *State ex rel. City of St. Joseph v. Public Service Commission*, 325 Mo. 209, 30 S.W. 2d 8, 14, that 'It must be kept in mind that the Commission's authority to regulate does not include the right to dictate the manner in which the company shall conduct its business.'" *Id.*, at p. 11.

"Those powers (of the Commission) are purely regulatory. The dominating purpose in the creation of the Public Service Commission was to promote the public welfare. To that end the statutes provided regulation which seeks to correct the abuse of any property right of a public utility, not to direct its use. Exercise of the latter function would involve a property right in the utility. The law has conferred no such power upon the Commission." *State ex rel. Kansas City v. Public Service Commission of Missouri*, 301 Mo. 179, 257 S.W. 462. *Id.*, at p. 181.

* * *

"The utility's ownership of its business and property includes the right of control and management, subject, necessarily, to state regulation through the Public Service Commission. The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. Those powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its own affairs and conduct its business as it may choose as long as it performs its legal duty, complies with lawful regulation and does no harm to public welfare." *Id.*, at pp. 181, 182.

In the Matter of General Telephone Company of the Midwest, 18 Mo. P.S.C. (N.S.) 141, 164-165

(1973).

5. Finally, Hillcrest disagrees with some of the factual assumptions utilized by the Staff in its memorandum. Most particularly, Hillcrest does not believe that Staff's use of a "cost of debt . . . based on the most recent 3 month average yield of 10 and 30 year bonds with a B rating" has any connection to the reality of a small water and sewer company with significant capital requirements. This is an issue that may not need to be adjudicated in this proceeding, as the Commission would "reserve the right to consider rate making treatment to be afforded these financing transactions, and their effect on cost of capital, in any later proceeding" (Staff Condition 4o). However, as Staff has indicated concerns in regard to certain matters, Hillcrest will do the same.

EXPEDITED TREATMENT

6. Given these disagreements, Hillcrest asks that the Commission set this matter for an expedited prehearing conference between September 9 and 12, 2014.

7. Brandco currently has major regulatory compliance issues in regards to both drinking water and wastewater service. Recently, the system was under a month-long boil order due to failing drinking water quality tests. The Missouri Department of Natural Resources (DNR) was forced to bring in a temporary chlorination system to help shock the Brandco drinking water system in order to determine the possible cause of the drinking water contamination. A temporary fix is now in place.

8. However, the current owner has claimed it is unable to pay for a permanent, safe, and reliable solution. The current owner further indicated that it did not have the capital to purchase a temporary chlorination system to replace the DNR's emergency system. As a solution, Brandco, DNR, and Central States Water Resources Inc. (CSWR) (Hillcrest's

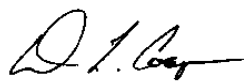
affiliate) have a temporary, tri-party agreement where CSWR paid for a temporary disinfection system to be installed and CSWR is paying a local engineer to weekly inspect the temporary system fixes to make sure they functioning on an ongoing basis.

9. On the wastewater side, Brandco is subject to DNR enforcement action concerning its lack of waste disinfection. Hillcrest understands that Brandco's waste water treatment plant is not currently operational as the blowers are no longer functioning and there is no mechanical treatment taking place. In addition, the Brandco owner flipped his lawn mower into the lagoon several weeks ago while attempting to mow the property. The mower is still in the lagoon. Basic maintenance seems to not be taking place.

10. Given the existing environmental, health and public safety issues that need to be addressed, this Commission should adjudicate the remaining issues in an expedited manner and, most immediately, set this matter for a prehearing conference so that a procedural schedule can be developed quickly.

WHEREFORE, Hillcrest respectfully requests that the Commission consider this response and set this matter for prehearing conference between September 9 and 12, 2014.

Respectfully submitted,



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ATTORNEYS FOR HILLCREST UTILITY

OPERATING COMPANY, INC.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail on September 2, 2014, to the following:

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