

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

In the Matter of the Application of Old)
National Bank for the Authority to Seize) File No. WM-2012-0314
the Assets of Tri States Utility, Inc.)

REPLY OF OLD NATIONAL BANK

COMES NOW Old National Bank (“Old National”), by and through its undersigned counsel, and respectfully files this Reply with the Missouri Public Service Commission (“Commission”) in further support of its Application filed herein and in reply to the Response of Tri-States Utility, Inc. (“Tri-States”) and the Recommendation of the Staff of the Commission (“Staff”):

Pursuant to the judgment of the United States District Court for the Western District of Missouri in its Case No. 6:09-CV-03388-DGK, Tri-States is indebted to Old National in the amount of \$848,288.11, plus late fees of \$6,157.70, interest on those amounts at the rate of 10% per annum from November 19, 2009, Old National’s attorney fees and expenses of \$14,226.29, and court costs. Old National, as a creditor, is provided with certain rights and remedies pursuant to Federal Rules of Civil Procedure 64 and 69 and Missouri Rules of Civil Procedure 74.08 and 76. In general, Old National, through the sheriff of any county in which property owned by Tri-States is located, is entitled to levy upon the real estate owned by Tri-States and seize the personal property owned by Tri-States in order to satisfy the judgment issued by the District Court.

RSMo. §393.190.1, however, provides that a utility may not “sell, assign, transfer, mortgage or otherwise dispose of or encumber” necessary or useful property without a Commission order. It is the belief of Old National that Tri-States has not sought Commission approval to “sell, assign, transfer, mortgage, or otherwise dispose of or encumber” any of its

property in an effort to satisfy its debt to Old National. Thus, the issue now before this Commission is the relationship between §393.190.1 and Federal Rules of Civil Procedure 64 and 69 and Missouri Rules of Civil Procedure 74.08 and 76. May Old National forthwith seek relief pursuant to Federal Rules of Civil Procedure 64 and 69 and/or Missouri Rules of Civil Procedure 74.08 and 76 and direct the sheriff of any county in which property owned by Tri-States is located to levy upon Tri-States' real estate and seize Tri-States' personal property, or is an order of this Commission approving Old National's Application required in the first instance? Based upon its understanding that a Commission order would be required in order to pursue collection efforts against the assets of Tri-States, Old National filed its Application with the Commission.

Tri-States and Staff assert that Old National's Application is deficient in certain respects. For example, referencing Commission Rule 4 CSR 240-2.060(1)(A) and (C), Tri-States and Old National each assert as a deficiency that Old National did not explicitly state that it is a "foreign corporation" and did not supply a certificate of authority from the Missouri Secretary of State's Office. As stated in its Application, Old National is a national banking association organized under the laws of the United States -- it is not a foreign corporation authorized to conduct business in Missouri through the Secretary of State's Office. Referencing 4 CSR 240-2.060(1)(L), Staff also asserts as a deficiency that Old National did not make a statement in its Application that it has no Commission annual reports or assessment fees that are overdue. As Old National is not regulated by the Commission, Old National thought it would be inappropriate to state that it does not have any *overdue* annual reports or assessments, thereby implying that it regularly files annual reports and pays Commission assessments. Instead, Old National stated in Paragraph 2 of its Application that it is not obligated to file annual reports or pay assessment fees to this Commission. To the extent the Commission finds that Old National has failed, in any

material respect, to comply with the requirements of 4 CSR 240-2.060, Old National seeks leave to amend its Application.

The Staff of the Commission also alleges certain deficiencies on the part of Old National with respect to Commission Rule 4 CSR 240-3.605. This Rule is applicable to water utility applications to sell, assign, lease, or transfer assets. Old National is not a water utility, but Old National did seek to satisfy all applicable portions of this Commission Rule with its Application. The Application of Old National does appear to be somewhat unique in terms of Commission practice, in that the Application was filed by a creditor against a debtor utility company and does not involve two willing parties. Recognizing its unusual character, in Paragraph 12 of its Application, Old National sought a waiver of all requirements of Rule 240-3.605(1) not addressed in the Application. To the extent the Commission finds that Old National has failed, in any material respect, to comply with any requirements of 4 CSR 240-3.605 which are not waived by the Commission pursuant to the request of Old National, Old National seeks leave to amend its Application.

Neither Staff nor Tri-States has demonstrated that the Application of Old National should be denied at this time, thereby denying Old National the discovery process and an evidentiary hearing on its Application. Staff's Recommendation does, however, demonstrate that Old National may not possess all necessary information in order to prove, at this time, that the granting of its Application is not contrary to the public interest. This is why Old National has served data requests on Tri-States concerning its assets and operations. In its Recommendation, Staff suggests that the parties may benefit from the mediation procedures afforded by Commission Rule 4 CSR 240-2.125. Old National concurs and states its willingness to engage

in mediation with the parties to this case. In the event that mediation is not successful, Old National requests that a procedural schedule be established herein.

WHEREFORE, Old National respectfully submits this Reply in further support of its Application and in reply to the Response of Tri-States and the Recommendation of the Staff. Old National requests such relief as is just and proper under the circumstances.

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

/s/ Diana C. Carter
Diana C. Carter #50527
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
Telephone: (573) 635-7166
Facsimile: (573) 634-7431
E-mail: DCarter@BrydonLaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via electronic mail on this 25th day of September, 2012, to all attorneys of record.

/s/ Diana C. Carter