

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

The Staff of the Missouri Public Service  
Commission, )

Complainant, )

v. )

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

Aspen Woods Apartment Associates, LLC, Barry )

Howard, Aspen Woods Apartments, Sapal )

Associates, Sachs Investing Co., Michael Palin, )

Jerome Sachs, and National Water & Power, Inc. )

Respondents. )

**STAFF'S RESPONSE TO RESPONDENTS'  
JOINT MOTION FOR SUMMARY DETERMINATION**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff), by and through the undersigned counsel, and respectfully states to the Commission its response pursuant to 4 CSR 240-2.117 (C) to the Respondents' October 26, 2010 *Joint Motion For Summary Determination (Joint Motion)*:

Response

1. The Staff admits the material facts within paragraph one (1) of the Respondents' *Joint Motion*.

2. The Staff admits the material fact within paragraph two (2) of the Respondents' *Joint Motion*.

3. The Staff admits the material facts within paragraph three (3) of the Respondents' *Joint Motion*.

4. The Staff admits the material facts within paragraph four (4) of the Respondents' *Joint Motion*.

5. The Staff admits the material fact that potable water for tenant use within the Aspen Woods Apartment Complex initiates from Missouri American Water Company. The Staff denies the remainder of the material fact(s) within paragraph five (5) of the Respondents' *Joint Motion*.

6. The Staff admits the material fact that the Metropolitan St. Louis Sewer District receives the sewage waste from the Aspen Woods Apartment Complex. The Staff denies the remainder of the material fact(s) within paragraph six (6) of the Respondents' *Joint Motion*.

7. The Staff admits the material fact that separate water meters owned by Missouri American Water Company are located within the Aspen Woods Apartment Complex. The Staff denies the remainder of the material fact(s) within paragraph seven (7) of the Respondents' *Joint Motion*.

8. The Staff admits the material fact that meters are located within the Aspen Woods Apartment Complex. The Staff denies the remainder of the material fact(s) within paragraph eight (8) of the Respondents' *Joint Motion*.

9. The Staff is without sufficient information to form a belief as to the material facts within paragraph nine (9) of the Respondents' *Joint Motion*, and therefore denies the same.

10. The Staff denies the material facts within paragraph ten (10) of the Respondents' *Joint Motion*.

11. The Staff admits the material fact that a contractual relationship exists between Aspen Woods Apartment Associates, LLC (Aspen Associates) and National Water & Power (NWP). The Staff denies the remainder of the material fact(s) within paragraph eleven (11) of the Respondents' *Joint Motion*.

12. The Staff is without sufficient information to form a belief as to the material facts within paragraph twelve (12) of the Respondents' *Joint Motion*, and therefore denies the same.

13. The Staff is without sufficient information to form a belief as to the material facts within paragraph thirteen (13) of the Respondents' *Joint Motion*, and therefore denies the same.

14. The Staff admits the material facts that NWP bills tenants of the Aspen Woods Apartment Complex and collects payments from tenants. The Staff denies the remainder of the material facts within paragraph fourteen (14) of the Respondents' *Joint Motion*.

15. The Staff admits the material fact contained within paragraph fifteen (15) of the Respondents' *Joint Motion*.

16. The Staff admits the material fact that a lease exists between some tenants of Aspen Woods Apartment Complex and Aspen Associates. The Staff denies the remainder of the material facts within paragraph sixteen (16) of the Respondents' *Joint Motion*.

17. The Staff is without sufficient information to form a belief as to the material facts within paragraph seventeen (17) of the Respondents' *Joint Motion*, and therefore denies the same.

18. The Staff is without sufficient information to form a belief as to the material facts within paragraph eighteen (18) of the Respondents' *Joint Motion*, and therefore denies the same.

19. The Staff admits the material fact that Aspen Associates owns the property of Aspen Woods Apartment Complex, but is without sufficient information to form a belief as to the remainder of material facts within paragraph nineteen (19) of the Respondents' *Joint Motion*, and therefore denies the same.

20. The Staff is without sufficient information to form a belief as to the material facts within paragraph twenty (20) of the Respondents' *Joint Motion*, and therefore denies the same.

Attachment A

Pursuant to 4 CSR 240-2.117 (C), the Staff attaches its *Memorandum In Opposition To Respondents' Joint Motion For Summary Determination And Legal Memorandum And Intervenor's Legal Memorandum* as Attachment A.

Conclusion

**WHEREFORE**, the Staff submits this response and attachment for the Commission's information and consideration, and requests that the Commission issue an order denying Aspen Associates and NWP's *Joint Motion for Summary Determination* and allow this matter to proceed to hearing on the remaining issues in dispute, and such other and further relief for the Staff as the Commission finds necessary and proper.

Respectfully submitted,

/s/ Jennifer Hernandez

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**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](mailto:lowell.pearson@huschblackwell.com); Craig S. Johnson, attorney for National Water & Power, Inc., at [craigsjohnson@berrywilsonlaw.com](mailto:craigsjohnson@berrywilsonlaw.com); Paul A. Boudreau and John J. McDermott, attorneys for the National Apartment Association at [paulb@brydonlaw.com](mailto:paulb@brydonlaw.com) and [jmcdermott@naahq.org](mailto:jmcdermott@naahq.org); and the Office of the Public Counsel at [opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov) this 22<sup>nd</sup> day of November 2010.

/s/ Jennifer Hernandez