

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

In the Matter of the Joint Application of        )  
Moore Bend Water Company, Inc. and        )  
Moore Bend Water Utility, LLC for        )        File No. WM-2012-0335  
Authority of Moore Bend Water Company,    )  
Inc. to Sell Certain Assets to Moore Bend    )  
Water Utility, LLC.                                )

**THE OFFICE OF THE PUBLIC COUNSEL’S RESPONSE  
TO STAFF’S MOTION TO AMEND RECOMMENDATION**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Response to Staff’s Motion to Amend Recommendation states as follows:

1. On April 11, 2012, Moore Bend Water Company, Inc. (Moore Bend) and Moore Bend Water Utility, LLC (MBU) filed a Joint Application with the Missouri Public Service Commission (Commission) requesting authority for Moore Bend to sell certain assets to MBU.
2. On July 9, 2012, the Staff of the Missouri Public Service Commission (Staff) filed its Recommendation asking that the Commission approve the Joint Application subject to recommendations attached as Appendix A.
3. On July 19, 2012, Public Counsel filed its Response to Staff’s Recommendation stating that a review of the assets to be acquired revealed that there was no mention of the transfer of the real property where the two wells are located, nor was there any documentation that legal access in the form of easements to the well sites is being transferred to MBU. Staff’s Recommendation contained no verification that legal access exists even though it is quite obvious the lack of legal access to the wells would greatly affect the utility’s ability to provide safe and adequate service. Public Counsel objected to Staff’s Recommendation but stated that once the transfer of

ownership agreement for the well site properties has been submitted to the Commission and verified by Public Counsel and Staff to be in the public interest, Public Counsel would withdraw its objection.

4. On July 27, 2012, Staff' filed its Response to the Office of the Public Counsel's Response and Motion to Amend Staff's Recommendation. In its filing Staff included a request to amend its Recommendation by adding two recommendations to the eight recommendations previously filed. Staff requested that the Commission issue an order adding the following recommendations to Staff's original recommendations:

a. Requires MBU to obtain a legal written easement or purchase the property the wells are located on within six (6) months of obtaining the certificate of convenience and necessity for the utility and to file notice of such document with the Commission, Public Counsel and Staff within five (5) days of such a transaction under this case number; and

b. Requires MBU to file a rate case no later than three (3) years from the effective date of any order entered in this matter, wherein any such transaction described in paragraph a above will be reviewed for prudence by Staff and Public Counsel.

As justification for its request, Staff states:

Staff has concluded that because the courtesy access to the property continues to be permitted, the utility owner will continue to have access to conduct utility business, as it has in the past. Staff also concludes that while an easement or property sale may be a cleaner resolution to this situation, the utility owner will continue to have access until such time the formalities can be completed. Staff argues that it is not imperative to have a property sale or easement document finalized in this proceeding. Such a sale would involve different parties because the current owner will not be part of that sale, and, without approval of this transfer, the potential purchaser is agreeing to buy property that that purchaser may not ultimately need access to if this transfer is not approved. So, a commitment to obtain such an easement or property sale after the transfer is approved should be sufficient in this case. Since such a commitment has been verbalized by the potential purchaser, MBU, this case should not be delayed further.

5. Public Counsel disagrees with Staff's argument that it is not imperative to have a property sale or easement document finalized in this proceeding. As Public Counsel stated in its

Response, it is crucial that the owner of the utility have legal access to the well sites. The lack of legal access to the wells would greatly affect the utility's ability to provide safe and adequate service. Staff admits it is unable to provide sufficient documentation to determine the existence of legal access to the well sites. Without this documentation, the Commission has no way to verify that the proposed transaction is in the public interest as required for approval of the transaction.

6. Staff has absolutely no basis for its conclusion that the utility owner will continue to have access until the formalities of an easement or property sale can be completed. Staff naively seems to think that just because access has been permitted in the past, the utility will continue to have access in the future. Without legal rights to access the well sites, the utility and its customers are at the mercy of the property owner. It is well known that relationships can change in an instant. If the property owner determines that access should be denied, he has that right. The Commission has no jurisdiction over the property owner so would have no recourse to force the property owner to provide access. If access to the well sites is denied, the utility may have no choice but to expend additional funds to drill new wells. This additional cost would certainly not be in the best interest of the customers, but neither is the lack of a necessary water source. Therefore, it is not in the public interest to approve a sale of the utility property until the utility can prove it has legal access to the wells.

7. Staff argues against requiring a sale of the well site property in this case because such a sale would involve different parties as the current owner of the utility will not be part of that sale, and, without approval of this transfer, the potential purchaser is agreeing to buy property that the purchaser may not ultimately need access to if this transfer is not approved. However, this can easily be remedied by MBU including a contingency on the sale of the well site property where

if the transfer is not approved by the Commission, the sale of the property is null and void. This minor issue is no impediment to requiring legal access to the well site property in order to ensure that the transfer is in the public interest.

8. Staff also states its belief that a commitment to obtain an easement or property sale after the transfer is approved should be sufficient in this case. Staff states that since such a commitment has been verbalized by the potential purchaser, MBU, this case should not be delayed further. Public Counsel has no wish to delay, but does believe that the transaction cannot be proven to be within the public interest without a resolution of the legal access to the well sites in this case. Granting the Joint Application based on a mere commitment to act in the future is not sufficient. Once the Joint Application is approved, there will be no opportunity to determine if the transactions to obtain easements or the well site properties are reasonable and in the public interest until after the transaction is complete. Nor is there any actual recourse available if MBU fails to meet this requirement.

9. Public Counsel is willing to accept all of Staff's recommendations; however Public Counsel believes that the Commission should approve the Joint Application contingent on MBU obtaining a legal written easement or purchasing the property where the wells are located on at a reasonable price within six (6) months of obtaining the Certificate of Convenience and Necessity. If MBU fails to meet this requirement, the Commission's Approval of the Joint Application and the Certificate of Convenience and Necessity for MBU would be void. Without this contingency, Public Counsel opposes Staff's motion to amend and renews its original objection.

**WHEREFORE,** Public Counsel respectfully submits its Response to Staff's Motion to amend its recommendation.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Christina L. Baker**

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 2<sup>nd</sup> day of August 2012:

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**/s/ Christina L. Baker**

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