

**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,) **File No. WM-2012-0335**
LLC for Authority of Moore Bend Water Company)
Inc. to Sell Certain Assets to Moore Bend Water)
Utility, LLC.)

STAFF'S RESPONSE
TO THE OFFICE OF THE PUBLIC COUNSEL'S RESPONSE AND
MOTION TO AMEND STAFF'S RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through its attorney, and submits to the Missouri Public Service Commission (Commission) its *Response to the Office of the Public Counsel's (Public Counsel) Response (Response) and Motion to Amend Staff's Recommendation* 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 Commission.

2. On July 9, 2012, Staff filed *Staff's Recommendation (Recommendation)* recommending that the Commission approve the joint application with conditions as expressed in Staff's Memorandum, attached to the *Recommendation*.

3. Public Counsel initially inquired into the matter of the real property where the two wells are located after Staff filed its *Recommendation*. As a result, Staff made additional calls to the owner and the potential purchaser, had discussions with Public Counsel, and provided Public Counsel with all

information it possessed regarding the ownership of the well sites as soon as it was obtained by Staff.

4. On July 19, 2012, Public Counsel filed its *Response* making several general assertions about this matter and citing its objections to the *Recommendation*.

5. Staff asserts that legal theories not yet discussed among the parties may exist under which the utility currently may have lawful access to the wells, so Staff does not fully agree with Public Counsel's statement that it "verif[ied] that legal access does not exist at this time." (*Response, paragraph 7*) What Staff will agree with is that the focus of the phone call referenced in the *Response* was the existence of a legal, documented easement and a possible purchase of the property on which the wells are located, and no one could verify the existence of either of those two types of legal access during that call.

6. This utility has been providing service to its customers lawfully since it obtained its Certificate of Convenience and Necessity from the Commission in 1971. The current landowner of that property where the wells are located, who is also a former owner of the utility, has represented to all the parties involved in this matter that he has provided access to the utility as a courtesy for years and there is no information to contradict this representation, therefore official legal title to the land is not detrimental to this case. Whether a purchase agreement materializes, or a legal easement document is produced, Staff asserts that utility service is being provided safely and adequately and this transfer of assets remains in the best interest of the utility and its customers.

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.

7. As a result of those conclusions and Public Counsel's noted objection regarding the real estate, Staff requests adding the following two recommendations to the eight recommendations previously filed, thereby amending Staff's *Recommendation* as follows:

The Commission issue an order that includes the following:

- 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.

8. Staff presented this offer to Public Counsel and does not anticipate an objection to this proposal for the purposes of compromise and resolution, though Public Counsel plans to file a separate response to Staff's proposal and response.

9. Additionally, in its *Response* Public Counsel also voiced concern about the language regarding treatment of the acquisition found in Staff's Memorandum and Recommendations. (*Response, Paragraph 9*) The issue raised in many of these cases, from Staff's perspective, is the concept of "acquisition adjustments" and more specific to that discussion is an explanation of "acquisition premiums" and "acquisition discounts". Staff and Public Counsel take different positions on this matter. Staff's position, in this case and in general, is that the Commission should not include any form of acquisition adjustment in these types of cases, but look at the net original cost instead. From Staff's perspective, Public Counsel's general position is that acquisition premiums should be excluded from these types of cases, but acquisition discounts should be included in these cases.

The language included in the *Recommendation* supports the action *Staff recommends* is appropriate in this case, not any agreed upon recommendation and certainly not the recommendation of another party such as Public Counsel. Staff is unwilling to recommend that the Commission adopt Public Counsel's position in its *Recommendation* or any filing it makes with the Commission.

Therefore, Staff's *Recommendation* will remain as it was filed by Staff, including the paragraph on page 4 of Staff's Memorandum filed with the *Recommendation* that Public Counsel highlighted in its *Response* as well as the portion of the *Recommendation* that recommends that any Commission order in this matter includes the following language: "3. Orders no recovery of acquisition adjustment or acquisition premium in this case."

Staff has presented its position and recommendations to the Commission and the other parties and it may be accepted, modified, or rejected, as the Commission deems appropriate.

WHEREFORE, Staff respectfully submits this *Response to the Office of the Public Counsel's Response and Motion to Amend Staff's Recommendation* for the Commission's information and consideration, and respectfully requests the Commission approve the joint application with the conditions included in *Staff's Recommendation* and the additional conditions stated in paragraphs 7a and 7b of this filing.

Respectfully submitted,

/s/ Rachel M. Lewis

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed, sent by facsimile or hand-delivered to all counsel of record this 27th day of July, 2012.

/s/ Rachel M. Lewis