

**BEFORE THE PUBLIC SERVICE COMMISSION OF
MISSOURI**

The Office of Public Counsel,)
)
Complainant,)
)
vs.)
)
Moore Bend Water Utility, LLC,)
)
Respondent.)

Case No. WC-2016-0252

**JOINT POSITION STATEMENT OF OFFICE OF THE PUBLIC
COUNSEL AND THE DEPARTMENT OF NATURAL RESOURCES**

COMES NOW the Office of the Public Counsel (“OPC” or “Public Counsel”) and the Department of Natural Resources (“DNR”), by and through counsel, and provides its *Statement of Position* with respect to the *Joint List of Issues* filed on behalf of the parties by the Staff of the Missouri Public Service Commission:

OPC’S POSITION ON LIST OF ISSUES

1. Certified Operator

Does the evidence establish that Moore Bend Water Utility, LLC (“Moore Bend” or “Company”) employs a certified water supply operator in accordance with Missouri Department of Natural Resources (“DNR”) and Missouri Public Service Commission (“Commission”) regulations as well as requirements articulated by DNR for this system?

Response:

It is OPC's position that, for several months in 2016 until the very beginning of 2017, Moore Bend had no certified operator. DNR witnesses will testify Moore Bend owner Bert Brower lost his certification on April 19th of 2016. At the time, he was the only certified operator working for the Company. It would be unfair to not point out Moore Bend has sought certified operators during this period but the problems in doing so were exacerbated by the fact the Company had violated numerous other DNR regulations and thus required a Level II or III operator rather than the Level I operator normally required. Thus, a problem of the Company's own making. DNR requires that a Level II and III operator be in place before the Boil Water Order ("BWO"), affecting the citizens of the Moore Bend subdivision since February of 2013, could be lifted.

The Company informed Public Counsel on January 10th of 2017 an operator with the requisite certification has been employed. Public Counsel is still awaiting verifiable evidence of this hiring. It still does not take away from the fact that for several months Moore Bend did not have the legally-required operator running the system.

It should be further noted that, in its last rate case, the Commission approved a rate increase for the Company in order to hire additional employees, including an operator certified at the appropriate level. During this time period, Moore Bend collected increased fees from its customers that were meant to go to an appropriately-certified operator. As Moore Bend had no certified operator, this calls into question as to how these increased fees were used and whether the Company was, in fact, overearning beyond that the law allowed.

2. Testing and Reporting Requirements

Does the evidence demonstrate Moore Bend complies with water testing and reporting requirements in accordance with DNR and Commission regulations?

Response:

No, it does not. Moore Bend, under requirements of DNR, was required to provide manual testing of the water supply at this subdivision. The Company has maintained that, despite this requirement, the non-approved computer system being used was sufficient despite consistent warnings from DNR this was not a suitable alternative. Further, before a BWO can be lifted, DNR requires sixty (60) consistent days of testing in order to ensure the quality of the water being provided. Moore Bend has routinely failed to collect samples on multiple days, which has caused the sixty-day period to re-set on a number of occasions.

Moore Bend has routinely failed to manually collect water samples in accordance with DNR regulations as well as used testing methods not approved by DNR. While all of this goes on between the Company and state agencies, customers of Moore Bend continue to pay their monthly water bill while not being able to use it.

1. Safe and Adequate Services

If the evidence demonstrates Issues 1-2, is Moore Bend providing safe and adequate water to its customers?

Response:

No. While the Company will argue isolated samples show that the water in the system is safe to use, this completely discounts the need for these regulations. DNR requires a Level II or III certified operator due to issues with the system. The Company has failed to do so for several months despite receiving a rate increase from the Commission to ensure

such a position is filled. There is no way to ensure safe and adequate water is being provided without this certified operator being in place. The same can be said because the Company isn't using testing methods approved by DNR, nor are they collecting samples consistent with DNR regulations. By violating these regulations, there is no assurance given to DNR nor to PSC Staff, that the water is safe and adequate. If that were the case, DNR would lift the BWO. If the Commission were to find the water is "safe and adequate" despite this BWO being in place, this would signal to customers all over the state that such BWO's should not matter. If BWO's are disregarded by the Commission, this further signals to water system operators that DNR regulations do not need to be followed. Such an inconsistent finding cannot be permitted as it would create a dangerous precedent.

2. Remedial Measures

If the Commission finds that Moore Bend is not compliant with the DNR and Commission regulations should the Commission direct its general counsel to seek monetary penalties against the Company?

Response:

This is somewhat unknowable since the Company has failed to comply with DNR regulations. Customers of Moore Bend have lived under this BWO since February of 2013. While this predates Moore Bend's ownership, any sophisticated water provider would be aware of this BWO prior to closing and understand the challenges associated with purchasing such a distressed system. Despite being a sophisticated water provider, Moore Bend continued to allow the system to remain distressed. Moore Bend failed to employ the requisite certified operator for several months, failed to use proper testing methods, failed to test the water under requirements prescribed by DNR, and failed to properly notify customers of the BWO. Yet,

the Company has always sent out a bill for these services with the expectation of payment. In fact, the Company sought and received a rate increase from this Commission in order to deal with issues like personnel; an issue at subject of this Complaint.

Despite constant notifications by DNR, Moore Bend has continued with its “business as usual” mentality. Their rationale for this mentality is wide-sweeping: what they are doing is good enough, most of the customers are not full-time residents so therefore should not expect water not subject to a BWO, OPC is being unreasonable, among others. One might excuse this mentality as the Company has expected customer bills to be paid on time every month despite providing them water that is not properly tested and being provided by a system not properly operated.

The only remedial measure that could reasonably be expected to get the attention of the Company is through its pocket book. The Commission must show the public this Company is not above following the statutes and regulations governing small water systems in this State and direct its counsel to seek monetary damages at the circuit court level.

WHEREFORE, Public Counsel and DNR submits its *Joint Statement of Positions*.

Respectfully Submitted,
OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 19th day of January, 2017, to all counsel of record.

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