

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

In the Matter of an Investigation into the )	
Operations and Condition of )	<b><u>Case No. WO-2013-</u></b>
Tri-States Utility, Inc. )	

**JOINT MOTION TO OPEN INVESTIGATION**

**COME NOW** the Staff of the Missouri Public Service Commission and the Office of the Public Counsel, by and through counsel, and for their *Joint Motion to Open Investigation*, state as follows:

1. The Missouri Public Service Commission is an agency of the State of Missouri charged with the general supervision of all non-governmental water utilities, § 386.250, RSMo., including the public safety aspects of their operation, § 386.310.1, RSMo. All such utilities must maintain safe and adequate facilities and charge only just and reasonable rates as authorized by the Commission. Section 393.130.1, RSMo.

2. Tri-States Utility, Inc. ("TSU"), is a Missouri general business corporation headquartered at 302 Terrace Road, Branson, Missouri 65616, that is engaged in the sale of water to the public in Taney County, Missouri, under the authority of a Certificate of Convenience and Necessity granted by this Commission on March 1, 1980. According to TSU's 2011 *Annual Report*, the company has 3,468 customers.

3. TSU is a water corporation and a public utility pursuant to § 386.020, RSMo, and is subject to the jurisdiction of this Commission.

4. Of TSU's 30,000 outstanding shares, 20,000 are owned by J&J Equities, LLC ("J&J"), and 10,000 are owned by McB Investments LLC. J&J and McB Investments are both Kansas limited liability corporations, duly authorized to conduct business in Missouri, and headquartered at 3512 SW Fairlawn Road, Suite 400, Topeka, Kansas 66614. According to information provided in Case No. WF-2010-0041, J&J owns 50% of McB Investments and the remaining 50% is owned by the Terry McCullough Trust. Terry McCullough, at 820 East Primrose Avenue, Springfield, Missouri 65807, is the Missouri registered agent of J&J.

5. On February 19, 2013, Great Southern Bank filed a *Petition on Note* in the Circuit Court of Greene County, Missouri, Case No. 1331-CC00215, against Defendants TSU and J&J with respect to default on a secured debt of \$1.472 million plus interest, charges and fees owed by TSU to Great Southern Bank and guaranteed by J&J, seeking judgment for the amounts due plus the immediate appointment of a receiver to take charge and possession of the security, namely, TSU's system and other assets, including payments for water service tendered by customers.

6. On February 19, 2013, Great Southern Bank's *ex parte* application for the appointment of a receiver was granted by the Circuit Court of Greene County, Missouri.

7. On February 22, 2013, Cole & Associates, Inc., the receiver appointed by the Circuit Court of Greene County, reported its observations made during its initial visit to the TSU headquarters on February 20, 2013, chief among

which was the covert looting of TSU's business accounts of some \$53,500 that was forwarded to TSU's bankruptcy attorney, David P. Eron, 229 East William, Suite 100, Wichita, Kansas 67202. The receiver also learned that Thomas C. Kelley, the COO of TSU, based in Kansas, rarely if ever actually visits the premises of TSU in Branson, Missouri, despite annual remuneration of \$52,000. Cole & Associates also discovered a "massive amount of deferred maintenance." The Superintendent advised that as much as 40% of the pumped water is lost and not metered, resulting in a very significant loss of revenue.

8. On February 20, 2013, TSU filed a petition pursuant to Chapter 11 of Title 11 of the United States Code, pertaining to bankruptcy, in the United States Bankruptcy Court for the District of Kansas, Case No. 13-20358.

9. Staff is advised that the receiver has now vacated TSU's premises and that J&J and McB Investments are again in control thereof, pending further developments.

10. By reason of all of the foregoing, Staff and Public Counsel are concerned that TSU's water service operations may be disrupted such that the public health and welfare are threatened. The opening of an investigatory docket will allow Staff and Public Counsel to formally investigate the ongoing operations and condition of TSU, monitor further proceedings in the bankruptcy court and circuit court, and provide periodic reports to the Commission.

**WHEREFORE,** Staff and Public Counsel pray that the Commission will open an investigation into the operations and condition of TSU; and grant such other and further relief as may be just in the circumstances.

Respectfully submitted,

s/ Kevin A. Thompson

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