

Exhibit No.: _____
Issues: General
Witness: Josiah Cox
Sponsoring Party: Hillcrest Utility
Case No.: WO-2014-0340, et al.
Type of Exhibit: Direct Testimony
Date: September 19, 2014

MISSOURI PUBLIC SERVICE COMMISSION

HILLCREST UTILITY OPERATING COMPANY, INC.

CASE NO. WO-2014-0340, ET AL.

DIRECT TESTIMONY OF

JOSIAH COX

Jefferson City, Missouri

September 2014

**DIRECT TESTIMONY OF JOSIAH COX
CASE NO. WO-2014-0340, ET AL.
SEPTEMBER 2014**

1

INTRODUCTION

2 **Q. WOULD YOU PLEASE STATE YOUR NAME AND BUSINESS**

3 **ADDRESS?**

4 A. My name is Josiah Cox and my business address is 3636 South Geyer Road, Suite

5 100. St. Louis, MO 63127.

6 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

7 A. I am employed by Central States Water Resources, Inc. as President of the

8 Company.

9 **Q. ON WHOSE BEHALF ARE YOU PROVIDING TESTIMONY?**

10 A. Hillcrest Utility Operating Company, Inc. (“Hillcrest” or “Company”).

11 **Q. HOW ARE YOU ASSOCIATED WITH HILLCREST?**

12 A. I am the President of Hillcrest.

13 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
14 **EXPERIENCE.**

15 A. I received a Bachelor of Science with a major in Environmental Science from the

16 University of Kansas. After graduation and a brief tenure at the Kansas

17 Biological Survey, I was employed by Fribis Engineering, a Civil Engineering

18 Firm in Arnold, MO. I spent approximately two and a half years working with

19 Fribis Engineering. I was involved during that time in various facets of the land

20 development process to include permitting, entitlement, civil design, project

21 management, and construction management. I focused mainly on the water and

22 wastewater side of the civil engineering business and participated in every part of

23 the civil business from wasteload allocation studies (now known as the anti-

1 degradation processes), design, permitting, project management, and construction
2 management. I also ran the environmental consulting division and was the
3 second private consultant to submit a water quality impact study in the state of
4 Missouri in 2003. At Fribis Engineering, I joined the executive leadership team
5 and helped run all of the operations of the firm. Thereafter, in 2005, I raised
6 money from a group of investors and formed Trumpet LLC. Trumpet LLC was a
7 full service civil engineering, environmental consulting, general contracting, and
8 construction management firm. In early 2006, I started the Executive Masters of
9 Business Administration (MBA) program at Washington University in St. Louis.
10 I graduated with my MBA from Washington University in the 2007. At Trumpet
11 LLC, as the Chief Operating Officer and finally Chief Executive Officer, I
12 obtained extensive experience with rural communities in every facet of the water
13 and wastewater compliance process including environmental assessment,
14 permitting, design, construction, operation and community administration of the
15 actual water and wastewater (sewerage) systems. At Trumpet, we performed
16 stream sampling and built waste-load allocation models to determine receiving
17 water-body protective permit-able effluent pollutant loads. We have done full
18 engineering design of multiple whole community wastewater and water
19 infrastructure systems including wells, water distribution, water treatment, water
20 storage, wastewater conveyance, and wastewater treatment plants and taken these
21 designs through federal and state administered permitting processes in Missouri.
22 Trumpet also administered the construction of these water and wastewater
23 systems from green field site selection all the way through system startup and

1 final engineering sign off. In 2008, I took over the operations on an existing rural
2 sewer district and I still currently operate a system actually managing the
3 functioning, testing, and maintenance of the system. Finally, I also act as the
4 administrator for this municipal system performing all the billing, emergency
5 response, accounts payable / accounts receivable, collections, budgeting, customer
6 service, and public town meetings required to service the community.

7 **Q. WHAT WAS THE ORIGIN OF CENTRAL STATES WATER**
8 **RESOURCES, INC.?**

9 A. In late 2010, after working on a number of small failing water and wastewater
10 systems, I created a business plan to acquire and recapitalize existing failing
11 utilities as an investor owned regulated water and wastewater utility company. In
12 early 2011, I went out to the capital markets to raise money for the purchase and
13 recapitalization of water and wastewater utilities. I spent approximately three
14 years raising money toward this utility business meeting with over fifty two
15 capital groups before closing on equity and raising debt financing in February of
16 2014, and starting Central States Water Resources, Inc.

17 **Q. WHAT IS CENTRAL STATES' BUSINESS PLAN?**

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_____,**

PURPOSE

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION (“COMMISSION”)?

A. The purpose of my testimony is to support the Joint Application requesting that the Commission:

(A) authorize Brandco Investments, LLC (“Brandco”) to sell and Hillcrest to acquire the assets of Brandco, to include the certificates held by Brandco or, in the alternative grant Hillcrest new certificates to provide water and sewer service in the areas now served by Brandco;

(B) authorize Hillcrest to enter into, execute and perform in accordance with the terms described in the Agreement attached to this Joint Application and to

1 take any and all other actions which may be reasonably necessary and incidental
2 to the performance of the acquisition;

3 (C) authorize Hillcrest to enter into, execute and deliver loan agreements with
4 Fresh Start Ventures LLC to incur indebtedness, provided that the aggregate
5 principal amount of all such debt obligations shall not exceed \$1,000,000,
6 pursuant to the terms identified herein;

7 (D) authorize Hillcrest to create and make effective a first lien on all of the
8 franchises, certificates of convenience and necessity, plant and system of
9 Hillcrest, to secure its obligations under the loan as provided herein;

10 (E) authorize Hillcrest to enter into, execute, deliver and perform the
11 necessary promissory notes, loan agreements and other documents necessary to
12 effectuate the described financing transactions; and,

13 (F) grant such other relief as may be deemed necessary and appropriate to
14 accomplish the purposes of the Agreement and the Joint Application and to
15 consummate related transactions in accordance with the Agreement.

16 **PARTICIPANTS**

17 **Q. PLEASE DESCRIBE BRANDCO.**

18 A. Brandco is a Missouri limited liability company. Its mailing address is P.O. Box
19 1685, Cape Girardeau, MO 63702. Brandco is the holder of Certificates of
20 Convenience and Necessity from the Commission to operate a water utility and a
21 sewer utility in and around Cape Girardeau County, Missouri. Brandco currently
22 provides water service to approximately 255 customers and sewer service to
23 approximately 255 customers. Brandco is a “water corporation,” “sewer

1 corporation,” and a “public utility,” as those terms are defined in Section 386.020
2 RSMo, and is subject to the jurisdiction and supervision of the Commission as
3 provided by law.

4 **Q. PLEASE DESCRIBE HILLCREST.**

5 A. Hillcrest is a Missouri corporation with its principal office and place of business
6 at 3636 S. Geyer Road, Suite 100, St. Louis, MO 63127. Hillcrest is a Missouri
7 corporation in good standing. Hillcrest has been formed for the purpose of
8 providing water and sewer service to the public in the areas currently served by
9 Brandco. Hillcrest intends to be a “water corporation,” a “sewer corporation” and
10 a “public utility” as those terms are defined in Section 386.020, RSMo, and will
11 be subject to the jurisdiction and supervision of the Commission as provided by
12 law.

13 **AGREEMENT**

14 **Q. HAVE HILLCREST AND BRANDCO REACHED AN AGREEMENT**
15 **CONCERNING BRANDCO’S UTILITY ASSETS?**

16 A. Yes. Hillcrest and Brandco have entered into an Agreement For Sale of
17 Sewer & Water Systems, dated April 4, 2014 (“Agreement”), a copy of which is
18 attached as **Schedule JC-1 HC**. Pursuant to the Agreement, Hillcrest proposes to
19 purchase substantially all of the water and sewer assets of Brandco as specifically
20 described in the Agreement under the terms and provisions further described in
21 the Agreement. Such assets include the Brandco Certificates of Convenience and
22 Necessity granted by the Commission to Hillcrest Utilities Company in Cases
23 Nos. 17,937 and 17,938, and obtained by Brandco as a result of Commission
24 Cases Nos. WM-2007-0261 and SM-2007-0262.

1 **BRANDCO ASSETS**

2 **Q. WHAT IS THE CURRENT CONDITION OF THE BRANDCO UTILITY**
3 **WATER ASSETS?**

4 A. I believe Brandco has an existing Missouri Attorney General enforcement action
5 alleging that Brandco has ongoing drinking water pathogen pollution. Brandco
6 has had multiple boil orders due to drinking water system malfunctions, including
7 one recently in May of 2014, when the system was under a month-long boil order
8 due to failing drinking water quality tests. The Missouri Department of Natural
9 Resources (DNR) was forced to bring in a temporary chlorination system to help
10 shock the Brandco drinking water system in order to determine the possible cause
11 of the drinking water contamination. A temporary fix is now in place. However,
12 the current owner claimed it was unable to pay for a permanent, safe, and reliable
13 solution. The current owner further indicated that it did not have the capital to
14 purchase a temporary chlorination system to replace the DNR's emergency
15 system. As a solution, Brandco, DNR, and Central States Water Resources Inc.
16 (CSWR) (Hillcrest's affiliate) have a temporary, tri-party agreement, where
17 CSWR paid for a temporary disinfection system to be installed and CSWR is
18 paying a local engineer to weekly inspect the temporary system fixes to make sure
19 they functioning on an ongoing weekly basis. Brandco's water system has no
20 backup power or twenty-four hour drinking water storage, which means the
21 community may not have sufficient water during a simple power outage *See*
22 **Schedule JC- 2.**

23 **Q. WHAT IS THE CURRENT CONDITION OF THE BRANDCO UTILITY**
24 **SEWER ASSETS?**

1 A. Brandco has an existing Missouri Attorney General enforcement action alleging
2 that Brandco is an active stream human pathogen polluter. Brandco has on-going
3 sanitary sewer over flows (SSO's) that Hillcrest observed during due diligence.
4 Thus, it appears Brandco may be a nutrient and biological contaminate polluter.
5 Currently, Hillcrest understands that Brandco's wastewater treatment plant is not
6 operational, as the blowers are no longer functioning and there is no mechanical
7 treatment taking place. In addition, the Brandco owner flipped his lawn mower
8 into the lagoon several weeks ago while attempting to mow the property. The
9 mower is still in the lagoon. Basic maintenance seems to not be taking place. In
10 addition according to recent sampling results Brandco is violating its current
11 permitted limits ranging from violations of double permitted limits to almost ten
12 times the treatment plants permitted limits. See **Schedule JC-2**.

13 **Q. WHAT OTHER COMMENTS WOULD YOU LIKE TO MAKE**
14 **CONCERNING THE BRANDCO SYSTEM?**

15 A. The operational records and state minimum DNR testing submittals are non-
16 existent. This means it takes a high level of expertise to ascertain what
17 engineering selections will be needed to remedy existing utility conditions.
18 Brandco has indicated that it does not possess any relevant plan information
19 cataloguing existing improvements, including original design and construction
20 documentation. In addition, Brandco and its predecessor company have not had a
21 tariff rate change for thirty-five years (since 1989). As a result, it appears to me
22 that the existing utility owners have operated the utility at an economic loss and
23 have been unable to pay for even basic administration.

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FUTURE ACTIONS

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Q. DOES HILLCREST HAVE A PLAN TO REMEDY THESE ISSUES?

A. Yes. Hillcrest has examined the sewer system and believes that it will be necessary to construct a new mechanical activated sludge wastewater treatment plant with supporting lift stations in order to meet the schedule of compliance for nutrient removal. In addition, fencing and general site work will be needed. Some of the existing lagoon system will need to be closed per MDNR regulations, while some of the lagoon pond areas will be kept open to act as infiltration and inflow catch basins. These catch basins will then be pumped through the mechanical plant in order to effect tertiary treatment per MDNR SSO regulations. A mini- lift station will be installed to utilize the existing disinfection pumping treated waste through the disinfection system. Hillcrest has examined the water system and believes it will need to permanently fix the leak which possibly allowed bird feces to contaminate the drinking water. Hillcrest plans on constructing a new building to house a permanent water disinfection system, install back up power to maintain water service to the community during emergency situations, and install storage to maintain service in the community in addition to performing some emergency rebuilding of line connections and buildings to keep the system running.

Q. WHAT IS THE PROJECTED COST OF THOSE IMPROVEMENTS?

A. The estimated cost of such improvements is approximately \$1,230,000.

Q. WHAT WILL BE HILLCREST’S SOURCE OF FUNDING FOR THESE IMPROVEMENTS?

1 Hillcrest will invest approximately \$236,000 in equity and plans to obtain the
2 additional funds necessary to build the wastewater and drinking water
3 improvements through a financing arrangement with Fresh Start Ventures LLC
4 (Fresh Start). Fresh Start has agreed to provide those funds at an interest rate of
5 **** ____ ****.

6 **HILLCREST QUALIFICATIONS**

7 **Q. DOES HILLCREST HAVE THE TECHNICAL CAPACITY TO OPERATE**
8 **THE BRANDCO ASSETS?**

9 A. Yes. I have experience in the design and operation of water and sewer systems.
10 Hillcrest intends to utilize a contract operator for plant operations, utilizing the
11 services of appropriately qualified and licensed utility system operators (for water
12 and for sewer) ultimately supervised by me. The contract operator will undertake
13 routine day-to-day inspections, checks, sampling and reporting for the water and
14 sewer systems, along with meter reading, as well as accomplish most system
15 repairs and extraordinary operations tasks as the need arises, to address proper
16 facility operations and customer service matters. As stated above, Hillcrest has
17 plans to address, on a permanent basis, the contamination and storage tank
18 volume issues that exist with the water system, and also is planning for
19 construction of a replacement sewage treatment facility that will be capable of
20 meeting new treated sewage discharge specifications.

21 **Q. DOES HILLCREST HAVE THE FINANCIAL CAPACITY TO OPERATE**
22 **THE BRANDCO ASSETS?**

1 A. Yes. Hillcrest has been able to attract investment to provide safe, reliable, water
2 and wastewater service despite the many challenges posed by Brandco (current
3 danger to public health Brandco’s water system faces, the current lack of basic
4 emergency service Brandco has, the current fact that Brandco is a polluter in
5 violation of multiple state and federal regulations, the current lack of a new tariff
6 in over thirty five years, the current fact that the utility is currently operating at a
7 loss, and that the fact that Brandco has almost no historical information on the
8 utility improvements it currently owns and operates). I believe this is very good
9 evidence of Hillcrest’s financial wherewithal.

10 **Q. DOES HILLCREST HAVE THE MANAGERIAL CAPACITY TO**
11 **OPERATE THE BRANDCO ASSETS?**

12 A. Yes. Similar to routine facility operations, Hillcrest intends to utilize a contract
13 billing agent, and utilize an emergency answering service. The billing agent will
14 be responsible for computing, printing, and sending monthly bills to customers,
15 and then collecting payment. The billing agent will also have customer service
16 staff that will be able to take and process customer calls with inquiries pertaining
17 to billing, make bill adjustments and enter into payment plans within company
18 guidelines, interact with Staff in working with customer complaints, and manage
19 new customer accounts and the closing of customer accounts. In conjunction with
20 an answering service that may be a different agent, the contract billing agent will
21 also be available to route service complaints and inquiries. I will also be available
22 by telephone at most all times when severe emergencies arise. Hillcrest intends to
23 comply with the Commission’s regulations with respect to customer billing and

1 customer complaints/inquiries, certain aspects of utility system upkeep including
2 placement of customer meters along with meter testing/replacement, and
3 recordkeeping to document company operations expenses including vehicle use,
4 equipment use, and telephone use.

5 **FINANCING**

6 **Q. THE COMPANY ALSO SEEKS AN ORDER FROM THE COMMISSION**
7 **GRANTING IT THE AUTHORITY TO ISSUE UP TO \$1,000,000 OF**
8 **SECURED INDEBTEDNESS. WHAT IS THE PURPOSE OF THIS**
9 **FINANCING?**

10 A. As stated above, this financing will allow Hillcrest to fund the construction
11 necessary to bring the systems into regulatory compliance.

12 **Q. WHAT ARE THE TERMS OF THE PROPOSED FINANCING?**

13 A. Hillcrest intends to execute a Term Loan with Fresh Start. ** _____

14 _____
15 _____**. The Term Loan will allow Hillcrest to complete the
16 acquisition of the Brandco water and sewer systems and the construction of a new
17 activated sludge mechanical wastewater treatment plant and drinking water stand
18 pipe, as required for MDNR regulatory compliance. Attached as **Schedule JC-3**
19 **HC** is the term sheet for the Fresh Start Ventures LLC Conditional Loan
20 Commitment, which outlines the principal terms of the agreement including the
21 interest rate, applicable fees and required collateral.

22 **Q. WHAT SECURITY WILL BE PROVIDED FOR THE LOAN?**

23 A. The loan will result in a first lien on substantially all of the properties acquired by
24 Hillcrest. Consequently, the loan obligations will be secured by a lien or

1 encumbrance on Hillcrest’s utility franchises, plant and system that are used to
2 provide service to its customers, and also on an encumbrance against any
3 additional plant and assets.

4 **Q. DID YOU INVESTIGATE OTHER FINANCING OPTIONS?**

5 A. Yes. I have been working on raising capital toward the acquisition and
6 recapitalization of small water and wastewater utilities since 2011. ** _____

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19 **Q. HAVE YOU MORE RECENTLY SOUGHT TRADITIONAL DEBT**
20 **FINANCING?**

21 A. Yes. After this Joint Application was filed in this case, I again approached banks
22 offering a revised capital structure and bank loan application. These applications
23 were summarily rejected by the banks.

1 **STAFF’S PROPOSED CONDITIONS**

2 **Q. THE STAFF OF THE COMMISSION PREVIOUSLY FILED A**
3 **RECOMEMNDATION IN REGARD TO THE JOINT APPLICATION.**
4 **HAVE YOU REVIEWED THAT DOCUMENT?**

5 A. Yes.

6 **Q. THE STAFF RECOMMENDATION PROPOSED THAT THE JOINT**
7 **APPLICATION BE APPROVED, SUBJECT TO CERTAIN CONDITIONS.**
8 **ARE THOSE CONDITIONS ACCEPTABLE TO HILLCREST?**

9 A. While Hillcrest agrees with Staff’s general conclusion – that the acquisition and
10 the proposed financing should be approved by the Commission – Hillcrest
11 disagrees with, and cannot voluntarily agree to, two of the conditions as proposed.

12 **Q. WHICH STAFF-PROPOSED CONDITIONS DOES HILLCREST FIND**
13 **UNACCEPTABLE?**

14 A. First, Hillcrest cannot agree to proposed Condition 4p. This condition proposes to
15 allow Hillcrest to only collateralize up to \$790,000 of its assets to issue secured
16 debt. This limit will not allow Hillcrest to construct the known improvements that
17 are necessary to bring these systems into compliance and provide safe and
18 adequate service.

19 Second, Hillcrest cannot agree to proposed Condition 4q. This condition purports
20 to require the company to capitalize itself with equity contributions in certain
21 circumstances. How a utility chooses to capitalize itself is a matter within its own
22 discretion and the Commission’s authority to regulate does not give it the right to
23 dictate a specific result without some evidence of abuse.

1 ASSESSMENTS

2 **Q. THE STAFF RECOMMENDATION ASSERTS THAT THERE ARE**
3 **COMMISSION ASSESSMENTS FOR BRANDCO THAT ARE PAST DUE**
4 **FOR THE LAST FIVE YEARS. HOW WILL THESE PAST DUE**
5 **ASSESSMENTS ADDRESSED?**

6 A. Hillcrest plans for those costs to be paid out of Brandco’s purchase price, when it
7 closes on the assets.

8 TARIFFS AND RATES

9 **Q. IF THE JOINT APPLICATION IS APPROVED, WHAT RATES AND**
10 **REGULATIONS DOES HILLCREST PLAN TO UTILIZE FOR THE**
11 **PROVISION OF SERVICE?**

12 A. Hillcrest proposes to adopt the Brandco rates, rules and regulations and other
13 tariffs currently on file with and approved by the Commission as Brandco P.S.C.
14 Mo. No. 2 water tariff and the Brandco P.S.C. Mo. No. 2 sewer tariff, until such
15 time as they may be modified according to law.

16 PUBLIC INTEREST

17 **Q. DO YOU BELIEVE THE PROPOSED TRANSACTIONS ARE IN THE**
18 **PUBLIC INTEREST?**

19 A. Yes. For the following reasons, the proposed acquisition of the specified assets of
20 Brandco and the related transactions are not detrimental to the public interest of
21 the State of Missouri and in fact will be consistent with and will promote the
22 public interest:

23 A. The assets of Brandco would be acquired by Hillcrest and remain
24 subject to the jurisdiction of the Commission.

1 B. Hillcrest is fully qualified, in all respects, to own and operate the
2 systems currently being operated by Brandco and to otherwise provide safe and
3 adequate service – something that is not present at the current time.
4 Furthermore properly functioning clean drinking water and wastewater treatment
5 systems are arguably the greatest single contributors to an increase in public
6 health in the developed world in the last 130 years.¹ Population centers in rural
7 areas of Missouri have under-invested in their water and wastewater infrastructure
8 for many years (thirty-five years in Brandco’s case), due to a lack of political will
9 and a perceived abundance of natural water resources. This is prohibiting the
10 possibility of continued sustainable development in Missouri and without new
11 investment, public health and human dignity are at risk. Missouri’s natural
12 resources are already being damaged by antiquated water systems that use
13 mismanaged aquifers, which at current usage rates will be drained. Failing sewer
14 systems are currently local polluting stream, lake, and subsurface aquatic
15 ecosystems destroying plant and animal life that is intricately tied to humanity
16 with dire unknown future consequences if they are not remediated. Ultimately,
17 society’s fate is tied to the natural world and how Missouri manages its natural
18 resources will be the final arbitrator of its continued long term sustainability.
19 With the above view of water resources in mind, it seems that bringing Brandco
20 back into regulatory compliance with federal and state health, human safety, and
21 environmental compliance promotes the public interest in that it keeps this
22 community healthy, safe, and whole.

23 **Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?**

1 <http://www.who.int/features/factfiles/sanitation/en/index.html> - World Health Organization.

1 A. Yes, it does.

2

AFFIDAVIT

STATE OF MISSOURI)
)
COUNTY OF St. Louis) ss

I, Josiah Cox, state that I am the President of Hillcrest Utility Operating Company, Inc.; that the Direct Testimony and schedules attached hereto have been prepared by me or under my direction and supervision; and, that the answers to the questions posed therein are true to the best of my knowledge, information and belief.



Subscribed and sworn to before me this 19 day of September, 2014.


Notary Public

My Commission Expires: July 17th, 2016

