

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

In the Matter of the Application of 188)	
North Summit, LLC to Surrender its)	<u>File No. SD-2019-0360</u>
Certificates of Convenience and Necessity)	
to Provide Water and Sewer Service and)	<u>File No. WD-2019-0361</u>
be Decertified as a Public Utility)	

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), and hereby respectfully submits its *Recommendation* in the above-captioned matters.

1. On May 22, 2019, 188 North Summit, LLC (“188NS”) filed an *Application to Surrender Certificates of Service Authority, to be Decertified as a Public Utility and Contingent Motion for Waiver* (“Application”) requesting that it be allowed to surrender its certificates of convenience and necessity (“CCNs”) authorizing 188NS to provide water and sewer service to the public.¹ 118NS also requested a waiver from the 60 day notice of 4 CSR 240-4.020(2)(B).

2. In its Application, 188NS states that it provides water and sewer service to 55 residents within the mobile home park it owns and manages in the City of Holts Summit, Missouri. 188NS asserts that its water and sewer service to mobile home park tenants is not a public service over which the Commission has jurisdiction and thus, the Company’s CCNs may be cancelled and the Company decertified. In support of this assertion, 188NS states that, because it does not offer or provide water or sewer service to any individual not residing within its mobile home park, and because the provision of water and sewer service to its mobile home tenants is incidental to its core business as

¹ Issued in File Nos. SM-2018-0017 & WM-2018-0018.

landlord of the property, 188NS therefore does not offer its water and sewer service to members of the public indiscriminately.² 188NS stated that if its CCNs are cancelled, 188NS will continue to read and bill customers monthly for water use and will charge customers for actual use with no mark up, late fees, connection fees, or any other fee.³

3. On May 29, 2019, the Commission issued its *Order Directing Notice, Establishing Time to Intervene, and Directing Staff Recommendation*. In this Order, the Commission directed 188NS to provide notice of its Application to each of its tenants receiving water or sewer service, set an intervention deadline of June 14, 2019, and ordered Staff to file a recommendation or status report no later than June 28, 2019. No parties have filed to intervene in this matter.

4. On June 4, 2019, 188NS filed its *Notice of Compliance with Order Directing Notice*, indicating that all of 188NS's tenants receiving water or sewer service were notified of its pending Application on May 30, 2019, via hand delivery of the Commission's *Order Directing Notice* dated May 29, 2019.

5. On June 28, 2019, Staff filed its *Status Report Indicating Anticipated Date of Filing Staff Recommendation*, indicating that at the time of the filing, it anticipated filing its recommendation no later than August 7, 2019. On July 9, 2019, the Commission issued its *Order Directing Staff Recommendation and Setting Time for Responses*, directing Staff to file its *Recommendation* no later than August 7, 2019, and directing all other parties to file any responses to it no later than August 19, 2019.

² *Application to Surrender Certificates of Service Authority, to be Decertified as a Public Utility and Contingent Motion for Waiver*, Case Nos. SD-2019-0360 & WD-2019-0361, Paragraph 7-8, Page 3, Filed May 22, 2019.

³ *Application* Paragraph 9, Page 4.

6. As discussed below, Staff recommends the Commission deny 188NS's Application and accept its legal recommendation that the Commission does have jurisdiction to regulate 188NS's water and sewer systems, on the basis that 188NS provides water and sewer service, for gain, indiscriminately, within the service territory it is able to serve.

Commission Jurisdiction

7. Missouri law states that every water and sewer corporation, as defined in Chapter 386, RSMo, is a public utility subject to Commission jurisdiction, control, and regulation and the provisions of Chapter 386, RSMo.⁴

8. Section 386.020(59), RSMo, defines a water corporation as every corporation or person "owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water[.]"

9. Section 386.020(49), RSMo, defines a sewer corporation as a corporation or person owning, operating, controlling or managing any sewer system with twenty-five (25) or more outlets, "for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain[.]"

10. In addition to meeting the definitions supra, utility plant must be dedicated to the public use. The Supreme Court of Missouri stated in *State ex rel. M.O. Danciger & Co. v Public Service Comm'n.*, 205 S.W. 36, 38 (Mo. 1918) that while the definition of an electric utility includes no language stating that the utility must be for the public use, a

⁴ See Section 386.020(43), RSMo.

public use requirement is implicit from the definition. This requirement is applicable to water and sewer utilities. Further:

For the operation of the electric plant must of necessity be for a public use, and therefore be coupled with a public interest; otherwise the Commission can have no authority whatever over it. The electric plant must, in short, be devoted to a public use before it is subject to public regulation.⁵

Indiscriminant Service for Public Use

11. Missouri appellate courts have historically listed three independent factors to be considered when determining whether an entity is indiscriminately providing service for public use: (a) Whether the entity solicited customers within the area it was capable of serving,⁶ (b) Whether the entity “refused to provide water service” to eligible customers,⁷ and (c) Whether the entity provides service via special contract.⁸

12. Determining whether an entity indiscriminately provides services for the public use is a fact-specific analysis. “[I]n determining whether a corporation is or is not a public utility, the important thing is, not what its charter says it may do, but what it actually does.”⁹ While any of the above considerations may be treated as an independent, definitive factor, the most persuasive consideration appears to be whether the providing entity “holds itself out to serve the public.”

⁵ *Danciger* at 38 (citing *Munn v. Illinois*, 94 U.S. 113 (1876)).

⁶ *State ex rel. Cirese v. Public Service Commission*, 178 S.W.2d 788, 790 (Mo. App W.D. 1944); see also, *Hurricane Deck Holding Co. v. Public Service Comm’n of State*, 289 S.W.3d 260, 266 (Mo. App. W.D. 2009)(finding that providing water service indiscriminately to all homeowners constituted engaged in the business as a public utility)(quoting *Cirese* at 791).

⁷ *Osage Water*, at 575 (finding the record void of evidence the company had refused service). See also, *Danciger*, at 40-41 (finding the company had refused service beyond its production capacity).

⁸ *Hurricane Deck* at 266, quoting *Danciger*, at 41 (“[W]here the company supplying electricity has not professed to sell the public indiscriminately at regular rates, but has from the beginning adopted the policy of entering into special contracts upon its own terms[,] such companies are plainly engaged in private business”)(internal citations omitted).

⁹ *Osage Water* at 574, quoting *Danciger* at 39. See also *State ex rel. and to Use of Cirese v. Pub. Serv. Comm’n of Missouri*, 178 S.W.2d 788, 790 (Mo. App. 1944).

13. Appellants in *State ex rel. and to Use of Cirese v. Pub. Serv. Comm'n of Missouri*, 178 S.W.2d 788 (Mo. App. 1944) argued they were not operating a public utility, because they were producing electricity primarily for their own business and their tenants, and were only selling surplus energy.¹⁰ However, the Court, citing appellants' solicitation of business and building of additional capacity and transmission beyond what was needed for their business and their tenants' use, found that appellants were engaged in the production, distribution and sale of electricity to the public. Therefore, they fell under Commission jurisdiction.¹¹

14. In *Osage Water Co. v. Miller County Water Authority, Inc.*, 950 S.W.2d 569, 574 (Mo. App. S.D. 1997), the Missouri Court of Appeals, Southern District found an uncertificated company providing water to two subdivisions within a certificated utility's service area to be a public utility. The Court held that nothing in the Commission statutes suggested that the legislature did not intend to regulate non-profits via the Commission.¹² The court then found that there was no testimony that the non-profit company had refused to provide water service to any residents within the two subdivisions and, in fact, "the testimony suggested that Defendant has undertaken the responsibility to provide water service to everyone within its capability, not merely for particular persons."¹³ Based upon this evidence, the *Osage* court held the non-profit company's actions suggested that it had undertaken the responsibility to provide water service to all members of the public within its capabilities, and therefore, its service had been devoted to the public use.¹⁴

¹⁰ *Cirese* at 790.

¹¹ *Cirese* at 790-791.

¹² *Osage Water Co. v. Miller County Water Authority, Inc.*, 950 S.W.2d 569, 574 (Mo. App. S.D. 1997)

¹³ *Osage Water* at 575 (Citing *Danciger* at 42).

¹⁴ *Id.* (Citing *Danciger* at 40).

15. *Hurricane Deck Holding Co. v. Pub. Serv. Comm'n of State*, 289 S.W.3d 260 (Mo. App. W.D. 2009) involved a developer that owned a water and sewer system serving the same two subdivisions at issue in *Osage Water*. After *Osage Water Co.* ceased to exist, the developer that actually owned the water and sewer system¹⁵ sent out a single bill to all customers for past due amounts. Commission Staff filed a complaint, arguing that Hurricane Deck Holding Co. was a public utility operating without a CCN. The Commission agreed,¹⁶ and the Appellate Court, citing *Cirese*, *Danciger*, and most prominently, *Osage Water*, found that the Commission did not err in its determination. The court stated that Hurricane Deck could constitute a public utility where it offered service indiscriminately to all persons located within a service territory, even though its services were limited to the two subdivisions in which its water and sewer systems were located.¹⁷

16. Staff Counsel is unaware of any Missouri case law that has opined directly on the issue of what jurisdiction, if any, the Commission has over landlord/tenant relationships involving the provision of water and/or sewer service to tenants.¹⁸ However,

¹⁵ Pursuant to an operating agreement, *Osage Water Co.* provided operation and maintenance service of the water and sewer systems serving the subdivisions at issue, and had obtained CCNs from the Commission; however, Hurricane Deck Holding Company maintained ownership. After *Osage Water Co.* was placed in receivership, the receiver elected not to enter into another agreement with Hurricane Deck Holding Company. *Hurricane Deck* at 261-262.

¹⁶ The Commission stated:

The key fact is that by sending out bills to the residents, Hurricane Deck Holding Company offered service to all residents of the given subdivisions. It is not purporting to merely offer services to a few friends. *Hurricane Deck* at 262.

¹⁷ *Hurricane Deck* at 266 (quoting Commission's underlying *Report and Order*).

¹⁸ While Staff Counsel could not identify any Missouri case law pertaining to the provision of water or sewer services by landlords solely to tenants, several other jurisdictions have opined on this subject, the majority of which have held that landlords providing water/sewer service solely to tenants is *not* subject to regulation:

See *Arizona Corp. Com. v. Nicholson*, 108 Ariz. 317, 497 P.2d 815 (1972)(Holding that it was never contemplated that the definition of public service corporation contained in the state's constitution was meant to include landlords providing water/sewer service only to tenants; the court found landlord was not in the business of supplying water, and since the water enterprise was incidental to the business of renting trailer spaces, albeit an

the Missouri Court of Appeals stated in dicta in *Cirese* that a landlord providing electrical service to its tenants did not constitute a utility.¹⁹ While the Court of Appeals stated that *Cirese* needed a CCN to serve the public generally, it strongly implied that no CCN was needed to serve the building they owned and the tenants thereof:

There was ample and substantial evidence to support a finding by respondent that appellants are engaged as a public utility to the extent that they manufacture, distribute and sell electrical energy to members of the public. ***They are not, however, a public utility insofar as their facilities and activities are confined to the manufacture, distribution and sale of electrical energy to themselves and to their own buildings and tenants thereof in the manner shown in evidence.*** (Emphasis added).²⁰

indispensable incident, the court found this enterprise was not a public service corporation subject to Commission jurisdiction.); *Junction Water Co. v. Riddle*, 108 N.J.Eq. 523, 155 A. 887 (Ch. 1931)(Holding the supplying of water to houses and property owned by the landlord, notwithstanding that such water was consumed by tenants who were part of the public, was not, in the court's judgement, supplying water "for public use" as contemplated by statute.); *Drexelbrook Assocs. v. Pennsylvania Pub. Util. Comm'n*, 418 Pa. 430, 212 A.2d 237 (1965)(Holding gas, water, and electric service provided directly to the tenants by the landlord of a large apartment village (over 1,200 residential units and 9 retail stores) was private service to a special class of persons (those selected as tenants), not a class open to the indefinite public, and therefore not a public utility subject to regulation by the state public service commission.)

For case law from other jurisdictions holding landlords providing water/sewer service only to tenants is subject to regulation:

See *Fletcher Properties, Inc. v. Fla. Pub. Serv. Comm'n*, 356 So.2d 289 (Fla. 1978)(Holding manager and part owner of a development, through providing water service and billing on an equal share basis, subjected it the jurisdiction of the Commission. The court found that the manager's billing procedures did not fall within the statutory exception applying to landlords providing service to their tenants without specific compensation for the service.); *Gosar's Unlimited Inc. v. Wyoming Pub. Serv. Comm'n*, 2013 WY 90, 305 P.3d 1152 (Wyo. 2013)(Holding landlord who installed water meters on each trailer lot in mobile home park and provided water services to tenants for a fee separate from rent constituted a public utility subject to Public Service Commission regulation, where, in general, when a person furnished or distributed water to tenants, that person was not acting as a public utility, however, such exemptions did not apply to metered or other direct sales of a utility commodity.)

¹⁹ *Cirese* at 789.

²⁰ *Cirese* at 790.

It is important to note, however, that the definition of “Electrical Corporation” contained in statute at the time *Cirese* was decided provided a specific exception for landlord/tenant relationships:

13. The term “electrical corporation,” when used in this chapter, includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever (other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others) owning, operating, controlling or managing any electric plant **except where electricity is generated or distributed by the producer solely on or through private property** for railroad, light rail or street railroad purposes or **for its own use or the use of its tenants and not for sale to others.** (*Emphasis added*).²¹

This exception does not exist in the definitions of “Water Corporation” and “Sewer Corporation” contained in Section 386.020, RSMo.²²

17. However, as 188NS noted in its Application, the Commission has, in the past, found that landlords providing water and/or sewer service solely to their tenants are not subject to Commission’s jurisdiction. Staff Counsel is aware of at least two instances where this has occurred. The first, *In the Matter of Public Water Supply District No. 8 of Jefferson County, Missouri v. Norman Goad Construction Company, Inc.*, WC-77-128,

²¹ R.S. 1938 Section 5577. It should also be noted that the currently effective definition of “Electric Corporation,” contained in Section 386.020(29), RSMo, is essentially identical to the 1938 version, and still includes the exemption for landlord/tenant relationships. It reads:

“**Electrical Corporation**” includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, owning, operating, controlling or managing any electric plant **except where electricity is generated or distributed by the producer solely on or through private property** for railroad, light rail or street railroad purposes or **for its own use or the use of its tenants and not for sale to others[.]** (*emphasis added*).

²² See Sections 386.020(49) and (59), RSMo.

cited by 188NS in its Application,²³ involved a mobile home park owner providing water service to its tenants without obtaining a CCN. The Commission concluded that, “the Respondent herein is providing water service to a limited group defined as ‘tenants,’ and therefore is not providing water service to the public generally and therefore that portion of his business is not a public utility.”²⁴ While courts in other jurisdictions have applied similar rationale in finding landlord tenant relationships beyond the jurisdiction of a state utility commission, i.e., distinguishing tenants as a special class distinct from the general public,²⁵ Staff Counsel is unaware of any Missouri case law applying such reasoning.

18. The second is *The Staff of the Missouri Public Service Commission v. Aspen Woods Apartment Associates, LLC, et al.* WC-2010-0227. Aspen Woods Apartment Associates, LLC (“Aspen Woods”) owned an apartment complex consisting of a number of multi-unit apartment buildings in St. Louis County, and was a single customer for water service and sewer service.²⁶ Aspen Woods contracted with a third party vendor which used the monthly water and sewer usage of the entire complex, adjusted for usage for irrigation, swimming pools, and common areas, and allocated the remaining amounts to individual apartment tenants with no mark up.²⁷ In its complaint, Staff alleged that the company operating the apartment complex and the third party vendor were (1) water and sewer corporations, pursuant to Sections 386.020(49) and (59), RSMo, (2) public utilities pursuant to Section 386.020(43) RSMo, and (3) were providing water and sewer services

²³ Application, Paragraph 8, Page 3.

²⁴ *Pub. Water Supply Dist. No. 8 of Jefferson Cty., Mo.*, 21 Mo. P.S.C. (N.S.) 614 (Oct. 24, 1977).

²⁵ See *Drexelbrook Assocs. v. Pennsylvania Pub. Util. Comm’n*, 418 Pa. 430, 212 A.2d 237 (1965).

²⁶ *Staff Complaint*, Paragraph 25, Page 5, EFIS Item No. 1, Case No. WC-2010-0227, Filed January 29, 2010.

²⁷ *Aspen Woods Apartment Associates, LLC and National Water & Power, Inc.’s Joint Motion for Summary Determination, Mathes Affidavit, Legal Memo in Support*, Paragraphs 12 and 13, Page 4, EFIS Item No. 82, Case No. WC-2010-0227, Filed October 26, 2010.

without obtaining CCNs from the Commission.²⁸ The apartment complex and third party vendor filed a joint motion for summary determination, requesting a Commission ruling that Aspen Woods was a private apartment complex not devoted to the public use, and therefore was not subject to Commission regulation.²⁹ A series of responsive pleadings were filed, and the Commission heard oral arguments on the Respondents' motion. Ultimately, after a stay of proceedings to investigate a potential rulemaking workshop, the Commission dismissed Staff's complaint for lack of jurisdiction.³⁰

19. Staff Counsel is aware of a third Commission matter that, although not relating to the provision of water and sewer service, applied similar rationale; *In the Matter of Investigation into WATS Resale by Hotels/Motels*, 28 Mo. P.S.C. (N.S.) 535 (July 24, 1986). As part of its investigation, the Commission considered several issues, including whether hotels or motels providing intrastate interlata or intralata toll telecommunications services should be required to obtain a CCN. In its July 24, 1986, Report and Order, the Commission found that hotels and motels reselling telephone service to tenants were not subject to Commission regulation; stating:

Based on the above analysis, the Commission finds that hotels and motels which resell telephone service to their own tenants incidental to other terms in a lease are not holding themselves out to provide telephone service to the public generally and indiscriminately. Therefore, the Commission concludes that such hotels or motels are not subject to its jurisdiction and

²⁸ *Staff Complaint*, Paragraphs 39, 42, Page 8, EFIS Item No. 1, Case No. WC-2010-0227, Filed January 29, 2010.

²⁹ *Aspen Woods Apartment Associates, LLC and National Water & Power, Inc.'s Joint Motion for Summary Determination, Mathes Affidavit, Legal Memo in Support*, EFIS Item No. 82, Case No. WC-2010-0227, Filed October 26, 2010.

³⁰ *Order Dismissing Complaint*, EFIS Item No. 130, Case No. WC-2010-0227, Filed October 5, 2011. Staff notes no findings of fact or conclusions of law were included in the Commission's order. The Commission ordered:

1. The Staff of the Missouri Public Service Commission's complaint against Aspen Woods Apartment Associates, L.L.C. and National Water & Power, Inc. is dismissed for lack of jurisdiction.
2. This file shall be closed.

therefore are not required to be certificated pursuant to Section 392.260 RSMo. 1978.³¹

However, again, while courts in other jurisdictions have applied similar reasoning in holding a company is not subject to regulation,³² Staff Counsel is unaware of any court in Missouri doing as much.

20. While the Commission cases cited *supra* clearly indicate that, at times, the Commission has held that provision of service solely to tenants by a landlord is not service to the public generally and indiscriminately, recent Missouri case law seems to indicate otherwise.³³ The *Osage Water* and *Hurricane Deck* cases clearly state the “public use” requirement can be met through indiscriminate service within a defined territory, even if that territory is very small. Further, while other jurisdictions have held otherwise,³⁴ Staff Counsel is unaware of any Missouri case law explicitly exempting the provision of water and/or sewer service by landlords solely to their tenants from Commission jurisdiction, and finds nothing in the Commission statutes that suggests that the legislature *did not* intend to regulate these landlord/tenant relationship via the Commission. Therefore, based on the foregoing case law, and given the lack of a landlord/tenant exception within the definitions of “water corporation” and “sewer corporation” in Section 386.020, RSMo, a landlord that provides water and/or sewer service indiscriminately to all individuals within the area it is capable of serving, meets the “public use requirement” defined in case law.

³¹ *Matter of Investigation into Wats Resale by Hotels/motels*, 28 Mo. P.S.C. (N.S.) 535 (July 24, 1986).

³² See *Arizona Corp. Com. v. Nicholson*, 108 Ariz. 317, 497 P.2d 815 (1972).

³³ Staff notes that prior Commission decisions are not binding precedent on later Commission decisions. See *State ex rel. AG Processing, Inc. v. Public Serv. Comm’n*, 120 S.W.3d 732, 736 (Mo. banc 2003); *Fall Creek Const. Co., Inc. v. Director of Revenue*, 109 S.W.3d 165, 172-173 (Mo. banc 2003).

³⁴ See Footnote 20 *supra*.

Provision of Service “For Gain”

21. Aside from the “public use” requirement, the other necessary element for Commission jurisdiction over either a water or sewer corporation is that the entity is operating “for gain.” The phrase “for gain” has been interpreted by the *Osage Water* court to mean “for compensation,” and includes even not-for-profit companies that provide water or sewer service where those entities charge for service provided. A more analytical discussion in *Hurricane Deck Holding Co. v. Public Service Comm’n of State*, reaffirms and strengthens the *Osage Water* court’s conclusions. The Hurricane Deck court quotes the underlying Commission Report and Order, affirming that:

the definition [of water or sewer corporation] depends upon an intent to supply water or sewer service for gain or compensation. Sending a bill to customers for the provision of water and sewer service meets the definition of operating a system for gain, regardless of whether any customer actually pays the bills.

22. Thus, pursuant to *Osage Water and Hurricane Deck*, a water and/or sewer provider that sends bills to customers for the provision of water or sewer service, in any amount, is operating “for gain.”³⁵

Relevant Facts Related to Commission Jurisdiction

23. 188NS is an existing regulated water and sewer utility currently providing water and sewer service to approximately 55 residents of a mobile home park that it owns, located in Holts Summit, Missouri. 188NS does not offer or provide water or sewer service to any individual not residing within the mobile home park.

³⁵ Staff notes that statutory provisions enacted in 1997 authorize not-for-profit membership organizations to be organized to operate water and sewer systems free of PSC authority. See *generally* Sections 393.825–.861 (sewer companies), 393.900–.954 (water companies).

24. In Case Nos. SM-2018-0017 and WM-2018-0018, 188NS applied for and obtained from the Commission approval to acquire substantially all of the water and sewer assets of Seges Partners Mobile Home Park, LLC, (“Seges”) and CCNs to provide water and sewer service to the residents of the mobile home park. The Commission originally granted Seges CCNs for the provision of water and sewer service in Case Nos. WA-2008-0403 and SA-2009-0401.

25. The mobile home park receives wholesale water service from Callaway County Public Water Supply District No. 1 (“PWSD1”) and wholesale sewer service from the City of Holts Summit (“City”). 188NS does not own or maintain either a water supply or a wastewater treatment facility. The water system consists of a distribution system, with meters for each occupied mobile home space, and a metered connection with PWSD1. The sewer system consists of a gravity collection system, and a connection for sewage treatment with the City.

26. Based upon knowledge and belief, PWSD1 currently charges 188NS a water rate consisting of:

- a. Base Charge (minimum monthly charge):
\$7.00
- b. Commodity Charge:
\$3.00 for each 1,000 gallons of metered water usage
- c. Demand Charge (Monthly Large Meter Fee):
\$15.00
- d. DNR Charge:
\$0.62
- e. City Taxes

27. Based upon knowledge and belief, the City of Holts Summit currently charges 188NS a sewer rate consisting of:

- a. Base Rate Per Pad Connection:
\$23.51 per pad, with an active sewer connection, whether the trailer itself is occupied or not.
- b. Commodity Charge:
\$5.08 per 1,000 gallons of metered water usage

28. 188NS charges its tenants a water rate consisting of:³⁶

- a. Monthly Customer Charge:
\$12.49, regardless of water usage
- b. Monthly Commodity Charge:
\$2.37 for each 1,000 gallons of metered water usage
- c. Taxes: Any applicable Federal, State or local taxes computed on billing basis shall be added as separate items in rendering each bill.

29. 188NS charges its tenants a sewer rate consisting of:³⁷

- a. Monthly Minimum Service Charge:
\$32.53 per month
- b. Monthly Commodity Charge:
\$4.65 for each 1,000 gallons of metered water usage
- c. Taxes: Any applicable Federal, State or local taxes computed on billing basis shall be added as separate items in rendering each bill.

30. Pursuant to its *Application*, if the Commission were to decertify 188NS, the Company states that it will:

³⁶ See 188NS Tariff: P.S.C. MO No. 1 Original Sheet No. 5

³⁷ See 188NS Tariff: P.S.C. MO No. 2, Cancelling P.S.C. MO No. 1, Original Sheet No. 5.

- a. Continue to read water meters monthly and bill customers based only upon their actual usage, in arrears;³⁸
- b. Charge a zero markup on water and sewer and will use the formula on the Company's monthly billing from Callaway County Water District 1 and the City of Holts Summit Sewer.³⁹
- c. Refrain from assessing customers late fees, connection fees, or any other fees aside from their individual usage;
- d. Refrain from disconnecting any resident in the park from water and/or sewer service for non-payment of charges for utility service.

31. The Company also states, that following decertification, its obligation to provide water and sewer services to the residents in the mobile home park will be governed by the terms and provisions of its lease with the tenants.⁴⁰

Additional Items for Consideration

32. Staff's Water and Sewer Department performed a comparison of an average customer bill based on the Company's current rates to that of an average customer bill based the "pass-through" methodology as proposed by 188NS.⁴¹ According to Staff's analysis, under the Company's current rates, the billed amounts for a customer with 1,900 gallons of water usage in a month would be:

- a. Water: \$16.99
- b. Sewer: \$41.37
- c. Combined: \$58.36

³⁸ Pursuant to 188NS's confidential response to Staff DR No. 0002 submitted in Case Nos. SD-2019-0360 & WD-2019-0361, attached hereto as Confidential Appendix A, the Company ** does not expect its bill template to change.**

³⁹ 188NS outlined its proposed methodology in its responses to Staff DR No. 0004 submitted in Case Nos. SD-2019-0360 & WD-2019-0361, attached hereto as Appendix B.

⁴⁰ Missouri Landlord and Tenant matters are governed by Chapter 441, RSMo.

⁴¹ Staff's full calculation is attached hereto as Appendix C.

Under the Company's proposed "pass-through" methodology, the billed amounts for a customer with the same usage would be:

- a. Water: \$6.20
- b. Sewer: \$33.16
- c. Combined: \$39.36

Discussion

33. As stated above, 188NS does not own or maintain either a water supply or a wastewater treatment facility. Its water system consists of a distribution system, with meters for each occupied mobile home space, and a metered connection with PSWD1. The sewer system consists of a gravity collection system, and a connection for sewage treatment with the City. Essentially, 188NS's water and sewer systems act as conduits for distributing the services provided by PSWD1 and the City, and its proposed methodology for passing through costs would essentially transform 188NS into a "money collector" that passes on fees for service from its tenants to PSWD1 and the City.

34. However, based upon the facts known to Staff, and the holdings in *Osage Water* and *Hurricane Deck*, 188NS is subject to the jurisdiction of this Commission. 188NS currently provides water and sewer service to all of the tenants in its mobile home park, which constitutes its certificated service area. Further, 188NS bills for the provision of that service. Therefore, 188NS's current operations clearly fall within the jurisdiction of the Commission; 188NS provides water and sewer service, for gain, indiscriminately, within the service territory it is able to serve.

35. Further, even if the Company followed through with the assertions made in its *Application*, 188NS would continue to be subject to the jurisdiction of this Commission. 188NS states that it will continue to provide service to all tenants in the mobile home park.

Additionally, it will continue to send bills to its customers for the provision of that service in the same manner it does currently. The only change in 188NS's operations would be to the amounts billed customers; the charges 188NS incurs from PWSD1 and the City would be passed-through to tenants at no upcharge. However, while Staff's analysis shows the pass-through rates may be lower than current rates, and would hypothetically earn no profit for the Company, pursuant to *Osage Water* and *Hurricane Deck* billing for any amount of compensation constitutes provision of service "for gain."

36. Accordingly, the Company's *Application* should be denied, and its CCN should *not* be cancelled.

WHEREFORE, Staff respectfully submits this Staff Recommendation for the Commission's information and consideration, and requests the Commission deny 188NS's *Application to Surrender Certificates of Service Authority, to be Decertified as a Public Utility and Contingent Motion for Waiver*, and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

/s/ Mark Johnson

Mark Johnson
Missouri Bar Number 64940
Deputy Staff Counsel
P.O. Box 360
Jefferson City, MO 65102
573-751-7431 (Voice)
573-526-6969 (Fax)
mark.johnson@psc.mo.gov

Attorney for Staff of the
Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were served electronically to all counsel of record this 7th day of August, 2019.

/s/ Mark Johnson

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of)	File No. SD-2019-0360
188 North Summit, LLC to Surrender its)	
Certificates of Convenience and Necessity)	File No. WD-2019-0361
to Provide Water and Sewer Service and)	
be Decertified as a Public Utility)	

AFFIDAVIT OF JARROD J. ROBERTSON

STATE OF MISSOURI)
)
COUNTY OF COLE) ss.

COMES NOW JARROD J. ROBERTSON and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Staff Recommendation*; and that the same is true and correct according to his best knowledge and belief.

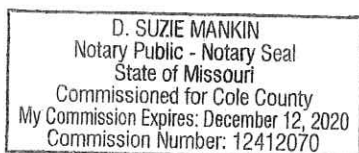
Further the Affiant sayeth not.

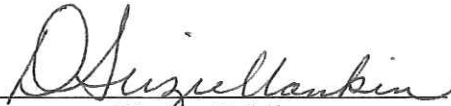


JARROD J. ROBERTSON

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 6th day of August 2019.





Notary Public