

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Braden Park, LLC's Application)
for Certificate of Convenience and Necessity to)
Provide Water Service.)
File No. WA-2011-0260

STAFF'S RESPONSE TO COMMISSION'S JULY 6, 2011 ORDER

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the undersigned counsel, and files this *Response to Commission's July 6 Order (Response)* with the Missouri Public Service Commission (Commission), respectfully stating the following:

1. On February 14, 2011, Braden Park, LLC (Braden Park or Applicant) filed an *Application For Certificate Of Convenience And Necessity To Provide Water Service (Application)* to Braden Park Village subdivision, a Mobile Home Park located in Benton County, Missouri with approximately 65 households and 140 residents that obtains water from the City of Warsaw, Missouri.

2. Staff sought more time to resolve the issue on three separate occasions because it was discussing possible resolutions with Braden Park, with the final order granting Staff's request to file its response to the *Application* by July 2, 2011.

3. On June 27, 2011, Braden Park filed a *Withdrawal of Application for Certificate of Convenience and Necessity to Provide Water Service (Withdrawal Request)*.

4. Commission Rule 4 CSR 240-2.113 (1) provides that "an applicant or complainant may voluntarily dismiss an application or complaint without an order of the commission at any time before prepared testimony has been filed or oral evidence has been offered, by filing a notice of dismissal with the commission and service a copy on all parties."

As no response had been filed and none was passed due in this matter, Braden Park timely filed its *Withdrawal Request*.

5. On June 29, 2011, Staff filed its *Response to Application and Motion to Withdraw*, which was timely filed and meant to comply with the previous Commission orders to file its response by July 1, 2011, as well as to respond to the *Withdrawal Request*.

6. Both Staff and the Office of the Public Counsel support Braden Park's *Withdrawal Request*.

7. On July 7, 2011, the Commission issued an Order stating that Staff was not compliant with the Commission's previous orders as no agreement was filed by July 1, 2011 and that Staff shall file a copy of the Memorandum of Agreement (*Agreement*) no later than July 8, 2011. This filing is meant to comply with that Order.

8. Attached please find a copy of the *Agreement* executed by Braden Park, Staff and the Office of the Public Counsel. Please note that this document is filed "HC" pursuant to a request from Braden Park's counsel.

9. There are thousands of small water and sewer systems, including mobile home parks like Braden Park Village, that are not regulated by the Commission. Staff is often called upon to provide assistance and guidance to those small entities through various inquiries, questions, concerns and problems that arise in daily operations. Due to the inquiries, which typically come from the owner/operator, customers or the Missouri Department of Natural Resources, Staff investigates the operations of these systems to determine if they are operating lawfully or if they should be under Commission jurisdiction. These situations often require Staff to consider new alternatives and resolutions to the questions, concerns and problems without obtaining Commission approval. Frequently, these questions come from systems that obviously

do not fall under Commission jurisdiction. Sometimes, the operation of the system is in a manner that requires further investigation as to whether or not it should fall under Commission jurisdiction. In most instances, the owner/operator has no desire to be a regulated entity.

Staff and the Commission are well aware of the many problems that are associated with very small systems. Staff views each system on a case-by-case basis and works diligently with these systems to explore all options to ensure safe and adequate service is provided in a legal manner. On occasion, cases involving these types of situations are filed with the Commission before a matter can be resolved between the interested parties. Once it is filed, Staff continues its investigation and the open discussions with the system and, ultimately, provides its best recommendation to the Commission for the Commission to review in making a decision. Sometimes, Staff is able to reach an amicable solution prior to the point when the Commission is required to make a decision. In those situations, Staff makes its best effort to keep the Commission apprised of the progress and to provide a recommendation on the status or resolution of the case. The alternative to Staff's efforts is that many of these small systems will make filings with the Commission when the Commission may not be required under the current law to regulate the particular system. This would result in a crowded docket with little resolution to the inquiries, questions, concerns and problems that arise with the small water and sewer entities.

10. In this case, Staff worked with Braden Park and the Office of the Public Counsel and achieved a written *Agreement* on the status of Braden Park's current operation. Part of that *Agreement* states that Braden Park is not required to obtain a Certificate of Convenience and Necessity (CCN) at this time, as both Staff and the Office of the Public Counsel believe the current operation of providing water service to the residents is proper and deem it unnecessary

for Braden Park to be regulated by the Commission at this time. Braden Park agreed to allow Staff and the Office of the Public Counsel the ability to perform follow-up visits to ensure that Braden Park is continuing to operate without the need of a CCN and to meet the conditions of the *Agreement*. If Braden Park fails to meet the conditions, Staff may take further action as necessary at that point in time.

This resolution provides Staff with the opportunity to ensure that Braden Park is not acting as a public utility unlawfully in the future. The outcome Staff achieved with Braden Park reaches a more positive result for this situation than what has been practiced in the past because it provides, in writing, for Staff's continued follow-up and ongoing communication with the Company. Filing agreements reached by Staff and the entities described in this pleading in EFIS is not absolutely necessary because of the many variables involved, including that the entities may not fall under the jurisdiction or the entities may not desire the information contained in the agreement to be public information so they may be less likely to enter into an agreement. Whether or not it is filed in EFIS, the Commission's Water and Sewer Department is able to maintain ongoing files that may be used in the future.

WHEREFORE, Staff respectfully submits this *Response* and *Memorandum of Agreement* for the Commission's information and consideration and respectfully requests the Commission grant Braden Park's *Withdrawal of Application for Certificate of Convenience and Necessity to Provide Water Service* and close this file.

Respectfully submitted,

/s/ Rachel M. Lewis

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or by electronic mail to all counsel of record on this 8th day of July, 2011.

/s/ Rachel M. Lewis