

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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

NOTICE OF NONCOMPLIANCE AND ORDER DIRECTING COMPLIANCE FILING

Issue Date: July 6, 2011

Effective Date: July 6, 2011

On February 14, 2011, Braden Park, L.L.C. filed an application requesting that the Commission grant it a Certificate of Convenience and Necessity ("CCN") to provide water service to Braden Park Village subdivision located in Benton County, Missouri. The Commission issued notice and set an intervention deadline. No entity sought intervention, and the Commission directed its Staff to file a recommendation regarding the application no later than April 7, 2011. At Staff's request, the Commission granted Staff extensions of time on April 8, 2011, May 5, 2011 and June 23, 2011 for it to ultimately file an "Agreement" in lieu of a recommendation. The "Agreement," as directed in the Commission's orders granting the extensions, was to be filed no later than July 1, 2011.

On June 27, 2011, Braden Park withdrew its application stating that withdrawal of its application was in conformity with the "Agreement" it executed with Staff. And, on June 29, 2011, Staff filed a pleading entitled "Staff's Response to Application and Motion to Withdraw," wherein Staff states:

Staff, Company, and the Office of the Public Counsel (Public Counsel) have entered into a *Memorandum of Agreement (Agreement)* and stipulated to a method of operation that will allow Braden Park to provide water service to its customers without being required to obtain a Certificate of Convenience and Necessity from the Commission at this time. The *Agreement* also provides that Staff will conduct periodic follow-up reviews of the operation. As a result of entering into the *Agreement*, Braden Park filed a *Motion to Withdraw (Motion)* its *Application* with

the Commission on June 27, 2011. Staff has reviewed the Company's *Motion* and finds it to be in compliance with the *Agreement* and recommends the Commission allow this matter to be withdrawn and closed. Staff further asserts that Public Counsel does not object to the Company's *Motion to Withdraw*.

It is unclear how Staff has authority to independently enter into an agreement with these parties without the Commission's approval, and how Staff would continue to review or monitor Braden Park's operation if it is outside of the Commission's jurisdiction and does not require a CCN for its operations. And none of the parties have provided the Commission with a copy of their "Agreement" to review or approve.

Each of the Commission's orders issued on April 8, 2011, May 5, 2011 and June 23, 2011 that granted Staff an extension of time directed Staff to file the agreement. Staff did not comply with the Commission's orders. Staff will be directed to comply with the prior Commission orders.

THE COMMISSION ORDERS THAT:

1. No later than July 8, 2011, the Staff of the Missouri Public Service Commission shall file a copy of the "Memorandum of Agreement" it executed with Braden Park, L.L.C. and the Office of the Public Counsel.
2. This order shall become effective immediately upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Harold Stearley, Senior Regulatory Law Judge,
by delegation of authority under
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 6th day of July, 2011.