

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Joint application of Green)
Acres Mobile Home Park LLC (GA) and)
Desperado Series Three LLC and MAM)
Investments Three LLC (DM), Joint) Docket No. 17-STMW-040-ACQ
Applicants, for an Order Approving the)
Transfer to DM of GA's Certificates/Licenses)
for the Operation of a Public Water Utility and)
for Other Related Relief.)

**STAFF'S RESPONSE TO JOINT APPLICANTS'
OBJECTION TO ASSESSMENT OF COSTS OF INVESTIGATION**

COMES NOW, the Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission," respectively), files its Response to Green Acres Mobile Home Park LLC, Desperado Series Three LLC and MAM Investments Three LLC's (referred hereafter as "Joint Applicants") Objection to Assessment of Costs of Investigation. In support of its Response, Staff states as follows:

I. BACKGROUND

1. On July 21, 2016, the Joint Applicants filed an Application requesting Commission approval of a transfer of public utility rights and obligations currently held by Green Acres Mobile Home Park LLC to Desperado Series Three LLC and MAM Investments Three LLC.¹

2. On July 27, 2016, the Commission issued an Order Assessing Costs in connection with the Commission's investigation of the Application.²

3. On August 8, 2016, the Joint Applicants filed an Objection to Assessment of Costs of Investigation (Objection).³ The Joint Applicants request "the Commission to provide a

¹ See Joint Application, pp. 5-6 (Jul. 21, 2016) (Joint Application).

² Order Assessing Costs (Jul. 27, 2016).

³ Objection to Assessment of Costs of Investigation (Aug. 8, 2016) (Objection).

reasonable range of costs that they can expect to have assessed or, in the alternative, to put a maximum amount on the costs that can be assessed to the [Joint] Applicants and give the [Joint] Applicants an opportunity to object to that amount.”⁴

II. STAFF’S RESPONSE

The Order Assessing Costs

4. The Commission should deny the Joint Applicants’ Objection because the Joint Applicants have not stated or detailed any ground indicating the Commission’s Order Assessing Costs is invalid.

5. K.S.A. 66-1502 provides the Joint Applicants an opportunity to be heard regarding the Commission’s assessment of costs for time spent investigating the Joint Applicants’ Application. A public utility may be heard “as to the necessity of such investigation or appraisal and may show cause, if any, why such investigation or appraisal should not be made or why the costs thereof should not be assessed against such public utility or common carrier.”⁵

6. At the forefront, Staff notes the Joint Applicants have not requested a hearing before the Commission regarding the assessment of investigative costs. Assuming they had, the Joint Applicants have not stated any argument negating the necessity of an investigation of their Application, detailing why an investigation should not be made or why the costs of such investigation should not be assessed against them.⁶

7. The entirety of the Joint Applicants’ Objection is rooted in one question: How much will this cost *us*? This is easily observed in the Objection itself. “There is no indication in the [Order Assessing Costs] as to the expected amount of [the investigation’s] costs.”⁷ The Joint

⁴ *Id.* at p. 1.

⁵ K.S.A. 66-1502(a).

⁶ *See id.*

⁷ *See* Objection at p. 1.

Applicants' requested relief confirms this observation. Unfortunately, "cost estimates" are not a ground that may be used to challenge an Order Assessing Costs.

No Costs Have Yet Been Assessed

8. At this time, the Commission has not billed the Joint Applicants for any investigation-related costs. To date, only a Commission Order indicating investigative costs will be assessed against the Joint Applicants has been issued.

9. K.S.A. 66-1505 provides the Joint Applicants an opportunity to object to any particular cost assessment on the grounds that it is "excessive, erroneous, unlawful or invalid."

10. If the Joint Applicants believe a particular assessment amount is unwarranted, then the appropriate procedure is to object upon receiving such an assessment. The Joint Applicants have not been assessed anything. Therefore, any objection to an assessment is premature and not ripe for adjudication. The Joint Applicants have simply received notice that the Commission intends to assess them for the costs of its investigation.⁸

Estimates Are Not Warranted

11. Neither the Commission nor its Staff are required to provide an estimate to the Joint Applicants for the cost of reviewing the Joint Applicants' Application. This should not imply that Staff refuses to provide an estimate because the law does not require it. Quite the contrary. The acquisition of a small water public utility is not a common proposal Staff routinely encounters. To provide an estimate of any costs to the Joint Applicants would be baseless. Likewise, imposing an artificial cap on investigative costs would also be baseless. The Commission should not be hamstrung in its investigative role because of an arbitrarily determined, unmerited and unrequired artificial cap on investigation expenses. Such limitation

⁸ For the reader's information, K.S.A. 66-1502(a) contains statutory limits on the amount that may be assessed against Green Acres Mobile Home Park LLC for this investigation. K.S.A. 66-1502(b) indicates that Desperado Series Three LLC and MAM Investments Three LLC may be assessed actual expenses for services rendered.

would only impair the Commission and its Staff's ability to conduct a full and thorough investigation of a public utility's proposal.

WHEREFORE, Staff respectfully requests the Commission deny the Joint Applicants' Objection because the Joint Applicants have not stated or detailed any ground indicating the Commission's Order Assessing Costs is invalid.

Respectfully submitted,

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CERTIFICATE OF SERVICE

17-STMW-040-ACQ

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Response to Joint Applicants' Objection to Assessment of Costs of Investigation was served by electronic service on this 18th day of August, 2016, to the following:

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