

Exhibit No.:
Issue(s): Policy
Witness: Natelle Dietrich
Sponsoring Party: MoPSC Staff
Type of Exhibit: Direct Testimony
Case No.: WA-2019-0185
Date Testimony Prepared: July 11, 2019

MISSOURI PUBLIC SERVICE COMMISSION
COMMISSION STAFF DIVISION

DIRECT TESTIMONY
OF
NATELLE DIETRICH

OSAGE UTILITY OPERATING CO., INC.

CASE NO. WA-2019-0185

Staff Exhibit No. 100P
Date 9-17-19 Reporter Bjt
File No WA-2019-0185

Jefferson City, Missouri
July 2019

1 DIRECT TESTIMONY

2 OF

3 NATELLE DIETRICH

4 OSAGE UTILITY OPERATING CO., INC.

5 CASE NO. WA-2019-0185

6 Q. Please state your name and business address.

7 A. My name is Natelle Dietrich. My business address is 200 Madison Street,
8 Jefferson City, MO 65101.

9 Q. By whom are you employed and in what capacity?

10 A. I am employed by the Missouri Public Service Commission (Commission) as
11 Commission Staff Director.

12 Q. Please describe your education and relevant work experience.

13 A. I received a Bachelor's of Arts Degree in English from the University of
14 Missouri, St. Louis, and a Master's of Business Administration from William Woods
15 University. During my tenure with the Commission, I have worked in many areas of
16 telecommunications regulation. In October, 2007, I became the Director of Utility Operations.
17 The division was renamed the Tariff, Safety, Economic and Engineering Analysis Department
18 in August 2011. In October 2015, I assumed my current position as Commission Staff Director.
19 In this position, I oversee all aspects of the Commission Staff.

20 I am a member of the National Association of Regulatory Utility Commissioners
21 Subcommittee on Rate Design and the Staff Subcommittee on Telecommunications. I serve on
22 the Staff of the Federal/State Joint Board on Universal Service, serve as lead Staff for the
23 Missouri Universal Service Board, and was a member of Governor Nixon's MoBroadbandNow

1 taskforce. I was a member of the Missouri Delegation to the Missouri/Moldova Partnership
2 through NARUC and the US Agency for International Development.

3 Q. Have you previously testified before the Commission?

4 A. Yes. My Case Summary is attached as Schedule ND-d1.

5 Q. What is the purpose of your direct testimony?

6 A. The purpose of my direct testimony is to provide a summary of the *Application*
7 *and Motion for Waiver* (“Application”) and *Amended Application for Convenience and*
8 *Necessity* (“Amended Application”), (collectively “Applications”), filed by Osage Utility
9 Operating Company, Inc. (“OUOC”); to provide a general overview of Staff’s
10 recommendation; and to sponsor Staff’s Memorandum filed May 24, 2019 and attached as
11 Confidential Schedule ND-d2 (“Staff Recommendation”).

12 Q. Please summarize the Applications.

13 A. On December 19, 2018, OUOC submitted its Application seeking approval for
14 Osage Water Company (“OWC”), a regulated water and sewer utility, to sell and transfer its
15 water and sewer assets along with its Certificates of Convenience and Necessity (“CCN”) to
16 OUOC. OUOC’s Application also seeks a new CCN to provide water and sewer service to
17 Reflections Condominiums, a condominium development not regulated by the Commission.
18 On February 19, 2019, OUOC submitted an Amended Application for Convenience and
19 Necessity (“Amended Application” or “Applications”, collectively) correcting “inaccuracies”
20 discovered in its Application. OUOC proposes to adopt the existing tariffs, rates and charges
21 of OWC, as well as to adopt the existing rates charged to customers in the Reflections
22 Condominiums.

Direct Testimony of
Natelle Dietrich

1 Q. Please summarize Staff's Recommendation.

2 A. In its memoranda, Staff recommends the Commission approve the
3 Applications - thus finding the transfer of the OWC assets and CCNs to OUOC is not
4 detrimental to the public interest, and further finding the issuance of a new CCN to OUOC for
5 the Reflections Condominium development is in the public interest. Staff further recommends
6 approval of the Applications subject to the 17 conditions outlined in the Executive Summary of
7 Staff's Recommendation attached hereto as Confidential Schedule ND-d2, including approval
8 of OUOC's proposal to adopt the existing tariffs, rates and charges of OWC, as well as to adopt
9 the existing rates charged to customers in Reflections Condominiums.

10 Q. Does this conclude your direct testimony?

11 A. Yes it does.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of Osage)
Utility Operating Company, Inc. to Acquire)
Certain Water and Sewer Assets and for a)
Certificate of Convenience and Necessity) Case No. WA-2019-0185

AFFIDAVIT OF NATELLE DIETRICH

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW NATELLE DIETRICH and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing *Direct Testimony*; and that the same is true and correct according to her best knowledge and belief.

Further the Affiant sayeth not.

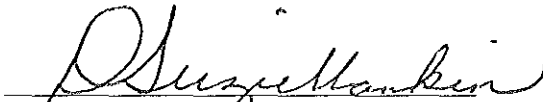


NATELLE DIETRICH

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 11th day of July 2019.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: December 12, 2020
Commission Number: 12412070



Notary Public

**Natelle Dietrich
Case Summary**

Presented testimony or analysis through affidavits on the following cases and proceedings:

- Case No. TA-99-405, an analysis of the appropriateness of a “payday loan” company providing prepaid telecommunications service.
- Case No. TX-2001-73, In the Matter of Proposed New Rules on Prepaid Calling Cards.
- Case No. TO-2001-455, the AT&T/Southwestern Bell Telephone Company arbitration, which included issues associated with unbundled network elements.
- Case No. TX-2001-512, In the Matter of Proposed Amendments to Commission Rule 4 CSR 240-33.010, 33.020, 33.030, 33.040, 33.060, 33.070, 33.080, 33.110, and 33.150 (telecommunications billing practices).
- Case No. TO-2002-222, the MCI/SWBT arbitration.
- Case No. TR-2002-251, In the Matter of the Tariffs Filed by Sprint Missouri, Inc. d/b/a Sprint to Reduce the Basic Rates by the Change in the CPI-TS as Required by 392.245(4), Updating its Maximum Allowable Prices for Non-Basic Services and Adjusting Certain Rates as Allowed by 392.245(11) and Reducing Certain Switched Access Rates and Rebalancing to Local Rates as Allowed by 392.245(9).
- Case No. TX-2002-1026, In the Matter of a Proposed Rulemaking to Implement the Missouri Universal Service Fund End-User Surcharge.
- Case No. TX-2003-0379, In the Matter of Proposed Amendments to Commission Rule 4 CSR 240-3.545, formerly 4 CSR 240-30.010 (tariff filing requirements).
- Case No. TX-2003-0380, In the Matter of Proposed Amendments to Commission Rules 4 CSR 240-2.060, 4 CSR 240-3.020, 4 CSR 240-3.510, 4 CSR 240-3.520, and 4 CSR 240-3.525 (competitive local exchange carrier filing requirements and merger-type transactions).
- Case No. TX-2003-0389, In the Matter of Proposed Amendment to Commission Rules 4 CSR 240-3.530 and 4 CSR 240-3.535, and New Rules 4 CSR 240-3.560 and 4 CSR 240-3.565 (telecommunications bankruptcies and cessation of operation).
- Case No. TX-2003-0445, In the Matter of a Proposed New Rule 4 CSR 240-33.160 Regarding Customer Proprietary Network Information.
- Case No. TX-2003-0487, In the Matter of Proposed Commission Rules 4 CSR 240-36.010, 36.020, 36.030, 36.040, 36.050, 36.060, 36.070, and 36.080 (arbitration and mediation rules).
- Case No. TX-2003-0565, In the Matter of a Proposed Rulemaking to Codify Procedures for Telecommunications Carriers to Seek Approval, Amendment and Adoption of Interconnection and Resale Agreements.
- Case Nos. TX-2004-0153 and 0154, in the Matter of Proposed Rule for 211 Service (emergency and permanent rules).
- Case Nos. TO-2004-0370, IO-2004-0467, TO-2004-0505 et al, In the Matter of the Petition of various small LECs for Suspension of the Federal Communications Commission Requirement to Implement Number Portability.

Continued Case Summary of
Natelle Dietrich

- Case No. TX-2005-0258, In the Matter of a New Proposed Rule 4 CSR 240-33.045 (placement and identification of charges on customer bills).
- Case No. TX-2005-0460, In the Matter of the Proposed Amendments to the Missouri Universal Service Fund Rules.
- Case No. TO-2006-0093, In the Matter of the Request of Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, for Competitive Classification Pursuant to Section 392.245.6, RSMo (2205) – 30-day Petition.
- Case Nos. TC-2005-0357, IR-2006-0374, TM-2006-0306, the complaint case, earnings investigation and transfer of assets case to resolve issues related to Cass County Telephone Company, LP, LEC Long Distance, FairPoint Communications, Inc., FairPoint Communications Missouri Inc. d/b/a FairPoint Communications and ST Long Distance Inc. db/a FairPoint Communications Long Distance.
- Case No. TC-2006-0068, FullTel, Inc., v. CenturyTel of Missouri, LLC.
- Case No. TX-2006-0169, In the Matter of Proposed New Rule 4 CSR 240-3.570 Regarding Eligible Telecommunications Carrier Designations for Receipt of Federal Universal Service Fund Support.
- Case No. TX-2006-0429, In the Matter of a Proposed Amendment to 4 CSR 240-3.545 (one day tariff filings).
- Case No. TX-2007-0086, In the Matter of a Proposed Rulemaking to Create Chapter 37 – Number Pooling and Number Conservation Efforts
- Case No. TA-2009-0327, In the Matter of the Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Missouri for the Limited Purpose of Offering Lifeline and Link Up Service to Qualified Households.
- Case No. RA-2009-0375, In the Matter of the application of Nexus Communications, Inc. dba TSI for Designation as an Eligible Telecommunications Carrier in the State of Missouri for the Limited Purpose of Offering Wireless Lifeline and Link Up Service to Qualifying Households.
- Case No. AX-2010-0061, Office of Public Counsel’s Petition for Promulgation of Rules Relating to Billing and Payment Standards for Residential Customers.
- Case No. GT-2009-0056, In the Matter of Laclede Gas Company’s Tariff Revision Designed to Clarify its Liability for Damages Occurring on Customer Piping and Equipment Beyond the Company’s Meter.
- Case No. ER-2012-0166, In the Matter of Union Electric Company d/b/a Ameren Missouri’s Tariffs to Increase Its Revenues for Electric Service. Energy Independence and Security Act of 2007 (EISA).
- Case No. ER-2012-0174, In the Matter of Kansas City Power & Light Company’s Request for Authority to Implement A General Rate Increase for Electric Service. Energy Independence and Security Act of 2007 (EISA).
- Case No. ER-2012-0175, In the Matter of KCP&L Greater Missouri Operations Company’s Request for Authority to Implement A General Rate Increase for Electric Service. Energy Independence and Security Act of 2007 (EISA).
- Case No. ER-2012-0345, In the Matter of Empire District Electric Company of Joplin, Missouri Tariff’s Increasing Rates for Electric Service Provided to

Customers in the Missouri Service Area of the Company. Energy Independence and Security Act of 2007 (EISA).

- File Nos. EO-2013-0396 and EO-2013-0431, In the Matter of the Joint Application of Entergy Arkansas, Inc., Mid South TransCo, LLC, Transmission Company Arkansas, LLC and ITC Midsouth LLC for Approval of Transfer of Assets and Certificate of Convenience and Necessity, and Merger and, in connection therewith, Certain Other Related Transactions; and In the Matter of Entergy Arkansas, Inc.'s Notification of Intent to Change Functional Control of Its Missouri Electric Transmission Facilities to the Midwest Independent Transmission System Operator Inc. Regional Transmission System Organization or Alternative Request to Change Functional Control and Motions for Waiver and Expedited Treatment, respectively.
- Case No. MX-2013-0432, In the Matter of a Proposed Rulemaking to Revise Manufactured Housing Rules Regarding Installation and Monthly Reporting Requirements.
- Case No. TX-2013-0324, In the Matter of a Proposed Rulemaking to the Missouri Universal Service Fund.
- Case No. EO-2014-0095, In the Matter of Kansas City Power & Light Company's Filing for Approval of Demand-Side Programs and for Authority to Establish Demand-Side Programs Investment Mechanism.
- Case No. EA-2014-0207, In the Matter of the Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity Authorizing It to Construct, Own, Operate, Control, Manage, and Maintain a High Voltage, Direct Current Transmission Line and an Associated Converter Station Providing an Interconnection on the Maywood - Montgomery 345 kV Transmission Line.
- Case No. ER-2014-0370, In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service.
- Case No. WR-2015-0301, In the Matter of Missouri-American Water Company's Request for Authority to Implement a General Rate Increase for Water and Sewer Service Provided in Missouri Service Areas.
- Case No. ER-2016-0156, In the Matter of KCP&L Greater Missouri Operations Company's Request for Authority to Implement a General Rate Increase for Electric Service.
- Case No. ET-2016-0246, In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Approval of a Tariff Setting a Rate for Electric Vehicle Charging Stations.
- Case No. ER-2016-0285, In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service.
- Case No. ER-2016-0179, In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariffs to Increase its Revenues for Electric Service.
- Case No. EE-2017-0113, In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company for a Variance from the Commission's Affiliate Transactions Rule, 4 CSR 240-20.015

Continued Case Summary of
Natelle Dietrich

- Case No. EA-2016-0358, In the Matter of the Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity Authorizing it to Construct, Own, Operate, Control, Manage and Maintain a High Voltage, Direct Current Transmission Line and an Associated Converter Station Providing an Interconnection on the Maywood-Montgomery 345kV Transmission Line
- Case No. EM-2017-0226, In the Matter of the Application of Great Plains Energy Incorporated for Approval of its Acquisition of Westar Energy, Inc.
- Case No. GR-2017-0215, In the Matter of Laclede Gas Company's Request to Increase its Revenues for Gas Service.
- Case No. GR-2017-0216, In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy's Request to increase its Revenues for Gas Service.
- Case No. WR-2017-0259, In the Matter of the Rate Increase Request of Indian Hills Utility Operating Company, Inc.
- Case No. WR-2017-0285, In the Matter of Missouri-American Water Company's Request for Authority to Implement General Rate Increase for Water and Sewer Service Provided in Missouri Service Areas.
- Case No. EM-2018-0012, In the Matter of the Application of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc.
- Case No. EO-2018-0092, In the Matter of the Application of The Empire District Electric Company for Approval of Its Customer Savings Plan.
- Case No. GR-2018-0013, In the Matter of Liberty Utilities (Midstates Natural Gas) Corp. d/b/a Liberty Utilities' Tariff Revisions Designed to Implement a General Rate Increase for Natural Gas Service in the Missouri Service Areas of the Company.
- Case No. ER-2018-0145, In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service.
- Case No. ER-2018-0146, In the Matter of KCP&L Greater Missouri Operations Company's Request for Authority to Implement a General Rate Increase for Electric Service.
- Case No. EO-2018-0211, In the Matter of Union Electric Company d/b/a Ameren Missouri's 3rd Filing to Implement Regulatory Changes in Furtherance of Energy Efficiency as Allowed by MEEIA.
- Case Nos. WM-2018-0116 and SM-2018-0117, In the Matter of the Application of Confluence Rivers Utility Operating Company, Inc. to Acquire Certain Water and Sewer Assets, For a Certificate of Convenience and Necessity, and, in Connection Therewith, To Issue Indebtedness and Encumber Assets.
- Case No. EA-2019-0010, In the Matter of the Application of The Empire District Electric Company for Certificates of Convenience and Necessity Related to Wind Generation Facilities.
- Case No. EM-2019-0150, In the Matter of the Joint Application of Invenergy Transmission LLC, Invenergy Investment Company LLC, Grain Belt Express Clean Line LLC and Grain Belt Express Holding LLC for an Order Approving the Acquisition by Invenergy Transmission LLC of Grain Belt Express Clean Line LLC.

Continued Case Summary of
Natelle Dietrich

- Actively participated in or prepared comments on numerous issues on behalf of the Commission to be filed at the Federal Communications Commission.
- Prepared congressional testimony on behalf of the Commission on number conservation efforts in Missouri.
- A principal author on Missouri Public Service Commission Comments on the Reduction of Carbon Emissions in Missouri under Section 111(d) of the Clean Air Act.
- A principal author on Missouri Public Service Commission Comments on the Environmental Protection Agency's "Emission Guidelines for Existing Stationary Sources: Electric Generating Unity".

Commission Arbitration Advisory Lead Staff for the following cases:

- Case No. TO-2005-0336, Southwestern Bell Telephone, L.P., d/b/a SBC Missouri's Petition for Compulsory Arbitration of Unresolved Issues For a Successor Interconnection Agreement to the Missouri 271 Agreement ("M2A").
- Case No. IO-2005-0468, In the Matter of the Petition of Alma Telephone Company for Arbitration of Unresolved Issues Pertaining to a Section 251(b)(5) Agreement with T-Mobile USA, Inc.
- Case No. TO-2006-0147 et al, In the Matter of the Petition for Arbitration of Unresolved Issues in a Section 251(b)(5) Agreement with T-Mobile USA, Inc and Cingular Wireless.
- Case No. TO-2006-0299, Petition of Socket Telecom, LLC for Compulsory Arbitration of Interconnection Agreements with CenturyTel of Missouri, LLC and Spectra Communications, LLC, pursuant to Section 251(b)(1) of the Telecommunications Act of 1996.
- Case No. TO-2006-0463, In the Matter of the Petition for Arbitration of Unresolved Issues in a Section 251(b)(5) Agreement with ALLTEL Wireless and Western Wireless.
- Case No. TO-2009-0037, In the Matter of the Petition of Charter Fiberlink-Missouri, LLC for Arbitration of an Interconnection Agreement Between CenturyTel of Missouri, LLC and Charter Fiberlink-Missouri, LLC.

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

In the Matter of the Application of)	
Osage Utility Operating Company, Inc.)	
To Acquire Certain Water and Sewer)	<u>Case No. WA-2019-0185</u>
Assets and for a Certificate of Convenience)	
And Necessity)	

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its *Recommendation*, respectfully states:

1. Osage Utility Operating Company, Inc. (OUOC) filed an *Application and Motion for Waiver* seeking to acquire certain water and sewer assets in the four service areas of Osage Water Company (OWC) and the single service area of Reflections Subdivision Master Association, Inc., and Reflections Condominium Owners Association, Inc., on December 19, 2018. Lake Area Waste Water Association, Inc., Missouri Water Association, Inc., Public Water Supply District No. 5 of Camden County Missouri, Cedar Glen Condominium Owners Association, Inc., and Reflections Condominium Owners Association, Inc., filed *Motions to Intervene*, which the Commission granted. The Commission scheduled a prehearing conference, which was held February 20, 2019, at which a procedural schedule was proposed and later approved by the Commission. Pursuant to that agreed-upon schedule, Staff committed to filing a recommendation no later than April 30, 2019, which the Commission ultimately extended, upon request, to May 24, 2019, and which Staff now files in fulfillment of the schedule.

2. Staff conducted a full investigation of each of the water and sewer assets that OUOC seeks to acquire in its *Application* and provides details regarding each of them for the Commission's consideration in its Memorandum attached here as Attachment A.

Staff also lays out certain delineated recommendations for OUOC, should the Commission approve its *Application*. Generally, Staff finds that OUOC in consideration of it along with its affiliates has the technical, managerial, and financial capabilities to manage the water and sewer assets it seeks to acquire. Additionally, Staff finds that OUOC meets the Tartan criteria, which Staff considers in conjunction with all applications for a certificate of convenience and necessity for a water and/or sewer system. Finally, Staff finds that should the Commission approve OUOC's request to acquire the Osage water and sewer assets it would not be detrimental to the public interest.

3. The OWC systems OUOC seeks to acquire are presently in receivership and bankruptcy. This proceeding is unique in the fact that OUOC was the stalking horse bidder on those systems through a bankruptcy auction process following the receiver's filing of a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code, pending as Case No. 17-42759-drd11 in the U.S. Bankruptcy Court for the Western District of Missouri. A stalking horse bidding process is defined as one where a debtor enters into an agreement with a bidder or purchaser in advance of an auction for the sale of the debtor's assets.¹ The bid proposed serves as an initial bid which is the base-line for the auction once approved by the bankruptcy court.² If a higher bid is not made at the auction then the stalking horse agreement becomes the asset purchase agreement.³ The stalking horse bidding process is common under Section 363 of the U.S. Bankruptcy Code.⁴ Attachment B includes a letter from the law firm Spencer Fane, which

¹ Stalking Horse Process (Sales Procedures) – Overview, Lexis Practice Advisor Canada, https://www.lexisnexis.com/ca/guidance/mergersandacquisitions/document/415544/5GNG-BXN1-F003-H05D-00000-00/Stalking_Horse_Process_Sales_Procedures_Overview

² *Id.*

³ *Id.*

⁴ *Id.*

represents the bankruptcy trustee in Case No. 17-42759-drd11. The attachment explains the process undertaken in relation to the relevant bankruptcy auction and includes relevant filings from the proceeding explaining the bidding procedure, auction instructions, notice of the auction's results, and the order of sale by the bankruptcy court. In summary, the letter explains that the Commission appointed receiver in keeping with Commission directives to liquidate OWC's assets voluntarily filed a petition for Chapter 11 bankruptcy for OWC once his attempts to sell the assets failed. The appointed bankruptcy trustee identified Central States Water Resources (CSWR), which is under common ownership with OUOC, as a potential stalking horse purchaser and successful negotiations with CSWR ultimately resulted in a stalking horse asset purchase agreement. The agreement permitted the trustee to solicit additional bids and an auction was held between all interested parties. CSWR matched all competing bids at the auction and was ultimately declared the successful purchaser.

4. The Commission does not have any applicable rules regarding approval of assets to be acquired through the bankruptcy process and no statute specifically addresses this type of situation. The Commission did previously address a situation involving acquisition through a bankruptcy auction similar to the present matter in Case No. GO-2005-0019, *In the Matter of the Application of Southern Union Company, d/b/a Missouri Gas Energy, for Authority to Acquire Directly or Indirectly, up to and Including Fifty Percent (50%) of the Equity Interests of CrossCountry Energy, LLC, and to Take All Other Actions Reasonably Necessary to Effectuate Said Transaction*. In that matter the Commission approved a Non-Unanimous Stipulation and Agreement which included provisions that joint and common costs allocated to Missouri for ratemaking should not

increase as a result of the acquisition; acquisition costs were to be booked separately; retail rates would not increase as a result of the acquisition; Southern Union assumed the risk of costs associated with the acquisition; Southern Union agreed that no detrimental impact to its utility customers would occur as a result of the acquisition; and ratemaking treatment would be determined in a future rate case. The Stipulation also included an agreement on the part of Southern Union to forgo recovery of any part of the acquisition premium in rates.

5. OUOC requested an acquisition incentive in conjunction with its *Application* to acquire the water and sewer systems, specifically a rate of return premium and a debit acquisition adjustment. 4 CSR 240-10.085 governs incentives for acquisitions of nonviable utilities and requires an acquiring entity to demonstrate: 1) that it is not a nonviable utility as that term is defined in the rule and that it will not be materially impaired by the acquisition; 2) that the acquiring entity maintains the necessary managerial, technical, and financial capabilities to operate the system(s) to be acquired; 3) that the utilities it seeks to acquire are nonviable utilities; 4) that the purchase price and financial terms of the acquisition are fair and reasonable terms reached through arm's length negotiations; 5) that any improvements necessary to make the system(s) viable will be done in a reasonable time period; 6) how managerial or operational deficiencies will be corrected within six months of acquisition, if possible; 7) how planned improvements and changes will correct deficiencies; 8) that the acquisition is in the public interest; and 9) that the acquisition would be unlikely to occur without the probability of obtaining an acquisition incentive. The rule also requires the acquiring entity to make an effort to obtain records of the original cost of the utility along with accounting for

contributions, services or property and construction. If the Commission approves an acquisition premium as part of this proceeding, OUOC would need to file a rate case within the period of time ordered by the Commission. Should the Commission approve OUOC's request, the Company must also track properly booked contributions in aid of construction, use proper accounting for all plant retirements and plants no longer considered used and useful, and maintain those amounts using prior records of the systems or, if prior records are unavailable, keep new records starting with the date of acquisition. Pursuant to 4 CSR 240-10.085.6, OUOC will also need to file a plant-in-service study supporting its request in its next general rate case; any disputes with the study will be resolved in that proceeding. Staff's recommendation at this time is that OUOC should be granted only a debit acquisition premium, based upon the purchase price for OWC and Reflections, combined. Should the Commission issue an order including a determination that a debit acquisition premium is proper, it should be considered as part of the first rate case held following OUOC's acquisition of the systems.

6. Staff's delineated recommendations for the water and sewer system are:
 1. Issue a new CCN to OUOC to provide water and sewer service for the proposed Reflections service area, with OUOC to begin providing such service upon closing of the assets;
 2. Approve rates of \$25 per month for water service, and \$25 per month for sewer service, for OUOC, applicable to customers in the Reflections service area;
 3. Require OUOC to submit appropriate tariff sheets for water and sewer service, as a thirty (30) day filing, within ten (10) days after the effective date of approval of a CCN for Reflections by the Commission, to become effective before OUOC closes on the Reflections' assets;

4. Authorize OWC to sell and transfer utility assets to OUOC, and transfer the CCN's currently held by OWC to OUOC upon closing on any of the respective systems;
5. Upon closing on each of the OWC water and sewer systems, authorize OWC to cease providing service, and authorize OUOC to begin providing service;
6. Require OUOC to file Tariff Adoption Notice tariff sheets for the corresponding water and sewer tariffs of the regulated OWC systems within ten (10) days after closing on the OWC assets;
7. Upon closing on each of the water and sewer systems, authorize OUOC to provide service by applying, on an interim basis, the existing rates, rules and regulations as outlined in OWC's water tariff and sewer tariff, until the effective date of respective adoption notice tariff sheets, as recommended above;
8. Require OUOC to create and keep financial books and records for plant-in-service, revenues, and operating expenses (including invoices) in accordance with the NARUC Uniform System of Accounts;
9. Require OUOC to, going forward, keep and make available for audit and review all invoices and documents pertaining to the capital costs of constructing and installing the water and sewer utility assets;
10. Approve depreciation rates for water and sewer utility plant accounts as described and shown herein;
11. Require OUOC to distribute to all customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water service, consistent with the requirements of Commission Rule 4 CSR 240-13, within thirty (30) days after the effective date of approval of a CCN by the Commission;
12. Require OUOC to, within ninety (90) days of the effective date of a Commission order approving OUOC's Application, complete repairs to resolve the bypassing of treatment at any wastewater treatment system;

13. Resolve all issues regarding noncompliance with Missouri Department of Natural Resources (DNR) regulations for all water and sewer systems;
14. Require OUOC to provide adequate training for the correct application of rates and rules to all customer service representatives, including those employed by contractors, prior to the customers receiving their first bill from OUOC;
15. Require OUOC to provide to the Customer Experience Department Staff a sample of ten (10) billing statements of bills issued to OWC and Reflections customers within thirty (30) days of such billing;
16. Require OUOC to file notice in this case once Staff's recommendations regarding customer communications and billing, listed above, have been completed; and
17. Require OUOC to file a rate case with the Commission no later than twenty-four (24) months after the effective date of an order approving OUOC's Application.

7. Due to the severe weather events that transpired in Jefferson City, Missouri, on May 22, 2019, all affidavits relating to Staff's Recommendation will be late-filed on Tuesday, May 28, 2019.

WHEREFORE, Staff prays that the Commission will accept this *Recommendation*; order the other parties to this matter to file their responses to Staff's Recommendation pursuant to the applicable response period; and grant such further and other relief as is just in the circumstances.

Respectfully submitted,

/s/ Whitney Payne

Whitney Payne
Senior Counsel
Missouri Bar No. 64078
Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8706 (Telephone)
(573) 751-9285 (Fax)
whitney.payne@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 24th day of May, 2019, to all counsel of record.

/s/ Whitney Payne



ERIC JOHNSON
DIRECT DIAL: 816-292-8267
ejohnson@spencerfane.com

File No. 5017895-3

May 13, 2019

VIA ELECTRONIC MAIL

Whitney Payne, Senior Counsel
Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
Whitney.payne@psc.mo.gov

Re: In the Matter of the Application of Osage Utility Operating Company, Inc. to Acquire Certain Water and Sewer Assets and for a Certificate of Convenience and Necessity, Case No. WA-2019-0185

Dear Ms. Payne:

We represent Jill Olsen (the "Trustee"), the duly appointed Chapter 11 Trustee for the bankruptcy estate of Osage Water Company (the "Debtor") in the Chapter 11 case styled *In re Osage Water Company*, Case No. 17-42759 (the "Bankruptcy Case") currently pending in the United States Bankruptcy Court for the Western District of Missouri (the "Bankruptcy Court").

Currently pending before the Public Service Commission (the "Commission") is the application of Osage Utility Operating Company, Inc. (the "Applicant") as part of its acquisition of certain water and sewer assets in the for service areas of the Debtor. As you may know, the Applicant is purchasing the assets from Debtor's bankruptcy estate and such sale is contingent upon Commission approval. The Trustee has reviewed several of the filings with the Commission and is concerned there may be some misapprehension as to the bankruptcy sale process. As such, the purpose of this letter is to provide general background and information related to the bankruptcy sale process in order to assist the Commission's Staff in its investigation related to the application. For the avoidance of doubt, the Trustee has no objection to this letter being filed publically on the docket in this matter.

I. Bankruptcy Sales in General

While chapter 11 is titled "reorganization", it can be used for orderly liquidations. In this regard, a bankruptcy trustee may sell substantially all of the Debtor's assets pursuant to 11 U.S.C. § 363 ("363 Sale"). Section 363(b) of the Bankruptcy Code provides, in part, that the "trustee, after notice and hearing, may use, sell, or lease other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). The recent trend in chapter 11 bankruptcies is for a debtor to file a chapter 11 case and then conduct a 363 Sale.

As a general matter, a 363 Sale may be approved provided that such a sale is supported by a good business reason. See *In re Channel One Communications, Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990). As set forth by the Eighth Circuit Bankruptcy Appellate Panel in *In re Meill*:

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Bankruptcy courts have wide discretion with respect to sales of assets of a bankruptcy estate; they have ample latitude to strike a satisfactory balance between the relevant factors of fairness, finality, integrity, and maximization of assets. A sale of estate property outside the ordinary course of business is in the best interest of the estate and may be approved if it is for a fair and reasonable price and in good faith.

In re Meill, 441 B.R. 610, 615 (8th Cir. BAP 2010) (internal citations and quotations omitted). While good faith is not defined under the Bankruptcy Court, courts have indicated that the bankruptcy court should look at the integrity of the purchaser's conduct in the course of the sale proceedings, not at conduct prior to such proceedings. *In re Rock Industries Machinery Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978).

In many 363 Sales, "bidding and auction procedures" are established as part of the sale process. As part of the bidding procedures, a "stalking-horse" purchaser may be selected to help drive the sale process and also assure that the estate is guaranteed a minimum price for the assets. In exchange for serving as a "white knight" bidder, the purchaser generally negotiates certain bid protections, which can take many forms including, without limitation, expense reimbursement, break-up fees, matching rights, and overbid requirements. *See In re 995 Fifth Ave. Assoc., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989)(bid protections "may be legitimately necessary to convince a 'white knight' bidder to enter the bidding by providing some form of compensation for the risks it is undertaking."). The Bankruptcy Code provides for many mechanisms to promote the finality of sales and the protection of good faith purchasers. *See* 11 U.S.C. § 363(m) and (n).

A 363 Sale is commenced by the filing of a motion before the Bankruptcy Court. Ultimately, the approval of a sale by auction contains several opportunities for creditors and other parties-in-interest to object to the process and the sale. First, creditors and other parties-in-interest generally have the ability to object to the bidding and auction procedures. Second, once the auction has concluded, creditors and other parties-in-interest generally have the ability to object to the ultimate confirmation of the auction results. A 363 Sale is generally concluded with the entry of an order by the bankruptcy court approving of the proposed sale and the ultimate closing of the sale pursuant to that order.

II. The Osage Water Bankruptcy Sale Process

A. Debtor Background

In a report and order dated December 10, 2002 (the "PSC Order"), the Commission determined that the Debtor had been effectively abandoned by its owners and that it was unable or unwilling to provide safe and adequate service to its customers. The Commission recommended its staff seek the appointment of a receiver to take control and responsibility of the company. The Commission also recommended its staff seek a determination from the circuit court that Debtor should not be returned to its owners but rather should be liquidated by the receiver. On October 21, 2005, the Circuit Court of Camden County (the "State Court") appointed Gary Cover receiver of Debtor (the "Receiver").

The Receiver marketed the Assets prepetition, receiving multiple bids from 2014 to 2017. In the Receiver's report to the State Court dated January 14, 2015, the Receiver reported the following bids: (1) Central States Water Resources, Inc., \$479,702.00; (2) Missouri American Water Company, \$250,000.00;



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(3) Cedar Glen Condominium Owners Association, Inc., Missouri Water Association, Inc., and Lake Area Waste Water Association, Inc. (joint bidders), \$160,000.00; and (4) Gregory Williams, satisfaction of judgment obtained in Case No. 09CM-CC00413.

In the Receiver's report to the State Court dated May 12, 2017, the Receiver reported the following bids: (1) Central States Water Resources, Inc., \$440,000.00; (2) Public Water Supply District # 5, \$636,000.00 (Cedar Glen service area only); (3) Patrick Mitchell, \$5,000.00 (all assets except Cedar Glen service area); and (4) Gregory Williams, satisfaction of judgment obtained in Case No. 09CM-CC00413. None of the repetition bids resulted in a sale.

On October 11, 2017, the Receiver, on behalf of the Debtor, filed a voluntary petition for Chapter 11 bankruptcy commencing the Bankruptcy Case. On October 26, 2017, the United States Trustee appointed the Trustee.

B. Bankruptcy Sale Process

1. The Stalking Horse APA

After her appointment, the Trustee, either personally or through her counsel, contacted entities that expressed interest in the Debtor's assets. This communication resulted in the Trustee identifying Central States Water Resources, Inc. (the "Stalking Horse Purchaser") as a potential stalking horse purchaser. The proposed asset purchase agreement with the Stalking Horse Purchaser was negotiated over a period of time and ultimately the Trustee and the Stalking Horse Purchaser finalized an asset purchase agreement in the amount of \$465,000 (the "Stalking Horse APA"). It is the Trustee's understanding that the Applicant is subsidiary of the Stalking Horse Purchaser.

The Stalking Horse APA contained, among other things, the following bid protections:

- **Matching Rights.** The Stalking Horse APA provided that the Trustee could solicit other bids and hold an auction. In return, the Stalking Horse APA was granted the following matching rights:

In return for Buyer's commitments and undertakings hereunder, Buyer shall have the right and option, in its sole discretion, to match ("Matching Right") any competing offer or bid for the Assets or any related asset ("Competing Offer") that may be submitted by any person other than Buyer before or after the Effective Date and up to the close of the Auction in accordance with the Bidding Procedures Order, and to the extent Buyer exercises the Matching Right, Seller shall support that Buyer be declared by the Bankruptcy Court as the high bidder; provided, however, that if Buyer matches a Competing Offer, *the other offeror can increase its offer over the matched offer with the Buyer having the ability to keep matching the highest offer until there are no other Competing Offers at which time the Buyer will be declared the high bidder.* (emphasis added)

- **Expense Reimbursement.** If the Trustee selected a competing offer, then the Stalking



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Horse Purchaser had the right to assert an administrative expense claim up to \$13,950 against the Bankruptcy Estate by making proper application to the Bankruptcy Court.

In addition to Bankruptcy Court approval, the Stalking Horse APA was also contingent on state regulatory agency approval, including approval by the Commission.

On August 26, 2018, the Trustee filed her *Motion to Approve (A) the Sale of Substantially All of Debtor's Assets Free and Clear of All Liens, Interests, Claims and Encumbrances and Related Procedures and Bid Protection Pursuant to 11 U.S.C. § 363, (B) The Potential Assumption and Assignment, or Rejection, of Certain Executory Contracts and Unexpired Leases, and Related Procedures, Pursuant to 11 U.S.C. § 365, and (C) Related Relief Pursuant to 11 U.S.C. §§ 102 and 105* (Doc. 115) (the "**Sale Motion**"). In the Sale Motion, the Trustee sought approval of Stalking Horse APA, bidding and auction procedures (the "**Bidding Procedures**"), and setting a schedule to confirm the ultimate sale of the assets.

The Sale Motion was set for an initial hearing before the Bankruptcy Court on September 20, 2018 with a response deadline of September 17, 2018. The purpose of the initial hearing was to approve the Stalking Horse APA and the Bidding Procedures. Notice of initial hearing was circulated to creditors of the Debtor's bankruptcy estate and other required parties under the Bankruptcy Code. See Doc. 120. No objections were received.

On September 19, 2019, the Bankruptcy Court entered its *Order Approving Procedures for the Solicitation of Offers for (A) the Sale of Substantially All of Debtor's Assets Free and Clear of Liens, Claims, Encumbrances, and Interests; (B) the Possible Assumption and Assignment, or Rejection, of Certain Executory Contracts and Unexpired Leases; and (C) Related Relief* (the "**Bid Procedures Order**"). In the Bid Procedures Order, the Bankruptcy Court found the Stalking Horse APA and the Trustee's selection of the Stalking Horse to be fair, reasonable, and appropriate, and designed to maximize the value of the Debtor's bankruptcy estate.

The Bid Procedures Order also held that any disputes as to the selection of a successful bid be resolved by the Bankruptcy Court. After entry of the Bid Procedures Order, the Trustee reached out to prior interested parties including Lake Area Waste Water Association, Inc., Missouri American Water Company, Public Water Supply District #5, Missouri Water Association, Inc., Liberty Utilities, and Cedar Glen COA, Inc. Each of these parties were provided with the Bid Procedures Order. A copy of the Bid Procedures Order is attached hereto as **Exhibit A**.

1. The Auction

The Trustee ultimately received two qualified bids: (i) a joint bid by Public Water Supply District No. 5 of Camden County, Missouri and Lake Area Waste Water Association, Inc. (collectively, the "**Joint Bidders**") and (ii) Missouri American Water Company ("**MAWC**"). The Auction was set to take place on October 24, 2018. The auction participants were the Stalking Horse Purchaser, the Joint Bidders, and MAWC (collectively, the "**Auction Participants**"). Prior to the Auction, further instructions were provided to each of the Auction Participants including that the Auction would be commenced in two phases in light of the Stalking Horse Purchaser's matching rights. A copy of such further instructions are attached hereto as **Exhibit B**.



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On October 24, 2018, the Trustee convened the Auction. Instructions were once again given to the Auction Participants and Phase 1 of the Auction was commenced. Phase 1 of the Auction was between the Joint Bidders and MAWC. Ultimately, the Joint Bidders were determined to have the winning Phase 1 Bid and proceeded to Phase 2 of the Auction.

In Phase 2 of the Auction, the Stalking Horse Purchaser successfully matched each offer by the Joint Bidders until the Joint Bidders failed to make a competing higher offer. Accordingly, the Stalking Horse Purchaser was declared the successful purchaser with a bid of \$800,000. The Joint Bidders were designated the first Back-Up Bidder and MAWC was designated the second Back-Up Bidder. A copy of the Notice of Auction Results and along with revised asset purchase agreements (taking into account the Auction) are attached hereto as **Exhibit C**.

2. The Bankruptcy Court Sale Order

On November 5, 2019, the Trustee filed *Notice of Proposed Order* (Doc. 133), which attached a copy of the proposed sale order and provided that no hearing would be held unless objections were filed with the Bankruptcy Court by November 13, 2018. No objections were filed with the Bankruptcy Court. On November 14, 2019, the Bankruptcy Court entered its *Order Approving (A) the Sale of Substantially All of the Debtor's Assets Free and Clear of All Liens, Interests, Claims and Encumbrances and Related Procedures and Bid Protection Pursuant to 11 U.S.C. § 363, (B) the Potential Assumption and Assignment, or Rejection, of Certain Executory Contracts and Unexpired Leases, and Related Procedures, Pursuant to 11 U.S.C. § 365, and (C) Related Relief Pursuant to 11 U.S.C. §§ 102 and 105* (Doc. 135) (the "Sale Order"). The Sale Order is attached hereto as **Exhibit D**.

In the Sale Order, the Bankruptcy Court made, *inter alia*, the following findings:

- A reasonable opportunity to object or to be heard regarding the relief sought in the Sale Motion had been afforded to all creditors and parties-in-interest.
- The Trustee conducted the sale process in compliance with the Bid Procedures Order and completed a full, fair, and complete auction process.
- The Auction conducted by the Trustee, including the methodology for determining the highest and best offers, was conducted in a manner that was reasonably calculated to achieve the highest and best offers for the Assets.
- The Auction was conducted in a non-collusive, fair and good faith manner and a reasonable opportunity has been given to any interested party to make a higher or otherwise better offer for the Assets.
- The asset purchase agreements were negotiated, proposed, and entered into by the Trustee and the Auction Participants in good faith, without collusion, and was the result of arm's-length bargaining with the parties represented by independent counsel.



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III. Conclusion

Pursuant to the Bidding Procedures each Auction Participant was deemed to have agreed to keep its final bid made at the Auction open through 180 days after the entry of the Sale Order, *i.e.* May 13, 2019. Given the circumstances related to the Application, the Trustee has requested that the Back-Up Bidders confirm that their back-up bids will remain open for additional time pending the Commission's approval process. If the sale does not close with the Stalking Horse Purchaser or the Trustee is unable to enforce the back-up bids, then the Trustee is concerned that she will be required to recommence sale proceedings or engage in further litigation thereby further extending the bankruptcy proceedings and the continued unsettled state of affairs related to water and sewer assets in the effected service areas of the Debtor.

As recognized in the Sale Order, the Trustee believes that the sale of the Debtor's assets was conducted in a fair and transparent process according to the Bankruptcy Code and Rules. More importantly, a sale will ultimately allow for some sense of closure related to the troubled history surrounding the Debtor. If Commission Staff has any questions, please do not hesitate contact the undersigned.

Sincerely,



Eric Johnson

Enclosure

cc: Jill Olsen, Chapter 11 Trustee

MEMORANDUM

TO: Missouri Public Service Commission
Official Case File, Case No. WA-2019-0185

FROM: Curt Gateley – Water and Sewer Department
James A. Merciel, Jr. – Water and Sewer Department
David Roos – Water and Sewer Department
Matthew Barnes – Water and Sewer Department
Kim Bolin – Auditing Department
Scott Glasgow – Customer Experience Department
Ben Rankin – Customer Experience Department
David Buttig – Engineering Analysis Department

/s/ Curt Gateley 5/24/19
Case Manager/ Date

/s/ Whitney Payne 5/24/19
Senior Counsel / Date

SUBJECT: Recommendation of Approval of Application

DATE: May 24, 2019

EXECUTIVE SUMMARY

On December 19, 2018, the Osage Utility Operating Company, Inc. (OUOC) filed its *Application and Motion for Waiver* (Application) with the Missouri Public Service Commission (Commission). OUOC seeks approval for Osage Water Company (OWC), a regulated water and sewer utility, to sell and transfer its water and sewer assets along with its Certificate of Convenience and Necessity (CCN) to OUOC. OUOC also seeks a new CCN to provide water and sewer service to a condominium development named Reflections Condominiums (Reflections). Reflection's water and sewer operation is not regulated by the Commission.

According to the Application, pursuant to Sections 386.040, 386.250 and 393.140 RSMo and Commission Rule 4 CSR 240-10.085(2), OUOC requests a rate of return premium and a debt acquisition adjustment in conjunction with its acquisition of OWC and Reflections. On February 19, 2019, OUOC submitted in this case an *Amended Application for Convenience and Necessity* (Amended Application). The Amended Application was submitted to "...correct inaccuracies discovered after the filing of the original Application."

Reflections Condominium Owners Association, Cedar Glen Condominium Owners Association, Lake Area Waste Water Association, Inc., Missouri Water Association, Inc., Public Water Supply District No. 5 of Camden County, and Great Southern Bank have been granted intervention in this case by the Commission. No applications to intervene were denied.

It is Staff's position, based on its review as described herein, that the transfers of the specific utility assets as requested in the Application are not detrimental to the public interest, and the Commission's issuance of a new CCN is in the public interest. OUOC's proposal to adopt the existing tariffs, rates and charges of OWC, as well as to adopt the existing rates charged to customers in Reflections as described herein are reasonable. Staff recommends OUOC be authorized and ordered to file adoption notice tariff sheets for the water tariff and sewer tariff currently in effect for OWC, new water and sewer tariff sheets for Reflections prior to closing on those assets, and new blank tariff sheets to replace the appropriate maps and service area descriptions for the inactive service areas discussed below. OUOC should provide notice to the Commission of closing on the assets of OWC and Reflections, and status reports as necessary describing the status of closing on the assets. Staff therefore recommends approval of the transfer of assets of OWC, transfers of the relevant CCNs, and issuance of a new CCN, with the conditions and actions as outlined herein:

1. Issue a new CCN to OUOC to provide water and sewer service for the proposed Reflections service area, with OUOC to begin providing such service upon closing of the assets;
2. Approve rates of \$25 per month for water service, and \$25 per month for sewer service, for OUOC, applicable to customers in the Reflections service area;
3. Require OUOC to submit appropriate tariff sheets for water and sewer service, as a thirty (30) day filing, within ten (10) days after the effective date of approval of a CCN for Reflections by the Commission, to become effective before OUOC closes on the Reflections' assets;
4. Authorize OWC to sell and transfer utility assets to OUOC, and transfer the CCN's currently held by OWC to OUOC upon closing on any of the respective systems;

5. Upon closing on each of the OWC water and sewer systems, authorize OWC to cease providing service, and authorize OUOC to begin providing service;
6. Require OUOC to file Tariff Adoption Notice tariff sheets for the corresponding water and sewer tariffs of the regulated OWC systems within ten (10) days after closing on the OWC assets;
7. Upon closing on each of the water and sewer systems, authorize OUOC to provide service by applying, on an interim basis, the existing rates, rules and regulations as outlined in OWC's water tariff and sewer tariff, until the effective date of respective adoption notice tariff sheets, as recommended above;
8. Require OUOC to create and keep financial books and records for plant-in-service, revenues, and operating expenses (including invoices) in accordance with the NARUC Uniform System of Accounts;
9. Require OUOC to, going forward, keep and make available for audit and review all invoices and documents pertaining to the capital costs of constructing and installing the water and sewer utility assets;
10. Approve depreciation rates for water and sewer utility plant accounts as described and shown herein;
11. Require OUOC to distribute to all customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water service, consistent with the requirements of Commission Rule 4 CSR 240-13, within thirty (30) days after the effective date of approval of a CCN by the Commission;
12. Require OUOC to, within ninety (90) days of the effective date of a Commission order approving OUOC's Application, complete repairs to resolve the bypassing of treatment at any wastewater treatment system;
13. Resolve all issues regarding noncompliance with Missouri Department of Natural Resources (DNR) regulations for all water and sewer systems;

14. Require OUOC to provide adequate training for the correct application of rates and rules to all customer service representatives, including those employed by contractors, prior to the customers receiving their first bill from OUOC;
15. Require OUOC to provide to the Customer Experience Department Staff a sample of ten (10) billing statements of bills issued to OWC and Reflections customers within thirty (30) days of such billing;
16. Require OUOC to file notice in this case once Staff's recommendations regarding customer communications and billing, listed above, have been completed; and
17. Require OUOC to file a rate case with the Commission no later than twenty-four (24) months after the effective date of an order approving OUOC's Application

BACKGROUND OF OWC AND REFLECTIONS

OWC obtained a CCN in 1989 to operate as a water and sewer utility in Commission Case No. WM-89-73, which authorized a regulated utility named Oak Tres, Inc. to sell and transfer its assets to OWC. OWC subsequently filed a number of cases seeking additional service areas. On December 10, 2002, the Commission issued a Report and Order in Case No. WC-2003-0134, finding that Osage had been effectively abandoned by its owners, and that it was unable or unwilling to provide safe and adequate service to its customers.

Since granting its original CCN, the Commission has granted OWC several additional CCNs as it acquired or constructed additional water and sewer systems. At present, OWC provides water and sewer services to four active water and sewer service areas: Cedar Glen, Chelsea Rose, Cimarron Bay and HWY KK. The HWY KK water service area consists only of the Eagle Woods subdivision; the sewer service area includes both Eagle Woods and Golden Glade. OWC also has six inactive¹ water service areas that Staff proposes to delete from the water tariff, described further herein. These inactive service territories are Osage Beach South, Osage Beach North, Sunrise Beach South, Sunrise Beach North, Shawnee Bend, and Parkview Bay.

¹ Reinstatement of these service areas may be possible in the future if OUOC files with an application with the Commission to serve these areas, including a plan to provide utility service.

At present, OWC provides water service to approximately 402 customers and sewer service to approximately 420 customers in Camden County, Missouri, according to the Application. Due to certain decisions by company management,² failure to properly construct, and failure to properly maintain the water and sewer systems, there are several compliance issues that need to be addressed. Some facilities are operating without permits from DNR; at least one wastewater treatment system is in such a state of disrepair that wastewater is bypassing treatment processes. (Bypassing means that partially treated or untreated wastewater is released from the system, endangering public health and the environment.) Varying degrees of immediate repairs and longer term capital improvements are necessary among the systems.

OWC was placed into permanent receivership on October 21, 2005.³ More recently, OWC filed for Chapter 11 bankruptcy and a bankruptcy trustee was appointed on October 26, 2017.⁴ OWC's assets were liquidated by the bankruptcy trustee using a bidding procedure, with OUOC as the high bidder, resulting in this current case before the Commission.

Reflections, which is not a part of OWC, is a residential community near Sunrise Beach in Camden County, Missouri, with approximately 50 existing water and sewer customers. OUOC proposes to purchase water and sewer assets owned by the Reflections Subdivision Master Association, Inc., the Reflections Condominium Owners Association, Inc., and Great Southern Bank. The drinking water system was not constructed in accordance with DNR requirements and is operating without a permit. The wastewater treatment system was improperly constructed, and is in a state of disrepair and structural failure.

BACKGROUND OF OUOC

OUOC was formed for the purpose of purchasing and operating the OWC and Reflections systems. It is a wholly owned subsidiary of Central States Water Resources, Inc., which owns several other Commission approved utility companies in Missouri which are providing safe and adequate service, and otherwise being properly operated in compliance with the law.

² See the *Report and Order* in WC-2003-0134

³ Commission Case No. WC-2003-0134, and Circuit Court of Camden County, originally docketed as Case No. CV102-965CC, now docketed as Case No. 26V010200965.

⁴ United States Bankruptcy Court for the Western District of Missouri Central Division, Case No. 17-42759-drd11.

STAFF'S INVESTIGATION

Water and Sewer Systems

Staff from the Water and Sewer Department inspected the condition of each water and sewer system, including its performance and compliance with drinking water and environmental regulations. Staff performed inspections of OWC and Reflections water and sewer systems in Camden County on February 5, 2019. Staff also reviewed information from DNR's records, including operating permits, inspections, notices of violations, sampling results and correspondence with the owner/operator via formal sunshine requests.

This memorandum provides system descriptions, Staff observations, DNR regulatory status, and OUOC's proposed system improvements of each facility. Included in OUOC's proposed improvements are OUOC's cost estimates for the proposed improvements. Staff considers OUOC's proposals as conceptual, and OUOC's cost estimates as preliminary. Staff has included these proposals and cost estimates in this memorandum only to inform the Commission, and their inclusion is in no way an indication of Staff's support or adoption. **Staff recommends that OUOC regularly update Staff on the design, construction, and startup of the improvements to the OWC and Reflection systems.**

In its review of the systems Staff found some conflicting or missing information concerning DNR construction and operating permits and/or the ability for some existing wastewater systems to meet permitted effluent limits. **Staff recommends OUOC work with DNR to resolve all DNR drinking water and wastewater permit concerns.**

OWC Systems

OWC Cedar Glen Service Area

Cedar Glen is a residential condominium community located in Camdenton, Camden County, Missouri. The Commission granted OWC a CCN to provide water and sewer service to the Cedar Glen service area on May 31, 1998, in Case No. WA-98-36. OWC is currently providing service through approximately 216 water connections and 216 sewer connections.

Description of the OWC Cedar Glen Water System

The water system consists of a well house, one well, one submersible well pump, a master meter, a 35,000 gallon hydro-pneumatic pressure tank, piping and valves, and three unused 250-gallon bladder tanks. There is no treatment and no disinfection of the water. The source of water is a single well, Well #1, that was drilled in 1997 to a depth of 665 feet with six-inch casing to a depth of 465 feet. The well is equipped with a 125 gallon per minute submersible pump set at a depth of 296 feet.

OWC's Cedar Glen permit to dispense water to the public was last issued by DNR on August 23, 2013. The DNR Public Water Supply Identification (PWSID) is MO3071205. DNR conducted an inspection of the Cedar Glen water system on August 24, 2017. At that time, Cedar Glen was found to be in compliance with the Safe Drinking Water Law.

Staff observed caked dirt, algae, and mold on the exterior of the 35,000-gallon hydro-pneumatic tank. The well house has rotten framing and siding. Wiring and electrical panels are exposed and in some places, wiring is hanging or simply stapled to the walls. The submersible well pump pumps water directly to the 35,000 gallon hydropneumatic tank.

Proposed Improvements to the OWC Cedar Glen Water System

OUOC's proposed improvements for the water system include: installing a remote monitoring unit and magnetic flow meter, repairing the building, installing electrical wiring in conduit to eliminate electrical hazards, converting the hydro-pneumatic storage tank to ground storage with variable speed electric high service pumps (to increase storage capacity), power washing and cleaning the hydro-pneumatic tank, installing at least two flushing hydrants and at least five system valves in the distribution system, replacing all existing meters with remote shutoff meters, and installing new meters in units that are not presently metered. OUOC estimates the cost of these proposed improvements to be \$377,750.

Description of the OWC Cedar Glen Sewer System

The sewer system consists of a gravity collection system, lift station, recirculating sand filter treatment facility with a central septic tank, in-ground sand filter, chlorination and dechlorination. Sludge from the septic tank is periodically removed and disposed off-site by a licensed contract sludge hauler. The system has a design capacity of approximately 25,728 gallons per day (gpd)

and an actual flow of approximately 6,600 gpd.⁵ The collection system is composed mostly of PVC pipe.

The OWC Cedar Glen wastewater treatment facility's Missouri State Operating Permit MO-0120936 was last issued by DNR on June 1, 2016, and expires on June 30, 2019. Based upon a letter to DNR dated June 8, 2018, from the contract operator for the system, Lake of the Ozarks Water & Sewer, , the current treatment plant will meet the ammonia limits and no new construction will be needed. A DNR sewer inspection report notes no unsatisfactory conditions.

Staff observed that the sand filter consists of four beds, with surface signs such as staining, and rotten timbers on the northeast bed, possibly indicating integrity issues and some failed piping. Two of the eight filter pumps are non-operable. Further, OUOC informed Staff that the pumps at the lift stations have had difficulty handling large seasonal flows in the summer.

Proposed Improvements to the OWC Cedar Glen Sewer System

OUOC proposes to repair treatment piping as needed, replace the two inoperable filter pumps, clear trees from around the facility, install a moving bed bio-reactor (MBBR) as an additional component of treatment, add additional storage volume at each lift station, and replace the lift station pumps with newer, higher capacity units. OUOC estimates these proposed improvements cost approximately \$281,950.

Staff notes that the MBBR that OUOC proposes for additional treatment would primarily be used for additional ammonia removal. This proposal is inconsistent with statements made by the current operators of the system, Lake of the Ozarks Water and Sewer, in the July 8, 2018 letter noted above that the system meets effluent limitations without further upgrades. Staff understands that OUOC's proposal is preliminary, but further details and justification will be necessary if OUOC seeks inclusion of an MBBR upgrade in rates during the next rate case.

OWC Chelsea Rose Service Area

Chelsea Rose is a residential subdivision, located in Sunrise Beach, Camden County, Missouri. The Commission granted OWC a CCN to provide water and sewer service to Chelsea Rose on

⁵ Volume estimated in the DNR Operating Permit.

October 2, 1992, in Case No. WA-92-141. OWC is currently providing service through approximately 42 water connections and 38 sewer connections.

Description of the OWC Chelsea Rose Water System

The water system consists of a well house, one well that is in service (Well #2), one submersible well pump producing 60 gallons per minute (gpm), a master meter and a 250-gallon bladder tank to maintain pressure on the system. According to DNR, Well #2 was drilled in 1999 to a depth of 820 feet with six-inch steel casing to a depth of 550 feet. The well is equipped with a 10-horsepower 60 gpm submersible pump set at a depth of 399 feet. There is no treatment or disinfection of the water. There is another well, Well #1, along with some piping that is no longer connected to the water system. Well #1 has not been properly “abandoned” and closed per DNR regulations.

The system has operated without a permit to dispense water to the public for approximately 10 years, because the system was not constructed according to DNR approved plans and specifications. However, to facilitate the sale of OWC, on May 30, 2018, after the most recent DNR inspection, DNR issued a permit to dispense water to the public. The DNR PWSID number for the system is No. MO3031244.

On April 2, 2018, DNR personnel performed an inspection of the Chelsea Rose water system, and On April 19, 2018, DNR issued a report with violations that are summarized below:

1. The Chelsea Rose water system, did not at the time have a Permit to Dispense Water to the Public as required by Safe Drinking Water Regulation 10 CSR 60-3.010(2)(A). This system was referred to the Public Drinking Water Branch for enforcement previously; the ownership and receivership situation has hindered the issue.

Once the ownership issues have been resolved, the new owner must complete and submit a new application for a permit to dispense and submit it with all required documentation, including a deed to the well property, to Missouri Department of Natural Resources.

2. The previous owners of the Chelsea Rose water system failed to construct the water system in accordance with approved plans and specifications in violation of Safe Drinking Water Regulation 10 CSR 60-10.010(4). The new owners will submit two copies each of

engineering report, plans, and specifications along with an application for a new or revised construction permit to the Missouri Department of Natural Resources.

Staff observed that the well house roof and siding has deteriorated, and inside the well house there is exposed wiring. The 250-gallon bladder tank does not meet the DNR recommendation to provide 2,730 gallons of hydro-pneumatic storage. In general, the water system is substandard and was not constructed according to DNR approved plans and specifications.

Proposed Improvements to the OWC Chelsea Rose Water System

OUOC proposes to repair the functioning well house and wiring, install magnetic flow meter and remote monitoring, install a 3,000-gallon hydro-pneumatic tank, properly close the unused well, demolish the derelict well house and install three flush hydrants and valving in the distribution system. OUOC estimates the cost of these repairs at \$143,100. However, Staff notes that OWC replaced the master water meter sometime after the DNR inspection on April 15, 2015, and it may not require replacement, as it may be suitable for continued service.

Description of the OWC Chelsea Rose Sewer System

The wastewater is treated by an extended aeration plant consisting of two aeration chambers, one clarifier, one aerobic sludge digester, and chlorination and dechlorination equipment.

Chelsea Rose has a current DNR-issued Missouri State Operating Permit. On May 25, 2017, permit No. MO-0111104, was terminated by DNR and replaced with general operating permit No. MO-GD00275. The statement on page 4 of OUOC's Application that the Chelsea Rose sewer system does not appear to have an active permit to operate is inconsistent with Staff's investigation indicating the system does have a general operating permit.

DNR provided no inspection reports in response to Staff's sunshine request. From October through December, 2014, the Chelsea Rose sewer system exceeded its effluent limitations for ammonia.

Staff observed that the access road to the system is washed out and there is significant water erosion around the system. The system is located in a wooded area, and there is a floating mat of fallen leaves and excessive sludge in the clarifier and aeration basins. There is evidence that sludge has overflowed the system. The treatment system is in a general state of disrepair. The plant

effluent pipe is broken, so the effluent does not reach the permitted discharge site, and the effluent is causing further erosion around the system.

Proposed Improvements to the Chelsea Rose Sewer System

OUOC proposes to regrade the access road, remove vegetation around the system, install a cover over the plant to prevent leaves from falling in (thus reducing additional organic load on the treatment system), convert the system to an integrated fixed film activated sludge (IFAS) system with flow equalization, and install a sludge pump and waste line along the access road to pump sludge to a paved road for offsite disposal. OUOC estimates a cost of \$336,175 for the proposed repairs and upgrades.

OWC Cimarron Bay Service Area

The service area includes Cimarron Bay, a residential townhome subdivision, and Harbour Bay, a condominium community, located in Camden County, Missouri. These two developments are served by one water system and one wastewater treatment system. Collectively, Cimarron Bay and Harbour Bay are referred to as the “Cimarron Bay” service area. The Commission granted OWC a CCN to provide water and sewer service in this service area on March 5, 1998, in Case No. WA-97-110. OWC is currently providing service through 110 residential water and 110 residential wastewater connections.

Description of the OWC Cimarron Bay Water System

The water system consists of a well house, one well (Well #1), one submersible well pump, a master meter, a 35,000 gallon hydro-pneumatic pressure tank and a 119-gallon bladder tank. According to DNR, Well #1 is a state-approved well that was drilled in 1995 to a depth of 620 feet with six-inch casing to a depth of 450 feet. The submersible pump is set at 252 feet and is rated at 50 gpm. There is no treatment or disinfection of the water.

On August 23, 2013, OWC received from DNR a permit to dispense water to the public, permit No. MO 3031290. The most recent DNR inspection of the water system was on November 20, 2017. At that time, the Cimarron Bay water system was in compliance with the Missouri Safe Drinking Water Regulations.

Staff observed that the well house has rotten siding and fascia boards, and the interior shows some water damage. Some of the equipment power is supplied through extension cords stapled to the well house wall.

Proposed Improvements to the OWC Cimarron Bay Water System

OUOC is proposing to repair and expand the well house, install a high service pump and convert the hydro-pneumatic tank to ground storage, install a magnetic flow meter and remote monitoring at the well house, and to install three flush hydrants, remote shutoff meters, and additional distribution system valves. The estimated cost for these proposed improvements is \$238,863.

Description of the OWC Cimarron Bay Sewer System

The Cimarron Bay sewer system provides sewer service to approximately 110 customers. The sewer system consists of a recirculating sand filter facility with a central septic tank, chlorination and dechlorination. Sludge from the septic tank is periodically removed and disposed off-site by a licensed contract sludge hauler. The collection system is composed mostly of PVC pipe. The waste water is delivered by gravity to a lift station which pumps the wastewater to the treatment facility.

Staff observed that the sand filter consists of three in-ground beds, although only two of the beds are in use. The visible portion of the walls of the sand filter are constructed of plywood, which has partially rotted away leaving exposed piping. Some of the wastewater flows through the walls of the filter, resulting in partially treated wastewater bypassing the chlorination/dechlorination treatment step. Although unusual for a recirculating sand filter, Staff was informed by OUOC that the system had difficulty meeting its effluent limits in the winter due to reduced flows from seasonal fluctuations.

On May 7, 2015, Lake of the Ozarks Water and Sewer Company, the contract operator of the Cimarron Bay wastewater treatment system, sent a letter to DNR stating that the Cimarron Bay treatment system was able to meet final effluent limits for ammonia, and no further construction for the treatment of ammonia was needed. On June 14, 2017, the Cimarron Bay Missouri State Operating Permit, No. MO-0110921, was terminated by DNR and replaced with general permit No. MO-GD00297. Therefore, the statement on page 5 of OUOC's application that the system

does not appear to have an active permit to operate is inconsistent with Staff's investigation indicating that the system does have a general operating permit.

DNR did not provide Staff with information relating to inspections of the Cimarron Bay wastewater system.

Proposed Improvements to the OWC Cimarron Bay Sewer System

OUOC proposes to abandon the sand filter facility, and convert the septic tank to an extended aeration facility supplemented by a new MBBR. OUOC also proposed installing remote monitoring at the lift stations.

OWC Service Area KK - Eagle Woods (Water and Sewer) and Golden Glade (Sewer Only)

Golden Glade is a residential development located in Camden County, Missouri. The Commission granted OWC a CCN to provide sewer service to Golden Glade on October 14, 1999, in Case No. SA-99-268. Eagle Woods Subdivision (Eagle Woods) is an adjacent residential development. The Commission granted OWC a CCN to provide both water and sewer service to Eagle Woods on February 10, 2000, in Case No. WA-99-437. The water and sewer systems in this service area are the subject of currently-pending formal complaints; Case Nos. WC-2014-0215 and SC-2014-0214.

The formal complaints were filed by Summit Investments, LLC (Summit), the developer of Eagle Woods, against OWC on January 30, 2014. These formal complaints are related to a case in the Circuit Court of Camden County between Summit and OWC, Case No. 11CM-CC00113. In these complaints, Summit alleges that OWC has failed and refused on repeated occasions to provide adequate water supply and sewage treatment capacity for water and sewer service to lots within its certificated service area as the developer contracted for with OWC, thereby preventing Summit from developing and selling those lots.

In 1998, Summit began constructing Eagle Woods. The development of Eagle Woods was to occur through four phases. OWC, for the sum of \$30,000, contracted to provide water and sewer service to Eagle Woods through all phases of construction. In accordance with the contract, Summit conveyed to OWC its ownership in all infrastructure, water well, pump and storage plant

and equipment, real estate and associated easements, and all permits in its name for all the facilities supplying sewer and water services to Eagle Woods.

OWC only partially completed the phased expansions of the water and sewer systems that served lots in both the Golden Glade and Eagle Woods subdivisions. OWC currently provides wastewater service to 23 Golden Glade lots and 33 Eagle Woods customers. However, because of the incomplete utility expansions, Summit has approximately 25 remaining lots in Eagle Woods that cannot be sold because new homes on those lots are not allowed to be connected to the water and sewer systems due to the lack of capacity.

In addition to the abandonment finding by the Commission in Case No. WC-2003-0134, the Commission issued a Report and Order on October 22, 2015, in the Summit formal complaint cases directing certain additional steps, which were not completed. On July 6, 2017, OWC filed a status report noting that it was in receivership and that it did not have the funding to make the necessary improvements. Per Staff Data Request No. 0019, once OUOC takes possession of the facilities, and completes the planned system improvements, both the water and wastewater treatment systems will be able to provide service to the additional 25 lots.

Description of the KK - Eagle Woods Water System

The water service area consists of the Eagle Woods subdivision, currently with 33 homes connected to the OWC water system. Golden Glade is not connected to the OWC water system and is not in OWC's service territory for the provision of water. The Eagle Woods water system consists of a single well, for which the production capacity is stated in OWC's annual report as 25 gpm; however, Staff was unable to verify production in the field. Because the well serving Eagle Woods was constructed as a 'non-community' well, it does not meet DNR construction standards for a public water supply. The well, therefore, does not have a permit to dispense water, and does not meet approval requirements by DNR for use with a public water supply; however, DNR is aware that it is being used as a temporary measure. The water system also utilizes two steel ground storage tanks of 9,000 gallons storage volume, two high-service pumps, two 175-gallon bladder tanks to maintain pressure, chlorine disinfection, and a master meter that measures water pumped into the distribution system from the storage tanks. The distribution system is reportedly two-inch (2") PVC, with meters for each customer.

The well house is small for the amount of piping and equipment it stores. In the well house, Staff observed exposed and corroded wiring, corroded piping and fittings and other corrosion caused by chlorine being stored in the well house. The outside ground storage tanks are caked with dirt and mold.

DNR Water Permit and Inspections of the KK - Eagle Woods Water System

Although the water system has a DNR-issued Public Water Supply Identification number, DNR did not provide Staff with information regarding a permit to dispense water, or any DNR inspections of the water supply.

Proposed Improvements to the KK - Eagle Woods Water System

OUOC proposes to pressure wash and clean the ground storage tanks, repair the well house and electrical, and to install remote monitoring, a magnetic flow meter and variable frequency drive (VFD) booster pumps to improve pressure control and meet DNR recommendations. The hydro-pneumatic tanks would be decommissioned. OUOC estimates these proposed improvements to cost approximately \$123,300.

OWC KK - Eagle Woods and Golden Glade Sewer Service Area

The sewer service area consists of both the Eagle Woods subdivision, currently with 33 customers, and the Golden Glade subdivision, currently with 23 customers, for a total of 56 OWC sewer customers. The treatment facility in use, known as the Highway KK facility, is a recirculating sand filter type facility presently with permit design flow capacity of 13,875 gpd. The sand filter consists of two concrete walled beds. The collection system is what is sometimes called a “small diameter collecting sewer system.” Sewage discharge from customers’ homes first flows to multi-home septic tanks that are maintained by OWC, which provides partial treatment and retains solids. Then the septic tank effluent flows by gravity through smaller pipes than those used by conventional gravity sewers to the treatment facility. Since the hilly terrain in the Eagle Woods portion of the service area necessitates pumping, OWC utilizes three lift stations.

Staff observed that the road to the system is washed out. The site is covered with discarded pipes, pumps, and trash from repairs and maintenance. Staff observed large cracks and signs of leakage on the sand filter’s wall. Both beds have broken distribution piping. Some inlet piping is not fully

connected and there is surface soil staining around this piping. Pipe supports are makeshift posts with rope ties. The chlorination chambers appear makeshift and of temporary construction. The chambers are choked with algae and plant growth.

In an undated letter in 2018, the Hwy KK operating permit, No. MO-0113170, was terminated by DNR and replaced with general permit No. MO-GD00340. The statement on page 8 of OUOC's application that the system does not appear to have an active permit to operate is inconsistent with Staff's investigation indicating that the system does have a general operating permit.

In a letter dated November 4, 2014, DNR informed OWC that the treatment system exceeded the discharge limit for E. coli on June 10, 2014. In a letter dated May 7, 2015, Lake of the Ozarks Water and Sewer Company stated that the wastewater treatment plant was able to meet new proposed effluent limits for ammonia, and therefore no improvements were necessary. However, Staff notes that in a letter dated June 21, 2016, DNR informed OWC that the treatment system exceeded the limit for ammonia for the January to March 2016 monitoring period.

Staff notes that the treatment system failed to meet ammonia effluent limits about a year after Lake of the Ozarks Water and Sewer Company notified DNR that the treatment system could meet the ammonia effluent limits. Therefore, improvements to the treatment system may be necessary.

Proposed Improvements to the OWC KK - Eagle Woods and Golden Glade Sewer System

OUOC proposes to: complete a smoke test of the collecting sewers; install manholes; upgrade one of the lift stations; regrade the access road and the site to improve access and reduce infiltration and inflow of storm water into the filter beds; replace and repair piping; install a moving bed bioreactor for additional treatment; replace the chlorination and dechlorination contact chambers; and remove trash and debris from the site. OUOC estimates a cost of \$303,175 for the repairs and upgrades.

Reflections Condominiums

Reflections, which is not a part of OWC, is a residential community near Sunrise Beach in Camden County, Missouri, with approximately 50 existing water and sewer customers. OUOC proposes to purchase water and sewer assets owned by the Reflections Subdivision Master Association, Inc., the Reflections Condominium Owners Association, Inc., and Great Southern Bank.

Description of the Reflections Condominium Water System

The water system consists of one well house, one well, one submersible well pump, master meter, Schedule 40⁶ PVC piping that does not meet DNR requirements, and seven 119-gallon bladder tanks. There is no treatment of the water. There are no customer meters. The system was not constructed pursuant to DNR approved construction plans and is operating without a permit to dispense water. The system was referred to the Public Drinking Water Branch for enforcement on October 7, 2009. The system has the DNR public water system ID# MO3071337.

According to the DNR High Yield and Public Well Record and Pump Information Data Report #A072734 (DNR Reference No. 0025901), the well is a deep well for use as a public water supply. The well has a pump rate of 125 gpm and a well yield of 193 gpm.

The most recent DNR inspection was conducted on August 9, 2017, which only noted operating without a permit as a compliance issue.

Staff observed that outside, the well house siding and roofing is in need of repair or replacement. Inside Staff observed 2-inch, 3-inch and 4-inch Schedule 40 PVC piping and valving that does not meet DNR requirements. The main waterline has an exposed, above-ground section of piping, suspended over a rock bluff, with some insulation but no heat tracing. Without an active heat source, such as heat tracing, above ground, insulated water pipes can freeze.

Proposed Improvements to the Reflections Condominium Water System

OUOC proposes to install perimeter fencing around the well house and repair the well house exterior, install remote monitoring, install electrical conduit, insulate exposed piping, and install remote shut off meters. OUOC estimates these proposed improvements to cost \$165,213.

Description of the Reflections Condominium Sewer System

The collection system has a gravity sewer line from three buildings to two pump stations. The pumps stations convey sewage to the treatment plant. No monitoring is installed at the pump stations. The treatment facility is a series of interconnected, above-ground, poured-in-place concrete basins, consisting of flow equalization, extended aeration, clarification, chlorination, and

⁶ PVC pipe comes in different Schedules, with a higher number indicating greater thickness and therefore greater physical integrity. A minimum thickness is sometimes required by DNR to ensure durability.

sludge holding. The system has a design flow capacity of 56,950 gpd. Sludge is disposed by contract hauler. Discharge from this facility flows into Lake of the Ozarks. The facility has a DNR design population equivalent of 670.

The Operating Permit, No. MO-0126438, expired on December 26, 2009. DNR received an application for renewal; however, DNR denied the application and returned it to the sender on January 9, 2012.

The most recent DNR compliance inspection of Reflection's wastewater treatment system occurred on June 29, 2016. At that time the system was found to be out of compliance for the following reasons: failure to renew permit; failure to submit Annual Sludge Report; missing Discharge Monitoring Reports; failure to provide flow measurement; caused pollution of Lake of the Ozarks; and failure to maintain a valid continuing authority.

Staff observed numerous cracks around the aeration basin. The east-facing wall of the aeration basin is bowing outward and numerous cracks were observed along the wall. On the northeast and southeast corners of the aeration basin there are pieces of concrete missing with large vertical and horizontal cracks running the length of the wall. Many of these cracks show signs of leakage. Wastewater is leaking from the aeration basin where the overflow pipe exits the basin's wall. Staff is concerned that the structural integrity of the system has been compromised. The wooden stairs and crosswalks are rotting and unstable. The blower building has a plywood exterior that is rotten and delaminating.

Proposed Improvements to the Reflections Condominium Sewer System

OUOC proposes to repair concrete walls, install structural supports, replace decking material, install structural/process control steel walls in the aeration, install remote monitoring at the wastewater system, and install remote monitoring at each pump station. OUOC estimates the cost of these proposed improvements at \$310,800.

Technical, Managerial, and Financial Capacity and Tartan Energy Criteria

In investigating most situations involving transfers of assets, or new CCNs involving regulated water and/or sewer systems, Staff utilizes the concepts of technical, managerial and financial capacity (TMF), originally developed by the United States Environmental Protection Agency (EPA). Staff has reviewed and stated its position on TMF regarding each of OUOC's affiliates in

previous CCN and transfer of assets cases before the Commission. Staff's position on TMF remains positive regarding those affiliates, and similarly takes the position that OUOC has adequate TMF capability.

When considering a request for a new CCN, the Commission applies criteria originally developed in a CCN case filed by the Tartan Energy Company and referred to now as the "Tartan criteria." The Tartan criteria contemplate 1) need for service; 2) the utility's qualifications; 3) the utility's financial ability; 4) the feasibility of the proposal; and, 5) promotion of the public interest. For its reviews, Staff also considers whether or not other utility entities are available to provide similar service. Staff has studied these points as they relate to the situations and abilities involving new CCNs and several transfer cases pertaining to OUOC's affiliates, which the Commission has approved. Further, as related to this specific CCN request for OUOC's proposed Reflections service area, Staff takes the position that it is feasible for OUOC to operate and manage its water and sewer operations, and it is in the public interest for it to do so.

Staff is of the opinion that the criteria regarding TMF and the Tartan Energy criteria are all met.

Inactive Service Areas

In the course of filing its several CCN cases, OWC was granted authorization to provide water service by the Commission in some service areas in which either OWC never began providing service, or ceased providing service because the City of Osage Beach is now providing service to the involved customers. OUOC indicated verbally to Staff that it has no plans to provide service in these service areas. Staff thus recommends OUOC voluntarily delete the following service areas from the OWC water tariff and ask the Commission to recognize de-certification of these areas:

- Osage Beach South (aka Pizza Hut or Mariner's Cove, along and off of old U.S. Highway 54) – water tariff Sheet Nos. 3A (map) and 4A (description). This was OWC's original service area granted in Case No. WM-89-73. The original sewer service area was previously deleted from OWC's sewer tariff after the City of Osage Beach assumed providing sewer service to customers sometime in the late 1990s using its own sewer system, and after OWC abandoned its sewer system. Within the past few years, the water service area and the water distribution system were both physically severed by construction of the re-routed U.S. Highway 54, the City of Osage Beach began serving the remaining

customers using its water system, and OWC abandoned its water system assets. OUOC has no plans to provide any water service in this area.

- Osage Beach North (Shoney's well and Consumers Market well, along and off of old U.S. Highway 54) – water Sheet Nos. 3B (map) and 4A description. CCN in Case No. WA-94-132. Osage Beach took over providing water service to the OWC customers in this area using its water system, and OWC abandoned its water system assets. OUOC has no plans to provide any water service in this area.
- Sunrise Beach North (commercial properties along Missouri Highway 5) – water Sheet Nos. 3C (map) and 4A (description). CCN in Case No. WA-92-141. OWC never constructed or acquired water system assets in this area, never began providing service to any customers in this area, and OUOC has no plans to begin providing water service in this area.
- Sunrise Beach South (commercial properties along Missouri Highway 5) – water Sheet Nos. 3D (map) and 4A (description). CCN in Case No. WA-92-141. OWC never constructed or acquired water system assets in this area, never began providing service to any customers in this area, and OUOC has no plans to begin providing water service in this area.
- Shawnee Bend (Chimney Point area off of Missouri Highway MM) – water Sheet Nos. 3F (map) and 4B (description). CCN in Case No. WA-92-141. OWC never constructed or acquired water system assets in this area, never began providing service to any customers in this area, and OUOC has no plans to begin providing water service in this area.
- Parkview Bay (Parkview Bay development off of old U.S. Highway 54) – water Sheet No. 3I (map) and 4B (description). CCN in Case No. WA-98-236. Although OWC began steps to acquire an existing water system in this area and in fact had acquired a well that is no longer in service today, the City of Osage Beach ultimately began providing water service in this area using its water system and still does so today. OUOC has no plans to begin providing water service in this area.

Rate Base

In regard to rate base valuation of the OUOC properties, Staff reviewed information provided by OUOC in response to Staff's data requests, its Application (including attached sale agreement documents), OUOC's work papers, as well as the effective tariffs and annual reports of OWC.

Staff is proposing that the net book value as of December 31, 2018, be used to determine the rate base in this case for OWC. Staff conducted a review of plant in service, depreciation reserve, Contributions in Aid of Construction ("CIAC"), CIAC amortization and other rate base items during its investigation in order to determine OWC's rate base as related to this case. Staff's starting point for determining rate base in this case was to analyze the actual rate base used in OWC's most recent rate case (Case Nos. WR-2009-0149 and SR-2009-0152), and then, using OWC's subsequent annual reports submitted to the Commission, to update the plant in service, depreciation reserve, CIAC and CIAC amortization values to December 31, 2018. The net book value of assets proposed to be purchased from OWC by OUOC as of December 31, 2018, as determined by Staff, is approximately \$341,508.

Since Reflections was an unregulated water and sewer system, Staff is proposing that the amount provided by OUOC in its Asset Valuation Report as of December 31, 2018, be considered the net book value. Accordingly, the depreciated value of the Reflections water and sewer assets as of December 31, 2018 is \$313,440.⁷

Depreciation

The Engineering Analysis Department performed a review of the depreciation rates for water and sewer utility assets, plant-in-service, and the accumulated depreciation reserves for OWC. The Auditing Department used these depreciation rates in calculating the recommended rate base discussed above.

Staff recommends that OUOC maintain the existing depreciation rates for the plant accounts that were previously ordered by the Commission for OWC.

The depreciation rates are included with this memorandum as Attachment 1 applying to water

⁷Rate base for both OWC and Reflections as determined by Staff for this case is for information only, and reflects only Staff's determination based on its review of this case. Rate base determination is subject to change based on positions of other parties or by additional information not available during Staff's review of this case.

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assets, and as Attachment 1 applying to sewer assets. Staff intends to review the depreciation schedules again when OUOC files for its first rate case.

Request For Acquisition Incentives

Pursuant to Sections 386.040, 386.250, and 393.140, RSMo and Commission Rule 4 CSR 240-10.085(2), OUOC requested a rate of return premium and a debit acquisition adjustment in conjunction with its acquisition of the Osage and Reflections systems. Due to OWC being purchased out of bankruptcy court and presently being in receivership, Staff recommends OUOC be granted a debit acquisition premium based on the purchase price of ** _____ ** for OWC and Reflections combined. The difference between the above purchase price and the rate base values for OWC and Reflections discussed above as of December 31, 2018, results in an acquisition premium of ** _____ **. The estimated annual increase to revenue requirement associated with the acquisition premium is approximately \$20,574. Staff does not recommend a rate of return premium be granted.⁸ If the Commission approves the acquisition premium, Staff recommends the Commission order OUOC to file a rate case no later than twenty-four (24) months after the effective date of an order approving OUOC's Application.

Rate and Tariff Matters

In its Application, OUOC states that it proposes to adopt existing tariff rules and rates for all of the OWC systems.

Staff recommends that the Commission order OUOC file Tariff Adoption Notice tariff sheets for OWC's existing water tariff and sewer tariff within ten (10) days after closing on the OWC assets, and that the Commission authorize OUOC to provide water and sewer service by the terms of OWC's tariffs on an interim basis until the effective date of such Adoption Notices. As noted above, Staff recommends voluntary deletion of certain OWC service areas.

For Reflections, OUOC proposes in its Application to file water and sewer tariffs similar to the sample tariff templates that Staff has created, and adopt the existing Reflections rates of \$25/month for water and \$25/month for sewer. However, as a simpler alternative, Staff recommends OUOC incorporate Reflections into the OWC water and sewer tariffs to be adopted by OUOC. As such, Staff recommends the Commission order OUOC submit new original water tariff sheets and sewer

⁸ OUOC did not request a specific rate of return adjustment or specific number of basis points in its application.

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tariff sheets adding the Reflections legal description, service area map, rates, and service charge sheet to the former OWC tariff within ten (10) days after the effective date of a Commission order granting a CCN to OUOC for Reflections. These tariff sheets must become effective on or before the date OUOC closes on the assets, with expedited approval if necessary.

Publicity and Customer Notice

According to the OUOC, initial customer notifications were mailed during the week of March 11, 2019. A sample letter was provided by OUOC, which advises customers that rates will not change as a result of this acquisition; however, the application states that the current rates do not reflect current costs and a rate increase will be necessary following substantial investment into repairs and upgrades of these water and wastewater systems. As of the date of this report, zero public comments have been entered into the Commission's Electronic Filing Information System concerning this case.

Customer Experience Department

Customer service and billing functions will be outsourced to Nitor Billing Services, LLC. Customers will be able to contact OUOC by calling a toll free phone number. Personnel will be available Monday through Friday, 8 am to 5 pm, to answer customer inquiries by phone or email. A separate phone number and email address will be available 24 hours / 7 days a week for emergencies.

Customer bills will be mailed the first week of each month in a postcard format and will be due by the end of each month. Reflections customer's water and wastewater service is currently paid out of the home owner's association fees, but will be integrated with OWC customers and Reflections customers will begin to receive separate bills for water and wastewater service once OUOC begins operations. Current OWC customers will continue to receive monthly-metered bills and current Reflections customers will continue to receive monthly flat-rate bills. Available payment options will be mailing checks, money orders, or cashier's checks. Customers will also have the option of paying online by credit card, debit card, or e-check, and the option to set up auto-pay.

OTHER ISSUES

OUOC is a registered business in good standing with the Secretary of State's office, but is not yet operating as a regulated utility and has no obligations with the Commission regarding annual reports and annual assessment requirements.

OWC is current on its water and sewer PSC assessment payments, is current on its annual reports, and is in good standing with the Secretary of State's office.

STAFF RECOMMENDATION

It is Staff's position, based on its review as described herein, that the transfers of the specific utility assets as requested in the Application are not detrimental to the public interest, and the Commission's issuance of a new CCN is in the public interest. OUOC's proposal to adopt the existing tariffs, rates and charges of OWC, as well as to adopt the existing rates charged to customers in Reflections as described herein are reasonable. Staff recommends OUOC be authorized and ordered to file adoption notice tariff sheets for the water tariff and sewer tariff currently in effect for OWC, new water and sewer tariff sheets for Reflections prior to closing on those assets, and new blank tariff sheets to replace the appropriate maps and service area descriptions for the inactive service areas. OUOC should provide notice to the Commission of closing on the assets of OWC and Reflections, and status reports as necessary describing the status of closing on the assets. Staff therefore recommends approval of the transfer of assets of OWC, transfers of the relevant CCNs, and issuance of a new CCN, with the conditions and actions described herein and more specifically delineated in the Executive Summary of this Memorandum.

Osage Water Company
DEPRECIATION RATES
(WATER)
WR-2009-0149

<u>ACCOUNT NUMBER</u>	<u>ACCOUNT DESCRIPTION</u>	<u>DEPRECIATION RATE</u>	<u>AVERAGE SERVICE LIFE (YEARS)</u>
311	Structures & Improvements	2.5%	40
314	Wells & Springs	2.0%	50
316	Supply Mains	2.0%	50
321	Structures & Improvements	2.5%	40
325	Electric Pumping Equipment	10.0%	10
325.2	High Service or Booster Pumping Equip.	6.7%	15
325.3	Shaft-Driven Pumping Equipment	5.0%	20
328	Other Pumping Equipment	4.0%	25
332	Water Treatment Equipment	2.9%	35
342	Distribution Reservoirs & Standpipes	2.5%	40
343	Transmission & Distribution Mains	2.0%	50
346	Meters - Bronze Chamber	3.3%	30
349	Other Transmission and Dist. Plant	2.0%	50
390	Structures & Improvements	2.5%	40
396	Power Operated Equipment	6.7%	15