

**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	)	Case No.: WA-2019-0185 &
Assets and for a Certificate of	)	SA-2019-0186
Convenience and Necessity	)	

**MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO MODIFY  
OSAGE UTILITY OPERATING COMPANY, INC'S AMENDED APPLICATION**

Pursuant to 20 CSR 4240-2.116(4), Reflections Condominium Owners Association, Inc. (“**Reflections Condo**”), Reflections Subdivision Master Association, Inc. (the “**Master Association**”), and Great Southern Bank request an order from the Public Service Commission (the “**Commission**”) dismissing Osage Utility Operating Company, Inc.’s (“**Osage**”) Amended Application and Motion for Waiver (“**Amended Application**”) in its entirety or, in the alternative, dismissing the portion of the Amended Application that applies to water and sewer service at the Reflections subdivision. In support of their joint Motion, Reflections Condo, the Master Association, and Great Southern Bank state the following:

1. On December 19, 2018, Osage filed its Application and Motion for Waiver.
2. On February 19, 2019, Osage filed its Amended Application.
3. Reflections Condo, the Master Association, and Great Southern Bank have been granted leave to intervene in this matter.
4. In the Amended Application, Osage states that it proposes to purchase the water and sewer assets of the Master Association and Reflections Condo (the “**Systems**”) and seeks a Certificate of Convenience and Necessity to operate the Systems and provide services to the Reflections subdivision. *See* Amended Application, ¶ 13.

5. Osage also states in the Amended Application that it,<sup>1</sup> Great Southern Bank, the Master Association, and Reflections Condo entered into an Amended and Restated Agreement for Sale of Utility System (the “**Agreement**”).

6. According to Wherefore paragraph subpart (C), Osage seeks a “Certificate of Convenience and Necessity authorizing it to install, acquire, build, construct, own, operate, control, manage and maintain a sewer system for the public within the area currently served by the Associations (Reflections).” *See* Amended Application, page 17.

7. The basis for Osage’s Amended Application to purchase and operate the Systems is that it entered into the Agreement with Reflections Condo, the Master Association, and Great Southern Bank.

8. On August 2, 2019, pursuant to their reserved right to do so, Reflections Condo, the Master Association, and Great Southern Bank terminated the Agreement by sending a written letter to Josiah Cox, President of Central States. A true and accurate copy of the letter from Sue Schultz to Josiah Cox, dated August 2, 2019, is attached hereto as **Exhibit A**.

9. Thereafter, on August 15, 2019, Central States filed a lawsuit against Reflections Condo, the Master Association, and Great Southern Bank seeking an injunction and declaratory judgment (the “**Lawsuit**”), among other things, that the termination of the Agreement was improper and “null and void”, that the Agreement was still in effect, and to prevent the sale of the Systems to any other potential buyer. *See* Petition for Injunction & Declaratory Relief, Case No. 19CM-CC00158.

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<sup>1</sup> Osage is not a party to the Agreement. Central States Water Resources, Inc. is the purchaser of the System pursuant to the Agreement. Central States and Osage have never provided an assignment agreement to Reflections Condo, the Master Association, Great Southern Bank, or the Commission.

10. Central States, Reflections Condo, the Master Association, and Great Southern Bank engaged in numerous filings and briefing that culminated in a hearing on Central States' request for a temporary restraining order on August 22, 2019.

11. After reviewing the parties' written submissions and hearing oral argument from the parties, the Court entered an Order denying Central States' request for a temporary restraining order. A true and accurate copy of the Court's Order is attached as **Exhibit B**.

12. Central States has taken no action in the Lawsuit since its request for a temporary restraining order was denied on August 22, 2019. Central States has not served Reflections Condo, the Master Association, and Great Southern Bank with the Lawsuit. Nor has Central States taken any action to pursue an injunction or prosecute the Lawsuit.

13. The Agreement between Central States and Reflections Condo, the Master Association, and Great Southern Bank to purchase the Systems has been properly terminated.

14. The Systems have been sold to third parties.

15. Central States (and, presumably, its assignee Osage) has no contractual right or interest to purchase or operate the Systems.

16. Based on the foregoing, good cause exists for the Public Service Commission to dismiss Osage's Amended Application in its entirety or, at a minimum, dismiss the portion of the Amended Application addressing the Systems and Great Southern Bank, Reflections Condo and the Master Association. 20 CSR 4240-2.116(4).

17. The hearing is set for September 17 and 18, 2019. In order to avoid the time and expense of unnecessary parties appearing at the hearing, Reflections Condo, Master Association, and Great Southern Bank request that the Commission enter an order requiring all parties to respond to this motion within five (5) calendar days.

WHEREFORE, Reflections Condo, the Master Association, and Great Southern Bank respectfully request that the Public Service Commission dismiss Osage's Amended Application in its entirety or, at a minimum, dismiss the portion of the Amended Application addressing the Systems and Reflections Condo, the Master Association, and Great Southern Bank, and for such other relief as the Commission deems just and proper.

Respectfully submitted,

ROUSE FRETS WHITE GOSS  
GENTILE RHODES, P.C.

By: /s/Christopher L. Kurtz

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**ATTORNEYS FOR  
REFLECTIONS CONDOMINIUM  
OWNERS ASSOCIATION, INC.**

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By:/s/ Anthony J. Soukenik

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**ATTORNEY FOR REFLECTIONS  
SUBDIVISION MASTER ASSOCIATION,  
INC. and GREAT SOUTHERN BANK**



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August 2, 2019

*VIA EMAIL: jcox@cswrgroup.com*  
*FACSIMILE: 314-238-7201*  
*and CERTIFIED MAIL, RETURN*  
*RECEIPT REQUESTED*

Josiah Cox, President  
Central States Water Resources, Inc.  
500 Northwest Plaza Drive #500  
St. Ann, MO 63074

RE: **NOTICE OF THE TERMINATION** of Amended and Restated Agreement for Sale of Utility System dated December 14, 2018 (the "**Agreement**"), Great Southern Bank, Reflections Subdivision Master Association, Inc., and Reflections Condominium Owners Association, Inc. (collectively "**Seller**"), and Central States Water Resources, Inc. ("**CSWR**") for the transfer of the water and sewer systems (the "**Property**") serving the Reflections subdivision development in Camden County, Missouri (the "**Development**"). All terms not defined herein shall have such meaning as set forth in the Agreement.

Dear Mr. Cox:

As you know, this firm represents Great Southern Bank and Reflections Subdivision Master Association, Inc. under the above Agreement. Based upon the vote of all three entities constituting the Seller, Seller hereby terminates the Agreement, pursuant to the right reserved in Section 5 thereof, because the Closing has not occurred by December 31, 2018 (nor during the period since then).

CSWR chose to submit the Agreement for approval by the Missouri Public Service Commission (the "**PSC**") in conjunction with its submission of approval for several other systems, with the knowledge that other parties were interested in providing service to those other systems; and CSWR chose to request an acquisition premium and amounts to be included in rate base above the \$1.00 price CSWR would have paid for the Property, all causing a delay in the prosecution of the proceeding before the PSC. Despite our requests for the proceeding to be bifurcated, to allow more expedient prosecution, CSWR refused to do so. Based on the issues CSWR has chosen to raise in the proceeding, the end date for the proceeding cannot be predicted. Such delay is not acceptable to the Seller, as time is of the essence to the Seller and to the condition of the Property.

Further, based upon the data request responses and the testimony filed to date in the PSC proceeding, it has become apparent that CSWR would not provide the least cost qualified service to the Development. Others would be in a position to provide lower cost service and more efficiently address the concerns listed by the seller's engineers who have, previously, reviewed the Property's condition. These factors provide basis for even more delay in the PSC proceeding, as parties seek to submit responsive testimony and, potentially, appeal any decision the PSC would finally render.

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**EXHIBIT**

**A**

For all the foregoing reasons, the Seller entities have unanimously voted to terminate the Agreement pursuant to Section 5.

Should you have questions, please have your counsel direct them to the undersigned.

Very truly yours,



Sue A. Schultz

cc: James A. Beckemeier (via email and facsimile)  
Jennifer L. Hernandez (via email)  
Jessica Braden (via email)  
Anthony Soukenik (via email)  
Stanley Woodworth (via email)

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<input type="checkbox"/> Adult Signature Restricted Delivery	\$ _____
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	500 Northwest Plaza Dr., #500
City, State, ZIP+4®	St. Ann, MO 63074
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

8/2/19

Postmark  
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## Barbara A. Wunderlich

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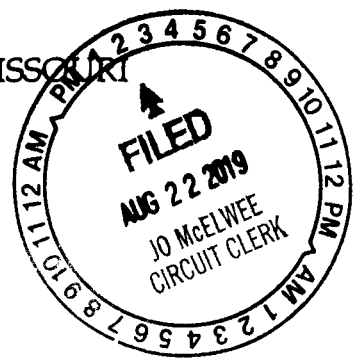


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Central States Water Resources, Inc.  
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\_\_\_\_\_

Plaintiff(s), )

Case Number: 19 cm-cc 0015 J

Great Southern Bank  
Reflections Subdivision Master Assoc.  
Reflections Condominium Owners, Inc.  
Association, Inc.

Defendant(s) )

MEMORANDUM

Re: Temporary Restraining Order

Motion for Plaintiff's Temporary Restraining Order, called, heard all parties represented. Temporary Restraining Order is denied.

Approved: [Signature]  
\_\_\_\_\_  
\_\_\_\_\_

Attorney(s) for Plaintiff(s)

Anthony J. Souther 34097  
for Great Southern Bank  
[Signature] 36143  
Atty for Master Assoc.  
Chris Keady Atty for Reflections  
Condo 61654

Attorney(s) for Defendant(s)

Dated: 8-22-19

SO ORDERED:

[Signature]  
\_\_\_\_\_  
Circuit Judge

