

KLB

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

In the Matter of the Application of Osage )  
Water Company for Permission, Approval, and a )  
Certificate of Convenience and Necessity )  
Authorizing It to Construct, Install, Own, ) Case No. WA-99-437  
Operate, Control, Manage and Maintain a Water )  
and Sewer System for the Public Located in an )  
Unincorporated Portion of Camden County, )  
Missouri, Known as Eagle Woods. )

**ORDER PARTIALLY GRANTING OBJECTION TO PUBLIC WITNESSES**

On June 24, 1999, the Missouri Public Service Commission (Commission) entered its Order Adopting Procedural Schedule which, *inter alia*, stated that "The Commission will require the prefiling of testimony as defined in 4 CSR 240-2.130. All parties shall comply with this rule...."

On November 1, 1999, the Staff of the Commission (Staff) filed a proposed list of issues, order of witnesses and order of cross-examination. Staff stated, *inter alia*, that the filing was made "...on behalf of all other parties...." Staff also included in its order of witnesses, a reference to "...[p]ublic witnesses (if any)...." (Emphasis in the original.)

On November 5, 1999, Osage Water Company (OWC) filed an objection to the proposed order of witnesses. OWC stated that Staff had not discussed with OWC nor had OWC agreed to the proposed order of witnesses. OWC stated that it "...specifically objects to Staff's proposal to allow [public witnesses] as set out in Staff's pleading

herein." OWC also stated that to allow testimony from "public witnesses" without the requirement that prefiled testimony be submitted for such "public witnesses" would be a direct violation of the Order Adopting Procedural Schedule. OWC stated that this would result in unfair surprise, numerous objections, and delays at the hearing caused by a lack of notice to OWC regarding the claims, contentions, and evidence in issue. OWC stated that this would also constitute a manifest injustice and denial of due process to OWC.

No party responded to OWC's objection.

The Commission is concerned that all parties to a hearing shall be provided their full procedural and substantive due process rights. Commission Rule 4 CSR 240-2.120(4) states, in part: "A presiding officer shall have the duty to conduct full, fair and impartial hearings...." To avoid endangering any party's due process rights, the Commission will decline to make a blanket ruling that a whole class of witnesses (in this case, "public witnesses") should be excluded from testifying at a hearing.

However, the Commission is also concerned that all parties to all hearings follow the Commission's rules and state statutes regarding the conduct of such hearings. If the Commission allowed a party to flout such rules and statutes, due process would again be endangered.

If any party to this case desires the testimony of any witness to be entered into evidence, it can either follow the dictates of the Order Adopting Procedural Schedule or Commission Rule 4 CSR 240-2.090(1) which states:

Any party, in any proceeding before the commission, may obtain discovery by one (1) or more of the following

methods: depositions upon oral examination or written questions, written interrogatories, requests for production of documents or things and requests for admission upon and under the same conditions as in civil actions in the circuit court. Sanctions for abuse of the discovery process or failure to comply with commission orders regarding discovery will be the same as those provided for in the rules of civil procedure.

The Commission thus agrees with that part of OWC's objection which relates to the process by which the evidence from "public witnesses" was attempted to be entered in this case. The Commission will not allow any testimony from any "public witness" which violates the Commission's rules or the state statutes under which it operates.

**IT IS THEREFORE ORDERED:**

1. That the objection to the proposed order of witnesses filed by Osage Water Company on November 5, 1999, is granted insofar as to prohibit the introduction of the testimony of any witness which does not comply with applicable Rules of the Commission or statutes of the State of Missouri.

2. That this order shall become effective on November 29, 1999.

BY THE COMMISSION



Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

( S E A L )

Bill Hopkins, Senior Regulatory Law Judge,  
by delegation of authority pursuant to  
4 CSR 240-2.120(1) (November 30, 1995)  
and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,  
on this 19th day of November, 1999.

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COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION