

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

In the Matter of the Application of Osage)	
Utility Operating Company, Inc. to Acquire)	Case No. WA-2019-0185
Certain Water and Sewer Assets and for a)	and SA-2019-0186
Certificate of Convenience and Necessity)	

**OSAGE UTILITY OPERATING COMPANY, INC.’s RESPONSE IN OPPOSITION TO
RENEWED MOTION TO STAY UNDER 386.500.3, RSMo**

COMES NOW Osage Utility Operating Company, Inc. (“OUOC” or “Company”), and for its *Response in Opposition to Renewed Motion to Stay Under 386.500.3, RSMo*, filed by Public Water Supply District No. 5 of Camden County, Lake Area Waste Water Association, Inc., Missouri Water Association, Inc., and Cedar Glen Condominium Owners Association, Inc. (collectively, “Movants”), states as follows to the Missouri Public Service Commission (“Commission”):

1. The Commission authorized OUOC to acquire the water and sewer assets of Osage Water Company in this matter by its *Report and Order* issued April 8, 2020 (“Report and Order”). The Report and Order was made effective thirty days after issuance, or May 8, 2020.
2. On May 5, 2020, Movants filed their *Joint Motion Under Section 386.500.3, RSMo, and Motion for Expedited Treatment*.
3. On May 7, 2020, less than one day before the Commission’s Report and Order was to become effective, the Movants, and the Office of Public Counsel (“OPC”), filed their *Joint Application for Rehearing* with the Commission. The Commission took no action on either the Motion for Stay, or the Application for Rehearing, and thus, the Report and Order became effective on May 8, 2020.
4. On May 11, 2020, Movants, also joined by OPC, filed their *Petition for Alternative Writ of Certiorari and Writ of Mandamus and Suggestions in Support* in the Missouri

Court of Appeals for the Western District seeking stay or suspension of the effective date of the Report and Order, in Case No. WD83773.

5. On May 15, 2020, the Court of Appeals issued an amended order stating that “any action related to the implementation of the Report and Order is stayed until further notice of this court except Respondent, Missouri Public Service Commission, may rule on Relator’s joint application for rehearing and the Public Counsel’s application for rehearing, and contact this court when a ruling has been made.” (emphasis added).

6. On June 3, 2020, the Court of Appeals denied the *Petition for Alternative Writ of Certiorari and Writ of Mandamus*.

7. On June 4, 2020, Movants filed their *Renewed Motion to Stay Under 386.500.3, RSMo, and Motion for Expedited Treatment* (“Renewed Motion”) with the Commission.

8. Movants now ask the Commission to stay the operation date of its own Report and Order nearly thirty days after the Order’s effective date (i.e. May 8, 2020), and before the Commission has ruled on Movants’ Application for Rehearing. Movants cite to Section 386.500.3, RSMo, as authority for the Commission to stay the effectiveness of its order after the order had become effective. However, when Section 386.500.3 is read in context with the rehearing and appeal provisions of Section 386.500, RSMo, *et seq*, no such remedy is expressly authorized by law. “An order is lawful if the [Commission] had the statutory authority to act as it did. Because the [Commission] is purely a creature of statute, its powers are limited to those conferred by statute either expressly, or by clear implication as necessary to carry out the powers specifically granted.” *State ex rel. Mo. Energy Dev. Ass’n v. Pub. Serv. Comm’n*, 386 S.W.3d 165, 169 (Mo. App. W.D. 2012) (internal citations omitted).

9. Section 386.500.3, RSMo, states that the filing of an application for rehearing does not stay a Commission order. Section 386.500.4, RSMo, states that even in the event that a rehearing is granted by the Commission, a subsequent order abrogating, changing, or modifying the original order does not affect any right or obligation created by the original order prior to the subsequent order granting rehearing becomes effective. Likewise, the mere appeal of a Commission order to the Court of Appeals under Section 386.510, RSMo, does not stay the effectiveness of that order, according to Section 386.520.1, RSMo. While a stay may be issued by the Court of Appeals, it may only do so after the posting of an appropriate appeal bond, and a determination by the court of great or irreparable harm would otherwise result to the appellant. Section 386.520.1, RSMo.

10. When the above-referenced statutes are considered together and properly construed, the Commission's authority to stay its own order under Section 386.500.3, RSMo, is limited to staying or postponing orders after an application for rehearing, but before the effective date of such order. Staying an order of the Commission after its effective date is properly the province of the Court of Appeals under Section 386.520.1 RSMo. The only action the Commission can properly do now is to grant or deny Movants' Application for Rehearing. Significantly, that is what the Court of Appeals' May 15, 2020 amended order would also suggest.

11. Even if the Commission determines it does have authority to stay the effective date of its Report and Order some thirty days after such Order has become effective, no such stay should issue without a weighing of potential harm and damages to all parties, and the posting of an appropriate bond. Movants seek to skirt these requirements by requesting a stay from the Commission, and not from the Court of Appeals.

12. Movants speculate in their Renewed Motion that if, in the absence of a stay of the Report and Order by the Commission, OUOC were to close on the purchase of the assets of Osage Water Company, then much of the Report and Order could be declared moot and effectively unreviewable. Although mootness may be a possibility, the plain language of Section 386.520.1, RSMo, clearly contemplates the possibility of adverse consequences to a party during the pendency of an appeal from the Commission. The state legislature specifically chose to distinguish between orders and decisions of the Commission that involve the establishment of rates and charges, which typically are not subject to stay, but are subject to post-appeal adjustments, (see Section 386.520.2, RSMo), and other orders which may only be stayed upon certain findings and the posting of an appropriate bond. Thus, the General Assembly understood parties might be adversely affected by orders taking effect while appeal is pending, yet expressly declined to provide for automatic stays.

13. In the event, however, the Commission finds that it has authority to stay its Report and Order after its effective date, it should not issue such stay, in the instant case, without a finding of great and irreparable harm, nor should it issue a stay without consideration of the damages OUOC, current Osage Water Company consumers, and the environment will suffer if the sale and subsequent repairs and improvements to the infrastructure are not allowed to proceed.

14. On May 18, 2020, the Missouri Department of Natural Resources (“DNR”) issued a letter of warning to Permittee Osage Water Company, Inc. regarding the Highway KK Wastewater Treatment Plant (see Exhibit No. 1, attached hereto). The DNR found the facility was out of compliance with Missouri Clean Water Law, Missouri Clean Water Commission regulations, and the Operating Permit. DNR inspection revealed that due to deteriorating

facilities, partially treated wastewater was “where it is reasonably certain to cause pollution of waters of the state [Sections 644.051.1(1) and 644.076.1, RSMo].” The report also detailed infrastructure repairs that are required to be addressed by June 29, 2020, and recommended repairs that will become required if left to deteriorate. Among the recommendations was that “the facility should be expanded to serve the additional load or possibly connect to a regional facility.”

15. On May 28, 2020, the DNR issued two letters of warning, one regarding Cimarron Bay/Harbor Bay Condominiums Wastewater Treatment Facility and a second regarding Cedar Glen Condominiums water system (see Exhibits No. 2 and 3, attached hereto). The Cedar Glen inspection found “extensive damage” and determined “[t]he public water system failed to properly operate and maintain the system, or is inadequate or of defective design, in violation of Safe Drinking Water Regulation 10 CSR 60-4.080(5).” The report details extensive recommended repairs and infrastructure upgrades. The Cimarron Bay/Harbor Bay Condominiums report found “[t]he facility to be out of compliance with the Missouri Clean Water Law, the Missouri Clean Water Commission regulations, and [the] Missouri State Operating Permit.” In that report, the DNR recommends “it may be time to consider a major repair or replacement of the wastewater treatment facility.”

16. It is unclear how the bankruptcy trustee will or can address the violations noted in the three DNR letters, bring the cited systems into compliance with applicable regulations, and eliminate the threats to the environment and customer safety the cited violations likely represent. Staying the effective date of the order and thereby allowing the infrastructure of the Osage Water Company to further deteriorate would not only harm OUOC, who seeks to mitigate any further loss caused by the crumbling of the wastewater treatment facilities and correct current non-

compliance, but would also harm consumers who are denied a properly operating water and wastewater system, and the environment at large.

17. Lastly the Commission should remember that this situation is different than most it encounters in that jurisdiction over the assets in question is shared with the U.S. Bankruptcy Court. As a matter of fact, Movants, on May 28, 2020, filed a *Complaint Seeking Declaratory and Injunctive Relief as to the Estate and Central States Water Resources, Inc. for the Transfer of Assets* with the Bankruptcy Court (see Exhibit No. 4, attached hereto). Movants seek a stay from the Bankruptcy Court preventing the Trustee and OUOC from consummating the sale of water and wastewater assets. Also enclosed are copies of the Bankruptcy *Trustee's Motion to Abstain from Exercising Jurisdiction Over Proceeding Pursuant to 28 USC Section 1334(c)(1) and To Dismiss the Complaint* (Exhibit 5 attached hereto), *Trustee's Suggestions in Opposition to Plaintiff's Request for Temporary Restraining Order* (Exhibit 6 attached hereto), and *Defendant Central States Water Resources, Inc.'s Suggestions in Opposition to Plaintiff's Request for Temporary Restraining Order* (Exhibit 7 attached hereto). Consequently, a closing on the sale of the water and wastewater assets will only take place under the supervision of the U.S. Bankruptcy Court and its Trustee. The Commission should not take action that would serve to usurp the Court's authority to address these assets.

WHEREFORE, OUOC respectfully requests the Commission deny Movants' *Renewed Motion to Stay Under 386.500.3, RSMo, and Motion for Expedited Treatment*, and for any other relief as the Commission deems proper and in the interest of justice.

Respectfully Submitted,

/s/ W.R. England
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