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January 15, 2001

Hon. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

FILED

JAN 18 2001

Missouri Public  
Service Commission

Re: Osage Water Company Small Company Rate Increase  
WR-2000-557  
~~SR-2000-556~~

Dear Judge Roberts:


Please find enclosed for filing in each of the above referenced matters the original and 9 copies of the following:

1. OWC's Response to OPC Motion to Suspend – WR-2000-557.
2. OWC's Response to OPC Motion to Suspend – SR-2000-556

Also enclosed is a copy of each pleading to be stamped "filed" and returned to me in the enclosed envelop.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely yours,

  
Gregory D. Williams

cc: Keith Krueger  
M. Ruth O'Neill

FILED

JAN 18 2001

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of Osage Water Company's  
Request for a Rate Increase for Sewer  
Service Pursuant to the Public Service  
Commission's Small Company Rate Increase  
Procedure.

Missouri Public  
Service Commission

Case No. SR-2000-556

**OSAGE WATER COMPANY'S RESPONSE TO  
OFFICE OF PUBLIC COUNSEL'S MOTION TO  
SUSPEND TARIFF SHEETS AND REQUEST FOR  
EVIDENTIARY HEARING AND TO QUASH DATA REQUESTS**

COMES NOW Osage Water Company and for its Response to the Office of Public Counsel's Motion to Suspend Tariff Sheets and Request for Evidentiary Hearing, and in response to Data Requests Nos. 1050 through 1054 submitted to Osage Water Company by the Office of Public Counsel states:

**APPLICABLE LAW AND REGULATIONS**

Section 393.140(11) grants this Commission the authority to regulate the rates charged by water and sewer corporations for water and sewer utility service, and further provides that "The commission shall have power to establish such rules and regulations to carry into effect the provisions of this subdivision, as it may deem necessary, and to modify and amend such rules or regulations from time to time."

Section 393.150 provides for a formal procedure for approval of rate increases and other tariff revisions requested by a water or sewer company, and provides a period of 30 days for review of tariff pages after filing, a 120 day suspension period for investigation and evidentiary hearing, and, if necessary, an additional 6 month period to complete the evidentiary hearing. Adding all of these periods together, the maximum time for which a rate increase tariff may be suspended is somewhat less than 11 months.

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Under the authority of Section 393.140(11), the Commission has adopted 4 CSR 240-2.200, its Small Company Rate Increase Procedure. Generally, that Rule requires that a Small Company Rate Increase Procedure be completed within 150 days. Generally, the Rule contemplates a cooperative proceeding in which the OPC and the Staff simultaneously review the books and records of the Company, develop their respective positions on the Company's requested revenue increase, and, based on customer responses to the initial customer notice letter, make recommendations regarding changes in the Company's operations. The rule specifically provides: "The commission staff and the public counsel shall exchange copies of customer responses upon their receipt." Additional time for investigation by OPC is not allowed by the Rule, which requires that "If public counsel wishes to conduct an investigation and audit of the company, it must do so in the same time period as staff's investigation and audit."

It is well settled law in Missouri that "every utility does have an undoubted constitutional right to such a fair and reasonable return [on its property invested], and this is a continuing right which does not cease after beginning rates are initially determined." State ex rel. Laclede Gas Co. v. Public Service Commission, 525 S.W.2d 561, 569 (Mo. App. 1976). This constitutional right is subject to the doctrine of "regulatory lag," which recognizes that "[b]ecause of the necessity to make these investigations, hold hearings, and permit arguments with respect thereto, the proceedings before regulatory bodies for rate increases inevitably entail considerable time and have led to delay in increases which is generally referred to as 'regulatory lag.' While this delay is regrettable, the courts have recognized that some lag is unavoidable and have generally held that no deprivation of constitutional rights occur because of suspension of the proposed increase pending a hearing thereon, *provided the delay for purposes of such hearing is not unreasonably long.*" Id. at 570 (emphasis added).

The question then presented is what constitutes a "reasonable delay," and, by corollary, an unreasonable delay. In this case, this Commission has held that "only in extraordinary circumstances (such as non-cooperation by the requesting utility) should the informal procedure take longer than the formal rate case procedure" of 150 days. (Order of September 5, 2000, page 2.)

OPC suggests in its Motion that rate increases in an informal proceeding can only be approved by the Commission where there is an agreement between the Staff and the Company, and the Public Counsel does not object. No specific citation to Rule 4 CSR 240-2.200 accompanies this assertion. A review of the Rule indicates that this is not correct. 4 CSR 240-2.200 (1)(G) provides that "If no agreement can be reached between the commission staff and the company, the company may initiate a standard rate case." In this case, an agreement between the commission staff and the company has been reached. Agreement or acquiescence by OPC is not required by the applicable regulations.

### **PROCEDURAL HISTORY**

On October 12, 1999, OWC filed its request for a rate increase herein pursuant to 4 CSR 240-2.200. On March 6, 2000, OPC filed its motion to open a docket and to schedule an early public hearing. On April 25, 2000, the Commission denied the request for an early public hearing, noting that such a hearing was not provided for by 4 CSR 240-2.200. On August 8, 2000, OWC filed its motion to compel the Commission's Staff to complete its investigation into the amount of any rate increase justified for OWC, noting that the time limitations of the informal rate case were not being observed by the Staff. In response thereto, the Commission ordered a prehearing conference that was held herein on September 14, 2000. OWC, the Staff, and the OPC all appeared at the prehearing conference. On October 4, 2000, OWC filed a

second motion to compel the Staff to complete its investigation. On November 15, 2000, a Disposition Agreement between OWC and Staff and proposed tariff pages were filed with the Commission. On December 19, 2000, the Commission ordered a local public hearing, which was held on January 9, 2001. On or about January 12, 2001, OPC filed its Motion to Suspend and Request for Evidentiary Hearing.

### **LACK OF PARTICIPATION BY THE OFFICE OF PUBLIC COUNSEL**

To the knowledge of OWC, the Office of Public Counsel has not conducted any formal investigation of OWC during the pendency of this proceeding, and OWC is certain that OPC has not conducted an audit of OWC's books, as no member of OPC's staff has ever requested an opportunity to review OWC's books and records. On October 5, 2000, Staff employee Wendell R. Hubbs forwarded the memorandum attached as Exhibit 1 hereto to OPC, enclosing the Staff's Revenue Requirement Accounting Run and related supporting documents, the Staff's rate design work papers, and a customer bill comparison based on Staff's recommended rate increase and rate design. On October 6, 2000, Mr. Hubbs forwarded revised copies of said documents to OPC as shown by Exhibit 2 attached hereto. On October 6, 2000, OPC replied by Exhibit 3 attached hereto. The response by OPC does not identify any errors in Staff's revenue requirement accounting run or rate design, nor does it request any changes in OWC's operations, but rather states that OPC believed a local public hearing was required to provide customers an opportunity to comment on the quality of service they were currently receiving.

OWC and the Commission's Staff reached an Agreement regarding Disposition of Small Company Rate Increase Request, prepared tariff sheets implementing the same, and filed both the agreement and the tariff sheets with the Commission on November 14, 2000. On November 16, 2000, the Commission directed the OPC to file a pleading indicating its agreement or

disagreement with the tariff sheets on or before December 8, 2000. On November 30, 2000, OPC filed a request for a local public hearing. On December 19, 2000, the Commission ordered that a local public hearing be held on January 9, 2001, and that OWC provide notice thereof to each of its customers. Counsel for OWC was out of state from December 21, 2000 until January 2, 2001. OWC's staff mailed notice of the local public hearing to each of its customers on December 30, 2000. OPC has complained about the wording of the notice provided by OWC to its customers, but did not provide a particular form of the notice at the time it requested that such notice be sent.

OPC has never made any request during this proceeding that OWC make any changes in its operations, has never requested any information regarding the potential cost of providing any additional services or the cost of any changes in OWC's operations. OPC simply has done nothing but request that local public hearings be held.

OWC is not in a posture to proceed with a contested rate case, or to convert this case into a contested rate proceedings. Under the Disposition Agreement with Staff, Staff required, and OWC has reluctantly agreed, that it will recover its legal expenses at the rate of \$1 per customer per month, without interest, until such time as this Commission determines that a different rate making treatment is appropriate. However, OWC is not willing to engage in any protracted litigation, including a contested rate case, if it is simply "throwing away" the legal fees incurred in such litigation.

Finally, on January 12, 2001, OPC submitted its Data Requests Nos. 1050 through 1054 to OWC. This case is not in a posture where data requests are appropriate, in that OPC was to complete its audit and investigation of OWC within the same time frame as the Commission's Staff. Staff (finally) completed its investigation and entered into a Disposition Agreement with

OWC last November. OPC's data requests are not timely, and should be quashed by the Commission.

### CONCLUSION


OWC is entitled by law to a fair return on its investment utilized to provide service to customers, over and above its operating expenses. OPC has failed during the pendency of this proceeding to provide any meaningful input into the process of determining what OWC's operating expenses are or should be. There is no reason to expect that OPC will develop through an adversarial evidentiary hearing information it was unable to develop during an informal non-adversarial proceeding, since OPC made no effort to participate in the informal process.

OPC apparently feels that allowing OWC a "return" on its investment is a "reward" which this Commission may in its discretion either grant or deny. That is not the function of this Commission. This Commission has the duty to protect customers from excessive charges by utilities, and to provide utilities and their investors with sufficient funds to operate and provide a reasonable return on the investment utilized to provide service to customers. The Commission's Staff has concluded that a rate increase is required, though not the amount requested by OWC. A compromise between Staff and OWC has been reached, after long delay and much negotiation.

OWC does not believe that the Disposition Agreement it has entered into with Staff is a "reward." Rather, it is a compromise of contested issues, as clearly stated in the Disposition Agreement. The Disposition Agreement imposes certain specific requirements on OWC, in response to service issues identified by the Commission's Staff. OPC chose not to participate in that process, and should not be rewarded for "opting out" with a contested proceeding which will only serve to further delay an already tardy proceeding. OPC has not identified any changes in OWC's operations that it is now recommending to the Commission, and which are not already

included in the Disposition Agreement. In the absence of such specific recommendations, the Commission has no basis for determining whether an evidentiary hearing would be appropriate herein. OPC should also not be allowed to commence its "investigation" at this time by submitting data requests to OWC, as the time for such an investigation has now passed.

**WHEREFORE**, OWC prays for an Order of this Commission denying the Motion to Suspend Tariff Sheets, Denying the Request for Evidentiary Hearing, Quashing Data Requests 1050 through 1054 tendered by OPC, and further entering its Order approving the tariff sheets heretofore filed by OWC.

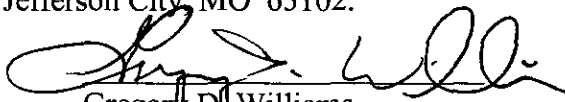
  
Gregory D. Williams #32272  
Highway 5 at Lake Road 5-32  
P.O. Box 431  
Sunrise Beach, MO 65079  
(573) 374-8761

Attorney for Osage Water Company

#### **CERTIFICATE OF SERVICE**

I, Gregory D. Williams, do hereby certify that a true copy of the foregoing was on this 17 day of January, 2001, mailed, postage prepaid, to the following:

Keith Krueger, MPSC, P.O. Box 360, Jefferson City, MO 65102.  
M. Ruth O'Neill, OPC, P.O. Box 700, Jefferson City, MO 65102.

  
Gregory D. Williams





**Commissioners**

**SHEILA LUMPE**  
Chair

**M. DIANNE DRAINER**  
Vice Chair

**CONNIE MURRAY**

**ROBERT G. SCHEMENAUER**

**KELVIN L. SIMMONS**

**Missouri Public Service Commission**

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**BRIAN D. KINKADE**  
Executive Director

**GORDON L. PERSINGER**  
Director, Research and Public Affairs

**WESS A. HENDERSON**  
Director, Utility Operations

**ROBERT SCHALLENBERG**  
Director, Utility Services


**DONNA M. KOLILIS**  
Director, Administration

**DALE HARDY ROBERTS**  
Secretary/Chief Regulatory Law Judge

**DANA K. JOYCE**  
General Counsel

**MEMORANDUM**

**TO:** John B. Coffman  
Office of the Public Counsel

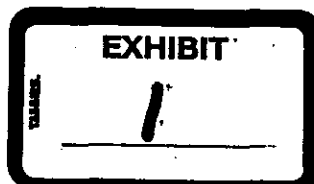
**FROM:** Wendell R. Hubbs   
Assistant Manager - Rates  
Water and Sewer Department

**SUBJECT:** Small Company Rate Increase Requests  
**Osage Water Company**  
Case Nos. SR-2000-556 & WR-2000-557  
Mo. PSC Tariff File Nos. 2000 00346 & 2000 00345

**DATE:** October 5, 2000

Regarding the above-referenced subject, I have attached for your review and comment the following documents: (1) the Staff's revenue requirement accounting run, and related supporting documents; (2) the Staff's rate design work papers; and (3) a customer bill comparison based upon the Staff's recommended rate increase and rate design.

Proposed tariff language changes and list of suggested system operation changes will be forthcoming, hopefully later today. The Staff's audit shows the need for an increase in the Company's annual water revenues of \$55,539 (approximately a 104.7% increase), and the need for an increase in the Company's annual sewer revenues of \$2,100 (approximately a 4.65% increase).



The Company originally requested an increase of \$209,578 for water revenues and \$98,625 for sewer revenues.

Please feel free to contact me by telephone at (573) 751-3437 if you have questions about any of the enclosed documents or if you need additional information. Please respond to me in writing as soon as possible about whether you agree with the Staff's proposals and/or with your offices counter proposals.

attachments

copies (memo only):

✓Mr. Greg Williams – Osage Water Company	
Greg Meyer	Martin Hummel
Jim Russo	James Merciel
Amanda McMellen	Dale Johansen
Janis Fisher	Joan Wandel
Ron Bible	Lisa Kremer
Keith Krueger	



*Commissioners*

**SHEILA LUMPE**  
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**MEMORANDUM**

**TO:** John B. Coffman  
Office of the Public Counsel

**FROM:** Wendell R. Hubbs   
Assistant Manager - Rates  
Water and Sewer Department

**SUBJECT:** Small Company Rate Increase Requests  
**Osage Water Company**  
Case Nos. SR-2000-556 & WR-2000-557  
Mo. PSC Tariff File Nos. 2000 00346 & 2000 00345

**DATE:** October 6, 2000

Regarding the above-referenced subject, Yesterday I attached for your review and comment the following documents: (1) the Staff's revenue requirement accounting run, and related supporting documents; (2) the Staff's rate design work papers; and (3) a customer bill comparison based upon the Staff's recommended rate increase and rate design. I found a problem with the run and have corrected it. Attached is the corrected runs and the proposed tariff language.

Please feel free to contact me by telephone at (573) 751-3437 if you have questions about any of the enclosed documents or if you need additional information. Please respond to me in writing as soon as possible about whether you agree with the Staff's proposals and/or with your offices counter proposals.



attachments

copies (memo only):

Mr. Greg Williams -- Osage Water Company	
Greg Meyer	Martin Hummel
Jim Russo	James Merciel
Amanda McMellen	Dale Johansen
Janis Fisher	Joan Wandel
Ron Bible	Lisa Kremer
Keith Krueger	



Martha S. Hogarty

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Mel Carnahan

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October 6, 2000

Mr. Wendell R. "Randy" Hubbs  
Assistant Manager-Rates  
Missouri Public Service Commission  
P O Box 360  
Jefferson City, MO 65102.

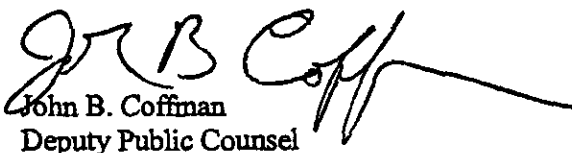
**Re: Case Nos. SR-2000-556 and WR-2000-557**

Dear Randy:

Thank you for your October 5, 2000 Memorandum regarding the recommendation of the Commission Staff for water and sewer increases for Osage Water Company. We will continue to review all of the information in this case but Public Counsel believes that the consumers should receive the second notice contemplated by the informal small company rules, informing them of the Staff recommendations.

Furthermore, Public Counsel continues to believe that the consumers of this company deserve a local public hearing in which they can provide comment regarding the quality of service they are currently receiving. Apparently, the Commission would only be interested in a public hearing after the second notice is sent. Yet this would require yet another notice to consumers. I would be willing to request the local public hearing now if we could file a three-way request with Staff and Osage Water Company. The benefit of requesting it now is that the utility company could combine the notice of the Staff recommendation together with the notice of a local public hearing thereby saving costs. Let me know if you think that a three-way recommendation or a local public hearing is possible at this point.

Sincerely,

  
John B. Coffman  
Deputy Public Counsel

JBC:jb

cc: Mr. Greg Williams, Osage Water Company

