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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 21st
day of October, 1998.

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,)
Operate, Control, Manage and Maintain)
a Water System for the Public Located)
in Parkview Bay Subdivision, Osage)
Beach, Missouri.)

Case No. WA-98-236 ✓

Osage Beach Fire Protection District,)
)
)
Complainant,)
)

v.)

Case No. WC-98-211

Osage Water Company,)
)
)
Respondent.)

**ORDER DENYING MOTION TO STRIKE, MOTION TO RESUME DEPOSITIONS, AND
MOTION FOR LEAVE TO SUBSTITUTE WITNESS AND FILE SUPPLEMENTAL TESTIMONY**

On September 16, 1998, Osage Water Company (Osage) filed a Motion to Strike in which it requests that the Commission strike portions of the prefiled testimony of several of the witnesses filing on behalf of the Osage Beach Fire Protection District (the District). In general, Osage argues that the portions of the testimony it seeks stricken is either irrelevant, or is improper expert testimony.

On October 7, the District filed a response opposing the motion to strike. Much of that response is incomprehensible because it repeatedly cites to Commission rules that do not exist. Furthermore, it was

untimely filed; 4 CSR 2.080(12) provides that parties shall have ten days to respond to any motion unless otherwise ordered by the Commission. Nonetheless, the Commission has considered the points raised in the response to the extent it can decipher them.

The standard by which an application such as the one at issue in Case No. WA-98-236 is reviewed is whether granting the application is necessary and convenient for the public service. Missouri courts have found that adequacy of facilities is a proper criterion to consider.

Consequently, it is not judicially remiss to conclude that 'adequate' facilities, although not an exclusive criterion, is in and of itself a proper criterion for determining whether a grant of territorial authority is 'necessary or convenient for the public service.' State ex rel. Ozark Elec. Co-op. v. Public Service Commission, 527 S.W.2d 390, (Mo. App. 1975), at 394.

Much of the testimony that Osage seeks to strike is offered by the District to support its position that the facilities of Osage are not adequate. The remainder properly rebuts issues raised in Osage's direct testimony. While it is true that some of the testimony of the District is somewhat rambling, none of it is so clearly irrelevant that it needs to be stricken. The Motion to Strike will be denied.

On October 14, the District filed a Motion to Resume Depositions or to Have Information Supplemented by Order of Public Service Commission. In that motion, the District claims that, at depositions of Gregory D. Williams, William P. Mitchell, and David Hancock, the deponents refused to answer certain questions. The deponents refused to divulge who the shareholders of Osage are, and the terms of a settlement of a civil suit between David Hancock and Osage. The District hypothesizes that Osage has issued stock to David Hancock as part of the settlement agreement, and suspects that this hypothesized issuance would impair Osage's

financial viability. In the deposition of Mr. Hancock, a portion of which is attached to the motion, Mr. Hancock stipulated that he was one of the shareholders of Osage. Forcing one of the other deponents to answer the question of who owns stock in Osage will not help the District to prove its hypothesis. The District also claims that it suspects Osage violated 4 CSR 240-2.060 by issuing stock without authority from the Commission¹. Whether Osage has violated any laws or Commission rules with respect to issuing stock is not a proper issue in this complaint, since it was not alleged in the complaint that initiated this case. Furthermore, the District does not explain how an issuance of stock to Mr. Hancock, if it did occur, would impair Osage's financial viability. Without an explanation of how prospective ratepayers might be harmed by such an issuance, the Commission will not attempt to breach a confidential settlement of a civil lawsuit. The Motion to Resume Depositions or to Have Information Supplemented by Order of Public Service Commission will be denied.

On October 1, Osage filed a Motion for Leave to Substitute Witness and File Supplemental Direct and Rebuttal Testimony. In that motion, Osage alleges that it "has recently determined that Gregory D. Williams will not be available to testify as a witness in this matter." Osage seeks to have William P. Mitchell, Vice President of Osage, adopt Mr. Williams' testimony. Osage chose not to reveal that the reason Mr. Williams would not be available to testify as a witness is that he would prefer to appear as counsel. In the portion of his deposition attached

¹ 4 CSR 240-2.060(8) merely prescribes the content of an application to issue stock. The requirement that a utility receive Commission authorization is created by Sections 393.180 and 393.200, RSMo 1994.

to the Motion to Resume Depositions or to Have Information Supplemented by Order of Public Service Commission filed by the District, Mr. Williams states that he intends to appear at that hearing as Osage's attorney.

On October 7, the District filed a response to the Motion for Leave to Substitute Witness and File Supplemental Direct and Rebuttal Testimony. This response by the District, like the response opposing the motion to strike, is nearly incomprehensible since not one of its citations to the Commission's rules is valid. The District appears to somehow anticipate that Osage will not appear at the hearing, and moves the Commission to dismiss the application based upon this anticipation. The Commission cannot dismiss a case for failure to appear before such failure actually occurs. The District in its response correctly points out that the matters testified to by Mr. Williams are personal observations and may not be within the experience of Mr. Mitchell. Since Mr. Williams is able to attend the hearing, but simply would prefer not to testify, the Commission will not allow his testimony to be adopted by another witness who may not be as familiar with the matters it addresses. The Commission will deny the Motion for Leave to Substitute Witness and File Supplemental Direct and Rebuttal Testimony.

IT IS THEREFORE ORDERED:

1. That the Motion to Strike filed on September 16, 1998, by Osage Water Company is denied.

2. That the Motion to Resume Depositions or to Have Information Supplemented by Order of Public Service Commission filed on October 14, 1998, by the Osage Beach Fire Protection District is denied.

3. That the Motion for Leave to Substitute Witness and File Supplemental Direct and Rebuttal Testimony filed on October 1, 1998, by Osage Water Company is denied.

4. That this order shall become effective on November 3, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Crumpton, Murray, Schemenauer
and Drainer, CC., concur.
Lumpe, Ch., absent.

Mills, Deputy Chief Regulatory Law Judge

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION