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January 25, 2001

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

FILED³
JAN 25 2001
Missouri Public
Service Commission

**Re: Osage Water Company
Case No. SR-2000-556**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of **Public Counsel's Reply to Company's Response to Motion to Suspend Tariff Sheets and Response to Company's Motion to Quash Data Requests**. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

M. Ruth O'Neill
Assistant Public Counsel

MRO:jb

cc: Counsel of Record

FILED³

JAN 25 2001

Missouri Public
Service Commission

**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) Case No. SR-2000-556

**PUBLIC COUNSEL'S REPLY TO COMPANY'S RESPONSE TO MOTION TO
SUSPEND TARIFF SHEETS, AND
RESPONSE TO COMPANY'S MOTION TO QUASH DATA REQUESTS**

COMES NOW, the Office of Public Counsel (Public Counsel), and respectfully replies to Osage Water Company's (Company's) response to Public Counsel's Motion to Suspend Tariff Sheets and Request for Evidentiary Hearing. In addition, this motion responds to the Company's Motion to Quash Data Requests sent by OPC to the Company. In support of this Motion, Public Counsel states as follows:

1. The Company's reliance on the time periods which are usually observed in small company rate cases is misplaced. The delays which are referred to in the Company's pleading, up until the date that Company and Staff filed the proposed tariffs, were either agreed to, or occasioned by, the Company.

2. The Company's pleading is misleading in its allegation that Public Counsel has lacked diligence in investigating Company's case in several respects. At pages 4-5, the Company suggests that Public Counsel failed to comply with a Commission imposed deadline of filing objections to the proposed rate increase, because Public Counsel did not file its objections on or before December 8, 2000. In making this allegation, the Company -- either inadvertently or deliberately -- misread the Commission's order of November 16, 2000. In that Order, the Commission directed Public Counsel to file a pleading "indicating its agreement or disagreement with the tariff sheets filed on

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November 14,2000, unless it requests a public hearing." Both the language of the Order, and Rule 4 CSR 2-200.1(E), provide for Public Counsel to either file its pleading regarding the proposed tariff **or** to request a public hearing within 20 days after the proposed tariff is filed. The language of the rule explicitly allows Public Counsel until 7 days **after** the public hearing to file its pleading regarding the proposed tariffs in a small company rate proceeding. (Emphasis added.)

3. The Company incorrectly asserts in its pleading that Public Counsel has not participated in this proceeding. In fact, Public Counsel has been involved since the inception of this case. Early on, Public Counsel learned of numerous customer service problems attributed to the Company. Based on the information obtained from Osage Water Company's customers, Public Counsel became concerned the Company was not complying with its duty to provide safe and adequate service to its customers. For this reason, Public Counsel filed its "Motion to Open a Formal Docket and Request for Early Public Hearings" on March 6, 2000.

4. The Company's response to that motion, received by Public Counsel on March 16, 2000, alleged that all service and quality issues of concern to Public Counsel occurred in the past, and that all complaints had been satisfactorily addressed. The Company vehemently opposed conducting a public hearing at that time. The Commission, referencing the Company's claim that the customer service issues no longer existed, denied Public Counsel's request for a local public hearing on April 25, 2000.

5. Following the denial of the request for local public hearing, Public Counsel continued to be involved in the case. Public Counsel has reviewed the Staff's work papers and continued to receive information from Company's customers. Public Counsel

suggested, in a letter dated October 6, 2000, (Company's Exhibit #3 attached to its Response) that the parties agree to conduct a local public hearing prior to the filing of any proposed agreement in this case. The Company declined to enter such an agreement, even though it knew of Public Counsel's concerns about service. Public Counsel reviewed the proposed agreement between Company and Staff, and conferenced with Staff members about certain terms of the agreement. Then, in a timely manner, Public Counsel requested a local public hearing, and the Commission granted that hearing. At the hearing, the Commission learned that the Company's customers continue to suffer from significant service problems. Following the hearing, and again in compliance with the time provisions of 4 CSR 2-200, Public Counsel filed its objection to the proposed agreement and requested an evidentiary hearing.

6. The primary purposes of the Commission's Small Company rate procedure are (1) to facilitate agreement between the parties regarding whether a rate increase is appropriate, and the amount of any such increase, and (2) to avoid charging rate case expense to a small customer base whenever possible. Public Counsel is concerned that many areas of disagreement remain between Staff and the Company in the "Agreement Regarding Disposition of Small Company Rate Increase Request" at the time it was filed. In light of the continuing customer complaints received by the Commission at the local public hearing and by Public Counsel and Staff, Public Counsel felt it had no choice but to move to suspend the tariff and request an evidentiary hearing. Public Counsel also believes that we have a right to request such hearing under the provisions of 4 CSR 2-200.

7. Although 4 CSR 2-200 does not explicitly state that no tariff shall take effect pursuant to the small company rate procedure without the approval of Public Counsel, there is no provision of that rule which allows such a tariff to take effect over the objection of public counsel in the absence of a hearing. In construing the language of the rule as a whole, it is clear that the rule contemplates settlement on the issue of the proposed rate increase between all of the parties. When the language of a statute or rule is clear and unambiguous, there is no need for statutory construction or interpretation. However, "when clearly necessary the strict letter of the act must yield to the manifest intent of the legislature." Brownstein v. Rhomberg-Haglin & Associates, 824 S.W.2d 13, 16 (Mo. banc 1992). In construing the intent of the commission from the language used in the rule, and give effect to that intent if possible, one must consider the words used in their "plain and ordinary meaning." State ex rel. Riordan v. Dierker, 956 S.W.2d 258, 260 (Mo. banc 1997).

Where the plain language requires some construction to determine the intent of the Commission one should assume that the Commission did not intend "an absurd result." Budding v. SSM Healthcare System, 19 S.W.3d 678 (Mo. banc 2000). In addition, "[v]arious sections of a single act [or rule] should be construed so as to render the [rule] a consistent and homogenous whole." State ex rel. Ashcroft v. Union Electric, 559 S.W.2d 216, 221 (Mo. App. W.D. 1978). Public Counsel's reading of the rule renders it consistent and avoids the absurd result suggested by the Company, whereby Public Counsel must agree to the terms of an agreement between Staff and the Company, or make a meaningless objection.

8. The purpose of 4 CSR 2-200 is to induce a settlement and avoid unnecessary expense. As much as Public Counsel would like to avoid the risk of imposing a greater financial burden on Company's customers, Public Counsel cannot acquiesce in a settlement which fails to require that the Company improve its customer service. As of the date of the local public hearing in this case, Company was not providing safe and adequate service, or indeed any service, to some customers.

9. In Case No. WR-2000-557, the "Disposition Agreement" provides that the Company

"will either seek certificates of convenience and necessity for those areas not currently certificated but where it is providing service under the provisions of its Commission-approved tariff or will dispose of the systems and terminate its service to such non-certificated areas....no later than June 30, 2001."

While Public Counsel agrees that the Company should either obtain certificates or stop serving those customers, Public Counsel is very concerned about the fact that the Company's response to this provision was to send notices to the customers in the uncertificated areas advising them that, in effect, the Company was abandoning those customers. The Commission received copies of the letters sent to Moss Cove and Cavern View customers into evidence at the local public hearing on January 9, 2001. Public Counsel cannot acquiesce to the "Disposition Agreement" unless the Company agrees that it will "dispose of the systems and terminate its service" to those customers in a manner by which the customers will be provided with safe and adequate service by an operator qualified to administer the system.

10. Throughout this matter, the Company has walked a semantic tightrope, resulting in misleading communications to its customers and to the Commission. The

Company has occasioned, and then objected to, delay by dragging its feet in providing the Staff auditors with necessary information. The company claims that Public Counsel merely complains but does not tell the Company how to solve its problems. It is not Public Counsel's job to micromanage Company's affairs. It is Public Counsel's job to determine whether Company is operating in a manner which provides its customers with safe and adequate service at a just and reasonable rate.

11. Public Counsel understands that the Company should be able to charge rates which are just and reasonable, in return for meeting its obligation to provide safe and adequate service. Just and reasonable rates should include giving the Company the opportunity to earn a reasonable return on its prudent investment. Nothing in Public Counsel's Motion to Suspend Tariff suggests otherwise. However, under the circumstances in this case, Public Counsel does not believe the 12.54% rate of return proposed is just and reasonable for a company which fails to adequately serve its customers. This Company has left customers without water for at least seven days, according to sworn testimony of witnesses at the local public hearing. The Company's failure to address an ongoing, long-lasting lack of service in the very week of the local public hearing demonstrates complete disregard for the Company's duties as a public utility in the State of Missouri. This, along with the other behavior exhibited by the Company while the 4 CSR 2-200 procedure was pending, illustrates Public Counsel's concern for the customers of Osage Water Company.

12. By asking for an evidentiary hearing in this case, it is not Public Counsel's intention to require that this matter be extended by eleven months. It is Public Counsel's intention to request that the Commission address matters of concern within the Staff and

Company's proposed agreements on the rate increase issues. Public Counsel anticipates that this matter can be addressed prior to the June 30, 2001, deadline the Company and Staff have settled on for resolving the issue of providing service in non-certificated areas.

Response to Motion to Quash

13. Public Counsel's right to submit data requests to a utility is not conditioned upon (1) the existence of an open case or (2) whether or not the utility is a party to a case. Section 386.450 RSMo authorizes Public Counsel to investigate utilities and to review any utility records whether or not a case is opened.

14. In order to determine whether the Company was complying with this mandate, Public Counsel submitted some data requests following the public hearing, including requests for financial information. In Raytown Water Company, Case No. WO-94-192, Order Compelling Answers to Data Requests, January 5, 1994, the Commission recognized Public Counsel's authority to inspect company records without any particular proceeding before the Commission. See also, In the Matter of the Application of United Water Missouri, Inc., for an Accounting Authority Order Related to FAS 106, Case No. WA-98-187, where the Commission granted Public Counsel's Motion to Compel response to Public Counsel's data request.

15. Section 386.710(2) RSMo further provides that Public Counsel may represent and protect the interests of the public in "any proceeding" and to that end has "all powers necessary or proper to carry out" that duty. § 386.710(4) RSMo. Cases SR-2000-556 and WR-2000-557 are proceedings before the Commission and Public Counsel's issuance of data requests in connection with these proceedings is proper.

The Commission's authority to obtain information from public utilities is not limited to contested case proceedings. Public Counsel's access to information is co-extensive with that of the Commission. § 386.450 RSMo. See, "Order Granting Public Counsel's Motion to Compel Data Requests Presented to AmerenUE and to Missouri Gas Energy and Sustaining Certain Objections," In the matter of 4 CSR 240-40.016 Proposed Rule - Gas Utilities, Marketing Affiliate Transactions, Case No. GX-99-445 (August 3, 1999).

16. In any event, the data requests at issue involve pending cases. While Public Counsel recognizes that, if it were to perform a complete audit of the Company, it should do so at the time that Staff is conducting its own audit, 4 CSR 2-200.1(A), this subsection should not be construed as a limitation on the time in which Public Counsel may request data from the Company. Especially in light of the on-going customer service problems testified to at the local public hearing, it is appropriate for Public Counsel to submit further data requests as necessary.

Conclusion

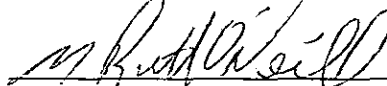
The Commission's small company rate case procedure was designed to facilitate settlement of small company's requests for rate increases without burdening the company, and its customers, with the expense of a formal rate case. Public Counsel agrees with this goal. Only rarely has Public Counsel disputed the agreements reached between Staff and a small utility company. These cases can be successfully negotiated approximately 90% of the time. Even in those 10% of cases where Public Counsel does not agree, it is rare for Public Counsel to move to suspend the tariff and request an evidentiary hearing. However, the Company's conduct during the case, including its

misrepresentations, obstructionist tactics and disregard for its duty to provide safe and adequate service required Public Counsel to file its Objection and Motion to Suspend in this case. The submission of data requests to the Company at that time was done to facilitate preparation for an evidentiary hearing.

WHEREFORE, it is respectfully requested that this Commission grant Public Counsel's Motion to Suspend and set this matter for evidentiary hearing, and that the Commission deny the Company's Motion to Quash Data Requests in this matter.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 25th day of January 2001:

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