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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 22nd
day of July, 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 REGARDING MOTION TO COMPEL, MOTION TO STRIKE,
AND MOTION TO DISMISS INTERVENTION

On April 13, 1998, the Osage Beach Fire Protection District (District) filed a motion to compel answers to data requests (DRs) it had propounded upon Osage Water Company (Osage). The District seeks an order from the Commission compelling Osage to answer DRs 1, 3, 4, 5, 6, 7, 8, 10, 12, 14, 16, 17, 27, 32, 33, 34, 36, 38, 41, 42, 44, and 47-72. Osage did not respond to DRs 47-72. Osage did, however, file a motion to strike these DRs on May 4. Osage also filed a response to the motion to compel on July 6. The Commission will discuss each data request, Osage's

response (if any), the District's argument in favor of compelling a response (if any), Osage's reply to those arguments, and the Commission's ruling.

DR 1: The District requested copies of Osage's 1992 and 1993 annual reports. Osage's response to the DR is that the District could obtain copies from the Commission and that Osage does not have "filed" copies. In its motion to compel, the District merely argues that the response is "non-responsive, evasive, negligent, possibly hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236." Osage responds to that argument by restating that the reports are available from the Commission, and adds that other DRs submitted by the District indicate that the District already has copies of the annual reports.

The Commission finds that annual reports are the type of basic information that any regulated utility should be prepared to provide to parties when it files a case. While the reports are available from the Commission, as the applicant and moving party in Case No. WA-98-236, Osage will be required to provide them.

DR 3: The District requested copies of Osage's 1994 and 1995 annual reports. Osage's response to the DR is that the District could obtain copies from the Commission and that Osage does not have "filed" copies. In its motion to compel, the District merely argues that the response is "non-

responsive, evasive, negligent, possibly hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236." Osage responds to that argument by restating that the reports are available from the Commission, and adds that other DRs submitted by the District indicate that the District already has copies of the annual reports.

The Commission finds that annual reports are the type of basic information that any regulated utility should be prepared to provide to parties when it files a case. While the reports are available from the Commission, as the applicant and moving party in Case No. WA-98-236, Osage will be required to provide them.

DR 4: The District requested copies of Osage's 1996 annual report. Osage's response to the DR is that the District could obtain a copy from the Commission and that Osage does not have a filed copy. In its motion to compel, the District merely argues that the response is "non-responsive, evasive, negligent, possibly hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236." Osage responds to that argument by restating that the report is available from the Commission, and adds that other DRs submitted by the District indicate that the District already has a copy of the annual report.

Although the District may already have a copy (since it was cited extensively in the District's direct testimony), the

Commission finds that annual reports are the type of basic information that any regulated utility should be prepared to provide to parties when it files a case. While the reports are available from the Commission, as the applicant and moving party in Case No. WA-98-236, Osage will be required to provide them.

DR 5: The District requested a copy of a letter from Staff to Osage. Osage's response to the DR is that the request is vague, that Osage does not know whether such a letter exists or where to locate it, or to what case file the letter refers. In its motion to compel, the District merely argues that the response is "non-responsive, evasive, negligent, possibly hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236." Osage responds to that argument by restating that the request does not identify the letter with sufficient specificity to allow Osage to respond, adds that the letter requested does not relate to this case since the letter is dated before this case was opened, and also adds that the phrasing of the DR indicates that the District already has a copy of it.

The Commission finds that the DR does not sufficiently identify the letter requested, and declines to compel Osage to provide it.

DR 6: The District requested a copy of a letter from Staff to Osage concerning deficiencies in Osage's annual reports. Osage's response to the DR is that the request is vague, that

Osage does not know whether such a letter exists or where to locate it, or to what case file the letter refers. In its motion to compel, the District merely argues that the response is "non-responsive, evasive, negligent, possibly hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236." Osage responds to that argument by restating that the request does not identify the letter with sufficient specificity to allow Osage to respond, adds that the letter requested does not relate to this case since the letter is dated before this case was opened, and also adds that the phrasing of the DR indicates that the District already has a copy of it.

The Commission sees nothing in the DR that would indicate that the District already has a copy. In this instance, it is clear that the letter requested does not refer to a specific case, but to Osage's annual report filings. The DR, with its reference to the subject and the date, sufficiently identifies the letter requested. The Commission finds that review of Staff's concerns about annual report deficiencies is reasonably calculated to lead to the discovery of relevant information, and will order Osage to provide it.

DR 7: The District requested a copy of a response Staff filed to a motion filed by Osage. Osage's response to the DR is that no such response or motion was filed in these cases. In its motion to compel, the District merely argues that the response is "non-responsive, evasive, negligent, possibly

hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236." Osage did not respond directly to this argument.

The Commission finds that the DR, since it does not give a case number, does not sufficiently identify the pleading requested. Furthermore, pleadings filed in Commission cases are public documents available from the Commission. The Commission therefore declines to compel Osage to respond to this DR.

DR 8: The District requested a copy of Osage's response to Staff's letter about Osage's annual report deficiencies. Osage's response to the DR is that the request is vague, that Osage does not know whether such a letter exists or where to locate it, or to what case file the letter refers. In its motion to compel, the District merely argues that the response is "non-responsive, evasive, negligent, possibly hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236." Osage did not respond to that argument.

The DR gives the date of the letter as well as the topic, so Osage should be able to identify it and provide its response. The Commission finds that Osage's response to the Staff's concerns about annual report deficiencies is reasonably calculated to lead to the discovery of relevant information, and will order Osage to provide it.

DR 10: The District requested: 1) a copy of the permit issued by Missouri Department of Natural Resources (DNR) on April 7, 1997; and 2) a copy of plans and specifications that Osage submitted to DNR on March 19, 1997. Osage's response to the DR is that the request is vague, and that Osage has submitted numerous plans and obtained numerous permits. Osage attached a copy of a letter from DNR dated April 9, 1997 that appears to be responsive to 1). It also offered to make available (for the cost of reproduction) documents responsive to 2) from the engineering firm that produced them. In its motion to compel, the District merely argues that the response is "non-responsive, evasive, negligent, possibly hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236." Osage responds to that argument by stating that it has already fully answered the DR to the extent it requests information about the subdivision that is at issue in this case.

The Commission finds that Osage's response is sufficient.

DR 12: The District requested communications between Osage or its attorney and 1) Stern Brothers and Company, 2) Raul Walters Properties, and 3) Fred Meyer. Osage responded that no communications responsive to 3) exists, and the communications responsive to 1) and 2) are irrelevant and may be protected by attorney-client privilege. In its motion to compel, the District merely argues that the response is "non-responsive,

evasive, negligent, possibly hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236." Osage responds to that argument by restating that the information is irrelevant, may be privileged, and adds that responsive documents are voluminous and in storage in closed files such that production would be burdensome.

Although this brief allegation is insufficient for the Commission to find the documents privileged, the Commission finds any possible relevance to be outweighed by the burden of producing responsive documents. The Commission therefore declines to compel Osage to respond to this DR.

DR 14: The District requested: 1) correspondence between Osage and Mercantile Bank concerning a 1994 loan request; 2) whether the request was approved; and 3) a list of other banks where Osage applied for a revolving line of credit. Osage responded that the communications responsive to 1) are irrelevant and protected by attorney-client privilege. It answered parts 2) and 3). In its motion to compel, the District merely argues that the response is "non-responsive, evasive, negligent, possibly hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236." Osage responds to that argument by restating that the information is irrelevant and may be privileged.

Although this brief allegation is insufficient for the Commission to find the documents privileged, the Commission finds that communications about a loan request that Osage made five years ago and then withdrew are not relevant and not reasonably calculated to lead to the discovery of relevant information. The Commission finds that Osage's response is sufficient and will not order a further response.

DR 16: The District requested a breakdown of Osage's total plant by Uniform System of Accounts (USOA) plant accounts. Osage provided a copy of an asset listing report that breaks down its total plant into various items, but not into USOA plant accounts. In its motion to compel, the District merely argues that the response is "non-responsive, evasive, negligent, possibly hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236." Osage responds to that argument by stating that it provided all information in its possession, and states that requiring it prepare documents not kept in the ordinary course of its business would be unduly burdensome.

The Commission finds that information about Osage's plant is relevant to this case, and notes that the Commission's rules (4 CSR 240-50.030) require this information to be kept by USOA plant accounts. The Commission will order Osage to provide the requested information.

DR 17: The District requested Osage's depreciation rate schedules for each USOA account. Osage referred to the

document provided in response to DR 16, and referred to documents provided by the Staff but not in Osage's possession, but did not provide the information requested. In its motion to compel, the District merely argues that the response is "non-responsive, evasive, negligent, possibly hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236." Osage responds to that argument by stating that it provided all information in its possession.

The Commission finds that information about Osage's depreciation rates is relevant to this case, and will order Osage to provide the requested information.

DR 27: The District requested details behind a calculation in a Staff memorandum. Osage responded that it does not have the data upon which the Staff made its calculation. In its motion to compel, the District merely argues that the response is "non-responsive, evasive, negligent, possibly hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236." Osage did not respond to that argument.

Since Osage does not have the information requested, and since the information relates to a Staff memorandum and is therefore presumably discoverable from Staff, the Commission will not order Osage to provide the requested information.

DR 32: The District requested information about a DNR violation and the Parkview operations. Osage answered this

DR. The District's motion to compel does not discuss why it believes the answer is unsatisfactory but merely states that the response is "non-responsive, evasive, negligent, possibly hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236."

The Commission will not speculate about why the District finds the answer insufficient. The motion to compel will be denied.

DR 33: The District requested an application that Osage submitted to DNR. Osage stated in its response that it does not have a copy of this application. In its motion to compel, the District merely argues that the response is "non-responsive, evasive, negligent, possibly hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236." Osage responds to that argument by stating that it provided all information in its possession.

Osage does not claim that the information is irrelevant, does not explain why it failed to keep a copy, and does not claim that it is unable to obtain a copy from DNR. The Commission finds that the requested application may be relevant to this case, and will order Osage to provide it.

DR 34: The District requested: 1) "as built" plans; 2) documents relied upon by Osage in making a certain statement; and 3) an emergency operating plan submitted to DNR. In response, Osage offered to make available (for the cost of

reproduction) documents responsive to 1) from the engineering firm that produced them. Osage asserts that it did not make the statement that is the subject of 2), and so did not provide any documents. Osage states that it does not have a copy of the plan requested in 3). In its motion to compel, the District merely argues that the response is "non-responsive, evasive, negligent, possibly hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236." Osage responds to that argument by stating that it provided all information relevant to part 3) in its possession.

The Commission finds Osage's response to parts 1) and 2) to be adequate. With regard to part 3), Osage does not claim that the information is irrelevant, does not explain why it failed to keep a copy, and does not claim that it is unable to obtain a copy from DNR. The Commission finds that the requested plan may be relevant to this case, and will order Osage to provide it.

DR 36: The District requested information concerning unpaid invoices from Hancock Construction. Osage responded that the information requested is irrelevant and protected by attorney-client privilege. In its motion to compel, the District merely argues that the response is "non-responsive, evasive, negligent, possibly hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236." Osage responds to that argument by restating that

(the information is irrelevant and may be privileged, and adds that the information is sought by the District's expert witness for use in a civil lawsuit in which that expert has also been retained.

Although this brief allegation is insufficient for the Commission to find the information privileged, the Commission does not find it relevant or reasonably calculated to lead to the discovery of relevant information. The Commission therefore declines to compel Osage to respond to this DR.

(**DR 38:** The District requested information concerning unpaid invoices from Hancock Construction. Osage responded to two of the three parts of the DR, and asserts that the information requested in the third is protected by attorney-client privilege. In its motion to compel, the District merely argues that the response is "non-responsive, evasive, negligent, possibly hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236." Osage responds to that argument by stating that the information is irrelevant and may be privileged, and adds that the information is sought by the District's expert witness for use in a civil lawsuit in which that expert has also been retained.

(Although this brief allegation is insufficient for the Commission to find the information privileged, the Commission does not find it relevant or reasonably calculated to lead to the discovery of relevant information. The Commission

therefore declines to compel Osage to respond to this DR.

DR 41: The District requested a copy of "Commission Order WA-94-132." In response, Osage points out that the Commission issued a number orders in that case. In its motion to compel, the District merely argues that the response is "non-responsive, evasive, negligent, possibly hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236." In response to this argument Osage restates that it is unclear which order is requested, and adds that none of the orders in that case are relevant and that Commission orders are available from the Commission.

The Commission finds that the DR does not sufficiently identify the order requested. Furthermore, orders in Commission cases are public documents available from the Commission. The Commission therefore declines to compel Osage to respond to this DR.

DR 42: The District requested documents having to do with retained earnings. In response, Osage states that the request does not make sense. In its motion to compel, the District merely argues that the response is "non-responsive, evasive, negligent, possibly hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236." In response to this argument Osage restates that the request makes no sense.

The Commission agrees that the DR is unclear. Since the District in its motion to compel did not even attempt to

explain what information was sought, the Commission will not compel Osage to answer it.

DR 44: The District requested copies of unpaid promissary [sic] notes of Gregory D. Williams, and possibly other stockholders of Osage Water. In response, Osage states that Gregory D. Williams is not a party and has no obligation to provide this information and that the information is irrelevant. In its motion to compel, the District merely argues that the response is "non-responsive, evasive, negligent, possibly hazardous to the public and involves a lack of required production from the moving party in Case WA-98-236." In response to this argument Osage restates that Gregory D. Williams is not a party and has no obligation to provide this information and that the information is irrelevant.

The Commission finds that the information sought does not appear relevant or likely to lead to the discovery of relevant information, and the Commission will not compel Osage to answer this DR.

DRs 47 through 72: Osage did not respond or object to any of these DRs. In its motion to compel, the District merely states that Osage has not answered them. In its response to the motion to compel, Osage detailed the reasons it did not answer each DR, and raised objections to many of them.

Without a detailed explanation from the District as to why the information sought in each subpart of each DR is

relevant, the Commission is unable to determine that the information sought is relevant or likely to lead to the discovery of relevant information, and the Commission will not compel Osage to answer these DRs.

On May 4, Osage filed a motion to strike DRs 47-72 propounded by the District. On June 2, the Commission denied that motion. On July 6, Osage filed the same motion (with only the date of service changed) that the Commission denied on June 2. The motion is again denied, for the reasons set forth in the June 2 order.

On April 29, Osage filed a motion to dismiss the intervention of the District. On June 30, the District filed a response in opposition to the motion to dismiss its intervention, and Osage filed suggestions in support of its motion on July 6. In general, Osage believes that the allegations upon which the District based its application to intervene are no longer true. However, the Commission did not grant intervention based upon the allegations discussed by Osage, but rather, as stated in its Order Regarding Motion to Dismiss, Motion to Consolidate and Application to Intervene issued on February 11, based its decision upon a finding that "pursuant to 4 CSR 240-2.075(4)(B) the District is a political subdivision and pursuant to 4 CSR 240-2.075(4)(A) it has an interest in this proceeding different from the general public." Both of these findings are still valid, and the District's status as an intervenor should continue.

IT IS THEREFORE ORDERED:

1. That the motion to compel answers to data requests filed on June 18, 1998, by the Osage Beach Fire Protection District is denied

(in part and granted in part as discussed herein.

2. That Osage Water Company shall provide, by August 8, 1998, answers to the Data Requests concerning which the motion to compel is granted.

3. That the motion to strike data requests filed on July 6, 1998, by Osage Water Company is denied.

4. That the motion to dismiss the Osage Beach Fire Protection District as an intervenor filed on April 29, 1998 by Osage Water Company is denied.

5. That this order shall become effective on August 4, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Mills, Deputy Chief Regulatory Law Judge

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION