

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

**PUBLIC WATER SUPPLY DISTRICT NO. 5 OF CAMDEN COUNTY, LAKE AREA
WASTER WATER ASSOCIATION, INC., AND MISSOURI WATER ASSOCIATION,
INC.'S MOTION TO STRIKE PORTIONS OF THE WRITTEN SURREBUTTAL
TESTIMONY OF TODD THOMAS AND JOSIAH COX, OR ALTERNATIVELY,
MOTION FOR LEAVE TO FILE TESTIMONY IN RESPONSE**

COMES NOW Public Water Supply District No. 5 of Camden County, Missouri, Lake Area Waste Water Association, Inc., and Missouri Water Association, Inc. (collectively referred to herein as the "Movants"), by and through counsel and respectfully move to strike portions of the prefiled written surrebuttal testimony of Osage Utility Operating Company, Inc.'s witnesses Todd Thomas and Josiah Cox including the schedules referred to in such testimony. In support thereof, Movants submit the following:

MOTION TO STRIKE

1. On September 4, 2019, Todd Thomas and Josiah Cox caused to be filed written surrebuttal testimony. On the pages and in the lines identified below, Mr. Thomas and Mr. Cox have failed to limit their testimony to material which is responsive to matters raised in rebuttal testimony in violation of the Commission's evidentiary rule 20 CSR 4240-2.103(7)(D)

Todd Thomas Surrebuttal

2. In his surrebuttal testimony, Mr. Thomas discusses Public Water Supply District No. 5's history of compliance with the Missouri Department of Natural Resources regulations on the following pages and line numbers:

Page 3	Lines 16-23
Page 4	Lines 1-23
Page 5	Lines 1-23
Page 6	Lines 3-9

3. In his surrebuttal testimony, Mr. Thomas discusses Lake Area Waste Water Association, Inc.'s, and Missouri Water Association, Inc.'s history of compliance with the Missouri Department of Natural Resources regulations on the following pages and line numbers:

Page 6	Lines 10-23
Page 7	Lines 1-22
Page 8	Lines 1-23
Page 9	Lines 1-23
Page 10	Lines 1-23
Page 11	Lines 1-23
Page 12	Lines 1-23
Page 13	Lines 1-16

4. Mr. Thomas purports to be responding to the rebuttal testimony of Office of Public Counsel witness Keri Roth in the above noted pages and lines of his surrebuttal. In actuality, his testimony is rebuttal to the direct testimony of David Stone and Neddie Goss, particularly with respect to their testimony that acquisition of the Osage Water Company's water distribution and wastewater assets would benefit the public in general. Issues about the Movants' qualifications to provide water and sewer services and the public interest were raised in Mr. Stone's and Mr. Goss's direct testimony and were subject to the deadline of August 12, 2019, set by the Commission for filing rebuttal testimony.

5. Failure of OUOC, Mr. Thomas and Mr. Cox to file timely rebuttal testimony and his delay in filing his rebuttal until the surrebuttal phase of this matter violates Commission rules and unfairly prevents Movants and other parties from issuing data requests and filing responsive testimony, which is unfair, detrimental and prejudicial to Movants.

6. In surrebuttal, Mr. Thomas also questions the cost estimate of \$39,000 for improvements to the Osage Water Company assets serving Cedar Glen on the following pages and lines:

Page 13 Lines 21-23

Page 14 Lines 1-27

Page 15 Lines 1-23

Page 16 Lines 1-6

7. Mr. Thomas purports to be responding to the rebuttal testimony of Cedar Glen witness Ken Hulett. In actuality his testimony constitutes rebuttal to the direct testimony of David Stone in which the \$39,000 estimated cost of Cedar Glen facility improvements was first raised.

8. Issues about the estimated costs of the Cedar Glen facilities as first testified by Mr. Stone in his direct testimony was subject to rebuttal by the Commission's deadline of August 12, 2019.

9. Failure of Mr. Thomas to file timely rebuttal and his delay in filing his rebuttal until the surrebuttal phase of this matter violates Commission rules and unfairly prevents Cedar Glen and other parties from filing responsive testimony to their prejudice.

Josiah Cox Surrebuttal

10. On page 12, lines 3-12 of his surrebuttal, Mr. Cox refers to the surrebuttal testimony submitted by Mr. Thomas regarding the District’s qualifications to serve Cedar Glen and the public interest. Mr. Cox’s conclusions in his testimony rely on testimony of Mr. Thomas which should be stricken.

MOTION FOR LEAVE TO FILE RESPONSIVE TESTIMONY

11. Under the Commission’s evidentiary rules, parties are not permitted to submit responsive testimony to surrebuttal. The surrebuttal testimony of Mr. Thomas and Mr. Cox contains new matters which should have been filed as rebuttal and Movants and other parties will be prejudiced if not allowed to submit data requests and testimony regarding the new matters. In the event the Commission does not strike the surrebuttal testimony of Mr. Thomas and Mr. Cox as set forth in the foregoing, Movants respectfully request the Commission to grant Movants and all other parties leave to issue data requests regarding the new matters and to file testimony in response, and also to alter the procedural schedule adopted in this matter to allow for the filing of responsive testimony.

WHEREFORE, Movants respectfully request the Commission to enter the following relief:

- a) Strike the portions of the prefiled written surrebuttal testimony of Osage Utility Operating Company, Inc.’s witnesses Todd Thomas and Josiah Cox as identified herein including any annexed schedules to such testimony, and further order and declare that such testimony is irrelevant and inadmissible; or
- b) Alternatively, in the event the Commission overrules this Motion to Strike, grant Movants and all other parties leave to file testimony in response; and

- c) Modify the procedural schedule to allow a reasonable time, not less than twenty-one (21) days, for the parties to prepare and file responsive testimony.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 9th day of September, 2019, to:

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