

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	]	

**RESPONSE IN OPPOSITION**  
**TO THE STAFF RECOMMENDATION**

COME NOW the Public Water Supply District No. 5 of Camden County, Missouri ("PWSD #5"), Lake Area Waste Water Association, Inc. ("LAWWA"), and Missouri Water Association, Inc. ("MWA") (collectively referred to herein as the "District"), and submit their Response in Opposition to the Staff Recommendation.

**INCORPORATION**

The District has reviewed Cedar Glen Condominium Owners Association, Inc.'s Response to Staff Recommendation and agrees with all points made therein. In an effort to avoid redundancy, the District will not duplicate the facts and arguments stated therein. The District hereby incorporates those facts and arguments in their entirety in to this Response in Opposition to the Staff Recommendation. The District does have some additional facts and arguments to be made as a supplementation to Cedar Glen's Response.

**THE STAFF RECOMMENDATION**

The Staff has recommended that the Commission approve Osage Utility Operating Company, Inc.'s ("Osage") application for Certificates of Convenience and Necessity for the Osage Water Company ("OWC") and Reflections utilities assets. The Staff Recommendation points out that Osage is seeking acquisition incentives in conjunction with its Application to acquire such assets, specifically a rate of return premium and a debit acquisition adjustment.

**STANDARD OF REVIEW  
OF APPLICATION FOR SALE OF ASSETS**

4 CSR 240-10.085 (4) governs the acquisition of nonviable utilities, which states the following:

(4) When submitting an application for an acquisition incentive to acquire a nonviable utility, the acquiring utility has the burden of proof and shall demonstrate the following:

(A) The acquiring utility is not a nonviable utility and will not be materially impaired by the acquisition;

(B) The acquiring utility maintains the managerial, technical, and financial capabilities to safely and adequately operate the system to be acquired;

(C) The system to be acquired is a nonviable utility;

(D) The purchase price and financial terms of the acquisition are fair and reasonable and have been reached through arm's-length negotiations;

(E) Any plant improvements necessary to make the utility viable will be completed within a reasonable period of time, as specified in the application, after the effective date of acquisition;

(F) How managerial or operational deficiencies that can be corrected without capital improvements will be corrected within six (6) months of the acquisition;

(G) How planned capital improvements and operational changes will correct deficiencies;

(H) The acquisition is in the public interest; and

(I) The acquisition would be unlikely to occur without the probability of obtaining an acquisition incentive.

The above state regulation places the burden of proof on Osage, and requires Osage to demonstrate, that the purchase price and financial terms of the acquisition are fair and reasonable

and have been reached through arm's-length negotiations, that the acquisition is in the public interest, and that the acquisition would be unlikely to occur without the probability of obtaining an acquisition incentive.

### **THE FINANCIAL TERMS OF THE ACQUISITION**

The District opposes the Staff Recommendation because it completely lacks any analysis or inquiry with respect to the financial terms of Osage's acquisition of the OWC and Reflections utility assets and the necessary improvements thereto.

The District has requested the name of the lender, all persons having an ownership interest in the lender, the interest rate, the repayment terms and other information attempting to discover the reasonableness of the financial terms for the acquisition and improvement to the assets, but Osage has not yet provided any such information. The Staff did not even address this requirement before recommending that the Commission approve Osage's application.

In *Hillcrest*, it was questioned as to whether the same players behind the current application, Central States Water Resources, Inc., Josiah Cox and First Round CSWR engaged in an arm's length transaction with respect to the 14% costs of debt claimed by Hillcrest Utility Operating Company, Inc. *Matter of Water Rate Request of Hillcrest Util. Operating Co., Inc.*, 523 S.W.3d 14 (Mo. App. W.D. 2017). The District has the same questions regarding the current transaction and Osage is required to demonstrate that it has engaged in an arm's length transaction with respect to the financing of the purchase and improvements to the assets. There is no doubt, that just as was done in Hillcrest, the purchase of the OWC and Reflections assets will be followed immediately by an application for a rate increase, which will pass the debt cost on to the public.

In contrast, the District voters authorized it to utilize revenue bonds and the District has remaining voted authority to bond an additional \$1,426,000 to fund the purchase of the OWC assets. The revenue bond rate would be approximately 4.25%, which would result in substantial savings to the public.

The Commission should reject the Staff Recommendation and schedule this matter for a full evidentiary hearing imposing upon Osage all the requirements of the state regulations.

### **PUBLIC INTEREST**

The District opposes the Staff Recommendation because it merely concludes that Osage's acquisition of the OWC and Reflections utility assets "would not be detrimental to the public interest". This conclusion is made without identifying any facts or stating any analysis of the issue.

The acquisition of the OWC and Reflections utility assets by Osage will be detrimental to public interest. If Osage's application is approved, all customers of these systems will face substantial rate increases which is detrimental to public interest. Further, substantial rate increases have a detrimental effect on property values and even the ability to sell one's property.

Further, the Staff states it also considers whether or not other utility entities are available to provide similar service; however, the Staff makes no analysis of the District's ability to provide the same service and the benefits of the District acquiring the OWC and Reflections utility assets.

The Commission should reject the Staff Recommendation and schedule this matter for a full evidentiary hearing to determine if Osage's acquisition of the OWC and Reflections utility assets is detrimental to public interest in light of the District being able to provide the same service at significantly lower rates.

**THE ACQUISITION WILL OCCUR  
WITHOUT ACQUISITION INCENTIVES**

The District remains ready, willing and able to acquire the OWC assets without acquisition incentives, which will be passed on to the customers through rate increases. The regulations state that Osage shall demonstrate that the acquisition of the assets will not occur without acquisition incentives. Osage will be unable to demonstrate this requirement and the Staff Recommendation totally ignores it.

**THE BANKRUPTCY COURT SALE**

The Staff of the Missouri Public Service Commission ("Staff") attached to its Staff Recommendation as Attachment B, a letter prepared by the law firm of Spencer Fane, which represented Jill Olson, the bankruptcy trustee. The letter repeatedly states the objective of the trustee and her counsel, which is to maximize the value of the bankruptcy estate. There was zero consideration given to the public's interest in selling the assets to a purchaser that could provide service to the public at a reasonable rate. The goal of the bankruptcy trustee was simply to obtain the most she could for the bankruptcy estate.

The result of the auction is that Osage and the District have matching offers to purchase the OWC assets. Due to Osage simply being granted the "stalking-horse" purchaser designation, it has been declared as the winning bidder.

**WHEREFORE**, the District prays that the Commission reject the Staff Recommendation and for such other and further orders as the Commission deems just and proper in this matter.

ELLSWORTH & HARDWICK

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ASSOCIATION, INC. AND MISSOURI  
WATER ASSOCIATION, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served via email to all counsel of record on the official service list for this case on this 3<sup>rd</sup> day of June, 2019.

/s/ J. Aaron Ellsworth  
J. Aaron Ellsworth