

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

SUMMIT INVESTMENT, LLC,)	
)	
Complainant)	
)	File No. SC-2014-0214
v.)	
)	File No. WC-2014-0215
OSAGE WATER COMPANY,)	
)	
Respondent.)	

REPLY BRIEF OF RESPONDENT OSAGE WATER COMPANY

Comes now the Respondent, Osage Water Company ("Osage"), and for its Reply Brief, states to the Commission as follows.

INTRODUCTION

The factual background of this case is complex, and not easily understood. This Reply Brief, therefore, begins with a recap of the facts, including the correction of misstatements found in the Brief of Complainant Summit Investment, LLC ("Summit"). This Brief then responds to each of the three main points in Summit's Brief, and concludes by briefly addressing the ultimate issues before the Commission.

CONSTRUCTION OF WATER SUPPLY AND SEWAGE TREATMENT FACILITIES

The facts recited in Summit's Brief, about the construction of the water supply and sewage treatment facilities at Eagle Woods, require some clarification. Contrary to a statement in Summit's Brief, Summit never obtained from the Commission a Certificate of Convenience and Necessity to provide water or sewer services to Eagle Woods; nor did it ever transfer such a certificate to Osage.

Rather, Eagle Woods LLC (an affiliate of Summit) did obtain a construction permit from the Missouri Department of Natural Resources ("MDNR"), to construct a wastewater treatment facility that would serve 25 lots in Eagle Woods. Later, Eagle Woods Homeowners Association, Inc. (another affiliate of Summit) obtained an amended construction permit from MDNR for the same purpose.¹ However, neither Summit nor its affiliates constructed this facility. Instead,

¹ See Exh. AA, Partial Stipulation of Facts, ¶¶ 5 and 6, and Exh. B and Exh. C.

Osage constructed the sewage facilities, and in October 2001, Osage obtained from MDNR an operating permit for these facilities.²

Later, Osage obtained a construction permit from MDNR to construct additional facilities to serve an additional 25 lots, but MDNR stipulated that the expanded facility would serve 25 lots in Eagle Woods and 25 lots in Golden Glade.³ After this expansion was constructed, the MDNR revised its operating permit. The revised permit provided that the expanded facility would serve 25 specific lots in Eagle Woods and any 25 lots in Golden Glade.⁴

To summarize, Osage constructed wastewater treatment facilities in two phases, each sufficient to serve 25 lots. Osage also obtained operating permits from the MDNR, which authorized it to serve 25 lots in Eagle Woods and 25 lots in Golden Glade.

EAGLE WOODS HOMEOWNER'S ASSOCIATION'S APPLICATION FOR CONSTRUCTION PERMIT

In the second paragraph of its Brief (beginning at the bottom of page 1), Summit discussed MDNR's denial of its application for a permit to construct additional wastewater treatment facilities.

The record reveals only that MDNR denied this application because Osage never provided a continuing authority waiver.⁵ In its Brief, Summit stated that it had requested such a waiver from Osage, but that Osage was unwilling to provide the waiver, because it was trying to sell its assets and contracts to American Water Company. That may be true, but Osage cannot find any support in the record for Summit's claim. Nor did Summit tell whether Osage was required to provide a continuing authority waiver, and if so, why.

Even if Osage was required to provide a continuing authority waiver, it's important to note that Summit's application was filed "more than 10 years ago," in March 2003,⁶ and it was denied in February 2004;⁷ so if Osage wrongfully refused to provide a waiver, it happened no later than 2004. Osage requests that if the Commission finds that Osage should have provided the continuing authority waiver, it state the date when Osage failed to do so.

² See Exh. AA, Partial Stipulation of Facts, ¶ 9, and Exh. F.

³ See Exh. AA, Partial Stipulation of Facts, ¶11, and Exh. G.

⁴ See Exh. AA, Partial Stipulation of Facts, ¶16, and Exh. L.

⁵ See Exh. AA, Partial Stipulation of Facts, ¶17, and Exh. M.

⁶ See Exh. AA, Partial Stipulation of Facts, ¶15, and Exh. J and Exh. K.

⁷ See Exh. AA, Partial Stipulation of Facts, ¶17, and Exh. M.

CONTRACTUAL OBLIGATION TO PROVIDE SERVICE UNDER THE TARIFF

In the third paragraph of its Initial Brief (on page 2), Summit states that Osage claims "the contract is unenforceable due to a statute of limitations argument," and that Osage "therefore has no obligation under the Tariff." That is not an accurate statement of Osage's position on this issue.

Osage agrees that there is a contract between the parties. And Osage contends that Summit cannot sue for breach of contract, because of the statute of limitations. But the resolution of contractual issues is for the Circuit Court -- not the Commission -- to decide.

However, Osage does not now contend, and never has contended, that it has no obligation under the tariff. Osage must comply with the terms of its own tariff, regardless of whether there is a contract or not. It is up to the Commission to decide whether Osage has complied with its tariff, and if not, when it failed to do so.

Osage submits that the Commission should not speculate as to why the Circuit Court only stayed the proceedings in the breach of contract case, instead of "simply dismissing the action."

SUMMIT'S FINANCIAL CONTRIBUTION TO CONSTRUCTION COSTS

In the fourth paragraph of its Brief (at the bottom of page 2), Summit states that it "provided all of the financial resources" to build all of the water and sewage facilities, except the well that was owned by Greg Williams. Summit also claims the well was abandoned because the water was of poor quality.⁸

Osage can find no support in the record for the claim that Osage paid all of the construction costs. There is certainly no evidence that Summit expended "approximately \$250,000.00" for this purpose. Furthermore, there is no evidence that Summit paid for the construction of enough capacity to meet all obligations under the 1999 contract. If Summit wanted to make such claims, it should have presented evidence in support, and should have given Osage an opportunity to challenge the evidence, to cross-examine witnesses, and to present its own evidence on the subject. It should not first make such claims in its Initial Brief.

ISSUES FOR THE COMMISSION

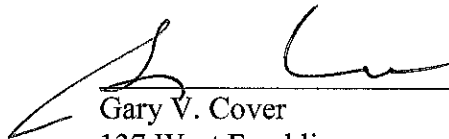
Summit claimed, in the last paragraph of its Brief, that the actions of Osage and of Greg Williams are criminal or fraudulent. But this complaint case is neither a criminal case, nor a civil action for fraud. Rather, it is an administrative proceeding. Summit's claim is scurrilous and irrelevant.

⁸ In fact, the well was owned by Environmental Utilities, LLC, a company owned by Williams and his wife. Osage stopped using this source of supply because EU refused to continue selling water to Osage. See Osage's Initial Brief, page 3.

The issues in this case are those specified in the List of Issues that the parties filed in this case on July 17, 2014. These issues are: whether Osage failed to provide adequate water service (Issues 1-3), and whether Osage failed to provide adequate sewer service (Issues 6-8). If so, the Commission must decide when each such failure began and ended. Also, if so, the Commission must decide what action Osage should take to render its service to Eagle Woods "safe and adequate." As to this latter point, very little evidence was presented regarding remedial actions the Commission should order. The Staff addressed possible remedies in its Investigation Report⁹, basically concluding that Osage should conduct various studies and investigations to determine how to proceed, but Staff did not file an Initial Brief.

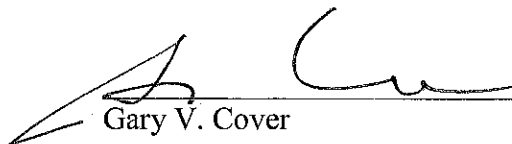
Osage submits that if the Commission finds Osage failed to provide adequate service, that such failure occurred "more than 10 years" ago (as Summit alleged on page 3 of its Brief), and that the Commission should so find.

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I hereby certify that a copy of the above and foregoing was electronically served on all parties of record on the Service List maintained for this case by the Data Center of the Missouri Public Service Commission, on this 8 day of September, 2014.



Gary V. Cover

⁹ See the Staff Recommendations presented on page 7 of Exh. R, the Staff Report of Investigation.