

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
March 12, 1998**

CASE NOS: WA-98-36

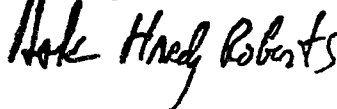
**Office of the Public Counsel
P. O. Box 7800
Jefferson City, MO 65102**

**General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102**

**Gregory D. Williams
Highway 5 at Lake Road 5-33
P. O.Box 431
Sunrise Beach, MO 65079**

Enclosed you will find certified copy of ORDER in the above-numbered case(s).

Sincerely,



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

Uncertified Copy:

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 12th
day of March, 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 and Sewer System for the)
Public Located in an Unincorporated)
Portion of Camden County, Missouri.)

Case No. WA-98-36

ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

A) Procedural History

On July 28, 1997, Osage Water Company (Company or Applicant) filed an application in which it requested permission, approval and a certificate of public convenience and necessity to construct, install, own, operate, control, manage and maintain a water and sewer system for the public located in an unincorporated portion of Camden County known as the Cedar Glen Condominiums. Applicant states that there are no residents within the proposed service area and that the area is presently being developed into a condominium project. Applicant intends to provide the proposed water service under the terms and rates of its existing water tariff and to provide the proposed sewer service under the terms and rates of the sewer tariff which is pending for Commission approval in Case No. WA-97-110. The Company submitted with its application a copy of its contract with the condominium developer, a feasibility study, a map and a legal description of the proposed area.

On July 30 the Commission issued an Order and Notice and directed that any applications to intervene should be filed no later than

August 29, 1997. No applications to intervene were filed. On October 1 Applicant filed a Motion to Submit Case on Verified Application and Attachments. On October 14 the Staff of the Missouri Public Service Commission (Staff) filed a Response to the Company's motion in which it requested that the Commission deny the Company's motion because Staff still needed to complete its audit. On October 29 the Commission issued its Order Denying Motion to Submit Case on Verified Application and Attachments. That order directed Staff to file its recommendation on or before December 12.

On December 12 Staff filed its memorandum. On the same date, Osage Beach Fire Protection District (District) filed a Motion to Consolidate this case with Case Nos. WA-97-110 and WC-98-211. On December 18 Applicant filed a Response to Staff Recommendation, Response to Motion to Consolidate, and Motion to Submit Case on Verified Application and Staff Recommendation. On December 19 Staff filed its Response in Opposition to Motion to Consolidate and on January 6, 1998, the Commission issued its Order Denying Motion to Consolidate.

On January 13 the District filed yet another Motion to Consolidate this case with several others and also filed a Response to Staff's Recommendation. On January 16 the District filed a Motion to Reconsider and requested that the Commission reconsider its January 6 Order Denying Motion to Consolidate. On January 21 the Company filed a Motion to Strike Pleadings of the District. On January 21 Staff filed a Response to the District's Motion to Consolidate.

On January 29 the Commission issued an Order Denying Motion to Reconsider and denied the District's request that the Commission reconsider its January 6 Order Denying Motion to Consolidate. On February 2 Staff filed a Memorandum in which Staff supplemented its December 12

recommendation for approval of the Company's application. On February 11 the Commission denied the District's motion to consolidate this case with any other. On February 26 the Commission issued an Order Granting in Part and Denying in Part Motion to Strike Pleadings. The Commission granted the Company's motion to strike pleadings insofar as the Commission determined that the District's Response filed on January 13 to Staff Recommendation should be considered stricken.

B) Discussion

Since no one has requested to intervene in this case, and since there are no requests for a hearing, the Commission determines that no hearing is necessary. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). The Commission will grant the Company's December 18 Motion to Submit Case on Verified Application and Staff Recommendation.

The Staff states in its memorandum filed on December 12 that the Company's proposal to provide sewer and water service under the terms of its existing and proposed water and sewer tariffs is appropriate, with the caveat that the sewer rate be considered only an initial rate subject to review at the end of an 18-month start-up period.

Staff proposed that the service area should be modified to include only the portion where it is currently clear that development is taking place or is definitely planned. As a result of discussions with Staff, representatives of the Company and the developer verbally agreed to reduce the proposed service area to include only the area south of Highway 54.

Staff states that although it has not fully completed its audit of the Company's books and records, Staff believes that the Company's short-term position is such that it will be able to continue to serve its

existing customers and take on new customers as well. Nevertheless, Staff has long-term concerns because of substantial unpaid balances related to services provided by principals of the Company. Staff reports the Company's annual revenues are between \$50,000 and \$60,000 whereas accounts payable, including disputed invoices and amounts owed principals of the Company total more than \$560,000. According to Staff, while this situation brings the Company's long-term solvency into question, many of these balances have existed since 1994 and thus do not necessarily affect the Company's ability to operate in the near term.

Staff recommends that the Commission approve the application and grant the Company a certificate of convenience and necessity to provide water and sewer service to the public in the area known as the Cedar Glen Condominiums in Camden County, limited, however, to the portion of the originally proposed service area that is located south of Highway 54. Staff believes the Company has shown: (1) that there is a need for the proposed services; (2) that it is technically qualified to provide the proposed services; (3) that it has the financial ability (at least in the near term) to provide the proposed services; (4) that the proposal is economically feasible; and (5) that the proposed services will promote the public interest. Staff recommends that the certificate become effective upon approval of the sewer tariff being considered in Case No. WA-97-110 and the tariff modifications for the appropriate service area map and legal description in this case.

Staff further recommends that the Commission's order include provisions: (1) requiring the Company to maintain its books and records in accordance with the Commission-approved Uniform System of Accounts; (2) establishing an 18-month review period for the appropriateness of the sewer rates; (3) authorizing the use of the existing water tariff and rates; (4)

authorizing the use of the proposed sewer tariff and rates subsequent to their approval in Case No. WA-97-110; and (5) stating that nothing in this case will be considered determinative of the ratemaking treatment to be afforded the subject services and related matters in future ratemaking proceedings.

The Company states in its response filed on December 18 that it agrees with the Conclusions and Recommendations sections of Staff's Memorandum filed on December 12. The Company states it does not agree or disagree with the portion of Staff's recommendation entitled "The Staff's Investigation" because the assertions are based upon a pending and incomplete audit of the Company. The Company includes a Motion to Submit Case on Verified Application and Staff Recommendation. The Company states this case is ready for submission to the Commission without a hearing.

Staff indicates in its supplemental recommendation filed on February 2 that it seeks to clarify the following three areas of its December 12 recommendation: (1) Staff believes it would be appropriate for the Commission to go forward with its issuance of an order regarding the Company's requested certificate of convenience and necessity and with the recommendations set forth in Staff's December 12 recommendation; (2) the issuance of an order at this time will not adversely affect Staff's ongoing financial audit of the Company, even if the issuance of an order leads to the closing of this docket before the Staff completes its remaining audit work; and (3) the matters referred to by Staff as "long-term ratemaking issues" are primarily ones having to do with unpaid amounts related to work done by current and former principals of the Company. Staff indicates that the amount of such "sweat equity" that exists, the reasonableness of the principal's billings for the sweat equity, how the amount of sweat equity compares to the overall value of the Company and the

extent to which recovery of the sweat equity would affect the Company's customer rates are all areas that the Staff continues to review as part of its ongoing audit of the Company's books and records. However, Staff believes these matters would be more appropriately addressed within the context of a rate proceeding rather than in this certificate application case.

C) Commission Determination

Upon review of the application, the Staff's recommendations, and the entirety of the file, the Commission determines that the Osage Water Company is a Public Utility, a Sewer Corporation, and a Water Corporation, as defined in Sections 386.020(42), (48) and (58), RSMo Supp. 1996. The Commission finds it is in the public interest for the Company to construct, install, own, operate, control, manage and maintain a water and sewer system for the public located in an unincorporated portion of Camden County known as the Cedar Glen Condominiums. The Commission will grant permission and approval and a certificate of public convenience and necessity to the Company as requested by the Company's application and subject to the conditions recommended by Staff. The effect on customers' rates from the principal's billings for sweat equity may be reviewed by Staff and addressed in the context of a rate proceeding rather than in this certificate application case.

IT IS THEREFORE ORDERED:

1. That Osage Water Company's Motion to Submit Case on Verified Application and Staff Recommendation filed on December 18, 1997, is granted.
2. That Osage Water Company is granted a certificate of public convenience and necessity to construct, install, own, operate,

control, manage and maintain a water and sewer system for the public located in an unincorporated portion of Camden County known as the Cedar Glen Condominiums limited to the portion of the originally proposed service area that is located south of Highway 54.

3. That the certificate of convenience and necessity referenced in ordered paragraph 1 shall only become effective simultaneous with the effective date of the tariff sheets required to be filed and approved pursuant to ordered paragraph 4.

4. That Osage Water Company shall file with the Commission tariff sheets modifying the appropriate service area maps and legal descriptions contained in the existing water tariff and proposed sewer tariff consistent with Staff's recommendation.

5. That Osage Water Company shall maintain its books and records in accordance with the Commission-approved Uniform System of Accounts.

6. That the Commission establishes an 18-month review period for the appropriateness of the sewer rates. Staff shall file its recommendation regarding the appropriateness of the sewer rates at the conclusion of the 18-month period.

7. That Osage Water Company is authorized the use of existing water tariff and rates, subject to the modifications required pursuant to ordered paragraph 4, and proposed sewer tariff and rates subsequent to their approval in Case No. WA-97-110.

8. That nothing in this order shall be considered as a finding by the Commission of the reasonableness of the expenditures herein involved, nor of the value for ratemaking purposes of the properties herein involved, nor as an acquiescence in the value placed on said property.

9. That the Commission reserves the right to consider the ratemaking treatment to be afforded the subject services and related matters, and the resulting cost of capital, in any later proceeding.

10. That this order shall become effective on March 24, 1998.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive style with a large, prominent "D" and "R".

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

G. George, Regulatory Law Judge

ALJ/Sec'y: George Bayne

3-9
Date Circulated

WA-98-36
CASE NO.

[Signature]
Lumpkin, Chair

[Signature]
Crumpton, Commissioner

CM 13
Murray, Commissioner

[Signature]
Commissioner

[Signature]
Drainer, Vice Chair

3-12
Agenda Date

Action taken: 4-0 A A

Must Vote Not Later Than _____

**STATE OF MISSOURI
OFFICE OF THE PUBLIC SERVICE COMMISSION**

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 12th day of March, 1998.

Dale Hardy Roberts

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**