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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 5th
day of August, 1997.

Osage Water Company,)	
)	
Complainant,)	
)	
v.)	<u>Case No. WC-97-152</u>
)	
Ozark Shores Water Company, Inc., et al.,)	
)	
Respondents.)	

ORDER DENYING MOTION TO DISMISS AND
MOTION FOR SUMMARY JUDGMENT

This docket was opened on October 16, 1996 as the result of a Complaint filed by Osage Water Company (Osage) alleging that the Respondents, Ozark Shores Water Company, Inc., et al. (collectively Ozark Shores), are unlawfully operating a public water system in the Osage certificated area. The Staff investigation filed June 3, 1997 states that the area in question is composed of two subdivisions, those being Woodland Cove and Dogwood Park Estates.

On June 26, 1997, in response to the Staff investigative report, Ozark Shores filed a motion to dismiss the entire Complaint. In that motion Ozark Shores states that two of the three Respondents, Miller County Water Authority (MCWA) and CenTrust Capital Corporation (CenTrust), sold the entirety of the assets involved in the provision of water service to the above two subdivisions to the Osage Beach Fire Protection District (the Fire Protection District). Ozark Shores asks that the Commission dismiss the Complaint on the grounds that it is moot.

On July 14 Osage filed a response to the motion to dismiss and a motion for summary judgment. As a basis for the motion for summary judgment, Osage offers the opinion of the Missouri Court of Appeals, Southern District, in Osage Water Co. v. Miller County Water Authority, Inc., No. SD-21022 (Mo. App. July 7, 1997). In that case Osage sought to condemn property then being used by MCWA to provide service to the two subdivisions above. The court held that MCWA was a "water corporation" under Section 386.020, RSMo 1994 and therefore a "provider of public utility service" under Section 523.010, RSMo 1994. The Court concluded that under Section 523.010, one provider may not condemn the property of another utility provider and that, therefore, the Circuit Court was correct in denying the condemnation action of Osage.

Osage proffers this opinion as being dispositive of the issues presented in this case by its Complaint and the Staff report. Osage maintains that the above-cited opinion supports the contention that Ozark Shores has violated Missouri law by operating a public water supply district without the requisite certificate of convenience and necessity from this Commission and by transferring the assets of the system without Commission approval.

On July 24, Ozark Shores filed its reply to the motion for summary judgement of Osage. In that reply Ozark Shores provides argument that the opinion of the Southern District is not binding on the Commission, that material questions of fact remain in this case, and that its motion to dismiss, detailed above, should be granted.

The Commission has considered the positions of the parties and has thoroughly reviewed the Court of Appeals decision. The Commission finds that the opinion of the Court of Appeals is not dispositive of the issues in this case. The Court, in fact, strictly avoids infringement on

the jurisdiction of the Commission and on the issues in this case involving the status of the Respondents before this Commission and the legality of the purported sale of assets by the Respondents. The Commission agrees that several material questions of fact remain to be resolved. The Commission will deny all motions to dismiss and the motion for summary judgment, and order the parties to file a suggested procedural schedule no later than September 2.

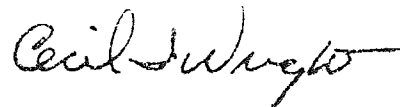
IT IS THEREFORE ORDERED:

1. That all pending motions to dismiss and the motion for summary judgment are denied for reasons as set out above.

2. That the parties are ordered to file a suggested procedural schedule for the hearing of this case no later than September 2, 1997.

3. That this order shall become effective on the date hereof.

BY THE COMMISSION



Cecil I. Wright
Executive Secretary

(S E A L)

Zobrist, Chm., Crumpton, Drainer,
Murray, and Lumpe, CC., Concur.

ALJ: Derque