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January 9, 1998

FILED

JAN 13 1998

MISSOURI
PUBLIC SERVICE COMMISSION

SENT VIA FEDERAL EXPRESS

Public Service Commission
Attn: Cecil Wright
P.O. Box 360
Jefferson City, MO 65102

RE: Case Nos. WC-98-211, WA-97-110, WA-98-36 & WA-98-236

Dear Mr. Wright:

Enclosed please find the original and fourteen copies of Osage Beach Fire Protection District's Response to Staff Recommendation in the above-referenced matters to be filed with the Commission. Please file-stamp one copy and return it in the self-addressed, stamped envelope that is enclosed for your convenience.

Your attention to this matter is greatly appreciated.

Very truly yours,

THOMAS E. LORAIN, P.C.



Thomas E. Loraine

TEL/maa

Enclosures

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED
JAN 18 1998
MISSOURI
PUBLIC SERVICE COMMISSION

OSAGE BEACH FIRE DISTRICT)
Complainant)
)
v.)
)
OSAGE WATER COMPANY)
Respondent)

Case No. WC-98-211

In the Matter of the Application of)
Osage Water Company for a Certificate of)
Convenience and Necessity Authorizing it)
to Construct, Install, Own, Operate,)
Control, Manage and Maintain a Water)
System for the Public Located in Unincor-)
porated Portions of Camden County,)
Missouri.)

Case No. WA-97-110

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

**OSAGE BEACH FIRE PROTECTION DISTRICT'S
RESPONSE TO STAFF RECOMMENDATION**

1. On October 29, 1997, in its Order Denying Motion and Ordering Staff Recommendation (Order), the Commission ordered Staff to complete its audit and file its recommendation by December 12, 1997 concerning unresolved financial matters in Cases WA-97-110 and WA-98-36 (emphasis added).

2. On November 6, 1997, the Osage Beach Fire Protection District (OBFPD) filed a Formal Complaint concerning unresolved financial matters related to 4 CSR 240-2.060(2).

3. On December 12, 1997, the OBFPD filed a Motion to Consolidate (Motion) Cases WA-97-110, WA-98-36 and WC-98-211.

4. On December 12, 1997, Staff made a recommendation, based on a partial and as yet incomplete audit and under a format characterized as a "Memorandum", to Commission Official Case Files of Case No's WA-97-110 and WA-98-036.

5. On December 12, 1997, Staff's Memorandum offered opinions about the merits of OBFPD's Motion. Staff used this Memorandum/ Recommendation rather than file a Response, allowed by 4 CSR 240-2.080, to OBFPD's Motion.

6. Staff's Memorandum does not comply with Commission Order in that Staff failed to provide a complete audit on OWC. In addition, Staff fails to understand the import of the very reason why OBFPD seeks to consolidate the financial evidence of OWC's capability to perform. It is not important that OBFPD waited till December 12, 1997 since Staff's report could not have been complete since the complete audit was not performed by December 12, 1997, and to the best of our knowledge Staff's audit still remains incomplete, nor is it important that cases WA-97-110 and WA-98-36 are not within the boundaries of OBFPD. The important issue is can OWC maintain operations and long-term viability so as to best serve the citizens of Missouri. Presently, at Parkview Bay, OWC has built a well in violation of DNR regulations and is continuing to sell water (see attached "Exhibit

A"). The total financial picture of OWC must be examined by Staff and the P.S.C. without further piecemeal handling of OWC's applications.

7. Staff's Memorandum identifies the reasons why it can't comply with the Order's Paragraph #2. Staff's recommendation doesn't resolve material issues identified in Commission's Order. The most apparent reasons for Staff's inability to comply with the Order are: OWC's inability to keep and preserve books and records required by 4 CSR 240-50.020 & 4 CSR 240-61.010; Staff's reliance on unsupported depreciation rates characterized as "attachment 1" to Staff's Memorandum; OWC's continuing inability to file annual reports for the last five years in compliance with 4 CSR 240-50.030(5) & 4 CSR 240-

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61.020(5); OWC's inability to meet 4 CSR 240-2.060 requirements; the shortfall of Staff's "overall audit" of OWC to uncover significant indebtedness to "outsiders" (See Williams surrebuttal in Docket No. WA-97-332) that after resolution of pending civil lawsuits could further threaten OWC's financial ability to provide water and sewer services. OBFPD's preliminary audit indicates that Staff's Memorandum significantly understates OWC's debt exposure and liabilities (emphasis added). Staff's partial audit only identifies what Staff believes is owed to "principals of the Company". Apparently Staff is unaware of OWC's debt exposure to "outsiders"; Staff's apparent inability, based on 1997 Missouri State Senate Bill 289, to conduct a depreciation study on a sewer company in support of "attachment 1" to its Memorandum; and Staff's reliance on criteria inconsistent with and weaker than five criteria previously adopted by the Commission Re Tartan Energy Co. 3 Mo. P.S.C. 3d 173,177 (1994).

WHEREFORE, notwithstanding the incomplete audit, Staff has given a recommendation without a basis in fact since Staff did not have sufficient financial information upon which to render a conclusion. This appears arbitrary and capricious and is not competent evidence upon which the Commission by law can rely.

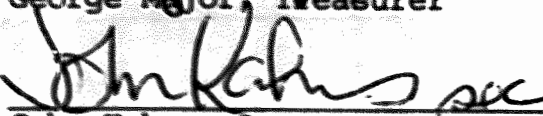
OSAGE BEACH FIRE PROTECTION DISTRICT



Russell C. Clark, President



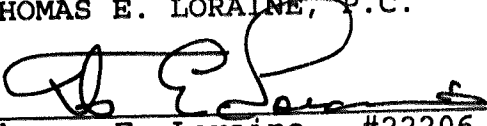
George Major, Treasurer



John Kahrs, Secretary

Respectfully submitted,

THOMAS E. LORAINÉ, P.C.

By: 
Thomas E. Loraine #22206
4075 Highway 54, Suite 300
Osage Beach, MO 65065
(573) 348-8909

ATTORNEYS FOR OSAGE BEACH FIRE
PROTECTION DISTRICT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was on this 21st day of December, 1997, mailed, postage prepaid, to the following:

Carol Keith
Office of General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

John Coffman
Senior Public Counsel
Office of Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Gregory D. Williams
P.O. Box 431
Sunrise Beach, MO 65079

Norman E. Gaar
605 W. 47th Street, Ste 350
Kansas City, MO 64112-1905

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190 Court Circle
Camdenton, MO 65020


Thomas E. Loraine

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STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Act. Com. Gov. • Stephen M. Mahood, Director

DIVISION OF ENVIRONMENTAL QUALITY

Jefferson City Regional Office

1511 Christy Drive P.O. Box 176 Jefferson City, MO 65102-0176

(573)751-2729

FAX (573)751-0014

January 5, 1998

CERTIFIED MAIL # 331 166 097
RETURN RECEIPT REQUESTED

Mr. Gregory D. Williams, President
Osage Water Company
Hwy 54 West, P.O. Box 777
Osage Beach, MO 65065

Dear Mr. Williams:

The Osage Water Company owns and operates a public system serving Parkview Bay Condominiums in Camden County. It has come to our attention that the system has been placed into operation in violation of Missouri's Safe Drinking Water Law and Public Drinking Water Regulations; as well as, terms and conditions of the department's construction permit for the water system. The specific sections of the law and regulations of which the Osage Water Company is in violation are listed on the enclosed Notice of Violation 1033 JC.

A supplier of water wishing to construct, modify, or operate a community water must obtain authorization from this department. Plans and specifications are required before construction approval will be given to construct a new or modify an existing water system. After the construction approval has been granted and the project is completed, the supplier must obtain final approval before that project is placed into service. If the completed project is a new community water system, the supplier must apply for a permit to dispense water to the public prior to putting the new supply into service. According to our files, construction approval was given to the Osage Water Company to construct the water system serving phase one of Parkview Bay Condominium complex on April 9, 1997. Since that date, no request for a final inspection has been made, nor has an application been submitted for a permit to dispense water to the public. On December 18, 1997, it was verified that Osage Water Company had illegally placed this water system into operation.

In order to resolve the existing violations, the Osage Water Company will need to complete the following:

1. Submit a written request for a final construction approval.
2. Apply for a permit to dispense water to the public (application form enclosed).
3. Submit any bacteriological or chemical drinking water sample analysis for the water system.
4. Starting January 1998, the system shall begin monthly bacteriological monitoring in accordance with 10 CSR 60-4.020.
5. Complete an emergency operating plan as described in 10 CSR 60-12.010.

Parkview Bay Condos
January 5, 1998
Page Two

Items 1, 2, 3, and 5, shall be submitted to the Department of Natural Resources, Jefferson City Regional Office by January 19, 1998. Failure to comply with the provision of this letter will result in the referral of this matter to the Public Drinking Water Program for appropriate enforcement action.

If you have any questions or need assistance, please contact Stephen P. Jones, P.E. of my staff at (573) 751-2729.

Sincerely,

JEFFERSON CITY REGIONAL OFFICE



Robert H. Hentges
Regional Director

RHH:grg

Enclosure

c: Camden County Health Department
Mr. William Price, Public Drinking Program
Mr. Breck Summerford, Public Drinking Water Program
Mr. Bob VanStavern
Mr. Val Valent, City of Osage Beach