

**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 Water)	<u>Case No. WA-2019-0185</u>
and Sewer Assets and for a Certificate)	
Of Convenience and Necessity)	

**STATEMENTS OF POSITION ADDRESSING ONLY
THE OSAGE WATER COMPANY ISSUES**

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, pursuant to the Commission’s *Order Bifurcating Hearing, Excusing Parties, and Directing Filing of Revised Staff Recommendation*, and submits the following Statements of Position on the issues as listed in *List of Issues, Order of Witnesses, Order of Cross-Examination and Order of Opening Statements* filed by Staff, on behalf of itself and Osage Utility Operating Company, on September 9, 2019, addressing only those issues relating to Osage Water Company:

- I. *Public Interest*
 - a. *Would the sale of Osage Water Company’s certificates of convenience and necessity and its water and sewer assets to Osage Utility Operating Company be detrimental to the public interest?*

Staff Position: No, the transfer of Osage Water Company’s certificates of convenience and necessity (“CCN”) and its water and sewer assets to Osage Utility Operating Company (“OUOC”) would not be detrimental to the public interest, and therefore, the Commission must approve the disposition of assets in this case.¹ OWC has been in permanent receivership since October 21, 2005.² On October 11, 2017, OWC

¹ See *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. 1980) citing *State ex rel. City of St. Louis v. Public Service Commission of Missouri*, 73 S.w.2d 393, 400 (Mo. banc 1934).
² See *Report and Order*, Case No. WC-2003-0134.

filed for Chapter 11 bankruptcy, and its assets were liquidated by the bankruptcy trustee using a bidding procedure, with OUOC as the high bidder.³ The OWC systems require several improvements in order to comply with Missouri Department of Natural Resources regulations and provide safe and adequate service to its customers.⁴ OUOC was formed for the purpose of purchasing and operating OWC and Reflection systems, and is a wholly owned subsidiary of Central States Water Resources, Inc.; an entity that owns several other utility companies in Missouri and other states.⁵ OUOC, through its parent company, has the necessary technical, managerial, and financial capabilities to acquire and operate the OWC systems at issue in this case, and to ensure the systems provide safe and adequate service to their customers.⁶ Further, OUOC's proposal to adopt OWC's existing tariffs, rates, and charges is reasonable. Therefore, the proposed transaction is not detrimental to the public interest, and should be approved. Staff recommends the Commission issue an order containing the following actions and conditions, as agreed to by OUOC:⁷

1. Authorize OWC to sell and transfer utility assets to OUOC, and transfer the CCN's currently held by OWC to OUOC upon closing on any of the respective systems;
2. Upon closing on each of the OWC water and sewer systems, authorize OWC to cease providing service, and authorize OUOC to begin providing service;
3. Require OUOC to file Tariff Adoption Notice tariff sheets for the corresponding water and sewer tariffs of the regulated OWC systems within ten (10) days after closing on the OWC assets;
4. Upon closing on each of the water and sewer systems, authorize

³ Confidential Schedule ND-d2 of the Direct Testimony of Staff Witness Natelle Dietrich, pg. 19; Direct Testimony of OUOC Witness Josiah Cox pg. 11.

⁴ Dietrich Direct, Confidential Schedule ND-d2; Cox Direct, Direct Testimony of OUOC Witness Todd Thomas.

⁵ Dietrich Direct, Confidential Schedule ND-d2 pg. 5, Cox Direct, pg. 5- 6.

⁶ Dietrich Direct, Confidential Schedule ND-d2 pg. 32-33; Cox Direct pg. 8-10.

⁷ Dietrich Direct, Confidential Schedule ND-d2 pg.5-7; Cox Direct pg. 26-28.

OUOC to provide service by applying, on an interim basis, the existing rates, rules and regulations as outlined in OWC's water tariff and sewer tariff, until the effective date of respective adoption notice tariff sheets, as recommended above;

5. Require OUOC to create and keep financial books and records for plant-in-service, revenues, and operating expenses (including invoices) in accordance with the NARUC Uniform System of Accounts;

6. Require OUOC to, going forward, keep and make available for audit and review all invoices and documents pertaining to the capital costs of constructing and installing the water and sewer utility assets;

7. Approve depreciation rates for water and sewer utility plant accounts as described and shown on page 39 of Confidential Attachment ND-d2 to Staff Witness Natelle Dietrich's Direct Testimony;

8. Require OUOC to distribute to all customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water service, consistent with the requirements of Commission Rule 20 CSR 4240-13, within thirty (30) days after the effective date of approval of a CCN by the Commission;

9. Require OUOC to, within ninety (90) days of the effective date of a Commission order approving OUOC's Application, complete repairs to resolve the bypassing of treatment at any wastewater treatment system;

10. Resolve all issues regarding noncompliance with Missouri Department of Natural Resources (DNR) regulations for all water and sewer systems;

11. Require OUOC to provide adequate training for the correct application of rates and rules to all customer service representatives, including those employed by contractors, prior to the customers receiving their first bill from OUOC;

12. Require OUOC to provide to the Customer Experience Department Staff a sample of ten (10) billing statements of bills issued to OWC customers within thirty (30) days of such billing;

13. Require OUOC to file notice in this case once Staff's recommendations regarding customer communications and billing, listed above, have been completed; and

14. Require OUOC to file a rate case with the Commission no later than twenty-four (24) months after the effective date of an order approving OUOC's Application.

II. *Acquisition Premium*

- a. *Should the Commission approve an acquisition premium for the acquisition of the Osage Water Company Systems under 20 CSR 4240-10.085?*

Staff Position: Yes. The Commission should approve an acquisition incentive in conjunction with the acquisition of Osage Water Company (OWC) by Osage Utility Operating Company. OWC is currently a nonviable utility.⁸ OUOC is not a nonviable utility, has the managerial, technical and financial capability to operate the systems, and will not be materially impaired by the acquisition.⁹ OUOC submitted plans on how to correct plant, managerial and operational deficiencies for OWC and has committed to making those corrections,¹⁰ and the purchase price of the utilities was reached through an arm's-length transaction. Further, OUOC has stated that should the Commission deny their request for an acquisition premium, OUOC will need to reevaluate its risk in taking on these failing systems.¹¹ While Staff recommends approval of an acquisition incentive for the acquisition of the OWC systems, its original recommendation in this matter was based upon the acquisition of the OWC systems in conjunction with that of the Reflections Systems. Pursuant to the Commission's September 11, 2019, *Order Bifurcating Hearing, Excusing Parties, and Directing Filing of Revised Staff Recommendation*, Staff will provide a revised recommendation addressing only OWC which includes Staff's recommendation regarding a debit acquisition incentive for only the OWC systems no later than September 13, 2019.

⁸ Dietrich Direct, Confidential Schedule ND-d2 pg 36; Cox Direct pg. 24.

⁹ Dietrich Direct, Confidential Schedule ND-d2, Cox Direct pg. 25.

¹⁰ *Id.*

¹¹ Cox Direct pg. 25-26.

WHEREFORE, Staff prays that the Commission will accept this *Statements of Position Addressing Only the Osage Water Company Issues*; and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ Whitney Payne

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served electronically, or hand-delivered, or via First Class United States Mail, postage prepaid, on all parties of record herein on this 12th day of September, 2019.

/s/ Whitney Payne