

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

Summit Investment, LLC

Complainant,

v.

Osage Water Company

Respondent.

File No. SC-2014-0214

File No. WC-2014-0215

NOTICE OF EXTRA-RECORD COMMUNICATION

Issue Date: September 22, 2014

On Friday, September 19, 2014, I received an email from Robert Boone, Legislative Coordinator for the Missouri Public Service Commission. Mr. Boone's email included forwarded messages from Missouri State Senator Dan Brown's Office and Mr. Ron Westenhaver regarding the above-captioned matters. Mr. Westenhaver requested Mr. Brown's assistance in ensuring the Commission is aware of his situation. The communication concerned a contested case, currently pending before the Commission.

This communication occurred outside of the contested hearing process, and Commission Rule 4 CSR 240-4.020 requires that the communication be disclosed as an extra-record communication. Commission Rule 4 CSR 240-4.020(6) requires a presiding officer to give notice of an extra-record communication as soon as practicable after learning of the initiating person's failure to file such notice. Since this communication involves persons who may not be familiar with the Commission's rules, I am filing this notice.



Kim S. Burton, Regulatory Law Judge

Burton, Kim

From: Boone, Robert
Sent: Friday, September 19, 2014 4:20 PM
To: Burton, Kim
Subject: RE: Attached Image

Okay, thanks.

Robert Boone

Legislative Coordinator

Missouri Public Service Commission

Telephone: (573) 522-8708

Fax: (573) 751-0429

From: Burton, Kim
Sent: Friday, September 19, 2014 4:19 PM
To: Boone, Robert
Subject: RE: Attached Image

Robert:

I didn't review any of the attachments, but I did read some of the emails below. This is an ongoing case before the Commission (File Nos. SC-2014-0214 and WC-2014-00215). The Commission conducted a hearing on this at the end of July and the deadline for reply briefs was last week. It now has to go to the Commission for them to decide. I expect a Commission decision will be approved in the next few weeks.

From: Boone, Robert
Sent: Friday, September 19, 2014 3:50 PM
To: Burton, Kim
Subject: FW: Attached Image

Kim, see email trail below and attached documents. Any advice on how to respond to this inquiry? Jared Brown works for Sen. Dan Brown. Thanks.

Robert Boone

Legislative Coordinator

Missouri Public Service Commission

Telephone: (573) 522-8708

Fax: (573) 751-0429

From: Jared Brown [mailto:jared_dbrown@yahoo.com]
Sent: Thursday, September 18, 2014 1:55 PM
To: Boone, Robert
Subject: Fwd: Attached Image

Robert,

Could you give me some advice on how to handle this constituents concern? I'll also send you the voice mail he left.
Thanks.

Sent from my iPhone

Begin forwarded message:

From: Betty Pringer <betty.pringer@senate.mo.gov>

Date: September 18, 2014 at 10:30:55 AM CDT

To: Dan Brown <Dan.Brown@senate.mo.gov>, Jared Brown <jared_dbrown@yahoo.com>

Subject: FW: Attached Image

Good Morning!

I received the attached fax from

Ron Westenhaver
573-302-0040
573-216-5268 (cell)

Ron said he talked to you at an event at the Lake and you told him that you could hopefully get the attention of someone over at the PSC. Ron also called this morning to see if you had time to look at his information. The urgency of this message is that the PSC is scheduled to hear this case on Sept 26 and Mr. Westhaver wants to try every effort to make sure the PSC is aware of this situation. Supposedly, Mr. Westenhaver has spent over \$180,000 on legal fees over the past 14 years. He still has 25 lots without any sewer (and supposedly he has already paid the Osage Water and Sewer Company for sewer to be installed). Now Osage Water and Sewer are selling their company and he wants the company buying to know this up front that this is still pending. Mr. Westenhaver tells me that the Judge has put this case on hold pending a hearing with the PSC.

I will also send his phone message so you can listen to him – I am sure that my email is quite confusing – sorry!

From: copyroom.right@senate.mo.gov [<mailto:copyroom.right@senate.mo.gov>]

Sent: Thursday, September 18, 2014 9:59 AM

To: Betty Pringer

Subject: Attached Image

Burton, Kim

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Sent: Thursday, September 18, 2014 9:59 AM
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Subject: Attached Image

FAX COVER SHEET

 <p>design. build. improve. WESTENHAVER CONSTRUCTION</p>	<p>6340 Red Barn Road Osage Beach, MO 65065 E-Mail: support@westenhaverconstruction.com Phone: 573 302-0040 Fax: 573 302-0263</p>
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TO: Sender Dan BrownFAX NUMBER: 1-573-751-0733FROM: Ron & Sue WestenhaverDATE: 9/17/14PAGES INCLUDING THIS COVER PAGE: 7NOTES: Please review & help in any way you can.
Ron & Sue W.

9/17/14

Dear Senator Brown,

This is the latest in our ongoing tragedy, the Eagle Woods lack of proper sewer and water for the last 25 Homesites.

I have enclosed a Reply Brief from Orage Water Co regarding the ~~on~~ current Public Service Commission hearing. I have edited it with known correct information. Having lived with this burden since 1999 I have all pertinent documentation for review in two large files.

After reading the reply please communicate with the PSC in our behalf. We need water supply & sewer capability for our last 25 lots.

Cover's main point is the time span from orig contract signing in 1999 to current time.

He fails to mention that Greg Williams put all on hold while he fought with DNR & PSC, trying to sell the OWC & stall prosecution of his failings while owning & controlling the company from 2002-2006.

In 2006 Cover took over but has never in any way provided the sewer & water as provided for in our contract.

See also! have paid and paid. First for the sewer & water we put in to Eagle Woods then the legal expenses \$180,000+, and now unable to sell the remaining lots because they need the sewer and water improvements we were never responsible for that expense.

we agree that it should not be penalized in any way for Orage's actions or lack thereof

¹ See Exh. AA, Partial Stipulation of Facts, 103, and Exh. E.

² See Exh. AA, Partial Stipulation of Facts, 103, and Exh. G.

³ See Exh. AA, Partial Stipulation of Facts, 106, and Exh. L.

⁴ See Exh. AA, Partial Stipulation of Facts, 117, and Exh. M.

⁵ See Exh. AA, Partial Stipulation of Facts, 115, and Exh. J and Exh. K.

⁶ See Exh. AA, Partial Stipulation of Facts, 127, and Exh. N.

From: KAY, GREEN, and ASSOCIATES LLC To: 3020263

09/15/2014 08:12 #361 P.002/005

*To Jeff-**Please respond after reading**Do we have an opportunity to respond to Cover's B.S. -*BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

SUMMIT INVESTMENT, LLC,

Complainant

v.

OSAGE WATER COMPANY,

Respondent.

File No. SC-2014-0214

File No. WC-2014-0215

*Ron***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,

*we assisted, w/ concrete walls
rock, piping, excavation*

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

From: KAY, GREEN, and ASSOCIATES LLC To: 3020263

09/15/2014 08:13

#361 P.003/005

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

- 2 years later because of bigger problems
 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

Important
~~Osage applied & was granted a permit for another 25 in EW~~
 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. *but never built it*

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

2001
 June 2003

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.

So we could have built our EW HOA facility & operated w/o Osage
 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.

This is not our fault - Osage was trying to sell - Osage was going thru hearings to have their CCW removed for poor service. We were not responsible for either of those time consuming wasteful periods & should not be penalized in any way for Osage's actions or lack thereof

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

³ See Exh. AA, Partial Stipulation of Facts, ¶¶ 1, and Exh. G.

⁴ See Exh. AA, Partial Stipulation of Facts, ¶¶ 5, and Exh. L.

⁵ See Exh. AA, Partial Stipulation of Facts, ¶¶ 7, 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, ¶¶ 27, and Exh. N.

From: KAY, GREEN and ASSOCIATES LLC To: 3020263

09/15/2014 08:14 #361 P 004/005

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 ^{when} 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. *see previous time set*

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 2.

*We paid for all 53
lots of sewer, pumps
left 5 ft
lines, etc
& have bill
to prove it
for sewer
water we paid
for all water line
& two wells*

From: KAY, GREEN, and ASSOCIATES LLC To: 3020263

09/15/2014 08:15

#361 P.005/005

2001-2002 They did They did


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.

① Build new well for 53 homes as required by DNR in 2008

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. why not? why is this important to Cover -

COVER & WEAVER, L.L.C.

② Service the sewer system



Gary V. Cover

#28854

137 West Franklin

P.O. Box 506

Clinton, MO 64735


(660) 885-6914

(660) 885-6780 Fax

garycover@earthlink.net

Attorney & Receiver for Osage Water Company

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.