



Missouri Public Service Commission

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December 19, 1997

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Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED

DEC 19 1997

MISSOURI
PUBLIC SERVICE COMMISSION

RE: Case No. WA-97-110 - Osage Water Company

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of **STAFF'S RESPONSE IN OPPOSITION TO MOTION TO CONSOLIDATE**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

William K. Haas
Senior Counsel
(573) 751-7510
(573) 751-9285 (Fax)

WKH/wf
Enclosure
cc: Counsel of Record

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

FILED

DEC 19 1997

**MISSOURI
PUBLIC SERVICE COMMISSION**

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)
unincorporated 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,)
Complainant,)
v.)
Osage Water Company,)
Respondent.)

Case No. WC-98-211

STAFF'S RESPONSE IN OPPOSITION TO MOTION TO CONSOLIDATE

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its response states:

1. On September 17, 1996, Osage Water Company (Company) filed with the Missouri Public Service Commission (Commission) an Application requesting certificates of convenience and necessity to provide sewer service in Chelsea Rose subdivision and to provide water and sewer service in Cimarron Bay subdivision. Both subdivisions are located in unincorporated areas of Camden County, Missouri. The Application was docketed as Case No. WA-97-110.

2. On September 20, 1996, the Commission issued its Order and Notice in Case No. WA-97-110 and established an intervention deadline of October 21, 1996. The Commission received no applications for intervention in this case.

3. On July 28, 1997, the Company filed with the Commission an Application requesting a certificate of convenience and necessity to provide water and sewer service in an unincorporated area of Camden County, Missouri known as the Cedar Glen Condominiums. This Application was docketed as Case No. WA-98-36.

4. On July 30, 1997, the Commission issued its Order and Notice in Case No. WA-98-36 and established an intervention deadline of August 29, 1997. The Commission received no applications for intervention in this case.

5. On October 29, 1997, the Commission established a deadline of December 12, 1997 for the Staff to file its recommendations in Case Nos. WA-97-110 and WA-98-36. The Staff filed Memoranda on December 12, 1997 recommending that the Commission grant the requested certificates of convenience and necessity.

6. On November 19, 1997, the Osage Beach Fire Protection District (District) filed with the Commission a Complaint which states that the Company is supplying water to the Passover Road Expansion without a certificate of convenience and necessity. The Complaint states that the Passover Road Expansion is located within the city limits of the City of Osage Beach, Missouri and within the political subdivision limits of the District. The Complaint was docketed as Case No. WC-98-211.

7. On December 12, 1997, the District filed a motion to consolidate Case Nos. WC-98-211, WA-97-110 and WA-98-36.

8. The Staff opposes the District's motion to consolidate. Commission rule 4 CSR 240-2.110(5) states: "When actions pending before the commission involve related questions of law or fact, the commission may order a joint hearing of any or all the matters in issue, and may make other orders concerning proceedings before it to avoid unnecessary costs or delay." Case No. WC-98-211 does not involve related questions of law or fact with Case Nos. WA-97-110 and WA-98-36. The Commission has articulated the following criteria to evaluate an application for a certificate of convenience and necessity: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. Re Tartan Energy Co., 3 Mo. P.S.C. 3d 173, 177 (1994). This standard is applicable to the applications for certificates of convenience and necessity in Case Nos. WA-97-110 and WA-98-36. By contrast, the general question before the Commission in Case No. WC-98-211 is whether the Company is unlawfully operating a water system.

9. The District's motion to consolidate is in essence an untimely motion to intervene in Case Nos. WA-97-110 and WA-98-36. Commission rule 4 CSR 240-2.075(4) states:

The commission may permit intervention on a showing that --

- (A) The applicant has an interest in the proceeding which is different from that of the general public;
- (B) The applicant is a municipality or other political subdivision;
- (C) Granting the proposed intervention would serve the public interest; or
- (D) Applications to intervene filed after the intervention date set by the commission may be granted upon a showing of good cause.

Although this rule suggests that the Commission may permit a municipality or other political subdivision to intervene under a lesser showing than that required of a nongovernmental entity, this rule does not suggest a lesser showing for an application to intervene filed out of time by a

municipality or other political subdivision. The District's motion to consolidate does not show good cause for late intervention in Case Nos. WA-97-110 and WA-98-36. Furthermore, Chelsea Rose subdivision, Cimarron Bay subdivision and Cedar Glen Condominiums are not located within the political subdivision limits of the District. Therefore, the District does not have an interest in the certificate cases which is different than that of the general public.

WHEREFORE, the Staff requests the Commission to deny the District's motion to consolidate.

Respectfully submitted,

William K. Haas

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Missouri Bar No. 28701

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 19th day of December, 1997.

William K. Haas

**Service List for Case Nos. WA-97-110,
WA-98-36 and WC-98-211
Revised: December 19, 1997**

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