

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

Summit Investment, LLC)	
)	<u>Case No. SC-2014-0214</u>
Complainant,)	
)	
v.)	
)	
Osage Water Company,)	<u>Case No. WC-2014-0215</u>
)	
)	
Respondent.)	

STAFF INVESTIGATION REPORT

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through counsel, and for its *Investigation Report*, states as follows:

1. On January 30, 2014, Summit Investment, LLC ("Summit"), filed a formal complaint with the Commission against Osage Water Company ("OWC"), alleging that OWC has failed and refused on repeated occasions to extend water and sewer service to additional lots within its certificated service area, thereby preventing Summit from developing and selling those lots.

2. On January 31, 2014, the Commission issued its *Notice of Complaint*, directing OWC to file its *Answer* by March 3, 2014, and directing Staff to investigate the complaint and file a report with the Commission no later than March 21, 2014.

3. OWC filed its *Answer* on February 24, 2014.

4. Attached hereto as Attachment A is *Staff's Investigation Report*, which states Staff's opinion that OWC's water system serving Eagle Woods subdivision and sewer system serving Eagle Woods and Golden Glade subdivisions are capable of

serving new customers. Eagle Woods subdivision is served by a well that is not approved and which has no permit from the Missouri Department of Natural Resources (“MoDNR”); nonetheless, the capacity is such that new customers could be served. The sewer system serving Eagle Woods and Golden Glade subdivisions is at or beyond its permitted capacity; nonetheless, it is likely that new customers could be served thereby because the volume of waste per capita used by MoDNR in the permitting process is significantly greater than that actually produced in practice.

5. Staff expresses no opinion as to whether or not MoDNR would allow OWC to connect any additional water or sewer customers in Eagle Woods. Mr. Cover’s position is that it would not.

6. The legal obligation of a monopoly public utility is to serve anyone in the service area that requests service. “The certificate of convenience and necessity issued to the utility is a mandate to serve the area covered and it is the utility’s duty, within reasonable limitations, to serve all persons in an area it has undertaken to serve.” ***State ex rel. Missouri Power and Light Co. v. Public Service Com’n***, 669 S.W.2d 941, 946 (Mo. App., W.D. 1984); ***State v. Public Service Com’n***, 343 S.W.2d 177, 181 (Mo. App. 1960). Summit complains that OWC is in violation of that obligation in that repeated requests for service to new customers have been rejected or ignored. Mr. Cover does not deny it.

7. Summit and OWC entered into a contract (“the Contract”) for water and sewer service for 53 residences in Eagle Woods subdivision in January 1999, including main extensions, collecting sewer extensions, and the construction of an adequate sewage treatment facility. OWC’s tariffs contemplate such contracts, see Sewer

Service Tariff, Rule 11 (P.S.C.Mo. No. 1, O.S. 31 & 33); Water Service Tariff, Rule 14 (P.S.C.Mo. No. 1, O.S. 31). Summit alleges that it has fully performed under the Contract and Mr. Cover does not deny it.¹ There are presently 33 residential water and sewer customers in Eagle Woods and 23 sewer customers in Golden Glade.

8. Nothing in the order appointing receiver in **PSC v. OWC**, Case No. CV102-965CC (now No. 26V010200965), October 24, 2005, Circuit Court of Camden County, Missouri, prohibits Mr. Cover, as receiver of OWC, from extending service to new customers so long as the terms of the tariff are met. To the extent that the Court has issued subsequent orders that prohibit Mr. Cover, as receiver of OWC, from serving new customers, Staff is unaware of such.

9. It is Staff's position that OWC is obligated to provide 20 additional water and sewer connections in the Eagle Woods subdivision and that Summit is responsible for the costs thereof to the extent that they exceed the contributions that Summit has already made under the Contract.

WHEREFORE, Staff prays that the Commission will accept its *Investigation Report* and recommendation herein stated.

¹ Summit's performance under the Contract includes contributing its existing "non-community drinking water supply," including mains, easements, pumps, etc., engineering plans, permits, etc., for a sewage treatment plant, and up to \$30,000 for its construction.

Respectfully submitted,

/s/ Kevin A. Thompson
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Missouri Bar Number 36288

/s/ Alexander Antal
Assistant Staff Counsel
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Attorneys for the Staff of the
Missouri Public Service Commission

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been served, by hand delivery, electronic mail, or First Class United States Mail, postage prepaid, to all parties of record on the Service List maintained for this case by the Data Center of the Missouri Public Service Commission, **on this 21st day of March, 2014.**

/s/ Kevin A. Thompson

STAFF REPORT OF INVESTIGATION

Case Nos. WC-2014-0215 and SC-2014-0214

Summit Investment, LLC, Complainant v. Osage Water Company, Respondent

TO: Missouri Public Service Commission Official Case File

FROM: James A. Merciel, Jr., P.E., Utility Regulatory Engineering Supervisor
Water & Sewer Unit
Martin Hummel, Utility Engineering Specialist III
Water & Sewer Unit

DATE: March 21, 2014

<u>/s/ James A. Merciel, Jr.</u> Water and Sewer Unit	<u>3/21/2014</u> Date
<u>/s/ Martin Hummel</u> Water and Sewer Unit	<u>3/21/2014</u> Date
<u>/s/ Alexander Antal</u> Staff Counsel's Office	<u>3/21/2014</u> Date

Executive Summary

Staff takes the position that Summit Investments, LLC paid for sewage treatment plant capacity for 53 Eagle Woods lots by the terms of a Water and Sewer Supply Contract (Contract), and Osage Water Company (OWC) may not have provided all necessary capacity. This Contract and the present ownership of the sewer and water system assets is the subject of ongoing litigation in the Circuit Court of Camden County.

The sewage treatment facility currently serves 33 Eagle Woods sewer customers as well as 23 other OWC sewer customers. The facility has capacity to serve additional customers, but Staff is not able to quantify available capacity. The current treatment facility may be able to handle 20 additional Eagle Woods customers, as described by the terms of the Contract between the Parties. OWC should undertake an engineering study of plant component capacities, and install additional monitoring equipment, in order to make such a determination.

The Contract does not have specific requirements regarding the sewage collection system. The collection system may need improvements, but Staff is uncertain whether OWC has accepted and taken ownership of the sewage collection system from either Summit or a related entity such as the Eagle Woods Homeowners Association, Inc., and is uncertain as to whether or not Summit or a successor developer entity could be required to undertake improvements especially before additional Eagle Woods customers are connected.

Staff takes the position that OWC is obligated to provide plant capacity, and impose reasonable further requirements provided for in its water and sewer tariff that are not addressed in the Contract. However, Staff is not certain of the receiver's ability or obligation to undertake projects requiring substantial financial investment in light of the ongoing litigation.

The Contract provides for Summit to contribute the water system to OWC, which similar to the sewer collection system may not have been accomplished, but OWC is using it to provide service to current Eagle Woods residents. Improvements to address intermittent water pressure issues need to be addressed presumably by OWC especially if additional customers are connected in Eagle Woods.

Overview

These formal complaints were filed by Summit Investments, LLC (Summit), the developer of a subdivision known as Eagle Woods in Camden County, against Osage Water Company (OWC) on January 30, 2014. These formal complaints are related to a case in the Circuit Court of Camden County between Summit and OWC, Case No. 11CM-CC00113.

OWC began operations as a regulated water and sewer utility with the approval of the Public Service Commission (PSC or the Commission) in Case No. WM-89-73, when it acquired assets of Oak Tres, Inc., a regulated water and sewer utility, along with a Certificate of Convenience and Necessity (CCN) granted by the Commission to provide water and sewer service in the service area of Oak Tres, Inc. Among various CCN expansions and other types of cases before the Commission, OWC filed WA-99-268 in which it obtained a CCN to provide sewer service in a residential development known as Golden Glade¹, and WA-99-437 in which it obtained a CCN to provide both water and sewer service in an adjacent residential development known as Eagle Woods. The water and sewer systems in these service areas are the subject of this formal complaint. OWC was placed into interim receivership by the Commission in Case No. WC-2003-0134, and permanent receivership by the Circuit Court of Camden County in Case No. CV102-965CC, effective October 25, 2005.

Service Areas - General Description

The water and sewer service areas are located along and off of State Highway KK in Camden County, in an area known as Turkey Bend, and north of the Tan-Tar-A resort development.

The water service area consists of the Eagle Woods subdivision, currently with 33 homes connected to the OWC water system. The Eagle Woods water system consists of a single well, for which the production capacity is stated in OWC's annual report as 25 gallons per minute (gpm); however Staff was unable to verify production in the field. The well does not meet approval by the Missouri Department of Natural Resources (DNR) for use with a public water supply, but it is being used as a temporary measure with DNR's knowledge. The water system

¹ Environmental Utilities, LLC, which obtained a CCN in Case No. WA-2002-65, provides water service in Golden Glade. It is owned and controlled by people who are or were also involved with ownership of OWC, or were officers/directors of OWC.

also utilizes two ground storage tanks of 9,000 gallons storage volume, two high-service pumps that pump from the storage tanks to the distribution system, chlorine disinfection, and a master meter that measures water pumped into the distribution system from the storage tanks. The distribution system is reportedly two-inch (2") pvc, with meters for each customer.

The sewer service area consists of both the Eagle Woods subdivision currently with 33 customers, and the Golden Glade subdivision currently with 23 customers, for a total of 56 OWC sewer customers. The treatment facility in use, known as the Highway KK facility, is a recirculating sand filter type facility presently with permit design flow capacity of 13,875 gallons per day (gpd). The collection system is what is sometimes called a "small diameter collecting sewer system." Sewage discharge from customers' homes first flows to multi-home septic tanks that are maintained by OWC, which provide partial treatment and retain solids. Then the septic tank effluent flows by gravity through smaller pipes than those used by conventional gravity sewers to the treatment facility. Since the hilly terrain in the Eagle Woods portion of the service area necessitates pumping, OWC utilizes three lift stations.

Background of the Eagle Woods - OWC Relationship

Beginning probably sometime in 1998, Summit undertook planning and work on its Eagle Woods subdivision, consisting of four (4) phases. Summit entered into a "Water and Sewer Supply Contract" (Contract) that is dated January 12, 1999, included in Summit's formal complaint as Exhibit 1. The Contract specifies, among other things, 53 Eagle Woods lots to be served both with both water and sewer service, a Contribution-in-aid-of-Construction (CIAC) amount of \$30,000 to be paid by Summit for sufficient sewage treatment plant capacity for the 53 lots along with a collecting sewer to be constructed by OWC to connect the subdivision sewer system to the sewage treatment facility. The Contract states that Summit had constructed what is called in the Contract a "non-community" water system² which would be contributed to OWC, and provides that OWC will construct a water main and connection to a well located in Golden Glade³. Not mentioned in the Contract is the Eagle Woods sewer collection system along with the septic tanks and lift stations, which had previously been constructed by Summit and were to be contributed to OWC. It is not clear to Staff whether OWC had agreed to accept ownership of the sewage collection system as constructed, nor if OWC has in fact accepted ownership.

Eagle Woods development work was active for several years after 1998. Also within approximately the same time frame, work involving the development of Golden Glade⁴ was

² Staff asserts that referring to the water system as "non-community" is not correct by DNR definitions in its regulations (10 CSR 60-2.015 (2) (C) 11. Further, Staff and DNR often refer to unapproved wells such as the Eagle Woods well as a "multi-family" well.

³ The well in Golden Glade is the one presently owned and operated by Environmental Utilities, LLC. Upon issuance of CCN to Environmental Utilities, LLC, the well was connected to Eagle Woods with a wholesale agreement providing OWC to be a wholesale customer of Environmental Utilities, LLC. That agreement is no longer in place, and OWC is presently using the unapproved community well in Eagle Woods.

⁴ The development of Golden Glade was undertaken by generally the same people who founded Environmental Utilities, LLC, and also involved with OWC.

ongoing. OWC combined development of the Eagle Woods and Golden Glade sewer systems into one sewer system with one sewage treatment facility. Construction permits were issued by the Missouri Department of Natural Resources (DNR) for sewer system facilities to various entities including OWC, as well as Eagle Woods, LLC and Golden Glade Homeowners Association (sic), though not all planned construction was undertaken.

The sewer operating permit, MO-123170, as originally issued by DNR on October 13, 2000, was for the first phase of the treatment facility with design flow of 6,937 gpd (construction permit No. 26-3075) for 25 Eagle Woods lots. After additional construction permits for sewer construction as well as treatment addition, DNR modified the operating permit for the treatment facility as expanded with flow capacity of 13,875 gpd to serve 25 lots in Eagle Woods and 25 lots in Golden Glade. It is not clear to Staff whether the specified number of 25 Eagle Woods lots was intended to be limited to lots located in Phases I and II as indicated in an early construction permit, or 25 lots throughout Phases I through IV as indicated in one or more later versions of the operating permit. One version of the operating permit also identifies twenty-four (24) specific lots, with locations in all four phases. The reason this lack of clarity may be significant is that permit language specifying lots or development phases that existed at any given time could have affected decisions the Eagle Woods developer made to sell particular lots, or build on those lots, and connect to the utility systems.

Another DNR construction permit, 26-3571 issued on July 18, 2001, was for an expanded sewage treatment facility with a design flow capacity of 27,750 gpd for all 53 lots in Eagle Woods and 47 lots in the Golden Glade development, for a total of 100 lots. However, this construction has never taken place. The treatment facility as it exists today still has the flow capacity of 13,875 gpd.⁵

System Operations, Plant Capacity Issues

Water System

Although Staff has not been able to collect and verify all information needed to analyze water system capacity and capacity used, it appears that source and storage capacity is not an issue. If the 25 gpm production capacity is accurate, the well could meet maximum day even for all 53 Eagle Woods lots. A quick review of operations records in the wellhouse indicates peak day production exceeding 7,000 gallon within the past year. This reflects production of up to approximately 220 gallons per customer. If there were 53 customers, and with 25 gpm production capacity, the well would run approximately 467 minutes of the 1,440 minutes in a day, which is adequate. Average day appears to be approximately 4,500 gpd, reflecting production of 136 gallons per customer. Staff has not seen nor conducted any water loss studies comparing production to water sales through customer meters, to determine system losses. If there were 53 customers, then the DNR-recommended design one-day storage volume of 7,200

⁵ The operating permit was most recently re-issued on December 27, 2011 and expires on December 26, 2016. The operating permit requires upgrades to the treatment process to meet additional discharge specifications, which have not been undertaken by OWC. The upgrades, and the permit status, are issues not directly related to capacity to serve Eagle Woods although it might be possible for OWC to address additional capacity if and when it addresses the permit limits requirements.

gallons would be met by the present 9,000 storage volume. The contract operator stated to Staff that flow through the distribution system is inadequate because under some use conditions the houses that are farthest from the well and at the highest elevations have inadequate water pressure. This could be caused by undersized water mains, inadequate high-service pump capacity, or both; and would be made worse if additional homes were constructed and connected. Several resolutions could be workable, all of which would require capital funding. The fact that the well is not approved by DNR is itself an issue that ultimately needs resolution, and such resolution could also possibly address the hydraulic flow pressure issue.

Sewer System

The current sewage treatment facility with capacity of 13,875 gpd is ostensibly designed for 50 residential customers. There is not a flowmeter at the facility to indicate actual daily and hourly plant flows. However, if Staff's estimate of water system production in Eagle Woods of 136 gpd per customer based on quick observations of operation records, and annual report information indicating similar per-customer water production at Golden Glade is used, then Staff estimates the daily flow through the plant is a value approaching 8,000 gpd, meaning the facility is operating at less than 60% capacity. Arguably the treatment facility could handle approximately another forty (40) customers. This is a very rough estimate of flow; actual customer water use information, both quantity and type of usage, as well as surface water infiltration and inflow (I and I) into the sewers, plant performance as additional hydraulic and organic load is added, and septic tank and lift station capacities, are important factors that at present are unknown. To determine actual capacity availability, to design additional needed plant capacity, and to design upgrades to meet new discharge requirements, OWC should undertake an engineering study of actual flows and plant component capacities, in order to assure the ability of the treatment facility to meet current and future discharge requirements. Based on information from DNR the facility is currently being operated within permit requirements.

The contract operator stated to Staff that maintenance of septic tanks and removing/handling solids associated with sewage discharge needs more attention on this system than other similar systems, requiring more sludge removal frequency and resulting in more lift station pump and recirculation pump failures, indicating undersized or inadequate septic tank systems. Similar to the issues with the water distribution system there are resolution alternatives, all of which require capital improvements. However Staff is unsure whether or not OWC is in a position, in consideration of the Contract and pending Circuit Court case, to require Summit to either undertake or financially support improvements or upgrades to the sewage collection system.

Throughout the years when most of the development work in both Eagle Woods and Golden Glade was taking place, there was a great deal of activity, communications and meetings between some and all of the various involved parties - OWC under its ownership prior to receivership, the owners of Summit, DNR, and Staff. The activity included not only positive actions such as seeking approvals and permits and a certain amount of plant construction, but also substantial negative issues including failure to construct facilities as obligated by contract, installing inadequate or substandard components, and connecting customers improperly such as without water meters or with inadequate septic tank capacity, or without authorization.

Ownership transfer of plant components from the developer or a homeowner/landowner association to OWC, and conversion of customers from being association customers to becoming OWC customers were also issues. Indeed, it is a fact that the sewage treatment facility is not of the capacity contemplated by design numbers for the entire planned service area, and was not constructed as was authorized as per one of the most recent DNR-issued construction permits for the total increased flow of 27,750 gpd.

Although Staff was involved in this matter from its early stages, Staff simply does not have all of the details of system specifications and capacities, nor of all of the negative actions and issues between Summit and OWC, and as such is not in a position to make any final recommendation that would completely resolve the matter. One conclusion is that OWC owes Summit adequate sewage treatment capacity for all of the 53 Eagle Woods lots, as per the Contract, since money was paid by Summit to OWC. Staff suggests that OWC may be in a position to serve some number of additional new customers in Eagle Woods utilizing the existing treatment facility, but to do so there may be other system improvements beyond treatment capacity that should be addressed; including septic tank adequacy, and lift station adequacy, as well as the aforementioned water distribution system inadequacy. It would take further study to determine specific needs or to determine actual existing system capacities and limitations.

To resolve capacity issues, it is also possible that utility services through the City of Osage Beach (the City) could be available. The City has collecting sewers in the vicinity and it might be available to provide either retail services, or provide wholesale sewage treatment for OWC. Pumping into the City's sewer collection system would be necessary. Details including construction of a pumping facility, financing for such a facility, and arrangements on how service would be provided all would have to be addressed. The City does not have water distribution facilities within a mile of the area at present and therefore water service through the City is not readily available. Future availability of utility services, specific arrangements, and financing also depend on circumstances including other services to other developments and annexation of areas by the City.

Receiver issues

Staff generally promotes the concept that regulated utilities are obligated to provide service to any customer in the service area that requests service, under approved rules (the tariff), and Staff finds it necessary for OWC or a successor to address capacities of various utility plant components, whether by utility investment, working with developers, customers or other parties to determine improvements and needs that need to be addressed in order to obtain service.

However, OWC is in receivership, and the receiver states in the response to the formal complaint that direction from Camden County Circuit Court indicates the receiver is to operate existing facilities until liquidation in the best interest of existing customers. (Ref. pp 4 and 5 of the Order in CV102-965CC)

This is a legal matter. Staff's recommendation is that the court order does not prohibit the OWC receiver from undertaking improvements, expansions, and authorizing new customer connections and thus OWC remains obligated to provide service within its service areas under its tariffs.

However, staff is fully aware that receivers are not utility owners and are not in a good position to invest equity in capital improvements for the utility without involved investors.

Staff Recommendations

1. OWC determine actual treatment facility flows, actual capacity used, and study the adequacies of all plant components.
2. OWC determine what improvements, or component replacements or additions, are necessary for providing service to the remaining 20 Eagle Woods lots as well as other anticipated future customers.
3. OWC determine what improvements to the collecting sewer system in Eagle Woods are necessary for adequate capacity, reliability and reasonable maintenance levels.
4. OWC meet with the City of Osage Beach, and determine the feasibility of entering into a wholesale treatment arrangement with the City.
5. OWC determine the most feasible alternative to address water pressure issues in Eagle Woods.
6. OWC determine what sources of financing might be available for undertaking cost effective improvements and expansions necessary to meet its obligation to provide service in the service areas, and to meet environmental requirements.

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

Summit Investment, LLC, Complainant v.)
Osage Water Company, Respondent Summit)

File No. SC-2014-0214

Summit Investment, LLC, Complainant v.)
Osage Water Company, Respondent)

File No. WC-2014-0215

AFFIDAVIT OF JAMES A. MERCIEL, JR., P.E.

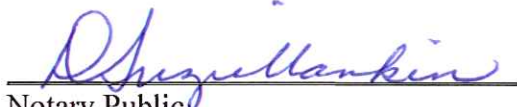
STATE OF MISSOURI)
) ss
COUNTY OF COLE)

James A. Merciel, Jr., P.E., of lawful age, on his oath states: (1) that he is the Utility Regulatory Engineering Supervisor in the Water and Sewer Unit of the Missouri Public Service Commission; (2) that he participated in the preparation of the foregoing *Staff Report of Investigation*; (3) that information in the *Staff Report of Investigation* was provided by him; (4) that he has knowledge of matters set forth in such *Staff Report of Investigation*; and (5) that such matters set forth in the foregoing *Staff Report of Investigation* are true and correct to the best of his knowledge, information and belief.



James A. Merciel, Jr., P.E.

Subscribed and sworn to before me this 21st day of March 2014.



Notary Public

