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Debit Acquisition Adjustment/
Additional Standing Offers
to Acquire OWC
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Sponsoring Party: Public Counsel
Case No.: WA-2019-0185

REBUTTAL TESTIMONY

OF

KERI ROTH

Submitted on Behalf of the Office of the Public Counsel

OSAGE UTILITY OPERATING COMPANY, INC.

CASE NO. WA-2019-0185

**

**

Denotes Confidential Information that has been Redacted

August 13, 2019

Non-Proprietary

TABLE OF CONTENTS

Testimony	Page
Introduction	1
Staff Memorandum – Publicity and Customer Notice	2
Debit Acquisition Adjustment	5
Additional Standing Offers to Acquire OWC	13

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KERI ROTH
OSAGE UTILITY OPERATING COMPANY, INC.
CASE NO. WA-2019-0185

1 **I. INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. Keri Roth, P.O. Box 2230, Jefferson City, Missouri 65102-2230.

4 **Q. By whom are you employed and in what capacity?**

5 A. I am employed by the Missouri Office of the Public Counsel (“OPC”) as a Public Utility
6 Accountant III.

7 **Q. On whose behalf are you testifying?**

8 A. I am testifying on behalf of the OPC.

9 **Q. What is the nature of your duties at the OPC?**

10 A. My duties include performing audits and examinations of the books and records of public
11 utilities operating within the state of Missouri. I have performed audits in water, sewer,
12 electric and gas cases and have performed audits or accounting analysis in acquisition cases,
13 complaint cases, and rate cases.

14 **Q. Please describe your educational background.**

15 A. I graduated in May 2011 from Lincoln University in Jefferson City with a Bachelor of Science
16 Degree in Accounting.

17 **Q. Have you received specialized training related to public utility accounting?**

1 A. Yes. In addition to being employed by the OPC since September 2012, I have also attended
2 the NARUC Utility Rate School held by Michigan State University.

3 **Q. Have you previously filed testimony before the Missouri Public Service Commission**
4 **(“Commission” or “PSC”)?**

5 A. Yes. Please refer to Schedule KNR-1, attached to this testimony, for a listing of cases in
6 which I have submitted testimony.

7 **Q. What is the purpose of your rebuttal testimony?**

8 A. The purpose of my rebuttal testimony is to respond to the direct testimony of Missouri Public
9 Service Commission Staff (“Staff”) witness, Ms. Natelle Dietrich, regarding Staff’s
10 Memorandum filed as part of Staff’s Recommendation regarding its position on Osage Utility
11 Operating Company, Inc.’s (“OUOC”) application to acquire Osage Water Company
12 (“OWC”) and Reflections Condominiums (“Reflections”) water and sewer systems;
13 specifically, the Publicity and Customer Notice section of Staff’s Memorandum. I will also
14 respond to OUOC’s witness, Mr. Josiah Cox, and Ms. Dietrich regarding OUOC’s request for
15 a debit acquisition adjustment.

16 **II. STAFF MEMORANDUM – PUBLICITY AND CUSTOMER NOTICE**

17 **Q. What does Staff’s Memorandum state regarding publicity and customer notice?**

18 A. Staff’s Memorandum states, “According to the OUOC, initial customer notifications were
19 mailed during the week of March 11, 2019. A sample letter was provided by OUOC, which
20 advises customers that rates will not change as a result of this acquisition however, the
21 application states that the current rates do not reflect current costs and a rate increase will be
22 necessary following substantial investment into repairs and upgrades of these water and

1 wastewater systems. As of the date of this report, zero public comments have been entered in
2 the Commission's Electronic Filing Information System concerning this case."¹

3 **Q. Did OPC request a copy of the customer notification provided by OUOC to Staff as**
4 **stated previously in Staff's Memorandum?**

5 A. Yes, OPC data request 0027 requested Staff to provide a copy of the initial customer notice if
6 a copy was received by Staff.

7 **Q. Did OPC receive a copy of the customer notice from Staff?**

8 A. No. Staff stated in its response to OPC data request 0027 that Staff did not receive a copy of
9 the initial customer notice, as shown in Schedule KNR-2, which is inconsistent with Staff's
10 Memorandum stating a sample letter was provided by OUOC.² Staff also states it believes a
11 copy of the notice was provided to OPC in data request 1106.

12 **Q. Did OPC request a copy of the customer notification from OUOC?**

13 A. Yes. OUOC responded to OPC data request 1106 with a copy of the customer notification,
14 attached as Schedule KNR-3.

15 **Q. Has OPC reviewed the customer notice prepared and sent out by OUOC?**

16 A. Yes.

17 **Q. Does OPC take issue with any statements contained inside the Staff Memorandum**
18 **related to the OUOC notice?**

19 A. Yes. OPC takes issue with three specific items discussed in the Publicity and Customer Notice
20 section of Staff's Memorandum attached to Ms. Dietrich's direct testimony.

¹ Direct Testimony, Natelle Dietrich, Staff Memorandum, page 23

² Direct Testimony, Natelle Dietrich, Staff Memorandum, page 24

1 **Q. Please describe OPC’s first issue with Staff’s Memorandum regarding “Publicity and**
2 **Customer Notice” after reviewing the customer notification provided by OUOC.**

3 A. First, as previously mentioned, Staff states in its Memorandum that a sample letter of the
4 customer notification was provided to Staff, but responded to OPC data request 0027 that
5 Staff did not receive a copy of the customer notice. This is not consistent with statements
6 provided in Staff’s Memorandum.

7 **Q. Please describe OPC’s second issue with Staff’s Memorandum regarding “Publicity and**
8 **Customer Notice” after reviewing the customer notification provided by OUOC.**

9 A. Second, Staff’s states in its Memorandum that the sample letter provided to Staff advised
10 customers that rates will not change as a result of the acquisition, but the application filed by
11 OUOC with the Missouri Public Service Commission states a rate increase will be necessary
12 following substantial investment of the water and sewer systems.

13 Staff is correct in stating the customer notice explained that customer rates will not change as
14 a result of the acquisition. However, the notice does not provide customers information
15 regarding how to access OUOC’s application with the Missouri Public Service Commission.
16 Therefore, customers have not been made aware of the likely rate increase to occur after
17 substantial investment has been made in the water and sewer systems. The customer notice
18 only explains that all necessary repairs and upgrades to provide safe and reliable service to
19 the community will be made if the purchase is approved the Missouri Public Service
20 Commission. This is misleading to customers.

21 **Q. Did OUOC’s customer notice provide sufficient information informing customers how**
22 **to file public comments with the Missouri Public Service Commission?**

23 A. No. The only information provided about the Missouri Public Service Commission is the
24 official website www.psc.mo.gov with zero instructions of how to follow the docket or
25 provide public comments.

1 **Q. Did Staff make any statements regarding public comments?**

2 A. Yes. Staff explains in its Memorandum that zero public comments have been filed as of the
3 date of the Staff report, which is OPC's third issue.

4 If Staff had actually reviewed the sample letter it stated was provided by OUOC, Staff should
5 have noticed that the notification contained no information informing customers how to file
6 public comments in the case. Therefore, it is unlikely that customer comments will be filed.
7 Customers have not been provided the proper information to voice their opinions regarding
8 OUOC's application.

9 **Q. Please summarize OPC's position regarding Staff's Memorandum regarding "Publicity
10 and Customer Notice."**

11 A. It is unclear if Staff actually reviewed a copy of the notice. Staff appears to be under the
12 impression that customers could have easily filed customer comments in the case and would
13 know that a rate increase is likely in the future. However, OPC's review of the notice provided
14 by OUOC in response to OPC data request 1106, clearly shows no information was provided
15 to customers regarding how to file a customer comment, or that a customer comment could
16 be filed, and no information was provided to customers regarding how to view the application
17 filed by OUOC, which indicated substantial investment would result in a rate increase.
18 OUOC only informed customers that repairs would be made to ensure safe and reliable
19 service, with no indication of how those repairs will be paid, which is misleading to customers.
20 OUOC's customer notification states, "For information regarding the Missouri Public Service
21 Commission including its regulation of utilities you may visit its website at:
22 www.psc.mo.gov." This statement is very vague and provides no guidance to customers.

23 **III. DEBIT ACQUISITION ADJUSTMENT**

24 **Q. Please describe the debit acquisition adjustment requested by OUOC.**

1 A. OUOC has requested a debit acquisition adjustment under 4 CSR 240-10.085 Incentives for
2 Acquisition of Nonviable Utilities. Per the rule, a debit acquisition adjustment is an
3 adjustment to a portion or all of an acquiring utility's rate base to reflect a portion or all of the
4 excess acquisition cost over depreciated original cost of the acquired system.³

5 **Q. What is the amount of the debit acquisition adjustment requested by OUOC?**

6 A. OUOC has not requested a specific amount. However, Mr. Cox states in his direct testimony,
7 "OUOC requests...a debit acquisition adjustment equal to the difference between the total
8 purchase prices and the total rate base values for the OWC and Reflections systems."⁴

9 **Q. Has Staff calculated a recommended debit acquisition adjustment for OUOC?**

10 A. Yes.

11 **Q. Please describe Staff's calculation.**

12 A. Staff has calculated the debit acquisition adjustment based on the combined purchase prices
13 of the OWC and Reflections system of ** **. Staff calculated rate base of the OWC
14 systems at December 31, 2018 to be \$341,508. Staff proposes the rate base value of the
15 Reflections systems be set at \$313,440, provided by OUOC in its Asset Valuation Report⁵,
16 attached as Schedule KNR-4 - Confidential, as of December 31, 2018. Based on the values
17 above, Staff proposes the debit acquisition adjustment be the difference between the combined
18 purchase prices and combined rate base values, equaling ** **. ⁶

19 **Q. Please describe the debit acquisition adjustment amount if reviewed by each system**
20 **individually.**

³ 4 CSR 240-10.085(1)(B)

⁴ Direct Testimony, Josiah Cox, page 24, lines 8 – 10

⁵ OUOC response to Staff data request 0013

⁶ Direct Testimony, Natelle Dietrich, Staff Memorandum, pages 21 - 22

1 A. The difference between the purchase price of the OWC systems, \$800,000, and Staff's
2 calculated rate base of \$341,508, is \$458,492.

3 The difference between the purchase price of the Reflections systems, ** **, and
4 OUOC's rate base using its Asset Valuation Report⁵, \$313,440, is ** **.

5 **Q. Does OPC have concerns regarding Staff's use of OUOC's Asset Valuation Report to**
6 **determine the rate base value for the Reflections systems?**

7 A. Yes. OPC has concerns about Staff relying on OUOC's numbers for the Reflections systems
8 since OUOC's Asset Valuation Report rate base numbers for the OWC systems⁷ is much
9 more inflated than Staff's calculated numbers using rate base values determined in the most
10 recent rate cases and using annual reports to update rate base values.⁸ However, Staff has
11 included a footnote in its Staff Memorandum that rate base values reviewed in this case are
12 for information only and subject to change. OPC will review the rate base value further in the
13 next general rate case.

14 **Q. Does OPC have concerns regarding the purchase price paid over the rate base value of**
15 **the OWC systems?**

16 A. Yes.

17 **Q. Please explain OPC's concerns.**

18 A. 4 CSR 240-10.085 Incentives for Acquisition of Nonviable Utilities states that the acquiring
19 utility has the burden of proof to demonstrate that the acquisition would be unlikely to occur
20 without the probability of obtaining an acquisition incentive.⁹ OPC does not believe OUOC
21 has met its burden of proof.

⁷ OUOC response to Staff data request 0016, attached as Schedule KNR-5 - Confidential

⁸ Direct Testimony, Natelle Dietrich, Staff Memorandum, page 21

⁹ 4 CSR 240-10.085(4)(I)

1 **Q. Does Staff believe the acquisitions requested by OUOC would be unlikely to occur**
2 **without the probability of obtaining acquisition incentives?**

3 A. In response to OPC data request 0023, attached as Schedule KNR-6, Staff states it does not
4 take a position, which appears to be another inconsistency with its recommendation that the
5 Commission approve an acquisition adjustment. Per the rule, the acquisition adjustment
6 cannot be approved unless the acquiring utility has met its burden of proof that the acquisition
7 would be unlikely to occur without the probability of obtaining an acquisition incentive. Staff
8 continues to explain that its recommendation is based on an evaluation of each of the criteria
9 of 4 CSR 240-10.085; however, that logic does not seem reasonable considering the history
10 of acquisitions.

11 **Q. Does OUOC's parent company, CSWR LLC ("CSWR"), formerly First Round CSWR,**
12 **LLC, have a history of acquiring failing or troubled systems?**

13 A. Yes. OUOC's response to OPC data request 1108, attached as Schedule KNR-7, explains
14 that to date, CSWR affiliated companies have acquired several failing or troubled systems in
15 Missouri and Arkansas.

16 **Q. Have CSWR affiliates filed dockets in other states to acquire systems?**

17 A. Yes. Mr. Cox explains in his direct testimony that CSWR has acquisition cases pending
18 before the Tennessee Public Utility Commission for three systems, the Kentucky Public
19 Service Commission for eight systems, and the Louisiana Public Service Commission for
20 approximately 170 systems.¹⁰

21 **Q. Is OPC aware of the conditions of the systems in Arkansas, Tennessee, Kentucky, and**
22 **Louisiana?**

¹⁰ Direct Testimony, Josiah Cox, page 5, lines 21 – 23, and page 6, lines 1 – 2

1 A. Yes. Mr. Cox utilizes the words “distressed” and “failing” when describing some repairs to
2 the Arkansas systems.¹¹

3 Also, in Mr. Cox’s pre-filed testimony in Tennessee docket number 19-00062, attached as
4 Schedule KNR-8, he explains his business plan to “acquire and recapitalize failing systems”.¹²
5 Mr. Cox’s pre-filed testimony states:

6 In late 2010, after working on several small, failing water and wastewater
7 systems, I created a business plan to acquire and recapitalize failing systems
8 as investor-owned regulated water and wastewater utility companies.¹²

9 Mr. Cox also states:

10 In 2018, I was able to attract an additional large institutional private equity
11 investor, which allowed me to expand the scope of my business plan beyond
12 Missouri and Arkansas. This new investor is allowing CSWR *to form*
13 *companies for the purpose of acquiring distressed water and wastewater*
14 *systems* in additional states including Tennessee.¹³

15 The same is described in Tennessee docket number 19-00035, attached as Schedule KNR-
16 8.¹⁴

17 The same scenario is also described in Kentucky docket number 2019-00104, attached as
18 Schedule KNR-9:

19 7. CSWR Group was created to acquire and recapitalize failing systems as
20 investor-owned regulated water and wastewater utility companies...In 2018,

¹¹ Direct Testimony, Josiah Cox, page 5, lines 11 - 21

¹² <http://share.tn.gov/tra/orders/2019/1900062a.pdf> - Exhibit 11 - Prefiled Testimony of Josiah Cox, page 2

¹³ <http://share.tn.gov/tra/orders/2019/1900062a.pdf> - Exhibit 11 - Prefiled Testimony of Josiah Cox, page 3
(emphasis added)

¹⁴ <http://share.tn.gov/tra/orders/2019/1900035.pdf> - Exhibit 11 - Prefiled Testimony of Josiah Cox, pages 3 – 4

1 CSWR Group attracted an additional, large institutional private equity
2 investor, enabling the expansion of its business beyond Missouri and
3 Arkansas, and allowing the Group to form affiliates for the purpose of
4 acquiring and professionalizing distressed water or wastewater systems in
5 other states, including Tennessee and Kentucky.¹⁵

6 Additionally, the application in the Kentucky docket states:

7 As typical among systems acquired and then operated by the CSWR Group,
8 many of the transferring utilities are out of compliance with Commission rules
9 and with federal or state pollution laws and regulations. Many do not have the
10 permits required to lawfully operate the systems; most have not adjusted their
11 rates for a decade or more and do not have the financial resources necessary
12 to build, maintain, and replace facilities used to provide service or to bring
13 operations into compliance with rapidly-changing environmental and water-
14 quality regulations.¹⁶

15 Once again, the same scenario is described in the numerous acquisition applications filed in
16 Louisiana dockets.¹⁷ For example, Louisiana docket number S-35282, attached as Schedule
17 KNR-10, states:

18 The affiliated group of which Magnolia and CSWR are members is the type
19 of buyer small system operators like Jones Rolling Ridge have sought out.
20 The group's business plan is to pursue the purchase and recapitalization of

¹⁵ https://psc.ky.gov/pscecf/2019-00104/kyunker%40mcbrayerfirm.com/04162019035651/JA_JtApp_with_Exhs_A-N.pdf - Application, page 4, item 7

¹⁶ https://psc.ky.gov/pscecf/2019-00104/kyunker%40mcbrayerfirm.com/04162019035651/JA_JtApp_with_Exhs_A-N.pdf - Application, page 5, item 11

¹⁷ <http://lpscstar.louisiana.gov/star/portal/lpsc/page/Dockets/portal.aspx> - Docket Nos. S-35282, S-35284, S-35285, S-35286, S-35287, S-35288, S-35289, S-35290, S-35291, S-35292, S-35293, S-35294, S-35295, S-35296, S-35297

1 small water and wastewater systems, many of which are financially
2 distressed.¹⁸

3 CSWR Group's application additionally states:

4 All the systems CSWR and its affiliates have acquired this far reflect some
5 degree of operational neglect, with several recording numerous, oftentimes
6 ongoing, violations of applicable health and environmental regulations.¹⁸

7 Finally, the application states:

8 The system Magnolia proposes to acquire has, in the past, failed to satisfy one
9 or more health or environmental regulations. As detailed elsewhere in the
10 petition, Magnolia has identified capital investments and expenditures
11 necessary to correct past problems and ensure that in the future the system
12 would be operated in full compliance with all applicable regulations.

13 Similar language is included in every docket filed with the Louisiana Public Service
14 Commission by CSWR. See Schedule KNR-10.

15 **Q. Does Arkansas, Tennessee, Kentucky, or Louisiana have acquisition incentives in place**
16 **for the purchase of non-viable systems?**

17 A. Based on my research, Tennessee, Kentucky, and Louisiana do not have acquisition
18 incentives for the purchase of non-viable systems. The Arkansas systems do not appear to be
19 regulated by the Arkansas Public Service Commission due to revenue thresholds.¹⁹

20 **Q. Considering CSWR's history of affiliates in Missouri, Arkansas, Tennessee, Kentucky,**
21 **and Louisiana acquiring or in the process of acquiring non-viable systems without**

¹⁸ <http://lpscstar.louisiana.gov/star/portal/lpsc/page/Dockets/portal.aspx> - Docket No. S-35282, page 2

¹⁹ http://www.apscservices.info/g_w.asp

1 **acquisition incentives, has OUOC met its burden of proof as required in 4 CSR 240-**
2 **10.085?**

3 A. No, OPC is not convinced OUOC has met its burden of proof when considering CSWR's
4 acquisition history. It has been clearly stated in dockets in other states that CSWR's business
5 plan is to acquire failing or distressed water and wastewater systems, which is the same
6 practice seen in Missouri. Neither CSWR, nor OUOC, need or require an acquisition
7 incentive to pursue acquisitions of failing or distressed systems, because such practice is the
8 business plan used in the past and will continue to be in the future.

9 **Q. Does OPC have any other reason to believe OUOC has not met its burden of proof as**
10 **required in 4 CSR 240-10.085?**

11 A. Yes. OUOC's purchase price of the OWC systems causes concern for OPC.

12 **Q. Please explain.**

13 A. As discussed in my affidavit attached to *Public Counsel's Response to Staff Recommendation*
14 *and Memorandum and Request for a Procedural Conference*, CSWR repeatedly raised its bid
15 price to purchase the OWC systems. CSWR was identified as a "Stalking Horse Purchaser"
16 by the bankruptcy Trustee. CSWR and the Trustee negotiated an asset purchase agreement
17 ("APA") in the amount of \$465,000.²⁰ Prior to becoming the "Stalking Horse Purchaser" at
18 some point after October 26, 2017, CSWR submitted bids to the court appointed receiver of
19 OWC as early as 2015,²¹ prior to the acquisition incentive rule becoming effective. CSWR
20 was aware the OWC systems were troubled and distressed long before the acquisition
21 incentive rule was available. Therefore, I am convinced the acquisition would have occurred
22 without the probability of obtaining the incentive. Additionally, CSWR's APA price of
23 \$465,000 when compared to Staff's calculated rate base of \$341,508 originated at

²⁰ Direct Testimony, Natelle Dietrich, Schedule ND-d2, Spencer Fane letter, page 3

²¹ Direct Testimony, Natelle Dietrich, Schedule ND-d2, Spencer Fane letter, page 2

1 approximately 36% over rate base. After continuing to match bids from Missouri American
2 Water Company of \$600,000²² and Public Water Supply District #5 of Camden County,
3 Missouri, Missouri Water Association, Inc., and Lake Area Waste Water Association, Inc. of
4 \$800,000²², see Schedule KNR-11²², CSWR's bid increased to approximately 134% above
5 rate base. CSWR's behavior to repeatedly match higher bids, driving its original bid from
6 \$465,000 up to the final bid of \$800,000 during the bankruptcy bidding process convinces me
7 that the acquisition would occur regardless of a debit acquisition adjustment, or that CSWR
8 would stop matching bids at no number to attempt to collect the largest premium possible on
9 OWC assets at a later date utilizing the new acquisition incentive rule. The fact that there
10 were multiple bidders for the system, willing to purchase the system at a lower price, is a clear
11 indication that the sale would have occurred without the probability of obtaining an
12 acquisition incentive.

13 **IV. ADDITIONAL STANDING OFFERS TO ACQUIRE OWC**

14 **Q. Does Staff acknowledge the other interested interveners in the current case whom are**
15 **interested in acquiring the OWC systems?**

16 A. No.

17 **Q. Please explain.**

18 A. Staff states in its memorandum, "For its reviews, Staff also considers whether or not other
19 utility entities are available to provide similar service." Per Staff's response to OPC data
20 request 0025, attached as Schedule KNR-12, this language specifically addresses the
21 applicable criteria for investigation into the application for acquisition of Reflections.
22 However, Staff's evaluation of the technical, managerial and financial criteria applied to the
23 application for acquisition of the OWC systems does not include such language. It is unclear
24 to OPC why Staff would consider other available entities for Reflections, which has no

²² Spencer Fane letter Exhibit C – Notice of Auction Results, pages 1 - 3

1 interested interveners, but not consider other available entities for OWC, which has three
2 interested interveners in the current case.

3 **Q. Who are the interested interveners with a standing offer to purchase the OWC systems?**

4 A. Public Water Supply District #5 of Camden County, Missouri, Missouri Water Association,
5 Inc., and Lake Area Waste Water Association, Inc. (“Joint Bidders”) have a standing offer to
6 purchase the OWC systems.

7 **Q. Does the offer match OUOC’s purchase price of \$800,000?**

8 A. Yes. However, the Joint Bidders believe it is in the ratepayer’s best interest that the systems
9 be acquired by them at lower costs. This is explained further in the direct testimony of the
10 Joint Bidders, and OPC urges the Commission to not ignore other available, and potentially
11 cheaper, options. The Joint Bidders are also offering to purchase the systems without the use
12 of an acquisition incentive.

13 **Q. Does this conclude your rebuttal testimony?**

14 A. Yes.