

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

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its *Recommendation*, respectfully states:

1. Osage Utility Operating Company, Inc. (OUOC) filed an *Application and Motion for Waiver* seeking to acquire certain water and sewer assets in the four service areas of Osage Water Company (OWC) and the single service area of Reflections Subdivision Master Association, Inc., and Reflections Condominium Owners Association, Inc., on December 19, 2018. Lake Area Waste Water Association, Inc., Missouri Water Association, Inc., Public Water Supply District No. 5 of Camden County Missouri, Cedar Glen Condominium Owners Association, Inc., and Reflections Condominium Owners Association, Inc., filed *Motions to Intervene*, which the Commission granted. The Commission scheduled a prehearing conference, which was held February 20, 2019, at which a procedural schedule was proposed and later approved by the Commission. Pursuant to that agreed-upon schedule, Staff committed to filing a recommendation no later than April 30, 2019, which the Commission ultimately extended, upon request, to May 24, 2019, and which Staff now files in fulfillment of the schedule.

2. Staff conducted a full investigation of each of the water and sewer assets that OUOC seeks to acquire in its *Application* and provides details regarding each of them for the Commission's consideration in its Memorandum attached here as Attachment A.

Staff also lays out certain delineated recommendations for OUOC, should the Commission approve its *Application*. Generally, Staff finds that OUOC in consideration of it along with its affiliates has the technical, managerial, and financial capabilities to manage the water and sewer assets it seeks to acquire. Additionally, Staff finds that OUOC meets the Tartan criteria, which Staff considers in conjunction with all applications for a certificate of convenience and necessity for a water and/or sewer system. Finally, Staff finds that should the Commission approve OUOC's request to acquire the Osage water and sewer assets it would not be detrimental to the public interest.

3. The OWC systems OUOC seeks to acquire are presently in receivership and bankruptcy. This proceeding is unique in the fact that OUOC was the stalking horse bidder on those systems through a bankruptcy auction process following the receiver's filing of a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code, pending as Case No. 17-42759-drd11 in the U.S. Bankruptcy Court for the Western District of Missouri. A stalking horse bidding process is defined as one where a debtor enters into an agreement with a bidder or purchaser in advance of an auction for the sale of the debtor's assets.¹ The bid proposed serves as an initial bid which is the base-line for the auction once approved by the bankruptcy court.² If a higher bid is not made at the auction then the stalking horse agreement becomes the asset purchase agreement.³ The stalking horse bidding process is common under Section 363 of the U.S. Bankruptcy Code.⁴ Attachment B includes a letter from the law firm Spencer Fane, which

¹ Stalking Horse Process (Sales Procedures) – Overview. Lexis Practice Advisor Canada, https://www.lexisnexis.com/ca/guidance/mergersandacquisitions/document/415544/5GNG-BXN1-F003-H05D-00000-00/Stalking_Horse_Process_Sales_Procedures_Overview

² *Id.*

³ *Id.*

⁴ *Id.*

represents the bankruptcy trustee in Case No. 17-42759-drd11. The attachment explains the process undertaken in relation to the relevant bankruptcy auction and includes relevant filings from the proceeding explaining the bidding procedure, auction instructions, notice of the auction's results, and the order of sale by the bankruptcy court. In summary, the letter explains that the Commission appointed receiver in keeping with Commission directives to liquidate OWC's assets voluntarily filed a petition for Chapter 11 bankruptcy for OWC once his attempts to sell the assets failed. The appointed bankruptcy trustee identified Central States Water Resources (CSWR), which is under common ownership with OUOC, as a potential stalking horse purchaser and successful negotiations with CSWR ultimately resulted in a stalking horse asset purchase agreement. The agreement permitted the trustee to solicit additional bids and an auction was held between all interested parties. CSWR matched all competing bids at the auction and was ultimately declared the successful purchaser.

4. The Commission does not have any applicable rules regarding approval of assets to be acquired through the bankruptcy process and no statute specifically addresses this type of situation. The Commission did previously address a situation involving acquisition through a bankruptcy auction similar to the present matter in Case No. GO-2005-0019, *In the Matter of the Application of Southern Union Company, d/b/a Missouri Gas Energy, for Authority to Acquire Directly or Indirectly, up to and Including Fifty Percent (50%) of the Equity Interests of CrossCountry Energy, LLC, and to Take All Other Actions Reasonably Necessary to Effectuate Said Transaction*. In that matter the Commission approved a Non-Unanimous Stipulation and Agreement which included provisions that joint and common costs allocated to Missouri for ratemaking should not

increase as a result of the acquisition; acquisition costs were to be booked separately; retail rates would not increase as a result of the acquisition; Southern Union assumed the risk of costs associated with the acquisition; Southern Union agreed that no detrimental impact to its utility customers would occur as a result of the acquisition; and ratemaking treatment would be determined in a future rate case. The Stipulation also included an agreement on the part of Southern Union to forgo recovery of any part of the acquisition premium in rates.

5. OUOC requested an acquisition incentive in conjunction with its *Application* to acquire the water and sewer systems, specifically a rate of return premium and a debit acquisition adjustment. 4 CSR 240-10.085 governs incentives for acquisitions of nonviable utilities and requires an acquiring entity to demonstrate: 1) that it is not a nonviable utility as that is term is defined in the rule and that it will not be materially impaired by the acquisition; 2) that the acquiring entity maintains the necessary managerial, technical, and financial capabilities to operate the system(s) to be acquired; 3) that the utilities it seeks to acquire are nonviable utilities; 4) that the purchase price and financial terms of the acquisition are fair and reasonable terms reached through arm's length negotiations; 5) that any improvements necessary to make the system(s) viable will be done in a reasonable time period; 6) how managerial or operational deficiencies will be corrected within six months of acquisition, if possible; 7) how planned improvements and changes will correct deficiencies; 8) that the acquisition is in the public interest; and 9) that the acquisition would be unlikely to occur without the probability of obtaining an acquisition incentive. The rule also requires the acquiring entity to make an effort to obtain records of the original cost of the utility along with accounting for

contributions, services or property and construction. If the Commission approves an acquisition premium as part of this proceeding, OUOC would need to file a rate case within the period of time ordered by the Commission. Should the Commission approve OUOC's request, the Company must also track properly booked contributions in aid of construction, use proper accounting for all plant retirements and plants no longer considered used and useful, and maintain those amounts using prior records of the systems or, if prior records are unavailable, keep new records starting with the date of acquisition. Pursuant to 4 CSR 240-10.085.6, OUOC will also need to file a plant-in-service study supporting its request in its next general rate case; any disputes with the study will be resolved in that proceeding. Staff's recommendation at this time is that OUOC should be granted only a debit acquisition premium, based upon the purchase price for OWC and Reflections, combined. Should the Commission issue an order including a determination that a debit acquisition premium is proper, it should be considered as part of the first rate case held following OUOC's acquisition of the systems.

6. Staff's delineated recommendations for the water and sewer system are:

1. Issue a new CCN to OUOC to provide water and sewer service for the proposed Reflections service area, with OUOC to begin providing such service upon closing of the assets;
2. Approve rates of \$25 per month for water service, and \$25 per month for sewer service, for OUOC, applicable to customers in the Reflections service area;
3. Require OUOC to submit appropriate tariff sheets for water and sewer service, as a thirty (30) day filing, within ten (10) days after the effective date of approval of a CCN for Reflections by the Commission, to become effective before OUOC closes on the Reflections' assets;

4. 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;
5. Upon closing on each of the OWC water and sewer systems, authorize OWC to cease providing service, and authorize OUOC to begin providing service;
6. 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;
7. Upon closing on each of the water and sewer systems, authorize 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;
8. 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;
9. 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;
10. Approve depreciation rates for water and sewer utility plant accounts as described and shown herein;
11. 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 4 CSR 240-13, within thirty (30) days after the effective date of approval of a CCN by the Commission;
12. 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;

13. Resolve all issues regarding noncompliance with Missouri Department of Natural Resources (DNR) regulations for all water and sewer systems;
14. 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;
15. Require OUOC to provide to the Customer Experience Department Staff a sample of ten (10) billing statements of bills issued to OWC and Reflections customers within thirty (30) days of such billing;
16. Require OUOC to file notice in this case once Staff's recommendations regarding customer communications and billing, listed above, have been completed; and
17. 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.

7. Due to the severe weather events that transpired in Jefferson City, Missouri, on May 22, 2019, all affidavits relating to Staff's Recommendation will be late-filed on Tuesday, May 28, 2019.

WHEREFORE, Staff prays that the Commission will accept this *Recommendation*; order the other parties to this matter to file their responses to Staff's Recommendation pursuant to the applicable response period; and grant such further and other relief as is just in the circumstances.

Respectfully submitted,

/s/ Whitney Payne

Whitney Payne

Senior Counsel

Missouri Bar No. 64078

Attorney for the Staff of the

Missouri Public Service Commission

P. O. Box 360

Jefferson City, MO 65102

(573) 751-8706 (Telephone)

(573) 751-9285 (Fax)

whitney.payne@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 24th day of May, 2019, to all counsel of record.

/s/ Whitney Payne

ERIC JOHNSON
DIRECT DIAL: 816-292-8267
ejohnson@spencerfane.com

File No. 5017895-3

May 13, 2019

VIA ELECTRONIC MAIL

Whitney Payne, Senior Counsel
Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
Whitney.payne@psc.mo.gov

Re: In the Matter of the Application of Osage Utility Operating Company, Inc. to Acquire Certain Water and Sewer Assets and for a Certificate of Convenience and Necessity, Case No. WA-2019-0185

Dear Ms. Payne:

We represent Jill Olsen (the "**Trustee**"), the duly appointed Chapter 11 Trustee for the bankruptcy estate of Osage Water Company (the "**Debtor**") in the Chapter 11 case styled *In re Osage Water Company*, Case No. 17-42759 (the "**Bankruptcy Case**") currently pending in the United States Bankruptcy Court for the Western District of Missouri (the "**Bankruptcy Court**").

Currently pending before the Public Service Commission (the "**Commission**") is the application of Osage Utility Operating Company, Inc. (the "**Applicant**") as part of its acquisition of certain water and sewer assets in the for service areas of the Debtor. As you may know, the Applicant is purchasing the assets from Debtor's bankruptcy estate and such sale is contingent upon Commission approval. The Trustee has reviewed several of the filings with the Commission and is concerned there may be some misapprehension as to the bankruptcy sale process. As such, the purpose of this letter is to provide general background and information related to the bankruptcy sale process in order to assist the Commission's Staff in its investigation related to the application. For the avoidance of doubt, the Trustee has no objection to this letter being filed publically on the docket in this matter.

I. Bankruptcy Sales in General

While chapter 11 is titled "reorganization", it can be used for orderly liquidations. In this regard, a bankruptcy trustee may sell substantially all of the Debtor's assets pursuant to 11 U.S.C. § 363 ("**363 Sale**"). Section 363(b) of the Bankruptcy Code provides, in part, that the "trustee, after notice and hearing, may use, sell, or lease other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). The recent trend in chapter 11 bankruptcies is for a debtor to file a chapter 11 case and then conduct a 363 Sale.

As a general matter, a 363 Sale may be approved provided that such a sale is supported by a good business reason. See *In re Channel One Communications, Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990). As set forth by the Eighth Circuit Bankruptcy Appellate Panel in *In re Meill*:

Whitney Payne, Senior Counsel
May 13, 2019
Page 2

Bankruptcy courts have wide discretion with respect to sales of assets of a bankruptcy estate; they have ample latitude to strike a satisfactory balance between the relevant factors of fairness, finality, integrity, and maximization of assets. A sale of estate property outside the ordinary course of business is in the best interest of the estate and may be approved if it is for a fair and reasonable price and in good faith.

In re Meill, 441 B.R. 610, 615 (8th Cir. BAP 2010) (internal citations and quotations omitted). While good faith is not defined under the Bankruptcy Court, courts have indicated that the bankruptcy court should look at the integrity of the purchaser's conduct in the course of the sale proceedings, not at conduct prior to such proceedings. *In re Rock Industries Machinery Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978).

In many 363 Sales, "bidding and auction procedures" are established as part of the sale process. As part of the bidding procedures, a "stalking-horse" purchaser may be selected to help drive the sale process and also assure that the estate is guaranteed a minimum price for the assets. In exchange for serving as a "white knight" bidder, the purchaser generally negotiates certain bid protections, which can take many forms including, without limitation, expense reimbursement, break-up fees, matching rights, and overbid requirements. See *In re 995 Fifth Ave. Assoc., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (bid protections "may be legitimately necessary to convince a 'white knight' bidder to enter the bidding by providing some form of compensation for the risks it is undertaking."). The Bankruptcy Code provides for many mechanisms to promote the finality of sales and the protection of good faith purchasers. See 11 U.S.C. § 363(m) and (n).

A 363 Sale is commenced by the filing of a motion before the Bankruptcy Court. Ultimately, the approval of a sale by auction contains several opportunities for creditors and other parties-in-interest to object to the process and the sale. First, creditors and other parties-in-interest generally have the ability to object to the bidding and auction procedures. Second, once the auction has concluded, creditors and other parties-in-interest generally have the ability to object to the ultimate confirmation of the auction results. A 363 Sale is generally concluded with the entry of an order by the bankruptcy court approving of the proposed sale and the ultimate closing of the sale pursuant to that order.

II. The Osage Water Bankruptcy Sale Process

A. Debtor Background

In a report and order dated December 10, 2002 (the "PSC Order"), the Commission determined that the Debtor had been effectively abandoned by its owners and that it was unable or unwilling to provide safe and adequate service to its customers. The Commission recommended its staff seek the appointment of a receiver to take control and responsibility of the company. The Commission also recommended its staff seek a determination from the circuit court that Debtor should not be returned to its owners but rather should be liquidated by the receiver. On October 21, 2005, the Circuit Court of Camden County (the "State Court") appointed Gary Cover receiver of Debtor (the "Receiver").

The Receiver marketed the Assets prepetition, receiving multiple bids from 2014 to 2017. In the Receiver's report to the State Court dated January 14, 2015, the Receiver reported the following bids: (1) Central States Water Resources, Inc., \$479,702.00; (2) Missouri American Water Company, \$250,000.00;

Whitney Payne, Senior Counsel
May 13, 2019
Page 3

(3) Cedar Glen Condominium Owners Association, Inc., Missouri Water Association, Inc., and Lake Area Waste Water Association, Inc. (joint bidders), \$160,000.00; and (4) Gregory Williams, satisfaction of judgment obtained in Case No. 09CM-CC00413.

In the Receiver's report to the State Court dated May 12, 2017, the Receiver reported the following bids: (1) Central States Water Resources, Inc., \$440,000.00; (2) Public Water Supply District # 5, \$636,000.00 (Cedar Glen service area only); (3) Patrick Mitchell, \$5,000.00 (all assets except Cedar Glen service area); and (4) Gregory Williams, satisfaction of judgment obtained in Case No. 09CM-CC00413. None of the prepetition bids resulted in a sale.

On October 11, 2017, the Receiver, on behalf of the Debtor, filed a voluntary petition for Chapter 11 bankruptcy commencing the Bankruptcy Case. On October 26, 2017, the United States Trustee appointed the Trustee.

B. Bankruptcy Sale Process

1. The Stalking Horse APA

After her appointment, the Trustee, either personally or through her counsel, contacted entities that expressed interest in the Debtor's assets. This communication resulted in the Trustee identifying Central States Water Resources, Inc. (the "**Stalking Horse Purchaser**") as a potential stalking horse purchaser. The proposed asset purchase agreement with the Stalking Horse Purchaser was negotiated over a period of time and ultimately the Trustee and the Stalking Horse Purchaser finalized an asset purchase agreement in the amount of \$465,000 (the "**Stalking Horse APA**"). It is the Trustee's understanding that the Applicant is subsidiary of the Stalking Horse Purchaser.

The Stalking Horse APA contained, among other things, the following bid protections:

- **Matching Rights.** The Stalking Horse APA provided that the Trustee could solicit other bids and hold an auction. In return, the Stalking Horse APA was granted the following matching rights:

In return for Buyer's commitments and undertakings hereunder, Buyer shall have the right and option, in its sole discretion, to match ("Matching Right") any competing offer or bid for the Assets or any related asset ("Competing Offer") that may be submitted by any person other than Buyer before or after the Effective Date and up to the close of the Auction in accordance with the Bidding Procedures Order, and to the extent Buyer exercises the Matching Right, Seller shall support that Buyer be declared by the Bankruptcy Court as the high bidder; provided, however, that if Buyer matches a Competing Offer, *the other offeror can increase its offer over the matched offer with the Buyer having the ability to keep matching the highest offer until there are no other Competing Offers at which time the Buyer will be declared the high bidder.* (emphasis added)

- **Expense Reimbursement.** If the Trustee selected a competing offer, then the Stalking

Whitney Payne, Senior Counsel
May 13, 2019
Page 4

Horse Purchaser had the right to assert an administrative expense claim up to \$13,950 against the Bankruptcy Estate by making proper application to the Bankruptcy Court.

In addition to Bankruptcy Court approval, the Stalking Horse APA was also contingent on state regulatory agency approval, including approval by the Commission.

On August 26, 2018, the Trustee filed her *Motion to Approve (A) the Sale of Substantially All of Debtor's Assets Free and Clear of All Liens, Interests, Claims and Encumbrances and Related Procedures and Bid Protection Pursuant to 11 U.S.C. § 363, (B) The Potential Assumption and Assignment, or Rejection, of Certain Executory Contracts and Unexpired Leases, and Related Procedures, Pursuant to 11 U.S.C. § 365, and (C) Related Relief Pursuant to 11 U.S.C. §§ 102 and 105* (Doc. 115) (the "**Sale Motion**"). In the Sale Motion, the Trustee sought approval of Stalking Horse APA, bidding and auction procedures (the "**Bidding Procedures**"), and setting a schedule to confirm the ultimate sale of the assets.

The Sale Motion was set for an initial hearing before the Bankruptcy Court on September 20, 2018 with a response deadline of September 17, 2018. The purpose of the initial hearing was to approve the Stalking Horse APA and the Bidding Procedures. Notice of initial hearing was circulated to creditors of the Debtor's bankruptcy estate and other required parties under the Bankruptcy Code. See Doc. 120. No objections were received.

On September 19, 2019, the Bankruptcy Court entered its *Order Approving Procedures for the Solicitation of Offers for (A) the Sale of Substantially All of Debtor's Assets Free and Clear of Liens, Claims, Encumbrances, and Interests; (B) the Possible Assumption and Assignment, or Rejection, of Certain Executory Contracts and Unexpired Leases; and (C) Related Relief* (the "**Bid Procedures Order**"). In the Bid Procedures Order, the Bankruptcy Court found the Stalking Horse APA and the Trustee's selection of the Stalking Horse to be fair, reasonable, and appropriate, and designed to maximize the value of the Debtor's bankruptcy estate.

The Bid Procedures Order also held that any disputes as to the selection of a successful bid be resolved by the Bankruptcy Court. After entry of the Bid Procedures Order, the Trustee reached out to prior interested parties including Lake Area Waste Water Association, Inc., Missouri American Water Company, Public Water Supply District #5, Missouri Water Association, Inc., Liberty Utilities, and Cedar Glen COA, Inc. Each of these parties were provided with the Bid Procedures Order. A copy of the Bid Procedures Order is attached hereto as **Exhibit A**.

1. The Auction

The Trustee ultimately received two qualified bids: (i) a joint bid by Public Water Supply District No. 5 of Camden County, Missouri and Lake Area Waste Water Association, Inc. (collectively, the "**Joint Bidders**") and (ii) Missouri American Water Company ("**MAWC**"). The Auction was set to take place on October 24, 2018. The auction participants were the Stalking Horse Purchaser, the Joint Bidders, and MAWC (collectively, the "**Auction Participants**"). Prior to the Auction, further instructions were provided to each of the Auction Participants including that the Auction would be commenced in two phases in light of the Stalking Horse Purchaser's matching rights. A copy of such further instructions are attached hereto as **Exhibit B**.

Whitney Payne, Senior Counsel
May 13, 2019
Page 5

On October 24, 2018, the Trustee convened the Auction. Instructions were once again given to the Auction Participants and Phase 1 of the Auction was commenced. Phase 1 of the Auction was between the Joint Bidders and MAWC. Ultimately, the Joint Bidders were determined to have the winning Phase I Bid and proceeded to Phase 2 of the Auction.

In Phase 2 of the Auction, the Stalking Horse Purchaser successfully matched each offer by the Joint Bidders until the Joint Bidders failed to make a competing higher offer. Accordingly, the Stalking Horse Purchaser was declared the successful purchaser with a bid of \$800,000. The Joint Bidders were designated the first Back-Up Bidder and MAWC was designated the second Back-Up Bidder. A copy of the Notice of Auction Results and along with revised asset purchase agreements (taking into account the Auction) are attached hereto as **Exhibit C**.

2. The Bankruptcy Court Sale Order

On November 5, 2019, the Trustee filed *Notice of Proposed Order* (Doc. 133), which attached a copy of the proposed sale order and provided that no hearing would be held unless objections were filed with the Bankruptcy Court by November 13, 2018. No objections were filed with the Bankruptcy Court. On November 14, 2019, the Bankruptcy Court entered its *Order Approving (A) the Sale of Substantially All of the Debtor's Assets Free and Clear of All Liens, Interests, Claims and Encumbrances and Related Procedures and Bid Protection Pursuant to 11 U.S.C. § 363, (B) the Potential Assumption and Assignment, or Rejection, of Certain Executory Contracts and Unexpired Leases, and Related Procedures, Pursuant to 11 U.S.C. § 365, and (C) Related Relief Pursuant to 11 U.S.C. §§ 102 and 105* (Doc. 135) (the "**Sale Order**"). The Sale Order is attached hereto as **Exhibit D**.

In the Sale Order, the Bankruptcy Court made, *inter alia*, the following findings:

- A reasonable opportunity to object or to be heard regarding the relief sought in the Sale Motion had been afforded to all creditors and parties-in-interest.
- The Trustee conducted the sale process in compliance with the Bid Procedures Order and completed a full, fair, and complete auction process.
- The Auction conducted by the Trustee, including the methodology for determining the highest and best offers, was conducted in a manner that was reasonably calculated to achieve the highest and best offers for the Assets.
- The Auction was conducted in a non-collusive, fair and good faith manner and a reasonable opportunity has been given to any interested party to make a higher or otherwise better offer for the Assets.
- The asset purchase agreements were negotiated, proposed, and entered into by the Trustee and the Auction Participants in good faith, without collusion, and was the result of arm's-length bargaining with the parties represented by independent counsel.

Whitney Payne, Senior Counsel
May 13, 2019
Page 6

III. Conclusion

Pursuant to the Bidding Procedures each Auction Participant was deemed to have agreed to keep its final bid made at the Auction open through 180 days after the entry of the Sale Order, *i.e.* May 13, 2019. Given the circumstances related to the Application, the Trustee has requested that the Back-Up Bidders confirm that their back-up bids will remain open for additional time pending the Commission's approval process. If the sale does not close with the Stalking Horse Purchaser or the Trustee is unable to enforce the back-up bids, then the Trustee is concerned that she will be required to recommence sale proceedings or engage in further litigation thereby further extending the bankruptcy proceedings and the continued unsettled state of affairs related to water and sewer assets in the effected service areas of the Debtor.

As recognized in the Sale Order, the Trustee believes that the sale of the Debtor's assets was conducted in a fair and transparent process according to the Bankruptcy Code and Rules. More importantly, a sale will ultimately allow for some sense of closure related to the troubled history surrounding the Debtor. If Commission Staff has any questions, please do not hesitate contact the undersigned.

Sincerely,



Eric Johnson

Enclosure

cc: Jill Olsen, Chapter 11 Trustee