

**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 Assets and for a Certificate                )  
Of Convenience and Necessity                        )  
**Case No. WA-2019-0185**

**AMENDED MOTION TO STRIKE  
AND/OR TO LIMIT SCOPE OF THE PROCEEDING**

COMES NOW Osage Utility Operating Company, Inc. (“OUOC” or “Company”), and, as its *Amended Motion to Strike and/or to Limit Scope of the Proceeding*, states as follows to the Missouri Public Service Commission (“Commission”):

On this same date, OUOC filed its *Motion to Strike and/or to Limit Scope of the Proceeding*. Commission Rule 4 CSR 240-2.080(18) provides that any pleading may be amended within ten (10) days of filing, unless a responsive pleading has already been filed. No responsive pleading has been filed.

**BACKGROUND**

1. In part, this Application concerns the proposed acquisition of the assets of an existing water corporation and sewer corporation regulated by the Commission (Osage Water Company), by an affiliate of existing water and sewer corporations (Osage Utility Operating Company, Inc.). Osage Water Company has been in receivership and bankruptcy for approximately fourteen (14) years. The Bankruptcy Trustee has agreed to sell the Osage Water Company utility assets pursuant to an *Agreement For Sale of Utility System*.

2. OUOC seeks to provide service after closing of the proposed transaction under the same water and sewer tariffs currently applicable to the Osage Water Company service area and

charge the same rates currently applicable to the Osage Water Company service area. Neither the rates nor the tariff provisions may be changed without approval of the Commission.

### **STANDARD**

3. This case arises from the following requirement in Section 393.190.1, RSMo:

No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void.

4. The Commission's review of these types of matters hinges on whether the proposed transaction is "not detrimental to the public interest." *See State ex rel. St. Louis v. Public Service Commission*, 73 S.W.2d 393, 400 (Mo. 1934).

### **TRANSACTION AT ISSUE**

5. The change at issue, and the transaction to be assessed as to the "not detrimental" standard, is that which the Bankruptcy Trustee has agreed to and the Commission has been asked to approve. In this case, the transaction at issue is described in the *Agreement For Sale of Utility System*.

6. The Commission has previously found offers suggested as an alternative to the transaction before the Commission to be irrelevant. In response to a Staff argument in an earlier case, the Commission stated that principle as follows:

Staff argues that the Agreement with WNG is detrimental to the public because there were proposals to purchase the pipeline made by *Missouri Gas Energy* (MGE) that the Staff believes were superior to the Agreement. The Commission

finds that the MGE proposals are not relevant to the question of whether the transaction at issue in this case is detrimental to the public interest. The record is clear that these proposals had been withdrawn by the time the Williams' proposal was accepted. Simply because there may have been proposals more favorable to ratepayers at some point does not have much bearing on whether or not the current proposal is detrimental. The MGE proposals may form the basis for a challenge in a subsequent rate case to UCU's prudence in not accepting them and accepting the WNG offer instead, but they do not have any relevance to the issues in this case.

*In the matter of the Application of UtiliCorp United Inc., d/b/a Missouri Public Service, for authority to sell a part of its franchise, works or system, Case No. GM-97-435 (October 15, 1998).*

### **MOTION TO STRIKE OR TO LIMIT SCOPE OF THE PROCEEDING**

7. Certain testimony has been filed in this matter concerning the bid of Public Water Supply District No. 5 of Camden County ("PWSD#5"), Missouri Water Association ("MWA"), and Lake Area Waste Water Association ("LAWWA") to purchase the Osage Water Company assets from the Bankruptcy Trustee.

8. Because the Bankruptcy Trustee declined to enter into any such transaction, all testimony concerning such a transaction is speculative. Moreover, even if such a transaction existed it would be irrelevant to the "not detrimental" standard prescribed by law. Therefore, all testimony related to any proposed purchase of the assets at issue in this case by PWSD#5, LAWWA, and/or MWA should be stricken, or the scope of the proceeding limited, to exclude these matters from consideration in this case<sup>1</sup>.

9. The provisions of testimony at issue (to include schedules referenced by these provisions) are as follows:

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<sup>1</sup> See, for example, *In the Matter of the Joint Application of Great Plains Energy Incorporated, et al.*, Report and Order, 2008 Mo. PSC LEXIS 693, 23-50; 266 P.U.R.4<sup>th</sup> 1, EM-2007-0374 (July 11, 2008).

Neddie K. Goss Direct Testimony – All;

David Stone Direct Testimony – All;

David G. Krehbiel Direct Testimony and Rebuttal Testimony – All;

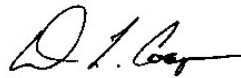
Keri Roth Rebuttal Testimony – p. 13, line 13 through p. 14, line 12; and,

Kenneth Hulett Rebuttal Testimony – All.

10. Each of these pieces of testimony concerns a transaction that does not exist and is not before the Commission in this case. Accordingly, OUOC requests the Commission strike the identified testimony or limit the scope of the proceeding to eliminate the issues raised by the identified portions of testimony.

**WHEREFORE**, OUOC respectfully requests the Commission issue its order granting this *Amended Motion to Strike and/or Limiting the Scope of the Proceeding* in the manner, and for the reasons, stated herein.

Respectfully submitted,



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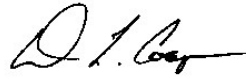
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**ATTORNEYS FOR OSAGE**

**UTILITY OPERATING COMPANY, INC.**

## CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served electronically, or hand-delivered, or via First Class United States Mail, postage prepaid, on all parties of record herein on this 9<sup>th</sup> day of September, 2019.



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