

**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)	Case Nos. WA-2019-0185
and Sewer Assets and for a Certificate)	& SA-2019-0186
of Convenience and Necessity)	

**PUBLIC COUNSEL’S RESPONSE TO AMENDED MOTION TO STRIKE
AND/OR TO LIMIT SCOPE OF THE PROCEEDING**

COMES NOW, the Office of the Public Counsel (OPC) to respond as follows to Osage Utility Operating Company, Inc.’s (OUOC or Company) *Amended Motion to Strike and/or to Limit Scope of the Proceeding*:

1. On September 9, 2019, OUOC filed an initial and later amended motion to strike the testimony of several witnesses including OPC witness Keri Roth.
2. OUOC objects to Ms. Roth and other witness speaking to Public Water Supply District No. 5 of Camden County, Missouri (PWSD #5), Missouri Water Association (MWA), and Lake Area Waste Water Association’s (LAWWA) (collectively the Joint Bidders) bid to purchase the Osage Water Company (OWC) assets.
3. OUOC claims testimony on the Joint Bidders’ bid for the OWC system is irrelevant and speculative, and therefore should be stricken from the case.
4. Evidence is relevant if “it tends to make the existence of a material fact more or less probable.”¹
5. The contested issues in this case are fundamentally whether OUOC’s acquisition of the OWC water and sewer systems is detrimental to the public interest, and whether OUOC should receive an acquisition incentive.

¹ *State v. Naylor*, 510 S.W.3d 855, 862 (Mo. 2017).

6. The public's interest in being served by an operator at the most efficient cost is a material fact for determining whether OUOC's acquisition of the OWC systems is detrimental to the public interest.

7. The existence of Joint Bidders' prior bid to acquire the OWC systems makes it less probable that OUOC would operate the OWC systems at the most efficient cost.

8. Considering other potential buyers is a consistent Commission practice. For example, in *State ex rel. Intercon Gas, Inc. v. Public Service Commission*, the Commission considered alternative operators of an intrastate natural gas pipeline during a Certificate of Convenience and Necessity (CCN) docket.²

9. This Commission has even entertained arguments from other potential buyers when previously deliberating on the same OWC assets in question now.³ In other contexts, this Commission even relied upon whether other hypothetical transactions that "could" serve the public interest better than what applicants proposed.⁴ When Aquila sought to join the Midwest Independent Service Operator network, the Commission determined that the public interest would be deterred because, "in part, because Aquila's plan to join Midwest ISO would preclude it from joining Southwest Power Pool . . . the net benefit to Aquila of joining Midwest ISO would be approximately \$65 million less over ten years than the net benefit it could obtain by Southwest Power Pool."⁵

10. Considering other potential alternatives is also logically sound under a public interest analysis. The OPC struggles to see how one can determine whether there is a detriment to

² See 848 S.W.2d 593, 595-596 (Mo. App. W.D. 1993) (describing how the Commission considered the competing offers of Intercon, Missouri Gas Company, Missouri Pipeline Company, and Laclede Gas).

³ See *Evntl. Utils. v. Pub. Serv. Comm'n*, 219 S.W.3d 256, 260 fn3 (Mo. App. W.D. 2007) (noting Cedar Glen Condominium Owners Association's competing interest against Missouri American Water's proposed purchase of the OWC assets).

⁴ *Report and Order*, EO-2008-0046 p. 17 (2008).

⁵ *Id.*

the public interest by only looking at an application in a vacuum. If the Commission must consider the “regulation of monopoly for destructive competition, prevention of undesirable competition, and prevention of duplication of service” when evaluating a CCN request then other service options must be considered to fully grasp the public interest at issue.⁶

11. The OUOC misapplies a Commission case to confuse the standards at issue. OUOC claims that the Commission’s decision in Case No. GM-97-435 precludes presenting evidence of other purchase offers and bids. The actual quote OUOC relies upon explains that the alternative “proposals had been withdrawn” by the time the Commission was presented with the transaction at issue.⁷ That is not analogous to the OWC systems. The Joint Bidders are still maintaining their offer and ability to service the systems.

12. Whether the OWC systems would have been purchased without the aid of an acquisition incentive is a material fact for determining whether this Commission should grant OUOC an acquisition incentive.

13. The Commission rule at issue requires that the “acquisition would be unlikely to occur without the probability of obtaining an acquisition incentive” in order for the Commission to grant the incentive.⁸ The existence of Joint Bidders’ prior bid to obtain the OWC systems negates the claim that the OWC systems would not be acquired but for an incentive.

14. Thus the Joint Bidders prior and outstanding proposal to purchase the OWC assets without an acquisition incentive is wholly relevant and proper before this Commission.

15. A substantial inequity would also occur if OUOC’s Motion to Strike is granted. The OPC and Joint Bidder’s testimony regarding acquisition alternatives would be removed from the

⁶ *State ex re. Intercon Gas*, 848 S.W.2d at 597.

⁷ *Report and Order*, GM-97-435 p. 5 (1998).

⁸ 20 CSR 4240-10.085(4)(I).

record, but OUOC's testimony responding to those points in surrebuttal would remain. The Joint Bidders and the OPC would thus be put at a significant disadvantage; threatening the due process integrity throughout the proceeding.

16. OUOC is also noticeably inconsistent. The Staff of the Public Service Commission's (Staff) Recommendation discusses the bidding process for the OWC and that the Joint Bidders would have acquired the OWC systems but for Central States Water Resources (CSWR) negotiating its position as the stalking-horse bidder. If it is improper to discuss the Joint Bidders' interest in purchasing the OWC systems, then the OUOC should have moved to strike Staff's Recommendation as well, but the OUOC did not.

Wherefore, the OPC responds to the OUOC's Motion to Strike, and asks that this Commission deny the motion and disregard the OUOC's arguments in total.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 16th day of September, 2019, with notice of the same being sent to all counsel of record.

/s/ Caleb Hall