

**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)	Case No.: WA-2019-0185 &
Assets and for a Certificate of)	SA-2019-0186
Convenience and Necessity)	

**PUBLIC COUNSEL’S RESPONSE TO STAFF RECOMMENDATION AND
MEMORANDUM AND REQUEST FOR A PROCEDURAL CONFERENCE**

COMES NOW, the Office of the Public Counsel (OPC), and in response to the Staff of the Public Service Commission’s (Staff) Recommendation and accompanying Memorandum, states as follows:

1. Osage Utility Operating Company, Inc. (OUOC) filed its Application and Motion for Waiver on December 19, 2018, as its request for a certificate of convenience and necessity (CCN) to acquire and operate the Osage Water Company (OWC) and Reflections Subdivision Master Association, Inc.’s (Reflections) water and sewer assets.

2. On May 24, 2019, the Staff filed its Recommendation wherein Staff recommends that the Public Service Commission (Commission) approve OUOC’s CCN application with certain conditions and adjustments to OUOC’s initial proposal.

3. The OPC disagrees with certain Staff recommendations. Specifically, the OPC contests the rate base calculation for the OWC and Reflections systems included in Staff’s Recommendation, and the lawfulness and reasonableness of the acquisition incentive as suggested by Staff.

4. OPC questions Staff calculating rate base by relying solely on OUOC’s asset valuation report. OPC expert witness Keri Roth’s attached affidavit notes this concern.

5. OPC also maintains its view from AX-2018-0240 that the acquisition incentive rule, now codified at 4 CSR 240-10.085, lacks sufficient statutory support.

6. However, even if the acquisition incentive rule is lawful, it cannot be awarded to an applicant utility for an acquisition that is likely to occur regardless of the acquisition incentive. As detailed in Staff's Recommendation, OUOC was the stalking horse bidder for the OWC systems, and expressed enough interest by continually raising its bid offer at auction for the OWC system. OUOC's behavior is not that of a disinterested investor that would only purchase the OWC assets due to an acquisition incentive. OPC witness Keri Roth also speaks to this conclusion in her affidavit.

7. In addition, OPC notes inconsistencies between the purchase prices for the OWC system described in Staff's Recommendation versus that offered in OUOC's application. These inconsistencies result in Staff inflating the recommended acquisition incentive.

8. The Commission and other parties should not interpret OPC's failure to identify other potential conflicts or issues at this time as a relinquishment of any future claims made in this docket.

WHEREFORE, OPC responds to Staff's Recommendation and Memorandum. OPC prays that the Commission not accept the Recommendation as filed, and requests that the Commission order a procedural conference in order for the parties to present a procedural schedule allowing for the filing of testimony and an eventual hearing. In the alternative, OPC requests that the Commission order that a mutually agreed upon procedural schedule be filed by a date as determined by the Commission.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

/s/ Caleb Hall

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**Attorney for the Office of the Public
Counsel**

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 3rd day of June, 2019, with notice of the same being sent to all counsel of record.

/s/ Caleb Hall

1. My name is Keri Roth and I am employed by the Missouri Office of the Public Counsel (“OPC”) as a Public Utility Accountant III.
2. The Staff of the Missouri Public Service Commission (“Staff”) filed its Staff Recommendation and Staff Memorandum in this case on May 24, 2019. This is in response to Osage Utility Operating Company, Inc.’s (“OUOC”) Application and Motion for Waiver (“Application”) seeking to acquire certain water and sewer assets in the Osage Water Company (“OWC”) service area and the Reflections Subdivision Master Association, Inc. and Reflections Condominium Owners Association, Inc. (“Reflections”) service area.
3. This affidavit is in response to the Staff Recommendation and Staff Memorandum, specifically, the purchase price of OWC and Reflections, the acquisition premium Staff recommends be approved, and Staff’s calculated rate base.
4. Staff describes the purchase price in its Staff Memorandum of ** **¹ for OWC and Reflections combined. OUOC is purchasing the OWC systems for a winning bid price of ** **² and the Reflections system for ** **³.
5. The purchase price described in the Staff Recommendation and Staff Memorandum for the OWC systems does not match the purchase price described in Appendix B – Confidential – Agreement for Sale of Utility System (“Appendix B”) attached to OUOC’s Application. Appendix B states the purchase price of the OWC assets to be ** **⁴.
6. OUOC has requested a debt acquisition adjustment in conjunction with its acquisition of the OWC and Reflections systems⁵. A request for a debt acquisition adjustment requires that the acquisition would be unlikely to occur but for the acquisition incentive. I believe OUOC would have pursued to acquire OWC and the Reflections systems without the acquisition incentive because of the recent history of OUOC’s parent company, Central States Water Resources, purchasing multiple failing water and sewer systems without an acquisition premium.⁶ Furthermore, the facts of this case show that Central States Water Resources repeatedly raised its bid price to purchase the OWC system⁷. Central States Water Resources’ behavior to repeatedly match higher bids, driving its original bid from ** ** up to the final winning bid of ** ** during the bankruptcy bidding process convinces me that the acquisition would occur regardless of a debt acquisition adjustment.
7. Staff recommends OUOC be granted a debit acquisition premium based on the combined purchase price of ** ** for the OWC and Reflections systems. As stated

¹ Staff Memorandum, Page 22

² Staff Recommendation, Attachment A, Page 5

³ OUOC Application, Appendix d-c – executed amended agreement for sale - reflections

⁴ OUOC Application, Appendix b-c – executed purchase agreement – osage water

⁵ OUOC Amended Application and Motion for Waiver, Page 14, Paragraph 29

⁶ Case Numbers WO-2014-0340, SO-2014-0341, SM-2015-0014, WO-2016-0045, WM-2017-0151, SM-2017-0150

⁷ Staff Recommendation, Page 3, last sentence of Paragraph 3; Staff Recommendation, Attachment A, Page 5

previously, this purchase price does not match the purchase price described in Appendix B of OUOC's Application.

8. The difference between the purchase price utilized by Staff and the rate base values as of December 31, 2018 utilized by Staff, results in an acquisition premium of ** **.⁸
9. Staff calculated rate base for OWC as of December 31, 2018 by starting actual rate base used in OWC's most recent rate cases (WR-2009-0149 and SR-2009-0152), and then utilizing subsequent annual reports to update plant in service, depreciation reserve, CIAC and CIAC amortization balances to December 31, 2018. Staff determined OWC's rate base is approximately \$341,508 at December 31, 2018.⁹ Staff's calculated rate base for OWC is ** ** lower than the purchase price utilized by Staff and ** ** lower than the purchase price described in Appendix B attached to OUOC's Application.
10. Staff is proposing that the Public Service Commission consider the amount provided by OUOC in its Asset Valuation Report as of December 31, 2018 to be the net book value of the Reflections system assets.¹⁰ The estimated rate base for Reflections as of December 31, 2018, is \$313,440, making the estimated rate base for the Reflections system ** ** higher than the purchase price of ** **.

⁸ Staff Memorandum, Page 22

⁹ Staff Memorandum, Page 21

¹⁰ Staff Memorandum, Page 21

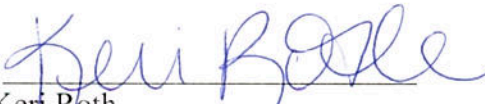
**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

AFFIDAVIT OF KERI ROTH

STATE OF MISSOURI)
) SS.
COUNTY OF COLE)

COMES NOW KERI ROTH and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing *PUBLIC COUNSEL'S RESPONSE TO STAFF RECOMMENDATION AND MEMORANDUM AND REQUEST FOR A PROCEDURAL CONFERENCE*; and that the same is true and correct according to her best knowledge and belief.

Further the Affiant sayeth not.


Keri Roth
Public Utility Accountant III

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 3rd day June 2019.


Jerene A. Buckman
Notary Public

My Commission expires August 23, 2021.