

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

RESPONSE TO MOTION FOR STAY OF EFFECTIVE DATE

COMES NOW Osage Utility Operating Company, Inc. (“OUOC” or “Company”), and for its *Response to Motion for Stay of Effective Date*, states as follows to the Missouri Public Service Commission (“Commission”):

1. On December 19, 2018, OUOC filed an *Application and Motion for Waiver* proposing to purchase all water and sewer assets owned by Osage Water Company, among other assets. The Application was amended on February 19, 2019.

2. On April 8, 2020, the Commission issued its Report and Order authorizing OUOC to acquire the water and sewer assets owned by Osage Water Company. That order contained an effective date of May 8, 2020 (thirty days thereafter).

3. On May 5, 2020, Public Water Supply District No. 5 of Camden County, Lake Area Waste Water Association, Inc., and Missouri Water Association, Inc. (collectively, "Joint Bidders"), Cedar Glen Condominium Owners Association, Inc. (“Cedar Glen”), and the Office of Public Counsel, (collectively, “Movants”) filed a *Joint Motion Under 386.500.3, RSMo, and Motion for Expedited Treatment (“Motion to Stay Effective Date”)*.¹

¹ Contrary to Commission Rule 20 CSR 4240-2.080(14), the *Motion for Stay of Effective Date* contains no explanation as to why the motion for expedited treatment was not filed sooner, although twenty-seven (27) days

4. The Missouri General Assembly has already expressly set forth the effect of Commission orders, a clear process for appeals, and the effect of such appellate filings on the effectiveness of orders –

- In order to appeal a Commission order, a party must first file an application for rehearing with the Commission. Section 386.500.2, RSMo.
- The filing of an application for rehearing does not stay a Commission order. Section 386.500.3, RSMo.
- Even if rehearing is granted and thereafter the Commission issues an order abrogating, changing, or modifying its original order, that subsequent order does not affect any right or obligation created by the original order prior to the subsequent order's effective date. Section 386.500.4, RSMo.
- A party has thirty (30) days from the denial of an application for rehearing to file a notice of appeal to the Court of Appeals. Section 386.510, RSMo, and, as was the case with an application for rehearing, the mere appeal of a Commission order to the Court of Appeals does not stay the effectiveness of that order. Section 386.520.1, RSMo.
- A stay may be issued by the Court of Appeals, but only after certain findings and "the posting of an appropriate appeal bond." Section 386.520.1, RSMo

5. The *Motion for Stay of Effective Date* seeks to take a detour around this process after Movants, either strategically or negligently, waited until the very end of the thirty days period provided by the Commission rules to come forth with this filing. The inappropriateness of this proposal can be seen by the fact that the Commission has rarely, if ever, taken this step to extend the effective date of its orders once issued.

6. Even if the Commission were inclined to grant a stay of the effective date, no such extension should be granted in the absence of an analysis of the Movants' likelihood of success, a requirement within the civil context for a stay. No such

have passed since the Commission issued its Report and Order.

likelihood of success can be found today. Presumably, the Commission believes its order to be lawful and, at this point, the Movants have not yet even filed their application for rehearing. Without some sort of belief in the Movants' likelihood of success, a stay is just delay for the sake of delay, while avoiding the Section 386.510, requirement for the posting of a bond.

7. Similarly, the specific requests for stay found in paragraph 9.b. of the *Motion for Stay of Effective Date* are unreasonable. A notice of appeal from a Commission case is a simple, straightforward document that the Movants should be able to file much more quickly than the *Motion for Stay of Effective Date* suggests. Consequently, assuming the Commission grants the requested extensions while applications for rehearing are pending, the extension following the Commission's ruling on those applications should not be for more than 5 business days. That is more than enough time to file a notice of appeal, at which time the Movants would be required to comply with the applicable statutes in order to secure a further stay.

8. Lastly, the Commission should remember that this situation is different than most it encounters in that jurisdiction over the assets in question is shared with the U.S. Bankruptcy Court. A closing on those assets will only take place under the supervision of the U.S. Bankruptcy Court and its trustee. The Commission should not take an action that would serve to usurp that Court's authority to address these assets.

WHEREFORE, OUOC respectfully requests the Commission deny the *Motion for*

Stay of Effective Date.

Respectfully submitted,



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**ATTORNEYS FOR OSAGE
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served electronically on all parties of record herein on this 6th day of May, 2020.

