

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

In the Matter of Osage Water Company)
Small Company Rate Increase.) **Case No. WR-2009-0149**

**THE OFFICE OF THE PUBLIC COUNSEL’S OBJECTIONS, RESPONSE AND, IN
THE ALTERNATIVE, MOTION TO ADD RECEIVER FEES AS ISSUE AND
REQUEST FOR EXTENSION OF PROCEDURAL SCHEDULE**

COMES NOW the Office of the Public Counsel (Public Counsel or OPC) and for its Objections, Response and, in the Alternative, Motion to Add Receiver Fees as Issue and Request for Extension of Procedural Schedule states as follows:

1. On October 23, 2008, Osage Water Company (Osage), through its court appointed receiver, Mr. Gary V. Cover, Esq., initiated small company revenue increase requests with the Missouri Public Service Commission (Commission) for its water and sewer services in Camden County, Missouri. The water increase case was issued Case Number WR-2009-0149 and the sewer increase case was issued Case Number SR-2009-0152.
2. On May 21, 2009, the Staff of the Missouri Public Service Commission (Staff) filed a Notice of Company/Staff Agreement Regarding Disposition of Small Water Company Revenue Increase Request and a Notice of Company/Staff Agreement Regarding Disposition of Small Sewer Company Revenue Increase Request (Company/Staff Dispositions) indicating agreements between Staff and Osage for an annualized water operating revenue increase of \$60,760 annually (approximately 64.34%) and an annualized sewer operating revenue increase of \$24,071 annually (approximately 20.49%). Public Counsel did not join in the agreements.

3. On June 26, 2009, Public Counsel filed requests for evidentiary hearings pursuant to 4 CSR 240-3.050 (19) and (20). In its requests, Public Counsel included specified lists of issues for evidentiary hearing and the reasons for its request for each issue.

4. On July 6, 2009, Staff filed a timely response to Public Counsel's requests for evidentiary hearings stating "OPC's limited list of issues filed pursuant to rule 3.050(19) and (20) should restrict any evidentiary hearing held in this matter to those issues, while *all other resolutions* contained within the Company/Staff Agreement Regarding Disposition of Small Water Company Revenue Increase Request and Company/Staff Agreement Regarding Disposition of Small Sewer Company Revenue Increase Request, both filed on May 21, 2009, should be treated as unopposed and, therefore, as unanimous agreements pursuant to Rule 2.115(C) and (E) respectively."¹

5. Osage did not file a response to Public Counsel's June 26, 2009 requests for evidentiary hearing and specified lists of issues, nor did Osage file a response to Staff's July 6, 2009 response.

6. On July 14, 2009, the Commission issued an order consolidating the Osage sewer increase request case with the Osage water increase request case, designating WR-2009-0149 as the lead case.

7. On July 17, 2009, (twenty-one (21) days after Public Counsel's evidentiary hearing request), Staff and Osage filed a joint Motion to Amend Response and Add the Necessary and Specific Issue of Rate Case Expense to Evidentiary Proceedings and Request to Shorten Time for Response (Staff/Osage Motion to Amend). The Staff/Osage Motion to Amend claims that "...no rate case expense or cost associated with a formal rate case evidentiary hearing was recognized or included in the Company/Staff Disposition Agreement filed May 21, 2009." The motion also

¹ Public Counsel assumes the rule citation is actually meant to be "Rule 4 CSR 240-2.115 (2)(C) and (E)."

goes on to claim that “...the raising of this issue will not prejudice or unduly delay these proceedings.”

OBJECTION (STAFF MOTION)

8. Public Counsel objects to the Staff/Osage Motion to Amend as improper in that it represents an apparent conflict of interest for counsel of record for Staff. Public Counsel also objects to Staff’s motion to amend in that it is merely a late-hour attempt to add an issue to the evidentiary hearing and as such is untimely and unreasonable.

9. The Staff/Osage Motion to Amend states “COMES NOW the Staff of the Missouri Public Service Commission (Staff) and Osage Water Company (Osage), (collectively the parties) **by and through undersigned counsel**, and for their *Motion to Amend Response...*” (emphasis added.) Public Counsel would point out that the motion is not signed by counsel of record for Osage nor is it offered on behalf of Osage. The motion purports to be a joint filing of Staff and Osage “by and through undersigned counsel,” however the motion is signed only by Ms. Brueggemann of the Missouri Public Service Commission’s General Counsel’s Office (General Counsel), who is a counsel of record for Staff. 4 CSR 240-2.040(1) states: “The general counsel represents the staff in investigations, contested cases and other proceedings and appears for the commission in all courts and before federal regulatory bodies; and in general performs all duties and services as attorney and counsel to the commission which the commission may reasonably require.” No statement is made that counsel for Staff is filing this motion on behalf of counsel for Osage. Ms. Brueggemann’s signature and the wording in the motion indicate that Ms. Brueggemann is signing both as counsel for Staff and counsel for Osage. Public Counsel objects to counsel for Staff acting as dual counsel for Osage, another party to this case, as this appears to

be a conflict of interest for Ms. Brueggemann and General Counsel. Therefore, Public Counsel objects to the Staff/Osage Motion to Amend as being improper.

10. Additionally, Public Counsel objects to Staff's motion to amend as untimely and unreasonable. Only now, twenty-one (21) days after Public Counsel filed its evidentiary hearing requests and specified lists of issues, is Staff attempting to add the issue of rate case expense. Staff was properly allowed ten (10) days for response to Public Counsel's evidentiary hearing requests and specified lists of issues. Within that timeframe, Staff filed its response and specifically asked the Commission to limit the evidentiary hearing to those issues listed by Public Counsel. Staff even went on to ask that the Commission treat the remaining resolutions in the Company/Staff Dispositions as unopposed and, therefore, as unanimous agreements pursuant to 4 CSR 240-2.115 (2)(C) and (E) respectively.

11. Staff lists no good-cause reasons for its untimely attempt to take back Staff's own statements in its July 6, 2009 response and add an issue into this evidentiary hearing. The only explanation given is that "It has come to Staff and Osage's attention that a necessary and limited issue in determining the just and reasonable rates for Osage is absent from the list of issues." Basically, this statement is little more than "Oops, we didn't notice this before." The fact that Staff failed to perform due diligence and did not fully consider the specified lists of issues submitted by Public Counsel during the allowed timeframe for response is not good cause to allow the issue to be added at this late date.

12. Therefore, Public Counsel objects to the July 17, 2009, Staff and Osage Water Company's Motion to Amend Response and Add the Necessary and Specific Issue of Rate Case Expense to Evidentiary Proceedings and Request to Shorten Time for Response and asks that the Commission deny the motion in that Staff's request is improper, untimely and unreasonable.

OBJECTION (OSAGE MOTION)

13. Public Counsel objects to Osage's motion to amend as it is merely a late-hour attempt to add an issue to the evidentiary hearing and as such is improper, untimely and unreasonable. Osage's motion to amend is improper in that Osage is attempting to amend a response when in actuality no response has been filed by Osage. Osage's motion to amend is also untimely and unreasonable in that only now, twenty-one (21) days after Public Counsel filed its evidentiary hearing requests and specified lists of issues, is Osage attempting to add the issue of rate case expense.

14. The Staff/Osage Motion to Amend states "COMES NOW the Staff of the Missouri Public Service Commission (Staff) and Osage Water Company (Osage), (collectively the parties) by and through undersigned counsel, and for **their** *Motion to Amend Response...*" (emphasis added.) Osage was properly allowed ten (10) days for response to Public Counsel's evidentiary hearing requests and specified lists of issues. Osage filed no response during that timeframe, so no response of Osage exists for the Commission to even consider amending. Instead of requesting leave of the Commission to file its response out of time and providing good-cause reasons for its untimely (eleven (11) days late) request, Osage is attempting to skirt the rules and confuse the Commission by seemingly amending a response which does not exist. Therefore, Public Counsel objects to Osage's motion to amend as improper.

15. As stated above, Osage filed no response during the allowed ten (10) days for response to Public Counsel's evidentiary hearing requests and specified lists of issues. Osage made no attempt to state that it disagreed with the specified lists of issues submitted by Public Counsel. Therefore, since Osage did not respond, Osage is deemed to not be in opposition of Public Counsel's specified lists of issues.

16. Additionally, Osage did not respond to Staff's July 6, 2009 response to Public Counsel's request for evidentiary hearing and made no attempt to state that it disagreed with Staff specifically asking the Commission to limit the evidentiary hearing to those issues listed by Public Counsel, or that it disagreed with Staff asking that the Commission treat the remaining resolutions in the Company/Staff Dispositions as unopposed and, therefore, as unanimous agreements pursuant to 4 CSR 240-2.115 (2)(C) and (E) respectively. Again, as Osage did not respond, Osage is deemed to not be in opposition of Staff's requests.

17. By joining in the Staff/Osage Motion to Amend, Osage is attempting to improperly extend its time for response beyond the allowed ten (10) days. Osage lists no good-cause reasons for its untimely attempt to add an issue into this evidentiary hearing. As argued above, the only explanation given is that "It has come to Staff and Osage's attention that a necessary and limited issue in determining the just and reasonable rates for Osage is absent from the list of issues." Basically, this statement is little more than "Oops, we didn't notice this before." The fact that Osage failed to perform due diligence and did not fully consider the specified lists of issues submitted by Public Counsel, or the statements and requests by Staff in its July 6, 2009 response, during the allowed timeframes for response is not good cause to allow the issue to be added at this late date.

18. Therefore, Public Counsel objects to the July 17, 2009, Staff and Osage Water Company's Motion to Amend Response and Add the Necessary and Specific Issue of Rate Case Expense to Evidentiary Proceedings and Request to Shorten Time for Response and asks that the Commission deny the motion in that Osage's request is improper as well as untimely and unreasonable.

RESPONSE

19. Public Counsel asks that the Commission deny the Staff/Osage Motion to Amend because sufficient rate case expense is already included in the Company/Staff Dispositions through the receiver fees, and the raising of this issue at this late date will cause Public Counsel to be prejudiced and will cause undue delay in these already expedited proceedings.

20. The Staff/Osage Motion to Amend claims that "...no rate case expense or cost associated with a formal rate case evidentiary hearing was recognized or included in the Company/Staff Disposition Agreement filed May 21, 2009." Public Counsel disagrees with this claim, in that it believes the receiver fees included in the Company/Staff Dispositions include sufficient rate case expense and evidentiary hearing expense.

21. Osage is under the control of a court appointed receiver, Mr. Gary Cover. As the receiver and a licensed attorney in Missouri, Mr. Cover is also the attorney of record acting on behalf of Osage. The Company/Staff Dispositions include an agreed-upon amount of receiver fees which include on-going legal fees for Mr. Cover acting as attorney on behalf of Osage.

22. In its review of the Company/Staff Dispositions, Public Counsel determined that the receiver fees for Mr. Cover were excessive. However, once it was determined that evidentiary hearings would be requested, Public Counsel considered the additional rate case expense and evidentiary hearing expense that Mr. Cover would incur as compared to the receiver fees included in the Company/Staff Dispositions. From this comparison, Public Counsel determined that the receiver fees were reasonable given the additional rate case expense and evidentiary hearing expense. Therefore, Public Counsel chose not to list receiver fees in its specified lists of issues for the evidentiary hearings and chose not to oppose Staff's request in its July 6, 2009

response that the issue of receiver fees "...should be treated as unopposed and, therefore, as unanimous..."

23. If Staff and Osage are allowed to add the issue of rate case expense, Public Counsel believes that customers will be asked to pay twice for rate case expense, once through the receiver fees and again through any rate case expense the Commission would see fit to include via the evidentiary hearing.

24. Additionally, the Staff/Osage Motion to Amend claims that "...the raising of this issue will not prejudice or unduly delay these proceedings." Public Counsel also disputes both of these claims.

25. Public Counsel would point out that the procedural schedule for this case has Prehearing Briefs with Position Statements due on July 29, 2009, which is less than one week after Public Counsel is due to file this response. The procedural schedule also has the evidentiary hearing set for August 6 and 7, 2009, which is a mere two weeks after Public Counsel is due to file this response.

26. Public Counsel agreed to the parties submitting Prehearing Briefs as opposed to filing written testimony due to the fact that Osage's specific request from the Commission for each issue was already quantified in the Company/Staff Dispositions. The addition of rate case expense as an issue changes the entire situation.

27. As opposed to the issues listed by Public Counsel in its specified lists of issues which are based on the Company/Staff Dispositions, no information exists as to what Osage believes would be a sufficient amount of rate case expense to include in this case. As the party who bears the burden of proof in this case, Osage is required to state what amount of rate case expense it is requesting from the Commission. Without a statement as to what Osage believes would be a

sufficient amount of rate case expense to include in this case, Public Counsel will be prejudiced in its filing of a Prehearing Brief in that Public Counsel would not be able to even state its position as to whether Osage's proposal is just and reasonable, let alone discuss that position. Public Counsel will also be prejudiced in the evidentiary hearing in that Public Counsel's time for hearing preparation on this issue will be severely limited. Therefore, Public Counsel states that it will be prejudiced by the addition of the issue of rate case expense.

28. Public Counsel would also point out that it is unreasonable for Staff and Osage to expect to add a whole new issue twenty-one (21) days after Public Counsel filed its evidentiary hearing requests and specified lists of issues and not have it unduly affect the already expedited timeframe for this case.

29. As stated above, as opposed to the issues listed by Public Counsel in its specified lists of issues which are based on the Company/Staff Dispositions, no information exists as to what Osage believes would be a sufficient amount of rate case expense to include in this case. As the party who bears the burden of proof in this case, Osage is required to state what amount of rate case expense it is requesting from the Commission. Once this information is received from Osage, Public Counsel must be given sufficient time to conduct discovery as necessary, contemplate its position and properly draft its Prehearing Brief and prepare for evidentiary hearing.

30. If the Commission decides to add the issue of rate case expense, Public Counsel sees no possible way that it will be able to file its Prehearing Brief with Position Statements as required on July 29, 2009, and would have no means to adequately prepare for the evidentiary hearing which is scheduled for August 6 and 7, 2009. Consequently, Public Counsel will have no

alternative but to request an extension of the procedural schedule in this case, which will unduly delay these already expedited proceedings.

31. Public Counsel asks that the Commission deny the Staff/Osage Motion to Amend because sufficient rate case expense is already included in the Company/Staff Dispositions through the receiver fees, and the raising of this issue at this late date will cause Public Counsel to be prejudiced and will cause undue delay in these already expedited proceedings.

**ALTERNATIVE MOTION TO ADD RECEIVER FEES AS ISSUE AND
REQUEST FOR EXTENSION OF PROCEDURAL SCHEDULE**

32. For the above stated reasons, it is Public Counsel's position that the Commission should deny Staff and Osage Water Company's Motion to Amend Response and Add the Necessary and Specific Issue of Rate Case Expense to Evidentiary Proceedings and Request to Shorten Time for Response. However, if the Commission determines the addition of the issue of rate case expense is necessary, Public Counsel requests that the Commission also add the issue of receiver fees as well. Additionally, Public Counsel requests an extension of the procedural schedule to allow adequate time for Osage to present information on what it believes would be a sufficient amount of rate case expense to include in this case, and adequate time for the parties to prepare their Prehearing Briefs with Position Statements and prepare for the evidentiary hearing.

33. The Staff/Osage Motion to Amend claims that "...no rate case expense or cost associated with a formal rate case evidentiary hearing was recognized or included in the Company/Staff Disposition Agreement filed May 21, 2009." As argued above, Public Counsel disagrees with this claim, in that it believes the receiver fees included in the Company/Staff Dispositions include sufficient rate case expense and evidentiary hearing expense. Therefore, Staff, Osage and Public Counsel are in dispute as to whether sufficient rate case expense is already included in the receiver fees calculated in the Company/Staff Dispositions.

34. If Staff and Osage are allowed to add the issue of rate case expense, Public Counsel believes that customers will be asked to pay twice for rate case expense, once through the receiver fees and again through any rate case expense the Commission would see fit to include via the evidentiary hearing. Therefore, it would then be Public Counsel's position that receiver fees should be added as an issue as well. Adding the issue of receiver fees as well as rate case expense will prevent the customers from facing the possibility of paying excessive receiver fees as well as additional rate case expense.

35. All rates approved by the Commission must be just and reasonable. Therefore, if rate case expense is to be added as an issue in the evidentiary hearing, Public Counsel requests that the Commission also add the issue of receiver fees to protect the customers by determining if the receiver fees included in the Company/Staff Dispositions include a sufficient amount to cover rate case expense.

36. Additionally, if the Commission determines the issue of rate case expense should be added to the evidentiary hearing, Public Counsel would point out that no information exists as to what Osage believes would be a sufficient amount of rate case expense to include in this case. As the party who bears the burden of proof in this case, Osage is required to state what amount of rate case expense it is requesting from the Commission.

37. Without a statement as to what Osage believes would be a sufficient amount of rate case expense to include in this case, Public Counsel will be at a disadvantage in filing a Prehearing Brief and would not be able state its position as to whether Osage's proposal is just and reasonable. Similarly, if the issue of receiver fees is added, Public Counsel would have no proposal of rate case expense to use in its Prehearing Brief as discussion on its position regarding the sufficiency of receiver fees included in the Company/Staff Dispositions.

38. If the Commission decides to add the issue of rate case expense, Public Counsel sees no possible way that it will be able to file its Prehearing Brief with Position Statements as required on July 29, 2009, and would have no means to adequately prepare for the evidentiary hearing which is scheduled for August 6 and 7, 2009. Therefore, if the Commission decides to add the issue of rate case expense, Public Counsel requests an extension of the Procedural Schedule to allow adequate time for Osage to present information on what it believes would be a sufficient amount of rate case expense to include in this case, and adequate time for the parties to prepare their Prehearing Briefs with Position Statements and prepare for the evidentiary hearing.

WHEREFORE, Public Counsel respectfully requests that the Commission deny Staff and Osage Water Company's Motion to Amend Response and Add the Necessary and Specific Issue of Rate Case Expense to Evidentiary Proceedings and Request to Shorten Time for Response. In the alternative, if Rate Case Expense is to be added as an issue, Public Counsel requests that the Commission also add the issue of receiver fees and requests an extension of the Procedural Schedule to allow adequate time for Osage to present information on what it believes would be a sufficient amount of rate case expense to include in this case, and adequate time for the parties to prepare their Prehearing Briefs with Position Statements and prepare for evidentiary hearing.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Christina L. Baker

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 23rd day of July 2009:

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