

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	<u>Case No. WC-2017-0009</u>
v.)	
)	<u>Case No. SC-2017-0010</u>
Osage Water Company)	
)	
Respondent.)	

STATUS UPDATE AND MOTION FOR DETERMINATION ON THE PLEADINGS

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and for its *Status Update and Motion for Determination on the Pleadings* pursuant to Commission Rule 4 CSR 240-2.117(1), respectfully states as follows: **Procedural History and Material Facts Not in Dispute**

1. Staff filed its *Complaint* on July 5, 2016, asserting that Osage Water Company (“Osage Water” or “Company”) failed to file its 2013, 2014, and 2015 Annual Reports, as required by Section 393.140(6), RSMo¹ and Rules 4 CSR 240-3.335(1) and 4 CSR 240-3.640(1).^{2, 3}

2. On July 14, 2016, the Commission ordered Osage Water Company to file an Answer on or before August 13, 2016. Osage Water Company did not file an Answer.

¹ Section 393.140(6), RSMo, requires every water corporation and every sewer corporation to file with the Commission an annual report.

² Rules 4 CSR 240-3.335(1) and 4 CSR 240-3.640(1) require the Annual Reports to be filed with the Commission on or before April 15 of each year.

³ *Complaint*, Paragraphs 12, 18, and 24

3. On September 9, 2016, Staff filed a *Motion for Default Determination*.

4. On September 27, 2016, Osage Water Company filed its *Response to Staff's Motion for Default Determination* ("Response"). This *Response*, Respondent stated "The Receiver thought the timing of the sale of the Company assets would be such that his duties as Receiver would be discharged and that it would not be necessary for him to file the 2013, 2014 or 2015 Annual Reports. However, the Receiver now recognizes that the event has not occurred."⁴

5. Respondent also stated that it would file its 2013, 2014, and 2015 Annual Reports by October 15, 2016.⁵

6. Respondent did not deny any of the allegations put forth in Staff's *Complaint*.⁶

7. On October 13, 2016, Osage Water Company requested, and the Commission granted, additional time to file the missing Annual Reports. The new deadline was set for October 31, 2016.

8. On October 31, 2016, Osage Water Company filed a *Status Update of Receiver and Request for Additional Time to File Annual Reports*. Osage Water Company requested that the new deadline to file its 2013, 2014, and 2015 Annual Reports be set for November 30, 2016.

9. On November 2, 2016, the Commission granted the second extension allowing the Company until November 30, 2016, to file the 2013, 2014, and 2015 annual reports.

⁴ *Response*, Paragraph 4

⁵ *Response*, Paragraph 5

⁶ *See, Response*.

10. To date, the Company has not filed its annual reports for 2013, 2014, or 2015, despite numerous extensions and Staff attempts to reach out to assist the Company in its filings.

11. Additionally, Osage Water has not filed an answer to Staff's Complaint, though its *Response to Staff's Motion for Default Determination* admitted Staff's allegations that the Company failed to file its 2013, 2014, and 2015 annual reports.

Argument

12. Commission Rule 4 CSR 240-2.117(2) provides, "Except in a case seeking a rate increase or which is subject to an operation of law date, the commission may, on its own motion or on the motion of any party, dispose of all or any part of a case on the pleadings whenever such disposition is not otherwise contrary to law or contrary to the public interest."

13. The *Complaint* filed by Staff on July 5, 2016, does not seek a rate increase, nor is it subject to an operation of law date. For relief, Staff's *Complaint* prays that the Commission will make the findings requested by Staff and require Osage Water to file its delinquent annual reports. Alternatively, Staff prays that the Commission will authorize its General Counsel to seek penalties in Circuit Court.

14. The standard for granting a motion for judgment on the pleadings is that there exists no material issue of fact.⁷ The facts, as well as all reasonable inferences arising from those facts, will be considered in ruling such a motion.⁸

15. The key facts alleged by the *Complaint* are that Respondent failed to file the statutorily required 2013, 2014, and 2015 annual reports. Respondent's statement in

⁷ *Madison Block Pharmacy, Inc. v. U. S. Fid. & Guar. Co.*, 620 S.W.2d 343, 345 (Mo. 1981)("A motion for judgment on the pleadings should not be sustained where a material issue of fact exists.")

⁸ *Bakewell v. Missouri State Employees' Retirement System*, 668 S.W.2d 224, 228 (Mo.App.1984).

its *Response* that it would file the missing 2013, 2014, and 2015 annual reports admits that the reports have not been filed. Thus, there is no material issue of fact before the Commission. Respondent cannot in good faith both (1) represent to the Commission that Respondent will file the missing annual reports, and (2) deny the Complaint's averment that the annual reports have not been filed.

16. Moreover, Respondent's explanation that an event anticipated by the Receiver that did not occur is neither a sufficient, nor well-pled affirmative defense that mitigates the requirements of § 393.140(6), RSMo and 4 CSR 240-3.335(1) and 4 CSR 240-3.640(1).

Conclusion

17. Because Respondent Osage Water has failed to provide a timely answer to the Staff's allegations as required by Commission and Missouri Court rules, and because Respondent Osage Water admitted Staff's allegations in its *Response to Staff's Motion for Default Determination*, the Commission may deem the Staff's averments as admitted. The Commission may make a determination on the pleadings as filed under 4 CSR 240-2.117(2).

WHEREFORE, Staff prays that the Commission will grant a determination on the pleadings of its *Complaint* filed herein and enter its order (1) finding that Osage Water failed to file its 2013, 2014, and 2015 annual reports, (2) requiring Osage Water to file the delinquent annual reports in compliance with the Commission's rules and the law, and (3) authorizing its General Counsel to seek penalties in circuit court; and granting such other and further relief as the Commission deems just.

Respectfully submitted,

/s/ Marcella L. Forck

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were mailed, electronically mailed, or hand-delivered to all counsel of record this 16th day of December, 2016.

/s/ Marcella L. Forck