

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

In the Matter of the Joint Application of)
Missouri-American Water Company and)
Both Osage Water Company and)
Environmental Utilities, L.L.C. for)
Authority for Missouri-American Water)
Company to Acquire the Water and Sewer)
Assets of Both Entities, and for the)
Transfer to Missouri-American Water)
Company of Certificates of Convenience)
and Necessity to Continue Operation of)
Such Assets as Water and Sewer)
Corporations Regulated by the Missouri)
Public Service Commission)

Case No. WO-2005-0086

MOTION TO REJECT TRANSACTION AND DISMISS APPLICATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through Counsel, and for its Motion to Reject Transaction and Dismiss Application in the above-captioned case states the following to the Missouri Public Service Commission (Commission):

1. On January 13, 2005, the Commission held an oral argument in its hearing room for the purpose of allowing the Applicants,¹ the Staff, the Office of the Public Counsel and the other parties to the case, through their attorneys, to appear before the Commission to explain the legal nature of certain aspects of the transaction that the Applicants have submitted for Commission approval.

2. On January 25, 2005, the Commission issued its *Order Adding Party And Directing Filing (Order)*. The *Order* stated “The Commission is unwilling to consider the transaction as currently configured, that is, with only a portion of the Osage system being

¹ “Applicants” refers to Missouri-American Water Company, Environmental Utilities, L.L.C., and Osage Water Company.

transferred. The Commission will therefore make AmerenUE a party to this case in order to help resolve the title issues, and to allow the transaction to be modified to include the Cedar Glen sewer facilities.”

3. On March 9, 2005, Missouri-American Water Company (MAWC) filed its *Notice Concerning Cedar Glen Sewer (Notice)* in response to the Commission’s *Order* bringing AmerenUE into this case “...in order to resolve the title issues, and to allow the transaction to be modified to include the Cedar Glen sewer facilities.” MAWC stated in its *Notice*:

Unfortunately, the ownership issues regarding the Cedar Glen sewer properties are more complex than just the AmerenUE permit issue. Accordingly, MAWC wishes to notify the Commission that MAWC is not interested in amending its original application to include entering into a contract to acquire the assets known as the “Cedar Glen Sanitary Sewer” system (Cedar Glen sewer assets). [Emphasis added]

MAWC offered three reasons in support of its position against amending its original Application to include the Cedar Glen sewer assets.

4. Two days later on March 11th, MAWC, in its *Response to Filings Of The Staff*, reiterated its position to the Commission:

As stated in MAWC’s Notice Regarding Cedar Glen Sewer, which was filed with the Commission on March 9, 2005, MAWC does not have a contract to purchase the Cedar Glen sewer assets and is not interested in amending its original application to include entering into a contract to acquire the assets known as the “Cedar Glen Sanitary Sewer” system. [Emphasis added]

5. On March 14, 2005, the Staff filed its *Response to Notice Concerning Cedar Glen Sewer* wherein it stated its belief that “. . . the operating revenues provided by the other sewer systems, and thus the current sewer rates, would have to at least double in order to provide recovery of the overall cost of providing sewer service if the Cedar Glen system is not a part of the overall operations.” Additionally, the Staff stated its belief that “. . . the potential rate impact resulting from the Cedar Glen sewer system not being included in the proposed asset transfer

would result in a situation where the required standard for the subject Joint Application (a finding that the proposed transactions are "not detrimental to the public interest") could not be met."

6. MAWC has now twice stated that it declines to amend its Application to include the Cedar Glen sewer assets. Because the Commission has stated that it "is unwilling to consider the transaction as currently configured, that is, with only a portion of the Osage system being transferred," it has effectively rejected the pending transaction. Despite the Commission's invitation to amend the application, the Staff believes it is clear that the Applicants will not avail themselves of the opportunity. Therefore, the Staff recommends that the Commission unequivocally reject the proposed transfer and dismiss this Application so that the parties may pursue other options.

7. While the Applicants might still accept the Commission's invitation to amend the transaction, the Staff respectfully suggests that the Commission pursue other avenues to resolve the persistent problems plaguing the Osage water and sewer operations. One such solution is the continued prosecution of the receivership action currently pending in the Camden County Circuit court. In the alternative, the Commission might consider an involuntary bankruptcy proceeding, and the immediate appointment of a trustee with the full authority of the bankruptcy court.

WHEREFORE, because the Commission will not approve the Application as submitted, and because MAWC will not amend its Application to address the Commission's concerns, the Staff recommends that the Commission issue an order rejecting the transaction and dismissing the Application.

Respectfully submitted,

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General Counsel

/s/ Thomas R. Schwarz, Jr.

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 2nd day of May, 2005.

/s/ Thomas R. Schwarz, Jr.