

**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 and for a) File No. _____
Certificate of Convenience and Necessity)

APPLICATION AND MOTION FOR WAIVER

COMES NOW Osage Utility Operating Company, Inc. (the “Applicant”) and, pursuant to 393.170 and 393.190, RSMo, and 4 CSR 240-2.060, 3.305, 3.310, 3.600, 3.605, and 4.020(2)(B), states the following to the Missouri Public Service Commission (“Commission”) as its Application and Motion for Waiver:

I. Background Information

1. The Applicant is a Missouri corporation, active and in good standing, with its principal office and place of business at 500 Northwest Plaza Drive, Suite 500, St. Ann, MO, 63074. A certified copy of the Applicant’s certificate of good standing is attached hereto as **Appendix A.**

2. Communications regarding this Application should be addressed to the undersigned counsel and to:

Josiah Cox, President
Osage Water Utility Operating Company, Inc.
500 Northwest Plaza Drive, Suite 500
St. Ann, MO 63074
Phone: (314) 736-4743
E-mail: jcox@cswrgroup.com

3. The Applicant was formed for the purpose of providing water and sewer service to the public and intends to be a “water corporation,” a “sewer corporation,” and a “public utility” as those terms are defined in Section 386.020, RSMo, and will be subject to the

jurisdiction and supervision of the Commission as provided by law. The Applicant has no overdue Commission annual reports or assessment fees. There is no pending action or final unsatisfied judgment or decision against the Applicant from any state or federal agency or court which involves customer service or rates, which action, judgment or decision has occurred within three years of the date of this Application.

II. The Transaction – Osage Water Company

4. The Applicant proposes to purchase substantially all of the water and sewer assets of Osage Water Company (“Osage”).

5. Osage is a water and sewer corporation doing business in the State of Missouri, and, as such, is subject to the jurisdiction of the Commission as provided by law. Section 393.190.1, RSMo, states, in pertinent part, that “no . . . water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public . . . without having first secured from the Commission an order authorizing it so to do.”

6. In 1989, Osage was granted a CCN to operate a water and sewer utility in Commission Case No. WA-89-73. Pursuant to that CCN, Osage provides water service to approximately 402 customers and sewer service to approximately 420 customers in Camden County, Missouri.

7. Osage is in receivership, initiated by the Commission in 2002.

8. Osage filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code, which case is pending as Case No. 17-42759-drd11 in the U.S. Bankruptcy Court for the Western District of Missouri. On October 26, 2017, Jill D. Olsen was appointed as

the Chapter 11 Trustee of Osage.

9. On August 26, 2018, Ms. Olsen, as Trustee of the Osage bankruptcy estate, filed a Motion to Approve with the Court seeking the sale of substantially all of Osage's assets.

10. On October 24, 2018, Ms. Olsen, as Trustee of the Osage bankruptcy estate, and Central States Water Resources, Inc. ("Central States"), which is under common ownership with the Applicant herein, entered into an Agreement for Sale of Utility System. The Agreement is attached hereto as **Appendix B-C**.

11. Pursuant to the agreement attached as Appendix B, the Applicant proposes to purchase substantially all the water and sewer assets of Osage from the bankruptcy estate, as specifically described in the agreement and under the terms and provisions further described in the agreement. Such assets include the Osage CCN. Appendix B has been identified as Confidential in accordance with Commission Rule 4 CSR 240-2.135(2)(A)(3) and (6), as it contains market specific information and information representing strategies employed in contract negotiations.

12. Osage consists of four water and wastewater service areas. Pictures of the current system condition can be found in **Appendix C**.

A. Osage Water Company - Chelsea Rose Water and Sewer Service Area. Chelsea Rose is a residential community with approximately 42 water and 38 wastewater residential connections, with townhomes developed in the greater Lake of the Ozarks area in and around Camden County, MO.

1. Water - Expected Investment of \$143,100. The system has two well house structures. One well house is inoperable, and the active well house has

deteriorated structurally and has unsafe wiring. The tank in the active well house is a hydro-pneumatic tank that is approximately 250 gallons which does not meet the MDNR recommendation to provide 2,730 gallons of hydro-pneumatic storage. No water supply monitoring is in place. In the distribution system, minimal flushing hydrants and isolation valves exist. The Applicant plans to install a Mission unit for monitoring, magnetic flow meter, repair failing building, place electrical wiring in conduit to mitigate the hazard, install a 3,000-gallon hydro-pneumatic tank that will have a portion of the tank outside of the building wall demolish old inoperable well house, and install three flushing hydrants and some system valving.

2. Sewer - Expected Investment of \$336,175. The wastewater treatment facility is a standard extended aeration activated sludge facility. It doesn't appear this system has an active permit to operate. The clarifier and contact chamber have excessive floating sludge and leaves. Clarifier airlifts and aeration diffusers require replacement. Overgrown vegetation is hampering plant operations. The road to the plant has washed out. The plant cannot consistently meet limits in the winter due to a reduction of loading from flow rates falling from over 10,000 gpd to 1,000 gpd or lower. The plant effluent pipe is broken, and effluent does not reach the permitted discharge site. The Applicant plans to install a cover over plant to keep leaves and debris from falling in the process, convert plant to have flow equalization and an IFAS wastewater plant utilizing the existing infrastructure, replace clarifier returns. regrade and repair roadway into site and,

install a sludge pumping/waste line along road to allow for sludge to be hauled.

B. Osage Water Company - Cimarron Bay Water and Sewer Service Area.

Cimarron Bay is a residential community with approximately 110 residential water and 110 wastewater connections, with townhomes developed in the greater Lake of the Ozarks area in and around Camden County, MO.

1. Water - Expected Investment of \$238,863. The well house is dilapidated and requires repair inside and out. The electrical wiring is substandard. The 35,000-gallon hydro-pneumatic tank is sufficient on capacity if it remains in use as a pressure tank but requires cleaning and inspection. No hydrant or flushing hydrants are in place in the distribution system. The Applicant plans to install a mission unit, magnetic flow meter, repair building, and install electrical wiring in conduit to eliminate electrical hazards, install a booster skid and building expansion for additional equipment, install three flushing hydrants, some system valving, and remote shutoff meters.

2. Sewer - Expected Investment of \$181,850. The wastewater treatment facility is a recirculating sand facility. It doesn't appear this system has an active permit to operate. Three beds exist for treatment. Only two of the beds are in use. The plywood walls have failed, piping is exposed. It is difficult to determine quality of media in place. The sand bed walls have mostly deteriorated. A portion of the flow to the plant is pouring out the walls. The picture above shows the walls where this most likely occurs. It is difficult for the plant to meet limits in the winter due to the reduced flow from seasonal fluctuations. The Applicant

plans to abandon sand bed in place and replace that portion of the facility treatment with an MBBR and aerate the influent tank and install a mission unit at the two main pump stations.

C. Osage Water Company - Cedar Glen Water and Sewer Service Area. Cedar Glen is a residential community with approximately 216 water and 216 wastewater connections, for condos developed in the greater Lake of the Ozarks area in and around Camden County, MO.

1. Water - Expected Investment of \$377,750. The system consists of one well house. The well house has 3 unused 250-gallon pressure tanks and one 35,000-gallon hydro-pneumatic tank. This well house is in poor shape and is failing. Exposed wiring is hanging and stapled to the ceiling and walls. Electrical panels are all open and without covers. The well pumps ground water directly in the 35,000-gallon pressure tank acting as a hydro-pneumatic tank with no booster pumps at this facility. The water system has 216 water customers serving approximately 432 people. MDNR requires that systems with over 50 customers do not have system storage consisting of 100% on hydro-pneumatic and shall have ground storage. DNR has stated they will not approve a ground storage tank unless it is 1.5 times average daily. Based on usage, 28,500 gallons of storage is required. Backup power does not exist. The hydro-pneumatic tank should be power washed and cleaned. No monitoring is in place. The Applicant plans to install a mission unit, magnetic flow meter, repair building, install electrical wiring in conduit to eliminate electrical hazard. convert hydropneumatic storage tank to ground storage, install a booster skid with VFDs, power wash and clean hydro-pneumatic tank, install at least two flushing hydrants and at least five system valves in the distribution system, and

install meters in units that are not metered and replace all existing meters with remote shutoff meters.

2. Sewer - Expected Investment of \$281,950. The wastewater treatment facility is a recirculating sand facility. The operating permit expires on June 30, 2019. Ammonia is a new limit to meet as of June 1, 2018. The sand plant consists of 4 beds. The northeast most bed appears to have integrity issues and some failed piping. Two of the eight filter pumps are not functioning. The control panel has caught on fire a couple times in the past. The system has difficulty dealing with irregular flow due to the seasonality of the residents. Flows in the summer are sometimes more than what the lifts station pumps can handle. The Applicant plans to repair treatment piping as needed, replace two filter pumps, clear trees from around the facility, install a MBBR as an additional component of treatment, add additional storage volume at each pump station, and replace pumps with newer/higher capacity units.

D. Osage Water Company - Eagle Woods Water and Sewer Service Area. Eagle Woods is a residential community with approximately 56 wastewater and 34 drinking water connections for homes developed in the greater Lake of the Ozarks area in and around Camden County, MO.

1. Water - Expected Investment of \$123,300. The system consists of one well house. The well house is very small and is only about 6'x6' inside dimensions. This system does chlorinate the water and also houses it in the room with all the equipment. Metal components are corroding due the chlorine being stored in the same room. The system is a one well in operation that pumps to two ground storage tanks proving a total of 9,000 gallons of storage. The system utilizes a 357-gallon hydro-pneumatic tank for

system pressure. The system should have 35 gallons per person served equating to 2,975 gallons. The hydro-pneumatic tank serving this system is only 357 gallons is well short of capacity. The ground storage tanks should be power washed and cleaned. No monitoring is in place. The Applicant plans to install a mission unit, magnetic flow meter, repair building, and install electrical wiring in conduit to eliminate hazard, remove hydro-pneumatic tank from operation, and install VFDs on the booster pumps to improve pressure control and meet DNR recommendations.

2. Sewer - Expected Investment of \$303,175. The wastewater treatment facility is made up of a recirculating sand facility with chlorine disinfection. They appear to be operating without an active permit. The system is struggling to meet standard effluent limits. The sand plant consists of two concrete beds with a total footprint of 33'x 88'. Both beds have cracks in the walls and are failing. Both beds have some issues with failing distribution piping. It is difficult to determine quality of media in place. A make shift chlorine disinfection system is in place that consists of a plastic storage container that was converted to a contact chamber with blocks for travel path requirements of DNR. A large quantity of algae/moss growth is present on the inside of the substandard chlorine contact chamber. The site is in complete disarray. Waste materials from old repairs, trash, pumps, and broken pipes are laying all over the site and is a safety hazard. The site is not fully fenced. The road has washed out and the plant is not accessible at this time with having a 2' deep rut through the road. The sand bed sits in a valley and run off water is directed to the plant walls. Based on the size of the system it will struggle to meet ammonia limits. I and I is anticipated due to shape and

integrity of the existing infrastructure. The influent pipe is exposed along the edge of the plant due to the erosion issues and it actually is not fully connected and under high flows discharges on the ground. The collection system is all gravity sewer with no manholes. Not having a manhole at all breaks in grade and bends does not meet DNR current design codes. The system has four pump stations. There is a section of gravity line that was constructed with a sag to go under the drainage creek of the dam. Solids will settle in the bottom of this pipe and potentially clog over time. A booster pump station serving some homes needs additional storage capacity in order to keep up without overflowing. The Applicant plans to re-pour concrete sections that are failing. Regrade entire area around site to improve drainage and install a culvert, reconstruct roadway as needed to enter the plant, replace the disinfection tankage with a more conventional installation to avoid recontamination of effluent, repair sand bed distribution piping as needed, replace piping as needed and bury to protect from freezing, install new fencing around the perimeter, install MBBR for additional treatment, cover up piping as needed, provide additional storage at pump stations serving multiple homes, and complete smoke testing as soon as possible to determine how bad I and I is as well as assist in plant capacity analysis.

III. The Transaction – Reflections

13. The Applicant also proposes to purchase all the water and sewer assets of Reflections Subdivision Master Association, Inc., a Missouri not-for-profit corporation, and Reflections Condominium Owners Association, Inc., a Missouri not-for-profit corporation (“Reflections” or the “Associations”) and seeks a Certificate of Convenience and Necessity (“CCN”) to operate the system and provide service to the public.

14. On December 4, 2018, the Associations, the Applicant, and Great Southern Bank

entered into an Amended and Restated Agreement for Sale of Utility System. This Agreement is attached hereto as **Appendix D-C**.

15. Pursuant to the agreement attached as Appendix D, the Applicant proposes to purchase substantially all the water and sewer assets of the Associations, as specifically described in the agreement and under the terms and provisions further described in the agreement. Appendix D has been identified as Confidential in accordance with Commission Rule 4 CSR 240-2.135(2)(A)(3) and (6), as it contains market specific information and information representing strategies employed in contract negotiations.

16. Currently, Reflections is a residential community with approximately 55 drinking water and 55 wastewater connections, for condos developed in the greater Lake of the Ozarks area in and around Camden County, MO. The Applicant is acquiring Reflections utility assets from utility assets from Great Southern Bank for \$1. The estimated cost of capital improvements, legal expenses, and technical due diligence is \$95,000. The Bank foreclosed on the utility assets due to a developer's business failure, and the Bank is not in the utility business. Pictures of the current system condition can be found in **Appendix C**.

17. The Applicant expects to invest \$165,213 in the water system. The system consists of one well house. The well house has seven 119-gallon pressure tanks. The system does not disinfect the drinking water prior to distribution. The exterior of the well house has not been maintained and will lead to premature failure of the structure. Vegetation is overgrown on the outside of the building. There is exposed electrical wiring inside the well house. Per DNR, the plastic pipe installed in the well house does not meet code. The system does not chlorinate. No monitoring is in place. The main water line feeding the condo units is exposed but has some

form of insulation. This will be an ongoing concern in the winter when usage is low. There are no meters.

18. The Applicant plans to install a mission remote monitoring unit, magnetic flow meter, install fencing around the well house, perform maintenance around exterior of building, replace interior piping per DNR permits, and install electrical wiring in conduit to eliminate hazard, power wash and clean the exterior of the building, insulate the exposed water line, and install remote shut-off meters.

19. The Applicant plans to invest \$310,800 in the sewer system. The wastewater treatment facility is extended aeration activated sludge. The operating permit expired on December 26, 2009. The permit is not consistent with current limit standards around the lake. The facility will have difficulty meeting typical chlorine residual and ammonia limits that will be added to the permit when it is renewed. The concrete structure is in poor shape. The walls are nearing failure due to the steel corroding. Various corners are crumbling, and chunks of concrete have already separated and fallen from the walls. The walls are also leaking and will continue to expedite the concrete deterioration until the leakage is addressed. The exterior wall is bowing and is a structural concern long term for potential failure. Knowing that the area is mostly visited in the winter, summer months are the peak months and predominately weekends. This creates a unique treatment solution to provide continual treatment. While the facility has enough capacity, the winter months is the period when the plant will struggle to meet limits. The blower building is in very poor shape. Insulation was nailed to the interior of the building. When the blowers are operating, they put off a lot of heat and if insulation falls onto the blowers, they can catch fire and the system will be shut down. The decking/cat walk for the plant has deteriorated and is

nearing failure. Due to the plant being above ground, the stairs are not structurally sound and are in danger of failing and could injure someone visiting the plant. The clarifier has a large amount of sludge at the surface which are signs of poor sludge blanket and will lead to washout and contamination of the lake. The collection system has a gravity sewer line from three buildings to two pump stations. The pumps stations convey sewage to the treatment plant. No monitoring is installed at the pump stations.

20. The Applicant plans to repair concrete walls, install structural supports, replace decking material, and install structural/process control steel walls in the aeration, install mission monitoring at the wastewater facility, and install mission monitoring at each pump station.

IV. The Transactions – Additional Information

21. The Applicant's verifications of authority authorizing the purchase of the subject assets and related transactions contemplated by the agreements referenced above are attached as **Appendix E**.

22. A balance sheet and income statement with adjustments showing the results of the acquisition of the properties is attached as **Appendix F-C**. Appendix F has been identified as Confidential in accordance with Commission Rule 4 CSR 240-2.135(2)(A)(3) and (6), as it contains market specific information and information representing strategies employed in contract negotiations.

23. The sale and purchase of the referenced assets should have no impact on the tax revenues of relevant political subdivisions.

V. Certificate of Convenience and Necessity - Reflections

24. The Applicant requests permission, approval, and a CCN to install, own, acquire, construct, operate, control, manage, and maintain water and sewer systems for the public in an

area of Camden County, Missouri, as set forth on the map attached to this Application as **Appendix G**. This area is currently served by the Associations.

25. Attached hereto and marked as **Appendix H-C** is a list of fifty residents or land owners within the proposed service area. Appendix G has been identified as Confidential in accordance with Commission Rule 4 CSR 240-2.135(2)(A)(1), as it contains customer-specific information.

26. Attached hereto and marked as **Appendix I-C** is a feasibility study for the water and sewer systems, including estimated expenses and revenues during the first three years of operation by the Applicant. Appendix I has been identified as Confidential in accordance with Commission Rule 4 CSR 240-2.135(2)(A)(3) and (6), as it contains market specific information and information representing strategies employed in contract negotiations.

27. The Applicant will not require any franchises or permits from municipalities, counties, or other authorities in connection with the proposed systems.

28. To provide service to the proposed area, the Applicant will purchase substantially all the water and sewer assets of the Associations, as specifically described in the agreement previously attached and under the terms and provisions further described in said agreement.

VI. Request for Acquisition Incentives

29. Pursuant to RSMo. 386.040, 386.250, and 393.140, and Commission Rule 4 CSR 240-10.085(2) (to take effect January 16, 2019), the Applicant requests a rate of return premium and a debt acquisition adjustment in conjunction with its acquisition of the Osage and Reflections systems.

30. As described above, the Osage and Reflections systems are nonviable within the

meaning of Rule 4 CSR 240-10.085(1)(C).

31. Pursuant to Rule 4 CSR 240-10.085(4), detailed above are the plant improvements necessary to make the Osage and Reflections systems viable, all of which will be completed by the Applicant within a reasonable amount of time after the effective date of the acquisitions, as well as planned capital improvements and operational changes to correct the current deficiencies.

VII. Tariffs/Rates

32. The Applicant proposes to adopt the rules and regulations in place for Osage. For Reflections (the Associations), the Applicant proposes to adopt the “standard” PSC Water and Sewer Department sample tariff.

33. As to rates, the Applicant proposes to use the existing rates for all customers. The current water rates for Osage are as follows:

Monthly Minimum: (Includes 2,000 gallons of water)
For Service through a 5/8" water meter \$24.76 per month +
For Service through a 1" water meter \$34.27 per month +
For Service through a 1 1/2" water meter \$58.80 per month +
For Service through a 2" meter \$66.98 per month +
For Service through a 3" meter \$96.19 per month +
For Service through a 4" meter \$243.89 per month +

Commodity Charge: For metered usage greater than 2,000 gallons per month
5 .86 per 1,000 gallons

The current sewer rates for Osage are as follows:

Monthly Bill
Unmetered Condominium \$ 29.02 per month +
For Service Through a 5/8" water meter \$ 29.02 per month +
For Service through a 1" water meter \$ 51 .34 per month +
For Service through a 1 1/2" water meter \$109.96 per month +
For Service through a 2" meter \$129.49 per month +
For Service through a 3" meter \$199.25 per month +
For Service through a 4" meter \$363 .14 per month +

34. The current water rates for Reflections are \$25/month, and the current sewer rates for Reflections are \$25/month.

35. The current rates for Osage and Reflections do not reflect the current cost of providing service. Additionally, as indicated above, these systems will require substantial investment after the purchase by the Applicant that will necessarily result in a rate increase of some amount after those additions have been completed.

VIII. Public Interest

36. The proposed acquisition of the specified assets, and the related transactions, are not detrimental to the public interest of the State of Missouri, and, in fact, will be consistent with and will promote the public interest.

37. The Applicant, and all utility services provided, will be subject to the jurisdiction of the Commission.

38. The Applicant is fully qualified, in all respects, to own and operate the systems currently being operated by Osage and the Associations, and to otherwise provide safe and reliable service.

IX. Motion for Waiver

39. Commission Rule 4 CSR 240-4.017(1) provides that “(a)ny person that intends to file a case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such case.” A notice was not filed 60 days prior to the filing of this Application. As such, the Applicant seeks a waiver of the 60-day notice requirement.

40. Commission Rule 4 CSR 240-4.017(1)(D) provides that a waiver may be granted for good cause. In this regard, the Applicant declares (as verified below) that it has had no communication with the Office of the Commission (as defined in Commission Rule 4 CSR 240-

4.015(10)) within the prior 150 days regarding any substantive issue likely to be in this case. Further, the Applicant notes that there are health and safety issues involved with these small companies, as well as a deadline imposed by the Bankruptcy Court. It would serve no purpose to further delay the filing of this Application.

41. For the good cause shown, the Applicant moves for a waiver of the 60-day notice requirement of Rule 4 CSR 240-4.017(1) and acceptance of this Application at this time.

WHEREFORE, Osage Water Utility Operating Company respectfully requests that the Commission issue its order:

(A) Authorizing Osage to sell and the Applicant to acquire the assets of Osage identified herein, to include the Osage CCN; or, in the alternative, grant the Applicant a new CCN to provide water and sewer service in the area now served by Osage;

(B) Authorizing Osage and the Applicant to enter into, execute, and perform in accordance with the terms described in the agreements attached to this Application and to take any and all other actions which may be reasonably necessary and incidental to the performance of the acquisitions;

(C) Granting the Applicant a Certificate of Convenience and Necessity authorizing it to install, acquire, build, construct, own, operate, control, manage and maintain a sewer system for the public within the area currently served by the Associations (Reflections);

(D) Granting the Applicant permission to acquire the assets identified herein of the Associations;

(E) Awarding the Applicant an acquisition incentive related to its acquisition of nonviable utility systems; and,

(F) Granting such other relief as may be deemed necessary and appropriate to

accomplish the purposes of the agreements and the Application and to consummate related transactions in accordance with the agreements.

Respectfully submitted,

/s/ Diana C. Carter

Dean L. Cooper, MBE #36592

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on the 19th day of December, 2018, to the following:

Office of the General Counsel
Governor Office Building
Jefferson City, MO 65101
staffcounsel@psc.mo.gov

Office of the Public Counsel
Governor Office Building
Jefferson City, MO 65101
opc@ded.mo.gov

/s/ Diana C. Carter