

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) Case No. WA-2019-0185
Water and Sewer Assets and for a Certificate of) and SA-2019-0186
Convenience and Necessity)

**CEDAR GLEN CONDOMINIUM OWNERS ASSOCIATION, INC.’S
RESPONSE TO OSAGE UTILITY OPERATING COMPANY, INC.’S AMENDED
MOTION TO STRIKE AND/OR LIMIT THE SCOPE OF THE PROCEEDING**

COMES NOW Cedar Glen Condominium Owners Association, Inc. (hereinafter sometimes referred to as “Cedar Glen”), by and through counsel and in response to Osage Utility Operating Company Inc.’s (“OUOC”) Motion to Strike and/or Limit the Scope of the Proceeding (the “Motion”), as amended, submits the following:

1. OUOC contends that the matter before the Commission is limited to review of OUOC’s agreement with the bankruptcy trustee to purchase the Osage Water Company assets, and any alternative proposals to purchase those assets are irrelevant to the Commission’s application of the “not detrimental to the public interest” standard.

2. Quite to the contrary, the matter before the Commission encompasses more than a series of “offers” for the Osage Water Company assets. Squarely before the Commission are two prospective buyers, both under binding and nearly identical written contracts with an officer of the Federal Judiciary—contracts that are both still in force and effect—to purchase the same assets at the same price. OUOC has tried to shrink the size of the matter to fit the authority it has cited in support of its motion. The “transaction,” as OUOC has labeled it in the Motion, cannot be so conveniently circumscribed. OUOC’s arguments should be rejected and its motion denied.

3. In support of the Motion OUOC supplied excerpts from the Commission’s report and order in *In the matter of the Application of UtiliCorp United Inc., d/b/a Missouri Public*

Service, for authority to sell a part of its franchise, works or system, Case No. GM-97-435 (October 15, 1998). In that case the Commission concluded that evidence of offers to purchase part of, or one of, Utilicorp’s pipelines--offers that had been withdrawn--which were more favorable to the one under review was not relevant to whether the sale was detrimental to the public interest. The conclusion reached is inapposite to the facts and circumstances in the instant case and should be disregarded. None of the factors used by the Commission in that case are involved here. Furthermore, the Commission is not hamstrung in the number of factors it may consider as part of its analysis of detriment to the public.

4. It is unquestionable that this case involves firm commitments by competing prospective purchasers to acquire the same assets of a distressed utility at the same price. The contract between the bankruptcy trustee and Public Water District No. 5 (“District No. 5”), Missouri Water Association (“MWA”) and Lake Area Wastewater Association (“LAWWA”) is not experimental, hypothetical, or illusory. The contract between the bankruptcy trustee and District No. 5, MWA and LAWWA remains in full force and effect. This case is not about alternative “offers.” It is about alternative providers under the same obligation to buy utility assets. For the Commission the issue at root is whether the applicant in this matter will do more harm than good if it acquires those assets.

5. The Commission provided a lengthy summary of the “not detrimental to the public interest” in *the AmerenCIPS* case,¹ pertinent portions of which are quoted below:

Public Counsel urges the Commission to ignore UE’s quotations of erroneous language from past Commission orders that approval must be granted unless “compelling” evidence shows that a “direct and present” detriment is “likely” to occur. Instead, as recently articulated by the Missouri Supreme Court in *AG*

¹ *In the Matter of the Application of Union Electric Company, d/b/a AmerenUE, for an Order Authorizing the Sale, Transfer and Assignment of Certain Assets, Real Estate, Leased Property, Easements and Contractual Agreements to Central Illinois Public Service Company, d/b/a AmerenCIPS, and, in Connection Therewith, Certain Other Related Transactions*, Case No. EO-2004-0108. (October 6, 2004).

Processing, and restated by the Commission itself, “**a detriment to the public interest includes a risk of harm to ratepayers.**”² [emphasis added]

6. The evidence prefiled in this case shows that the Osage Water Company ratepayers face the risk of significant increases in their usage charges if OUOC’s application is granted, a factor in the evaluation of public detriment. OUOC will eventually seek to recover from a customer base of less than 450 the costs of, and debt associated with: a) its purchase of the assets; and b) the contemplated improvements to the systems, the total estimate for which is over \$2,000,000. The testimony submitted by District No. 5, MWA and LAWVA establishes there is a lower cost alternative to regulated public utility service in the region. Lower costs translate into lower rates. Granting OUOC’s instant motion would render inadmissible decisive and relevant evidence on risk of harm to the ratepayer.

7. As mentioned above, this case, as the prefiled evidence shows, involves entities which are qualified, ready, willing and able to provide water and sewer services to the Osage Water Company customers as an alternative to the service OUOC intends to provide. Evidence of those alternatives is critical to the evaluation of public detriment. While Osage Water Company degenerated into bankruptcy, the public utility authorities created by petition to the circuit court and nonprofit water and sewer companies established new footholds in the same area. They now occupy much of the field raising serious questions whether the addition of a regulated rate of return public utility in the same region is needless.

8. On page 19 of the Staff Memorandum attached to its filed Recommendation in this matter, Staff notes that “[f]or its reviews, Staff also considers whether or not other utility entities are available to provide similar service.” Osage Water Company is a distressed utility. Pursuant

² *Id.*, at 41.

to Section 393.146, RSMo 2016 the Commission has authority to order a utility company to acquire a distressed small water or sewer company. Before doing so,

the commission shall discuss alternatives to acquisition with the small water or sewer corporation and shall give such small water or sewer corporation thirty days to investigate alternatives to acquisition, including:

(1) . . . ;

* * *

(4) The acquisition of the small water or sewer corporation by a municipality, a municipal authority, a public water supply district, a public sewer district, or a cooperative.

9. The availability of other utility service providers is part of the Commission's measurement of detriment to the public. The evidence OUOC seeks to strike supplements Staff's review process. Its relevance and its subsequent admission in this matter is consistent with the policies enunciated in the bedrock of state law.

10. As of the date this response is prepared, seventy-one public comments have been filed in this case, all of which, based on counsel's information and belief, are authored by unit owners at Cedar Glen. Their number represents 17% of the total customers of Osage Water Company and 33% of the number of unit owners at Cedar Glen. Each commenter objects to OUOC's acquisition of the Osage Water Company assets serving Cedar Glen and favors the transfer of those assets to District No. 5. The "not detrimental to the public interest" standard acts as a shield held in front of ratepayers who have little or no defense against monopoly power. OUOC moves this Commission to apply that standard as a means to silence the very people the standard is expected to protect. That injustice should not be countenanced by this Commission.

11. OUOC's Motion to Strike and/or Limit the Scope of the Proceeding, as amended, should be summarily denied.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 16th day of September, 2019, to:

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