

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
MOTION TO STRIKE PORTIONS OF THE WRITTEN SURREBUTTAL TESTIMONY
OF TODD THOMAS AND JOSIAH COX, OR ALTERNATIVELY, MOTION FOR
LEAVE TO FILE TESTIMONY IN RESPONSE**

COMES NOW Cedar Glen Condominium Owners Association, Inc. (hereinafter sometimes referred to as “Cedar Glen”), by and through counsel and respectfully moves to strike portions of the prefiled written surrebuttal testimony of Osage Utility Operating Company, Inc.’s witnesses Todd Thomas and Josiah Cox including any annexed schedules to such testimony. In support thereof, Cedar Glen submits the following:

MOTION TO STRIKE

1. On September 4, 2019, Todd Thomas and Josiah Cox caused to be filed written surrebuttal testimony. On the pages and in the lines identified below, Mr. Thomas and Mr. Cox have failed to limit their testimony to material which is responsive to matters raised in rebuttal testimony in violation of the Commission’s evidentiary rule 20 CSR 4240-2.103(7)(D)

Todd Thomas Surrebuttal

2. In his surrebuttal testimony, Mr. Thomas discusses Public Water Supply District No. 5's (the “District”) history of compliance with the Missouri Department of Natural Resources regulations on the following pages and line numbers:

Page 4 Lines 1-23

Page 5 Lines 1-23

Page 6 Lines 3-9

3. Mr. Thomas purports to be responding to the rebuttal testimony of Office of Public Counsel witness Keri Roth in the above noted pages and lines of his surrebuttal. In actuality, his testimony is rebuttal to the direct testimony of District witness David Stone, particularly with respect to Mr. Stone's testimony that acquisition of Osage Water Company's water distribution and wastewater assets would benefit Cedar Glen and the public in general. Issues about the District's qualifications to serve Cedar Glen and the public interest were raised in Mr. Stone's direct testimony and were subject to rebuttal by the Commission's deadline of August 12, 2019.

4. Failure of Mr. Thomas to file timely rebuttal and his delay in filing his rebuttal until the surrebuttal phase of this matter violates Commission rules and unfairly prevents Cedar Glen and other parties from filing responsive testimony to their prejudice.

5. In surrebuttal, Mr. Thomas also questions the cost estimate of \$39,000 for improvements to the Osage Water Company assets serving Cedar Glen on the following pages and lines:

Page 13 Lines 21-23

Page 14 Lines 1-27

Page 15 Lines 1-23

Page 16 Lines 1-6

6. Mr. Thomas purports to be responding to the rebuttal testimony of Cedar Glen witness Ken Hulett. In actuality his testimony constitutes rebuttal to the direct testimony of David Stone in which the \$39,000 estimated cost of Cedar Glen facility improvements was first raised.

7. Issues about the estimated costs of the Cedar Glen facilities as first testified by Mr. Stone in his direct testimony was subject to rebuttal by the Commission's deadline of August 12, 2019.

8. Failure of Mr. Thomas to file timely rebuttal and his delay in filing his rebuttal until the surrebuttal phase of this matter violates Commission rules and unfairly prevents Cedar Glen and other parties from filing responsive testimony to their prejudice.

Josiah Cox Surrebuttal

9. On page 12, lines 3-12 of his surrebuttal, Mr. Cox refers to the surrebuttal testimony submitted by Mr. Thomas regarding the District's qualifications to serve Cedar Glen and the public interest. Mr. Cox's conclusions in his testimony rely on testimony of Mr. Thomas which should be stricken.

MOTION FOR LEAVE TO FILE RESPONSIVE TESTIMONY

10. Under the Commission's evidentiary rules parties are not permitted to submit responsive testimony to surrebuttal. The surrebuttal testimony of Mr. Thomas and Mr. Cox contains new matter which in substance should have been filed as rebuttal and Cedar Glen and other parties will be prejudiced if not allowed to respond. In the event the Commission does not strike the surrebuttal testimony of Mr. Thomas and Mr. Cox as set forth in the foregoing, Cedar Glen respectfully moves the Commission to grant Cedar Glen and all other parties leave to file testimony in response, and also to alter the procedural adopted in this matter to allow for the filing of responsive testimony.

WHEREFORE, on the basis of the above and foregoing, Cedar Glen Condominium Owners Association, Inc. respectfully requests the Commission to enter the following relief:

- a) Strike the portions of the prefiled written surrebuttal testimony of Osage Utility Operating Company, Inc.'s witnesses Todd Thomas and Josiah Cox as identified herein including any annexed schedules to such testimony, and further order and declare that such testimony is irrelevant and inadmissible; or
- b) Alternatively, in the event the Commission overrules this Motion to Strike, grant Cedar Glen Condominium Owners Association, Inc. and all other parties leave to file testimony in response; and
- c) Modify the procedural schedule to allow a reasonable time, not less than twenty-one (21) days, for the parties to prepare and file responsive testimony.

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 9th day of September, 2019, to:

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/s/ Mark W. Comley