

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

SUMMIT INVESTMENTS, LLC,)	
)	
Complainant,)	
vs.)	Cases Nos. SC-2014-0214
OSAGE WATER COMPANY,)	and WC-2014-0215
)	
Respondent.)	

RESPONSE TO COMPLAINT

Comes now the Respondent, Osage Water Company, and for its Response to Complaint, states to the Commission as follows:

1. **RESPONSE TO INTRODUCTION AND PARAGRAPH 1.** Respondent admits the allegations in the Introduction and Paragraph 1 of the Complaint.

2. **RESPONSE TO THE "BASIS OF THE COMPLAINT".** *Response to the first subparagraph.* Respondent Osage Water Company admits that the Missouri Department of Natural Resources ("MDNR") issued to Complainant a Construction Permit to build a wastewater treatment facility in Eagle Woods Subdivision. However, that facility was never built, and the MDNR never issued to Complainant a permit to operate that facility.

Respondent is a Missouri corporation authorized by the Commission to provide water and sewer services at various locations in the State of Missouri, including the Eagle Woods Subdivision and the Golden Glade Subdivision. However, Respondent Osage Water Company has never been the developer of Golden Glade Subdivision. Gregory D. Williams has been one of the owners of Osage Water Company from the time of its incorporation to the present. Mr. Williams and his wife, Debra Williams, are the developers of Golden Glade Subdivision. Osage Water Company has never held any ownership interest in Golden Glade.

Response to the second subparagraph. Complainant and Respondent entered into a “Water and Sewer Supply Contract” on January 12, 1999. The document attached to the Complaint as “Exhibit 1” is a true copy of that contract. Respondent states that the contract itself is the best evidence of the terms thereof, and Respondent therefore denies Complainant’s allegations concerning the substance thereof.

Response to the third subparagraph. The MDNR issued to Respondent a Construction Permit, authorizing Respondent to construct a wastewater treatment facility sufficient to serve 25 lots. Respondent completed construction of that facility, and on October 13, 2000, the MDNR issued Operating Permit No. MO-0123170, authorizing Respondent to operate that wastewater treatment facility. Exhibit 6 to this Response (excepting only the handwritten notations thereon) is a true copy of the first page of the said Operating Permit.

On January 25, 2001, MDNR issued Construction Permit No. 26-3467 to Respondent, authorizing Respondent to expand the existing facility, to serve 25 additional lots. Exhibit 2 to the Complaint herein (excepting only the handwritten notes, underscoring and other emphases) is a true copy of that Construction Permit, and of the MDNR’s cover letter. That Construction Permit authorized Respondent to construct facilities “to serve 25 lots in Eagle Woods Phase 1 & 2 and 25 lots in Golden Glades Phase 1 & 2.” Respondent completed construction of that facility, and MDNR subsequently issued an Operating Permit, authorizing Respondent to operate the expanded wastewater treatment facility from July 14, 2001, through July 13, 2006.

On October 21, 2005, the Circuit Court of Camden County appointed Gary V. Cover as receiver, to manage the affairs of Respondent. A copy of the Order Appointing Receiver is attached hereto as Exhibit “A”.

MDNR subsequently renewed Respondent’s Operating Permit No. MO-0123170, authorizing Respondent to continue to operate the expanded wastewater treatment facility from July 14, 2006, through July 13, 2011. Exhibit 3 to the Complaint is a true copy of that Operating

Permit. Page 4 of this permit included the following “Special Condition”: “There shall be no more than fifty lots connected to the current wastewater treatment system. Service shall be limited to any fifty lots platted in Eagle Woods I, II, III and IV and the Golden Glade Subdivision. The addition of lots in excess of fifty will require an expansion of the wastewater treatment plant to treat the additional load.” This plant has never been expanded, and Respondent has no legal authority to connect additional lots from Eagle Woods to the wastewater treatment plant.

Response to the fourth subparagraph. Respondent connected lots from the Eagle Woods and Golden Glade subdivisions to its wastewater treatment system in accordance with the provisions of Operating Permit No. MO-0123170. Respondent is without knowledge concerning the Complainant’s attempts to connect three lots to the wastewater treatment system and concerning the resulting fines imposed by the MDNR, and therefore denies Complainant’s allegations regarding the same.

Response to the fifth subparagraph. The provisions of the Order Appointing Receiver (Exhibit “A”) prohibit Respondent from constructing an expansion of the subject wastewater treatment plant to serve “Complainant's remaining 25 lots” in the Eagle Woods Subdivision as requested by Complainant. Respondent is without knowledge concerning the other allegations of the fifth paragraph, and therefore denies the same.

General response to “Basis of the Complaint.” Respondent denies each and every allegation in Summit’s Complaint that has not been specifically admitted herein.

3. RESPONSE TO COMPLAINANT’S STATEMENT OF STEPS TAKEN TO PRESENT COMPLAINT.

Respondent admits that Complainant has, on various occasions over the past 15 years, requested the Respondent provide services to Complainant. Respondent admits that it has not provided water and sewer services to some of the lots in the Eagle Woods Subdivision.

Respondent admits that it is under a receivership ordered by the Circuit Court of Camden County in Case No. 26V010200965. Respondent further states that the court's orders in said case prohibit Respondent from constructing an expansion of its wastewater treatment plant that serves parts of Eagle Woods and Golden Glade subdivisions.

Respondent admits that Complainant's lawsuit against Respondent (Camden County Circuit Court Case No. 11CM-CC00113) was stayed on October 25, 2013, because the circuit court lacked jurisdiction to hear the case. Complainant's lawsuit rests upon the claim that Respondent failed to comply with the terms of its water tariff and its sewer tariff. The issue of whether Respondent has complied with its tariffs lies solely with the Commission. Matters within the jurisdiction of the Commission must first be determined by the Commission before the circuit court will adjudge any part of the controversy.

Respondent is without knowledge concerning the other allegations of Paragraph 3 of the Complaint and therefore denies the same.

Further Answering, Respondent states that its failure to comply with the terms of its tariff, if any, occurred more than ten years ago, prior to the issuance of the order appointing Gary V. Cover as the receiver for Respondent. Specifically, Complainant has alleged in its lawsuit that Respondent failed to provide water and sewer services to Complainant on numerous occasions between 1999 and 2002. The nature of, and the exact dates of, any failures to provide safe and adequate service to the Complainant are crucial facts that must be established by the Commission, in order for the Camden County Circuit Court to resolve the legal issues that are pending in the circuit court lawsuit.

WHEREFORE, Respondent requests that the Commission determine whether Respondent has failed to comply with the provisions of its water or sewer tariff or has failed in any way to provide safe and adequate service to Complainant; and if so, that the Commission specifically identify and describe each and every specific instance of such failure, and state the

date on which each such failure occurred. Respondent further requests that the Commission deny Complainant's request for orders that Respondent provide water and sewer service that is prohibited by the orders of the Camden County Circuit Court in Case No. 26V010200965. Respondent further requests that the Commission deny Complainant's request for the authority to veto certain transactions by the Respondent.

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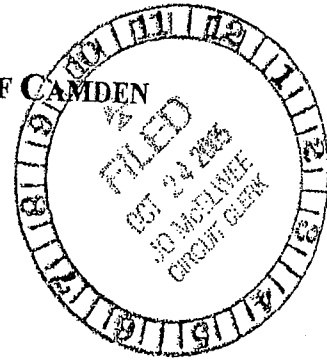
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Attorney for Respondent

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EXHIBIT "A"

**IN THE CIRCUIT COURT FOR THE COUNTY OF CAMDEN
STATE OF MISSOURI**



Public Service Commission of the State of Missouri,)
)

Plaintiff,)
)

v.)
)

Osage Water Company,)
)

Defendant.)
)

Case No. CV102-965CC

ORDER

On the 8th day of March, 2004, this cause came on for trial. Plaintiff Public Service Commission appeared by its attorneys, Keith R. Krueger and David A. Meyer. Intervenor Office of the Public Counsel appeared by its attorney, Ruth O'Neill. Paula Hernandez-Johnson, attorney for Defendant Osage Water Company failed to appear, and Defendant appeared without counsel, but William P. Mitchell, president of Defendant was present in court as the corporate representative of Defendant Osage Water Company.

Cause called. After the commencement of the trial, the Court received faxed copies of a Motion for Continuance and an Application / Petition to Disqualify Judge, submitted by Paula Hernandez-Johnson, counsel of record for Defendant Osage Water Company, which were overruled as untimely filed.

On March 9, 2004, after the conclusion of evidence, and during argument on the cause by counsel, the Court received a Notice of Bankruptcy Court Filing issued by the United States Bankruptcy Court for the Western District of Missouri in Case No. 04-20546, which indicated that Defendant Osage Water Company filed a Petition for Bankruptcy under Chapter 7 of the

EXHIBIT "A"

United States Bankruptcy Code on March 9, 2004, at 1:59 p.m. The Notice of Bankruptcy Court

Filing further included the following statement:

The filing of a bankruptcy case automatically stays certain actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Pending resolution of the bankruptcy case, further proceedings in this cause were stayed.

The U.S. Bankruptcy Court issued its judgment dismissing Osage Water Company's bankruptcy case on April 29, 2004. The Bankruptcy Court's Judgment further enjoined Osage Water Company from filing a subsequent bankruptcy petition for 180 days.

On or before June 2, 2004, Gregory D. Williams entered his appearance as attorney for Osage Water Company.

On June 2, 2004, the Court heard argument on various legal issues and the Company advised the Court that it had nearly reached agreement to sell its assets to Missouri-American Water Company. The Court announced that it had determined that the appointment of a receiver was appropriate, but that it would delay the entry of such an order, while the proposal to sell the Company's assets was pending.

Upon the direction of the Court, the Commission subsequently filed 39 Status Reports regarding the progress of the proposed sale of the Company's assets to Missouri-American and of the application to the Commission for approval of such sale of assets.

On October 7, 2005, the Commission and the Company appeared through counsel for argument on the Commission's Petition for Appointment of Receiver. The Office of the Public Counsel, although notified of the hearing, appeared not.

This Court will now rule upon the Plaintiff's Petition.

The Court finds that, based upon the evidence received in this proceeding, Osage Water Company has failed to provide safe and adequate water service to its customers as required by Section 393.130.1 RSMo. (2000). Section 393.130.1 provides, in part, as follows:

Every gas corporation, every electrical corporation, every water corporation, and every sewer corporation shall furnish and provide such service and instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.

The Court further finds that although Osage Water Company did execute a contract to sell its assets to Missouri-American Water Company and did seek the Commission's approval of this asset sale, the Commission found, in the opinion of this Court improperly and against public interest, that the proposed asset sale was detrimental to the public interest and dismissed Osage Water Company's application, and that the Company has not sought judicial review of the Commission's order.

By reason of the refusal of the Commission to approve the contract of sale the appointment of a receiver for Osage Water Company is necessary to promote the best interests of the customers of the Company, and to ensure that the customers of the Company receive safe and adequate water and sewer service. See Section 393.145.6, RSMo, as amended by Senate Bill 462 (Laws 2005). Section 393.145.5, RSMo, as amended by Senate Bill 462 (Laws 2005) authorizes the Court to grant the Commission's Petition to appoint a receiver for a water corporation or a sewer corporation. It provides that "[t]he court, after hearing, may grant the commission's petition for appointment of a receiver" and "[a] receiver appointed pursuant to this section shall be a responsible person, partnership, or corporation knowledgeable in the operation of utilities."

The Court further finds that Gary Cover of Clinton, Missouri possesses the foregoing statutory qualifications for service as a receiver. The Court therefore appoints Gary Cover as

receiver for Osage Water Company until further order of this Court. The appointed receiver shall have all of the powers, rights and authority vested in receivers pursuant to the provisions of Section 393.145.6, RSMo, as amended by Senate Bill 462 (Laws 2005). The appointed receiver shall post bond in the amount of \$50,000, with the premium therefore to be paid from the assets of the Company.

The Court further directs the receiver to negotiate with Mike McDuffey, the owner of Lake of the Ozarks Water and Sewer, for the provision of services to operate and maintain the Company's water and sewer facilities.

The Court further orders that Osage Water Company and its officers, agents and representatives, and specifically its past contractual agent and representative Environmental Utilities, LLC, employees and successors, and all other persons in active concert and participation with them, are directed to cooperate with Mr. Cover and with Mr. McDuffey to promptly transfer control of Osage Water Company to the appointed receiver; and to deliver to him all records and assets.

Section 393.145 also authorizes the Court to direct the receiver to liquidate the assets of the Company. Section 393.145.7, RSMo, as amended by Senate Bill 462 (Laws 2005) provides in full as follows:

Control of and responsibility for the utility shall remain in the receiver until the utility can, in the best interests of its customers, be returned to the owners. However, if the commission or another interested party petitions and the court determines, after hearing, that control of and responsibility for the utility should not, in the best interests of its customers, be returned to the owners, the court shall direct the receiver to transfer by sale or liquidate the assets of the utility in the manner provided by law.

The Court directs the receiver to liquidate the assets of the Company as soon as practicable on terms that protect the interest of the customers of the Company, and allow them to

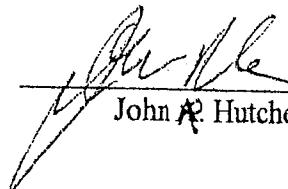
continue to receive utility service from the assets that have been put in place to serve them. The Court further directs and requires the appointed receiver to exercise care when liquidating the assets of the Company to ensure that any assets that are not immediately sold may still be efficiently operated after other systems and assets are sold. Further the Court requires the Receiver to file with the Court a request to proceed with sale upon the event that a buyer is found on terms agreeable to the Receiver.

The Receiver shall file monthly status reports with the Court and provide e-mail copies to the Court and to Attorneys of record, and to the Company if it is not represented.

The Court further grants the oral motion of Gregory D. Williams to withdraw as counsel for Osage Water Company.

That the Order for periodic reports by the Commission and Company is terminated.

So ordered this 21st day of October, 2005.


John A. Hutcherson, Judge

CERTIFIED TO BE A TRUE AND
CORRECT COPY OF THE ORIGINAL

DATE 10-25-05

CLERK OF CIRCUIT COURT
CAMDEN COUNTY, MO.

BY Jo McEllwaine CLERK

BY B. S. S. S. DEPUTY
Elkins-Sweyers Co., Springfield, Mo. - A-3277