

Bv
P.O.
CC

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 13th
day of August, 1997.

In the matter of the Application of)
Osage Water Company for permission,)
approval and a Certificate of Conven-)
ience and Necessity authorizing it)
to construct, install, own, operate,)
control, manage and maintain a water)
system for the public located in the)
City of Osage Beach, Missouri.)

Case No. WA-97-332

ORDER REGARDING MOTION TO COMPEL
AND ADOPTING PROTECTIVE ORDER

On February 19, 1997 Osage Water Company (Osage) filed an application with the Commission requesting issuance of a certificate of convenience and necessity for the construction and operation of a water supply system for the public in an area located within the city limits of the City of Osage Beach, Missouri. On June 19 the Commission established a procedural schedule for the hearing of this matter. As part of the discovery process authorized by the Commission's rules, Osage tendered ten data requests to intervenor Osage Beach Fire Protection District (Fire Protection District or District) on June 3. On June 27 Osage filed a motion to compel the Fire Protection District to respond fully to those data requests. On July 7 the District filed supplemental responses and objections to several data requests, and asked the Commission to deny the motion to compel.

Osage has now moved to compel responses to Data Requests 1-6 and 8. However, since Data Request 2 was not attached to the motion to

compel, it will not be considered. The data requests are set out as follows, together with the responses of the Fire Protection District:

Data Request 1:

Please provide copies of all ordinances enacted by the Osage Beach Fire Protection District ("OBFPD") which you believe establish or define standards for the supply of water within the OBFPD for fire protection, sprinkler operation, or potable drinking water. Please provide copies of the minutes of the meeting or meetings of the Board of Directors of the OBFPD where such ordinance(s) were adopted, together with a copy of the public notice provided by the OBFPD prior to such meeting. If an ordinance has been amended or repealed, please include copies of the amended or repealed ordinance in addition to the ordinance currently in effect.

The Fire Protection District filed its supplemental response, stating the name and location of the proper person to contact regarding the requested information. The District had previously tendered all the requested documents for copying at its place of business. Such responses to this data request are sufficient. The motion to compel further responses is denied.

Data Request 3:

Please provide copies of all contracts entered into by you for the purchase, acquisition, construction, design, operation, maintenance, management, or control of any water utility plant, systems, equipment, or assets.

The Fire Protection District filed its response objecting to the requested information as being irrelevant.

The Commission finds that the data request is relevant so far as the requested information is limited to the service area in question in this case. The motion to compel is granted to the extent that Data Request 3 is limited to contracts relevant to the service area at issue in this case. The Fire Protection District's objection is overruled.

Data Requests 4 and 5:

Please provide copies of all proposals submitted or offers made by you to the present owner, operator, manager, or person in control of any water utility plant, systems, equipment or assets for the purchase, transfer,

management, operation, or control of said water utility plant, systems, equipment, or assets by you.

Please provide copies of all legal opinions, memorandum, or other documents upon which you rely for the proposition that you have the necessary legal authority to own, operate, manage, or control a water utility system for the distribution of potable drinking water to the public in Osage Beach.

The Fire Protection District has responded that the information requested is not relevant to the position of the District as an intervenor in this proceeding and is therefore not relevant. The Commission disagrees. In its Application to Intervene the District states as a reason for having an interest different from the general public that: "The District is ready, willing and financially able to serve the described area within the City with fire protection and water distribution service, having officially authorized such action at a meeting of its governing body held February 19, 1997."

It is clear to the Commission from the Fire Protection District's own Application to Intervene that an issue exists regarding which potential provider is best able to provide safe and adequate service to the area in question. The motion to compel responses to Data Requests 4 and 5 is granted.

Data Request 6:

Please state whether you presently own any water utility plant, systems, equipment or assets which would enable you to presently provide public water utility service to the Parkview Bay Condominium project. If your answer to the preceding question is no, please explain how you propose to provide service to the Parkview Bay Condominium project if Osage Water Company is not granted a certificate of convenience and necessity by the Missouri Public Service Commission.

The District responded that it "anticipates building a system that will provide fire protection as mandated by ordinance, rather than providing drinking water." The Commission agrees with Osage that the one-sentence response of the Fire Protection District is evasive and not

responsive to the request. The District is ordered to respond fully and appropriately.

Data Request 8:

Please describe in detail your method of financing your proposed water system as referred to by your counsel at the prehearing conference held in this case on May 27, 1997. Please provide copies of all documents pertaining to said financing, including the names and addresses of all persons who have purchased or agreed to purchase any evidences of indebtedness issued or to be issued by you or your affiliates.

Osage argues that the issuance of indebtedness, or intent to do so by the Fire Protection District is relevant to this case, and the Commission agrees. However, the Fire Protection District is correct in its assertion that the names and addresses of persons who have purchased or agreed to purchase any proposed or actual debt issuance does not appear to be relevant at this time. The motion to compel is denied so far as names and addresses of purchasers or potential purchasers are concerned. However, with that exception, the Fire Protection District is ordered to respond fully to this request and the motion to compel is otherwise granted.

In order to facilitate full and complete disclosure and protect information which may be proprietary or of a highly confidential nature, the Commission will issue its standard Protective Order in this case, sua sponte.

IT IS THEREFORE ORDERED:

1. That the motion to compel, filed June 27, 1997 by Osage Water Company, is granted to the extent as set out above and, to that extent, Osage Beach Fire Protection District is ordered to comply.

2. That a Protective Order is hereby adopted for use in this case as set out in Attachment A hereto.

3. That this order shall become effective on the date hereof.

BY THE COMMISSION

A handwritten signature in dark ink, appearing to read "Cecil I. Wright". The signature is fluid and cursive, with a long horizontal stroke at the end.

Cecil I. Wright
Executive Secretary

(S E A L)

Zobrist, Chm., Crumpton,
Drainer, Murray and Lumpe,
CC., concur.

ALJ: Derque

PROTECTIVE ORDER

- A. The following definitions shall apply to information which a party claims should not be made public.

HIGHLY CONFIDENTIAL: Information concerning (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration in contract negotiations.

PROPRIETARY: Information concerning trade secrets, as well as confidential or private technical, financial and business information.

- B. During the course of discovery a party may designate information as HIGHLY CONFIDENTIAL or PROPRIETARY (hereinafter, "designated information") and shall make such designated information available to the party seeking discovery, if such information is not objectionable on any other ground, under the restrictions set out in paragraphs C and D. The party designating the information as HIGHLY CONFIDENTIAL or PROPRIETARY shall provide to counsel for the requesting party, at the time the designation is made, the ground or grounds for the designation. The requesting party may then file a motion challenging the designation. The party designating the information confidential shall have five (5) days after the filing of the challenge to file a response. No other filings are authorized.

- C. Materials or information designated as HIGHLY CONFIDENTIAL may at the option of the furnishing party, be made available only on the furnishing party's premises and may be reviewed only by attorneys or outside experts who have been retained for the purpose of this case, unless good cause can be shown for disclosure of the information off-premises and the designated

information is delivered to the custody of the requesting party's attorney. Outside expert witnesses shall not be employees, officers or directors of any of the parties in this proceeding. No copies of such material or information shall be made and only limited notes may be taken, and such notes shall be treated as the HIGHLY CONFIDENTIAL information from which notes were taken.

- D. Disclosure of PROPRIETARY information shall be made only to attorneys, and to such employees who are working as consultants to such attorney or intend to file testimony in these proceedings, or to persons designated by a party as outside experts. Employees to whom such disclosure is to be made must be identified to the other party by name, title and job classification prior to disclosure. Information designated as PROPRIETARY shall be served on the attorney(s) for the requesting party. On-premises inspection shall not be required for PROPRIETARY information, except in the case of voluminous documents (see paragraph K). Any employees of the party who wish to review such PROPRIETARY materials shall first read this order and certify in writing that (s)he has reviewed same and consented to its terms. The acknowledgement so executed shall contain the signatory's full name, permanent address, title or position, date signed, and an affirmation that the signer is acting on behalf of his/her employer. Such acknowledgement shall be delivered to counsel for the party furnishing the information or documents before disclosure is made.
- E. Attorneys, in-house experts or outside experts who have been provided access to material or information designated HIGHLY CONFIDENTIAL or PROPRIETARY shall be subject to the nondisclosure requirements set forth in paragraphs C or D, whichever is applicable, and S.
- F. If material or information to be disclosed in response to a data request contains material or information concerning another party which the other

party has indicated is confidential, the furnishing party shall notify the other party of the intent to disclose the information. The other party may then choose to designate the material or information as HIGHLY CONFIDENTIAL or PROPRIETARY under the provisions of this Protective Order.

- G. Any party may use material or information designated as HIGHLY CONFIDENTIAL or PROPRIETARY in prefiled or oral testimony at hearing provided that the same level of confidentiality assigned by the furnishing party is maintained, unless otherwise classified by the Commission. In filing testimony all parties shall designate as HIGHLY CONFIDENTIAL or PROPRIETARY only those portions of their testimony which contain information so designated by the furnishing party. If any party plans to use information and testimony which has been obtained outside this proceeding, it must ascertain from the furnishing party if any of such information is claimed to be HIGHLY CONFIDENTIAL or PROPRIETARY prior to filing.
- H. A party may designate prefiled or live testimony, or portions thereof, submitted in this case as HIGHLY CONFIDENTIAL or PROPRIETARY (hereinafter, "designated testimony"). Prefiled testimony designated as HIGHLY CONFIDENTIAL or PROPRIETARY shall be filed under seal and served upon all attorneys of record. Only those portions of the prefiled testimony designated as HIGHLY CONFIDENTIAL or PROPRIETARY should be filed under seal, and should be marked in a manner which clearly indicates which materials are considered HIGHLY CONFIDENTIAL and which are considered PROPRIETARY.
- I. Within five (5) days of the filing of designated testimony, the party asserting the claim shall file with the Commission the specific ground or grounds for each claim. Such filing shall show the nature of the information sought to be protected and specifically state the alleged harm of disclosure. Such filing shall be filed under seal only if it contains

either PROPRIETARY or HIGHLY CONFIDENTIAL information and shall be served upon all attorneys of record.

- J. Attorneys upon whom prefiled testimony designated HIGHLY CONFIDENTIAL or PROPRIETARY has been served shall make such testimony available only to those persons authorized to review such testimony under the restrictions in Paragraphs C or D, whichever is applicable.
- K. If a response to a discovery request requires the duplication of voluminous material or material not easily copied because of its binding or size, the furnishing party may require the voluminous material be reviewed on its own premises. Voluminous material shall mean a single document, book or paper which consists of more than 150 pages.
- L. Attorneys of record in this case shall require that the in-house or outside expert read this Protective Order and certify in a written nondisclosure agreement that the person has reviewed the Protective Order and consented to be bound by its terms. The nondisclosure agreement shall contain the signatory's full name, permanent address, employer and the name of the party with whom the signatory is associated. Such agreement shall be filed with the Commission. Attached hereto as Appendix "A" and incorporated by reference herein is a form for use in complying with the terms of this paragraph.
- M. In the event a witness discloses the contents of designated prefiled testimony in his or her own prefiled testimony, such testimony shall also be designated in the same manner as the designated prefiled testimony and handled in accordance with this order.
- N. Unless good cause is shown, challenges to the confidential nature of prefiled designated testimony shall be filed with the Commission no later than ten (10) days after the grounds supporting the designations are filed or at the hearing, whichever occurs first. The party making the designa-

tion shall have five (5) days to respond to the challenge or may respond at the hearing, whichever occurs first.

- O. The Commission or hearing examiner may rule on the challenge to the designations prior to the hearing, or at the hearings.
- P. In the event no party challenges prefiled designated testimony, or in the event the Commission or its hearing examiner rules that testimony was properly designated, then such testimony shall be received into evidence, subject to any other objections being made and ruled upon, and kept under seal.
- Q. In addition, all live testimony, including cross-examination and oral argument which reveals the content of prefiled designated testimony or which is otherwise held to be confidential, including any argument as to whether certain testimony is properly designated, shall be made only after the hearing room is cleared of all persons besides the Commission, its hearing examiners, court reporters, attorneys of record and witnesses to whom the designated information is available pursuant to the terms of this Protective Order. The transcript of such live testimony or oral argument shall be kept under seal and copies shall only be provided to the Commission, its hearing examiners, and attorneys of record. Such attorneys shall not disclose the contents of such transcripts to anyone other than those who may have access to the designated information under the terms of this Protective Order. Persons who have access to the designated information under the terms of this Protective Order shall treat the contents of such transcript as any other designated information under the terms of this Protective Order.
- R. References to designated testimony, whether prefiled or live and transcribed, in any pleadings before the Commission, shall be by citation only and not by quotation. Subject to the jurisdiction of any reviewing

court, references to designated testimony in pleadings or oral arguments made to such reviewing court shall also be by citation only.

- S. All persons who are afforded access to information under the terms of this Protective Order shall neither use nor disclose such information for purposes of business or competition or any other purpose other than the purpose of preparation for and conduct of this proceeding and then solely as contemplated herein, and shall keep the information secure and in accordance with the purposes and intent of this order.
- T. Subject to the jurisdiction of any reviewing court, designated testimony constituting part of the record before the Commission shall be delivered to any reviewing court under seal upon service of the appropriate writ of review.
- U. The Commission may modify this order on motion of a party or on its own motion upon reasonable notice to the parties and opportunity for hearing.
- V. Within ninety (90) days after the completion of this proceeding, including judicial review thereof, all designated information, testimony, exhibits, transcripts or briefs in the possession of any party other than Staff or the Public Counsel shall be returned to the party claiming a confidential interest in such information and any notes pertaining to such information shall be destroyed.
- W. The provisions of paragraph C, D, J and L of this Protective Order do not apply to Staff or Public Counsel. Staff and Public Counsel are subject to the nondisclosure provisions of Section 386.480, R.S.Mo. 1986. Staff and Public Counsel shall provide a list of the names of their employees who will have access to the designated information.
- X. Outside experts of Staff or Public Counsel who have been contracted to be witnesses in this proceeding shall have access to designated information and testimony on the same basis as Staff and Public Counsel except the

outside expert shall read this order and sign the nondisclosure agreement attached as Appendix "A" hereto.

- Y. Outside experts of Staff and Public Counsel who have not been contracted to be witnesses in this proceeding are subject to the provisions of this Protective Order.
- Z. Prefiled testimony and exhibits, whether filed or offered at the hearing, shall be prepared in the manner described in Appendix "B".

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

NONDISCLOSURE AGREEMENT

I, _____, have
been presented a copy of this Protective Order issued in Case No. _____ on the
_____ day of _____, 19____.

I have requested review of the confidential information produced in Case
No. _____ on behalf of _____
_____.

I hereby certify that I have read the above-mentioned Protective Order and
agree to abide by its terms and conditions.

Dated this _____ day of _____, 19____.

Signature and Title

Employer

Party

Address

Telephone

1. If prefiled testimony contains parts which are classified as Proprietary or Highly Confidential, it shall be filed with the Commission's Executive Secretary's Office as follows:
 - A. An original plus eight (8) copies of prefiled testimony with the Proprietary or Highly Confidential portions obliterated or removed shall be filed.
 - B. One (1) copy of those pages which contain information which has been designated as Proprietary, with any Highly Confidential portions obliterated or removed, shall be filed in a separate envelope. The portions which are Proprietary shall be indicated as described in D, below.
 - C. One (1) copy of those pages which have been designated as Highly Confidential shall be filed in a separate envelope. The portions which are Highly Confidential shall be indicated as described in D, below.
 - D. Six (6) copies of the complete prefiled testimony to be filed under seal for the Hearing Examiner and Commissioners. The Proprietary pages shall be stamped "P" and the Proprietary information indicated by two asterisks before and after the information, ****Proprietary****. The Highly Confidential pages shall be stamped "HC" with the Highly Confidential information indicated by two asterisks and underlining before and after the Highly Confidential information, ****Highly Confidential****.

Any deviations from this format must be approved by the Hearing Examiner.

2. Three (3) copies of exhibits, whether testimony or other, shall be filed at the hearing with the information separated as described in 1.A, 1.B and 1.C above with each copy of the Proprietary and Highly Confidential portions placed into separate envelopes to be marked as Exhibit __, Exhibit __P and Exhibit __HC.