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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 16th
day of September, 1997.

In the Matter of the Application of Osage)
Water Company for Permission, Approval and)
a Certificate of Convenience and Necessity)
Authorizing it to Construct, Own, Operate,) Case No. WA-97-332
Control, Manage and Maintain a Water System)
for the Public Located in the City of Osage)
Beach, Missouri.)

ORDER REGARDING MOTIONS TO FILE TESTIMONY OUT OF TIME
AND SUBMIT AN ADDITIONAL DATA REQUEST OUT OF TIME

On February 19, 1997, Osage Water Company (Osage) filed an application with the Commission requesting 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. After the adoption of a procedural schedule by the Commission, discovery commenced between the parties. Currently, three motions are pending: a motion to file testimony out of time by the City of Osage Beach; a motion to file rebuttal testimony out of time by the fire protection district; a motion to submit an additional data request out of time by the fire protection district.

The City of Osage Beach (City), an intervenor, requests leave to file the direct testimony of its witness, Pat McCourt, out of time. No other party has objected to this request. The Commission finds that no prejudice will occur as a result and therefore grants the motion. The testimony of Pat McCourt will be filed no later than 3:00 p.m., September 19, 1997.

The fire protection district asks that it be allowed to file the rebuttal testimony of its expert witness out of time for reason that "it has just recently been decided that Mr. William Cochran is a qualified expert witness in this case." No other justification is given by the fire protection district. In addition, the fire protection district asks to be allowed to submit an additional data request out of time. That data request, as submitted with the motion, is an inquiry into the current debt of Osage.

In its response, Osage objects to both motions. Osage states that it will be unduly prejudiced by allowing either motion as the procedural schedule in this case has been established since June 1997 and has advanced to the point that surrebuttal testimony is due September 15, 1997.

The rebuttal testimony of the fire protection district witness, William J. Cochran, was filed on September 3, 1997. That has allowed the remainder of the parties 12 days in which to study and respond to that testimony. In addition, cross-examination of the fire protection district witness will take place at the evidentiary hearing of this matter. The Commission finds that any potential for prejudice by allowing the late filing of this testimony is mitigated by the opportunity to cross-examine the witness. The motion to file rebuttal testimony out of time is granted.

In regard to the fire protection district motion to submit an additional data request out of time, the Commission notes that formal discovery was concluded in this matter after various motions to compel were filed and orders issued. Formal discovery has taken approximately one month longer than anticipated by the procedural schedule. The Commission agrees that allowing the additional discovery will unduly prejudice the applicant. Should the fire protection district have additional inquiries

it wishes to make of the Osage witnesses, it may attempt to do so on cross-examination.

IT IS THEREFORE ORDERED:

1. That the City of Osage Beach motion to file testimony out of time is hereby granted. Said testimony will be filed no later than September 15, 1997 at 3:00 p.m.

2. That the motion of Osage Beach Fire Protection District to late file the rebuttal testimony of William J. Cochran is granted to the extent that the rebuttal testimony of William J. Cochran filed September 3, 1997 is accepted.

3. That the motion of the Osage Beach Fire Protection District to submit an additional data request is denied for reasons as set out above.

4. That this order shall become effective on September 16, 1997.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Cecil I. Wright", written in a cursive style.

**Cecil I. Wright
Executive Secretary**

(S E A L)

Lumpe, Ch., Crumpton, Murray,
and Drainer, CC., concur.

ALJ: Derque