

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the matter of the application of Environmental Utilities, LLC)
for permission, approval, and a certificate of convenience and)
necessity authorizing it to construct, install, own, operate,) Case No. WA-2002-65
control, manage and maintain a water system for the)
public located in unincorporated portions of Camden County,)
Missouri (Golden Glade Subdivision).)

Initial Brief of Environmental Utilities, LLC

INTRODUCTION

This case involves an application for a certificate of convenience and necessity by a Company not presently regulated by the Public Service Commission to acquire a new water utility system and provide public water utility service to the Golden Glade Subdivision on State Route KK west of Osage Beach, Missouri. No other water utility service providers are available to provide water utility service to this area.

Environmental Utilities is a newly formed limited liability company. One of the owners of the Company, its attorney, Gregory D. Williams, is also a shareholder of Osage Water Company, an existing regulated water and sewer utility company. None of the other shareholders of Osage Water Company are owners of Environmental Utilities.

The other parties to this case are the Staff of the Public Service Commission ("Staff"), the Office of Public Counsel ("OPC"), and the Intervenor Hancock Construction Co. ("Hancock").

ISSUES TO BE DETERMINED BY THE COMMISSION

The parties agreed upon the following issues for determination by the Commission:

1. Is the Applicant qualified to provide public water utility service within the proposed service area?

2. Is there a public need for public water utility service within the proposed service area?
3. Is the Applicant's proposal to provide public water utility service within the proposed service area economically feasible?
4. Is the Applicant financially able to provide the proposed public water utility service?
5. Is granting the certificate of convenience and necessity requested by the Applicant in the public interest?
6. What is the amount of the investment in the water plant and certificate costs that will be included in the Applicant's rate base if the certificate is granted?
7. If a certificate is granted, should conditions be imposed on the Applicant?
8. Should any of the proposed tariffs filed by the Applicant be withdrawn or modified?

The Intervenor submitted additional issues which it desired to have the Commission determine, but those additional issues were not agreed upon by the other parties to this Case, nor did the Commission enter an order adopting said additional issues as issues to be determined herein.

Qualifications of Environmental Utilities

Staff admitted in its Statement of Position that the Applicant has the general qualifications necessary to provide the proposed service, but noted a need to employ a licensed operator for this system. Staff admitted at the evidentiary hearing that the Applicant does employ a licensed operator, and that one of the principals of the Applicant also holds the required MDNR license to operate the system. OPC admitted in its statement of position that "if

a licensed operator is hired, the Applicant meets the minimum qualifications to provide public water utility service. Hancock did not clearly state whether it admits or denies that the Applicant is qualified in its Statement of Position, but rather asserts that the principals of the Applicant are also the principals of Osage Water Company, and alleged that therefore they are not qualified.

The evidence at hearing was that the principals of Environmental Utilities have put together a staff including a manager, Debra J. Williams, a licensed field supervisor, Jeffrey Smith, and a clerical and billing support person, and that this staff is presently operating the Osage Water Company water and sewer systems. Testimony was uncontroverted that since the time when the principals of Environmental Utilities took over operation of the Osage Water Company systems, that the number of customer complaints to the Commission has declined dramatically, and that the quality of service observed by the Commission's Staff had improved substantially.

There was no evidence presented from which the Commission could conclude that the principals of Environmental Utilities are not able or qualified to operate a public water utility system for Golden Glade Subdivision. There was ample evidence presented which will support a finding that the Applicant is qualified to operate a public water utility system of the type at issue in this case.

Public Need for Service

Staff has admitted in its Statement of Position that there is a public need for public water utility service within the proposed service area. The OPC has admitted in its Statement of Position that the current and potential residents of the proposed service area have a need for water service. Hancock stated in its position statement that "there is no need of service from

Environmental Utilities,” and suggested that service could be provided by Osage Water Company or a homeowner’s association. The evidence at the hearing was that if a certificate is not granted to Environmental Utilities, that the water system will be conveyed to an existing homeowner’s association, and that it is lawful for the developer to do so. However, the homeowner’s association will not be able to provide water to the adjoining Eagle Woods development unless it obtains a certificate of convenience and necessity from this Commission. Without access to the Golden Glade water system, the Eagle Woods development will not have an adequate supply of water to meet the needs of residents therein. Osage Water Company does not desire to acquire the Golden Glade water system.

Based on the evidence presented, the Commission can only conclude that a public need exists for public water utility service within the proposed service area. While that need may lawfully be met by a homeowner’s association instead of a regulated utility, water may not be provided by a homeowner’s association to the adjoining Eagle Woods development for which this Commission granted a certificate to Osage Water Company in WA-99-437. Thus, the granting of a certificate in this case is necessary to meet the public need for water utility service in Eagle Woods.

Economic Feasibility of Proposed Service

Staff admitted in its Statement of Position that, subject to certain assumptions, the proposed service is economically feasible, but may not achieve the desired rate of return. OPC did not adopt a position on this issue, but noted that “A feasibility study by the Applicant as revised by the Staff indicate that the rates proposed in the tariffs would provide sufficient revenues to operate the system at present. Hancock stated in its position statement that “the proposal must be economically feasible.”

The Applicant prepared and attached a feasibility study to its Application, which calculated the anticipated income and expenses in providing water utility service to Golden Glade. Staff witness Jim Merciel presented a revision to the Applicant's feasibility study. Both analyses indicate that the proposed service is economically feasible, at the proposed tariff rate; however the rate of return actually earned may not equal the target rate of 12% set out in the feasibility study. Staff also questioned whether the customer projections of the feasibility study would be attained. However, no conclusive evidence was presented by any party to show that the customer projections would not be attained, and they remain simply as projections, as the future is impossible to forecast with absolute certainty.

It may be necessary to adjust the rates for service at some point in the future in order to compensate for changes in the cost of service and for the actual customer connection rate vs. the projected customer connection rate, as well as for changes in what constitutes a reasonable rate of return as market interest rates fluctuate. However, this is true of any regulated utility company, and the case before the Commission does not present any new or unusual risks in this regard.

Financial Ability to Provide Service

The Tartan Energy decision requires that an applicant show that it has the financial ability to provide the proposed service. In this case, the principals of the Applicant have provided 100% of the capital required to completely construct the necessary water system, and are prepared to contribute the same to the Applicant as equity. The Applicant's initial capital structure would therefore be 100% equity. Staff has admitted in its Position Statement that the Applicant has the necessary capital for the proposed water utility service. The OPC took no position on this issue, but presented no evidence that would show that the Applicant does not have the necessary

financial ability. Hancock stated in its position statement that “the applicant must have the financial ability to provide the proposes service.” (sic). However, it presented no evidence from which the Commission could reasonably conclude that the principals of the Applicant have not provided 100% of the capital required to construct the necessary water system. The best evidence on this issue was presented by Staff witness James Russo, who testified that he had audited the records of the Applicant pertaining to the water system, and that in fact the applicant had paid for the water system with cash.

The Commission can only conclude that the Applicant does have the financial ability to provide public water utility service as proposed, as 100% of the required capital has been provided in the form of equity.

Promote the Public Interest

According to the Commission’s opinion in Tartan Energy, “positive findings with respect to the other four standards will in most instances support a finding that an application for a certificate will promote the public interest.” Environmental Utilities believes that the availability of public water utility service to future residents of the Golden Glade project will in fact promote the public interest. Staff has adopted the Commission’s opinion in Tartan Energy as its position on this issue in its Position Statement. OPC takes the position that it supports “a conditional grant of a certificate of convenience and necessity.” While the position of Hancock is not clearly and succinctly stated, it appears that it does not agree that granting a certificate to Environmental Utilities is in the public interest.

It appears to the Applicant that the only legally feasible means of providing a MDNR approved water supply to the residents of Eagle Woods requires that a certificate of convenience and necessity be granted to someone who has the capital to acquire the Golden Glade water

system from the subdivision developers, and dedicate the same to providing public water utility service. Osage Water Company has stated in its Board Minutes in evidence in this case that it does not have such capital, nor does it desire to acquire the Golden Glade Water system. Water service to Golden Glade residents can be provided either through Environmental Utilities as a regulated public utility, or by an unregulated homeowner's association. This Commission has previously held that service provided by a regulated public utility is preferred over that by a homeowner's association. (See SA-98-268). The Commission should conclude that regulated public utility service is the preferred alternative in this situation as well.

Applicant's Rate Base

The Applicant has requested that a total cost \$76,115.48 pertaining to construction of the water well be allowed into rate base, that a cost of \$11,139.82 pertaining to construction of the distribution system be shown as a contribution in aid of construction on the Company's books, that the organizational costs of \$605 be included in rate base under account 301, and that the itemized legal expenses incurred in this proceeding be allowed in rate base under account 302. Staff has estimated these legal expenses at \$17,280. Staff is in general agreement with these numbers, with the exception of a general overhead allowance included in the cost of construction of the well at a rate of 10% of other costs. OPC also objects to the 10% general overhead allowance. Hancock did not directly state a position on this issue in its position statement, nor did it present any competent evidence from which the Commission could conclude that the costs of the water well, distribution system, organization costs, or costs of obtaining a certificate in this proceeding are materially different from the costs agreed upon by the Applicant, Staff, and OPC.

The Applicant would therefore submit that the Commission should approve the costs as presented by the Applicant and audited by Staff as the approved initial rate base for the Company, subject of course to review of the actual legal expenses incurred.

Certificate Conditions

The Applicant has agreed that the conditions proposed by OPC and by Staff in their testimony and position statements are reasonable and appropriate under the circumstances, and the Applicant had in fact complied with virtually all of the Staff's conditions prior to the evidentiary hearing. If Hancock addressed this issue in its Statement of Position, the substance of its position is not readily identifiable by the Applicant from reading that Statement of Position.

Proposed Tariffs

The Applicant has prepared and filed with the Commission a proposed tariff which is based largely on a model tariff prepared and provided by Staff Witness Jim Merciel. The rates proposed are the same as the Osage Water Company rates recently approved by this Commission for similar systems in the same geographic area, and, as is apparent from the feasibility studies by the Applicant and Staff, pose no significant risk of the Applicant earning an excessive rate of return. The Applicant has proposed Rules 15, 16 and 17 which vary from and are in addition to the terms of Staff's model tariff. OPC objects to these additional rules. Staff favors some and objects to others. The Applicant believes that these additional rules are desirable, but are not essential to its operations. Staff suggested some additional modifications to the model tariff to provide special rules for service to condominiums. The Applicant has no objection to these modifications, but there are no condominiums within the proposed service area, nor is there any reasonable likelihood that condominiums will be constructed in the proposed service area. If

Hancock stated a coherent position on this issue in its Statement of Position it is not readily apparent to Applicant from reading that Statement of Position.

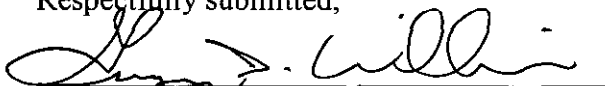
Intervenor's Proposed Additional Issues

The Applicant did not present any evidence concerning these proposed additional issues at the evidentiary hearing, and stands by its Position that these additional issues are not properly part of the Commission's decision making criteria in deciding whether to grant a certificate in this case.

CONCLUSION

The Commission has established specific criteria for determining whether a certificate should be granted. An application for a certificate of convenience and necessity should be granted if the applicant satisfies the five tests set forth by the Commission in Case No. GA-94-127, *In the Matter of the Application of Tartan Energy Company*, 3 Mo. P.S.C.3d 173. Environmental Utilities has satisfied all of the requirements established by the Commission to obtain a certificate of convenience and necessity to provide water utility service at Golden Glade Subdivision. The Commission should therefore grant the certificate requested.

Respectfully submitted,



Gregory D. Williams #32272
Highway 5 at Lake Road 5-33
P.O. Box 431
Sunrise Beach, MO 65079
(573) 374-8761

Attorney for Environmental Utilities


CERTIFICATE OF SERVICE

I, Gregory D. Williams, do hereby certify that a true copy of the foregoing was on this 29 day of April, 2002, mailed, postage prepaid, to the following:

Mr. Thomas E. Loraine, Attorney at Law, 4075 Highway 54, Suite 300, Osage Beach, MO 65065.

Keith Krueger, Assistant General Counsel, Missouri Public Service Commission, P.O. Box 360, Jefferson City, MO 65102.

M. Ruth O'Neill, Office of Public Counsel, P.O. Box 7800, Jefferson City, MO 65102.



Gregory D. Williams