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May 14, 2002

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

RE: Case No. WA-2002-65

Dear Mr. Roberts:

Enclosed please find the one (1) original and fourteen (14) copies of **HANCOCK CONSTRUCTION'S REPLY BRIEF TO ENVIRONMENTAL UTILITIES ON BEHALF OF HANCOCK CONSTRUCTION COMPANY, REPLY BRIEF TO STAFF'S BRIEF ON BEHALF OF HANCOCK CONSTRUCTION COMPANY AND REPLY BRIEF TO PUBLIC COUNSEL ON BEHALF OF HANCOCK CONSTRUCTION COMPANY** to be filed in the above-referenced matter to be filed with the Commission. Please file-stamp a copy for our records.

Your attention to this matter is greatly appreciated.

Very truly yours,

LORAIN & ASSOCIATES

*Thomas E. Loraine*  
Thomas E. Loraine (aw)

TEL/jw

Enclosures

Hancock/filingPSC5-14-02

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the matter of the application of Environmental Utilities,	)	
LLC, for Permission Approval and Certificate of	)	
Convenience and necessity Authorizing it to Construct	)	
Install, Own, Operate, Control, Manage and Maintain	)	CASE #: WA-2002-65
A Water System for the Public Located in Unincorporated	)	
Portions of Camden County, Missouri (Golden Glade	)	
Subdivision)	)	

**REPLY BRIEF TO PUBLIC COUNSEL ON BEHALF  
OF HANCOCK CONSTRUCTION COMPANY**

**I. Introduction:**

Comes Now Hancock Construction Company (Hancock), by its attorney, Thomas E. Loraine, and for its Reply Brief to Public Counsel, and offers the following discussion and argument.

Public Counsel believes that "Evidence presented at the hearing suggested that Mr. Williams had virtually no part in the day to day operations with Osage Water , at least prior to July of 2001".

Public Counsel left uncontroverted William J. Cochran's evidence presented regarding Mr. Williams involvement in Osage Water operations. "The chief operating officer for the vast majority of Osage's regulated life has been Mr. Williams" (Ex. 10, 3, 1-2). "Osage's imminent collapse is due to Mr. Williams' incompetence, misrepresentations, illegal operations and callous disregard of the public" ( Ex. 10, 6 , 12-13).

No questions were asked of Mr. Cochran, thereby forfeiting any opportunity to cross-examine Mr. Cochran on the numerous references where Mr. Williams was defacto, the person

calling the shots in management decisions of O.W.C. prior to July of 2001.

Public Counsel agrees Mr. and Mrs Williams are not qualified to provide service. The Tartan criteria adopted by Public Counsel and cited on page six of its Initial Brief says “the applicant must be qualified to provide the proposed service”. This Tartan criteria is in the present tense. The allegation that future training and assistance somehow meets this Tartan criteria is incorrect. Future training or the imposition of a condition “for the company to continue to seek assistance from the Commission’s Water and Sewer Department,” is not fulfillment of this criteria. Public Counsel distorts Tartan #1 from “there must be a need for the service” to there is a need for a centralized distribution system. There are only eight (8) verified residents in Golden Glade and these as Public Counsel alleges “are connected to small, multi-family wells”. Tartan does not consider a Public Council’s alleged required centralized water distribution system as a fulfilling requirement that there is a need for the proposed service. Public Counsel offers no support for the statement “as the subdivision grows” it would require a need for a centralized water distribution system.

Public Counsel believes the proposal will be (emphasis added) economically feasible “if the operator of the Golden Glade well is able to sell water to Eagle Woods”. This belief is based on Public Counsel’s assumption “If Golden Glade develops as predicted”. It is also based on a non existent wholesale contract from the utility serving Eagle Woods, that is (O.W.C.) will soon go bankrupt (Ex. 28). Public Counsel offers no citation on its prediction. It is the considered opinion of Hancock that the Court of Appeals, in applying the Tartan criteria, will have no difficulty deciding that Public Counsel’s understanding of Tartan will not be “substantial evidence on the record as a whole”. Any discussion to the contrary as urged by Public Counsel, by the

Commission, will be reversed and remanded. The standard requires economic feasibility at the time of the application not in distant future time.

Predictions about Golden Glade development, non existent wholesale agreements, and predicted wholesale agreements with a soon to be defunct utility do not meet the present tense Tartan requirement “(4) the applicant’s proposal must be economically feasible”, **Now!** (Emphasis added).

Public Counsel states the evidence presented on the financial capability of providing utility service “ was not compelling”. It is not compelling because Mr. and Ms Williams cannot produce one document regarding their financial capability to provide service(Ex.5, 2 -3). Tartan is explicit, “(3)The applicant must have the financial ability to provide the service”. Public Counsel’s qualifications of “it appears that the owners of Environmental have made considerable investment” and “the Williams will transfer the water system” combined with Public Counsel’s condition that a future “reviewing and approving all transactions” does not meet the Tartan criteria that the applicants must now have the financial capability to provide service.

Public Counsel believes Commission’s regulation automatically meets the fifth Tartan criteria “ five (5) promotes public interest”. Public Counsel, without one citation, on this non existent “unregulated public utility”, claims Commission regulation is preferable to “Mr. and Mrs. Williams... free rein (sic) to operate an unregulated public utility”.

Public Counsel ignores the fact, that Commission’s oversight and alleged restriction of the Williams’ free reign did not aid the customers now being served by the City of Osage Beach due to the incompetence of Mr. and Mrs. Williams and (O.W.C.) (Ex. 10,16, 20-24; Ex. 10, 17, 1-24; Ex. 10,18, 1-4 and 19-23; and Ex. 10, 19, 1-14).

Public Counsel's suggestion of a regulated utility as a safe guard to promote the public interest did not safe guard the one hundred and fifty (150) to two hundred (200) O.W.C. customers that will have to seek alternative water suppliers when O.W.C. goes bankrupt ( Ex. 28). Public Counsel's argument for the sixteen (16) conditions identified on page 21, 22, 23, 24 & 25 should not be a replacement for Tartan's five (5) criteria. These sixteen (16) conditions would not be proposed or necessary if E.U. had met the Tartan criteria.

### **Conclusion**

It is the opinion of Mr. Hancock that the standard being urged upon the P.S.C. by the Public Counsel and the Staff materially differs from the Tartan criteria and for those reasons should be rejected. If Environmental Utilities can not presently and immediately meet the Tartan criteria, the Commission must reject the application as speculative.

Respectfully submitted,

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