

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
October 4, 2001**

CASE NO: WA-2002-65

Office of the Public Counsel
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Presiding Commissioner
Camden County Courthouse
1 Court Circle, PO Box 960
Camdenton, MO 65020

Enclosed find certified copy of ORDER in the above-numbered case(s).

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office in
Jefferson City on the 4th day of
October, 2001.

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, Control, Manage and Maintain)	<u>Case No. WA-2002-65</u>
a Water System for the Public Located in Unincorporated)	
Portions of Camden County, Missouri (Golden Glade)	
Subdivision))	

**ORDER DENYING MOTION TO REFUSE PUBLIC COUNSEL'S
REQUEST FOR HEARING AND ESTABLISHING A PROCEDURAL
SCHEDULE**

On August 6, 2001, Environmental Utilities, LLC, filed an application seeking a certificate of authority to construct and operate a water system in a subdivision in Camden County, Missouri. On August 29, the Office of the Public Counsel filed a request for hearing. Public Counsel's request indicates that it is requesting a hearing in part because Environmental Utilities also owns Osage Water and Sewer Company, and Public Counsel states that Osage Water and Sewer has had recent problems in providing safe and adequate service to its customers.

On September 6, Environmental Utilities filed a response to Public Counsel's request for hearing. Environmental Utilities indicates that there is no such entity as Osage Water and Sewer Company, but acknowledges that there is a Osage Water Company.

Environmental Utilities indicates that it does not own any interest in Osage Water Company, but does indicate that the principals of Environmental Utilities are also shareholders and directors of Osage Water Company.

Environmental Utilities asserts that Public Counsel's request for hearing is deficient because Public Counsel is required by 4 CSR 240-2.080(16) to file a responsive pleading to Environmental Utilities' application within 10 days. Environmental Utilities argues that Public Counsel's request for hearing is not a proper responsive pleading because it fails to present any issues for determination by the Commission. From this, Environmental Utilities argues that the Commission should deny Public Counsel's request for hearing, and decide Environmental Utilities' application based on the verified statements contained in the application.

Environmental Utilities' argument fails because there is no requirement that Public Counsel, or any other party, to file a responsive pleading to Environmental Utilities' application. 4 CSR 240-2.080(16), the regulation cited by Environmental Utilities, simply limits the time in which a party may respond to a pleading filed by another party. It does not require any party to file such a response. Therefore, Public Counsel's request for hearing cannot be deficient because of its failure to present issues for the Commission's determination because there is no requirement that Public Counsel present any issues when requesting a hearing.

Section 393.170.3, RSMo 2000, the statute under which the Commission will consider approval of Environmental Utilities' application, provides that the Commission

may approve an application only after a "due hearing." The Missouri Court of Appeals, Western District, in the *Deffenderfer* case,¹ has held that the statute's requirement for a "due hearing" is met "when the opportunity for hearing was provided and no proper party requested the opportunity to present evidence."² In this case, Public Counsel clearly has requested an opportunity to present evidence. Contrary to the assertions of Environmental Utilities, Public Counsel's request for a hearing need not be in any particular form, nor need it specify any particular issues that the Commission should address. A simple statement requesting a hearing, with nothing more, is sufficient to require the Commission to hold a hearing on Environmental Utilities' application. Therefore, Environmental Utilities' motion asking the Commission to refuse Public Counsel's request for hearing will be denied.

In an order issued on September 5, the Commission directed the parties to file a proposed procedural schedule no later than September 26. On September 26, the Staff of the Commission, acting on behalf of the Public Counsel and Environmental Utilities, filed a proposed procedural schedule. That procedural schedule calls for an evidentiary hearing on November 14, 2001. Presumably that date is a typographical error, with the parties actually intending a hearing on December 14, since the schedule also calls for surrebuttal testimony to be filed on November 14, with position statements to be due on November 28.

¹ *State ex rel. Rex Deffenderfer Enter., Inc. v. Public Service Comm'n*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

² *id.* at 496.

In any event, neither November 14, nor December 14, is available on the Commission's calendar. The next available date for a hearing is January 7, 2002. Because the hearing date is being pushed back by approximately three weeks, the other dates on the proposed procedural schedule will also be pushed back by three weeks.

The Commission finds that the following conditions should be applied:

(A) The Commission will require the prefiling of testimony as defined in Commission Rule 4 CSR 240-2.130. All parties shall comply with this rule, including the requirement that testimony be filed on line-numbered pages. The practice of prefiling testimony is designed to give parties notice of the claims, contentions, and evidence in issue and to avoid unnecessary objections and delays caused by allegations of unfair surprise at the hearing.

(B) Pursuant to Commission Rule 4 CSR 240-2.130(15), testimony and schedules shall not be filed under seal and treated as proprietary or highly confidential unless the Commission has first established a protective order. Any testimony or schedule filed without a protective order first being established shall be considered public information.

(C) The parties shall agree upon and the Staff shall file a list of the issues to be heard, the witnesses to appear on each day of the hearing and the order in which they shall be called, and the order of cross-examination for each witness. Any issue not contained in this list of issues will be viewed as uncontested and not requiring resolution by the Commission.

(D) Each party shall file a statement of its position on each disputed issue. Such statement shall be simple and concise, and shall not contain argument about why the party believes its position to be the correct one.

(E) The Commission's general policy provides for the filing of the transcript within two weeks after the hearing. If any party seeks to expedite the filing of the transcript, such request shall be tendered in writing to the regulatory law judge at least five days prior to the date of the hearing.

(F) All pleadings, briefs, and amendments shall be filed in accordance with Commission Rule 4 CSR 240-2.080. Briefs shall follow the same list of issues as filed in the case and shall set forth and cite the proper portions of the record concerning the remaining unresolved issues that are to be decided by the Commission.

(G) All parties are required to bring an adequate number of copies of exhibits that they intend to offer into evidence at the hearing. If an exhibit has been prefiled, only three copies of the exhibit are necessary for the court reporter. If an exhibit has not been prefiled, the party offering it should bring, in addition to the three copies for the court reporter, copies for the five Commissioners, the regulatory law judge, and all counsel.

IT IS THEREFORE ORDERED:

1. That Environmental Utilities, LLC's motion asking that the Commission refuse the Office of the Public Counsel's request for a hearing is denied.

2. That the following procedural schedule is established for this case:

Direct Testimony	-	October 31, 2001
Rebuttal Testimony	-	November 21, 2001
Prehearing Conference	-	November 26, 2001 10:00 a.m.
Surrebuttal Testimony	-	December 5, 2001
Issues List	-	December 12, 2001
Statements of Positions	-	December 19, 2001
Hearing	-	January 7, 2002 8:30 a.m.

3. That the evidentiary hearing will be held in the offices of the Missouri Public Service Commission, Governor Office Building, 200 Madison Street, Jefferson City, Missouri. This hearing will be held in a building that meets accessibility standards required by the Americans with Disabilities Act. Any person needing additional accommodations to participate in this hearing may call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or 1-800-829-7541 (TDD) prior to the hearing.

4. That this order shall become effective on October 14, 2001.

BY THE COMMISSION

(S E A L)



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Simmons, Ch., Murray and Lumpe, CC., concur
Gaw, C., absent

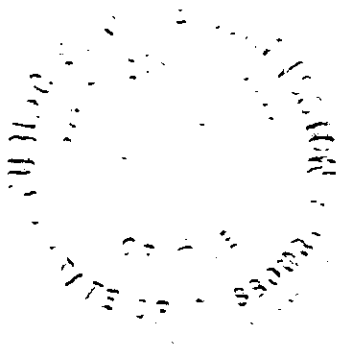
Woodruff, Senior Regulatory Law Judge

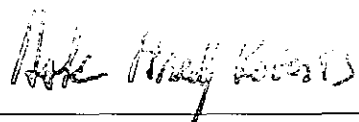
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 4th day of Oct. 2001.





Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

