

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
December 6, 2001**

**CASE NO: WA-2002-65**

**Office of the Public Counsel**  
P.O. Box 7800  
Jefferson City, MO 65102

**Gregory D. Williams**  
Attorney at Law  
Highway 5 at Lake Road 5-33  
PO Box 431  
Sunrise Beach, MO 65079  
**Presiding Commissioner**  
Camden County Courthouse  
1 Court Circle, PO Box 960  
Camdenton, MO 65020

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

**Missouri Department of Natural Resources**  
205 Jefferson Street  
Jefferson City, MO 65101

**Loraine & Associates**  
Thomas E. Loraine  
4075 Highway 54, Suite 300  
Osage Beach, MO 65065

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

Sincerely,



**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 6th day of  
December, 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	)	<b><u>Case No. WA-2002-65</u></b>
a Water System for the Public Located in Unincorporated	)	
Portions of Camden County, Missouri (Golden Glade	)	
Subdivision)	)	

**ORDER GRANTING REQUEST FOR RECONSIDERATION AND UPON  
RECONSIDERATION, GRANTING APPLICATION TO INTERVENE OUT OF TIME**

This order grants a request for reconsideration and upon reconsideration grants an application to intervene out of time filed by Hancock Construction Company.

On November 16, 2001, the Commission issued an order granting the application of Hancock Construction Company to intervene out of time. Hancock filed its application on November 1, and no party had filed a response to Hancock's application at the time the Commission issued its order. On November 21, Environmental Utilities, LLC, the applicant in this case, filed a response indicating its opposition to Hancock's intervention. Environmental Utilities indicated that it had not responded sooner to Hancock's application because it was not served with a copy of the application to intervene and did not become aware of Hancock's proposed intervention until an order regarding the application appeared on the Commission's November 15<sup>th</sup> agenda. On November 26, Environmental

Utilities filed a motion asking the Commission to set aside its order that permitted Hancock to intervene.

Although Environmental Utilities asks the Commission to set aside its previous order, the Commission's rules do not describe a procedure for setting aside an order. Therefore, the Commission will treat the motion as one for reconsideration. Commission Rule 4 CSR 240-2.160(2) allows for reconsideration and permits motions for reconsideration of procedural and interlocutory orders to be filed within ten days of the date the order is issued. Environmental Utilities' motion to set aside was filed on November 26, ten days after the order granting Hancock's application to intervene was issued. Therefore, Environmental Utilities' motion is timely.

Environmental Utilities contends that it never had an opportunity to respond to Hancock's request to intervene because Hancock never served it with a copy of its motion, as required by Commission Rule 4 CSR 240-2.080(11) & (19). Hancock's Application to Intervene contains a Certificate of Service in which Thomas Loraine, attorney for Hancock, attests that he served the Application to Intervene by hand delivering a copy to the Office of the Public Counsel, and mailing a copy to counsel for Environmental Utilities on November 1, 2001. The Certificate of Service does not indicate that a copy was served on the General Counsel, as required by 4 CSR 240-2.080(19).

At a prehearing conference held on November 26, 2001, Thomas Loraine admitted that despite the representations in the Certificate of Service that he signed, the Application to Intervene was not served on Environmental Utilities or the Public Counsel on November 1<sup>st</sup>. Mr. Loraine presented an affidavit from his legal assistant in which she indicates that she mailed a copy of the Application to Intervene to counsel for

Environmental Utilities on November 8. The affidavit indicates, and Mr. Loraine confirmed, that the Application to Intervene was never served on Public Counsel or Staff. Under the circumstances, there is no credible basis for believing that either Public Counsel, Staff, or Environmental Utilities had been served with a copy of the Application to Intervene in sufficient time to present a response to the Commission.

Hancock's failure to serve its Application to Intervene on the other parties denied them the opportunity to respond. Equally importantly, their inability to respond denied the Commission the benefit of the information and arguments that it can only obtain from those parties. Therefore, the Commission will reconsider Hancock's Application to Intervene. This time it will examine the arguments of Environmental Utilities.

The Application to Intervene indicates that Hancock is a creditor of Osage Water Company. The application alleges that the principal owners of Osage Water Company are also the principal owners of Environmental Utilities, the applicant in this case. Hancock alleges that allowing Environmental Utilities to operate in an area adjacent to Osage Water Company will divert future revenue from Osage Water Company and leave it unable to meet its obligations, including its obligation to pay its debt to Hancock. Hancock asserts that the public is also interested in Osage Water Company's ability to meet its current and future obligations.

Hancock filed its Application to Intervene substantially after September 4, 2001, the date established by the Commission for intervention. Hancock does not indicate any reason why it failed to intervene earlier but does indicate that it would conform to the previously established procedural schedule.

In its response to the Application to Intervene, Environmental Utilities argues that Hancock does not have an interest in this case. Hancock may have a financial interest in Osage Water Company, but Environmental Utilities points out that Osage Water Company is not the applicant in this case. Environmental Utilities argues that Osage Water Company has no protected interest in preventing a competing company from serving a subdivision near its existing service area. Even if Osage Water Company did have such an interest, Hancock has no authority to speak for Osage Water Company.

Commission Rule 4 CSR 240-2.075(4)(B) permits the Commission to grant a request for intervention if to do so would serve the public interest. Hancock's allegations regarding the operation of Osage Water Company and its relationship to Environmental Utilities do affect the public interest. Whether or not those allegations prove to be true, the public interest requires that the Commission permit Hancock to intervene so that those allegations may be presented to the Commission for consideration.

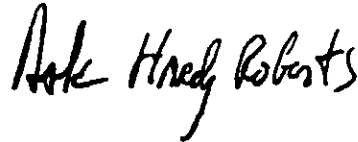
In addition to the previously indicated requirements, 4 CSR 240.2.075(5) provides that applications to intervene filed after the intervention date may be granted upon a showing of good cause. The question of what constitutes good cause is left largely to the discretion of the Commission. The Commission wants to hear a wide variety of views regarding Environmental Utilities' application. Permitting Hancock to intervene will allow the Commission to consider an additional viewpoint. Therefore, the Commission finds that Hancock has shown good cause to permit it to intervene after the intervention date.

After reconsideration, the Commission concludes that Hancock's Application to Intervene out of time should be granted.

**IT IS THEREFORE ORDERED:**

1. That Environmental Utilities LLC's request for reconsideration of the Commission's Order Granting the Application of Hancock Construction Company to Intervene Out of Time is granted.
2. That upon reconsideration the Application to Intervene Out of Time filed by Hancock Construction Company is granted.
3. That this order shall become effective on December 16, 2001.

**BY THE COMMISSION**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Simmons, Ch., Murray, Lumpe, Gaw and Forbis, CC., concur

Woodruff, Senior Regulatory Law Judge

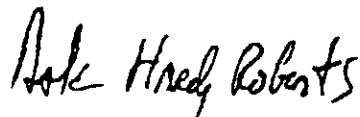
**STATE OF MISSOURI**

**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 6<sup>th</sup> day of Dec. 2001.



  
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Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge