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May 9, 2002

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

Attn: Filing Desk

Re: Environmental Utilities, LLC
WA-2002-65

Dear Judge Roberts:

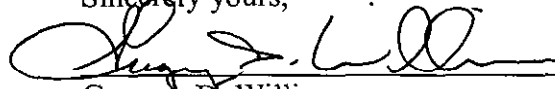
Please find enclosed for filing in the above referenced matter the original and 8 copies of the following:

1. Environmental Utilities, LLC Proposed Findings of Fact and Conclusions of Law.

A copy of the same has been mailed this date to all counsel of record.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely yours,



Gregory D. Williams

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).)

**ENVIRONMENTAL UTILITIES, LLC
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

COMES NOW Environmental Utilities, LLC and presents the following Proposed Findings of Fact and Conclusions of Law for consideration by the Missouri Public Service Commission in the resolution of this case.

PROPOSED FINDINGS OF FACT

Applicant Environmental Utilities, LLC is a Missouri Limited Liability Company in good standing authorized under Missouri Law to conduct business within the State of Missouri. Its charter authorizes it to engage in the business of providing regulated water and sewer utility service within the State of Missouri. The Applicant submitted an Application to this Commission requesting permission, approval, and a certificate of convenience and necessity authorizing it to install, acquire, build, construct, own, operate, control, manage and maintain a water system for the public in an area described therein as Golden Glade Subdivision. This Commission is authorized by Chapters 386 and 393 RSMo. to grant such authority to the Applicant.

The principals of Environmental Utilities, LLC are Gregory D. Williams and Debra J. Williams, and they are the sole members and owners of that Applicant. The principals of the Applicant are also the developers of Golden Glade Subdivision. Gregory D. Williams holds a water operator's license issued by the Missouri Department of Natural Resources. The Applicant

proposed to employ Jeffrey Smith in its operations, and Mr. Smith also holds a water operator's license.

The Golden Glade Subdivision consisted at the time of hearing of approximately 30 houses, upon which approximately 14 houses have been constructed, and additional unplatted property upon which it is anticipated as many as an additional 70 lots may be developed and housed thereon constructed over time. The Declaration of Restrictions for Golden Glade Subdivision requires that all houses within the subdivision connect to a central water system. The first six houses within the subdivision were connected to temporary water wells, and remained so connected at the time of hearing. The principals of the applicants as developers of the subdivision have constructed a "public drinking water supply" to supply water to the subdivision, and a distribution system throughout the Golden Glade Subdivision. The water supply and distribution system were constructed pursuant to construction permits therefore issued by the Missouri Department of Natural Resources. If the Applicant's application herein is not approved, the water supply and distribution system will be transferred to the homeowner's association for Golden Glade Subdivision.

Adjacent to Golden Glade Subdivision is the Eagle Woods Subdivision for which this Commission granted a certificate of convenience and necessity to Osage Water Company to provide public water and sewer utility service in Case WA-99-437. Osage Water Company has not constructed a public water supply for Eagle Woods, and the Applicant proposes to provide water from the Golden Glade water supply to the distribution system operated by Osage Water Company in Eagle Woods if the Application is granted. During the pendency of this case, the non-public water supply operated by Osage Water Company in Eagle Woods failed, and the Eagle Woods distribution system was connected to the Golden Glade water system, with the

permission of the Missouri Department of Natural Resources. If the Application herein is not granted, that connection will be authorized under Missouri Law and will be removed.

The Missouri Department of Natural Resources believes, and the Commission finds, that supply of drinking water through a public water supply and distribution system constructed pursuant to the regulations of the Missouri Department of Natural Resources Public Drinking Water System is better for the public than the provision of water through individually owned wells. The Commission finds that there is a need for public water utility service to provide water service within the proposed service area.

Gregory D. Williams has been a shareholder and director of Osage Water Company, and has served as that company's legal counsel since 1992, and has held various offices with that Company, including serving as its president from 1996 until January of 2001. Day to day operations of Osage Water Company were managed by William P. Mitchell, another principal of that company, from 1987 until July 7, 2001. On July 7, 2001 Mr. Mitchell terminated his day to day management of OWC. Debra J. Williams has managed the day to day affairs of OWC since July 7, 2001. This Application was filed on August 6, 2001.

OWC has experienced problems with quality of service, record keeping, and compliance with Commission requirements during the past few years. OWC's performance in these areas has improved since the change in management on July 7, 2001. There was substantial evidence presented that his change in performance was due to the change in the management of OWC. The Commission finds that based upon the qualifications and experience of the Applicant, and the investigation of Staff member James Russo and his testimony to the Commission herein, that the Applicant is qualified to manage a public water system for Golden Glade Subdivision under the supervision and regulation of this Commission.

In order to provide public water utility service, the Applicant will need to construct or acquire a public water supply and distribution system which meets the requirements of the Missouri Department of Natural Resources Public Drinking Water Program. The principals of the Applicant have constructed such a system, and propose to transfer the same to the Applicant upon the granting of the certificate requested herein as an equity contribution. The Applicant therefore has the financial ability to acquire the necessary systems to provide public water utility service.

The Applicant provided an economic feasibility study as part of its Application, which showed, with certain material assumptions, that public water utility service can be provided by the Applicant in an economically feasible manner. Staff Witness Jim Merciel presented a revised economic feasibility study utilizing similar assumptions, which also showed that public water utility service can be provided by the Applicant in an economically feasible manner. No party presented any economic feasibility study which would support a finding that the proposed method of providing water utility service is not economically feasible. The Commission finds that the assumptions upon which both the Applicant and the Staff have based their feasibility studies are reasonable for a public water utility of the size proposed herein, and that they establish that the Applicant's proposed method of providing service is economically feasible.

In this case, the Commission has found that there is a need for service, Applicant is qualified to provide the service, Applicant has the financial ability to provide the service, and that Applicant's proposed method of service is economically feasible. No evidence was presented that there is not a need for water utility service, that an alternative provider of service is available and willing to provide service, that an alternative provider of service has the capital necessary to provide the needed service, or that an alternative method of providing water utility

service would be more economical than that proposed by the Applicant. The Commission therefore finds that granting the Applicant a certificate of convenience and necessity is in the public interest.

The Applicant has also requested that the Commission make an initial determination of its allowable rate base in this proceeding, and has presented substantial and competent evidence upon which the Commission may make such a determination. The Commission finds that the Applicant has incurred direct expenses of \$69,160 in the construction of the public water supply, and that these direct expenses are allowable as rate base for the Applicant.

The Commission finds that the Applicant has requested a general overhead allowance of 10% of those direct expenses, and has presented evidence that an overhead ratio of 10% is usual and customary in construction projects of this size and scope. Both Staff and the OPC objected to allowance of an overhead ratio, rather than basing overhead on an itemization of time and expenses incurred. However, the Applicant presented evidence that if a detailed accounting of general overhead costs were prepared, it would be considerably more than the 10% requested, due to the necessity of coordinating design and inspection by professional engineers, obtaining state permits, and inspections of regulatory officials such as the Department of Natural Resources. Staff and OPC did not present any evidence which would indicate that a detailed accounting of overhead costs would total to less than 10% of the direct expenses. Since the Applicant's evidence on this point is uncontroverted, the Commission finds that a general overhead allowance of 10% on a project involving less than \$100,000 in direct expenses for a small utility company which lacks a dedicated book-keeping and accounting staff is a reasonable estimate of the costs incurred by the Applicant in constructing the water system, and from which efforts the public has and will receive a corresponding benefit. Accordingly, the Commission

finds that under these circumstances a general overhead allowance of \$6,916 is allowable as rate base for the Applicant.

The Commission finds that the Applicant also presented evidence of organizational costs of the Applicant of \$605, and that the same is allowable as rate base for the Applicant. The Commission finds that the Applicant presented evidence as to the costs incurred in this proceeding for its legal fees in acquiring the legally required certificate of convenience and necessity to provide public water utility service in the amount of \$_____, that the Commission's Staff presented evidence by the testimony of Jim Merciel that usual and customary legal expenses for a contested application case are in the vicinity of \$17,280. The Commission therefore finds that the sum of \$_____ expended by the Applicant is reasonable and that the same is allowable as rate base for the Applicant.

The Applicant submitted to the Commission a proposed Tariff with its Application herein. The evidence presented was that the proposed tariff rules 1 through 14 on Pages 6 through 28 are substantially identical to a "model tariff" prepared by the Commission's Water and Sewer Department Staff and provided to the Applicant. Pages 1, 2 and 3 of the proposed tariff set forth a table of contents, map of the proposed service area, and a legal description of the proposed service area. Pages 4 & 5 of the proposed tariff set forth a schedule of rates and service charges, which are substantially identical to the rates and service charges approved by this Commission for Osage Water Company in its most recent rate case. The Commission finds that pages 1 through 27 of the proposed tariff are reasonable and proper and are hereby approved for filing, and that the proposed rates and schedule of service charges set forth on Pages 4 & 5 are reasonable charges for the services to be provided on a start-up basis, but shall be subject to review and modification in accordance with the Commission's rate-making authority.

Rule 15 of the proposed tariff set forth on pages 29 and 30 proposed a method for determining the Applicant's level of investment in the event of a service request by a commercial, industrial, or multi-family residential customer which requires service in an amount or volume which exceeds the existing capacity of the Applicant's water plant. The Commission finds that the proposed rule sets forth a reasonable method of allocating the cost of such plant expansions between the Applicant and the customer requesting such service, so that the provision of service to such a customer will not unfairly burden the Company or cause an increase in rates to existing customers in order to pay for such a plant expansion. Rule 15 of the proposed tariff is therefore reasonable and appropriate for a water utility of the size of the Applicant, and pages 29 and 30 are approved for filing.

Rule 16 of the proposed tariff set forth on pages 31 proposes that the cost of a certificate proceeding before this Commission be paid for initially by the customer requesting service outside of the certificated area of the Applicant, and that said customer be reimbursed for the cost of such certificate actually allowed into the rate base of the Company within 1 year of a Commission order approving the certificate requested. The Commission finds that because the Applicant has no obligation to request additional certificates, and may contract separately with prospective customers outside its service area who request service on such terms as the Applicant deems to be fair and reasonable, including the terms set forth in proposed Rule 16, that the proposed Rule 16 is fair and reasonable. Setting forth the terms of such an agreement will allow prospective customers outside the existing certificated areas of the Company to determine in advance the manner in which service is available from the Company. Rule 16 set forth on Page 31 is therefore approved for filing.

Rule 17 of the proposed tariff set forth on Pages 32 and 33 proposes that the cost of providing water for fire protection be paid for by the customer who requests such service. The Commission's regulations require that where water for fire service is provided, that the Customer receiving such service have a contract with the company providing that service. Including the terms of such a contract in the Company's tariff will satisfy the requirements of the Commission's regulations, and avoid future confusion and disputes regarding the obligation of the Company to provide water for fire protection. Rule 17 of the proposed tariff is therefore fair and reasonable, and pages 32 and 33 are approved for filing.

The Staff has suggested that revisions to the proposed tariff pages are appropriate, and has suggested that the Commission delay approval of the same until such time as said changes can be resolved with the Company on an informal basis. The Commission notes that this is a contested proceeding, and that the Staff has had ample opportunity to resolve issues with the Company on an informal basis during the pendency of this proceeding. Staff has further failed to provide the Commission with any alternative tariff pages to those presented by the Applicant which would incorporate the revisions Staff desires. The Commission therefore rejects Staff's request for additional time to negotiate revisions to the Applicant's proposed tariff. However, Staff may informally address such issues as it deems appropriate with the Applicant regarding the tariff pages prior to the effective date of this Order and the actual filing of said tariff pages.

Staff has also suggested that the flat rate established by Staff and approved by this Commission for Osage Water Company and incorporated in the Applicant's tariff is not appropriate, and suggests that the flat rate is "too high." However, Staff has failed to advise the Commission as to what flat rate is "appropriate." The Commission therefore finds that the flat

rate proposed by Applicant is appropriate, particularly in light of the tariff provisions requiring that all service connections be metered.

Staff has also suggested that the Commission condition the granting of a certificate herein on the submission to the Commission of a contract between the Applicant and Osage Water Company for wholesale water service and the sharing of equipment and personnel with Osage as a means of reducing the Applicant's cost of operations. The Commission declines to micro-manage the Applicant by dictating to it what contract or terms of contracts it should engage in, as it is up to the management of Applicant to engage in sound business practices. However, the Staff may address such issues in any future rate case submitted to the Commission wherein the Applicant seeks a rate increase resulting from the lack of wholesale revenue from sales to Osage Water Company, or cost increases attributable to a lack of sharing of equipment and personnel, to the extent that such a lack is attributable to management decisions of the Applicant.

Intervenor Hancock Construction Company failed to present any credible evidence herein from which the Commission could reasonably conclude that it would in any way be affected by this proceeding in a manner different from any other member of the general public. Such a showing is a requirement of this Commission's regulations regarding intervention in a contested proceeding before the Commission. The evidence presented by Hancock consists solely of unsupported opinion testimony of the principal of Hancock and its expert witness. No documentary evidence was presented to support any of the allegations made by Hancock in its Application to Intervene herein.

Specifically, the Commission finds that no credible evidence was presented which shows that Osage Water Company and the Applicant in this case are owned by the same principals. The evidence presented showed that Pat Mitchell does not own any interest in the Applicant, and

that there is therefore a substantial difference in the ownership of the Applicant from the ownership of Osage Water Company.

The Commission further finds that Pat Mitchell was, until July 7, 2001, in charge of the day to day operations of Osage Water Company, and that the past experience of recorded keeping and management of Osage Water Company does not provide any basis for determination of the anticipated future management of the Applicant by Debra J. Williams, and there was no evidence from which the Commission could reasonably conclude that the principals of the Applicant are incompetent to handle the business of the Applicant.

The Commission further finds that granting the certificate requested herein does not and will not adversely affect Osage Water Company, or divert additional revenue from the service of the existing debt of Osage Water Company. Osage Water Company does not by virtue of its existing certificates have a vested or proprietary interest in revenue derived from customers outside of its existing certificated areas. While Osage Water Company could, if it chose to do so, seek to intervene herein, or to file a competing application case to provide service to the proposed service area, it has neither sought such intervention, nor filed such a competing application. Osage Water Company's board minutes rejecting intervention or a competing application are part of the record before this Commission, and therefore the Commission finds that the granting of this Application will not have an adverse affect on Osage Water Company.

The Commission further finds that the granting of a certificate to the Applicant in a geographic area near Osage Water Company certificated areas will not allow competition, as the Commission's policy for regulated water utilities is to provide for regulated monopoly service within specific areas, and to prohibit competition. Neither Osage Water Company, nor the Applicant, will be authorized to engage in the provision of water utility service outside of their

respective certificated areas as a result of the granting of a certificate herein. Granting the certificate herein will not cause Osage Water Company to become unable to meet its obligations.

Intervenor Hancock further asserted that Osage Water Company has transferred equipment, including a bobcat and mini-excavator to Applicant, without consideration. Intervenor failed to support this allegation with any competent evidence, such as documentation to show that such a transfer occurred. Staff witness Russo testified, and the Commission finds, that Osage leased this equipment from a leasing company which subsequently repossessed it and sold it to the principals of the Applicant. There was no credible evidence to suggest that this equipment has been improperly transferred from Osage to the Applicant.

This Commission specifically rejected a request by Intervenor that this case be consolidated with Case WE-2002-240 regarding Osage Water Company's 1999 Annual Report to the Commission. Notwithstanding said Order of this Commission, the Intervenor sought to interject issues pertaining to said 1999 Annual Report of Osage Water Company into the record of this proceeding. The Commission finds that in so doing the Intervenor and its counsel acted with contempt and disregard for the orders and authority of this Commission.

PROPOSED CONCLUSIONS OF LAW

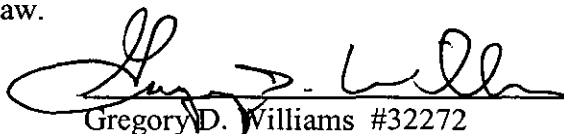
The Missouri Public Service Commission has reached the following conclusions of law:

Environmental Utilities, LLC is a Missouri Limited Liability Company, and, upon the granting of its Application herein, will be a public utility and a water corporation subject to the jurisdiction of the Commission under Section 396.250, RSMo. and Section 393.170, RSMo. The Commission is authorized by Section 393.170 RSMo. to grant certificates of convenience and necessity for the provision of water utility service, and therefore has jurisdiction of this proceeding.

In *Re Tartan Energy*, 3 Mo. P.S.C.3d 173, 177 (Sept. 16, 1994), the Commission articulated the legal standard to be met by an applicant for a certificate of convenience and necessity: (1) there must be a need for the service; (2) the applicant must be qualified to provide the service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. See also *Re Intercon Gas, Inc.*, 30 Mo. P.S.C. (N.S.) 55, 73 (November 15, 1985).

The Commission has found that the Applicant and its proposal in this case meet the requirements heretofore established by the Commission for the granting of a certificate of convenience and necessity, and that the granting of a certificate to the Applicant is in the public interest. The Commission therefore grants the relief prayed for by the Applicant in its Application, and approves the proposed tariff pages 1 through 33.

WHEREFORE, the Applicant prays that the Commission adopt the foregoing Proposed Findings of Fact and Conclusions of Law.



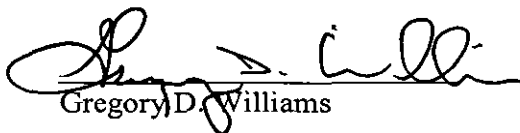
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Attorney for Environmental Utilities, LLC

CERTIFICATE OF SERVICE

I, Gregory D. Williams, do hereby certify that a true copy of the foregoing was on this 10 day of May, 2002, mailed, postage prepaid, to the following:

Mr. Thomas E. Lorzine, 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