

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
February 21, 2002**

CASE NO: WA-2002-65

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Enclosed find certified copy of an 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 21st day
of February, 2002.

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) **Case No. WA-2002-65**
a Water System for the Public Located in Unincorporated)
Portions of Camden County, Missouri (Golden Glade)
Subdivision))

**ORDER DENYING MOTION TO ALLOW SUPPLEMENTAL
SURREBUTTAL TESTIMONY**

This order denies Hancock Construction Company's motion asking leave to file supplemental surrebuttal testimony regarding Osage Water Company's 1999 annual report.

On January 30, 2002, Hancock Construction Company filed a motion seeking leave to file supplemental surrebuttal testimony to rebut the testimony of Debra Williams, witness for Environmental Utilities, and James Russo, witness for the Staff of the Commission. Hancock argues that supplemental surrebuttal is necessary because the 1999 annual report of Osage Water Company was not available to Hancock's witness, William Cochran, before the January 7, 2002 hearing. Hancock alleges that if Cochran had been able to examine the annual report before preparing his written testimony he could have used it to support Hancock's position that Osage Water Company was not keeping its books in compliance with NARUC USOA. Hancock alleges that Cochran was misled in his search for the 1999 annual report because it was filed in the wrong case. In support of that

assertion, Hancock points to a Notice of Correction that was filed in Case Numbers WD-2001-701 and WE-2002-240 on January 9, 2002. Hancock also asserts that the need to file supplemental surrebuttal testimony is an additional basis for a continuance of the second day of the hearing from March 4, 2002.

On February 11, Environmental Utilities filed a response to Hancock's motion, indicating its opposition to the request to file supplemental surrebuttal testimony. Staff also filed a response to Hancock's motion on February 11. Staff points out that Environmental Utilities' 1999 annual report was filed with the Commission on November 28, 2001, along with a motion asking leave to file a delinquent annual report. That filing resulted in the creation of Case Number WE-2002-240. Staff indicates that the 1999 annual report was never filed in the wrong case and was available to Hancock's witness before the hearing, and before December 3, 2001, when he filed his surrebuttal testimony. Staff further argues that allowing Hancock to file supplemental surrebuttal testimony would disrupt the established procedural schedule and would further delay the Commission's consideration of Environmental Utilities' application.

As authority for its motion, Hancock cites subsections (4) and (8) of Commission rule 4 CSR 240-2.130. Subsection (4) of that rule provides that in extraordinary circumstances the presiding officer at a hearing may refer a matter to the Commission for decision during the course of a hearing. This subsection has absolutely no application to Hancock's motion. The relevant portion of subsection (8) provides that "no party shall be permitted to supplement prefiled prepared direct, rebuttal or surrebuttal testimony unless ordered by the presiding officer or the commission." This provision implies that the Commission does have

the authority to permit a party to file supplemental written testimony if it chooses to do so. In this case, no good reason has been shown to permit such supplementation.

There is no reason to believe that Hancock's witness could not have discovered the existence of the 1999 annual report before the hearing and before he filed his surrebuttal testimony. Hancock's allegation that the annual report was concealed because it was filed in an incorrect case number simply is wrong. The Notice of Correction, to which Hancock refers, clearly indicates that an Order Granting Extension of Time issued on January 8, 2002, bore an incorrect case number and caption. The order bore the caption for case number WD-2001-701, when it should have borne the caption for WE-2002-240. WD-2001-701 is an entirely separate case relating to a different company and the Notice of Correction does not indicate that Osage Water Company's annual report was ever filed in case number WD-2001-701. Certainly, Hancock was aware of the filing of the 1999 annual report at the January 7 hearing, when Hancock's attorney cross-examined Environmental Utilities' witness about that report. (Transcript page 97).

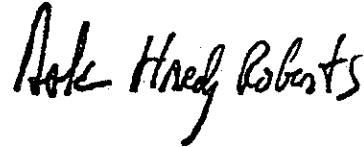
No reason has been shown that would justify disrupting the established procedural schedule by permitting Hancock to file supplemental surrebuttal testimony. The Commission has, in a previous order, rescheduled the second day of hearing from March 4 to March 25. For that reason, there is no need to consider Hancock's additional request for continuance.

IT IS THEREFORE ORDERED:

1. That the Motion to Allow Supplemental Surrebuttal Testimony and Additional Request for Continuance Based on Extraordinary Circumstances filed by Hancock Construction Company is denied.

2. That this order shall become effective on March 3, 2002.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

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

(SEAL)

Simmons, Ch., Murray, Lumpe and Forbis, CC., concur
Gaw, C., not participating

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 21st day of Feb. 2002 .

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

