

**LORAIN & ASSOCIATES**

Attorneys at Law  
4075 Highway 54, Suite 300  
Osage Beach, Missouri 65065

Thomas E. Loraine  
Clara M. Weppner, Paralegal

Tel: (573) 348-8909  
Fax: (573) 348-8920

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

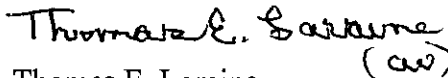
Dear Mr. Roberts:

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 (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 ENVIRONMENTAL UTILITIES 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 Environmental Utilities, (E.U.) offers the following discussion and argument.

Mr. Williams does not have one citation in his brief to support any of his statements. Instead he relies on "Statement of Position" allegations to refute Hancock's voluminous evidence. It is no surprise he does not attempt to use transcript nor pre-filed rebuttal and surrebuttal since the evidence is overwhelming that the same principals who operate E.U. are the unqualified principals who have driven Osage Water Company to imminent bankruptcy (Ex. 28; Ex.10, 5 , 23; Ex. 10, 6, 1-12) through incompetence (Ex. 10, 6, 11-13), illegal operations (Ex. 10, Schedule 5) and hazardous and illusionary false images. (Ex. 10, 7, 16-22, Ex. 10, 8, 1-24; Ex. 10, 9, 1- 15).

E.U. claims quality of service has improved substantially and claims this assertion is uncontroverted. Alleged improvement of quality of service does not address these principals' historical dismal record keeping (Tr. 455,3-7). Hancock believes unlawful overcharges (Ex.10, 3,

12) does not indicate improved quality of service but a sad continuation of illegal operations and callous disregard for the public ( Ex. 10, Schedule 5 & 6).

**Need for service.**

E.U. admits there is no need for service by Golden Glade residents. Instead, E.U. claims the granting of a certificate “ is necessary to meet the public need for water service in Eagle Woods”.

The Application was never admitted into evidence either as an exhibit nor as a schedule attached to Exhibit 1 or 2. It is not in evidence because an Application would demonstrate the C.C.N. is for Golden Glade not Eagle Woods. There is no evidence and as a result no citations in E.U. 's Initial Brief that the Commission, Osage Water Company, the forthcoming Trustee of Osage Water Company (Ex. 28) or even the residents of Eagle Woods would accept the conditions of a future wholesale agreement, with E.U., a less financially able company, than was O.W.C. when first founded.

**Economic Feasibility of Proposed Services.**

E.U. claims that not achieving the desired rate of return is not a requirement for economic feasibility. Not meeting the 12% rate of return shows that E.U. 's cost of capital will not be covered by revenue collections. Inadequate rate of return or cost of capital coverage will send this company down the same path as Osage Water Company ( Ex. 28). It is not economically feasible to operate a company that does not meet its cost of capital requirements. Revenue projections not meeting cost of capital requirements, Staff and Public Counsel proposed conditions, and E.U. 's statement that it is impossible to forecast with reasonable certainty, does not meet the Tartan economic feasibility criteria.

**Financial Ability to Provide Service.**

There is no evidence that the Golden Glade well, pumps and pumping equipment, supply mains, water treatment facilities, transmission and distribution mains have been paid for, are owned or will be owned by E.U. Staff's Position Statement is not a citation from evidence. Relying on Mr. Russo's November 29<sup>th</sup> visit showed (Ex. 2, 2 &3) that the only asset these principals had paid for was some "Well house" structure and some vague undeterminable "distribution system" (Ex. 2, Schedule EU-2, 1) . Nothing presented by these principals nor Mr. Russo identifies if an adequate approximate seven hundred (700) foot well, a D.N.R. construction permit, an adequate centrifugal pump and pumping equipment, supply mains, water treatment facilities, transmission and distribution mains even exist, much less are paid for by these principals.

**Promote the Public Interest.**

It is not in the public interest to grant a conditional C.C.N. The C.C.N. should only be granted when all "conditions" have been met prior to filing the Application. It is in the public interest only when the five (5) Tartan criteria have been met. It is not in public interest to attempt to enforce the multiple proposed conditions sometime in the future. Further, it is not in the public interest to rely on probable unenforceable of Staff and Public Counsel's proposed sixteen (16) conditions instead of the Tartan criteria.

**Applicant's Rate Base.**

At this time the Applicant claims a \$76,115.48 total cost pertaining to the construction of the water well. Exhibit 2, Schedule EU-2, 1, does not identify a "water well". It shows that the \$76,115.48 is for a "Well House" structure and an ill defined "distribution system". These principals make it a common practice to keep dismal records (Tr. 424,2-6), file delinquent annual reports not in compliance with NARUC (Tr.444, 2-5) and use these dismal records to

significantly inflate rate base (Tr. 452, 8-19, Tr. 454, 6-9 and Tr. 455,3-7 ). By refusing in Ex. 2 , Schedule 2,1, to use proper NARUC USOA they are embarking on the same path for E.U. that has been perpetuated since 1994 for O.W.C. found in case WR-2000-557 which resulted in the Disposition Agreement. ( Ex. 10, 3, 23-24; Ex. 10, 4, 3-11; Ex. 10, 10, 11-23 & Schedule 19).

**Conclusion**

The brief of E.U. is wholly devoid of evidentiary transcription citations because the vast majority of competent and substantial evidence proves that E.U. has failed to meet the Tartan criteria. The application must fail for lack of substantial evidence on the whole record.

Respectfully submitted,

LORAINE & ASSOCIATES

Thomas E. Loraine (cu)  
Thomas E. Loraine, Missouri Bar #: 22206  
4075 Highway 54, Suite 300  
Osage Beach, Missouri 65065  
(573) 348-8909 Telephone  
(573) 348-8920 Facsimile

ATTORNEY FOR HANCOCK CONSTRUCTION  
COMPANY