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December 19, 2001

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Director, Administration
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Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

FILED²

DEC 19 2001

Missouri Public
Service Commission

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-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 a Water System for the Public Located in Unincorporated Portions of Camden County, Missouri (Golden Glade Subdivision).

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of **STAFF'S STATEMENT OF POSTIONS**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Victoria L. Kizito
(573) 751-6726 (Telephone)
(573) 751-9285 (Fax)

Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

DEC 19 2001

Missouri Public
Service Commission

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 a water system)
for the public located in)
unincorporated portions of Camden)
County, Missouri (Golden Glade)
Subdivision).

Case No. WA-2002-65

STAFF'S POSITION STATEMENTS

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"),
by and through counsel, and for its Position Statements regarding the Proposed
List of Issues filed herein on December 12, 2001 presents the following:

ISSUES AGREED UPON BY ALL PARTIES

Issue 1: Is the Applicant qualified to provide public water utility service within the
proposed [service] area?

Staff Position: The Applicant has the general qualifications necessary to provide
the proposed service; however, these are conditioned in great part on the
continued operation of Osage Water Company (OWC), since various costs and
work functions will be shared between the Applicant and OWC. Additionally, the
Applicant will need to employ, either directly or through a contractual
arrangement, a licensed operator for this system meeting the requirements of the
Missouri Department of Natural Resources (MDNR). Currently, neither the

Applicant nor OWC directly employ such an operator or have a contractual arrangement with such an operator.

Issue 2: Is there a public need for public water utility service within the proposed service area?

Staff Position: The Staff does not dispute that the provision of water service for the proposed service area through a centralized supply and distribution system would be the most preferable manner for the residents in the area to receive water service. However, the Staff's position is that this issue goes beyond that basic premise to the question of whether there is a need for the Applicant to be the entity providing such service in the manner proposed in the Application.

Issue 3: Is the Applicant's proposal to provide public water utility [service] within the proposed service area economically feasible?

Staff Position: Based upon the following premises being true, the Staff believes the Applicant's proposal would be economically feasible: (1) current and future residents of the proposed service area become customers of the Applicant; (2) the proposed service area "builds out" as projected; (3) OWC continues in operation; (4) OWC becomes a wholesale customer of the Applicant for the adjacent Eagles Woods service area; (5) current and future residents in OWC's Eagles Woods service area become customers of OWC (and thus "indirect customers" of the Applicant due to OWC being a wholesale water customer of the Applicant); and (6) cost sharing occurs between the Applicant and OWC.

However, it should be noted that the Applicant would not likely earn its full rate of

return, which, as used in the feasibility studies presented by the Applicant and the Staff, is 12%, in the year 2006 even if the above-noted premises are true. Additionally, it should be noted that the feasibility studies produced to date by the Applicant and the Staff utilize an assumed level of rate base that is significantly less than the rate base for which the Applicant is now requesting recognition.

Issue 4: Is the Applicant financially able to provide the proposed public water utility service?

Staff Position: The principals of the Applicant, as the developers of the subdivision that makes up the proposed service area, have provided the necessary start-up capital to date, which will result in the Applicant initially being financed by 100% equity. However, as noted in the Staff's Rebuttal Testimony, the Applicant has not demonstrated to the Staff's satisfaction that it has commitments from financial institutions necessary to obtain the debt financing needed to reach its stated goal of achieving an approximate 60%-to-40% debt-to-equity capital structure. Additionally, the principals' involvement in the operation of OWC and the financial condition of OWC raise further concerns for the Staff on this matter.

Issue 5: Is the granting [of] the certificate of convenience and necessity requested by the Applicant in the public interest?

Staff Position: The Staff's position is that this "public interest" standard has been met when the above questions are answered in the affirmative. Absent

affirmative answers to the above questions, the Staff's position is that the public interest standard has not been met.

Issue 6: What is the amount of the investment in the water plant and certificate costs that will be included in the Applicant's rate base if the certificate is granted?

Staff Position: With reference to the plant investment and certificate costs identified by the Applicant, and the Applicant's suggested accounting treatment of those items, the Staff's only remaining issue is with the Applicant's proposed 10% contractor overhead charge.

Issue 7: If a certificate is granted, should conditions be imposed on the Applicant?

Staff Position: First, the Staff's position regarding this issue is that any Commission order granting a "conditional" certificate should clearly state that to the extent feasible the conditions must be met prior to the Applicant providing service. Regarding possible conditions to be imposed, the Staff believes that conditions consistent with those proposed by the Office of the Public Counsel in its Rebuttal testimony would be reasonable and the following additional conditions would also be reasonable: (1) a showing that the Applicant has obtained the services of a licensed operator that meets the applicable MDNR requirements; (2) a showing that the Applicant has entered into an agreement for wholesale service to OWC related to OWC's Eagle Woods service area; (3) a showing that the facilities necessary to serve OWC as a wholesale customer have

been installed; (4) a showing that all necessary MDNR permits or approvals related to the construction of the supply and distribution system have been received; and (5) a showing that the Applicant has applied for the required MDNR permit to dispense.

Issue 8: Should any of the proposed tariffs filed by the Applicant be withdrawn or modified?

Staff Position: Yes, as discussed in Staff Witness Merciel's Rebuttal Testimony, the relevant portions of which are attached hereto as Attachment A.

INTERVENOR'S PROPOSED ADDITIONAL ISSUES

Issue 1: Whether there has been a transfer of equipment and systems from Osage Water Company to Environmental Utilities.

Staff Position: Based upon the Staff's review of the Application in this case, the somewhat recent rate audit of OWC and related follow-up field audit work, it does not appear that there have been any transfers of either equipment or systems from OWC to Environmental Utilities (E.U.).

Issue 2: Whether Environmental Utilities and its principals by seeking a Certificate of Convenience and Necessity as requested in its Application will contribute to the non-profitability of Osage Water Company, hereby causing Osage Water Company to be less culpable [capable] of paying its valid debts (Hancock Debenture) as authorized in prior rate base cases.

Staff Position: The Staff does not believe that granting E.U. a certificate as requested in the Application will, in and of itself, make OWC less capable of paying its recognized operating expenses, such as the Hancock Debenture.

Issue 3: Whether Osage Water Company as a regulated utility has a public interest that is being harmed by allowing its assets to be used by a competing utility company.

Staff Position: The Staff does not believe that the sharing of assets such as equipment will, in and of itself, harm OWC, especially since shared costs will be allocated between the companies based upon each company's usage levels.

Issue 4: Whether the customers of Osage Water Company are being properly served by allowing its assets to be used by a competing utility serving an adjacent area.

Staff Position: The Staff does not believe that the sharing of assets such as equipment will, in and of itself, harm OWC's customers, especially since shared costs will be allocated between the companies based upon each company's usage levels.

WHEREFORE, the Staff submits its Position Statements for the Commission's consideration in this case.

Respectfully Submitted,

DANA K. JOYCE
General Counsel



Victoria L. Kizito
Associate General Counsel
Missouri Bar No. 46244

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all parties of record, as shown on the attached service list, this 19th day of December, 2001.



Victoria L. Kizito

Service List for

WA-2002-65

Revised: November 21, 2001, (cgo)

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