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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

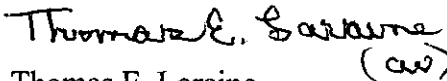
Dear Mr. Roberts:

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 STAFF 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 Staff's Brief, offers the following discussion and argument.

Staff claims management of Osage has recently changed but left uncontroverted the evidence presented by William J. Cochran and others that the mere absence of Pat Mitchell does not materially alter the history of Mr. Williams' involvement in O.W.C. A thorough review of Mr. Johansen's testimony as set forth in Hancock's Initial Brief disproves this contention of Staff's counsel that management has recently changed. See transcription citations previously set forth and reproduced here for convenience. (Tr. 423,17-25; Tr. 423, 13-16; Tr. 424, 2-6; Tr. 452, 8-19 and Tr. 454, 6-9). See also statements under oath by Mercial and Hummel. (Tr. 376, 1-23 and Tr. 534, 4-18), and Mrs. Williams. (Tr. 69, 1-3; Tr. 98, 15-20; Tr. 99, 1-25; and Tr. 100, 1-22). "The chief operating officer for the vast majority of Osage's regulated life has been Mr. Williams" (Ex. 10, 3, 1-2).

"Osage's imminent collapse is due to Mr. Williams' incompetence, misrepresentations, illegal operations and callous disregard of the public" (Ex. 10, 6 , 12-13).

Staff claims “under management of Ms. Williams, Osage’s operations have improved”. Staff believes that Ms. Williams’ “unlawful overcharges” (Ex. 10, 3, 12) is an improvement of O.W.C.’s operations.

Staff contends “(T)he evidence in this case clearly shows that the Applicant satisfies four of the **Tartan Energy** criteria.”

Staff’s brief is silent to the sixteen (16) conditions proposed and adopted by Staff (Tr. 414-415) in order for the Applicant to possibly meet the four Tartan criteria sometime in the unforeseeable future.

Staff only identifies a “preferable need” where : “that it would be preferable to serve the residents through a central water system” (Tr. 396, 20 and Tr. 397, 6). Tartan is explicit there must be a need for the service not a preferable desire of the Williams and Staff that these eight (8) customers, who are presently on their own private wells, be served from a centralized water system.

Staff claims there is an additional advantage of receiving these water services from a regulated utility. The residents of Parkview Bay customers found no advantage receiving water services from a regulated utility operated by the Williams. (Ex. 10, 5, 4-18). Nor will the remaining one hundred and fifty (150) to two hundred (200) Osage Water Company customers in Osage Beach find any advantage. (Ex 28), after the demise of O.W.C.

The Staff claims, Mr. and Mrs. Williams obtained the necessary construction permits from M.D.N.R., the well is completed, and it is operating successfully. There is no citation on this statement. The permits have not been entered into evidence. There has been no evidence to support the claim the well is successfully operating. The Williams’ obtained a similar Parkview Bay well permit from M.D.N.R., but due to Mr. Williams technical incompetence and illegal

operations, Staff excluded this well from rate base because it is not used and useful. (Ex. 10 Schedules 4, 5, 13 &14).

As to the Tartan criteria of financial ability to provide service, the P.S.C. should note that the well is not owned by E.U. Staff claims the Applicant will provide it in exchange for equity. This same argument was presented by these same principals in case WA-99-437 for an Osage Water Company C.C.N. (Ex. 11, 2, 2-14; Ex. 11, 5, 6-10; Ex. 5, 4, 3-14; Tr. 51, 5-24; Tr. 53, 11-25; Tr. 380, 11-25; Tr. 381, 1-12; and Tr. 286, 5-23).

Staff states the proposal is not economically feasible and would be economically feasible if the present eight (8) customers with their own wells plus an alleged fifty (50) future Golden Glade residents agree to hook up to Applicant's water system. Proposing to sell the well to E.U., relying on unidentified fifty (50) future potential customers and entering into a future unidentified wholesale contract with a utility that is going to bankrupt (Ex. 28) does not meet Tartan, economic feasibility criteria. Tartan, economic feasibility requires hard financial data and explicit economic analysis based on existing and confirmed hard financial data. This data and analysis simply does not exist, in the evidence at bar.

Staff, bases meeting the Tartan, economic feasibility on a future event called, "execution of a wholesale contract with Osage Water Company". Tartan, is explicit. A wholesale contract must be executed and presented as evidence in a hearing, before the Commission could consider this application meeting the Tartan economic feasibility criteria.

As to the public interest requirements of Tartan, the Staff relies on Mr. Merciel's statement, "M.D.N.R. does not find operation of water systems to be preferable because of the difficulty in obtaining competent dedicated management". Using this unsupported statement, Staff concludes that there is no evidence in this case to dispute that Mr. and Mrs. Williams will

be competent and dedicated. Staff concludes this application therefore meets the Tartan public interest criteria.

Staff ignores the loss of the customer base at Parkview Bay and Osage Beach to be related to the incompetence of Mr. Williams' management for the vast majority of the regulated life of the Osage Water Company. (Ex. 10, 2, 26-27 and Ex. 10, 3, 1-5). Staff ignores the illegal operations. (Ex. 10, 11, 5-8; Schedule 5), the callous disregard for the public (Ex 10. 11, 9-15; Schedule 6), the unlawful overcharges (Ex. 10, 3, 12). Staff ignores that the Williams' past management has caused public hazards and detriments and resulted in a "financial death spiral" of the Osage Water Company (Ex. 10, 19, 1-13) which will soon result in the demise of Osage Water Company (Ex 28).

Conclusion

It is the opinion of Mr. Hancock that the standard being urged upon the P.S.C. by the Public Counsel and the Staff materially differs from the Tartan criteria and for those reasons should be rejected. If Environmental Utilities can not presently and immediately meet the Tartan criteria, the Commission must reject the application as speculative.

Respectfully submitted,

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