

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,)
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

FILED³

SEP 6 2001

RESPONSE REQUEST FOR A HEARING BY
OFFICE OF PUBLIC COUNSEL

Missouri Public
Service Commission

COMES NOW the Applicant in the above captioned matter and for its Response to the

Request for A Hearing filed herein by the Office of Public Counsel states:

1. OPC's Request for A Hearing filed herein states that it is based upon "the fact that the Environmental Utilities, LLC, the Applicant in this case, also owns Osage Water and Sewer Company, and that company has had recent problems in providing safe and adequate service to customers. The application states that the Applicant is currently managing the Osage Water and Sewer territories, since the resignation of one of that Company's officers."
2. The alleged "facts" upon which the OPC has based its request for a hearing are not supported by any of the allegations of the Application filed herein, nor, are they in fact true or correct, as shown by the affidavit attached hereto. To the knowledge of Applicant, there is no public utility regulated by this Commission known as "Osage Water and Sewer Company," and the Applicant herein does not own Osage Water and Sewer Company, or any interest therein. As of the date of the Application, and as of the date of this pleading, the Applicant herein does not own any water or sewer utility assets, but does have an agreement with the developer of Golden Glade Subdivision to acquire such assets, upon receipt of this Commission's approval to do so.

3. There is a regulated public utility known as "Osage Water Company," however Environmental Utilities does not own that company, or any interest therein. The principals of Environmental Utilities are also shareholders and directors of Osage Water Company, and, as stated in the Feasibility Study attached as an Exhibit to the Application herein, have arranged for Environmental Utilities to operate the facilities of Osage Water Company on an interim basis since the abandonment thereof by William P. Mitchell. Said principals have been in discussions with the Staff and General Counsel's Office with respect to the proper and appropriate steps to take before this Commission with respect to the facilities of Osage Water Company, and anticipate filing a separate case with the Commission with respect thereto in the near future. However, the assets and operations of Osage Water Company have nothing to do with the issues presented by the Application in this case.
4. The Request for A Hearing filed herein by the OPC fails to present any issues for determination by this Commission. OPC asks the Commission to "establish a procedural schedule and set his matter for hearing to determine whether granting the requested certificate of convenience and necessity is in the public interest." The Commission has heretofore established five specific criteria for determining whether a certificate of convenience and necessity should be granted: 1) Is there a need for the service; 2) Is the Applicant qualified to provide the service; 3) Does the Applicant have the financial ability to provide the service; 4) Is the Applicant's proposal economically feasible; 5) does the Applicant's proposal promote the public interest? See In Re Tartan Energy, 3 Mo. P.S.C.3d 173, 177 (Sept. 16, 1994); In Re Osage Water Company, SA-99-268 (Oct. 14, 1999); In Re Osage Water Company,

WA-99-437 (December 26, 2000). The OPC's in its Request for Hearing takes issue only with the last of these five issues, i.e. whether the proposed service would promote the public interest, and asks the Commission to establish a procedural schedule and conduct a contested hearing in order to make such a determination. This request is simply not supported by prior Commission decisions in certificate cases.

5. In the case of In Re Osage Water Company, SA-99-268 (Oct. 14, 1999), which pertained to the provision of sewer utility service in the same development project at issue in this case, OPC opposed the granting of a certificate on the grounds that granting the same was not in the public interest, but this Commission held that "... this case is not whether [Osage] or the City is the more qualified applicant in this case; the issue is whether [Osage] has satisfied the requirements of the *Tartan Energy Company* case.' That case stands for the proposition that a positive finding for the first four standards will, in most cases, support a finding that granting an application for a certificate promotes the public interest." The Commission went on to state that "[t]he only other alternative to granting Osage the certificate it requests is, obviously, to deny it. If that happened, then this sewer system would be turned over to a homeowners' association; there is no other entity available to provide sewer service to Golden Glade. The Commission is of the opinion that, in this instance, it is better to have a regulated investor-owned utility providing sewer service than an unregulated homeowners' association."
6. In its request, OPC only requests that this Commission determine whether granting the Application herein is in the public interest, based upon OPC's misunderstanding

of the relationship between the Applicant herein and, presumably, Osage Water Company. Granting such a request would result in a hearing on an issue that this Commission has previously held to be determined by four other factors, none of which are contested by OPC herein.

7. OPC is required to file a responsive pleading to the Application herein within ten days of service. 4 CSR 240-2.080(16). As a responsive pleading, the OPC's Request for A Hearing is materially deficient. It does not request any relief from this Commission, only that the Commission establish a procedural schedule, hold a hearing and make a determination. This is not a request for relief, it is a request for the Commission to undertake a process utilized to determine whether a requested relief is proper. It does not request that OPC be given time to investigate. It does not state that OPC objects to the granting of the requested certificate of convenience and necessity. It does not request that the Commission order an investigation. It does not allege that there is no need for public water utility service in Golden Glade Subdivision. It does not allege that Environmental Utilities is not qualified to provide public water utility service. It does not allege that Environmental Utilities lacks the financial ability to provide public water utility service to Golden Glade Subdivision. It does not allege that Environmental Utilities' proposal is not economically feasible. "Specific averments in a pleading to which a responsive pleading is required .. are admitted when not denied in the responsive pleadings." Missouri Supreme Court Rule 55.09. This Commission's Regulations further require that "[e]ach pleading shall include a clear and concise statement of the relief requested and specific reference to the statutory provision or other authority under which relief is

requested.” 4 CSR 240-2.080(3). OPC’s responsive pleading to the Application herein fails to controvert the factual allegations of the Application, and fails to raise any factual issues for determination by this Commission. Since the factual allegations of the Application are deemed admitted under applicable Missouri Supreme Court Rules, all that remains for this Commission to determine is whether the application satisfies its requirements for the granting of a certificate of convenience and necessity under the criteria of In Re Tartan Energy, 3 Mo. P.S.C.3d 173, 177 (Sept. 16, 1994).

8. Recently the Commission had the opportunity to address a similar deficient pleading by OPC in the case of In the Matter of Osage Water Company’s Request for a Rate Increase for Water Service, WR-2000-557 (July 26, 2001). In its order therein, this Commission said “Public Counsel’s pleading does not request any relief. It does not raise an objection ..., nor does it ask the Commission to take or not take any specific action. The filing gives no indication of what Public Counsel wants the Commission to do, nor does it give any indication about what steps Public Counsel is going to take to decide whether to object ... or not, or when it is going to take those steps. The Commission cannot consider the filing to be an objection, nor can it consider it a request to take some action ..., because clearly it is neither. ... The Commission’s rules require pleadings to include a clear and concise statement of the relief requested. Public Counsel’s filing does not do so, and as a result leaves the Commission, and the [case], in the same position it would be in if Public Counsel had not filed anything.”

WHEREFORE, Environmental Utilities prays for an Order of the Commission finding that the Office of Public Counsel has not raised a genuine issue of material fact, has not requested any particular relief from this Commission, and finding that therefore the Application herein

may be submitted for determination upon the verified statements contained therein, and deny the Request for A Hearing by the Office of Public Counsel.




Gregory D. Williams #32272
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Sunrise Beach, MO 65079
(573) 374-8761

CERTIFICATE OF SERVICE

I, Gregory D. Williams, do hereby certify that a true copy of the Application in the above captioned matter was on this 30 day of September, 2001, mailed, postage prepaid, to the following:

Office of Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

General Counsel, Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102


Gregory D. Williams

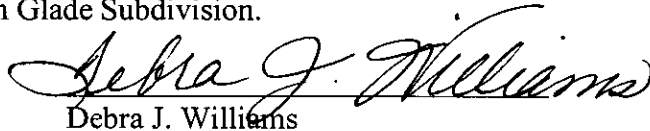
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public located in unincorporated portions of Camden County,)
Missouri (Golden Glade Subdivision).)

AFFIDAVIT

COMES NOW Debra J. Williams, manager of Applicant in the above captioned matter
and being duly sworn upon her oath states:

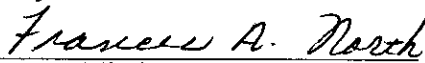
1. Environmental Utilities, LLC does not own any shares of stock in Osage Water Company.
2. Environmental Utilities, LLC does not own any water or sewer utility assets, whether those
owned by Osage Water Company, or otherwise, but has contracted to acquire the water
system under construction in Golden Glade Subdivision.


Debra J. Williams

STATE OF MISSOURI)
COUNTY OF CAMDEN) ss

On this 30th day of August, 2001, before me,
FRANCES A. NORTH, a Notary Public, personally appeared Debra J. Williams, to me
known to be the person described in and who executed the foregoing instrument, and
acknowledged that she executed the same as her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official
seal at my office in SUNRISE BEACH, MO the day and year last above written.


Notary Public in and for said
County and State

My term expires _____, 20__.

