

**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

November 30, 2001

Public Service Commission  
Attn: Cecil Wright  
P.O. Box 360  
Jefferson City, MO 65102

**FILED<sup>2</sup>**

**DEC 03 2001**

**Missouri Public  
Service Commission**

RE: Case No. WA-2002-65

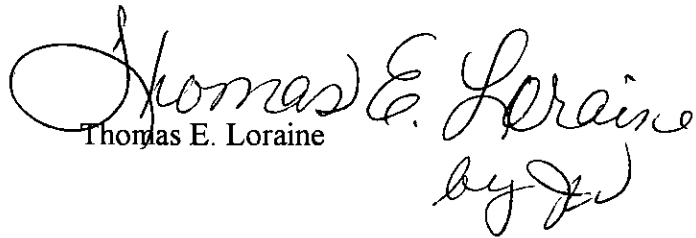
Dear Mr. Wright:

Enclosed please find the original and nine (9) copies of the HANCOCK CONSTRUCTION COMPANY'S RESPONSE TO ENVIRONMENTAL UTILITIES, LLC'S MOTION TO SET ASIDE ORDER GRANTING HANCOCK CONSTRUCTION COMPANY TO INTERVENE OUT OF TIME 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  
by J.W.

TEL/jw

Enclosures

Hancock/filingPSC-Response

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>  
DEC 03 2001

Missouri Public  
Service Commission

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

CASE #: WA-2002-65

**HANCOCK CONSTRUCTION COMPANY'S RESPONSE**  
**TO ENVIRONMENTAL UTILITIES, LLC'S MOTION TO SET ASIDE**  
**ORDER GRANTING HANCOCK CONSTRUCTION COMPANY**  
**TO INTERVENE OUT OF TIME**

COMES NOW Hancock Construction Company, movant, by and through it's attorney of record, Loraine & Associates and for it's responses to Environmental Utilities, LLC's Motion to Set Aside Order Granting Hancock Construction Company to Intervene Out of Timed states as follows:

1. Gregory Williams states that Environmental Utilities, LLC was not served with a copy of Hancock Construction Company's Application to Intervene Out of Time. Certain evidence and affidavit that shows that a copy of Hancock Construction Company's Application to Intervene Out of Time was mailed to Counsel on November 8, 2001. (See attached hereto as Exhibits 1)

2. That on November 14, 2001, Counsel for Hancock Construction Company agreed to a joint extension in order not to prejudice Environmental Utilities and allow Gregory Williams time for preparation and submission of his pleadings to the Commission. (See attached hereto as Exhibit 2) That on November 19<sup>th</sup>, Gregory Williams asked the Commission to deny Hancock Construction Company's Motion to Intervene Out of Time and waited until November 29<sup>th</sup>, 2001 to file a Motion to Set Aside Hancock Construction Company's Motion to Intervene Out of

Time.

3. That on November 14, 2001, a letter was faxed to Gregory Williams, wherein Counsel for Hancock Construction Company agreed to a joint extension in order to give Gregory Williams time for preparation and submission of his pleading to the Commission.

4. That failure to mail a copy of Hancock Construction Company's Motion to Intervene Out of Time to Ruth O'Neill or Victoria Kizito was an oversight by Counsel for Hancock Construction Company, but given Environmental Utilities, LLC's attempt to refuse Public Counsel's request for hearing and establishing a procedural schedule on same issues addressed in Hancock Construction Company's Motion to Intervene Out of Time. Public Counsel did not indicate any due process prejudice occurred because they are addressing the same issues as Hancock Construction Company.

5. There is no substance to Gregory Williams "Response" to Hancock Construction Company's Application to Intervene Out of Time. This is merely a "form" response with no probative value or weight of evidence to consider. (See attached Exhibit 5.) The Commission would find no value in receiving such a "Response".

6. Mr. Williams attempted to inject a false issue concerning a Libel petition. He would have better served the Commission by introducing the civil case where Mr. Hancock found it necessary to sue to collect the valid debt Osage Water Company owed Mr. Hancock (See Exhibit 3) and yet where Mr. Williams denied the debenture to be a valid debt of Osage Water Company. (See Exhibit 4). Mr. Williams does not attempt to introduce Camden County Circuit Court case #CV101-008CC and it does not include reference to case # CV101-008CC regarding Osage Water Company's refusal to make payments of \$12,000.00 per year on it's "valid obligation" regarding the Hancock debenture identified as such in Commission findings in case Environmental

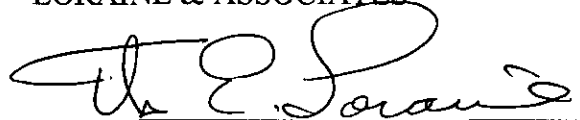
Utilities-2000-557.

7. See response to paragraphs 2 and 3 above.

8. That paragraph 8 of Gregory Williams Motion to Set Aside Order Granting Application of Hancock Construction Company to Intervene Out of Time regarding "Counsel . . . failure to include all material relevant facts." The Commission found that "Hancock had an interest in this matter that is different from that of the General Public." The Commission also finds that this is good cause to permit Hancock to intervene out of time. The Commission concludes that the Application to Intervene Out of Time should be granted.

WHEREFORE, Hancock Construction Company prays for an Order denying Gregory Williams and Environmental Utilities, LLC's Motion to Set Aside Order Granting Application to Hancock Construction Company to Intervene Out of Time since Environmental Utilities, LLC failed to take advantage of a remedy to extend time for Mr. Williams to respond as set forth in paragraphs 2 and 3 above and for such other and further relief as the Commission deems just and proper in the circumstances.

LORAIN & ASSOCIATES

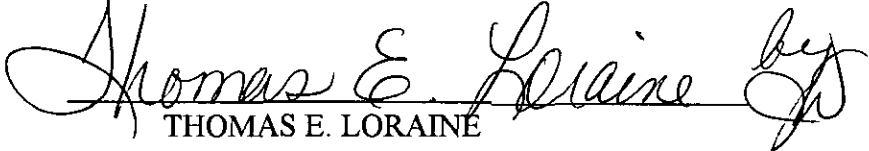


Thomas E. Loraine, Missouri Bar #: 22206  
4075 Highway 54, Suite 300  
Osage Beach, Missouri 65065  
(573) 348-8909 Telephone  
(573) 348-8920 Facsimile

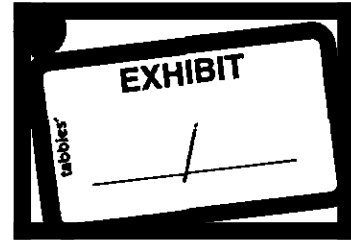
ATTORNEY FOR HANCOCK CONSTRUCTION  
COMPANY

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of HANCOCK CONSTRUCTION COMPANY'S RESPONSE TO ENVIRONMENTAL UTILITIES, LLC'S MOTION TO SET ASIDE ORDER GRANTING HANCOCK CONSTRUCTION COMPANY TO INTERVENE OUT OF TIME mailed hard copy, postage prepaid, this 1st day of December, 2001, **Certified/Return Receipt Requested #7000 1530 0001 0787 4599 to Gregory D. Williams**, Highway 5 at Lake Road 5-32, P.O. Box 431, Sunrise Beach, MO. 65079, and regular mail to Office of Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102, Presiding Commissioner, Camden County Courthouse, 1 Court Circle, P.O. Box 960, Camdenton, Missouri 65020, General Counsel, Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102 and Missouri Department of Natural Resources, 205 Jefferson Street, Jefferson City, Missouri 65101.

  
THOMAS E. LORAINE

AFFIDAVIT

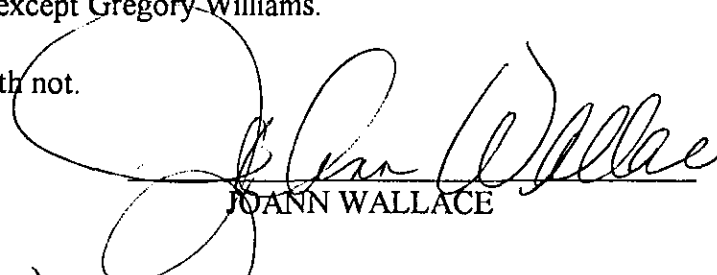


STATE OF MISSOURI     )  
                                      ) ss.  
COUNTY OF CAMDEN     )

COMES NOW, Joann Wallace, being duly sworn upon her oath and states and alleges as follows:

1. That she is over the age of twenty-one (21) years and well able to make this Affidavit.
2. That she is a legal assistant for the law firm of Loraine & Associates and has been since November 13, 1998.
3. That she has been acting as a legal assistant in the State of Missouri for seven (7) years.
4. That she mailed David Hancock's Application to Intervene Out of Time to Gregory Williams at P.O. Box 431, Sunrise Beach, Missouri 65079 by U.S. Mail, first class, postage prepaid on the 8<sup>th</sup> day of November, 2001.
5. That she did not mail David Hancock's Application to Intervene Out of Time to anyone else except Gregory Williams.

Further Affiant sayeth not.

  
JOANN WALLACE

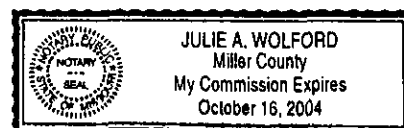
STATE OF MISSOURI     )  
                                      ) ss.  
COUNTY OF                 )

On this 21<sup>st</sup> day of November, 2001, before me personally appeared Joann Wallace, 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 Testimony Whereof, I have hereunto set my hand and affixed my official seal in Osage Beach, Missouri the day and year first above written.

  
NOTARY PUBLIC

My commission expires: 10/16/04



**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

November 14, 2001

**VIA FAX NO. (573) 374-4432**

Mr. Greg Williams  
Attorney at Law  
Post Office Box 431  
Sunrise Beach, Missouri 65079

RE: Case No. WA-2002-65

Dear Mr. Williams:

Enclosed please find our application To Intervene Out of Time for the above-referenced case that was previously mailed to you on November 8, 2001. I understand that you never received this mail. Our mail register shows that the package was mailed to you on that day.

I apologize if you never received it. I sincerely hope this has not caused you any inconvenience or prejudice. I am enclosing a copy of my legal Secretary's Certificate of Service concerning this mailing.

I can do nothing about the inadequacies of the mail system, I am prepared to rely on our internal system to advise you that the matter was mailed. Never the less, I would agree to any joint extension of time that you feel necessary to allow adequate preparation and submission to the Commission. Please prepare said document and forward it by fax and I will execute same.

Very truly yours,

LORAIN & ASSOCIATES

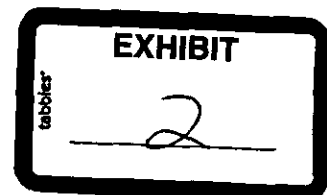


Thomas E. Loraine

TEL/jw

cc: David Hancock  
Commission

Civil Litigation\Hancock\Williams lt11-14-01



## IN THE CIRCUIT COURT OF CAMDEN COUNTY, MISSOURI



HANCOCK CONSTRUCTION CO.,

Plaintiff,

vs.

Case No. CV101-008CC

OSAGE WATER COMPANY,  
Serve: Gregory D. Williams,  
Registered Agent,  
Hwy 5 at Lake Road 5-33,  
Sunrise Beach, Missouri

Defendant.

PETITION

COMES NOW Plaintiff and for its cause of action states as follows:

1. Plaintiff is a Missouri corporation in good standing authorized to bring this suit.
2. Defendant is a Missouri corporation and can be served by and through its registered agent, Gregory D. Williams, Hwy 5 at Lake Road 5-33, Sunrise Beach, Missouri.
3. Defendant duly executed and delivered to Plaintiff, for value received, its Debenture Note in and for the sum of Two hundred forty thousand dollars (\$240,000.00), payable in installments of One thousand dollars (\$1,000.00) per month, commencing October 15, 1998. A copy of said debenture note is marked Exhibit A, attached hereto and incorporated herein by reference thereto.
4. Said debenture note provides that in the event of default in the payment of any principal payment thereon, and if said default continued for more than sixty



(60) days after written notice thereof, then the entire unpaid principal amount shall become immediately due and payable.

5. Defendant is in default of the payment called for in said debenture note and, Plaintiff having given the required notice on or about August 17, 2000, the entire balance is now due and payable.

6. After allowing all payments and offsets thereto, there remains due and payable by Defendant to Plaintiff the sum of Two hundred twenty-three thousand three hundred ninety-four dollars and thirteen cents (\$223,394.13).

7. Plaintiff has heretofore duly demanded from Defendant payment of the entire remaining balance of said debenture note, but Defendant has failed, neglected and refused to pay same and said sum is now due and payable.

WHEREFORE, Plaintiff prays for judgment against Defendant for the sum of Two hundred twenty-three thousand seven hundred fifty-three dollars and nineteen cents (\$223,753.19), together with interest thereon at the highest rate allowed by law from and after the date of said judgment, for its costs herein incurred and expended, and for such other and further relief as this Court deems just and proper in the premises.

**MCDORMAN & HAYDEN, L.L.C.**

By: 

Michael L. McDorman #24447  
119 South Monroe  
Post Office Box 70  
Versailles, MO. 65084  
Telephone: (573) 378-4622

**ATTORNEYS FOR PLAINTIFFS**

\$240,000.00

**OSAGE WATER COMPANY**

Osage Beach, Missouri  
20-Year Debenture Note  
Without Interest  
October 15, 1998

Osage Water Company, A Missouri Corporation, herein called the Corporation, for value received, hereby promises to pay to Hancock Construction Company, or order, the sum of Two Hundred Forty Thousand Dollars (\$240,000.00) as hereinafter provided, without interest.

**PAYMENTS DUE**

The principal hereof shall be payable in equal monthly installments of One Thousand Dollars (\$1,000.00) each, commencing October 15, 1998, at the principal office of the Corporation in Osage Beach, Missouri. The Corporation shall, upon request of the registered holder hereof, mail a check or draft representing such monthly installment to the registered holder hereof at his address appearing on the books of registration.

**PREPAYMENT BY CORPORATION**

The Corporation reserves the right to pay all or any portion of the principal amount of this note, upon any monthly installment date, without prepayment penalty.

**REGISTRATION OF TRANSFERS**

Books for the registry hereof are kept at the office of the Corporation. No transfer hereof shall be valid unless made on the Corporation's books at the office of the Corporation, by the registered holder hereof, in person, or by attorney duly authorized in writing, and similarly noted hereon.

Payment to the registered holder hereof of any principal installment, prepayment, or payment in full shall be a complete discharge of the Corporation's liability with respect to such payment, but the Corporation may, at any time, require the presentation hereof as a condition precedent to such payment.

**ASSIGNMENT OF ACCOUNTS**

The Corporation does hereby collaterally assign its accounts receivable from the following named customers, arising from the sale of water in the ordinary course of its business as a public water utility, to secure its obligation to make payment of the monthly installments due hereunder, to wit:

Miner Mike's Adventure Zone  
Lake Tire  
Great Southern Savings Bank

Great Southern Savings Bank  
Tres Hombres Restaurant  
Holiday Inn Motel  
Ramada Hotel .

In the event of default by the Corporation in the payment of two (2) successive monthly installments due hereunder, and said default has not been cured after written notice of such default of the Corporation at its principal business office, then the registered holder hereof may, at its option, direct the payment by the above named customers of the Corporation of all sums due and payable to the Corporation by said customers to such registered holder. All sums received by the registered holder from said customers shall be applied toward such past due installments of principal.

In the event that the Corporation cures such default by making said past due installments, then the Corporation may direct that said customers shall thereafter make payment of their accounts to the Corporation, subject to the right of the registered holder to collect said accounts in the event of a future default.

#### ACCELERATION

In the event of default in the payment of any principal payment on this note, and said default continues for more than sixty (60) days after written notice thereof by the holder to the Company at its principal office, then the entire unpaid principal amount of this note shall become immediately due and payable.

#### DUE ON SALE OF OSAGE BEACH NORTH ASSETS

In the event of the sale by the Corporation of its water system assets located within its Osage Beach North Service Area, as described in the Water Tariff of the Corporation on file with the Missouri Public Service Commission on the date of issuance of this Debenture, the registered holder hereof, may, at its option, call for immediate payment of the principal balance then remaining hereunder, subject, however, to the limitation that in no event shall the amount paid to the registered holder at such time, when added to the amount paid to David L. Hancock, his successors or assigns, with respect to the preferred stock held by him in the Corporation, exceed Thirty Percent (30%) of the net sale proceeds received by the Corporation from the sale of said water system assets. To the extent that said 30% limitation results in insufficient funds to satisfy both this debenture and to redeem the preferred stock, the funds available shall be applied first toward said preferred stock, and the balance, if any, shall be applied to reduce the number of remaining payments due under said debenture, and in that event, Osage Water Company shall continue to make the monthly payments on said debenture until all remaining payments are paid.

#### LIMITED RECOURSE

No recourse shall be had for payment of any part of the principal of this note against any incorporateor, or against any present or future shareholder of the corporation by virtue of any law, or by enforcement of any assessment, or otherwise, or against any officer or director of the Corporation by reason of any matter prior to the delivery of this note, or against any present or

future officer or director of the Corporation, all such liability being, by the acceptance hereof and as a part of the consideration for the issue hereof, expressly released.

IN WITNESS WHEREOF the Corporation has signed and sealed this debenture note on October 15, 1998.

(SEAL)

Osage Water Company

Gregory D. Williams, President

Gregory D. Williams, Secretary

### REGISTRATION

(NO WRITING ON THIS DEBENTURE NOTE EXCEPT BY AN OFFICER OR AGENT OF THE CORPORATION)

Date of Registration	In Whose Name Registered	Address	Registry Officer
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

### Assignment

For Value Received I hereby assign to \_\_\_\_\_ the within 20 year registered debenture note and hereby irrevocably appoint \_\_\_\_\_ to transfer the debenture note on the books of the Corporation with full power of substitution in the premises.

Dated: \_\_\_\_\_

In the presence of

\_\_\_\_\_  
Signature of Registered Holder

IN THE CIRCUIT COURT OF CAMDEN COUNTY, MISS

HANCOCK CONSTRUCTION CO.,

Plaintiff,

vs.

OSAGE WATER COMPANY,

Defendant.

Case No. CV101-008CC

EXHIBIT

tabbies

4

RECEIVED  
1299-269  
1195-251

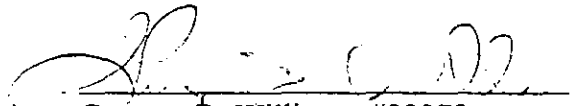
ANSWER

COMES NOW Osage Water Company and for its Answer to Plaintiff's Petition states as follows:

1. Defendant is without knowledge as to the truth or falsity of the allegations of Paragraph 1 of Plaintiff's Petition, and therefore denies each and every allegation contained therein. Defendant affirmatively states that there are multiples entitles registered with the Missouri Secretary of State under the name "Hancock Construction" and that some of said entities are defunct and not in good standing.
2. Defendant admits the allegations of Paragraph 2 of Plaintiff's Petition.
3. Defendant admits the allegations of Paragraph 3 of Plaintiff's Petition, but affirmatively states that said Debenture Note was never approved by the Missouri Public Service Commission as required by Section 393.180, RSMo., and the same is therefore void and without legal effect.
4. Defendant admits the allegations of Paragraph 4 of Plaintiff's Petition, but affirmatively states that said Debenture Note was never approved by the Missouri Public Service Commission as required by Section 393.180, RSMo., and the same is therefore void and without legal effect.

5. Defendant denies the allegations of Paragraph 5 of Plaintiff's Petition.
6. Defendant denies the allegations of Paragraph 6 of Plaintiff's Petition.
7. Defendant admits that it has received demands with respect to the Debenture Note, but denies that Plaintiff or any other person is entitled to such demands.

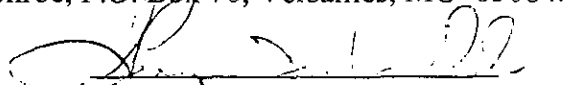
WHEREFORE, having fully answered, Defendant prays for Judgment in its favor and against Plaintiff on the issues raised in Plaintiff's Petition, and for its costs, expenses, and attorney's fees herein incurred.

  
Gregory D. Williams #32272  
Highway 5 at Lake Road 5-32  
P.O. Box 431  
Sunrise Beach, MO 65079  
(573) 374-8761

#### CERTIFICATE OF SERVICE

I, Gregory D. Williams, do hereby certify that a true copy of the foregoing was on this 1st day of February, 2001, mailed, postage prepaid, to the following:

Michael L. McDorman, 119 South Monroe, P.O. Box 70, Versailles, MO 65084.

  
Gregory D. Williams

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, ) Case No. WA-2002-65  
control, manage and maintain a water system for the )  
public located in unincorporated portions of Camden County, )  
Missouri (Golden Glade Subdivision). )



**RESPONSE TO APPLICATION TO INTERVENE OUT OF TIME  
BY HANCOCK CONSTRUCTION COMPANY**

COMES NOW the Applicant Environmental Utilities, LLC in the above captioned matter  
and for its Response to the Application to Intervene Out of Time filed herein by Hancock  
Construction Company states:

1. Hancock Construction Company failed to comply with applicable rules of procedure adopted by the Commission in that it failed to serve a copy of its Application to Intervene whether by mail or otherwise on Environmental Utilities. Environmental Utilities was notified of said Application to Intervene by virtue of the consideration of the same being placed on the Commission's agenda for November 15, 2001.
2. Said Application to Intervene fails to state the proposed Intervenor's interest in the case as required by 4 CSR 240-2.075(1). The Application to Intervene appears to allege that the proposed intervenor has a financial interest in Osage Water Company, which holds a certificate of convenience and necessity near the proposed service area in this case. It does not allege that the proposed intervenor has a financial interest in Osage Water Company, or that it has an interest in the proposed service area in this case, and therefore fails to show that the proposed intervenor has an interest in this case. At most, the Application to Intervene may state that Osage Water Company has an interest in the subject matter of this case, in that it has a certificate of convenience and necessity near the proposed service area, in which event the proposed intervenor's remedy is to request

that Osage Water Company intervene herein. Osage Water Company's potential interest herein does not provide a basis for an interest herein by Hancock Construction Company.

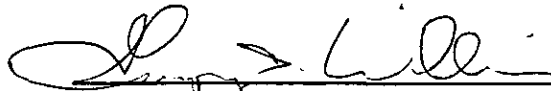
3. The Application to Intervene does not show that Hancock Construction Company has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case, nor does it show how granting the proposed intervention would serve the public interest.
4. The Application to Intervene does not state good cause for the proposed intervenor's failure to timely file its application herein within the time provided by the Commission's Order of August 13, 2001, which established an intervention deadline of September 4, 2001.
5. The Application to Intervene incorrectly states that Pat Mitchell is a principal of Environmental Utilities, when in fact Pat Mitchell does not own an interest herein. As shown by the Application filed herein, Environmental Utilities, L.L.C. is wholly owned by Gregory D. Williams and Debra J. Williams.
6. Extensive discovery has already taken place herein, including a pre-hearing conference, data requests by Staff, data requests by OPC, data requests by Environmental Utilities to Staff and OPC, and the filing of Direct Testimony by Environmental Utilities. Allowing an untimely intervention herein at this point in the case will unduly prejudice Environmental Utilities and the other parties herein in the preparation of this case for hearing.
7. The Application to Intervene incorrectly states that Osage Water Company has a vested interest in providing utility service in areas for which it does not hold a certificate of convenience and necessity from the Commission, and suggests that Osage Water



Company should be allowed to compete with Environmental Utilities in geographical areas near OWC's service areas. As a matter of law, OWC has no vested interest in areas for which it does not hold a certificate of convenience and necessity.

8. The proposed intervenor's remedy arising from the Application filed herein by Environmental Utilities lies with the board of directors of Osage Water Company, and a request that OWC pursue intervention herein, not by direct participation in this proceeding. Hancock Construction Company has no interest in the subject matter of this proceeding.

WHEREFORE, Environmental Utilities, LLC prays for an Order of this Commission denying the Application for Leave to Intervene Out of Time filed herein by Hancock Construction Company.



Gregory D. Williams #32272  
Highway 5 at Lake Road 5-32  
P.O. Box 431  
Sunrise Beach, MO 65079  
(573) 374-8761

#### CERTIFICATE OF SERVICE

I, Gregory D. Williams, do hereby certify that a true copy of the foregoing was on this 16 day of November, 2001, mailed, postage prepaid, to the following:

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

Thomas E. Loraine  
4075 Highway 54, Suite 300  
Osage Beach, MO 65065

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

  
Gregory D. Williams