

**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

**STAFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**COMES NOW** the Staff of the Missouri Public Service Commission, and presents the following Proposed Findings of Fact and Conclusions of Law for consideration by the Missouri Public Service Commission in the resolution of this case.

**PROPOSED FINDINGS OF FACT**

Applicant Environmental Utilities, LLC, filed an Application for a certificate of convenience and necessity to serve the Golden Glade Subdivision in unincorporated portions of Camden County, Missouri. Greg and Debra Williams are the owners of Environmental Utilities. They are also the developers of Golden Glade Subdivision, and as the developers, they can retain total control of the Golden Glade Homeowners Association until all lots in the subdivision are sold, or until 2010.

The Golden Glade Subdivision consists of 50 lots. All of the lots in the subdivision will eventually require water service. The covenants and restrictions of the Golden Glade Homeowners Association require that all residents of the subdivision connect to a central water system. There is presently no central water system available to serve the subdivision.

Homes have already been built on eight of the lots in the subdivision, and each of these homes is now served by an individually owned well. However, there is presently no water service available to the other 42 lots, and there is no central water system. The Missouri Department of Natural Resources believes, and the Commission finds, that it would be better if the subdivision were served from a central water system than through individually owned wells.

Greg and Debra Williams, the owners of the Applicant, own a completed, functional well near the Golden Glade Subdivision. If the Application is approved, Mr. and Mrs. Williams will transfer the well to Applicant, which will provide water to the subdivision, and this water service will be subject to the regulation of the Commission. If the Application is not approved, Mr. and Mrs. Williams will transfer the well to the homeowners association, which will provide water service to the subdivision, but this water service will not be subject to the regulation of the Commission. In either event, Mr. and Mrs. Williams will be the persons who are responsible for the water service that the residents of Golden Glade receive.

There is a need for water service to the subdivision. Regardless of whether this application is approved, the residents of Golden Glade will receive this service indirectly from Mr. and Mrs. Williams. If the application is granted, they will enjoy the additional advantage of receiving these water services from a regulated company.

The Commission finds that there is a need for the service that the Applicant seeks to provide.

The principals of the Applicant, Greg and Debra Williams have been active in the management of another regulated water and sewer company, Osage Water Company, for about ten years. Until July 7, 2001, William P. Mitchell, another principal of the company, was

responsible for the day-to-day management of Osage. On July 7, Debra Williams assumed those duties, and she has been responsible for the day-to-day management since then.

Over the past several years, Osage has experienced problems in the quality of service it provides, in its record keeping, and in its compliance with Commission requirements. Osage's performance in these areas has improved since July 7, 2001. The Commission finds that this improvement is due to the change in the management of Osage. The Commission finds that the principals of Applicant are qualified to manage Applicant in the provision of services to the Golden Glade Subdivision.

At the time the Applicant filed its Application, neither Applicant nor its affiliate, Osage Water Company, employed a certified water plant operator. However, while this case was pending before the Commission, an employee of Osage, who is available to provide services to Applicant, obtained a license as a certified operator, and the Applicant therefore possesses the technical qualifications that are necessary to provide service to the Golden Glade Subdivision.

The Commission finds that the Applicant is qualified to provide water service to Golden Glade Subdivision.

The principal investment that the Applicant will need to make to serve Golden Glade is the purchase of a well. Mr. and Mrs. Williams have already constructed and paid for a well, and if the Application is approved, they will provide the well to Applicant in exchange for equity. Although the Applicant will incur ongoing expenses in operating this well and providing service to Golden Glade, significant additional financing will not be required.

The Commission finds that the Applicant has the financial ability to provide the service.

Osage Water Company, an affiliate of Applicant, holds a certificate of convenience and necessity to provide water service to the Eagle Woods Subdivision, which is adjacent to Golden

Glade. Osage plans to provide water to the residents of the Eagle Woods Subdivision from the well that Mr. and Mrs. Williams own, which the Williamses plan to transfer to the Applicant in exchange for equity, as discussed above. The Applicant proposes to sell water from the Williams Well to Osage, for service to the residents of Eagle Woods.

The Applicant presented to the Commission a feasibility study, for the purpose of showing that its proposal to provide water service to Golden Glade is economically feasible. In this feasibility study, the Applicant assumed that all residents of Golden Glade will connect to the Applicant's system, and that the Applicant will also sell water to Osage for distribution in Eagle Woods. The feasibility study also assumed that Applicant would enter into a cooperative agreement with Osage for the sharing of equipment and personnel, thereby reducing its cost of operations.

The Commission finds that, under Applicant's assumptions, the Applicant's proposal is economically feasible. However the Applicant's proposal is tenuous, and it depends to a significant extent on the accuracy of its assumptions. It is not reasonable to expect that all of Applicant's assumptions will be one hundred percent accurate. It is possible, for example, that Golden Glade will not develop as rapidly as Applicant assumes it will, or that some residents of Golden Glade will not connect to the Applicant's system, even though they may be contractually obligated to connect to a central water system. Although the Applicant may seek to influence such matters, they are not entirely within the control of the Applicant.

It is also clear, however, that if the Applicant does not sell water to Osage, for distribution in Eagle Woods, Applicant's proposal is not economically feasible; in that case the Application should not be approved. The execution of a contract for wholesale service to Osage Water Company is within the control of Applicant. The Commission will require Applicant to

produce an executed contract for wholesale service to Osage Water Company, on terms that are satisfactory to the Commission, as a condition of approving the application for a certificate of convenience and necessity. The contract should also provide for the sharing of equipment and personnel with Osage, as a means of reducing the Applicant's cost of operations.

The Commission finds that the Applicant's proposal is economically feasible, if the Applicant produces an executed contract or contracts for the sale of water to Osage Water Company and for the sharing of equipment and personnel with Osage on terms that are satisfactory to the Commission.

In this case, the Commission has found that there is a need for service, Applicant is qualified to provide the service, Applicant has the financial ability to provide the service, and Applicant's proposal to provide service is economically feasible if certain conditions are met. No party has presented any compelling evidence that granting the application would not be in the public interest.

The Commission finds that granting Applicant a certificate is in the public interest, if the mentioned conditions are met.

If this Application is granted, Mr. and Mrs. Williams will transfer ownership of the well to Applicant, in exchange for equity in the Applicant. The Applicant seeks to include this well in its rate base at an amount equal to the documented cost of construction, which is approximately \$69,160, plus a ten percent "general contractor's fee." The assets of a regulated company are generally included in rate base at their historical cost. Staff witness James M. Russo testified that it would be appropriate to include in the cost of the well the actual expenditures that were incurred for such items as personnel or management costs that were directly related to the construction of the well, if such costs were properly documented. However, the Commission

finds that there has been no such documentation in this case, and that the “general contractor’s fee” amounts to nothing more than an “add-on,” and that it should not be included in Applicant’s rate base.

The Applicant attached to its Application in this case a specimen tariff, including one sheet that called for a flat rate of \$28.61 per month for unmetered customers. The Staff contends that that rate is too high, and should be reduced, but the Company contends that it is reasonable, because it is the same rate as is used for unmetered customers of Applicant’s affiliate, Osage Water Company. It is not necessary in this proceeding to determine whether this tariff sheet, or any of the other tariff sheets attached to the Application, is appropriate or not. This issue can be examined, in detail, if and when tariff sheets with an effective date are actually issued. Applicant presently plans to install meters for all customers, if possible, and the parties agree that meters should be utilized wherever possible. The rate that is eventually approved for unmetered customers should be designed to encourage the Applicant to provide meters and should reflect the fact that a company avoids certain expenses, such as meter-reading costs, when it provides unmetered service.

Intervenor Hancock Construction Company claims that Osage Water Company transferred some equipment, including a Bobcat and a mini-excavator, to Applicant without consideration. Staff witness Russo testified, and the Commission finds, that Osage leased this equipment from a leasing company, which subsequently repossessed it and sold it to Mr. and Mrs. Williams. There was no credible evidence to suggest that this equipment has been improperly transferred from Osage to Applicant.

Hancock Construction also contends that granting a certificate to Applicant will impair the ability of Osage to pay its debts, which include an indenture to Hancock Construction. There

is no credible evidence to support this claim. If the Application is approved, the Commission will carry out its statutory obligation to regulate Applicant and will continue to regulate Osage, and will establish just and reasonable rates for both companies. There is no reason for Intervenor to fear that granting a certificate will impair Osage's ability to pay its debts.

### **PROPOSED CONCLUSIONS OF LAW**

The Missouri Public Service Commission has reached the following conclusions of law:

Environmental Utilities is a public utility and a water corporation subject to the jurisdiction of the Commission under Section 386.250, RSMo, and Section 393.170, RSMo. The Commission has authority pursuant to Section 393.170, RSMo, to grant certificates of convenience and necessity.

In *Re Tartan Energy*, 3 Mo. P.S.C.3d 173, 177 (Sept. 16, 1994), the Commission articulated the legal standard to be met by an applicant for a certificate of convenience and necessity: (1) there must be a need for the service; (2) the applicant must be qualified to provide the service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. See also *Re Intercon Gas, Inc.*, 30 Mo. P.S.C. (N.S.) 55, 73 (November 15, 1985).

The authority for the issuance by the Commission of a certificate of convenience and necessity to provide water and sewer service is contained in Section 393.170, RSMo. Subsection 1 of that statute states in part, that no "... water corporation ... shall begin construction of a ... water system ... without first having obtained the permission and approval of the commission." Subsection 3 of that statute states in part: "The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction ... is necessary or convenient for the public service."

The courts have held that “necessity,” as used in the term “convenience and necessity,” does not mean essential or absolutely indispensable, but rather that an additional service would be an improvement justifying the cost and that the inconvenience to the public occasioned by the lack of a utility is so sufficiently great as to amount to a necessity. See *State ex rel. Public Water Supply District No. 8 v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980); *State ex rel. Intercon Gas v. Public Service Commission*, 848 S.W.2d 593, 597 (Mo. App. W.D. 1993); and *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973).

The Commission has found that Applicant, and its proposal to provide water service to the Golden Glade Subdivision, meet the requirements of the *Tartan Energy* case, provided that the Applicant satisfies the conditions that are described herein, and the Commission concludes that granting the requested certificate is necessary or convenient for the public service, if those conditions are met. The Commission will therefore grant the requested certificate at such time as Applicant produces an executed contract or contracts for the sale of water to Osage Water Company and for the sharing of equipment and personnel with Osage Water Company on terms that are satisfactory to the Commission. The Applicant shall have no authority to serve Golden Glade until the Applicant submits and the Commission, by subsequent order, approves such contracts, thereby removing the conditions that are imposed upon the granting of the certificate.

If and when the Commission finally grants the requested certificate, the Applicant shall submit tariff sheets governing the terms of its service to the Golden Glade Subdivision, for review and approval in accordance with the discussion herein.

**WHEREFORE,** the Staff prays that the Commission adopt the foregoing Proposed Findings of Fact and Conclusions of Law.



Respectfully submitted,

DANA K. JOYCE  
General Counsel

**/s/ Keith R. Krueger**

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record this 2nd day of May 2002.

**/s/ Keith R. Krueger**