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February 11, 2002

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ROBERT SCHALLENBERG
Director, Utility Services
DONNA M. PRENGER
Director, Administration
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Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED
FEB 11 2002
Missouri Public
Service Commission

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 RESPONSE IN OPPOSITION TO HANCOCK CONSTRUCTION COMPANY'S MOTION TO ALLOW SUPPLEMENTAL SURREBUTTAL TESTIMONY AND ADDITONAL REQUEST FOR CONTINUANCE BASED ON EXTRAORDINARY CIRCUMSTANCES.**

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
FEB 11 2002
**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 RESPONSE IN OPPOSITION TO HANCOCK CONSTRUCTION COMPANY'S
MOTION TO ALLOW SUPPLEMENTAL SURREBUTTAL TESTIMONY AND ADDITIONAL
REQUEST FOR CONTINUANCE BASED ON EXTRAORDINARY CIRCUMSTANCES**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and in support of its Response to Hancock Construction Company's ("Hancock Company") Motion To Allow Supplemental Surrebuttal Testimony And Additional Request For Continuance Based On Extraordinary Circumstances, states:

1. On January 7, 2002, the Missouri Public Service Commission (Commission) convened a hearing regarding Environmental Utilities, LLC's application.
2. On November 28, 2001, Osage Water Company ("OWC") filed its Motion For Leave To File Delinquent Annual Report. OWC's motion thus established Case No. WE-2002-240, for OWC to file its Annual Report for the calendar year ending December 31, 1999.
3. The Hancock Company Motion To Allow Supplemental Surrebuttal Testimony And Additional Request For Continuance Based On Extraordinary

Circumstances, and William Cochran's attached Comments, incorrectly state that OWC's Annual Report for 1999 was incorrectly filed under the wrong case number. (Hancock Company Motion, page 2). Therefore, the Hancock Company's assertions to the effect that "[t]he wrongfully filed number did not permit Mr. Cochran to find the annual report which in turn did not permit Intervenor to discover evidence in support of it's position..." (Hancock Company Motion, page 2) are incorrect. Unlike the Hancock Company's assertions that OWC's 1999 Annual Report was unavailable to the Hancock Company until after the hearing in this case, the Annual Report was not only available prior to the hearing, but prior to the due date of the Hancock's Surrebuttal Testimony in this case.

4. The Hancock Company's assertions regarding the Staff's position and the basis for Staff's position are false. The Staff has been aware of the delinquent status of the OWC's Annual Reports since the time they became overdue. The Staff did not need OWC's November 28th filing of OWC's Motion For Leave To File Delinquent Annual Report to be aware of the status of OWC's Annual Reports.

5. In Case No. WE-2002-240, on January 3, 2002, the Staff filed Staff's Request For Enlargement Of Time In Which To File Response. The only error that occurred in WE-2002-240 occurred when the Commission issued its Order granting the Staff's request was issued on January 8, 2002, with the wrong case number. The Commission corrected this error the next day on January 9, 2002, by issuing its Notice Of Correction and its Revised Order Granting Extension Of Time.

6. In as far as the hearing in the above-styled case was convened on January 7, 2002, and the error in the case number of the Commission's Order Granting Extension Of Time in Case No. WE-2002-240 occurred on January 8, 2002 and was corrected on

January 9, 2002, the Hancock Company was not prejudiced or hampered in its search for and presentation of evidence at the hearing of January 7, 2002. Therefore, the error provides no basis for the Commission to grant the Hancock Company's request for a continuance or to file supplemental surrebuttal testimony. Further, the Hancock Company has not shown "extraordinary circumstances" for a prompt decision as it claims is contemplated by 4 CSR 240-2.130(4).

7. 4 CSR 240-2.130(8) provides:

No party shall be permitted to supplement prefiled prepared direct, rebuttal or surrebuttal testimony unless ordered by the presiding officer of the commission. A party shall not be precluded from having a reasonable opportunity to address matters not previously disclosed *which arise at the hearing* (emphasis added).

Any evidence that has arisen as a result of OWC's filings in Case No. WE-2002-240, did not "arise at the hearing" as required by 4 CSR 240-2.130(8). Rather, it arose before the hearing and even before the Hancock Company's surrebuttal testimony was due.

8. The Comments of William Cochran, referring to the Testimony of Staff's Witness, Jim Russo, at page 257, lines 5-8, are incorrect and taken out of context. Mr. Russo's testimony on page 257, lines 5-8 specifically deals with records of Greg and Debra Williams regarding the cost of the Golden Glade well and water system, "[a]t this point in time" (testimony of Jim Russo, page 257, line 4). The well and water system were paid for by Greg and Debra Williams, personally and as such, are not records of OWC, at any time, past or present. The clear and proper context of Mr. Russo's testimony can be referenced from page 256, line 7 to page 257, line 15. Mr. Russo's testimony is further reinforced by his testimony on page 268, lines 7-25, in response to

Judge Woodruff's questions. Therefore, Mr. Cochran's references to the Staff's 'change of mind,' 'lack of knowledge,' 'erroneous belief' and 'ignorance' regarding the status of OWC's delinquent reports of 1999 are incorrect and also in no way support Hancock's assertions of "extraordinary circumstances."

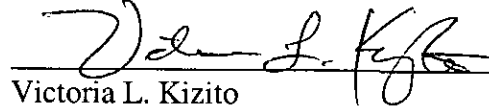
9. The number of false assertions in the Hancock Company's motion and attached Comments, regarding the procedural facts in the cases discussed and regarding Staff's testimony and position demonstrate that the Hancock Company's motion is only designed to harass and vex the parties and delay the proceedings in this case.

10. Allowing the Hancock Company to file supplemental surrebuttal testimony at this time would be disruptive to the established procedural schedule and would further delay the Commission's consideration of Environmental Utilities' application. Were the Commission to grant the Hancock Company's request, all other parties would need the opportunity to file responsive testimony as well and to re-cross-examine the witnesses who have already testified.

WHEREFORE, the Staff respectfully requests the Commission to deny the Hancock Company's Motion To Allow Surrebuttal Testimony And Additional Request For Continuance Based On Extraordinary Circumstances.

Respectfully submitted,

DANA K. JOYCE
General Counsel

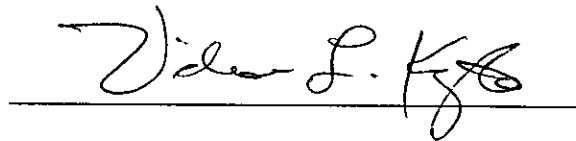


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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 11th day of February 2002.



Service List for

WA-2002-65

Revised: January 25, 2002 (ccl)

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