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December 19, 2001

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

FILED<sup>3</sup>

DEC 19 2001

Re: **Environmental Utilities, LLC**  
**Case No. WA-2002-65**

Missouri Public  
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of **Position Statement of the Office of the Public Counsel**. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

M. Ruth O'Neill  
Assistant Public Counsel

MRO:jb

cc: Counsel of Record

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

**FILED<sup>3</sup>**  
**DEC 19 2001**

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). )

**Missouri Public  
Service Commission**

Case No. WA-2002-65

**POSITION STATEMENT OF THE OFFICE OF THE PUBLIC COUNSEL**

COMES NOW, the Office of the Public Counsel, and respectfully files its Statement of Position on the Issues in the Above-captioned case with the Missouri Public Service Commission.

**1. Is the Applicant qualified to provide public water utility service within the proposed service area?**

Probably. The Applicant's owners also hold an ownership interest in Osage Water Company. Therefore, the Applicant has access to persons with knowledge of the regulatory requirements for operating a public water utility. Applicant has not employed a licensed operator for its system, but has made informal arrangements for the system to be checked by an independent licensed operator. If a licensed operator is hired, or a contract with a licensed operator is entered into, the Applicant meets the minimum qualifications to provide public water utility service.

**2. Is there a public need for public water utility service within the proposed service area?**

The current and potential residents of the Golden Glade subdivision (proposed service area) have a need for water service. That water service is currently being

provided by small wells. However, restrictions in the deeds to lots in the subdivision require residents to connect to a central water system. Therefore, some form of central water system is or will be necessary. The most likely manner in which this system will be provided would be either (1) a system operated by the homeowners' association, (2) a regulated public utility, or (3) a system operated by the developer of the subdivision. The only current directors of the homeowners association are Greg and Debra Williams. Greg and Debra Williams are the developers of the subdivision. Greg and Debra Williams are the owners of Environmental Utilities, LLC.

**3. Is the Applicant's proposal to provide public water utility within the proposed service area economically feasible?**

Public Counsel takes no position on this issue at this time, but reserves the right to do so at a later date. A feasibility study by the Applicant as revised by the Staff indicate that the rates proposed in the tariffs would provide sufficient revenues to operate the system at present.

**4. Is the Applicant financially able to provide the proposed public water utility service?**

Public Counsel takes no position on this issue at this time, but reserves the right to do so at a later date.

**5. Is the granting the certificate of convenience and necessity requested by the Applicant in the public interest?**

Due to a consideration of the current possible alternatives for providing water service in this territory, Public Counsel supports a conditional grant of a certificate of convenience and necessity. The primary reason for this position is that a central water

system is already being built by the developer of the subdivision, who is also the owner of the Applicant. If a certificate is not granted, restrictions in the property deeds will still require homeowners to connect to that central water system. The system will be operated by Greg and Debra Williams, either as developers, the sole directors of the homeowners' association, or as owners of a regulated public utility. (The by-laws of the homeowners association guarantee that Greg Williams will be a director of the association until all lots are sold. Less than half of the lots in the subdivision have been sold to date.) It is in the public interest for the Commission to oversee the operations of this water system under these circumstances.

**6. What is the amount of the investment in the water plant and certificate costs that will be included in the Applicant's rate base if the certificate is granted?**

Only the direct out-of-pocket expenditures associated with the installation of the water supply system should be included. The distribution system is being recorded as contribution in aid of construction. Public Counsel reserves the right to change this position upon receipt of additional information. Public Counsel objects to the inclusion of the 10% general overhead allowance in rate base. Public Counsel does not currently have the necessary information to make a recommendation regarding costs of obtaining the certificate, although would not oppose inclusion of a reasonable amount for legal and other expenses of obtaining the certificate.

**7. If a certificate is granted, should conditions be imposed on the Applicant?**

Yes. The Conditions attached to the rebuttal testimony of Kimberly Bolin, at schedules KKB-2 and KKB-3 should be imposed on the Company. In addition, Public Counsel recommends that the Applicants rates be reviewed approximately 12 months

after Commission approval. Conducting the review at this time will enable the Staff and Public Counsel the opportunity to (1) review historical operating revenues, expenses and rate of return calculations, and (2) assure that appropriate books and records are being maintained by the Company.

**8. Should any of the proposed tariffs filed by the Applicant be withdrawn or modified?**

Yes. Public Counsel objects to Rule 15, 16 and 17. Public Counsel urges the Commission to carefully review all of the Company's proposed tariffs to ensure that rates will be just and reasonable.

#### **INTERVENOR'S PROPOSED ADDITIONAL ISSUES**

The Intervenor in this case, Hancock Construction Company, has raised additional issues which the Commission may wish to consider in determining whether the Applicant has met the criteria for obtaining a certificate of convenience and necessity in this case, and in imposing conditions upon the grant of such a certificate. Within the context of this application for a certificate, Public Counsel has insufficient information to take a position on the following issued proposed by Hancock. Public Counsel does note that, to the extent that Osage Water Company and Environmental Utilities share common ownership, the Commission should make it clear to the Applicant that transactions between these business entities should not unfairly increase customer rates.

**9. Whether there has been a transfer of equipment and systems from Osage Water Company to Environmental Utilities?**

**10. Whether Environmental Utilities and its principals by seeking a**

**Certificate of Convenience and Necessity as requested in its Application will contribute to the non-profitability of Osage Water Company, hereby causing Osage Water Company to be less culpable of paying its valid debts (Hancock Debenture) as authorized in prior rate base cases.**

**11. Whether Osage Water Company as a regulated utility has a public interest that is being harmed by allowing its assets to be used by a competing utility company.**

**12. Whether the customers of Osage Water Company are being properly served by allowing its assets to be used by a competing utility in an adjacent area.**

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: 

M. Ruth O'Neill (#49456)

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 21<sup>st</sup> day of November 2001:

**GENERAL COUNSEL**

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

**GREGORY D. WILLIAMS**

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**MISSOURI DEPARTMENT OF NATURAL RESOURCES**

205 Jefferson Street  
Jefferson City MO 65101

A handwritten signature in cursive script, appearing to read "Gregory D. Williams", written over a horizontal line.