

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

In the Matter of the Cancellation of the Certificate)
of Convenience and Necessity of Envirowater) **File No. SD-2014-_____**
Company, LLC) **Tariff No. YS-2004-1401**

**MOTION TO CANCEL OR DEEM NULL AND VOID CERTIFICATE OF
CONVENIENCE AND NECESSITY AND TARIFF**

COMES NOW Staff of the Missouri Public Service Commission (“Staff”), by and through the undersigned counsel, and moves for the Missouri Public Service Commission (“Commission”) to cancel or deem null and void the Certificate of Convenience and Necessity (“CCN”) of Envirowater Company, LLC (“Envirowater”), and cancel the associated tariff. For its Motion, Staff respectfully states as follows:

1. On February 6, 2004, the Commission granted a CCN to Envirowater to construct and operate a sewer system in an unincorporated area of Lincoln County, Missouri in Case No. SA-2004-0159.

2. On June 30, 2004, the tariff submitted by Envirowater and approved by the Commission, P.S.C. MO #1, Original Sheet No. 1 through Original Sheet No. 19 (Tracking No. YS-2004-1401), became effective.

3. On April 16, 2013, the Commission received Envirowater’s 2012 Annual Report. Attached to the Annual Report was a letter from Patrick Nasi, Manager of Envirowater. The letter stated “[t]here were no customers nor any revenue generated in 2012. A decision has been made to dissolve the company effective December 31, 2012.”

4. Since Mr. Nasi’s letter, Staff conducted a site review of the service area and has had further discussions with Mr. Nasi. The Commission granted a CCN to

Envirowater to provide sewer service to a planned subdivision development. The developer was to construct all wastewater treatment facilities and then contribute the facilities to Envirowater. Staff understands that the developer has ended all development of the subdivision and no homes have been constructed. Because of this, neither the developer nor Envirowater have constructed a complete sewer system. The developer constructed portions of collection lines that run under the streets prior to street construction, but constructed no other portion or components of the collecting sewers or a wastewater treatment facility. Envirowater does not have any customers, does not own, operate, control or manage a sewer system, and is not likely to ever commence sewer service to any customers.

5. Neither Mr. Nasi nor Envirowater have any ownership or investment in the development of the subdivision property or utility systems, nor do they intend to be involved with any future development of the subdivision should it occur. Mr. Nasi understands that if Envirowater intends to offer service to any future development, it would need to seek a new CCN from the Commission prior to the provision of service. As such, Mr. Nasi has requested the cancellation of Envirowater's CCN.

6. Because Envirowater requested cancellation of its CCN and has never provided service in Missouri, Staff recommends the Commission cancel the CCN or deem it null and void. Such decision is not detrimental to the public interest because Envirowater has no utility systems or customers.

7. Section 393.170.3, RSMo (2000) provides that "[u]nless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void." Based on

Staff's investigation and Envirowater's representations, Envirowater never provided service to customers or owned, operated, controlled or managed a sewer system. As such, the Commission should deem the CCN null and void.

8. Should the Commission choose not to deem Envirowater's CCN null and void, it may cancel the CCN instead. Section 393.170.3, RSMo (2000) allows the Commission to grant a CCN "...whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service." Although the Commission's authority to cancel a sewer certificate is not specifically set out in Chapter 393 of the Missouri statutes, the Commission has previously allowed regulated entities to discontinue operations in cases where cancellation was sought by the service providers and also where the service provider had ceased to exist.¹

9. The Commission need not hold a hearing, if, after proper notice and opportunity to intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

10. Envirowater is current on the submission of calendar year annual reports and the payment of fiscal year assessments.

11. Staff is not aware of any other matter before the Commission that a decision in this case will affect, or be affected by.

¹ See *In the Matter of Ozark Shores Water Company's Application for an Order Canceling the Certificate of Public Convenience and Necessity*, Case No. WD-2001-701; See also *In the Matter of the Cancellation of the Certificate of Convenience and Necessity and Tariff of the Lake Hannibal Sewer Corporation*, Case No. SD-2004-0144.

WHEREFORE, Staff files this Motion and requests the Commission cancel or deem null and void the Certificate of Convenience and Necessity of Envirowater Company, LLC, to construct and operate a sewer system in an unincorporated area of Lincoln County, Missouri, and cancel the associated tariff P.S.C. MO #1, Original Sheet No. 1 through Original Sheet No. 19 (Tracking No. YS-2004-1401).

Respectfully submitted,

/s/Jennifer Hernandez

Jennifer Hernandez
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served this **20th day of August 2013** by: United States Postal Mail, postage prepaid, to Envirowater Company, LLC, c/o Patrick Nasi, Manager, 712 Balcarra Drive, Dardenne Prairie, MO 63368; and electronically to the Office of the Public Counsel at opcservice@ded.mo.gov.

/s/Jennifer Hernandez

AFFIDAVIT OF JERRY SCHEIBLE

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

File No. SD-2014-_____

Jerry Scheible, being of lawful age, on his oath states: (1) that he is a member of Staff of the Missouri Public Service Commission; (2) that he participated in the preparation of the foregoing *Motion To Cancel Or Deem Null And Void Certificate Of Convenience And Necessity And Tariff*; (3) that he has knowledge of the matters set forth in the foregoing *Motion*; and (4) that the matters set forth in the foregoing *Motion* are true and correct to the best of his knowledge, information and belief.

Jerry Scheible
Jerry Scheible

Subscribed and sworn to before me this 20th day of August 2013.

Dianna L. Vaught
Notary Public

My Commission expires 6/28/2015

