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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

PREHEARING CONFERENCE

November 26, 2001
Jefferson City, Missouri
Volume 2

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) Case No. WA-2002-65
Located in Unincorporated Portions)
of Camden County, Missouri)
(Golden Glade Subdivision))

BEFORE:

MORRIS L. WOODRUFF, Presiding,
SENIOR REGULATORY LAW JUDGE.

REPORTED BY:

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1 APPEARANCES:
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11 FOR: Hancock Construction Company.
12
13 RUTH O'NEILL, Legal Counsel
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17 FOR: Office of the Public Counsel
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19
20 VICTORIA L. KIZITO, Legal Counsel
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24 FOR: Staff of the Missouri Public Service
25 Commission.

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P R O C E E D I N G S

(Written Entries of Appearance filed.)

JUDGE WOODRUFF: Let's go on the record then.

We're here for a prehearing conference in Case
No. WA-2002-65, which is -- concerns the Application of
Environmental Utilities, LLC, for a Certificate of
Convenience and Necessity to Operate a Water System in
a portion of Camden County, Missouri.

And we will begin today by taking entries of
appearance. And we'll begin by -- or with
Environmental Utilities.

MR. WILLIAMS: Gregory Williams, P. O.
Box 431, Sunrise Beach, Missouri 65079 for the
Applicant, Environmental Utilities, LLC.

JUDGE WOODRUFF: And is anyone here for Staff?

MS. O'NEILL: I believe she's on her way,
Judge.

JUDGE WOODRUFF: Okay.

MS. O'NEILL: I can go next if you want and
see if she gets here by the time we're done.

JUDGE WOODRUFF: Who is --

MS. O'NEILL: Public Counsel.

JUDGE WOODRUFF: No. I'm sorry.

MS. O'NEILL: Oh --

JUDGE WOODRUFF: Who's appearing for Staff?

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1 MS. O'NEILL: It's Victoria Kizito, and she's
2 here. I've talked to her already this morning.

3 JUDGE WOODRUFF: Okay. Well, we'll skip over
4 Staff, then, and go on to Public Counsel?

5 MS. O'NEILL: Okay. Ruth O'Neill for the
6 Office of the Public Counsel, P. O. Box 7800, Jefferson
7 City, Missouri 65102.

8 JUDGE WOODRUFF: Okay.
9 And for Hancock Construction?

10 MR. LORAIN: Yes, Judge, my name the Thomas
11 Loraine. I've provided a copy of my appearance at the
12 judge's desk. I've also give my address and my name is
13 Thomas Loraine. I've given the address and card also
14 to the court reporter.

15 JUDGE WOODRUFF: Thank you.

16 Well, I -- I came in here right at
17 ten o'clock, but we will go off the record for a moment
18 and wait for the Staff attorney to appear.

19 And we're off the record at this time.

20 (A RECESS WAS TAKEN.)

21 JUDGE WOODRUFF: We're back on the record,
22 then. And were off the record for a moment to allow
23 Ms. Kizito to arrive for Staff.

24 And, Ms. Kizito, we went ahead and took
25 entries of appearance from everyone else, so at this

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1 point you can enter your appearance for Staff.

2 MS. KIZITO: Good morning, Your Honor. My

3 name is Victoria Kizito. I'm here on behalf of the

4 Staff of the Public -- or the Staff of the Public

5 Service Commission and also present is -- I'm sorry.

6 I'm not familiar with the names of all the Staff that

7 are present.

8 MR. EAVES: Dana Eaves.

9 MS. KIZITO: Dana Eaves.

10 MR. MEYER: Bill Meyer.

11 MS. KIZITO: Bill Meyer.

12 MR. MERCIEL: Jim Merciel.

13 MS. KIZITO: Jim Merciel.

14 And Jake --

15 MR. HUMMEL: Martin Hummel.

16 MS. KIZITO: Martin Hummel. I'm sorry.

17 JUDGE WOODRUFF: That's quite all right.

18 MS. KIZITO: And our address is Governor

19 Office Building, Suite 800, 200 Madison Street,

20 P. O. Box 360, Jefferson City, missouri 65102.

21 JUDGE WOODRUFF: Okay. Well, and as we

22 indicated previously, we are here for a prehearing

23 conference. The main purpose for you being here today

24 is to discuss possible issues in the case and prepare a

25 list of issues for presentation to the Commission. And

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1 by previous order that was due on December the 12th of
2 this year.

3 And, of course, I'd also like to have you
4 discuss possibility of settlement, if that is
5 reasonable in this case. And I'll let you -- certainly
6 allow you time to do that.

7 While we're on the record, are there any other
8 matters anyone wants to bring up?

9 MR. WILLIAMS: Yes, Your Honor, there are.

10 For the Applicant, Environmental Utilities,
11 with respect to the application to intervene of Hancock
12 Construction in this case, we did not receive a service
13 copy of the same at the time it was filed.

14 As a result of that, we were unable to respond
15 with the 10 days provided by the Commission's rules.
16 We have filed a response that was not within that
17 10-day period.

18 And also we'll be filing shortly a motion to
19 ask the Commission to reconsider its order granting
20 leave to intervene and that our opportunity to respond
21 was not given.

22 Based on that, we do object to the continued
23 participation of Hancock Construction in this
24 proceeding. In addition, I would note for the record
25 that I received by mail the rebuttal testimony both of

1 the Staff and of the Office of Public Counsel, however,
2 I have not received rebuttal testimony from Hancock
3 Construction; and, therefore, it's very difficult, if
4 not impossible, to discuss intelligently the issues
5 that might be raised therein today.

6 JUDGE WOODRUFF: Okay. I believe the order
7 granting the application of Hancock Construction to
8 intervene was issued on the 16th of November, which
9 means the 10 days for reconsideration will be running
10 today.

11 Do you intend to file today?

12 MR. WILLIAMS: Yes.

13 JUDGE WOODRUFF: Okay.

14 Mr. Loraine, do you have any response?

15 MR. LORAIN: I do, Your Honor. I had a
16 discussion with Mr. Williams about his non-receipt
17 of -- of our original application -- or our motion to
18 intervene. And I -- I believe that date was -- that's
19 the document I'm having copied right now that I'll want
20 to mark.

21 But basically that -- the date of that was
22 before the 10 days had expired, apparently. He had
23 received notice of our information sometime prior to
24 the actual expiration of the 10 days and had called me
25 asking me why it was that we did not mail him a copy.

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1 I told him at that time that I would check our
2 records, and I did get back with him with a -- the
3 letter that I am now about to hand the Court.
4 Basically, suffice it to say -- I guess, I can
5 summarize this, but basically we caused a -- because of
6 Greg's phone call, I -- I did ask the girl in my office
7 that was responsible for the mailing of that to check
8 the -- our records, and I sent the following
9 communication, which I am -- am now marking as
10 Exhibit 1 to the Court.

11 (EXHIBIT NOS. 1 AND 2 WERE MARKED FOR
12 IDENTIFICATION.)

13 MR. LORAIN: You've got -- may I approach the
14 Bench?

15 JUDGE WOODRUFF: You may.

16 MR. LORAIN: This is Exhibit 1. At that time
17 the letter -- according to the letter, we faxed the
18 information to him, apologized if, in fact, he had not
19 received it and told him also in that letter that I had
20 checked with the people in my office.

21 And the person responsible for that had, in
22 fact, told me that the copy was mailed to Greg. And
23 that person's name is Joanne Wallace. And I'm now
24 going to hand you -- if I may -- I'd like to approach
25 the Bench again --

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1 JUDGE WOODRUFF: You may approach.

2 MR. LORAIN: -- with Exhibit 2 we're filing
3 today. Exhibit 2 basically is a -- an affidavit
4 supporting the position that I took in the letter that
5 Joanne did, in fact, mail that to Greg.

6 Now, she also states -- if you'll look at
7 Exhibit 2, Judge, she also states in there that she did
8 not mail it to Public Counsel -- well, actually she
9 said she did not mail it anywhere -- to anyone else
10 other than Greg Williams.

11 This lady works on litigation and basically
12 made a copy for -- for Greg only on this particular
13 instance. So -- and at the time -- I was not aware of
14 that, but at the time that I presented Exhibit 1 to
15 Greg, I had told him that if he would -- I could -- I
16 could apologize, but I'm not gonna take the blame for
17 the mail system. I can only do what I can do.

18 Today I'm told by him that he did not receive
19 a copy of the rebuttal that we filed on time and I did
20 send that certified. So I'm in the position now that I
21 will be sending all information to him certified, but I
22 can guarantee the Court that he got a copy.

23 Now, whether that is received as of this
24 moment, I don't know. But we -- we did file -- we had
25 one day to file basically -- or two days to file our

1 rebuttal and we did file it on the -- on the exact date
2 and copies were mailed to the other parties. We
3 dropped off copies in the box for Staff and two copies
4 were sent to Public Counsel.

5 I noted when she came in today, I thought I
6 saw that in her hand. But in any case, Judge, the -- I
7 am not going to call Mr. Williams -- that -- that he's
8 not telling the truth. I -- I assume he is telling the
9 truth and I assumed that on the day in question and
10 offered to do whatever was appropriate procedurally to
11 allow him to have an adequate notice time.

12 I cannot -- I do not know what -- why-- the
13 reason why the -- Hancock Construction Company was
14 allowed in. I can't say with any certainty that --
15 that there would have been a response from Public
16 Counsel negative or -- or from Staff negative. I can't
17 say that one way or the other. I don't know. But they
18 were not given the opportunity. Those two
19 people -- those two groups were not given the
20 opportunity because my office failed to mail -- mail
21 that.

22 I told Mr. Williams in that exhibit that I
23 presented to the Court here that at the time he should
24 prepare whatever document he felt that was necessary to
25 set the -- aside the order allowing us to intervene and

1 so that he could get his response and Staff could get
2 their response and Public Counsel could get their
3 response if necessary, and I offered do that.

4 I don't know what else I can do. I offered to
5 do that on -- November 8th, I think, is the date on
6 that letter there, Judge, so -- pardon me --
7 November 14th.

8 So that the -- the only thing I can say about
9 that is we did what was necessary for him to get the
10 copy, and that was mailed. I have to be able to rely
11 on the people in my office just like -- like this
12 Commission has to be able to rely on people to -- to do
13 things that are appropriate.

14 I have no reason to -- to believe that Joanne
15 Wallace -- she's been a -- a secretary -- a legal
16 secretary for eight years. She's worked for me for
17 three years. And this is the first instance that I've
18 ever had that there was a controversy over a mailing.

19 Nevertheless, my client, Mr. Hancock, has been
20 advised of the situation. Greg has asked me to
21 voluntarily withdraw my application for intervention.
22 I am not going to do that. I am not going to do that
23 because I don't want to prejudice my -- my client's
24 status in this matter.

25 If I do -- I am sympathetic with Mr. Williams

1 from the standpoint that if he did not receive this
2 because of some reason of the mail, I, of course, like
3 anyone else would like to have notice, and I believe
4 it's fundamental to our system.

5 I believe that cases have been reversed
6 where -- where the Commission has failed to allow
7 procedural due process in the past. And I'm suspecting
8 that cases will be -- that will happen in the future.
9 I think the Courts expect us to -- to give those kinds
10 of notices.

11 I gave, to the best of my knowledge, and I --
12 I would swear under oath I ga-- I fulfilled my duties
13 to Mr. Williams to the best of my ability to do so, and
14 instructed my staff to -- to mail it. My staff advises
15 me that they did so mail; however, I did -- I
16 understand from my staff that they did not mail a copy
17 to Public Counsel and they did not mail a copy to the
18 Office of -- of the Staff.

19 However, I know Staff did get a copy because
20 we -- at the time we filed our motion for intervention,
21 we, of course, filed the appropriate numbers and -- but
22 I know legal counsel may not have, Judge.

23 That's the situation that we're in here prior
24 to anything else occurring. And along those lines, I
25 do have some other matters that I would be happy to

1 discuss on -- as -- as to issues, but I -- I agree with
2 Greg -- Greg Williams that this is certainly a No. --
3 No. 1 issue.

4 JUDGE WOODRUFF: Okay.

5 Let me ask Ms. O'Neill: Is it correct, in
6 fact, that Public Counsel did not receive a copy of
7 this application for intervention?

8 MS. O'NEILL: That's correct, Your Honor.

9 JUDGE WOODRUFF: Okay. And I -- I believe
10 this has been a problem in the past at -- at our
11 previous prehearing conference that Public Counsel had
12 not gotten information from Mr. Williams.

13 MS. O'NEILL: And -- and I have gotten
14 information from Mr. Williams since our last meeting --
15 our last conference when he sent it. And I was not
16 aware until just now that Staff had also not received
17 intervention, or maybe I had talked to somebody about
18 it. But I'm not sure that I was aware of that.

19 JUDGE WOODRUFF: Ms. Kizito, what is the
20 situation with Staff's receipt of this document?

21 MS. KIZITO: My recollection is that Staff
22 received the application, but late. It --

23 JUDGE WOODRUFF: Okay. It -- it came through
24 the extra copies, but not -- was not served on; is
25 that -- is that fair?

1 MS. KIZITO: I'm sorry. I have to --

2 MR. LORAIN: I -- that is fair, Judge,
3 because I apparently didn't -- we -- we gave it to
4 the -- through the system, but we did not serve an
5 extra copy.

6 JUDGE WOODRUFF: Okay.

7 MR. LORAIN: I can save her time.

8 That's what Joanne has advised me.

9 JUDGE WOODRUFF: Okay.

10 Mr. Williams, you wanted to add something?

11 MR. WILLIAMS: I -- I do, Your Honor. Thank
12 you.

13 I note that the filing date on the application
14 to intervene is November 1st. The affidavit that's
15 been presented indicates that there was a mailing on
16 November 8th, which is not consistent with the Court
17 rules.

18 In addition, I have prepared and -- and as
19 I've indicated we'll be filing a formal motion
20 requesting permission to set aside its order granting
21 the application to intervene, and have attached thereto
22 a certificate of service, which Mr. Loraine sent me in
23 another case on November 8th with respect to another
24 pleading. And I think his legal secretary is correct
25 that she mailed me something on November 8th; however,

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1 it was not the application to intervene in this case.

2 I first became aware of the application to
3 intervene by -- as a result of an email of the
4 Commission's agenda for the 15th when the matter was
5 taken up for consideration. I -- I became aware of
6 that on the 14th. I contacted Mr. Loraine on that date
7 and he was kind enough, as this letter indicates, to
8 fax me a copy of it.

9 However, obviously, we could not respond
10 within the 10 days provided. We did promptly prepare
11 and file a response; however, I believe the Commission
12 had already acted with respect to the application.

13 Mr. Loraine has apparently offered to agree to
14 set aside the Commission's order and have it
15 reconsidered, and that's exactly what we're asking the
16 Commission to do. And we will file a formal motion to
17 that effect.

18 JUDGE WOODRUFF: Well, there's no motion in
19 front of me at this time, so I'm not gonna -- going to
20 make a ruling on anything.

21 MR. WILLIAMS: Certainly.

22 JUDGE WOODRUFF: The Commission will certainly
23 consider the -- the motion for reconsideration when it
24 is -- when it is filed.

25 Anything else anyone wants to bring up while

1 we're on the record?

2 MR. LORAIN: Yes, Judge.

3 JUDGE WOODRUFF: Mr. Loraine?

4 MR. LORAIN: I would like to also assuming
5 that -- assuming for a moment that the Commission would
6 set aside its order granting us the right to intervene.
7 And assuming for a moment that after Mr. Williams files
8 his -- whatever his position is going to be and -- and
9 assuming Staff likewise and Public Counsel likewise --
10 and assuming further that we still get the right to
11 intervene, I would certainly not like to have to file
12 everything again.

13 So I would like the record to reflect that my
14 application as originally filed would be accepted in a
15 form of ratification, if you will, at the time I --
16 I -- I hope that no one has any objections to that, if
17 that -- if that -- those series of events occur.

18 JUDGE WOODRUFF: Well, at -- at the moment you
19 are, of course, a party in the case.

20 MR. LORAIN: That's true.

21 JUDGE WOODRUFF: And the Commission may or may
22 not decide to reconsider that. That is the matter for
23 the Commission to be settled -- be going on agenda.

24 Beyond that, the Commission will decide on --
25 on whether or not you'll remain as a party.

1 MR. LORAIN: Right. And -- and I'm
2 suggesting that if the -- if the Commission does allow
3 us to -- to -- to intervene, I hope that I don't have
4 to file another application to intervene.
5 I hope that they will take into consideration
6 our previous application --
7 JUDGE WOODRUFF: I don't --
8 MR. LORAIN: -- without refiling.
9 JUDGE WOODRUFF: I don't know of any reason
10 why you would be required to refile at this point.
11 MR. LORAIN: Thank you.
12 JUDGE WOODRUFF: Okay.
13 Any other matters anyone wants to bring up
14 while we're on the record?
15 MR. WILLIAMS: None for the parties -- or
16 company.
17 MS. O'NEILL: No, Your Honor.
18 JUDGE WOODRUFF: All right. At that -- this
19 point, then, we will go off the record, and I'll leave
20 you to your discussions as to issues and possible
21 settlement.
22 Thank you.
23 (A RECESS WAS TAKEN.)
24 JUDGE WOODRUFF: I've asked the clerk to go
25 back -- or the reporter to go back on the record for a

1 moment, because I do have two exhibits in front of me
2 that were presented by Mr. Loraine.

3 They've not been offered into evidence or
4 admitted into evidence and I wanted to make sure.
5 What -- what should I do with these, Mr. Loraine?

6 MR. LORAIN: Well, I'd like to offer them,
7 Judge. I have extra copies for whatever -- whatever
8 purpose the Commission has, but I think that I'd like
9 to offer them in this -- along with this transcript
10 today.

11 JUDGE WOODRUFF: Okay. Exhibits 1 and 2 have
12 been offered into the record today.

13 Anyone object -- any objections to their
14 receipt into the record?

15 MR. WILLIAMS: None for the company.

16 MS. O'NEILL: No.

17 JUDGE WOODRUFF: All right.

18 Exhibits 1 and 2 will be received into the
19 record.

20 (EXHIBIT NOS. 1 AND 2 WERE RECEIVED INTO
21 EVIDENCE.)

22 MR. LORAIN: Thank you, Judge. I appreciate
23 that.

24 JUDGE WOODRUFF: Thank you.

25 And at this point, then, we are off the

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1 record.

2 Thank you.

3 WHEREUPON, the on-the-record portion of the
4 prehearing conference was concluded.)

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EXHIBIT INDEX

MARKED

RECEIVED

Exhibit No. 1
Letter from Mr. Loraine's
office to Gregory Williams

15

25

Exhibit No. 2
Affidavit

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