

**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,)	<u>Case No. WA-2002-65</u>
Manage and Maintain a Water System for the Public)	
Located in Unincorporated Portions of Camden)	
County, Missouri (Golden Glade).)	

**PUBLIC COUNSEL’S BRIEF RE: THE PROPOSED WATER SUPPLY
AGREEMENT BETWEEN ENVIRONMENTAL UTILITIES, LLC,
AND OSAGE WATER COMPANY**

COMES NOW, the Office of the Public Counsel (Public Counsel), and respectfully submits this brief regarding the proposed water supply agreement between the Applicant, Environmental Utilities, LLC, and Osage Water Company (Osage), to the Missouri Public Service Commission (Commission). Public Counsel believes that the initial proposed agreement submitted by the Applicant did not comply with the requirements of the Commission’s condition precedent to receiving a certificate of convenience and necessity. A modified agreement, presented to Public Counsel at the pre-hearing conference on October 9, 2002, and attached to the proposed procedural schedule filed in this case by the Commission Staff (Staff) on October 15, 2002, addresses some concerns regarding the original agreement. However, Public Counsel remains concerned about whether this revised agreement complies with the condition precedent imposed by the Commission in this case. Therefore, Public Counsel opposes the granting of a certificate at this time. In support of this motion, Public Counsel submits the following information.

1. Environmental Utilities, LLC, is a limited liability company formed by Greg and Debra Williams, a married couple, to provide water service to Golden Glade subdivision, one of their real estate developments.

2. Golden Glade subdivision is located next to Eagle Woods subdivision in the area of Route KK in rural Camden County, Missouri. The Eagle Woods subdivision is a service territory of Osage Water Company. Osage Water Company is primarily owned by Greg Williams and William P. Mitchell. Some preferred stock in the company is owned by David Hancock, and other preferred shares are owned by Mr. Williams and Mr. Mitchell, in their own names and/or in the names of closely held corporations controlled by one or the other of the primary shareholders. Only Mr. Williams and Mr. Mitchell own voting (common) stock in Osage. Osage water is currently the respondent in multiple complaints filed with the Commission, including a Staff complaint seeking permission to Petition the Circuit Court for the Appointment of a receiver for Osage Water Company. Until very recently, Debra Williams was the manager of Osage. Currently, she continues to manage Osage via a management services agreement between Osage and Environmental Utilities. Public Counsel was not provided with a rationale for this change in the method of providing management services.

3. Environmental Utilities filed an Application for a Certificate of Convenience and Necessity in this case in August 2001. The applicants indicated that they were seeking a certificate for Golden Glade through Environmental Utilities, in part, because of problems between the principles of

Osage Water, including an allegation that Mr. Mitchell, president of Osage, had effectively abandoned the company.

4. Environmental Utilities proposed to provide water utility service to customers living in the Golden Glade subdivision by means of water pumped from the Golden Glade well. The well sits on property owned by Greg and Debra Williams, and the well is currently owned by Mr. and Mrs. Williams. Mr. and Mrs. Williams have stated to this Commission that, upon the receipt of a certificate of convenience and necessity, they will deed the well to Environmental Utilities. It is unclear whether they also intend to convey the property on which the well is built to Environmental Utilities.

5. The application also states that, when it obtains the well, Environmental Utilities will provide water to Osage Water Company. Osage would then utilize this water source to provide water service to its customers in the Eagle Woods subdivision.

6. During the course of this proceeding, the Staff and Public Counsel evaluated the application. While expressing grave reservations about the wisdom of granting a certificate to Mr. and Mrs. Williams – due to their involvement in Osage Water and their lack of “hands on” experience managing a water utility prior to the purported abandonment of Osage by Mr. Mitchell in July of 2001 – Public Counsel reluctantly asked the Commission to conditionally grant a certificate. Public Counsel took that position because denying the application for a certificate would have resulted in Mr. and Mrs. Williams operating the water system in Golden Glade pursuant to their control of an unregulated homeowners’

association, Public Counsel proposed that the Commission grant a certificate, subject to a number of conditions.

7. Because of the small number of customers in the Golden Glade proposed service territory, the Staff determined that the application only satisfied the economic feasibility concerns set forth in State ex rel. Intercon Gas, Inc. v. Public Service Commission, 848 S.W.2d 593, 597-598 (Mo. App. W.D. 1993), and In the Matter of the Application of Tartan Energy, 3 Mo. P.S.C. 3d 173, 189 (1994), if Environmental Utilities could sell water, on a wholesale basis, to Osage Water, for the purpose of serving Osage customers in the Eagle Woods territory. Public Counsel concurred with that evaluation.

8. On June 27, 2002, the Commission issued its Report and Order in this case. In that Report and Order, the Commission granted a conditional certificate to Environmental. The primary condition precedent with which Environmental must still comply was that “[t]he Commission will require Environmental Utilities to establish arrangements to sell wholesale water to Osage Water Company for the use of Osage Water’s customers in the Eagle Woods subdivision before granting a certificate.” (Report and Order of June 27, 2002.)

9. The first “water supply agreement” submitted by Environmental Utilities to the Commission pursuant to this order did not comply with the condition precedent set out by the Commission in a number of respects. However, the Staff, at the time of the filing of the proposed procedural schedule, also filed with the Commission a copy of a revised agreement, signed by Debra

Williams on behalf of Environmental Utilities and Williams P. Mitchell on behalf of Osage Water. This revised agreement does relieve Public Counsel of a number of concerns which it had regarding the first agreement, namely, that the terms of the agreement are no longer “at will” and the agreement now provides for the “successors and assigns” of the parties to enforce the agreement. These changes do much to alleviate Public Counsel’s concerns.

10. In one important respect, however, the agreement still does not comply with the Commission’s order. The Commission ordered Environmental to enter into a “wholesale” water contract with Osage Water Company. The proposed contract is a “retail” water contract, which represents an imprudent business decision by Osage Water. Only some of the residents of Eagle Woods have water meters installed and operating. Therefore, some residents of Eagle Woods are presumably still receiving a minimum bill for water service. Public Counsel is still concerned about the water supply agreement’s provisions for shutting off water to the subdivision if Osage does not timely pay the water bill to Environmental. The current business relationship between Eagle Woods and Osage is that Environmental collects all of Osage’s revenues under the management agreement, and pays all of Osage Water’s bills. If a new arrangement for selling water from the Golden Glade well arose, which was more financially advantageous to Environmental, Public Counsel is worried that the water bill will not be paid, and Environmental will shut off water to Eagle Woods customers. Public Counsel also believes that Osage may not be able to bill its customers enough to cover the cost for the water being pumped to Eagle Woods

if meters are not installed and read. Until these problems are addressed, Public Counsel believes the Commission should not approve this agreement.

WHEREFORE, it is respectfully submitted that the Commission should direct Environmental Utilities to conduct further negotiations regarding the wholesale water supply agreement that it was ordered to enter into before a certificate issues in this case.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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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 4th day of November 2002:

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