

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 11th day of
April, 2006.

In the Matter of the Release of Staff's Audit Report)	
Regarding Environmental Utilities, L.L.C., and)	<u>Case No. WO-2006-0361</u>
Osage Water Company)	

**ORDER REGARDING THE RELEASE TO THE PUBLIC OF STAFF'S
AUDIT REPORT**

Issue Date: April 11, 2006

Effective Date: April 21, 2006

In December 2005, and January 2006, the Commission's Staff conducted a limited audit of Environmental Utilities and Osage Water Company regarding the payment, or nonpayment, by Osage Water of money due to Environmental Utilities for delivery of wholesale water supplies. On March 10, Staff notified Environmental Utilities that it intended to release its report regarding that audit to the public unless Environmental Utilities objected in writing by March 15. On March 13, Environmental Utilities notified Staff that it did object to the release of the report. Osage Water is now under the control of a court-appointed receiver and does not object to the release of the report. On March 17, Staff filed a Motion to Open Docket and Require Environmental Utilities, L.L.C. to Show Cause Why Staff's Audit Report Should not be Made Public.

The Commission directed Environmental Utilities to respond to Staff's motion and it did so in a pleading filed April 3. Environmental Utilities confirmed that it does object to the public disclosure of the audit report, and cites four arguments against disclosing the report.

First, Environmental Utilities argues that the Staff's audit concerns a matter that is subject to res judicata. Staff's audit arose as a result of a dispute between Environmental Utilities and Osage Water Company regarding nonpayment of a bill for wholesale water supplied by Environmental Utilities to Osage Water for retail sale to Osage Water's customers in the Eagle Woods subdivision. In December 2005, Environmental Utilities sent a disconnection notice to Osage Water's customers threatening to shut off the water supply for that subdivision unless Osage Water paid several months of past-due bills for that water supply. The Commission and Osage Water sued Environmental Utilities regarding those bills in the Circuit Court of Camden County. On February 14, 2006, Osage Water confessed to a judgment in favor of Environmental Utilities in the amount of \$5,065.54 for payment of the past-due water bills. Environmental Utilities contends that the judgment in its favor in the Circuit Court precludes Staff from making a contrary finding in its audit report.

Environmental Utilities' res judicata argument is not well founded. Staff's audit report is not an official report and order of the Commission. Rather, it merely details a finding and argument by the Commission's Staff. If res judicata did apply in this situation, it could only apply to preclude an inconsistent decision by the Commission. Since the Commission has not made any ruling regarding whether Osage Water owes money to Environmental Utilities, and has not been asked to do so, questions of res judicata are inapplicable.

Environmental Utilities' second argument against the public release of the audit report contends that the report includes detailed accounting information regarding payments made by Environmental Utilities to its vendors and suppliers. Environmental

Utilities argues that such information is privileged business information that should not be released to the public.

Section 386.480, RSMo 2000, provides that information furnished to the Commission by a public utility is not to be open to the public except as ordered by the Commission. The text of Staff's audit report does not reveal any confidential business information belonging to Environmental Utilities. But the first page of the attachment to Staff's audit report includes a chart showing a cash flow analysis for Environmental Utilities for the period of January 1, 2005, through September 30, 2005. Staff has not shown any reason why that information should be made available to the public, and the Commission will order that chart to be redacted from any version of the audit report that may be released to the public.

Staff also attached a cash flow analysis chart regarding Osage Water to its audit report. That chart reveals payments made by Environmental Utilities on behalf of Osage Water while Environmental Utilities was operating Osage Water pursuant to an operation and maintenance agreement. That information belongs to Osage Water, not Environmental Utilities. Osage Water does not object to the release of that information and Environmental Utilities has no standing to object to the release of information belonging to Osage Water. Therefore, information regarding payments made on behalf of Osage Water does not need to be redacted from any version of the audit report that may be released to the public.

Environmental Utilities' third argument against the public release of the audit report contends that Section 386.420.2, RSMo 2000, requires the Commission to conduct a hearing before issuing a report regarding the results of an investigation. No hearing has been held regarding Staff's audit investigation and Environmental Utilities argues that the report cannot be released to the public in the absence of such a hearing.

Environmental Utilities has found a requirement in Section 386.420.2 that does not exist. The applicable portion of that statute provides as follows:

Whenever an investigation shall be made by the commission, it shall be its duty, to make a report in writing in respect thereto, which shall state the conclusions of the commission, together with its decision, order or requirement in the premises.

The statute simply does not require a hearing before the Commission can issue and release an investigative report. In any event, as previously indicated, the audit report that Staff wants to release to the public is not an official report and order of this Commission. As Environmental Utilities points out in its argument, the audit report merely voices the findings and conclusions of the Commission's Staff. In essence, it is no different than any other pleading or brief prepared or filed by Staff. There is no need for the Commission to conduct a hearing before Staff releases that report to the public.

Environmental Utilities' fourth, and final, argument against the public release of the audit report is that Staff's report is "erroneous, opinionated, and libelous." Environmental Utilities threatens that publication of the report by the Commission will "constitute actionable libel against this Commission for its wrongful and harmful actions towards Environmental Utilities." In particular, Environmental Utilities argues that Staff's conclusion regarding the availability of funds to pay Osage Water's bill to Environmental Utilities is incorrect.

Staff's audit report merely represents the views of Staff, and the Commission cannot make any findings about the accuracy of Staff's conclusions. However, the accuracy or inaccuracy of Staff's audit report is not relevant to the question of whether Staff may release that report to the public.

After considering the arguments of the parties, the Commission concludes that, except for the chart showing a cash flow analysis of Environmental Utilities, Staff's audit report may be released to the public.

IT IS ORDERED THAT:

1. The Commission's Staff may release its Findings Concerning Provision of Service to Eagle Woods Subdivision to the public provided, however, that before releasing such report to the public, Staff shall redact the first page of the attachment to that report, which contains a Cash Flow Analysis for Environmental Utilities, L.L.C. for the period January 1, 2005 to September 30, 2005.

2. This order shall become effective on April 21, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur

Woodruff, Senior Regulatory Law Judge