

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

FILED⁴

JAN 13 2005

**Missouri Public
Service Commission**

*IN THE MATTER OF THE JOINT APPLICATION OF)
MISSOURI-AMERICAN WATER COMPANY AND BOTH)
OSAGE WATER COMPANY AND ENVIRONMENTAL)
UTILITIES, L.L.C., FOR AUTHORITY FOR MISSOURI-)
AMERICAN WATER COMPANY TO ACQUIRE THE)
WATER AND SEWER ASSETS OF BOTH ENTITIES, AND)
FR TRANSFER TO MISSOURI-AMERICAN WATER)
COMPANY OF CERTIFICATES OF CONVENIENCE)
AND NECESSITY TO CONTINUE OPERATION OF SUCH)
ASSETS AS WATER AND SEWER CORPORATIONS)
REGULATED BY THE MISSOURI PUBLIC SERVICE)
COMMISSION)*

) Case No. WO-2005-0086

BRIEF OF INTERVENER, HANCOCK
ON LEGAL ISSUES FOR PRETRIAL

The Intervener, Hancock Construction Company, submits the following on the legal issues to which the PSC requests argument for January 13, 2005.

Issue 1: Authority of PSC to Distribute Proceeds:

The Intervener believes that the PSC has the authority to approve a recommendation of its staff. However if that recommendation is based on misinformation, e.g. information supplied by an applicant mis stating the amount of a judgment indebtedness of an Intervener, logically, the PSC should required that the rate base be founded on correct information. The determination of an interest of a creditor is not the issue, as the interest was determined as this intervener by a judgment pursuant to Missouri law in September of 2003. The judgment constitutes a lien on certain property of the judgment creditor as a matter of law. The case cited by Williams has nothing to do with a judgment creditor whose interest has been established. Can then the PSC defeat that interest by approving application? Not under Section 393.190 as it does not relate to judgments. Nothing prevents a judgment and a judgment lien, which are products of judicial proceedings. And there appears to be no authority in the PSC to extinguish such debts through a change of ownership. The recommendations of the Staff appear calculated to meet the legal requirements to at least address debtors by way of distributions of proceeds from the sale of assets based on approval of the contract between the joint applicants. In considering the proposed distribution the owners of the assets profit personally to the detriment of the creditors.

Mo Am Water Company and the owners of the assets have agreed on how much Hancock should get and be happy with. The Staff agrees to the distribution under the contract which is the subject of a protective order. So only Mo Am and the owners know how they arrived at the figures. In the next breath Mr. Williams says the PSC cannot determine the interest of Hancock. However the PSC can determine the adequacy of the rate base or purchase price and can approve the recommendations of the Staff. So the PSC can examine how we have reached those points and enter orders accordingly.

The public interest includes broadly how proceeds are distributed. Directly or indirectly the PSC should not allow certificated companies to circumvent debts and profit to the detriment of the judgment creditors or any creditors by selling out to such good companies as Mo Am. Apparently Mo Am is attempting to get the creditors paid. Mo Am should be protected by a proper rate and the rate base should be sufficient.

We do not address other issues at this time but reserve the right to file responsive reply briefs if necessary to the above and any other issue.

RESPECTFULLY SUBMITTED



Terry C. Allen, Bar No 19894
Allen Law Offices, LLC
314 Monroe, P.O. Box 1702
Jefferson City, Missouri 65102
FAX 573 636 9667
Tele 573 636 9667
E-mail tallen@allenholdenlaw.com

ATTORNEY FOR HANCOCK CONSTRUCTION COMPANY

CERTIFICATE OF SERVICE

The foregoing with attachment was handed to the those listed below on this the 13 day of January, 2005 first class mail postage prepaid.

Public Counsel
P.O. 2230
Jefferson City, Mo. 65102

Tim Duggan
P.O. Box 899
Jefferson City, Mo 65102

Dean Cooper
312 East Capitol Avenue
P.O. Box 456

Dana Joyce
Cliff Snodgrass
P.O. Box 360

Jefferson City, Mo. 65102

Jefferson City, Mo. 65102

Gregory Williams
P.O. Box 431
Sunrise Beach, Mo. 65079

Mark Comley
P.O. Box 537
Jefferson City, Mo. 65102

Secretary of the Public Service Commission
P.O. Box 360
Jefferson City, Mo. 65102