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Witness Name: James A. Merciel, Jr.
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Sponsoring Party: MoPSC Staff
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MISSOURI PUBLIC SERVICE COMMISSION

UTILITY OPERATIONS DIVISION

WATER & SEWER DEPARTMENT

REBUTTAL TESTIMONY

OF

JAMES A. MERCIEL, JR.

CASE NO. WA-2002-65

ENVIRONMENTAL UTILITIES, LLC

**Jefferson City, Missouri
November 21, 2001**

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TESTIMONY OF JAMES A. MERCIEL, JR.**

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1 **REBUTTAL TESTIMONY**
2 **OF**
3 **JAMES A. MERCIEL, JR.**
4 **Case No. WA-2002-65**
5 **Environmental Utilities, LLC**

6
7 **INTRODUCTION**

8 Q. Please state your name and business address.

9 A. James A. Merciel, Jr., P. O. Box 360, Jefferson City, Missouri, 65102.

10 Q. By whom are you employed and in what capacity?

11 A. I am employed by the Missouri Public Service Commission
12 ("Commission") as a Utility Regulatory Engineering Supervisor, in the Water and Sewer
13 Department ("W/S Department").

14 Q. Please describe your education and work experience.

15 A. I graduated from the University of Missouri at Rolla in 1976 with a
16 Bachelor of Science degree in Civil Engineering. I am a Registered Professional
17 Engineer in the State of Missouri. I worked for a construction company in 1976 as an
18 engineer and surveyor, and have worked for the Commission in the W/S Department
19 since 1977.

20 **PURPOSE OF TESTIMONY**

21 Q. What is the purpose of your rebuttal testimony?

22 A. The purpose of this rebuttal testimony is to respond to the application filed
23 by Environmental Utilities, LLC (EU), and direct testimony filed by Debra J. Williams.

1 Specifically, I will discuss viability of the water utility operation. Viability may be broken
2 down to three terms that were created by the United States Environmental Protection
3 Agency in its Safe Drinking Water regulations, and have been adopted by state drinking
4 water agencies such as the Missouri Department of Natural Resources – Public
5 Drinking Water Program. Those terms are Technical, Managerial, and Financial
6 capacity. I will also discuss the Staff's position on the tariff proposed by EU as a part of
7 its application.

8 **VIABILITY**

9 Q. Do you believe that EU is proposing a water utility that will be viable?

10 A. No. I have concerns regarding the viability of this company in regard to
11 the requested service area.

12 Q. What are your concerns?

13 A. From the technical standpoint, EU has not yet shown that it has the
14 capacity to construct and operate a central water system in full compliance with
15 regulations, mainly involving utilization of a licensed operator. Martin Hummel of the
16 Commission Staff will be addressing utility operations, and compliance with DNR
17 regulations.

18 From the management standpoint, I believe EU has managers who can handle
19 most situations, but there may be shortcomings regarding negotiations with developers,
20 and construction planning.

21 From the financial standpoint, there are concerns about adequate capital
22 resources, which will be addressed by James Russo of the Commission Staff. Also, I

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1 think there is a good chance that EU will not develop as the feasibility study predicts. If
2 it does not, then there could be financial problems due to day-to-day cash flow.

3 Q. Would you please describe your concerns in detail?

4 A. One concern I have is that this company's success in the proposed
5 service area is dependent upon customers in Golden Glade actually becoming retail
6 customers of EU, upon residents of adjacent Eagle Woods subdivision becoming
7 customers of Osage Water Company (OWC, ref. Case No. WA-99-437), and upon
8 OWC becoming a wholesale customer of EU in order that it may to provide service to
9 potential customers in Eagle Woods. In fact, however, current residents in both of these
10 subdivisions have water service of a sort through several wells apparently drilled by
11 homebuilders or developers, because no central water systems were in place when the
12 homes were ready for occupancy. This is an example of poor planning by
13 management, in my opinion. Normally, the central water system would be operational,
14 along with appropriate governmental approvals, before residents construct and move
15 into new homes. Based on my experience, at this point I would not count on all
16 customers willingly connecting to the central water system since they already have
17 water. This could result in lack of adequate day-to-day revenue.

18 Q. Are there subdivision restrictions in place requiring a central water
19 system?

20 A. Yes. However, waivers were apparently granted for individual or shared
21 wells to be constructed perhaps as a temporary measure. From a practical standpoint,
22 since water service other than that proposed by EU and what was proposed by OWC in

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1 Case No. WA-99-437 already exists, it may take legal action by somebody to force
2 residents to become customers. This could be costly, and could be perceived by
3 potential customers as being "heavy-handed" if those customers are not fully aware of
4 the subdivision requirements.

5 Q. Are there any requirements other than subdivision restrictions that require
6 residents to connect to a central water system?

7 A. I am not aware of any other state or local requirements. EU stated in its
8 feasibility study that the Missouri Department of Natural Resources (DNR) would require
9 connections, although in my opinion applicable DNR regulations would not actually
10 accomplish this. Interpretation of and the intent of the DNR regulations, specifically 10
11 CSR 60-3 (6) (A) 3., could be debatable as to whether it is applicable to EU's proposed
12 system. But even if the intent of the regulations is to prevent wells other than those
13 used for central water systems to be drilled, then the purpose of the regulation has been
14 defeated, since other wells have indeed already been constructed and are in use.
15 Regardless of interpretation of the regulations, DNR's Public Drinking Water Program
16 enforcement section does not force residential customers to connect to central water
17 systems.

18 Q. Do you have other concerns regarding the management matter?

19 A. Yes. OWC does not have a good track record regarding dealing with
20 developers, nor with keeping up with regulatory requirements. These issues with OWC
21 also involve an owner of EU. Besides the current situation already described pertaining
22 to both Eagle Woods and Golden Glade residents pre-dating the central water systems,

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1 OWC has entered into numerous agreements with various developers and subdivision
2 homeowners, both inside and outside its authorized service area, that have resulted in
3 failure. Although the owners of EU are also the developers of Golden Glade, the
4 subdivision within the proposed service area, EU and/or OWC to the best of my
5 knowledge still needs to work with the developer of Eagle Woods subdivision regarding
6 system ownership. In the future EU will need to work with other customers and/or
7 developers in the surrounding area if its long range plans include further expansion.
8 Detrimental issues continuing between OWC and the developer of Eagle Woods, or
9 between EU and other parties, which result in an inadequate number of customers, then
10 EU could be the owner of a non-viable small water system.

11 Additionally, OWC for many years has had problems with PSC assessments and
12 annual reports. OWC recently has experienced changes in its day-to-day management,
13 which appears to be an improvement. In fact, OWC has been making payments on
14 past due annual assessments. OWC seems to say that it lacks funds to complete
15 annual reports. However, annual reports for small companies have been simplified so
16 that in many cases the owners of utility companies are capable of completing them
17 without outside consultation.

18 Q. If EU does develop as predicted, with an adequate number of customers
19 in both Golden Glade and Eagle Woods subdivisions, then would EU have a viable
20 water utility?

21 A. Yes, I believe that if the customer base does develop, then EU would be a
22 viable operation, with an adequate revenue level as provided by the proposed rates.

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1 The proposed metered rates are identical to the currently approved metered rates for
2 OWC. The proposed flat rate, which may or may not apply to some customers in the
3 future, is too high in my opinion. In addition to issues discussed above, viability of EU is
4 also dependent upon sharing resources with OWC. Estimated costs were allocated in
5 the feasibility study based on projected customers. Better allocations could be made in
6 future rate cases and cost of service studies. Based on estimated expenses and
7 allocations, and if average monthly water use of 5,000 gallons is assumed, then the
8 metered rates as proposed are appropriate. I have attached to this testimony as
9 Schedule 1 my revision of EU's feasibility study.

10 Q. Do you believe there is a public need for water service in the proposed
11 service area?

12 A. If this case would have been presented prior to any construction taking
13 place in Golden Glade, my answer would have been yes, there is a public need for a
14 central water system. Still, today, a viable central water system such as that proposed
15 by EU is desirable. However, since construction of homes has taken place, and along
16 with them alternative water supplies, viability of a central system is more difficult to
17 accomplish, as discussed herein.

18 Q. If the Commission does not grant a certificate of convenience and
19 necessity to EU, what alternatives could be utilized for water service to residents?

20 A. Possible alternatives to a central water system owned by EU include:

- 21 1. A central system owned and operated by the homeowners of Golden Glade.

22 This would likely hinder expansion into neighboring areas, and using the central

1 system for service to OWC customers in Eagle Woods, as was originally
2 planned, might be more difficult.

3 2. Some or all residents in Golden Glade using individual or shared wells, as
4 existing residents are doing now. Although some residents may be happy with
5 this arrangement, especially those who have had to spend money to maintain the
6 wells, the disadvantage is a lack of organization between residents in equitably
7 sharing the costs of maintaining the wells. This disadvantage could be resolved
8 if the homeowners association assumed some responsibility. There could also
9 be a minor issue for the developer involving a subdivision restriction requiring a
10 central system.

11 3. Since Eagle Woods was intended to be connected to the system as proposed by
12 EU, though the original plan was for OWC to be the water utility serving both
13 Eagle Woods and Golden Glade, the alternative of continued use of existing
14 wells in Eagle Woods might need to be utilized, either under individual
15 ownership, ownership of a homeowners association, or ownership of OWC.

16 **TARIFF**

17 Q. Do you have issues regarding the tariff as proposed by EU?

18 A. Yes. I have an issue with the flat rate, and with some of the proposed
19 rules. Although most of the proposed tariff is similar to the Water and Sewer
20 Department's example tariff for water utilities, some rules were created uniquely for EU,
21 and may need further improvement. Some rules, though somewhat "standard" for water
22 utilities, should be modified to better address situations with customers who are owners

1 of condominium units. Modifications to these rules likely will involve the creation of
2 additional service charges for meter installations under various circumstances. In the
3 event that the Commission grants a certificate of convenience and necessity to EU, then
4 all of the tariff matters may be able to be worked out informally between the Staff, the
5 Office of the Public Counsel, and EU. My specific comments are as follows:

- 6 1. **Sheet 4**, flat rate expressed as "monthly minimum" should not be there.
7 Availability of a flat rate should be defined to include only pre-existing subdivision
8 or condominium residential developments acquired by EU where immediate
9 meter installation is not practical. Not intended to allow new developments with
10 inadequate metering. Also flat rate amount is too high. Needs to include a
11 reasonable amount of water, and exclude meter and meter reading costs.
12
- 13 2. **Sheet No. 5**, re-define construction inspection charge and service connection
14 installation charge, and justify the amounts. These charges are for the pipeline
15 connected to the company-owned water main and ending approximately at the
16 street curb (lot line) where a meter is set, or a valve is set in the case of inside
17 meter(s). This connection serves a single customer, or serves a multiple unit
18 building where outside facilities are owned by one owner or a condo association.
19 Need language to allow for extra costs associated with commercial/larger service
20 lines as necessary.
21
- 22 3. Subdivide New Inside Meter Installation charges for varying circumstances
23 including placing meter (both with and without remote capability) in an existing
24 adequate setting; installation of shutoff valve; modification of plumbing to accept
25 shutoff valve or meter installation, installation of remote read unit, installation of
26 remote reader wiring. Each charge to be justified. The reason for subdividing
27 into various charges is to encourage customers/developers to adequately

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1 construct plumbing facilities to conform with company's meter installation
2 requirements.

- 3
- 4 4. Disconnect and reconnect charge with backhoe needs to be justified (Osage
5 Water Company charge is \$400 instead of proposed \$600) and applicability
6 needs to be defined (for customers with no meter or inside meter with no
7 accessible valve. May need two charges – one for installation of a valve, and
8 one for installation of meter setting and meter.
- 9
- 10 5. **Sheets 6 and 7**, re-define "meter setting," "service connection," and "unit," and
11 "water service line;" not to change the basic concepts, but to incorporate
12 individually metered multi-unit building developments.
- 13
- 14 6. **Sheet 11 Rule 5b** rewrite and/or create a new paragraph to address individually
15 metered multi-unit building developments.
- 16
- 17 7. **Sheets 22 and 23, Rules 11d, 11f, and 11j** need to be modified to include multi-
18 unit buildings or perhaps specifically condominium buildings. Modify **Rule 11i** to
19 apply to inside meter locations rather than limiting to basements.
- 20
- 21 8. **Sheet 23**-- revise meter rules to include condominiums
- 22
- 23 9. **Sheets 26 and 27** -- delete tax impact for main extensions (still applies to service
24 line contributions)
- 25
- 26 10. **Sheet 29 Rule 15b** delete tax impact; **rule 15d**, justify refunds for plant
27 expansion formula – basis not clear to me.
- 28

1 11. **Sheet 31 Rule 16**, the basic concept may be ok, but language may need to
2 include a provision for company participation for cases where an expanded
3 service area encompasses more than what a developer is requesting. Also
4 address how to handle this if requested new area is for multiple developers, and
5 then one bows out after expenses are incurred.

6
7 12. **Sheet 32 Rule 17f** – Need to think about this from a ratemaking standpoint.
8 Maybe a fire protection rate is needed, or maybe a different rate if fire protection
9 is available. I am not convinced it would be proper in all cases to make a
10 particular developer or customer pay for fire protection upgrade when other
11 customers also benefit.

12
13 **RECOMENDATION**

14 Q. Do you recommend that the Commission grant a certificate of public
15 convenience and necessity to EU in this case?

16 A. At this time, I am not prepared to recommend a certificate be granted, due
17 to issues as discussed herein as well as in rebuttal testimony of other staff members.
18 EU might be able to resolve some of the issues, but some of them have been
19 developed over many years by EU's owners in the context of operating OWC.

20 **SUMMARY**

21 Q. Would you please summarize your testimony?

22 A. Yes. I am not prepared to recommend a certificate be granted to EU at
23 this time. If certain issues could adequately be addressed then I would be in a position
24 to recommend such a certificate. Those issues include various technical, managerial,

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1 and financial matters as identified herein, and viability that would only result if residents
2 of Golden Glade actually connect to EU's proposed central water system, and residents
3 of Eagle Woods actually becoming customers of OWC along with a wholesale
4 connection to EU's proposed water system. If the Commission does grant a certificate
5 to EU, then various tariff matters need to be addressed, which I believe could be
6 accomplished between the involved parties. Except for the proposed flat rate, the
7 proposed metered rates, which are identical to OWC's approved rates, are adequate.

8 **CONCLUSION**

9 Q. Does this conclude your pre-filed rebuttal testimony?

10 A. Yes.

Rate design for 100 customers

Plant initially adequate for		100 customers			
Well	\$ 60,000	40 year depreciation	requested rates	\$ 16.36	min 2000 gal
Meters	\$ 500 each	10 year depreciation		\$ 3.8701	per 1000
Organization	\$ 3,500	10 year depreciation			
Golden Glade	16 initial customers				
Eagle woods	25 initial customers - wholesale 2" meter	8 meter equiv	\$ 123.14	customer charge	
Water usage	5,000 gallons/month/customer	Ave Water Bill	\$ 27.97		

customers and rate base allocation

capital investment allocations

Well -- (allocated for EU and OWC retail customers connected)
Meters -- (allocated on golden glade customers only)
Organization/Certificate

	2002		2004		2006
41	24,600	60	36,000	80	48,000
16	8,000	31	15,500	46	23,000
	1,435		2,100		2,800

Allocated rate base

	\$ 34,035	\$ 53,600	\$ 73,800
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Projected Revenue

Monthly Water Service - golden glade	447.52	867.08	1,286.63
Wholesale connection monthly --eagle woods	606.90	684.30	781.06
Annual Water Service revenue	\$ 12,653.13	\$ 18,616.60	\$ 24,812.29

Water Operating Expenses

Electricity	\$0.20/1000 gallons		492		720		960
Operation & Maintenance	\$200/month		2,400		2,400		2,400
Repairs	Estimate		0		1,000		3,000
MDNR Fees	Estimate		100		100		100
PSC Assessment	Estimate		190		279		372
Depreciation			1,559		2,660		3,780
Gen. Overhead include 1/2 of eagle woods customers	Assume 20K total	7%	1,330	10%	2,043	14%	2,721
Insurance	MOPERM		100		100		100
Office Staff based on Golden glade	18,000.00	4%	692	7%	1,295	10%	1,857
Management Staff based on Golden Glade	36,000.00	2%	692	4%	1,295	5%	1,857
Billing	Postage \$35		67		130		193
Return on Capital @ 12%	12%		4,084		6,432		8,856
Total Water Operating Expenses			\$ 11,706		\$ 18,454		\$ 26,196

Net over or (under) earnings

	\$ 947.13	\$ 162.60	\$ (1,383.71)
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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 located in)
unincorporated portions of Camden County,)
Missouri (Golden Glade Subdivision).)

Case No. WA-2002-65

AFFIDAVIT OF JAMES A. MERCIEL, JR.

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

James A. Merciel, Jr., of lawful age, on his oath states: that he has participated in the preparation of the foregoing written testimony in question and answer form, consisting of eleven (11) pages and one (1) schedule, to be presented in this case; that the answers in the testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.

~~James A. Merciel, Jr.~~

Subscribed and sworn to before me this 21st day of November 2001.

Notary Public

My Commission Expires: Aug. 22, 2004

CYNTHIA GOTT
NOTARY PUBLIC STATE OF MISSOURI
COLE COUNTY
MY COMMISSION EXP. AUG. 22, 2004