

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 19th day of  
December, 2002.

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 ) **Case No. WA-2002-65**  
a Water System for the Public Located in Unincorporated ) **Tariff No. JW-2003-0238**  
Portions of Camden County, Missouri (Golden Glade )  
Subdivision )

**ORDER FINDING THAT ADDITIONAL FACTUAL ISSUES MUST BE  
ADDRESSED, ORDERING THE PARTIES TO SUBMIT TESTIMONY,  
SCHEDULING HEARING, AND FURTHER SUSPENDING TARIFF**

On June 27, 2002, the Commission issued a report and order holding that Environmental Utilities, LLC, could be granted a certificate of convenience and necessity to provide water service to the Golden Glade subdivision. The report and order provided, however, that a certificate would not be issued to Environmental Utilities until it filed a pleading proving to the satisfaction of the Commission that it had arranged to provide wholesale water to Osage Water Company for the use of Osage Water Company's customers in the Eagle Woods subdivision.

On September 1, 2002, Environmental Utilities issued a tariff that would establish rules for the provisioning of service in its requested service area. That tariff carried an effective date of October 1, 2002. On September 11, 2002, Environmental Utilities filed a Notice of Water Supply Agreement. The water supply agreement that was attached to that

notice indicated that Environmental Utilities has signed a contract with Osage Water Company to supply water for the Eagle Woods subdivision.

On September 12, 2002, the Commission issued an order that directed Staff, and permitted other parties, to file a recommendation regarding whether the water supply agreement submitted by Environmental Utilities satisfied the requirements for issuance of a certificate of convenience and necessity previously established by the Commission. The Commission's order required that all such recommendations be filed on or before September 20.

Staff filed its recommendation and memorandum on September 20, indicating that it did not object to Environmental Utilities' proposed tariff. However, Staff concluded that the proposed water supply agreement with Osage Water Company did not satisfy the requirements of the Commission's report and order. Because Environmental Utilities does not have a certificate of convenience and necessity, and will not be issued such a certificate until the Commission approves the proposed water supply agreement, Staff recommended that the proposed tariff be suspended until November 30, 2002, to allow Environmental Utilities an opportunity to correct the problems with the water supply agreement.

The Office of the Public Counsel also filed a recommendation on September 20, 2002. Public Counsel argued that the proposed water supply agreement between Osage Water and Environmental Utilities does not satisfy the requirements set out in the Commission's report and order. Public Counsel recommended that the Commission not issue a certificate of convenience and necessity to Environmental Utilities at that time.

On September 18, 2002, Hancock Construction Company, an intervenor in this case, filed a response regarding the water supply agreement submitted by Environmental Utilities. Hancock Construction also argued that the Commission should not issue a certificate of convenience and necessity to Environmental Utilities.

Given the opposition of Staff, Public Counsel, and Hancock Construction, the Commission did not issue a certificate of convenience and necessity to Environmental Utilities. Instead, on September 24, the Commission scheduled a prehearing conference and directed the parties to file a proposed procedural schedule. In the same order, the Commission suspended Environmental Utilities' proposed operating tariff until January 29, 2003.

Following a prehearing conference held on October 9, 2002, the Staff of the Commission, acting with the agreement of all the parties, submitted a proposed procedural schedule that indicated that no factual issues were in dispute and requested that the Commission decide the issue based on briefs filed by the parties. The Commission accepted the briefing schedule proposed by the parties and initial briefs were filed on November 4, with reply briefs following on November 12.

In its initial brief, Staff indicated that it had three concerns about the water supply agreement submitted by Environmental Utilities on September 11. The concerns listed by Staff are as follows:

1. The Agreement does not contain a provision to bind successors and assigns to the Agreement;

2. The Agreement does not contain a provision for adjustment of the rate charged for water in accordance with the ratemaking procedure of the Commission; and
3. The Agreement does not bind the parties to the contract for a period of at least five years.

Staff indicated that Environmental Utilities satisfied each of its concerns by submitting a modified agreement with Osage Water Company. Staff offered its opinion that the modified agreement would meet the requirements established in the Commission's report and order of June 27.

However, Staff asserted that Osage Water Company was administratively dissolved by the Secretary of State on September 4, 2002. Staff argues that because it has been dissolved, Osage Water Company does not have the ability to enter into the modified agreement that Staff would find acceptable. Therefore, Staff argued that the Commission should not grant Environmental Utilities a certificate of convenience and necessity until Osage Water Company has been reinstated and is able to execute a valid water supply agreement with Environmental Utilities.

In its reply brief, Staff again argued that the modified agreement would satisfy the Commission's requirements for issuance of a certificate of convenience and necessity to Environmental Utilities. However, Staff indicated that Osage Water Company's corporate status has not yet been reinstated. In addition, the Staff also raised a new factual concern when it reported that Osage Water Company has attempted to return the water and sewer systems serving Eagle Woods to the developer of that subdivision, indicating that it would no longer serve customers in that subdivision. If Osage Water ceases serving the Eagle

Woods customers, it would not be purchasing water from Environmental Utilities, calling into question the financial viability of Environmental Utilities.

In its initial brief, the Office of the Public Counsel indicated that, like Staff, it was satisfied with the terms of the modified agreement that was offered by Environmental Utilities. However, Public Counsel also argued that the proposed supply contract with Osage Water Company contains retail rates rather than wholesale rates and that it therefore represents an imprudent business decision by Osage Water Company. For that reason, Public Counsel argues that the Commission should reject the proposed supply contract. Public Counsel did not file a reply brief.

In its briefs, Hancock Construction requests that the Commission approve the language of the modified wholesale agreement referenced in Staff's initial brief. But, Hancock argues, the Commission should not grant a certificate of convenience and necessity to Environmental Utilities until Osage Water Company's corporate status is restored and it executes the modified wholesale agreement. Furthermore, Hancock contends that the Commission should not issue a certificate to Environmental Utilities until it obtains all necessary permits from the Department of Natural Resources.

Environmental Utilities contends in its briefs that it has entered into a valid wholesale water supply contract with Osage Water Company and has thereby fulfilled the requirements for issuance of a certificate established in the Commission's previous report and order. It contends that Public Counsel's concerns about whether the agreement is in the best interest of Osage Water Company is irrelevant to this case. Environmental Utilities argues that the factual issues raised by Hancock Construction are not supported by any evidence in the record and should be ignored. Finally, Environmental Utilities rejects Staff's

argument about the modified wholesale agreement referenced in Staff's initial brief. Environmental Utilities contends that the modifications were minor and that the Commission should approve the initial contract that was signed before Osage Water Company's corporate status was revoked by the Secretary of State.

After reviewing the arguments of the parties, the Commission finds that there are indeed factual issues that must be resolved before the Commission is able to decide whether the submitted wholesale agreement satisfies the requirements of the previous report and order. The first issue is whether Osage Water Company has the legal capacity to enter into a wholesale water supply contract. There are two questions related to this issue. First, has Osage Water Company's status as an administratively dissolved corporation changed? Second, if Osage Water Company is still administratively dissolved, does that fact prevent it from executing a binding wholesale water supply contract? The second issue is whether Osage Water Company will continue to serve its customers in the Eagle Woods subdivision, and if not, whether whoever does serve those customers will purchase wholesale water from Environmental Utilities.

Currently there is not enough evidence in the record of this case by which the Commission can resolve these issues. So that additional evidence regarding these issues may be taken, the Commission will direct the parties to file testimony and will schedule a hearing.

The tariff submitted by Environmental Utilities is currently suspended until January 29, 2003. Because the hearing cannot be concluded before that date, the Commission will suspend the tariff for an additional six months as permitted by Section 393.150.2, RSMo, 2000.

**IT IS THEREFORE ORDERED:**

1. That the following procedural schedule is established for resolution of the issues identified by the Commission:

**Direct Testimony filed by all parties - January 24, 2003**

**Rebuttal Testimony filed by all parties - February 7, 2003**

**Hearing - February 19, 2003  
8:30 a.m.**

2. That the evidentiary hearing will be held in the offices of the Missouri Public Service Commission in Jefferson City, Missouri. This hearing will be held in a building that meets accessibility standards required by the Americans with Disabilities Act. Any person needing additional accommodations to participate in this hearing may call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or 1-800-829-7541 (TDD) before the hearing.

3. That the tariff issued on September 1, 2002, by Environmental Utilities, LLC, and assigned Tariff No. JW-2003-0238, previously suspended until January 29, 2003, is further suspended until July 29, 2003, or until otherwise ordered by this Commission. The tariff suspended is:

**PSC Mo. – No. 1**

4. That this order shall become effective on December 29, 2002.

**BY THE COMMISSION**

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Simmons, Ch., Lumpe and Forbis, CC., concur  
Murray, C., dissents with dissenting opinion attached  
Gaw, C., not participating

Woodruff, Senior Regulatory Law Judge