

Exhibit Number: _____

Issues: 1) Osage Water Company's
Legal Capacity to Enter
Into a Wholesale Water
Supply Agreement
2) Osage Water Company's
Provision of Service to the
Eagle Woods Subdivision
3) Staff's Position
Regarding this Case

Witness Name: Dale W. Johansen

Type of Exhibit: Direct Testimony

Sponsoring Party: MoPSC Staff

Case Number: WA-2002-65

Date Testimony Prepared: January 24, 2003

Missouri Public Service Commission

Utility Operations Division

Water & Sewer Department

Direct Testimony

of

Dale W. Johansen

Case No. WA-2002-65

Environmental Utilities, LLC

Jefferson City, Missouri

January 2003

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

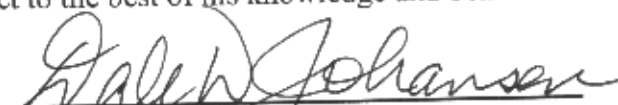
In the Matter of the Application of)
Environmental Utilities, LLC, for)
Permission, Approval, and a Certificate of)
Convenience and Necessity Authorizing It to)
Construct, Install, Own, Operate, Control,)
Manage and Maintain a Water System for)
the Public Located in Unincorporated)
Portions of Camden County, Missouri)
(Golden Glade Subdivision))

Case No. WA-2002-65

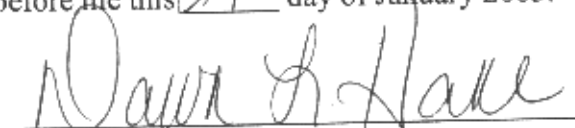
AFFIDAVIT OF DALE W. JOHANSEN

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Dale W. Johansen, of lawful age, on his oath states: that he has participated in the preparation of the following written direct testimony in question and answer form, consisting of six (6) 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.


Dale W. Johansen

Subscribed and sworn to before me this 24th day of January 2003.


Dawn A. Hall
Notary Public
Notary Public - State of Missouri
County of Cole
My Commission Expires Jan 9, 2005

My Commission Expires:

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TESTIMONY OF DALE W. JOHANSEN**

Case No. WA-2002-65

Environmental Utilities, LLC

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**DIRECT TESTIMONY
OF
DALE W. JOHANSEN
CASE No. WA-2002-65
ENVIRONMENTAL UTILITIES, LLC**

INTRODUCTION

Q. Please state your name and business mailing address.

A. Dale W. Johansen, P.O. Box 360, Jefferson City, Missouri 65102.

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

A. I work for the Missouri Public Service Commission (Commission) and my position at the Commission is Manager of the Water & Sewer Department (W/S Dept) in the Utility Operations Division.

Q. Please briefly describe your job responsibilities.

A. My responsibilities include general administrative and supervisory duties for the overall operation of the W/S Dept, and direct participation in water and sewer utility cases before the Commission regarding both technical and policy matters.

Q. What are your educational and work experience backgrounds?

A. Please refer to Schedule DWJ – 1 attached to this testimony for a summary of my education and work experience backgrounds.

Q. Have you previously testified before this Commission?

A. Yes, I have, on numerous occasions.

INVOLVEMENT IN THIS CASE

Q. What has been the nature of your involvement in this case?

A. I am the Staff's Case Coordinator for this case and in that capacity I have been involved in all aspects of the Staff's review of the Application in this case. I have also previously filed testimony in this case.

PURPOSE OF TESTIMONY

Q. What is the purpose of this pre-filed direct testimony that you are presenting in this case at this time?

A. I am presenting this testimony in response to an Order that the Commission issued on December 19, 2002 (12/19/02 Order) and, consistent with that Order, I am addressing the issues and related questions set out below.

(1) Whether Osage Water Company (OWC) has the legal capacity to enter into a wholesale water supply contract with Environmental Utilities (EU).

(A) Has OWC's status as an administratively dissolved corporation changed?

(B) If OWC is still administratively dissolved, does that fact prevent it from executing a binding wholesale water supply contract?

(2) Whether OWC 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 EU.

1 **Q. Are the positions you will be providing in this testimony the Staff's positions,**
2 **as well as your own?**

3 A. Yes, they are.

4 **OWC'S LEGAL CAPACITY TO ENTER INTO A CONTRACT**

5 **Q. The first issue set out in the Commission's 12/19/02 Order is whether OWC**
6 **has the legal capacity to enter into a wholesale water supply contract with**
7 **EU. To address that issue, first please advise the Commission of whether**
8 **OWC's status as an administratively dissolved corporation has changed.**

9 A. OWC's corporate status has not recently changed. According to the Secretary of
10 State's business entity database, OWC's corporate status as of January 23, 2003 is
11 "DF", which stands for "administratively dissolved for failure to file an annual
12 report". As has been previously reported to the Commission, the date of that
13 status going into effect is shown as September 4, 2002.

14 **Q. Next, please advise the Commission of your position on whether the fact that**
15 **OWC is still administratively dissolve prevents it from executing a binding**
16 **wholesale water supply contract.**

17 A. Based on advice of counsel, it is my position that the Secretary of State's
18 administrative dissolution of OWC does prevent OWC from executing a binding
19 wholesale water supply contract, as this would be an act outside of the scope of
20 winding up the affairs of the company.

1 **Q. Based on your answers to the previous two questions, what is your position**
2 **as to whether OWC has the legal capacity to enter into a wholesale water**
3 **supply contract with EU?**

4 A. Based upon OWC's current corporate status and the advice of counsel on related
5 matters, it is my position that OWC does not now have the legal capacity to enter
6 into a wholesale water supply contract with EU.

7 **WILL OWC CONTINUE TO SERVE EAGLE WOODS**

8 **Q. Do you have a position on the first part of the second issue set out in the**
9 **Commission's 12/19/02 Order, namely whether OWC will continue to serve**
10 **its customers in the Eagle Woods subdivision?**

11 A. Yes, I do; however, I cannot be very definitive. First, I will point out that OWC
12 has the obligation to continue to provide service to its customers in Eagle Woods,
13 regardless of whether it has a wholesale water supply agreement with EU. OWC
14 has, however, recently stated its intention to discontinue service to Eagle Woods
15 (see Appendix A to Staff's Reply Brief Regarding Water Supply and Agreement
16 Between EU and OWC) due to disputes between OWC and the developer of
17 Eagle Woods regarding system construction and permitting and service
18 availability issues. That matter is now the subject of litigation in the Camden
19 County Circuit Court and it is not yet known how it will be resolved.

20 **Q. If OWC does not have a wholesale water supply agreement with EU, how**
21 **would it provide service to its customers in Eagle Woods?**

1 A. I currently do not know how OWC would do so on a permanent basis, because it
2 does not now have another state-approved source of supply sufficient to provide
3 service to its Eagle Woods customers.

4 **Q. Do you have a position on the second part of the second issue set out in the**
5 **Commission's 12/19/02 Order, namely whether another water service**
6 **provider for Eagle Woods would purchase water from EU if OWC does not**
7 **continue to serve that area?**

8 A. Yes, I do, but unfortunately the answer to this question is also not very definitive.
9 As with OWC, another water service provider, such as the developer or the
10 homeowners association, would also not currently have a state-approved source of
11 supply sufficient to provide service to the customers in Eagle Woods absent a
12 wholesale purchase agreement with EU. However, since EU is not yet authorized
13 by the Commission to conduct business, and may never be authorized to do so,
14 there is no guarantee that EU will be able to enter into such an agreement with
15 someone other than OWC. Additionally, it is not known if EU would enter into
16 such an agreement with someone other than OWC even if it could do so. It is also
17 clear that EU is not obligated to enter into a wholesale agreement with a party
18 other than OWC, absent modification of the conditions that the Commission
19 imposed on EU's certificate becoming effective.

20 **Q. Would the lack of a wholesale water supply agreement with the water service**
21 **provider for Eagle Woods, whomever that may be, affect EU?**

1 A. Yes, it clearly would. First, EU's rates are premised in great part on EU selling
2 water for the use of the customers in the Eagle Woods subdivision. Absent such
3 sales, EU's rates are clearly not sufficient to recover its projected cost of
4 providing service. Second, the economic feasibility of EU's overall proposal for
5 going into business and providing service to the Golden Glade subdivision
6 depends upon EU selling water for the use of the customers in the Eagle Woods
7 subdivision. And finally, the existence of a wholesale water supply agreement
8 relating to the sale of water for the ultimate use of the Eagle Woods customers is a
9 condition precedent to EU's certificate becoming effective. The bottom line is
10 that EU must have a wholesale water supply agreement with the water service
11 provider for Eagle Woods, or its proposal for providing service to the Golden
12 Glade subdivision would have to be completely reworked and reevaluated and
13 given further consideration by the Commission.

14 **STAFF'S POSITION**

15 **Q. Has the Staff's position regarding this case changed from the position that it**
16 **stated in its Initial Brief and Reply Brief regarding the water supply**
17 **agreement, which it filed on November 2, 2002 and November 12, 2002,**
18 **respectively?**

19 A. No, it has not.

20 **Q. Do you have anything further to add at this time?**

21 A. No, I do not.

EDUCATION & WORK EXPERIENCE
SUMMARY OF DALE W. JOHANSEN

COLLEGE EDUCATION

Associate of Arts in Pre-Engineering Studies
State Fair Community College – Sedalia, Missouri

Bachelor of Science in Agricultural Engineering
School of Engineering – University of Missouri @ Columbia

REGULATORY/UTILITY WORK EXPERIENCE

Missouri Public Service Commission

Manager – Water & Sewer Department
Utility Operations Division
June 1995 to Present

Johansen Consulting Services

Utility & Regulatory Consultant
February 1994 to June 1995

Missouri One Call System, Inc.

Executive Director
January 1992 to February 1994

Missouri Public Service Commission

(service prior to current position)

Director – Utility Services Division
November 1990 to January 1992

Case Coordinator – Utility Division
November 1987 to November 1990

Assistant Manager – Engineering
Gas Department – Utility Division
October 1980 to November 1987

Gas Safety Engineer
Gas Department – Utility Division
May 1979 to October 1980