

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

FILED²

NOV 1 2 2002

Missouri Public
Service Commission

In the matter of the application of Environmental Utilities,)
LLC, for Permission Approval and 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 #: WA-2002-65
Tariff No. JW-2003-0238

**REPLY BRIEF TO ENVIRONMENTAL UTILITIES'S INITIAL BRIEF
ON BEHALF
OF HANCOCK CONSTRUCTION COMPANY**

I. INTRODUCTION:

COMES NOW Hancock Construction Company (Hancock), by and through its attorney,
Thomas E. Loraine, and for its Reply Brief to Environmental Utilities Initial Brief offers the
following discussion and argument.

Environmental Utilities LLC (hereinafter referred to as E.U.) states in its Initial Brief that
it has identified no legal issues pertaining to the Water Supply Agreement which would require a
determination by the Commission. Hancock Construction believes there are three legal issues
regarding this Water Supply Agreement which must be determined by the Commission.

1) Does the Commission have the Statutory authority to issue a tariff despite admissions
by the respondent that the distribution system E.U. relies on to satisfy the Water Supply Contract
cannot meet state standards and will provide unsafe and inadequate water contaminated with
harmful bacteria ?

2) Does the Commission agree with the Missouri Department of Natural Resources (DNR) determination that a water system, without a Permit to Dispense Water, engages in an illegal operation?

3) Does OWC have authority to do business other than wind up of business as allowed under State law for dissolved corporations?

Question 1: Is the Commission's Statutory Obligation to ensure safe and adequate service a legal issue requiring a determination by the Commission?

Gregory Williams admits in paragraph 4 a. b. c. & d. of the August 27, 2002, letter to DNR attached to Hancock Construction's Initial Brief that due to "improper materials", "improper bedding materials" and "poor construction practices" the Eagle Woods distribution system allows "dirt and other contaminants to enter the distribution piping...resulting in water quality problems within Eagle Woods".

Gregory Williams admits, in this August 27, 2002, letter to DNR, that the "Eagle Woods distribution system does not meet state standards".

Question 2: Does the Commission agree with DNR's requirement that a Permit to Dispense water is a legal requirement under Missouri Safe Drinking Water Law, Sections 640.100 to 640.140, RSMo?

A DNR Notice of Violation and a communication contained in Exhibit 10 Schedule 5 identifies that to dispense water to Parkview Bay customers without a Permit to Dispense Water is an illegal operation.

Gregory Williams admits in paragraph one of the August 27, 2002, letter to DNR, attached to Hancock Construction's Initial Brief, that E.U. does not have a Permit to Dispense Water to Golden Glade Subdivision or the Eagle Woods Subdivision.

Question 3: Does OWC have authority to do business other than wind up of business as allowed under State law for dissolved corporations?

OWC and E.U. entered the original Water Supply Agreement on September 1, 2002. OWC was administratively dissolved by order of the Secretary of State as of September 4, 2002, for failing to file a correct annual report to the Secretary of State. Section 351.486(3) RSMo 2000 provides that a "corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 351.476 and notify claimants under sections 351.478 and 351.482... ."

Mr. Williams did not notify the Secretary of State of his resignation as registered agent before OWC was administratively dissolved on September 4, 2002. Section 351.484(4) RSMo 2000, provides that the Secretary of State may administratively dissolve a company if it does not notify the Secretary of State within thirty days that its registered agent has resigned. Further, the Secretary of State does not accept any filings or notices from a company while it is administratively dissolved.

A modification constitutes making of a new contract. *Appendix A* to Staff's Initial Brief contained modifications, agreed to by E.U., to the original Water Supply Agreement.

The modified Water Supply Contract can only be executed after OWC has been reinstated and the modified water supply agreement is signed by a person authorized to sign on behalf of OWC.

WHEREFORE, Hancock Construction Company requests that the Commission approve the language of the draft of the modified Water Supply Agreement as attached in *Appendix A* of Staff's Initial Brief. Hancock Construction Company requests that the Commission does not grant EU's Certificate of Convenience and Necessity until OWC is reinstated and EU has executed and filed with the Commission a valid water supply agreement with OWC. Hancock Construction further requests that E.U. not be granted a Certificate of Necessity and Convenience until all distribution systems served by the Golden Glade water well have been P.E. certified and sealed to meet state standards. DNR identifies the Golden Glade Water System to be a safe and adequate public drinking water system with a Permit to Dispense Water to the Golden Glade and Eagle Woods Subdivisions.

Respectfully submitted,

LORAIN & ASSOCIATES



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ATTORNEY FOR HANCOCK CONSTRUCTION
COMPANY

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CERTIFICATE OF SERVICE

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It is hereby certified that a true and correct copy of **REPLY BRIEF TO**

ENVIRONMENTAL UTILITIES INITIAL BRIEF ON BEHALF OF HANCOCK

CONSTRUCTION COMPANY, was mailed, prepaid, this 12th day of November, 2002, **VIA**

CERTIFIED/RETURN RECEIPT REQUESTED to Gregory D. Williams, Highway 5 at

Lake Road 5-32, P.O. Box 431, Sunrise Beach, MO. 65079, and **HAND DELIVERED** by

William Cochran and mailed by U.S. mail, first class, postage pre-paid this 12th day of

November, 2002, to Office of Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102

and General Counsel, Missouri Public Service Commission, P.O. Box 360, Jefferson City,

Missouri 65102, and by us mail to the Presiding Commissioner, Camden County Courthouse, 1

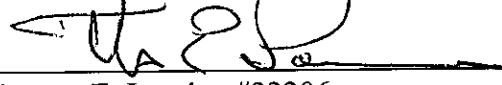
Court Circle, P.O. Box 960, Camdenton, Missouri 65020, and Missouri Department of Natural

Resources, 205 Jefferson Street, Jefferson City, Missouri 65101.

Respectfully submitted,


William J. Cochran

LORAINE & ASSOCIATES


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ATTORNEY FOR HANCOCK CONSTRUCTION

Subscribed and sworn to before me, a notary public, this 12th day of November, 2002.


Notary Public

My commission expires:

JOANN WALLACE
Notary Public - Notary Seal
STATE OF MISSOURI
Camden County
My Commission Expires Dec. 22, 2002