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March 4, 2003

Hon. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**FILED<sup>2</sup>**  
MAR 10 2003  
Missouri Public  
Service Commission

Re: Environmental Utilities, LLC  
WA-2002-65

Dear Judge Roberts:

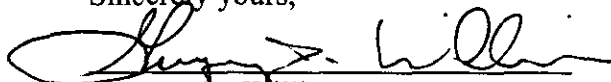
Please find enclosed for filing in the above referenced matter the original and 8 copies of the following pleadings:

1. Applicant's Final Brief Regarding Water Supply Agreement.

An additional copy is enclosed to be stamped "filed" and returned to me in the enclosed envelop. A copy of the same has been mailed this date to all counsel of record.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely yours,

  
Gregory D. Williams

cc: Keith Krueger  
M. Ruth O'Neill  
Thomas Loraine

MAR 10 2003

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

In the matter of the application of Environmental Utilities, LLC	)	Missouri Public
for permission, approval, and a certificate of convenience and	)	Service Commission
necessity authorizing it to construct, install, own, operate,	)	Case No. WA-2002-65
control, manage and maintain a water system for the	)	
public located in unincorporated portions of Camden County,	)	
Missouri (Golden Glade Subdivision).	)	

**APPLICANT'S FINAL BRIEF  
REGARDING WATER SUPPLY AGREEMENT**

COMES NOW Environmental Utilities, LLC and pursuant to the Commission's Order herein submits the following for its Final Brief regarding the Water Supply Agreement between Environmental Utilities, LLC and Osage Water Company.

**FACTUAL ISSUES**

There are no factual issues in dispute in this matter. The Commission requested testimony on the following issues:

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

Pre-filed testimony was presented by Staff Witness Dale Johansen and OPC witness Kimberly Bolin. The applicant did not pre-file any testimony.

The evidence was uncontroverted on the following issues:

1. Osage Water Company is still administratively dissolved. (Exhibit 1, Page 3, Lines 5-13).
2. No receiver has been appointed for OWC. (Transcript, Page 614, Lines 18-20).
3. No injunction has been entered with respect to the provision of water utility service by OWC at Eagle Woods. (Transcript, Page 614 Lines 21 through Page 615 Line 2).
4. As of February 19, 2003 all of OWC's customers were receiving water and sewer utility service. (Transcript Page 614 Lines 10-13).

### **LEGAL ISSUES**

In addition to requesting factual information, the Commission's questions also pose legal questions and require the interpretation of Missouri Law to the facts in this case. Although the Commission's employs a large number of attorneys who were available to present testimony on these legal questions, and although two staff attorneys were present at the hearing, no attorney testified on behalf of the Staff. The applicant did not have multiple attorney's available, and Missouri Court Rules prohibit an attorney from testifying and representing a party at a hearing. Cross examination of Staff Witness Dale Johansen provides the only basis for interpreting the law and facts applicable to this case.

In Mr. Johansen's opinion, Osage Water Company has a continuing duty to provide water utility service to customers at Eagle Woods, notwithstanding its status as an administratively dissolved corporation. (Transcript, Page 612 line 23-Page 613 Line 3). It is necessary for Osage Water Company to have access to a public water supply in order to provide public water utility service. (Transcript Page 612, Line 23 through Page 613, Line 3). Under Section 351.476 of the Revised Statutes of Missouri, a dissolved corporation continues to exist and may do every act necessary to wind up and liquidate its business and affairs. (Transcript Page 613 Lines 8-23).

Staff would not recommend to the Commission that this application be denied, as it would eliminate the only legal source of water for OWC to supply to Eagle Woods customers. Staff believes that the contractual arrangement is “what should happen.” (Transcript Page 615 Lines 14-19). The contractual arrangement between OWC and Environmental Utilities “makes the most sense” among the alternatives available to OWC to supply water to Eagle Woods. (Transcript Page 618 Line 19 through Page 619 Line 5).

Section 351.476 RSMo. describes the effect of a dissolution of a corporation. It states that “a dissolved corporation *continues its corporate existence* but may not carry on any business *except that appropriate to wind up and liquidate its business and affairs including:*

(1) – (4) omitted

(5) Doing every other act *necessary* to wind up and liquidate its business and affairs.

The law here is quite simple and clear. A dissolved corporation does not cease to exist, nor is it required to “stop” all operations and close its doors. It may carry on business which is appropriate to wind up and liquidate its affairs, and it may do every act which is necessary in order to wind up and liquidate its business and affairs.

According to Mr. Johansen, Osage Water Company must continue to provide water utility service even though it has been administratively dissolved. While he did not provide any case law or statutory citation to support this conclusion of law, his statements are uncontroverted on the record of this case. If the Commission agrees with Mr. Johansen that Osage Water Company as a matter of law must continue to provide water utility service to Eagle Woods after its administrative dissolution, then the Commission must conclude that Osage Water Company may do every act which is necessary to continue to provide water utility service to Eagle Woods. On the other hand, if the Commission does not agree with Mr. Johansen, and does not believe

that the obligation to provide service continues after dissolution, then the Commission should instruct its General Counsel to dismiss all pending lawsuits filed by the Commission against OWC.

Assuming the Commission agrees with Mr. Johansen, the next question posed is whether it is necessary for OWC to enter into the wholesale supply agreement in order to provide public water utility service to Eagle Woods. Mr. Johansen testified that access to a public water supply is required by law in order to provide public water utility service. Mr. Johansen further testified that among the alternatives available to obtain access to a public water supply, the contract with Environmental Utilities "makes the most sense" and is "what should happen." Mr. Johansen described and eliminated as feasible alternative several other solutions to the necessity of obtaining water from a public water supply.

If it is necessary for OWC to provide public water utility service to Eagle Woods customers after its administrative dissolution, then it may take such actions as are appropriate and/or necessary to provide that service. The Contract between OWC and Eagle Woods is both necessary and appropriate, and therefore is within the statutory authority granted to OWC as an administratively dissolved corporation under Section 351.476.

### **CONCLUSION**

Environmental Utilities, LLC has complied with the conditions set forth by this Commission in its Report and Order for the granting of a certificate of convenience and necessity. The Commission should enter an Order finding that the company has satisfied its requirements, and holding that the certificate is in full force and effect.

WHEREFORE, Environmental Utilities, LLC prays for an Order of the Commission finding that the company has satisfied the conditions established by the Commission for the

certificate of convenience and necessity to provide water utility service to Golden Glade Subdivision, and holding that said certificate is now in full force and effect, and for an award of its attorney's fees and expenses incurred in this matter.



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### **CERTIFICATE OF SERVICE**

I, Gregory D. Williams, do hereby certify that a true copy of the foregoing was on this 6<sup>th</sup> day of March, 2003, mailed, postage prepaid, to the following:

M. Ruth O'Neill  
Office of Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102

Keith Krueger  
General Counsel, Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

Thomas E. Loraine  
4075 Highway 54, Suite 300  
Osage Beach, MO 65065

  
Gregory D. Williams