

Ex 33

**Johansen, Dale**

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**From:** Johansen, Dale  
**Sent:** Wednesday, August 14, 2002 4:22 PM  
**To:** Merciel, James; Hubbs, Randy; Hummel, Martin  
**Subject:** FW: Application to PSC to Approve Foreclosure.doc

F.Y.I. - Yet something more from the OWC front. Please review and comment. Thanks. dwj

-----Original Message-----

**From:** Greg Williams [mailto:gregw@laurie.net]  
**Sent:** Wednesday, August 14, 2002 4:02 PM  
**To:** Johansen, Dale; Krueger, Keith; O'Neill, Ruth  
**Subject:** Application to PSC to Approve Foreclosure.doc

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Dale -

Attached is a draft of a possible Application to bring before the Commission approval of the transfer of the assets of OWC by foreclosure, with the anticipated successful bidder being Environmental Utilities. I am copying Keith Krueger and Ruth O'Neill for their input and comment as well.

As we discussed, in light of the recent MDNR/AGO lawsuit against OWC for activities of Pat Mitchell in Sedalia unrelated to the legitimate business of OWC, it is probably past time to close out OWC and put its problems behind all of us so that we can focus on systems that work and resolving problems with them and providing safe and adequate service to customers.

Obviously this isn't the type of transaction that any of us have any experience with, so any comments, suggestions, or ideas would be welcome.

GDW

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

In the Matter of the Application of  
Environmental Utilities, LLC to acquire by  
Foreclosure the franchise, water works, and  
Sewer Systems of Osage Water Company.

Case No. \_\_\_\_\_

**APPLICATION**

COMES NOW Environmental Utilities, LLC, (the "Applicant"), pursuant to Section 393.190 RSMo, and states as follows:

1. Applicant is duly organized and operates as a limited liability company under the laws of the State of Missouri, and maintains its principal office and place of business as Highway 5 at Lake Road 5-33, P.O. Box 650, Sunrise Beach, Missouri, and is a public utility as defined in Section 396.020 RSMo subject to the jurisdiction, supervision, and control of the Commission over the transmission, distribution and sale of water in Applicant's service area in Camden County, Missouri. Applicant was approved by this Commission to provide water utility service in Case WA-2002-65.
2. Osage Water Company is an administratively dissolved corporation organized under the laws of the State of Missouri and has been authorized by this Commission to provide water and sewer utility service in various specific service areas in Camden county, Missouri.
3. Communications regarding this Application should be made to:  

Gregory D. Williams  
Attorney at Law  
P.O. Box 431  
Sunrise Beach, MO 65079  
573-374-8761 Telephone  
573-374-4432 Facsimile  
[gregw@laurie.net](mailto:gregw@laurie.net) e-mail
4. Applicant proposes to acquire by foreclosure the franchise, water works, and sewer systems presently owned and operated by Osage Water Company and necessary or

useful to provide water and/or sewer utility service to its customers in the certificated service areas of Osage Water Company, under the terms and conditions of a promissory note executed by William P. Mitchell as president of Osage Water Company, with a current principal balance of \$500,000 issued by Osage Water Company on February 15, 2002 to secure payment of balances due from Osage Water Company to Gregory D. Williams for legal services rendered, and which promissory note is secured by a Future Advance Deed of Trust & Security Agreement of the same date filed of record on March 6, 2001 in Book 210 at Page 59 in the Office of the Recorder of Deeds of Camden County, Missouri, a copy of which is attached hereto as Appendix A. Osage Water Company is in default for failing to pay any of the principal or interest installments due under said note. Applicant acquired said promissory note and Future Advance Deed of Trust by Assignment dated August 14, 2002 and recorded in Book \_\_\_\_ at Page \_\_\_\_ in the Office of the Recorder of Deeds of Camden County, Missouri.

5. Said Future Advance Deed of Trust is subordinant to a Deed of Trust executed by Osage Water Company in favor of Central Bank of Lake of the Ozarks on \_\_\_\_\_, 1997 and recorded in Book \_\_\_\_ at Page \_\_\_\_ in the Office of the Recorder of Deeds of Camden County, Missouri, and a Judgment of Mechanic's Lien in favor of Jim Clary Concrete Construction, Inc. dated \_\_\_\_\_, 2002 and recorded in Book \_\_\_\_ at Page \_\_\_\_ in the Office of the Recorder of Deeds of Camden County, Missouri.
6. Applicant has commenced foreclosure proceedings with respect to said Future Advance Deed of Trust and contemplates that a trustee's sale thereunder will be held

on \_\_\_\_\_, 2002 at 1:00 p.m. at the East Front Door of the Camden County Courthouse.

7. While Applicant cannot assure the Commission that it will be the successful bidder at said foreclosure sale, Applicant desires to place the Commission on notice of the pendency of said foreclosure and of Applicant's desire to obtain the Commission's approval to acquire said assets of Osage Water Company and to operate the same under the jurisdiction and regulation of the Commission if it is the successful bidder at said sale.
8. The proposed transaction would not harm the public interest in that (a) Applicant is an existing regulated utility company operating under the jurisdiction and regulation of the Commission and has a water tariff on file with the Commission; (b) Osage Water Company is an administratively dissolved corporation and is not authorized to conduct business in the State of Missouri; (c) Osage Water Company is insolvent and unable to pay its debts as they come due; (d) Osage Water Company is unable to obtain capital necessary to repair its systems and to expand the same for additional customers, (e) the sale of all of the assets of Osage Water Company is in the best interests of the customers thereof as breaking the same down into component portions for sale may result in higher operating costs for each respective component thereof.
9. Customers of Osage Water Company will not initially experience any change in rates after the transfer, as Applicant's rates for water service are identical to those of Osage Water Company, and Applicant proposed to initially adopt the terms and conditions of Osage Water Company's sewer tariff if this Application is approved. Future rate changes by Applicant will be subject to the Commission's rate making procedures.

10. No change in tax revenues to Camden County should occur as a result of the approval of this Application.
11. Upon completion of the foreclosure sale and approval of this Application, Osage Water Company will no longer have any utility assets subject to the jurisdiction of the Commission and its certificates of convenience and necessity may be terminated by the Commission.

WHEREFORE, Applicant respectfully requests the Commission to issue an order:

- (1) Approving the foreclosure of all of the assets of Osage Water Company, and upon successful acquisition at said foreclosure sale by Applicant, approving the transfer of all of said assets to Applicant; and
- (2) Granting to Applicant certificates of convenience and necessity to provide public water and/or sewer utility service within the current certificated water and sewer service areas of Osage Water Company; and
- (3) Terminating the certificates of convenience and necessity heretofore granted to Osage Water Company.

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Gregory D. Williams #32272  
Highway 5 at Lake Road 5-33  
P.O. Box 431  
Sunrise Beach, MO 65079  
(573) 374-8761

#### **CERTIFICATE OF SERVICE**

I, Gregory D. Williams, do hereby certify that a true copy of the foregoing was on this \_\_\_\_\_ day of \_\_\_\_\_, 2002, mailed, postage prepaid, to the following:

William P. Mitchell, President, Osage Water Company, P.O. Box 826, Linn Creek, MO 65052;  
Office of Public Counsel, P.O. Box 7800, Jefferson City, MO 65102; Office of the General  
Counsel, Missouri Public Service Commission, P.O. Box 360, Jefferson City, MO 65102.

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Gregory D. Williams