

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office in
Jefferson City on the 2nd day of
July, 2002.

Office of the Public Counsel,)	
)	
Complainant,)	
)	
v.)	<u>Case No. WC-2002-155</u>
)	
Warren County Water and Sewer)	
Company and Gary L. Smith,)	
)	
Respondents.)	

**ORDER REGARDING MOTIONS TO REOPEN THE RECORD
AND ESTABLISHING BRIEFING SCHEDULE**

Syllabus: The Commission grants a motion to reopen the record filed by the Office of the Public Counsel, denies a motion to reopen the record filed by the Staff of the Commission, and confirms the briefing schedule agreed upon by the parties.

On June 10, 2002, pursuant to 4 CSR 240-2.110 (8), Public Counsel filed a motion to reopen the record to have a notice of violation and attendant documents from the Missouri Department of Natural Resources to Gary Smith admitted as a late-filed exhibit. Public Counsel asserts that it filed its motion to reopen the record as soon as it received the documents, and that they are relevant to the question of whether Respondents are providing safe and adequate service.

On June 18, Respondents filed a response to Public Counsel's motion. Respondents argue that the aforesaid documents constitute hearsay, and should not be admitted. In addition, they argue that no proper foundation has been laid for authentication, and that not allowing them to conduct cross-examination with respect to the proposed exhibits would constitute a fundamental violation of Warren County's due process rights.

4 CSR 240-2.110 (8) provides that:

A party may request that the commission reopen a case for the taking of additional evidence if the request is made after the hearing has been concluded, but before briefs have been filed or oral argument presented, or before a decision has been issued in the absence of briefs or argument. Such a request shall be made by filing with the secretary of the commission a petition to reopen the record for the taking of additional evidence in accordance with these rules, and serving the petition on all other parties. The petition shall specify the facts which allegedly constitute grounds in justification, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. The petition shall also contain a brief statement of the proposed additional evidence, and an explanation as to why this evidence was not offered during the hearing.

Respondents' objections notwithstanding, Public Counsel's motion complies with the Commission's rule in all respects: the proffered evidence was not available at the time of the hearing, and it constitutes a material change in fact that occurred after the conclusion of the hearing.¹ The question of whether Respondents are able to provide safe and adequate service is a central issue, and this new evidence may be relevant to that issue.

The Commission will grant Public Counsel's motion to reopen the record, and will admit its proposed exhibit. Respondents will be given the opportunity to file a response to the

¹ Although the letter is dated May 31, Public Counsel did not receive it until June 7.

exhibit, and to request the opportunity to conduct cross-examination with respect to the exhibit.

On June 5, the Staff of the Commission filed a motion to reopen the record to take additional evidence. The Staff's proposed exhibit shows the recent history of the Company's annual report filings and assessment payments. Staff seeks to reopen the record because it alleges that Exhibit 20, admitted at the hearing, is incomplete and therefore possibly misleading. Staff did not claim that the information is new, or that it was not available at the time of the hearing.

Respondents also objected to Staff's proposal to reopen the record. Respondents argued that, in addition to the problems with Public Counsel's motion, it opposes Staff's motion because Staff seeks to admit material that was available, not only at the time of the hearing, but at the time prefiled testimony was prepared. The Commission agrees with Respondents. Simply because Exhibit 20 does not show the complete picture regarding Warren County Water and Sewer Company's assessment payments and annual report filings does not justify reopening the record. Rule 4 CSR 240-2.110(8) requires a change in material fact or law. Staff's motion does not comply with this requirement, and the Commission will deny it.

Finally, the Commission will order that briefs be filed in accordance with the schedule agreed upon by the parties. Initial Briefs be due July 9 and Reply Briefs be due July 31.

IT IS THEREFORE ORDERED:

1. That the motion to reopen the record filed by the Office of the Public Counsel on June 7, 2002, is granted.

2. That the letter sent to Warren County Water and Sewer Company by the Missouri Department of Natural Resources, dated May 31, 2002, containing a Notice of Violation #1804 SL, and the attached report of the sewer inspection on May 14, 2002, by Paul Mueller and Steve Loethen are admitted into the record as Exhibit 21.

3. That Respondents may file a response to Exhibit 21, or request the opportunity to conduct cross-examination with respect to Exhibit 21, no later than July 9, 2002.

4. That the motion to reopen the record filed by the Staff of the Public Service Commission on June 5, 2002, is denied.

5. That Initial Briefs are due July 9 and Reply Briefs are due July 31, 2002.

6. That this order shall become effective on July 12, 2002.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Simmons, Ch., Murray, Lumpe, Gaw and Forbis, CC., concur

Mills, Deputy Chief Regulatory Law Judge