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February 13, 2002

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

FILED³
FEB 13 2002

Re: **Case NO. WC-2002-155 (Consolidated with SC-2002-160)**

**Missouri Public
Service Commission**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of **Office of the Public Counsel's Proposed Findings of Fact and Conclusions of Law (Preliminary)**. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

M. Ruth O'Neill
Assistant Public Counsel

MRO:jb

cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³
FEB 13 2002

Missouri Public
Service Commission

Office of the Public Counsel,)
Complainant,)
)
v.)
)
Warren County Water and Sewer)
Company and Gary L. Smith,)
Respondents.)

Case No. WC-2002-155

**OFFICE OF THE PUBLIC COUNSEL'S PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW (Preliminary)**

COMES NOW, the Office of the Public Counsel, pursuant to the Order of the Missouri Public Service Commission, in which it directed Public Counsel to file proposed findings of fact and conclusions of law at the time of the filing of supplemental direct testimony. While Public Counsel believes that it is premature to submit proposed findings of fact and conclusions of law prior to the Commission receiving any evidence in this case, we are willing to comply with the Commission's order. Public Counsel notes that the following proposed findings and proposed conclusions may be subject to modification or change, based upon the evidence actually produced at the evidentiary and public hearings in this case. Public Counsel may submit supplemental or different proposed findings and proposed conclusions at the time of briefing. Subject to the above caveats, Public Counsel submits the following preliminary Proposed Findings of Fact and Conclusions of Law.

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Findings of Fact

1. The Office of the Public Counsel, the Complainant in this case, is a state agency which represents the interests of the public in proceedings before the Missouri Public Service Commission. The Commission staff also participated in this case.

2. Warren County Water and Sewer Company (the Company) is a company which holds a certificate to provide water and sewer service to an area near Foristell, in Warren County, Missouri, which includes the unincorporated areas of Incline Village and Shady Oaks subdivision. Gary L. Smith is an individual who owns and operates Warren County Water and Sewer Company.

3. The Company is a small water and sewer corporation, previously incorporated under the laws of the State of Missouri. The Company is regulated by the Commission, and also regulated by the Missouri Department of Natural Resources (DNR) and the United States Environmental Protection Agency (EPA). The Company is owned and operated by Gary Lett Smith.

4. The Company has fewer than 1,000 customers.

5. Mr. Smith was convicted in the federal district court of the Eastern District of Missouri for a felony violation of the Clean Water Act, in case number 4:01CR195. Mr. Smith was convicted for dumping raw sewage into Incline Village Lake at one of the Company's two sewer treatment plants in Incline Village. Mr. Smith was placed on probation for that offense.

6. Since 1996, the Staff of the Public Service Commission (Staff), the Public Counsel and the Company have agreed that the Company does not have adequate storage capacity in its water system. The Commission previously approved the Company's

request to borrow funds to construct and install a storage tank. The Company has failed to construct and install the tank to date.

7. Company that it is currently operating its two sewer plants without a valid permit from the DNR.

8. The Company has committed numerous violations of DNR regulations, as evidenced in part by the numerous notices of violation it has received from the DNR that its sewer system was in violation of DNR regulations. Some of those violations, including an incident in January of 2002, in which wastewater overflowed from a manhole, created a significant public health risk. The overflow was caused by a non-functioning lift station.

9. The Company currently receives gross revenues from the operation of its water and sewer systems in excess of \$150,000 per year. The Company's rates were set by determining the cost of service, including the cost of electricity and maintenance costs.

10. Gary Smith attempted to transfer the Company to another corporate entity controlled by Mr. Smith without prior authorization of the Commission.

11. The Company has failed to keep current on its electric bills.

12. The Company has an extremely poor customer service record.

13. The Company has billed customers in violation of its tariffs.

14. The Company has failed to adequately maintain its plant, and has failed to adequately fence and secure its facilities, which constitutes a safety hazard.

15. The Company engages in poor management practices, including failure to timely file reports with this Commission, the Department of Natural Resources and the

Secretary of State, and failure to timely pay required assessments and fees required to continue to operate the Company in good standing.

16. The current owner of the Company is unwilling or unable to provide safe and adequate service to the Company's customers, or has constructively abandoned the company. Further, this company is a chronic "problem" company, with a long pattern of complaints and violations before this Commission.

17. There are persons who are able to assume management of the Company as receivers on a temporary basis, and who have the ability to contract with a person qualified to operate the system, and that qualified person is willing to operate the system.

18. Given the history of the Company under Mr. Smith's management, it is unlikely that Mr. Smith will become able to safely and adequately operate this company in the foreseeable future. It is therefore in the best interests of the Company's customers to prevent Mr. Smith from continuing to operate the Company.

Conclusions of Law

1. This Commission has jurisdiction over this matter pursuant to Sec. 386.210 et. seq. RSMo, Chapter 393 RSMo, and 4 CSR 240-2.070(1).

2. The Respondents have failed in their statutory duty to provide safe and adequate service at just and reasonable rates as required by Sec. 393.130.1 RSMo.

3. The Respondents have repeatedly violated public safety regulations promulgated by the Commission, the DNR and the EPA, including, but not limited to 10 CSR 20-8.140(9). These violations constitute a violation of the Respondents' statutory duty to provide safe and adequate service.

4. The Respondents are unwilling or unable to provide safe and adequate service to their customers for reasons not related to the lack of adequate revenues, and Respondents have failed to take prudent and necessary actions which would improve service and increase company revenues.

5. The Respondents attempted to transfer the assets of the company to another corporate entity owned by Respondent Smith without Commission approval in violation of Sec. 393.190 RSMo.

6. The Company has billed customers in a manner which violates its tariffs.

7. The Company serves fewer than 1,000 customers, and so the provisions of Sec. 393.145 RSMo may be applied in this case.

8. The public interest requires that this Commission direct the General Counsel to file a petition with the Circuit Court of Warren County, pursuant to Sec. 393.145 RSMo, for an order attaching the assets of the utility and placing the utility under the control and responsibility of a receiver.

9. At the time of hearing on the petition to appoint a receiver, the General Counsel shall request that the Court determine whether or not, in the best interests of the Company's customers, the receiver should eventually return the Company to its owner, or should proceed to liquidate the assets of the utility in a manner provided by law, pursuant to Sec. 393.145.5.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: 
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 13th day of February 2002:

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