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December 20, 2001

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

**FILED<sup>3</sup>**

DEC 20 2001

**Re: Warren County Water & Sewer Co. and Gary L. Smith  
Case No. WC-2002-155**

Missouri Public  
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of **Response to Respondent's Answer to Complaint and Response to Prayer for Dismissal Contained Therein**. 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

FILED<sup>3</sup>  
DEC 20 2001

Missouri Public  
Service Commission

Office of the Public Counsel, )  
Complainant, )

v. )

Case No. WC-2002-155

Warren County Water and Sewer )  
Company and Gary L. Smith, )  
Respondents. )

**RESPONSE TO RESPONDENT'S ANSWER TO COMPLAINT AND RESPONSE  
TO PRAYER FOR DISMISSAL CONTAINED THEREIN**

COMES NOW, the Office of the Public Counsel, and respectfully responds to the Request, contained in the Warren County Water and Sewer Company's (Company's) Answer to the Complaint filed in this case that this matter be dismissed. Public Counsel informs the Missouri Public Service Commission that it opposes the Request to Dismiss. Public Counsel received the answer to the Complaint on December 10, 2001.

In support of this response, Public Counsel states the following:

1. Public Counsel filed a Complaint in this case and in SC-2002-160, alleging that the Company was failing to provide safe and adequate service to its customers. The allegations in the complaint dealt with many aspects of the Company's operations, including safety and management issues. The concerns raised in the Complaint are ongoing in nature and have not been resolved. These additional concerns include the discovery of an unlocked, unfenced pump station in the Shady Oaks subdivision of the service territory. Public Counsel is currently investigating whether there is a problem concerning the payment of its electric bills by the Company.

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2. The answer to the Complaint does not resolve any of the issues raised within the Complaint. The answer does not state that any of the deficiencies set out in the Complaint have been rectified. The answer places in dispute numerous issues of material fact.

3. The answer to a complaint filed with the Commission is required to contain certain elements, which are set forth in 4 CSR 240-2.070(8). This provision of the rules of procedure before the Commission provides that:

“The respondent shall file an answer to the complaint within the time provided. All grounds of defense, both of law and of fact, shall be raised in the answer.”

While the petition includes denials of several portions of the complaint, no grounds for defense in law or fact are provided. Therefore, the answer is deficient. It is noteworthy that the Company claims that it Gary Smith is not the owner of Warren County Water and Sewer Company. If this denial is based upon a transfer conducted or attempted without the approval of the Commission, that is another basis for investigating whether this Company is operating in a manner which violates statutes or Commission rules.

4. Subsequent to filing the complaint in this case, Public Counsel conducted further investigation in connection with this case. That investigation included another visit to the Company's service territory, where other violations were discovered which were not contained in the original complaint. Public Counsel has also learned that, as recently as October 15, 2001, the Company was not in compliance with effluent limitations regarding its sewage treatment plant #1, and in fact violated the Clean Water Commission Regulation 10 CSR 20-7.015(8)(B) 1. A “grab sample” showed that the

Company's Biochemical Oxygen Demand (BOD) exceeded the monthly average limit by 30 percent. As a result, the Company received another notice of violation from the Department of Natural Resources (DNR).

5. Pursuant to the Company's request, in another pending case, to increase the rates it charges for water and sewer service, the Commission's Staff has conducted an investigation and audit of the company. As a result of the Staff's investigation, Public Counsel has reason to believe additional evidence of Company mismanagement exists including:

a) Gary Smith may have attempted to transfer the assets of the Company, by use of a general warranty deed, to a new affiliated company, Warren/Lincoln Investments, Inc. Public Counsel has found no evidence that Mr. Smith has notified the Commission of this attempted transfer, or has obtained Commission approval for such transfer.

b) A recent payment made by the Company on its current Commission assessments was returned unpaid due to insufficient funds. Public Counsel has news as to believe the assessment delinquencies have not been paid.

c) The Company has been delinquent in paying its property taxes.

d) The Company may be co-mingling its financial records with an affiliated construction company, Gary Smith and Associates.

e) The Company issued numerous checks to Gary Smith and his affiliated companies during the review period which ended June 30, 2001. The checks totaled over \$87,000. The Staff could find no supporting documentation for the majority of those checks.

f) The Staff has found numerous billing errors and inconsistencies, and it appears many customers may have been charged in excess of the approved tariff for water and sewer connections. The Company has also been inappropriately adding late charges to bills in some situations.

6. In the answer, the Company and Mr. Smith deny numerous allegations in the complaint. At least some of those denials are incredible. By way of illustration, those claims include,

a) denial that the company is owned and operated by Gary Smith and

b) denial that the Company sought pre-approval of rates which include the cost of the as-yet unconstructed water storage tank in a letter by Mr. Smith to the Commission on 6/28/2001 requesting a small company rate increase.

7. In its answer, the Company and Mr. Smith, state that they are without sufficient information to admit or deny allegations of which Public Counsel alleges they have personal knowledge. By way of illustration, those claims of insufficient information include:

a) information in paragraph 15 of the complaint regarding information obtained from the Department of Natural Resources. That information comes from documentation which was provided by DNR to the Respondents.

b) information in paragraph 14 describing Mr. Smith's whereabouts in May of 2001, and the identity of the person who operated the system in his absence.

8. The denials contained in the answer create significant issues of material fact, which should be determined by the Commission. The Respondents have denied the existence of material facts which Public Counsel believes entitle the Commission to order

the relief requested in the Petition. The Respondents have not asked for a dismissal because deficiencies have been corrected. They are denying that the deficiencies exist. The allegations in the Complaint may not be the only issues which the Commission should consider in determining whether this Company is providing its customers with safe and adequate service. They are, however, significant problems which the Company has chronically failed to address.

WHEREFORE, Public Counsel respectfully requests that the Respondents' prayer that this Complaint be dismissed be denied. Further, Public Counsel requests that this Commission set an early pre-hearing conference for the purposes of establishing a procedural schedule and evidentiary hearing in this case. Public Counsel also renews its outstanding request that this matter be joined with SC-2002-160 for all further proceedings.

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 20<sup>th</sup> day of December 2001:

**GENERAL COUNSEL**

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