

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held at its office  
in Jefferson City on the 4th  
day of May, 1993.

In the matter of the application of Gary L. Smith, d/b/a )  
Incline Village Water and Sewer Co., to assume assets, )  
to expand its operating area, to amend connection fees, ) Case No. WM-93-109  
and such related matters. )  
)

**ORDER APPROVING SALE OF ASSETS, GRANTING CERTIFICATION**  
**AND EXPANDING CERTIFICATED AREA**

On September 22, 1992 Gary L. Smith, d/b/a Incline Village Water and Sewer Co., (Applicant) filed an Application pursuant to Section 393.190, R.S.Mo. 1986, seeking authorization of the Commission: (1) approving the sale and transfer of all the franchise, works, or system of Incline Village Water Company, Inc. and Incline Village Sewer Company, Inc. to Applicant; (2) authorizing Applicant to begin providing services to the certificated service area of Incline Village Water Company, Inc. and Incline Village Sewer Company, Inc.; (3) authorizing Applicant to expand to a newly certificated area; (4) to increase new service connection fees as to new water connections to the sum of \$575 and as to new sewer connections to the sum of \$400; (5) to require any extension of an existing main to be charged to the developer or new service applicant; (6) to require customers on pressurized connection systems to be required to pay maintenance costs of such systems; and (7) for such other relief as may be deemed necessary.

On September 24, 1992 Applicant filed an Amended Application. On October 15, 1992 Applicant filed an Assignment from Robert L. Lewis to Applicant of all his right, title, or interest in a certain Sales Contract and Management Agreement dated January 15, 1992 wherein Incline Village Water Company, Inc. and Incline Village Sewer Company, Inc. are named as first party and further

consenting to the Application to the Commission of Applicant. On October 23, 1992 Applicant filed a duplicate of the Board of Directors of Incline Village Water Company, Inc.'s assent to the sale of the water company dated June 15, 1990. On October 26, 1992 Applicant filed a statement from Joseph J. Becker, attorney for Incline Village Water Company, Inc., and Incline Village Sewer Company, Inc. which indicated that there was no objection of the said companies to the Application herein.

Applicant is an individual doing business as Incline Village Water and Sewer Co. with his principal office and place of business located at 1248 Mimosa Court, Foristell, Missouri 63348. Incline Village Water Company, Inc., and Incline Village Sewer Company, Inc. are both public utilities as defined in Section 386.020, R.S.Mo. 1986, and as such are authorized, respectively, to distribute and sell water and provide sewer service in their service areas located in Warren County, Missouri and St. Charles County, Missouri.

Certificates to provide water service and sewer service were granted by the Commission to Incline Village Water Company, Inc., and Incline Village Sewer Company, Inc., respectively, by a Report And Order in Case Nos. WA-82-259 and WA-82-260, effective November 9, 1982. Incline Village Water Company, Inc., and Incline Village Sewer Company, Inc. provide water and sewer service to approximately 57 residential customers plus the club house, swimming pool, and a subdivision sales office. The service area consists of the Incline Village lake development in Warren County, and the developers of the subdivision are the owners of Incline Village Water Company, Inc., and Incline Village Sewer Company, Inc. This subdivision was not successful for the developers, who are in bankruptcy. Also, some of the principals in the development company have died or have health problems. For these reasons they are no longer interested in the operation of the utilities. Although Incline Village Water Company, Inc., and Incline Village Sewer Company, Inc. themselves are not in bankruptcy, the

attorney for the utilities has indicated bankruptcy would be filed unless the assets and responsibility are transferred to another party. Applicant, Gary L. Smith, is presently operating Incline Village Water Company, Inc., and Incline Village Sewer Company, Inc. by contract with the utilities and also has a contract to purchase the assets, which is the subject of this case. Smith plans to operate the utility systems charging the same rates that the Commission has approved for Incline Village Water Company, Inc., and Incline Village Sewer Company, Inc., which are monthly rates of \$7.50 plus \$2.42 per 1,000 gallons for water service and \$15.00 flat rate for sewer service.

On November 6, 1992 the Commission issued its Order And Notice of the proposed sale causing notice to be provided: (1) to each customer of Incline Village Water Company, Inc., and Incline Village Sewer Company, Inc., (2) to ten persons residing in the proposed service area to be newly certificated, (3) to newspaper publishers located in St. Charles, Warren and Lincoln Counties, Missouri, (4) area lawmakers, and (5) area county commissions. Said Order And Notice also established a 30-day intervention period and directed inquiries to the Office of Public Counsel or the Commission's Staff (Staff). On December 23, 1992 the Commission issued its order granting intervention to East Central Missouri Water and Sewer Authority (East Central).

On April 16, 1993 the Commission's Staff filed its recommendation. Staff recommends that the sale of assets from both Incline Village Water Company, Inc., and Incline Village Sewer Company, Inc. to Applicant be approved. Staff also recommends that the expansion of the certificated area for water service as requested by Applicant be approved. Staff also recommends Applicant give notice of the closing of the sale to Staff within five days thereafter and make specific tariff filings. In making its recommendations, Staff indicates that it has settled with Applicant as to the connection charges applying to new customers to the water and sewer systems. For a residential service connection and meter

setting construction the charge will be \$300. This would include material and labor for making the tap, connecting service line piping between the tap at the main and the property line, and a meter installed in a covered meter box at the property line. The customer would be responsible for the service line between the meter setting and the building. For a residential sewer service connection, the present rule requires Incline Village Sewer Company, Inc. to provide material and inspection. Applicant wishes to provide material and labor for sewer connections similar to its desires on water connections. Therefore, Staff recommends a modification of the applicable sewer tariff rules. Staff believes the current charge of \$150 is adequate for sewer connections. Staff also recommends that Applicant file an extension rule for each tariff concerning water and sewer. Staff says no such tariffs currently exist and may be needed to service a developer or prospective customer. Staff recommends that the tariffs comply with its "example" tariffs for small companies.

Applicant proposes to expand the water service area to include an additional area. Included in the additional area is a subdivision known as Forest Green Estates. That subdivision has a developer-owned water system; but, the well has some problems and the developer is under directive from the Missouri Department of Natural Resources to correct the problem. Staff believes the appropriate way to correct the problem would be to supply the area with water from the Incline Village Water Company, Inc. system. Staff states that the Incline system's single well is capable of producing 350 gallons per minute which, with the utilization of the storage tank, is enough water to supply more than 700 residential customers. Staff believes that the Incline system provides more than enough water supply for the 60 existing customers and the eight existing customers in Forest Green Estates. Staff states that a new main between Forest Green Estates and Incline Village has been constructed by the developer of Forest Green Estates. When the new main is connected to the two systems the

Forest Green distribution system will be deeded to Applicant and the residents of Forest Green Estates will become retail customers of Applicant. Applicant will install water meters for each of the existing customers in Forest Green Estates and include the cost in rate base. Customers connecting in the future would be subject to the same connection charges as any other new customer in the existing service area.

Staff indicates that there have been numerous complaints from homeowners concerning such problems as water pressure, water leaks, pressure sewer pump unit maintenance, dirty water, hydrant repair, and lack of response. Staff attributes most of the problems to the inaction of the present owners, who are essentially a bankrupt business. Staff believes that Applicant will provide necessary management to the business and that service can be provided since a professional operator has been hired.

Staff further states that East Central has been interested in ownership of the Incline system for years. Applicant and the management of East Central have a tentative verbal agreement wherein East Central would purchase the assets from Applicant, subject to Commission approval, after the approval of the sale herein to Applicant. Staff states that an initial transfer of ownership to Applicant is necessary due to contracts and interests of the various parties with regard to the assets.

An opportunity for hearing has been provided and no proper party has requested an opportunity to present evidence. Pursuant to *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d, 494, 496 (Mo. App. 1989), the Commission will consider the case based upon the verified Application and attachments.

After considering the verified Application and statements and Staff's recommendations, the Commission finds that the transfer of assets of Incline Village Water Company, Inc. and Incline Village Sewer Company, Inc. to

Applicant and the expansion of the certificated area for water service as requested should be approved. The Commission determines that this transfer and expansion of certificated area for water service is not detrimental to the public interest and, in fact, is in the public interest. The Incline system has been in a state of improper management from the present owners, who have no interest in continuing operation of water and sewer service. Although the companies themselves are not presently in bankruptcy, the developers of the Incline companies are in bankruptcy. Applicant is the present operator under a management contract with the present owners and has demonstrated to Staff sufficient willingness to provide proper management to the Incline system. The East Central interest is a separate matter at this point and may be considered by the Commission in the future. The important consideration for the Commission is that there is a present owner and operator who will provide adequate water and sewer service to the existing customers of the Incline system. Also, the Commission is of the opinion that the Incline system should be expanded to include the Forest Green Estates. The present Forest Green Estates water distribution system appears inadequate and its inclusion in the Incline water system would be an improvement to the water system of the homeowners of that development. The Commission also finds that the tariffs requested by the Staff for Applicant to file are just and reasonable. The Commission is of the opinion that small water companies have a particularly challenging task to operate efficiently and in an environmentally safe manner and that it is imperative that adequate water service be continuous. Therefore, the Commission cannot be caught up in competing interests and must look to each applicant on a stand-alone basis, as it has done with this Application. The Commission also determines that there will be no local tax impact from the sale of assets upon any political subdivision.

**IT IS THEREFORE ORDERED:**

1. That Incline Village Water Company, Inc. and Incline Village Sewer Company, Inc. be hereby authorized to sell, transfer and assign to Gary L. Smith, d/b/a Incline Village Water and Sewer Co., their water operations, sewer operations, assets, franchise and service area.

2. That the expansion of the certificated area for water service to an area including Forest Green Estates be hereby approved.

3. That Gary L. Smith, d/b/a Incline Village Water and Sewer Co., notify the Commission's Staff of the date of the closing of the sale of assets within five (5) days after such action.

4. That Gary L. Smith, d/b/a Incline Village Water and Sewer Co., be hereby authorized to adopt the tariffs on file for Incline Village Water Company, Inc. and Incline Village Sewer Company, Inc. for provision of water and sewer service, with the provision that if a case to transfer assets to East Central Missouri Water and Sewer Authority is not filed within sixty (60) days after the effective date of the Commission's order herein, Gary L. Smith will file his own complete tariffs.

5. That Gary L. Smith, d/b/a Incline Village Water and Sewer Co., be hereby authorized to file tariff sheets within five (5) days after the effective date of the Commission's order herein modifying the water tariffs with a new map and metes and bounds description to reflect the added water service area, a water service connection charge of \$300, and a rewording of present tariff rules 4(e) and 12(f) regarding new water service connections which shall also include an extension rule.

6. That Gary L. Smith, d/b/a Incline Village Water and Sewer Co., be hereby authorized to file tariff sheets within five (5) days after the effective date of the Commission's order herein modifying the sewer tariffs with a

rewording of present tariff rules 4(g), 5(i), 5(k) and 12(d) regarding sewer service connections which shall also include an extension rule.

7. That after receipt of notification of the closing of the sale from Gary L. Smith, d/b/a Incline Village Water and Sewer Co., the certificates of convenience and necessity held by Incline Village Water Company, Inc. and Incline Village Sewer Company, Inc. shall be canceled.

8. That after cancellation of the certificates of convenience and necessity held by Incline Village Water Company, Inc. and Incline Village Sewer Company, Inc., certificates of convenience and necessity for water and sewer service in the same area and for water service in the expanded area herein approved shall be granted to Gary L. Smith, d/b/a Incline Village Water and Sewer Co.

9. That Incline Village Water Company, Inc. and Incline Village Sewer Company, Inc. be hereby authorized to enter into, execute and perform in accordance with the terms of all other documents reasonably necessary and incidental to the performance of transfer of assets herein described.

10. That nothing in this order shall be considered as a finding by the Commission of the reasonableness of the expenditures herein involved, nor of the value for ratemaking purposes of the properties herein involved, nor as an acquiescence in the value placed upon said properties by Gary L. Smith, d/b/a Incline Village Water and Sewer Co., or Incline Village Water Company, Inc. or Incline Village Sewer Company, Inc. ; and the Commission reserves the right to consider the ratemaking treatment to be afforded these transactions, and their resulting cost of capital, in any later proceeding.



11. That this order shall become effective on the 14th day of May,  
1993.

BY THE COMMISSION

*Brent Stewart*

Brent Stewart  
Executive Secretary

(S E A L)

Mueller, Chm., Rauch, McClure,  
Perkins and Kincheloe, CC., concur.