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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 20th  
day of October, 1998.

In the Matter of the Application of )  
Gary L. Smith d/b/a Incline Village )  
Water & Sewer Co. for Authority to )  
Borrow an Amount not to Exceed )  
\$155,000 in a Private Placement, and )  
in Connection therewith to Execute a )  
Promissory Note, Deed of Trust and )  
any Required Security Agreements and )  
Financing Statements. )

Case No. WF-97-271

ORDER APPROVING STIPULATION AND AGREEMENT

On January 14, 1997, Gary L. Smith, d/b/a Incline Water & Sewer Co., (Applicant) filed an application for authority pursuant to 4 CSR 240-060(8) to borrow \$155,000 to build an elevated storage tank. Applicant later amended the application to borrow \$200,000 and to add Warren County Water and Sewer Company (WCWS) as a joint applicant and borrower. Testimony was filed by the Applicant and by the Staff of the Commission. On July 15, 1998, Applicant, Staff, and the Office of the Public Counsel filed a unanimous stipulation and agreement (Stipulation). Also on July 15, the Staff filed suggestions in support of the Stipulation.

In the Stipulation, the parties agree that the construction of the water tower has been estimated to cost \$200,000 and that it is in the public interest to build it. They also agree that the terms of the proposed loan by the People's Bank of Lincoln County are reasonable, and that the Commission should authorize WCWS to obtain the loan to build the water tower.

The parties also agree that the asset transfer from Applicant to WCWS approved in Case No. WA-96-449 should be completed before WCWS enters into the loan transaction proposed in this case. The parties recommend that the Commission's order in this case should contain a provision substantially as follows:

The asset transfer approved in Case No. WA-96-449 shall close, and WCWS's tariffs shall be approved, before WCWS can enter into the debt transaction approved herein.

In his direct testimony, Staff Witness Randy Wright testified that the capital structure after the proposed loan would be above average for comparably sized water and sewer companies (approximately 49% common equity and 51% long term debt). However, Mr. Wright testified that the terms of the loan were, at the time his testimony was filed, not yet definite enough to evaluate their reasonableness. In its suggestions in support of the Stipulation, Staff states that the terms of the proposed loan are reasonable, and recommends that the Commission approve the Stipulation and grant Applicant authority to enter into the loan.

The Commission finds that allowing Applicant to enter into the proposed loan transaction is not detrimental to the public interest. Pursuant to Section 536.060 RSMo 1994, the Commission may accept the Stipulation and Agreement as a resolution of the issues in this case. The Commission has reviewed the Stipulation and Agreement and evidence of record in this matter and finds that substantial and competent evidence of record exists to find the Stipulation to be reasonable and in the public interest and will, therefore, approve it.

On August 19, the Commission issued an order in Case No. WA-96-449 approving WCWS's tariffs. On September 1, WCWS filed a notice in that case that the asset transfer had been completed. Accordingly, the

Commission finds that the condition in the Stipulation requiring WCWS to take over from Incline Water & Sewer Co. has been met.

**IT IS THEREFORE ORDERED:**

1. That the Stipulation and Agreement, Attachment A to this order, is hereby approved.

2. That Warren County Water and Sewer Company is hereby authorized to enter into the loan transaction described in the application as amended.

3. That this order shall become effective on October 30, 1998.

**BY THE COMMISSION**

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

(S E A L)

Lumpe, Ch., Crumpton, Murray,  
Schemenauer and Drainer, CC., concur.

Mills, Deputy Chief Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION  
FOR THE STATE OF MISSOURI

In the matter of the application of )  
Gary L. Smith, d/b/a Incline )  
Water & Sewer Co. for authority to )  
borrow an amount not to exceed )  
\$200,000 in a private placement, and in )  
connection therewith to execute a Promissory )  
Note, Deed of Trust and any required )  
Security Agreements and Financing Statements.

Case No. WF-97-271

**FILED**

JUL 15 1998

Missouri Public  
Service Commission

**STIPULATION AND AGREEMENT**

**PROCEDURAL HISTORY**

On January 14, 1997, Gary L. Smith, d/b/a Incline Water & Sewer Co., (hereinafter "Applicant") by and through counsel, filed an application pursuant to 4 CSR 240-2.060 (8) for authority to borrow \$155,000 for purposes related to the utility's operations. On March 2, 1998, Applicant amended the application by interlineation to increase the amount of borrowing authority applied for to \$200,000 and the caption to this document so reflects. On July 1, 1998, Applicant further amended the application to add as a joint applicant Warren County Water and Sewer Company.

To date, no party has intervened in this matter.

Pursuant to the proposed procedural schedule(s) in this matter, Incline filed the written direct testimony of Gary L. Smith on March 2, 1998 and the Staff filed the written rebuttal testimony of Randy Z. Wright.

For purposes of this action only, and for no other action or proceeding, the parties stipulate and agree that the following facts are true:

#### STIPULATED FACTS

1. Applicant proposes to construct a 100,000 gallon elevated water storage tank for its water operations to account for anticipated growth and to comply with Missouri Department of Natural Resources regulations, and for other reasons explained in the record to date in *In the Matter of the Application of Gary L. Smith d/b/a Incline Water & Sewer Co. to Sell and Transfer its Franchise, Work or System to Warren County Water and Sewer Company, a Missouri corporation, and to Expand its Operating Area, and for Such Other Related Matters*, Case No. WA-96-449.

2. The construction of the elevated water tower is in the public interest.

3. The total cost of acquiring such a tank and its installation including the 1) costs of acquiring the hardware itself; 2) the estimated construction and installation costs; 3) the real property, which has been acquired by condemnation, and the related legal expenses; 4) the costs of landscaping and fencing the area after construction of the tower, has been estimated at \$200,000.00.

4. On June 23, 1998, the Peoples Bank of Lincoln County (the Bank) proposed by letter to lend the sum of \$200,000 to Warren County Water and Sewer Company (WCWS) on terms and conditions set forth therein. A copy of the Bank's loan commitment letter is attached as Exhibit 1.

5. On June 18, 1998, the Commission approved the stipulation and agreement in Case No. WA-96-449 and authorized Applicant to transfer the utility assets to WCWS. Following transfer of those assets and approval of tariffs, WCWS will replace Incline as the operating water and sewer utility.

6. The terms and conditions of the Bank's loan proposal to WCWS are reasonable and

in the public interest.

7. The parties stipulate and agree that the Commission should authorize WCWS to enter into the debt transaction for the purposes of constructing and installing the water tower on the terms and conditions proposed by the Bank on Exhibit 1.

8. The parties further agree that the asset transfer approved in Case No. 96-449 should close, and WCWS's tariffs should be approved, before WCWS enters the loan transaction proposed herein. Accordingly, the Commission's order in this matter should contain a provision substantially as follows:

WCWS's application for approval of the within financing is approved subject to the following: The asset transfer approved in Case No. 96-449 shall close, and WCWS's tariffs shall be approved, before WCWS can enter into the debt transaction approved herein.

9. This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof. The Stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the signatories to take other positions in other proceedings.

10. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties and participants waive, with respect to the issues resolved herein: their respective rights pursuant to §536.080.1, RSMo 1994, to present testimony, to cross examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2, RSMo 1994; and their respective rights to

seek rehearing pursuant to §386.500 RSMo 1994 and to seek judicial review pursuant to §386.510, RSMo 1994. The parties agree to cooperate with the Incline and with each other in presenting this Stipulation and Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of this Stipulation and Agreement.

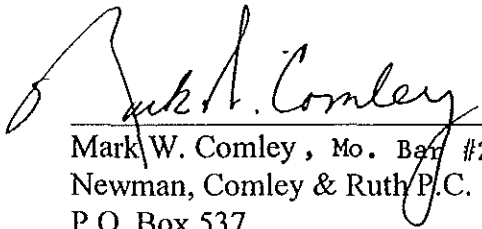
11. The Staff may submit a Staff Recommendation concerning matters not addressed in this Stipulation. In addition, if requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record and participant herein shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all parties and participants. All memoranda submitted by the parties shall be considered privileged in the same manner as settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties and participants, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding or in this proceeding whether or not the Commission approves this Stipulation and Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to the Stipulation and Agreement, whether or not the Commission approves and adopts this Stipulation and Agreement.

12. The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties and participants with advance notice of when the Staff shall

respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure.

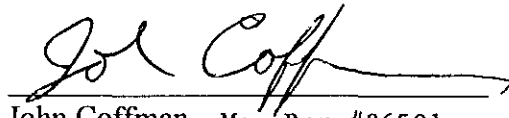
WHEREFORE, the signatories respectfully request the Commission to issue its Order approving the terms of this Stipulation and Agreement and issue its Order granting the authority as requested by Applicants subject to any conditions described above.

Respectfully submitted,



Mark W. Comley, Mo. Bar #28847  
Newman, Comley & Ruth P.C.  
P.O. Box 537  
Jefferson City, MO 65102-0537  
(573) 634-2266

FOR: Incline Water and Sewer Company  
and Warren County Water and Sewer  
Company



John Coffman, Mo. Bar #36591  
Office of Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102  
(573) 751-5565

FOR: Office of Public Counsel



Cherlyn McGowan, Mo. Bar #42044  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102-0360  
(573) 751-3966





P.O. BOX 6 • TROY, MO 63379 • (314) 528-7001 • FAX: (314) 528-7016

June 23, 1998

Gary L. Smith, President  
Warren County Water & Sewer  
1248 Mimosa Ct.  
Foristell, MO 63348

Dear Mr. Smith:

I am pleased to advise you that Peoples Bank and Trust Company of Lincoln County has approved your request for a loan in the amount of \$200,000.00 to finance the construction of a 100,000 gallon water storage tank. The rate on the loan will be Prime plus 1.0% (currently 9.5%) and the loan will be amortized in monthly installments over a period of twenty (20) years. Our agreement to make this loan is subject to the following conditions:

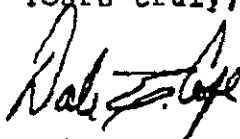
1. U.S. Department of Agriculture Rural Economic and Community Development guaranteeing 80% of the balance of the loan.
2. The loan will be secured by all of assets of Warren County Water & Sewer, including, but not limited to, all of its real estate; all of its machinery, equipment and fixtures; all inventory; and all accounts receivable.
3. The loan will also be guaranteed by War-Lin, Inc. and Gary L. Smith and A. Lynn Smith.
4. The guaranty of War-Lin, Inc. will be secured by the residential real estate located at 1248 Mimosa Ct. in Foristell and the other real estate owned by War-Lin, Inc. as shown by its balance sheet of October 13, 1997.
5. Appraisals will show that War-Lin, Inc. has equity in the above-described real estate in the approximate amount of \$86,860 as indicated on its balance sheet.
6. Key-man life insurance in the amount of \$200,000 will be obtained on the life of Gary L. Smith and assigned to the bank.

Gary L. Smith  
June 23, 1998  
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7. The Missouri Public Service Commission will authorize Warren County Water and Sewer to execute such loan documentation as may be necessary to carry into effect this financing.

Thank you for giving us the opportunity to serve you. If you have any questions or comments regarding these matters, please feel free to call.

Yours truly,



Dale E. Cope  
Vice President and  
General Counsel

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 15th day of July, 1998.

A handwritten signature in black ink, appearing to be "CDM", is written over a horizontal line.

Service List - July 15, 1998  
WF-97-271

Mark Comley  
Attorney for Incline Water & Sewer  
Newman, Comley & Ruth  
205 East Capitol Ave.  
Jefferson City, MO 65101

Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102

RECEIVED

OCT 21 1998

COMM. COUNCIL  
PUBLIC SERVICE COMMISSION