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May 15, 2002

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

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

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the Original and eight copies of Position Statement of the **Office of the Public Counsel**. Please "file" stamp the extra-enclosed copy and return it to this Office.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, reading "M. Ruth O'Neill".

M. Ruth O'Neill  
Assistant Public Counsel

MRO :jb

cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Office Of the Public Counsel,	)	
Complainant,	)	
v.	)	Case NO. WC-2002-155
Warren County Water and Sewer	)	
Company and Gary L. Smith,	)	
Respondents.	)	

POSITION STATEMENT OF THE OFFICE OF THE PUBLIC COUNSEL

COMES NOW, the Office Of the Public Counsel, and respectfully submits to the Missouri Public Service Commission, the following statement of position On the contested issues in this case.

Issue 1.        Water Service. Has Warren County Water and Sewer Company failed to provide safe and adequate water service to its customers?

**Public Counsel's Position:** Yes. The Company has failed to provide adequate storage, despite receiving permission from the Commission, in 1996, to construct additional storage. The Company obtained the necessary DNR permits for construction, but allowed the permits to lapse. Despite the need for additional storage, the Company has refused to move forward with financing until it is awarded a rate increase to cover an alleged but unsubstantiated revenue shortfall. The lack Of adequate water storage has adverse affects the service provided by customers. This Company has a history of frequent and repeated complaints about low Or inconsistent water pressure, excessive chlorine unpleasant odor, incorrect billing, missed and slow responses to trouble reports

and Other issues. For these and Other reasons, the Company has failed to provide safe and adequate water service to its customers.

Issue 2. Sewer Service. *Has* Warren County Water and Sewer Company failed to provide safe and adequate sewer service to its customers?

**Public Counsel's Position:** Yes. The Company has failed to keep its sewer facilities in good operating condition. As a result, many customers have experienced sewer problems. The failure to adequately maintain the sewer facilities has resulted in the owner Of the company being convicted Of a felony violation Of the Clean Water Act, and subsequently violating his probation for that conviction. The discharges which were subject Of the conviction and the probation violation Occurred in two different locations On the Company's system, and these discharges created a significant risk to the health and safety Of the Company's customers. In addition, the Company has failed to maintain adequate fencing and locks On the various components Of its system, in violation Of Missouri DNR regulations. The Company has created a situation where persons were at great risk of serious physical injury. The Company's sewer *has* a history of frequent and repeated complaints about inappropriate malfunctioning equipment, system discharge, unpleasant odor, incorrect billing, missed and slow responses to trouble reports and Other issues. For these and other reasons, the Company has failed to provide safe and adequate sewer service.

**Issue 3. Management of the Company.** *Has* the management of Warren County Water and Sewer Company failed to Operate the company in a reasonable and prudent manner, *such* as by keeping accurate books and records and preventing commingling Of regulated and unregulated business matters?

Public Counsel's Position: Yes. The Company has extremely poor customer service, keeps poor records, and fails to utilize the revenues received from providing service to maintain the system. The Company's finances have been commingled with various non-regulated business enterprises Owned by Mr. Smith (the owner of the Company). The Company has attempted to transfer its assets without Commission approval. The Company has a history Of failing to pay its bills, taxes and assessments to the Commission and the Missouri DNR in a timely manner. The Company has been administratively dissolved by the Missouri Secretary Of State for failure to comply with its requirements.

Issue 4. Appointment of a Receiver. Should the Commission seek the appointment of a receiver for the Company, pursuant to Section 393.145 RSMo (2000)?

Public Counsel's Position: Yes. The current management Of the Company has utterly failed to comply with its Obligation to provide safe and adequate service, despite repeated attempts by the Commission Staff and the Missouri DNR to provide assistance. Only a complete change in management will provide the Company's customers with the opportunity to receive safe and adequate service. Public Counsel believes that the appointment of a receiver is a better option than revoking the company's certificate, because the company has Over 300 customers with no Other options for Obtaining water Or sewer service.

Issue 5, Liquidation of the Assets of the Company. If the Commission seeks appointment Of a receiver, should the Commission also seek a determination, pursuant to Sec. 393.145.5 RSMo, that "control and responsibility for the utility should not, in the best interests Of its customers, be returned to the Owners," and an Order from

the circuit court directing "the receiver [to] proceed to liquidate the assets Of the utility in the manner provided by law"?

**Public Counsel's Position:** Yes. Given the long history Of the Company's management Of refusing to comply with the statutory responsibilities which are assumed upon receiving a certificate Of convenience and necessity, Public Counsel believes that the appointment Of a receiver is only a temporary solution to the problems the customers are experiencing. Ultimately, the system should be transferred to an Owner with the training and experience necessary to Operate a water and sewer company, who is willing and able to abide by the statutory and regulatory requirement of a regulated utility company in this state.

At this time, Public Counsel believes it is premature to recommend that any particular entity be chosen as the receiver. However, Public Counsel discussed the possibility Of serving as a receiver with several entities. Public Counsel notes that the company which Operates the water system in nearby Foristell, and the Incline Village Board Of Trustees, have both expressed a willingness to be considered as a receiver On a temporary basis.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

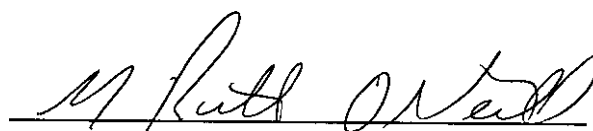
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CERTIFICATE OF SERVICE

I hereby certify that copies Of the foregoing have been mailed or hand-delivered to the following this 15<sup>th</sup> day Of May 2002:

GENERAL COUNSEL  
Missouri Public Service Commission  
P O Box 360  
Jefferson City MO 65102

PAUL S DEFORD  
Lathrop & Gage  
2345 Grand Boulevard Suite 2500  
Kansas City MO 64108-2684

A handwritten signature in cursive script, appearing to read "Paul S. Deford", is written over a horizontal line.