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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 2nd  
day of July, 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	)	<u>Case No. WF-97-271</u>
in Connection therewith to Execute a	)	
Promissory Note, Deed of Trust and	)	
any Required Security Agreements and	)	
Financing Statements.	)	

ORDER DENYING INTERVENTION AND  
DENYING MOTION TO ESTABLISH BRIEFING SCHEDULE

On May 27, 1998, Judy A. Smith filed an application to intervene in this case. Ms. Smith states that she is the former wife and a judgment creditor of Gary L. Smith, and that she has an interest in this case which is not similar to the public generally and would not be adequately represented by any other party to this proceeding. Ms. Smith believes that Mr. Smith has fraudulently transferred personal assets, held under the fictitious name of Incline Water & Sewer (Incline), to a Missouri general business corporation by the name of Warren County Water & Sewer Company. Ms. Smith states that she would oppose any proposal by which Mr. Smith would seek to encumber his personal assets that he has fraudulently conveyed to another entity, in such a way as to defeat her rights as a creditor.

In this case, Applicant has requested Commission authority to borrow up to \$200,000 from Peoples Bank of Lincoln County to construct an elevated water storage tank. The Commission recently found, in Case No. WA-96-449, that the construction of this tower would further the

public interest. In the same case, the Commission also authorized the transfer to Warren County Water and Sewer from Incline of the assets used by Incline to provide public water and sewer service. In this case the Commission will either deny, approve, or conditionally approve Incline's application to borrow money. In so doing, the Commission will not ratify any fraudulent transfer of assets, if such has occurred.

On June 5, Gary L. Smith d/b/a Incline Water & Sewer Co., the applicant in this case, filed suggestions in opposition to Ms. Smith's application to intervene. Applicant states that Ms. Smith's intervention targets Mr. Smith as an individual, and that she claims no right against the public utility that is the applicant in this case. Applicant alleges that Ms. Smith seeks to intervene to serve her self interest, and that she seeks to raise issues foreign to the case. Applicant also claims that, although it is unclear precisely what Ms. Smith seeks to accomplish in this proceeding, her goal is to protect her rights as a creditor of Mr. Smith and use this Commission proceeding to enforce the judgment. Applicant correctly asserts that the Commission does not have the power to enforce judgments. Applicant's final argument is that, although the Commission did not establish an intervention deadline, Ms. Smith's application should be considered untimely.

On June 8, the Staff of the Commission (Staff) filed a pleading opposing Ms. Smith's intervention and raising the same arguments made by Incline.

On June 16, Ms. Smith filed a motion to establish a briefing schedule. Ms. Smith states that, if the Commission allows Mr. Smith to grant a security interest in his assets to a lender, she will be hindered in her efforts to collect the judgment against Mr. Smith. Ms. Smith states that her purpose in intervening in this case is to persuade "the

Commission to condition its approval by ordering Mr. Smith to allocate a portion of the revenues earned in his sewer and water business toward a timely satisfaction of his other debts."

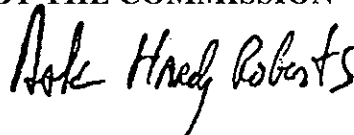
If Ms. Smith believes she is entitled to some of Mr. Smith's income, she may seek that relief from a circuit court. There is a significant difference between Mr. Smith's income and the utility's revenue, however, and the Commission will not apportion the revenues from the utility business between Mr. and Ms. Smith.

The Commission does not believe that it needs briefs in order to decide the issue of Ms. Smith's intervention.

**IT IS THEREFORE ORDERED:**

1. That the application to intervene of Judy A. Smith is denied.
2. That the motion to establish a briefing schedule of Judy A. Smith is denied.
3. That this order shall become effective on July 14, 1998.

BY THE COMMISSION



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

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COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION