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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 10th
day of September, 1997.

In the Matter of the Application of)
Gary L. Smith d/b/a Incline Water &)
Sewer Company to Sell and Transfer)
its Franchise, Works or System to) Case No. WA-96-449
Warren County Water and Sewer Company,)
a Missouri Corporation, and to Expand)
its Operating Area, and for Such Other)
Related Matters.)

**ORDER GRANTING IN PART AND DENYING IN PART MOTION TO COMPEL
AND REINSTATING PROCEDURAL SCHEDULE**

On May 20, 1997, Intervenors, the Trustees of Incline Village (Trustees) filed a motion to compel responses to certain Data Requests (DRs) sent by Trustees to the Applicant, Gary L. Smith (Applicant). The Trustees noted the Applicant's objections or failure to respond to the DRs and stated generally why they felt those requests were valid. On May 30 Applicant filed a response and made suggestions in opposition to the proposed DRs. The DRs will be addressed below without recitation of each party's position unless necessary for the decision.

DR #1:

"Describe your educational background, including high school, undergraduate and graduate institutions attended, all degrees obtained and the dates on which such degrees were obtained."

The Standard for determining whether to grant the motion to compel responses is whether the matter for which discovery is sought is

relevant to the subject matter of the pending application case.¹ In this case, the ultimate question for determination by the Commission is whether authorizing a transfer of the Incline Water and Sewer Company franchise, works, and system and granting an expanded certificated service area to the proposed transferee (Warren County Water and Sewer Company) is detrimental to the public interest. The Commission concludes that the Applicant's educational experience is relevant to the question of the Applicant's ability to expand the operating area and therefore will order Applicant to respond as requested by the Trustees but only as it relates to Gary L. Smith. The response need not go back any further than Mr. Smith's post high school education.

DR #2:

"Describe in detail your work experience and for each such employer, business or occupation at which you have worked, state:

- a. The employer's name and address;
- b. The dates of employment;
- c. The principal business of the employer;
- d. Your title and description of your duties and responsibilities;
- e. Your salary or rate of compensation;
- f. Each of the persons to whom you directly reported and the time period during which you reported to such person; and
- g. A brief description of any training or education received by you from the employer."

¹Mo. Sup. Ct. Rule 56.01(b).

The Commission finds that the information requested is relevant to the underlying issues in this case. The work experience of the Applicant is relevant to the determination of the Applicant's ability to expand the operating area. The Applicant will be ordered to respond as requested by the Trustees but only as related to Gary L. Smith. The response need not go back any further than Mr. Smith's age of 21.

DR #3:

"Describe in detail the facts and circumstances by which you acquired your interest in IVWS [Incline Water & Sewer Company], and identify:

- a. The date of your acquisition of IVWS;
- b. The persons from whom you obtained your interest in IVWS;
- c. The consideration given by you for your interest in IVWS; and
- d. All documents relating or referring to your negotiation for and/or acquisition of IVWS."

The Commission finds that the information requested is not relevant to the subject matter of this case and shall deny Trustee's motion to compel a response to DR #3. There is no benefit to the process by re-evaluating the facts underlying Mr. Smith's acquisition of IVWS.

DR #4:

"Identify and produce all documents submitted by you to the Public Service Commission pursuant to your application to own and/or operate IVWS."

The Trustees' Motion to Compel is denied with regard to DR #4. This material can be more properly obtained by going to the Commission

offices and copying the requested documents that are on file with the Records Department.

DR #5:

"Identify all interests in real property presently or formerly held by you (or by any proprietorship, partnership, corporation, or other entity in which you owned an interest),

(including but not limited to:

- a. The property's address and location;
- b. The date on which you acquired an interest in the property;
- c. The ownership interest acquired by you;
- d. The person or entity from whom you acquired the property;
- e. Whether the property is located within the present service area of IVWS;
- f. Whether the property is located within the area in which you seek to expand water service;
- g. Whether you transferred, sold or leased any portion or interest in the property and if so identify:
 - (i) The dates of such transfer, sale or lease;
 - (ii) The person or entity to whom you transferred, sold or leased an interest in the property;
and,
 - (iii) All documents relating to or evidencing such transfer, sale or lease;

- h. All persons who represented you or participated on your behalf in the acquisition, transfer, sale or lease of the property; and,
- i. All documents relating to your ownership interest in the property.

The Trustees' Motion to Compel a response to data request No. 5 is granted in part as set forth herein. The Trustees are entitled to discover ownership interests of Mr. Smith in real estate located within the present service area of IVWS and within the area for which Applicant seeks an expansion of certificated service area. This includes direct or indirect interest in real estate controlled by businesses in which Mr. Smith is involved. To the extent that Applicants identify interests in real estate that meet the above-stated criteria, Applicants shall respond to sub-parts a, b, c, d, e, f, g and i of data request No. 5. Applicants are not required to respond to sub-part h.

DR #6:

"Have you ever been a plaintiff or defendant in any civil, criminal, administrative or regulatory proceeding or action? If so, for each such proceeding or action, identify:

- a. The style, court (or administrative body) and case number;
- b. The parties;
- c. The date on which the proceeding or action was filed;
- d. The claims made by or against you;
- e. The parties' attorneys; and

- f. Describe in detail the settlement, verdict, award, judgment, order or other disposition of the proceeding or action."

The Commission finds that the information requested is relevant except insofar as Mr. Smith's involvement in criminal proceedings is requested. Thus, the Commission will grant Trustee's motion to compel a response to DR #6 with the sole exception that Mr. Smith need not answer as to whether he has been a defendant in a criminal proceeding.

DR #7:

"Please provide tax returns for Gary L. Smith, A. Lynn Smith, IVWS and Warren County Water & Sewer Co. for the period January 1990 to the present."

The Trustee's Motion to Compel relating to data request No. 7 is denied. The Trustees have not shown a relationship between this data request and the issues underlying the application.

DR #11:

"Describe in detail the amount, type and nature of capital improvements (and itemize the expenses incurred in connection therewith) you have made for each of the following developments, during the period January 1992 to the present:

- a. Incline Village;
- b. Forest Green;
- c. Shady Oaks."

DR #12:

"Identify the source of the money expended to make the capital improvements itemized in your response to request number 11 above."

The Commission finds that the information requested in DRs #11 and #12 is relevant to the underlying issues in this case. The financial ability of the Applicant to make capital improvements is relevant to the expansion of services. The Trustee's motion to compel responses to DR #11 and DR #12 is granted.

The Commission has ruled on the data requests as discussed above and will order responses be made by September 19, 1997. It would be preferable that the Trustees determine what information it requires for this case and does not have in its possession so that Applicant can concentrate on providing such information rather than items which are duplicative.

On June 11, the Commission granted Staff's Motion to Suspend Full Procedural Schedule until the Commission ruled on the motion to compel data request responses. The Commission determines that the procedural schedule set forth in Ordered Paragraph 3 should be reinstated in this case.

IT IS THEREFORE ORDERED:

1. That the motion to compel filed by Intervenors, the Trustees of Incline Village, against Gary L. Smith be hereby granted in part and denied in part as described in this order.

2. That the Applicant, Gary L. Smith, shall respond to the Data Requests on or before September 19, 1997.

3. That the following procedural schedule shall be established for this case:

Staff, Public Counsel and Intervenor's Rebuttal Testimony	October 3, 1997 3:00 p.m.
Applicant's Surrebuttal Testimony	October 17, 1997 3:00 p.m.

Staff, Public Counsel and
Intervenor's Cross-Surrebuttal
Testimony

October 17, 1997
3:00 p.m.

Prehearing Conference

October 22, 1997
10:00 a.m.

Hearing Memorandum

November 20, 1997

Evidentiary Hearing

December 1-3, 1997
(10:00 a.m. first day)

4. That this order shall become effective on September 10,
1997.

BY THE COMMISSION



Cecil I. Wright
Executive Secretary

(S E A L)

Lumpe, Ch., Murray, and Drainer, CC., concur.
Crumpton, C., absent.

ALJ: Luckenbill