

**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.)	

MOTION TO REOPEN CASE
FOR THE TAKING OF ADDITIONAL EVIDENCE

COME NOW the Staff of the Missouri Public Service Commission, and moves the Missouri Public Service Commission for its order reopening the case for the taking of additional evidence, and in support thereof states to the Commission as follows:

1. The evidentiary hearing in this case concluded on June 4, 2002. The Staff requests permission to file one additional exhibit following the conclusion of the hearing. The Staff's proposed exhibit shows the recent history of the Company's annual report filings and assessment payments. A copy of the proposed late-filed exhibit is attached hereto.

2. During the hearing in this case, Commissioner Murray asked a series of questions of Staff witnesses Jim Merciel and Bill Meyer in an attempt to ascertain whether Warren County Water and Sewer Company had timely satisfied its obligations to pay Commission assessments and to file annual reports with the Commission, and whether it is now current on those obligations.

3. Near the end of the hearing, during the redirect examination of Gary L. Smith, the Company introduced Exhibit 20, a letter to the Company from Dana K. Joyce, General Counsel

of the Commission. Because this exhibit was introduced during redirect examination, the Staff and Public Counsel did not have an opportunity to cross-examine Mr. Smith about this letter, and did not have an opportunity to respond to Exhibit 20 in any other way.

4. In the second paragraph of the letter to Mr. Smith, Mr. Joyce correctly stated that the Company's unpaid annual assessment for the fiscal year beginning July 1, 2001 was \$1,666.36. Although this information in Exhibit 20 is correct, it is incomplete, and it may mislead the Commission, because it does not address the Company's obligation to file annual reports, and does not address the Company's unpaid assessments for fiscal years beginning before July 1, 2001.

5. As is shown on the attached late-filed exhibit, the unpaid balance of the assessments for fiscal years 2000, 2001 and 2002 totals \$4,632.11 as of June 3, 2002. As the attached late-filed exhibit also shows: the Company had failed, as of June 3, 2002, to file annual reports for calendar years 1998, 1999 and 2001; the Company's annual report for calendar year 2000 was filed nearly three months late; and the Company's annual report for calendar year 1997 was filed more than nine months late, using unacceptable alternate forms.

6. Rule 4 CSR 240-2.110 (8) authorizes the late filing of evidence under certain circumstances. The rule reads in full as follows:

- (8) A party may request that the commission reopen a case for the taking of additional evidence if the request is made after the hearing has been concluded, but before briefs have been filed or oral argument presented, or before a decision has been issued in the absence of briefs or argument. Such a request shall be made by filing with the secretary of the commission a petition to reopen the record for the taking of additional evidence in accordance with these rules, and serving the petition on all other parties. The petition shall specify the facts which allegedly constitute grounds in justification, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. The petition shall also contain a brief statement of the proposed additional evidence, and an explanation as to why this evidence was not offered during the hearing.

7. The Staff submits that the Commission should accept the proffered exhibit, because the exhibit includes data that Commissioner Murray specifically sought, because it concerns factual data that is contained in the Commission's own files, and because the Staff did not realize that Exhibit 20 was incomplete and misleading before the end of the hearing. The Staff is proffering the exhibit as soon as possible, within one day after the conclusion of the hearing, and no party will be harmed by the late admission of this exhibit.

8. The Staff's motion complies in all respects with the provisions of Rule 4 CSR 240-2.110 (8), and the motion should be granted.

WHEREFORE, the Staff moves that the Commission reopen the case for the taking of additional evidence concerning the status of the Company's unpaid annual assessments and its filing of annual reports with the Commission.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ **Keith R. Krueger**

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or e-mailed to all counsel of record this 5th day of June 2002.

/s/ Keith R. Krueger
