

Exhibit No.: _____

Issue(s) Safe and Adequate Service
Witness/Type of Exhibit: Meisenheimer/
Supplemental Direct
Sponsoring Party: Public Counsel
Case No.: WC-2002-155
(Consolidated with SC-2002-160)

SUPPLEMENTAL DIRECT TESTIMONY

OF

BARBARA A. MEISENHEIMER

FILED³
FEB 13 2002

Missouri Public
Service Commission

Submitted on Behalf of the Office of the Public Counsel

OFFICE OF THE PUBLIC COUNSEL

v.

**WARREN COUNTY WATER & SEWER COMPANY
AND GARY L. SMITH**

**Case No. WC-2002-155
(Consolidated with SC-2002-160)**

February 13, 2002

**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.)	

AFFIDAVIT OF BARBARA A. MEISENHEIMER

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

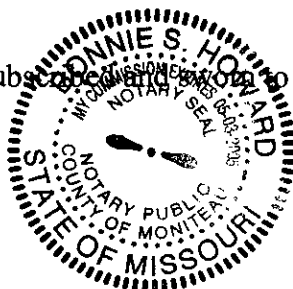
Barbara A. Meisenheimer, of lawful age and being first duly sworn, deposes and states:

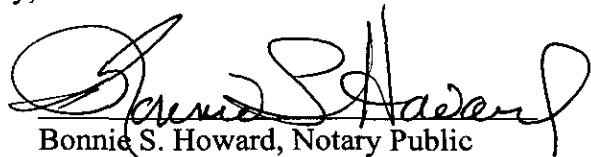
1. My name is Barbara A. Meisenheimer. I am Chief Utility Economist for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my supplemental direct testimony consisting of pages 1 through 13 and Attachments BAM-1 through BAM-6.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.



Barbara A. Meisenheimer

Subscribed and sworn to me this 13th day of February, 2002.





Bonnie S. Howard, Notary Public

My Commission expires May 3, 2005.

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BARBARA A. MEISENHEIMER

OFFICE OF THE PUBLIC COUNSEL

v.

WARREN COUNTY WATER AND SEWER COMPANY

AND GARY L. SMITH

CASE NO. WC-2002-155

(CONSOLIDATED WITH CASE NO. SC-2002-160)

INTRODUCTION

Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

A. Barbara A. Meisenheimer, Chief Utility Economist, Office of the Public Counsel, P. O. Box 7800, Jefferson City, Missouri 65102. I am also employed as an adjunct Economics Instructor for William Woods University.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS CASE?

A. Yes, I filed direct testimony on September 26, 2001.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. In my supplemental direct testimony, I am presenting additional information in support of the Complaint filed by the Office of the Public Counsel in September of 2001. I am also sponsoring exhibits which consist in part of photographs which illustrate some facets of the operation of Warren County Water and Sewer Company (WCWS or the Company). I took these photographs during two investigative visits to the Company's facilities located in Incline Village and Shady

Oaks in Warren County, Missouri. I traveled to the Company's service territory on October 17, 2001 and January 16, 2002. Both of these inspections occurred after I filed direct testimony in this case. The attachments in BAM-1 are photos taken on the October 17, 2001 visit, which illustrate the condition of some aspects of the Company's plant on that date. The attachments in BAM-2 are photos taken on the January 16, 2002 visit, which illustrate the conditions of some aspects of the Company's plant on that date.

Q. WHAT WAS THE PURPOSE OF THE OCTOBER 17, 2001 VISIT?

A. A primary purpose of the October 17, 2001, visit was to locate and inspect a lift station operated by the Company in a subdivision named Shady Oaks. Additionally, we sought to determine whether the Company had addressed any of the safety and operational concerns raised in Public Counsel's direct testimony at its facilities located in Incline Village.

Q. PLEASE IDENTIFY THE PUBLIC COUNSEL STAFF MEMBERS WHO PARTICIPATED IN THE OCTOBER 17, 2001 INSPECTION.

A. Ruth O'Neill, Kim Bolin and I visited the Company's service territory on that date.

Q. WERE YOU ABLE TO LOCATE A LIFT STATION IN SHADY OAKS?

A. Yes, we were. Attachment BAM-1 to my supplemental direct testimony illustrates what we observed at the lift station in Shady Oaks.

Q. DO THE PICTURES OF THE LIFT STATION SHOWN IN PICTURES ON PAGES 1-2 OF ATTACHMENT BAM-1 ACCURATELY REPRESENT WHAT YOU OBSERVED ON YOUR OCTOBER 17, 2001, VISIT?

1 A. Yes, they do.

2 **Q. DOES PUBLIC COUNSEL HAVE CONCERNS REGARDING WHAT YOU OBSERVED**
3 **AT THE LOCATION?**

4 A. Yes. The lift station we visited in Shady Oaks was not fenced. The cover was not locked and there
5 were no locks present at time of our visit, as illustrated on pages 1-2 of Attachment BAM-1. The
6 electrical box at the Shady Oaks lift station was not locked. at the time of our visit, as illustrated at
7 pages 1-2 of Attachment BAM-1. Finally, as was the case in our May 17, 2001 visit to the Incline
8 Village lift station, the Shady Oaks lift station's warning indicator did not appear to be working.

9 **Q. WHICH SITES LOCATED IN INCLINE VILLAGE DID PUBLIC COUNSEL**
10 **STAFF INSPECT ON OCTOBER 17, 2001?**

11 A. In response to customer complaints regarding the condition of road restorations following
12 placement of facilities we visited the site of previous road cuts. The pictures on pages 3-4 of
13 Attachment BAM-1 illustrate the condition of the road at two such sites.

14 **Q. DO THE PICTURES OF THE ROAD CUTS SHOWN IN PICTURES 1 AND 2 ON**
15 **PAGES 3-4 OF ATTACHMENT BAM-1 TO YOUR SUPPLEMENTAL DIRECT**
16 **TESTIMONY ACCURATELY REPRESENT WHAT YOU OBSERVED ON YOUR**
17 **OCTOBER 17, 2001, VISIT?**

18 A. Yes, they do.

19 **Q. WHAT OTHER SITES LOCATED IN INCLINE VILLAGE DID PUBLIC**
20 **COUNSEL STAFF INSPECT ON OCTOBER 17, 2001?**

1 A. We also revisited the two treatment plants and the lift station previously visited on May 17, 2001.

2 Q. DO THE PHOTOS OF THE LIFT STATION AND TREATMENT PLANTS SHOWN
3 IN PICTURES ON PAGES 5-10 OF ATTACHMENT BAM-1 TO YOUR
4 SUPPLEMENTAL DIRECT TESTIMONY ACCURATELY REPRESENT WHAT YOU
5 OBSERVED ON YOUR OCTOBER 17, 2001, VISIT?

6 A. Yes, they do.

7 Q. DID IT APPEAR THAT THE COMPANY HAD TAKEN STEPS TO ADDRESS
8 SAFETY ISSUES WHICH WERE CONCERNS RAISED IN YOUR DIRECT
9 TESTIMONY?

10 A. Yes, the missing fence panel at Treatment Plant I near the golf course illustrated on page 2 of
11 Attachment BAM-1 to my direct testimony had been replaced. Additionally, the cover of the lift
12 station in Incline Village was locked at the time of our visit. The Company had also constructed a
13 fence around the lift station as illustrated in Picture 1 on page 10 of Attachment BAM-1 to my
14 supplemental direct testimony.

15 Q. HAD THE COMPANY SUFFICIENTLY RESTRICTED ACCESS TO TREATMENT
16 PLANT II NEAR THE LAKE?

17 A. No. Although, it appeared that some of the fence panels surrounding Treatment Plant II had been
18 replaced the gate to the fence was hanging loose and was not secure against entry. The condition of
19 the gate is shown in the pictures on pages 5-8 of Attachment BAM-1 to my supplemental direct
20 testimony.

1 **Q. WHAT WAS THE PURPOSE OF PUBLIC COUNSEL'S JANUARY 17, 2001,**
2 **INSPECTION OF THE COMPANY'S FACILITIES?**

3 A. Public Counsel visited the Company's facilities for the third time to respond to a report that the
4 Shady Oaks lift station was not operating properly and to determine if the Company had taken
5 further action to address the safety concerns discussed previously in my testimony.

6 **Q. PLEASE IDENTIFY THE PUBLIC COUNSEL STAFF MEMBERS WHO**
7 **PARTICIPATED IN THE JANUARY 16, 2001, INSPECTION.**

8 A. Kim Bolin and I went to the service territory that day.

9 **Q. DO THE PHOTOS OF THE SHADY OAKS LIFT STATION SHOWN IN**
10 **PICTURES ON PAGES 1-5 OF ATTACHMENT BAM-2 TO YOUR**
11 **SUPPLEMENTAL DIRECT TESTIMONY ACCURATELY REPRESENT WHAT YOU**
12 **OBSERVED ON YOUR JANUARY 16, 2001, VISIT?**

13 A. Yes, they do.

14 **Q. PLEASE DESCRIBE WHAT YOU OBSERVED AT THE SHADY OAKS LIFT**
15 **STATION.**

16 A. As we approached the area near the facilities the ground was marshy and there was a strong foul
17 smell. At one point there was a small stream of grayish liquid that crossed the path to the lift
18 station. As illustrated in Pictures 1 and 2 of Attachment BAM-2 to my supplemental direct
19 testimony when we arrived at the Shady Oaks lift station we observed that the cover to the lift
20 station was not locked. Picture 3 of Attachment BAM-2 illustrates that the electrical box was not

1 locked. There were no signs posted in the immediate area of the lift station prohibiting or warning
2 against entry to the facilities. It also appeared that the pump station and warning indicator were not
3 working. Upon opening the cover we observed that sewage was at a level near the top of the
4 holding tank. This is illustrated in Picture 4 of Attachment BAM-2. Picture 5 of Attachment
5 BAM-2 shows a small pool of liquid on the ground near the base of the lift station.

6 **Q. WHAT FACILITIES IN INCLINE VILLAGE DID YOU INSPECT ON YOUR**
7 **JANUARY 16, 2001, VISIT?**

8 A. We revisited the treatment plants near the lake and golf course.

9 **Q. DO THE PHOTOS OF THE TREATMENT PLANTS SHOWN IN ON PAGES 6-9**
10 **OF ATTACHMENT BAM-2 TO YOUR SUPPLEMENTAL DIRECT TESTIMONY**
11 **ACCURATELY REPRESENT WHAT YOU OBSERVED ON YOUR JANUARY 16,**
12 **2001, VISIT?**

13 A. Yes, they do.

14 **Q. WHAT WAS TREATMENT PLANT II SECURE AT THE TIME OF YOUR**
15 **JANUARY 16, 2001, VISIT?**

16 A. No. The gate to Treatment Plant II was hanging loose from the fence.

17 **Q. DO YOU BELIEVE THAT THE CONDITION OF THE COMPANY'S SEWER**
18 **TREATMENT FACILITIES SATISFIES THE COMPANY'S REQUIREMENT TO**
19 **PROVIDE SAFE AND ADEQUATE SERVICE?**

1 A. No. Based on my observations during the visits to WCWS I believe that the Company has
2 demonstrated a recurring failure to secure dangerous facilities against entry. As I discussed in my
3 direct testimony, the lift stations are large pits containing sewage. If they are left unlocked, they
4 pose a significant safety hazard. The treatment plants contain exposed vats filled with liquid and
5 solid waste where a chemical process is used to treat raw sewage prior to release. Public Counsel's
6 pictorial evidence taken over a period of approximately nine months demonstrates that the
7 Company has repeatedly failed to utilize measures as simple and inexpensive as padlocks and
8 minor fence repairs to protect lives in the areas it serves and to protect the company against any
9 financial liability associated with such negligence. The lack of a properly functioning warning
10 indicators was also a recurring problem that poses an additional health hazard. Without an
11 operational warning system, the Company will not be timely alerted to problems with its operating
12 plant, which potentially could allow raw, untreated sewage to overflow from the stations on to the
13 ground surrounding the lift stations and into lakes or waterways near the stations. This creates a
14 significant risk to public health and safety.

15 **Q. DOES PUBLIC COUNSEL BELIEVE THAT THE COMPANY'S WATER**
16 **FACILITIES SATISFY THE COMPANY'S REQUIREMENT TO PROVIDE SAFE**
17 **AND ADEQUATE SERVICE?**

18 A. No. Despite a growing customer base, complaints regarding water pressure, a recommendation for
19 immediate construction of a new water tower made by an engineering firm employed by the
20 company, approval from DNR and Commission approval for constructing a new storage facility the
21 Company has failed to construct the water storage tank its tariffs indicate it had hoped to complete

1 by the Spring of 1999. (See Kim Bolin's Direct Testimony pages 6-8 and Attachment 3) The
2 Commission and Public Counsel have received numerous complaints regarding the Company's
3 water outages, water quality and low water pressure.

4 **Q. ARE THERE OTHER FACTORS IN ADDITION TO THE SAFETY AND**
5 **ADEQUACY OF PHYSICAL PLANT THAT THE COMMISSION SHOULD**
6 **CONSIDER IN DETERMINING WHETHER THE COMPANY IS FUFILLING ITS**
7 **RESPONSIBILITIES AS A PUBLIC UTILITY?**

8 A. Yes. The primary consideration for the Commission is whether the Company is providing safe and
9 adequate service, regardless of the condition of its physical plant. The Commission should also
10 evaluate whether the Company has complied with its tariff terms of service, including billing
11 practices, and how such practices affect the justness and reasonableness of rates. The Commission
12 should evaluate whether the Company's business practices are appropriate. Public Counsel
13 believes that the company has demonstrated deficiencies in these areas. Public Counsel has
14 received complaints that the Company has estimated water usage as a surrogate for reading meters
15 in billing. The Company's tariffs provide for meter readings, with the bill based upon usage. In a
16 recent audit of the Company, the Commission Staff raised concerns regarding the appropriateness
17 of application of late charges, connect and disconnect charges and installation charges on customer
18 bills. In addition to billing issues, the audit disclosed a number of deficiencies. For example, the
19 Company has been administratively dissolved by the Secretary of States Office for failure to file an
20 annual report. The Company attempted to transfer regulated assets to an affiliate without the
21 required approval from the Commission. The Company failed to document related to transactions

1 between the regulated Company and its affiliates. The Company was delinquent on taxes and fees.
2 Mr. Smith admitted that the Company was administratively dissolved in a letter to the Staff.. (See
3 Attachment 4) The Company admitted that customers were incorrectly billed for late charges when
4 it was required to correct the error on subsequent bills. (See Attachment 5.)

5 **Q. HOW DO INCORRECT BILLING, INADEQUATE RECORD KEEPING AND OTHER**
6 **IMPROPER BUSINESS PRACTICES AFFECT A UTILITY'S ABILITY TO**
7 **PROVIDE SAFE AND ADEQUATE SERVICE AT JUST AND REASONABLE**
8 **RATES?**

9 A. Incorrect billing may result in a Company inappropriately over or under collecting money from its
10 customers. The Company's rates are approved by the Commission, and based on the cost of
11 providing service. In the Company's case, most customers are billed based on both a minimum
12 "customer charge" of \$7.50 per month, and a usage charge of \$2.42 per 1,000 gallons of water
13 usage. Inconsistent application of tariff charges will likely result in similarly situated customers
14 paying different rates for the same service. Both over and under collection raise issues regarding
15 the justness and reasonableness of rates charged to consumers. A lack of adequate records with
16 regard to billing and affiliate transactions and improper business practices can also adversely affect
17 a firm's ability to meet its responsibilities in serving consumers as a regulated utility. For example,
18 such problems can impede a company's ability to receive rate increases when those rate increases
19 are necessary to ensure safe and adequate service. Such practices can also impede regulatory
20 oversight regarding the safety and adequacy of the service provided and the justness and
21 reasonableness of rates charged to consumers.

1 **Q. PLEASE DESCRIBE THE ECONOMIC BASIS FOR REQUIRING RATE OF**
2 **RETURN REGULATED COMPANIES TO MAKE A SHOWING OF THE JUST AND**
3 **REASONABLENESS OF RATES.**

4 **A.** Rate of return regulation is frequently utilized when the most cost-effective method of providing a
5 necessary service is achieved by a single firm, capitalizing on economies of scale. Rate of return
6 regulation provides a monopoly utility with the opportunity to recover costs while simultaneously
7 mimicking a competitive market outcome by protecting consumers against the market power
8 typically afforded to a monopoly producer. Economic theory suggests that this outcome can be
9 achieved by establishing rates that are set at levels which will allow the utility the opportunity to
10 recover prudently incurred "explicit costs" and earn a fair return on investment ("implicit costs").
11 This outcome is viewed as optimal from a societal perspective because it provides the utility with
12 reasonable assurance that it will be able to attract capital while also minimizing the risk that the
13 utility will operate inefficiently by allowing for future disallowance of imprudently incurred costs.
14 Another reason this outcome is considered optimal is that as a whole consumers pay prices that
15 approximate the cost of service or that are in general just and reasonable. In identifying the
16 appropriate level of recoverable "costs" the standard has been to allow costs of resources that are
17 used and useful in the provision of the utility service. Under this methodology rate increases are
18 warranted when costs exceed revenues. However, absent adequate records regarding such costs and
19 the revenues currently generated that offset those cost there is no reliable method for establishing
20 the appropriate level of rates.

1 **Q. IS IT REASONABLE TO HOLD A SMALL COMPANY LIKE WCWS TO THE**
2 **SAME STANDARD AS A LARGER COMPANY IN EVALUATING WHETHER IT IS**
3 **PROVIDING SAFE AND ADEQUATE SERVICE AND MAINTAINING RELIABLE**
4 **BUSINESS RECORDS?**

5 A. Absolutely. It is completely reasonable to hold all public utilities to the legal requirement that they
6 provide safe and adequate service. Let me emphasize that for small companies, just as for large
7 companies, their rates are set based upon allowable costs, which include the reasonable costs
8 incurred in maintaining adequate records. A company's business records are the foundation on
9 which the cost of service is determined for regulatory purposes. This does not mean that the format
10 for keeping records must be identical for all companies, regardless of size. It merely means that
11 adequate records must be maintained.

12 **Q. FROM AN ECONOMIC PERSPECTIVE, WHAT PROBLEMS CAN RESULT FROM**
13 **FAILURE TO MAINTAIN BUSINESS RECORDS OF TRANSACTIONS WITH**
14 **UNREGULATED AFFILIATES?**

15 A. Improper cost shifts from unregulated to regulated affiliates may occur, imposing an unjust burden
16 on the company's captive customers. Another problem is that the unregulated affiliate might secure
17 a competitive advantage by virtue of its relationship with the regulated entity. For example, as
18 recently as last year, the Company was marketing its unregulated service in the same document as
19 the regulated company's basic installation rates and terms of service. The same access was not
20 afforded the unregulated affiliate's competitors. A copy of the document is included as Attachment
21 6.

1 Q. PUBLIC COUNSEL HAS RECOMMENDED THAT THE COMMISSION ORDER THE
2 COMPANY TO IMMEDIATELY CORRECT ALL OF ITS ACTIONS OR
3 OMISSIONS WHICH VIOLATE THE LAW AND ACT QUICKLY TO PLACE THE
4 COMPANY'S WATER AND SEWER SYSTEMS UNDER THE CONTROL AND
5 RESPONSIBILITY OF A RECEIVER, PURSUANT TO SEC. 393.145 RSMO.
6 ALTHOUGH NOT WITHOUT PRECEDENT, THIS ACTION IS NOT
7 COMMONPLACE. DOES PUBLIC COUNSEL BELIEVE THAT THIS IS THE
8 MOST APPROPRIATE REMEDY AVAILABLE IN THIS CASE?

9 A. Yes, we believe that this is the only workable solution that will afford WCWS's customers the
10 opportunity for long-term improvements in their service. Under current management, the company
11 has a history of recurring customer complaints, quality, safety, billing, legal and financial problems.
12 Based on past performance, Public Counsel believes that any solutions the Company may propose
13 to address these current problems will only temporarily improve conditions. Therefore, only
14 meaningful resolution is to place the Company's water and sewer systems under the control and
15 responsibility of a receiver.

16 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

17 A. Yes, it does.