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April 24, 2002

HAND DELIVERY

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

Re: **Office of the Public Counsel v Warren County Water and
Sewer Company, Case No. WC-2002-155**

Dear Secretary Roberts:

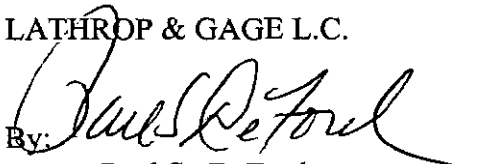
Enclosed for filing with the Commission is the following:

Original and eight (8) copies of Surrebuttal Testimony of Gary L. Smith

Thank you for your attention to this matter. If you have any questions, please contact me.

Very truly yours,

LATHROP & GAGE L.C.

By: 
Paul S. DeFord

Enclosures

cc: Ruth O'Neill
Office of Public Counsel
Office of General Counsel

11969.1

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Exhibit No.: _____

Issues(s): Introduction & Qualifications;
Meter Reading;
Service Condition;
Service Complaints;
Well Inspector;
Receivership;
Sale of Company;
Other Options; and
Conclusion

Witness//Type of Exhibit: Smith/Surrebuttal

Sponsoring Party: Respondent

Case No.: SC-2002-160

SURREBUTTAL TESTIMONY

OF

GARY L. SMITH

Submitted on Behalf of Warren County Water & Sewer Company and Gary L. Smith

OFFICE OF THE PUBLIC COUNSEL

v.

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

Case No. SC-2002-160, et al.

April 24, 2002

Table of Contents

Introduction and Qualifications	Page 1
Meter Reading	Page 2
Service Connection	Page 2
Service Complaints	Page 3
Well Inspector	Page 4
Receivership	Page 4
Sale of Company	Page 4
Other Options	Page 5
Conclusion	Page 6-

Exhibit No.: _____
Issue:
Witness: Gary L. Smith
Type of Exhibit: Surrebuttal Testimony
Sponsoring Party: WARREN COUNTY WATER AND
SEWER
Case No.: WC-2002-155, et al.
Date: April 23, 2002

SURREBUTTAL TESTIMONY OF GARY L. SMITH

**Q. PLEASE STATE YOUR NAME, ADDRESS AND DESCRIBE YOUR WORK
RELATIONSHIP WITH RESPECT TO WARREN COUNTY WATER AND
SEWER COMPANY.**

A. My name is Gary L. Smith and I reside at 1248 Mimosa Court, Forest Hill, Missouri,
63348. I am the sole stockholder of Warren County Water & Sewer Company and
Warren Lincoln Investments, Inc.

**Q. ARE YOU THE SAME GARY L. SMITH THAT CAUSED TO BE FILED IN
THIS DOCKET REBUTTAL TESTIMONY ON MARCH 28, 2002?**

A. Yes, I am.

**Q. MR. SMITH, DO YOU HAVE A RESPONSE TO THE REBUTTAL TESTIMONY
OF MR. MERCEIL?**

A. Yes. Mr. Merceil does not really raise any new points and I have no disagreement with
most of what he says. However, he continues to reference matters that are not in context,
are exaggerated, or, represent half-truths.

1 **Q. COULD YOU PROVIDE EXAMPLES OF SUCH ALLEGATIONS OR**
2 **STATEMENTS?**

3 A. Yes. The Staff has continually made allegations that meters are routinely not read.
4 However, the Company has available meter worksheets dating back to at least 1993,
5 showing readings each month and, if a meter was not read, an explanation as to why it
6 was not read . On one occasion, the Staff representatives sat in my house making that
7 allegation while I physically possessed and offered the worksheets for their review. To
8 date, they continue to refuse to look at utility records to determine what meters are read
9 and which are not. One Staff member, on one occasion, even accused me of being too
10 lazy to bend over and read the meters when, had he looked at the records, he would have
11 seen that I hire a meter reader and the reader does read outside meters (inside meters are
12 the ones we have trouble on occasion accessing) and, in general, that only 2-5% of the
13 active meters are not read in an average month.

14 **Q. ARE THERE OTHER EXAMPLES OF SUCH ALLEGATIONS OR**
15 **STATEMENTS?**

16 A. Yes. Staff continues to raise unfounded concerns about connection policies. The
17 Company operates under the same policy that has been in place since utility began
18 operations. Although, in response to Staff complaints, I have asked for written
19 clarification of Staff's recommended policy and also asked that the connection fees be
20 adjusted to reflect the Company's obligations, there has been no written response from
21 Staff. The last request was almost one year ago and, to date, there has been no response
22 to my request for clarification and fee adjustment on this issue. In fact, recently the Staff

1 confused the situation even more by saying that sewer laterals are not the Company's
2 responsibility. This position was adopted after previously being advised that it was the
3 Company's responsibility to make all road crossings.

4 **Q. WHAT IS YOUR CURRENT POSITION WITH REGARD TO CONNECTIONS?**

5 A. Because I can not get a definitive decision on the connection issue, I have decided to sell
6 my non-utility equipment and simply leave it to the customer to make their own service
7 connection arrangements. This is how it has been done since 1983 except that my
8 construction company will no longer be an option available to the customer. I also
9 decided against buying a new boring machine since the utility does not have that
10 responsibility, or at least the connection fees do not cover the cost.

11 **Q. DO YOU HAVE ANY COMMENT ABOUT SERVICE COMPLAINTS IN**
12 **GENERAL?**

13 A. Yes. Incline Village Trustees, for ten years, have jumped on every opportunity to
14 orchestrate complaints and, rather than dispose of them, the Staff simply continues to
15 regurgitate them when the opportunity arises. An objective evaluation of the system by
16 an independent third party would produce, in my opinion, a completely different
17 conclusion. A continued rehashing of old issues is clearly not the solution to anything in
18 this matter.

19 **Q. DO YOU HAVE A RESPONSE TO THE REBUTTAL TESTIMONY OF STAFF**
20 **WITNESS LOETHEN?**

1 A. My experience in dealing with Mr. Loethen has not been positive. For example, Mr.
2 Loethen indicates that he has asked for records of inspections at the well. While I do not
3 recall any such requests, had he made even the most cursory inspection, while he was on
4 site, he would have seen, in plain view, a monthly record sheet in the well house showing
5 the time each day the well was inspected and the daily pumping. In addition, in
6 reviewing Company files, it appears there are 27 monthly reports in the current file. Prior
7 records are in closed files. All of these files and posted record sheets are available to
8 Staff and with even minimal effort could have been reviewed.

9 **Q. HAVE YOU GIVEN FURTHER CONSIDERATION TO THE IDEA OF**
10 **PUTTING THE COMPANY INTO RECEIVERSHIP?**

11 A. Yes. In light of Mr. Merceil's testimony, I would agree that placing the Company into
12 receivership will not provide a permanent solution to resolve any problems that may
13 exist. Nor do I believe that it would be in the best interest of the utility, its customers or
14 myself, because it would add another layer of expense to utility operations that would
15 somehow need to be recovered.

16 **Q. HAVE YOU FURTHER CONSIDERED THE OPTION OF SELLING THE**
17 **COMPANY AS SUGGESTED BY MR. MERCEIL?**

18 A. Yes. I have preliminarily talked with a number of people representing different entities
19 about this option. However, in discussing this matter with one potential purchaser, it
20 was disclosed that there had been discussions with both Mr. Merceil and an Incline
21 Village Trustee in which false information was given to the potential purchaser, which
22 would mean that no sale could likely be consummated with the agreement of all current

1 parties in interest. I am, therefore, extremely concerned that under the present
2 circumstances it will be difficult to obtain an arm's length and fair disposition of the
3 Company.

4 **Q. ARE YOU CURRENTLY CONSIDERING, OR EXPLORING, ANY OTHER**
5 **OPTIONS?**

6 A. Yes. I am considering obtaining protection in Federal Bankruptcy Court in order to
7 accomplish debt restructuring and hopefully allow time to develop a permanent solution
8 that would protect the Utility, its customers and myself. Because the Company has
9 failed, through the informal rate process, to get rates in place which reflect the cost of
10 doing business, there are current outstanding payables in the neighborhood of \$50,000.
11 It would be my hope that these utility debts could be restructured under the supervision
12 of the bankruptcy court while at the same time seeking rate adjustments, perhaps with
13 federal intervention to ensure positive cash flow and the ability to obtain financing for
14 necessary capital improvements. Electing this option may be somewhat complicated
15 and cumbersome, but given the animosity of the respective parties and the dire financial
16 condition of the utility, I nonetheless believe it deserves further serious consideration.

17 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

18 A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Office of the Public Counsel,
Complainant,

v.

Warren County Water and Sewer
Company and Gary L. Smith,
Respondents.

Case No. SC-2002-155, et al.

AFFIDAVIT OF GARY L. SMITH

STATE OF MISSOURI

COUNTY OF WARREN

)
) SS
)

I, Gary L. Smith, of lawful age and being first duly sworn, deposes and states:

1. My name is Gary L. Smith. I am the sole shareholder of Warren County Water and Sewer Company.

2. Attached, hereto and made a part hereof for all purposes, is my surrebuttal testimony consisting of pages 1 through _____.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge.

ORIGINAL SIGNED BY GARY L. SMITH

Subscribed and sworn to me this _____ day of April, 2002.



Notary Public


My Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served this 24 th day of April, 2002, upon the following:

Ruth O'Neill
Office of Public Counsel
Governor Office Building
Jefferson City, MO 65101

Office of General Counsel
Missouri Public Service Commission
Governor Office Building
Jefferson City, MO 65101



Attorney for Warren County Water
and Sewer Company