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Corporate Structure;
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Local Public Hearing Issues; and
Conclusion

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Case No.: SC-2002-160

REBUTTAL 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.

March 28, 2002

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

CASE NO. WC-2002-155, et al.

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

4 A. My name is GARY L. SMITH and I reside at 1248 Mimosa Court, Foristell, Missouri
5 63348. I am the sole stockholder of Warren County Water & Sewer Company and
6 Warren-Lincoln Investments, Inc.

7 **Q. WHEN DID YOU BECOME AFFILIATED WITH WARREN COUNTY WATER**
8 **& SEWER COMPANY?**

9 A. In 1991/92, I acquired the assets of Incline Water, Inc. and Incline Sewer, Inc. I first
10 operated as Gary L. Smith d/b/a Incline Water and Sewer Company and then transferred
11 the utility to Warren County Water & Sewer Co.

12 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL, VOCATIONAL AND RELEVANT**
13 **WORK-RELATED EXPERIENCE.**

14 A. I have a B.S. in Education and a J.D. from the University of Missouri-Columbia and have
15 taken various graduate courses toward either an M.A. or a M.B.A.

1 Over the last ten years I have taken numerous training courses in the water and sewer
2 field and have obtained a "B" level wastewater license and a "C" level water license from
3 MODNR. I am also a member of several trade organizations including the Missouri
4 Rural Water Association, American Water Works Association, the Water Environment
5 Federation and the Missouri Water and Wastewater Conference.

6 After negotiating the takeover of the water and sewer system in 1991, I began operating
7 the current utility in 1992, I handle all of the administrative and managerial work, review
8 the daily operation of the system and supervise all contractors in performing maintenance
9 and repairs.

10 I have used an "A" level wastewater operator for purpose of laboratory work, testing and
11 consulting. I have used MODNR's technical assistance program and have brought in
12 various technicians from trade associations for technical help in running the system.

13 **Q. WHAT IS YOUR GENERAL RESPONSE TO THE ALLEGATIONS AND THE**
14 **RELIEF REQUESTED BY THE OFFICE OF PUBLIC COUNSEL'S ("OPC")**
15 **COMPLAINT?**

16 **A.** For the most part, allegations are not well-founded or are overstated. The relief requested
17 is similarly extreme and not warranted on the facts.

18 **Q. DOES OPC APPEAR TO HAVE A CLEAR AND ACCURATE PERCEPTION OF**
19 **THE COMPANY AND THE CIRCUMSTANCES IT OPERATES UNDER?**

20 **A.** No. There seems to be some confusion on the part of the OPC as to service area as well
21 as other matters set out in its Complaint.

1 In 1983, when tariffs were first issued, the service area of the Utility included portions of
2 Warren and St. Charles Counties. In 1992, the Utility requested that the service area be
3 expanded to include a portion of Lincoln County. The MOPSC approved this expansion
4 and the Company has added approximately 100 customers since that approval.

5 As to the "conditional" area referenced, the Utility originally proposed building a new
6 water tower approximately one mile west of the current plant along Route WW since that
7 ground is higher and it is a natural area for future expansion. The Trustees of Incline
8 Village appeared at a pre-hearing conference before this Commission in Jefferson City
9 and indicated their opposition to the tank being placed outside of Incline Village. To
10 avoid litigation costs, and because it would be cheaper to build the new tank next to the
11 current tank, the Company dropped the original plan and undertook to acquire the ground
12 next to the current plant. The Utility acquired the land and began engineering work on
13 the new tower. At that time, Incline Village filed for an injunction and sought to prohibit
14 construction of the tank inside Incline Village. At that point the Company went through a
15 condemnation proceeding to get authority to build the tank and spent a great deal of time
16 and money to just be in a position to begin construction.

17 After Incline Village's second opposition, plans for expansion were essentially dropped.
18 The Company was able to get the expansion area approved as "conditional".

19 In spite of the tremendous cost Incline Village forced the Company to incur, it still had
20 bank approval for financing of the new tank. I was prepared to pledge sufficient personal
21 collateral to secure the loan and the bank was prepared to take the Mo PSC Staff's
22 ("Staff") assurances that the cost of the tank would, at the appropriate time, be placed in

1 rate base. However, due to the \$10-30,000 the utility was losing each year in normal
2 operating cost, both the bank and myself conditioned the loan upon a rate adjustment that
3 would offset the operating losses. We were always prepared to risk the delay in making
4 necessary rate adjustments until after the tank was constructed assuming there was no
5 ongoing operating loss. To address the operating losses the Company initiated an
6 informal rate proceeding..

7 The conclusion of the informal rate case left the Company with what appears to be the
8 typical gross overstatement of income and understatement of expenses so both I and the
9 bank deferred on the loan until the normal operating budget of the utility would be close
10 to solvent.

11 **Q. DID THE COMPANY EXPECT TO HAVE RATES "PRE-APPROVED" BEFORE**
12 **UNDERSTANDING CONSTRUCTION OF THE NEW TOWER?**

13 A. No. With regard to "pre-approval", the Staff offered and the Utility requested that during
14 the audit various anticipated costs of the new tank be looked at and that the auditors make
15 a projection of the impact those presumed costs would have on rates. The Staff indicated
16 that it would explain the rate-making process to the bank and advise as to what the
17 Company could expect in the way of a rate adjustment. While I assume a Company can
18 ask for anything in a rate case, I am as aware as anyone of the work in progress statute
19 (my name was on the ballot the same year the initiative passed state-wide).

20 **Q. PLEASE EXPLAIN THE COMPANY'S POSITION ON WHAT HAS BEEN**
21 **REFERENCED AS THE "TURNER COMPLAINT."**

1 A. With regard to the David Turner Complaint, the only effect it had was that the Company
2 amended its Application for Service to use exact tariff language with regard to purchase
3 of lift stations and I undertook to consolidate the Construction Company and the Utility
4 into one company. I was attempting to follow what I thought to be Staff's advice. It now
5 appears that it was not possible to do what I thought Staff was suggesting and I have
6 begun the process of undoing the parent/subsidiary relationship.

7 **Q. OPC HAS RAISED CONCERNS ABOUT THE CONDITION OF THE**
8 **COMPANY'S TREATMENT PLANTS AND FENCES. PLEASE RESPOND.**

9 A. The fences surrounding both treatment plants have been in place for over twenty years
10 and were built to MODNR specifications. They serve as a screen and are not designed
11 for security purposes or to keep anyone out. We repair fences at least twice each year,
12 especially after storms, and have rebuilt all of one and a major portion of the other. DNR
13 has never, to my knowledge, criticized the fences around the treatment plants. Again,
14 they are not built for the purpose keeping people out. In any event, I am not aware of
15 anyone ever forcing their way in to any portion of the plant.

16 As to the presence of debris on Utility property, I allowed Incline Village to use the
17 property when it dredged the lake, and also allowed Charter Cable to use the property
18 when it laid its cable in the spring of 2001. The "trash" referenced by OPC comes from
19 both those operations and have nothing to do with the "treatment process" or the Utility.
20 Charter removed the cables, barrels, etc., referred to when it finished this past spring.

21 **Q. OPC ALSO ALLEGES THAT THE OPERATION OF THE UTILITY WAS**
22 **TURNED OVER TO A RELATIVE. PLEASE EXPLAIN.**

1 A. For three weeks in May, 2001, I underwent treatment in Columbia. At that time I was
2 present at the Utility three days each week, my class "A" consultant was present two days
3 each week, and my normal work crew worked each day. My brother was staying at my
4 house at the time but he only took care of household affairs and ran errands in my
5 absence.

6 **Q PLEASE ADDRESS THE MDNR VIOLATIONS RAISED BY OPC.**

7 A. (a) Plant One

8 With regard to sample violations, these basically involve Plant One and have been a
9 problem for years. In 1991, it lacked a blower and the other was not functioning
10 properly. I installed a new blower and rebuilt the other. I also replaced piping, diffusers
11 and other parts of the plant. While it has been in compliance a substantial percentage of
12 the previous 120 plus months, there is a continuing problem with return sludge. Various
13 experts and consultants have made suggestions over the years but no one has found a
14 permanent solution. I have tried to obtain financing for improvements to the plant and
15 for the addition of a second plant, but the PSC Staff, while suggesting a program and
16 offering to help, made little or no effort to assist in getting loan approval. Obviously,
17 conventional financing is not an option, especially with the water tank being a higher
18 priority.

19 (b) Lift Station Repair

20 I immediately respond to calls on individual lift stations and am able to take care of most
21 problems immediately or after I can get a repairman on the job. As to large stations, we

1 respond immediately and try to repair at the lowest possible cost. When major work is
2 necessary, we are at the mercy of one or two repair places and face dramatic costs when
3 major repairs are necessary. In the most recent audit, the auditors put zero in the budget
4 for pump repairs but so far in 2002, we have spent around \$11,000. During the audit
5 period, we spent over \$4,000. Obviously, with no funds for pump repair, we have great
6 difficulty when disaster happens.

7 Generally we have serious pump problems every 18-24 months. With eight pumps and a
8 ten year life expectancy, that seems about average. Why the auditors don't recognize that
9 issue and allow a rate adjustment is beyond me.

10 **Q. DO YOU HAVE ANY COMMENT ABOUT THE CUSTOMER COMPLAINTS**
11 **OPC LISTS IN ITS TESTIMONY?**

12 A. Yes. I have found that essentially the same people re-hash the same complaints at every
13 opportunity. Because most of these complaints can be settled with objective testing I
14 don't understand why the Staff never takes turbidity tests, chlorine tests or other readily
15 available tests to determine the legitimacy of these complaints. I have made a standing
16 offer to take a turbidity test at any time a customer claims to have discolored water.
17 However, I have only received one call over the years and that person's water was clear.
18 (She said it must have just cleared up).

19 **Q. PLEASE EXPLAIN HOW THE COMPANY TREATS THE WATER PROVIDED.**

20 A. Our water comes from a deep well, therefore it is not really subject to organic
21 contamination. Well water does, however, have inorganic matter (minerals) in it. As a

1 result, people on well water have hardness from these minerals while surface (river)
2 water systems do not. Our water comes from the same aquifer as other communities in
3 this area. Wright City, Foristell, Troy and others have the same water and, hence, the
4 same problems as I do. Most of us treat with chlorine since that kills hydrogen sulfide
5 odors which occur naturally. Most customers use water softeners remove hardness.
6 Unlike shallow wells in the area, we have never had organic pollutants in our water.

7 **Q. THE OPC HAS CRITICIZED THE RELATIONSHIP AND ACTIVITY**
8 **BETWEEN TH UTILITY AND THE CONSTRUCTION COMPANY YOU OWN.**
9 **MR. SMITH, COULE YOU CLARIFY AND EXPLAIN THE RELATIONSHIP?**

10 A. Yes. From the time I took over the utility in 1992 until sometime around 1995, the utility
11 did not own any equipment nor did it have any employees. We were unable to do routine
12 maintenance where equipment was required. As to emergency repairs, we had to depend
13 on the contractors who damaged utility property to repair such damage. As to making
14 connections, taps, etc., we had to defer to the contractor who worked on behalf of
15 property owners.

16 Around 1995, I was developing some real estate and had hired contractors to perform the
17 construction, including laying water and sewer mains. I found it extremely useful to be
18 able to pull the equipment from the primary job to perform maintenance or repairs on the
19 part of the utility. I did not pay for the utility work but merely absorbed the cost in the
20 development costs of the new subdivision. My experience in this regard, along with a
21 couple of jobs I did as a sub-contractor, convinced me that if I could generate enough

1 private work that would pay for equipment and manpower, that the Utility would then
2 have equipment available for it's needs.

3 In 1996, or so, I began renting a backhoe and having a payroll. I ran this business as
4 Gary L. Smith & Associates. The money earned from various private jobs paid the
5 expenses and allowed the Utility to have access to the equipment. As the business
6 expanded, and the Utility used the Construction Company for more and more work, I
7 began billing the Utility for work performed by the Construction Company. Although the
8 Utility had no money to pay the bills, I had hoped to build in expenses for a rate
9 adjustment that would allow the Utility, as it grew, to have equipment available as
10 needed.

11 **Q. DID YOU ATTEMPT TO RESTRUCTURE THE TWO COMPANIES TO**
12 **ACCOMMODATE CRITICISM FROM REGULATORS?**

13 Yes. Since the MOPSC Staff began criticizing my operating two separate companies, so
14 I attempted to merge Smith & Associates into the Utility. Utility and non-utility work
15 was billed separately and expenses were accounted for separately, although one set of
16 books was kept. The Staff then criticized my operating both operations in one company.
17 For the year 2001, I then operated the Utility as a subsidiary of Warren/Lincoln
18 Investments. All Utility records were, and are kept separately and the Parent company
19 bills the Utility for work performed. Although the Utility still can't pay its bills to the
20 Parent, records are, as they always have been, kept separately. I am in the process of
21 separating the Companies by undoing the transaction.

1 **Q. HOW DO YOU RESPOND TO THE CONTENTION THAT THE**
2 **CONSTRUCTION COMPANY HAS UNJUSTLY PROFITED AT THE EXPENSE**
3 **OF THE UTILITY?**

4 A. As to the construction business, I periodically look at the balances owed from the Utility
5 and cut a check for what was owed. In most instances these checks were not cashed but
6 were issued so that the Utility could establish the amount of work performed for
7 ratemaking purposes. Even in instances where the money was actually paid, it was for
8 work actually performed and was done at rates for less than if the Utility chose to use
9 independent contractors. The advantage to using an affiliated company was that the
10 Utility could delay or avoid paying its bills provided the Construction Company
11 continued to earn sufficient revenue elsewhere to pay its bills.

12 **Q. WHAT IS THE CURRENT STATUS OF THE BUSINESS RELATIONSHIP**
13 **BETWEEN THE CONSTRUCTION COMPANY AND THE UTILITY?**

14 Due to the auditors not including the expenses for work performed for the Utility in rates,
15 the Construction Company can no longer perform work for the Utility. Equipment is
16 being sold and it no longer runs a payroll. Also, due to the auditors adding the money
17 supposedly paid to the Construction Company as income to the Utility, thus overstating
18 the Utility income by double, with no provision for the equipment, material and labor
19 used by the Construction Company on behalf of the Utility, we can no longer allow this
20 situation to continue.

21 **Q PLEASE EXPLAIN HOW YOU HAVE BEEN COMPENSATED FOR**
22 **OPERATING THE UTILITY.**

1 A. In 1992 I did not pay myself a salary because there was no money. During the course of
2 an audit, I was told by Staff that a salary could not be imputed so I should charge a salary
3 even if not paid. During the next audit, I was told that the salary had to be paid but, if
4 there was no money, it could be invested back in the Utility. During the most recent
5 audit most current salary was ignored and over \$100,000 in deferred salary, or salary that
6 has been charged but reinvested in the Utility was disregarded.

7 **Q. HOW DID THESE SALARY EXPENSES APPEAR ON THE BOOKS OF THE**
8 **UTILITY?**

9 A. Over the last several years I charged the Utility an annual salary. I would draw some and
10 let the rest accumulate. Once or twice a year I would take the accumulated salary and
11 issue a check to myself for most, or all, of the balance. I would then deposit that same
12 amount in the Utility and show that as capital. In other words, salary not actually paid,
13 which was most of it, was converted to capital with the expectation of a return on
14 investment. Since each Staff auditor over the years has taken a different position, to the
15 point that all is apparently lost, I now draw a weekly salary and am not accruing any
16 further balances.

17 **Q. MR. SMITH, WOULD IT BE ACCURATE TO STATE THAT YOU HAVE NOT**
18 **TAKEN ANY SIGNIFICANT AMOUNT OF CASH COMPENSATION FROM**
19 **THE UTILITY?**

20 A. Yes that is correct. They were for the most part only paper transactions. A payable was
21 shown as paid and that same amount was shown as being paid back in the utility as
22 capital.

1 **Q. HOW ARE THE PRICES YOUR CONSTRUCTION COMPANY CHARGES THE**
2 **UTILITY DETERMINED?**

3 A. I simply bill the Utility \$25.00 per hour for labor and \$75.00 per hour for backhoe work.
4 This covers my cost and is lower than outside contractors would charge.

5 **Q. OPC CRITICIZES THE USE OF YOUR CONSTRUCT COMPANY AS**
6 **OPPOSED TO UNRELATED THIRD PARTIES, FOR UTILITY WORK. HOW**
7 **DO YOU RESPOND?**

8 A. While what I read in their testimony is an excellent textbook definition of self dealing
9 and, in the abstract, is true, the reality is totally to the contrary. I have found that, in the
10 real world, especially considering the rural environment I operate in, that private
11 contractors do not want to do little jobs (or the cost is too great) and they are not readily
12 available in an emergency. Also, they like to do larger jobs where there is an opportunity
13 to make some money. In my particular situation, there are no "as-builds" so reliable
14 information is not available to location of mains nor is information available as to sizing
15 of pipe and other information helpful for construction. A particular problem is the rocky
16 nature of most ground in this area. Ordinarily, contractors want to complete a job in one
17 day in order to make money. Because of rock and other construction difficulties, I have
18 had numerous contractors refuse to work in this area.

19 The difficulties in finding contractors, and the need for emergency work and the need to
20 perform small jobs which no one is interested in doing, has led me to find ways to have
21 equipment and manpower available on site. I have tried to do this, but since the auditors
22 refuse to recognize these expenses, I find that I can no longer subsidize this work.

1 **Q. MR. SMITH, DID YOU ATTEND THE LOCAL PUBLIC HEARING IN THIS**
2 **MATTER WHICH WAS HELD AT INCLINE VILLAGE.**

3 **A.** Yes.

4 **Q. PLEASE RESPOND TO THE ISSUES RAISED BY THE PUBLIC WITNESSES**
5 **AT THAT HEARING.**

6 **A.** I would first note that there were some rather ridiculous on the record comments. For
7 example, the one comment about the Utility using duct tape on pipes. This would be
8 impossible to do, since we use bell end pipe that merely snaps together, and trying to tape
9 two pieces of pipe together would be difficult or impossible. That has to be the silliest of
10 all complaints. Another was the idea that sludge could be pumped to the lake rather than
11 being hauled away. First of all, the way it was described involved pumping into the final
12 clarifier. Doing that would just fill the clarifier and cause other serious problems. Any
13 sludge that might escape would be negligible. Because sludge has the consistency of
14 very liquid mud, dumping any significant amount into a shallow body of water would
15 simply fill the lake and be very obvious. One load of sludge, 1,500 gallons, costs
16 \$135.00 to haul. One load would have a large impact and would only represent 1/4 - 1/8
17 of the amount normally hauled. This complaint borders on the absurd.

18 **Q. PLEASE ADDRESS THE WATER PRESSURE ISSUE RAISED AT THE**
19 **HEARING.**

20 **A.** With regard to water pressure, the level of pressure has remained constant since tariffs
21 were first issued in 1983. Pressure is determined by the elevation of water in the storage

1 tank relative to the elevation of a particular home. As long as the elevation in the tank
2 remains constant, the pressure throughout the system will not vary, especially considering
3 the fact that water mains are six and eight inches and the well produces approximately
4 350 gallons per minute. While peak usage is probably around that level, the level in the
5 tank would have to fall 2.31 feet for the pressure to drop one pound. Because peak
6 periods tend to be in the summer when a sweat line is on the tank, I can say that in all the
7 years that I have monitored the level of water in the tank it has never dropped two feet
8 during normal times.

9 **Q. WOULD THE NUMBER OF HOMES ON THE SYSTEM AFFECT PRESSURE?**

10 A. No. As long as the elevations remain the same, it should make no difference how many
11 homes are on the system. The people complaining now are the same people who
12 complained when the Utility went from 40 some customers to over 60 when Forest Green
13 was added to the system. Currently we have over 360 customers.

14 **Q. HOW CAN WATER PRESSURE THROUGH OUT THE SYSTEM BE**
15 **INCREASED?**

16 A. The only logical way is to the raise the elevation of the water in storage. We have
17 determined that an additional 55 feet would add 20 pounds of pressure throughout the
18 system. We can not add more than that amount of pressure without causing too much
19 pressure in lower areas of the system.

20 **Q. PLEASE EXPLAIN WHY AN ADDITIONAL STORAGE TANK HAS NOT BEEN**
21 **BUILT?**

1 A. There are number of reasons. First, when I originally sought MOPSC approval to
2 construct the tank, I proposed building it along a high area along Route WW. Incline
3 Village opposed this proposal. I then attempted to purchase land next to the existing tank
4 but Incline Village opposed that too and made me go through condemnation proceedings
5 to acquire the property. Based upon various estimates at the time, Incline Villages
6 opposition at every step of the way cost all parties legal fees exceeding the actual cost of
7 constructing the tank. Now they complain of their legal fees and the Company has still
8 not recovered its cost of litigation. Had they really wanted the tank, they would have
9 cooperated.

10 Second, since 1991, the year prior to my taking over the utility, the utility has lost \$10-
11 30,000 each year. We have tried on several occasions, through the informal rate case
12 process, to get rates sufficient to offset operating costs so that money contributed could
13 go to improvements. The auditors continue to use inflated income figures and ignore
14 operating costs to deny relief. In 1998, our bank was prepared to make the loan and I was
15 prepared to secure the loan with personal assets and also pledge life insurance, my home
16 and other security to get the loan. However the bank and I both recognized that loan
17 payments could not be made if we could not pay normal operating costs. A condition I,
18 along with the bank, required to go forward with the loan was a rate adjustment sufficient
19 to make up operating losses. I was prepared to continue to contribute to the utility for
20 loan payments, if necessary, but I was not prepared to contribute out-of-pocket for
21 operating expenses and also make loan payments.

1 Finally, although offered, we have never received any assistance from the Staff. They
2 have offered to work with our bank and even offered to assist in obtaining money from
3 other sources. Nothing material has ever been done.

4 **Q. MR. SMITH, HAVE YOU SPENT ANY OF YOUR OWN MONEY TO BUILD**
5 **THE TANK?**

6 A. Yes. I have spent, and, if built, would contribute to the Utility, over \$60,000, including
7 land, improvements, engineering and legal expenses. Obviously I would not have spent
8 this money from my own pocket if I had know what was going to happen to the Company
9 in the informal rate case process.

10 **Q. HAS THE COMPANY EVER INTENDED FOR ITS SYSTEM TO BE CAPABLE**
11 **OF PROVIDING FIRE PROTECTION DIRECTLY FROM HYDRANTS?**

12 A. No. We do not provide fire protection because of the pressure in certain areas. MODNR
13 has recommended that hydrants be removed so as not to give the impression that fire
14 protection is provided. I, however, have left them in place but notified the fire
15 department that they may only draw water for their tanker and not directly to fight a fire.
16 If they draw directly, there is a chance that lines would implode. Greater storage would
17 enable the Company to provide fire protection. Also, the fire department has advised me
18 that because of the distance and time factor in getting to a fire, they would only need
19 10,000 gallons or so and the Company can currently provide that amount.

20 **Q. PLEASE ADDRESS THE INSTALLATION OF INDIVIDUAL LIFT STATIONS?**

1 A. There was some discussion about the installation of individual lift stations. Our policy is
2 to provide specifications and, if requested arrange for the customer to purchase the
3 system from what is the only supplier in the area. I prefer they pay the supplier directly
4 and obtain the system but, as a convenience, we have on occasion purchased and
5 provided the system with the customer then reimbursing me for the cost.

6 **Q. HOW IS THAT HANDLED ON THE BOOKS OF THE UTILITY?**

7 A. The Utility does not buy the lift station nor does it collect any money. I try to have the
8 customer pay the supplier directly. If I am paid, it is booked through the Construction
9 Company with no impact on the Utility.

10 If the Construction Company installs a lift station, or service lines, the Construction
11 Company bills for any such work and collects for that work. None of the income or
12 expense is booked through the Utility.

13 **Q. DOES THE UTILITY COMPANY'S APPLICATION FOR SERVICE SPELL**
14 **THIS OUT?**

15 A. Yes. I refer to "non-regulated" or "non-utility" functions as opposed to utility functions,
16 and provide that while a lift station may be purchased from the Construction Company,
17 the only Utility requirement is that the lift station meet the specifications of the unit we
18 require.

19 **Q. SOME MENTION WAS ALSO MADE OF EXTENDING ELECTRIC SERVICE**
20 **TO LIFT STATIONS. PLEASE EXPLAIN THE COMPANY'S POSITION?**

1 A. The system we specify can be run only on 220 wire but if they do so, the alarm will not
2 work when the 220 breaker is blown. We strongly urge that both 110 and 220 be run so
3 that they will still have an alarm if the 220 breaker fails. Electricians have all argued this
4 point but I try to prevail. When I give up arguing this point, I advise the customer of the
5 potential consequences if the system is not wired as I suggest.

6 **Q. ONE CUSTOMER MENTIONED HER DOWN STAIRS TOILET WOULDN'T**
7 **DRAIN PROPERLY. DOES THE COMPANY HAVE A POSITION ON ISSUES**
8 **SUCH AS THIS PROBLEM?**

9 A. Yes. According to the tariffs, it is the customer's responsibility to maintain service lines.
10 While we try to accommodate, we do not fix stopped up toilets or, in her case, rebuild
11 lines in a person's home.

12 **Q. PLEASE ADDRESS THE ISSUE OF "RUSTY WATER."**

13 A. All ground (well) water contains inorganic matter, including iron. The level of iron in the
14 utilities water has been tested at a level considered moderate. In other words, iron levels
15 are much higher in some other systems. Iron molecules will settle to the bottom of pipes
16 when the water is setting still. When there is a sudden increase in velocity, flushing lines
17 or a broken line, the velocity of the water becomes such that the settled iron is picked up
18 and carried through the system. When we flush lines, we try to notify people in advance
19 and only do it on weekday mornings so that people who work will not notice anything. I
20 have had retired persons run to their faucets or toilets and run water when they see me
21 flushing their line. Naturally they will get rusty water but if they wait until the line is
22 totally flushed they will see only milky water and if they wait some time, the water will

again be clear. Iron sequestration will cause the iron molecules to become encapsulated so that they are carried through the system without the rusty color. As to line breaks, the same thing happens but, obviously, we have no way to notify customers in advance.

Q. IS "RUSTY WATER" TYPICALLY A PROBLEM IN CUSTOMERS' HOMES?

A. No. In twelve years, I have never seen rusty water in my home. Most people should not ever see it either, unless they try. I have observed people with filters have a problem but this has to do with not changing the filter often enough. Frankly, in my opinion, filters tend to cause rather than alleviate the problem. Filters can also serve as a trap for bacteria.

Q. PLEASE ADDRESS THE ACTUAL FREQUENCY OF LINE BREAKS.

A. I have heard all kinds of things in this regard. One person once complained that there is always a line break on Fridays. The reality is that my Construction Company has only hit three lines in about two years and all of those were unavoidable because of soil conditions. I believe the electric and phone companies have hit maybe one line in that time period. When that happens, we try to isolate the affected area and do necessary repairs as promptly as possible. Generally it takes 4-6 hours to identify the problem, get materials and make the repairs. We then flush affected lines.

Q. WAS THERE A PARTICULAR PERIOD OF TIME WHEN THERE WERE NUMEROUS BREAKS?

A. Yes. In March-May, 2001, Charter Communications was installing cable/television lines throughout my service area. They averaged hitting two lines a week. This included

1 mains and service lines because they did directional boring over long stretches of ground.
2 They cost the Utility a lot of money and never paid for any damage. They also caused
3 numerous complaints as to outages. Obviously this is another example of some truth
4 being exaggerated beyond reason.

5 **Q. THERE HAS BEEN SOME DISCUSSION CONCERNING THE COMPANY'S**
6 **USE OF CHLORINE IN THE WATER. PLEASE PROVIDE BACKGROUND**
7 **AND EXPLAIN HOW CHLORINE IS USED BY THE COMPANY.**

8 A. Approximately six years ago, because of complaints about hydrogen sulfide odors in
9 water and, somewhat to deal with potential iron problems, Jack Baker of MODNR
10 suggested that I begin adding chlorine to the water. Other systems in the area were also
11 beginning to go to chlorine as a way of treating the "rotten egg" odor that is prevalent in
12 ground water. In addition, Mr. Baker suggested iron sequestration as a way of
13 eliminating complaints resulting from the presence of iron in the water.

14 I implemented both of these treatment processes and, although no customer commented, I
15 found the chlorine gave a much better taste to the water, eliminated all complaints as to
16 "rotten egg", and that the iron sequestration gave a nice sparkle to the water and
17 eliminated the build up of iron in the pipes and seemed to eliminate the rusty stains that
18 accumulated on toilets, tubs, etc.

19 I continued to use both treatment processes for several months. Then, because of general
20 operating losses and, especially the high cost of poly phosphate, which is used for iron
21 sequestration, the Company then again asked for a rate adjustment through the informal
22 process. Again, the auditors estimated income much too high and cut operating costs so

1 as to make it impossible to continue the iron sequestration process. I did continue with
2 chlorination although it meant spending more than the auditors provided.

3 **Q. HAS THE COMPANY CONTINUED ITS CHLORINATION PROGRAM?**

4 A. Yes. After the 1998 attempt at a rate adjustment, I found I had to begin cutting the level
5 of chlorine. By the 2001 informal rate case, which set a level of spending for chlorine at
6 \$1,193.00, based on water income of approximately \$92,000.00, the Company had spent
7 \$2,490 on income of \$75,000. In the first three months of 2002, the Company has spent
8 \$607.00, which projects to an amount in excess of \$2,500.00 this year.

9 **Q. HAVE THESE EVENTS AFFECTED THE LEVEL OF CHLORINE IN THE**
10 **WATER?**

11 A. Yes, MODNR requires surface water system, and recommends ground water systems to
12 maintain a level of approximately 1.0 mg/L throughout the distribution system. Because
13 of the size of pumps I use, and to reduce costs, I like to run about 0.5 mg/L. As a result
14 of the Staff's actions in 1998 I cut the level to approximate 0.2-0.3mg/L. In 2002 I have
15 further cut the level to approximately 0.1 mg/L.

16 **Q. IS THAT AMOUNT ADEQUATE?**

17 A. Yes. 0.1mb/L is nearly too low but the other levels seem to work ok. The problem is that
18 at the ends of the distribution system there could be a problem with coliform bacteria and
19 during hot weather, hydrogen sulfide odors could surface. Because there are no
20 mandatory levels set by MODNR, we would still be in compliance as long as we do not
21 get coliform positive results. The taste and odor is fine. The only time chlorine is

noticeable, in my opinion, is at levels above 0.5mg/L. I believe major water systems operate at 1.0mg/L with little complaint.

Q. HAVE THERE BEEN COMPLAINTS OF HIGH CHLORINE IN THE WATER?

A. Yes. Because we operate at below suggested levels, I do not detect chlorine in the water. When it is at 0.5 it is noticeable and at 1.0 it seems high until you get used to it. I have never operated at 1.0 so legitimate complaints about the level in the water should not exist. Nonetheless once the level was tested at an amount in excess of 2.0mg/L and that was very noticeable the morning it reached my house.

Q. WHY WAS THE LEVEL OF CHLORINE HIGH ON THAT OCCASION?

A. One of two or three things happened at the time. Instead of approximately five gallons of chlorine being pumped into the system that prior 24 hours, about 10-15 was pumped. This could have been because I had moved the settings on the pump from about 80% to about 95% (pumps are less accurate at settings over 90% I am told), or the pump went bad and instead of ceasing to pump, pumped at a higher rate, or, finally, there could have been some siphonage perhaps caused by the pump going bad.

Q. WHAT ACTION DID THE COMPANY TAKE TO CORRECT THE SITUATION?

A. I immediately shut off the pump and during that day, I flushed lines at extremities in the system in order to carry the higher amounts out of the system.

1 **Q. HAVE YOU CHECKED WITH OTHER PROFESSIONALS TO DETERMINE**
2 **WHAT LEVELS OF CHLORINE ARE HARMFUL?**

3 A. Yes. I talked to Jack Baker at MODNR at the time and he indicated that the level it was
4 tested at was not harmful. After receiving complaints about bleached out clothing, I
5 talked with Randy Johnson, formerly with MODNR and now an instructor at various
6 water training classes, and he indicated that it would take a level of chlorine several times
7 a level of 2.0mg/L to do any harm. While we did not try to calculate the maximum level
8 possible that could be achieved, the most that could enter the system, if dumped at once,
9 is 55 gallons of a 12% solution (bleach is 3-5%) and this would first go into solution with
10 32,000 gallons of water. The dilution at that point would be too low to cause any harm.
11 That 32,000 gallons would then go into the distribution system which would further
12 dilute the solution. I believe there is about 60-80,000 gallons in pipes throughout the
13 system.

14 **Q. IN ALL OF THE YEARS THAT YOU HAVE INJECTED CHLORINE, ARE YOU**
15 **AWARE OF ANY OCCASION WHEN THERE WERE OTHER HIGH LEVELS?**

16 A. No. I sample the water every day so I would know.

17 **Q. DO YOU BELIEVE THERE IS AN EXPLANATION FOR THE COMPLAINTS?**

18 A. Yes. I have found that a certain group in Incline Village can take a grain of fact and,
19 after telling the story over and over, come up with some significantly exaggerated results.
20 The one high instance has apparently caused people to imagine that levels are high all of
21 the time when, in fact, the level I am feeding is minimal.

1 **Q. CAN YOU PROVIDE ON EXAMPLE OF HOW CUSTOMER PERCEPTION**
2 **DEPARTS FROM REALITY?**

3 A. Yes. When I requested comments from customers on their February bills, one person
4 claimed to have bleached some pants on February 26, but at that time the Company had
5 been running at a level of 0.1 mg/L for several weeks. That is approximately 10% of the
6 amount of chlorine in surface water systems. It would be impossible for the water to
7 have "bleached" anything at that level.

8 **Q. WHAT NEEDS TO BE DONE WITH THE UTILITY?**

9 A To assure that the Company can continue to provide safe and adequate service the rates
10 need to be adjusted to a reasonable level on an expedited basis. Obviously, due to the
11 track record of failed informal proceedings this will require a formal rate case and most
12 likely emergency relief.

13 Currently the Company is not performing maintenance where a backhoe is required and
14 only addresses as any emergencies as they occur. Private contractors will have to be
15 paid. Because the Company continues to lose money it is urgent that the Commission act
16 quickly.

17 It would be unjust, unlawful and an abuse of process to force the Company into
18 receivership by continuing to deny rate relief and thus the opportunity to earn a
19 reasonable return on utility investments.

20 **Q. Does this conclude your testimony?**

1 A. Yes.

MAR. 27. 2002 4:31PM LATHROP&PAGE CROWN C

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)

) SS

COUNTY OF WARREN)

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 rebuttal testimony consisting of pages 1 through 25.

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.

Subscribed and sworn to me this 28 day of March, 2002.


Notary Public

My Commission Expires:

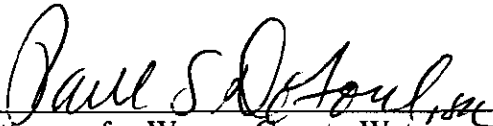
JOYCE M. PRESSER
Notary Public - Notary Seal
STATE OF MISSOURI
County of Lincoln
My Commission Expires: 12-15-2005

1
2 **CERTIFICATE OF SERVICE**
3

4 I hereby certify that a copy of the above and foregoing was served this 28th day of
5 March, 2002, upon the following:
6

7 Ruth O'Neill
8 Office of Public Counsel
9 Governor Office Building
10 Jefferson City, MO 65101
11

12 Office of General Counsel
13 Missouri Public Service Commission
14 Governor Office Building
15 Jefferson City, MO 65101
16

17
18 
19 _____
20 Attorney for Warren County Water
and Sewer Company