

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

<b>Office of the Public Counsel,</b>	)	
Complainant,	)	
	)	
v.	)	Case No. WC-2002-155
	)	
<b>Warren County Water and Sewer</b>	)	
<b>Company and Gary L. Smith,</b>	)	
Respondents.	)	

**SUPPLEMENTAL BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL**

COMES NOW, the Office of the Public Counsel, and hereby files this supplemental brief in the above-styled case.

**POST-HEARING PROCEDURAL HISTORY**

The evidentiary hearing in this case concluded on June 4, 2002. On June 7, 2002, the Office of the Public Counsel (Public Counsel) received a copy of a letter sent to Warren County Water & Sewer Company from the Missouri Department of Natural Resources (DNR), along with a Notice of Violation and a copy of the inspection report of DNR environmental specialist Paul Mueller. These reports stemmed from Mr. Mueller's general inspection of Respondents' facilities on May 14, 2002. Public Counsel then immediately filed a "Motion to Reopen Case for the Taking of Additional Evidence" and proposed that this report be received by the Commission as Exhibit 21.

In the Motion, Public Counsel noted that both Mr. Mueller and Commission Staff witness Steve Loethen had testified at the hearing regarding the May 14 inspection, and states that "if Public Counsel had had access to this letter and

attachments at the time of the hearing, this exhibit would have been offered into evidence at that time.”

Respondents objected to Public Counsel’s motion on grounds that a proper foundation had not been laid, and that they lacked an opportunity for cross-examination with respect to the proposed exhibit.

On July 2, the Commission issued its Order regarding Public Counsel’s motion to reopen the record, and provided the Respondents with the opportunity to file a response to Exhibit 21. On July 3 by the Respondents’ requested an evidentiary hearing, and moved to stay the briefing schedule.

On July 5, Public Counsel filed a motion agreeing to a cross-examination hearing, objecting to suspending the briefing schedule, and moving to also introduce late-filed Exhibit 22: a letter to the Respondent, and attachments providing the Respondents with another DNR notice of violation, and a short report from Paul Mueller regarding a fish kill incident at Incline Village Lake on May 30, 2002. Mr. Mueller and EPA special agent Vic Muschler both testified about the fish kill incident at the evidentiary hearing. In the July 5 pleading, Public Counsel noted that the Respondents could prepare to cross-examine the witness about both late-filed exhibits at the same hearing.

The Commission granted Respondents’ request for a cross-examination hearing, and, in the same order, admitted Exhibit 22 into evidence. The hearing was held July 26, 2002. Mr. Mueller testified at that hearing, and was cross-examined by the Respondent.

## **ARGUMENT**

**Warren County Water and Sewer Company continued to violate DNR regulations, in connection with its operation of its sewer treatment plants, even up to the eve of the evidentiary hearing, which in this case is strong evidence that the Company is being mismanaged, and that a receiver should be appointed.**

Exhibit 21 is a letter to the Respondents dated May 30, 2002, and three attachments. One attachment is a “Report on Inspections, Warren County Water & Sewer Company Warren County, Missouri, State Operating Permits MO-0098817 & MO-0100358.” The report contains:

15 comments regarding “Plant #1 MO-0098817”;

10 comments regarding “Plant #2 MO-0100358”;

1 comment regarding “Plant #2-Lift Station

4 comments regarding “Shady Oaks Lift Station”

3 comments regarding “Boat Dock Lift Station”

13 comments regarding compliance requirements

3 comments regarding “Initiate plans to upgrade the facilities.”

The second attachment in Exhibit 21 is a copy of Violation No. 1804 SL, which lists the nature of Respondents violations as:

“Failure to pay permit fees

Exceeding permit discharge limits

Failed to submit a complete Operating Permit application.

Discharging without a valid permit.

Failed to have duplicate pumps and alarm at lift stations.

Failed to maintain wastewater treatment facilities.”

The third attachment is the laboratory report of analysis conducted on samples obtained by Mr. Mueller on May 14.

Exhibit 22 is a letter to Respondents dated June 20, 2002, from DNR, and two attachments. The first attachment is the Notice of Violation No. 1806 SL, issued to Respondents. The violation is listed at “Discharging water contaminants into water of the State that do not meet the Water Quality Standar[d]s or permit limits.” The second attachment is the laboratory report on analysis conducted on samples obtained by Mr. Mueller on May 30, during the fish kill investigation.

At the July 26 hearing, Respondents did not question the accuracy of any information contained in either Exhibit 21 or Exhibit 22. Respondents did not provide rebuttal evidence regarding any of the comments in Mr. Mueller’s report regarding deficiencies of the system. Respondents did not deny the allegations contained in the notices of violation, nor did they attempt to rebut the results of the laboratory analysis.

Although the Respondents have requested rate increases in the past, the documentation Respondents provided in the most recent rate review failed to support raising rates. The evidence in this case suggests that Respondents used revenue generated by monthly customer payments to the regulated utility as if they were making withdrawals from a cash machine. Now they prefer to plead poverty rather than meet their statutory obligation to provide safe and adequate service at just and reasonable rates. Sec. 393.130 RSMo (2000). This is completely contrary to the public interest, and the Commission should not

tolerate the Respondents' blatant disregard for this Commission, other state and federal agencies and, most importantly, their customers.

WHEREFORE, Public Counsel respectfully reiterates its request that the Commission

1. Find that Warren County Water and Sewer Company has violated its duty to provide safe and adequate service, and

2. Direct its general counsel to petition the Circuit Court of Warren County for the appointment of a receiver pursuant to Sec. 393.145 RSMo.

3. FURTHER, that the Commission direct its counsel to seek a finding from the Circuit Court, pursuant to Sec. 393.145.5 RSMo, that "control and responsibility for the utility should not, in the best interests of its customers, be returned to the owners," and an order from the circuit court directing "the receiver [to] proceed to liquidate the assets of the utility in the manner provided by law" by selling the utility to a person or company qualified to operate a water and sewer utility in the State of Missouri.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 15<sup>th</sup> day of August 2002:

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