

**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,)	

**PUBLIC COUNSEL’S NOTICE OF SCHEDULING CONFLICT AND REQUEST
TO RESCHEDULE JULY 16 HEARING TO JULY 26 AND, IF NECESSARY,
EXTEND THE TIME FOR FILING REPLY BRIEFS TO
FRIDAY, AUGUST 2, 2002**

COMES NOW, the Office of the Public Counsel, and respectfully informs the Missouri Pubic Service Commission of a witness availability conflict regarding the time set for re-opening this matter for further cross-examination. Public Counsel apologizes in advance for any inconvenience this will cause the Commission, and further proposes an alternative schedule which will allow the Respondents the opportunity for cross-examination on the late-filed exhibits, without adding any significant delay to the decision in this case.

1. On July 9, 2002, the parties were contacted by e-mail by regulatory law judge Lewis Mills. Judge Mills attempted to determine whether the parties would be available on July 16, if the hearing were to be re-opened on that date. The Assistant Public Counsel noted her availability for that date. She then attempted to contact the Missouri Department of Natural Resources to ascertain the

availability of Paul Mueller and other persons who contributed to the documents which are late filed Exhibits 21 and 22.

2. On the morning of July 10, Mr. Mueller sent e-mail to Public Counsel that he would be out of the office until July 22. Ms. O'Neill sent e-mail to the parties the morning of July 10, reporting this witness's unavailability. She also noted that "since Mr. Mueller already testified about both the May 14 inspection and the fish kill at the evidentiary hearing, I expect that the Company may actually wish to cross examine someone else." Ms. O'Neill received no response from the Respondents regarding this message.

3. On July 11, the Commission entered its Order setting re-opening the hearing for the purpose of further cross-examination for July 16, 2002, at 10:00 am. Ms. O'Neill was directed to make witnesses available on that date. Ms. O'Neill immediately attempted to contact counsel for Respondents to determine which witnesses they wished to cross-examine. That Order also denied the Respondents' request to stay the briefing schedule in this case. Public Counsel and the Staff have filed their initial briefs. However, as of the filing of this Motion, Public Counsel has not received the Respondents' initial brief.

4. On July 12, Kurt Schaefer, counsel for Respondents, informed Ms. O'Neill that the Respondents wished to cross-examine only Paul Mueller regarding the late-filed exhibits. Mr. Schaefer also stated that, the week of the 22, he was unavailable Tuesday through Thursday. He did not state he was unavailable on Friday, July 26. Ms. O'Neill also contacted the general counsel's office of the Commission Staff, and Mr. Krueger is also available on that date.

Public Counsel therefore proposes that the hearing be moved from July 16 to July 26. In the event this prevents the parties from receiving a transcript in time to supplement their brief by July 31, Public Counsel would not oppose moving the due date for the reply briefs, including the supplemental brief regarding the late-filed exhibits, to August 2, 2002.

5. Ms. O'Neill contacted the Missouri DNR in an attempt to locate Mr. Mueller, but was unable to obtain information on his whereabouts, other than he is on vacation. He will be back in his office July 22. Although Ms. O'Neill does not have access to Mr. Mueller's calendar at this time, she believes that, if notified on June 22, he may be available on July 26. The DNR office indicates that Mr. Mueller is scheduled to work in the Troy satellite office that date, but did not have further information. The DNR did not have any information about Mr. Mueller's calendar after July 26.

6. While not the most convenient, Public Counsel believes that another attorney could cover this hearing, as Ms. O'Neill will be out of the jurisdiction. Because of the importance of reaching a timely decision in this case, Public Counsel does not wish to delay completing the record unless absolutely necessary. Ms. O'Neill recognizes that failing to determine Mr. Mueller's availability before responding to Judge Mills' inquiry may have unnecessarily complicated this matter, and apologized to the Commission for this request for re-scheduling.

7. Public Counsel proposes that the hearing be tentatively moved from July 16 to July 26, depending on the availability of Mr. Mueller. In the event this

prevents the parties from receiving a transcript in time to supplement their brief by July 31, Public Counsel would not oppose moving the due date for the reply briefs, including the supplemental brief regarding the late-filed exhibits, to August 2, 2002. Counsel for all parties can be available on July 26.

8. Public Counsel notes that, in response to questions from the bench, Mr. Mueller testified at the evidentiary hearing regarding his routine inspection of Warren County Water and Sewer Company's facilities on May 14, and his investigation of a fish kill which occurred the week prior to the hearing. [Tr. pp. 162, 165.] Following this questioning, Respondents were afforded the opportunity for cross-examination following questions from the bench, in accord with Commission procedure. Mr. Shaefer conducted re-cross-examination of Mr. Mueller on behalf of the Respondents. [Tr. pp. 166-169.] At that time, Mr. Mueller could have been cross-examined about his activities related to the May 14 inspection and late May fish kill investigation, but counsel chose not to do so.

WHEREFORE, Public Counsel apologizes for this inconvenience, and respectfully requests that the Commission tentatively re-schedule this matter for July 26, 2002, and, if necessary, extend the time for filing final briefs in this matter until August 2, 2002.

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 12th day of July 2002:

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