

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

In the matter of Timber Creek Sewer Company)	
Inc's. Request for a Small Company Rate)	SR-2004-0532
Increase)	Tariff No. YS-2004-1264

**RESPONSE TO RECOMMENDATION
OF THE OFFICE OF THE PUBLIC COUNSEL**

COMES NOW Timber Creek Sewer Company, Inc. ("Timber Creek"), and pursuant to The Order dated May 21, 2004, responds to the Recommendation of the Office of Public Counsel ("OPC") as follows:

1. Timber Creek notes that OPC accepts the terms of the Agreement Regarding Disposition of Small Company Rate Increase ("Agreement"), and OPC made only one comment concerning the number of customers to be used in computing Timber Creek's flat monthly bill. Thus, OPC has not contested the Agreement, thereby tacitly agreeing that the proposed increase to the revenue requirement of \$80,000 annually is reasonable. Furthermore, OPC has not challenged the underlying cost of service or the Staff's audit of the rate filing.
2. The OPC comments ask the Commission to change only one component of the Agreement, namely the number of residential customers used to calculate rates. If this recommendation is adopted without corresponding changes to the costs and expenses of serving additional customers, then the revenues and the rates to produce necessary revenues will not be synchronized with the costs of service. Rates calculated under the scenario advocated by OPC will inevitably result in inadequate revenues thus accelerating the day when a new rate case is needed.

3. The specific issue raised by the OPC comments is the appropriate number of customers to use in setting the monthly flat rate to be charged the retail residential customers of Timber Creek. The Timber Creek filing and Staff audit used 637 customers as the basis for computing the monthly residential rate. OPC contends that there have been 60 building permits issued between January 1, 2004, and May 21, 2004.

4. The OPC recommendation suffers from uncertainty and the actual adjustment cannot be verified. The basis for the change in number of customers is based upon an unverified conversation with the Platte County Planning Department where 60 building permits have been issued since January 1, 2004. The use of this number is misplaced because a building permit does not necessarily translate into a customer. It may take months, or even years, before construction is complete and the property is added as a customer. The addition of 60 customers could not be verified by Timber Creek. The reliability of this figure is further clouded by the reference in OPC comments to the testimony of a witness at the Public Hearing who testified to over 800 customers, a number that OPC acknowledges it could not verify.

5. OPC recommends that the Commission utilize customers who were added outside the test period. This position is untenable and should be rejected. Adjustments for events occurring after the conclusion of the test year should not be considered by the Commission unless they fall within the "known and measurable" exception. In this instance, the events that allegedly justify a true-up or correction as recommended by OPC occurred outside of the test year and are also not known or measurable and simply cannot be verified. Indeed, they occurred *after* the rate case was supposed to have been concluded under the

Commission's rules. Consequently OPC's comments may be seen to address a future rate case and the OPC recommendation should not be adopted.

6. Timber Creek also respectfully reminds the Commission of the procedural posture of this case. It was filed as a small company rate case under Commission Rule 4 CSR 240-3.330 on July 15, 2003. Accordingly, a decision was due on or about December 13, 2003, or more than five months ago. Thus, OPC's comments come at a time well beyond the period within which this matter was to be decided. In addition, the comments follow the agreement entered into between Timber Creek and the Commission's staff, and the comments do not take issue with the principles of that agreement.

7. While OPC has certainly identified a reasonable concern about the number of customers, in consideration of all the circumstances, the concern ought not to be considered as major. Even assuming that the 60-customer recommendation is accurate, our calculations indicate that the monthly rate would be reduced by roughly 91 cents from the agreed-upon monthly increase of \$10.47. Viewed in isolation, this difference may assume greater significance than if it is considered with the recognition that it has been many years since Timber Creek sought any increase in its rates and that Staff's audit indicated that Timber Creek is willing to forego roughly \$45,000 of revenue that could be supported, even without the addition of additional hypothetical customers. Moreover, and although this is not a classic "file and suspend" case, the Commission should consider all relevant factors in making its decision. *State ex rel. Utility Consumers Council of Missouri v. Public Service Commission*, 585 S.W.2d 41 (Mo. *en banc* 1979) ("UCCM"). OPC has often, and correctly, chastized Missouri utilities that have sought to include expenses without corresponding items of revenue

in their rate case adjustments. Here it seems that OPC would include these speculative "customers" without recognizing either the additional rate base that would be required as well as the additional expense that would be incurred to serve them. Were these items also to be considered, the Staff's audit would have shown a substantially greater revenue deficiency than it did.

8. If the Commission is inclined to abandon its longstanding practice of honoring the matching principle, then the Commission *should* take into account all relevant factors, including the results of the Staff audit. In this case, the audit revealed that revenues should be increased by \$125,707 per year, or more than \$45,000 above the amount accepted by Timber Creek and the Staff. If the full revenue requirement that was supported by the audit is collected, then the monthly customer charge would be increased more than \$5.00. Put another way, by reaching agreement with the Staff, Timber Creek agreed to forego an additional \$45,000 revenue increase and avoided increasing the monthly customer charge by \$5.00. Timber Creek voluntarily gave up increases to rates that are more than five times any benefit to be obtained by following the OPC recommendations. Timber Creek gave these concessions as consideration for moving forward with implementation of the rate increase as originally proposed. The OPC recommendations negate the consideration bargained-for by Timber Creek and vitiate the value to Timber Creek of its agreement with Staff.

9. Taking into account all relevant factors, the rates for Timber Creek should be increased by an additional \$45,707.00. Using the OPC figures for number of customers, the increase to the monthly rate would be approximately \$15.02. Clearly adherence to the agreement between Staff and Timber Creek presents the greatest benefit to all parties, but if

OPC persists in its recommendation to count additional customers not served during the test year, then the Commission should grant Timber Creek the full revenue requirement justified by the Staff audit in the amount of \$125,707.00 per year.

Respectfully Submitted,

TIMBER CREEK SEWER COMPANY

/s/ C. Edward Peterson

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ATTORNEYS FOR APPLICANT

Certificate of Service

I hereby certify that a copy of the foregoing has been mailed to all counsel of record this 25th day of May, 2004.

/s/ C. Edward Peterson