

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

In the Matter of the Small Company Rate)
Increase Request of Mill Creek Sewers, Inc.)

Case No. SR-2005-0116
Tariff Work I.D. No. YS-2005-0330

**SECOND SUPPLEMENTAL AGREEMENT REGARDING
DISPOSITION OF SMALL COMPANY RATE INCREASE REQUEST**

COME NOW Mill Creek Sewers, Inc. (Mill Creek or Company), the Staff of the Missouri Public Service Commission (Staff) and the Office of the Public Counsel (OPC) (collectively, the Parties), by and through counsel, and for their Second Supplemental Agreement Regarding Disposition of Small Company Rate Increase Request (Agreement) state to the Missouri Public Service Commission (Commission) that they have reached the agreements set forth below regarding the Company's operations and the implementation of the Company's pending tariff revisions.

INTRODUCTION

1. The Parties note that the agreements set forth below are in addition to the agreements set forth in the Company/Staff disposition agreement filed in this case on October 29, 2004 and the Company/Staff/OPC supplemental disposition agreement filed in this case on April 1, 2005. Further, the Parties note that the provisions of those prior agreements that have not been modified, or that have not "expired" due to the passage of time, are still in effect. (For the Commission's convenience, a document containing the agreements included in the above-referenced Company/Staff disposition agreement and Company/Staff/OPC supplemental disposition agreement is attached hereto as Appendix A.)

2. The Parties note that they are submitting this Agreement to the Commission to provide the Commission with an alternative for approving the Company's pending tariff revisions if the Company's response to the Commission's September 27 ***Order Directing Filing*** is not acceptable to the Commission or if the Company is not successful in negotiating a contract with Testing, Analysis & Control, Inc. (TAC) related to the financial aspects of the Company's operations.

SUPPLEMENTAL AGREEMENTS

3. Mill Creek acknowledges that the funds generated by its customer rates are to be used solely for the following purposes: (a) ensuring the proper operation and maintenance of the Company's sewage collection and treatment system, including but not limited to continuation of the contract for the operation and maintenance of the sewage treatment plant with TAC, which includes the required effluent testing and reporting functions related to the plant, the hauling of sludge from the treatment plant as recommended by TAC or the Staff, the continued operation of the plant's two blowers and the flushing of the Company's sewer collecting mains as may be needed to prevent/correct blockages in those mains; and (b) the payment of legal obligations related to the Company's operation and ownership of the system and its status as a Commission-regulated public utility, including but not limited to the Company's DNR sewer discharge permit fees, PSC assessments and local property taxes, provided, however, that such obligations specifically do not include Mill Creek's outstanding civil penalty judgment related to the Missouri Attorney General's and Department of Natural Resources' past enforcement actions or possible future similar judgments.

4. Mill Creek acknowledges that the Staff and the OPC have the right to closely monitor the Company's business operations (e. g. – billings and collections, and payment of

operating expenses such as the electric bill for the treatment plant and TAC's contract fees) for the purpose of ensuring that the funds generated by the Company's customer rates are being used solely for the purposes specified in Paragraph 3 above.

5. The Staff will monitor Mill Creek's business operations on a monthly basis, through scheduled on-site reviews of the Company's books and records, to ensure that the funds generated by the Company's customer rates are being used solely for the purposes specified in Paragraph 3 above. If the Commission requests it to do so, the Staff will submit monthly reports to the Commission regarding these monitoring activities.

6. Mill Creek acknowledges that the Staff and the OPC have the right to file a motion with the Commission requesting that the Company's rates be reduced to the level currently in effect (\$5/month/customer) if either finds that the Company is not using the funds generated by its customer rates solely for the purposes specified in Paragraph 3 above.

7. The Parties agree that this case should remain open for the purpose of receiving monitoring reports requested by the Commission pursuant to the provisions of Paragraph 5 above and for the purpose of the Staff or the OPC filing a motion recommending that the Company's rates be reduced pursuant to the provisions of Paragraph 6 above, if such a motion is deemed necessary.

8. Mill Creek agrees it will not seek to increase its customer rates above the level necessary to ensure the proper operation and maintenance of its sewage collection and treatment system and to support its related business operations before January 1, 2007. (In other words, the Company will not seek to implement the originally contemplated second phase of the rate increase, which would provide the Company a return on its investment in the new treatment plant and the income taxes related to the return on that investment, before January 1, 2007.)

9. Mill Creek will continue its efforts, and continue to cooperate in the efforts of others, to see that its system is transferred to a new owner under conditions acceptable to the Company, the Staff, the OPC and the Commission.

10. As a result of the above agreements, and the agreements contained in the Company/Staff disposition agreement and the Company/Staff/OPC supplemental disposition agreement, as continue to be applicable, the Staff and the OPC agree that Mill Creek's pending tariff revisions should become effective as soon as possible. Accordingly, the Staff and the OPC recommend that the Commission issue an order making the Company's pending tariff revisions effective for service rendered on and after October 1, 2005, if possible; or otherwise no later than the end of the current suspension period (October 12, 2005).

WHEREFORE, Mill Creek, the Staff and the OPC respectfully submit their Second Supplemental Agreement Regarding Disposition of Small Company Rate Increase Request for the Commission's consideration in issuing its order in this case.

Respectfully Submitted,

/s/ Lisa C. Langeneckert

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed with first class postage, hand-delivered, transmitted by facsimile or transmitted via e-mail to all counsel and/or parties of record this 28th day of September 2005.

/s/ Keith R. Krueger

APPENDIX A

SECOND SUPPLEMENTAL AGREEMENT REGARDING DISPOSITION OF SMALL COMPANY RATE INCREASE REQUEST

Case No. SR-2005-0116

Provisions of the Previous Disposition Agreements

Agreements Included in the Company/Staff Disposition Agreement

- (1) That for the purpose of implementing the agreements set out herein, the Company will file tariff revisions with the Commission containing the rates, charges and language included in the example tariff sheets attached hereto as Attachment A.
- (2) That except as otherwise noted in the agreements below, the ratemaking income statement attached hereto as Attachment B accurately reflects the Company's annualized revenues generated by its current customer rates, the Company's annualized cost of providing service, excluding a return on its plant investments and related income taxes, and the agreed-upon annualized operating revenue increase of \$22,301, which is required to recover the Company's cost of service, excluding a return on its plant investments and related income taxes.
- (3) That the rates included in the example tariff sheets attached hereto as Attachment A, the development of which is shown on the rate design worksheet attached hereto as Attachment C, are designed to generate revenues sufficient to recover the Company's total annualized cost of service, excluding a return on its plant investments and related income taxes, and that the provisions of the attached example tariff sheets also properly reflect all other agreements set out herein, where necessary.
- (4) That the rates included in the example tariff sheets attached hereto as Attachment A are just and reasonable under the circumstances under which these agreements were reached [see Items (6) through (11) set out below].
- (5) That the implementation of the following service charges is reasonable:
 - (a) a late payment charge of \$3.00 per month, up to a maximum of 3 months;
 - (b) a door collection charge of \$25.00 for collections of payments made at the time of a scheduled service disconnection;
 - (c) a service disconnection charge equal to the actual cost of performing the disconnection, applicable to disconnections due to non-payment of bills for service or violations of applicable tariff provisions, or made at the request of the customer;
 - (d) a service reconnection charge equal to the actual cost of the reconnection; and
 - (e) a returned check charge of \$20.00 per check returned from the issuer's bank.
- (6) That the depreciation rates included in Attachment D hereto should be the prescribed sewer plant depreciation rates for the Company, as these were the depreciation rates used by the Staff in its revenue requirement analysis.
- (7) That a return on the Company's plant investments and related income taxes is not being included in the Company's cost of service, at this time, in anticipation of the transfer of the Company's assets to either the Metropolitan Sewer District of St. Louis (MSD) or the property owners association (POA) of the development in which the Company provides service.
- (8) That the Company and the Staff agree to jointly pursue the transfer of the Company's assets to the MSD or the POA, as discussed in Items (8), (9) and (10) below.

(9) That the Staff will take the actions necessary to involve the Missouri Attorney General's Office (AGO) and the Missouri Department of Natural Resources (DNR) in achieving the transfer of the Company's assets to the MSD or the POA. Specifically, these actions will include any necessary follow-ups related to the AGO's and DNR's agreement not to pursue the collection of court-awarded judgments pertaining to the Company's prior violations of the DNR's environmental regulations and related court orders in the event the Company's assets are contributed to the MSD or the POA.

(10) That the Staff will pursue the asset transfer contemplated by these agreements with the MSD and the POA, with those efforts initially directed to the transfer being made to the MSD. Specifically, the Staff will attempt to see that a transfer of the assets to the MSD is agreed upon on or before December 31, 2004. In the event that does not occur, the Staff will focus its efforts on seeing that a transfer of the assets to the POA is agreed upon on or before March 31, 2005.

(11) That if the transfer of the Company's assets discussed in these agreements occurs under the conditions contemplated in these agreements, the Company agrees to a sale price of \$1.00 to the entity to which the assets will be transferred.

(12) That if the asset transfer contemplated by these agreements does not occur by March 31, 2005, through no fault of the Company, the Staff agrees that the Company should be allowed to increase its rates to include a return on its plant investments and related income taxes. Accordingly, the Staff's recommendation to the Commission regarding approval of the annual operating revenue increase identified in Item (2) above, will include a recommendation that the Company be authorized to file revised rate tariff sheets to increase its annual operating revenues by an additional amount of \$18,766. However, the Staff's recommendation will also include a provision that this subsequent tariff filing may only occur subsequent to the Staff filing a notice in the rate case that will be created by the Company's filing of the revised tariff sheets discussed in Item (1) above confirming that the asset transfer did not occur by March 31, 2005 through no fault of the Company. Additionally, the tariff filing that could occur under these conditions will contain the rates, charges and language included in the example tariff sheets attached hereto as Appendix E.

(13) That the ratemaking income statement attached hereto as Attachment F accurately reflects the Company's current operating revenues, the Company's full cost of providing service, including a return on its plant investments and related income taxes, and the resulting additional increase in revenues referenced in item (12) above.

(14) That the rates included in the example tariff sheets attached hereto as Attachment E were developed as shown on the rate design worksheet attached hereto as Attachment G.

(15) That the Staff agrees to send the required notice regarding these agreements to the Company's customers, rather than the Company being responsible for mailing that notice, and the Company thus agrees to provide the Staff with its customer address list at the time that it returns the signed copy of this agreement to the Staff. With further regard to this matter, the customer notice attached hereto as Appendix H will be the notice sent to the Company's customers by the Staff.

(16) That the above agreements satisfactorily resolve all issues identified by the Staff and the Company regarding the Company's Request, except as otherwise specifically stated.

Agreements Included in the Company/Staff/OPC Supplemental Disposition Agreement

- (1) That the Company will take the actions necessary to ensure that its sewer treatment plant is operating properly, including at a minimum the purchase of new blowers or blower motors, or the repair of available blowers/motors that are currently not in working order.
- (2) That the Company will contract with a properly qualified operator for the routine operation and maintenance of its sewer treatment plant, including at a minimum the required visits to and inspections of the plant, and the effluent testing required by the DNR.
- (3) That the Company will evaluate the need to haul sludge from its sewer treatment plant, and will haul sludge from the plant as deemed necessary to ensure proper operation of the plant.
- (4) That the Company will evaluate the need to flush its sewer collecting mains and take the actions necessary as a follow-up to that evaluation.
- (5) That the Company will initiate regular monthly billing once new rates go into effect.
- (6) That the Company acknowledges that the Staff will monitor the Company's actions in regard to items (1) – (5), and further acknowledges that these actions must be carried out to the Staff's satisfaction.
- (7) That the Company will place a telephone contact number on its customer bills and will take the actions necessary to ensure that customer contacts are responded to in an expeditious manner.
- (8) That the Company will submit its CY2004 Commission annual report on or before April 15.
- (9) That for the purpose of the calculation of the Commission's FY2006 assessments, the Company's annual operating revenues for CY2004 are \$4,400.
- (10) That as a result of the above agreements, the Staff and the OPC agree that the Company's pending tariff revisions should be allowed to go into effect on April 12, 2005.
- (11) That the Company acknowledges that the Staff and/or the OPC have the right to recommend to the Commission that the customer rates be reduced to the level currently in effect (\$5/month) if the Company does not comply with the agreements set forth herein.