

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

In the Matter of the Application of Timber	)	
Creek Sewer Company Request for a Rate	)	File No. SR-2010-0320
Increase	)	

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**INITIAL POST-HEARING BRIEF OF THE STAFF OF THE  
MISSOURI PUBLIC SERVICE COMMISSION**

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**PURSUANT TO COMMISSION ORDER**

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**February 4, 2011**

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Small Company Rate Increase of        )  
Timber Creek Sewer Company                                )       File No. SR-2010-0320

## **STAFF'S INITIAL POST-HEARING BRIEF**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) by and through counsel, and respectfully provides the following to the Missouri Public Service Commission (Commission) as its Post-Hearing Brief.

### **Procedural History**

On May 10, 2010, the Timber Creek Sewer Company (Timber Creek or Company) submitted a request letter to the Commission seeking to change its gross annual revenue by \$63,500. This request letter initiated the small sewer utility rate case designated File No. SR-2010-0320.

On October 7, 2010, the Parties filed a *Unanimous Partial Agreement Regarding Disposition of Small Sewer Company Revenue Increase Request* (Partial Agreement). This Partial Agreement resolved all the issues except for: (1) salaries/overtime/timesheets; (2) rate case expense; (3) alternative energy source/gas well; (4) Public Service Commission Assessment; and (5) contingency/emergency repair fund. On October 18, 2010, Timber Creek filed its *Stipulation of Timber Creek Sewer Company to Factual Assertions in Attachments to Unanimous Partial Agreement*. On October 20, 2010, Public Counsel filed *The Office of Public Counsel's Stipulation* which it stipulated to the factual assertions contained in Attachments A and B to the *Unanimous Partial Agreement*.

As a result of not resolving all of the issues through the small rate case procedure process, Staff filed a *Request to Open Contested Case* on October 7, 2010. On the same day, the Commission issued an Order *Directing Notice of Contested Case*. A local public hearing was held on November 17, 2010 at Platte City High School, 1501 Branch Street, Platte City, Missouri.

In preparation for the evidentiary hearing, Timber Creek, the Office of the Public Counsel (Public Counsel), and Staff, in addition to the Partial Agreement filed on December 29, 2010 a filed a *Unanimous Stipulation of Undisputed Facts*. On January 5, 2011, the Commission conducted an evidentiary hearing on the issues of (1) salaries/overtime/timesheets; (2) rate case expense; (3) alternative energy source/gas well; (4) Public Service Commission Assessment; and (5) contingency/emergency repair fund.

### **Background**

Timber Creek Sewer Company (Timber Creek) is a corporation organized under the laws of the State of Missouri in good standing with its principal place of business at 18305 Cable Bridge Road, Platte City, MO 64079. Timber Creek possesses a certificate of convenience and necessity issued by the Commission in PSC Case No. SA-95-110 and effective June 1, 1995, to provide sewer service in Missouri. Timber Creek is a sewer corporation pursuant to Section 386.020(49) RSMo (2000)<sup>1</sup>, and subsequently a public utility within the meaning of 386.020(43); thereby subject to the jurisdiction of the Commission pursuant to Section 386.250(4). Timber Creek provides sewer service to approximately 1,526 customers in Platte and Clay Counties, Missouri.<sup>2</sup>

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<sup>1</sup> All statutory references are to the Revised Statutes of Missouri (RSMo) (2000) as currently supplement unless otherwise noted.

<sup>2</sup> Exhibit 8, *Prenger Direct*, p. 5, line 24.

## **Payroll/Overtime/Timesheets**

### **I. Payroll**

The issue currently before the Commission is a determination of what is the appropriate level of payroll to be included in Timber Creek's revenue requirement for setting the Company's sewer rates. The Commission should set the level of payroll at \$245,441; General Manager - \$76,862; Plant Manager - \$81,020; Office Manager - \$41,559; and Assistant Operator - \$39,000 plus \$7,000 in overtime.<sup>3</sup>

When determining what level for salaries should be included in Timber Creek's cost of service, the Commission must consider whether that amount is just and reasonable for customers to pay.<sup>4</sup> Timber Creek has the burden of proving that its proposed cost of service for payroll is just and reasonable and should be included in rates.<sup>5</sup> Timber Creek has not met its burden of proof that the requested \$265,742 is just and reasonable.<sup>6</sup> While Timber Creek does operate a successful sewer system, Staff's proposed salaries are just and reasonable and supported by competent and substantial evidence.<sup>7</sup>

When assessing the appropriate level of salaries to be included in rates, Staff expert, Bret Prenger, identified the current compensation level for each employee and the individual salaries that was approved in prior rate cases.<sup>8</sup> In determining the reasonableness of the current salary level, Mr. Prenger conducted several types of analyses. He consulted the Missouri Economic Research and Information Center (MERIC)<sup>9</sup> pay survey<sup>10</sup> and the market survey for the Bureau

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<sup>3</sup> Exhibit 9, *Prenger Rebuttal*, Schedule 1.

<sup>4</sup> See RSMo § 393.130.1.

<sup>5</sup> RSMo § 393.150.2.

<sup>6</sup> See RSMo § 393.150.2.

<sup>7</sup> Exhibit 9, *Prenger Rebuttal*, p. 2, lines 4-6.

<sup>8</sup> Transcript, Vol. 3, p. 104, lines 17-23; Exhibit 9, *Prenger Rebuttal*, p. 2, line 19 – p.3, line 8.

<sup>9</sup> MERIC is a database for all Missouri Employment data, including salaries and wages for specific jobs and classifications.

<sup>10</sup> Exhibit 9, *Prenger Rebuttal*, p. 2, line 19 – p. 3, line 8.

of Labor Statistics.<sup>11</sup> In addition, Mr. Prenger reviewed salaries for Platte County Regional Sewer District, Johnson County Wastewater, and Wyandotte County Wastewater-Unified Government Treatment Plants.<sup>12</sup> Mr. Prenger further analyzed a comparison of previous Commission rate case salary evaluations in the water and sewer industry, some cases in which he personally participated in and was responsible for the payroll issue, such as the Lake Region Water and Sewer Company, completed in mid-2010.<sup>13</sup> Mr. Prenger, along with other Staff members, conducted on-site visits, and interviewed employees to gain specific job function information.<sup>14</sup> Mr. Prenger also reviewed the job descriptions for each Timber Creek employee to consider the job duties and responsibilities for each of those employees.<sup>15</sup>

Timber Creek operates its sewer system with four employees; General Manager, Operations Manager, Office Manager, and Plant and Collection System Operator.<sup>16</sup> To fully understand the nature of each employee's role, Staff requested and Timber Creek provided a detailed description of each employee's job duties.<sup>17</sup> The comparison of actual job documentation in the form of job descriptions combined with company employee interviews is a critical step in determining compensation levels as not all job duties may be documented and not all documented job duties may be performed.

#### A. General Manager

Staff is requesting the Commission authorize \$76,862 for the General Manager's salary. Staff's recommended salary includes a three percent cost of living adjustment, plus an additional

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<sup>11</sup> Transcript, Vol. 3, p. 74, lines 22-24.

<sup>12</sup> Exhibit 9, *Prenger Rebuttal*, p. 3, lines 9-19.

<sup>13</sup> Exhibit 9, *Prenger Rebuttal*, p. 2 line 19 – p. 3, line 8.

<sup>14</sup> Transcript, Vol. 3, p. 74, lines 24-25; Exhibit 8, *Prenger Direct*, p. 4, lines 16-20.

<sup>15</sup> Exhibit 8, *Prenger Direct*, p. 10, lines 12-15.

<sup>16</sup> Exhibit 10, *Prenger Surrebuttal*, p. 3, lines 2-4.

<sup>17</sup> Exhibit 8, *Prenger Direct*, p. 4, line 20.

three percent increase.<sup>18</sup> The General Manager's duties are: Direct all Company administrative activities including, but not limited to: Financial; Billing, Credit, and Collections; Personnel; Legal; Office Systems; Provide and set acceptable levels of customer service; Promote company growth by actively exploring business development opportunities; Ensure effective plant operations and maintenance; assure sound engineering and construction principles and practices including; Keep company in good standing with regulatory entities.<sup>19</sup>

While Timber Creek's position on a General Manager salary is the median of MERIC's management search, MERIC does not specify the size of the company, work force, or even specifically account for the utility industry.<sup>20</sup> Public Counsel's position is that Mr. Sherry is an entry-level manager.<sup>21</sup> Staff does not agree with Public Counsel's position. It appears that Public Counsel did not take into consideration Mr. Sherry's prior seventeen years in an executive position at Johnson County Wastewater and Sprint.<sup>22</sup>

Staff does support an increase to the General Manager's salary, however not to the extreme level Timber Creek is requesting.<sup>23</sup> Staff included a higher cost of living adjustment for the General Manager's salary in this case, to specifically address this concern to narrow the salary gap between the two positions.<sup>24</sup> Timber Creek is seeking a \$17,000 increase in the General Manager's salary, for a total of \$94,529 annually.<sup>25</sup> For a utility the size of Timber Creek, Staff believes Timber Creek's request is unreasonable and unsupported by competent evidence.<sup>26</sup> While it may seem contrary for a General Manager to make less than an Operations

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<sup>18</sup> Exhibit 9, *Prenger Rebuttal*, p. 2, lines 14-18.

<sup>19</sup> Exhibit 8, *Prenger Direct*, p. 12, line 3 – p. 14, line 14.

<sup>20</sup> Transcript, Vol. 3, p. 86, lines 3-14; Exhibit 9, *Prenger Rebuttal*, p. 4, line 23.

<sup>21</sup> Exhibit 23, *Robertson Rebuttal*, p. 10, line 18.

<sup>22</sup> Exhibit 4, *Sherry Direct*, p. 1, line 13 – p. 2, line 9.

<sup>23</sup> Exhibit 9, *Prenger Rebuttal*, p. 6 lines 1-9.

<sup>24</sup> Exhibit 9, *Prenger Rebuttal*, p. 2, lines 14-17; p. 5, lines 7-21.

<sup>25</sup> Transcript, Vol 3. p 49, lines 7-9; Exhibit 6, *Prenger Rebuttal* p. 6, line 9.

<sup>26</sup> Exhibit 9, *Prenger Rebuttal*, p. 6, lines 3-4.

Manager, the Operations Manager possesses the necessary credentials to operate Timber Creek.<sup>27</sup> Under the Department of Natural Resources (DNR) requirements for sewer companies the size of Timber Creek, the utility must employ an individual with a Class A operator's license.<sup>28</sup> The only Timber Creek employee with the necessary credentials is the Operations Manager.<sup>29</sup>

To include an increase to the level Timber Creek requests for the General Manager would require each customer to pay \$61.95. Staff's proposal, in comparison would require each customer to pay only \$50.37.<sup>30</sup> Interestingly, even Staff's proposed level of salary for the General Manager is substantially higher on a per customer level compared to other utility entities; Johnson County - \$1.10 per customer; Wyandotte County \$2.41 per customer; Platte County \$23.28 per customer; and Lake Region \$19.02 per customer.<sup>31</sup> Timber Creek's General Manager's salary is significantly higher compared to other utilities specifically identified as a source used by Timber Creek to support the other job positions in the Company.<sup>32</sup>

In a recent Commission rate case, Case Nos. SR-2010-0110 and WR-2010-0111, the Commission authorized Lake Region Water and Sewer Company's<sup>33</sup> (Lake Region) General Manager's salary at the level of \$80,614.<sup>34</sup> Lake Region is comparable to Timber Creek in that

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<sup>27</sup> Exhibit 9, *Prenger* Rebuttal, p. 5, lines 13-18.

<sup>28</sup> Exhibit 9, *Prenger* Rebuttal, p. 5, lines 13-17.

<sup>29</sup> Exhibit 9, *Prenger* Rebuttal, p. 5, line 20.

<sup>30</sup> Exhibit 9, *Prenger* Rebuttal, p. 6, lines 1-8.

<sup>31</sup> Exhibit 9, *Prenger* Rebuttal, p. 8-10, 13.

<sup>32</sup> Exhibit 9, *Prenger* Rebuttal, p. 13.

<sup>33</sup> Lake Region Water and Sewer Company does not have any employees. It operates under contract with Camden County Public Water Supply District No. 4. Ozark Shores Water Company is another regulated water company that operates under the Water District umbrella through a contractual relationship. The General Manager for the Water District is responsible for the Water District, Lake Region and Ozark Shores. Lake Region operates under this unique situation which results in employee salaries split amongst the three entities.

<sup>34</sup> Exhibit 9, *Prenger* Rebuttal, p. 11, line 7.

their annual revenues are very similar and they have similar customer sizes.<sup>35</sup> Staff believes the \$76,862 salary is appropriate and reasonable for Timber Creek's General Manager.

#### B. Operations Manager

Staff is recommending the Operations Manager's annual salary be set at \$81,020.<sup>36</sup> This amount includes a three percent cost of living increase over his existing salary.<sup>37</sup> Staff's recommended salary range for the Operations Manager salary is higher than the market rate.<sup>38</sup> Staff believes its position is just and reasonable based upon the job duties, and the fact that it is one of only two field positions at Timber Creek which has responsibility of serving a system in excess of 1,200 customers.<sup>39</sup> Further Mr. Sherry indicated during the evidentiary hearing, this position generally works more hours per week than the General Manager and is on call seven days per week.<sup>40</sup>

The Operations Manager's duties are the following: Ensure effective plant operations, collection system operations, and maintenance by meeting DNR rules and regulations and company direction for operating sanitary sewer facilities including pump stations, collections systems, and solids processing and disposal; water quality discharge limits are met in accordance with DNR permits; develop solids management plan and execution is in accordance with state regulations and company direction; develop and schedule routine maintenance of all plant, pump, and collection systems including inspections, cleaning, repair, replacement; ensure buildings, grounds, and related equipment is presentable and professionally maintained and in good

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<sup>35</sup> Exhibit 9, *Prenger Rebuttal*, p. 12, lines 21-22.

<sup>36</sup> Exhibit 10, *Prenger Surrebuttal*, p. 13, line 1.

<sup>37</sup> Exhibit 10, *Prenger Surrebuttal*, p. 13, line 1.

<sup>38</sup> Transcript, Vol. 3, p. 76, lines 16-20; Exhibit 9, *Prenger Rebuttal*, p. 5, line 9.

<sup>39</sup> Transcript, Vol. 3, p. 77, lines 1-3.

<sup>40</sup> Transcript, Vol. 3, p. 110, lines 4-5; p. 111, line 24 – p. 112, line 6.



working order; Plant Automation Systems; assure sound construction principles and practices; provide professional customer service including; assist in keeping the company in good standing with regulatory entities; assist in company administration by providing budgetary and personnel oversight.<sup>41</sup>

### C. Office Manager

Staff is recommending \$41,559 annually for the Office Manager.<sup>42</sup> Staff's recommendation includes a three percent cost of living adjustment to the position's current salary.<sup>43</sup> The Office Manager's job duties are: manage the Company's general office administration by completing accounts payable, payroll, office surroundings, and office supplies; manage the Company's account receivables, credits, and collections activities; provide exceptional customer service; ensure accurate, timely, and complete customer billing; assist in effective plant operations and maintenance by providing support functions; bookkeeping of the Company's accounting records.<sup>44</sup> After Staff evaluated the Office Manager's job duties, and performed research through MERIC, Staff believes it has proposed a just and reasonable salary for the position.

### D. Plant and Collection System Operator

Staff is recommending the Plant and Collection System Operator receive a base salary of \$39,000 with an additional \$7,000 in overtime.<sup>45</sup> The base salary was obtained from MERIC's database which indicated that an experienced Assistant Operator's, in the Northwest Missouri Region, (a position comparable to the Company's Plant and Collection System Operator), salary range was \$38,000 - \$39,000 and an Assistant Operator in the Kansas City area would range

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<sup>41</sup> Exhibit 8, *Prenger Direct*, p. 13, line 15 – p. 15, line 40.

<sup>42</sup> Exhibit 9, *Prenger Rebuttal*, p. 7, line 10.

<sup>43</sup> Exhibit 9, *Prenger Rebuttal*, p. 2, lines 14-15.

<sup>44</sup> Exhibit 8, *Prenger Direct*, p. 11, lines 15-25.

<sup>45</sup> Transcript, Vol. 3, p. 80, lines 18-25.

from \$30,174 - 48,765 based upon experience.<sup>46</sup> The median for the Kansas City area was \$39,000.<sup>47</sup> This annual amount is a minimum decrease in the position's current salary.<sup>48</sup> However, Staff is recommending overtime compensation with this position.<sup>49</sup> The Plant and Collection System Operator has the following duties: ensure effective plant operations, collection system operations; maintain the sewer system by meeting Missouri Department of Natural Resources (DNR) rules and regulations and company guidelines for operating sanitary sewer facilities including pump stations, collections systems, and solids processing and disposal; perform plant operations duties for effective utilization of resources while meeting or exceeding water quality permit standards for treatment plant effluent; take and transport routine, scheduled samples for lab testing and analysis in accordance with prescribed timelines, parameters, and guidelines; monitor and record daily flows and other plant parameters to ensure effective water treatment is operating within design thresholds; appropriately respond and take necessary steps and actions to correct any anomalies discovered during plant operations in accordance with company guidelines and as directed by the operations manager; perform solids management by monitoring sludge levels, reporting, complete dewatering, transporting, and applying solids in accordance with state regulations and company direction; perform routine lift station inspections and record necessary monitoring data and observations to ensure lift stations are operating within design parameters; take necessary actions to correct deficiencies as outlined by company direction; perform routine manhole and sewer line inspections and record necessary observations to ensure infrastructure is sound and operating within guidelines; ensure buildings, grounds, and

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<sup>46</sup> Exhibit 10, *Prenger Surrebuttal*, p. 7, lines 11-16.

<sup>47</sup> Exhibit 10, *Prenger Surrebuttal*, p. 7, lines 11-17.

<sup>48</sup> Exhibit 9, *Prenger Rebuttal*, p. 7, line 12.

<sup>49</sup> Exhibit 9, *Prenger Rebuttal*, p. 14, lines 14-17. (With the inclusion of \$7,000 in overtime for this position, it equates to a twelve percent increase from the current level of compensation.)

related equipment are presentable and professionally maintained and in good working order; complete routine maintenance as scheduled and as needed.<sup>50</sup>

While Staff and Timber Creek evaluated the employee compensation of sewer companies located in the greater Kansas City, Missouri area, Timber Creek failed to distinguish itself from like duties and responsibilities of other sewer companies. When comparing Timber Creek to other local wastewater entities, Staff observed vast differences in the size of the utilities. Johnson County Wastewater services over 133,000 customers and employs approximately 218 individuals.<sup>51</sup> Wyandotte County services over 43,000 customers and employs approximately 100 individuals.<sup>52</sup> Platte County Regional Sewer District services 3,200 customers and employs 10 individuals.<sup>53</sup> Timber Creek services 1,526 customers and employs four (4) individuals.<sup>54</sup>

While Timber Creek used the same sources Staff did when assessing the appropriate level of compensation for its employees, it failed to recognize the differences in the utilities that make its entity distinguishable from the ones it based its comparison. Based upon Staff's thorough evaluation of salary databases, job descriptions and observation, and comparison to other utility companies, it has recommended just and reasonable salaries for each of the Timber Creek's four employees. The Commission should set the level of payroll at \$245,441; General Manager - \$76,862; Operations Manager - \$81,020; Office Manager - \$41,559; and Plant and Collection System Operator - \$39,000 plus \$7,000 in overtime.<sup>55</sup>

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<sup>50</sup> Exhibit 8, *Prenger Direct*, p. 10, line 6 – p. 11, line 3.

<sup>51</sup> Exhibit 9, *Prenger Rebuttal*, p. 7, lines 13-16; *see* Schedule 2.

<sup>52</sup> Exhibit 9, *Prenger Rebuttal*, p. 8, lines 8-9; *see* Schedule 3.

<sup>53</sup> Exhibit 9, *Prenger Rebuttal*, p. 9, lines 7-8; *see* Schedule 4.

<sup>54</sup> Exhibit 8, *Prenger Direct*, p. 5, line 24; Exhibit 9, *Prenger Rebuttal*, p. 2, line 8.

<sup>55</sup> Exhibit 9, *Prenger Rebuttal*, Schedule 1.

## II. Overtime

The overtime issue came into play when Staff proposed time reporting for the Company's employees. As a direct response to that position, Timber Creek indicated the need for overtime.<sup>56</sup> While Staff disagrees with the notion that the requirement of time reporting has any relationship to overtime, Staff does support overtime for one of Timber Creek's employee based on his job duties and responsibilities.

Staff supports \$7,000 in overtime for the Plant and Collection System Operator. Timber Creek has never previously paid overtime and Staff acknowledges that overtime was not booked in the test year.<sup>57</sup> After Timber Creek consulted with an attorney, it determined it needed to treat the Plant and Collection Systems Operator as a non-exempt employee. With that information, and the Company's affirmation it planned on paying the Plant and Collection System Operator overtime<sup>58</sup>, Staff adjusted the Plant and Collection System Operator's salary to \$39,000 and accounted for \$7,000 in overtime.<sup>59</sup> Even though the Company determined the necessity of paying the Assistant Operator overtime which formed the basis for Staff proposing to include overtime in this case<sup>60</sup>, Timber Creek has yet to establish a policy to pay this position overtime. Timber Creek has not paid any overtime, to date, according to Mr. Sherry's testimony at the evidentiary hearing.<sup>61</sup> Mr. Sherry testified that Timber Creek was awaiting the outcome of this case before it would implement the payment of overtime to the Assistant Operator.<sup>62</sup>

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<sup>56</sup> See Exhibit 4, *Sherry Direct*, Schedule DS-4; Schedule DS-5.

<sup>57</sup> Transcript, Vol. 3, p. 102, line 20; Exhibit 9, *Prenger Rebuttal*, p. 16, lines 18-20.

<sup>58</sup> Transcript, Vol. 3, p. 81, lines 18 – p. 82, lines 11; Exhibit 9, *Prenger Rebuttal*, p. 18, lines 6-27; Exhibit 10, *Prenger Surrebuttal*, p. 6, lines 21 – p. 7, line 3.

<sup>59</sup> Exhibit 9, *Prenger Rebuttal*, p. 17, lines 1-3.

<sup>60</sup> Exhibit 9, *Prenger Rebuttal*, p. 17, line 10 – p. 18, line 34.

<sup>61</sup> Transcript, Vol. 3, p. 50, lines 7-19.

<sup>62</sup> Transcript, Vol. 3, p. 50, lines 7-19.

Staff included the level of overtime to include in rates based upon an estimate determined by both Staff and Company.<sup>63</sup> The estimate was based upon activities in the year 2009 in which the Company believes it would have had to pay overtime.<sup>64</sup>

Staff does not support overtime for the Office Manager.<sup>65</sup> Staff based its decision on a review of the Office Manager's job description, observation of the Office Manager's duties while on-site and discussions with the Office Manager regarding her duties and the time spent each week performing the duties, reviewing salary surveys specific to the position, and Timber Creek indicating it did not plan on paying overtime for the Office Manager's position.<sup>66</sup>

Staff acknowledges there is some element of risk in allowing overtime in rates when it is currently not paid out. Staff relied on Timber Creek's management to develop an accurate overtime level in which it believes it would have had to pay out during the test year.<sup>67</sup> The Staff still recommends that the Commission authorize \$7,000 in overtime for the Plant and Collection Systems Operator.

### **III. Time Reporting**

The Commission should order Timber Creek to establish and maintain a time reporting mechanism for all of its employees. Time reporting supports the managerial responsibilities of planning, organizing, directing, and controlling organizational resources.<sup>68</sup> It also helps to ensure the allocation between expense and construction activities is accurate.<sup>69</sup> In addition, the Commission has expressed an interest in the value of time reporting as to public utilities in the

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<sup>63</sup> Exhibit 9, *Prenger Rebuttal*, p. 16, lines 17-21.

<sup>64</sup> Exhibit 10, *Prenger Surrebuttal*, p. 5, lines 16-18.

<sup>65</sup> Exhibit 9, *Prenger Rebuttal*, p. 17, lines 12-27.

<sup>66</sup> Exhibit 9, *Prenger Rebuttal*, p. 17, line 16 – p. 18 line 27; *see* Schedule 5.

<sup>67</sup> Exhibit 10, *Prenger Surrebuttal*, p. 8, lines 1-21.

<sup>68</sup> Exhibit 11, *Hagemeyer Direct*, P. 5, line. 11-13; *See* Exhibit 8, *Direct Prenger*, p. 18, lines 4-27.

<sup>69</sup> Exhibit 8, *Prenger Direct*, p. 17, lines 21-22.

past. Despite the classification of the Company's employees, either exempt or non-exempt, Staff recommends that all employees maintain time records.<sup>70</sup>

The practice of time reporting serves multiple functions which are important to any business, especially one that is regulated. Time records track time spent on all projects and activities, creates a historical record of the work and projects that have been accomplished, demonstrates that expected and defined job duties are being completed, assists in projecting and managing required staffing levels, as well as many other functions.<sup>71</sup> Timber Creek is requesting additional revenue to pay for overtime for two positions; however, Timber Creek currently does not have a system of time reporting to support and demonstrate that overtime is actually occurring.<sup>72</sup> While there is no direct relationship between time reporting and overtime. Staff believes time reporting would aid all auditing entities in future payroll analysis and discussion and aid in the Company, as well as, in its managerial activities.<sup>73</sup>

In the rate increase of Hickory Hills Water and Sewer Company, the Commission expressed an opinion about the value of time reporting for regulated utilities.<sup>74</sup> On page 7 of its report and order, the Commission provided:

The Commission agrees that there are many tasks such as fielding phone calls from customers that were never entered into the hourly log. However, the Commission is not inclined to allow any public utility to claim a wage expense for hours not actually worked or documented sufficiently for the Commission to review . . . the Commission will not allow compensation for time not documented in

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<sup>70</sup> Exhibit 12, *Hagemeyer Rebuttal*, P. 2, lines. 6-7.

<sup>71</sup> Exhibit 11, *Hagemeyer Direct*, p. 5, lines 15-23.

<sup>72</sup> Exhibit 12, *Hagemeyer Rebuttal*, p. 2, lines. 16-20.

<sup>73</sup> Transcript, Vol. 3, p. 165, lines 15-18; Exhibit 9, *Prenger Rebuttal*, p. 20, lines 7-15.

<sup>74</sup> Exhibit 11, *Hagemeyer Direct*, p. 7, lines 8-12.

the time log. To do otherwise would invite other public utilities to make similar claims and seek additional expenses in rates that are not supported by documentation.

The Commission determined that in order for a public utility to claim a wage expense, it must present sufficiently documented work hours.<sup>75</sup> Because Timber Creek is requesting additional revenue for a wage expense, the Commission should order the Company to establish a time recording system for each of its employees.

### **Rate Case Expense**

The issue currently before the Commission is a determination of what is the appropriate level of rate case expense to be included in Timber Creek's revenue requirement for setting Timber Creek's sewer rates. Staff supports the inclusion of \$30,630 of rate case expense amortized over three years.

At the time of the evidentiary hearing held on January 5, 2011, Staff did not have all of the actual receipts and invoices necessary to determine whether the rate case expense was prudent and appropriate to include in rates. After the hearing the Company provided Staff with invoices and receipts for Staff's review. After reviewing the invoices and receipts, Staff believes \$30,630 was prudently incurred and thus appropriate and reasonable to include in rates. This amount reflects the true and accurate representation of actual rate case expenses incurred up to January 31, 2011. Staff urges the Commission to adopt its recommendation.

Timber Creek is also requesting recovery of rate case expenses from its previous rate case, Case No. SR-2008-0080. At the time of that rate case, Timber Creek's current General Manager, Derek Sherry, was only serving as an uncompensated officer and member of Timber

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<sup>75</sup> Exhibit 11, *Hagemeyer* Direct, p. 7, lines 22-23.

Creek’s Board of Directors.<sup>76</sup> Mr. Sherry claims to have worked \$18,175 worth of time during that rate case.<sup>77</sup> Staff is opposed to permitting recovery of this cost as it relates to cost incurred from a rate case which occurred three years ago. Including certain specific costs from a prior period in determining the rates to be established in this case on a going-forward basis constitutes single-issue ratemaking and retroactive ratemaking, which are in violation of the matching principle accounting standard.

The Commission must “consider all facts . . . with due regard, among other things to a reasonable average return upon capital actually expended” when determining rates for a utility company.<sup>78</sup> The Missouri Supreme Court has long interpreted Section 393.270 to prohibit single-issue ratemaking.<sup>79</sup> Single-issue ratemaking is when rates are changed based upon considering a single factor, such as rate case expense, in contravention of statutory requirements that the Commission must consider all relevant factors in setting rates.<sup>80</sup> “Missouri’s prohibition against single-issue ratemaking bars the Commission from allowing a public utility to change an existing rate without consideration of all relevant factors such as operating expenses, revenue, and rates of return.”<sup>81</sup>

Retroactive ratemaking is “the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with rate actually established.”<sup>82</sup> The prohibition on retroactive ratemaking prohibits prior over- or under-recoveries.

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<sup>76</sup> Exhibit 4, *Sherry Direct*, p. 11, line 11.

<sup>77</sup> Exhibit 4, *Sherry Direct*, p. 11, line 11.

<sup>78</sup> Section 393.270.4.

<sup>79</sup> See *State ex rel. Midwest Gas Users’ Association v. Public Service Commission*, 976 S.W.2d 470 (Mo App. W.D. 1998) (MGUA).

<sup>80</sup> *Id.* at 477.

<sup>81</sup> *Sprint Spectrum L.P. d/b/a Sprint PCS v. P.S.C.*, 112 S.W.3d 20 (Mo. App. W.D. 2003). *State ex. rel. Mo. Water Co.*, 308 S.W.2d 704, 718-19 (Mo. 1957); Section 392.240.1.

<sup>82</sup> *State ex. Rel. Utility Consumers’ Council of Missouri, Inc. v. Public Service Commission of Missouri*, 585 S.W.2d



The matching principle is an accounting principle in which the expenditure (rate case expense at that time) be matched with the benefits received (revenue from rates established at that time).<sup>83</sup> This case has its own rate case expense to be matched with the revenue generated from the rates established in this case.

Mr. Sherry seeks to include past under recoveries in this case. Staff expert, V. William Harris is the auditor who reviewed Timber Creek's books and records in Case No. SR-2008-0080.<sup>84</sup> The cost which Mr. Sherry seeks to include in this rate case was never sought in Timber Creek's previous rate case.<sup>85</sup> Unfortunately, Timber Creek should have sought reimbursement of Mr. Sherry's time in the past rate case and not this rate case.

It would be unlawful for the Commission to include prior cost in Timber Creek's cost of service in this case, as it would be retroactive ratemaking and in violation of the prohibition on single-issue ratemaking.<sup>86</sup> What Timber Creek is seeking to do in this rate case is considered an out of period adjustment and violates the matching principle. Thus, Staff requests that the Commission not include in this current case any cost related to Mr. Sherry's involvement in rate Case No. SR-2008-0080.

Timber Creek has already recovered the costs relating to Mr. Sherry's time devoted to 2008 rate case. Staff expert Mr. Harris performed an analysis identified in his rebuttal testimony where he clearly shows the Company has more than enough revenues to cover Mr. Sherry's rate case related costs from the 2008 rate case, but also the amount of the PSC Assessment the Company claims it under recovered through the increase in revenues through the growth in

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41, 59 (Mo banc 1979) (UCCM).

<sup>83</sup> New York State Society of CPAs (NYSSCPA).

<sup>84</sup> Exhibit 14, *Harris Rebuttal*, p. 3, lines 18-19.

<sup>85</sup> Exhibit 14, *Harris Rebuttal*, p. 3, lines 19-21.

<sup>86</sup> See *MGUA*, 976 S.W.2d 470; *UCCM*, 585 S.W.2d 41.

customers.<sup>87</sup> Mr. Harris revised his analysis to address concerns identified in Mr. Sherry's surrebuttal testimony.<sup>88</sup> Exhibit 16 illustrates that there was more than enough additional revenues collected by Timber Creek over and above the levels built into rates in Case No. SR-2008-0080 to offset the full amount of Mr. Sherry's rate case costs. In addition, there was sufficient revenue to fully cover any amounts not built into rates for the PSC Assessment.<sup>89</sup>

### **Alternative Energy/Natural Gas Well**

The issue before the Commission is whether Timber Creek should be allowed to recover costs for an exploratory alternative energy source. The Commission should not support the inclusion for exploratory alternative energy sources in Timber Creek's rates. Timber Creek is basing cost for exploratory energy on a highly speculative drilling for natural gas it engaged in during the test year.

The Company contends that its electric utility costs have increased over the past few years, without the corresponding increase in usage.<sup>90</sup> As a result of the increase in energy costs, the Company began evaluating alternative energy sources.<sup>91</sup> Timber Creek evaluated solar, wind, and natural gas as sources for alternative energy and believed natural gas had the most attractive payback period.<sup>92</sup>

Timber Creek based its decision to drill for natural gas from information collected from the Missouri Department of Natural Resources (DNR) and United States Geological Survey.<sup>93</sup> Timber Creek used information obtained from DNR logs that indicated natural gas production at

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<sup>87</sup> Exhibit 14, *Harris Rebuttal*, p. 5, line 8.

<sup>88</sup> See Exhibit 16, *Calculation of Excess Revenues Over Expenses*.

<sup>89</sup> See *Infra* PSC Assessment.

<sup>90</sup> Exhibit 4, *Sherry Direct*, p. 12, lines 11-16.

<sup>91</sup> Exhibit 4, *Sherry Direct*, p. 12, lines 17-19.

<sup>92</sup> Exhibit 4, *Sherry Direct*, p. 12, lines 22-23. (According to Mr. Sherry, the cost and payback period for the solar, wind, and natural gas were: "Solar (panels) was estimated at \$750K with a 22 year payback", Wind (turbines) estimated at \$500K with a 14 year payback", and "Natural Gas (on-site well) at \$130K with a 4-year payback.") *Id.* at lines 6-14.

<sup>93</sup> Exhibit 4, *Sherry Direct*, p. 13, lines 18-20.

Tiffany Springs.<sup>94</sup> Tiffany Springs is located within seven to eight miles of Timber Creek.<sup>95</sup> Tiffany Springs well is capped off and not producing any form of energy.<sup>96</sup> Mr. Sherry testified at the evidentiary hearing, that he believed there was fifty percent chance of finding natural gas, which is not the likelihood of finding a viable quantity of natural gas.<sup>97</sup> Timber Creek obtained three bids from drilling companies.<sup>98</sup> The firm ultimately selected drilled a pilot well for \$10,849.00, and determined that natural gas was not present.<sup>99</sup>

While Timber Creek is not requesting recovery of this failed venture, it is requesting the same amount amortized over three years to continue to explore alternative energy options.<sup>100</sup> Mr. Sherry is proposing to use the cost of this speculative venture as the cost basis for future efforts to explore alternative energy options. Mr. Sherry testified that he is still interested in exploring solar and wind, however the costs for those investments are still steep.<sup>101</sup> It was not until the evidentiary hearing that Mr. Sherry testified that he was interested in exploring biogas.<sup>102</sup>

Staff expert, Martin Hummel, asserts that Mr. Sherry's comparison of solar, wind, and natural gas are not a valid comparison when determining alternative energy sources.<sup>103</sup> With solar energy, the assumption is that solar energy will be present, and with wind, the assumption is that wind will be present, both are accurate.<sup>104</sup> However, with natural gas, the assumption that

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<sup>94</sup> Exhibit 4, *Sherry Direct*, p. 14, lines 5-7.

<sup>95</sup> Exhibit 4, *Sherry Direct*, p. 14, line 7.

<sup>96</sup> Transcript, Vol. 3, p. 57, lines 12-19.

<sup>97</sup> Transcript, Vol. 3, p. 57, lines 3-9. (While Mr. Sherry indicated that there was a fifty percent chance of locating natural gas, there is no other evidence to prove the likelihood was to that level).

<sup>98</sup> Exhibit 4, *Sherry Direct*, p. 14, line 18.

<sup>99</sup> Exhibit 4, *Sherry Direct*, p. 14, line 21.

<sup>100</sup> Exhibit 4, *Sherry Direct*, p. 15, lines 2-5.

<sup>101</sup> Transcript, Vol. 3, p. 58, lines 7-24.

<sup>102</sup> Transcript, Vol. 3, p. 59, lines 18-19.

<sup>103</sup> Exhibit 18, *Hummel Rebuttal*, p. 2, lines 19-22.

<sup>104</sup> Exhibit, 18, *Hummel Rebuttal*, p. 2, lines 1-3.

natural gas will be present is highly speculative.<sup>105</sup> Mr. Sherry based his comparison of alternative energy sources on, and, the likelihood of natural gas being available was and is highly speculative, Mr. Sherry's comparison is invalid.<sup>106</sup> Mr. Hummel further did not find any evidence that the cost of the exploratory well was prudent.<sup>107</sup>

Timber Creek has not provided any support for the inclusion of an alternative energy "allowance" for inclusion in rates. During the evidentiary hearing, Mr. Sherry testified the money he is requesting is for consulting fees.<sup>108</sup> However, Mr. Sherry has not provided any evidence to the cost for consulting, or any particular costs involved in the continuation of exploring alternative energy.

While Staff certainly supports and encourages utility companies finding ways to reduce costs and finding alternative energy sources, Staff cannot support ratepayers bearing the costs for speculative ventures.<sup>109</sup> Staff requests the Commission deny Timber Creek's request to include costs for speculative alternative energy in its sewer rates.

### **Public Service Commission Assessment**

The issues are to determine the appropriate level of the Public Service Commission Assessment (PSC Assessment) to be included in rates and whether or not the Commission should authorize Timber Creek to create a pass-through on its customers' bills to reflect the annual fluctuation in the PSC Assessment? The appropriate level of the PSC Assessment should be \$62,590, the most current amount Timber Creek was assessed for the 2011 fiscal year. The Commission should not allow Timber Creek to recover past variances in its PSC Assessment. Lastly, the Commission should not create a PSC Assessment pass-through on Timber Creek's

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<sup>105</sup> Exhibit 18, *Hummel* Rebuttal, p. 2, lines 3-4.

<sup>106</sup> Exhibit 18, *Hummel* Rebuttal, p. 2, lines 1-4.

<sup>107</sup> Exhibit 18, *Hummel* Rebuttal, p. 3, lines 1-3.

<sup>108</sup> Transcript, Vol. 3, p. 59, line 12.

<sup>109</sup> Transcript, Vol. 3, p. 197, lines 13-21.

customer bills. Any determination on the PSC Assessment should be addressed in Commission workshop docket, File No. WW-2009-0386.

## **I. PSC Assessment Value**

Timber Creek is requesting that the Commission authorize it to recover \$45,902 in past under recovered PSC Assessments accumulated from prior years.<sup>110</sup> Staff is appropriately allocating the PSC Assessment under Section 386.370. Timber Creek's request constitutes retroactive ratemaking. Retroactive ratemaking is "the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with rate actually established."<sup>111</sup> The prohibition on retroactive ratemaking prohibits prior over- or under-recoveries of any costs including the PSC Assessment. It would be unlawful for the Commission to isolate an expense from a prior periods rate case in which the company believes it under recovered. Thus, the Staff requests that the Commission deny Timber Creek's request to recover past under recoveries in this current rate case.

Further, the amount of the PSC Assessment the Company claims it has not collected from its customers has already been fully recovered from increases in revenues through the growth in customers.<sup>112</sup> Mr. Harris revised his analysis to address concerns identified in Mr. Sherry's surrebuttal.<sup>113</sup> There was more than enough additional revenues collected by Timber Creek over and above the levels built into rates in Case No. SR-2008-0080 to recovery any amounts not built into rates for the PSC Assessment.

## **II. PSC Assessment Pass-Thru**

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<sup>110</sup> Exhibit 4, *Sherry* Direct, p. 17, lines 2-3.

<sup>111</sup> *UCCM*, 585 S.W.2d at 59.

<sup>112</sup> Exhibit 14, *Harris* Rebuttal, p. 5, line 8.

<sup>113</sup> See Exhibit 16, *Calculation of Excess Revenues of Expenses*.

Timber Creek requests the Commission to create a PSC Assessment pass-through on customer bills.<sup>114</sup> Section 386.370.3 authorizes the Commission to assess investor-owned utilities. Pursuant to that statute, Staff is correctly calculating and applying to the PSC Assessment to investor-owned utilities.<sup>115</sup> Absent statutory authorization, the Commission cannot change its practices in assessing utility companies.

Staff expert, James Busch, states “the PSC Assessment is a regular cost of doing business for the regulated utilities.”<sup>116</sup> The PSC Assessment should be treated like all other expenses a utility incurs.<sup>117</sup> Additionally, the PSC Assessment is built into utility’s cost-of-service in a rate case.<sup>118</sup> Any change to the PSC Assessment could create unintended consequences to other investor-owned utilities in Missouri.<sup>119</sup>

The Commission must “consider all facts . . . with due regard, among other things to a reasonable average return upon capital actually expended” when determining rates for a utility company.<sup>120</sup> The Missouri Supreme Court has long interpreted Section 393.270 to prohibit single-issue ratemaking.<sup>121</sup> Single issue ratemaking is when rates are changed based upon considering a single factor, such as PSC Assessment, in contravention of statutory requirements that the Commission must consider all relevant factors in setting rates.<sup>122</sup> “Missouri’s prohibition against single-issue ratemaking bars the Commission from allowing a public utility to

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<sup>114</sup> Exhibit 4, *Sherry* Direct, p. 17, lines 7-12.

<sup>115</sup> Exhibit 19, *Busch* Direct, p. 2, lines 10-12.

<sup>116</sup> Exhibit 19, *Busch* Direct, p. 5, lines 11-12.

<sup>117</sup> Exhibit 19, *Busch* Direct, p. 5, lines 12-14.

<sup>118</sup> Exhibit 20, *Busch* Rebuttal, p. 7, lines 1-2.

<sup>119</sup> Exhibit 19, *Busch* Direct, p. 2, lines 12-14.

<sup>120</sup> Section 393.270.4.

<sup>121</sup> See *MGUA*, 976 S.W.2d at 479.

<sup>122</sup> *Id.* at 477.

change an existing rate without consideration of all relevant factors such as operating expenses, revenue, and rates of return.”<sup>123</sup>

In 1979, the court reviewed the lawfulness of a Commission’s approved fuel adjustment clause (FAC) that allowed fuel cost recovery above or below the base fuel costs.<sup>124</sup> Interpreting section 393.270, the Missouri Supreme Court held that it was necessary for the Commission to consider “all relevant factors” when determining the lawfulness of a FAC.<sup>125</sup> The Court concluded that this particular FAC permitted “one factor to be considered to the exclusion of all other factors in determining whether or not a rate is to be increased,” making the FAC unlawful.<sup>126</sup>

Section 393.270(5) provides: “[i]n determining the price to be charged for sewer service the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question. . . .” Missouri courts have interpreted Section 393.270(5) to require the Commission to consider “all relevant factors” when setting rates.<sup>127</sup>

In 1998, the court considered the Commission’s approved Purchased Gas Adjustment (PGA) mechanism for Missouri Gas Energy (MGE) within the context of a general rate case.<sup>128</sup> The court concluded that since: 1) the PGA was considered within the context of a general rate case; 2) gas fuel costs are different and unique in nature from other expenses; and 3) the Commission may disallow imprudent gas purchasing decisions; MGE’s PGA mechanism was an exception to the prohibition on single-issue ratemaking.<sup>129</sup>

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<sup>123</sup> *Sprint Spectrum*, 112 S.W.3d 20; *State ex. rel Mo. Water Co.*, 308 S.W.2d at, 718-19; Section 392.240.1.

<sup>124</sup> *UCCM*, 585 S.W.2d at 44.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 56.

<sup>127</sup> *Id.* at 56.

<sup>128</sup> *See MGUA*, 976 S.W.2d at 477.

<sup>129</sup> *Id.*

In *MGUA* the court determined “that due to the unique nature of gas fuel costs, including the fact that natural gas is a natural resource, not a product which must be produced with labor and materials, the fuel cost component of the rate must be treated differently than other components because it is different.”<sup>130</sup> The court distinguished the *UCCM* FAC from the *MGUA* PGA finding that cost of fuel passed through the PGA mechanism is not set by the Commission, but is federally regulated.<sup>131</sup>

In *Hotel Continental v. Burton*, 334 S.W.2d 75 (Mo. 1960), the Missouri Supreme Court reviewed a Commission decision approving a tax adjustment clause (TAC) that passed local taxes to utility customers outside the context of a rate case. The Court approved the TAC, in part, because the taxes were “not affected by economy of operation in other respects or by greater volume of sales or by variations in the amounts of any other expense items”, and because the TAC could be levied “without regard to changes in other costs and without disturbing the statutory scheme that changes in rates of return not occur without consideration of all costs factors and without public awareness and understanding of rates proposed to be charged.”<sup>132</sup> The Court concluded that an increase in taxes could not affect the utility’s revenue because the “approved rate of return of necessity remains the same”.<sup>133</sup>

The Company asserts that since the Commission has approved gross receipt tax and franchise fees as pass-through charges, it should treat the PSC Assessment the same.<sup>134</sup> However, under the *Hotel Continental* analysis, the Commission should deny Timber Creek’s request for a PSC Assessment pass-through. First, the PSC Assessment is different from local taxes because the PSC Assessment is “affected by economy of operation in other respects . . . or

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<sup>130</sup> *Id.* at 480.

<sup>131</sup> *Id.*, 976 S.W.2d at 482.

<sup>132</sup> *Hotel Continental v. Burton*, 334 S.W.2d 75, 82 (Mo. 1960).

<sup>133</sup> *Id.*

<sup>134</sup> Exhibit 4, *Sherry Direct*, p. 7, lines 3-11.



by variations in the amounts of any other expense item.”<sup>135</sup> The PSC Assessment is based upon Commission Staff’s evaluation of services incurred based upon a particular industry, i.e., electric, natural gas, water and sewer. It fluctuates from year to year and can have specific variances based on industry demands and the amount of revenue collected by the utility.

Second, Timber Creek’s proposal could not be implemented “without disturbing the statutory scheme that changes in rates of return not occur without consideration of all relevant factors.”<sup>136</sup> Recent Commission decisions have followed the understanding that reducing a company’s business risks necessitates a reduction in the company’s return on equity.<sup>137</sup> A rate change that does not factor the necessary changes to return of equity and all other relevant factors when making the requested rate change would be a violation of § 393.270.

In this case, Timber Creek is seeking the Commission to allow the Company to recover the PSC Assessment in an unlawful manner that would constitute improper single-issue ratemaking. While the *MGUA* case clearly determined that fuel costs are different and unique, the PSC Assessment is not different and unique, as it is a cost of doing business in which it is factored into a utility’s cost-of-service.

The Staff requests that the Commission deny Timber Creek’s request to create a PSC Assessment pass-through. In the event the Commission is interested in creating a pass-through for assessments, potential changes to the PSC Assessment are currently being addressed in File No. WW-2009-0386. File No. WW-2009-0386 is the appropriate forum to address any proposed changes in the PSC Assessment to ensure that all utilities and ratepayers will be protected and to

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<sup>135</sup> *Hotel Continental*, 334 S.W.2d at 82.

<sup>136</sup> *Hotel Continental*, 334 S.W.2d 75.

<sup>137</sup> In Case Number GR-2006-0422, *In the Matter of Missouri Gas Energy’s Tariffs Increasing Rates for Gas Service Provided to Customers in the Company’s Missouri Service Area, Report and Order*, March 22, 2007, the Commission reduced Missouri Gas Energy’s ROE by 32.5 basis points due to a rate design that removes weather as a business risk.

ensure that any unintended consequences to the changes can be discussed among the various stakeholders in this process.

### **Contingency/Emergency Repair Fund**

The issue before the Commission is whether the Commission should authorize Timber Creek Sewer to establish a Contingency/Emergency Repair Fund. The Commission should not authorize such a Contingency/Emergency Repair Fund in this case, as it is better suited for discussion in the current working group, associated with File No. WW-2009-0386. The Commission is charged with setting just and reasonable rates and a Contingency/Emergency Repair Fund is not just or reasonable and therefore, not statutorily permissible in the context of this case.

The Company would like to establish a Contingency/Emergency Repair Fund to fund emergency repairs on existing infrastructure and assets serving existing ratepayers.<sup>138</sup> Funds would be accumulated over time by charging a fee per month per customer. The Company proposes to identify critical infrastructure components, estimate significant repair costs, and establish a ceiling for a repair fund. The Company would also create a separate account fund that would be managed under certain guidelines.<sup>139</sup> The funds would be intended to repair existing infrastructure that is part of the core utility processes.<sup>140</sup> The Company proposes to charge an additional \$0.50 per month/ per customer. At the proposed rate it would take over 19 years before the fund ceiling would be reached, provided no funds were ever used during the timeframe.<sup>141</sup> The Company believes the amount that should be allowed to accumulate in this

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<sup>138</sup> Exhibit 4, *Sherry* Direct, p. 20, lines 20-21.

<sup>139</sup> Exhibit 5, *Sherry* Rebuttal, p. 7, lines 17-22.

<sup>140</sup> Exhibit 5, *Sherry* Rebuttal p. 7, lines 17-22.

<sup>141</sup> Exhibit 5, *Sherry* Rebuttal p. 8, lines 14-17.

fund is \$177, 604,<sup>142</sup> which represents three months of cash reserves.<sup>143</sup> Timber Creek relied on an asset model from EPA<sup>144</sup> as well as some of its real data, conversations with some vendors on hypothetical information and telephone calls with utilities in the public sector to calculate this amount.<sup>145</sup>

Timber Creek is seeking a creative way to address this situation.<sup>146</sup> The model used by Timber Creek includes all expenses, not just plant expenses,<sup>147</sup> as well as non-regulated and regulated utilities.<sup>148</sup> These distinctions are important because while the model may be instructive, it is not a genuine comparison, since it includes both regulated and non-regulated utilities. Timber Creek seeks both plant expenses and new-employee training costs in its proposal and it contemplates both regulated and non-regulated utilities. This creative way to address the situation may affect all small water and sewer companies, as well as other regulated entities.<sup>149</sup>

Timber Creek argues that its proposal of a Contingency/Emergency Repair Fund is authorized by Section 393.270.5, because that section uses “contingencies.”<sup>150</sup> Section 393.270.5 provides, in pertinent part, “the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question ...among other things, to a reasonable average return upon the value of the property actually used in the public service and to the necessity of making reservations out of income for surplus and contingencies.” Timber

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<sup>142</sup> Exhibit 4, *Sherry* Direct, Schedule DS-7.

<sup>143</sup> Transcript, Vol. 3, p. 134, lines 17-18.

<sup>144</sup> Exhibit 4, Direct *Sherry*, Schedule DS-7.

<sup>145</sup> Transcript, Vol. 3, p. 124, lines 5-6, 11.

<sup>146</sup> Transcript, p. 205, lines 11-12.

<sup>147</sup> Transcript, p. 132, lines 17-19.

<sup>148</sup> Transcript, p. 124, lines 20-23, 135.

<sup>149</sup> Transcript, p. 205 lines 11-12.

<sup>150</sup> Transcript, p. 24, lines 21-22.

Creek isolates a single word at the end of a statute and argues that the statute allows a contingency, specifically a Contingency/Emergency Repair Fund.

Staff argues that the section must be read in its entirety and in conjunction with other pertinent statutes, including Section 393.130.1. First and foremost, the Commission must set rates that are just and reasonable,<sup>151</sup> and in consideration of setting those rates, the Commission can consider the items identified in Section 393.270.5. Staff argues that the Commission regularly considers “the necessity of making reservations out of income for surplus and contingencies”<sup>152</sup> during rate cases by factoring in the company’s expense levels. Utilities are allowed operating and maintenance expense as part of the rate base, which provides the company with the capability to fix things as they come up - contingencies that arise in the operation of a utility. In this case, it is not reasonable to allow Timber Creek to establish a separate fund that has the potential to collect more than \$700,000. Timber Creek is seeking a separate fund in the context of a rate case with an operation of law date of April 10, 2011. Despite Timber Creek’s arguments, “contingencies” as used in Section 393.270.5 does not contemplate the Contingency/Emergency Repair Fund Timber Creek seeks in this matter. The statute Timber Creek relies on does not contemplate Timber Creek’s proposal as articulated in this case.

Staff’s expert, James Busch, stated that Staff supports efforts to find solutions to help small utilities raise funds to make necessary repairs and replacement.<sup>153</sup> Many small companies simply do not have the funding capacity to make critical repairs and replacements to essential infrastructure to ensure the continued provision of safe and adequate service.<sup>154</sup> Staff is concerned that because many small utilities operating in Missouri do not have the capital to

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<sup>151</sup> See Section 393.130.

<sup>152</sup> See Section 393.270.5.

<sup>153</sup> Exhibit 19, *Busch* Direct p. 10, lines 20-21.

<sup>154</sup> Exhibit 19, *Busch* Direct p. 7, lines 21-22.

repair and/or replace critical infrastructure, customers are at risk of losing essential service.<sup>155</sup> However, appropriate consumer safeguards must also be in place if a fund of this type is ever approved.<sup>156</sup> Any discussion on Contingency/Emergency Repair Funds must include placing sufficient restrictions on the utility provider that require real investment on the part of the owner of the company.<sup>157</sup> The more appropriate way to handle this issue is within the context of the current working group, File No. WW-2009-0386.<sup>158</sup>

There are many factors that go into determining whether a Contingency/Emergency Repair Fund is appropriate. The Company must have proper oversight of the use and control of the fund,<sup>159</sup> ongoing monitoring by the Commission, its Staff or the Office of the Public Counsel is also important.<sup>160</sup> Other factors include: the type of account to be created, the appropriate level of reserve in the fund, the types of expenses the fund could cover, the types of expenses it would not cover, all appropriate reporting requirements, all appropriate oversight, treatment of any excess reserve collections, to name a few.<sup>161</sup> Another concern is determining when and how the Company would have access to the fund, including whether Commission approval would be necessary or agreement by the Office of the Public Counsel.<sup>162</sup> Lastly, it is critical to determine the amount that would be included in the Company's cost of service and rate base.<sup>163</sup>

Public Counsel's witness, Ted Robertson, testified that Timber Creek has not demonstrated a need for a contingency fund, so it is possible that the Company's need for funds

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<sup>155</sup> Exhibit 20, *Busch* Rebuttal p. 5, lines 18-20.

<sup>156</sup> Exhibit 19, *Busch* Direct, p. 7, line 22.

<sup>157</sup> Exhibit 19, *Busch* Direct, p. 8, lines 18-20.

<sup>158</sup> Exhibit 19, *Busch* Direct p. 7, lines 19-20.

<sup>159</sup> Exhibit 20, *Busch* Rebuttal, p. 12, lines 7-8.

<sup>160</sup> Exhibit 20, *Busch* Rebuttal, p. 12, lines 9-10.

<sup>161</sup> Transcript, Vol. 3, p. 211, line 2 – p. 212 line 13; Exhibit 19, *Busch* Direct p. 11, lines 8-10.

<sup>162</sup> Transcript, Vol. 3, p. 212, line 24 – p. 213, line 4; Exhibit 19, *Busch* Direct p. 11, lines 8-10.

<sup>163</sup> Transcript, p. 224 lines 12-13; Exhibit 20, *Busch* Rebuttal, p. lines 21-23.

should also be a factor in this issue.<sup>164</sup> There might be an instance where the Office of the Public Counsel would consider a Contingency/Emergency Repair Fund for a company if it is proven that the company needs one. However, it is noted that The Office of Public Counsel does not support any form of a Contingency/Emergency Repair Fund for Timber Creek in this case.

The most reasonable way to address the situation is to continue the ongoing discussions in the working case File No. WW-2009-0386. Timber Creek is willing to work with Staff to establish how the parameters of the fund would work to come up with a satisfactory mechanism to assure that the consumers are protected with the proper safeguards and restrictions.<sup>165</sup> Timber Creek even agrees that the working group is a good forum to discuss this issue. Timber Creek's only concern is with the length of time it takes to address issues in that forum.<sup>166</sup> This is an important issue and should not be rushed in the context of a rate case.

The Commission should not include a Contingency/Emergency Fund in this case, as there are many factors that must be established before Staff and possibly OPC would be able to agree that it is appropriate. The Commission has already established a working group to address such issues, WW-2009-0386, and Staff urges the Commission to order that group to discuss and address this issue instead of including it in this case.

**WHEREFORE**, the Staff submits the foregoing as its Post-Hearing Brief in this matter.

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<sup>164</sup> Transcript, Vol. 3, p. 248, lines 19-20, 25; p. 249, line 1.

<sup>165</sup> Exhibit 5, *Sherry* Direct, p. 8, lines 20-23.

<sup>166</sup> Transcript, Vol. 3, p. 150, lines 8-14.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 4<sup>th</sup> day of February, 2011

/s/ Jaime N. Ott