

# APPENDIX A

Staff's Case Status Report

Case No. SR-2005-0116

March 25, 2005

# **CASE STATUS REPORT**

## **CASE No. SR-2005-0116**

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**Utility Operations Division**

**March 25, 2005**

### **Procedural History**

On March 16, 2005\*, the Commission conducted an on-the-record presentation (March 16 Presentation) regarding the *Agreement Regarding Disposition of Small Company Rate Increase Request* entered into by the Staff and Mill Creek. During the March 16 Presentation, the parties to this case informed the Commission that the St. Louis Metropolitan Sewer District (MSD) was a potential purchaser of Mill Creek's sewer system, that the Staff was directly involved in the discussions regarding the potential transfer of Mill Creek's sewer system to the MSD, and that the potential transfer also involved the Department of Natural Resources (DNR) and the Attorney General's Office (AGO). (Provisions regarding the potential transfer of Mill Creek's sewer system to the MSD, or another acceptable entity, are included in the above-referenced disposition agreement, which was filed in this case on October 29, 2004.)

On March 23, the Commission issued its Order Directing Filing, in which it directed the Staff to: (1) file a status report, no later than March 25, informing the Commission of the progress of the potential sale of Mill Creek's sewer system to the MSD; (2) file a statement, no later than March 25, indicating whether it is likely that a sale of Mill Creek's sewer system to the MSD would occur prior to April 12; and (3) file a second status report, no later than April 1, informing the Commission of the progress of the potential sale of Mill Creek's sewer system to the MSD.

### **Actions Taken Subsequent to the March 16 Presentation**

Late in the afternoon of March 16, I sent an e-mail message to Joe Bindbeutel, an attorney with the AGO that is familiar with the MSD's potential purchase of Mill Creek's sewer system and that has represented the DNR in past enforcement actions involving Mill Creek, advising him of the discussions that took place during the on-the-record presentation and of the need for an update on the AGO's and DNR's consideration of the potential transfer of Mill Creek's sewer system to the MSD. On March 17, Mr. Bindbeutel responded via e-mail to my March 16 message. A summary of his response is included in the following section of this report.

Also late in the afternoon of March 16, I sent a separate e-mail message to Paul DeFord, an attorney representing the MSD in the potential purchase of Mill Creek's sewer system, advising him of the discussions that took place during the on-the-record presentation and of the need for an update on the MSD's consideration of the subject purchase. As a result of my March 16 message, I participated in a telephone conversation with Mr. DeFord on March 23. A summary of the information I obtained from Mr. DeFord during that conversation is included in the following section of this report.

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\* Unless noted otherwise, all dates herein refer to the year 2005.

### **Current Status of the Potential System Transfer**

AGO/DNR: In his response to my March 16 e-mail message, Mr. Bindbeutel indicated that the AGO & DNR are receptive to giving the owner of Mill Creek (Mr. Joe Afshari) a "substantial credit" off of the existing judgment against him, if a transfer of the system to the MSD is accomplished. Mr. Bindbeutel also indicated that the AGO & DNR are receptive to giving the MSD "credits" against potential enforcement actions related to the operation of the Mill Creek system, if a transfer of the system to the MSD is accomplished. (The Staff's understanding on this matter is that such an arrangement would be similar to the arrangement offered Missouri-American Water Company regarding its purchase of the Warren County Water & Sewer Company systems.) Mr. Bindbeutel further noted that reaching the necessary agreements on these matters "will take time" and was thus hesitant to set any arbitrary deadlines for the completion of the agreements. Lastly, Mr. Bindbeutel offered to meet with the Staff, Mill Creek and the MSD, either collectively or separately, to further discuss how to best accomplish the transfer of Mill Creek's sewer system to the MSD.

MSD: During the March 23 telephone conversation, Mr. DeFord indicated the following: (1) that the MSD is definitely interested in obtaining Mill Creek's sewer system.; (2) that the MSD has identified some operational problems with the treatment plant that would need to be addressed prior to a takeover; (3) that the MSD is working with the DNR on a number of issues that may relate to its decision whether to acquire the system; (4) that the appropriate employees of the MSD are involved in the consideration of this matter; and (5) that the time needed to finalize the necessary arrangements for the transfer, and to then receive board approval of the transfer, will be such that the transfer may not happen "quickly".

Possible Completion Date: Though it is not yet clear how much time might be needed to finalize the arrangements for a successful transfer of Mill Creek's system to the MSD, I believe it is clear that the transfer will not occur prior to April 12. However, I think it is also clear that the necessary parties are interested in seeing the transfer accomplished and are working toward that goal with the understanding that "sooner is better".

### **Planned Follow-Up Activities**

The Staff will be following up on the matter of the potential transfer of Mill Creek's sewer system to the MSD through further contacts with Mr. Bindbeutel and Mr. DeFord next week, and will file a second status report regarding that matter no later than April 1, as directed by the Commission. Additionally, the Staff will file its recommendation regarding Mill Creek's pending rate increase tariff revisions, which are currently suspended until April 12, no later than April 1.

Regarding the Staff's recommendation regarding the pending tariff revisions, the Staff will be discussing the execution of a "supplemental disposition agreement" with Mr. Afshari, the owner of Mill Creek, and Ruth O'Neill of the Office of the Public Counsel, with the intent of reaching an agreement that would provide for the "phase 1" rates to go into effect on an interim basis on April 12 – subject to certain conditions regarding Mill Creek's system and business operations being met, and subject to the rates reverting back to the current amount if those conditions are not met. Absent such a supplemental agreement being reached between at least Mill Creek and the Staff by March 31, the Staff's recommendation regarding the pending rate increase tariff revisions will be that the tariff revisions be further suspended or rejected, depending on the circumstances as to why a supplemental agreement was not reached by March 31.