

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of)
Timber Creek Sewer Company for a)
Certificate of Convenience and Necessity)

File No. SA-2010-0063

ORDER SUSPENDING SCHEDULE AND SETTING DEADLINE TO REQUEST HEARING

Issue Date: April 8, 2010

Effective Date: April 8, 2010

The Missouri Public Service Commission is suspending the procedural schedule and directing the filing of any request for hearing as set forth below.

On August 21, 2009, Timber Creek Sewer Company ("Timber Creek") sought the Commission's permission and approval for construction of a sewer system by filing the application. Such application is subject to the following procedure:

The commission shall have the power to grant the permission and approval herein specified whenever it shall after **due hearing** determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service.¹

Whether a hearing is "due" under that statute depends on whether any party opposes the application.² Opposition to the application arose when the Commission granted³ the *Application to Intervene of Platte County Regional Sewer District* ("the District").⁴ Therefore, the Commission issued notice of a contested case⁵ and a procedural schedule.⁶

¹ Section 393.170.3, RSMo 2000.

² *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Com'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

³ On October 5, 2009.

⁴ Filed on September 9, 2009.

⁵ On November 17, 2009.

⁶ On December 15, 2009.

But the District has withdrawn its intervention.⁷ Staff has never opposed, and recommends granting,⁸ the application. According to Timber Creek, Staff, and the District, “The Office of the Public Counsel [“OPC”⁹] is not taking an active role in this case at this time.”¹⁰ Because the application may be unopposed, a hearing may not be due. Therefore, the Commission will suspend the procedural schedule and set a deadline for OPC to request a hearing.

THE COMMISSION ORDERS THAT:

1. The procedural schedule is suspended.
2. Not later than April 15, 2010, the Office of the Public Counsel shall file any request for hearing, setting forth with particularity any issue of fact remaining in dispute.
3. This order shall become effective immediately upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Daniel Jordan, Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 8th day of April 2010.

⁷ *Notice of Withdrawal of Intervention* filed on April 8, 2010.

⁸ Staff's recommendation filed on October 30, 2009.

⁹ OPC is a party to this action under 4 CSR 240-2.010(11).

¹⁰ *Joint Motion to Establish Procedural Schedule* filed on December 10, 2009; the District's *Motion for Leave to Supplement Schedules Attached to Prefiled Testimony*, filed on February 10, 2010.