

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

In the Matter of the Small Company Rate)
Increase Request of Timber Creek Sewer) Case No. SR-2008-0080
Company.)

PUBLIC COUNSEL’S REQUEST FOR AN ON-THE-RECORD PRESENTATION

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Request for an On-The-Record Presentation states as follows:

1. On March 22, 2007, Timber Creek Sewer Company (Timber Creek or Company) submitted to the Missouri Public Service Commission (Commission) a request for an increase of \$120,000 in its total annual sewer service operating revenues and for an increase in its Contribution in Aid of Construction (CIAC) connection fee from \$1,600 to \$3,200.
2. On April 6, 2007, the customers were given notice that Timber Creek was seeking a \$120,000 (approximately 32.24%) increase in its annual sewer operating revenues.¹ The notice included a table explaining the impact listing the type of charge, current rates, proposed rates and percentage increase. Customers were thereby notified that, if Timber Creek received its proposed increase of \$120,000 annually from the Commission, their Total Monthly Bill would see a 32.24% increase.
3. On September 25, 2007, the Staff of the Missouri Public Commission (Staff) filed its Notice of Agreement Regarding Disposition of Small Company Rate Increase Request. This filing contained a Company/Staff Agreement Regarding Disposition of Small Sewer Company

¹ *Initial Customer Notice*, Filed 4-9-2007, MO PSC Tracking File No. QS-2007-0008.

Revenue Increase Request (Company/Staff Agreement) which was entered into by Timber Creek and Staff. Public Counsel was not a signatory to the Company/Staff Agreement.

4. The Company/Staff Agreement states that Staff's audit of the books and records of Timber Creek indicated an increase in revenue requirement of \$129,837 which is \$9,837 more than Timber Creek requested. The Company/Staff Agreement also states that "Based on the action of the Staff and Commissions for the past 27, years, Staff was of the opinion it would file an increase in revenue recommendation in this case of \$120,000 which is the amount of revenue increase requested by the Company. However, the Commission's General Counsel has made a decision that the recommended rate increase in this case should be \$129,837 which is more than the Company requested."²

5. The Company/Staff Agreement includes future expenses which are not known and measurable. A \$70,000 salary for a General Manager has been included even though Timber Creek has not previously employed a General Manager nor does it currently employ one. Estimated costs have been included for items Timber Creek has agreed to perform, but has not performed nor paid for at this time. The Company is only required to execute contracts for these items by September 30, 2007. The work is not required to be performed by a specific date and there is no required reporting to the Commission stating that the work has been completed. The Company/Staff Agreement merely states that the Staff will conduct follow-up reviews to ensure that the Company has complied with the provisions of the agreement. There is no indication of a timeline for compliance or review.

6. As the sewer utility, Timber Creek determined the increase it requested from the Commission. The Small Sewer Company Rate Procedure requires a sewer utility to specifically

² *Notice of Agreement Regarding Disposition of Small Company Rate Increase Request*, Appendix A, Company/Staff Agreement Regarding Disposition of Small Sewer Company Revenue Increase Request, Pg. 2.

state the amount of additional revenue that is requested.³ The upper limit for the requested revenue requirement and the rate increase should be governed by Timber Creek's request. The Commission's General Counsel (General Counsel) recommendation would supplant Timber Creek's request and introduce a new ceiling or cap for the rate request. As the Commission cannot approve a rate request in excess of the Company's request, General Counsel cannot circumvent this regulatory principle with a recommendation urging the Commission to approve more than was requested. Furthermore, it is not appropriate for Staff or the General Counsel to pursue rates that exceed what the Company determined as sufficient to fund the operation and provision of safe and adequate service.

7. More importantly, customers have the right to proper notice of any potential rate increase. The Small Sewer Company Rate Procedure requires a sewer utility to give notice to its customers of the amount of the request and what effect that request will have on a typical residential customer's bill.⁴ The customers were notified of the amount of the rate request by the Timber Creek. But, the customers had no notice that rate increases proposed by the Staff and the General Counsel could exceed those requested by the sewer utility in its filing and in the published customer notice. Commission approval of the General Counsel's proposed rate increase, being more than requested by the sewer utility, violates the customers' due process right to proper, adequate and timely notice of the maximum rate increase under consideration.

8. Staff's audit is to verify that the requested additional revenue is appropriate. The Small Sewer Company Rate Procedure requires the Staff to make a determination of only whether the

³ 4 CSR 240-3.330.

⁴ *Id.*

requested additional revenue is recommended “in whole or in part”.⁵ The purpose of the audit is to test the reasonableness of the request and to advise the Commission if there is a factual, justified basis for that request. It is not to serve as a means for the Staff or the General Counsel to advocate additional revenues for the company. The audit’s purpose is a check, not as evidence to seek even higher rates than the Company’s management seeks. The Company can well speak for itself as to its needs. The Staff’s role is to investigate and verify that there is a true, accurate and reasonable basis for the Company’s request. Therefore, General Counsel’s recommendation that, based on Staff’s audit, an increase above that requested by the sewer utility should be implemented is inappropriate.

9. In this case, Timber Creek determined it would request an annual revenue increase in the amount of \$120,000. Notice was given to the customers based on Timber Creek’s \$120,000 annual revenue increase request. Staff’s audit was performed so Staff could determine whether it would recommend that Timber Creek’s revenue increase request be implemented at the requested \$120,000 or at some lower amount. Instead, a recommendation was made that the Commission should implement an increase above that which was requested and which included additional future expenses above and beyond that which are known and measurable. Therefore, the General Counsel recommended rate increase of \$129,837 violates the customers’ due process right to proper, adequate and timely notice and is an inappropriate act.

10. The General Counsel admits that this recommendation runs contrary to 27 years of past Commission decisions. Because of the importance and wide ranging consequences of this departure from well reasoned and long established practice that may affect all utilities under the Commission’s jurisdiction, Public Counsel requests that the Commission fully investigate and

⁵ *Id.*

consider all aspects of this proposal which cross the line on proper and lawful ratemaking. To that end, Public Counsel asks the Commission to require the parties to submit written briefs and then hold an on-the-record presentation for parties to submit their legal arguments regarding whether the Commission may or may not approve a rate increase above that requested by the utility.

WHEREFORE, Public Counsel respectfully requests that the Commission schedule an on-the-record presentation in this matter.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 28th day of September 2007:

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