

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 16th day
of October, 2007.

In the Matter of Timber Creek Sewer Company, Inc.'s)	<u>Case No. SR-2008-0080</u>
Tariff Designed to Increase Rates for Sewer Service.)	Tariff No. YS-2008-0171

**ORDER GRANTING INTERVENTION, DIRECTING FILING OF BRIEFS,
AND DENYING REQUEST FOR ORAL ARGUMENTS**

Issue Date: October 16, 2007

Effective Date: October 16, 2007

Timber Creek Sewer Company submitted a request on March 22, 2007, 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. This request was submitted to Staff through the small company rate case provisions of the Commission's rules.¹ On April 6, 2007, customers were given notice of this request.

The Staff of the Missouri Public Service Commission performed its audit and found that an increase in revenue requirement of \$129,837 was appropriate based on estimates subject to a true-up audit after September 30, 2007. On September 14, 2007, the request became a formal case with the filing of tariffs consistent with an Agreement Regarding Disposition of Small Company Rate Increase Request between Staff and

¹ 4 CSR 240-3.330.

Timber Creek. Those tariffs reflect an intended rate increase of \$129,837 including an increase of the connection fee from \$1,600 to \$2,650.

A second notice was sent to customers on September 19, 2007, explaining the request that was finally proposed. Comments from the public were due to the Public Counsel or to the Commission by October 9, 2007. The Commission has received numerous public comments to date opposing the rate increase.

Request for Oral Arguments and Briefs:

On September 28, 2007, the Office of the Public Counsel requested a local public hearing and requested that the Commission schedule oral arguments.² Public Counsel argues that it is a violation of the customers' due process rights for Staff to propose a rate request which is higher than the company's original request. Public Counsel cites no legal authority for this statement; however, it requests that the parties be required to file briefs and present arguments regarding the legal question.

Timber Creek filed its opposition to Public Counsel's request for oral arguments and briefs to be filed. Timber Creek argued that the Commission's rules do not authorize Public Counsel to request an oral argument because it limits Public Counsel to merely filing a pleading indicating its agreement or disagreement with the tariff. Timber Creek argues that the purpose of the small company rate increase rule is to allow small companies to seek rate increases without the necessity of an attorney or the expense of expert witnesses.

Timber Creek is correct that the rule was created to allow Staff to review the company books and finances and help determine what rates are needed, thus helping a

² Public Counsel requested an "on-the-record presentation" which in this case is the same as oral arguments.

small company avoid the expense associated with a regular rate case. Although the rule does not specifically authorize Public Counsel to make a request for oral arguments, there is no prohibition in the rule either. And certainly, Public Counsel, or any other interested party would have the right to object to an unlawful tariff filing, even if it were recommended by Staff.

Timber Creek also responded to the legal arguments. Timber Creek argues that the tariff filing requests a lawful rate increase. Timber Creek also argues that Subsection 536.070(12), RSMo, prevents any objection to the request because more than seven days have passed since the filing of Staff's supporting affidavits regarding its audit of the company. The section states, in part:

(12) Any party or the agency desiring to introduce an affidavit in evidence at a hearing in a contested case may serve on all other parties . . . copies of such affidavit . . . at any time before the hearing Not later than seven days after such service, or at such later time as may be stipulated, any other party . . . may serve . . . an objection to the use of the affidavit

That statute details the method by which evidence may be entered as evidence at an administrative hearing; it does not set out a method by which a company may avoid a hearing completely. The statute does not preclude the filing of an objection to Staff's position, which may later lead to the request for a hearing. At the time that Staff filed its supporting affidavits, no hearing had been requested.

The Commission determines that the small company rate case rule, while meant to offer an expedited and less expensive manner for small companies to seek rate relief, is not an automatic guarantee to a rate increase merely by selecting to proceed by that method. At the same time, nothing in the small company rate case rule appears to limit the final rate request to the original amount requested. Public Counsel cited no legal authority,

other than “due process” concerns, for its argument that the increase is improper. Thus, the Commission shall allow the parties to file legal briefs regarding this question; however, the Commission finds that nothing will be gained by adding the expense of oral arguments in addition to briefs. Therefore, the request for an “on–the-record-presentation” is denied.

Intervention:

On October 4, 2007, Hunt Midwest Real Estate Development, Inc., filed an application for intervention, a motion to suspend the tariffs, and a request for evidentiary hearings. Hunt indicates that it is a residential subdivision developer engaging in business within Timber Creek’s service area. The service connection fee increase of \$2,650 from \$1,600 will have a direct effect on Hunt. Hunt states that the tariffs “are unlawful, unjust and unreasonable” and that the Commission should suspend the tariffs and hold a hearing.

As support for its motion, Hunt provides only its comment letter submitted with regard to the original rate increase request from Timber Creek. At that time, Timber Creek was requesting that the connection fee be raised from \$1,600 to \$3,200. In any event, Hunt indicates that without having the opportunity to examine the rate request in detail, it believes the rate increase to be unjust and unreasonable.

Timber Creek objects to Hunt being allowed to intervene. Timber Creek argues that the small company rate case procedure does not provide for the intervention of other parties, but rather only provides for the company, Staff and the Public Counsel to negotiate an agreement. Timber Creek further argues that Hunt is represented by the Public Counsel in this proceeding.

Again, the Commission states that the small company rate case rule is meant to aid small companies in obtaining rate relief without the expense and delay of a “large” rate

case proceeding. However, the rule is not a guarantee that an interested party with a legitimate concern as to the lawfulness or reasonableness will not intervene. And, while the Public Counsel is charged with representing the “interests of the public in any proceeding before”³ the Commission, that does not “limit the right of any person, firm or corporation . . . [to] intervene in proceedings or other matters before the commission.”⁴

The Commission determines that Hunt has articulated an interest in the proposed rate and has an interest that will not otherwise be represented by the current parties to the case, including Public Counsel. Thus, the Commission shall grant the intervention request of Hunt. The Commission reserves its determination on the motion to suspend and for an evidentiary hearing until the legal briefs and Public Counsel’s position statement have been submitted.

IT IS ORDERED THAT:

1. No later than October 22, 2007, the Office of the Public Counsel and the Staff of the Missouri Public Service Commission shall, and the other parties may, file legal briefs regarding the issue of the Commission’s authority to authorize a rate increase which will provide more revenue than originally requested by the company.
2. The motion for oral arguments is denied, and the date reserved, October 19, 2007, for such arguments is released.
3. The application for intervention of Hunt Midwest Real Estate Development, Inc., is granted. Hunt Midwest shall be added as a party to this case.

³ Section 386.710(2).

⁴ Section 386.700(3).

4. This order shall become effective on October 16, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is positioned above the printed name.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Clayton, Appling,
and Jarrett, CC., Concur.
Murray, C., absent.

Dippell, Deputy Chief Regulatory Law Judge