

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Small Company Rate)	<u>Case No. SR-2005-0116</u>
Increase Request of Mill Creek Sewers, Inc.)	Tariff No. YS-2005-0330

**Dissenting Opinion of Commissioners Steve Gaw
and Robert M. Clayton III**

In its Order Approving Tariff and Agreement, the majority grants a rate increase to Mill Creek Sewers, Inc. We recognize the need for periodic rate increases for Missouri regulated utilities and, given the level of current rates as well as the length of time since the last rate increase, we normally would not have had a problem with the stipulated rate increase. That said, however, the record is replete with evidence, as the majority's decision recognizes, that Mill Creek's management / ownership has been unwilling or incapable of providing safe and adequate service.¹ The evidence reflects that the Missouri Department of Natural Resources (MO DNR) has sought and received numerous judgments against this utility for violations of environmental regulations. Furthermore, the MO DNR disclosed that they are in the process of pursuing alleged violations occurring this year. As a result, large penalties have been imposed upon the utility as well as individually against its owner. Against this background of inadequate utility service, we are opposed to any rate increase so long as a new owner or receiver is not in place.

This past year, the General Assembly enacted SB 462 which provides the Commission with the authority to appoint an interim receiver upon a finding that a water / sewer utility is "unable or unwilling to provide safe and adequate service". The record clearly demonstrates that, for the past decade, Mill Creek's management has been unwilling or unable to provide such a basic level of sewer service. Given the availability of this new statutory grant of authority, we

¹ In its Order, the majority specifically notes that customer complaints range from "damaged real property and sewage backup to the lack of customer service and customers having to repair the sewage system because the owner was either unwilling or unable to do so."

find it difficult to vote for a rate increase prior to the installment of an interim receiver. The parties have attempted to impose conditions that will ensure that the rate increase will be used to improve the quality of the sewer service. The current owner stated that he is agreeable for the company that has been physically running the system this summer to take over the financial operation. However, there is no contract to do so before the Commission, no guarantee that a contract will be executed, and no way to insure that the current owner will not unilaterally rescind such a contract under this order. We can not agree to a rate increase so long as Mill Creek's current owner remains even tangentially involved in the utility's operation. Until such time as he divests himself of his interest in the utility or the Commission appoints an interim receiver to operate the Company, we must dissent from any rate increase.

Respectfully submitted,



Steve Gaw
Commissioner



Robert M. Clayton III
Commissioner

Dated at Jefferson City, Missouri,
on this 11th day of October, 2005.