

Exhibit No.: \_\_\_\_\_  
Issue(s): Timber Creek Staff Compensation/  
Timesheets/Overtime  
Rate Case Expenses  
Alternative Energy Gas Well Cost Recovery  
PSC Assessment  
Contingency/Emergency Repair Fund  
Witness: Ted Robertson  
Type of Exhibit: Rebuttal  
Sponsoring Party: Public Counsel  
Case Numbers: SR-2010-0320  
Date Testimony Prepared: Dec. 21, 2010

**REBUTTAL TESTIMONY**  
  
**OF**  
  
**TED ROBERTSON**

Submitted on Behalf of  
the Office of the Public Counsel

**TIMBER CREEK SEWER COMPANY**  
  
**Case Nos. SR-2010-0320**

December 21, 2010

My Commission expires August 23, 2013.

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**III. TIMBER CREEK STAFF COMPENSATION, TIMESHEETS AND OVERTIME**

Q. WHAT IS THE COMPENSATION ISSUE?

A. The issue pertains to the level of annualized salary the MPSC Staff has proposed as a result of its audit of the Company's books and records, what the Company is seeking and what the Public Counsel recommends.

Q. WHAT IS THE AMOUNT OF ANNUAL COMPENSATION THAT THE MPSC STAFF IS PROPOSING?

A. Excluding payroll taxes, the total annual compensation approximates \$245,441.

Q. HOW WAS THE MPSC STAFF'S COMPENSATION DETERMINED?

A. The MPSC Staff witness, Mr. Bret G. Prenger, discusses the development of the amounts in his Direct Testimony; however, it is my understanding that book payroll costs were adjusted for cost of living increases for all employees and that overtime was included for one employee.

Q. WHAT IS THE AMOUNT OF COMPENSATION THAT THE COMPANY IS SEEKING?

A. On page 5, lines 8 - 11, of his Direct Testimony, Mr. Sherry states that the Company believes the accumulated salaries for Timber Creek's personnel are below market

1 salary levels for similar positions in the Kansas City region and should be increased.

2 Further, on page 8, lines 1 - 4, he states Company is seeking annual salaries for  
3 the positions of General Manager - \$94,529, Office Manager - \$43,263, Operations  
4 Manager - \$78,660 and Collection System Operator - \$49,290. Company also  
5 requests that if it is to track employees time via timesheets, additional revenue  
6 requirement of \$10,033 is needed to pay overtime for the positions Collection  
7 System Operator and Office Manager and for increased workman's compensation  
8 and general liability insurance.

9  
10 Q. HOW WAS THE COMPANY'S PROPOSED COMPENSATION DETERMINED?

11 A. My review of Mr. Sherry's Direct Testimony, and its attached schedules, indicate  
12 that the General Manager's salary appears to be based on an example of Missouri  
13 Economic Research and Information Center's (MERIC) Occupations Wages year  
14 2007 information identified on page 7 of his Schedule DS-3, the Office Manager's  
15 salary is an average of year 2009 MERIC (median) information and other market  
16 data obtained (Sherry Direct Testimony, Schedule DS-2, p. 3), it is my  
17 understanding, from archives of the Kansas City Star newspaper, the Operations  
18 Manager's salary is his 2007 book salary increased by 3.5% (Sherry Direct  
19 Testimony, Schedule DS-2, p. 1) and the Collection System Operator's salary  
20 appears to be from the same example as the proposed General Manager's.

1 Q. WHAT IS THE LEVEL OF ANNUALIZED SALARY THAT THE MPSC STAFF  
2 PROPOSES IN COMPARISON TO THE LEVEL THAT THE COMPANY  
3 REQUESTS?

4 A. The following table shows a comparison of the Company's requested annualized  
5 salary excluding payroll taxes and the MPSC Staff's proposal (rounded)  
6 excluding payroll taxes:

	<u>Company</u>	<u>MPSC</u>	<u>Difference</u>
General Manager	\$94,529	\$76,862	\$17,667
Office Manager	\$43,263	\$41,559	\$1,704
Operations Manager	\$78,660	\$81,020	(\$2,360)
Plt. & Coll. System Operator	<u>\$49,290</u>	<u>\$46,000</u>	<u>\$3,290</u>
Total	\$265,742	\$245,441	\$20,301

14 Note: The additional \$10,033 Company requests for overtime, workman's  
15 compensation and general liability insurance is not included in the above table;  
16 however, the MPSC Staff Position does include overtime for the Plant and  
17 Collection System Operator.  
18  
19

20 Q. WHAT IS PUBLIC COUNSEL'S POSITION ON THE COMPENSATION ISSUE?

21 A. Public Counsel believes that the annualized compensation proposed by both the  
22 MPSC Staff and Company is excessive.  
23

1 Q. WHY DOES THE PUBLIC COUNSEL BELIEVE THE MPSC STAFF AND  
2 COMPANY COMPENSATION RECOMMENDATIONS TO BE EXCESSIVE?

3 A. I believe the MPSC Staff's recommendation to be excessive because it relies on  
4 adjusted actual current salaries which I believe to be excessive and also includes  
5 overtime costs which have not been incurred. While the Company's is excessive  
6 because its recommendation relies on an excessive current salary, inaccurate  
7 MERIC information, and other selective, and likely incomplete and unverified,  
8 market information pulled from the article archives of a local newspaper.

9  
10 Q. WHAT DOES THE PUBLIC COUNSEL RECOMMEND?

11 A. Public Counsel recommends that the Commission base its authorization of  
12 compensation on information provided in the MERIC Occupations Wages -  
13 Kansas City Region 2009 along with verifiable additional support.

14  
15 My review of the MERIC Occupations Wages - Kansas City Region 2009 shows  
16 the following job classifications and annual salaries which I believe would better  
17 represent the utility's compensation costs for all employees except the General  
18 Manager:

19  
20 MERIC Median  
21 Office &Admin. Support (Office Mgr.) \$30,776



1st line Supr./Mgrs. of Prod. (Op. Mgr.)	\$55,856
W&L Waste Treat. Plt. & Sys. Op. (P&C Sys. Op.)	<u>\$43,234</u>
Total	\$129,866

Q. WHY ARE YOU RECOMMENDING THAT THE ANNUAL SALARY LEVELS BE AUTHORIZED AT THE MERIC MEDIAN?

A. Based on Mr. Sherry's Direct Testimony on page 8, lines 14 - 22, it is obvious that these employees have several years experience in their jobs but the utility is an extremely small company servicing approximately 1,526 residential customers (Prenger Direct Testimony page 5, line 24) while the MERIC database consists of payroll information gathered from large, medium and small companies within and outside the metropolitan Kansas City area. In fact, some of the MERIC payroll information likely includes unionized jobs and activities which, I believe, usually includes pay rates that exceed similar non-unionized jobs and activities pay rates. To adjust for those anomalies, I believe that the MERIC median pay rates are more representative of the compensation that the utility should be paying its employees.

In addition, my review of Mr. Sherry's Direct Testimony, Schedule DS-2, indicated to me that he did not correctly classify the Office Manager and Operations Manager with comparable MERIC information. He classified the

1 Office Manager as an Executive Secretary/Administrative Assistant which  
2 according to MERIC lists the associated duties as:

3  
4 Provide high-level administrative support by conducting research,  
5 preparing statistical reports, handling information requests, and  
6 performing clerical functions such as preparing correspondence,  
7 receiving visitors, arranging conference calls, and scheduling  
8 meetings. May also train and supervise lower-level clerical staff.  
9  
10

11 Whereas, the MERIC classification I utilized was the average for the Office and  
12 Administrative Support Occupation because no job classification was identified for  
13 Office Manager of a small sewer utility and the aforementioned Executive  
14 Secretary/Administrative Assistant duties do not match well with those described in  
15 the Direct Testimony of Mr. Prenger, page 11, lines 14 - 23.  
16

17 Mr. Sherry's Schedule DS-2 also shows that he found no MERIC information for  
18 the Operations Manager; however, the position of First Line  
19 Supervisors/Managers of Production is clearly shown in the Production  
20 Occupations category as is Water and Liquid Waste Treatment Plant and System  
21 Operator he identified as support for the salary of the Company's Plant and  
22 Collection System Operator (though it appears that he relied on older MERIC  
23 information in his recommendation of salary for this position).  
24

1 MERIC states that the duties of the First Line Supervisors/Managers of  
2 Production are:

3  
4 Supervise and coordinate the activities of production and operating  
5 workers, such as inspectors, precision workers, machine setters  
6 and operators, assemblers, fabricators, and plant and system  
7 operators.  
8  
9

10 I believe that the aforementioned duties are representative of the duties of the  
11 Operations Manager as listed in the Direct Testimony of Mr. Prenger beginning on  
12 page 14, line 17.  
13

14 Q. DID YOU LOCATE ANY OTHER INFORMATION THAT WOULD SUPPORT  
15 YOUR RECOMMENDATION FOR THE OPERATIONS MANAGER ANNUAL  
16 COMPENSATION?

17 A. Yes. Attached as Schedule TJR-1 to this testimony is an advertised job offering  
18 from the City of Kansas City, Missouri-Water Services, dated October 29, 2010.  
19 The job offer seeks a Chief Plant Operator with a Class A waste/wastewater  
20 certification and the position salary range is listed as \$3,481 - \$5,305 per month.  
21 The monthly salary represents an annual salary of \$41,772 - \$63,660 per year  
22 which means that the \$55,856 median identified by the 2009 MERIC, and

1 recommended by OPC, is well within the range of a market-based salary for the  
2 area.

3  
4 Q. WHAT IS PUBLIC COUNSEL'S POSITION REGARDING THE  
5 COMPENSATION OF THE COMPANY'S GENERAL MANAGER?

6 A. Mr. Sherry's Schedule DS-2 shows that he classified the General Manager as  
7 MERIC Management Occupations. I believe he misclassified the position  
8 because the MERIC classification, Management Occupations, is the average for  
9 that job category. However, within the same category is the position of General and  
10 Operations Manager (Mr. Sherry's title is General Manager). The duties for the  
11 position are listed as:

12  
13 Plan, direct, or coordinate the operations of companies or public and  
14 private sector organizations. Duties and responsibilities include  
15 formulating policies, managing daily operations, and planning the use  
16 of materials and human resources, but are too diverse and general in  
17 nature to be classified in any one functional area of management or  
18 administration, such as personnel, purchasing, or administrative  
19 services. Include owners and managers who head small business  
20 establishment whose duties are primarily managerial.

21  
22  
23 I believe that the aforementioned duties are representative of the duties of the  
24 General Manager as listed in the Direct Testimony of Mr. Prenger beginning on  
25 page 12, line 5.  
26

1 Q. WHAT IS THE MERIC MEDIAN SALARY FOR THE GENERAL AND  
2 OPERATIONS MANAGER?

3 A. The median salary is identified as \$83,512.  
4

5 Q. IS THE MERIC MEDIAN SALARY FOR THE GENERAL AND OPERATIONS  
6 MANAGER WHAT PUBLIC COUNSEL PROPOSES TO INCLUDE AS THE  
7 ANNUAL COMPENSATION FOR THE GENERAL MANAGER?

8 A. No. Because Timber Creek Sewer Company is a very small sewer utility, I  
9 believe the General Manager's salary should be based on the known salary  
10 information for his position in the geographic area in which the utility operates  
11 (i.e., MERIC) adjusted for the size of the utility's operations and other supporting  
12 information.  
13

14 For example, the 2009 MERIC range for the General and Operations Manager  
15 position described above is Entry - \$48,290, Median - \$83,512, Mean - \$97,023 and  
16 Experienced - \$121,389. However, since the MERIC database likely includes  
17 information from companies of all sizes, it is inconceivable to me, that a utility the  
18 size of this Company would pay its relatively new General Manager a salary that  
19 much exceeded the entry level salary of \$48,290 particularly when you take into  
20 account the recently authorized salary for the General Manager of the Lake Region  
21 Water and Sewer Company, a sewer utility with a similarly sized customer base.

1  
2 Q. WHAT IS THE ANNUAL SALARY PUBLIC COUNSEL'S PROPOSES TO  
3 INCLUDE IN THE COST OF SERVICE FOR THE COMPENSATION OF THE  
4 COMPANY'S GENERAL MANAGER?

5 A. The General Manager (i.e., Mr. Sherry) is a relatively new employee of the utility  
6 having started his employment with the utility in 2008 (Sherry Direct Testimony p. 8,  
7 lines 19 - 20). Thus, Public Counsel recommends that his annual salary be  
8 calculated as the MERIC entry level amount (i.e., \$48,290) adjusted for annual 3%  
9 merit increases for the approximate 3 years of his employment. The total annual  
10 salary I recommend for the position is \$52,768.

11  
12 Q. WHY DOES PUBLIC COUNSEL'S RECOMMENDATION UTILIZE A 3% MERIT  
13 INCREASE PERCENTAGE?

14 A. It is my understanding that the 3% merit increase is the amount most recently paid  
15 by the Company to its employees.

16  
17 Q. WHAT IS THE TOTAL ANNUAL PAYROLL COMPENSATION (EXCLUDING  
18 PAYROLL TAXES) RECOMMENDED BY PUBLIC COUNSEL FOR THE  
19 COMPANY'S EMPLOYEES?

20 A. Since the MERIC information I reviewed is dated as of early 2009, I believe that  
21 the OPC recommended salaries for the utility's other employees should also be

adjusted upward for merit increases similar to the General Manager's, but for only two years instead of three. Public Counsel's recommended total Company annual payroll compensation is as follows:

	<u>OPC Recommendation</u>
General and Operations Manager (G Mgr.)	\$52,768
Office & Admin. Support (Office Mgr.)	\$32,650
1st line Supr./Mgrs. of Prod. (Op. Mgr.)	\$59,258
W&L Waste Treat. Plt. & Sys. Op. (P&C Sys. Op.)	<u>\$45,867</u>
Total	\$190,543

Q. WILL PAYROLL TAXES HAVE TO BE ADJUSTED BASED ON THE AMOUNT OF ANNUAL PAYROLL ULTIMATELY AUTHORIZED BY THE COMMISSION?

A. Yes.

Q. WHAT IS PUBLIC COUNSEL'S POSITION ON THE TIMESHEET ISSUE?

A. Public Counsel believes that the utilization of an employee time reporting system is a best business practice standard that would greatly assist the management of the utility in a myriad of ways. Not the least of which is the proper allocation of costs to new plant construction. In addition, it is Public Counsel's belief that a time reporting system is a requirement of *The Uniform Systems of Accounts For*

1        *Class A and B Sewer Utilities 1976* (USOA) adopted and prescribed for use by all  
2        sewer companies under the jurisdiction of the Public Service Commission (4 CSR  
3        240-61.020 (1)). Therefore, Public Counsel recommends that the Commission  
4        require the utility to develop and implement a time reporting system for its  
5        employees.

6  
7        Q.     WHAT DOES THE COMMISSION AUTHORIZED USOA STATE REGARDING  
8        THIS ISSUE?

9        A.     USOA Utility Plant Instructions 2(A) states:

10  
11            All amounts included in the accounts for utility plant acquired as an  
12            operating unit or system except as otherwise provided in the texts  
13            of the intangible plant accounts shall be stated at the cost incurred  
14            by the person who first devoted the property to utility service. All  
15            other utility plant shall be included in the account at the cost  
16            incurred by the utility. Where the term "cost" is used in the detailed  
17            plant account, it shall have the meaning stated in this paragraph.  
18  
19

20        Furthermore, Utility Plant Instructions 3 adds:

21  
22            The cost of construction properly includable in the utility plant  
23            accounts shall include, where applicable, the direct and overhead  
24            costs as listed and defined hereunder.  
25



1 The costs listed and defined in Utility Plant Instructions 3 include contract work,  
2 labor, materials and supplies, transportation, special machine service, shop  
3 service, protection, injuries and damages, privileges and permits, rents,  
4 engineering and supervision, general administration, engineering service,  
5 insurance, law expenditures, taxes, allowance for funds used during construction  
6 and earnings and expenses during construction.

7  
8 Lastly, Utility Plant Instructions 4 states:  
9

10 A. All overhead construction costs, such as engineering,  
11 supervision, general office salaries and expenses, construction  
12 engineering and supervision by others than the accounting utility,  
13 law expenses, insurance, injuries and damages, relief and  
14 pensions, taxes and allowance for funds used during construction,  
15 shall be charged to particular jobs or units on the basis of the  
16 amounts of such overheads reasonably applicable thereto, to the  
17 end that each job or unit shall bear its equitable proportion of such  
18 costs and that entire cost of the unit, both direct and overhead,  
19 shall be deducted from the plant account at the time the property is  
20 retired.

21  
22 B. As far as practicable, the determination of payroll charges  
23 includible in construction overheads shall be based on time card  
24 distributions thereof. Where this procedure is impractical, special  
25 studies shall be made periodically of the time of supervisory  
26 employees devoted to construction activities to the end that only  
27 such overhead costs as have a definite relation to construction shall  
28 be capitalized. The addition to direct construction costs of arbitrary  
29 percentages or amounts to cover assumed overhead costs is not  
30 permitted.  
31

1 C. The records supporting the entries for overhead construction  
2 costs shall be so kept as to show the total amount of each  
3 overhead for each year, the nature and amount of each overhead  
4 expenditure charged to each construction work order and to each  
5 utility plant account, and the basis of distribution of such costs.

6  
7 (Emphasis added by OPC)  
8

9 Q. WHAT IS PUBLIC COUNSEL'S POSITION ON THE OVERTIME ISSUE?

10 A. Public Counsel recommends that the Commission not authorize the inclusion of  
11 any alleged (or estimated) overtime costs in the determination of the utility's  
12 annualized payroll cost.

13  
14 Q. WHY HAS PUBLIC COUNSEL TAKEN THE POSITION OF NO RECOVERY  
15 FOR ALLEGED OVERTIME COSTS?

16 A. Public Counsel bases its position on the fact that during the test year no overtime  
17 costs were incurred by the utility. Thus, if no overtime expenditures were  
18 incurred or paid to employees, none should be recoverable in the determination  
19 of rates for this case. This position is supported by the Direct Testimony of Mr.  
20 Sherry for on page 9, lines 20 - 21, he states:

21  
22 Timber Creek has historically paid all staff on a salary basis as  
23 exempt employees - not eligible for overtime....  
24  
25

1 In addition, in its response to MPSC Staff Date Request No. 3, dated November  
2 2, 2010, Company stated:

3  
4 Timber Creek does not track overtime.  
5  
6

7 Q. DOES THE MPSC STAFF'S ANNUALIZED PAYROLL  
8 RECOMMENDATION INCLUDE AN ADDITION FOR ALLEGED  
9 OVERTIME COSTS?

10 A. Yes. Beginning on page 9, line 15, of the Direct Testimony, of MPSC Staff  
11 witness, Mr. Bret G. Prenger, he states:  
12

13 Q. Have there been any changes to the annualized payroll  
14 since Staff filed its case?  
15

16 A. Yes, there have been changes to the annualized payroll level  
17 that is included in the revenue requirement amount  
18 recommended in this case. Following the initial  
19 recommendation made to the Company, there were a  
20 number of discussions between the parties in this case with  
21 payroll being one of the topics.  
22

23 Q. What has Staff done to address the concerns of the  
24 Company?  
25

26 A. Part of the concerns identified by the Company related to the  
27 payment of overtime for certain employees. The Company  
28 feels that its assistant plant operator will have to be  
29 compensated for overtime pay based on job responsibilities.  
30 The General Manager provided Staff with a calculation of

1 the overtime pay worked by the assistant operator for the  
2 calendar year 2009.

3  
4 Staff agreed to include overtime for the assistant operator  
5 based on the level of overtime worked in 2009. The  
6 overtime was included in the payroll amount and reflected in  
7 the revenue requirement calculation.  
8  
9

10 Q. IS IT PUBLIC COUNSEL'S POSITION THAT THE ALLEGED OVERTIME  
11 COSTS INCLUDED IN THE MPSC STAFF'S ANNUALIZED PAYROLL BE  
12 DISALLOWED?

13 A. Yes. It is my understanding that the "overtime pay" referenced in Mr. Prenger's  
14 Direct Testimony is an "estimate" of alleged overtime hours worked based on  
15 call-out and other information originally provided in a Company email to Staff and  
16 OPC, dated August 20, 2010, and currently included as Schedule DS-5 to Mr.  
17 Sherry's Direct Testimony and not actual overtime payments made to the  
18 employee. No overtime payment was provided to the employee because he has  
19 been treated as a salaried employee and no time reporting records have been  
20 kept to substantiate the overtime hours claimed. Therefore, the alleged costs  
21 were not incurred or paid and are not known and measureable and they should  
22 not be included in the determination of the cost of service for this case.  
23

24 **IV. RATE CASE EXPENSES**

25 Q. WHAT IS THE ISSUE?

1 A. The issue pertains to the level of rate case expense that the MPSC Staff has  
2 proposed, what the Company is seeking and what the Public Counsel recommends.  
3

4 Q. WHAT IS THE AMOUNT OF RATE CASE EXPENSE THAT THE MPSC STAFF IS  
5 PROPOSING?

6 A. MPSC witness, Mr. V. William Harris, recommends, beginning on page 6, line 1, of  
7 his Direct Testimony, a total rate case expense of \$23,073 normalized over 3 years  
8 or \$7,691 per year included in the cost of service. He also states that additional  
9 costs will likely be incurred and they will be considered for inclusion in his proposal.  
10

11 Q. HOW WAS THE MPSC STAFF'S RATE CASE EXPENSE DETERMINED?

12 A. It is my understanding that since Company booked no rate case expense in the test  
13 year, Mr. Harris developed a normalized level of costs based on rate case expense  
14 costs incurred in the Company's last rate case.  
15

16 Q. IS THE COMPANY CURRENTLY INCURRING RATE CASE EXPENSE?

17 A. Yes. In fact, Company now states it has incurred some rate case expense during  
18 the period May 2010 to current.  
19

1 Q. DOES PUBLIC COUNSEL BELIEVE IT APPROPRIATE TO USE PRIOR RATE  
2 CASE COSTS AS A SURROGATE FOR RATE CASE EXPENSE ACTUALLY  
3 BEING INCURRED IN THE INSTANT CASE?

4 A. No. The MPSC Staff's reliance on the costs of a prior rate case for inclusion in the  
5 current case is not appropriate given rate case expense for the current case is being  
6 incurred.

7  
8 Q. DO YOU BELIEVE THAT THE RATE CASE EXPENSES SHOULD BE  
9 NORMALIZED?

10 A. Yes, however, I believe that the normalization should be based on actual costs incurred  
11 by the utility as represented by the current case. To do otherwise, would likely  
12 cause the utility to either under-recover or over-recover the Commission authorized  
13 costs on a going forward basis since the level of costs incurred in the current case  
14 are significantly different from what the MPSC Staff has used as a surrogate.

15  
16 Q. WHAT IS THE AMOUNT OF RATE CASE EXPENSE THAT THE COMPANY IS  
17 SEEKING?

18 A. Beginning on page 11, line 5, of his Direct Testimony, Mr. Sherry states:

19  
20 The Company is seeking to recover all rate case expenses from the  
21 previous rate case SR-2008-0080, as well as rate case expenses  
22 incurred for this rate case SR-2010-0320.

1  
2  
3 He goes on to state that \$18,175 of rate case expenses for SR-2008-0080 were not  
4 included in that case and an estimated \$40,000 will be incurred to process this  
5 case. He proposes that the total, \$58,175, be normalized over 3 years (i.e.,  
6 \$19,391 per year).

7  
8 Q. WHAT DO THE COSTS ASSOCIATED WITH THE PRIOR RATE CASE  
9 REPRESENT?

10 A. Beginning on page 11, line 11, of his Direct Testimony, Mr. Sherry describes the  
11 costs as:

12  
13 The disputed amount of \$18,175 is the invoiced amount from Derek  
14 Sherry to manage the company's rate case SR-2008-0080. While Mr.  
15 Sherry was an officer of Timber Creek, he was not an employee of  
16 Timber Creek at the time of the rate case and did not become an  
17 employee until after the completion of Case No. SR-2008-0080.  
18  
19

20 Q. WERE THE ALLEGED COSTS INCURRED DURING THE TEST YEAR OF THE  
21 INSTANT CASE?

22 A. No.  
23

1 Q. SHOULD COSTS, ALLEGED OR ACTUAL, OF A PRIOR PERIOD BE INCLUDED  
2 IN THE COST OF SERVICE FOR THE INSTANT CASE?

3 A. No. Mr. Sherry's request, if authorized, amounts to retroactive ratemaking.  
4

5 Q. WHAT IS RETROACTIVE RATEMAKING?

6 A. Retroactive ratemaking is defined as, "the setting of rates which permit a utility to  
7 recover past losses or which require it to refund past excess profits collected  
8 under a rate that did not perfectly match expenses plus rate-of-return with the  
9 rate actually established." See. State ex rel. Utility Consumers' Council of  
10 Missouri, Inc. v. Public Service Commission of Missouri, 585 S.W.2d at 59 (Mo.  
11 banc 1979). The rule prevents regulated companies from collecting revenues to  
12 compensate from prior over- or under-recoveries. That is, the regulator may not  
13 adjust rates to compensate for past under-recoveries or to penalize past over-  
14 recoveries.  
15

16 Q. DOES THE COMMISSION ALLOW RETROACTIVE RATEMAKING?

17 A. No. It is my understanding that, in the State of Missouri, there exists a prohibition  
18 against retroactive ratemaking. See. State ex rel. Util. Consumers' Council of  
19 Mo., 585 S.W.2d at 41.  
20



1 Q. SHOULD MR. SHERRY'S ESTIMATED COSTS TO PROCESS THE CURRENT  
2 CASE BE AUTHORIZED BY THE COMMISSION?

3 A. No. Regardless of the positions of the parties to recovery of rate case expense,  
4 costs that are not "known and measureable" should not be included in the cost of  
5 service and determination of rates.

6  
7 Q. WHAT IS MEANT BY THE RATEMAKING TERM, "KNOWN AND  
8 MEASURABLE?"

9 A. The term refers to the permitting of adjustments for conditions that are known  
10 with absolute finality and measurable by some explicit test year activity.

11  
12 Q. DOES MR. SHERRY'S REQUEST MEET THE STANDARD OF KNOWN AND  
13 MEASURABLE?

14 A. No. His testimony defines the costs to process the current case as estimates  
15 because they have not been incurred.

16  
17 Q. WHAT IS THE AMOUNT OF RATE CASE EXPENSE COMPANY HAS  
18 ACTUALLY INCURRED TO-DATE?

19 A. Company has provided Public Counsel with documentation that identifies it has  
20 incurred approximately \$6,977 in the processing of this case.

1 Q. WHAT IS THE PUBLIC COUNSEL'S POSITION ON THE RECOVERY OF THE  
2 RATE CASE EXPENSE INCURRED?

3 A. Public Counsel recommends that all rate case expense associated with the current  
4 case that has been identified and documented, except those attorney costs billed by  
5 the firm Finnegan, Conrad and Peterson, L.C., be normalized over 3 years. Further,  
6 I recommend that only fifty percent (50%) of the Finnegan, Conrad and Peterson,  
7 L.C. costs be recovered from ratepayers and that that 50% also be normalized over  
8 3 years.

9  
10 Public Counsel's recommendation results in a normalized rate case expense of  
11 \$1,809 per year. However, I believe it likely that the Company will continue to incur  
12 additional costs prior to the time that the case is finalized. Public Counsel will  
13 continue to monitor and audit the Company's rate case expenses, as they are  
14 incurred, and will present in surrebuttal testimony any additional information  
15 required.

16  
17 Q. WHY IS PUBLIC COUNSEL RECOMMENDING A DISALLOWANCE OF 50% OF  
18 THE ATTORNEY COSTS COMPANY INCURS TO PROCESS THIS CASE?

19 A. Public Counsel believes that this Company has inappropriately forced issues to the  
20 Commission for hearing that are frivolous and irresponsible given their substance  
21 and likely outcome. Ratepayers should not be forced to reimburse the owner's of a

1 utility for costs incurred, legal or otherwise, simply because Company's  
2 management want "face time" before the Commission. This Company has  
3 presented issues to the Commission for decision relating to plant that does not exist  
4 and costs that are not known and measureable (i.e., costs for which recovery is  
5 prohibited by law), in addition to requesting changes in Commission policy that are  
6 more appropriately discussed in a setting outside of a contested rate hearing. If the  
7 utility wants to present the issues in the current case for decision by the  
8 Commission, so be it, but ratepayers should not be required to fund their folly.

9  
10  
11 **V. ALTERNATIVE ENERGY GAS WELL COST RECOVERY**

12 Q. WHAT IS THE ISSUE?

13 A. Beginning on page 15, line 2, of Mr. Sherry's Direct Testimony, he requests  
14 Commission authorization for the Company to recover \$10,849 over 3 years (i.e.,  
15 \$3,616 per year) under the pretense to continue to explore alternative energy  
16 options that could potentially reduce its energy costs to the benefit of its  
17 customers.

18  
19 Q. WHAT DO THE MONIES ACTUALLY REPRESENT?

20 A. As I stated in my Direct Testimony, and Mr. Sherry describes in his Direct  
21 Testimony, page 14, lines 19 - 21, Company drilled a speculative pilot natural

1 gas well in the summer of 2009 at a cost of \$10,849, but natural gas was not  
2 found. Company is now seeking Commission authorization to recover the  
3 expenditures from ratepayers albeit, I believe, in a disingenuous framing of the  
4 request.

5  
6 Q. WHAT IS PUBLIC COUNSEL'S POSITION ON THIS ISSUE?

7 A. Public Counsel recommends, as I did in my Direct Testimony, that the  
8 Commission disallow the request because the drilling of the natural gas well was  
9 nothing more than a costly speculative venture conceived and implemented by the  
10 utility's management. In as much as the venture reached far outside what could  
11 reasonably be identified as the skill set of the sewer company's operations and  
12 operators, it is no surprise that it failed. No natural gas was found and no plant in  
13 service has been installed as used and useful in the provision of service to  
14 ratepayers.

15  
16 Q. WHAT IS MEANT BY THE RATEMAKING TERM, "USED AND USEFUL?"

17 A. The general rule is that:

18  
19 The rate base on which a return may be earned is the amount of  
20 property used and useful, at the time of the rate inquiry, in  
21 rendering a designated utility service. (A.J.G. Priest, *Principles of*  
22 *Public Utility Regulation* (1969), p. 139, Vol. 1)  
23

1  
2 This principle is certainly grounded in common sense. In dividing the  
3 responsibility for a utility's operation between ratepayers and stockholders,  
4 regulators have traditionally required that stockholders rather than ratepayers be  
5 required to bear the costs of any utility's investment which is not used and useful  
6 to provide service to ratepayers.

7  
8 In a discussion of the policy in State ex rel. Union Electric v. Public Service of the  
9 State of Missouri, 765 S. W. 2d 618 (Mo. App. 1988), the Court of Appeals for the  
10 Western District of Missouri endorsed the used and useful policy. The case  
11 involved Union Electric's appeal of the Commission's denial of the costs of  
12 cancellation of its Callaway II nuclear unit. The Commission ruled that the risk of  
13 cancellation should be borne by the shareholder, since if it was not, the  
14 shareholders investment would be practically risk free. The Court, in upholding  
15 the Commission's decision stated:

16  
17 The utility property upon which a rate of return can be earned must  
18 be utilized to provide service to its customers. That is, it must be  
19 used and useful. This used and useful concept provides a well-  
20 defined standard for determining what properties of a utility can be  
21 included in its rate base. Id. at 622  
22  
23

1 Q. SHOULD COST RECOVERY BE AUTHORIZED BASED ON THE PREMISE  
2 THAT THE MONIES WOULD BE UTILIZED TO CONTINUE FURTHER  
3 EXPLORATION OF ALTERNATIVE ENERGY OPTIONS?

4 A. No. Mr. Sherry's attempt to characterize the recovery of the expenditures from  
5 that associated with a failed investment project to a future, but unknown,  
6 operating expense is quite a "stretch" in my opinion. Rates developed via the  
7 regulatory ratemaking process are not based on the possible future incurrence of  
8 costs that may or may not yield tangible benefits to ratepayers. They are based  
9 on a revenue requirement which consists of an appropriate return on the  
10 shareholders used and useful investment plus reasonable known and  
11 measureable operating expenses, depreciation and taxes. Mr. Sherry's request  
12 is a disingenuous proposal because he frames it as needed to fund future  
13 unknown exploration of alternative energy options when in fact what he actually  
14 seeks is recovery of the costs from the failed speculative drilling of a natural gas  
15 well.

16  
17 Q. DOES MR. SHERRY'S REQUEST MEET THE STANDARD OF KNOWN AND  
18 MEASURABLE DISCUSSED PREVIOUSLY?

19 A. No. His attempt to recover the costs associated with the failed investment  
20 project by now stating the monies, if authorized, will be utilized to continue  
21 exploring options for alternative energy resources does nothing to identify or

1 quantify what the costs of the yet unknown exploration will encompass or yield.

2 In fact, his request is a bit nonsensical since it is the obligation of the utility and  
3 its management to always be on the outlook for opportunities to lower the cost of  
4 providing service to ratepayers. In part, that is what the shareholders and  
5 ratepayers alike expect to receive in return for the salaries and employee  
6 benefits that they provide to management.  
7

8 **VI. PSC ASSESSMENT**

9 Q. WHAT IS THE ISSUE?

10 A. Beginning on page 17, line 2, of Mr. Sherry's Direct Testimony, he requests  
11 Commission authorization for several positions related to this issue. He requests  
12 that the Commission authorize the utility to recover \$45,902 of prior year's  
13 assessments, alleged to have not been recovered from ratepayers, over a period  
14 of 3 years. He also recommends that the PSC assessment for sewer companies  
15 become more equitable to other utility industries with percentage allocation of  
16 less than 2%. Lastly, he requests that Company be allowed to segregate the  
17 annual MSPC assessment from its operating costs and instead allow it to pass  
18 the cost directly to ratepayers as a separate surcharge on their monthly bills  
19 identified as a "PSC Assessment Charge."  
20

1 Q. WHAT IS THE PUBLIC COUNSEL'S POSITION ON MR. SHERRY'S  
2 REQUESTS?

3 A. Public Counsel will not address Mr. Sherry's recommendation that the PSC  
4 assessment for sewer companies become more equitable to other utility  
5 industries with a percentage allocation of less than 2% because we believe that  
6 to be an internal matter of the Commission's associated with how it bills the  
7 various industries for the oversight and services it provides. However, regarding  
8 his requests that Company be authorized future recovery of prior period costs  
9 and segregation of the annual MPSC Assessment from other operating costs to  
10 be billed as a surcharge, we oppose both.

11  
12 Q. WHY DOES PUBLIC COUNSEL OPPOSE COMPANY'S REQUEST FOR  
13 RECOVERY OF PRIOR PERIODS COSTS?

14 A. Mr. Sherry's request, if authorized, amounts to retroactive ratemaking.

15  
16 Q. WHAT IS RETROACTIVE RATEMAKING?

17 A. As I stated earlier, retroactive ratemaking is defined as "the setting of rates which  
18 permit a utility to recover past losses or which require it to refund past excess  
19 profits collected under a rate that did not perfectly match expenses plus rate-of-  
20 return with the rate actually established."



1 Q. DOES THE COMMISSION ALLOW RETROACTIVE RATEMAKING?

2 A. No.

3  
4 Q. WHY DOES PUBLIC COUNSEL OPPOSE COMPANY'S REQUEST FOR  
5 SEGREGATING THE MPSC ASSESSMENT FROM OTHER OPERATING  
6 EXPENSES AND TREATING THE COST AS A SURCHARGE ON RATEPAYERS  
7 MONTHLY BILLS?

8 A. What Mr. Sherry is requesting is "single-issue ratemaking" which is also  
9 prohibited in the State of Missouri.  
10

11 Q. WHAT IS SINGLE-ISSUE RATEMAKING?

12 A. Single-issue ratemaking is a departure from the normal practice of determining  
13 appropriate rates by looking at all the expenses, investment, cost of capital and  
14 revenues of a utility in a test period. The concern that must be addressed in  
15 evaluating single-issue rates is that changing rates based on only one factor  
16 necessarily ignores potential offsetting changes in other factors. For example,  
17 increases in some costs may be offset by decreases in other costs or by  
18 increased revenues. If there are such offsetting changes, the rates resulting from  
19 the examination of only one factor might not accurately reflect the real financial  
20 needs of the company.  
21

1 Furthermore, in the State of Missouri, the Commission determines the  
2 appropriateness of a rate or charge that a utility seeks to impose on its  
3 customers, it is obligated to review and consider all relevant factors, rather than  
4 just a single factor. To consider some costs in isolation might cause the  
5 Commission to allow a company to raise rates to cover increased costs in one  
6 area without recognizing counterbalancing savings in another area. Such a  
7 practice is justly considered to be single-issue ratemaking.

8  
9 Q. WHY IS SINGLE-ISSUE RATEMAKING PROHIBITED IN THE STATE OF  
10 MISSOURI?

11 A. Section 393.270.4, RSMo 2000, provides that when the Commission determines  
12 the rate that can be charged by a utility, it “may consider all facts which in its  
13 judgment have any bearing upon a proper determination of the question . . . ,  
14 with due regard, among other things, to a reasonable average return upon the  
15 value of the property actually used in the public service and to the necessity of  
16 making reservations out of income for surplus and contingencies.” The law is  
17 quite clear that when determining a rate the Commission is obligated to review  
18 and consider all relevant factors, rather than just a single factor. See. State ex  
19 rel. Missouri Water Co. v. Public Service Commission, 308 S.W.2d 704 (Mo.  
20 1957); State ex rel. Util. Consumers’ Council of Mo., 585 S.W.2d at 41; and

1        Midwest Gas Users' Association v. Public Service Commission, 976 S.W.2d 470  
2        (Mo. App. W.D. 1998).

3  
4        To consider some costs in isolation might cause the Commission to allow a  
5        company to raise rates to cover increased costs in one area without realizing that  
6        there were counterbalancing savings in another area. Such a practice is justly  
7        condemned as single-issue ratemaking. Midwest Gas Users' Association, 976  
8        S.W.2d at 480.

9  
10    **VII.    CONTINGENCY/EMERGENCY REPAIR FUND**

11    Q.    WHAT IS THE ISSUE?

12    A.    Beginning on page 18, line 6, of Mr. Sherry's Direct Testimony, he requests that  
13        the Commission authorize the utility to establish and maintain a contingency fund  
14        for emergency and extraordinary unplanned events. Further, beginning on page  
15        20, line 21, he states that Company proposes an additional small amount to be  
16        charged per month that would accumulate over a period of time until the cap (see  
17        Sherry Direct Testimony Schedule DS-7) is reached. Once the cap is reached  
18        the monthly charge would be removed. Additionally, the cap would be adjusted  
19        as additional capital infrastructure is added.

20  
21    Q.    WHY IS COMPANY PROPOSING THE CONTINGENCY FUND?

1 A. Mr. Sherry's Direct Testimony beginning on page 17, line 23, states that the  
2 current rate structure supports routine operations and maintenance type items  
3 but does not support emergency, unplanned events that would substantially  
4 impact utility operations.

5  
6 Q. HAS THE COMPANY PROVIDED ANY DETAILS ON HOW RATEPAYERS  
7 WILL BE PROTECTED IF THE PROPOSED CONTINGENCY FUND IS  
8 AUTHORIZED BY THE COMMISSION?

9 A. No.  
10

11 Q. WHAT IS THE PUBLIC COUNSEL'S POSITION ON THE DEVELOPMENT AND  
12 IMPLEMENTATION OF A CONTINGENCY FUND?

13 A. Public Counsel believes that the development and implementation a contingency  
14 fund, as proposed by Mr. Sherry, is not reasonable or appropriate and should not  
15 be authorized. Mr. Sherry's position is that the annual level of operation and  
16 maintenance expenses built into the MPSC Staff's case may not be sufficient to  
17 meet the utility's future actual future costs; however, he has provided no  
18 evidence that the Staff's annualization of the costs is unreasonable. What he is  
19 seeking is to have risk associated with operating the Company shifted from  
20 shareholders to ratepayers. The Public Counsel believes that is not a  
21 reasonable request and should not receive authorization by the Commission.

1  
2 Q. WHY DOES THE PUBLIC COUNSEL BELIEVE THE RISK ASSOCIATED WITH  
3 OPERATING THE UTILITY SHOULD NOT BE SHIFTED FROM THE  
4 SHAREHOLDER TO RATEPAYER?

5 A. As I stated in my Direct Testimony, Public Counsel generally opposes any scheme  
6 that would force ratepayers to pay more than the cost of service determined under  
7 the traditional regulatory ratemaking process. Public Counsel opposes such  
8 schemes because it is our understanding that the owners of the regulated utility  
9 bear the responsibility for funding the capital investments associated with the  
10 operation of their company - not ratepayers. In addition, once the Commission has  
11 determined a reasonable and prudent level of expenses to include in rates, that  
12 amount plus the authorized return on their in-service investment is the owner's  
13 reward for risks taken. Mitigation of the owner's risk by forcing ratepayers to pay  
14 rates that exceed the actual cost of service is, in my opinion, inappropriate and  
15 unreasonable.

16  
17 Q. HAS MR. SHERRY PROVIDED ANY EVIDENCE THAT THE MPSC STAFF'S  
18 ANNUALIZED LEVEL OF OPERATION AND MAINTENANCE EXPENSE IS  
19 UNREASONABLE?

20 A. No. In fact, just the opposite is true. Mr. Sherry has accepted the MPSC Staff's  
21 annualization(s) as reasonable. That fact is evident because operation and

1 maintenance expense has not been identified as a contested issue in this  
2 proceeding.

3  
4 Q. WHAT INFORMATION HAS MR. SHERRY PROVIDED THAT HE HOPES WILL  
5 CONVINCING THE COMMISSION TO SUPPORT HIS REQUEST?

6 A. Attached as Schedule DS-7 to his Direct Testimony, Mr. Sherry has provided a  
7 table of what he identifies as probabilities and costs associated with a list of possible  
8 unplanned events.

9  
10 Q. HAS MR. SHERRY PROVIDED ANY DOCUMENTATION THAT WOULD  
11 SUPPORT THE VALIDITY AND ACCURACY OF THE INFORMATION THAT IS  
12 SHOWN ON HIS SCHEDULE DS-7?

13 A. No. It is my understanding that Mr. Sherry has no workpapers to support the  
14 probabilities and costs he lists on the schedule. Thus, one must assume that the  
15 information he has provided is a creature of his own imagination without auditable  
16 substance.

17  
18 Q. HAVE THE UNPLANNED EVENTS LISTED ON MR. SHERRY'S SCHEDULE DS-7  
19 ACTUALLY OCCURRED?

20 A. It is my understanding that the schedule is a listing of possible future unplanned  
21 events. Therefore, they have not occurred, it is not known if or when they will ever

1        occur and the costs must be viewed as purely speculative since they are not known  
2        and measurable.

3

4    Q.    DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

5    A.    Yes, it does.

6

7

8

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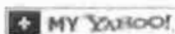
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Supervises and participates in the operation of one or more major treatment facilities and multiple pumping stations including flood pumping stations. Establishes operating procedures on an assigned shift for the efficient operation of water treatment facilities. Supervises and participates in troubleshooting problems with processes and equipment. Ensures proper priority is assigned to repair work by maintenance crews. Ensures operational records are accurate, complete, and up-to-date. Ensures sample collection and handling is performed in accordance with NPDES permit requirements and sound scientific practices. Trains Plant Operators and develops specific career development plans for employees under CPO supervision. Provides safety training and ensures safe work practices are strictly adhered to. Requires high school graduation and 1 year of experience at the Senior Plant Operator level. Must possess an A-level operator certification in waste/wastewater issued by the Missouri Department of Natural Resources. For this position, must possess a valid driver's license in accordance with City of KCMO policies. Preference will be given to those who have surface water treatment plant experience, have lab and computer skills, have managed work crews and possess a DS-III Drinking Water Distribution license. \*\*Specify all licenses on application/resume. \*\*

**Job Title** Chief Plant Operator**Post Details****Employer** City of Kansas City, Missouri-Water Services**Fax****Position Details****Location ST/Province** MO**Deadline** Nov-24-2010**Category****Job Type** [Full-time](#)**Classification** [Water Treatment Plant Jobs](#)**Salary** \$3,481-\$5,305/monthCopyright © 2010 [MyWaterPlantJobs.com](#). All Rights Reserved.Designed by [Nasthon Systems](#)[Job Seekers](#) | [Employers](#) | [Job Search](#) | [Pricing](#) | [Privacy Policy](#) | [Contacts](#)

Schedule TJR-1