

**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 RESPONSE TO ORDER DIRECTING FILING

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Response to Order Directing Filing states as follows:

Introduction

1. This is to advise the Missouri Public Service Commission (Commission) and the parties on Public Counsel’s position and its effect on this case as a proceeding under the small company rate case. As a result of the intervention of Hunt Midwest Real Estate Development, Inc. (Hunt Midwest) it appears that this case may go to evidentiary hearing and not be resolved under the Staff/Company Agreement and the revenue requirement true-up. Therefore, Public Counsel wants to make the record clear that if this case proceeds to an evidentiary hearing rather than by the proposed resolution, Public Counsel does not waive any right to full participation in all aspects of any evidentiary hearing and does not waive the right to provide positions on or to contest any and all issues in that evidentiary hearing, and any prior objection, lack of objection or other position to proposed resolutions shall not act as a waiver of any rights or positions on hearing issues.

Background

2. On September 14, 2007, pursuant to a Staff/Company Agreement, Timber Creek Sewer Company (Timber Creek) filed a tariff proposing to increase its sewer service rates by \$129,837

which was more than the \$120,000 requested by Timber Creek. The tariff carried an effective date of November 1, 2007.

3. On October 5, 2007, the Commission ordered Public Counsel to file its pleading indicating its agreement or disagreement with the tariff sheets no later than October 24, 2007.

4. On October 15, 2007, the Staff of the Missouri Public Service Commission (Staff) filed a Motion for Extension of Time to File Memorandum and Recommendation. In its motion, Staff stated it had trued-up its determination of Timber Creek's revenue requirement through September 30, 2007 and, as a result of this true-up, Staff had determined that Timber Creek requires an annualized operating revenue increase of \$115,310, compared with the \$129,837 increase that Timber Creek and the Staff agreed upon in the Staff/Company Agreement.

5. On October 16, 2007, the Commission approved Hunt Midwest's motion for intervention in this case. The addition of an intervenor has the effect that this case goes beyond the normal small company rate case procedure.

6. On October 19, 2007, Timber Creek filed substitute tariff sheets designed to replace the tariff sheets filed on September 14, 2007 and which would result in the true-up revenue increase of \$115,310.

7. On October 22, 2007, the Commission issued its Order Setting Prehearing Conference. In this Order, the Commission set a date for a Prehearing Conference in anticipation that an evidentiary hearing would be set in this matter. Points for discussion were proposed as including live testimony, the amount of discovery needed and the possibility of a stipulation of facts.

Position of Public Counsel

8. While this case was originally begun under the small company rate case procedure, the addition of an intervenor and the potential evidentiary hearing may change it into a general rate increase request case.

9. Since the only information available at this time to evaluate the revenue requirement is the Staff/Company Agreement and the accompanying audit findings, Public Counsel advises the Commission that if this case had followed the normal small company rate case procedure, Public Counsel may not have objected to the updated revenue increase of \$115,310 and may not have opposed the October 19, 2007 tariffs implementing that increase.

10. However, there may be a material effect on Public Counsel's position because of the entry of an intervenor and the potential for an evidentiary hearing, with additional discovery, testimony and other evidence. As a result, Public Counsel states that this response does not in any way waive any right to fully participate in any evidentiary hearing and does not waive the right to take any positions of agreement with or opposition to any and all issues that may arise in that evidentiary hearing. Any conflict or inconsistency between this response to the Staff/Company Agreement and the revenue requirement true-up and any position taken at hearing shall not be considered a waiver or an admission.

WHEREFORE, Public Counsel states that if this case had followed the normal small company rate case procedure, there is the likelihood that Public Counsel would not have objected to the updated revenue increase of \$115,310 and would not have any opposition to the October 19, 2007 tariffs designed to implement that increase. But, because it appears that this proceeding may no longer be resolved under the small company rate case procedure and instead may go to an evidentiary hearing, Public Counsel further states that it does not waive any right to fully

participate in any evidentiary hearing nor does it waive its right to provide positions on any and all issues that may arise in that evidentiary hearing, notwithstanding any conflict with this response.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Christina L. Baker

By: _____

Christina L. Baker (#58303)

Assistant Public Counsel

P O Box 2230

Jefferson City, MO 65102

(573) 751-5565

(573) 751-5562 FAX

christina.baker@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 24th day of October 2007:

Office General Counsel
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
GenCounsel@psc.mo.gov

Keith Krueger
Office General Counsel
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City MO 65102
keith.kruger@psc.mo.gov

Jeremiah Finnegan
Finnegan, Conrad & Peterson, L.C.
3100 Broadway, Suite 1209
Kansas City, MO 64111
jfinnegan@fcplaw.com

Mark Comley
Newman, Comley & Ruth, P.C.
P.O. Box 537
Jefferson City, MO 65102
comleym@ncrpc.com

/s/ Christina L. Baker
