

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

In the Matter of the Small Company Rate       )  
Increase Request of Mill Creek Sewers, Inc.    )

**Case No. SR-2005-0116**  
Tariff Work I.D. No. YS-2005-0330

**SUPPLEMENTAL RECOMMENDATION FOR APPROVAL OF TARIFF REVISIONS**

**COMES NOW** the Staff of the Missouri Public Service Commission ("Staff"), by and through Counsel, and for its Supplemental Recommendation for Approval of Tariff Revisions states the following to the Missouri Public Service Commission ("Commission").

**PROCEDURAL HISTORY**

1. On October 27, 2004, Mill Creek Sewers, Inc. ("Mill Creek") submitted to the Commission revised tariff sheets to implement an increase in its sewer service rates and charges, and the instant case was established.

2. As was stated in Mill Creek's tariff filing transmittal letter, the rates and charges contained in the subject revised tariff sheets were based upon a *Company/Staff Agreement Regarding Disposition of Small Company Rate Increase Request* ("Original Disposition Agreement") entered into by Mill Creek and the Staff, which pertained to the small company rate increase request that Mill Creek submitted to the Commission on February 20, 2002.

3. Among other things, the Original Disposition Agreement contained the following: (a) provisions that would result in Mill Creek submitting initial tariff revisions to implement rates that did not include a return on its investment in its new sewage treatment plant or the income taxes related to the return on that investment; (b) an agreement that Mill Creek would cooperate in the actions needed to realize a transfer of its sewer collection and treatment facility to a new owner (either the St. Louis Metropolitan Sewer District ("MSD") or a non-profit entity formed by Mill

Creek's customers), under certain circumstances; and (c) provisions giving Mill Creek the right to file tariff revisions including rates that would include a return on its investment in its new sewage treatment plant and the income taxes related to the return on that investment, if a system transfer did not occur by a certain date through no fault of Mill Creek.

4. On October 29, 2004, the Staff filed the Original Disposition Agreement in this case. In addition to the Original Disposition Agreement, that filing included the following documents: (a) example tariff sheets related to Mill Creek's initial tariff filing; (b) the Staff's ratemaking income statement related to Mill Creek's initial tariff filing; (c) the Staff's rate design worksheet related to Mill Creek's initial tariff filing; (d) the agreed-upon schedule of depreciation rates to be prescribed for Mill Creek; (e) example tariff sheets related to Mill Creek's possible second rate increase; (f) the Staff's ratemaking income statement related to the possible second rate increase; (g) the Staff's rate design worksheet related to the possible second rate increase; and (h) the customer notice that would be sent to Mill Creek's customers regarding the provisions of the disposition agreement.

5. On November 1, 2004, the Staff sent a notice to Mill Creek's customers regarding the rate increase that would result from the pending subject revised tariff sheets being approved. On November 2, 2004, the Staff filed a copy of the customer notice in this case.

6. On December 2, 2004, the Office of the Public Counsel ("OPC") filed a request for a local public hearing, based upon responses received in response to the above-referenced customer notice. In addition to its request for a local public hearing, the OPC also submitted copies of the responses to the above-referenced customer notice and the original customer notice regarding Mill Creek's rate increase request.

7. On December 7, 2004, the Commission issued an order suspending Mill Creek's pending revised tariff sheets until April 12, 2005.

8. On December 22, 2004, the Commission issued an order setting January 24, 2005 (unless noted otherwise, all dates hereafter refer to the year 2005) as the date for a local public hearing regarding Mill Creek's rate increase request.

9. On January 20, the Staff made its standard "informational" filing in advance of the scheduled local public hearing. In addition to information that the Staff had previously filed in the case, that filing included copies of responses to the November 1, 2004 customer notice that had not been submitted with the OPC's filing on December 2, 2004.

10. On January 24, the public hearing for this case was held as scheduled.

11. On March 16, pursuant to the provisions of an order that the Commission issued on February 8, the parties participated in an on-the-record presentation regarding Mill Creek's rate increase request and related matters.

12. On March 23, the Commission issued an order directing the Staff to file two reports regarding the status of the potential transfer of Mill Creek's sewer collection and treatment system to the MSD.

13. The Staff filed the status reports required by the Commission's March 23 order on March 25 and April 1, respectively.

14. Pursuant to negotiations held after the above-referenced on-the-record presentation, Mill Creek, the Staff and the OPC reached several agreements regarding Mill Creek's operations and the implementation of the subject pending revised tariff sheets, with those agreements being set out in a *Unanimous Supplemental Agreement Regarding Disposition of Small Company Rate Increase Request* ("Supplemental Disposition Agreement").

15. Regarding the implementation of Mill Creek's pending tariff revisions, the Supplemental Disposition Agreement included the following provisions:

\* "That . . . the Staff and the OPC agree that the Company's pending tariff revisions should be allowed to go into effect on April 12, 2005."

\* "That the Company acknowledges that the Staff and/or the OPC have the right to recommend to the Commission that the customer rates be reduced to the level currently in effect (\$5/month) if the Company does not comply with the agreements set forth herein."

16. On April 1, the Staff filed the Supplemental Disposition Agreement and its Recommendation for Approval of Tariff Revisions ("Original Recommendation"). In its Original Recommendation, the Staff recommended that the Commission, among other things, approve Mill Creek's pending tariff revisions to be effective for service on and after April 12.

17. Also on April 1, the Commission issued its Order Further Suspending Tariff and Setting Prehearing Conference, in which, among other things, it extended the suspension of Mill Creek's pending tariff revisions from April 12 to October 12.

18. Beginning April 8 and continuing through September 2, the Staff has made weekly filings in this case that have included information regarding the following matters: (a) the status of the potential transfer of Mill Creek's sewage treatment and collection system to the MSD, or another entity (now including Missouri-American Water Company ("MAWC") in addition to a non-profit entity formed by Mill Creek's customers); (b) the Staff's on-going monitoring of the condition and operation of Mill Creek's sewage treatment plant; (c) the actions taken by Mill Creek in response to issues brought to its attention as a result of the Staff's monitoring of the sewage treatment plant; and (d) Mill Creek's response to a Department of Natural Resources' ("DNR") report regarding a joint DNR/Staff inspection of the sewage treatment plant.

#### **RATE INCREASE PHASE-IN PROVISIONS**

19. As noted previously, the Original Disposition Agreement entered into by Mill Creek and the Staff contained the following: (a) provisions that would result in Mill Creek submitting initial tariff revisions to implement rates that did not include a return on its investment in its new

sewage treatment plant or the income taxes related to the return on that investment; (b) an agreement that Mill Creek would cooperate in the actions needed to realize a transfer of its sewer collection and treatment facility to a new owner (either the MSD or a non-profit entity formed by Mill Creek's customers), under certain circumstances; and (c) provisions giving Mill Creek the right to file tariff revisions including rates that would include a return on its investment in its new sewage treatment plant and the income taxes related to the return on that investment, if a system transfer did not occur did not occur by a certain date through no fault of Mill Creek.

Specifically, the Original Disposition Agreement contemplated that if Mill Creek's system was not transferred to a new owner by March 31, through no fault of Mill Creek, Mill Creek would then have the right to submit additional tariff revisions including rates that would include a return on its investment in its new sewage treatment plant and the income taxes related to the return on that investment. Additionally, the Original Disposition Agreement contemplated that Mill Creek's initial rate increase would go into effect prior to December 31, 2004.

20. As a result of various actions that have been taken in this case, the "action dates" included in the Original Disposition Agreement regarding the following matters have passed and are thus no longer valid: (a) the approval of Mill Creek's initial rate increase; (b) the possible transfer of Mill Creek's system to a new owner; and (c) the opportunity for Mill Creek to submit tariff revisions including rates that would include a return on its investment in its new sewage treatment plant and the income taxes related to the return on that investment.

However, the Staff believes that the theory behind the original action dates is still valid and that new "action dates" should be established consistent with that theory. Specifically, the Staff believes the following "action dates" are now appropriate: (a) October 1 – the effective date for Mill Creek's pending tariff revisions; (b) December 31 – the target date for a final decision

regarding the transfer of the system to a new owner (under the provisions of the Original Disposition Agreement) to be made; and (c) January 1, 2006 – the date after which Mill Creek could submit tariff revisions including rates that would include a return on its investment in its new sewage treatment plant and the income taxes related to the return on that investment, if a final decision regarding the system transfer is not made by December 31 through no fault of Mill Creek.

### **STATUS UPDATES**

21. Regarding the current condition of Mill Creek's sewage treatment plant, the Staff notes that Steve Loethen of the Water & Sewer Department visited the plant the morning of September 9 (today). During this visit, Mr. Loethen confirmed that the plant is now being operated by a contract operator, and also noted that the general condition of the plant and the plant grounds has improved since his last visit on August 18. Mr. Loethen also noted that sludge will need to be hauled from the plant in the near future and advised a representative of Mill Creek of this need.

22. Regarding the status of the MSD's determination of whether it will take over Mill Creek's system, the Staff notes that as of August 31 the MSD had not yet made a decision regarding this matter.

23. Regarding the possibility that MAWC might be interested in taking over Mill Creek's system, the Staff notes that it requested an update from MAWC regarding this matter on August 31 but has not yet received a response to that request. However, as a part of MAWC's decision-making process, representatives of MAWC met with Mr. Loethen at Mill Creek's system on September 9.

24. As documented in the Status Reports the Staff has filed in this case, the Staff notes that Mill Creek has responded positively to the Staff's recommendation's regarding the operation of the sewage treatment plant, and that Mill Creek has also responded positively to the issues raised in the DNR's report regarding the June 23 joint DNR/Staff inspection of the sewage treatment plant.

25. Regarding Mill Creek's compliance with the provisions of the Original Disposition Agreement and/or the Supplemental Disposition Agreement, the Staff notes that Mill Creek's positive responses to the Staff's recommendations regarding the operation of the sewage treatment plant and to the DNR's inspection report, and other actions taken by Mill Creek, have resulted in Mill Creek being in compliance with these agreements, except for the provisions of the agreements for which compliance is not yet due or for which compliance has not yet been addressed by the Staff through its monitoring activities.

#### **THE PENDING TARIFF REVISIONS**

26. As noted previously, Mill Creek's pending tariff revisions include rates that do not include a return on Mill Creek's investment in its new treatment plant or the income taxes related to the return on that investment. Rather, the rates included in the pending tariff revisions reflect only Mill Creek's expenses related to the on-going operation and maintenance of the treatment plant and the collection system.

Based upon Mill Creek's operation of the system over the past several months, which includes more routine sludge hauling, repairs to the blower motors when needed, and the recent execution of a contract for operations and testing, as has been documented by the Staff's on-going monitoring of the operation of the system, the Staff believes the proposed rates included in the pending tariff revisions are reasonable and should be approved. In fact, it is clear that Mill Creek's current rate of \$5.00/customer/month is not sufficient to sustain the proper operation and maintenance of the system.

#### **ADDITIONAL MATTERS**

27. Regarding the case-related information that is normally included with the Staff's filing of its recommendation for approval of tariff revisions in small company rate cases, the Staff

notes that this information has previously been submitted in this case. For reference purposes, the Commission should take note of the Staff filings made on October 29, 2004, January 20, 2005 and April 1, 2005, as well as the OPC filing made on December 2, 2004.

28. Regarding certain general information that the Staff routinely provides to the Commission in all of its recommendations, the Staff notes the following: (a) Mill Creek is current on the payment of its Commission assessments through FY2006; (b) Mill Creek is current on the submission of its Commission annual reports through CY2004; and (c) Mill Creek is in good standing with the Secretary of State.

#### **STAFF'S RECOMMENDATIONS**

29. Based upon the above, and the information previously filed in this case, the Staff recommends that the Commission issue an order that:

- (a) Approves Mill Creek's pending tariff revisions to be effective for service rendered on and after October 1, 2005;
- (b) Directs Mill Creek to maintain compliance with the provisions of the Original Disposition Agreement submitted in this case, as applicable and to the extent those provisions have not been modified by the Supplemental Disposition Agreement submitted in this case;
- (c) Directs Mill Creek to maintain compliance with the provisions of the Supplemental Disposition Agreement submitted in this case, as applicable;
- (d) Prescribes the depreciation rates set out in Attachment D to the Original Disposition Agreement as the depreciation rates authorized for Mill Creek's use; and
- (e) Recognizes the provisions of the Original Disposition Agreement, and the Staff's suggested changes to those provisions presented herein, regarding the possibility that Mill Creek may be allowed to submit tariff revisions for a further increase in its rates.



**WHEREFORE**, the Staff respectfully submits its Supplemental Recommendation for Approval of Tariff Revisions for the Commission's consideration in this case.

Respectfully Submitted,

DANA K. JOYCE  
General Counsel

/s/ Mary E. Weston

Mary E. Weston  
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Missouri Bar No. 54669

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed with first class postage, hand-delivered, transmitted by facsimile or transmitted via e-mail to all counsel and/or parties of record this 9th day of September 2005.

/s/ Mary E. Weston

**AFFIDAVIT OF DALE W. JOHANSEN**

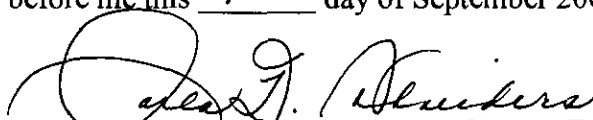
STATE OF MISSOURI     )  
                                      ) ss  
COUNTY OF COLE     )

Dale W. Johansen, of lawful age, on his oath states: (a) that he is a member of the Staff of the Missouri Public Service Commission; (b) that he is familiar with the procedural history and details of the case in which the foregoing Supplemental Recommendation for Approval of Tariff Revisions is being filed; (c) that he participated in the preparation of the foregoing Supplemental Recommendation for Approval of Tariff Revisions; and (d) that he has knowledge of the matters set forth in the foregoing Supplemental Recommendation for Approval of Tariff Revisions, and that such matters are true and correct to the best of his knowledge and belief.



Dale W. Johansen – Manager  
Water & Sewer Department  
Utility Operations Division

Subscribed and sworn to before me this 9<sup>th</sup> day of September 2005.

  
Notary Public

My Commission Expires:

June 7, 2008

**CARLA K. SCHNIEDERS**  
Notary Public - Notary Seal  
State of Missouri  
County of Cole  
My Commission Exp. 06/07/2008