

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 30th day of October, 2007.

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

ORDER APPROVING SMALL COMPANY RATE INCREASE ON AN INTERIM BASIS, SUBJECT TO REFUND, AND APPROVING TARIFF

Issue Date: October 30, 2007

Effective Date: November 9, 2007

On October 4, 2007, Hunt Midwest Real Estate Development, Inc., filed its request for intervention and objection to the tariffs filed on September 14, 2007, by Timber Creek Sewer Company. Specifically, Hunt objected to the proposed connection fee of \$2,650 as being unreasonable and unlawful. The Commission added Hunt as a party on October 16, 2007. Timber Creek amended its tariff sheets on October 19, 2007; however, the connection fee in the amended tariff sheets remains the same. The original tariff effective date was November 1, 2007. The Commission suspended the tariff sheets until November 9, 2007.

This case has existed in its “informal” state since March 22, 2007, when the company originally submitted a request to the Staff of the Commission for an increase in rates of \$120,000. After Staff conducted its audit, the company and Staff agreed to a revenue requirement and the company filed tariff sheets requesting rates which would increase its revenue requirement by \$129,837 with a true-up through September 30, 2007, to follow. After the September true-up occurred, the company filed substitute tariff sheets

reducing its rates slightly. The current proposed increase in the company's revenue requirement is \$115, 310.

The Office of the Public Counsel filed its response to the proposed tariff sheets on October 24, 2007, as required by Commission Rule 4 CSR 240-3.330. In its response, Public Counsel states 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."¹ Thus, Public Counsel, while not specifically stating that it was in agreement with the proposed rate increase, did not specifically object to the increase. Public Counsel was clear that it did not waive any right to fully participate or raise any objection that may be discovered in the course of an evidentiary hearing.

Also on October 24, 2007, the Staff of the Missouri Public Service Commission filed its verified recommendation as directed by the Commission. As part of that recommendation, Staff stated that:

[t]he amount of the service connection fee has no effect on the revenue requirement or rate design agreed to in this case. Staff recommends that the Company Staff-agreed-upon service connection fee be approved on an interim basis, subject to refund, if it is determined that a hearing is necessary

The Commission has examined the various pleadings and tariffs in this case carefully. The Commission has special procedures² for small company rate increases so that Staff may review the company books and finances and help determine what rates are needed, thus helping a small company avoid the expense associated with a regular rate

¹ *Public Counsel's Response to Order Directing Filing*, filed October 24, 2007.

² 4 CSR 240-3.330.

case. Because rate case expense is usually allowed as a component of rate base, and because attorneys' fees and expert fees to prosecute a rate increase can be a significant expense to a small company, it is in the interest of all the ratepayers to keep those costs as low as possible.

While the Commission recognizes that it is in the interest of the ratepayers to keep rate case expenses low, it also must hear the legitimate arguments of parties, such as Hunt, to determine if the fees set are appropriate. Thus, for the reasons set out below, the Commission has determined that in this case it is reasonable to grant the rate increase on an interim basis, subject to refund. Because the rate and fee increases will be subject to refund, if the rates are later shown after a hearing to be unreasonable or unlawful, Hunt, and the other ratepayers, will be protected.

The Commission has previously set out standards for interim rate relief.³ According to the *Missouri Public Service* case, to be eligible for interim rate relief a utility company must show: (1) that it needs the additional funds immediately, (2) that the need cannot be postponed, and (3) that no other alternatives exist to meet the need but rate relief. The Commission has, however, granted interim rate relief on a nonemergency basis⁴ where the Commission found that particular circumstances necessitated such relief. The Western District Court of Appeals has also held that it is possible to grant interim rate

³ *In re Missouri Public Service Company*, Case No. 18,502, 20 Mo. P.S.C. (N.S.) 244 (1975).

⁴ *In re Missouri Power & Light Company*, Case Nos. GR-81-355 and ER-81-356 (1981).

relief on a nonemergency basis.⁵ The Commission has the authority to grant nonemergency relief by applying a case-by-case standard.⁶

With the exception of the connection fee, no party has objected to the residential rates or the revenue requirement as set out in the October 19, 2007 tariff revision. The amount of the connection fee does not affect the revenue requirement or rate design. Thus, it is reasonable to conclude that as of the time of the true-up, September 30, 2007, Timber Creek will be earning \$115,310 per year less than necessary to meet its revenue requirement. In addition, \$115,310 per year for a small company like Timber Creek is a significant amount that if forgone could quickly threaten the company's financial integrity and even its ability to provide safe and adequate service. The company originally indicated its need for a revenue increase in March. Suspending the general rate increase while waiting an additional 6-11 months for a decision regarding the connection fee could be detrimental to the company's operations. Therefore, the Commission determines that good cause exists to approve the rates on an interim basis, subject to refund at the conclusion of the rate case. Approving the rates on an interim basis will allow sufficient time to hear the arguments against the connection fee while protecting both the interests of the company and of the ratepayers.

IT IS ORDERED THAT:

1. The proposed tariff sheets filed by Timber Creek Sewer Company on September 14, 2007, as amended on October 19, 2007, Tariff No. YS-2008-0171, shall be

⁵ *State ex rel. Laclede Gas Co. v. Public Serv. Comm'n*, 535 S.W.2d 561 (Mo. App. 1976).

⁶ *State ex rel. Arkansas Power & Light Company v. Public Service Commission*, 736 S.W. 2d 457 (Mo. App. 1987).

approved on an interim basis, subject to refund, effective November 9, 2007, unless otherwise ordered by the Commission.

2. This order shall become effective on November 9, 2007

BY THE COMMISSION

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

Colleen M. Dale
Secretary

(S E A L)

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

Dippell, Deputy Chief Regulatory Law Judge