

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

In the Matter of the Application of)	
Timber Creek Sewer Company for Approval)	Case No. SU-2011-0289
of an Accounting Authority Order)	

**TIMBER CREEK'S REPLY TO STAFF RECOMMENDATION AND OPC
OBJECTION AND MOTION TO DISMISS**

COMES NOW Timber Creek Sewer Company ("Timber Creek") by its Counsel and for its Reply to the Commission Staff's Recommendation to Deny Accounting Authority Order and OPC's Objection and Motion to Dismiss, respectfully states as follows:

1. On March 10, 2011, in Case No. SR-2010-0320, Timber Creek's recent rate case, the Commission ordered that the record be closed on March 15, 2011, despite the fact that Timber Creek was still in the process of incurring rate case expenses and would continue to incur same for a period after March 15th and until the last act in implementing the increase in rates was completed.

2. In a filing on March 14, 2011, in Case No. SR-2010-0320, Timber Creek requested that an Accounting Authority Order ("AAO") be issued allowing Timber Creek to defer such rate case expenses incurred after the closing of the record in Case No. SR-2010-0320 under the AAO and saved for potential recovery as rate case expenses in Timber Creek's next rate case. Unless these expenses are saved in an AAO, the result will be the same as in SR-2010-0320, where the Commission denied recovery of a rate case expense incurred in Timber Creek's prior rate case, Case No. SR-2008-0080, i.e., the reasonable and prudent rate case expenses incurred after the closing of the record would never be recovered.

3. As a result of such filing, the Commission set up the current case, Case No. SU-2011-0289 to consider the application for an AAO.

4. OPC in its Objections and Motion to Dismiss this case, objected to the an AAO and moved to dismiss the case on the grounds that the expenses are not "extraordinary."

5. Staff in its response does not support the Company's request for an AAO because AAO's are "generally" issued for extraordinary events and construction projects and after the close of record rate case expenses are not the type of expense for which the Commission "typically" authorizes the use of an AAO. Further, Staff speculates, without using a crystal ball, that it expects continued customer growth would allow Timber Creek to recover the costs so it does not recommend approval of this AAO for rate case expenses. Presumably, the Staff must also be speculating that such customer growth does not have any costs associated with it that would offset the recovery of the rate case expenses.

6. Staff and OPC assert these positions, despite the fact that the Commission in its Report and Order in the rate case, Case No. SR-2010-0320, found Timber Creek at fault for the loss of recovery of a rate case expense incurred in Timber Creek's last rate case, Case No. SR-2008-0080, firstly because Timber Creek did not seek to include the expense in the agreement settling Case No. SR-2008-0080; and secondly for not seeking an AAO after the case to defer the expenses for possible recovery in a later rate case. The Commission stated as follows at p. 37 of the Report and Order in Case No. SR-2010-0320:, with respect to the \$18,175 expense for consulting services by Mr. Sherry in Case No. SR-2008-0080, a

rate case that was settled. The Commission had this to say in the Report and Order in Case No. SR-2010-0320:

"No provision was placed in the settlement agreement to allow additional recovery of the \$18,175. **The company did not request an accounting authority order that would have allowed recovery at a later date.** If there is any error to be had with the loss of recovery of this additional expense, the fault would rest on Timber Creek." [Emphasis Added.]

Quite obviously, in holding that Timber Creek was at fault in not seeking an AAO in an effort to recover the expense in Timber Creek's next rate case, the Commission is asserting that seeking an AAO for unrecovered rate case expenses is a proper form of relief available for Timber Creek.

7. Based on its position with respect to Timber Creek's failure to make a provision for future recovery of the \$18,175 in the settlement of the SR-2008-0080 case and its failure to request an AAO to attempt to recover it in its next rate case, as being errors on Timber Creek's part, it would obviously be an error on Timber Creek's part if it did not request an AAO in this case. Unlike SR-2008-0080, which was a settled case, there is no settlement in SR-2010-0320 in which to include a provision for recovery at a later date. According to the Commission's Report and Order in SR-2010-0230, the only procedure Timber Creek has available to it to preserve the unrecovered rate case expenses is to file for an AAO, which is what Timber Creek did.

8. Inasmuch as Timber Creek requested an AAO on March 14th and the Commission issued its Notice of New File and its Order Directing Notice on March 15th, the Commission was quite aware of the existence of such AAO case when it issued its Report

and Order in Case No. SR-2010-0320 on March 31st faulting Timber Creek for not filing for an AAO to preserve the costs that were not recovered in Case No. SR-2008-0080.

9. Obviously, the Commission knew that it had the authority to grant an AAO under these circumstances when it faulted Timber Creek for not seeking an AAO after the SR-2008-0080 case and that failure to so request an AAO was an error on Timber Creek's part because the Commission had the power to grant it an AAO had there been a request for one then. It knew that a request for an AAO by Timber Creek in this case to allow recovery at a later date of the unrecovered rate case expenses was a necessary action for Timber Creek to take if it wanted to preserve the expenses for potential later recovery.

10. There is also an inconsistency in Staff's opposition to an AAO in this case to defer unrecovered rate case expenses until a later rate case and its position with respect to deferring for consideration in a later rate case unrecovered rate case expenses incurred by KCPL in Case Nos. ER-2010-0355. The Commission stated that Staff's position in that case was as follows:

"Staff does not object to the Companies' proposal to defer rate case expenses incurred after December 31, 2010, for consideration in a future rate case so long as Staff has an opportunity to review those expenses for prudence and reasonableness in that subsequent case." See Report and Order in Case Nos. ER-2010-0355, et al., pp. 159-160. [Emphasis Added.]

The Commission approved Staff's position, stating at p. 171 of the Report and Order that:

"Rate case expenses for these cases after the true-up will be deferred for possible recovery in the next rate case, subject to review for prudence and reasonableness." [Emphasis Added.]

11. What the Staff did not object to and which the Commission approved in the KCPL rate case is exactly what Timber Creek is seeking in this case; i.e., deferral of

unrecovered rate case expenses for possible recovery in the next rate case, subject to review for prudence and reasonableness in that subsequent case.

12. While KCPL is significantly larger than Timber Creek and KCPL's rate case expenses are also significantly larger in amount, that is not a valid reason to treat KCPL more favorably than Timber Creek. Everything is relative. Discrimination in favor of KCPL and discrimination against Timber Creek are both unlawful. The inability to recover thousands of dollars in rate case expenses is just as devastating to Timber Creek as the inability of KCPL to recover millions of dollars in rate case expenses. Since the increase authorized Timber Creek in Case No. SR-2010-0320 was only \$35,986 and the increase granted KCPL in Case No. ER-2010-0355 was \$34,817,199, it is quite obvious that the loss of just a few thousand dollars in rate case expense is as significant a loss to Timber Creek as a loss of a few million dollars is to KCPL.

13. Finally, while Staff does not recommend the Commission approve this AAO for unrecovered rate case expenses in the first place, it does, nevertheless, recognize that the Commission has the authority to grant the request and thus, it recommends that if the Commission chooses to grant the request for an AAO, that the Commission's order includes certain language that states that there is no particular ratemaking treatment of the expense at this time and reserves the right to address treatment of the expense in Timber Creek's next rate case.

14. Timber Creek is asking no more than to allow the unrecovered rate case expenses to be deferred under the AAO for potential recovery in its next rate case and that

Staff and others have the opportunity to review such expenses for prudence and reasonableness in that subsequent rate case.

WHEREFORE, Timber Creek submits its Reply to Staff and OPC and requests that the Commission grant it an AAO to defer unrecovered rate case expenses incurred after the close of the record in Case No. SR-2010-0320 to Timber Creek's next rate case where they could be considered for inclusion subject to their prudence and reasonableness.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.,

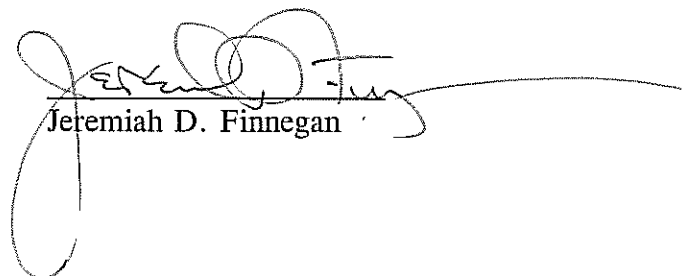
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ATTORNEYS FOR TIMBER CREEK
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CERTIFICATE OF SERVICE

I hereby certify that on this date, April 22, 2011, I electronically filed the foregoing document with the Commission and further caused a copy of the same to be sent to Staff Counsel Jaime N. Ott and Christina L. Baker of the Office of Public Counsel by electronic transmission.


Jeremiah D. Finnegan