

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

In the Matter of the Small Company                     )  
Rate Increase Request of Timber Creek            )       Case No. SR-2008-0080  
Sewer Company.   )

**OBJECTIONS OF TIMBER CREEK SEWER COMPANY TO LOCAL PUBLIC  
HEARING TESTIMONY**

COMES NOW Timber Creek Sewer Company (Timber Creek) by its counsel, Jeremiah D. Finnegan, and for its Objections to Local Public Hearing Testimony, states as follows:

1.       At the outset of the hearing, Counsel advised the Commission that he would not try to cross-examine the witnesses because he wanted the witnesses to make their statements but because the courts have ruled that unobjected to hearsay becomes substantial and competent evidence, there may be times when it would be necessary to object. (Tr. 5)
2.       During the testimony of Nancy Wakefield, Counsel did make an objection and Judge Dippell determined that, rather than rule on the objection then or on any further objections in the interest of time, Counsel should reserve all objections without waiving any rights, and be given an opportunity to object to the testimony when the transcripts arrive. (Tr. 14-16) At the end of the hearing, Counsel was given two days from the return of the transcripts to submit objections in writing. (Tr. 55-56) On October 22nd, the Commission issued an order directing the filing of the objections by no later than October 24, 2007.

The objections are as follows:

- a.       Tr. 16, lines 2-4, what J&J Septic Company allegedly told Ms. Wakefield is hearsay.

b. Tr. 16, lines 13-15, what the homeowners who allegedly called Ms. Wakefield stated to her is hearsay.

c. Tr. 16, lines 18-20, alleged complaints about sewer odors from 15 people is hearsay 15 times over.

d. Tr. 19, lines 1-6, Ms. Wakefield's petition was numbered Exhibit 1. We object to Exhibit 1 as hearsay as to all the persons allegedly signing the petition, since they were not present to verify their signatures and Ms. Wakefield admitted did not collect all the alleged signatures personally as she so testified at Tr. 11, lines 21-23, when she stated that she wanted to thank all of those who took time to pass the petition around.

e. Tr. 19, lines 1-6, Ms. Wakefield's pictures were numbered Exhibit 2. We object to Exhibit 2 as lacking foundation in that there was no testimony that they are true reproductions of the place in question. Ms. Wakefield's only testimony on the pictures is contained at Tr. 14, lines 1-5 and does not contain any statement that the photographs are true reproductions of the place it is alleged to be depicting.

f. Tr. 25, lines 13-22 and Tr. 36, lines 2-6, Mr. Cecil Murray's two statements as to what his brother-in-law told him about odors is hearsay.

g. Tr. 25, lines 13-25; Tr. 26, lines 1-10, 25; Tr. 27, lines 1-4; Tr. 31, lines 17-25; and Tr. 32, lines 1-18, Mr. Murray gives an engineering opinion on what is causing the odor, which is inadmissible opinion testimony of a non-expert witness. At Tr. 26, lines 3-4, Mr. Murray admits that he is "not an engineer by any imagination." .

h. Tr. 26, lines 10-12 and Tr. 32, lines 18-20, Mr. Murray's statements that he has names of people who smelled the odor over time is clearly hearsay in that he is attributing others with having told him that they smelled odor.

3. While there are many other statements by some of the witnesses at the public hearing that Timber Creek finds objectionable because the witnesses are either mistaken, uninformed of the actual facts, positing mere suppositions or otherwise failing in stating the facts as they actually occurred, no matter how well intentioned, such statements, however, are not objectionable under the rules of evidence. They are better dealt with by rebuttal testimony on Timber Creek's part. However, Timber Creek is not requesting to file rebuttal testimony in this case at this time because it could delay the approval of the new rates which are sorely needed. If, however, there

is an evidentiary hearing scheduled, Timber Creek does not waive the right to full participation in all aspects of any evidentiary hearing and take positions on any and all issues in that evidentiary hearing, including the right to file rebuttal testimony to the testimony of the public witnesses to clarify any misstatements of fact.

**WHEREFORE**, Timber Creek respectfully requests that the Commission sustain its objections to the testimony of the witnesses at the public hearing.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.,

By: /s/ Jeremiah D. Finnegan

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ATTORNEYS FOR TIMBER CREEK  
SEWER COMPANY

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing have been emailed to Christina L. Baker (christina.baker@ded.mo.gov); Keith Krueger (keith.krueger@psc.mo.gov); and Mark W. Comley (comleym@ncrpc.com) this 24th day of October, 2007.

/s/ Jeremiah Finnegan