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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

April 8, 2005

Jefferson City, Missouri

Volume 3

In the Matter of the Small Company )  
Rate Increase Request of Mill ) Case No. SR-2005-0116  
Creek Sewers, Inc. )

KENNARD L. JONES, Presiding,  
REGULATORY LAW JUDGE.

REPORTED BY:  
KELLENE K. FEDDERSEN, CSR, RPR, CCR  
MIDWEST LITIGATION SERVICES

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FOR: Staff of the Missouri Public  
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1 P R O C E E D I N G S

2 JUDGE JONES: This is a prehearing  
3 conference for Case No. SR-2005-0116, in the matter of the  
4 small company rate increase request of Mill Creek Sewers,  
5 Inc. My name is Kennard Jones. I'm the presiding judge  
6 over this matter.

7 And right now I'll take entries of  
8 appearance, beginning with Mill Creek Sewers.

9 MS. KRESYMAN: Jamis Kresyman,  
10 K-r-e-s-y-m-a-n.

11 JUDGE JONES: And from the Staff of the  
12 Commission, please?

13 MR. SNODGRASS: Yes. Good morning, Judge.  
14 My name is Cliff Snodgrass. I represent the Staff of the  
15 Missouri Public Service Commission today. My formal  
16 business address is Governor Office Building, Suite 800,  
17 200 Madison Street, P.O. Box 360, Jefferson City, Missouri  
18 65102.

19 JUDGE JONES: And from the Office of the  
20 Public Counsel?

21 MS. O'NEILL: Good morning, Judge. This is  
22 Ruth O'Neill from the Office of the Public Counsel. Our  
23 mailing address is P.O. Box 2230, Jefferson City, Missouri  
24 65102.

25 JUDGE JONES: Thank you all. Were you all

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1 able to hear Mr. Snodgrass okay?

2 MS. O'NEILL: Yes, barely.

3 JUDGE JONES: Great. We can hear you fine.

4 I set this prehearing conference for a couple of reasons.

5 One is it seemed that Mill Creek Sewer would not be sold  
6 to MSD prior to the effective date of its tariff, and in  
7 order to suspend the tariff for an additional six months,  
8 we have to move toward a hearing.

9 My interpretation of the statute says in  
10 order to do that, it has to be because we're unable to  
11 complete a hearing within the time frame allowed. So I've  
12 set this prehearing conference to move toward a hearing in  
13 the event that the company is not -- the assets are not  
14 transferred to MSD.

15 Also, as you all are aware, the Commission  
16 wants regular status updates, I presume weekly to be  
17 fairly regular, and last week a status update was filed.  
18 And in lieu of paper being filed today, the prehearing  
19 conference can serve as an opportunity for a status  
20 update. So with that in mind, who will present that  
21 status update?

22 MR. SNODGRASS: Your Honor, I've got Dale  
23 Johansen here, manager of the water and sewer department,  
24 and he's the closest to the happenings in this case, and I  
25 think he'd be glad to present you with a status report.

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1 JUDGE JONES: Okay. Mr. Johansen.

2 (Witness sworn.)

3 JUDGE JONES: Thank you, sir. You may  
4 proceed.

5 MR. JOHANSEN: Judge, we do basically have  
6 our written status report completed, and I'll talk to  
7 Mr. Snodgrass, we may go ahead and file that just for the  
8 record.

9 I can tell you, I have talked with Paul  
10 DeFord, who is an attorney that represents the MSD. He  
11 left me a phone message last night saying that MSD is --  
12 has initiated what he calls their initial due diligence  
13 reviews in regard to a possible acquisition of the system.  
14 They've done some plant inspection work as well as some  
15 other research that would be necessary for them to  
16 complete prior to a transfer occurring.

17 I have not yet had a chance this week to  
18 talk with Joel Bindbeutel at the Attorney General's Office  
19 regarding this matter. I've left him a message this  
20 morning. He will not be in the office until this  
21 afternoon. I'm hoping to be able to talk with him before  
22 we have to file our written status report so I can have  
23 some additional information for that.

24 Also, I think it would be good to note that  
25 Steve Loethen, who's a member of the water and sewer

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1 department, conducted an onsite inspection of the  
2 treatment plant on Wednesday of this week. He has  
3 submitted a report to me which will be included in our  
4 written status report.

5 But he does report that the company has  
6 taken some actions to improve the operation of the plant.  
7 Both blowers are now operational. One of the motors had  
8 to be replaced. Another one required some rewiring in the  
9 control panel. That has been taken care of. Both  
10 motors -- blowers, excuse me, are fully operational now.  
11 The sludge-holding tank has been pumped, which was a  
12 concern that we had identified.

13 What they call the sludge return line to  
14 the clarifier is apparently clogged, but Mr. Loethen  
15 worked with an employee of Mill Creek on Wednesday  
16 regarding what needed to be done to get that corrected,  
17 and they are discussing what needs to be done there and  
18 hopefully will be taking any actions necessary to get that  
19 situation corrected.

20 On Wednesday when Mr. Loethen was at the  
21 plant, a representative of Midwest Testing came to the  
22 plant and took effluent samples for the purpose of getting  
23 those samples tested to see what the condition of the  
24 effluent is. And Mr. Afshari, who's the owner of Mill  
25 Creek, we understand is discussing a contract with Midwest



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1 be. As I mentioned, I just e-mailed the report that we  
2 planned on filing today to Mr. Snodgrass and Mr. Loethen  
3 for their final review. I really think it would probably  
4 make more sense for us to go ahead and file that today.  
5 It's going to be probably middle to later next week before  
6 Mr. Loethen is back at the plant for any further  
7 inspections.

8 So I think it would make more sense to go  
9 ahead and file what we have ready today and then file a  
10 follow-up report next week, next Friday, if that's fine.

11 JUDGE JONES: That's fine. Okay. Does  
12 anyone have anything else they'd like to offer on the  
13 record? Ms. Kresyman?

14 MS. KRESYMAN: Well, I would draw your  
15 attention to the Supplemental Agreement that the Staff has  
16 prepared and their Supplemental Agreements, especially  
17 point No. 11 where they're asking that the Staff -- or  
18 rather that the tariff be allowed to go into effect on  
19 April 12th because there are all of these costs that the  
20 company is incurring and they are not recouping anywhere  
21 near what their costs are on this, with the provision that  
22 they have offered in paragraph 10 that there would be the  
23 right then to reduce the increase back to the current  
24 level of \$5 a month if the company does not comply, so  
25 that they could start getting some money in to cover the



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1 costs that they're incurring.

2 JUDGE JONES: Well, I guess the problem I  
3 have with that, and I'm not real clear on how the law  
4 should be interpreted, but I am certain that once a tariff  
5 goes into effect, it is like law. It's the law. And I  
6 have a question I'll pose to all of the parties. If the  
7 tariff goes into effect and it is the law and then some  
8 condition is not met, and I realize your agreement says in  
9 that event the rate will revert back to \$5, that would be  
10 like, well, changing the law again. So I'm not sure if  
11 I'm clear on that, but --

12 MS. O'NEILL: Your Honor, this is Ruth  
13 O'Neill from the Office of the Public Counsel, and we -- I  
14 have been involved in at least one and I think maybe two  
15 rate cases, both of them actually involving small water  
16 and sewer companies, where rates were -- interim rates  
17 were approved subject to reduction.

18 JUDGE JONES: Right.

19 MS. O'NEILL: I know that there is a  
20 Laclede Gas case from I think it's the '70s, and I don't  
21 have the cite with me right now, where the Commission has  
22 the authority to approve interim rates in the context of a  
23 rate case. It may be if the Commission wants to leave  
24 this matter open and call them interim rates, that would  
25 be something that the Commission can do. In fact, I think

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1 that there's a recent Laclede -- maybe it's a Laclede case  
2 or another case that's pending now in a general rate case  
3 where there are some interim -- there was some discussion  
4 about interim rates as well.

5 JUDGE JONES: Thank you, Ms. O'Neill. It  
6 sounds like Public Counsel's in agreement with the  
7 supplement?

8 MS. O'NEILL: Yeah. Basically, we're  
9 hoping that the sale goes through expeditiously and that  
10 this matter can be resolved that way. We also know what  
11 the expenses are to just do the day-to-day operations of  
12 the plant, and the \$5 a month fee is something that  
13 frankly it's probably not adequate to meet those expenses  
14 at this time. And I would hate to be in a situation where  
15 the company fails to comply and then raises that as its  
16 defense, that the Commission won't give it enough money to  
17 meet its actual day-to-day operating expenses.

18 There's no provision for any return or any  
19 profit for the owners of the company in these rates, which  
20 Public Counsel believes was important because we didn't  
21 want to reward the company for its past failures to comply  
22 with various things. But we did believe it was important  
23 to have some income coming in to the company so that the  
24 plant can be operated for the benefit of the customers  
25 pending the transfer.

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1 JUDGE JONES: Have you been in contact with  
2 any customers regarding this, Ms. O'Neill?

3 MS. O'NEILL: I've talked to customers, and  
4 Mr. Dandino from my office participated in the local  
5 public hearing. He spoke to several of the customers  
6 then. The customers know that -- the customers know that  
7 a new plant has gone in. The customers know that  
8 Mr. Afshari is trying to sell the system or transfer the  
9 system, and they're behind the transfer.

10 And I think some of the customers I've  
11 talked to understand that \$5 a month is an unusually low  
12 rate for them to be paying for sewer service in a small  
13 system.

14 JUDGE JONES: Okay.

15 MR. SNODGRASS: Your Honor, Staff would  
16 like to add a little bit of information to this record  
17 also. We would look at this -- we are aligned with Public  
18 Counsel in looking at these operational tariff rates that  
19 we've called Phase 1 as merely an opportunity to get the  
20 plant up and serving the customers, No. 1; and secondly,  
21 so it's easier to sell, so there are no operational  
22 problems for a buyer to assume. That's the other part of  
23 this equation.

24 Staff's viewpoint would be that we've done  
25 this before with tariff situations, and if for some reason

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1 the company would not honor provisions of the supplemental  
2 agreement, Staff would file a complaint on that issue, and  
3 then the Commission could we believe modify the tariff if  
4 we establish our complaint grounds.

5 So we have a little bit different spin on  
6 it, not necessarily disagreement with Public Counsel, but  
7 we believe there are alternatives to handle this tariff  
8 issue if they don't comply.

9 JUDGE JONES: Okay. Well, Ms. Kresyman, I  
10 don't know what the Commission would want to do in light  
11 of the supplement. I'm fairly certain, though, they won't  
12 do it by the 12th. I believe that's Tuesday. Right. But  
13 I'll --

14 MS. KRESYMAN: As long as it's not  
15 continued for six months in which there would be no  
16 increase at all.

17 JUDGE JONES: The reason the tariff was  
18 suspended for an additional six months is simply because,  
19 well, that's the longest it can be suspended. It doesn't  
20 necessarily mean nothing will happen for six months. I  
21 just feel like it's easier to suspend it for as long as  
22 possible and then do what we can as fast as we can, but --  
23 do you understand what I'm saying?

24 MS. KRESYMAN: Yes.

25 JUDGE JONES: Okay.

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1 MR. SNODGRASS: Your Honor, Mr. Johansen  
2 has mentioned to me that from a practical standpoint,  
3 Staff believes a tariff effective date of May 1st would be  
4 workable from Staff's point of view in this case.

5 JUDGE JONES: Did you hear that,  
6 Ms. Kresyman?

7 MS. KRESYMAN: No, I can't.

8 JUDGE JONES: Mr. Snodgrass has indicated  
9 that a practical date for a tariff effective date would be  
10 May 1st.

11 MS. KRESYMAN: Well, that would be much  
12 better than six months from now.

13 JUDGE JONES: All right. Does anyone else  
14 have anything else they'd like to offer?

15 MS. O'NEILL: Not from Public Counsel, your  
16 Honor.

17 MR. SNODGRASS: Lastly from Staff, Judge,  
18 as you may know, today's my last day with the Commission,  
19 and I just want to put you on notice that there will be  
20 another counsel appearing on behalf of Staff later in this  
21 case.

22 JUDGE JONES: Okay. Thank you,  
23 Mr. Snodgrass.

24 Ms. Kresyman, do you have anything further?

25 MS. KRESYMAN: No, your Honor.

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1 JUDGE JONES: With that, then, we will  
2 conclude the hearing.

3 WHEREUPON, the recorded portion of the  
4 prehearing conference was concluded.

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