

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

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

**THE OFFICE OF THE PUBLIC COUNSEL’S OBJECTION AND  
MOTION TO DISMISS**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Objection and Motion to Dismiss states as follows:

1. On March 14, 2011, Timber Creek Sewer Company (Timber Creek) submitted a request<sup>1</sup> to the Missouri Public Service Commission (Commission) for an Accounting Authority Order (AAO). In its request, Timber Creek stated:

Now that by the Commission’s Order closing the record on March 15, 2011, if Timber Creek is required to make such mailing at its own expense and if such expense and the additional legal fees sought to be included in rate case expense are not included in the rate case expense for this case, as well as any subsequent costs incurred in this case by Timber Creek, such as the cost of reviewing the Report and Order and determining if a rehearing should be sought, filing and/or responding to Applications for Rehearing, if any, and getting the approved rates on file are not included in the rate case expense, then Timber Creek is requesting that an Accounting Authority Order be issued allowing Timber Creek to treat the expenses not included in the rate case expense under an Accounting Authority Order (AAO) and saved for potential recovery as rate case expenses in Timber Creek’s next rate case. Unless these expenses are saved, the result will be the same in future cases as in this case, i.e. reasonable and prudent expenses incurred after the record is closed will not be recovered in this case nor in the next rate case.

Timber Creek gives no specific accounting of the amount it is seeking to include in the AAO.

Timber Creek gives only vague descriptions of costs it may possibly incur in the future such as

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<sup>1</sup> The request was included in a filing entitled “Timber Creek Sewer Company’s Responses to Responses of Staff & OPC to Timber Creek’s Late Filed Exhibit” in Missouri Public Service Commission Case No. SR-2010-0320.

mailing of a customer notice and legal services including reviewing the Report & Order, determining if rehearing should be sought, filing and/or responding to Applications for Rehearing, and tariff filings.

2. In defining an AAO, the Court of Appeals for the Western District stated:

The Commission has the regulatory authority to grant a form of relief to the utility in the form of an accounting technique, an Accounting Authority Order, (hereinafter called an "AAO") which allows the utility to defer and capitalize certain expenses until the time it files its next rate case. The AAO technique protects the utility from earnings shortfalls and softens the blow which results from **extraordinary** construction programs. However, AAOs are not a guarantee of an ultimate recovery of a certain amount by the utility.<sup>2</sup> (emphasis added)

Therefore, the basic requirement for the Commission to consider granting an AAO is that the expenses must be "extraordinary."

3. In defining what expenses are properly considered to be extraordinary, the Western District also stated:

The Uniform System of Accounts defines "extraordinary items" as

those items related to the effects of events and transactions which have occurred during the current period and **which are not typical or customary business activities of the company . . . .** Accordingly, they will be events and transactions of significant effect **which would not be expected to recur frequently and which would not be considered as recurring factors** in any evaluation of the ordinary operating processes of business . . . . To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary.<sup>3</sup> (emphasis added)

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<sup>2</sup> *Missouri Gas Energy v. Public Service Commission*, 978 S.W.2d 434, 435 (Mo. App. W.D. 1998).

<sup>3</sup> *State ex rel. Public Counsel v. Public Service Commission*, 858 S.W.2d 806, 810 (Mo. App. W.D. 1993).

4. According to its Request, the only expenses Timber Creek is proposing to include in an AAO are those related to its last rate case.<sup>4</sup>
5. Rate case activities of mailing of a customer notice and legal services including reviewing a Report & Order, determining if rehearing should be sought, filing and/or responding to Applications for Rehearing, and tariff filings are typical and customary business activities of a regulated public utility.
6. It is expected that these types of rate case activities and costs will recur.
7. Therefore, the rate case expenses Timber Creek is proposing to include are not extraordinary expenses which would meet the basic requirements for the Commission to determine whether an AAO is necessary.
8. Accordingly, Public Counsel objects to Timber Creek's request for an Accounting Authority Order and makes a motion to dismiss Timber Creek's request on the grounds that the expenses are not "extraordinary" and thus do not meet the basic requirement for the Commission to consider granting an AAO.

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<sup>4</sup> See Commission Case No. SR-2010-0320.

**WHEREFORE,** Public Counsel respectfully submits its Objection and Motion to Dismiss.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Christina L. Baker**

By:\_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 11<sup>th</sup> day of April 2011:

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