

**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.	)	

**SUGGESTIONS OF TIMBER CREEK SEWER COMPANY IN OPPOSITION TO  
APPLICATION OF HUNT MIDWEST REAL ESTATE DEVELOPMENT, INC., TO  
INTERVENE, MOTION TO SUSPEND TARIFFS AND SCHEDULE EVIDENTIARY  
HEARING**

COMES NOW Timber Creek Sewer Company (Timber Creek) by its counsel, Jeremiah D. Finnegan, and for its Suggestions in Opposition to Application of Hunt Midwest Real Estate Development, Inc. (Hunt Midwest), To Intervene, Motion to Suspend Tariffs and Schedule Evidentiary Hearing, states as follows:

1. This is a proceeding for rate relief brought by Timber Creek pursuant to 4 CSR 240-3.330, the Sewer Utility Small Company Rate Increase Procedure. This is an informal proceeding, *sui generis* to small utilities, and is governed by its own rule of procedure which provides:

a. Under subsection (1)(A), the Company requests an increase by filing a letter asking for a rate change and unlike formal rate cases which are instituted by the filing of tariffs, a small company is specifically directed by the rule **not** to file any tariffs. The only notice required is a letter to the Company's customers: 1) advising of the request and the effect on a typical residential customer's bill; and 2) advising that comments may be sent to the PSC or Public Counsel within thirty (30) days.

The filing of the letter does not open a formal case with a docket number assigned to it. The Company does not file tariffs with supporting testimony and exhibits to start the case as it does in a formal rate case. The Company does not incur the expense of engaging expert witnesses or attorneys to present its case as in a formal rate case, but instead under the procedure relies upon the Commission Staff to investigate its operations and audit its books as provided by the rule. To assure expeditious treatment, the Staff's investigation is to commence immediately upon receipt of the request. Public Counsel is also authorized by the rule to conduct an investigation and audit at the same time as the Staff so as to forestall any delays there. The result of the small company rate case procedure is the reaching of an agreement between Company and Staff with or without the agreement of Public Counsel. There is no authorization anywhere in the rule for any other parties in the small company rate proceeding than Company, Staff and Public Counsel. The goal of the rule is to reach an agreement within one hundred fifty (150) days of the filing of the request. See subsection (1)(F).

b. Under subsection (1)(B), in order to keep on the 150 day track, the Staff is given only twenty-one (21) days after completing its investigation to arrange a conference with the Company and to give Public Counsel an opportunity to participate.

c. Under subsection (1)(C), at such conference, the three (3) parties to the proceeding, Company, Staff and Public Counsel, are directed to confer in an effort to reach an agreement concerning "additional revenue requirements and any other matters pertaining to the company's operations, including responses to customer concerns..." If the three (3) parties agree on revenue requirements and the tariffs to implement that

revenue requirement, the Company is permitted to file such tariff sheets with a thirty (30) day effective date and "no additional customer notice or local public hearing shall be required," unless the commission itself orders a public hearing.

d. Under subsection (1)(D), an alternative procedure is established in the event only the Staff and Company reach agreement, which is the case here. Under such circumstances, after reaching the agreement with Staff, the Company files its tariff sheets with a forty-five (45) day effective date and notifies the customers in writing of the proposed rates resulting from the agreement and advises them that responses may be sent to the PSC or Public Counsel within twenty (20) days. The Public Counsel is then directed to file a pleading indicating its agreement or disagreement with the tariff sheets within twenty-five (25) days of the tariff filing if it has not requested a public hearing. If Public Counsel requests a public hearing within twenty (20) days of the tariff filing, as has been done in this case, the procedure is then governed by subsection (1)(E).

e. Under subsection (1)(E), after the public hearing is held, the next procedural step provided is for Public Counsel to file a pleading indicating agreement or disagreement with the tariff sheets within seven (7) days. This has also been ordered by the Commission in its October 5th Order Setting Local Public Hearing for October 17, 2007 and requiring Public Counsel to file its pleading indicating its agreement or disagreement on October 24, 2007.

f. Under subsection (1)(F), an agreement must be reached and tariff sheets filed within one hundred fifty (15) days from the date the Company made its request unless

the time period is extended by the Company's consent. Consent has been given here and the agreement was filed..

g. Under subsection (1)(G), if no agreement can be reached between Staff and Company, Company may file a standard rate case.

2. This rule was clearly designed to allow small companies to avoid the necessity of incurring substantial legal fees and expert witness fees as would of necessity be incurred following the formal procedure of the file and suspend rule for large utilities. It is also clear from the numerous specific time constraints placed upon Staff and Public Counsel, that the intent of the rule was that small company rate requests be handled expeditiously, with an agreement to be reached within 150 days and tariffs to go into effect thirty (30) days thereafter, where unanimous agreement is reached, or forty-five (45) days thereafter if only Staff and Company agree. Thus, rates could be allowed to go into effect in as little as one hundred eighty (180) days to one hundred ninety five (195) days<sup>1</sup>, rather the three hundred thirty (330) days<sup>2</sup> the Commission is given in formal rate cases before it is required to act or the rates go into effect by operation of law. In recognition of the rule's intent to provide small companies with expedited relief, in an Order dated June 26, 2007, the Commission, while granting Public Counsel's motion to compel answers to late-filed data requests, advised Public Counsel of its displeasure with any delay with small utility companies seeking rate increases under its expedited

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<sup>1</sup> That is 150 days plus thirty days notice when all three parties agree or 150 days plus 45 days when only Company and Staff agree.

<sup>2</sup> Notice of 30 days plus suspension periods of 120 days plus 6 months under Section 393.150.

procedure, especially if that delay can be prevented by filing the requests within the time the Staff is conducting its investigation.<sup>3</sup>

3. Inasmuch as the Company's request was filed on March 22, 2007, the 150 days to reach an agreement expired on August 19th, however, Company agreed to an extension with Staff and upon reaching an agreement on September 13th, filed tariffs on September 14th with an effective date of November 1, 2007, which is 224 days after the case was commenced by the filing of its informal request. Thus, the Company has already suffered a delay of almost a month in which its agreed to rates could otherwise have become effective. Granting Hunt Midwest's request would only delay this time unnecessarily longer especially when there is no basis in the rule for doing so.

4. A review of the rule discloses no procedure for granting intervention or contemplation of any parties other than the Company, Staff and Public Counsel. Public Counsel represents the public, which includes Hunt Midwest. As a member of the public, Hunt Midwest was first notified by the Company of its request as required by subsection (1)(A) and on May 3, 2007, Hunt Midwest responded by letter addressed to the Staff Water and Sewer Department and Public Counsel in which it expressed its concerns about the justness and reasonableness of a proposed increase in Timber Creek's connection fee from \$1,600 to \$3,200. Thus, Hunt Midwest has taken advantage of its opportunity to be heard and followed the procedure customers were authorized to take by such subsection (1)(A). There is no authorization for intervention contained in the rule. This is reasonable, since there is no formal rate case activity taking place, but rather

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<sup>3</sup> *In the Matter of S.K. & M. Water and Sewer Company's Rate Increase Request*, Case Nos. WR-3007-0460 and SR-2007-0461 at p. 7.

contract negotiations between three (3) parties, with the Public Counsel representing the public, including Hunt Midwest, at the bargaining table.

5. Pursuant to subsection (1)(C), in the conference to reach an agreement between the Company, Staff and Public Counsel, the parties are specifically required to give consideration to "responses to customer concerns." It is obvious from the resulting agreement that the parties did give consideration to "responses to customer concerns" including those of Hunt Midwest, since the agreement reached under the small company rate procedure resulted, *inter alia*, in a \$2,650 connection fee being agreed to instead of the \$3,200 connection fee requested by Company.

6. While there is nothing in the small company rate increase procedure for intervention because Public Counsel represents the public in the negotiations to reach an agreement and there is no formal case in which to intervene in reaching such an agreement, neither Hunt Midwest or any other customer are denied an opportunity to be heard. In fact, it has already been heard and since Public Counsel has requested a Public Hearing, a request which has been granted and which has been set for October 17th, Hunt Midwest has the opportunity to raise its concerns, on the record and under oath directly with the Commission, should it decide to appear at such hearing and take the stand. Thus, it has not only already been heard, it has also been afforded an opportunity to participate in the public hearing, the only hearing contemplated by the rule.

7. Furthermore, since such hearing is to be held two weeks before the November 1st proposed effective date of the tariffs and the other procedural action authorized by the rule, Public Counsel's pleading indicating agreement or disagreement as required by subsection (1)(E), is due October 24th or a week before the effective date of the tariffs, there is no need to suspend the tariffs beyond the 48 days notice that was given when they were filed, which is already three

days more than the 45 day notice required by subsection (1)(D). It is important that the tariffs go into effective the first day of the month to avoid unnecessary billing problems and pro-ration of bills.

8. Inasmuch as Public Counsel's request for a Public Hearing has been granted by the Commission, Hunt Midwest has a forum for its grievances before the Commission and may exercise its right at such Public Hearing without delaying this case and increasing Timber Creek's rate case expenses unnecessarily, both of which actions would thereby thwart both the purposes for which the rule was designed, *i.e.*, bringing needed rate relief to a small company on an expedited basis and keeping the company's rate case expenses low, since such expenses are ultimately borne by the ratepayers. By setting stringent time limits upon Staff, Public Counsel and Company, the procedure clearly provides for an expedited consideration not provided by a standard rate case. By establishing a procedure under which a small company merely requests an increase and relies on Staff and Public Counsel to make its case for reasonable rates rather than having to incur the expense of engaging expert witnesses and legal services, the procedure's purpose of keeping rate case expenses low is also met by avoiding the customary expenses incurred in formal rate cases, expenses which are ultimately borne by the company's relatively small customer base.

9. As Chairman Davis noted in his Concurring Opinion in the formal rate case brought by a small water and sewer company rather than utilizing the small company procedure, *In the Matter of Algonquin Water Resources of Missouri*, Case No. WR-2006-0245:

For example, the Commission estimates Algonquin's rate case expense at roughly \$175,000.00. Assuming Algonquin has 1,000 customers and we pro-rate those costs out over seven years, then each customer is paying roughly \$25.00 per year for the next seven years just to cover Algonquin's rate case expense. Incurring

legal fees of this magnitude is not in the best interest of Missouri ratepayers and to allow this to occur on a widespread basis would not be good public policy.

10. Timber Creek agrees with Chairman Davis's sentiments. Keeping rate case expenses low and its belief that it would receive expeditious treatment in this case were two of the major reasons Timber Creek brought this case under the small company rate case procedure even though its last small company rate case, Case No. SR-2004-0532, was not decided until July 15, 2004, one year to the day after it filed its letter requesting an increase. On that date, the Commission approved rates to go into effect on or after July 31, 2004, which meant the case took over 380 days from request to rate implementation when a formal rate case only takes 330 days before the rates go into effect by operation of law.

Should Timber Creek be subjected to a similar delay in this case as a result of Hunt Midwest's request being granted and also incur additional substantial rate case legal fees and other expenses that it had hoped to avoid for its customers' sakes by filing the small company case in the first place, it may have no alternative in the future but to bring a formal rate case and get its relief in only 11 months instead of the 12 months and 15 days it took to get new rates in the last case and which it could take in this case should Hunt Midwest's motion be granted.

WHEREFORE, for the foregoing reasons, the Commission should deny Hunt Midwest's Application to Intervene, Motion to Suspend Tariffs and its request to Schedule Evidentiary Hearing. Under the rule, its relief lies with its participation in the Public Hearing.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.,

By: /s/ Jeremiah D. Finnegan

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ATTORNEYS FOR TIMBER CREEK  
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**CERTIFICATE OF SERVICE**

I hereby certify the copies of the foregoing have been emailed to Christina L. Baker (christina.baker@ded.mo.gov) and Keith Krueger (keith.krueger@psc.mo.gov) and Mark W. Comley (comley@ncrpc.com) this 11th day of October, 2007.

/s/ Jeremiah Finnegan