

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

In the Matter of the Application of Timber)
Creek Sewer Company for Permission,)
Approval, and a Certificate of)
Convenience and Necessity Authorizing it)
to Construct, Install, Own, Operate,)
Control, Manage and Maintain a Sewer)
System for the Public, Located in an)
Unincorporated Area in Clay County,)
Missouri.)

Case No. SA-2005-0297

RECOMMENDATION FOR APPROVAL OF APPLICATION

COMES NOW, the Staff of the Missouri Public Service Commission and, for its Recommendation for Approval of Application, states to the Commission as follows:

1. On March 9, 2005, Timber Creek Sewer Company filed an Application with the Commission, requesting that it be issued a certificate of convenience and necessity to provide sewer service to the public in an unincorporated area in Clay County known as the Oakbrook Subdivision.

2. The Staff filed a pleading in which it stated that it planned to file its recommendation in this case by May 31. The date for filing the recommendation was subsequently extended on three occasions, and on August 8, 2005, the Commission ordered the Staff to file its recommendation two weeks after the Department of Natural Resources publishes public notice regarding Timber Creek's required DNR permits. The DNR has not yet issued an operating permit for the Oakbrook system, but the DNR's public notice comment period ended October 16, there are no apparent obstacles to approval of the permit, and the issuance of the permit awaits only a final review by the DNR Staff. During this time period, an additional matter pertaining to

customer-owned pump units that are needed for sewer service had surfaced. The Staff believed that it was important to outline customer responsibility and company responsibility regarding this matter, but this additional work unexpectedly ended up taking more than the two-week period after October 16, and thus this memorandum is being filed somewhat later than was anticipated.

3. Section 393.170 (3), RSMo 2000, provides, among other things, that the Commission may issue a certificate if it is “necessary or convenient for the public service.” See also *In the Matter of Tartan Energy Company, et al.*, 3 Mo. PSC 3d 173, 177 (1994), wherein the Commission set forth five criteria that should be met before a certificate is issued.

4. The Staff believes that the Company has met the requirements set forth in Section 393.170 (3), as well as the criteria established by the Commission in the *Tartan Energy* case. As a result, the Staff believes the Commission should approve the Company’s Application.

5. The Staff’s specific recommendations to the Commission regarding approval of the Company’s Application are found on page 5 of the Staff’s Memorandum, which is included in the document that is attached hereto and identified as Appendix A.

WHEREFORE, the Staff submits this Recommendation for the Commission’s consideration and respectfully requests that the Commission issue an order consistent with the recommendations contained in the Staff Memorandum that is included in Appendix A.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ Keith R. Krueger

Keith R. Krueger
Deputy General Counsel
Missouri Bar No. 23857

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-4140 (Telephone)
(573) 751-9285 (Fax)
keith.krueger@psc.state.mo.us

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or e-mailed to all counsel of record on this 22nd day of November 2005.

/s/ Keith R. Krueger

APPENDIX A

Staff Memorandum & Attachments

Case No. SA-2005-0297

Table of Contents

Official Case File Memorandum

Memo Attachment A: Staffs November 4 Letter to Company

Memo Attachment B: TCS's November 7 E-Mail to Staff

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. SA-2005-0297 (Oakbrook subdivision)
Timber Creek Sewer Company

FROM: Dale Johansen – Project Coordinator
Graham Vesely– Auditing Department
Jolie Mathis – Engineering & Management Services Department
David Murray – Financial Analysis Department
Jim Merciel – Water & Sewer Department
Martin Hummel – Water & Sewer Department

/s/ Dale W. Johansen **11/21/05**
Project Coordinator Date

/s/ Keith R. Krueger **11/21/05**
General Counsel’s Office Date

SUBJECT: Staff’s Recommendation for Granting a Certificate of Convenience and Necessity

DATE: November 21, 2005

BACKGROUND

On March 9, 2005 (unless noted otherwise, all dates herein refer to the year 2005), Timber Creek Sewer Company (TCS or Company) filed an Application for a certificate of convenience and necessity (certificate) to provide sewer service to the Oakbrook subdivision in Clay County, Missouri.

On March 11, the Commission issued its *Order and Notice* regarding the Company’s Application. The *Order and Notice* directed the Commission’s Records Department and Information Office to send out their standard public notices regarding the Application and also established a deadline of March 31 for interested parties to submit requests to intervene in the case. No requests to intervene in the case were submitted to the Commission by March 31, nor have any such requests been submitted since.

TCS was incorporated in September 1994 and was granted a certificate to provide sewer service in its first service area in Case No. SA-95-110 on May 18, 1995. Additional areas have been added to TCS’s certificated service area in subsequent cases. Currently, the Company’s certificated service areas are all located in Platte County, near Platte City.

The proposed Oakbrook service area is platted for 75 lots, and there are no homes constructed at present. The sewage collection system will utilize a grinder pump at each house and pressure mains. The wastewater will be treated using an extended aeration treatment plant. This treatment technology is the same as TCS uses at its main plant near Platte City, which has consistently produced effluent that meets environmental requirements.

STAFF'S INVESTIGATION

As noted at the beginning of this Memorandum, Staff members from the Auditing, Engineering & Management Services, Financial Analysis, and Water & Sewer Departments participated in the Staff's review of the subject Application. All Staff participants, the participants' up-line supervisors, and the assigned Staff attorney were afforded the opportunity to review and comment on this Memorandum prior to it being filed. Martin Hummel of the Water & Sewer Department created the initial draft of this Memorandum and comments received from the reviewers were incorporated therein for creation of this final version of the Memorandum.

Items reviewed during the Staff's investigation of TCS's Application included the Company's overall plans for providing service to the area, the appropriateness of the proposed customer rates for the system, the applicability of the Company's existing depreciation rates to the system and the Company's technical, managerial and financial capacities.

Additionally, the Staff analyzed the Company's ability to meet the "Tartan Energy Criteria," as slightly modified by the Staff, which are the criteria historically used by the Commission in evaluating service area certificate applications. The Tartan Energy Criteria, with Criterion No. 1 modified by the Staff, are set out within this Memorandum below.

The Staff has also spoken by phone with both the Missouri Department of Natural Resources' (DNR's) Kansas City Regional Office, and the Clay County Planning and Zoning Office to verify that other government requirements are being met. Based on those conversations, the Staff notes there are no unresolved issues between TCS and these agencies.

STAFF'S FINDINGS AND CONCLUSIONS

The Company's current Commission-approved rate is \$26.97 per month per customer. As is proposed in the subject Application, the Staff believes that the Company's existing rate should also be used for the Oakbrook service area.

Regarding the Company's depreciation rates, the Staff believes that TCS should apply its existing Commission-approved depreciation rates to this new service area.

Subsequent to the Commission granting TCS a certificate for the subject service area, TCS will need to amend its existing tariff by filing both new and/or revised tariff sheets with the Commission for its approval. The current tariff was drafted for service only in Platte County. The new tariff sheets will need to include a map and a written description of the Oakbrook service area, show that the Company's existing customer rates apply to this new service area, add an additional rule addressing service utilizing grinder pumps and pressure sewers and make heading changes designating the rules that will apply to areas outside Platte County if the Commission approves the subject Application.

THE TARTAN ENERGY CRITERIA

Is there a need for the proposed services, and is there a need for the Company to provide the proposed services?

There is a general need for sewer service in order for residential development to occur in the proposed service area, the Company's proposal to provide service is a sound answer to that need, and there is no other sewer system or sewer utility available proximate to Oakbrook. The proposed sewage collection system consists of small diameter pressure collector pipe, which is well suited for service to the large platted lots, with grinder pump units located on each customer's premises. The Company will provide service, within reasonable limits, for the customer pump units. The proposed wastewater treatment facility is a type of facility that consistently produces effluent that meets environmental requirements at many other locations throughout Missouri.

Is the Company qualified to provide the proposed service?

Based on its investigation and its familiarity with TCS, the Staff believes that TCS has the technical, managerial and financial capacities necessary to provide the proposed service. The operations supervisor has several years experience operating the wastewater system near Platte City and this is his full-time professional occupation. The owner/manager also has extensive experience with sewer utility service, starting with a small system over ten years ago.

Does the Company have the financial ability to provide the proposed services?

TCS's arrangement with the developers of Oakbrook provides that the developer will construct and transfer the sewer system at no cost to TCS for its perpetual operation and maintenance. The operation, maintenance, and billing will be provided by the same personnel that provide those services in TCS's main service area near Platte City. Currently, TCS provides service to about 900 customers and is on sound financial footing.

Is the Company's proposal economically feasible?

The Staff's current pro forma estimates indicate the necessary monthly rate for the proposed service area is in the range of \$26 to \$28. As a result, the Staff believes the proposal to utilize the Company's existing monthly rate of \$26.97 as the initial rate for this system is reasonable and will not adversely affect the success of the development. While future adjustments of monthly rates will likely occur due to increased operating expenses and customer growth, as is normal for most sewer utilities, the Staff does not expect that those adjustments will be extraordinary, based on the information available at this time. Additionally, the treatment facilities that will be installed in the proposed service area have a long expected life and the capability to meet the environmental discharge limits that are presently in effect. It is thus anticipated that any significant capital expenditures will coincide with significant customer growth beyond that which is presently expected.

Does the Company's proposal promote the public interest?

TCS's proposed sewer service fulfills one of the requirements that make new home construction possible in this portion of unincorporated Clay County. As such, it is in the public interest. Additionally, the presumption in these types of cases is that if the other four criteria are met then this criterion is also met.

STAFF'S POSITIONS & CONDITIONS AND RESPONSES THERETO

On November 4, the Staff e-mailed a letter summarizing its positions on, and conditions for approval of, the subject Application (and a separate similar Application) to TCS and requested a response regarding the Company's agreement with the Staff's positions and conditions (see Attachment A). The Staff also sent a copy of that letter to the Office of the Public Counsel (OPC).

On November 7, TCS e-mailed a response to the Staff's November 4 letter, in which the Company stated its agreement with the Staff's positions and conditions (see Attachment B). As of the date of this Memorandum, the OPC has not responded to the Staff's letter.

ADDITIONAL INFORMATION

The Staff has reviewed TCS's compliance history regarding the submittal of its Commission annual reports and the payment of its Commission assessments. Based on that review, the Staff notes that TCS has historically been and is now current on the submission of its annual reports and the payment of its assessments. Commission records that the Staff reviewed with regard to these matters covered calendar years 1997 through 2004 for annual report submissions and fiscal years 2000 through 2006 for assessment payments.

The Staff notes that TCS currently has another certificate application pending before the Commission. That application is for another subdivision in Clay County known as Johnson Ridge. While the Johnson Ridge service area is not contiguous with the Oakbrook area, and is being developed by a different developer, the request before the Commission is practically identical. If approval of either of these two applications is not granted, such a result would have no direct impact upon the other application. However, if both applications are approved, it may be practical to utilize a single tariff filing that would comply with the orders in both cases.

Extensive tariff revisions will be necessary consisting of the following: a new rule on service via a pressure collection system, including details regarding the installation, operation, maintenance and replacement of the customers' service sewers, grinder pump stations and pumps, as may be applicable; a separate listing of the rates and charges by service area; inspections of customer grinder pumps; service charges related to grinder pump service calls not covered by provided inspections; a designation of rules that apply statewide; new service area descriptions and maps; and, new tariff sheet heading notations. The Staff believes that TCS could file a complete new tariff which includes all of the above needed changes, including those modifications needed to reflect the service area of the other aforementioned application, if approved.

The Staff has reviewed TCS's current operations and found that the Company's efforts in properly operating its facilities are diligent. The Company has a record of cooperation with the Staff and the DNR regarding its operations, and the DNR has not issued any notices of violations to TCS for any of its systems. Also, while the DNR has not yet issued an operating permit for the Oakbrook system, the Staff has contacted the appropriate DNR personnel about the status of that permit and, based on that contact, expects the permit to be issued soon. (The DNR's Public Notice comment period for that operating permit ended October 16, there are no apparent obstacles to approval of the permit, and it only awaits final review by the DNR Staff.)

STAFF'S RECOMMENDATIONS

Based upon the above, the Staff recommends that the Commission issue an order that:

- 1) Grants TCS a certificate for the provision of sewer service to the Oakbrook subdivision as requested in its Application;
- 2) Approves the Company's existing monthly customer rate of \$26.97, and the application of the general service charges and depreciation rates to the Oakbrook service area;
- 3) Notes that TCS's existing contribution-in-aid-of construction (CIAC) charge for the Company's Platte County service area does not apply to the proposed service area, and that the Company will need to establish a new CIAC charge prior to expanding its service in the vicinity of the proposed service area;
- 4) Directs TCS to submit new and revised tariff sheets for its existing tariff or a complete new tariff, including provisions consistent with the discussion of this matter on page 4 of this Memorandum, within 60 days after the date the Commission issues its order granting the certificate, with the tariff sheets to bear an effective date that is at least 30 days from the date the tariff sheets are submitted to the Commission;
- 5) Directs TCS to submit copies of the required DNR construction and operating permits for the Oakbrook system to the case file for this case within fifteen (15) days after the DNR issues those permits;
- 6) Directs TCS to submit proof to the case file for this case that it has obtained clear title to the collection and treatment facilities and the land upon which the treatment facilities are located, and that easements providing for the necessary access for the operation and maintenance of the collection system have been provided;
- 7) Directs TCS to submit annual reports to the Commission's Water & Sewer Department regarding the number of customers connected to the Oakbrook system, with the first report to be submitted twelve (12) months after it starts providing service in the Oakbrook subdivision;
- 8) Directs TCS to maintain its books and records in a manner sufficient to allow for area-specific cost-of-service analyses to be performed for the proposed service area and the existing service area so that area-specific rates can be developed if needed in the future;
- 9) States that TCS cannot provide service to the proposed service area until the Company has obtained Commission approval of the required tariff revisions (or a new tariff) and the required DNR construction and operating permits for the Oakbrook system; and
- 10) Makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the requested certificate, including future expenditures by TCS, in any later proceeding.

MO PSC Case No. SA-2005-0297
Official Case File Memorandum
November 21, 2005– Page 6 of 6 Pages

In addition to the above, the Staff notes this case should remain open for receipt of the tariff filing discussed in item 4 above, the receipt of the filings discussed in items 5 and 6 above, the receipt of the Staff recommendation regarding the tariff filing and the issuance of the Commission's order regarding approval of the tariff filing.

List of Attachments

Attachment A – Staff's November 4 Letter to TCS
Attachment B – TCS's November 7 E-Mail to Staff



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

STEVE GAW

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.pse.mo.gov>

WESS A. HENDERSON
Executive Director

ROBERT SCHALLENBERG
Director, Utility Services

WARREN WOOD
Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

November 4, 2005

(sent via e-mail)

Willis C. Sherry, President
Timber Creek Sewer Company
18305 Cable Bridge Road
P.O. Box 511
Platte City, MO 64079

RE: Applications for Sewer Service Certificates of Convenience and Necessity
MO PSC Case Nos. SA-2005-0297 and SA-2005-0467

Dear Mr. Sherry:

The purpose of this letter is to present you with a summary of the Staffs positions and conditions regarding approval of the above-referenced Applications filed by Timber Creek Sewer Company (TCS) for certificates of convenience and necessity for the provision of sewer service to the Oakbrook and Johnson Ridge subdivisions in Clay County.

Summary of Staffs Positions and Conditions

(1) The Staff agrees with the use of TCS's current flat rate of \$26.97 per month as the initial rate for the proposed new service areas. However, on a going-forward basis TCS's rate rates will need to be based on area-specific cost-of-service analyses. In that regard, the Staff believes it is appropriate for the area-specific cost-of-service to be reviewed in the context of TCS's next rate case or when the systems have 30 customers connected, whichever occurs first. In the event the customer connection threshold is met first, the rate review to be conducted would need to include TCS's entire operations, not just the two new service areas.

(2) Since the construction of the treatment plants for the proposed new service areas is to be funded fully by developer contributions, the current contribution-in-aid-of-construction (CIAC) charge for the existing sewer system south of Platte City is not applicable to the proposed new service areas in Clay County. As a result, at such time that TCS proposes to expand its service in the vicinity of these new service areas to include customers outside of the subject subdivisions, TCS will need to establish CIAC charges for such expansions.

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Attachment A

- (3) At such time as individual customer water usage data is readily available, sewer rates based on wintertime water usage data should be instituted.
- (4) In conjunction with the Commission's approval of the subject Applications, extensive tariff revisions will be necessary to include the agreements within this letter, with those revisions consisting of the following: a new rule on service via a pressure collection system, including details regarding the installation, operation, maintenance and replacement of the customers' service sewers, grinder pump stations and pumps, as may be applicable; a separate listing of the rates and charges by service area; inspections of customer grinder pumps; service charges related to grinder pump service calls not covered by provided inspections; a designation of rules that apply statewide; and new service area descriptions and maps. These tariff revisions must be approved before TCS can begin providing service to the proposed new service areas.
- (5) TCS will maintain its books and records in a manner sufficient to allow for area-specific cost-of-service analyses to be performed for the new service areas and the existing service areas, so that area-specific rates can be developed if needed in the future.
- (6) TCS will maintain its books and records in accordance with the Uniform System of Accounts and other applicable Commission rules.
- (7) TCS's currently approved schedule of depreciation rates will apply to the new service areas.
- (8) Grinder pump stations will be used, with one to be installed for each customer.
- (9) The customers will install and provide electrical power to the grinder pump stations. The customer may also be required to pay for extra service calls when more than two service calls per year are necessary due to the customer's disposal of items incompatible with the grinder pump.
- (10) Before TCS can begin providing service to the proposed new service areas it will need to file a copy of the DNR construction permit and the DNR operating permit for each of the subdivision's collection and treatment facilities in the subject cases.
- (11) TCS will ensure that clear titles to the collection and treatment facilities, and the land upon which the treatment facilities are located, are conveyed to it. Likewise, TCS will ensure that easements providing the necessary access for the operation and maintenance of the collection systems are recorded in its name.

- (12) TCS will provide a written application for prospective customers to use to request sewer service, with the application specifying when a grinder pump station is necessary and that the cost of the initial installation of the grinder pump station and pump, and the service sewer, is the customer's or builder's responsibility, and including information regarding a current estimate for the cost to establish service to a specific lot.
- (13) TCS will establish specifications for the construction of the customers' service sewers and grinder pump stations and procedures for connection of the service sewers to its collecting sewers, including the location of the point of connection of the service sewers to the collecting sewers, and will provide such specifications and procedures to the subdivision developers, known builders and service applicants.
- (14) TCS will take the actions necessary regarding the construction of the collection and treatment facilities to ensure compliance with Commission rule 4 CSR 240-60.020(6), and will maintain records of all such actions taken.
- (15) TCS will conduct an inspection of the customers' service sewers from the building to the company's collecting sewers, and the customers' grinder pump station installation, to ensure that these facilities are constructed in accordance with its specifications, and will maintain records of all such inspections.
- (16) TCS will conduct an annual inspection of each grinder pump station and will conduct one additional customer-requested inspection at no charge during any twelve-month period, and will maintain records of all such inspections.
- (17) TCS will provide information for the customers' use in obtaining assistance on a 24/7 basis when a pump failure occurs.
- (18) TCS will perform the replacement of the repairable parts on the grinder pump units, including maintaining the necessary inventory of such repairable parts and an inventory of at least one replacement pump for each 50 pumps, or fraction thereof, in service.
- (19) TCS will ensure there is timely real estate disclosure to potential lot buyers that sewer service to lots served by pressure sewers requires the installation of a grinder pump station at the customer's cost.
- (20) TCS will ensure that collecting sewers, whether gravity or pressure sewers, are available to each platted lot in the subject subdivisions, with such collecting sewers to be installed at the developers' cost.

Timber Creek Sewer Company
RE: Case Nos. SA-2005-0297 & SA-2005-0467
November 4, 2005 - Page 4 of 4 Pages

If you agree with the Staffs positions and conditions set forth in this letter, please acknowledge that via either a letter or an e-mail message. Once the Staff receives such correspondence, it will move forward with filing its recommendations for approval of the subject Applications with the Commission. If you have questions or comments please feel free to contact me.

Sincerely,

/s/DaleW.Johansen

Dale W. Johansen - Manager
Water & Sewer Department

Copies: Jerry Finnegan - Company Attorney
Mark Wheatley-Office of the Public Counsel
Ted Robertson-Office of the Public Counsel
Keith Krueger - PSC Staff
Graham Vesely - PSC Staff
Jim Merciel - PSC Staff
Martin Hummel - PSC Staff

From: Jeremiah D. Finnegan [jinnegan@fcplaw.com]

Sent: Monday, November 07, 2005 12:52 PM

To: dale.johansen@psc.mo.gov; tcscoco@yahoo.com

Cc: mark.wheatley@ded.mo.gov; ted.robertson@ded.mo.gov;
keith.krueger@psc.mo.gov; graham.vesely@psc.mo.gov; james.merciel@psc.mo.gov;
martin.hummel@psc.mo.gov

Subject: Re: Certificate Application Cases - SA-2005-0297 & SA-2005-0467

This is to advise that Willis Sherry and I have reviewed Mr. Johansen's letter of November 4th in which he sets forth the Staffs positions and conditions regarding approval of the Applications in Case Nos. SA-2005-0297 and SA-2005-0467. After discussing same, we have come to the conclusion that Timber Creek could accept such positions and conditions.

We, therefore, agree to such positions and conditions and respectfully request that the Staff move forward and file its recommendations for approval of the Applications as soon as possible. Thank you for your efforts to keep this procedure moving forward.