

**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.	)	

**MOTION OF TIMBER CREEK SEWER COMPANY FOR  
REHEARING OR RECONSIDERATION AND  
MOTION FOR EXPEDITED CONSIDERATION**

COMES NOW Timber Creek Sewer Company (Timber Creek) by its counsel, Jeremiah D. Finnegan, and for its Motion for Rehearing or Reconsideration of the Commission's Order Approving Small Company Rate Increase on an Interim Basis, Subject to Refund, and Approving Tariff pursuant to Section 386.300, RSMo. and 4 CSR 240-2.160, and for its Motion for Expedited Consideration pursuant to 4 CSR 240-2.080, states as follows:

1. On October 30, 2007, the Commission issued its Order Approving Small Company Rate Increase on an Interim Basis, Subject to Refund, and Approving Tariff ("the Order"). In the Order, the Commission approved **all** of Timber Creek's revised rates filed on October 19, 2007, on an interim basis, subject to refund rather than only approving the connection fee on an interim basis, subject to refund, even though the Commission recognized on page 4 of the Order that with "the exception of the connection fee, no party has objected to the residential rates or the revenue requirement as set out in the October 19, 2007 tariff revision" and that "the amount of the connection fee does not affect the revenue requirement or rate design."

2. Timber Creek is most appreciative that the Commission recognized the fact that waiting an additional period for such revenues until a decision on the connection fee issue "could be detrimental to the company's operations" and ordered the rates go into effect on November 9th, even if on an interim basis, subject to refund and not on a permanent basis. Consequently, Timber Creek will be able to start collecting the revenues necessary to meet its revenue requirement before the hearing on the connection fee issue is completed.

3. Timber Creek, however, is concerned with the uncertain financial position it is placed in, when its entire rate increase has been placed into effect on an interim basis, subject to refund at a later date. This is a concern that it would not have if just the connection fee, the only rate in issue, were allowed to go into effect on an interim basis, subject to refund since such rate has no impact on its revenue requirement.

4. Furthermore, approving all of Timber Creek's rates on an interim basis is an unnecessary and unreasonable measure when only one rate sought to be increased, the connection fee, is at issue, that it is a fee that does not affect the revenue requirement or rate design, and especially when no party has objected to the other rates or revenue requirement, neither of which are affected by the connection fee.

5. That the connection fee is the only issue remaining in this case was confirmed at the prehearing conference held on October 31, 2007, at which time the parties agreed to a proposed procedural schedule revolving around the connection fee issue culminating in a hearing on the issue which the parties have proposed for February 28, 2008. On February 5, 2007, the Staff on behalf of all the parties filed the Parties' Joint Statement of Issue and Proposed Procedural Schedule in which it is stated:

**Statement of Issue.** The parties unanimously agreed that there is only one remaining issue in this case, to wit:

**ISSUE:** Is the sewer service connection fee of \$2,650 per connection, which Timber Creek proposed in the tariff that it filed on October 19, 2007, lawful and reasonable.

On November 7, 2007, the Commission issued its Order Adopting Procedural Schedule in which it noted that the parties agree that the only remaining issue in this case is the connection fee.

6. In addition to the fact that there is no reason for, nor anything to be gained by anyone by, keeping all the rates in effect on an interim basis, when only the connection fee is at issue, Timber Creek also believes that there is a question of law as to whether the Commission has the authority to approve tariffs on an interim basis, subject to refund if the utility does not give its consent. In over forty years of practice before the Commission, counsel is not aware of any cases that have placed rates into effect on an interim basis, subject to refund where the utility has not agreed.

7. Nevertheless, if the Commission were to reconsider its Order approving all rates on an interim basis, subject to refund and instead issue an order approving only the connection fee on an interim basis, subject to refund, and allowing all the other rates and tariffs to become permanent, this question need not be determined at this time. since Timber Creek has already agreed to the Commission approving the connection fee on an interim basis, subject to refund. In the Suggestions of Timber Creek Sewer Company to Deny Hunt Midwest's Motion to Suspend Tariffs and Alternate Proposal Regarding Interim Connection Fee, filed on October 29, 2007, in Paragraphs 15 through 17, Timber Creek consented to the connection fee, and only the connection fee, being approved on an interim basis, subject to refund. At this time, Timber Creek reaffirms such consent with respect to the connection fee.

8. Furthermore, since Timber Creek's billing system did not have the capability to provide pro-rated billing for the residential rates and Timber Creek does not have the desire to field the numerous questions and complaints it anticipates it would receive were it to attempt to manually issue pro-rated bills, it is instead waiting to implement the new approved residential rates for the billing period commencing December 1, 2007, without the need for pro-ration.

9. Consequently, what Timber Creek is requesting here is that the Commission reconsider the Order of October 30th and issue a new Order approving all rates and tariffs, except the connection fee, on a permanent basis effective on and after December 1, 2007, with the connection fee continuing to be approved on an interim basis, subject to refund.

10. The parties were provided a copy of this proposed motion by counsel and were asked to indicate one way or the other if they would agree not to oppose it. By electronic mail on November 7th, Staff advised counsel that Staff does not oppose this request and Public Counsel advised that Public Counsel doesn't have an opposition to the request. By electronic mail on November 8, 2007, Hunt Midwest advised that counsel that while Hunt Midwest does not necessarily agree with the legal analysis in the motion, it does not oppose the relief sought in the motion. A copy of such electronic responses are attached as Exhibit 1.

11. In support of its motion for expedited consideration, Timber Creek states: a) that it is seeking a ruling by the Commission, which if it grants Timber Creek's request, would be issued in sufficient time for Timber Creek to place all the rates, except the connection fee, in effect on a permanent basis on December 1, 2007; b) that Timber Creek will avoid the harm of having all its rates in effect subject to refund when only one rate, the connection fee, is in issue and there will be no negative effect on Timber Creek's customers, if the Commission acts by the desired

date, since such rates would have already been in effect, albeit on an interim basis on such date, and Public Counsel is not opposed to the relief; and c) that the pleading was filed as soon after counsel had heard from all the other parties as to their non-opposition to the relief sought and prior to the effective date of the order sought to be reconsidered or reheard.

**WHEREFORE**, Timber Creek respectfully requests that the Commission grant its motion to reconsider or rehear its Order approving all the proposed rates and tariffs on an interim basis, subject to refund, effective November 9, 2007, and, on an expedited basis, issue a new order approving all rates and tariffs, except the connection fee, on a permanent basis effective on and after December 1, 2007 and continuing its approval of the connection fee on an interim basis, subject to refund as agreed to by Timber Creek in its October 29, 2007 Suggestions and consented to again hereinabove.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.,

By: /s/ Jeremiah D. Finnegan

JEREMIAH D. FINNEGAN MO#18416  
1209 Penntower Office Center  
3100 Broadway  
Kansas City, MO 64111  
(816) 753-1122  
(816) 756-0373 FAX  
jfinnegan@fcplaw.com

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 8th day of November, 2007.

/s/ Jeremiah Finnegan