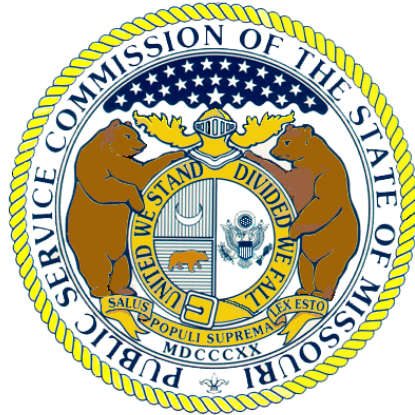


BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Small Company Rate Increase,)
Of Timber Creek Sewer Company)

File No. SR-2010-0320

REPORT AND ORDER

Issue Date: March 30, 2011

Effective Date: April 9, 2011

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Small Company Rate Increase,)
Of Timber Creek Sewer Company) File No. SR-2010-0320

REPORT AND ORDER

TABLE OF CONTENTS

APPEARANCES.....	3
I. PROCEDURAL HISTORY	4
II. RATE MAKING STANDARDS AND PRACTICES	5
III. FINDINGS OF FACT.....	8
A. THE PARTIES	8
B. WITNESSES.....	9
C. STIPULATED FACTS AND ADMISSIONS.....	9
D. EMPLOYEE COMPENSATION	18
E. RATE CASE EXPENSE.....	26
F. ALTERNATIVE ENERGY EXPLORATION EXPENSE RECOVERY	27
G. PSC ASSESSMENT.....	28
H. CONTINGENCY / EMERGENCY REPAIR FUND.....	29
I. SERVICE QUALITY	31
IV. CONCLUSIONS OF LAW.....	31
A. JURISDICTION, BURDEN OF PROOF, PRESUMPTION OF PRUDENCE AND THE PUBLIC INTEREST	31
B. RATE BASE, CAPITAL STRUCTURE AND WEIGHTED COST OF CAPITOL	34
C. RATE DESIGN, DEPRECIATION RATES, VARIOUS ACCOUNTING MEASURES & CONDITIONS	35
D. EMPLOYEE COMPENSATION	35
E. RATE CASE EXPENSE.....	36
F. ALTERNATIVE ENERGY EXPLORATION EXPENSE RECOVERY	38
G. PSC ASSESSMENT.....	39
H. CONTINGENCY / EMERGENCY REPAIR FUND.....	41
IV. FINAL DECISION.....	42

APPEARANCES

APPEARING FOR TIMBER CREEK SEWER COMPANY:

Jeremiah D. Finnegan, Finnegan, Conrad & Peterson, L.C., 1209 Penntower Office Center, 3100 Broadway, Kansas City, Missouri 64111.

APPEARING FOR THE OFFICE OF THE PUBLIC COUNSEL AND THE PUBLIC:

Christina Baker, Assistant Public Counsel, Governor Office Building, 200 Madison Street, Suite 650, Post Office Box 2230, Jefferson City, Missouri 65102.

APPEARING FOR THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

Jamie Ott, Legal Counsel, and **Rachel Lewis**, Deputy Counsel, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

REGULATORY LAW JUDGE: Harold Stearley, Senior Regulatory Law Judge

REPORT AND ORDER

I. Procedural History

On May 10, 2010, Timber Creek Sewer Company (“Timber Creek”) filed a request to increase its rates for sewer service pursuant to the small company rate case procedure in 4 CSR 240-3.050. Timber Creek sought an increase of \$63,500 in its annual sewer system operating revenues, representing an increase in rates of approximately 9%. On October 7, 2010, the deadline for Timber Creek and the Commission’s Staff to file a disposition agreement, Staff filed a request to open a contested case, which the Commission granted.

On December 29, 2010, the parties jointly filed a list of issues they believed required decisions from the Commission. Their list included: (1) Timber Creek Staff Compensation / Timesheets / Overtime; (2) Rate Case Expense; (3) Alternative Energy Gas Well Cost Recovery; (4) PSC Assessment; and (5) Contingency / Emergency Repair Fund. The Commission did not adopt the parties’ list of issues, or limit the scope of the issues in this matter. To address these, and any other, issues the Commission held a local public hearing on November 17, 2010¹ and an evidentiary hearing on January 5, 2010.²

¹ Transcript, Volume 2. The hearing was held at the Wilson Theater in the Platte City High School. At the conclusion of the local public hearing, the Commission had received the sworn testimony of one customer. No exhibits were offered or admitted into the record. All of the parties were given the opportunity to cross-examine the witness

² Transcript, Volume 3. In total, the Commission admitted the testimony of 8 witnesses and received 30 exhibits into evidence. Post-hearing briefs and proposed findings of fact and conclusions of law were filed on February 4, 2011. The case was deemed submitted for the Commission’s decision on March 15, 2011 when the Commission closed the record. “The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument.” Commission Rule 4 CSR 240-2.150(1).

II. Rate Making Standards and Practices

The Commission has exclusive jurisdiction to establish public utility rates,³ and the rates it sets have the force and effect of law.⁴ A public utility has no right to fix its own rates and cannot charge or collect rates that have not been approved by the Commission;⁵ neither can a public utility change its rates without first seeking authority from the Commission.⁶ A public utility may submit rate schedules or “tariffs,” and thereby suggest to the Commission rates and classifications which it believes are just and reasonable, but the final decision is the Commission’s,⁷ subject to judicial review on the question of reasonableness.⁸

A “just and reasonable” rate is one that is fair to both the utility and its customers;⁹ it is no more than is sufficient to “keep public utility plants in proper repair for effective public service, [and]. . . to insure to the investors a reasonable return upon funds invested.”¹⁰ The Commission’s guiding purpose in setting rates is to protect the consumer against the natural monopoly of the public utility, generally the sole provider of a public necessity.¹¹ However, the Commission must also afford the utility an opportunity to recover a

³ *May Dep’t Stores*, 107 S.W.2d at 57.

⁴ *Utility Consumers Council*, 585 S.W.2d at 49.

⁵ *Id.*

⁶ *Deaconess Manor Ass’n v. Pub. Serv. Comm’n*, 994 S.W.2d 602, 610 (Mo. App. 1999).

⁷ *May Dep’t Stores*, 107 S.W.2d at 50.

⁸ *St. ex rel. City of Harrisonville v. Pub. Serv. Comm’n of Missouri*, 291 Mo. 432, 236 S.W. 852 (1922); *City of Fulton v. Pub. Serv. Comm’n*, 275 Mo. 67, 204 S.W. 386 (1918), *error dis’d*, 251 U.S. 546, 40 S.Ct. 342, 64 L.Ed. 408; *City of St. Louis v. Pub. Serv. Comm’n of Missouri*, 276 Mo. 509, 207 S.W. 799 (1919); *Kansas City v. Pub. Serv. Comm’n of Missouri*, 276 Mo. 539, 210 S.W. 381 (1919), *error dis’d*, 250 U.S. 652, 40 S.Ct. 54, 63 L.Ed. 1190; *Lightfoot v. City of Springfield*, 361 Mo. 659, 236 S.W.2d 348 (1951).

⁹ *St. ex rel. Valley Sewage Co. v. Pub. Serv. Comm’n*, 515 S.W.2d 845 (Mo. App., K.C.D. 1974).

¹⁰ *St. ex rel. Washington University et al. v. Pub. Serv. Comm’n*, 308 Mo. 328, 344-45, 272 S.W. 971, 973 (Mo. banc 1925).

¹¹ *May Dep’t Stores Co. v. Union Elec. Light & Power Co.*, 341 Mo. 299, 107 S.W.2d 41, 48 (1937).

reasonable return on the assets it has devoted to the public service.¹² “There can be no argument but that the Company and its stockholders have a constitutional right to a fair and reasonable return upon their investment.”¹³

Ratemaking involves two successive processes:¹⁴ first, the determination of the “revenue requirement,” that is, the amount of revenue the utility must receive to pay the costs of producing the utility service while yielding a reasonable rate of return to the investors.¹⁵ The second process is rate design, that is, the construction of tariffs that will collect the necessary revenue requirement from the ratepayers.

Revenue requirement is usually established based upon a historical test year which focuses on four factors: (1) the rate of return the utility has an opportunity to earn; (2) the rate base upon which a return may be earned; (3) the depreciation costs of plant and equipment; and (4) allowable operating expenses.¹⁶ The return on the rate base is calculated by applying a rate of return, that is, the weighted cost of capital, to the original cost of the assets dedicated to public service less accumulated depreciation.¹⁷ For any

¹² *St. ex rel. Utility Consumers Council, Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 49 (Mo. banc 1979).

¹³ *St. ex rel. Missouri Public Service Co. v. Fraas*, 627 S.W.2d 882, 886 (Mo. App., W.D. 1981).

¹⁴ It is worth noting here that Missouri recognizes two distinct ratemaking methods: the “file-and-suspend” method and the complaint method. The former is initiated when a utility files a tariff implementing a general rate increase and the second by the filing of a complaint alleging that the subject utility’s rates are not just and reasonable. See *Utility Consumers Council*, 585 S.W.2d at 48-49; *St. ex rel. Jackson County v. Pub. Serv. Comm'n*, 532 S.W.2d 20, 28-29 (Mo. banc 1975).

¹⁵ *St. ex rel. Capital City Water Co. v. Missouri Pub. Serv. Comm'n*, 850 S.W.2d 903, 916 n. 1 (Mo. App. 1993).

¹⁶ *Id.*, citing Colton, “Excess Capacity: Who Gets the Charge From the Power Plant?,” 34 Hastings L.J. 1133, 1134 & 1149-50 (1983).

¹⁷ *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d 63, 75 - 76 (Mo. App. S.D. 2009); *St. ex rel. Union Elec. Co. v. Pub. Serv. Comm'n*, 765 S.W.2d 618, 622 (Mo. App. 1988). The Public Service Commission Act vests the Commission with the necessary authority to perform these functions. Section 393.140(4) authorizes the Commission to prescribe uniform methods of accounting for utilities and Section 393.140(8) authorizes the Commission to examine a utility’s books and records and, after hearing, to determine the accounting treatment of any particular transaction. In this way, the Commission can determine the utility’s prudent operating costs. Section 393.230 authorizes the Commission to value the property of any water and sewer corporation operating in Missouri, that is, to determine the rate base.

utility, its fair rate of return is simply its composite cost of capital. The composite cost of capital is the sum of the weighted cost of each component of the utility's capital structure. The weighted cost of each capital component is calculated by multiplying its cost by a percentage expressing its proportion in the capital structure. Where possible, the cost used is the "embedded" or historical cost; however, in the case of common equity, the cost used is its estimated cost.¹⁸

In the final analysis, it is not the method employed, but the result reached, that is important.¹⁹ The Constitution "does not bind ratemaking bodies to the service of any single formula or combination of formulas."²⁰

Section 393.240 authorizes the Commission to set depreciation rates and to adjust a utility's depreciation reserve from time-to-time as may be necessary.

¹⁸ Estimating the cost of common equity capital is a difficult task, as academic commentators have recognized. See Phillips, *The Regulation of Public Utilities*, Public Utilities Reports, Inc., p. 394 (1993). The United States Supreme Court, in two frequently-cited decisions, has established the constitutional parameters that must guide the Commission in its task. *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1943); *Bluefield Water Works & Improv. Co. v. Pub. Serv. Comm'n of West Virginia*, 262 U.S. 679, 43 S.Ct. 675, 67 L.Ed. 1176 (1923).

In the earlier of these cases, *Bluefield Water Works*, the Court stated that:

Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment. *Bluefield*, *supra*, 262 U.S. at 690, 43 S.Ct. at 678, 67 L.Ed. at 1181.

In the same case, the Court provided the following guidance as to the return due to equity owners:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. *Id.*, 262 U.S. at 692-93, 43 S.Ct. at 679, 67 L.Ed. at 1182-1183.

¹⁹ Within a wide range of discretion the Commission may select the methodology. *Missouri Gas Energy v. Public Service Comm'n*, 978 S.W.2d 434 (Mo. App., W.D. 1998), *rehearing and/or transfer denied*; *State ex rel. Associated Natural Gas Co. v. Public Service Commission*, 706 S.W.2d 870, 880, 882 (Mo. App., W.D. 1985); *State ex rel. Missouri Public Service Co. v. Fraas*, 627 S.W.2d 882, 888 (Mo. App., W.D. 1981). It may select a combination of methodologies. *State ex rel. City of Lake Lotawana v. Public Service Comm'n of State*, 732 S.W.2d 191, 194 (Mo. App., W.D. 1987).

III. Findings of Fact

A. The Parties

1. Timber Creek Sewer Company (“Timber Creek”) is a corporation in good standing organized under the laws of the State of Missouri. Its principal place of business is located at 18305 Cable Bridge Road, Platte City, MO 64079. Timber Creek possesses a certificate of convenience and necessity (“CCN”) to provide sewer service that was issued in File No. SA-95-110. That CCN went into effect on June 1, 1995. Timber Creek provides sewer service to approximately 1,525 single-family residential customers, primarily located in Platte and Clay counties. The Company also provides sewer service to one wholesale account in Platte City. The wholesale account includes a subdivision of 78 multi-family dwellings (comprising 366 units) and two strip malls containing the YMCA, a community center, a public library, a medical clinic, a bank, a daycare, a hardware store, and two restaurants.²¹

2. The Office of the Public Counsel (“Public Counsel”) “may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.”²² Public Counsel “shall have discretion to represent or refrain from representing the public in any proceeding.”²³

3. The Staff of the Missouri Public Service Commission (“Staff”) is a party in all Commission investigations, contested cases and other proceedings, unless it files a notice

²⁰ *Fed. Power Comm'n v. Nat. Gas Pipeline Co.*, 315 U.S. 575, 586, 62 S.Ct. 736, 743, 86 L.Ed. 1037, 1049-50 (1942).

²¹ Exh. 1 - *Unanimous Partial Agreement*, Exh. 2 - *Unanimous Stipulation of Undisputed Facts*; EFIS Docket Entry No. 11, *Stipulation of Timber Creek Sewer Company to Factual Assertions in Attachments to Unanimous Partial Agreement*, filed on October 18, 2010; EFIS Docket Entry No. 12, *The Office of the Public Counsel's Stipulation*, filed on October 20, 2010. EFIS is the Commission's Electronic Information and Filing System.

²² Section 386.710(2), RSMo 2000; Commission Rules 4 CSR 240-2.010(16) and 2.040(2).

²³ Section 386.710(3), RSMo 2000; Commission Rules 4 CSR 240-2.010(16) and 2.040(2).

of its intention not to participate in the proceeding within the intervention deadline set by the Commission.²⁴

B. Witnesses

4. The Commission finds that any given witness's qualifications and overall credibility are not dispositive as to each and every portion of that witness's testimony. The Commission gives each item or portion of a witness's testimony individual weight based upon the detail, depth, knowledge, expertise and credibility demonstrated with regard to that specific testimony. Consequently, the Commission will make specific weight and credibility decisions throughout this order as to specific items of testimony as is necessary.²⁵

5. Any finding of fact reflecting the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.²⁶

C. Stipulated Facts and Admissions

6. On October 7, 2010, Timber Creek, Staff and the Public Counsel filed a "Unanimous Partial Agreement Regarding Disposition of Small Sewer Company Revenue Increase" ("Partial Agreement").²⁷

²⁴ Commission Rules 4 CSR 240-2.010(11) and 2.040(1).

²⁵ Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony. *State ex rel. Public Counsel v. Missouri Public Service Comm'n*, 289 S.W.3d 240, 247 (Mo. App. 2009).

²⁶ An Administrative Agency, as factfinder, also receives deference when choosing between conflicting evidence. *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009)

²⁷ Exh. 1 - *Unanimous Partial Agreement*; EFIS Docket Entry No. 11, *Stipulation of Timber Creek Sewer Company to Factual Assertions in Attachments to Unanimous Partial Agreement*, filed on October 18, 2010; EFIS Docket Entry No. 12, *The Office of the Public Counsel's Stipulation*, filed on October 20, 2010.

7. The Partial Agreement addresses rate design methodology, a schedule of depreciation rates, test year and true-up period, and various accounting measures.²⁸

8. Two attachments were incorporated into the Partial Agreement by reference; the first being a schedule of depreciation rates and the second being the Staff's Engineering and Management Services Department's ("EMSD") "Report of Customer Service and Business Operations Review."²⁹

9. The attachments, and factual assertions contained therein, were verified by affidavit by Guy C. Gilbert, a Staff Utility Regulatory Engineer II, and Nila S. Hagemeyer, a Staff Utility Management Analyst III.³⁰

10. Timber Creek and Public Counsel stipulated to the factual assertions in the attachments.³¹

11. On December 29, 2010, the parties jointly filed a Unanimous Stipulation of Undisputed Facts ("Second Agreement").³²

12. In the Second Agreement, the parties agreed that the Partial Agreement resolved all issues except for the amounts recoverable in rates for: (1) salaries and overtime; (2) rate case expense; (3) an alternative energy source gas well; (4) the Public Service Commission Assessment; and (5) a contingency and energy repair fund.³³

13. The Second Agreement also establishes that the parties had not resolved an issue as to the use of time sheets for Timber Creek's employees. However, Timber Creek

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* The only factual assertion Timber Creek would not admit was the need to have a time reporting mechanism for its employees; however, Timber Creek conceded this issue during the evidentiary hearing. See Finding of Fact Number 13.

³² Exh. 2, *Unanimous Stipulation of Undisputed Facts.*

³³ *Id.*

has conceded on this issue and states it will implement the use of timesheets resolving this issue.³⁴

Timber Creek's Sewer System

14. The Engineering and Management Services Department Report of Customer Service and Business Operations ("ESMD Report" - Attachment B Partial Agreement) contains an overview of Timber Creek's operations, including the company's history and administrative structure, customer billing practices, credit and collection practices, complaint and inquiry practices, customer communication practices, security and record storage practices.³⁵

15. Based upon the parties' unanimous stipulation and the Commission's independent review of Timber Creek's operations, the Commission adopts the overview on pages 2 through 16 of the EMSD Report as findings of fact.

Test year and True Up³⁶

16. The appropriate historical time period for determining the revenue requirement calculation is the test year consisting of the 12-month period ending December 31, 2009.³⁷

17. The appropriate time period to true up material changes in revenue and expenses from the test year is the period ending June 30, 2010.³⁸

³⁴ Transcript, p. 134; EFIS Docket Entry No. 79, Post Hearing Brief of Timber Creek Sewer Company, filed February 4, 2011, p 6.

³⁵ Exh. 1 - Unanimous Partial Agreement; EFIS Docket Entry No. 11, Stipulation of Timber Creek Sewer Company to Factual Assertions in Attachments to Unanimous Partial Agreement, filed on October 18, 2010; EFIS Docket Entry No. 12, The Office of the Public Counsel's Stipulation, filed on October 20, 2010. EFIS is the Commission's Electronic Information and Filing System.

³⁶ For a full discussion on general ratemaking principles see *In the Matter of Lake Region Water & Sewer Company's Application to Implement a General Rate Increase in Water and Sewer Service*, Report and Order, Finding of Facts Numbers 42-72, 2010 WL 3378384, Mo.P.S.C. 2010, Issued August 18, 2010, Effective August 28, 2010.

³⁷ Exh. 1 - Unanimous Partial Agreement; EFIS Docket Entry No. 11, Stipulation of Timber Creek Sewer Company to Factual Assertions in Attachments to Unanimous Partial Agreement, filed on October 18, 2010; EFIS Docket Entry No. 12, The Office of the Public Counsel's Stipulation, filed on October 20, 2010.

Rate Base, Capital Structure and Weighted Cost of Capital

18. Timber Creek's rate base as presented in Staff's Accounting Schedules is as follows:³⁹

Line Number	A Rate Base Description	B Percentage Rate	C Dollar Amount
1	Plant In Service		\$3,170,997
2	Less Accumulated Depreciation Reserve		\$893,483
3	Net Plant In Service		\$2,277,514
4	ADD TO NET PLANT IN SERVICE		
5	Cash Working Capital		\$0
6	Materials & Supplies		\$0
7	Prepayments		\$0
8	Total Accumulated CIAC related Depreciation		\$796,113
9	TOTAL ADD TO NET PLANT IN SERVICE		\$796,113
10	SUBTRACT FROM NET PLANT		
11	Federal Tax Offset	38.0822%	\$0
12	State Tax Offset	38.0822%	\$0
13	City Tax Offset	38.0822%	\$0
14	Interest Expense Offset	38.0822%	\$0
15	Contribution In Aid of Construction		\$2,886,733
16	Customer Advances		\$0
17	Customer Deposits		\$0
18	Deferred Income Taxes		\$0
19	Accrued Pension Liability		\$0
20	TOTAL SUBTRACT FROM NET PLANT		\$2,886,733
21	Total Rate Base		\$186,894

19. The parties concede that Timber Creek's total rate base is \$186,894.⁴⁰

20. Based upon the parties' agreement and the Commission's independent review of Staff's accounting schedules Timber Creek's total rate base is \$186,894.

21. Timber Creek's Capital Structure, as presented in Staff's Accounting Schedules, is as follows:⁴¹

³⁸ *Id.*

³⁹ Exh. 7, *Staff Accounting Schedules*, Schedule 2; Exh. 8, Prenger Direct, pp. 6-7.

⁴⁰ Transcript, p. 17.

Capital Component Description	Dollar Amount	Percentage of Total Capital Structure	Embedded Cost of Capital	Weighted Cost of Capital		
				7.67%	7.67%	7.67%
Common Stock	\$0	0.00%	-----	0.00%	0.00%	0.00%
Common Equity	\$46,724	25.00%	11.07%	2.768%	2.768%	2.768%
Preferred Stock	\$0	0.00%	0.00%	0.00%	0.00%	0.00%
Long-Term Debt	\$140,171	75.00%	6.53%	4.897%	4.897%	4.897%
Short-Term Debt	\$0	0.00%	0.00%	0.00%	0.00%	0.00%
Other Security Tax Deductible	\$0	0.00%	0.00%	0.00%	0.00%	0.00%
Total Capitalization	\$186,895	100.00%		7.665%	7.665%	7.665%

22. Staff's recommended weighted average cost of capital ("WACC"), or Rate of Return, for Timber Creek is 7.67%. The WACC is calculated by multiplying each component ratio of the appropriate capital structure by its cost and then summing the results.⁴²

23. The only two types of capital included in Staff's recommended WACC were common equity and long-term debt.⁴³

24. Based on Staff's calculations' Timber Creek's embedded cost of debt was 6.53% as of the test year.⁴⁴

25. Staff estimated the Company's cost of equity to be 11.07% based on the assumption that Timber Creek's capital structure consisted of 25% equity and 75% debt.⁴⁵

⁴¹ Exh. 7, *Staff Accounting Schedules*, Schedule 1; Exh. 8, Prenger Direct, pp. 6-7.

⁴² Exh. 27, *Verified Memorandum of Shana Atkinson: Timber Creek Cost of Capital Explanation*.

⁴³ *Id.*

⁴⁴ *Id.*

26. The parties concede that Staff's accounting of Timber Creek's capital structure is correct.⁴⁶

27. Based upon the parties' agreement and the Commission's independent review of Staff's accounting schedules, Timber Creek's embedded cost of debt was 6.53% as of the test year.

28. Based upon the parties' agreement and the Commission's independent review of Staff's accounting schedules, Timber Creek's embedded cost of equity is 11.07%.

29. Based upon a rate of return of 7.67% and a rate base of \$186,894, Timber Creek's Net Operating Income Requirement is \$14,325.⁴⁷

30. Timber Creek's Gross Revenue Requirement cannot be determined until the Commission decides the contested issues in this matter.

Rate Design, Depreciation Rates, Various Accounting Measures & Conditions

31. In the Partial Agreement, the parties unanimously agreed that:⁴⁸

(1) Staff's rate design methodology of an equal percent increase to existing rates is acceptable;

(2) The schedule of depreciation rates attached hereto as Attachment A and incorporated herein by reference, which includes the depreciation rates used by Staff in its revenue requirement analysis, shall be the prescribed schedule of sewer plant depreciation rates for the Company;

(3) Within ninety (90) days of the effective date of an order approving this Unanimous Partial Disposition Agreement, the Company shall implement the following recommendations from the Auditing Department:

a. The Company shall keep a detailed list of invoices for future purchases within the Uniform System of Accounts ("USDA")

⁴⁵ *Id.*

⁴⁶ Transcript, p. 17.

⁴⁷ Exh. 7, *Staff Accounting Schedules*, Schedule 2.

⁴⁸ Exh. 1 - Unanimous Partial Agreement; EFIS Docket Entry No. 11, Stipulation of Timber Creek Sewer Company to Factual Assertions in Attachments to Unanimous Partial Agreement, filed on October 18, 2010; EFIS Docket Entry No. 12, The Office of the Public Counsel's Stipulation, filed on October 20, 2010.

including, but not limited to, the accounts Laboratory Equipment and Tools and Shop Equipment;

b. The Company shall maintain its financial and accounting records using the USDA guidelines for a Class A Sewer Company for its revenues, expenses and investment costs;

(4) Within ninety (90) days of the effective date of an order approving this Unanimous Partial Disposition Agreement, the Company shall implement the following recommendations contained in the Engineering & Management Services Department ("EMSD") Report, except any recommendation associated with time sheets or any other contested items. The EMSD Report is attached hereto as Attachment B and incorporated by reference herein. These recommendations include the following:

a. The Company shall display the Company's logo on the Company's vehicle;

(5) Within ninety (90) days of the effective date of an order approving this Unanimous Partial Disposition Agreement, the Company shall implement the following recommendations from Depreciation Staff associated with EMSD:

a. The Company shall adjust the Company's general ledger to reflect the plant and reserve account balances shown in the Staff EMS exhibit, attached hereto as Attachment A and incorporated by reference herein;

b. The Company shall adjust the Contributions in Aid of Construction ("CIAC") and the amortized CIAC account balances shown in the Staff EMS exhibit, attached hereto as Attachment A and incorporated by reference herein;

c. The Company shall implement a work order system to track material cost, labor cost, overhead cost, and record cost of removal and gross salvage for all new, replaced or retired plant; and

d. The Company shall follow National Association of Regulatory Utility Commissioners' ("NARUC") USOA guidelines for the recording of cost of removal and gross salvage in the Company ledger as adjustments to plant and reserves;

(6) Within six (6) months of the effective date of an order approving this Unanimous Partial Disposition Agreement, the Company shall implement the following recommendations from Depreciation Staff associated with EMSD:

a. The Company shall estimate the original installed cost of the Johnson Ridge and Oakbrook collection and treatment facilities which were installed by a developer and transferred (donated) to the

Company as contributed plant, and to provide these estimates to Depreciation Staff. This contributed plant relating to the collection and treatment facilities is to be included in plant in service and would be treated as a contribution in aid of construction an offset (reduction) to rate base;

(7) Staff and/or OPC may conduct follow-up reviews of the Company's operations to ensure that the Company has complied with the provisions of this Unanimous Partial Disposition Agreement;

(8) Staff and/or OPC may file a formal complaint against the Company, if the Company does not comply with the provisions of this Unanimous Partial Disposition Agreement;

(9) The Company agrees that it has read the foregoing Unanimous Partial Agreement Regarding Disposition of Small Sewer Company Revenue Increase Request; that facts stated therein are true and accurate to the best of the Company's knowledge and belief; that the foregoing conditions accurately reflect the partial agreement reached between the Company, OPC and Staff; and that the Company freely and voluntarily enters into this partial agreement; and

(10) The above partial agreements satisfactorily resolve all issues identified and addressed in the above paragraphs by Staff, OPC and the Company regarding the Company's Request.

32. Based upon the parties' unanimous Partial Agreement and the Commission's independent review, the Commission finds that the proper method to implement any over-all revenue increase is through Staff's rate design methodology.

33. Based upon the parties' unanimous Partial Agreement and the Commission's independent review, the Commission finds that the proper schedule of depreciation rates for setting a just and reasonable revenue requirement is delineated in Attachment A to the Partial Agreement. Those rates are:

TIMBER CREEK SEWER COMPANY

Schedule F - DEPRECIATION RATES

(SEWER Class B)

SR-2010-0320

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	DEPRECIATION RATE	AVERAGE SERVICE LIFE (YEARS)	NET SALVAGE
COLLECTION PLANT				
351	Structures & Improvements	4.0%	25	
352.1	Collection Sewers (Force)	2.0%	50	
352.2	Collection Sewers (Gravity)	2.0%	50	
353	Services	2.0%	50	
354	Flow Measurement Devices	3.3%	30	
PUMPING PLANT				
361	Structures & Improvements	4.0%	25	
362	Receiving Wells	4.0%	25	
363	Electric Pumping Equipment	10.0%	10	
TREATMENT & DISPOSAL PLANT				
371	Structures & Improvements	3.3%	30	
372	Treatment & Disposal Facilities	5.0%	20	
372.1	Oxidation Lagoons or Septic tank	4.0%	25	
373	Plant Sewers	2.5%	40	
374	Outfall Sewer Lines	2.0%	50	
GENERAL PLANT				
390	Structures & Improvements	2.5%	40	
391	Office Furniture & Equipment	3.3%	30	
391.1	Office Electronic & Computer Equip.	14.3%	7	
392	Transportation Equipment	13.0%	7	9%
393	Stores Equipment	4.0%	25	
394	Tools, Shop, and Garage Equipment	5.0%	20	
395	Laboratory Equipment	5.0%	20	
396	Power Operated Equipment	6.7%	13	13%
397	Communication Equipment	6.7%	15	
399.1	OSHA Required Safety Equipment	20.0%	5	

34. Based upon the parties' unanimous Partial Agreement and the Commission's independent review, the Commission finds it is just and reasonable for Timber Creek to implement the recommendations from Staff's Auditing Department as described in the Partial Agreement.

35. Based upon the parties' unanimous Partial Agreement and the Commission's independent review, the Commission finds it is just and reasonable for Timber Creek to implement the recommendations from Staff's EMSD Report.

36. Based upon the parties' unanimous Partial Agreement and the Commission's independent review, the Commission finds it is just and reasonable for Timber Creek to implement all other conditions contained in the Partial Agreement.

37. Upon review of the record and the Partial Agreement, the Commission independently finds that the Partial Agreement's proposed terms support the provision of safe and adequate service.

D. Employee Compensation

38. Water and sewer companies need quality employees to ensure that their operations are run effectively and efficiently and that their customers receive safe and adequate service.⁴⁹

39. Timber Creek's employees occupy four positions: Operations Manager, General Manager, System Operator and Office Manager.⁵⁰

40. Determining the appropriate compensation level for these employees involves considering many factors including: (a) an examination of the individual job descriptions, i.e., the employee's duties and responsibilities along with the employee's experience level; (b) an examination of labor statistics reports and market salary reports for the relevant comparable positions in the appropriate geographical area factoring in the experience level of the employees; (c) a comparison to prior Commission rate cases salary data; and, (d) a comparison of salaries for similarly sized and type of utilities, including examining the

⁴⁹ Transcript, p. 94.

⁵⁰ Exh. 4, Sherry Direct, pp. 4-5.

number of customers served and the number of persons employed to serve those customers (Collectively referred to as “Relevant Salary Determination Factors”).⁵¹

41. The following table presents the parties positions on salaries and overtime:⁵²

Position	Current Salary	Timber Creek	Staff	OPC
<u>Operations Manager</u>	\$78,660	\$78,660	\$81,020	\$59,258
Overtime	\$0.00	\$0.00	\$0.00	\$0.00
<u>General Manager</u>	\$72,450	\$94,529	\$76,862	\$52,768
Overtime	\$0.00	\$0.00	\$0.00	\$0.00
<u>System Operator</u>	\$40,980	\$49,290	\$39,000	\$45,867
Overtime	\$0.00	\$7,234.83	\$7,000	\$0.00
<u>Office Manager</u>	\$40,349	\$43,263	\$41,559	\$32,650
Overtime	\$0.00	\$2,604.45	\$0.00	\$0.00
Workers’ Comp. Ins.	\$0.00	\$194.07	\$0.00	\$0.00
Total Payroll	\$232,439.00	\$275,775.35	\$245,441.00	\$190,543.00

42. In order to determine the proper compensation for Timber Creek’s employees, Staff audited the Company's books, records, invoices and vouchers, conducted a review of the Company's customer service and general business practices, and reviewed the Company's existing tariff.⁵³

⁵¹ Exh. 8, Prenger Direct, Exh. 9, Prenger Rebuttal; Exh. 10, Prenger Surrebuttal.

⁵² Exh. 3, Reconciliation.

⁵³ *Id.*; Exh. 8, Prenger Direct, p. 4-5.

43. Staff identified the current compensation level for each employee and the individual salaries that were found to be just and reasonable in prior Commission rate cases.⁵⁴

44. Staff conducted on-site visits, inspecting the facilities and reviewing their operations, including the areas planned for expansion in Platte County.⁵⁵

45. To gain specific job function information for Timber Creek's four employees, Staff interviewed Timber Creek personnel, reviewed Timber Creek's responses to requests for information issued in this and other previous cases and reviewed the job description for each Timber Creek employee.⁵⁶

46. The comparison of actual job documentation in the form of job descriptions combined with company employee interviews is critical in determining compensation levels because not all job duties may be documented and not all documented job duties may be performed.

47. When making its recommendations on compensation, Staff also used outside sources necessary to complete the review; including information from the Bureau of Labor Statistics, the Missouri Economic Research and Information Center ("MERIC") and the cost of living adjustment ("COLA") the federal government authorizes for social security.⁵⁷

48. Staff also relied upon a comparison of relevant regional utilities, including the

⁵⁴ Exh. 9, *Prenger Rebuttal*, pp. 2-3; Transcript, p. 104.

⁵⁵ Exh. 8, *Prenger Direct*, p. 4-5.

⁵⁶ Exh. 8, *Prenger Direct*, p. 4-5, 10; Transcript, pp. 74.

⁵⁷ Exh. 8, *Prenger Direct*, p. 4-5; Exh. 9, *Prenger Rebuttal*, pp. 2-3; Transcript, pp. 74, 103. MERIC is a database for Missouri employment data, including salaries and wages for specific jobs. Exh. 8, *Prenger Direct*, p. 11.

Platte Country Regional Sewer District, Johnson County Wastewater, and the Wyandotte County Wastewater-Unified Government Treatment Plants.⁵⁸

49. Staff's payroll analysis also involved a comparison of previous Commission rate case salary evaluations in the water and sewer industry, including the recent rate case for Lake Region Water and Sewer Company.⁵⁹

50. Timber Creek based its salary analysis on its comparison of current salaries with MERIC's occupational wages for the Kansas City region and the American Water Works Association 2009 Salary Study of Water and Wastewater. Timber Creek also examined additional market data from positions in the Kansas City Area.⁶⁰

51. Timber Creek failed to distinguish the utility and its employees from similar duties and responsibilities of other sewer companies.⁶¹

52. While Timber Creek used some of the same sources as Staff when assessing the appropriate compensation level for its employees, it failed to recognize and account for the differences between general market studies and utility specific markets and differences in the utilities that were used for comparison in terms of the size of the utility, the size of the customer base and the total number of employees.⁶²

53. The evidence Timber Creek offered to support its request for employee compensation is incomplete and lacks credibility.

54. The Office of the Public Counsel based its analysis on compensation on a review of the MERIC Occupation Wages for the Kansas City Region. However, Public

⁵⁸ Exh. 9, Pregner Rebuttal, pp. 2-3.

⁵⁹ *Id.*

⁶⁰ Exh. 4, Sherry Direct, pp. 5-7.

⁶¹ Exh. 8, Prenger Direct, pp. 8-16; Exh. 9 Prenger Rebuttal, pp. 3-16, and accompanying schedules; Exh. 10, Prenger Surrebuttal, pp. 2-18, and accompanying schedules.

⁶² *Id.* Transcript, p. 86.

Counsel did not properly consider the duties of the individual positions, nor did it properly consider the experience level of all of Timber Creek's employees, nor did it properly consider the size and scope of Timber Creek's operations.⁶³ For example, Public Counsel did not take into consideration the General Manager's prior seventeen years executive experience including his prior positions at Johnson County Wastewater and Sprint.⁶⁴ Also, at one point during the hearing, Public Counsel's witness did not appear to recognize his own work papers, solidifying the impression that he could not have prepared a thorough analysis.⁶⁵

55. The evidence Public Counsel offered to support its position on employee compensation is insubstantial and lacks credibility.

56. Staff used the correct methodology to determine the appropriate compensation level for Timber Creek's employees.

57. Staff presented the most comprehensive and accurate analysis of the appropriate compensation level for Timber Creek's employees.

58. Staff's evidence on the proper compensation for Timber Creek's employees is credible, substantial and persuasive.

Operations Manager

59. Staff Witness Prenger fully and accurately delineated the duties and responsibilities of the Operations Manager (Plant Manager).⁶⁶

60. Reviewing the Relevant Salary Determination Factors, (See FOF Number 40), as they apply to an employee with the duties and responsibilities described in detail by

⁶³ *Id.*; Transcript, pp. 72-158, 225-245, 247; Exhibit 23, *Robertson* Rebuttal, p. 10, line 18.

⁶⁴ Exhibit 4, *Sherry* Direct, pp. 1- 2.

⁶⁵ Transcript, p. 231-232.

⁶⁶ Exhibit 8, *Prenger* Direct, pp. 10-15.

Witness Prenger, the Commission finds Staff's analysis is correct and the appropriate annual salary for the Operations Manager position is \$81,020.

61. The \$81,020 salary for the Operations Manager includes a three percent COLA over the existing salary for this position.⁶⁷

62. The COLA is justified because Timber Creek employees have not received a pay increase since 2008, because it was necessary to compensate for the higher cost of living, and because of the importance of this position to ensure the delivery of safe and adequate service.⁶⁸

General Manager

63. Staff Witness Prenger fully and accurately delineated the duties and responsibilities of the General Manager.⁶⁹

64. Reviewing the Relevant Salary Determination Factors (See FOF Number 40), as they apply to an employee with the duties and responsibilities described in detail by Witness Prenger, the Commission finds the appropriate annual salary for the General Manager position is \$76,862.⁷⁰

65. The \$76,862 salary for the General Manager includes a three percent COLA, plus an additional three percent increase.⁷¹

⁶⁷ Exh. 8, Prenger Direct, pp. 8-9; Exh. 9, Prenger Rebuttal, p. 2-6; Exh. 10, Prenger Surrebuttal, p. 13-14.

⁶⁸ Exh. 8, Prenger Direct, pp. 8-9; Exh. 9, Prenger Rebuttal, p. 2-6; Exh. 10, Prenger Surrebuttal, pp. 12-14.

⁶⁹ Exh. 8, Prenger Direct, pp. 10-15.

⁷⁰ The General Manager's salary authorized for Lake Region Water and Sewer Company, a utility comparable to Timber Creek with a similar customer base and annual revenues, was recently set at \$80,614.34. Exh. 9, *Prenger Rebuttal*, p. 11-12, line 7. See also File Nos. SR-2010-0110 and WR-2010-0111.

⁷¹ Exh. 8, Prenger Direct, pp. 9, 15-16; Exh. 9, Prenger Rebuttal, pp. 2-3.

66. The COLA is justified because Timber Creek employees have not received a pay increase since 2008, and because it was necessary to compensate for the higher cost of living.⁷²

67. The additional three percent increase is justified to address the wage gap that currently exists between the Operations Manager's position and the General Manager's position. The General Manager's position carries with it more responsibilities for the overall operations of Timber Creek and should receive compensation more closely aligned, although not completely matched, with the Operations Manager.⁷³

68. The remaining wage gap between the Operations Manager's Position and the General Manager's position, is justified because of the Missouri Department of Natural Resources' requirement for the Operations Manager to obtain and maintain a Class A operator's license to oversee the operations of a sewer company the size of Timber Creek.⁷⁴

69. The General Manager does not possess a Class A operator's license, and it is reasonable that the Operations Manager should be paid more than the General Manager at this time because the operator's license is required to maintain Timber Creek's operations in a safe and reliable manner.⁷⁵

Collection Systems Operator

70. Staff Witness Prenger fully and accurately delineated the duties and responsibilities of the Collection Systems Operator (Systems Operator or Assistant

⁷² Exh. 8, Prenger Direct, pp. 8-9; Exh. 9, Prenger Rebuttal, p. 2-6; Exh. 10, Prenger Surrebuttal, pp. 11-12.

⁷³ Exh. 8, Prenger Direct, pp. 15-16; Exh. 9, Prenger Rebuttal, p. 2-6.

⁷⁴ Exh. 9, Prenger Rebuttal, p. 2, 5-6.

⁷⁵ Exh. 9, Prenger Rebuttal, p. 2, 5-6.

Operator).⁷⁶

71. Reviewing the Relevant Salary Determination Factors (See FOF Number 40), as they apply to an employee with the duties and responsibilities described in detail by Witness Prenger, the Commission finds the appropriate annual salary for the Collection Systems Operator position is \$39,000. An additional amount of \$7,000 is authorized for overtime.

72. The \$39,000 salary for the Collection Systems Operator is a reduction from the position's current salary of \$40,980. This reduction brings the salary in line with proper market analysis.⁷⁷

73. The \$7,000 in overtime for this position is justified based upon the implementation of time reporting, the legal requirement to book this position as a non-exempt position once time reporting is initiated, and an estimate of the activities associated with the position in 2009 that would generate overtime wages.⁷⁸

Office Manager

74. Staff Witness Prenger fully and accurately delineated the duties and responsibilities of the Office Manager.⁷⁹

75. These duties of the Office Manager for Timber Creek go beyond clerical support making this position ineligible for overtime, but eligible (as a salaried employee and not an hourly employee) for a salary higher than that of performing a solely a clerical role.⁸⁰

⁷⁶ Exhibit 8, Prenger Direct, pp. 10-15.

⁷⁷ Exh. 8, Prenger Direct, pp. 8-11; Exh. 9, Prenger Rebuttal, p. 2-7, 14-20; Exh. 10, Prenger Surrebuttal, pp. 5-11.

⁷⁸ Exh. 8, Prenger Direct, pp. 8-11; Exh. 9, Prenger Rebuttal, p. 2-7, 14-20; Exh. 10, Prenger Surrebuttal, pp. 5-11. Transcript, pp. 50, 81-82. Timber Creek conceded on the dispute about keeping time sheets. For a discussion on proper rational for maintain time reporting see Exh. 11, Hagemeyer Direct and Exh. 12 Hagemeyer Rebuttal.

⁷⁹ Exhibit 8, Prenger Direct, pp. 10-15.

76. Reviewing the Relevant Salary Determination Factors (See FOF Number 40), as they apply to an employee with the duties and responsibilities described in detail by Witness Prenger, the Commission finds the appropriate annual salary for the Office Manager position is \$41,559.

77. The \$41,559 salary for the Office Manager includes a three percent COLA over the existing salary for this position.⁸¹

78. The COLA is justified because Timber Creek employees have not received a pay increase since 2008, and because it was necessary to compensate for the higher cost of living.⁸²

79. With regard to the appropriate level of compensation for all of Timber Creek's employees, the Commission finds that those portions of Staff Witness Prenger's testimony that support the ultimate findings of fact above (Findings of Fact Numbers 38 through 78) to be accurate and supported by proper methodology.⁸³

E. Rate Case Expense

80. The amount of verified, actual rate case expenses incurred by Timber Creek up to January 31, 2011 is \$30,630.⁸⁴

⁸⁰ Exh. 8, Prenger Direct, pp. 11; Exh. 9, Prenger Rebuttal, p. 2-7, 16-20; Exh. 10, Prenger Surrebuttal, pp. 14-17.

⁸¹ Exh. 8, Prenger Direct, pp. 9, 15-16; Exh. 9, Prenger Rebuttal, pp. 2-3.

⁸² Exh. 8, Prenger Direct, pp. 8-9; Exh. 9, Prenger Rebuttal, p. 2-7, 16-20; Exh. 10, Prenger Surrebuttal, pp. 10-12, 14-17.

⁸³ Exh. 8, Prenger Direct; Exh. 9, Prenger Rebuttal; Exh. 10, Prenger surrebuttal; and all accompanying schedules to these exhibits; Transcript, pp. 72-107.

⁸⁴ Exh. 28, Staff's Late-Filed Exhibit: Affidavits of V. William Harris and Bret G. Prenger, executed on February 3, 2011, Attachment A (Adjustment E-196) and Reconciliation, filed on February 3, 2011 as a late-filed exhibited and admitted, without objection, into evidence on February 23, 2011; Exh. 29, Timber Creek Sewer Company's Late-Filed Exhibit RE Additional Rate Case Expense: Exhibits A-D, filed on February 5, 2011, and admitted, without objection, into evidence on March 8, 2011; Exh. 30, Staff's Response to Timber Creek Sewer Company's late-Filed Exhibit Regarding Additional Rate Case Expense: Affidavit of V. William

81. The amount of verified, actual rate case expenses incurred by Timber Creek from February 1, 2011 through February 25, 2011 is \$5,540.⁸⁵

82. The total amount of verified, actual rate case expense of \$36,170 was prudently incurred and it is appropriate and reasonable to allow recovery of these expenses in customer rates.⁸⁶

83. For reasons more fully explained in the conclusions of law section, the appropriate amount of rate case expense that Timber Creek is authorized to recover in rates, amortized over three years, is \$36,170.

F. Alternative Energy Exploration Expense Recovery

84. Because Timber Creek's electric service rates had risen, it spent \$10,849.42 on a venture drilling for natural gas on its property to serve as an alternative energy source.⁸⁷

85. Based upon all of Timber Creek's preliminary studies, the company believed it had a fifty percent chance, or better, of finding commercial quantities of natural gas.⁸⁸

86. Timber Creek's decision to explore the natural gas option was known to be the lowest cost alternative energy source, but also involved the highest risk of success.⁸⁹

87. The natural gas industry would give this venture a fifty percent chance of finding commercial quantities of natural gas.⁹⁰

88. Commercial quantities of natural gas are required to power a generator to produce electricity for Timber Creek's operations.⁹¹

Harris executed on March 2, 2011 and attached billing statement, filed on March 4, 2011 and admitted, without objection, into evidence on March 15, 2011.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Exh. 4, Sherry Direct, pp. 12-15.

⁸⁸ Transcript, p. 57-58, 117-122.

⁸⁹ Transcript, p. 131.

⁹⁰ Transcript, p. 57.

89. Timber Creek is not an energy company.⁹²

90. Timber Creek's pilot well confirmed natural gas was not present.⁹³

91. Timber Creek's customers are receiving no benefit from the drilling venture.⁹⁴

92. Given the totality of the circumstances, Timber Creek's assumption that natural gas would be present was speculative.⁹⁵

93. For reasons more fully explained in the conclusions of law section, the appropriate amount of the expense associated with the exploratory pilot gas well that Timber Creek is authorized to recover in rates is \$0.00.

94. For reasons more fully explained in the conclusions of law section, the appropriate amount of expense associated with additional exploration for alternative energy sources that Timber Creek is authorized to recover in rates is \$0.00.

G. PSC Assessment

95. The Commission's assessment allocation percentage for sewer companies was 6.94% for fiscal year 2008, 8.74% for fiscal year 2009, 11.22% for fiscal year 2010 and 9.34% for fiscal year 2011.⁹⁶

96. Timber Creek recovered sufficient revenues to cover the expenses associated with Commission's assessment for the years in between this action and its last rate case, File No. SR-2008-0080.⁹⁷

⁹¹ *Id.* Exh. 17, Hummel Direct, pp. 2-3.

⁹² Transcript, p. 70.

⁹³ Exh. 4, Sherry Direct, pp. 14.

⁹⁴ Transcript, p. 62; Exh. 22, Robinson Direct, p. 7; Exh. 23, Robinson Rebuttal, pp. 25-28;

⁹⁵ Exh. 17, Hummel Direct, p. 2-3 ; Exh. 18, Hummel Rebuttal, pp. 1-2; Transcript, pp. 197-199.

⁹⁶ Exh. 4, Sherry Direct, pp. 15-17.

⁹⁷ Exh. 14, Harris Rebuttal, pp. 4-7; Exh. 16, Calculation of Excess Revenues over Expenses.

97. The correct 2011 fiscal year Commission Assessment for Timber Creek, as calculated pursuant to Section 386.370, RSMo 2000, is \$62,590.

98. For reasons more fully explained in the conclusions of law section, the appropriate amount of the PSC Assessment Timber Creek is authorized to recover in rates is \$62,590, the amount Timber Creek was assessed for the 2011 fiscal year.

99. For reasons more fully explained in the conclusions of law section, it is improper to pass-through the cost of the Commission assessment as a separate item on each customer's bill because it would increase the regulatory burden on utilities and the Commission's Staff increasing costs for the ratepayers. Additionally, to adopt such a practice would constitute a statement of general applicability of law or policy that would require a rulemaking.⁹⁸

H. Contingency / Emergency Repair Fund

100. Timber Creek seeks Commission approval to establish a fund to be used for unplanned events that it believes could substantially impact its utility operations, either financially or operationally, with the potential to interrupt its ability to provide safe, dependable and adequate service.⁹⁹

101. There are many factors that must be considered when determining whether such a fund is appropriate including, but not limited to, the actual need for the fund, the type of account to be created, the appropriate level of reserve in the fund, the types of expenses the fund could cover, the types of expenses it would not cover, appropriate reporting

⁹⁸ Exh. 19, Busch Direct, pp. 4-7; Exh. 20 Busch Rebuttal, pp. 3-7.

⁹⁹ Exh. 4, Sherry Direct, pp. 17-21 and Schedule DS-7; Exh. 5, Sherry Rebuttal, pp. 5-6; Transcript, pp. 65-70, 135-136, 148-150.

requirements, appropriate oversight, treatment of any excess reserve collections, and deciding when and how the company would have access to the fund.¹⁰⁰

102. Tiber Creek's proposal involves implementing a surcharge of \$0.50 per month per customer (approximately \$9,347 per year) for nineteen years to collect a total fund balance of \$177,604.¹⁰¹ Timber Creek believes this balance is approximately equal to three months of its regular expenses.¹⁰²

103. Timber Creek used a model for its proposed contingency fund that the Environmental Protection Agency uses as part of an assessment management awareness program to have utilities become proactive about managing aging infrastructure.¹⁰³

104. Timber Creek completed a comparison of actual repair and failure rates with the model it prepared.¹⁰⁴

105. Timber Creek did not offer any evidence that it is unable to fund unplanned events that it believes could substantially impact its utility operations at its current operational income level without establishing a contingency fund.¹⁰⁵ In fact, the evidence demonstrates the opposite.¹⁰⁶ Timber Creek recently experienced a pump failure caused when lightning struck a control panel and had no financial difficulty with repairing the damage from this unplanned event.¹⁰⁷

¹⁰⁰ Exhibit 20, Busch Rebuttal, pp. 8-11.

¹⁰¹ *Id.*

¹⁰² Transcript, pp. 123-125.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Transcript, pp. 65, 248

¹⁰⁶ *Id.*

¹⁰⁷ Transcript, p. 125.

106. For reasons more fully explained in the conclusions of law section, the appropriate amount Timber Creek is authorized to recover in rates for a contingency and emergency repair fund is \$0.00.

I. Service Quality

107. There are no deficiencies, problems or issues with the quality of service provided by Timber Creek.

108. There are no deficiencies, problems or issues with Timber Creek's billing for services.

109. There are no deficiencies, problems or issues with Timber Creek's response to customer calls.

110. Timber Creek's employees are well qualified, their system is run very well, and the Commission's Staff works with Timber Creek to teach others in the small water and sewer industry.¹⁰⁸

IV. Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

A. Jurisdiction, Burden of Proof, Presumption of Prudence and the Public Interest¹⁰⁹

Timber Creek is a sewer corporation pursuant to Section 386.020(49) RSMo Supp. 2010, and subsequently a public utility within the meaning of 386.020(42) RSMo Supp. 2010. As a public utility, Timber Creek is subject to the personal jurisdiction, supervision, control and regulation of the Commission under Chapters 386 and 393 of the Missouri

¹⁰⁸ Transcript, p. 103.

¹⁰⁹ See Findings of Fact Numbers 1-3 for this section.

Revised Statutes. The Commission's subject matter jurisdiction over Timber Creek's rate increase request is established under Section 393.150, RSMo 2000.

Sections 393.130 and 393.140, RSMo 2000, mandate that the Commission ensure that all utilities are providing safe and adequate service and that all rates set by the Commission are just and reasonable. Section 393.150.2 makes clear that at any hearing involving a requested rate increase the burden of proof to show the proposed increase is just and reasonable rests on the utility seeking the rate increase. As the party requesting the rate increase, Timber Creek bears the burden of proving that its proposed rate increase is just and reasonable. In order to carry its burden of proof, Timber Creek must meet the preponderance of the evidence standard.¹¹⁰ And in order to meet this standard, Timber Creek must convince the Commission it is "more likely than not" that Timber Creek's proposed rate increase is just and reasonable.¹¹¹

While a utility has the burden of proof to justify its proposed rate increase, there is initially a presumption that its expenditures, comprising one component of its revenue requirement, are prudent. This presumption can be rebutted upon a showing of serious doubt as to the prudence of expenditure, at which point the utility must dispel this doubt and prove the questioned expenditure is prudent.¹¹²

While the standard for evaluating the proposed rate increase pursuant to Section 393.150 is clear, and while Timber Creek receives an initial presumption that its

¹¹⁰ *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996), citing to, *Addington v. Texas*, 441 U.S. 418, 423, 99 S.Ct. 1804, 1808, 60 L.Ed.2d 323, 329 (1979).

¹¹¹ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109-111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

¹¹² *In the Matter of Union Electric Company*, 27 Mo.P.S.C. (N.S.) 183, 193 (1985) (quoting *Anaheim, Riverside, etc. v. Federal Energy Regulatory Commission*, 669 F.2d 779, (D.C. Cir. 1981)).

expenditures are prudent, the Commission must also consider the “public interest” when it makes its determination as to if the proposed increased rates are just and reasonable.¹¹³ The public interest is a matter of policy to be determined by the Commission.¹¹⁴ It is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served.¹¹⁵ Determining what is in the interest of the public is a balancing process.¹¹⁶ In making such a determination, the total interests of the public served must be assessed.¹¹⁷ This means that some of the public may suffer adverse consequences for the total public interest.¹¹⁸ Individual rights are subservient to the rights of the public.¹¹⁹ The “public interest” necessarily must include the interests of both the ratepaying public and the investing public;¹²⁰ however, as noted, the rights of individual groups are subservient to the rights of the public in general.

¹¹³ *In re Rahn's Estate*, 316 Mo. 492, 501, 291 S.W. 120, 123 (Mo. 1926); *Morrishead v. Railways Co.*, Mo. 121 165, 96 S.W. 261, 271 (Mo. banc 1907); *Missouri Public Service Co. v. City of Trenton*, 509 S.W.2d 770, 775 (Mo. App. 1974). The legislature delegated the task of determining the public interest in relation to the regulation of public utilities to the Commission when it enacted Chapter 386, and all other chapters and sections related to the exercise of the Commission's authority.

¹¹⁴ *State ex rel. Public Water Supply District v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980); *State ex rel. Mo. Pac. Freight Transport Co. v. Public Service Commission*, 288 S.W.2d 679, 682 (Mo. App. 1956).

¹¹⁵ *State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri*, 848 S.W.2d 593, 597 -598 (Mo. App. 1993). That discretion and the exercise, however, are not absolute and are subject to a review by the courts for determining whether orders of the P.S.C. are lawful and reasonable. *State ex rel. Public Water Supply Dist. No. 8 of Jefferson County v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980).

¹¹⁶ *In the Matter of Sho-Me Power Electric Cooperative's Conversion from a Chapter 351 Corporation to a Chapter 394 Rural Electric Cooperative*, Case No. EO-93-0259, Report and Order issued September 17, 1993, 1993 WL 719871 (Mo. P.S.C.).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *State ex rel. Mo. Pac. Freight Transport Co. v. Public Service Commission*, 288 S.W.2d 679, 682 (Mo. App. 1956).

¹²⁰ The United States Supreme Court tells us simply that “the fixing of ‘just and reasonable’ rates, involves a balancing of the investor and the consumer interests.” *State ex rel. Missouri Gas Energy v. Public Service Com'n*, 186 S.W.3d 376, 383 (Mo. App. W.D. 2005), *citing to*, *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603, 64 S.Ct. 281, 88 L.Ed. 333 (1944). The Missouri Supreme Court has also previously held that the Commission must consider the interests of the investing public and that failure to do so would deny them

B. Rate Base, Capital Structure and Weighted Cost of Capital¹²¹

The parties have agreed to the calculations of Timber Creek's rate base, capital structure and the appropriate weighted cost of capital as presented in Staff's Accounting Schedules. Based on the agreed-upon rate of return of 7.67% and the agreed-upon rate base of \$186,894, Timber Creek's Net Operating Income Requirement is \$14,325.

The Commission finds it highly persuasive that multiple parties representing diverse interests reached agreement on these calculations. The Commission has compared the substantial and competent evidence on the whole record with the parties' stipulation and admissions as to rate base, capital structure and the appropriate weighted cost of capital. After undertaking an independent review of all relevant factors,¹²² the Commission determines that the substantial and competent evidence on the record as a whole supports the conclusion that Timber Creek's Net Operating Income Requirement is \$14,325. While the Commission recognizes that Timber Creek's Gross Revenue Requirement cannot be determined until the Commission decides the contested issues in this matter, the Commission independently finds and concludes that the rate base, capital structure and the weighted cost of capital agreed to by the parties will lead to the setting of just and reasonable rates.

a right important to the ownership of property. See *State ex rel. City of St. Louis v. Public Service Com'n of Missouri*, 73 S.W.2d 393, 400 (Mo. banc 1934).

¹²¹ Refer to Findings of Facts Numbers 6-30 for this section.

¹²² When interpreting Section 386.420, the statute delineating the Commission's procedural requirements for conducting hearings and making its reports, Missouri Courts have held that in contested cases the Commission must include findings of fact in its written report. Section 386.420, RSMo 2000; *State ex rel. Monsanto Co. v. Public Serv. Comm'n of Missouri*, 716 S.W.2d 791, 794-795 (Mo. banc 1986); *State ex rel. Rice v. Public Serv. Comm'n*, 359 Mo. 109, 220 S.W.2d 61, 65 (Mo. banc 1949); *State ex rel. Fischer v. Public Serv. Comm'n*, 645 S.W.2d 39, 42-43 (Mo. App. 1982). The Commission cannot merely adopt agreements or positions of the parties on the ultimate legal issues presented because such action fails to satisfy the competent and substantial evidence standard embodied in the Missouri Constitution, Article V, Section 18. *Id.* Litigants cannot stipulate as to questions of law. *State v. Biddle*, 599 S.W.2d 182, 186 and n. 4 (Mo. banc 1980). The Commission must independently and impartially review the facts and make a separate and independent determination. *Kennedy v. Missouri Real Estate Comm'n*, 762 S.W.2d 454, 457 (Mo. App. 1988).

C. Rate Design, Depreciation Rates, Various Accounting Measures & Conditions¹²³

The parties have also reached agreement on the proper rate design methodology, depreciation rates, specific accounting measures and some additional conditions, as are fully outlined in the Partial Agreement and in the Commission's findings of fact. Based upon the parties' unanimous agreement and the Commission's independent review of all relevant factors, the Commission determines that the substantial and competent evidence on the record as a whole supports the conclusion that the proper method to implement any over-all revenue increase is through Staff's rate design methodology to implement an equal percentage increase to existing rates.

Similarly, based upon the parties' unanimous agreement and the Commission's independent review of all relevant factors, the Commission determines that the substantial and competent evidence on the record as a whole supports the conclusion that the proper depreciation rates and the accounting measures and other conditions are delineated in the Partial Agreement and in the Commission's findings of fact. While, the Commission recognizes that Timber Creek's Gross Revenue Requirement cannot be determined until the Commission decides the contested issues in this matter, the Commission independently finds and concludes that the depreciation rates, specific accounting measures and the additional conditions outlined in the Partial Agreement will lead to the setting of just and reasonable rates and will promote the provision of safe and adequate service.

D. Employee Compensation¹²⁴

Based upon the Commission's independent review of all relevant factors, the Commission determines that the substantial and competent evidence on the record as a

¹²³ Refer to Findings of Facts Numbers 31-37 for this section.

¹²⁴ Refer to Findings of Facts Numbers 38-79 for this section.

whole supports the conclusion that the appropriate compensation for Timber Creek's employees is the position advocated by the Commission's Staff's, i.e., Operations Manager - \$81,020; General Manager - \$76,862; Collection Systems Operator - \$39,000, plus \$7,000 for overtime; Office Manager position - \$41,559. Allowing Timber Creek to recover these salaries in rates is just and reasonable and will help to ensure the retention of quality and experienced employees to provide safe and adequate service.

E. Rate Case Expense¹²⁵

In addition to the \$36,170 of rate case expense associated with adjudicating this rate increase request, Timber Creek is also requesting recovery of \$18,175 in rate case expenses from a previous rate case, File No. SR-2008-0080. At the time of that action, Timber Creek's current General Manager, Derek Sherry, was serving as an uncompensated officer and member of Timber Creek's Board of Directors.¹²⁶ However, Mr. Sherry claims to have been acting in a consulting capacity for SR-2008-0080, and that due to the way Staff classified him this expense was not recovered in rates.¹²⁷ Staff and Public Counsel have argued that to allow this recovery would be a violation of the matching principle and unlawful retroactive ratemaking. Public Counsel also seeks a disallowance of some of the expenses associated with this case.

Retroactive ratemaking is "the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with rate actually established."¹²⁸ The matching principle is an accounting principle in which the expenditure (rate case expense

¹²⁵ See Finding of Facts Numbers 80-83 for this section.

¹²⁶ Exhibit 4, Sherry Direct, pp. 11-12; Transcript, pp. 116-117, 145-147, 184-186, 208-210.

¹²⁷ *Id.*

¹²⁸ *State ex. Rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Commission of Missouri*, 585 S.W.2d 41, 59 (Mo. banc 1979).

at that time) be matched with the benefits received (revenue from rates established at that time).¹²⁹ Under the matching principle, this case's expenses must be matched with the revenue generated from the rates established in this case.

File number SR-2008-0080 reveals that the parties settled the issues in that action by means of a stipulation and agreement.¹³⁰ Mr. Sherry testified that he was active during the settlement process.¹³¹ No provision was placed in the settlement agreement to allow additional recovery of the \$18,175. The company did not request an accounting authority order that would have allowed recovery at a later date. If there is any error to be had with the loss of recovery of this additional expense, the fault would rest on Timber Creek. The Commission concludes that under the specific facts of this case, to allow Timber Creek to recover that expense in this action, even if prudently incurred, would constitute unlawful retroactive ratemaking.¹³²

Addressing Public Counsel's request for a disallowance, contrary to Public Counsel's position, Timber Creek has advanced important positions with regard to the proper recovery of rate case expenses, expenses associated with developing alternative energy, a potential contingency fund, and recovery of the Commission's assessment. The Commission recognizes these issues can be particularly troublesome for smaller utilities and welcomes creative approaches to ensure that proper recovery of expenditures will ensure safe and

¹²⁹ New York State Society of CPAs (NYSSCPA).

¹³⁰ Transcript, pp. 116-117, 145-147, 184-186, 208-210; See File No. sr-2008-0080, in particular: *Order Approving Small Company Rate Increase on an Interim Basis, Subject to Refund, and Approving Tariff*, issued October 30, 2007; *Unanimous Stipulation*, filed January 4, 2008; and *Order Approving Unanimous Stipulation and Agreement*, issued January 29, 2008.

¹³¹ Transcript, p. 116-117.

¹³² Having found that allowing this recovery would be unlawful retroactive ratemaking, the Commission need not discuss the matching principle. However, the Commission notes, that it is not bound by that principle when setting rates. Commission Rule 4 CSR-240-61.020(4), provides: "In prescribing the system of accounts the commission does not commit itself to the approval or acceptance of any item set out in any such account for the purpose of fixing rates or in determining other matters before the commission."

adequate service. The Commission demonstrated its interest and concern regarding these issues while ferreting out the facts during the hearing and during its deliberative process when reaching its final decision.

There should also be no mistake that a ruling against recovery of any particular expense item does not equate with the request being frivolous in any manner. That simply means that the Commission has found, under the specific facts of the case, that recovery is not warranted. What Public Counsel appears to be proposing is that any time a utility does not settle a claim and takes its issues to hearing the utility should be denied rate case expense. To adopt such a position would indeed place a chill on a full and fair adjudicative process.

The substantial and competent evidence in the record as a whole supports the conclusion that Timber Creek prudently incurred \$36,170 of rate case expense associated with adjudicating this rate increase request. Timber Creek will be authorized to recover this amount in rates, amortized over three years.

F. Alternative Energy Exploration Expense Recovery¹³³

Timber Creek is not requesting that it recover the \$10,849 it expended in its attempt to drill for natural gas. Nor would the Commission grant such recovery because the substantial and competent evidence in the record as a whole supports the conclusion that this venture was speculative and the expenses associated with it were not prudently incurred. Timber Creek, however, is requesting to recover virtually the same amount, amortized over three years, to continue to explore alternative energy options.

While the Commission is sensitive to the fact that Timber Creek's energy costs are rising, and while the Commission supports the concept of using an alternative energy

¹³³ See Finding of Facts Numbers 84-94 for this section.

sources to reduce costs for the company and the ratepayers, all the Commission has in this record is speculation as to the possibility of developing wind, solar, or biogas technologies.¹³⁴ With no concrete plans for development, and no actual plant in the ground that is benefiting the rate payers, the Commission will not authorize recovery of speculative expenses that may or may not benefit the ratepayers.

The Commission observes that there are many issues that small utilities face that pose unique challenges for these companies under traditional ratemaking practices. With that in mind, the Commission opened a workshop, File Number WW-2009-0386, to explore possible solutions to these challenges. The Commission believes the recovery of expenses associated with alternative energy sources exploration can be addressed in that workshop. That process may lead to new rules outlining how such cost recovery may best be implemented.

G. PSC Assessment¹³⁵

Section 386.370, RSMo 2000, governs the process for the Commission's assessments on utilities. No party is contesting the amount of the 2011 fiscal year assessment on Timber Creek and there is no evidence that the \$62,590 was calculated incorrectly or inappropriately levied on the company. Timber Creek, however, not only requests recovery of the 2011 assessment, but also amounts it believes it under-recovered from prior years, specifically the time that elapsed since its last rate case. Timber Creek argues that the amount built into rates from its last rate case were based upon the 2008 assessment rate of 6.4%, and because the assessment increased each successive fiscal

¹³⁴ Transcript, pp. 58-63, 129-132, 147-148, 197-199.

¹³⁵ See Finding of Facts Numbers 95-99 for this section.

year, that it was unable to fully recover the assessment amounts from its customers. Timber Creek believes it under-recovered \$45,902 over that time period.¹³⁶

The Commission need not repeat the definition for unlawful retroactive ratemaking it discussed when addressing rate case expense. Suffice it to say that allowing recovery of these alleged under-recoveries from prior years in the manner advocated by Timber Creek would constitute prohibited retroactive ratemaking. Timber Creek was able to fully recover these expenses through the growth in the number of its customers.¹³⁷

Timber Creek has also requested it be allowed to directly pass the assessment through as a separate item on its customers' bills. However, the PSC assessment is a cost of doing business, just like all other costs, and utilities currently have an amount built into their cost of service and are able to collect in rates from its customers the dollars needed to pay the assessment. This amount is determined in the course of a rate case where all relevant costs, expenses, and revenues can properly be considered. To make this single item a pass-through places additional burdens on utilities because: (1) each would require a new rate case so base rates could be re-adjusted to remove the PSC assessment from their current rates and create a new pass-through amount on customer bills; (2) a true-up process would be required because of the changing assessment percentages; (3) additional reporting would be required from each utility; and (4) additional Staff would be required to handle the review of the approximately 80 small water and sewer companies that the Commission regulates.¹³⁸ All of these additional requirements would increase transaction and regulatory costs and those costs would have to be borne by the ratepayers.

¹³⁶ Exh. 4, Sherry direct, p. 17.

¹³⁷ Exh. 14, Harris Rebuttal, pp. 4-7; Exh. 16, Calculation of Excess Revenues over Expenses.

¹³⁸ Exh. 20, Busch Rebuttal, pp. 3-7.

The Commission believes that the pass-through issue is more appropriately addressed in its ongoing workshop, File Number WW-2009-0386. Crafting an appropriate mechanism to address rate recovery of the Commission's assessment will in all likelihood require articulating a statement of general applicability prescribing law or policy that will apply to all small sewer companies or potentially all utilities regulated by the Commission; an action that must be effected through rulemaking.

The substantial and competent evidence in the record as a whole supports the conclusion that the appropriate amount for Timber Creek to recover in rates for the Commission's assessment is \$62,590, the amount Timber Creek was assessed for the 2011 fiscal year.

H. Contingency / Emergency Repair Fund¹³⁹

Timber Creek seeks approval to establish a Contingency/Emergency Repair Fund to fund emergency repairs on existing infrastructure and assets serving existing ratepayers. In support of establishing the fund, Timber Creek cites to Section 393.270.4, which provides:

In determining the price to be charged for gas, electricity, or water the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein, with due regard, among other things, to a reasonable average return upon capital actually expended and to the necessity of making reservations out of income for surplus and contingencies.

Although Section 393,270 contemplates making reservations out of income for contingencies, there is no guidance in terms of when it would be appropriate and how such a fund should be established, maintained, or regulated. There are many factors that go into determining whether such a fund is appropriate including, but not limited to, the type of

¹³⁹ See Finding of Facts Numbers 100-106 for this section.

account to be created, the appropriate level of reserve in the fund, the types of expenses the fund could cover, the types of expenses it would not cover, appropriate reporting requirements, appropriate oversight, treatment of any excess reserve collections, as well as determining when and how the company would have access to the fund.¹⁴⁰ And the Commission would need to make an initial determination as to whether it was a necessity for the utility to have such a fund.

Timber Creek fails to establish that it requires such a fund and the multiple factors involved with establishing and properly regulating such a fund lend themselves to rulemaking not a single adjudication. The Commission believes that its ongoing workshop, File Number WW-2009-0386, is the appropriate forum to address this issue.

The substantial and competent evidence in the record as a whole supports the conclusion that Timber Creek has failed to establish the need for a Contingency/Emergency Repair Fund. Consequently, the Commission will not authorize any recovery in rates for such a fund.

IV. Final Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts, as it has found them, to the law to reach its conclusions, the Commission has reached the following final decision.

Timber Creek has, by a preponderance of the evidence, met its burden of proving that the salaries authorized for its employees in this order are the just and reasonable amounts to be recovered in rates for employee compensation. Timber Creek has also, by a preponderance of the evidence, met its burden of proving that \$36,170 is the just and reasonable amount to be recovered in rates for rate case expense, as amortized and

¹⁴⁰ Exhibit 20, Busch Rebuttal, pp. 8-11; Transcript, pp. 212-220.

allocated as described. Timber Creek has failed to meet its burden to recover in rates amounts requested for rate case expense from its prior rate case, for alternative energy exploration, for the alleged under-recovery of Commission assessments, and for a contingency/emergency repair fund.

The Commission further concludes, based upon its independent review of the whole record that the rates approved in this order are just and reasonable and support the provision of safe and adequate service. The revenue increase approved by the Commission today is concluded to be no more than what is sufficient to keep Timber Creek's utility plants in proper repair for effective public service, and insure to Timber Creek's investors an opportunity to earn a reasonable return upon funds invested.

THE COMMISSION ORDERS THAT:

1. Timber Creek Sewer Company shall file tariff sheets in compliance with this order sufficient to recover revenues approved in the body of this order no later than April 6, 2011.

2. No later than April 11, 2011, the Staff of the Missouri Public Service Commission shall file its recommendation concerning approval of Timber Creek Sewer Company's compliance tariff sheets.

3. No later than April 11, 2011, the Staff of the Missouri Public Service Commission and Timber Creek Sewer Company shall jointly file updated and revised rate Accounting Schedule 1 that was originally filed by Staff Witness Bret Prenger to reflect the approved gross revenue requirement. These parties shall also jointly file a statement comparing average residential monthly bills prior to and after the implementation of the newly approved rates.

4. The "Unanimous Partial Agreement Regarding Disposition of Small Sewer Company Revenue Increase," filed on October 7, 2010 is approved. The parties shall comply with the terms of this agreement. A copy of that agreement is attached to this order as "Attachment A" and it is incorporated by reference as if fully set forth.

5. Timber Creek Sewer Company shall establish a time recording system for each of its employees.

6. All objections not ruled on are overruled and all pending motions not otherwise disposed of herein, or by separate order, are hereby denied.

7. This Report and Order shall become effective on April 9, 2011.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Davis, Jarrett, and Kenney, CC., concur,
Clayton, C., concurs with separate concurring opinion to follow;
and certify compliance with the provisions
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 30th day of March, 2011.