

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

In the Matter of the Application of Timber)	
Creek Sewer Company Request for a Rate)	File No. SR-2010-0320
Increase)	

**STAFF’S PROPOSED FINDING OF FACTS
AND CONCLUSIONS OF LAW**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) by and through counsel, and respectfully submits the following Proposed Findings of Fact and Conclusions of Law to the Missouri Public Service Commission (Commission):

Identity of the Parties

1. Timber Creek Sewer Company (Timber Creek) is a corporation organized under the laws of the State of Missouri in good standing with its principal place of business at 18305 Cable Bridge Road, Platte City, MO 64079. Timber Creek possesses a certificate of convenience and necessity issued by the Commission in PSC Case No. SA-95-110 which became effective on June 1, 1995, to provide sewer service in Missouri. Timber Creek is a sewer corporation pursuant to Section 386.020(49) RSMo (2009), and subsequently a public utility within the meaning of 386.020(43) RSMo (2009); thereby subject to the jurisdiction of the Commission pursuant to Section 386.250 (4) RSMo (2000).

2. The Staff of the Missouri Public Service Commission (Staff) is a party to this case pursuant to Section 386.071 RSMo (2000) and Commission Rule 4 CSR 240-2.010(11).

3. The Office of Public Counsel (OPC) is a party to this case pursuant to Section 386.710(2) RSMo (2000) and by Commission Rule 4 CSR 240-2.010(11).

Procedural History

4. On May 10, 2010, the Missouri Public Service Commission (Commission) received a request letter from Timber Creek seeking to change its gross annual revenue and commencing the small sewer utility rate case designated File No. SR-2010-0320.

5. On October 7, 2010, the Parties filed a *Unanimous Partial Agreement Regarding Disposition of Small Sewer Company Revenue Increase Request*. (Partial Agreement) This Partial Agreement resolved all the issues except for: (1) salaries/overtime/timesheets; (2) rate case expense; (3) alternative energy source/gas well; (4) Public Service Commission Assessment; and (5) contingency/emergency repair fund.

6. On October 7, 2010, Staff filed a *Request to Open Contested Case*. On the same day, the Commission issued an *Order Directing Notice of Contested Case*.

7. On October 18, 2010, Timber Creek filed its *Stipulation of Timber Creek Sewer Company to Factual Assertions in Attachments to Unanimous Partial Agreement*.

8. On October 20, 2010, Public Counsel filed *The Office of Public Counsel's Stipulation* which it stipulated to the factual assertions contained in Attachments A and B to the *Unanimous Partial Agreement*.

9. A local public hearing was held on November 17, 2010 at Platte City High School, 1501 Branch Street, Platte City, Missouri.

10. On December 29, 2010, Staff filed an *Unanimous Stipulation of Undisputed Facts* on behalf of the parties to this case.

11. On December 29, 2010, Staff filed a *List of Issues, Order of Opening and Cross Examination* on behalf of the parties to this case.

12. On January 5, 2011, the Commission conducted an evidentiary hearing in this matter.

Applicable Law

13. The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

14. In making its Findings of Fact and Conclusions of Law, the Commission is mindful that it is required, after a hearing, to “make a report in writing in respect thereto, which shall state the conclusion of the commission, together with its decision, order and requirement in the premises.”¹ Because Section 386.420 does not explain what constitutes adequate findings of fact, Missouri courts have turned to Section 536.090, which applies “every decision and order in a contested case,” to fill in the gaps of Section 386.420.²

15. Findings of fact are inadequate when they “leave the reviewing court to speculate as to what part of the evidence the [Commission] believed and found to be true and what part it rejected.”³ Findings of fact are also inadequate that “provide no insight into how controlling issues were resolved” or that are “completely conclusory.”⁴

¹ Section 386.420.2, RSMo 2000. All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision 2000.

² *St. ex rel. Laclede Gas Co. v. Pub. Serv. Comm’n of Mo.*, 130 S.W.3d 813, 816 (Mo. App. W.D. 2003); *St. ex rel. Noranda Aluminum, Ind. V. Pub. Serv. Comm’n*, 24 S.W.3d 243, 245 (Mo. App. W.D. 2000).

³ *St. ex rel. Int’l Telecharge, Inc. v. Mo. Pub. Serv. Comm’n*, 806 S.W.2d 680, 684 (Mo. App. W.D. 1991) (quoting *St. ex rel. AM. Tel & Tel. Co. v. Pub. Serv. Comm’n*, 701 S.W.2d 45, 754 (Mo. App. W.D. 1985)).

⁴ *St. ex. rel., Monsanto Co. v. Pub. Serv. Comm’n*, 716 S.W.2d 791, 795 (Mo. Banc 1986) (relying on *St. ex rel. Rice v. Pub. Serv. Comm’n*, 359 Mo. 109, 220 S.W.2d 61 (1949)).

Jurisdiction

16. Section 393.140, gives the Commission authority to regulate the rates Timber Creek may charge its customers for sewer.

Burden of Proof

17. Section 393.150.2 provides in part, “[a]t any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the . . . water corporation or sewer corporation, and the commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.”

18. In determining rates Timber Creek may charge its customers, the Commission is required to determine that the proposed rates are just and reasonable. Section 393.130. Timber Creek has the burden of proving its proposed rates are just and reasonable. Section 393.150.2.

19. In determining whether the rates proposed by Timber Creek are just and reasonable, the Commission must balance the interests of the investor and the consumer. *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944). In discussing the need for a regulatory body to institute just and reasonable rates, the United States Supreme Court has held as follows:

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 Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 690 (1923).

In the same case, the Supreme Court provided the following guidance on what is a just and reasonable rate:

What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. 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 county on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as were 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. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally. *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 692-93 (1923).

The Supreme Court has further indicated:

‘[R]egulation does not insure that the business shall produce net revenues.’ But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business.

These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital. *Federal Power Commission v. Hope Natural Gas Co.*, 320, U.S. 591, 603 (1944) (citations omitted).

In undertaking the balancing required by the Constitution, the Commission is not bound to apply any particular formula or combination of formulas. Instead the Supreme Court stated:

Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances. *Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U.S. 575, 586 (1942).

Furthermore, the Missouri Court of Appeal quoting the United States Supreme Court in *Hope Natural Gas* stated:

[T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of ‘pragmatic adjustments.’ . . . Under the statutory standard of ‘just and reasonable’ it is the result reached, not the method employed which is controlling. It is not theory but the impact of the rate order which counts. *State ex. rel. Associate Natural Gas Co. v. Public Serv. Comm’n*, 706 S.W. 2d 870, 873 (Mo. App. W.D. 1985).

Ratemaking Standards and Practices

20. The Commission is vested with the state's police power to set "just and reasonable" rates for public utility services,⁵ subject to judicial review of the question of reasonableness.⁶ A "just and reasonable" rate is one that is fair to both the utility and its customers;⁷ it is no more than 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."⁸ In 1925, the Missouri Supreme Court stated:

The enactment of the Public Service Act marked a new era in the history of public utilities. Its purpose is to require the general public not only to pay rates which will keep public utilities plants in proper repair for effective public service, but further to insure to the investors a reasonable return upon funds invested. The police power of the state demands as much. We can never have efficient service, unless there is a reasonable guaranty of fair returns for capital invested. *** These instrumentalities are a part of the very life blood of the state, and of its people, and a fair administration of the act is mandatory. When we say 'fair,' we mean fair to the public, and fair to the investors.⁹

21. 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.¹⁰ "[T]he dominant thought and purpose of the policy is the protection of the public . . .

⁵ Section 393.130, in pertinent party, requires a utility's charges to be "just and reasonable" and not in excess of charges allowed by law or by order of the commission. Section 393.140 authorizes the Commission to determine "just and reasonable" rates.

⁶ *State ex rel City of Harrisonville v. Pub. Serv. Comm'n*, 291 Mo. 432, 236 S.W. 852 (1922).

⁷ *St. ex rel. Valley Sewage Co. v. Pub. Serv. Comm'n*, 515 S.W.2d 845 (Mo. App. K.C.D. 1974).

⁸ *St. ex rel. Washington University et al. v. Pub. Serv. Comm'n*, 308 Mo. 328, 344-45, 272 S.W. 971, 973 (banc 1925).

⁹ *St. ex rel. Washington University et al. v. Pub. Serv. Comm'n*, 308 Mo. 328, 344-45, 272 S.W. 971, 973 (banc 1925).

¹⁰ *May Dep't Stores Co. v. Union Elec. Light & Power Co.*, 341 Mo. 299, 107 S.W.2d 41, 48 (1937).

[and] the protection given the utility is merely incidental.”¹¹ However, the Commission must also afford the utility an opportunity to recover a reasonable return on the assets it has devoted to the public service.¹²

22. The Commission has exclusive jurisdiction to establish public utility rates,¹³ and the rates it sets have the force and effect of law.¹⁴ 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;¹⁵ neither can a public utility change its rates without first seeking authority from the Commission.¹⁶ 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.¹⁷ Thus, “[r]atemaking is a balancing process.”¹⁸

23. Ratemaking involves two successive processes: 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.¹⁹ 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 based upon a historical test year that focuses on four factors: (1) 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

¹¹ *St. ex rel. Crown Coach Co. v. Pub. Serv. Comm’n*, 179 S.W.2d 123, 126 (1944).

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

¹³ *May Dep’t Stores Co. v. Union Elec. Light & Power Co.*, 341 Mo. 299, 107 S.W.2d 41, 57 (1937).

¹⁴ *St. ex rel. Utility Consumers Council, Inc. v. Pub. Serv. Comm’n*, 585 S.W.2d 41, 49 (Mo. Banc 1979).

¹⁵ *St. ex rel. Utility Consumers Council, Inc. v. Pub. Serv. Comm’n*, 585 S.W.2d 41, 49 (Mo. Banc 1979).

¹⁶ *Deaconess Manor Ass’n v. Pub. Serv. Comm’n*, 994 S.W.2d 602, 610 (Mo. App. W.D. 1999).

¹⁷ *May Dep’t Stores Co. v. Union Elec. Light & Power Co.*, 341 Mo. 299, 107 S.W.2d 41, 50 (1937).

¹⁸ *St. ex rel. Union Elec. Co. v. Pub. Serv. Comm’n*, 765 S.W.2d 618, 622 (Mo. App. W.D. 1988).

¹⁹ *St. ex rel. Capital City Water Co., v. Mo Pub. Serv. Comm’n*, 850 S.W.2d 903, 916 n. 1 (Mo. App. W.D. 1993).

equipment; and (4) allowable operating expenses.²⁰ The calculation of revenue requirement from these four factors is expressed in the following formula:

$$RR = C + (V - D) R$$

where:

RR = Revenue requirement;

C = Cost of service including depreciation expense and taxes;

V = Gross value of utility plant in service;

D = Accumulated depreciation; and

R = Overall rate of return or weighted cost of capital.

24. 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.²¹ The Public Service Commission Act vests the Commission with the necessary authority to perform these functions. Section 393.140(4) 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 water and sewer utilities operating in Missouri, that is, to determine the rate base.

25. The Revenue requirement is the sum of two components: first, the utility's prudent operating expenses, and second, an amount calculated by multiplying the fair value of the utility's depreciated assets by a Rate of Return. For any utility, its fair Rate of Return is simply its composite cost of capital. The composite cost of capital is the sum of the weighed

²⁰ *St. ex rel. Capital City Water Co., v. Mo Pub. Serv. Comm'n*, 850 S.W.2d 903, 916 n. 1 (Mo. App. W.D. 1993) citing *Colton*, "Excess Capacity: Who Gets the Charge From the Power Plant?," 34 Hastings L.J. 1133, 1134 & 1149-50 (1983).

²¹ *St. ex rel. Union Elec. Co. v. Pub. Serv. Comm'n*, 765 S.W.2d 618, (Mo. App. W.D. 1988).

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 portion of the capital structure. Where possible, the cost used is "embedded" or historical cost; however, in the case of Common Equity, the cost used is its estimated costs.

PROPOSED FINDINGS OF FACT AND CONCLUSION OF LAW

26. Timber Creek is a sewer corporation pursuant to Section 386.020(49) RSMo (2009), and subsequently a public utility within the meaning of 386.020(43) RSMo (2009); thereby subject to the jurisdiction of the Commission pursuant to Section 386.250(4) RSMo (2000).

27. Timber Creek provides sewer service to approximately 1,526 customers in Platte and Clay Counties, Missouri.²²

Payroll/Overtime/Timesheets

I. Payroll

28. Timber Creek's request for \$265,742 in total compensation is unjust and unreasonable.²³ Staff's proposed salaries are just and reasonable and supported by competent and substantial evidence.²⁴ A just and reasonable total compensation level for Timber Creek is \$245,441; General Manager - \$76,862; Plant Manager - \$81,020; Office Manager - \$41,559; and Assistant Operator - \$39,000 plus \$7,000 in overtime.²⁵

29. Staff expert, Bret Prenger, conducted several types of analysis when assessing payroll. He consulted the Missouri Economic Research and Information Center (MERIC)²⁶ pay

²² Exhibit 1, Unanimous Stipulation and Agreement.

²³ See RSMo § 393.130.

²⁴ Exhibit 9, *Prenger* Rebuttal, p. 2, lines 4-6.

²⁵ Exhibit 9, *Prenger* Rebuttal, Schedule 1.

²⁶ MERIC is a database for all Missouri Employment data, including salaries and wages for specific jobs and

survey²⁷ and the market survey for the Bureau of Labor Statistics.²⁸ In addition, Mr. Prenger reviewed salaries for Platte County Regional Sewer District, Johnson County Wastewater, and Wyandotte County Wastewater-Unified Government Treatment Plants.²⁹ Mr. Prenger further analyzed a comparison of previous Commission rate case salary evaluations in the water and sewer industry, some cases in which he personally participated in and was responsible for the payroll issue, such as the Lake Region Water and Sewer Company, completed in mid-2010.³⁰

30. Mr. Prenger, along with other Staff members, conducted on-site visits, and interviewed employees to gain specific job function information.³¹ Mr. Prenger also reviewed the job descriptions for each Timber Creek employee to consider the job duties and responsibilities for each of those employees.³²

31. Timber Creek operates its sewer system with four employees; General Manager, Operations Manager, Office Manager, and Plant and Collection System Operator.³³

A. General Manager

32. A just and reasonable level for the General Manager's salary is \$76,862. This amount is six percent increase from the General Manager's current salary.³⁴ Based on the General Manager's job duties,³⁵ and MERIC, Staff's proposed salary level was just and reasonable. Public Counsel's position that Mr. Sherry is an entry-level manager, is not persuasive.³⁶ It appears that Public Counsel did not take into consideration the General

classifications.

²⁷ Exhibit 9, *Prenger Rebuttal*, p. 2, line 19 – p. 3, line 8.

²⁸ Transcript, Vol. 3, p. 74, lines 22-24.

²⁹ Exhibit 9, *Prenger Rebuttal*, p. 3, lines 9-19.

³⁰ Exhibit 9, *Prenger Rebuttal*, p. 2 line 19 – p. 3, line 8.

³¹ Transcript, Vol. 3, p. 74, lines 24-25; Exhibit 8, *Prenger Direct*, p. 4, lines 16-20.

³² Exhibit 8, *Prenger Direct*, p. 10, lines 12-15.

³³ Exhibit 10, *Prenger Surrebuttal*, p. 3, lines 2-4.

³⁴ Exhibit 9, *Prenger Rebuttal*, p. 2, lines 14-18.

³⁵ Exhibit 8, *Prenger Direct*, p. 12, line 3 – p. 14, line 14.

³⁶ Exhibit 23, *Robertson Rebuttal*, p. 10, line 18.

Manager's prior experience in executive positions at utility companies.³⁷ Timber Creek's position is excessive, in that it is requesting a \$17,000 increase, for a total of \$94,529 annually.³⁸ For a utility the size of Timber Creek, Timber Creek's request is unreasonable and unsupported by competent evidence.³⁹

33. To include an increase to the level Timber Creek requests for the General Manager, would require each customer to pay \$61.95 compared to the level Staff is proposing at \$50.37 per customer.⁴⁰ Staff's proposed level of salary for the General Manager is substantially higher on a per customer level compared to other utility entities; Johnson County - \$1.10 per customer; Wyandotte County \$2.41 per customer; Platte County \$23.28 per customer; and Lake Region \$19.02 per customer.⁴¹

B. Operations Manager

34. A just and reasonable level of compensation for the Operations Manager's is \$81,020.⁴² This amount includes a three percent cost of living increase over his existing salary.⁴³ While this amount is higher than the market rate⁴⁴, it is just and reasonable based upon the job duties⁴⁵, and the fact that it is one of only two field positions at Timber Creek which has responsibility of serving a system in excess of 1,200 customers.⁴⁶ Further, Mr. Sherry indicated during the evidentiary hearing, that this position generally works more hours per week than the General Manager and is on call seven days per week.⁴⁷

³⁷ Exhibit 4, *Sherry Direct*, p. 1, line 13 – p. 2, line 9.

³⁸ Transcript, Vol. 3, p. 49, lines 7-9; Exhibit 6, *Prenger Rebuttal* p. 6, line 9.

³⁹ Exhibit 9, *Prenger Rebuttal*, p. 6, lines 3-4.

⁴⁰ Exhibit 9, *Prenger Rebuttal*, p. 6, lines 1-8.

⁴¹ Exhibit 9, *Prenger Rebuttal*, p. 8-10, 13.

⁴² Exhibit 10, *Prenger Surrebuttal*, p. 13, line 1.

⁴³ Exhibit 10, *Prenger Surrebuttal*, p. 13, line 1.

⁴⁴ Transcript, Vol. 3, p. 76, lines 16-20; Exhibit 9, *Prenger Rebuttal*, p. 5, line 9.

⁴⁵ Exhibit 8, *Prenger Direct*, p. 13, line 15 – p. 15, line 40.

⁴⁶ Transcript, Vol. 3, p. 77, lines 1-3.

⁴⁷ Transcript, Vol. 3, p. 110, lines 4-5; p. 111, line 24 – p. 112, line 6.

35. Under the Department of Natural Resources (DNR) requirements for sewer companies the size of Timber Creek, the utility must employ an individual with a Class A operator's license.⁴⁸ The only Timber Creek employee with the necessary credentials is the Operations Manager.⁴⁹

C. Office Manager

36. A just and reasonable salary for the Office Manager is \$41,559.⁵⁰ This includes a three percent cost of living adjustment to the position's current salary.⁵¹ Based upon MERIC and the Office Manager's job duties⁵², this salary amount is just and reasonable.

37. The Commission does not support overtime for the Office Manager.⁵³ Based on a review of the Office Manager's job description, observation of the Office Manager's duties while on-site and discussions with the Office Manager regarding her duties and the time spent each week performing the duties, reviewing salary surveys specific to the position, and Timber Creek indicating it did not plan on paying overtime for the Office Manager's position.⁵⁴

D. Plant and Collection System Operator

38. A just and reasonable salary for Plant and Collection System Operator is a base salary of \$39,000 with an additional \$7,000 in overtime.⁵⁵ This amount is based upon MERIC⁵⁶ and the job duties of this position.⁵⁷

39. Based on the job duties and responsibilities of the Plant and Collection System Operator, the Commission supports \$7,000 in overtime. Based upon Timber Creek's attorney

⁴⁸ Exhibit 9, *Prenger Rebuttal*, p. 5, lines 13-17.

⁴⁹ Exhibit 9, *Prenger Rebuttal*, p. 5, line 20.

⁵⁰ Exhibit 9, *Prenger Rebuttal*, p. 7, line 10.

⁵¹ Exhibit 9, *Prenger Rebuttal*, p. 2, lines 14-15.

⁵² Exhibit 8, *Prenger Direct*, p. 11, lines 15-25.

⁵³ Exhibit 9, *Prenger Rebuttal*, p. 17, lines 12-27.

⁵⁴ Exhibit 9, *Prenger Rebuttal*, p. 17, line 16 – p. 18 line 27; *see* Schedule 5.

⁵⁵ Transcript, Vol. 3, p. 80, lines 18-25.

⁵⁶ Exhibit 10, *Prenger Surrebuttal*, p. 7, lines 11-16.

⁵⁷ Exhibit 8, *Prenger Direct*, p. 10, line 6 – p. 11, line 3.

determination that the position was a non-exempt employee and the Company's affirmation it planned on paying the Plant and Collection System Operator overtime⁵⁸, \$7,000 in overtime is just and reasonable.⁵⁹

40. While Staff and Timber Creek evaluated the employee compensation of sewer companies located in the greater Kansas City, Missouri area, Timber Creek failed to distinguish itself from like duties and responsibilities of other sewer companies. Johnson County Wastewater services over 133,000 customers and employs approximately 218 individuals.⁶⁰ Wyandotte County services over 43,000 customers and employs approximately 100 individuals.⁶¹ Platte County Regional Sewer District services 3,200 customers and employs 10 individuals.⁶² Timber Creek services 1,526 customers and employs four (4) individuals.⁶³

41. While Timber Creek and Staff used the same sources when assessing the appropriate level of compensation for its employees, Timber Creek to recognize the differences in the utilities that make its entity distinguishable from the ones it based its comparison.

42. The Commission orders Timber Creek to establish and maintain a time reporting mechanism for all of its employees. Time reporting supports the managerial responsibilities of planning, organizing, directing, and controlling organizational resources.⁶⁴ It also helps to ensure the allocation between expense and construction activities is accurate.⁶⁵ Despite the

⁵⁸ Transcript, Vol. 3, p. 81, lines 18 – p. 82, lines 11; Exhibit 9, *Prenger* Rebuttal, p. 18, lines 6-27; Exhibit 10, *Prenger* Surrebuttal, p. 6, lines 21 – p. 7, line 3.

⁵⁹ Exhibit 9, *Prenger* Rebuttal, p. 17, lines 1-3.

⁶⁰ Exhibit 9, *Prenger* Rebuttal, p. 7, lines 13-16; *see* Schedule 2.

⁶¹ Exhibit 9, *Prenger* Rebuttal, p. 8, lines 8-9; *see* Schedule 3.

⁶² Exhibit 9, *Prenger* Rebuttal, p. 9, lines 7-8; *see* Schedule 4.

⁶³ Exhibit 8, *Prenger* Direct, p. 5, line 24; Exhibit 9, *Prenger* Rebuttal, p. 2, line 8.

⁶⁴ Exhibit 11, *Hagemeyer* Direct, P. 5, line. 11-13; *See* Exhibit 8, Direct Prenger, p. 18, lines 4-27.

⁶⁵ Exhibit 8, *Prenger* Direct, p. 17, lines 21-22.

classification of the Company's employees, either exempt or non-exempt, the Commission orders that all employees maintain time records.⁶⁶

43. In order for a public utility to claim a wage expense, it must present sufficiently documented work hours.⁶⁷ Because Timber Creek is requesting additional revenue for a wage expense, but does not currently have any time recording mechanism in place, the Commission is ordering the Company to establish a time recording system for each of its employees.

Rate Case Expense

44. The appropriately of rate case expense to be allowed in rates is \$30,360, amortized over three years.

45. *Staff's Late-Filed Exhibit* included actual rate case expense incurred by Timber Creek to litigate this rate case through January 31, 2011. The Commission finds competent and substantial evidence to support the expenses incurred by Timber Creek to litigate this rate case.

46. The Commission will not allow Mr. Sherry's expenses related to a prior rate case. Mr. Sherry claims to have worked \$18,175 worth of time during that rate case, but never claimed the expenses during the prior rate case, Case No. SR-2008-0080.⁶⁸ To include cost from a prior rate would constitute single-issue ratemaking and retroactive ratemaking and is in violation of the matching principle accounting standard.

47. The Commission must "consider all facts . . . with due regard, among other things to a reasonable average return upon capital actually expended" when determining rates for a utility company.⁶⁹ The Missouri Supreme Court has long interpreted Section 393.270 to

⁶⁶ Exhibit 12, *Hagemeyer* Rebuttal, P. 2, lines. 6-7.

⁶⁷ Exhibit 11, *Hagemeyer* Direct, p. 7, lines 22-23.

⁶⁸ Exhibit 4, *Sherry* Direct, p. 11, line 11.

⁶⁹ Section 393.270.4.

prohibit single-issue ratemaking.⁷⁰ Single-issue ratemaking is when rates are changed based upon considering a single factor, such as rate case expense, in contravention of statutory requirements that the Commission must consider all relevant factors in setting rates.⁷¹ “Missouri’s prohibition against single-issue ratemaking bars the Commission from allowing a public utility to change an existing rate without consideration of all relevant factors such as operating expenses, revenue, and rates of return.”⁷²

48. 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.”⁷³ The prohibition on retroactive ratemaking prohibits prior over- or under-recoveries.

49. The matching principle is an accounting principle in which the expenditure (rate case expense at that time) be matched with the benefits received (revenue from rates established at that time).⁷⁴ This case has its own rate case expense to be matched with the revenue generated from the rates established in this case.

Alternative Energy/Natural Gas Well

50. The Commission cannot support the inclusion for exploratory alternative energy sources in Timber Creek’s rates.

51. Timber Creek based a cost for exploratory energy on a highly speculative drilling for natural gas which it engaged in during the test year.⁷⁵

⁷⁰ See *State ex rel. Midwest Gas Users’ Association v. Public Service Commission*, 976 S.W.2d 470 (Mo App. W.D. 1998) (MGUA).

⁷¹ *Id.* at 477.

⁷² *Sprint Spectrum L.P. d/b/a Sprint PCS v. P.S.C.*, 112 S.W.3d 20 (Mo. App. W.D. 2003). *State ex. rel Mo. Water Co.*, 308 S.W.2d 704, 718-19 (Mo. 1957); Section 392.240.1.

⁷³ *State ex. Rel. Utility Consumers’ Council of Missouri, Inc, v. Public Service Commission of Missouri*, 585 S.W.2d 41, 59 (Mo banc 1979) (UCCM).

⁷⁴ New York State Society of CPAs (NYSSCPA).

⁷⁵ Exhibit 4, *Sherry Direct*, p. 15, lines 2-5.

52. While the Commission acknowledges that Timber Creek's electric utility costs have increased over the past few years, it cannot support cost for highly speculative alternative energy research.⁷⁶

53. Staff expert, Martin Hummel, testified that Mr. Sherry's comparison of solar, wind, and natural gas are not a valid comparison when determining alternative energy sources.⁷⁷ With solar energy, the assumption is that solar energy will be present, and with wind, the assumption is that wind will be present, both are accurate.⁷⁸ However, with natural gas, the assumption that natural gas will be present is highly speculative.⁷⁹ Mr. Sherry based his comparison of alternative energy sources on, and, the likelihood of natural gas being available was and is highly speculative, Mr. Sherry's comparison is invalid.⁸⁰ Mr. Hummel further did not find any evidence that the cost of the exploratory well was prudent.⁸¹

54. Timber Creek has not provided any support for the inclusion of an alternative energy "allowance" for inclusion in rates. During the evidentiary hearing, Mr. Sherry indicated the money he is requesting is for consulting fees.⁸² However, Mr. Sherry has not provided any evidence to the cost for consulting, or any particular costs involved in the continuation of exploring alternative energy.

55. While the Commission certainly supports and encourages utility companies finding ways to reduce costs and finding alternative energy sources, the Commission cannot support ratepayers bearing the costs for speculative ventures.⁸³

⁷⁶ Exhibit 4, *Sherry Direct*, p. 12, lines 11-16.

⁷⁷ Exhibit 18, *Hummel Rebuttal*, p. 2, lines 19-22.

⁷⁸ Exhibit, 18, *Hummel Rebuttal*, p. 2, lines 1-3.

⁷⁹ Exhibit 18, *Hummel Rebuttal*, p. 2, lines 3-4.

⁸⁰ Exhibit 18, *Hummel Rebuttal*, p. 2, lines 1-4.

⁸¹ Exhibit 18, *Hummel Rebuttal*, p. 3, lines 1-3.

⁸² Transcript, Vol. 3, p. 59, line 12.

⁸³ Transcript, Vol. 3, p. 197, lines 13-21.

Public Service Commission Assessment

56. The appropriate level of the PSC Assessment should be \$62,590, the amount Timber Creek was assessed for the 2011 fiscal year.

57. The Commission cannot allow Timber Creek to recover past variances in its PSC Assessment.

58. Timber Creek is requesting that the Commission authorize it to recover \$45,902 in past under recovered PSC Assessments.⁸⁴ Staff is appropriately allocating the PSC Assessment under Section 386.370. Section 386.370, RSMo (2000) defines the Public Service Commission Assessment to be charged to each entity regulated by the Commission.

59. Timber Creek's request constitutes retroactive ratemaking. 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."⁸⁵ The prohibition on retroactive ratemaking prohibits prior over- or under-recoveries. It would be unlawful for the Commission to isolate an expense from a prior rate case in which the company believes it under recovered.

60. The Commission cannot create a PSC Assessment pass-through on Timber Creek's customer bills.

61. Section 386.370.3 authorizes the Commission to assess investor-owned utilities. Pursuant to that statute, Staff is correctly calculating and applying to the PSC Assessment to investor-owned utilities.⁸⁶ Absent statutory authorization, the Commission cannot change its practices in assessing utility companies.

62. The Commission encourages Timber Creek to continue vetting this issue in File

⁸⁴ Exhibit 4, *Sherry* Direct, p. 17, lines 2-3.

⁸⁵ *UCCM*, 585 S.W.2d at 59.

⁸⁶ Exhibit 19, *Busch* Direct, p. 2, lines 10-12.

No. WW-2009-0386.

Contingency/Emergency Repair Fund

63. The Commission cannot authorize Timber Creek Sewer to establish a Contingency/Emergency Repair Fund. At this time, it is better suited for discussion in the current working group, associated with File No. WW-2009-0386.

64. The Commission is charged with setting just and reasonable rates and a Contingency/Emergency Repair Fund is not just or reasonable and therefore, not statutorily permissible in the context of this case.

65. While Timber Creek has found a creative way to address the Contingency/Emergency Repair Fund⁸⁷, the model used by Timber Creek includes all expenses, not only isolated expenses⁸⁸, as well as non-regulated and regulated utilities.⁸⁹ These distinctions are important because while the model may be instructive, it is not a genuine comparison, since it includes both regulated and non-regulated utilities. Timber Creek seeks both plant expenses and new-employee training costs in its proposal and it contemplates both regulated and non-regulated utilities. This creative way to address the situation may affect all small water and sewer companies, as well as other regulated entities.⁹⁰

66. Timber Creek argues that its proposal of a Contingency/Emergency Repair Fund is authorized by Section 393.270.5, because that section uses “contingencies”.⁹¹ Section 393.270.5 states, in pertinent part, “the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question ...among other things, to a reasonable average return upon the value of the property actually used in the public service and

⁸⁷ Transcript, p. 205, lines 11-12.

⁸⁸ Transcript, p. 132, lines 17-19.

⁸⁹ Transcript, p. 124, lines 20-23, 135.

⁹⁰ Transcript, p. 205 lines 11-12.

⁹¹ Transcript, p. 24, lines 21-22.

to the necessity of making reservations out of income for surplus and contingencies.” Timber Creek isolates a single word at the end of a statute and argues that the statute allows a contingency, specifically a Contingency/Emergency Repair Fund.

67. When reading the statute in its entirety and in conjunction with other pertinent statutes, including Section 393.130.1. First and foremost, the Commission must set rates that are just and reasonable⁹², and in consideration of setting those rates, the Commission can consider the items identified in Section 393.270.5. The Commission regularly considers “the necessity of making reservations out of income for surplus and contingencies”⁹³ during rate cases by factoring in the company’s expense levels. Utilities are allowed operating and maintenance expense as part of the rate base, which provides the company with the capability to fix things as they come up - contingencies that arise in the operation of a utility.

68. In this case, it is not reasonable to allow Timber Creek to establish a separate fund that has the potential to collect more than \$700,000. Timber Creek is seeking a separate fund in the context of a rate case with an operation of law date of April 10, 2011. Despite Timber Creek’s arguments, “contingencies” as used in Section 393.270.5 does not contemplate the Contingency/Emergency Repair Fund Timber Creek seeks in this matter. The statute Timber Creek relies on does not contemplate Timber Creek’s proposal as articulated in this case.

69. The Commission encourages Timber Creek to continue to discuss the Contingency/Emergency Repair Funds within the context of the current working group, File No. WW-2009-0386.⁹⁴

WHEREFORE, the Staff submits the foregoing as its Proposed Findings of Fact and Conclusions of Law in this matter.

⁹² See Section 393.130.

⁹³ See Section 393.270.5.

⁹⁴ Exhibit 19, *Busch* Direct p. 7, lines 19-20.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 4th day of February, 2011

/s/ Jaime N. Ott