

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

**In the Matter of the Small Company)
Rate Increase of Timber Creek Sewer) Case No. SR-2010-0320
Company)**

**TIMBER CREEK SEWER COMPANY'S RESPONSES TO RESPONSES OF STAFF &
OPC TO TIMBER CREEK'S LATE-FILED EXHIBIT**

COMES NOW Timber Creek Sewer Company ("Timber Creek"), by its Counsel, and pursuant to the Commission's Order Regarding Response Deadline and Deadline for Closing the Record dated March 10, 2011, states the following:

Response to Staff's Response

1. With respect to Staff's Response, Timber Creek is thankful for the support of its witness, V. William Harris, on determining that the invoices of Finnegan, Conrad & Peterson, LC for the period from February 1, 2011 through February 25, 2011 were reasonably and prudently incurred and that Staff does not object to the inclusion of such costs in rate case expense incurred in this case. Obviously, Timber Creek has no objection to Staff's position on this expense and supports Staff.

2. Also, based on Staff's belief that a separate mailing required under 4 CSR 240-3.050(22) in small rate case proceedings is not necessary at this time because the case became a contested case under 4 CSR 240-3.050(21) and in general rate case proceedings a utility does not send a notice to customers upon the issuance of a Commission Report and Order and the filing of compliance tariffs at the conclusion of the case, if the Commission so

agrees and does not require Timber Creek to send out a notice it would no longer desire to press this issue. Obviously, if Timber Creek is not required to incur the expense of the mailing, it should not be awarded an amount in rate case expense when it does not have to make such mailing. Conversely, if the Commission decides that the mailing has to be made, Timber Creek would still be seeking inclusion of such expense in the rate case expense. See Paragraph 6, *infra*.

Response to OPC's Response

3. With respect to OPC's response, Timber Creek is not so favorably inclined. Public Counsel objects to Timber Creek's request for additional rate case expense even though the rate case expense to be considered in this case is the current rate case expenses being incurred in this case and is not based on the extrapolation of some prior rate case expenses. Because it is the current rate case expenses that are being considered, it is only just, fair and reasonable that the most recent current rate case expenses are included and this means the legal fees being incurred.

4. Timber Creek also takes exception to OPC's characterization that the number of hours claimed and the rate charged by Timber Creek's counsel as being exorbitant and unreasonable given the nature of the case and the small size of the utility and that they are unconscionable fees. Based on Mr. Finnegan's more than 45 years of experience in public utility rate cases commencing in July 1965 when he began as Assistant General Counsel, through his stint as General Counsel from 1967 to 1973 and his over 35 years since then representing various entities before the Commission, it is self-evident that Mr. Finnegan's rate for legal services charged to Timber Creek are neither exorbitant, unreasonable nor

unconscionable.^{1/} A review of the billings throughout this case will show that in order to keep costs down for his client, he did virtually all of the work in this case on his own and did not attempt to increase legal expenses by calling on his partners, who are also experienced in utility rate proceedings, to help out.

Further, in an effort to keep rate case costs down, the only witness Timber Creek utilized was Mr. Derek Sherry, the Company President and General Manager, so no cost was incurred for outside consultants. Nevertheless, merely because Timber Creek is a small utility, that does not mean that it should have to cut corners in presenting its case merely to keep the costs down, if cutting such corners would result in less than adequate representation for the company. Under the circumstances, Timber Creek believes that the fees and expenses incurred in presenting this case are just and reasonable and prudently incurred.

5. With respect to the charge for a separate mailing, Timber Creek was merely trying to recover for costs it believed it was required by rule to incur. The rule does not mention the combining of the notice with a bill and it appears from a reading of the rule that a stand-alone mailing is required. Believe us, if no separate mailing is required, Timber Creek would be happy to include it in a bill mailing to save customers' money or, in this case, to save Timber Creek money if it is required to make the mailing and such cost is not included in rate case expense. Of course, if as Staff Counsel argues no such mailing is

^{1/} Anyone who participated in KCPL's pending rate case would be aware that attorneys with considerably less experience are charging much more for their services. In fact, because Timber Creek is a small utility, Mr. Finnegan does not charge it his highest rate, which even then is lower than most of the rates charged by attorneys in the KCPL case.

required since this is a contested case, then there is no need to incur the expense and unless ordered by the Commission to make such separate mailing, it will not be incurred.

Accounting Authority Order

6. Now that by the Commission's Order closing the record on March 15, 2011, if Timber Creek is required to make such mailing at its own expense and if such expense and the additional legal fees sought to be included in rate case expense are not included in the rate case expense for this case, as well as any subsequent costs incurred in this case by Timber Creek, such as the cost of reviewing the Report and Order and determining if a rehearing should be sought, filing and/or responding to Applications for Rehearing, if any, and getting the approved rates on file are not included in the rate case expense, then Timber Creek is requesting that an Accounting Authority Order be issued allowing Timber Creek to treat the expenses not included in the rate case expense under an Accounting Authority Order (AAO) and saved for potential recovery as rate case expenses in Timber Creek's next rate case. Unless these expenses are saved, the result will be the same in future cases as in this case, i.e., reasonable and prudent expenses incurred after the record is closed will not be recovered in this case nor in the next rate case.

WHEREFORE, Timber Creek submits its Responses to Staff and OPC and requests an AAO to carry over unrecovered rate case expenses until the next rate case.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.,

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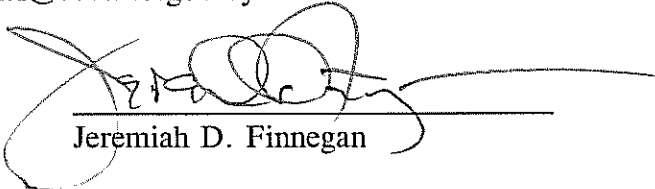
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ATTORNEYS FOR TIMBER CREEK
SEWER COMPANY

March 14, 2011

Certificate of Service

I hereby certify that on this 14th March, 2011, I electronically filed the foregoing document with the Commission and further caused a copy of the same to be sent to Staff Counsel Jaime N. Ott at jaime.ott@psc.mo.gov and Christina L. Baker of the Office of Public Counsel at christina.baker@ded.mo.gov by electronic transmission.



Jeremiah D. Finnegan