

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

In the Matter of the Application of TBJ Sewer	)	
Systems, Inc. Request for Increase in Annual	)	File No. SR-2011-0182
Sewer System Operating Revenues.	)	

**THE OFFICE OF THE PUBLIC COUNSEL’S POSITION STATEMENT**

COMES NOW the Office of the Public Counsel (Public Counsel or OPC) and for its Position Statement states as follows:

1. On December 27, 2010, TBJ Sewer Systems, Inc. (TBJ) initiated a small company rate increase proceeding with the Missouri Public Service Commission (Commission) requesting a total increase in its sewer rates of \$8,940.60 per year.
2. On July 14, 2011, the Staff of the Missouri Public Service Commission (Staff) filed a Notice of Company/Staff Agreement Regarding Disposition of Small Company Rate Increase Request (Company/Staff Agreement) indicating an agreement between Staff and TBJ for a total sewer rate increase of \$9,055 annually. Public Counsel did not join in the agreement.
3. Revised tariff sheets reflecting the proposed rates agreed to in the Company/Staff Agreement were filed by TBJ on July 19, 2011.
4. As the Company/Staff Agreement was executed by only TBJ and Staff, 4 CSR 240.3-050(15) requires Public Counsel to file a pleading stating its position regarding the Company/Staff Agreement and the related proposed tariff revisions, or requesting a local public hearing or an evidentiary hearing, no later than five (5) working days after the end of the comment period for the written customer notice contemplated in 4 CSR 240-3.050(14).

5. Pursuant to the requirements in 4 CSR 240-3.050 (15), Public Counsel now states that it will not object to the Company/Staff Agreement or the related tariff revisions filed in the above stated case. Additionally, Public Counsel states that it agrees with the following rate base numbers as of December 31, 2010, as listed in Attachment B – EMS Runs of the Company/Staff Agreement:

- St. John's – Plant 1: \$68,243
- Bourbeuse – Plant 2: \$14,440
- Oak Hollow – Plant 3: \$12,214

6. However, Public Counsel has concerns regarding the appropriateness of increasing the rates for customers served by the Bourbeuse and Oak Hollow plants at this time. These concerns revolve around an agreement between Staff and TBJ in the previous certificate case for TBJ, SA-2003-0189. The basis for these concerns is explained in the attached Memorandum.

7. According to the agreement between Staff and TBJ as presented in Staff's June 6, 2003, Final Recommendation in SA-2003-0189, rates are not to change until customer numbers in each area exceed the customer numbers used to calculate the rates set in that case. Presently, the customer numbers for the Bourbeuse and Oak Hollow Plants do not exceed the customer numbers used to calculate the rates set in the certificate case. Therefore, Public Counsel questions the appropriateness of increasing the rates at this time for customers served by the Bourbeuse and Oak Hollow plants.

8. Given that the letters indicating the agreement are referenced in and attached to Staff's Final Recommendation in SA-2003-0189, Staff apparently relied heavily on this agreement in order to form its recommendation that the certificate be granted. Public Counsel also relied on

this agreement between Staff and TBJ in order to determine its position in SA-2003-0189.

Staff's Final Recommendation in SA-2003-0189 specifically notes this fact:

“6. On May 29, 2003 and June 5, 2003, in conversations with Dale Johansen of the Staff and Cliff Snodgrass of the General Counsel's Office, respectively, Ms. Ruth O'Neill of the OPC advised the Staff that the OPC does not object to the Commission's approval of the Company's Application in this case, so long as that approval is consistent with the Staff's recommendations in the case.” (Emphasis added)

Public Counsel has concerns that this same agreement apparently is now being indiscriminately discarded.

**WHEREFORE,** Public Counsel respectfully submits its Position.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Christina L. Baker**

By:\_\_\_\_\_

Christina L. Baker (#58303)

Senior Public Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 18<sup>th</sup> day of August 2011:

General Counsel Office  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
GenCounsel@psc.mo.gov

Rachel Lewis  
General Counsel Office  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
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Jefferson City, MO 65102  
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TBJ Sewer Systems, Inc.  
5686 Gildehaus Road  
Villa Ridge, MO 63089  
tbj\_sewer\_systems\_inc@yahoo.com

**/s/ Christina L. Baker**

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**Commissioners**

**KELVIN L. SIMMONS**  
Chair

**CONNIE MURRAY**

**STEVE GAW**

**BRYAN FORBIS**

**ROBERT M. CLAYTON III**

***Missouri Public Service Commission***

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Executive Director

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Director, Administration

**DALE HARDY ROBERTS**  
Secretary/Chief Regulatory Law Judge

**DANA K. JOYCE**  
General Counsel

May 21, 2003

Mr. Joe Tobben, President  
TBJ Sewer System, Inc.  
5686 Gildehaus Road  
Villa Ridge, MO 63089

RE: MO PSC Case No. SA-2003-0189

Dear Mr. Tobben:

I am writing as a follow-up to a telephone conversation that you, Jim Merciel and I had a couple of weeks ago regarding the above-referenced case. During that conversation we discussed the Staff's memorandum and related worksheets that the Staff filed in the case on April 25, 2003. Specifically, we discussed the Staff's proposed requirements and conditions for approval of the Company's application for expansion of its certificated service area, as such were set out in the Staff's memorandum, and in the notes and footnotes on the Staff's worksheets.

Based upon the above-referenced telephone conversation, it is my understanding that you are in agreement with the Staff's proposed requirements and conditions, including certain assumptions upon which the Staff's proposed rates for the two new systems are based, and the Staff's proposed rates and charges for the two new systems. Of particular note is your understanding of and agreement with the following items, which comprise some but not all of the Staff's requirements and conditions for granting approval of the requested service area expansion.

1. That the rate for the Bourbeuse River Area will be set at \$27.87/customer/month.
2. That the CIAC Charge for the Bourbeuse River Area will be \$3,900/customer.
3. That the Bourbeuse River Area project will not be undertaken unless the Company obtains commitments from 24 of the 34 prospective customers that they will take service when it becomes available.

**APPENDIX A**

4. That the rate for the Oak Hollow Area will be set at \$23.99/customer.
5. That the developer of the Oak Hollow subdivision will contribute the collecting sewers and related easements for the Oak Hollow area to the Company, and as a result there will be no CIAC charge for customers located within the subdivision.
6. That the developer of the Oak Hollow subdivision will contribute an adequate plot of land to the Company, upon which the treatment facility will be built.
7. That the developer's contribution of the Oak Hollow Area's collecting sewers and related easements and the land upon which the treatment plant will be built will be properly recorded with the County Recorder of Deeds, so that it is clear for title purposes that such personal, real and mixed property are the property of the Company.
8. That for customers located outside of the Oak Hollow subdivision, but which will be served by the Oak Hollow treatment facility and collecting sewers, there will be a CIAC charge of \$2,200/customer that will be refunded to the developer of the subdivision as an offset to the cost of the collecting system.
9. That the customer rates set in the instant case for the two new service areas will not be subject to change until such time that the customer numbers in each area exceed the customer numbers used to calculate the rates being set in this case, unless extraordinary and unforeseen circumstances occur.

In addition to the above, please note that the Staff will include in its final recommendation a recommendation that the Commission authorize the Company to pledge its assets as collateral for the new loan that the Company will be obtaining for the purpose of carrying out the subject projects. Although this was not requested in the Company's application, it is a matter that needs to be dealt with at this time.

Please respond to this letter at your earliest convenience, confirming your agreement with the Staff's proposed requirements and conditions, including the assumptions upon which the Staff's proposed rates for the two new systems are based, and the Staff's proposed rates and charges for the two new systems. Once I have received that response, the Staff will file its final recommendation in the case, recommending that the Commission grant the Company's request for the expansion of its service area consistent with the Staff's proposed requirements and conditions.

Please contact me at 573/751-7074, or Jim Merciel at 573/751-3027, if you have any further questions regarding the Staff's April 25 memorandum and worksheets, and/or the matters discussed in this letter.

Sincerely,

**/s/ Dale W. Johansen**

Dale W. Johansen – Manager  
Water and Sewer Department

Copies: Paul Boudreau – Company Counsel  
M. Ruth O'Neill – Office of the Public Counsel  
Cliff Snodgrass – PSC Staff Counsel

Jim Merciel – PSC Staff  
Randy Hubbs – PSC Staff  
Greg Meyer – PSC Staff



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OF COUNSEL  
RICHARD T. CIOTONE

RECEIVED  
May 27, 2003  
MAY 28 2003

UTILITY OPERATIONS  
DIVISION

Mr. Dale Johansen, Manager  
Water and Sewer Department  
Missouri Public Service Commission  
Governor Office Building  
200 Madison Street, Suite 500  
P.O. Box 360  
Jefferson City, MO 65102-0360

**RE: TBJ Sewer System, Inc.**  
**Case No. SA-2003-0189**

Dear Mr. Johansen:

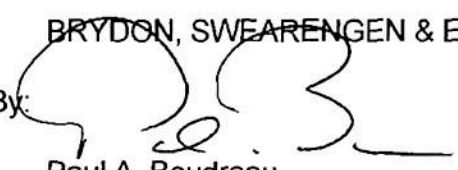
Mr. Joe Tobben, President of TBJ Sewer System, Inc. ("TBJ"), has asked that I respond to your letter of May 21, 2003 concerning the elements of Staff's recommendation in the referenced case. Please be advised that Mr. Tobben confirms his agreement with Staff's proposed requirements and conditions (including the assumptions upon which said requirements and conditions are premised) and, also, Staff's proposed rates and charges for the two new systems. Mr. Tobben understands that Staff will include in its final recommendation that the Commission authorize the company to pledge its assets as a collateral for the loan the company will be taking out for the purpose of constructing the sewer projects.

Thank you for your consideration and courtesies.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By:

  
Paul A. Boudreau

PAB/ccp

APPENDIX B

# MEMORANDUM

From: Shawn Lafferty, Public Utility Accountant – Office of Public Counsel

Date: August 18, 2011

Re: TBJ Sewer Systems, Inc. Case No. SR-2011-0182

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TBJ Sewer Systems, Inc. ("TBJ") initiated a Rate Increase Request on December 27, 2010. The Missouri Public Service Commission Staff ("Staff") investigated the request and provided TBJ and the Office of Public Counsel ("Public Counsel") materials related to the investigation, as well as their initial recommendation for resolution of the rate increase request.

Pursuant to that investigation, on July 14, 2011 Staff filed a Notice of Company/Staff Agreement Regarding Disposition of Small Company Rate Increase Request. The agreement calls for annual rate revenue increases as follows:

St. John's – Plant 1:	\$6,812
Bourbeuse – Plant 2:	\$ 498
Oak Hollow – Plant 3:	<u>\$1,745</u>
Total TBJ:	<u>\$9,055</u>

Public Counsel does not have any issue with Staff's calculations regarding the rate revenue increases.

**However Public Counsel does have concerns with the agreed upon rate increases for the Bourbeuse and Oak Hollow Plants** due to an agreement reached between Staff and TBJ regarding those systems pursuant to TBJ's application for Certificate of Convenience and Necessity to provide service in those areas. (Case No. SA-2003-0189)

Specifically, in a letter dated May 21, 2003 from Mr. Dale Johansen, then Manager of the Water and Server Department for the Missouri Public Service Commission to Mr. Joe Tobben, current President of TBJ Sewer Systems, Mr. Johansen listed some, but not all of Staff's proposed requirements and conditions for granting approval of the Company's application for expansion of its certified service area. (See Attachment A)

In addition to describing the rates to be charged for each service area and other conditions, item No. 9 of the letter states: "That the customer rates set in the instant case for the two new service areas will not be subject to change until such time that the customer numbers in each area exceed the customer numbers used to calculate the rates being set in this case, unless extraordinary and unforeseen circumstances occur".

The number of customers used to establish the initial rates in that case (rates have not changed since SA-2003-0189) were:

Bourbeuse – 24  
Oak Hollow – 21



## MEMORANDUM

**From:** Shawn Lafferty, Public Utility Accountant – Office of Public Counsel

**Date:** August 18, 2011

**Re:** TBJ Sewer Systems, Inc. Case No. SR-2011-0182

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On May 27, 2003, a letter was sent by Mr. Paul Boudreau, Esq. of Brydon, Swearengen & England, P.C. to Mr. Johansen in response to the May 21, 2003 letter. (See Attachment B) In that letter, Mr. Boudreau advises that on behalf of TBJ Mr. Tobben confirms his agreement with Staff's proposed requirements and conditions (including the assumptions upon which said requirements and conditions are premised) and also Staff's proposed rates and charges for the two new systems.

On June 6, 2003 Staff issued a final recommendation requesting the Commission issue an order approving the expansion of its certificated service area. The final recommendation referenced both the May 21 letter (item No. 4) and the May 27 letter (item No. 5) and included them as attachments. Public Counsel, after review of the recommendation, Staff workpapers and the May 21 and May 27 agreement letters, filed a statement of non-opposition to Staff's final recommendation. The Missouri Public Service Commission subsequently issued its order granting the Certificate of Public Convenience and Necessity on July 3, 2003.

However, per Staff's investigation in Case No. SR-2011-0182, the number of customers in the Bourbeuse and Oak Hollow service areas have not reached the committed level per the agreement between Staff and TBJ, as documented in the letters dated May 21, 2003 and May 27, 2003 in Case No. SA-2003-0189. The comparison of customers is:

Plant	Number of Customers Per Staff Audit Case No. SR-2011-0182	Number of Customers Before Rates Change Case No. SA-2003-0189
Bourbeuse	19	24
Oak Hollow	12	21

According to the agreement between Staff and TBJ, rates are not to change until customer numbers in each area exceed the customer numbers used to calculate the rates set in SA-2003-0189. Therefore, Public Counsel questions the appropriateness of increasing the rates at this time for customers served by the Bourbeuse and Oak Hollow plants.

In the Matter of the Application of TBJ Sewer Systems, Inc. Request for Increase in Annual Sewer System Operating Revenues. )  
)  
) File No. SR-2011-0182

STATE OF MISSOURI )  
 ) ss  
COUNTY OF COLE )

## Appendix D