

**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'S PROPOSED FINDINGS OF FACTS
AND CONCLUSIONS OF LAW ON CONTESTED ISSUES**

COMES NOW Timber Creek Sewer Company ("Timber Creek"), by its attorney, Jeremiah D. Finnegan, and respectfully submits the following Proposed Findings of Fact and Conclusions of Law on the Contested Issues to the Missouri Public Service Commission ("Commission"):

That based on the competent and substantial evidence on the record as a whole, the Commission makes the following findings of fact and conclusions of law:

Payroll/Overtime/Timesheets

A. Payroll

1. Timber Creek's current salaries for its four employees totalling \$232,439 are below market for analogous positions in the local market (Ex. 4, Sch. DS-2).

2. A just and reasonable total base compensation level for Timber Creek employees, not including overtime, is \$265,742 distributed as follows: General Manager/President \$94,529; Plant and Collection System Operator \$49,290; Operations Manager \$78,660; and Office Manager \$43,263. (Ex. 4, p.8 & Sch. DS-2 Tables 2-8)

B. Time Sheets/Overtime

3. While Timber Creek originally opposed the keeping of time sheets unless it were granted overtime, at the hearing, Mr. Sherry determined that the Company would begin keeping time sheets and paying time and a half for overtime worked by two employees, the Office Manager and the Plant and Collection System Operator, as soon as the decision by the Commission in this case became effective regardless of the outcome of this case. (Tr. 134)

4. That based on the overtime worked by its Office Manager and its Plant and Collection System Operator in 2009 according to Company records (Ex. 4, Sch. DS-5), a just and reasonable total annual level of overtime pay to be authorized is \$10,033.55, which is broken down as follows: \$7,234.83 - Plant and Collection System Operator; \$2,604.45 - Office Manager; and \$194.07 in insurance premium increases for Workmen's Compensation and General Liability Insurance.

Rate Case Expense

5. The appropriate level of rate case expense to be allowed in rates is the actual reasonable, necessary and prudent rate case expenses incurred by Timber Creek to litigate this case to its conclusion before the Commission. The actual reasonable, necessary and prudent rate case expenses incurred by Timber Creek through January 31, 2011 is \$30,360 (with additional costs incurred after such date to be filed as a late filed exhibit).^{1/}

^{1/} Company is still incurring rate case expenses in this case and proposes to file a late-filed exhibit indicating additional rate case expenses prior to the Commission issuing a Report and Order, a procedure the Staff has indicated that it would not object to assuming the costs are reasonable and prudent.

Alternative Energy Sources Exploration Allowance

6. In an effort to find an alternative energy source due to year over year increasing electricity costs, Timber Creek expended \$10,849 in drilling a pilot, exploratory natural gas well in an area where natural gas had been found approximately 7 to 8 miles away. (Ex. 4, p.14) After drilling to over 900 feet, natural gas was not found. (Ex. 4, p.15)

7. Timber Creek is seeking authorization to expend \$10,849 annualized over three years at \$3,616 per year to continue to explore alternative energy options that could potentially reduce its energy costs to the benefit of its customers.

8. The Commission supports and encourages utility companies to find ways to reduce costs and find alternative energy sources (Tr. 197) and finds that the amount Timber Creek is proposing to explore alternative energy options is just and reasonable and is in the public interest and shall be authorized.

PSC Assessment

9. The PSC Assessment for sewer utilities was 6.94% for FY2008 and was the percentage utilized in Timber Creek's last rate case, Case No. SR-2008-0080. (Ex. 4, p.15)

10. During FY2009 the rate was 8.47%, FY2010 the rate was 11.22% and for FY2011 is 9.34%. (Ex. 4, p.15)

11. During the same period, no other utility group in Missouri had an assessment over 1%. (Ex. 4, p.15)

12. If the PSC assessment for sewer companies had remained at 6.94%, Timber Creek would not have paid an additional \$45,902 from FY2009-FY2011, which amount was

not recovered from the ratepayers because there was no rate case during that period. (Ex. 4, pp.15-16)

13. Timber Creek is seeking to recover the \$45,902 over three years at \$15,901 a year and recommends that the PSC assessment for sewer utilities becomes more equitable to other utilities with a percentage allocation of less than 2%. (Ex. 4, p.17)

14. Timber Creek is also seeking, until such time as the assessment becomes more equitable for sewer companies, that the Commission allow it to segregate the annual assessment from its operating costs and allow it to pass the assessment on directly to its customers as a separately stated surcharge on the customers' monthly bills identified as a "PSC Assessment Charge." (Ex. 4, p.17)

15. While the Commission may not authorize recovery of the \$45,902 because it could constitute prohibited retroactive ratemaking and may not change the rate of the assessment because it is set by statute, Section 386.370, RSMo., the Commission has the authority to authorize Timber Creek to pass on the full amount of the assessment as a pass-through item pursuant to a company rule providing for such treatment similar to the manner in which a similar expenditure for gross receipts taxes is treated. *State ex rel. Hotel Continental, et al. v. Burton, et al.*, 334 S.W. @d 75 (Mo. 1960).

16. The Commission finds that it is lawful, just and reasonable for it to authorize Timber Creek to establish by rule billings for the PSC Assessment as a separate line item on its billings in a form that would disclose that a stated part of the total charge being imposed is the customer's proportionate share of the money the company must collect with which to pay the PSC Assessment to the Commission; and which would result in the automatic and

immediate adjustment of the customer's total charge in the exact proportionate amount by which any such assessment was increased or decreased over the years.

17. Timber Creek is hereby authorized to adopt and file a tariff provision that would accomplish such direct pass through of the PSC Assessment to its customers instead of booking the assessment as an operating expense or the money paid by ratepayers for their share of the PSC assessment as operating revenues.

Contingency/Emergency Repair Fund

18. While Timber Creek's current rate structure supports routine operations and maintenance type items, it does not support emergency, unplanned events that would substantially impact utility operations and would adversely impact Timber Creek's ability to provide uninterrupted, dependable utility service that is environmentally responsible. (Ex. 4, pp. 17-18)

19. To support uninterrupted service and implement a financially prudent business practice, the Company is seeking to establish and maintain a contingency fund for emergency and extraordinary unplanned events. (Ex.4, pp. 17-18)

20. The Company has identified critical areas for the on-going, uninterrupted operations and management of the Company in Ex. 4, Sch. DS-7. The amount sought to be funded is based on the reasonable estimated cost of potential unplanned events that would have significant financial and operational impact and which have been assigned a probability for occurrence of each event.

21. The Company's proposal to establish a cash reserve fund cap based on such calculations subject to needed consumer protections to ensure that the Fund would be used appropriately is just and reasonable.

22. The Company has estimated the total cost at \$177,604 which is to be normalized over 19 years at \$9,347 per year. The Company proposes that this amount be collected as a surcharge of \$0.50 per month on each of the customers' monthly bills during such period. (Ex. 5, pp. 5-6)

23. The PSC Staff and the Company generally agree that a fund should be established. The PSC Staff, however, would like consumer safeguards put into place and the Company is agreeable.

24. While the Company has provided several suggestions and ideas for the mechanics of managing the fund and safeguards for ratepayers, the PSC staff has not provided any suggestions. The PSC staff prefers to work the issue through Case No. WW-2009-0386. The Company cites the extreme lack of progress on WW-2009-0386 to solve any issues that have been prioritized by this working case.

25. The Company prefers to be and is requesting that it be made an immediate 'pilot program' by Commission order in this case, with the PSC Staff, OPC and Company being ordered to work through details of the fund and the reasonable consumer safeguards within a few months of the issuance of the Report and Order, so that this case can be used as a foundation for a future broader scale implementation for all sewer utilities.

26. Any question as to the Commission's authority to establish a contingency fund is answered by Section 393.270, RSMo. in which such authority is specifically provided in subsection 5, which reads as follows:


5. In determining the price to be charged for sewer service 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 the value of the property actually used in the public service and to the necessity of making reservations out of income for surplus and contingencies.** [Emphasis added.]

27. Inasmuch as the Commission has the statutory authority to do so and the Company is willing to accept conditions on the contingency fund, the Commission finds that such approach is just, reasonable and lawful and therefore finds that Timber Creek should be ordered to establish a fund and begin charging its customers fifty cents (\$0.50) a month to begin building up such fund while the Staff, Company and OPC work out the details over the next few months and to implement such details once agreed to and approved by the Commission.

WHEREFORE, Timber Creek submits the foregoing as its Proposed Findings of Fact and Conclusions of Law in this case.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.,

By: 
Jeremiah D. Finnegan Mo 18416
David L. Woodsmall Mo 40747
1209 Penntower Office Center

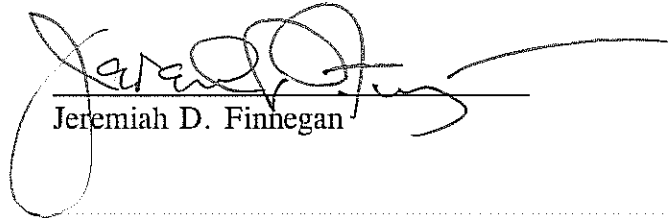
3100 Broadway
Kansas City, MO 64111
(816) 753-1122
(816) 756-0373 FAX
jfinnegan@fcplaw.com
dwoodsmall@fcplaw.com

ATTORNEYS FOR TIMBER CREEK
SEWER COMPANY

February 9, 2011

Certificate of Service

I hereby certify that on this date 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