

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

In the matter of the application of Timber)	
Creek Sewer Company, for permission,)	
approval, and a certificate of convenience)	
and necessity authorizing it to construct,)	CASE NO. SA-2010-0100
install, own, operate, control, manage and)	
maintain a sewer system for the public,)	
located in an unincorporated area in)	
Clinton County, Missouri.)	

**TIMBER CREEK SEWER COMPANY'S
MOTION FOR DISMISSAL OF APPLICATION AND FOR RESCISSION OF
CONDITIONAL GRANT OF CERTIFICATE OF CONVENIENCE AND NECESSITY**

Comes now Timber Creek Sewer Company ("Applicant" or "Timber Creek"), and pursuant to the Commission's Rule 4 CSR 240-2.116 hereby moves for dismissal of application and for rescission of conditional grant of certificate of convenience and necessity for the following reasons:

1. On September 21, 2009, Applicant, Timber Creek, filed its application for a certificate of convenience and necessity, with a supporting affidavit, seeking to provide sewer service to the Timber Springs Estates Subdivision in an unincorporated area in Clinton County, Missouri.
2. On September 22, 2009, the Commission gave notice of the application and set a deadline for motions to intervene. No one intervened.
3. On November 13, 2009, the Commission Staff filed its recommendation, with a

supporting affidavit, favoring the grant of the application subject to certain conditions.

4. On November 16, 2009, the Commission issued its Order Directing Filing in which it directed all parties other than the Staff to file a response to the Staff's recommendation no later than November 24, 2009.

5. On November 20, 2009, Timber Creek filed its response agreeing with Staff's proposed conditions. No one else filed a response.

6. Since the application was unopposed, the Commission convened no hearing and on December 2, 2009, issued its Order Granting Certificate of Convenience and Necessity basing its findings on the verified filings and conditioning the grant on Staff's recommended conditions.

7. The conditions are found in Paragraph 2. of the Ordered portion of the Commission's Order Granting Certificate of Convenience and Necessity. The following conditions are relevant to this motion, to wit:

a. The contract to transfer the collection system and wastewater treatment plant, now owned by Timber Springs Homes Association, to the company shall be finalized;

e. The company shall file the finalized contract transferring the collection system and wastewater treatment plant, now owned by Timber Springs Homes Association, to the company; and

f. The company shall file proof that it holds clear title to the wastewater treatment facility and the land on which such facility is located, and easements for access to and maintenance of the collection system now owned by Timber Springs Homes Association.

8. In its Response to Staff's recommendations, Timber Creek informed the Commission that it is had negotiated an agreement with the board of the homes association, who met with the home owners on November 19, 2009, to discuss it and give them the required thirty

day notice of a meeting to be held December 22, 2009, to vote on approving the agreement, which if approved by the members will become finalized upon signing and capable of being submitted to the Commission as recommended by Staff.

9. The membership did not approve the agreement on December 22, 2009. Further negotiations between Timber Creek and the board of the homes association failed to reach a meeting of the minds on a revised agreement and Timber Creek was just notified by the homes association that they are now going in another direction and will not enter into a contract with Timber Creek.

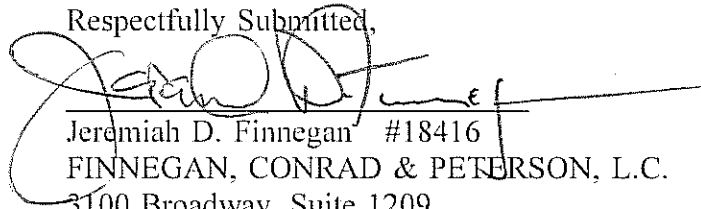
10. As a result of the membership refusing to approve the agreement, there is no finalized contract between Timber Creek and the homes association and according to the homes association's officers, there will be no likelihood that there would ever be a finalized contract. Without a finalized contract, Timber Creek is unable to comply with the conditions found in Paragraph 2.a, 2.e., and 2.f. of Ordered 2 of the Order Granting Certificate of Convenience and Necessity.

11. Timber Creek is, therefore, asking for an order of the Commission to dismiss its application for good cause shown and an order rescinding the conditional grant of a certificate of convenience and necessity because Timber Creek is unable to meet all of the conditions thereof.

WHEREFORE, for the foregoing reasons, Timber Creek respectfully prays that the Commission grant it its request to dismiss the application for good cause shown and an order rescinding the conditional grant of a certificate of convenience and necessity because Timber Creek is unable to meet all of the conditions thereof, and for such other relief as is just and

necessary to terminate this matter.

Respectfully Submitted,

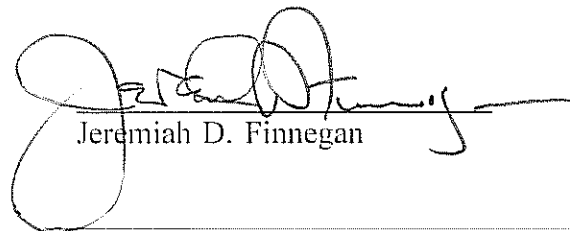


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ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Response to Staff's Recommendation has been provided, either by first-class mail, by electronic mail, by facsimile transmission or by hand-delivery, to each attorney and/or party of record in this case on this 29th day of January 2010.



Jeremiah D. Finnegan