

Exhibit No.: _____

Witness: Derek Sherry

Type of Exhibit: Direct Testimony

Issues: Compensation/Time Sheets/Overtime; Rate Case
Expenses; Alternative Energy Gas Well Cost Recovery; PSC
Assessment; Contingency/Emergency Repair Fund

Sponsoring Party: Timber Creek Sewer Company

Case No.: SR-2010-0320

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY DIVISION

TIMBER CREEK SEWER COMPANY

CASE NO. SR-2010-0320

DIRECT TESTIMONY OF

DEREK SHERRY

November 23, 2010

Exhibit No. 4
Date 1-5-11 Reporter MS
File No: SR-2010-0320

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

AFFIDAVIT OF DEREK SHERRY

STATE OF MISSOURI)
COUNTY OF Clay) ss

Derek Sherry, of lawful age, on his oath states: That he has reviewed the attached written testimony in question and answer form, all to be presented in the above cases, that the answers in the attached written testimony were given by him; that he has knowledge of the matters set forth in such answers; that such matters are true to the best of his knowledge, information and belief.

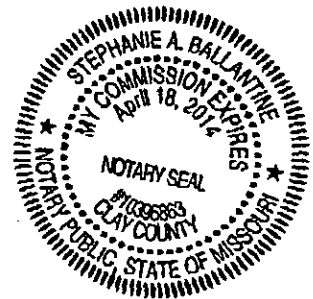
Derek Sherry
Derek Sherry

Subscribed and sworn to before me this 19 day of November, 2010.

Stephanie Ballantine
Notary Public

[SEAL]

My Commission expires: 4/18/2014



TIMBER CREEK SEWER COMPANY

SR-2010-0320

DIRECT TESTIMONY OF DEREK SHERRY

1 **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

2 A. My name is Derek L. Sherry. My address is 14398 Lucille Ct,
3 Olathe, Kansas 66062.

4

5 **Q: ON WHOSE BEHALF ARE YOU APPEARING?**

6 A: Timber Creek Sewer Company.

7

8 **Q: WHAT IS YOUR POSITION WITH TIMBER CREEK SEWER COMPANY?**

9 A: I am President and General Manager of the Company and have
10 been in those positions since February 2008. Prior to that
11 date, I was a Vice President of the Company since 1995.

12

13 **Q: PLEASE STATE YOUR QUALIFICATIONS.**

14 A: I graduated with an Engineering degree from University of
15 Missouri - Rolla in 1985. I worked for 5 years as an
16 engineer for Johnson County Wastewater in Johnson County,
17 Kansas that serves over 150,000 customers. I was the

1 engineer for rehabilitation projects, project manager for
2 new construction, completed planning analysis for potential
3 new service areas, performed feasibility and financial
4 analysis for numerous undertakings (capital improvements
5 plan, new administration building, new 8-10 mgd plant and
6 interceptors, etc.), and led environmental studies for
7 sensitive watersheds. Additionally, I've held numerous
8 executive positions at Johnson County and Sprint for over 17
9 years.

10

11 **Q: PLEASE PROVIDE YOUR WORK EXPERIENCE WITH TIMBER CREEK.**

12 **A:** As the President and General Manager, I'm the chief
13 executive and responsible for all facets of a sewer utility.
14 My primary responsibilities include:

- 15 • regulatory oversight and interaction with MoDNR, MoPSC,
16 EPA, Cities, Counties, and other government entities
17 where the Company provides service;
- 18 • all aspects of financial management of company including
19 revenue generation, expense management, capital budget
20 development, securing loans and investments, billing,
21 and collections;
- 22 • administrative management including legal issues, office
23 systems, customer service, and personnel management;
- 24 • operations and maintenance oversight, engineering and

1 construction oversight, and strategic planning;
2 • business development for company opportunities and
3 growth;
4 • Board president for planning, organizing, facilitating,
5 and leading the company shareholders and investment
6 community for company strategic direction setting,
7 establishment of high-level company goals and policies,
8 and ensuring the company achieves its mission.
9

10 **Q: HAVE YOU PREVIOUSLY TESTIFIED IN A PROCEEDING BEFORE THE**
11 **MISSOURI PUBLIC SERVICE COMMISSION ("MoPSC")**

12 **A:** I have testified on several occasions before the MoPSC on a
13 variety of issues affecting Timber Creek, including Timber
14 Creek's last rate case, Case No. SR-2008-0080. I also
15 prepared and filed Direct and Surrebuttal Testimony in one
16 of Timber Creek's certification case, Case No. SA-2010-0063.
17

18 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

19 **A:** The purpose of my testimony is to support the \$63,500 annual
20 increase being sought by Timber Creek. While the Company
21 originally sought a \$63,500 increase, it is aware that under
22 4 CSR 240-3.050(25) the Commission sets the just and
23 reasonable rates and that the rates set by the Commission
24 may result in a revenue increase more than the increase

1 originally sought.

2

3 **Q. WHAT IS THE STATUS OF THE PROPOSED INCREASE?**

4A: The parties (Timber Creek, PSC Staff and OPC) on October 7,
5 2010 have entered into a Unanimous Partial Agreement
6 ("Partial Agreement") regarding the partial disposition of
7 the revenue increase request resolving a substantial number
8 of the issues in the case as set forth on pp. 2-4,
9 subparagraphs (1) through (11). A copy of the Partial
10 Agreement is attached hereto as **Schedule DS-1** and
11 incorporated by reference herein. The Partial Agreement
12 also provides on p.4 that other issues have not been
13 resolved and requested that those issues be resolved through
14 the contested case process.

15 On October 18, 2010, the parties filed a Joint Procedural
16 Schedule and Joint Motion for Approval of Procedural
17 Agreements. In Paragraph 5 thereof the parties identified
18 the remaining issues in the case and agreed that pre-filed
19 testimony and issues to be addressed in this matter be
20 limited to the following unresolved issues:

- 21 a. Timber Creek Staff Compensation/Timesheets/Overtime
- 22 b. Rate Case Expenses
- 23 c. Alternative Energy Gas Well Cost Recovery
- 24 d. PSC Assessment

1 e. Contingency/Emergency Repair Fund

2

3

4

I. TIMBER CREEK STAFF COMPENSATION/TIMESHEETS/OVERTIME

5

6 **Q: WHAT IS THE COMPANY'S POSITION ON THE ISSUE OF COMPENSATION**
7 **FOR ITS STAFF?**

8 **A:** The Company believes that the accumulated salaries for
9 Timber Creek's personnel are below market salary levels for
10 similar positions in the Kansas City region and the salaries
11 should be increased.

12

13 **Q: WHY DOES THE COMPANY'S BELIEVE THE SALARY FOR ITS STAFF IS**
14 **BELOW MARKET?**

15 **A:** A salary analysis has been conducted by the company to
16 determine market levels in the industry and comparison to
17 local salaries for analogous positions. For the salary
18 analysis, two industry sources were used:

19 1. Missouri Economic Research and Information Center's
20 Occupational Wages - Kansas City Region, and

21 2. American Water Works Association 2009 Salary Study for
22 Water and Wastewater.

23 Timber Creek's four (4) staff positions of General Manager,

1 Operations Manager, Office Manager, and Plant and Collection
2 System Operator, whose current annual salaries are shown on
3 **Schedule DS-2**, Table 1 were compared to similar position
4 descriptions in the Missouri Economic Research and
5 Information Center (MERIC) database and this information is
6 depicted in **Schedule DS-2**, Table 2. Additionally, the
7 American Water Works Association (AWWA) 2009 Salary Study
8 and Analysis information is included in **Schedule DS-2**, Table
9 3.

10 To validate and confirm the industry survey data, additional
11 market data was collected from positions in the Kansas City
12 Area. All the market data in **Schedule DS-2**, Tables 4 thru 7
13 is from public entities - this is due to the availability of
14 information. All salary information is reported as 2009
15 data.

16 The market and salary survey information indicates that 3
17 out of 4 positions are below market levels (General Manager,
18 Office Manager, and Plant and Collection System Operator),
19 and one position is above market level (Operations Manager).

20

21

22 **Q: WHAT DOES THE PSC AUDIT STAFF REPORT STATE REGARDING TIMBER**
23 **CREEK'S EMPLOYEE POSITIONS?**

24 **A:** In a Memorandum dated August 2nd, 2010 (**Schedule DS-3**, Pages

1 4-7) from the PSC Auditing staff on the top of page 7, the
2 report states: "the salary levels paid to Timber Creek
3 employees are conservatively priced in relationship to
4 salaries paid for other similar positions for other
5 entities." The report indicates that the salary survey
6 information used for comparison to Timber Creek salaries
7 was:

- 8 • General Manager was compared to Management Occupations
9 for Kansas City region - median annual salary \$94,529
- 10 • Office Manager was compared to Executive
11 Secretary/Admin - mean annual salary \$41,142
- 12 • System Operator (Timber Creek's Plant and Collection
13 System Operator) - mean salary level of \$49,290
- 14 • Plant Operations Manager (Timber Creek's Operations
15 Manager) is "paid more than the mean of the salary
16 shown in the survey but given all of his duties and
17 responsibilities, Staff considered this salary level to
18 be reasonable. Mr. Jochim is actually considered a
19 plant manager but no specific salary base was available
20 for an exact comparison."

21
22 **Q: WHAT DID THE PSC STAFF OFFER FOR SALARIES?**

23 **A:** A 3% cost of living increase over current salaries.

24

1Q: WHAT IS THE COMPANY SEEKING FOR ANNUAL SALARIES?

2A: For the position of General Manager, - \$94,529, Office
3 Manager - \$43,263, Operations Manager - \$78,660, and Plant
4 and Collection System Operator - \$49,290.

5
6Q: WHY IS THERE SUCH A LARGE GAP IN CURRENT SALARIES AND MARKET
7 LEVELS FOR THE POSITION OF GENERAL MANAGER?

8A: Timber Creek registered with the MoPSC as a sewer utility in
9 1994 with less than 50 customers. At that time, the Company
10 did not have any paid staff and was solely supported by real
11 estate development activities by the owners. The Company
12 continued to grow with customers and infrastructure
13 throughout the years, which required the organic addition of
14 staff. First, a part time operator position was added in
15 the late 1990's, which became full time in early 2000's. We
16 added a part time office administration in early 2000's
17 (permitting, billing, and accounts payables), which became a
18 full time position in 2006. We added a 2nd operator in
19 2005, and finally a professional general manager was added
20 in 2008.

21 From 1994 with less than 50 customers to 2010 with 1540
22 retail customers and a wholesale customer of 325 units,
23 Timber Creek has been playing catch up with growth as well
24 as maturing the Company. Part of the business maturation

1 process is to evaluate staffing levels and compensation as
2 it relates to market conditions. Through this evaluation
3 the Company has found that increases should be made to
4 salaries to better reflect market conditions and retain
5 valuable employees.

6 The salary for the General Manager was originally set lower
7 than that of the Operations Manager and is still lower than
8 that of the Operations Manager, which does not make sense
9 based on the duties of the General Manager. Timber Creek
10 believes that it is necessary to bring this salary up to
11 market rate in order to have a fair and reasonable salary
12 structure and to retain the General Manager, who has an open
13 continuing offer of a position elsewhere at a more
14 substantial salary, and to be able to attract a competent
15 General Manager should the current General Manager decide to
16 move on to greener pastures.
17

18 **Q. WHAT IS THE COMPANY'S POSITION ON THE ISSUE OF TIMESHEETS**
19 **AND OVERTIME FOR ITS STAFF?**

20 **A:** Timber Creek has historically paid all staff on a salary
21 basis as exempt employees - not eligible for overtime and,
22 consequently, has not required time records. As part of
23 this rate case, the MoPSC staff has recommended and
24 requested that all company personnel keep timesheets (see
25 **Schedule DS-3, Page 7**). Timber Creek consulted with an

1 attorney to perform a risk analysis in requiring employees
2 to track time and assess the company's liability exposure
3 regarding potential claims under the Fair Labor Standards
4 Act. The opinion letter from Timber Creek's attorney
5 advising of the potential liability Timber Creek would face
6 if it were to adopt time records is attached as **Schedule DS-**
7 **4.** Because of such potential liability, the increased time
8 and effort required by the Company's four employees in
9 keeping time records, and because the employees now perform
10 many services after hours or on weekends which work is not
11 compensated by overtime, if Timber Creek is required to
12 adopt time records, it would also need to establish overtime
13 for its employees.

14 In order to cover the Company's liability exposure for
15 tracking time, Timber Creek is seeking additional revenue of
16 \$10,033 to pay for overtime for two positions, Plant and
17 Collection System Operator and Office Manager and for
18 increased workman's comp and general liability insurance as
19 indicated in **Schedule DS-5.**
20

1 **II. RATE CASE EXPENSES**

2

3 **Q: WHAT IS THE COMPANY'S POSITION ON THE ISSUE OF RATE CASE**
4 **EXPENSES?**

5 **A:** The Company is seeking to recover all rate case expenses
6 from the previous rate case SR-2008-0080, as well as rate
7 case expenses incurred for this rate case SR-2010-0320.

8

9 **Q: WHAT ARE THE RATE CASE EXPENSES IN DISPUTE?**

10 **A:** Rate case expenses for SR-2008-0080 that were not included
11 is \$18,175 as indicated in **Schedule DS-6**. The disputed
12 amount of \$18,175 is the invoiced amount from Derek Sherry
13 to manage the company's rate case SR-2008-0080. While Mr.
14 Sherry was an officer of Timber Creek, he was not an
15 employee of Timber Creek at the time of the rate case and
16 did not become an employee until after the completion of
17 Case No. SR-2008-0080. Had the Company not used Mr. Sherry
18 to manage the rate case, it would have had to pay a utility
19 consultant to perform the duties and the fees and expenses
20 would have doubtlessly cost much more than the \$18,175
21 requested to be recovered over a three year period.

22

23 **Q: WHAT IS TIMBER CREEK'S REQUEST?**

24 **A:** The Company is requesting to recover \$18,175 from SR-2008-

1 0080 and an estimated additional \$40,000 to be incurred in
2 the pursuit of this case, now that it is a contested case,
3 to be normalized over three (3) years (\$19,391 per year).
4
5
6

7 **III. ALTERNATIVE ENERGY GAS WELL COST RECOVERY**
8

9 **Q. WHAT IS THE COMPANY'S POSITION ON THE ISSUE OF ALTERNATIVE**
10 **ENERGY GAS WELL COST RECOVERY?**

11 **A:** Timber Creek's electrical utility costs have increased year
12 over year. In 2007 electrical costs were approximately
13 \$43,000, 2008 was \$56,000, and \$64,000 in 2009. While the
14 costs have increased approximately 49% over this 3-year
15 period, the usage has only increased 5% for this same
16 period. This area of increasing costs with more increases
17 on the horizon had Timber Creek evaluate potential
18 alternative energy options in late 2008 in an effort to
19 reduce on-going operational costs.
20

21 **Q: WHAT ALTERNATIVE ENERGY SOURCES DID THE COMPANY EVALUATE?**

22 **A:** The alternative energy sources considered were solar, wind,
23 and natural gas. The Company selected its Prairie Creek

1 WWTP as the site location for analyses because this location
2 consumes the most power and could potentially reap the
3 largest cost savings.

4 To summarize the cost and payback period for the various
5 energy options were as follows:

- 6 • Solar (panels) was estimated at \$750K with a 22 year
7 payback
- 8 • Wind (turbine) estimated at \$500K with a 14 year
9 payback
- 10 • Natural Gas (on-site well) at \$130K with a 4-year
11 payback.

12 Since the natural gas option had a financial attractive
13 payback period, this source of energy was further
14 investigated as a potential viable alternative.

15
16 **Q: WHAT ANALYSIS DID THE COMPANY DO TO DETERMINE IF NATURAL GAS**
17 **MIGHT BE PRESENT AT THE SITE?**

18 **A:** Extensive research was performed as to the potential of
19 natural gas in the selected site area by contacting the USGS
20 and Missouri DNR. From the *Geologic Column of Missouri*,
21 Volume 2, Issue 1, published in the summer of 2007 by the
22 Missouri Department of Natural Resources Division of Land
23 and Geology, there is a large basin that has produced oil

1 and natural gas called the Forest City Basin. The Forest
2 City basin incorporates northwest Missouri, portions of
3 Iowa, Nebraska, and Kansas. With this information, the
4 Company continued its research by requesting and receiving
5 oil and gas well logs from the Missouri DNR. These logs
6 indicated natural gas production at the Tiffany Springs
7 location - approximately 7 to 8 miles from selected site.
8 The Company continued its research through several
9 discussions with USGS, DNR, manufacturers of natural gas
10 generators and oil/gas drillers.

11 The common advice and recommendation from the multitude of
12 discussions with firms and organizations in the industry was
13 that the most practical and definitive method to determine
14 if natural gas is present is to drill a pilot well.

15

16 **Q: WHAT WAS THE COST AND RESULT OF A PILOT NATURAL GAS WELL?**

17 **A:** Timber Creek contacted 15 drilling companies and received
18 three bids from oil/gas well drillers ranging from \$12,000
19 to \$30,000 to drill a pilot, exploratory well. The pilot
20 well was drilled in the summer of 2009 to over 900 feet at a
21 cost of \$10,849, but natural gas was not present.

22

23

1 **Q: WHAT IS THE COMPANY LOOKING TO RECOVER?**

2 **A:** Timber Creek is requesting to recover \$10,849 annualized
3 over 3 years (\$3,616 per year) to continue to explore
4 alternative energy options that could potentially reduce its
5 energy costs to the benefit of its customers.

6
7

8 **IV. PSC ASSESSMENT**

9

10 **Q. WHAT IS THE COMPANY'S POSITION ON THE ISSUE OF THE PSC**
11 **ASSESSMENT?**

12 **A:** The Company believes the PSC assessment for sewer companies
13 the past four years is inequitable and overly financially
14 burdensome on the Company and its ratepayers. For FY2008
15 the PSC Assessment allocation percentage for sewer companies
16 was 6.94%, FY2009 was 8.47%, FY2010 was 11.22% and FY2011 is
17 9.34%. During this same time frame, no other utility
18 industry in Missouri had an assessment above 1%. Sewer
19 companies and their ratepayers are paying 700% to 1100% more
20 for regulatory oversight than other regulated utilities in
21 Missouri.

22

23 **Q. WHAT HAS BEEN THE FINANCIAL IMPACT TO TIMBER CREEK?**

24 **A:** Timber Creek's last rate case, Case No. SR-2008-0080
25 utilized the FY2008 allocation percentage of 6.94%. If the

1 PSC assessment for sewer companies had remained at 6.94%,
2 the Company would not have paid an additional \$45,902 from
3 FY2009-2011 to the PSC. Because there was no rate case
4 during that period, none of such amount was passed on to its
5 customers.

6

7Q: **WHY DIDN'T THE COMPPANY FILE A RATE CASE SOONER TO COVER THE**
8 **PSC ASSESSMENT INCREASES?**

9A: Rate cases are an expensive, time consuming, resource
10 consuming, and an onerous process for most small companies,
11 including Timber Creek. Timber Creek typically will only
12 file a rate case as a last resort when absolutely necessary.
13 The informal rate case process for small companies is
14 scheduled to take 150 days to complete and typically runs
15 longer due to extensions granted to resolve outstanding
16 items and issues. Further, if all issues are not resolved
17 the expense of the rate case increases substantially under
18 the contested case process. By the time the rate case is
19 completed, the order issued, tariff sheets updated and
20 filed, new rates established and implemented, a new PSC
21 assessment allocation has been issued, thus the Company is
22 unable to "catch up" due to regulatory lag.

23

24

1Q: **WHAT IS TIMBER CREEK TRYING TO RECOVER AND RECOMMEND?**

2A: The Company is seeking to recover \$45,902 over the period of
3 3 years and recommends that the PSC assessment for sewer
4 companies become more equitable to other utility industries
5 with percentage allocation of less than 2%. Further, until
6 such time as the assessment becomes more equitable for sewer
7 companies, the Company is asking that the Commission allow
8 Timber Creek to segregate the annual assessment from its
9 operating costs and instead allow Timber Creek to pass it on
10 directly to the customers as a separately stated surcharge
11 on the customers' monthly bills identified as "PSC
12 Assessment Charge." Such procedure would go a long way in
13 reducing the frequency of rate case filings by Timber Creek
14 that would benefit both the Company and Customers, who in
15 the end pay the prudently incurred costs of the rate cases.

16
17

18

19 **V. CONTINGENCY/EMERGENCY REPAIR FUND**

20

21Q. **WHAT IS THE COMPANY'S POSITION ON THE ISSUE OF A**
22 **CONTINGENCY/EMERGENCY REPAIR FUND?**

23A: Timber Creek's current rate structure supports routine
24 operations and maintenance type items but does not support

1 emergency, unplanned events that would substantially impact
2 utility operations. The Company believes that ratepayers
3 expect and are entitled to uninterrupted, dependable utility
4 service that is environmentally responsible. To support
5 uninterrupted service and implement a financially prudent
6 business practice, the company is seeking to establish and
7 maintain a contingency fund for emergency and extraordinary
8 unplanned events.

9 An additional benefit to utilities in maintaining a
10 contingency fund can be a more favorable interest rate since
11 many financial institutions evaluate cash reserves as a
12 parameter in determining risk and establishing interest
13 rates and/or bond ratings.

14

15 **Q. WHY WOULDN'T SIGNIFICANT REPAIRS TO INFRASTRUCTURE AND**
16 **UTILITY ASSETS BE VIEWED AS A CAPITAL INVESTMENT AND FUNDED**
17 **BY INVESTORS?**

18 **A:** The Company views capital investment as:

- 19 1. adding value by the addition of new functionality,
20 capability, or capacity;
- 21 2. prolonging the life of the asset in whole.

22 Additionally, the Company cites the following IRS court
23 cases in defining expense vs. capital:

1 In *FedEx Corp. v. United States*,¹¹¹ the taxpayer performed
2 repairs upon jet engines by removing them from the
3 airplane and then having parts replaced. The taxpayer
4 argued that these expenses were deductible, but the IRS
5 stated that the costs should be capitalized. The court
6 held that the inspection and replacement costs could be
7 deducted as an expense because the improvements did not
8 add to the value and did not prolong the life of the
9 airplanes as a whole.¹²¹ In *Midland Empire Packing Co. v.*
10 *Commissioner*,¹³¹ the taxpayer added a concrete lining to
11 its basement floor to prevent oil from seeping into where
12 the taxpayer stored meat. The taxpayer argued that the
13 costs of installation were deductible and the tax court
14 agreed. The costs of installation only permitted the
15 taxpayer to continue the plant's operation. The expenses
16 did not add to the value of the business or permit the
17 taxpayer to make new uses of the basement.

18 1. [^] 291 F. Supp. 2d 699 (W.D. Tenn. 2003).

19 2. [^] Prop. Reg. § 1.263(a)-3(d)(2)(v) sets forth nine factors
20 to use when determining whether an item should be treated as
21 an individual piece of property or as part of a whole.

22 3. [^] 14 T.C. 635 (1950).

23 Using the definitions above, the company believes that most

1 repairs to utility infrastructure are an expense item since
2 the repair, by definition, typically is restoring existing
3 capability to the asset.
4

5 **Q. WHAT WOULD BE EXAMPLES OF CONTINGENCY/EMERGENCY REPAIR ITEMS**
6 **AND HOW WOULD YOU ESTIMATE THE FINANCIAL COSTS?**

7A: The Company has identified critical areas for the on going,
8 uninterrupted operations and management of the utility in
9 **Schedule DS-7** and determined potential unplanned events that
10 would have significant financial and operational impact.
11 Fiscal impacts (significant repair costs) are established
12 for each of the unplanned events and assigned a probability
13 for occurrence. A cash reserve is calculated for each event
14 by using the fiscal impact estimate times the probability of
15 occurrence times the number of units (assets) in that
16 category. The cash reserve total would be the ceiling, or
17 cap, for the contingency/emergency repair fund.
18

19 **Q. HOW WOULD THE CONTINGENCY/EMERGENCY REPAIR FUND BE FINANCED?**

20A: The emergency repairs would be for existing infrastructure
21 and assets serving the existing ratepayers. The Company
22 proposes an additional small amount to be charged per month
23 that would accumulate over a period of time until the cap is
24 reached. Once the cap is reached the monthly charge would

1 be removed. Additionally, the cap would be adjusted as
2 additional capital infrastructure is added.

3

4Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?

5A. Yes it does.

UNANIMOUS PARTIAL AGREEMENT REGARDING DISPOSITION
OF SMALL SEWER COMPANY REVENUE INCREASE REQUEST

TIMBER CREEK SEWER COMPANY

MO PSC CASE NO. SR-2010-0320

BACKGROUND

Timber Creek Sewer Company ("Company") initiated a small company revenue increase request ("Request") for sewer service that is the subject of the above-referenced Missouri Public Service Commission ("Commission") Case Number by submitting a letter to the Secretary of the Commission in accordance with the provisions of Commission Rule 4 CSR 240-3.050, Small Utility Rate Case Procedure ("Small Company Procedure"). In its request letter, which was received at the Commission's offices on May 10, 2010, the Company set forth its request for an increase of \$63,500 in its total annual sewer service operating revenues. In its request letter, the Company also acknowledged that the design of its customer rates, its service charges, its customer service practices, its general business practices and its general tariff provisions would be reviewed during the Commission Staff's ("Staff") review of the revenue increase request, and could thus be the subject of Staff recommendations. The Company provides service to approximately 1,525 customers, the vast majority of which are residential customers located in Platte and Clay Counties.

Pursuant to the provisions of the Small Company Procedure and related internal operating procedures, Staff initiated an audit of the Company's books and records, a review of the Company's customer service and general business practices, a review of the Company's existing tariff, an inspection of the Company's facilities and a review of the Company's operation of its facilities. (Hereafter, these activities are collectively referred to as Staff's "investigation" of the Company's Request.)

Upon completion of Staff's investigation of the Company's Request, Staff provided the Company and the Office of the Public Counsel ("OPC") with the results of the investigation, with Staff's initial recommendations for the resolution of the Company's Request, and with other information regarding Staff's investigation.

PARTIAL RESOLUTION OF THE COMPANY'S RATE INCREASE REQUEST

Pursuant to negotiations held subsequent to the Company's and OPC's receipt of the above-referenced information regarding Staff's investigation of the Company's Request, Staff, OPC and the Company hereby state the following agreements:

- (1) Staff's rate design methodology of an equal percent increase to existing rates is acceptable;
- (2) The schedule of depreciation rates attached hereto as Attachment A and incorporated herein by reference, which includes the depreciation rates used by Staff in its revenue requirement analysis, shall be the prescribed schedule of sewer plant depreciation rates for the Company;
- (3) The Commission's Auditing Department conducted an audit of the Company's books and records using a test year consisting of the 12-months ending December 31, 2009 as the period to base the revenue requirement calculation. All revenues, expenses and rate base investment were reviewed through this period and certain material revenue and expenses were trued up through the period ending June 30, 2010.

Staff provided the Company and OPC its initial recommendations of the revenue increase for the resolution of the Company's request and Staff's EMS run. The work papers supporting the revenue requirement calculation were also provided to the Company and the OPC with the results of its investigation regarding the proposed rate increase;

- (4) Within ninety (90) days of the effective date of an order approving this Unanimous Partial Disposition Agreement, the Company shall implement the following recommendations from the Auditing Department:
 - a. The Company shall keep a detailed list of invoices for future purchases within the Uniform System of Accounts ("USOA") including, but not limited to, the accounts Laboratory Equipment and Tools and Shop Equipment;
 - b. The Company shall maintain its financial and accounting records using the USOA guidelines for a Class A Sewer Company for its revenues, expenses and investment costs;
- (5) Within ninety (90) days of the effective date of an order approving this Unanimous Partial Disposition Agreement, the Company shall implement the following recommendations contained in the Engineering & Management Services Department ("EMSD") Report, except any recommendation associated with time sheets or any other contested items. The EMSD Report is attached hereto as Attachment B and incorporated by reference herein. These recommendations include the following:
 - a. The Company shall display the Company's logo on the Company's

vehicle;

(6) Within ninety (90) days of the effective date of an order approving this Unanimous Partial Disposition Agreement, the Company shall implement the following recommendations from Depreciation Staff associated with EMSD:

- a. The Company shall adjust the Company's general ledger to reflect the plant and reserve account balances shown in the Staff EMS exhibit, attached hereto as Attachment A and incorporated by reference herein;
- b. The Company shall adjust the Contributions in Aid of Construction ("CIAC") and the amortized CIAC account balances shown in the Staff EMS exhibit, attached hereto as Attachment A and incorporated by reference herein;
- c. The Company shall implement a work order system to track material cost, labor cost, overhead cost, and record cost of removal and gross salvage for all new, replaced or retired plant; and
- d. The Company shall follow National Association of Regulatory Utility Commissioners' ("NARUC") USOA guidelines for the recording of cost of removal and gross salvage in the Company ledger as adjustments to plant and reserves;

(7) Within six (6) months of the effective date of an order approving this Unanimous Partial Disposition Agreement, the Company shall implement the following recommendations from Depreciation Staff associated with EMSD:

- a. The Company shall estimate the original installed cost of the Johnson Ridge and Oakbrook collection and treatment facilities which were installed by a developer and transferred (donated) to the Company as contributed plant, and to provide these estimates to Depreciation Staff. This contributed plant relating to the collection and treatment facilities is to be included in plant in service and would be treated as a contribution in aid of construction an offset (reduction) to rate base;

(8) Staff and/or OPC may conduct follow-up reviews of the Company's operations to ensure that the Company has complied with the provisions of this Unanimous Partial Disposition Agreement;

(9) Staff and/or OPC may file a formal complaint against the Company, if the Company does not comply with the provisions of this Unanimous Partial Disposition Agreement;

(10) The Company agrees that it has read the foregoing Unanimous Partial Agreement Regarding Disposition of Small Sewer Company Revenue Increase Request; that facts stated therein are true and accurate to the best of the Company's knowledge and belief; that the foregoing conditions accurately reflect the partial agreement reached between the Company, OPC and Staff; and that the Company freely and voluntarily enters into this partial agreement; and

(11) The above partial agreements satisfactorily resolve all issues identified and addressed in the above paragraphs by Staff, OPC and the Company regarding the Company's Request.

ITEMS TO BE RESOLVED THROUGH THE CONTESTED CASE PROCESS

Staff, OPC and the Company hereby state that other items and issues have not been resolved and request that those issues be addressed through the contested case process. Pursuant to any procedural schedule related to the contested matters, the parties will provide a list of issues to the Commission. A reconciliation of the differences between the parties will be developed and provided to the Commission prior to the hearings.

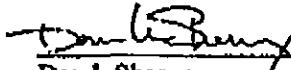
ADDITIONAL MATTERS

Other than the specific conditions agreed upon and expressly set out herein, the terms of this Unanimous Partial Disposition Agreement reflect compromises between Staff, OPC and the Company. The Company and OPC also acknowledge that the Staff will be filing this Unanimous Partial Disposition Agreement and the attachments hereto. The Company and OPC also acknowledges that Staff may make other filings in this case.

Additionally, the Company and OPC agree that Staff shall have the right to provide whatever oral explanation the Commission may request regarding this Unanimous Partial Disposition Agreement at any agenda meeting at which that case is noticed to be considered by the Commission. Staff will be available to answer Commission questions regarding this Unanimous Partial Disposition Agreement. To the extent reasonably practicable, Staff shall provide the Company with advanced notice of any such agenda meeting so that they may have the opportunity to also be represented at the meeting.

SIGNATURES


Agreement Signed and Dated:



Derek Sherry
President and General Manager
Timber Creek Sewer Company

10-7-2010

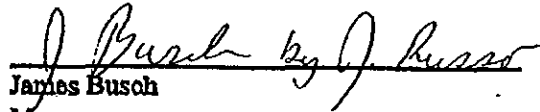
Date



Christina L. Baker
Senior Public Counsel
Office of the Public Counsel

10-7-10

Date



James Busch
Manager
Water & Sewer Department
Missouri Public Service Commission Staff

10/7/10

Date

List of Attachments

Attachment A - Schedule of Depreciation Rates

Attachment B - BMSD Report

Schedule DS-2

Table 1 – Timber Creek Annual Salaries

Name	Title	2007	2008	2009	2010	% Change 2007 -2010
Derek Sherry	General Manager	\$70,000	\$72,450	\$72,450	\$72,450	3.50%
Emma Farris	Office Manager*	\$38,984	\$40,349	\$40,349	\$40,349	3.50%
Jeff Jochim	Operations Manager Class A Operator License	\$76,000	\$78,660	\$78,660	\$78,660	3.50%
Stephen Smiley	Plant and Collection System Operator Class B Operators License	\$39,595	\$40,980	\$40,980	\$40,980	3.50%
Salary Total		\$224,579	\$232,439	\$232,439	\$232,439	3.50%

*Office Manager worked part time for first 3 months of 2007 - actual salary \$38,855, annualized salary \$38,984

Table 2 – MERIC Salary Information

Timber Creek Title	MERIC Salary Survey Title	Mean	Entry	Experienced	Median
General Manager	Management Occupations	\$97,035	\$51,021	\$120,041	\$86,798
Office Manager	Executive Secretary / Admin Assistant	\$42,971	\$32,054	\$48,429	\$41,425
Operations Manager Class A Operator License	(comparable position not found in MERIC)				
Plant and Collection System Operator	Water and Liquid Waste Treatment Plant and System Operator	\$42,569	\$30,176	\$48,765	\$43,234

Table 3 – AWWA Salary Study 2009

Timber Creek Title	AWWA Water Utility Salary Survey	2009 Salary
General Manager	TOP O&M Manager	\$94,467
Office Manager	(not included in AWWA Survey)	
Operations Manager Class A Operator License	Water Operations Manager	\$69,316
Plant and Collection System Operator	Wastewater Treatment Plant Operator	\$43,550

Table 4 General Manager – Comparable Positions in Kansas City Region

Employer	Position Title	Salary
Wyandotte County, KS	Director – Wastewater	\$92,976
Platte County Regional Sewer District	Director	\$83,500
Average		\$88,238

Table 5 Office Manager – Comparable Positions in Kansas City Region

Employer	Position Title	Salary
Platte County	Office Manager – Karla Wigman	\$40,590
Jackson County	Office Administrator – Diane Brown	\$42,140
Jackson County	Office Administrator – Debbie Bruckmeier	\$39,769
Jackson County	Office Administrator – Rose Mary Carter	\$43,638
Jackson County	Office Administrator – Sandra Custard	\$45,638
Jackson County	Office Administrator – Darlene Dobbins	\$38,452
Jackson County	Office Administrator – Debra Johnson	\$38,084
Jackson County	Office Administrator – Kathleen Liles	\$35,484
Jackson County	Office Administrator – Carol Lillis	\$36,045
Jackson County	Office Administrator – Karen Puhr	\$46,966
Jackson County	Office Administrator – Karey Schulze	\$36,795
Jackson County	Office Administrator – Marily Scothorne	\$46,966
Johnson County	Administrative Office Manager – Hart Beckie	\$41,600
Johnson County	Administrative Office Manager – Kern Cheri	\$54,436
Johnson County	Administrative Office Manager – Sandoval Roezelda	\$48,303
Johnson County	Office Manager – Jacqueline Eater	\$61,494
Johnson County	Office Manager – Christine Loomis-Nay	\$46,062
Johnson County	Office Manager – Nancy McCamish	\$57,009
Johnson County	Office Manager – Ruth Pfeifer	\$64,043
Johnson County	Office Manager – Michelle Rankin	\$37,440
Johnson County	Office Manager – Teri Supica	\$50,384
Average		\$45,101

Table 6 Operations Manager – Comparable Positions in Kansas City Region

Employer	Position Title	Salary
Johnson County, KS	Wastewater Superintendent – Mary Pegg	\$73,615
Johnson County, KS	Wastewater Superintendent – Donald Kirkpatrick	\$77,259
Johnson County, KS	Wastewater Superintendent – Curtis Norris	\$62,296
Johnson County, KS	Wastewater Superintendent – Scott Jacobs	\$67,213
Wyandotte County, KS	Wastewater Asst Plant Manager – Naser Bahadori	\$68,890
Wyandotte County, KS	Wastewater Asst Plant Manager – Mahmood Kamyab	\$77,438
Average		\$71,119

Table 7 Plant and Collection Systems Operator – Comparable Positions in Kansas City Region

Employer	Position Title	Salary
Wyandotte County, KS	Plant Operator I – Paul Hernandez	\$42,546
Wyandotte County, KS	Plant Operator I – Ronald Wittkopp	\$43,628
Wyandotte County, KS	Plant Operator II – Delbert Bremenkamp	\$50,904
Wyandotte County, KS	Plant Operator II – Mark Chase	\$51,085
Wyandotte County, KS	Plant Operator II – William Cigich	\$50,305
Wyandotte County, KS	Plant Operator II – Henry Hernandez	\$50,665
Wyandotte County, KS	Plant Operator II – Marquis Holmes	\$50,665
Wyandotte County, KS	Plant Operator II – Rodger Huskey	\$50,665
Wyandotte County, KS	Plant Operator II – Michael Johnson	\$50,904
Wyandotte County, KS	Plant Operator II – Robert Magill	\$50,665
Wyandotte County, KS	Plant Operator II – William Martin	\$50,665
Wyandotte County, KS	Plant Operator II – Joseph Novogradic	\$49,344
Wyandotte County, KS	Plant Operator II – Steven Rogers	\$50,665
Wyandotte County, KS	Plant Operator II – James White	\$50,665
Wyandotte County, KS	Plant Operator II – Walter Williams	\$50,904
Wyandotte County, KS	Plant Operator II – Daniel Wilson	\$50,305
Average		\$49,661

Table 8 – Timber Creek's 2009 Market Salary Basis Summary

	General Manager	Office Manager	Operations Manager	Plant and Collection System Operator	Total Salaries
MERIC (median)	\$86,798	\$41,425	(no data)	\$43,234	
AWWA	\$94,467	(no data)	\$69,316	\$43,550	
Average of Market Data	\$88,238	\$45,101	\$71,119	\$49,661	
Average	\$89,834	\$43,263	\$70,218	\$45,482	\$248,797

MEMORANDUM

TO: Jim Russo
Case Coordinator

THROUGH: Cary Featherstone
Auditing Department Staff

CC: Jaime Ott
Staff Counsel

FROM: Bret Prenger/Bill Harris
Auditing Department Staff

SUBJECT: Auditing Department's Findings
Case No. SR-2010-0320
Timber Creek Sewer Company

DATE: August 2, 2010

BACKGROUND

The Timber Creek Sewer Company (Timber Creek or Company) filed informally for a small sewer utility rate increase of approximately \$63,500 on May 10, 2010.

The Auditing Department subsequently conducted an audit using a 12-month test year ending December 31, 2009, with an update period ending June 30, 2010. On June 30, the Company was serving 1,526 residential customers. At the time of the Company's prior rate filing in Case No. SR-2008-0080, the Company was serving approximately 1,192 residential customers. The Company filed its original certificated case in Case No. SA-95-110, when it was serving only 47 customers. The substantial customer growth over this period has required the Company to make capital investments in major plant additions resulting in the subsequent rate cases. Timber Creek indicated the primary drivers behind the filing of this rate case (Case No. SR-2010-0320) were to offset an increase in the yearly PSC Assessment and to offset increases in electric utility rates.

There were a few significant plant additions in the years 2008 and 2009 leading into this rate case filing. In 2008, the Company had a major plant addition, the remodeling of the interior of the office building. Those capital additions carried over into 2009, where the Company continued to improve the plant and office areas. The 2009 capital plant additions were as follows: the installation of an irrigation system; the installation of a retaining wall to protect the office building's foundation; an addition to the treatment plant; the extension of sewer main to Johnson Ridge; the purchase of additional grinder pumps; and the purchase of a Company truck.

The Company serves three separate sewer systems: the largest sewer system is in Platte County and has approximately 1,499 customers; Timber Creek also serves two smaller sub-divisions in Clay County each with its own stand-alone sewer systems, serving 27 customers collectively.

Timber Creek recently expanded its certificate area in Case No. SA-2010-0063 approved by the Commission on April 21, 2010 with an effective date of May 3, 2010. This expansion is expected to increase the future customer count for Timber Creek. None of this expansion of the Company is included in this rate case.

The Auditing Staff is recommending a rate increase that would result in an additional revenue requirement of \$22,122 as outlined below for the Platte and Clay counties sewer systems.

RATE BASE

As of June 30, 2010, the Staff determined that the Company's total net plant in service was \$2,277,514 and the net contributions-in-aid-of-construction (CIAC) was \$2,090,620. Since CIAC-related plant is not financed by the Company's investors, ratepayers should not be required to pay a return on it. Accordingly, the Staff used the CIAC amount as an offset (reduction to) in the rate base calculation resulting in a net original cost rate base of \$186,894 (\$2,277,514 - 2,090,620).

CIAC for Timber Creek is derived from the service connection fees charged by the Company. Currently, the Company has approved Commission tariffed rates for these service connection fees at \$2,650 for the Platte County customers. However, per the stipulation and agreement filed in Case No. SR-2008-0080, Timber Creek customer, Hunt Midwest, maintains a Commission approved connection fee of \$1,600. The service connection fee is charged to each customer who connects to the Platte County sewer system for initial service. The customers in the two sub-divisions in Clay County, which represents approximately 27 residential customers as of June 30, 2010, were not charged a service connection fee.

CAPITAL STRUCTURE

The Company's capital structure consisted of \$46,724 of common equity and \$140,171 of long-term debt. Staff (Shana Atkinson of the Financial Analysis Department) calculated a rate of return of 7.67 percent with a weighted-cost-of-debt of 6.53 percent.

DEPRECIATION

Staff member Arthur Rice of the Commission's Engineering and Management Services Department provided the recommended depreciation rates to be submitted for approval by the Commission and be used on an on-going basis. The Audit Staff has applied those rates to the individual plant in service accounts in this case, pending Commission approval.

The Auditing Staff calculated the amortization of CIAC as an offset to depreciation expense. Since CIAC-related plant is not financed by the Company's investors and is removed from the calculation of net rate base, it must also be removed from the calculation of depreciation expense. The Staff's Accounting Schedule model automatically calculates depreciation expense on all plant-in-service including the portion relating to contributed plant--the CIAC amount of rate base. Thus, it was necessary for the Staff to calculate the amortization of CIAC and make an adjustment to offset depreciation expense. This adjustment removes the portion of CIAC plant calculated as depreciation in the revenue requirement model. Adjustment E-204 reflects the difference between Staff's annualized CIAC amortization expense and the 2009 per book depreciation expense.

PLANT

Timber Creek has incurred substantial growth since its initial certification, Case No. SA-95-110. As result of the increased customer levels and corresponding growth in revenues, the class size of the sewer company has changed according to the Uniform System of Accounts (USOA) guidelines. Timber Creek was considered a Class D sewer company but the increase in the size of the Company the Company has moved to an "A" Company. This change results in the Company having use of a more detailed description of plant-in-service accounts. Staff decided to revise Company accounts and titles to be in accordance with USOA requirements for class "A" sewer utilities. The new USOA accounts Staff utilized in this case were:

- Account 371: Structures and Improvements at a recommended annual depreciation rate of 3.3%
- Account 390: Structures and Improvements at a recommended annual depreciation rate of 2.5%
- Account 391.1 Office Electronic and Computer Equipment at a recommended annual depreciation rate of 14.3%
- Account 397: Communication Equipment at a recommended annual depreciation rate of 6.7%

With additional input from Company Management, Staff determined the amounts of plant to reclassify to the new accounts. Staff also made one plant adjustment, adjustment P-20, to include two formerly-expensed control panels in the plant balance so that they could also be depreciated over time.

REVENUES

Staff annualized revenues based on the current June 30, 2010 customer levels of 1,499 for the Platte County Service area at the current monthly charge of \$34.74 and the \$26.97 rate for the 27 Clay County Customers. Adjustment Rev-5 reflects the difference between Staff's annualized revenues and the 2009 test year per book revenues.

EXPENSES

Miscellaneous

The Staff has made several adjustments to annualize various expenses that the Company has provided updated information on. The adjustments include:

- Annualization of lab testing (E-94)
- Annualization of ground maintenance (E-121)
- Annualization of postage expenses (E-168)
- Reflect most current PSC Assessment (E-169)
- Remove payroll taxes from salary expense (E-175.1)
- Include a 3% cost-of-living increase to salaries (E-175.2)
- Reduction of meal expenses deemed excessive by Staff and adjustment to 50% in accordance with IRS guidelines for meal/travel expenses (E-179.1 and E-179.2)
- Board Member compensation annualization (E-185)
- Increase in health care premiums (E-190)
- Increase in electric utility rates (E-191)
- Increase in wireless expenses (E-192)
- Increase in water rates (E-197)
- Remove CIAC related depreciation expense (E-204)
- Annualize payroll taxes (E-210)
- Showcase payroll taxes reflecting the 3% cost-of-living increase (E-210.2)

Payroll Expense

The Company has four full-time employees (FTEs) dedicated exclusively to the Platte County sewer system and the two stand-alone sewer sub-divisions in Clay County. The General Manager, Derek Sherry, is responsible for the general management oversight for the day-to-day operations of the Company as well as:

General Manager

- Mr. Sherry is one of the owners of the Company and on the Board of Directors
- Interface with customers of the Company
- Acquiring necessary financial needs to operate the sewer system (Oversight on annual revenue and expense budget, develop capital improvement plan, secure funding)
- The Company contact with Commission Staff personnel
- Supervisory responsibility of all other Timber Creek personnel
- Set guidelines for policies and practices regarding customer service issues

- Promote company growth by exploring business development opportunities (New service area possibilities and possible revenue generation ideas)
- Oversight on effective plant operations and maintenance
- Oversight on engineering and construction principles and practices
- Ensure good standing between all regulatory entities, not just the MPSC

Timber Creek also has an Operations Manager (Jeffrey Jochim) (who has Class A operator's license), an Office Manager (Emma Farris) and a Systems Operator (Steven Smiley) (who has Class B operator's license). The Operations Manager is responsible for providing operations duties and activities to maintain the sewer systems for the Company's Platte County and Clay County operations. The Systems Operator also works with the Operations Manager to ensure Timber Creek's sewer system has 24-hour, seven days a week coverage of the sewer operations. Other duties and tasks for the Operations Manager and Systems Operator include:

Operations Manager

- Ensure effective plant operations, collection system operations, and maintenance by meeting DNR rules and regulations and company direction for operating sanitary sewer facilities including pump stations, collections systems, and solids processing and disposal
- Assure sound construction principles and practices (Enforcement of company standard engineering and construction specifications for treatment plant, pump stations, and collection systems design and construction, Review submitted engineering plans and as-builts for compliance with company specifications, Perform on-site inspections and diligently record and document issues or concerns and communicate with accountable party for timely resolution, Repairs) Provide professional customer service
- Assist in keeping the company in good standing with regulatory agencies
- Assist in company administration by providing budgetary and personnel oversight

Systems Operator

- Ensure effective plant operations, collection system operations, and maintenance by meeting DNR rules and regulations and company direction for operating sanitary sewer facilities including pump stations, collections systems, and solids processing and disposal (Perform plant operations duties for effective utilization of resources while meeting or exceeding water quality permit standards for treatment plant effluent, Take and transport routine, scheduled samples for lab testing and analysis in accordance with prescribed timelines, parameters, and guidelines, Monitor and record daily flows and other plant parameters to ensure effective water treatment is operating within design thresholds, Appropriately respond and take necessary steps and actions to correct any anomalies discovered during plant operations in accordance with company guidelines and as directed by the operations manager, Perform solids management by monitoring sludge levels, reporting, complete dewatering, transporting, and applying solids in accordance

with state regulations and company direction, Perform routine lift station inspections and record necessary monitoring data and observations to ensure lift stations are operating within design parameters. Take necessary actions to correct deficiencies as outlined by company direction, Perform routine manhole and sewer line inspections and record necessary observations to ensure infrastructure is sound and operating within guidelines. Take necessary actions to correct deficiencies as outlined by company direction, Ensure buildings, grounds, and related equipment are presentable and professionally maintained and in good working order. Complete routine maintenance as scheduled and as needed)

- Assure sound construction principles and practices
- Provide professional customer service

Office Manager

The Office Manager, Emma Farris, is responsible for the book keeping of the Company's accounting records. Ms. Farris is also responsible for the following responsibilities:

- Manages company general office administration by completing accounts payable, payroll, office surroundings, and office supplies
- Manages company account receivables, credits, and collections activities
- Provide exceptional customer service
- Ensure accurate, timely, and complete customer billing
- Assist in effective plant operations and maintenance by providing support functions

Staff reviewed the Company's current level of payroll expense, which is based on the level established in the Company last rate case-- Case No. SR-2008-0080. The payroll level included in the revenue requirement calculation for Case. No. SR-2010-0320 was based on existing salary levels and also contains an additional 3% raise to represent a cost-of-living increase. This 3% payroll increase is conditioned upon the Company actually authorizing such an increase for existing employees.

Staff obtained additional documentation to support its decision that the current payroll levels are reasonable based on the location and size of the Company. Staff considered utility salaries and wages paid to other Missouri water and sewer companies which had recently completed rate cases. Also documentation provided by the Company was reviewed which allowed a comparison of the Timber Creek's General Manager salary and benefits with the salary levels for the County Sewer District's regional manager. The Company provided information for salaries of similar job positions currently employed by Timber Creek (This information includes charts for salaries based upon 2008 calendar year). Staff also examined the Missouri Economic Research and Information Center (MERIC) salary summary chart, (based on 2007) to substantiate the salary levels of the Company's salary compensation levels. When viewing the MERIC survey, Staff compared similar or like positions with those of Timber Creek ranging from executive assistant (Ms. Farris), multiple management positions (Mr. Sherry), and multiple maintenance, grounds work, and construction jobs (Mr. Jochim and Mr. Smiley). Staff

concluded that the salary levels paid to Timber Creek employees are conservatively priced in relationship to salaries paid for other similar positions for other entities. An example of the survey viewed would be the following:

- Management Occupations (Kansas City region for General Manager position), Median Annual Salary \$94,529
- Executive Secretary/Admin. Assistant (Office Manager position), Mean Annual Salary \$41,142
- The system operator information identified a mean salary level of \$49,290. The salary level paid to Timber Creek's system operator is a conservative level compared to information reviewed
- The plant operations manager is paid more than the mean of the salary shown in the survey but given all of his duties and responsibilities, Staff considered this salary level to be reasonable. Mr. Jochim is actually considered a "plant manager" but no specific salary base was available for an exact comparison.

Based on this additional documentation, Staff believes it is appropriate to include a modest 3% cost-of-living increase in this case conditioned on the increase being granted to Timber Creek's employees.

AUDITING DEPARTMENT STAFF RECOMMENDATION

For the reasons outlined above, the Auditing Staff is recommending a rate increase that would result in an additional revenue requirement of \$22,122.

- 1) The Auditing Staff recommends Timber Creek Sewer Company keep a detailed time log, identifying the amount of time each employee spends working on activities strictly related to the regulated sewer utility company. This recommendation would aid Staff in future payroll analysis and discussions.
- 2) The Auditing Staff recommends that Timber Creek Sewer Company keep a detailed list of invoices regarding future purchases within the USOA Accounts for Laboratory Equipment and Tools, Shop Equipment etc. Following this recommendation would allow the Staff to provide the Commission with a more accurate plant number, which would then result in a better depiction of the "true" Rate Base dollar amount.
- 3) Timber Creek Sewer Company is to maintain its financial and accounting records using the Uniform System of Accounts (USOA) guidelines for a Class A sewer company, for its revenues, expenses, and investment costs.
- 4) The Auditing Staff recommends Timber Creek employees receive a 3% salary increase over existing salary levels conditioned upon this increase actually

being authorized and granted to the each employee.

**Costello
Davey Fera,** *A Limited Liability Company*



Jason Davey* Brian Costello* Addam Fera*
*Licensed in KS and MO

ATTORNEYS AT LAW

August 19, 2010

Via Electronic Mail

Mr. Derek Sherry
Timber Creek Sewer Co.
Platte City, Mo 64079

Re: Risk analysis for tracking employee time

Dear Mr. Sherry:

Our firm was retained by your company to deliver an opinion regarding what exposure to liability the company would have under the Fair Labor Standards Act regarding time sheets for your employees. We have not been retained to determine whether any employee of the company is exempt or non-exempt, and no opinion is made as to that question.

First Question Addressed: If employees who are currently salaried and not compensated based upon the number of hours actually worked begin tracking their time, will the mere fact of time tracking remove their exempt status under the FLSA?

Opinion: No. As you know, much of the exempt vs. non-exempt status of an employee is governed by regulations promulgated by the Secretary of Labor. The mere fact that an employer keeps track of an employee's time does not, in itself, remove the employee's exempt status. The Eighth Circuit holds, "the regulations do not prohibit employers from requiring employees to work a specific number of hours per week and track their time to ensure they have worked the requisite number of hours." *Guerrero v. J. W. Hutton, Inc.*, 458 F.3d 830, 836 (8th Cir. Iowa 2006).

Second Question Addressed: If the company begins tracking the actual hours worked by employees, could the employee use those records to rebut the company's classification of the employee as exempt under the FLSA? And if so, would the time tracking bring to the employee's attention a possible claim under the FLSA?

Opinion: Yes and yes. First, these records would be front and center in any action by an employee against the company. These time records would likely result in irrefutable proof that the employee is working more than 40 hours per week. The burden of proving that the employee is exempt rests upon the employer, and whether any one employee is exempt is a question to be determined through significant legal process. As to the second

question, maintaining time records of employees who are currently not receiving overtime puts the employee on notice that they may be entitled to overtime pay. Again, whether the employee is exempt or not exempt is not the main exposure the company has at this point. The exposure lies in the employee seeking the determination in the first place. In order to defend such an action, the company would have to employ experienced employment law attorneys and a host of experts in the fields of occupational analysis and economics. So whether the company was ultimately successful or not on the exemption question is secondary to the substantial cost in defending the action in the first place. I believe that the defense of such an action would easily exceed \$30,000.00.

As always, if you have any questions or concerns, please feel free to contact my office at your convenience.

Sincerely,

JASON DAVEY

Jason Davey,
Attorney at Law

Cc: file

Schedule DS-5

Table 1 – Plant and Collection System Operator Overtime

Plant and Collection System Operator - Overtime Calcs for 2009					
Regular OT Events (1.5 times hrly)	Events	Hours	Sub Total (hrs)	Adjust for Ops Mgr	Cost
Weekend Plant Checks ¹	44	3	132	66	
Customer Call Outs (after hours) ²	9	4	36	28	
Alarm Call-Outs (after hours) ¹	10	4	42	21	
Vendor Pick Up (pumps/adapters)	2	1.5	3	3	
Inspections (after hours) ¹	3	1	3	1.5	
Typical Work Week Overtime	52	2	104	104	
Total			210	223.5	
Overtime Rate (\$ per hr)			29.55	223.5	6604.43
Holiday OT Events (2 times hrly)					
Plant Checks – Holidays ¹	8	3	24	12	
Customer Call Outs – Holidays ²	1	4	4	4	
Total			39.40	16	
Overtime Rate (\$ per hr)			39.40	16	630.40
Total Overtime			68.95		7234.83

¹ Ops Manager responded to 50% of call-outs

² 5 of 9 calls took two individuals

Table 2 – Office Manager Overtime

Office Manager - Overtime Calcs for 2009				
Regular OT Events (1.5 times hrly)	Events	Hours	Sub Total (hrs)	Cost
Monthly Door Hangars	39		14.5	14.5
Office Supplies	24	1.5	36	36
Documentation/Projects	1	14	14	14
Year End / Beginning Process	1	16	16	16
Archive	1	9	9	9
Total				89.5
Overtime Rate (\$ per hr)			29.10	89.5
Total Overtime			29.10	2604.45

Total Company Overtime for 2009

9839.28

Table 3 – Insurance Impacts from Overtime

Insurance Policy	Emp Class	OT Hours	Pay Rate	Std Pay	Insurance Rate	Insurance Premium Increase
Workmans Comp	Operator	239.50	19.7	4718.15	0.0301	\$142.02
Workmans Comp	Clerical	89.50	19.4	1736.30	0.0032	\$5.56
General Liability	Operator	239.50	19.7	4718.15	0.009855	\$46.50
Total Insurance Increase						\$194.07

TIMBER CREEK SEWER COMPANY
Case No. SR-2010-0320
Normalization of Case No. SR-2008-0080 Rate Case Expense
8/9/10 vwh

Date	Vendor and/or Service	\$ billed	\$ included	Reason/Explanation
4/12/2007	Finnegan, Conrad & Peterson, L.C.	\$784	\$0	included in SR-2008-0080 update thru 9/30/2006
5/22/2007	Finnegan, Conrad & Peterson, L.C.	\$384	\$0	included in SR-2008-0080 update thru 9/30/2006
9/26/2007	Finnegan, Conrad & Peterson, L.C.	\$867	\$0	included in SR-2008-0080 update thru 9/30/2006
12/17/2008	Derek Sherry / Professional services	\$18,175	\$0	part of his salaried duties as Company GM/Pres.
8/13-19/2007	Parking, two lunches and two dinners	\$81	\$0	included in SR-2008-0080 update thru 9/30/2006
2/5/2007-9/23/2007	Derek Sherry / Mileage (1517mi. @\$.485)	\$736	\$0	included in SR-2008-0080 update thru 9/30/2006
9/24/2007-11/18/2007	Derek Sherry / Mileage (322mi. @\$.485)	\$156	\$156	^^^to complete disposition agreement/unanimous stipulation^^^
11/20/2007	Finnegan, Conrad & Peterson, L.C.	\$13,944	\$13,944	\$13,775 legal fees, \$165 mileage, \$4 photo copies
12/13/2007	Finnegan, Conrad & Peterson, L.C.	\$4,693	\$4,693	\$4,688 legal fees and \$5 copy of transcripts
1/15/2008	Finnegan, Conrad & Peterson, L.C.	\$3,220	\$3,220	\$3,220 in legal fees
2/14/2008	Finnegan, Conrad & Peterson, L.C.	\$780	\$780	\$780 in legal fees
3/13/2008	Finnegan, Conrad & Peterson, L.C.	\$180	\$180	\$180 in legal fees - order closing case on 2/8/2008
		\$44,000	\$22,973	Expense normalized over three years \$7,658

Disputed

Rate case expense updated through September 30, 2007 and included in ER-2008-0080 Unanimous Stipulation and Agreement

^^^Unanimous Stipulation and Agreement filed on January 4, 2008 and approved by Commission Order on January 29, 2008^^^

Schedule DS-7

Emergency Repair Fund Estimations				
Unplanned Events	Fiscal Impact if Occurred	Likelihood / Probability	Number of Units	Cash Reserve
Pump Station Control Panel Failure	\$15,000	10.0%	3	\$4,500
Pump Station Pump Failure	\$35,000	12.5%	6	\$26,250
Back Up Generator Failure	\$20,000	20.0%	3	\$12,000
Forcemain Break	\$15,000	20.0%	1	\$3,000
Aerial Crossing Break	\$60,000	5.0%	1	\$3,000
Treatment Plant Blower Failure	\$35,000	10.0%	7	\$24,500
Treatment Plant Control Panel Failure	\$12,000	30.0%	7	\$25,200
Sludge Press Failure	\$40,000	6.7%	1	\$2,680
Headworks	\$15,000	5.0%	1	\$750
Structure / Concrete Tank Failure	\$75,000	2.0%	20	\$30,000
Inland Marine Equipment Failure	\$20,000	20.0%	5	\$20,000
Collection System Blockage	\$18,000	20.0%	1	\$3,600
Disinfection Failure	\$44,000	6.7%	3	\$8,844
Computer System Failure	\$3,400	20.0%	4	\$2,720
Buildings (roof, HVAC, plumbing)	\$12,000	10.0%	5	\$6,000
Environmental Impacts (cleanup, restoration and DNR fines)	\$60,000	5.0%	1	\$3,000
Personnel Departure - Operations Manager	\$15,600	10.0%	1	\$1,560
Personnel Departure - Office Manager	\$14,000	10.0%	1	\$1,400
Personnel Departure - General Manager	\$45,000	10.0%	1	\$4,500
Total				\$177,604