2011 Wastewater Rate Change Proceeding

PREHEARING CONFERENCE REPORT

COMES NOW the Missouri Industrial Energy Consumers ("MIEC"), by counsel, and pursuant to Section 8 of the Procedural Rules and Section 3(9) of the Operating Rules, files its Prehearing Conference Report submitted in response to Metropolitan St. Louis Sewer District's ("MSD") proposed wastewater rate increase as provided by MSD Staff on May 10, 2011. In support of its Report, the MIEC states as follows:

1. **MSD's Rate Proposal**

MSD proposes a rate increase of $128.8 million dollars, or over a 60% increase, for the next four years (FY 2013 – FY 2016). As presented in MSD's Wastewater Rate Proposal, the rate proposal results in: (1) an increase of 12.6% to 13.3% to single family residential monthly bills for each of the next four years; (2) an increase of 12.5% to 13.6% to multifamily residential monthly bills for each of the next four years; and (3) an increase of 11.3% to 14.8% in medium size non-residential monthly bills for each of the next four years.[1] MSD proposes the use of $945,000,000 in bond financing and $171,000,000 in cash financing to fund its Capital Improvement and Replacement Program ("CIP") through FY 2016.[2]

MSD asserts that the proposed rate increase is necessary to comply with the Consent Decree lodged with the United States District Court on August 4, 2011 and currently under consideration for public comment.[3] MSD estimates that the capital program required to achieve compliance with the Consent Decree will cost $4.7 billion in 2011 dollars for the next twenty-three years.[4] MSD has

---

1 *See* Exhibit MSD 1, p. 1-8 and 1-9, Tables 1-1, 1-2, and 1-3.

2 *See, e.g.,* Exhibit MSD 3, p. 6.

3 *See* Exhibit MSD 49A, Final Consent Decree.

4 *See* Exhibit MSD 11A32, no. 1.

identified a list of projects which are anticipated to be a part of the current rate proposal, and these projects total $884,738,250.[5] Significantly, MSD has yet to prepare a Sanitary Sewer Overflow Control Master Plan ("SSO Plan") that needs to be submitted to EPA by December 31, 2013.[6]

2. **Obligations Pursuant to the Charter**

The Rate Commission (the "Commission") must make sure that MSD's proposed rate increase meets all of the five factors outlined in Section 7.270 of MSD's Charter. Specifically, the Commission must find that MSD's proposed rate change, and all portions thereof, meet the following five criteria:

(1) is consistent with constitutional, statutory or common law as amended from time to time;

(2) enhances the District's ability to provide adequate sewer and drainage systems and facilities, or related services;

(3) is consistent with and not in violation of any covenant or provision relating to any outstanding bonds or indebtedness of the District;

(4) does not impair the ability of the District to comply with applicable Federal or State laws or regulations as amended from time to time; and

(5) imposes a fair and reasonable burden on all classes of ratepayers.[7]

(emphasis added). Of these five factors, the MIEC asserts that MSD's proposed rate increase does not meet the fifth criteria because MSD's proposed rate increase requires ratepayers to pay for projected expenses that are both unjustified and excessive. As articulated by other intervenors[8] and

5 *See* Exhibit MSD 50A.

6 *See* Exhibit MSD 49A, Final Consent Decree, ¶23, p. 25.

7 *See* MSD Charter, §7.270. http://www.stlmsd.com/portal/pls/portal/!PORTAL.wwpob_page.show?_docname=342404.PDF

8 *See* Exhibit BJH 100, p. 1; *see also* Exhibit AARP 95, p. 1; *see also* Exhibit CCM 96, p. 1.

the Commission's legal counsel,[9] the "fair and reasonable" factor is the key consideration for the Commission in this proceeding.

3. **MIEC's Response**

Since MSD's proposed rate increase imposes an unfair and unreasonable burden on the ratepayers, the MIEC recommends that the Commission should only award a one year (or two year, at the most) revenue rate increase of no more than 9.6% in this proceeding. MSD's estimated costs for FY 2013 from July 1, 2012 to June 30, 2013 are reasonably measureable. The CIP costs are not known at this time, especially since MSD has yet to prepare the SSO Master Plan that needs to be submitted to the EPA by December 31, 2013. Moreover, considering the current economic conditions, there are unknown cost factors present including the interest rates on new revenue bond issuances, the amount of bad debt expense, and the customer sales during the forecast period. In its projections, MSD assumes, without justification, that these cost items get more expensive due to the continued decline to the service area and the general U.S. economy. However, the record – and independent economic projections – indicate that MSD's projected assumptions underlying the future costs are far too pessimistic. For example, independent economists project that in MSD's service area, the economy will improve during the forecast period (and not get worse as MSD projects), general inflation will be lower than assumed by MSD, and revenue bond debt service will be considerably lower than assumed by MSD.

By revising the MSD cost study to reflect these independent economists' projections and reducing the costs that are driven by these projections, MSD's own study would indicate a much lower rate increase during the four year rate increase period. Importantly, MSD did not offer evidence rebutting these independent projections. The MIEC does not endorse a four year rate

---

[9] *See* Exhibit LB 97, p. 2 (stating that the proceeding "comes down mainly to one factor: Does the District Wastewater Rate Change Proposal impose a fair and reasonable burden on all classes of ratepayers?")

increase plan, but if the Commission chooses to consider a four year rate plan, then MSD's cost of service projections should be modified to reflect independent economists' projections rather than MSD's unsupported assumptions. As the MIEC's evidence shows, using these independent projections would reduce the proposed four year increase to 49%, or $105.6 million dollars, for the next four years rather than the 60%, or $128.8 million dollars, proposed by MSD.[10] In other words, the MIEC recommends that the proposed adjustments result in a series of revenue increases of 9.6% in each of the four rate years instead of the erroneous 11% to 12% proposed by MSD.

Importantly, the MIEC has not recommended to adjust necessary capital or expense items in its modifications to MSD's proposed rate increase. As discussed below, all of the MIEC's adjustments relate to producing a balanced and fair estimate of MSD's costs needed to accomplish the CIP and operations included in the four year rate plan. The MIEC's position assumes that MSD Staff will be expected to effectively manage costs during this period.

By including overstated cost estimates in its rate proposal, MSD will have a reduced incentive to manage costs. This is unacceptable, especially considering that businesses and residential customers alike should not be responsible for paying for MSD's managerial oversight. If sewer rates spike dramatically, especially in this economic climate, businesses could re-evaluate their decision to maintain offices and plants in the St. Louis area. The Commission should be very sensitive to the fact that increasing MSD's rates to generate unnecessary revenue could be disastrous for the sustainability of commerce in our city.

4. **MIEC's Adjustments to MSD's Rate Proposal Make the Proposal Fair and Reasonable for All Classes of Ratepayers**

The evidence presented in this rate case demonstrates that MSD is overstating its cost of service over the forecast period and its proposed rate increase is materially higher than necessary.

10 *See* Exhibit MIEC 89, Michael Gorman's Supplemental Testimony, p. 4, lns. 18 - 19.

The MIEC has identified five key areas where MSD has made unreasonable cost projections. Together, these unreasonable cost projections produce approximately a $23 million overstatement to MSD annual costs of service to 2016, the end of the rate forecast period. So, it is imperative to think of each of the following five adjustments as essential pieces that need to be removed from MSD's inflated proposal to ensure that MSD's proposed rate increase imposes a fair and reasonable burden on the ratepayers. In other words, as stated by the Commission's legal counsel, "[t]he testimony from the Rate Consultant and Intervenors raises the issue of whether, when all these elements are considered together, the District is being overly conservative on the various elements which together lead to a larger Rate Change Proposal than may actually be necessary."[11]

Below is a description of each of the five adjustments that are proposed by the MIEC.

A. **Adjustment No. 1: Economic Activity in MSD's Service Area Should Remain Constant and Not Decline.**

There is no support for MSD's position that MSD's customer base will continue to decline from a depressed 2011 level. As discussed at length in testimony and during the technical conferences, MSD did not take into consideration economic activities for non-residential customer growth and sales volume during the forecast period.[12] In fact, a conservative estimate of actual future sales levels is to hold the 2011 sales levels constant.[13] Unlike MSD's assumption, the MIEC's position is supported by independent and reliable sources.[14] The total impact of this adjustment is over $1 million per year in revenue at the current rates.[15] Moreover, if the Rate Commission

---

11 *See* Exhibit LB 97, p. 2.

12 *See* Exhibit MIEC 29, Michael Gorman's Rebuttal Testimony, p. 7, lns. 8 – 11; *see also* Exhibit MSD 17, Transcript of Direct Testimony Technical Conference, p. 206, lns. 13-25 and p. 207, lns. 1 – 14.

13 *See* Exhibit BJH 88, Billie LaConte's Supplemental Testimony, p. 2, lns. 7 – 14; *see also* Exhibit MIEC 29, Michael Gorman's Rebuttal Testimony, p. 8, lns. 20 – 22.

14 *See* Exhibit MIEC 29, Michael Gorman's Rebuttal Testimony, p. 7, lns. 15 – 27 and p. 8, lns. 1 – 6; *see also* Exhibit MIEC 63, Michael Gorman's Surrebuttal Testimony, p. 11, lns. 1 – 22.

15 *See* Exhibit MIEC 63, Michael Gorman's Surrebuttal Testimony, p. 12, ln. 4.

recommends a one or two year rate increase, then all of the parties will be able to better evaluate the economic activity in MSD's service area at that time.

B. Adjustment No. 2: MSD's O&M Expense Should Reflect a Level of General Inflation Consistent with Independent Economists' Projections

MSD makes an unsupported assumption (with no justification at all) that its Operations & Maintenance ("O&M") expense should include an annual general base inflation factor of 3%. However, independent economists in published sources project a general inflation rate of only 2.25%.[16] The total impact from this reduction is a decline in projected O&M expense levels from approximately $16 million for four years.[17] Moreover, MSD unnecessarily increased the General Counsel expense, and if the General Counsel expense grows at a rate of general inflation, this adjustment further reduces MSD's projected O&M expenses by $6.3 million.[18]

C. Adjustment No. 3: MSD's Revenue Bond Interest Rate Should be Reduced to 4.65%.

MSD projects that it will issue over $857 million of incremental revenue bonds to finance the capital improvement projects. MSD assumes that the revenue bond issuances will be amortized over 30 years at an interest rate of 5.5%, and as discussed in testimony and during the conferences, this number is substantially overstated.[19] The MIEC recommends reducing the 30-year bond debt interest expense to 4.65%, which was the highest interest rate projection that MSD was able to provide any evidence to support in this proceeding.[20] Importantly, if accepted by the Commission,

---

16 *See* Exhibit MIEC 29, Michael Gorman's Rebuttal Testimony, p. 10, lns. 1 – 16.

17 *See id.*, at p. 10, lns. 16 – 18.

18 *See id.*, at p. 10, lns. 21 – 23 and p. 11, lns. 1 – 14.

19 *See* Exhibit MIEC 29, Michael Gorman's Rebuttal Testimony, p. 14, lns. 3 – 17; *see also* Exhibit MIEC 63, Michael Gorman's Surrebuttal Testimony, p. 7, lns. 3 – 22, and p. 8, lns. 1 – 29, and p. 9, lns. 1 – 5.

20 *See* Exhibit MIEC 89, Michael Gorman's Supplemental Testimony, p. 3, lns. 23 – 25. *See also* Exhibit MSD 90, Surrebuttal Technical Conference Transcript, Testimony of J. Vanda, p. 50, lns. 23 – 25 (discussing how a 25 year AAA general obligation bond yield had an interest rate of 4.25%, and by adding 40 basis points, the interest rate becomes 4.65%).

this debt interest expense of 4.65% will still overstate the debt service cost on new revenue bond issuances during the forecast period.[21]

D. **Adjustment No. 4: MSD's Bad Debt Expense is Substantially Overstated and Should be Reduced to a Factor of 3.18%.**

Bad debt expense should reflect the normalized historical levels of customers' failure to pay their bills. From the period 2006 to 2010, MSD's actual bad debt expense is represented with a factor of approximately 3.18% of actual total wastewater revenue billings.[22] MSD's expense is based on a highly abnormal factor of 3.96%. The MIEC recommends using a normal factor of 3.18% (a number still much higher than other Missouri utility companies) to reflect historical actual debt expense, a new enhanced collection procedure now implemented by MSD to improve the abnormal level of debt expense experienced in the economic recession, and the projection that the economy will improve over the next four years while rates are in effect.[23] Moreover, as the MIEC's review of the electronic model uncovered, MSD should have reflected a decrease (instead of an increase) in the bad debt expense in 2013.[24]

E. **Adjustment No. 5: MSD's Uncertain Cost Estimates for the CIP Should be Reduced by 10%.**

MSD's CIP budget should be reduced by approximately 10% to adjust for the fact that MSD's estimates of the CIP are highly uncertain and the current cost projections are not reliable. There is considerable uncertainty with MSD's budget. For example, as Mr. Brian Hoelscher stated in his testimony, because of the economic conditions, MSD received bids for capital work that "in some cases was 40% below traditional costs."[25] Mr. Hoelscher also testified that, as a generality, "a

---

21 *See* Exhibit MIEC 89, Michael Gorman's Supplemental Testimony, p. 3, lns. 25 – 26, and p. 4, lns. 1 – 4.

22 *See* Exhibit MIEC 29, Michael Gorman's Rebuttal Testimony, p. 16, lns. 5 - 7.

23 *See* Exhibit MIEC 63, Michael Gorman's Surrebuttal Testimony, p. 13, lns. 15 – 24, and p. 14, lns. 1 – 10.

24 *See* Exhibit MIEC 89, Michael Gorman's Supplemental Testimony, p. 2, lns. 3 – 28, and p. 3, lns. 1 – 8.

25 *See* Exhibit MSD 9B, Brian Hoelscher's Direct Testimony, p. 5, lns. 11 – 13.

lot" of projects were "done cheaper."[26] Therefore, additional funds were available which were used to complete contingency projects beyond the original program budget.[27] In light of this situation, it is clear that MSD is overstating its budget for projects, sometimes up to 40%. In short, ratepayers have already paid more for projects that, in actuality, cost much less. Importantly, the inflation expense for the CIP is excessive and unjustified for the four year period.[28] Due to the uncertainty of the CIP program, the budget, and the associated inflation with the CIP, it is prudent to reduce the CIP estimated expense by 10%.

5. **The MIEC Supports the Recommendations and Conclusions of the Commission's Expert and Barnes-Jewish Hospital's Expert**

In addition to the five adjustments listed above, the MIEC supports the recommendations of William Stannard, the Commission's expert, to make MSD's proposed rate increase more fair and reasonable for all ratepayers.[29] The MIEC also supports the recommendations and conclusions of Billie LaConte, Intervenor Barnes-Jewish Hospital's expert, regarding, among other things, operating costs, pension costs, and the use of the cash expenditure method.[30] Moreover, the MIEC echoes the statements from AARP and the Consumers Council of Missouri that the Commission should recommend no rate change that is higher than the least cost necessary for MSD to fulfill its obligations.[31]

---

26 *See* Exhibit MSD 90, Surrebuttal Technical Conference Transcript, Testimony of B. Hoelscher, p. 223, lns. 18 - 19.

27 *See* Exhibit MSD 9B, Brian Hoelscher's Direct Testimony, p. 5, lns. 13 – 14. *See also* Exhibit MSD 17, Direct Testimony Technical Conference, Testimony of B. Hoelscher, p. 95, lns. 2 – 6 ("So, over the last fix, six years that's been the strategy we've used is to have extra projects sitting in the queue waiting to go, and we've gone ahead and awarded those projects and bid those projects up to the amount of revenues that were available").

28 *See* Exhibit MSD 94B, Brian Hoelscher's Responsive Testimony, p. 1, lns. 13 – 15 and p. 2, lns. 3 – 7. Curiously, as discussed in the Supplemental and Responsive Testimony Conference on September 26, 2011, the inflation expense for the CIP did not appear in Exhibit MSD 50A, the list of CIP projects required under the Consent Decree.

29 *See* Exhibit LB 97, pp. 2 – 4 (presenting recommendations regarding CIP funding issues and O&M expenses).

30 *See* Exhibit BJH 100, p. 3; *see also* Exhibit BJH 88, Billie LaConte's Supplemental Testimony, p. 2, lns. 7 – 20 and p. 3, lns. 1 – 16.

31 *See* Exhibit AARP 95, p. 1; *see* also Exhibit CCM 96, p. 1.

The MIEC encourages the Commission to give considerable weight to these recommendations and conclusions. When considering this additional evidence, the Commission may be persuaded to further reduce the revenue rate increase below the 9.6% threshold per year recommended by the MIEC.

6. **<u>MSD has Presented Insufficient Evidence to Warrant a Four Year Rate Increase</u>**

MSD, as the utility, has the burden of proving that the proposed rate increase meets all of the five criteria identified in Section 7.270 of the Charter. It is the MIEC's position that MSD has failed to demonstrate that the proposed rate increase imposes a fair and reasonable burden on all ratepayers for the entire four year rate period. Rather, MSD has only proven that there is a fair and reasonable burden on all ratepayers for FY 2013. For example, Ms. Jeanne Vanda, MSD's financial expert from Public Financial Management, Inc., admits that there is more specificity with respect to the projects that must be performed under the Consent Decree within the next year or two.[32] Accordingly, the Rate Commission should carefully evaluate whether MSD has met its burden pursuant to the Charter, and if not, whether MSD should receive less than a four year rate increase.

MSD offered the testimony of Jan Zimmerman and Jeanne Vanda to conclude that a one year "rate freeze"[33] was not acceptable to MSD. Significantly, Ms. Zimmerman did not review any documents or prepare any financial summaries indicating why MSD would not support a one year rate increase.[34] Rather, Ms. Zimmerman relied solely upon conversations with Ms. Vanda to support

---

32 *See* Exhibit MSD 90, Surrebuttal Technical Conference Transcript, Testimony of J. Vanda, p. 139, lns. 8 - 10.

33 The term "one year freeze" should have been referred to as a "one year rate action" or "one year rate increase" that contemplates a one-year plan based upon the FY 2012 rates. *See* Exhibit MSD 90, Surrebuttal Technical Conference Transcript, Testimony of J. Vanda, p. 138, lns. 8 – 10; *see id.*, Testimony of J. Zimmerman, p. 147, lns. 10 – 20.

34 *See* Exhibit MSD 90, Surrebuttal Technical Conference Transcript, Testimony of J. Zimmerman, p. 148, lns. 19 - 23.

this conclusion.[35] Similarly, Ms. Vanda does not cite any authority or document in support of her position that the one-year rate increase will impair MSD's ability to use bonds to fund the proposed CIP.[36] MSD has asserted, without support, that a shorter rate proposal affects the bond rating agencies' perception of MSD;[37] however, if all four years of the proposal do not meet the "fair and reasonable" criteria outlined in the Charter, then the Rate Commission has a duty to modify the proposal so it is "fair and reasonable" throughout the entire proposal, not just for the first year.

The MIEC provides solid arguments – supported by evidence in the record – demonstrating that MSD's proposed rate increase should be limited to one year. Specifically, the Consent Decree requires that MSD shall submit to EPA the SSO Plan by December 31, 2013.[38] The SSO Plan is approximately 55%, or $485 million dollars, of the total proposed CIP for the rate period.[39] The SSO Plan will provide a schedule of specific projects for the elimination of many overflows; however, according to Mr. Brian Hoelscher, a draft of the SSO Plan is not available.[40] Significantly, the Rate Commission's counsel recently stated that the uncertainty of the availability of the SSO Plan is an "issue that goes to fair and reasonableness."[41] It is unfair and places an unreasonable burden on MSD's ratepayers for the Board of Trustees to approve of rate increases based upon an SSO Plan which has not reviewed by the Commission, much less drafted.

Notably, MSD's own witnesses provide support to the argument that the 2011 wastewater rate case was perhaps filed at the wrong time. Ms. Vanda admitted that MSD's filing was "a little bit

---

35 *See id.*, at p. 148, lns. 21-23 and p. 149, lns. 11 – 23.

36 *See* Exhibit MSD 60D, Surrebuttal Testimony of J. Vanda, p. 18, lns. 17 – 23 and p. 19, lns. 1 – 11; *see* Exhibit MSD 90, Surrebuttal Technical Conference Transcript, Testimony of J. Vanda, pp. 93 – 97 and pp. 137 – 142.

37 *See* Exhibit MSD 98, MSD's Prehearing Conference Summary, p. 3.

38 *See* MSD Exhibit 49A, Final Consent Decree, ¶23, p. 25.

39 *See* Exhibit BJH 88, Billie LaConte's Supplemental Testimony, p. 4, lns. 8 - 10.

40 *See* Exhibit MSD 90, Surrebuttal Testimony Technical Conference Transcript, p. 193, lns. 8 – 21.

41 *See* Exhibit MSD 109, Prehearing Conference Transcript, p. 69, lns. 9 – 19.

premature" until the Consent Decree was in place.[42] Although the Consent Decree has been lodged, the Consent Decree has not been finalized since the public comment period is open until October 10, 2011.[43] The Consent Decree – a document that serves as a foundation for much of MSD's 2011 rate proposal – could be revised by EPA in response to the public comments. This fact underscores the MIEC's position that it is fair and reasonable to the ratepayers that MSD's proposed rate increase be limited to one year after the Consent Decree is actually finalized.

7. **<u>Full and Complete Transparency is Vital to Future MSD Rate Cases</u>**

As the Commission is aware, the MIEC and the other Intervenors were very frustrated at MSD's unwillingness to provide the Commission and the Intervenors with full access to the electronic copy, with all formulas intact, of the May 10, 2011 MSD wastewater rate proposal performed by Black & Veatch (the "Electronic Model"). On June 7, 2011, the MIEC submitted discovery request 1-1 to MSD requesting access to the Electronic Model.[44] After submitting additional discovery requests and engaging in numerous conferences with MSD throughout June and most of July,[45] the Intervenors jointly filed a Motion to Compel on July 19, 2011.[46] The Intervenors were unable to evaluate the validity of the data without analyzing the formulas and calculations in the Electronic Model.[47] Importantly, since no member of the MSD staff requested to see the Electronic Model in the 2011 proceedings, the Intervenors wanted to make sure that

---

42 *See* Exhibit MSD 90, Surrebuttal Technical Conference Transcript, Testimony of J. Vanda, p. 134, lns. 13 – 15 ("You also bear in mind it was a little bit premature to do this, until you have the Consent Decree. In the process of doing a Consent Decree, they had to look at a lot of longer term implications, but without that Consent Decree in place, you don't have anything tangible to do in terms of looking at this long term. You now have that in place."

43 *See* Exhibit MSD 54; *see also* 76 Fed. Reg. 174, at 55705 (Sept. 8, 2011) http://www.justice.gov/enrd/ConsentDecrees/Metropolitan_St_Louis_Sewer_Federal_Register_Notice(1).pdf

44 *See* Exhibit MIEC 15, p. 1, Discovery Request 1-1.

45 *See, e.g.,* Exhibit MIEC 35, pp. 1 – 4 for a chronology of events describing the Intervenors' attempts to acquire access to the Electronic Model from MSD.

46 *See id.*

47 *See, e.g.,* Exhibit MIEC 45, p. 1.

someone was confirming the accuracy of Black & Veatch's Electronic Model.[48] And since Black & Veatch provided access to similar electronic models in other proceedings, it is only appropriate that Black & Veatch provide the Electronic Model to the parties in this proceeding.[49] On August 2, 2011, the Commission granted the Intervenors' Motion to Compel to provide access to the Electronic Model in this proceeding.

Unfortunately, MSD and/or Black & Veatch continued to cause delays in the process by submitting confidentiality agreements that were commercially unreasonable and exposed the consultants to unnecessary liability that was unusual for the industry.[50] Due to these delays, the Intervenors stated the following as it relates to future rate proceedings:

> As MSD prepares for future rate proceedings, the Intervenors strongly encourage – if not urge – MSD to select a consultant that is committed to standard rate case protocol and data and workpaper transparency throughout the entire rate proceeding. It is imperative for MSD to choose a consultant that does not refuse to share critical information or allow stakeholders to validate the accuracy of its work. If so, perhaps the electronic model will be provided with the parties at the beginning of the next rate process. And the electronic model will not be shielded from dissemination with an unreasonable confidentiality agreement. Then, the parties will have the necessary time to evaluate the electronic model and this evaluation can be the subject of discovery requests and numerous technical conferences well in advance of the submission of the prehearing conference reports.[51]

Thankfully, the Chairman of the Commission suggested revising the procedural schedule to enable the Commission's consultant and the Intervenors' consultants to review the Electronic Model.[52]

The MIEC would have performed a more detailed and comprehensive review of the Electronic Model had the Electronic Model been provided at the beginning of the rate case.[53]

---

48 *See* Exhibit MIEC 36A, MSD's Responses to MIEC's Fourth Discovery Requests, 4-5 and 4-6.

49 *See, e.g.,* Exhibit MIEC 45, p. 2; *see also* Exhibit L&B 87, Supplemental Testimony of Thomas Beckley, p. 3, lns. 1 – 9.

50 *See* Exhibit MIEC 58; *see also* Exhibit MIEC 66.

51 *See* Exhibit MIEC 66, p. 2.

52 *See* Exhibit L&B 69; *see also* Exhibit MIEC 72.

53 *See* Exhibit MIEC 89, Supplemental Testimony of Michael Gorman, p. 1, lns. 13 – 15, p. 2, lns. 1 – 2, and p. 3, lns. 9 – 14.

Significantly, the MIEC identified a concern with the bad debt expense that was uncovered solely because of the MIEC's review of the Electronic Model.[54] Moreover, Mr. Beckley, the Commission's consultant, determined that many of the calculations and data in the Electronic Model are not proprietary to Black & Veatch.[55] Mr. Beckley also located key information in the Electronic Model that was not included in MSD Exhibits 4a and 5.[56]

MSD's failure to disclose the details underlying the Black & Veatch electronic model clearly raise questions with regarding to the accuracy of MSD's entire filing.[57] Based upon these transparency issues alone, the Commission could recommend a one year rate increase in this proceeding. In the alternative, the Commission could urge MSD to hire consultants and experts in future rate proceedings that are committed to providing a level of transparency that is consistent with other utilities submitting rate filings in Missouri. Perhaps the Commission could request that MSD commit to using consultants and experts that will cooperate in providing, among other things, full access to electronic models and documents to the Rate Commission and to the Intervenors at the beginning of all future rate proceedings.

8. **Additional Considerations**

(a) **Response to Commissioner Tomazi's Inquiry**

During the Prehearing Conference, Commissioner Tomazi asked the MIEC what happens to the monthly wastewater bill projections if there is a 50 basis point and a 100 basis point spread on the interest rate assumptions made by MSD.[58] A one percentage point reduction in the projected

---

54 *See id.*, at p. 2, lns. 3 – 28 and p. 3, lns. 1 – 8.

55 *See* Exhibit L&B 87, p. 3, lns. 11 – 30.

56 *See id.*, at p. 2, lns. 18 – 23 (stating that this example "illustrates how not providing the electronic rate model to the Rate Commission's Rate Consultant (our firm) or the intervenors hinders our ability to efficiently review the District's rate proposal).

57 *See, e.g.*, Exhibit MIEC 29, Michael Gorman's Rebuttal Testimony, p. 2, lns. 13 – 29 and p. 3, lns. 1 – 25; *see also* Exhibit MIEC 63, Michael Gorman's Surrebuttal Testimony, p. 19, lns. 5 – 8.

58 *See* Exhibit MSD 108, p. 38, lns. 18 – 23.

interest rate of the proposed new revenue bond issuance needed to fund the projected CIP will reduce the debt service cost included in the cost of service study by over $6.3 million per year starting in 2016.

(b) **Confidentiality Agreements/Non Disclosure Agreements**

The Intervenors provided examples of commercially reasonable confidentiality agreements/non disclosure agreements that are routinely executed in the industry and before the Missouri Public Service Commission.[59] The MIEC strongly encourages the Rate Commission to recommend that MSD use similar, if not identical, agreements in future rate proceedings. Moreover, the MIEC recommends that MSD encourage its consultant to be consistent in asking parties to sign the confidentiality agreements. For example, Ms. Vanda testified that she and/or members of her firm reviewed "portions" of the Electronic Model as it relates to the debt component.[60] Yet, Ms. Vanda never signed a confidentiality agreement.[61] However, the consultants for the Commission and the Intervenors were required to sign a confidentiality agreement/nondisclosure agreement prior to reviewing the Electronic Model.[62]

9. **Conclusion**

MSD's proposed rate increase does not impose a fair and reasonable burden on all classes of ratepayers because the increase is excessive. The MIEC respectfully requests that the Commission recommend only a one year (or two year, at the most) revenue rate increase of no more than 9.6% from July 1, 2012 to June 30, 2013, thereby providing MSD with an opportunity to develop the SSO Plan, provide the Commission with more certainty as to the budget required in FY 2014 – 2016, and better understand the unknown cost factors such as the interest rates on new revenue bond

59 *See* Exhibit MIEC 58B, 58C, and 58D.

60 *See* Exhibit MSD 90, Surrebuttal Technical Conference Transcript, Testimony of J. Vanda, p. 82, lns. 2 – 5.

61 *See id.* at p. 83, lns. 4 – 5.

62 *See* Exhibits BJH 71, LB 73, MIEC 74 – 76, and MIEC 82.

issuances, the amount of bad debt expense, and the customer sales during the forecast period. Despite the MIEC's concerns, if the Rate Commission recommends a four year plan, then the MIEC urges the Commission recommend that the revenue rate increase be adjusted to no more than 9.6% per year for the next four years, totaling $105.6 million dollars. This adjustment will remedy the $23 million dollar overstatement to MSD annual costs of service to 2016, the end of the rate forecast period. This proposal takes into the account the numerous – and significant – adjustments that the MIEC has proven to be necessary to make the rate proposal reasonable.

Thank you for your time and consideration. We are grateful for your service and for ensuring that the obligations under the Charter are met with respect to MSD's 2011 rate proposal.

Sincerely,

By ______________________
Diana M. Vuylsteke
John R. Kindschuh
Bryan Cave LLP

Attorneys for Missouri Industrial Energy Consumers

Dated: October 5, 2011