



**Metropolitan  
St. Louis Sewer  
District**

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2350 Market Street  
St. Louis, MO 63103-2555  
(314) 768-6200

Exhibit MSD 59

August 18, 2011

Mr. Leonard Toenjes  
Chairman, Rate Commission  
Metropolitan St. Louis Sewer District  
c/o John Fox Arnold, Esq.  
Lashly & Baer, P.C.  
714 Locust Street  
St. Louis, MO 63101

Re: Intervener's Letter Dated August 17, 2011

Dear Mr. Chairman,

On behalf of MSD I would like to address the Intervener's concerns and inaccuracies they outline in their August 17, 2011 letter.

First and foremost, MSD has complied with all the Discovery Requests which it has received and with the Rate Commission's Resolution adopted on August 2, 2011. That Resolution directed MSD to make an electronic copy with formulas intact of the May 10, 2011, Black & Veatch MSD Rate Proposal available to all participants no later than August 10, 2011. At the August 8, 2011 Meeting of the Rate Commission you authorized circulation of the Confidentiality Agreement among the Interveners and the Rate Commission Consultant and authorized them to send any changes to Mr. Arnold by close of business the next day. Adjustments to the Agreement were presented to MSD on August 9, 2011. MSD presented the adjustments to Black & Veatch who in turn made additional adjustments and provided the document back to you on August 9, 2011. Now some 7 days later the Intervener's are refusing to sign the Confidentiality Agreement which you approved and issued on August 10, 2011, pursuant to the Rate Commission's Resolution adopted August 2, 2011.

In an attempt to address the concerns raised by the Intervener's the District offers the following, in cooperation with Black & Veatch:

Paragraph 4(c) – The intervener's claim they are concerned that they are hindered by this provision to testify in other future proceedings. Black & Veatch proposes to add the language "except as described in Paragraph 6". The 4<sup>th</sup> sentence in paragraph 6 was added by the Interveners when they provided adjustments to the Agreement on August 9, 2011. This is language that the Interveners added to the Agreement. Black & Veatch accepted the language being added in paragraph 6 and now to address the concerns with paragraph 4(c) feels it appropriate to reference such language. This directly addresses the concerns raised by the Interveners regarding Paragraph 4(c). Black & Veatch has provided access to the Model in this rate proceeding to accommodate the needs of MSD, and they want to ensure that this will not be used against them in the future.

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Paragraph 6 – The interveners seem to be concerned that if Black & Veatch “choose” to enforce the Confidentiality Agreement they would be liable for attorney fees and expenses. Black & Veatch proposes to modified the language so that the Recipient will be liable for attorneys fees and expenses if Black & Veatch chooses to enforce the Agreement and prevails. Black & Veatch is very concerned about protecting the Model. Recipients of the Agreement only face exposure if they breach the Agreement, bottom line is, if they don’t breach, they face no liability.

Throughout the Intervener’s letter they like to refer to the Black & Veatch Confidentiality Agreement as not being commercially reasonable and not consistent with other confidentiality agreements executed before the PSC. The model being made available in this rate proceeding is proprietary, intellectual property of Black & Veatch. In an effort to support this rate proceeding and allow the process to move forward, Black & Veatch agreed to make the model available under this Confidentiality Agreement. Black & Veatch accepted a majority of the adjustments provided by the Interveners. Protection of the model is of utmost importance to Black & Veatch therefore requiring a Confidentiality Agreement to protect it. It should not matter what agreements the PSC uses, this Agreement is what Black & Veatch feels is needed to protect their property. With that being said, Black & Veatch is willing, once again, to address the Intervener’s concerns and provide alternative language. See the language explained above and shown in track changes on the attached document.

The Intervener’s state in their letter that “Even if revisions to provisions 4(c) and 6 of the Confidentiality Agreement are adopted today, the Interveners and their consultants would not have the necessary time to review, analyze, and evaluate the Electronic model given the time constraints of this rate proceeding.” In light of this, MSD and Black & Veatch are once again trying to accommodate the Intervener’s proposed need to access the Model. If you remember, MSD and Black & Veatch offered on July 27, 2011 to make the Model available to the Interveners in a workshop format. The Intervener’s declined this proposal. The Interveners have had opportunities to gain access to the Model, they have refused to accept those opportunities. It is disingenuous for them now to continue to claim they do not have time to review, analyze and evaluate the Model.

In the best interest of our rate payers, MSD is attempting to keep the rate setting process on track. If you feel they will be of any avail, please consider the above noted adjustments to the Black & Veatch Confidentiality Agreement.

Sincerely,

  
Susan M. Myers  
General Counsel, MSD

C: John Fox Arnold, Esq.  
Lisa Stump, Esq.

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement ("Agreement"), effective the \_\_\_ day of \_\_\_\_\_, 2011 is entered into by \_\_\_\_\_ ("Recipient") with Black & Veatch Corporation ("Black & Veatch"). For the purposes used herein, Recipient shall also include any related or affiliated entities, being those under common control, ownership, or management (including without limitation, parent, subsidiary and sibling companies) of Recipient.

Black and Veatch is making the Rate Model ("Electronic Model") available per the Metropolitan St. Louis Sewer District's ("the District") request in order for the District to comply with the Rate Commission's decision on August 2, 2011. Availability of the Electronic Model is pursuant to this Confidentiality and Non-Disclosure Agreement as further described herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Upon Recipient's request, Black & Veatch will supply Recipient with access to an electronic copy of the Electronic Model regarding the Wastewater Rate Change Proposal submitted to the Rate Commission by the District on May 10, 2011 ("the Rate Proceeding"). Such data and information, which is confidential and proprietary to Black & Veatch, shall be deemed to be the "Confidential Information" discussed in this Agreement.

2. Recipient acknowledges that access to the Electronic Model is to be provided via a computer owned by Black & Veatch ("the Computer"), according to the following terms:

(a) Black & Veatch will make reasonable efforts to have the Computer available from 8:00 am to 4:30 pm, Monday through Friday (excluding national holidays) until the parties to the Rate Proceeding are able to file the prehearing conference reports on or around September 22, 2011. The Computer will be located in a suitable conference room (at Black & Veatch's discretion) located in Black & Veatch's St. Louis area office (15450 South Outer Forty Drive, Suite 200, Chesterfield, Missouri, 63017) during this time. Recipient will provide Tom Ratzki (or his designee) of Black & Veatch at least twenty-four (24) business hours notice, via email at [ratzkitj@bv.com](mailto:ratzkitj@bv.com), prior to acquiring access to the Computer.

(b) Except as provided in Article 4 of this Agreement, aside from printing results from Electronic Model "runs", Recipient may not copy, transfer, recreate or otherwise convey any information from the Computer or the Electronic Model, manually or electronically. Recipient shall not allow any storage media or other devices to be attached or connected to the Computer in any way, including but not limited to network connections, wireless, Wi Fi or other means of transferring data wirelessly. With the exception of the Recipient's own working papers or notes, Recipient shall not be allowed to bring bags, briefcases or other items (including but not limited to cellular or land line phones) into the above-referenced conference room at any time.

(c) Black & Veatch shall make reasonable efforts to have the Electronic Model contained on the Computer fully functional during the Recipient's review, and intends to have an authorized representative in the above-referenced conference room to monitor the Computer, but the authorized representative will not interfere with the Recipient's review, analysis, and evaluation of the Electronic Model. The Electronic Model will be password protected, and an authorized

representative of Black & Veatch will release access to the Electronic Model by password to the Recipient, subject to the Recipient complying with this Agreement.

3. Except as provided in Article 4 of this Agreement, the Recipient agrees that any Confidential Information which has been or will be disclosed directly or indirectly to it by or on behalf of Black & Veatch shall be maintained in confidence and shall not be disclosed to any third party at any time.

4. (a) The Recipient agrees that it will not make use of any Confidential Information disclosed pursuant to this Agreement for any commercial purpose, or for any reason other than providing expert consultation and/or testimony in the Rate Proceeding. Without limiting the foregoing, under no circumstance shall Recipient use any Confidential Information, directly or indirectly, to compete with, or to the disadvantage of, Black & Veatch or Black & Veatch's affiliates or subsidiaries (or third parties that have provided confidential information to Black & Veatch), or for the benefit of any third party, including any entity involved in a dispute with Black & Veatch.

(b) Any Confidential Information in Recipient's possession or control following conclusion of the Rate Proceeding shall be destroyed or returned to Black & Veatch. Confidential Information does not mean the printed results from Electronic Model "runs" as described in Section 2(b) of this Agreement or the materials used by the Recipient to provide expert consultation and/or testimony in the Rate Proceeding described in Section 4(a) of this Agreement.

(c) Recipient further agrees that it will not use Black & Veatch's provision of access to the Electronic Model pursuant to this Agreement as support for any position or argument for similar access in any other rate proceeding, ~~dispute, or matter, except as described in Paragraph 6.~~

Deleted: dispute, or matter

5. This Agreement shall not be construed as a license or authorization to the Recipient to utilize the Confidential Information for any purpose, except as provided for in Article 4 of this Agreement. Nothing in this Agreement shall be interpreted as granting a license to use or transferring any intellectual property rights of Black & Veatch or Black & Veatch's affiliates or subsidiaries (or third parties that have provided confidential information to Black & Veatch), including but not limited to, intellectual property, programming codes, copyrights, trademarks, trade secrets and patents.

6. This Agreement is for the benefit of Black & Veatch and, without prejudice to the rights and remedies otherwise available to it, Black & Veatch shall be entitled to equitable relief if the Recipient breaches or threatens to breach any of the provisions of this Agreement. In the event that Black and Veatch incurs attorney fees and/or expenses in ~~relation to any action to enforce this Agreement and/or any other action~~, arising from or relating to Recipient's breach of any of the provisions of this Agreement, ~~and Black & Veatch prevails in such action or actions~~, Recipient shall be required to pay Black & Veatch's attorney fees and expenses. Without limiting the foregoing, or any other rights and remedies, otherwise available to Black & Veatch, Recipient further agrees to pay over to Black & Veatch any revenue generated by Recipient through use of the Confidential Information. If Recipient is compelled or sought to be compelled by legal process to disclose the information (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demands, or otherwise), Recipient shall immediately provide Black & Veatch timely written notice of such legal process so that Black & Veatch may seek a protective order or other appropriate remedy. In any event, Recipient will not, unless legally compelled to do so, disclose the Confidential

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Information until after such timely written notice has been given, and in all cases shall only disclose that portion of the information to which the compelling party is legally entitled and will use its best efforts to obtain reliable assurance (by appropriate court orders, if applicable) that confidential treatment will be accorded the information.

7. This Agreement shall be interpreted, governed, and construed under the laws of the state of Missouri, USA, without reference to principles thereof which would result in the application of the law of another jurisdiction as governing law.

8. This Agreement is effective as of the date first written above upon execution by Recipient. The undersigned person represents and warrants that he or she is authorized to sign this Agreement on behalf of Recipient, and that he or she has the full power and authority to bind Recipient to each and every provision of this Agreement.

RECIPIENT:

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_