



MSD Exhibit No. 9  
2011 Rate Change Proceeding  
Jeffrey L. Theerman, P.E.  
Direct Testimony  
Metropolitan St. Louis Sewer District  
May 13, 2011

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1 **Witness Background and Experience**

2 Q1. Please state your name, business address, and telephone number.

3 A. Jeffrey L. Theerman, 2350 Market Street, St. Louis, Missouri 63103-2555,  
4 (314) 768-6245.

5 Q2. What is your occupation?

6 A. I am the Executive Director for the Metropolitan St. Louis Sewer District (District).

7 Q3. How long have you been associated with the District?

8 A. I have been with the District continuously since 1984.

9 Q4. What is your professional experience?

10 A. During my tenure with the District, I held various senior management level positions  
11 relating to wastewater operations including manager of the Bissell Point Wastewater  
12 Treatment Plant, Assistant Director of Wastewater, Director of Wastewater, Assistant  
13 Director of Operations and Director of Operations. I became Acting Executive Director  
14 in October 2003 and have served as Executive Director since June 10, 2004. Prior to  
15 joining the District, I worked as an environmental protection engineer with the Illinois  
16 Environmental Protection Agency.

17 Q5. What is your educational background?

18 A. I am a graduate of the University of Missouri at Rolla with an undergraduate degree in  
19 Civil Engineering. I received my Master of Science degree in Civil Engineering from the  
20 Southern Illinois University at Edwardsville.

21 Q6. Are you registered as a Professional Engineer?

22 A. Yes, I am a registered Professional Engineer in the State of Missouri.

1 **Composition of Rate Change Notice**

2 Q7. What is the focus of the Rate Change Notice?

3 A. The Rate Change Notice recommends necessary wastewater rate increases for the period  
4 of fiscal years 2013 through 2016. These increases are necessary to provide the revenue  
5 needed to perform operations, maintenance and construction activities required to comply  
6 with the Clean Water Act (CWA).

7 Q8. Why does the Rate Change Notice address only wastewater rates?

8 A. In the spring of 2008 the District enacted the stormwater user fees based upon impervious  
9 area as recommended by the Rate Commission. These user fees were proposed and  
10 approved to fund stormwater utility functions within the MSD service area. In the  
11 summer of 2010, the circuit court ruled that these user fees were a tax under Missouri law  
12 and required voter approval. Subsequently the court enjoined the District from collecting  
13 the impervious user fee. The District is currently appealing this decision. Until the  
14 appeal process is completed, the District intends to provide what minimal stormwater  
15 services can be funded through the tax structure that was in place prior to the impervious  
16 user fee. If the District is successful in the appeal process we intend to reinstate the  
17 impervious user fee. If the District does not prevail in its appeal, it will be necessary to  
18 bring forth a new stormwater funding approach to the Rate Commission for review.

19 **Criteria Governing Rate Change**

20 Q9. Do you consider the Rate Change Notice consistent with constitutional, statutory or  
21 common law as amended from time to time?

22 A. Yes.

- 1 Q10. Please explain why the Proposed Rate Change set forth in the Rate Change Notice is  
2 necessary, fair and reasonable.
- 3 A. The District is under enforcement by the United States (US) acting on behalf of the  
4 United States Environmental Protection Agency (USEPA) and the State of Missouri  
5 acting on behalf of the Missouri Department of Natural Resources (MDNR) in the form  
6 of a lawsuit in federal court. The suit alleges violations of the CWA including the  
7 existence of prohibited sanitary sewer overflows and unabated combined sewer  
8 overflows. In order to resolve this matter and to reasonably assure that future  
9 enforcement actions are avoided it is essential that the District continue to invest heavily  
10 in its wastewater system. The proposed rate change retains the same general  
11 methodology used in the past with respect to the wastewater rate structure. This rate  
12 structure has been in place since 1993 and has been approved as fair and equitable in a  
13 number of Rate Commission and Board of Trustee determinations since 2000.
- 14 Q11. It is your opinion the Rate Change Notice enhances the District's ability to provide  
15 adequate sewer and drainage systems and facilities, or related services?
- 16 A. Yes, with respect to wastewater services. As previously discussed, stormwater services  
17 are not included in this notice.
- 18 Q12. Do you consider the Rate Change Notice consistent and not in violation of any covenant  
19 or provision relating to any outstanding bonds or indebtedness of the District?
- 20 A. Yes.
- 21 Q13. In your opinion, does the Rate Change Notice impair the ability of the District to comply  
22 with applicable Federal or State laws or regulations as amended from time to time?
- 23 A. No.

1 Q14. In your opinion, does the Rate Change Notice impose a fair and reasonable burden on all  
2 classes of ratepayers?

3 A. Yes.

4 **Current Regulatory Requirements**

5 Q15. Is the District currently regulated by either the State and/or the Federal government with  
6 respect to the CWA?

7 A. Yes. The USEPA is responsible for administering the CWA. They in turn can delegate  
8 this administrative authority to the states which has occurred in the case of MDNR.  
9 Additionally Missouri has its own environmental regulations which are also administered  
10 by MDNR. MSD is regulated by both entities the USEPA and the MDNR.

11 Q16. Is MSD under enforcement action for alleged violations of the CWA?

12 A. Yes, in June of 2007 the US and the State of Missouri jointly sued the District for  
13 violations of the CWA. Subsequent to that filing, a third party, the Missouri Coalition for  
14 the Environment (MCE) intervened in the case. As previously stated, the complaint  
15 included wet weather compliance issues such as sanitary sewer overflows, combined  
16 sewer overflows, violations of the National Pollutant Discharge Elimination System  
17 (NPDES) permits, and basement backups.

18 Q17. What is the status of the case?

19 A. Since the filing of the case the District has been in mediated settlement negotiations with  
20 the parties to the suit. It has been the intention of the parties to negotiate an agreement  
21 that will settle all aspects of the suit. All parties have agreed to a confidentiality  
22 agreement with respect to the negotiations and the terms of the settlement until they are  
23 complete.

24

- 1 Q18. What is a consent decree?
- 2 A. A settlement agreement filed with and approved by the court. Most enforcement actions  
3 similar to that involving MSD are resolved through a consent decree rather than  
4 litigation. In most cases the parties negotiate a consent decree and file the complaint and  
5 the settlement in court all on the same day. Occasionally, the complaint is filed first and  
6 then the settlement is negotiated while the lawsuit is stayed by the court. This has been  
7 the case with our lawsuit.
- 8
- 9 Consent decrees are typically considered a better alternative to litigating compliance  
10 issues. They provide negotiated schedules and deliverables as well as address how future  
11 violations will be handled during the implementation of the required construction  
12 programs. They are intended to resolve all claims regarding past violations and allow a  
13 path forward.
- 14 Q19. When does MSD anticipate signing a consent decree?
- 15 A. When negotiations are complete. I believe this will happen before the Rate Commission  
16 process is complete.
- 17 Q20. Why is the District submitting a Rate Change Notice before reaching a settlement in the  
18 lawsuit?
- 19 A. Consent decrees typically include deliverables in the form of completed construction  
20 projects and deadlines. Deadlines are often challenging and there are significant  
21 penalties for failure to comply with the dates and remedial actions defined in these  
22 agreements. Because of the time required to complete a rate setting process involving  
23 the Rate Commission and the subsequent Board of Trustee actions we believed that

1 timing was critical. Additionally, the District's Rate Proposal utilizes the issuance of  
2 revenue bonds beyond our current voter authorization. Therefore we needed to provide  
3 for the necessary bond election as well.

4 Q21. What are the remaining steps needed to finalize a settlement with the plaintiffs?

5 A. After all parties sign a consent decree it is public noticed for a 30 day comment period.  
6 Typically following this comment period the US will decide if any information has come  
7 to light that would make entering into the consent decree inappropriate. Assuming this is  
8 not the case, the settlement agreement is filed with the court. If the judge agrees with the  
9 settlement it becomes final.

10 Q22. Can the consent decree be altered during these steps?

11 A. Only if the US believes that alterations are necessary. If that was the case, further  
12 negotiations would occur. Typically the utility is not at liberty to unilaterally alter the  
13 settlement agreement after it is signed.

14 Q23. What will be the consent decree's immediate impact on the District and the St. Louis  
15 community?

16 A. Short term impacts would primarily be rising user fees to fund necessary maintenance  
17 and capital improvement projects. MSD's compliance efforts would impact all of the  
18 Districts watersheds. Engineering and construction activity would increase over the  
19 initial years roughly doubling or tripling the current capital program.

20 Q24. What will the consent decree's long term impact be on the District and the St. Louis  
21 community?

22 A. MSD has multi-decade capital needs of approximately \$6 billion. This rate case is the  
23 beginning of what will be a long program. Long term impacts would include

1 significantly higher user fees in the order of triple the current average residential  
2 wastewater charge, the elimination of the constructed sanitary sewer overflow's that exist  
3 in the separate sanitary system, significant reduction of combined sewer overflows which  
4 discharge into the urban streams including the River Des Peres, its tributaries and Maline  
5 Creek, significant reduction of the amount of untreated sewage reaching the areas major  
6 rivers, and reductions in basement backups that occur in wet weather.

7 Q25. Are there other City's under a consent decree?

8 A. This type of enforcement has been a strategy of USEPA for years. The list of cities that  
9 have preceded St. Louis in CWA enforcement is very long. They include, Atlanta,  
10 Washington DC, Cincinnati, Cleveland, Kansas City, Baltimore, Los Angeles, Pittsburg,  
11 Indianapolis, Toledo, Honolulu, San Francisco, Virginia Beach, San Diego, Nashville,  
12 Puerto Rico, Hartford, Northern Kentucky, Louisville, Mobile, and Baton Rouge. This  
13 list does not include consent decrees that were handled in State courts. In a number of  
14 these cases the cities have entered into multiple consent decrees for various aspects of the  
15 CWA.

16 Q26. How does MSD's consent decree compare with those of other Cities?

17 A. I am not at liberty to give particulars about our negotiations. Federal consent decrees  
18 have many similarities including, required remedial actions, schedule for completion of  
19 remedial actions, fines, and stipulated penalties for failure to comply with the  
20 requirements of the consent decree.

21 Q27. What have been the consequences of the consent decrees in these other Cities?

22 A. Significantly increased user fees, considerable construction activity, reductions of  
23 overflows, renewal and replacement of sewer infrastructure, increased levels of treatment

1 at wastewater treatment plants, and increased pump station reliability. In a number of  
2 cases the cities have seen a reduction in their bond ratings by rating agencies and  
3 subsequent higher interest rates. This is in part due to the magnitude of debt financing  
4 that has occurred to fund the program.

5 Q28. What are the consequences of non-compliance with the CWA?

6 A. The CWA is structured to address non-compliance with several enforcement methods  
7 including monetary penalties. Depending on the compliance issue, fines can be up to  
8 \$32,500 per violation per day. In the case of wet weather overflows there can be  
9 hundreds during a large rain in a system the size of St. Louis. After a consent decree is  
10 entered there are stipulated penalties for failing to meet the requirements of the  
11 settlement. These penalties can also be thousands of dollars per event and typically  
12 escalate as the period of non-compliance grows longer.

### 13 **Future Regulatory Requirements**

14 Q29. Does a consent decree address future regulatory requirements?

15 A. Typically not because it is a settlement of past compliance issues and sets a course  
16 forward to achieve compliance. There are numerous new regulations being considered  
17 by regulators that will affect wastewater utilities. There is no way to anticipate the  
18 outcome of the regulatory process.

19 Q30. What additional future regulatory requirements may be anticipated?

20 A. In my opinion, the most likely future regulations that will affect St. Louis include nutrient  
21 standards for our wastewater treatment plants, water quality standard changes in local  
22 rivers, and increased standards for wastewater solids disposal. Longer term we could see  
23 green house gas rules that affect treatment plants and requirements to remove immerging

1 contaminants that are presently not removed in our treatment plants. While not covered  
2 in our wastewater rate, stormwater regulations will see significant changes that will affect  
3 MSD in the future.

4 Q31. Are any of these future regulatory requirement costs included in the proposed rate  
5 change?

6 A. No. At present, new regulatory requirements are not anticipated during the 2013 and  
7 2016 Rate Proposal timeframe.

### 8 **Wastewater Capital Improvement and Replacement Program**

9 Q32. Have wastewater related capital improvements been delayed recently due to lack of  
10 funding?

11 A. We purposely crafted our last rate case to fund the improvements we knew needed to be  
12 completed and were necessary to keep the compliance program proceeding. At the time  
13 we spoke of regulatory clarity, which was somewhat lacking at the time. Now, we have  
14 considerably more clarity due to negotiations that have proceeded since 2007.

15 Q33. How much of the Wastewater Capital Improvement and Replacement Program (CIRP) is  
16 required to comply with State or Federal requirements?

17 A. All projects in this rate change proposal are required by regulations.

### 18 **Wastewater Debt Financing**

19 Q34. Why is the District seeking additional debt authorization from the voters to support the  
20 wastewater CIRP in its Rate Proposal?

21 A. The need to dramatically raise rates places a considerable burden on MSD's customers.  
22 The use of debt financing to mitigate the rate impact is an important feature of this rate  
23 change proposal. In order to raise rates in a more gradual fashion, additional debt will

1 have to be authorized by the voters. An alternative approach that utilizes only cash  
2 financing is described in the Rate Change Notice. This description shows the necessary  
3 rate impact should a bond election fail. Funding the necessary program on a cash basis  
4 requires substantially higher rates to be implemented immediately.

5 Q35. When will the voters have an opportunity to consider additional debt authority for the  
6 District?

7 A. Our present thinking is to go for a bond authorization election in April 2012.

8 Q36. Does the proposed bond election impact the implementation date of proposed wastewater  
9 charges?

10 A. The proposed rate change would occur in July 2012 after the anticipated bond election.  
11 The outcome of the bond election will influence the required rate with lower rates with  
12 approved bond or higher rates if the election fails. For this reason it is important that the  
13 election for bond authorization precede the implementation of the rate if debt is used.

#### 14 **District Efficiency**

15 Q37. Can you provide any supporting documentation that the District is being operated  
16 efficiently and making the best use of ratepayer monies?

17 A. MSD is intently focused on providing high quality service to St. Louis while controlling  
18 costs. MSD has always been mindful of our operating costs. However, over the past 10  
19 years the District has undertaken a number of activities typically seen in the private sector  
20 to assure that efficiencies are realized. Staffing reductions, flattening organizational  
21 layers, reduction of the number of management employees, sourcing decisions  
22 concerning functions to perform "in house" verses by contract, control of medical  
23 insurance and pension costs, improved performance management, and leveraging

1 technology and automation are examples of the changes that have been and continue to  
2 be made.

3  
4 Over the past fifteen years, 46% of the districts expenditures have been in capital  
5 improvements on the wastewater system infrastructure. When looking at expenditures  
6 since 2004 that number climbs to 53%. The organization is cognizant that money saved  
7 in the operations of the District is then available for use in reinvesting in the  
8 infrastructure.

9  
10 The District has received numerous awards from the National Association of Clean Water  
11 Agencies for outstanding operations of its wastewater treatment plants and for excellence  
12 in its management. We continuously survey our customers to better understand their  
13 attitudes about the quality of billing and field services we provide. In these surveys we  
14 routinely score above 80 percent with respect to customer satisfaction. In many  
15 measured areas we score in excess of 90 percent. Many customers that think the most of  
16 the District have been those that have had a problem or concern and have called us for  
17 service. In addition to continuous customer surveys we periodically perform surveys on  
18 construction impacts, plan review and permitting, and cashier's window operations. The  
19 results of these efforts are part of an ongoing effort to improve performance.

20 MSD has recently received the report on the first phase of a management audit where it is  
21 stated that MSD is "... operating a very successful utility that provides excellent  
22 wastewater services at rates that are relatively low compared to other communities..."  
23

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2 Q38. Does this conclude your prepared direct testimony in this matter?

3 A. Yes, it does.