



1 **Witness Background and Experience**

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

3 A. Susan M. Myers, 2350 Market Street, St. Louis, Missouri 63103-2555,  
4 (314) 768-6209.

5 Q2. What is your occupation?

6 A. I am the General Counsel 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 August 6, 2001.

9 Q4. What is your professional experience?

10 A. I have been employed by the District as in-house counsel since 2001 and was recently  
11 promoted to General Counsel. I have a unique combination of environmental  
12 engineering and legal experience. Prior to joining MSD, I served as an environmental  
13 engineer for two years with EPA Region VII in Resource Conservation and Recovery Act  
14 (RCRA) Permitting and for nine years on a billion dollar DOE Superfund Clean-up  
15 project.

16 Q5. What is your educational background?

17 A. I am a graduate of the Missouri University of Science and Technology, formerly known  
18 as the University of Missouri – Rolla, with a B.S. in Geological Engineering. I received  
19 my Juris Doctorate Degree from St. Louis University School of Law.

20 **Criteria Governing Rate Change**

21 Q6. Is the Proposed Rate Change necessary to enable the District to comply with applicable  
22 Federal or State laws or regulations as amended from time to time and if so, to what

1 extent or specific quantification of the amount of the Proposed Rate Change is necessary  
2 for such purpose?

3 A. The District is regulated by an array of Federal and State environmental laws concerning  
4 such things as discharge and effluent levels, each of which carry with them the  
5 imposition of financial fines of various amounts. Administration of the Federal Clean  
6 Water Act has been delegated to the Missouri Department of Natural Resources  
7 (“MDNR”) by the Environmental Protection Agency (“EPA”). The District is monitored  
8 by the MDNR to ensure the requirements established under the Clean Water Act are met.  
9 It is critical to note the proposed rate change is needed to provide the District with the  
10 necessary funds to address the aging wastewater system and resulting wet weather  
11 ramifications.

12  
13 The Clean Water Act provides for penalties up to \$32,500 per violation per day. Failure  
14 to meet the requirements imposed at the Federal and State level would be extremely  
15 financially burdensome and would directly hamper or at differing levels, even thwart the  
16 efforts of the District. As such, a large proportion of the proposed rate change is  
17 necessary to meet legal requirements in that the failure to construct mandated projects or  
18 properly maintain existing lines and facilities bring with them immediate and direct legal  
19 repercussions.

20 Q7. Please state the general chronology of the past wastewater rate litigation and indicate if  
21 any of the court findings support whether or not the Rate Change Notice is consistent  
22 with constitutional, statutory or common law.

1 A. The following is a general chronology of the past wastewater rate litigation and court  
2 findings supporting the Proposed Rate Change Notice as being consistent with  
3 constitutional, statutory and common law. Article X, § 22(a) of the Missouri Constitution  
4 (The Hancock Amendment) prohibits a political subdivision of Missouri from increasing  
5 the current levy of an existing tax, license, or fee, above the current levy authorized by  
6 law or charter...without the approval of the required majority of the qualified voters of  
7 the political subdivision voting thereon.

8  
9 The Supreme Court of Missouri subsequently interpreted the above-cited section of the  
10 Hancock Amendment to mean that “user fees” are not subject to said section, and do not  
11 require a vote to be increased; but taxes are subject to it, and do require a vote to be  
12 increased. *Keller v. Marion County Ambulance District*, 830 S.W. 2d (Mo. Banc 1991).  
13 To determine whether a particular charge is a user charge or a tax, the *Keller* Court  
14 established a five-pronged analysis.

15  
16 In 1992, the District increased sewer service charges in the belief that the sewer service  
17 charges were user fees in the purview of the Keller decision, and that no vote would be  
18 required to implement the increase. Suit was brought by Richard Beatty, alleging that the  
19 sewer service charge increases violated the Hancock Amendment insofar as no vote was  
20 taken. The Supreme Court of Missouri in Beatty v. The Metropolitan St. Louis Sewer  
21 District, 867 S.W. 2d 216 (Mo. Banc 1993) held that the District’s sewer service charges  
22 did not comply with the five-pronged test of the Keller decision, and were indeed taxes  
23 rather than user fees, so as to require a vote for an increase.

1  
2 In 1993, the District again increased sewer service charges. However, prior to this  
3 increase the District's billing procedures had been changed in an attempt to comply with  
4 the five-pronged Keller test. In a challenge to the 1993 increase, the Missouri Court of  
5 Appeals in Missouri Growth Association v. Metropolitan St. Louis Sewer District, 941  
6 S.W. 2d 615 (Mo. App. E.D. 1997) held that the District's sewer service charges satisfied  
7 the five-pronged Keller analysis, were user fees, and as such did not require a vote for a  
8 In 2000 the Charter Plan of the Metropolitan St. Louis Sewer District was amended and  
9 approved by the voters, it outlines the Rate Change Procedure to be used by the District.

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

11 Q8. What civil or other penalties could the District incur if it is unable to construct all of the  
12 federally mandated wastewater capital improvement projects (CIRP)?

13 A. If we fail to construct all of the federally mandated capital improvement projects, the  
14 District would be exposed to significant fines at both the Federal and State level. The  
15 Clean Water Act (CWA) provides for penalties of up to \$32,500 per violation per day.  
16 Failure to meet the requirements imposed at the Federal and State level would be  
17 extremely financially burdensome and could directly hamper or even thwart the efforts of  
18 the District.

#### 19 **Litigation**

20 Q9. What was the basis for the US, State of Missouri, Missouri Coalition for the Environment  
21 (MCE) v. MSD lawsuit ("U.S. v. MSD")?

22 A. The US and the State of Missouri jointly filed a complaint against MSD on June 11, 2007  
23 seeking injunctive relief and civil penalties pursuant to the Clean Water Act. The

1 complaint alleged that MSD allows the discharge of untreated sewage from its Combined  
2 Sewer Overflows, Sanitary Sewer Overflows, Basement Backups and violates conditions  
3 of its National Pollutant Discharge Elimination System (NPDES) permits. MCE filed a  
4 motion to intervene and its motion was granted by the Court on August 29, 2007.

5  
6 Q10. Who are the parties to the US v MSD litigation?

7  
8 A. The United States of America, acting at the request and on behalf of the Administrator of  
9 the United States Environmental Protection Agency (EPA) and being represented by the  
10 Department of Justice.

11  
12 The State of Missouri, acting at the request and on behalf of the Missouri Department of  
13 Natural Resources (MDNR) and being represented by the State's Attorney General  
14 Office.

15  
16 The MCE was allowed to intervene on August 29, 2007 and is represented the  
17 Washington University Law Clinic.

18  
19  
20 Q11. What are the possible resolutions of the US v MSD?

21 A. MSD was sued prior to settlement discussions starting, therefore in similar situations  
22 across the country, often the outcome is to negotiate a settlement in the form of a consent  
23 decree.

24  
25 In rare instances, a settlement cannot be reached and the case goes to trial. Trials are  
26 expensive and the outcome is unknown because few wet weather municipal cases have

1        gone this route. Most cities consider this a last resort and work to an acceptable  
2        negotiated settlement in the form of a consent decree. The consent decree typically  
3        includes certain things that will be done by the utility to improve their system, requires  
4        the utility to pay fines and sets up a system of future penalties if they don't comply with  
5        the consent decree. These consent decrees can last a few years or several decades. Wet  
6        weather consent decrees will typically last 15–25 years because of the enormous costs  
7        and difficulty building solutions throughout the system.

8

9    Q12. Does this conclude your prepared direct testimony in this matter?

10   A.    Yes, it does.