



MSD Exhibit No. MSD 3B

2019 Rate Change Proceeding

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Direct Testimony

Metropolitan St. Louis Sewer District

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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, (314)768-6366,
4 smyers@stlmsd.com

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 promoted
11 to General Counsel in April 2011. 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 hold a Bachelor of Science degree in Geological Engineering from the University of
18 Missouri – Rolla (Missouri University of Science and Technology). I also received my
19 Juris Doctorate Degree from St. Louis University School of Law.

20

21 **Criteria Governing Rate Change - Wastewater**

22 **Q6. Is the Proposed Wastewater Rate Change consistent with constitutional, statutory**
23 **or common law as amended from time to time?**

24 A. Yes. First, the wastewater user charge is consistent with the District’s Charter. Under

1 Section 3.020(16), the District may “establish by ordinance a schedule or schedules of
2 rates, rentals, and other charges, to be collected from all the real property served by the
3 sewer facilities of the District, whether public or private, and to prescribe the manner in
4 which and time at which such rates, rentals, and charges are to be paid, and to change
5 such schedule or schedules from time to time as the Board may deem necessary, proper,
6 or advisable, and to collect or enforce collection of all such charges.” Moreover, the
7 Proposed Rate Change complies with the rate change procedures set forth in Charter
8 Section 7.280. Second, in *Missouri Growth Association v. Metropolitan St. Louis Sewer*
9 *District*, 941 S.W.2d 615 (Mo. App. E.D. 1997), the Missouri Court of Appeals held that
10 the District’s wastewater service charges were user fees, not taxes, and therefore rate
11 increases did not require voter approval pursuant to Article X, Section 22(a) of the
12 Missouri Constitution (the Hancock Amendment). The structure of the wastewater
13 charge contained in the Proposed Wastewater Rate Change is the same as that approved
14 in the *Missouri Growth* decision.

15 **Q7. Does the Proposed Rate Change enhance the District’s ability to provide adequate**
16 **sewer and drainage systems and facilities, or related services?**

17 A. See MSD Exhibit Nos. MSD 3C and MSD 3D, Rich Unverferth and Bret Berthold’s
18 direct testimony.

19 **Q8. Is the Proposed Rate Change consistent with and not in violation of any covenant or**
20 **provision relating to any outstanding bonds or indebtedness of the District?**

21 A. See MSD Exhibit No. MSD 3F, Tim Snoke’s direct testimony.

22 **Q9. Does the Proposed Rate Change impair the ability of the District to comply with**
23 **applicable Federal or State laws or regulations as amended from time to time?**

24 A. No. The District is subject to an array of Federal and State environmental laws

1 concerning such things as discharge and effluent levels, each of which carry with them
2 the imposition of financial fines of various amounts. Administration of the Federal Clean
3 Water Act has been delegated to the Missouri Department of Natural Resources
4 (“MDNR”) by the U.S. Environmental Protection Agency (“EPA”). The District is
5 regulated by the MDNR to ensure compliance with the requirements established under
6 the Clean Water Act. It is critical to note the proposed rate change is needed to provide
7 the District with the funds necessary to address the aging wastewater system and
8 resulting wet weather impact. The Clean Water Act provides for statutory penalties up to
9 \$50,000 per violation per day. Failure to meet the requirements imposed at the Federal
10 and State level would be extremely burdensome financially and could directly hamper or
11 even thwart the efforts of the District. In addition, Section XI of the Consent Decree (see
12 Q11 below) outlines stipulated penalties for which MSD may be liable if the District does
13 not comply with the Consent Decree. These penalties range from \$500 to \$4,000 per day
14 depending upon the type and length of noncompliance. Therefore, the proposed rate
15 change is necessary to meet legal requirements in that the failure to construct mandated
16 projects or properly maintain existing lines and facilities bring with them the possibility
17 of immediate and direct legal and financial consequences.

18 **Q10. Does the Proposed Rate Change impose a fair and reasonable burden on all classes**
19 **of ratepayers?**

20 A. Yes, the Rate Change Proposal retains the same general methodology used in the past
21 with respect to the wastewater rate structure. This rate structure has been in place since
22 1993 and has been approved as fair and reasonable in a number of Rate Commission and
23 Board of Trustee determinations since 2000.

24

1 Past Environmental Litigation Regarding Wastewater

2 **Q11. What was the basis and outcome of the environmental action brought against the**
3 **District in *United States and State of Missouri v. Metropolitan St. Louis Sewer District,***
4 **United States District Court, Eastern District of Missouri, Case No. 4:07-CV-01120?**

5 A. The United States and the State of Missouri jointly filed a complaint against MSD on
6 June 11, 2007 in the United States District Court for the Eastern District of Missouri
7 seeking injunctive relief and civil penalties pursuant to the Clean Water Act. The
8 complaint alleged that MSD allowed the discharge of untreated sewage from its
9 Combined Sewer Overflows, Sanitary Sewer Overflows, and Basement Backups, and
10 violated conditions of its National Pollutant Discharge Elimination System (NPDES)
11 permits. The Missouri Coalition for the Environment Foundation (MCE) was permitted
12 to intervene in the action. The District already had been working on these issues for
13 several years, steadily increasing rates to fund the improvements sought by the EPA and
14 the MDNR. In September 2008, the case was stayed to allow the parties to mediate the
15 issues. Thereafter, a proposed Consent Decree (CD) was negotiated and agreed to by the
16 parties. Pursuant to MSD Ordinance No. 13277, MSD executed the CD on July 15, 2011.
17 On April 27, 2012, the District Court approved and entered the Consent Decree, thus
18 concluding the litigation of the lawsuit. Initially, the CD required the District to spend
19 approximately \$4.7 billion, in 2010 dollars, over a 23-year period, including
20 improvements to the District's separate sewer system, combined sewer system, and
21 wastewater treatment plants. The MDNR approved MSD's CSO Long Term Control
22 Plan on June 1, 2011. In compliance with the CD, the District submitted its SSO Master
23 Plan, which was approved by the EPA on June 24, 2014. On June 22, 2018, the U.S.
24 District Court approved an amendment to the Consent Decree extending it by five years

1 to a 28-year program. Recent regulatory changes have compelled MSD to accelerate
2 certain non-CD work.

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

4 A. Yes, it does.

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