

Exhibit No.: 12
Issue: Rate Case Expenses
Witness: John R. Summers
Sponsoring Party: Lake Region Water & Sewer Company
Case Nos.: SR-2010-0110 and WR-2010-0111

LAKE REGION WATER & SEWER COMPANY

Case Nos. SR-2010-0110 and WR-2010-0111

TRUE UP REBUTTAL TESTIMONY

OF

JOHN R. SUMMERS

Four Seasons, Missouri
April, 2010

Lake
Region Exhibit No. 12
Date 4-26-10 Reporter KL
File No. SR-2010-0110 &
WR-2010-0111

1 TRUE UP REBUTTAL TESTIMONY

2 OF

3 JOHN R. SUMMERS

4 CASE NOS. SR-2010-0110 AND WR-2010-0111

5 **Q. Please state your full name and business address.**

6 A. My name is John R. Summers. My business address is 62 Bittersweet Road, Four
7 Seasons, MO 65049.

8 **Q. Are you the same John R. Summers who previously filed testimony in the two**
9 **eases referenced above?**

10 A. Yes.

11 **Q. What is the purpose of your True Up Rebuttal Testimony?**

12 A. In my testimony I will update the rate case expense number and rebut certain
13 statements contained in the direct true up testimony of Mr. Featherstone.

14 **Q. Has the Company incurred additional expenses or received additional invoices**
15 **in connection with the case since your Direct True Up Testimony?**

16 A. Yes. The amount of additional expenses at this time is \$26,449.00. This amount is
17 expected to grow since the Company will continue to incur legal expenses as this case
18 continues. Attached as JRS Schedule 1 is a spreadsheet containing the amounts
19 identified by the Company as rate case expense. A copy of each invoice contained on
20 this spreadsheet has been provided to both Staff and OPC.

21 **AVAILABILITY FEES**

22 **Q. Would you explain the reasons for a true up proceeding, Mr. Summers?**

1 A. A true up proceeding is designed to take into account any material changes in utility
2 expenses, income or plant in service that are projected to occur, or have occurred,
3 outside the approved test year period.

4 **Q. In his Direct True Up Testimony, does Mr. Featherstone report any material**
5 **changes in his estimates of availability fee revenue?**

6 A. No, he does not. Mr. Featherstone's testimony on availability fees is not "true up"
7 testimony but is a mere continuation of his surrebuttal testimony. He adds
8 argumentative material which may have been overlooked at the time his surrebuttal
9 testimony was due for filing but the numbers contained in the testimony he filed on
10 April 16, 2010 are the same as those which were presented during the evidentiary
11 hearing. His position is still the same as well. He proposes that assets owned and
12 controlled personally by the shareholders should be brought into the rate making
13 process. This true up testimony follows the same path as Staff's approach to
14 availability fees since this case began.

15 **Q. Please explain.**

16 A. Although members of the Staff asked and Lake Region answered several data
17 requests regarding availability fees at least a month prior to the filing of Staff's direct
18 case, no Staff witness testified about availability fee revenue in any manner in their
19 direct testimony. Staff had access to the same data as Mr. Robertson, the witness for
20 Office of the Public Counsel, prior to the filing of Staff's direct testimony on January
21 14, 2010. An issue that involves a revenue stream, which has been estimated by
22 Staff in excess of \$300,000, should have been addressed in Mr. Featherstone's direct
23 testimony, but instead it was consigned to his surrebuttal testimony as an apparent

1 afterthought. Mr. Featherstone's choice of waiting until the surrebuttal phase of the
2 Staff's presentation to address availability fee revenue and proposing an alternate
3 theory on executive management fee allocation: 1) injected new issues in the rate
4 case after settlement discussions had occurred between the parties; and 2) placed
5 Lake Region in a compromised position in formulating responsive written testimony
6 which is not provided for in the Commission rules. Mr. Featherstone is using the
7 true up phase of this case as one more opportunity to testify on a subject he should
8 have included in his direct testimony.

9 **Q. Is Mr. Featherstone's approach of imputing availability fee revenue correct?**

10 A. No, it is not. The Staff has assumed throughout this case and continues to assume
11 that Lake Region and its customers have some rights to the availability fee revenue.
12 These fees are not owned by the Company; the Company has no right to them and
13 there is no relationship between the availability fees and the Company other than the
14 Developer made the fees contingent upon a water and/or sewer pipe running in front
15 of the property. The fees result from a contractual agreement between the Developer
16 and the purchaser of the property. This is not a revenue stream originated or
17 authorized by the Commission and I am unaware of any authority this Commission
18 has to regulate real estate transactions. If the Staff is allowed to impute revenue from
19 assets not owned by the Company and to which the Company has no access it negates
20 the entire ratemaking process this Commission has used since its inception.

21 **Q. Do you agree with Mr. Featherstone's contention that the plant contributed in**
22 **association with these availability fees should not be added back to rate base if**
23 **the Commission wishes to impute the revenue?**

1 A. Absolutely not. Imputing the revenue without adjusting the rate base for the plant
2 associated with the revenue goes against every principle of matching costs and
3 revenues in the ratemaking process. The customers were given the benefit of lower
4 rates by virtue of the Developer donating the plant. The Staff now wants to give the
5 customer the revenue stream that was created by the Developer to recoup the
6 investment in the donated plant. The effect is that the plant is donated twice to the
7 Company. Just as importantly, this proposal would mean that the owners of
8 undeveloped lots on Shawnee Bend, most of which are non-lakefront properties, who
9 take no water or sewer service from the Company, pay the way for the owners of
10 million dollar lakefront homes.

11 **Q. What has been the traditional treatment of availability fee revenue and**
12 **associated plant?**

13 A. I have attached JRS Schedule 2 which shows past treatment of these items in both
14 certificate cases and rate cases. In each of the four instances over the past 39 years
15 the Commission has been consistent in using proper ratemaking technique of
16 matching costs and revenues. In every case the Commission either included both
17 availability fee revenue and the associated plant or they excluded both the availability
18 fee revenue and the associated plant. Never before has the Commission attempted to
19 make the one sided entry proposed by Staff and Mr. Featherstone in this case.

20 **Q. Does Mr. Featherstone address whether the contributed plant should be added**
21 **back to rate base if the Commission imputes the availability revenue?**

22 A. Yes. On page 30 of his True Up Direct Testimony he states "Contributed plant is just
23 that". He later states (on page 31) "the utility owners would be allowed a return of

1 monies for which it had no investment which creates a windfall to the Lake Region
2 shareholders.”

3 **Q. Do you agree with Mr. Featherstone’s statements?**

4 A. No. Mr. Featherstone continues to ignore the undisputed facts which are: The
5 Developer paid for the plant and was forced by the Commission to contribute this
6 plant to the Company in order to keep rates at a reasonable level when the Company
7 was certificated in Case WA-95-164 (the Certification Case). As demonstrated by
8 comparing the testimony of Greg Meyer and Martin Hummel in the Certification
9 Case, the availability fee revenue was not included in the ratemaking process. If Mr.
10 Hummel had offset the \$45,000 he identified as the cost of service in the Certification
11 Case with the \$49,000 of availability fee revenue testified to by Mr. Meyer, the rates
12 would have been zero. The Developer always reported this revenue as Non-utility
13 Income in the Annual Report to the Missouri Public Service Commission and no one
14 from the Commission ever notified the Company this was incorrect. The rights to the
15 availability fees owned by the utility in 1998 were transferred to individuals in 1998
16 when the stock of the Company was sold to Roy and Cindy Slates. The Developer
17 owned the rights to all subsequently created availability fees until 2005 when the
18 rights were assigned to RPS Properties and Sally Stump. By imputing revenues to the
19 Company without allowing the corresponding return on the plant the Staff is creating
20 an actual loss at the Company which will threaten its financial viability.

21 **Q. Why do you believe allowing the revenues to be imputed will threaten the**
22 **financial viability of Lake Region?**

1 A. Because imputing revenues is merely a fictitious entry made only on the Staff's
2 version of Lake Region's books to hold the rates at an artificially low level. The
3 Commission allowing the Staff to impute revenues does not actually give the
4 Company access to the funds. I am unaware of any authority the Commission may
5 have to force the shareholders and the Developer to turn over this revenue stream to
6 the Company. With the rates held artificially low by imputing a revenue stream,
7 eventually the actual cash flow generated by the Company will not be adequate for
8 the Company to provide safe and adequate service.

9 **Q. Is Mr. Featherstone's testimony based on accurate data?**

10 A. No. Mr. Featherstone admits in his testimony that all of his revenue calculations are
11 based on information provided by Four Seasons Lakesites Property Owners
12 Association (POA). While the POA may have very good records regarding which lots
13 are developed or undeveloped it has no records or source of knowledge about what is
14 actually billed or actually collected regarding the availability fees.

15 **Q. Pages 18 through 28 of Mr. Featherstone's testimony refer to additional**
16 **discovery conducted after the evidentiary hearing and the Company's objections**
17 **to certain questions. Were those objections overruled by the Commission?**

18 A. No, Lake Region's objections have not been overruled. The data requests on pages
19 18 through 28 of Mr. Featherstone's true up direct testimony were substantially the
20 same as data requests staff served on Lake Region, and to which Lake Region
21 objected, before the evidentiary hearing. Lake Region's position has not changed as
22 the Commission will observe from the objections to Data Requests 94 – 103
23 inclusive: Lake Region does not have legal access to documents in the possession or

1 control of its shareholders or other entities. RPS Properties LP, Sally Stump (who as
2 shareholders use the business name(s) of Lake Utility Availability or Lake Utility
3 Availability 1), Vernon Stump, Robert Schwermann, Lake Region Water & Sewer
4 Company and Ozark Shores Water Company are separate and distinct “persons” or
5 corporate entities. Lake Region and Ozark Shores Water Company are corporations
6 which are separate and distinct legal entities under Missouri law. North Suburban
7 Public Utility Company owns the outstanding shares of Ozark Shores Water
8 Company. RPS Properties and Sally Stump own the outstanding shares of Lake
9 Region. They also own the rights to the availability fees. They acquired the rights to
10 the fees owned by Waldo Morris in 2004 and they acquired the rights to the fees
11 owned by the Developer in 2005. Staff disregards the lawful separateness and
12 distinctiveness of the foregoing and assumes that common ownership in regulated and
13 unregulated entities permits the Commission to regulate anything owned by the
14 shareholders. The Staff continues to assert that assets owned personally by the
15 shareholders of the water and sewer corporation can somehow be considered funds of
16 the utility.

17 **Q. Is Mr. Featherstone correct in claiming that Company has refused to provide**
18 **information?**

19 A. I take great exception to Mr. Featherstone characterizing me as uncooperative. I
20 attended a meeting held immediately after the Pre Hearing Conference on November
21 9, 2009. In attendance were approximately eight members of the Staff and one
22 representative from the Office of Public Counsel. I spent several hours answering
23 every question posed to me by these nine individuals. In response to Data Request 45,

1 on November 13, 2009 the Company provided Staff with an electronic copy of both
2 Lake Region's and Ozark Shores' complete general ledgers beginning with 1998 and
3 continuing through March 31, 2010. The Company also provided Staff with an
4 electronic copy of Lake Region's billing system beginning with 1999 and continuing
5 through September 30, 2009. Staff could have checked the lots billed for water/sewer
6 service against the POA's list of lots to determine the number of undeveloped lots at
7 any time prior to filing their direct case on January 14, 2010. Mr. Featherstone
8 continues to ask Lake Region for information regarding the assets owned by the
9 shareholders. We have provided Mr. Featherstone, both in responses to data requests
10 and in the evidentiary hearing, with evidence demonstrating that Lake Region has no
11 legal claim to the availability fee revenue.

12 **Q. Mr. Featherstone states on page 34 of his testimony that Lake Region is hiding**
13 **behind "a corporate organization that was consciously and deliberately created**
14 **to circumvent regulatory oversight of the Commission".**

15 A. He is incorrect in so many ways with this statement. His remark is refuted by
16 testimony at hearing which established that Lake Utility Availability 1 is a fictitious
17 name for two shareholders, one of which is an individual, and her creation certainly
18 had nothing to do the Commission's regulatory oversight. The business name and the
19 availability billing structure have been in place since 1998. Lake Region never
20 concealed the fact that the availability fees were no longer owned by the utility after
21 1998. Lake Region's Annual Reports filed with the Commission confirm that the
22 fees were no longer in the Annual Report beginning in 1999.

1 **Q. Mr. Featherstone states on page 35 of his testimony that the regulated customers**
2 **are paying all the costs to support the infrastructure of the water and sewer**
3 **operations of Shawnee Bend. Do you agree with this statement?**

4 A. No. Mr. Featherstone has decided to again ignore a significant fact. The Developer
5 donated the plant associated with the entire water distribution and sewer collection
6 system serving the Porto Cima area. Therefore the customers are not paying the
7 carrying costs of that plant and should not get the benefit of the revenue stream the
8 Developer created to recoup its investment.

9 **Q. Also on page 35 of his testimony, Mr. Featherstone states that a small number of**
10 **customers support a very large utility system, much of which is not being used.**

11 A. This simply is not true. As stated earlier, the Developer donated the distribution and
12 collection lines serving the area. I suspect that there are many water and sewer utilities
13 in this state that have facilities which run past vacant lots for connections to
14 customers downstream. The water production capacity and sewer treatment capacity
15 are not installed to serve all the undeveloped lots. Additional capacity will be added
16 as customer growth demands. The current customers are only paying for plant
17 necessary to provide them with safe and adequate service.

18 **Q. On the same page Mr. Featherstone states “Because the cost to operate and**
19 **maintain this larger than necessary utility system (only 30% of the system is**
20 **generating revenues for Lake Region) falls entirely on the regulated customers**
21 **who actually take service, then the availability fees should be used to support**
22 **this system.”**

1 A. Clearly the Company disagrees with this statement. I believe that certain members of
2 the Staff disagree as well.

3 **Q. Please explain.**

4 A. If Staff believes that availability fees should be used to offset costs and keep rates at a
5 certain level it logically follows that the areas in which there are no availability fees
6 to offset costs should have higher rates than the areas which do have availability fees.
7 The Staff's case has set the rates for both areas the same. According to the response
8 to Data Request 105 which I received April 12, 2010, Mr. Russo states "At this time,
9 Staff is not proposing any changes to rate design in this case." He reaffirmed Staff is
10 not proposing different rates for these areas in his response to Data Request 109 in
11 which he states "At this time, Staff is not proposing different rates for areas that
12 charge availability fees."

13 **Q. Do you agree with Mr. Featherstone's assertion that the only logical conclusion**
14 **that can be drawn from the purpose of paying availability fees is that they are to**
15 **be used to maintain, repair and support construction of existing plant as**
16 **necessary?**

17 A. Absolutely not. The most logical use for the availability fees is for the Developer to
18 recoup the cost of the plant on which the Commission did not allow him to earn a
19 return as part of rate base. That is the obvious reason the Developer did not include
20 the availability fees arising after 1998 when it sold the stock of the utility. It is also
21 logically the reason why the fee is contingent upon the plant investment being made
22 before the fee is instituted upon the property. Once the Developer sold the utility in
23 1998 there was absolutely no reason for it to continue the availability fees other than

1 to recoup its investment. If availability fees are to support the ongoing maintenance
2 and support of the utility infrastructure in front of vacant lots and if the Commission
3 has jurisdiction over these availability fees why hasn't the Commission ordered that
4 these fees be implemented in every subdivision which has vacant lots?

5 **Q. On page 37 of his testimony Mr. Featherstone states in part "it would be**
6 **completely improper for customers to provide a return of and on investment to**
7 **owners with no invested capital for that infrastructure."**

8 A. Mr. Featherstone continues to propose one sided ratemaking. On the one hand, he
9 thinks it entirely proper to confiscate personal assets of the shareholders to use in the
10 ratemaking process while at the same time proposing to exclude the rate base
11 associated with this revenue stream. Mr. Featherstone talks about the \$3,000,000
12 stock purchase but he omits telling the Commission that the \$3,000,000 only included
13 the rights to the availability actually vested in the previous shareholder. To the best of
14 my knowledge, RPS Properties and Sally Stump had to negotiate separately with the
15 Developer the rights to the availability fees which had remained vested with the
16 Developer. The terms of that settlement agreement remain confidential.

17 **Q. Do you agree with Staff's assertion that the Developer has recouped its**
18 **investment in the donated plant?**

19 A. No. Mr. Featherstone's "logic" argument is nothing more than wishful thinking of
20 how things would be in Staff's version of the world. In the real world in which the
21 Developer and the rest of us operate a payment of \$428,100 (the highest amount
22 contained in Mr. Featherstone's chart on page 17 of his testimony) would amortize
23 the investment over approximately 56 years at 8%. As you can see from Mr.

1 Featherstone's chart the amount consistently drops as property owners build on the
2 lots and drop off the availability roster. Therefore, it will take significantly more than
3 56 years to recoup the investment.

4 **Q. Is it possible that the Developer recouped a portion of its investment through the**
5 **lot sales as Mr. Featherstone suggests?**

6 A. Oh yes. However, I don't have that information and I suspect the Developer did not
7 track costs recouped by lot. Mr. Merciel testified in his Rebuttal Testimony "[T]he
8 value of any given lot, anywhere, is what it is, based on any number of factors
9 including utility availability, and an extra recurring payment does not do anything to
10 increase the value of the lot." This seems to be a very clear statement that lot prices
11 are based on the overall real estate market and a Developer may or may not have
12 recouped his development costs which would include the water/sewer infrastructure
13 as well as his other development costs.

14 **Q. Do you believe whether the Developer did or did not recoup its investment has**
15 **any connection to Lake Region's request for rate relief in this case?**

16 A. No.

17 **Q. Did Lake Region provide Staff with the amount of plant donated by the**
18 **Developer in connection with the availability fees?**

19 A. Yes. In response to Data Request 72 the Company provided the following response in
20 part on February 18, 2010: "Company has identified \$5,273,850.00 recorded as CIAC
21 from Four Seasons Lakesites in 2002" and "[T]he plant in service amounts were
22 recorded to the following accounts: 360.20 \$2,965,612.50, 331.20 \$2,695,612.50,

1 371.10 \$240,000.00 and 370.00 \$240,000". This is the information upon which I
2 relied in both my surrebuttal testimony and the testimony at the evidentiary hearing.

3 **Q. Mr. Featherstone states in his testimony that this is the total amount of CIAC**
4 **the Staff included in the case and that a portion of the CIAC is not for the plant**
5 **related to availability. Is this correct?**

6 A. No it is not. Accounting Schedule 7 from Staff's own EMS runs shows a total of
7 \$6,231,652 in CIAC. I believe a portion of that number has been allocated in error to
8 the Horseshoe Bend system and I am partially to blame for that as I initially agreed to
9 use the Staff's allocation factors for CIAC. As this availability issue has progressed I
10 have examined the CIAC more deeply and believe that all of the CIAC on Lake
11 Region's books and records apply to the Shawnee Bend systems. I believe the
12 \$5,273,850 identified in Data Request 72 is for the area in which availability fees are
13 in force and the remainder is for the other service areas on Shawnee Bend.

14 **Q. Is any of the CIAC applicable to the Horseshoe Bend operation?**

15 A. No, it is not.

16 **Q. Please explain why.**

17 A. Because the plant for Horseshoe Bend was well established in 1997 and the Annual
18 Report to the Missouri Public Service Commission for that year shows the CIAC
19 balance at zero. All of the entries made to the CIAC account after that point in time
20 can be matched against the plant additions which are identified as Shawnee Bend
21 projects.

1 **Q. On pages 38 through 43 of Mr. Featherstone's testimony, he discusses the**
2 **alternative proposal that assigns costs to the shareholders of Lake Region. Are**
3 **there any material changes from what he testified in his surrebuttal testimony?**

4 A. No. Similarly to his testimony on availability revenue estimates, this section of
5 testimony is not true up testimony as there is not one updated number in the entirety
6 of these six pages of testimony. Again, this is a continuation of his surrebuttal
7 testimony.

8 **Q. The Commission has directed the Staff to file a scenario calculating Lake**
9 **Region's revenue requirement if availability fees for the test year were included**
10 **in revenue, but there was a corresponding addition to rate base. Does Staff have**
11 **sufficient data at this time to provide an example of the scenario.**

12 A. Yes it does. I must explain as well that while I do not agree with the concept I am
13 encouraged that at least the Commission has ordered Staff to produce this scenario. I
14 believe Staff has enough data based on the numbers which were included in Mr.
15 Featherstone's Surrebuttal testimony and which were given at the evidentiary hearing
16 to easily produce this scenario. I am authorized by Lake Region to suggest that such
17 a scenario may promote a settlement on this issue.

18 **Q. Does this conclude your True Up Rebuttal Testimony?**

19 A. Yes, it does.

LAKE REGION WATER & SEWER CO

Rate Case

All Transactions

1:01 PM

04/05/2010

Accrual Basis

Type	Date	Name	Memo	Split	Amount
980.00 · 2009 Rate Case					
Bill	09/25/2009	Newman, Comley & Ruth	Rate Case	231.00 · Accounts Payable	175.00
Bill	10/25/2009	Newman, Comley & Ruth	2009 Rate Case	231.00 · Accounts Payable	2,075.50
Bill	12/25/2009	Newman, Comley & Ruth		231.00 · Accounts Payable	843.50
Bill	01/11/2010	Summers, John R.	Mileage	231.00 · Accounts Payable	87.45
Bill	01/13/2010	Arrowhead Printing		231.00 · Accounts Payable	344.96
Bill	01/18/2010	Arrowhead Printing	Customer Notices	231.00 · Accounts Payable	227.37
Bill	01/25/2010	Newman, Comley & Ruth		231.00 · Accounts Payable	2,758.74
Bill	02/02/2010	Summers, John R.	Mileage	231.00 · Accounts Payable	269.64
Bill	02/17/2010	Summers, John R.	Lunches/Dinners with settlement converence and r	231.00 · Accounts Payable	254.58
Bill	02/25/2010	Newman, Comley & Ruth	Rate Case	231.00 · Accounts Payable	5,691.00
Bill	03/02/2010	Summers, John R.	Rate Case	231.00 · Accounts Payable	113.86
Bill	03/04/2010	Ozark Shores Water Company	FedEx	231.00 · Accounts Payable	25.72
Bill	03/16/2010	Summers, John R.	Bindings	231.00 · Accounts Payable	71.48
Bill	03/31/2010	Ozark Shores Water Company	FedEx bill	231.00 · Accounts Payable	25.96
		Summers, John R.	Rate Case		347.25
Bill	04/05/2010	Camden County PWSD#4	Conference Calling	231.00 · Accounts Payable	36.70
Bill	04/05/2010	National Depo	Mark Comley	231.00 · Accounts Payable	724.00
Bill	04/05/2010	National Depo	Mark Comley	231.00 · Accounts Payable	318.95
Bill	04/12/2010	Newman, Comley & Ruth	Legal Services	231.00 · Accounts Payable	4,193.10
Bill	04/19/2010	National Depo	Mark Comley	231.00 · Accounts Payable	614.10
Total 980.00 · 2009 Rate Case					19,198.86
Comley Through April 2 Per Email					7,250.00
Total Rate Case Expense Known as of April 21, 2010					<u>26,448.86</u>

Table 1

	Availability fees owned by Company	Infrastructure cost included in original Rate Base	Availability fees included in Company revunes	PSC Position Consistent With past regulation
Lakesites Water and Sewer Company Original Certification case 1972	Yes	Yes	Yes	Yes
Lakesites Water and Sewer Company 1991 Rate Case	Yes	No	No	Yes
Ozark Shores Water Company 1997 Rate Case	Yes	Yes	Yes	Yes
Lakesitew Water and Sewer Company Expansion to Shawnee Bend 1007	No	No	No	Yes
Lake Region Water and Sewer Company Rate Case 2010	No	No	No	Yes
Staff position Lake Region 2010 Rate Case	Impute Ownership	No	Yes	No

Note: The PSC treatment of availability fees are consistent with previous rulings since 1972
In only this current rate case does the Staff reverse all previous treatment by allowing only
revenue to be imputed without an offsetting cost component.