

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of Lake Region Water & Sewer	)	File No. SR-2010-0110
Company's Application to Implement a General	)	Tariff No. YS-2010-0250
Rate Increase in Water & Sewer Service	)	

In the Matter of Lake Region Water & Sewer	)	File No. WR-2010-0111
Company's Application to Implement a General	)	Tariff No. YW-2010-0251
Rate Increase in Water & Sewer Service	)	

**MOTION IN LIMINE**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the Staff Counsel's Office, and for its *Motion in Limine* respectfully states as follows:

1. In this general rate case, an evidentiary hearing is scheduled for March 29 – April 2, 2010. The Staff submits its *Motion In Limine* for a determination from the Commission that “availability fees” paid by customers to an affiliate of Lake Region Water and Sewer Company (Lake Region) are properly within the scope of this matter. It is Staff's theory that water and sewer availability fees paid by Lake Region customers and received by Lake Region's affiliate should be credited against Lake Region's revenue requirement.

2. On January 26, 2010, at a Local Public Hearing in Camden County, Missouri, testimony was offered by customers on the issue that availability fees should be an offset to rates; neither Lake Region nor OPC objected to that evidence and OPC was the only party to cross-examine a witness.

3. By failing to raise any timely objection to the testimony offered by customers at the local public hearing on the issue of availability fees, Lake Region has waived any objection to testimony concerning the availability fees, has consented to the trial of the issue, and furthermore is estopped from raising such an objection at the upcoming hearing.

4. Staff attempted to obtain discovery from Lake Region about availability fees through Data Requests (DRs). Lake Region objected to the DRs on the grounds of relevance. During a telephone conference pertaining to the ensuing discovery dispute, pursuant to 4 CSR 240-2.090(8)(B), Judge Stearley made an informal ruling that the Commission does not have jurisdiction over availability fees charged by an affiliate of a regulated company, because, in his opinion, availability fees are not charges for service.

5. This ruling was incorrect in that it failed to take into account the entire definition of “service” which provides that service “includes not only the use and accommodations afforded consumers or patrons, but also any product or commodity furnished by any corporation, person or public utility and the plant, equipment, apparatus, appliances, property and facilities employed by any corporation, person or public utility in performing any service or in furnishing any product or commodity and devoted to the public purposes of such corporation, person or public utility , and to the use and accommodation of consumer or patrons.” Section 386.020 (48) RSMo (2009). In this matter, availability charges are assessed to customers on whose lots utility plant has been laid, but the dwelling that will eventually be connected to the utility has not yet been built. As Staff witness testimony shows, in past rate cases concerning this company and its predecessor in interest, availability fees have been included as revenue of the company.

6. Staff anticipates that Lake Region will object and move to strike all testimony on the subject of availability fees, on the strength of Judge Stearley’s ruling. This would entail striking much of the testimony from the January 26, 2010 local public hearing, portions of prefiled testimony of witnesses of each party in this matter, and evidence obtained through data requests, and would preclude discussion on the treatment of availability fees in this or prior Commission matters during the hearing before the Commission.

7. Staff believes the inclusion of availability fees in revenue is a substantive matter to be determined on the merits by the Commission, and not precluded from consideration upon procedural grounds.

WHEREFORE, the Staff respectfully requests that the Commission grant Staff's *Motion in Limine*, and determine that availability fees received by Lake Region's affiliate from Lake Region's customers are a proper issue for consideration in this case.

Respectfully submitted,

/s/ Jaime N. Ott  
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#### CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 12<sup>th</sup> day of March, 2010.

/s/ Jaime N. Ott