

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Lake Region Water and Sewer)
Company's Application to Implement a General) Case No. SR-2013-0459
Increase in Water and Sewer Service)

In the Matter of Lake Region Water and Sewer)
Company's Application to Implement a General) Case No. WR-2013-0461
Increase in Water and Sewer Service)

LAKE REGION WATER AND SEWER COMPANY'S MOTION IN LIMINE

COMES NOW Lake Region Water & Sewer Company (the "Company"), by and through its attorneys, in advance of hearing and in advance of remaining deadlines for the filing of written testimony, and submits this Motion in Limine requesting that the Commission order the Office of Public Counsel, the Staff, its counsel and their witnesses not to, at any time, inquire into, elicit testimony, volunteer, be barred from inquiring into, eliciting testimony, volunteering, or injecting evidence or statements regarding or propound any questions in the presence of the Commission or its regulatory law judge(s) during any prehearing, public hearing, opening and closing statements and witness examinations relating directly or indirectly to the manner in which availability fees should be applied, if at all, as a factor in determining revenue requirement, the charging or collection of availability fees by any person, firm or entity, the revenue derived therefrom, the amounts thereof or the means of collecting or enforcing the same.

Mr. Ted Robertson on behalf of the Office of Public Counsel, and Ms. Kim Bolin on behalf of the Staff, have each prefiled written testimony in this matter in which they propose that availability fees be considered for purposes of determining the Company's revenue requirement in this case. The Staff has also prefiled a series of reports which address the proposal. For reasons set out in greater detail in the Company's *Motion To Strike Portions Of The Written Testimony Of Staff Witness Kim Bolin And Sections Of Staff's Revenue Requirement And Cost Of*

Service Report (Motion to Strike), which in relevant part is incorporated by reference herein as if fully set forth, evidence pertaining to availability fees is irrelevant and therefore inadmissible in this matter. Justice is served by an advance ruling by the Commission rejecting such evidence in this proceeding.

Although motions of limine are most frequently filed in circuit court proceedings, the Company submits that such a motion has applicability in contested administrative proceedings as well. A motion in limine notifies the Commission of anticipated evidence, which could be objected to at hearing, whether on grounds of prejudice or relevance. *See e.g., Robbins v. Jewish Hosp. of St. Louis*, 663 S.W.2d 341, 348 (Mo.App.E.D. 1983).

The Commission declared in the Company's previous rate case that it is unjust and unreasonable to impute additional revenue to the Company derived from availability fees.¹ The facts and circumstances upon which the Commission based that declaration have not changed. Developing an evidentiary presentation about availability fees in this matter would not serve any purpose. Whatever the evidence on availability fees might be, imputing availability fee revenue to the Company would be unjust and unreasonable, and hence unlawful, by virtue of the Commission's earlier ruling. Therefore, granting of the Company's motion would help to prevent needless development of proof by the Company and the parties, and costly preparation of data requests, objections to data requests, rebuttal and surrebuttal written testimony or other documentation on a subject or process that is meaningless to the revenue requirement calculation in this case.²

¹ *Report and Order*, Case Nos. SR-2010-0110 and WR-2010-0111 (August 18, 2010) at page 107.

² An extensive record on the history of availability fees charged in an area in which the Company is certificated was developed in Case Nos. SR-2010-0110 and WR-2010-0111 at great expense in both time and money. The prefiled testimony and reports filed by OPC and Staff in this new rate case set the stage to duplicate that previous record at the same expenditure of resources unless the Commission orders a halt to the effort by granting this motion.

WHEREFORE, Lake Region Water & Sewer Company respectfully requests that the Commission order the Office of Public Counsel, the Staff, its counsel and their witnesses not to, at any time, inquire into, elicit testimony, volunteer, be barred from inquiring into, eliciting testimony, volunteering, or injecting evidence or statements regarding or propound any questions in the presence of the Commission or its regulatory law judge(s) during any prehearing, local public hearing, opening and closing statements and witness examinations relating directly or indirectly to the manner in which availability fees should be applied, if at all, as a factor in determining revenue requirement, the charging or collection of availability fees by any person, firm or entity, the revenue derived therefrom, the amounts thereof or the means of collecting, enforcing or applying the same.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 22nd day of November, 2013, to General Counsel's Office at staffcounsel@psc.mo.gov; and Office of Public Counsel at opcservice@ded.mo.gov.

/s/ Mark W. Comley