

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

In the Matter of Lake Region Water & Sewer	)	<u>File No. SR-2010-0110</u>
Company's Application to Implement a General	)	<u>Tariff No. YS-2010-0250</u>
Rate Increase in Water & Sewer Service	)	
	)	
In the Matter of Lake Region Water & Sewer	)	<u>File No. WR-2010-0111</u>
Company's Application to Implement a General	)	<u>Tariff No. YW-2010-0251</u>
Rate Increase in Water & Sewer Service	)	

**LAKE REGION WATER & SEWER COMPANY'S  
MOTION TO STRIKE**

Comes now Lake Region Water & Sewer Company ("Lake Region"), by and through its attorneys, and moves to strike certain portions of the pre-filed testimony identified below:

1. The direct and surrebuttal testimony of Mr. Ted Robertson submitted by the Office of Public Counsel;
2. The rebuttal testimony and surrebuttal of Mr. James A. Merciel submitted by the Staff of the Missouri Public Service Commission ("Staff");
3. The surrebuttal testimony of Mr. Cary G. Featherstone submitted by the Staff;
4. The surrebuttal testimony of Ms. Nancy Cason submitted by Four Seasons Lakesites Property Owners Association ("Lakesites").

Specifically, Lake Region moves to strike those portions of the foregoing testimony, and any exhibits to that testimony, which pertain in any manner to availability fees charged to owners of undeveloped lots in Lake Region's service territories because the testimony is irrelevant and immaterial to any issue in this rate case. A charge for availability of unused water or wastewater infrastructure is not within the jurisdiction of the Missouri Public Service Commission as established in Section 386.250(6) RSMo in that availability is not a "service" as defined in

Section 386.020 RSMo 2000. Testimony concerning matters which are beyond the jurisdiction of the Commission is irrelevant and immaterial.

Lake Region moves to strike portions of the prefiled 1) rebuttal and surrebuttal of Mr. Merciel; 2) surrebuttal testimony of Mr. Featherstone; and 3) surrebuttal of Ms. Cason on the additional ground that all have injected matter into their rebuttal and surrebuttal testimony respectively which should have been part of direct testimony all in offense to the requirements of 4 CSR 240- 2.130 (D).

Mr. Merciel introduces the Staff's position on availability fees for the first time in his rebuttal testimony (See, Merciel Rebuttal, Executive Summary page 2) and carries it further in his surrebuttal. For the first time in Staff's case, Mr. Featherstone, in surrebuttal, presents a position on how availability fees are now included in Staff's formulation of the revenue requirement. He also fashions an alternative to that position, concerning a re-allocation of executive management and payroll expenses, which is first presented in his surrebuttal as well. (See, Featherstone Surrebuttal, Executive Summary, at pages 2-4). Ms. Cason filed no direct or rebuttal testimony in this case. Ms. Cason uses her surrebuttal not to reject or disagree with a party's position expressed in rebuttal but instead to agree with the direct testimony of Mr. Robertson and the rebuttal testimony of Mr. Merciel.

Commission rule 4 CSR 240-2.130 (7) provides:

(7) For the purpose of filing prepared testimony, direct, rebuttal, and surrebuttal testimony are defined as follows:

(A) Direct testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief;

(B) Where all parties file direct testimony, rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in any other party's direct case. A party need not file direct testimony to be able to file rebuttal testimony;

(C) Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party's direct case; and

(D) *Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party's rebuttal testimony.*

(8) No party shall be permitted to supplement prefiled prepared direct, rebuttal or surrebuttal testimony unless ordered by the presiding officer or the commission. A party shall not be precluded from having a reasonable opportunity to address matters not previously disclosed which arise at the hearing. This provision does not forbid the filing of supplemental direct testimony for the purpose of replacing projected financial information with actual results. [emphasis added]

Staff and Lakesites have failed to seek leave to file supplemental direct testimony and have attempted to inject evidence into this case by surrebuttal that should have been included in the direct testimony of these parties. The rules forbid the practice and Mr. Merciel's rebuttal and surrebuttal; Mr. Featherstone's surrebuttal; and Ms. Cason's surrebuttal should be stricken on those grounds as well.

The passages of the testimony and exhibits which should be stricken are:

**Direct Testimony of Ted Robertson**

- Page 3, line 2 through page 14 line 2;

**Surrebuttal Testimony of Ted Robertson**

- Page 11, line 9 through page 18, line 13

**Rebuttal Testimony of James A. Merciel, Jr.**

- Page 2, line 14 through page 18, line 16

**Surrebuttal Testimony of James A. Merciel, Jr.**

- Page 1, line 19 through page 8, line 11
- All exhibits referred to in those passages

**Surrebuttal Testimony Cary G. Featherstone**

- Page 4, line 3 to Page 21, line 7

**Surrebuttal Testimony of Nancy Cason**

- Page 1, line 24 to page 6, line 20.

- All exhibits referred to in those passages

WHEREFORE, for the reasons explained above, the Commission should rule and determine that the passages and attached exhibits of the prefiled testimony specifically identified in the foregoing are inadmissible, should be stricken, and should not be used for any purpose at hearing.

Respectfully submitted,

/s/ Mark W. Comley

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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 email, on this 22nd day of March, 2010, to:

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/s/ Mark W. Comley