

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)	

LAKE REGION WATER & SEWER COMPANY'S
TRUE UP BRIEF RESPECTING
ISSUES OTHER THAN AVAILABILITY FEES
AND REPLY TO PART 1 BRIEFS OF THE PARTIES

At the suggestion of the parties, on June 3, 2010, the Commission altered the initially approved briefing schedule in this matter. The briefing of the issues was divided into parts. In Part 1, the parties briefed and argued the appropriate level of executive management compensation to be included in its revenue requirement. The true up portion of this brief will present Lake Region Water & Sewer Company's (Lake Region or Company) arguments strictly on the issues plant additions and rate case expense that were heard on April 26, 2010. The issues pertaining to the treatment of availability fees have been reserved by the Commission for argument in Part 2 of the briefing schedule.

A brief reply to Office of the Public Counsel's (OPC) Part 1 brief follows the Company's True Up Brief.

TRUE UP BRIEF

Plant Additions

At the prehearing conference held November 9, 2009, Lake Region first advised the parties that construction of a sewer pumping station and sewer force main in the Horseshoe Bend service area would be completed outside the test year. (LRWS Ex. 11, Summers TU Direct,

page 1).¹ The plant addition was necessary to allow Lake Region to take over processing of wastewater on Horseshoe Bend from a municipality that provided this service under a contract. (Staff Ex. 17, Featherstone TU Direct, page 7). The facilities were put in service on March 10, 2010 (LRWS Ex. 11, Summers TU Direct, page 1) and Lake Region was able to terminate the contract.

The project was inspected by Staff Engineer Martin Hummel who confirmed that it was operational and in service. (LRWS Ex. 11, Summers TU Direct, page 1) (Staff Ex. 17, Featherstone TU Direct, page 7) The total amount for this plant addition, which is an addition to Staff's calculation as of September 30, 2009, is \$242,603. (LRWS Ex. 11, Summers TU Direct, page 2) Lake Region provided supporting documentation for the project costs to both Staff and Office of the Public Counsel (OPC) and neither took issue with the total. Staff member Karen Herrington accounted for this plant addition into figures representing the Company's total plant in service on Horseshoe Bend. Although a possible exception to the figure was pointed out during cross examination of Mr. Featherstone (Tr. 726), after further review Lake Region accepted, and continues to accept, her calculations on this issue.² (LRWS Ex. 11, Summers TU Direct, page 2).

Rate Case Expense

At the true up hearing on April 26, 2010, Mr. Summers, on behalf of Lake Region, identified \$26,449.00 in direct rate case related costs, excluding labor and benefits, which had accrued through April 22, 2010, the date his true up rebuttal had been filed. (LRWS Ex.12, Summers TU Rebuttal, page 1). He advised that additional rate case expense would be incurred as the case continued. Since the true up, Lake Region has continued to incur rate case expense

¹ True up testimony is denoted by the abbreviation "TU" in the exhibit references in this brief.

² See also, pages 1 and 2 of *Staff's June 21, 2010 Response To Missouri Public Service Commission's June 16, 2010 Order Regarding Clarification To Plant Additions*.

and has communicated with the parties about those amounts. As Staff reports on page 7 of *Staff's June 21, 2010 Response To Missouri Public Service Commission's June 16, 2010 Order Regarding Clarification To Plant Additions* filed June 21, 2010, (Staff's Late Filed Exhibit June 21) the "total amount of rate case expense Lake Region has incurred through May 2010 is \$42,997."³ Staff's Late Filed Exhibit June 21 was withdrawn and in its stead Staff filed a revised late filed exhibit on June 23, 2010 in which the rate case expense is not specifically mentioned. According to Staff's reconciliation, also filed June 23, 2010, and received into evidence as Staff Exhibit 50, Staff is now reducing its recommendation on rate case expenses to \$22,498.⁴ In a period of two days Staff reduced its recommendation on this issue by \$27,499.

Lake Region contends that its rate case expenses through May 2010 are appropriate to recover in this matter and the Staff's change in position should be disregarded by the Commission.

Staff and Lake Region are in concert on the amortization period for these expenses. Both Staff and Lake Region recommend that these expenses be amortized over a three year period. (LRWS Ex. 11, Summers TU Direct, page 1) (Staff Ex. 50, page 4)

Mr. Ted Robertson, testifying on behalf of the OPC, recommended disallowance of approximately \$3,853 of Lake Region's costs which he concluded were spent in objecting to information requests by the Staff and OPC relating to availability fees and availability fee related testimony. He explained:

It is the Public Counsel's belief that the costs incurred by Company to support its position regarding this issue were not incurred in the interests of the utility or its ratepayers. The costs were incurred solely to support the owners of the utility continued recovery of the "free" cash flow they currently enjoy and as such

³ Rate case expenses have not concluded.

⁴ Staff counsel indicated that the amount shown on the June 23, 2010 reconciliation was for the period ending as of the true up hearing on April 26, 2010. During hearing on June 24, 2010, the Commission directed Staff to update its recommendation of rate case expense through May, 2010.

ratepayers should not be required to reimburse the utility or its owners for the costs.

Those same owners, via the utility, have during the processing of the general rate increase case consistently attempted to block the dissemination of information regarding this issue that would have provided the Commission, the MPSC Staff and OPC with a much clearer view of number of persons paying the fees and the amounts collected. It is the Public Counsel's position that ratepayers should not be required to fund the costs incurred for private interests.

(OPC, Ex. 5, Robertson TU Direct, page 2).

There is nothing in the record supporting Mr. Robertson's (or OPC's) recommendation, and nothing in evidence to confirm that Lake Region's owners have blocked dissemination of information. Recent filings of affidavits from shareholders indicate to the contrary. The information about availability fees is irrelevant to the case and that objection has been raised at every point in this process, and has not been overruled by the Commission. The fact that OPC and Staff persisted in requesting irrelevant information from Lake Region, or requesting information from Lake Region that was in the possession or control of non parties, is no excuse for Lake Region to waive its objections, or take extraordinary steps to obtain records or documentation that meet the substance of irrelevant requests. The Commission has no rule, and there is no case authority or statute, providing that if a party raises the issue of availability fees all rules pertaining to the scope of pretrial discovery are nullified, discovery is unlimited, and a party has no retreat behind the usual objections. The Commission's discovery rules apply to all contested cases and are not pre-empted on a contested issue by issue basis. Lake Region was justified in opposing irrelevant data requests and testimony rife with assumptions and speculation.

Mr. Robertson also testified:

Further, it is my opinion that had the Availability Fees not been an issue in this case, it is likely that the case could have been processed via the small rate case

procedure and that would have led to a much lower level of rate case costs actually being incurred by the utility.

(OPC Ex. 5, Robertson TU Direct, page 3)

Likewise, it is Lake Region's contention, and one to which all could agree, that if availability fees had never been raised as an issue in this case, rate case expenses could have been dramatically reduced. Lake Region and Staff did not raise availability fees in their cases in chief. It was Mr. Robertson on behalf of OPC who was the first to inject the issue of availability fees. There is no merit to the argument that because Mr. Robertson unilaterally decided to raise the issue of availability fees, Lake Region is not entitled to its costs of addressing and objecting to inquiries about them. Lake Region had no power over Mr. Robertson's decision to insert availability fees into his testimony. Lake Region's rate case expenses should not be disallowed because of a contingency within Mr. Robertson's exclusive control which he could have avoided.

Mr. Robertson also recommends a five year recovery period for rate case expense. Lake Region anticipates filing for rate relief before that time lapses. (LRWS Ex. 11, Summers TU Direct, page 2) The three year amortization of those expenses is reasonable and appropriate.

REPLY TO OPC'S PART 1 BRIEF (Executive Management Fees)

On page 3 of OPC's brief, the office seems to imply that since Mr. Robert Schwermann and Mr. Brian Schwermann undertake financial duties, such as taxes and accounting, in their executive management role, there is no need for the outside accountant employed by Lake Region as testified to by Staff witness Harris. This assumes that Messrs. Schwermann could supply independent auditing functions Lake Region's lenders may require periodically. Since they serve in an executive capacity with the Company they would be disqualified from rendering an independent audit for which an outside professional must necessarily be retained.

On page 5, OPC states that its witness, Mr. Robertson, did not know of any other similarly sized and structured utility in Missouri that requires three managers. However, Mr. Robertson did not attempt to prepare a comparison of like-sized utilities and their outside management costs. Staff witness William Harris and Lake Region witness Vern Stump provided such comparisons in their respective testimonies. Although Lake Region disagrees with Staff's recommendation for the amount of management fees to include in this case, the analysis of management fee expenses paid by companies comparable in size to Lake Region supplied by Mr. Harris on page 5 of his surrebuttal is highly persuasive. (Staff Ex. 9, Harris Surrebuttal, page 5). Lake Region's recommended amount for management fees is \$49,847 which translates per customer to \$35.60. According to Mr. Harris's schedule on page 5, that amount is likely the second lowest per customer in the state. Lake Region garners the experience of three executive managers for a price less than what at least three other regulated companies of like size pay for one.

Lake Region is entitled to be treated comparably to other water and sewer utilities of similar characteristics such as customer base and revenue. The proper amount to include in the Company's cost of service for executive management oversight is \$49,847.

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 email, on this 24th day of June, 2010, to:

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