

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)

**OBJECTIONS AND MOTION TO QUASH SUBPOENA DUCES TECUM
AND REQUEST FOR A HEARING ON THE OBJECTIONS AND MOTION**

Comes now, Peter N. Brown, by and through his Attorney, and pursuant to 4 CSR 240-2.100 (3), and, for his Objections and Motion To Quash Subpoena Duces Tecum and Request For A Hearing on the Objections and Motion states as follows:

1. Apparently, on or about April 8, 2010, the Commission entered an order directing its staff to renew discovery in this matter. On April 14, 2010, Jaime N. Ott, Legal Counsel wrote Judge Harold Stearley, stating that the reason for subpoenaing Brown was that he was a **“former president of Four Season’s Water & Sewer Company, currently known as Lake Region Water & Sewer Company”** See attached letter exhibit 1.

2. Pursuant to its letter request to Judge Stearley, on April 15, 2010, the Staff caused to be served on Peter N. Brown as an individual, for the sole reason that he was a former president of Four Season’s Water & Sewer Company, now Lake Region Water & Sewer Company, a Subpoena Duces Tecum, Order to Appear for Deposition and Orders to Produce Documents (the Subpoena) which is attached to this motion as Exhibit 2, and along with Exhibit 1 are incorporated by reference herein as if fully set forth. The Subpoena cites several statutes and rules including Rules 57.03, 57.09(b) and 58.01. The order pertains to Peter N. Brown to appear for a deposition with certain records. The Subpoena is directed to Brown as an individual

and presumably as a former president of some entity which on the face of the request he is not as an officer nor as one who is the custodian of records being sought by the Subpoena that the Peter N. Brown is directed to produce. He is asked to produce the following in a capacity of a former officer not as a current officer of anything nor as the custodian of records:

all reports, notes, memorandum, receipts, correspondence, or other documentation and records relating to Four Seasons Water and Sewer Company, Four Seasons Lakesites, Inc., Four Seasons Lakesites Development, Inc, Lake Region Water & Sewer Company, Lake Utility Availability and Lake Utility Availability 1 regarding to availability fees or charges for the area known as Shawnee Bend at or near Lake Ozark, Missouri, and including, but not limited to, the acquisition of the right to receive or otherwise collect availability fees; the assignment of the right to receive or otherwise collect availability fees; the maintenance, collection, billing, administration, distribution, profits, dividends, and office supplies relating to availability fees;

3. The Subpoena should be quashed because an inquiry by the Staff or the Commission concerning the billing and collection of availability fees for infrastructure improvements on Shawnee Bend is beyond the subject matter jurisdiction of the Commission and hence irrelevant. Furthermore, according to the information and belief of the witness, the Subpoena should be quashed because the information or matter sought is legally irrelevant in that there are witnesses who have already testified such that further testimony from them would be cumulative or repetitive of that already of record, and moreover, they have affirmed that they have no possession, custody or control of the records sought in the Subpoenas. Furthermore as an individual Peter Brown has no access to the information and material being sought or subpoenaed and is not the custodian of any records, documents or materials being sought or subpoenaed. Nor has legal counsel, Jamie N. Ott, indicated any valid reason why Peter Brown has such documents, material or records in his possession, only that he is a former president. Thus the Subpoena is unreasonable, excessive, an abuse of discretion and consequently unenforceable.

4. The Commission’s jurisdiction is defined in terms of “service” under Section 386.020(48) RSMo Cum. Supp 2009:

(48) “**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 consumers or patrons;

Section 386.250(6) RSMO

(6) To the adoption of rules as are supported by evidence as to reasonableness and which prescribe the conditions of rendering public utility *service*, disconnecting or refusing to reconnect public utility service and billing for public utility service. [emphasis supplied]

Section 386.250(6)RSMo

The availability of a water line or sewer line or both at an undeveloped lot is not a “service” as defined in these sections which we understand is the position of a staff witness Jim Merciel.

5. The Commission lacks subject matter jurisdiction over the billing and collection of availability fees and the Subpoena seeks to exceed the jurisdiction of the Commission.

6. Discovery in the Commission is obtainable by the same means as in circuit court.

4 CSR 240-2.090. Under Rule 56.01 (b)(1),

[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action,

* * *

It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

7. To be admissible, evidence must be both logically and legally relevant.

“Evidence is logically relevant if it tends to prove or disprove a fact in issue or corroborates other evidence.” [citation omitted]. “ ‘Legal relevance involves a

process through which the probative value of the evidence (its usefulness) is weighed against the dangers of unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time or needless presentation of cumulative evidence (the cost of evidence).' [citation omitted].

UMB Bank, NA. v. City of Kansas City, 238 S.W.3d 228, 232 (Mo.App. W.D.,2007).

8. Seeking duplicative testimony from Peter N. Brown who is neither an officer nor the custodian of records on subjects already addressed by other witnesses who are or maybe officers or custodians of company records makes the subpoena in excess of the authority of the Commission, an abuse of discretion, unreasonable and excessive in that there is no relevance to the information, documents, or materials being subpoenaed nor does Mr. Brown have authority with regard to such information as a former president or individual. See Exhibit 1. There is nothing on the face of the Subpoena to suggest in what capacity he is being subpoenaed other than as expressed in said Exhibit.

9. As the Subpoena seeks information, documents and materials from Peter N. Brown, as an individual, not officer, nor custodian of records, or someone who officially has access to such items, on its face the Subpoena is unenforceable as unreasonable, in excess of authority and an abuse of discretion and the staff has admitted in Exhibit 1.

WHEREFORE, the objections of Peter N. Brown to the Subpoena should be sustained and the motion to quash should be granted and for any other relief as may be appropriate in the premises and further that the Commission hold a hearing on the Objections and Motion herein.

Respectfully submitted,

/s/Terry C. Allen

Terry C. Allen Mo Bar 19894
Allen Law Offices, LLC
612 E. Capitol Ave. PO 1702
Jefferson City, Mo 65102

Tele: 573 636 9667 Fax 573 636 4667
terry@tcallenlawoffices.com

ATTORNEY FOR PETER N. BROWN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via email, on this 23rd day of April, 2010, to:

Jaime Ott at jaime.ott@psc.mo.gov;
Craig Johnson at craigsjohnson@berrywilsonlaw.com;
Lisa Langeneckert at llangeneckert@sandbergphoenix.com;
Office of Public Counsel at opcservice@ded.mo.gov; and
General Counsel's Office at gencounsel@psc.mo.gov.
comleym@ncrpc.com

/s/ Terry C.Allen