

**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 REPLY
TO STAFF'S RESPONSE TO REQUEST FROM AGENDA ON APRIL 7, 2010**

Comes now Lake Region Water & Sewer Company (Lake Region) and submits this reply to Staff's response, filed on April 27, 2010, to Commissioner Davis's request during the agenda meeting held April 7:

1. In paragraph 1 of its response, Staff states:

Ozark Shores Water Company, which owns the water system located on Horseshoe Bend that was formerly owned by Four Seasons Lakesites Water & Sewer Co., currently has availability charges. These availability charges for water have existed and have been assessed by the regulated water utility since the inception of Four Season Lakesites in approximately 1973.

Ozark Shores Water Company is not a party to this case but to the best of Lake Region's knowledge, and to clarify, Ozark Shores has no authority to assess lot owners availability fees. The Commission has never approved a tariff for Ozark Shores to collect the fees. The developer of the real estate project has the right to assess those fees but has transferred ownership of the fees to Ozark Shores. Lake Region is unaware of any agreements between Ozark Shores and the lot owners on Horseshoe Bend in which Ozark Shores is given authority to charge availability fees.

Furthermore, with respect to Lake Region, revenue derived from availability fees charged on Shawnee Bend has never been included in Lake Region's rates since its certification. Unlike

Ozark Shores, which owns the rights to the availability fees and actually collects the fees on Horseshoe Bend, Lake Region does not own the rights to the availability fees charged on Shawnee Bend and does not collect any such fees.

2. Also in paragraph 1 of its response, Staff states:

Within the context of past Commission rate cases, specifically WR-92-59 and WR-99-183, the money collected through these charges has always been included with these regulated utilities' revenue but has not been included within the tariff, despite a provision in the subdivision restrictive covenants that states the charges should be in the tariff.

To the contrary, Lake Region notes that in Case No. WR-91-999, a previous rate case involving Ozark Shores, the revenues from availability fees were not included in the Company's revenues. (See Lake Region's response to DR 111 and its attachments as filed in EFIS.) Additionally, there is no statutory or case authority for the premise that the Commission is required to tariff an assessment or charge authorized in a recorded declaration of covenants and restrictions affecting real estate.

3. In paragraph 2 of its response, Staff states:

Lake Region Water & Sewer Co., which is the current name of the company originally known as Four Seasons Lakesites Water & Sewer Co., providing water and sewer service to Shawnee Bend, as well as sewer service on Horseshoe Bend, has availability fees associated with both its water and sewer systems on Shawnee Bend.

To make it perfectly clear, Lake Region has no provision for the charging, billing or collection of availability fees. It does not charge or collect availability fees anywhere. Additionally, there was no provision for a sewer availability fee applicable to Shawnee Bend until an amendment to a declaration of restrictive covenants was filed for record on July 29, 2009. (Compare Attachment 3 and Attachment 4, Merciel Rebuttal)

4. Also in paragraph 2 of its response, Staff states:

These availability fees were also created by the terms of subdivision restrictive covenants since approximately 1994 and are to be paid to the regulated utility, although Lake Region asserts it has relinquished its rights to collect the availability fees.

The lot owners on Shawnee Bend are not required to pay the regulated utility the availability fee. The subdivision restrictive covenants currently in force and effect on Shawnee Bend provide that the owner of each lot on Shawnee Bend serviced by a central water system or central sewer system agrees to pay an availability fee to the owner of the respective central system, **or its assigns or designees**. (See, Merciel Rebuttal, Attachment 4, pages 5 and 6). However, as mentioned above, there is no provision for sewer availability fees in the restrictive covenants to which Staff refers until the amendment of those covenants that was filed for record on July 29, 2009. (Compare Attachment 3 and Attachment 4, Merciel Rebuttal). Lake Region has established that it relinquished its rights to water availability fees that were due and owing prior to 1998. All water availability fees due, owing, charged and collected after 1998 have never been owned by Lake Region. There is no serious dispute at this stage of the proceeding that Lake Region is not the owner of the availability fee revenue derived from undeveloped lots on Shawnee Bend, and is not receiving revenue from availability fees.

5. In further reply to Staff's response, Lake Region asserts that persons or entities that charge or collect availability fees for water or sewer infrastructure owned, operated, controlled and managed by a separate regulated utility cannot qualify as a statutory "water corporation" or "sewer corporation" as implied by Staff in paragraph 5 of its response. As set out in Section 386.020 RSMo. Cum.Supp. 2009:

(49) **"Sewer corporation"** includes every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment, or disposal

of sewage anywhere within the state for gain, except that the term shall not include sewer systems with fewer than twenty-five outlets;

* * *

(59) “**Water corporation**” includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water;

Respectfully submitted,

/s/ Mark W. Comley

Mark W. Comley Mo. Bar 28847
Newman, Comley & Ruth P.C.
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, MO 65102-0537
(573) 634-2266 (voice)
(573) 636-3306 (facsimile)
comleym@ncrpc.com

Attorneys for Lake Region Water & Sewer Co.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via email, on this 5th day of May, 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.

/s/ Mark W. Comley