

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

FOUR SEASONS LAKESITES POA
RESPONSE IN SUPPORT OF STAFF'S MOTION IN LIMINE

COMES NOW Four Seasons Lakesites Property Owners Association ("Four Seasons Lakesites POA") and in support of Staff's *Motion in Limine* states as follows:

1. On March 12, 2010 the Missouri Public Service Commission Staff ("Staff") filed its *Motion in Limine* asking the Commission to "determine that availability fees received by Lake Region's affiliate from Lake Region's customers are a proper issue for consideration in this case."
2. On March 15, 2010, this Commission issued its *Order Establishing Deadline for Responses* indicating that anyone desiring to respond should do so by March 22, 2010.
3. Four Seasons Lakesites POA supports Staff's *Motion in Limine* and its statements therein as well as the request that availability fees paid by Lake Region's customers and received by Lake Utilities Availability ("LUA"), an affiliate of Lake Region's through common ownership, be considered as a proper issue for consideration in this case.
4. In its quest to develop a full and complete record, this Commission has traditionally attempted to gather as much information as possible to analyze the fairest way to protect both utilities and ratepayers. This case should not be treated any differently.

5. At the public hearing held on January 26, 2010 in his opening comments, Judge Stearley stated “However, I want to assure you that any of you that would like to speak tonight, **your comments will be made a part of the record in this case and all the Commissioners will be reviewing those comments.**” (Transcript Vol 2, p. 3, lines 12-15) (emphasis added). No Commissioners were present at the public hearing, nor did any participate via webcast as often do when they are unable to personally appear at the public hearing.

There were many members of the public at the hearing who went through the effort to travel to the hearing, presumably most (if not all) of whom are Lake Region Water and Sewer Customers who are interested and/or concerned about the rate increase request. All of these members of the public heard Judge Stearley’s statement that their comments would be part of the record and that the Commissioners would review their comments. Four members of the public spoke at that public hearing and two of those four made verbal comments about availability fees—with the understanding that their comments would be made a part of the record and the Commissioners would be reviewing those comments. To now bar those comments relating to availability fees from the record would not only do a disservice to the members of the public who took time to travel to the public hearing and endure the discomfort of speaking on the record in a room full of people, it would also call into question Judge Stearley’s statement quoted above and the concern and interest of the Commission for the customer’s verbal comments. In addition, there likely were members of the public who are Lake Region’s customers who would have filled out comment cards, but for the belief that their concerns had already been verbalized for the record and were being addressed in parties’ testimony.

6. The original developer of the Horseshoe Bend and Shawnee Bend lots was also the owner of the water and sewer company. This developer had its lot purchasers sign a “Sewer

and Water Agreement” that stated in part that

“The Owner or Owners of said water works system will be a privately owned public utility authorized by a Certificate of Public Convenience and Necessity issued by the State of Missouri Public Service Commission to operate water works systems, **the aforesaid amounts of said availability charges time and methods of payment thereof by said owners and other matters shall be provided in Schedules of Rates and Rules, Regulations and Conditions of services for Water Services and for Sewer Service filed and published by said public utility or utilities with said Missouri Public Service Commission.**

. . . .The amount of said availability charges and other charges are subject to change hereafter by order of the said Missouri Public Service Commission or its successors in accordance with then existing law and the structure of said availability charges are likewise and in the same manner subject to change from availability rate to another type of rate or rates.

See “Sewer and Water Agreement” Attachment 7 to Staff Witness Merciel Rebuttal Testimony dated February 19, 2010.

For over 15 years, purchasers of lots from the developer and customers of Lake Region Water and Sewer and its predecessors, relied on the statements in this Sewer and Water Agreement (that was also duplicated in a series of documents entitled “Declaration of Restrictive Covenants”) and believed that they would be protected by this State’s official body that regulates utilities. To remove that protection by allowing Lake Region to simply set up a separate company and state that it is not a utility and therefore not subject to this Commission’s jurisdiction should not be allowed.

WHEREFORE, Four Seasons Lakesites POA supports Staff's Motion in Limine and asks that this Commission grant same.

Respectfully submitted,

SANDBERG PHOENIX & von GONTARD P.C.

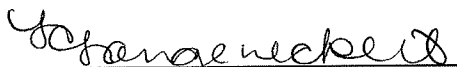
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CERTIFICATE OF SERVICE

Pursuant to 4 CSR 240-2.080 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day caused a copy of the foregoing to be served on all persons on the official service list in File No. SR-2010-0110, et al.

Dated at St. Louis, Missouri this 22nd day of March, 2010


Lisa C. Langeneckert