

**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><b>File No. SR-2010-0110</b></u> |
| Rate Increase in Water & Sewer Service.      | ) |                                     |

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

**THE OFFICE OF THE PUBLIC COUNSEL'S REQUEST FOR CLARIFICATION**

COMES NOW the Office of the Public Counsel and for its Request for Clarification states as follows:

1. On August 18, 2010, the Missouri Public Service Commission (Commission) issued its Report and Order in this case.
2. In the Report and Order, the Commission states: "Because the utility had, at different intervals, direct use of or access to this revenue stream, and because the fees can be defined as a commodity falling under the definition of utility service, the Commission concludes that it should assert jurisdiction over availability fees."<sup>1</sup> (emphasis added)
3. The Report and Order also states: "The Commission asserting jurisdiction over revenue derived from availability fees, as now declared in this matter, cannot simply be based on an adjudication on a specific set of accrued facts. What the Commission is announcing today is it is going to prospectively change its statement of general applicability that implements, interprets or prescribes law or policy, or that describes the organization, procedure, or practice requirements before this agency. Agencies cannot engage in this type of rulemaking by an adjudicated order.

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<sup>1</sup> Report & Order, pg. 103

Pursuing a major change in the Commission’s interpretation, implementation and prescription of its definitional statutes and its long-standing policy regarding ratemaking treatment of availability fees, requires compliance with the more stringent and lengthy process of rulemaking as required under section 536.021.”<sup>2</sup> (emphasis added)

4. On August 25, 2010, in its Order Approving Tariff Filings in Compliance with Commission Order, Judge Stearley through delegation by the Commission stated that Public Counsel’s assertion that the Commission declared, in its Report and Order, that it has jurisdiction over the availability fees and the revenue derived from the fees was a misreading of the Commission’s Order and that “The determination that the Commission made was that it was going to assert jurisdiction over availability fees in future actions after undertaking a formal rulemaking process. The Commission specifically noted that it could not assert jurisdiction based upon the adjudicatory process in this single action.” (emphasis added)

5. Public Counsel is unsure how the statements in the Report & Order that “... the Commission concludes that it should assert jurisdiction over availability fees ...” and “The Commission asserting jurisdiction over revenue derived from availability fees, as now declared in this matter ...” could be read to mean that the Commission “... was going to assert jurisdiction over availability fees in future actions after undertaking a formal rulemaking process” but actually “... could not ...” in this matter.

6. Therefore, Public Counsel requests clarification of the Report and Order.

**WHEREFORE**, Public Counsel respectfully submits its Request for Clarification.

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<sup>2</sup> Report & Order, pg. 104

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 27<sup>th</sup> day of August 2010:

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