

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
RESPONSE TO JUNE 1, 2010 ORDER OF THE COMMISSION

Comes now Lake Region Water & Sewer Co. (Lake Region) and submits the following to the Commission:

1. On May 3, 2010, the Commission held a motion hearing on Peter N. Brown's motion to quash a subpoena. During that hearing the Commission directed Staff to make certain filings in relation to Lake Region's annual reports (or reports filed under its previous names) dating back to 1973. The Commission also directed its Staff to explain entries on the Lake Region's annual reports beginning in 2005 on the page entitled "Payments for Services Rendered by Other Than Employees" bearing the captions "Lake Utility Availability" or "Lake Utility Availability, Management." On May 5, 2010, the Commission reduced these directives to a written order in which Staff was given until May 28, 2010 to file the requested information.

2. Staff filed its response on May 28, 2010 and in a subsequent order of June 1, 2010, the Commission directed Lake Region to reply to Staff's response, and further supply clarification about its customer base.

3. The Commission's May 5, 2010 order and directive to the Staff was specific. The Commission commanded in its order "that Staff identify any reporting, year by year the dollar amount of the collection of any availability fees." As additional guidance, the

Commission provided by footnote an example of its request: “For example, the dollar amount of availability fees reported by the company for the years 1997 and 1998 appear on page F-42 of the reports and are \$51,958.80 and \$52,648.00 respectively.”

4. Staff attached Appendix I to its response which sets out three tables. The first table (Table 1) is labeled “Availability Charges Based on Annual Reports.” The second table (Table 2) is labeled “Availability Charges Based on Company”¹ and the third table (Table 3) is labeled “Availability Charges Based on Property Owners Association.”² It would be appropriate for Lake Region to confine its discussion strictly to Table 1 since Staff’s Tables 2 and 3 are unresponsive to the Commission order. The Commission may and should disregard those tables. Even so, Lake Region will provide comment on Tables 2 and 3.

5. Of all the tables on Appendix 1, the Commission will detect that Table 1 comes closest to providing the data requested by the Commission. However, Table 1 has three columns. There is a column for an amount of “Annual *Water* Availability Charges,” and a column for “Annual *Sewer* Availability Charges.” For the years subject to report, Staff shows “Not Provided” for the amounts in both those columns. That these amounts are “not provided” should not be remarkable to the Commission; *there is no requirement for Lake Region in its present or previous names* to provide those amounts.

6. The Commission will also observe that Staff *estimated* an amount of availability fees for the year 1986. Staff does not explain why the estimate is inserted. Lake Region will assume that either Staff could not locate a 1986 annual report in the Commission’s archives, or the 1986 annual report did not schedule an amount of collected availability fees. Either way, Staff’s total amount of availability fees shown collected on the annual reports is inflated by

¹ Table 2 shows amounts provided in the affidavit of RPS Properties.

² Table 3 shows amounts provided by Four Seasons Lakesites Property Owners Association, Inc.

\$150,000. The total availability fees reported in the annual reports of Lake Region since 1972 is \$2,238,127 not \$2,388,127 as reported by Staff. Additionally, the availability fees shown by Table 1 apply to two different territories that have been served by of the Company; and one of those has been certificated in the name of, and served by, another utility since 1992 or 1993.

7. Table 1 is a listing of the amounts reported by Four Seasons Lakesites Water & Sewer Company (now known as Lake Region) as non-utility income in the annual reports filed with the Commission. *All availability fee collection totals listed on Table 1 from 1974 through 1992 relate to the water infrastructure on **Horseshoe Bend**.* Four Seasons Lakesites Water & Sewer Company sold the Horseshoe Bend water infrastructure to Ozark Shores Water Company (Ozark Shores) in 1992 or 1993. See Case No. WM-93-59. Ozark Shores owns the rights to the availability fees collected on Horseshoe Bend. Ozark Shores continued to report the availability fees as non-utility income in its annual reports until 2005 when it was instructed by Commission personnel to file an amended annual report excluding unregulated services/activities. The Staff email containing this instruction was admitted as evidence at hearing. See Lake Region Exhibit 9.

8. Table 2 reflects availability fee collection totals provided by Mr. Brian Schwermann on behalf of RPS Properties, L.P. in an affidavit. Again, these amounts are not included in Lake Region's annual reports and are, therefore, nonresponsive to the Commission's order. These amounts are not recorded on the Company's books in any manner and it has no legal claim to the revenue. In fact any availability fee amount shown anywhere on Appendix I after 1998 is not the property of Lake Region. The only availability fees related to the Shawnee Bend water and/or sewer operations which may have been owned by Lake Region are the amounts shown on Table 1 for the years 1995 through 1998 totaling \$190,403. However, as

stated in Company's response to Data Request 115, the Company has no documents ever showing a transfer of these rights from the developer to the utility. The availability fee totals were shown on the reports even though the Company had no obligation to do so.

9. Table 3 reports numbers from Four Season's Lakesites Property Owners Association, Inc.'s (POA) Exhibit 3. As with Table 2, these amounts are not included in Lake Region's annual reports. Table 3 is nonresponsive to the Commission's order. Moreover, the amounts are essentially guesses. Mrs. Cason was able to testify about the number of developed and undeveloped lots on Porto Cima the POA has been able to confirm, but she admitted that she had no knowledge of the actual amounts of availability fees billed or collected by Ms. Stump and RJS Properties, L.P. for the undeveloped lots. (Tr. 394, 399). Additionally, there may be significant discrepancies between the numbers of undeveloped lots as recorded by the POA versus those undeveloped lots upon which availability fees were levied in the early years of the subdivisions. Such a discrepancy results from the requirement that water and/or sewer lines be "available" before availability fees are levied. No availability fee would be charged against an undeveloped lot if infrastructure for water or sewer service had not been built out to the lot. There is no reliable basis for any figure used by Staff in Table 3.

10. The \$5,585,227 figure shown at the bottom of Table 3 and labeled as "Total Availability Charges 1973 to 2010" is very misleading. This total includes \$2,197,724 for water infrastructure currently owned by Ozark Shores and \$3,197,100 based upon the unreliable amounts supplied by the POA which were addressed in the foregoing paragraph.

11. Staff's explanation of the line item identified under "Payment for Services Rendered by Other than Employee" as "Lake Utility Availability, Management" is correct. Lake Region agrees with Staff that the number documented in the annual report is not the number

proposed by Staff for executive management fees. Neither is it the number proposed by Lake Region.

12. Regarding the customers of Lake Region, as of March 31, 2010, the end of the true up period, Lake Region had 638 water customers on Shawnee Bend, 615 sewer customers on Shawnee Bend and 147 sewer customers on Horseshoe Bend. These numbers correspond to the numbers used by Staff Witness Prenger on Accounting Schedule 4-1 for each operating system per Staff's True Up filing. All sewer customers on Shawnee Bend are also water customers. Several large sewer customers on Horseshoe Bend represent approximately 1,250 single family/condominium/hotel units which may have caused some confusion during the evidentiary hearing.

13. Staff also attached the affidavit of Cary G. Featherstone to its response. Staff does not indicate whether it desires to introduce this affidavit at any additional hearing in this matter. If it is being proposed for that purpose, pursuant to Section 536.070(12), RSMo 2000, Lake Region objects to the use of Mr. Featherstone's affidavit at any hearing on the ground that it is an affidavit.

Respectfully submitted,

/s/ Mark W. Comley

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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 8th day of June, 2010, to:

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/s/ Mark W. Comley