

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)	

**STAFF'S RESPONSE TO LAKE REGION WATER & SEWER COMPANY'S
MOTION TO STRIKE AND REQUEST**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and respectfully submits its Response to Lake Region Water & Sewer Company's *Motion to Strike* stating to the Missouri Public Service Commission (Commission) as follows:

1. As background, in this general rate case, the Office of Public Counsel's (Public Counsel) witness, Mr. Ted Robertson, addressed the issue of availability fees in his direct testimony. During the January 26, 2010, local public hearing, customers of Lake Region testified on the issue of availability fees. Staff responded to Public Counsel's direct testimony and the concerns of the ratepayers in its rebuttal testimony of Mr. James A. Merciel Jr. Mr. Merciel's rebuttal testimony addressed the concept of availability fees and the complex history of availability fees charged by the corporate entity Lake Region Water & Sewer Company (Lake Region or Company) and its predecessors. Lake Region's witness Mr. John Summers also filed rebuttal testimony on the issue of availability fees. Lake Region, Public Counsel, Four Season Lakesites Property Owner's Association (Lakesites POA) and Staff all filed surrebuttal testimony on the issue of availability fees. It is Staff's position that water and sewer availability

fees paid by Lake Region customers and received by Lake Region's affiliate should be credited against Lake Region's revenue requirement.

2. On March 22, 2010, Lake Region filed its *Motion to Strike* with the Commission requesting that it strike prefiled testimony of the following:

- a. The direct and surrebuttal testimony of Mr. Ted Robertson submitted by the Office of Public Counsel (Public Counsel)
- b. The rebuttal testimony and surrebuttal of Mr. James A. Merciel Jr., submitted by the Staff of the Commission;
- c. The surrebuttal testimony of Mr. Cary G. Featherstone submitted by the Staff; and
- d. The surrebuttal testimony of Ms. Nancy Cason submitted by Four Seasons Lakesites Property Owners Association.

3. The portions of the above-referenced prefiled testimony are relevant and material to this rate case. A charge to prospective customers to reserve availability of drinking water and wastewater service provided by a regulated utility is within the jurisdiction of the Commission as established in Section 386.250(3)-(4), RSMo 2000 and under the definition of "service." Section 386.020(48), RSMo 2009. Furthermore, Section 386.610 mandates that Chapter 386 "shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between patron and public utilities." Therefore, the definition of "service" contained within Section 386.020, should be construed liberally.

4. Public Counsel witness Ted Robertson's prefiled direct testimony included the issue of availability fees. At the time of filing, Mr. Robertson could not testify with specificity because his numerous outstanding data requests to Lake Region concerning availability fees had not been answered, and remain unanswered by Lake Region. (Direct Testimony Ted Robertson, p. 5, ln. 7-9).

5. Commission Rule 4 CSR 240-2.130(7)(B) states,

Where all parties file direct testimony, rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in

any other party's direct case. A party need not file direct testimony to be able to file rebuttal testimony.

Staff witness Mr. James A. Merciel filed rebuttal testimony concerning availability fees in response to Mr. Robertson's direct testimony.

6. Mr. Merciel's rebuttal testimony shows that the method of collection of availability fees has not changed since the Company's most recent rate case. However, the benefit to rate payers has changed due to the creation of Lake Utility Availability. Lake Utility Availability diverts to itself the availability fees that were originally assessed by the utility in connection with utility service. When the Company's predecessor alienated the availability fees (which constitute an asset of the utility company) it failed to seek Commission approval. Section 393.190.1 states that

[n]o . . . water or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means direct or indirect, merge or consolidate such works or systems, or franchises, or any part thereof, with any other corporation, person or public utility without having first secured from the commission an order authorizing it so to do. . . .

The Commission never approved the transfer of availability fees from the Company's revenue to Lake Utility Availability.

7. At the time of filing the early rounds of testimony and during the creation of the accounting schedules that have been presented in this case, the Staff has not had access to the amounts of those fees so as to properly attribute the revenue to Lake Region. As noted above, Mr. Robertson was also thwarted in his attempts to get specific information.

8. Not only did Mr. Merciel file rebuttal testimony addressing the issue of availability fees in response to Mr. Robertson's testimony, but so did Lake Region's Mr. John Summers. Interestingly, Lake Region does not seek to have that testimony stricken, only the testimony of other parties' witnesses.

9. Messrs. Robertson, Merciel, Featherstone, and Summers, and Ms. Cason, all filed surrebuttal testimony on the issue of availability fees in response to rebuttal testimony. Again, Lake Region only requests that the Commission strike testimony offered by witnesses other than its own. 4 CSR 240-2.130(7)(D) states, “[s]urrebuttal testimony shall be limited to material which is responsive to matters raised in another party’s rebuttal testimony.” As Lake Region’s Mr. Summers filed rebuttal testimony concerning availability fees, surrebuttal testimony in response thereto is entirely proper.

10. Even if it is determined that the issue of availability fees is not within the scope of rebuttal and should have been raised in direct testimony under 4 CSR 240-2.130(7), the Commission may waive rules. 4 CSR 240-2.015 states “[a] rule in this chapter may be waived by the commission for good cause.” No party has been or will be harmed or prejudiced by raising the issue of availability fees in Staff’s rebuttal and surrebuttal testimony. The issue was first addressed in direct testimony. Once the issue is brought into a case it is appropriate and fair for other parties to address the issue in subsequent testimony. All parties had the opportunity, and most took the opportunity, to address the issue of availability fees in prefiled testimony. Furthermore, any party that believes it needs the opportunity to respond to surrebuttal can request that opportunity and respond at hearing. The public interest requires the issue of availability fees be addressed to establish just and reasonable rates, as raised at the January 26, 2010 local public hearing. *See* Section 386.610 RSMo 2000. Alternatively, if the Commission determines it is necessary, Staff requests the Commission waive Rule 2.130(7) for the purpose of allowing all prefiled testimony to remain for the Commission’s consideration and ultimate determination in this case.

11. Finally, pursuant to 4 CSR 240-2.130(8), the Commission or the Regulatory Law Judge may issue an order allowing prefiled direct, rebuttal or surrebuttal testimony to be

supplemented, as long as all parties have a reasonable opportunity to address the matters. In this case, the issue of availability fees was specifically noticed up and addressed in direct testimony, and thereafter addressed by other parties in rebuttal and surrebuttal. All parties were on notice and given the opportunity to adequately address this issue. Therefore and alternatively, if the Commission determines it is necessary, Staff requests the Commission grant leave to supplement its testimony (as prefiled) pursuant to Commission Rule 4 CSR 240-2.130(8).

WHEREFORE, for the reasons explained above, the Commission should not grant Lake Region's *Motion to Strike*. The Commission should allow all prefiled testimony to be retained in the case so that it may determine, in the context of the whole case, what testimony is relevant and material. In the alternative, the Commission should waive 4 CSR 240-2.130(7) as to all testimony filed on the issue of availability fees in this case because no party has been harmed by the testimony and all parties have had an opportunity to respond to the issue of availability fees, or the Commission grant Staff leave to supplement its testimony pursuant to 4 CSR 240-2.130(8).

Respectfully submitted,

/s/ Jaime N. Ott

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 24th day of March, 2010.

/s/ Jaime N. Ott_____