

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Stipulation)	
Respecting Adjustments to Sewer Charges)	
Applicable to Four Seasons Racquet and)	<u>Case No. SO-2011-0046</u>
Country Club Condominium Owners)	
Association, Inc.)	

**STATUS REPORT, REQUEST TO AMEND THE PREVIOUSLY FILED PARTIAL
NONUNANIMOUS STIPULATION, AND REQUEST TO CLOSE CASE**

COMES NOW Lake Region Water and Sewer Company (Lake Region or Company), Four Seasons Racquet and Country Club Condominium Property Owners Association, Inc. (Racquet Club or Club) and Staff of the Missouri Public Service Commission (Staff) and submit this *Joint Status Report, Request to Amend the Previously Filed Partial Non-unanimous Stipulation, and Request to Close Case* (Joint Proposal) and state the following to the Missouri Public Service Commission (Commission) in support thereof:

1. On February 22, 2010, counsel for the Racquet Club, Lake Region and Staff filed a *Partial Non-unanimous Stipulation Respecting Adjustments to Sewer Charges Applicable to Intervenor Four Seasons Racquet and Country Club Condominium Owners Association, Inc.* (Original Stipulation) in Commission Case Nos. SR-2010-0110 and WR-2010-0111.

2. On March 2, 2010, the Commission issued a *Notice Regarding Treatment of Non-Unanimous Stipulations and Agreements* wherein the Commission stated that since no party timely opposed the agreement, the Stipulation shall be treated as a unanimous agreement.

3. On August 18, 2010, the Commission issued its Report and Order for SR-2010-0110 and WR-2010-0111, and reiterated that the Stipulation referenced above became effective on April 24, 2010.

4. On August 26, 2010, the Commission issued an *Order Establishing a Separate Case for Further Proceedings, Granting Temporary Extension and Directing Filing* in the rate case establishing the following: November 1, 2010 as the deadline for flow meters to be installed; and for the signatories to the Stipulation to begin their quarterly meetings and file a status report on October 15, 2010; and a new case File No. SO-2011-0046 to be opened for filings regarding the Stipulation.

5. The first Status Report was filed in this case on October 15, 2010 and quarterly status reports have been filed since January 13, 2011.

6. Pursuant to the terms and conditions of the Stipulation, the Company installed a flow measurement meter which was operational on or before January 31, 2011.

7. On February 17, 2012, a meeting was held at the County Club Hotel. In attendance were John Summers from the Company, Martin Hummel from the Staff, John Walker from the Four Seasons Racquet Club Property Owner's Association (Racquet Club or Club), and Ron Schlicht from the Country Club Hotel (Hotel), collectively referred to as "the Parties" though the Hotel was not a party to SR-2010-0110 and WR-2010-0111 or SO-2011-0046.

8. During the course of the meeting the Parties reviewed the flow meter data gathered during the period March 2011, through January 2012. After some discussion it was agreed the sewer usage measured by the flow meter was less than the sewer

usage as billed using the water meters. Both the Racquet Club and the Hotel representatives stated that they would prefer to continue using the water meters for billing due to their familiarity with and confidence in that methodology.

9. The purpose of the flow meter project was to ensure that the customer base on Horseshoe Bend did not subsidize the Club and the Hotel, and to develop actual measurement of inflow and infiltration to the sewer system. It is apparent from the data collected that the Horseshoe Bend customer base is not subsidizing the Club and the Hotel. The Parties agreed to use the data in a continued cooperative effort in identifying and minimizing inflow and infiltration to the sewer system.

10. As a result of the cooperative effort exhibited by Staff, the Racquet Club, the Hotel and Lake Region, those involved hereby assert to the Commission that the basic principle of the Stipulation has been accomplished and therefore an amendment is appropriate at this time.

11. The Parties assert that the basic purpose of the Stipulation has been achieved and agree with the process of charging based on water volume on a going forward basis, therefore the parties propose amending the Original Stipulation, as attached as **Appendix A** to this pleading.

12. If no objection is raised to this proposal, the parties suggest that this case can be closed. Closing this case at this time will not result in a resolution of the underlying issues for which the Stipulation was approved, but keeping it open would simply require the parties to file reports wherein no one is dissatisfied. In the event those issues are raised in any future proceeding, the parties to that Stipulation reserve and preserve all interests and rights set forth in that Stipulation.

13. The undersigned attorneys have agreed that this document and its **Appendix A** represent a joint agreement and may be filed by Staff.

WHEREFORE, Lake Region, the Racquet Club and Staff respectfully submit this *Joint Status Report, Request to Amend the Previously Filed Partial Non-unanimous Stipulation, and Request to Close Case* and request that the previously filed Stipulation be amended as specified in this pleading and that this matter be closed.

Respectfully submitted,

/s/ Mark W. Comley

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Attorney for Four Seasons Racquet Club and
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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 e-mail on this 13th day of April, 2012, to: General Counsel's Office at gencounsel@psc.mo.gov; Office of Public Counsel at opcservice@ded.mo.gov; Craig Johnson at cj@cjaslaw.com; and Mark Comley at comley@ncrpc.com

/s/ Rachel M. Lewis

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JOINT AMENDED
PARTIAL NONUNANIMOUS STIPULATION RESPECTING ADJUSTMENTS TO
SEWER CHARGES APPLICABLE TO INTERVENOR FOUR SEASONS RACQUET
AND COUNTRY CLUB CONDOMINIUM OWNERS ASSOCIATION, INC.

COMES NOW Lake Region Water & Sewer Company (Lake Region or Company), the Staff of the Missouri Public Service Commission (Staff), and Four Seasons Racquet and Country Club Condominium Owners Association, Inc. (Racquet Club or Club), and respectfully state to the Missouri Public Service Commission (Commission) that as a result of extensive negotiations, the undersigned signatories (Signatories), have reached the following Amended Partial Non-unanimous Stipulation (Amended Stipulation) concerning adjustments to sewer charges applicable to the Racquet Club:

BACKGROUND

1. Pursuant to the terms and conditions of the *Partial Non-unanimous Stipulation Respecting Adjustments to Sewer Charges Applicable to Intervenor Four Seasons Racquet and Country Club Condominium Owners Association, Inc.* (Original Stipulation) filed February 22, 2010 in Commission Case Nos. SR-2010-0110 and WR-2010-0111, Lake Region installed a flow measurement meter which was operational on or before January 31, 2011.

2. On February 17, 2012, a meeting was held at the County Club Hotel. In attendance were John Summers from the Company, Martin Hummel from the Staff,

John Walker from the Four Seasons Racquet Club Property Owner's Association (Racquet Club), and Ron Schlicht from the Country Club Hotel (Hotel), collectively referred to as "the Parties" though Hotel was not a party to SR-2010-0110 and WR-2010-0111 or SO-2011-0046.

3. During the course of the meeting the Parties reviewed the flow meter data gathered during the period March 2011, through January 2012. After some discussion it was agreed the sewer usage measured by the flow meter was less than the sewer usage as billed using the water meters. Both the Racquet Club and Hotel representatives stated that they would prefer to continue using the water meters for billing due to their familiarity with and confidence in that methodology.

STIPULATIONS

4. Metered Water Usage and Continued Sewer Charges. The Signatories acknowledge that pursuant to terms and conditions of the Original Stipulation, Lake Region's monthly service billings to the Racquet Club for sewer charges have been based upon the Racquet Club's metered water usage for those periods.

5. It is agreed that Lake Region's bills for sewer service rendered to the Racquet Club shall continue to be based on the Racquet Club's metered water usage.

6. Improvements to the Club System. The Racquet Club agrees to continue to work towards elimination of sources of infiltration and inflow entering its wastewater collection system, at its expense.

7. Access Restrictions. Nothing herein shall be construed to grant the Racquet Club or the Hotel unrestricted access to the flow meters installed pursuant to this Amended Stipulation. The Club and the Hotel shall not have access to the flow meters for any reason unless permission from Lake Region has been obtained in

advance, which Lake Region shall not unreasonably withhold. Notice should be given sufficiently in advance and a time mutually agreeable to Lake Region to allow its personnel, or someone on behalf of Lake Region to be present at any time that the Racquet Club or Hotel shall need to access the flow meters.

8. This Amended Stipulation is being entered into solely for the purpose of settling the identified issue above. None of the Signatories to this Amended Stipulation shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any method of cost determination or cost allocation or revenue related methodology, and none of the signatories shall be prejudiced or bound in any manner by the terms of this Amended Stipulation in this or any other proceeding, whether this Amended Stipulation is approved or not, except as otherwise expressly specified herein. Nothing in this agreement unless specifically referenced shall have an effect on future ratemaking.

9. Lake Region will provide to the Office of the Public Counsel, the Staff, Racquet Club and Hotel, a reporting of the usage in gallons and customer charge and usage charge in dollars on a monthly basis twice each year until Lake Region files its next rate case, which is to be filed by August 28, 2013, per the Report and Order in Case No. SR-2010-0110 and Case No. WR-2010-0111. This reporting will identify the usage of both the Hotel and Racquet Club using the flow meter device referenced in paragraph 1 above and based on the water usage using a water meter device.

10. If Lake Region, or its successor company, is sold or its assets transferred to another entity, then this agreement is assigned and transferred to future owners of Lake Region. The full effect and force of this agreement will be transferred to the future owners of the water and sewer company.

11. This Amended Stipulation has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not approve this Amended Stipulation in its Report and Order in this case, or approves this Amended Stipulation with modifications or conditions that a signatory to this proceeding objects to prior to the effective date of the Order approving this Amended Stipulation, then this Amended Stipulation shall be void and no signatory shall be bound by any of the agreements or provisions hereof.

12. If the Commission does not unconditionally approve this Amended Stipulation without modification, and notwithstanding its provision that it shall become void therein, neither this Amended Stipulation, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with §536.080 RSMo 2000 or Article V, Section 18 of the Missouri Constitution, and the Signatories shall retain all procedural and due process rights as fully as though this Amended Stipulation had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this Amended Stipulation shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

13. In the event the Commission accepts the specific terms of this Amended Stipulation, the Signatories waive their respective rights to present oral argument and written briefs pursuant to §536.080.1 RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2 RSMo 2000; their respective rights to seek rehearing, pursuant to §386.500 RSMo 2000; and their

respective rights to judicial review pursuant to §386.510 RSMo 2000. This waiver applies only to a Commission Report and Order respecting this Amended Stipulation issued in this proceeding, and does not apply to any matters raised in any prior or subsequent Commission proceeding, or any matters not explicitly addressed by this Amended Stipulation.

14. If requested, the Staff may file suggestions or a memorandum in support of this Amended Stipulation. Each of the parties shall be served with a copy of any such suggestions or memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's suggestions or memorandum, responsive suggestions of a responsive memorandum which shall also be served on all parties. The contents of any suggestions or memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the signatories to this Amended Stipulation and Agreement, whether or not the Commission approves and adopts this Amended Stipulation and Agreement.

15. The Staff shall have the right to provide oral explanation that the Commission may request regarding this Amended Stipulation and Agreement at any agenda meeting at which this case is noticed to be considered by the Commission. Staff will be available to provide Staff's perspective to the Commission in answering Commission questions regarding this Amended Stipulation and Agreement. To the extent reasonably practicable, Staff shall provide the Company and the Racquet Club with advanced notice of any such agenda meeting so that they may have the opportunity to also be represented at the meeting.

WHEREFORE, for the foregoing reasons, the undersigned Signatories respectfully request that the Commission issue its Order approving all of the specific

terms and conditions of this Amended Stipulation Respecting Adjustments To Sewer Charges Applicable To Intervener Four Seasons Racquet And Country Club Condominium Owners Association, Inc.

Respectfully submitted,

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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 e-mail on this 13th day of April, 2012, to: General Counsel's Office at gencounsel@psc.mo.gov; Office of Public Counsel at opcservice@ded.mo.gov; Craig Johnson at cj@cjaslaw.com; and Mark Comley at comleym@ncrpc.com

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