

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

In the Matter of Lake Region Water & Sewer	)	<u>File No. SR-2010-0110</u>
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	)	<u>File No. WR-2010-0111</u>
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 STAFF'S MOTION IN LIMINE**

Ordinarily, a motion in limine is used to *exclude* evidence in a hearing--most generally in a jury trial--which would be unfairly prejudicial or inflammatory. *Cass Bank & Trust Co. v. Mestman*, 888 S.W.2d 400, 404 (Mo.App. E.D. 1994). Staff has filed a pleading styled "Motion in Limine" in which it instead moves to estop the Company from objecting to testimony that Staff submits should be let in. Irrespective of the questionable use of the motion to test the evidentiary question involved, the Company suggests that Staff's position on the subject should be rejected.

According to the Commission's published *Guide to Local Public Hearings*:

Local public hearings are designed to give consumers the opportunity to speak directly to Public Service Commissioners, who will make the decision in a pending case. This hearing provides you a forum to express your views, opinions and concerns about this case or bring any service-related problems to the commissioners' attention.

Although considered "witnesses" and sworn in, the persons who deliver statements to the Commission at local public hearings do so without the customary required formality of question and answer form and they are allowed to recite their opinions without adequate foundation. Many of those opinions go beyond mere lay opinion but reach what otherwise would constitute expert opinion on subjects including the rate making process, the management of the utility company, the ability of the Commission to properly regulate and the merits or demerits of the

legislature. The license allowed and encouraged for these “witnesses” underlines that the procedure employed is a “local public hearing” and not an “evidentiary hearing” in which the taking of testimony and evidence is governed by 4 CSR 240.2.110 or the provisions set aside for contested cases in Chapter 536. At an evidentiary hearing long narrative answers, and conclusions or opinions from the unqualified, are objectionable and inadmissible.

Staff argues that the Company was required to object to testimony about availability fees during the local public hearing in this matter, otherwise the objection is waived and the subject is an appropriate one for the Commission to hear irrespective of considerations of Commission jurisdiction and the manner in which it presides over the rate making process. Upon information and belief, the local public hearing has not historically been regarded as a venue where attorneys for parties are expected to object to the opinions or conclusions of testifying individuals. To accept Staff’s argument would mean that attorneys for any party must attend each local public hearing and preserve specific objections at that point, before the evidentiary hearing ever commences. Such a requirement would change the conciliatory tone of public hearings and jeopardize their usefulness. Peppering a witness’s local public hearing statement with objections from counsel would serve only to discourage wide participation in the process by members of the public and hamper consumers in speaking directly to the Commissioners.

To accept Staff’s argument may lead to absurd results. Suppose a witness testified, as part of the local public hearing for a rate case, that in his opinion electro-magnetic fields from power lines caused severe physical illness to his family, and no one objected to that testimony. At the evidentiary hearing, the Commission could be required 1) to accept the witness’s medical/scientific opinion as sound and expert; and 2) to determine whether magnetic fields caused a customer’s family to suffer physical injury. Expanding the scope of a rate case to

include irrelevant or immaterial issues raised in the unobjected-to testimony of witnesses at local public hearings serves no practical purpose.

Staff is correct that the Company will assert objections to testimony pertaining to availability fees. The objection will be on grounds of relevance in that the setting, charging, collecting or distribution of an availability fee or connection fee is beyond the jurisdiction of the Commission just as it has determined on earlier occasions. A party's objection, or failure to object, to a statement provided at a local public hearing cannot enlarge what the Commission may lawfully regulate, or modify the authority the Commission possesses by statute. Excluding testimony about availability fees in this rate case is a substantive matter and that testimony cannot be included for reasons related to procedure.

Staff's Motion in Limine has no merit and should be denied.

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 16<sup>th</sup> day of March, 2010, to:

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/s/ Mark W. Comley