

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

In the Matter of Lake Region Water and Sewer)	
Company's Application to Implement a General)	Case No. SR-2013-0459
Increase in Water and Sewer Service)	

In the Matter of Lake Region Water and Sewer)	
Company's Application to Implement a General)	Case No. WR-2013-0461
Increase in Water and Sewer Service)	

**LAKE REGION WATER & SEWER COMPANY'S
RESPONSE TO STAFF'S STATEMENT CONCERNING DISCOVERY ISSUES**

Lake Region Water & Sewer Company (Lake Region) submits these authorities and suggestions in responses to Staff's Statement Describing Discovery Concerns filed on October 7, 2013 in advance of the discovery conference scheduled in this matter on October 9, 2013.

Discovery in the Commission.

Discovery devices in matters pending before this commission are identified and authorized by 4 CSR CSR 240-2.090 which provides in relevant part:

(1) Discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court. Sanctions for abuse of the discovery process or failure to comply with commission orders regarding discovery shall be the same as those provided for in the rules of civil procedure.

(2) Parties may use data requests as a means for discovery. The party to whom data requests are presented shall answer the requests within twenty (20) days after receipt unless otherwise agreed by the parties to the data requests. If the recipient objects to data requests or is unable to answer within twenty (20) days, the recipient shall serve all of the objections or reasons for its inability to answer in writing upon the requesting party within ten (10) days after receipt of the data requests, unless otherwise ordered by the commission. If the recipient asserts an inability to answer the data requests within the twenty (20)-day time limit, the recipient shall include the date it will be able to answer the data requests simultaneously with its reasons for its inability to answer. Upon agreement by the parties or for good cause shown, the time limits may be modified. As used in this

rule, the term data request shall mean an informal written request for documents or information which may be transmitted directly between agents or employees of the commission, public counsel or other parties.

The scope of discovery in civil actions in circuit court is set out in Rule 56.01(b):

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In General.* Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The discovery devices established for civil actions in circuit court apply to parties to the action and also to non parties. Discovery of information in the hands of non parties however is managed by special rules that involve the issuance of and response to subpoenas. *See, e.g.*, Rules 57.09 (c) and 58.02.

General investigatory power is vested in the Commission as well. As authorized by Section 386.320.3, RSMo 2000:

3. The commission and each commissioner shall have power to examine all books, contracts, records, documents and papers of any person or corporation subject to its supervision, and by subpoena duces tecum to compel production thereof. In lieu of requiring production of originals by subpoena duces tecum, the commission or any commissioner may require sworn copies of any such books, records, documents, contracts and papers or parts thereof to be filed with it.

The entire menu of discovery devices is available to the Staff of the Commission in this matter. Since Lake Region is a “party” to this rate case, it is subject to the discovery devices that can be exchanged between parties. If information or data in the hands of non parties is needed, Staff may employ the discovery devices set aside for non parties that are allowed by the specific rules. For any entity that is regulated by the Commission, Staff has the general investigatory power found in Section 386.320.3 at its disposal. If Staff is interested in the records or data maintained by a political subdivision of the state of Missouri, Staff may make a public records request pursuant to the Sunshine Law.

Staff’s Data Requests

The data requests Staff has identified in its statement of the discovery differences ask Lake Region to obtain and respond with information, documents or data about, concerning or pertaining to firms or individuals other than Lake Region including:

1. Ozark Shores Water Company (Ozark Shores), a Commission regulated water company;
2. Camden County Public Water Supply District #4 (the District), a political subdivision of the state of Missouri with duties and responsibilities enumerated by statute;
3. North Suburban Public Utility Company, an Illinois corporation authorized to do business in Missouri and the sole shareholder of Ozark Shores;
4. RPS Properties, L.P., a limited family partnership and shareholder in Lake Region; and
5. Sally Stump, an individual, and *former* shareholder in Lake Region.

Staff claims that the above are “affiliates” or “affiliated” with Lake Region such that Lake Region is under compulsion to produce the information requested in the applicable data request about each. Staff cites *State ex rel. Atmos Energy Corp. v. Public Service Com’n.*, 103 S.W.3d 753 (Mo.,2003), in support of its conclusion. *Atmos* is inapposite. The case involved the

Commission's promulgation of discrete rules applicable exclusively to electric utilities, steam heating utilities, and gas utilities. The rules established "asymmetrical pricing standards" that prohibit certain transactions between electric, steam heating and gas public utilities and their affiliates. Neither the rules interpreted in *Atmos* nor its analysis of "affiliates" supports Staff's assertion that Lake Region has affiliates. First, the affiliate transaction rules do not include water or sewer companies or their affiliates if they have any. Second, the statute construed in *Atmos* refutes any claim that Lake Region has an affiliate.

Section 393.140(12) is the general authority for Commission inquiry into other businesses operated by regulated utilities. It provides:

(12) In case any electrical corporation, gas corporation, water corporation or sewer corporation engaged in carrying on any other business than owning, operating or managing a gas plant, electric plant, water system or sewer system which other business is not otherwise subject to the jurisdiction of the commission, and is so conducted that its operations are to be substantially kept separate and apart from the owning, operating, managing or controlling of such gas plant, electric plant, water system or sewer system, said corporation in respect to such other business shall not be subject to any of the provisions of this chapter and shall not be required to procure the consent or authorization of the commission to any act in such other business or to make any report in respect thereof. But this subdivision shall not restrict or limit the powers of the commission in respect to the owning, operating, managing or controlling by such corporation of such gas plant, electric plant, water system or sewer system, and said powers shall include also the right to inquire as to, and prescribe the apportionment of, capitalization, earnings, debts and expenses fairly and justly to be awarded to or borne by the ownership, operation, management or control of such gas plant, electric plant, water system or sewer system as distinguished from such other business. In any such case if the owning, operating, managing or controlling of such gas plant, electric plant, water system or sewer system by any such corporation is wholly subsidiary and incidental to the other business carried on by it and is inconsiderable in amount and not general in its character, the commission may by general rules exempt such corporation from making full reports and from the keeping of accounts as to such subsidiary and incidental business.

For purposes of the Public Service Commission Law an “affiliate” is an unregulated business that is engaged in by a public utility. Lake Region engages in one business and that is the regulated water and sewer business. It does not engage in carrying on any business other than owning and operating a water and sewer system. By statute it has no affiliates.

This does not deter Staff from asserting the contrary. Without further citation of authority, Staff claims that the several entities and the individual identified above are “affiliates” because they “interact” with each other in that the District provides management and operations services to both Lake Region and Ozark Shores; that Lake Region and Ozark Shores have the same officers; that the general manager, John Summers, has provided access to Ozark Shores and District information; and that Lake Region has access to loans made by Altera Bank and Lake Region’s two shareholders.

Because Lake Region may have officers in common with another entity does not make it the custodian of records for that other entity, regulated or not. The District is a political subdivision. It is not a business corporation. Lake Region cannot be commercially affiliated with the District and vice versa. That the District has a contract to provide certain services to a regulated utility does not make it an unregulated affiliate of the utility with which it contracts. That an employee or member of a team under contract to provide operations and management has access to the records of several clients does not mean that they are authorized to disclose records of one pursuant to process served on another. Lake Region is not a parent company to any other entity, regulated or not. Lake Region is not a subsidiary of any other company or enterprise.

In short, Staff seeks information from Lake Region about separate and independent non parties to this matter and is lawfully relegated to other forms of discovery, rather than data requests directed solely to Lake Region, for the information it deems essential for its case.

Moreover, Staff already has in its possession, or in a form available to Staff, material it is now asking Lake Region to produce.

The arguments are largely academic

Staff's Data Request 0027 requests information concerning Ozark Shores' plant in service, accumulated depreciation reserve, revenues and expenses for two calendar years. The Annual Reports filed by Ozark Shores for those years contains this information. Since the information is available from another verifiable source, Staff has no need to request it in this proceeding. The general ledgers for Ozark Shores' were supplied to Staff pursuant to its oral request for that information made to the general manger of Ozark Shores.

Regarding the District's charges to Lake Region for contract services, which seems to be the central subject matter of DR 0023 and DR 0024, Staff has already obtained Lake Region's general ledger, check registers and bank statements. Staff has copies of all time sheets and the payroll allocation spreadsheet which contain the data showing the extent of the District's charges to the Company. The labor contracts between the District and Ozark Shores have been supplied to Staff pursuant an informal request made to the General Manager of the District.

Regarding the loans made by Altera Bank to Lake Region's shareholders or former shareholders, which are the subjects of Data Requests 0064 and 0065, Staff admits that this information or a document meeting the requests was submitted in Lake Region's financing case. (See ¶16 of Staff's bench brief). Staff has no need to request the same documents in this proceeding.

In Data Requests 0028.1 and 0063, Staff has requested debt information concerning Ozark Shores, North Suburban and “affiliates.” Any debt information pertaining to Ozark Shores can be found on file in Ozark Shores’ Annual Report to the Commission. Regarding North Suburban and “affiliates,” Staff explains that it needs this information to “verify that debt is not being taken out at the Lake Region level and then used as equity in the affiliated companies.” (¶21 of Staff’s bench brief) It is worthwhile to note that Lake Region is proposing a capital structure in this case that has **\$1,000,000 less debt** than what Staff and the Commission approved in its rate cases three years ago. It is highly questionable that Staff has any serious concern Lake Region is borrowing money and giving it away.

Staff has multiple lawful discovery devices and information gathering devices available. It is a misuse of the Commission’s data request to demand from a regulated company information that is controlled and in the lawful possession and custody of another independent firm, entity or individual.

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 e-mail on this 9th day of October, 2013, to General Counsel's Office at staffcounsel@psc.mo.gov; and Office of Public Counsel at opcservice@ded.mo.gov.

/s/ Mark W. Comley