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STATE OF MISSOURI

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PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

6

Evidentiary Hearing

7

March 29, 2010

Jefferson City, Missouri

8

Volume 3

9

10 In the Matter of Lake Region                    )  
Water & Sewer Company's                        )  
11 Application to Implement a General    ) File No. SR-2010-0110  
Rate Increase in Water and Sewer        )  
12 Service    )

13 In the Matter of Lake Region Water    )  
& Sewer Company's Application to        )  
14 Implement a General Rate Increase    ) File No. WR-2010-0111  
in Water and Sewer Service                )  
15

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HAROLD STEARLEY, Presiding,  
17 REGULATORY LAW JUDGE

18

ROBERT M. CLAYTON III, Chairman,  
19 KEVIN GUNN,  
ROBERT S. KENNEY  
20 COMMISSIONERS.

21

22 REPORTED BY:

23 KELLENE K. FEDDERSEN, CSR, RPR, CCR  
MIDWEST LITIGATION SERVICES  
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1 P R O C E E D I N G S

2 JUDGE STEARLEY: Good morning. Today is  
3 Monday, March 29th, 2010. The Commission has set this  
4 time for an evidentiary hearing in the matter of Lake  
5 Region Water & Sewer Company's application to implement a  
6 general rate increase in water and sewer service, File  
7 Nos. SR-2010-0110 and WR-2010-0111.

8 My name is Harold Stearley, and I'm the  
9 Regulatory Law Judge that will be presiding over today's  
10 hearing. The court reporter this morning is Kellene  
11 Feddersen. And we will begin by taking entries of  
12 appearance from counsel, starting with Lake Region Water &  
13 Sewer.

14 MR. COMLEY: Thank you, Judge Stearley.  
15 Let the record reflect the entry of appearance of Mark W.  
16 Comley, Newman, Comley & Ruth, PC, 601 Monroe Street,  
17 Jefferson City, Missouri 65101, on behalf of Lake Region  
18 Water & Sewer Company.

19 JUDGE STEARLEY: Thank you, Mr. Comley.  
20 For Four Seasons Lakesites Property Owners Association,  
21 Incorporated.

22 MS. LANGENECKERT: Good morning. Lisa  
23 Langeneckert appearing on behalf of Four Seasons Lakesites  
24 Property Owners Association, law firm of Sandberg,  
25 Phoenix & von Gontard, 515 North 6th Street, St. Louis,

1 Missouri 63101.

2 JUDGE STEARLEY: Thank you,  
3 Ms. Langeneckert.

4 Four Seasons Racket and Country Club  
5 Condominium Property Owners Association, Incorporated has  
6 been excused by order of the Commission at their request.

7 Entry for the Office of Public Counsel.

8 MS. BAKER: Thank you, your Honor.  
9 Christina Baker, P.O. Box 2230, Jefferson City, Missouri  
10 65102, appearing on behalf of the Office of the Public  
11 Counsel and the customers.

12 JUDGE STEARLEY: Thank you very much,  
13 Ms. Baker. The Staff of the Missouri Public Service  
14 Commission.

15 MS. OTT: Thank you, Judge. Let the record  
16 reflect Jaime Ott and Shelley Brueggemann on behalf of  
17 Staff of the Missouri Public Service Commission, P.O.  
18 Box 360, Jefferson City, Missouri 65102.

19 JUDGE STEARLEY: Thank you, Ms. Ott.  
20 Initially I will advise you all to, as we usually do, to  
21 please shut off all Blackberries, cell phones and other  
22 electronic devices. Those devices do have a tendency to  
23 interfere with our recording and webcasting.

24 As far as attendance policies for the  
25 hearings, I know parties here have done a very good job of

1 focussing the issues down to several. However, if there's  
2 a party here that doesn't want to be present for any  
3 certain part of the testimony, that's certainly  
4 acceptable, but if any party is absent from a time at  
5 which someone is giving testimony, the Commission's going  
6 to take that as a sign that you've waived your right to  
7 cross-examination.

8                   Depending on how long the hearing  
9 progresses this week, we will have an agenda session  
10 scheduled for Wednesday, and we will work our hearing  
11 proceedings around that time so the Commissioners and  
12 myself can be present at agenda.

13                   In terms of marking exhibits today as they  
14 are entered, I will have you mark them as, for example,  
15 Staff Exhibit 1, Staff Exhibit 2, et cetera, each party  
16 respectively, Office of the Public Counsel 1, 2, et  
17 cetera, so that they go sequentially by party.

18                   The witness list has been -- that's been  
19 provided to the Commission includes Vernon Stump and John  
20 Summers for Lake Region, Bill Harris, Cary Featherstone  
21 and James Merciel for the Staff of the Public Service  
22 Commission, Ted Robertson for the Office of Public  
23 Counsel, and Nancy Cason for the Property Owners  
24 Association; is that correct?

25                   MS. LANGENECKERT: Yes, Judge.

1 MR. COMLEY: Yes, your Honor.

2 MS. OTT: Yes, Judge.

3 JUDGE STEARLEY: In addition to the  
4 witnesses that we have listed to provide oral testimony, I  
5 have noted that we have prefiled testimony for three  
6 witnesses of Staff, I believe, that were not put on the  
7 list to be testifying witnesses, testimony of Martin  
8 Hummel, James Russo and Bret Prenger; is that correct?

9 MS. OTT: Yes, that's correct.

10 JUDGE STEARLEY: Does Staff intend to offer  
11 that testimony even though they will not be providing oral  
12 testimony?

13 MS. OTT: Yes.

14 JUDGE STEARLEY: Is there any party having  
15 any objection to the offering of those three witnesses'  
16 testimony?

17 MS. LANGENECKERT: Lakesites has no  
18 objection.

19 MR. COMLEY: Neither does the company,  
20 Judge Stearley.

21 MS. BAKER: None from Public Counsel.

22 JUDGE STEARLEY: All right. That included  
23 the direct testimony of Martin Hummel, the direct  
24 testimony of James Russo and the surrebuttal testimony of  
25 Bret Prenger. Staff, I'll have you go ahead and mark

1 those exhibits at this time. Mr. Hummel's testimony can  
2 be Exhibit 1 for Staff, Staff Exhibit 1, Mr. Russo as  
3 Staff Exhibit 2, and Mr. Prenger as Staff Exhibit 3.

4 MS. OTT: Judge, we also have -- there was  
5 attached to Mr. Russo's testimony his rate design. So  
6 would that be 4 or 3?

7 JUDGE STEARLEY: Why don't we make that 3  
8 since that's in association with Mr. Russo's testimony.  
9 Mr. Prenger's would be Staff Exhibit 4. I don't believe  
10 I've heard any objections, then, to the offering and  
11 admission of those exhibits. Very well. They will be  
12 received into evidence without objection.

13 (STAFF EXHIBIT NOS. 1 THROUGH 4 WERE MARKED  
14 AND RECEIVED INTO EVIDENCE.)

15 JUDGE STEARLEY: All right. As the parties  
16 are aware, we have a pending motion before the Commission  
17 that has not yet been ruled on, Lake Region's motion to  
18 strike. Are there any other preliminary matters we need  
19 to address before we take that up?

20 (No response.)

21 JUDGE STEARLEY: Well, hearing none, we  
22 will take up that motion.

23 MS. BAKER: Your Honor, I guess I do have  
24 one question about the customer comment cards. Public  
25 Counsel would like to enter those in as exhibits as well.

1 Do you want to do that now or at the end of the procedure?

2 JUDGE STEARLEY: Why don't we take that up,  
3 say, before opening statements but after this motion.

4 MS. BAKER: Thank you.

5 JUDGE STEARLEY: At that time, too, we  
6 could take up a couple other exhibits as housekeeping  
7 matters at this time. We can go ahead and get the items  
8 admitted that are not being disputed.

9 Mr. Comley, your motion for Lake Region is  
10 pending, so I will allow you to go first in your argument.

11 MR. COMLEY: I don't -- I don't want to  
12 belabor the points that are set out in the motion to  
13 strike for the Commission, but I think the highlights of  
14 that motion, Judge, are that testimony has been submitted  
15 on a prefiled basis that addresses an issue that we have  
16 contended throughout this proceeding as being beyond the  
17 regulatory jurisdiction of the Commission.

18 Some of the testimony indicates that there  
19 are at least two cases that we know of in which the  
20 Commission has taken up the issue, has determined on its  
21 own that availability fees that are charged for available  
22 infrastructure for water and sewer, or perhaps even  
23 availability fees for other types of utilities, whether  
24 they be gas, electric or telephone, are beyond the  
25 regulatory capacity of this body.



1                   The contention has been, and I think agreed  
2   to by a number of Staff people, that the availability of a  
3   water or sewer pipe would not constitute a utility service  
4   under the statute, and I think that's the critical  
5   definition. If it does not constitute a service, how then  
6   could it be lawfully tariffed?

7                   Several witnesses identified in the motion  
8   to strike have raised this issue as something the  
9   Commission should consider. The testimony is identified,  
10   and we would propose that it be stricken from the record,  
11   that the issues in this case be tailored today to strictly  
12   the management fee and expenses issue that is developed  
13   between the parties.

14                   Thank you.

15                   JUDGE STEARLEY: All right. Thank you,  
16   Mr. Comley.

17                   Staff, give you a chance for your argument  
18   next. I'll follow with Public Counsel and the Property  
19   Owners Association.

20                   MS. OTT: Thank you, Judge. First I would  
21   like to address the point that Mr. Comley brought up on  
22   the other cases that are mentioned in his motion to strike  
23   that are -- they're not on point. The central issue in  
24   both of those cases, which I believe he's referring to  
25   Central Jefferson and Big Island, were not on availability

1 fees. One was a pro se customer complaint trying to find  
2 out whether or not their service provider should be  
3 regulated by the Public Service Commission. The other one  
4 was a transfer of assets case.

5 Furthermore, this is administrative law.  
6 Previous cases brought before the Commission are not  
7 binding on one another.

8 Commissioners, I request that you deny Lake  
9 Region's motion to strike testimony regarding availability  
10 fees. The testimony regarding availability fees is both  
11 relevant and material to this case. A charge to a  
12 prospective customer to reserve availability of drinking  
13 water and wastewater service provided by a regulated  
14 utility is within the Commission's jurisdiction under  
15 statutory Section 386.250 subsection 3 and 4.

16 Availability fees for water and wastewater  
17 are inextricably tied to the utility and its water or  
18 sewer lines. If the lines or infrastructure did not  
19 exist, there would be no water or sewer available to  
20 provide. It is inherent in nature that availability fees  
21 are paid so customers can reserve capacity on Lake  
22 Region's water and sewer system and one day be able to run  
23 water to their homes or flush their toilet if necessary.  
24 Lot owners would not be paying these availability fees if  
25 there was not a utility system in which they could hook up

1 to when they build their home.

2                   Section 393.610 mandates that Chapter 386  
3 where the definition of service and water and sewer  
4 service shall be liberally construed with a view to the  
5 public welfare so there is substantial justice between  
6 patrons and public utilities. It's in the public interest  
7 for the Commission to hear the issue of availability fees.

8                   Furthermore, Section 386.140 sub 12 states,  
9 water and sewer corporations engaged in other business is  
10 not otherwise subject to jurisdiction under this  
11 Commission if it is conducted, that their operations are  
12 kept substantially apart and separate from owning,  
13 operating, managing or controlling the water and sewer  
14 system.

15                   That has not happened here. Here Lake  
16 Utility Availability, the company charging these  
17 availability fees, shares the same billing, ownership,  
18 office space, telephone numbers as Lake Region. They are  
19 not kept substantially apart and separated from the  
20 ownership, management and control of Lake Region. The  
21 Commission should deny Lake Region's motion to strike  
22 because the issue is material and relevant to this case.

23                   And as for Mr. Comley and Lake Region's  
24 assertion that Staff's testimony was inappropriately filed  
25 in the matter, that is just plain wrong. Staff witness

1 James Merciel's testimony was appropriately responsive to  
2 Ted Robertson's direct testimony. Mr. Robertson brought  
3 the issue of availability fees to light in his direct  
4 case. Commission rules specifically state that you do not  
5 have to file direct testimony to file rebuttal on a  
6 specific issue.

7                   While Staff did not address availability  
8 fees in its direct case, Public Counsel did. That does  
9 not bar Staff from responding to Public Counsel's direct  
10 case in rebuttal. Rebuttal was the logical and  
11 appropriate time for Staff to respond to the issue  
12 addressed by another party in direct.

13                   Now, Mr. Merciel's rebuttal testimony did  
14 not provide an exact accounting adjustment, but he did  
15 provide an estimated amount of revenue derived from  
16 availability fees.

17                   The fact of the matter is, Staff still does  
18 not have an exact number to put into its case because the  
19 company is claiming ignorance and has failed to respond to  
20 the Data Request. Lake Region and Lake Utility  
21 Availability share the same owners. They also share the  
22 same office space and employees. It is nearly impossible  
23 to believe that Lake Region does not know anything about  
24 availability fees or have access to obtaining the  
25 information. Again, it is all the same people that are --

1 and people paying the availability fees are the owners of  
2 property within Lake Region's system.

3 Furthermore, Lake Region has also filed  
4 rebuttal and surrebuttal testimony on the issue of  
5 available fees, and it's conveniently not sought to strike  
6 its own witness rebuttal and surrebuttal testimony on  
7 availability fees.

8 Here, Lake Region is clearly trying to  
9 circumvent Commission regulation. It has transferred the  
10 availability fee assets from the utility without the  
11 Commission authority, which is a requirement of  
12 Section 393.190 sub 1. It is obvious that Lake Region  
13 doesn't want the Commission to hear this issue because it  
14 never sought your approval to alienate a major asset of  
15 its company.

16 Here, Staff asks you to deny Lake Region's  
17 motion to strike testimony on availability fees as it is  
18 relevant and material to this case.

19 Thank you.

20 JUDGE STEARLEY: Thank you, Ms. Ott. And I  
21 hadn't mentioned earlier, Commissioners, that it was my  
22 thought to let the parties offer their arguments first.  
23 At the conclusion of all four parties offering the  
24 arguments, I was going to allow the Commissioners to  
25 direct questions to the counsel, and I also have questions

1 to direct to counsel as well. I thought that might be the  
2 most expeditious.

3 All right. Office of Public Counsel.

4 MS. BAKER: Thank you, your Honor.

5 Standby and availability charges are fees  
6 which are exacted for the benefit which accrues to  
7 property by the virtue of having water available to it  
8 even though the water might not actually be used at the  
9 present time. Availability fees are used to repay the  
10 utility's cost of plant and infrastructure which by design  
11 requirements must be made available.

12 Where a statute is reasonably open to  
13 construction, the Public Service Commission has the power  
14 to determine administratively its own jurisdiction. The  
15 definition of service in RSMo 386.020.37 can reasonably be  
16 seen to include availability charges. The definition of  
17 service includes accommodations afforded customers or  
18 patrons and includes providing a product or a commodity.

19 Lake Region provides a costly commodity,  
20 water availability, through the utility's plant and  
21 infrastructure for which the lot owners are required to  
22 pay. The lot owners gain an increase in their property  
23 values because there is an availability of water and sewer  
24 that is there and ready for them to take when they choose.

25 The power of the Public Service Commission

1 to classify is not limited just to the service of the  
2 utility rendered, but also has the power to determine the  
3 classification of the service that is rendered as well.

4                   Basically, the actions of the utility  
5 owners are a detriment to both the utility and the utility  
6 customers. It makes no difference that the availability  
7 charge contract is with the owners of the utility, the  
8 availability charge is a charge for service provided by  
9 the utility.

10                   The utility owners should not be allowed to  
11 contract themselves out of -- themselves and the utility  
12 out of Public Service Commission regulation. Contracts  
13 cannot limit regulation by the Public Service Commission.

14                   Utility rates which do not take into  
15 account that a portion of the utility plant and  
16 infrastructure is being paid through an availability  
17 charge is not just and reasonable. The owners of the  
18 utility should not be allowed to siphon money meant for  
19 the utility away from the utility and then expect that  
20 money to be collected a second time through rates and  
21 through their customers.

22                   Therefore, the Office of the Public Counsel  
23 requests that the Commission deny Lake Region's motion to  
24 strike and allow the parties to present testimony  
25 regarding the availability fee and its effect on the

1 utility and the utility customers.

2 Thank you.

3 JUDGE STEARLEY: Thank you, Ms. Baker. For  
4 Lakesites Property Owners Association.

5 MS. LANGENECKERT: Thank you, Judge.

6 I believe that Ms. Ott and Ms. Baker  
7 covered much of the law very well. I want to speak  
8 directly to the Lake Region Water & Sewer argument to keep  
9 Ms. Cason's testimony out because she only filed  
10 surrebuttal testimony.

11 Lake Region takes Ms. Cason to task for her  
12 lack of rejection or disagreement with other parties'  
13 testimony in her surrebuttal filing. 4 CSR 240-2.130.70  
14 states that surrebuttal testimony shall be limited to  
15 material which is responsive to matters raised in another  
16 party's rebuttal testimony.

17 Of course, when we're trying to figure out  
18 the meaning of words we go to the dictionary. Merriam  
19 Webster Online defines responsive as giving response, and  
20 response -- I love it when they use the word you're trying  
21 to define in defining the word. Response is something  
22 constituting a reply or a reaction.

23 In Ms. Cason's testimony, she states that  
24 the purpose of her testimony is to respond to rebuttal  
25 testimony of Staff witness Merciel and to present the Four



1 Seasons Lakesites Property Owners Association position  
2 regarding water and sewer utility availability charge  
3 discussed in his testimony.

4 Ms. Cason does not hold herself out as an  
5 expert witness in water and sewer matters. She wanted to  
6 ensure that the concerns of the residents of Porto Cima, a  
7 Shawnee Bend subdivision with over 1,600 lots, were  
8 included in the record. She wanted to provide the  
9 Commission with those customers' understanding of the  
10 purpose and understood recipient of availability charges  
11 that have been placed for over 15 years to the tune of  
12 millions of dollars.

13 The PSC rules are to be liberally construed  
14 as noted by both Ms. Ott and Ms. Baker. The Commission  
15 has traditionally been willing to err on the side of  
16 allowing evidence into the record versus keeping it out so  
17 that it can base its decision on the broadest information.  
18 People are allowed to intervene for good cause even on the  
19 day of the hearing. If a party needs to respond to  
20 something, they can certainly file supplemental testimony  
21 or do it from the stand.

22 As noted in Staff's response to Lake  
23 Region's motion to strike, it's curious that Lake Region  
24 wants to strike all prefiled testimony relating to  
25 availability charges but its own. It is incumbent upon



1 may come a little bit random, but Ms. Ott mentioned that  
2 the Staff has not received information from the company,  
3 and I can't remember exact words, but apparently she  
4 claims that we have refused to give her information,  
5 refused to give Staff information it needs.

6                   The issue is that Data Requests were  
7 submitted by the Staff, and they were vehemently objected  
8 to, and those objections have never been overruled. The  
9 company can't be faulted for validly objecting to Data  
10 Requests concerning this issue and the Staff not going  
11 forward with alternate discovery devices to find the  
12 information it needs.

13                   The fact that the information in  
14 Mr. Featherstone's surrebuttal, which I've objected to,  
15 may be inaccurate and unverifiable is not because of the  
16 company. The company did the right thing with the  
17 procedures of the Commission, objected. Those objections  
18 were not followed through with the Commission. They are  
19 not overruled, and that's where the information lies.

20                   If the Commission should decide to strike  
21 the testimony that's set forth in our motion, that would  
22 mean to the company that it wouldn't need to offer into  
23 evidence today the testimony it has responded to the issue  
24 with, primarily Mr. Summers' testimony. The fact that it  
25 hasn't been in the motion to strike doesn't mean that we

1 agree that it's relevant. It's just that we may not offer  
2 that, depending upon the Commission's decision today.

3                   However, if the Commission decides to allow  
4 this evidence to come in, we would offer it under a  
5 conditional relevance that we do not believe it's  
6 admissible, but there is no choice but to go ahead with  
7 what the Commission has decided.

8                   With respect to the surrebuttal of  
9 Mr. Featherstone, Ms. Ott went through a great deal of  
10 litany about the way in which the issue had been raised.  
11 The chief complaint with Mr. Featherstone's testimony is  
12 that a revenue adjustment is being made in his testimony  
13 that should have been part of his direct testimony. His  
14 surrebuttal does not necessarily act as surrebuttal. It  
15 is a continuation of his direct, and therefore, it is  
16 inadmissible under the rules of the Commission as well.

17                   Ms. Ott also raised the question of whether  
18 or not the availability revenue stream was an asset or  
19 part of the -- I think the statute talks about part of the  
20 works or system of Lake Region Water & Sewer Company. I  
21 don't think it is any way possible that a revenue stream  
22 from an unregulated entity is a -- unregulated enterprise  
23 is an asset or a part of the works or system of the  
24 utility. The works or system of the utility is still in  
25 place. They still operate it. It's still being operated

1 and maintained.

2                   On that score, there is some difference of  
3 opinion about what the reason for availability fees might  
4 be. For a recreational area like the Lake of the Ozarks  
5 and the Four Seasons area, the developer's intention was  
6 to make sure that the investment made in getting that  
7 plant into the ground was recoverable. Even -- it had to  
8 be recovered. What was not recovered in rates had to be  
9 recovered by the developer, and that was the purpose of  
10 it.

11                   In the development that's still there, it's  
12 perfectly reasonable the developer would want to do that.  
13 It's perfectly reasonable for the developer to figure out  
14 a way of trading those rights to availability fees as  
15 well, and that is what's happened here. The shareholders  
16 of this company have acquired the rights of those  
17 availability fees. There is no management of those fees  
18 by anything in the utility. The utility offers service.  
19 The availability fee is separate and distinct and  
20 discrete.

21                   The parties have made a point in their  
22 testimony of saying that these may be related to utility  
23 infrastructure construction, they may be payable to the  
24 company, and they may at some time have been payable to  
25 the company. It may be that the Staff and the Office of

1 Public Counsel believe they're unreasonable, they  
2 shouldn't be -- they shouldn't be part of the developer's  
3 development or in the deed restrictions.

4 But all these things still beg the issue of  
5 whether or not the Commission can exert jurisdiction over  
6 them, and again, that's the central point of our motion to  
7 strike. The issue is not a topic subject to Commission  
8 jurisdiction.

9 JUDGE STEARLEY: Thank you, Mr. Comley.  
10 Before I --

11 MS. OTT: Judge, may Staff respond to the  
12 comments by Mr. Comley?

13 JUDGE STEARLEY: Ms. Ott, I think we've  
14 given a chance for argument and initial rebuttal. The  
15 Commission's going to engage in a series of questions.  
16 Staff, Public Counsel, Property Owners Association and  
17 Lake Region are all going to have a chance to fully flesh  
18 this out. I think by the end of this, you'll have plenty  
19 of chance. We can even allow people to give summary  
20 arguments as well.

21 Before I open this up to the Commission for  
22 questions, and myself, I'd like the parties to all  
23 approach. As Lake Region and Staff know, we had a  
24 discovery conference in this matter regarding this  
25 disputed Discovery Request back on February 23rd. This

1 document was provided to me by Staff as information, for  
2 background leading up to that discovery dispute. Does  
3 that all look familiar to you?

4 This is, in fact, the Secretary of State  
5 filing of the registration of the fictitious name of Lake  
6 Utility Availability 1, which is the separate corporate  
7 entity that we're talking about with regards to this  
8 dispute that's collecting the availability fees; is that  
9 correct?

10 MR. COMLEY: I would say it's not a  
11 corporate entity. It is a business name for two  
12 individuals. I would say it's a convenience for purposes  
13 of having a byline for purposes of the collection.

14 JUDGE STEARLEY: That's correct,  
15 Mr. Comley. You can all be seated now. I just want to  
16 make sure no one's actually disputing the contents of this  
17 document. And that's the first point I wanted to make is  
18 just so we all understand and have in the record clearly,  
19 the business entity that we're speaking about is RSP  
20 Properties, LP and Sally Stump, doing business as Lake  
21 Utility Availability 1; is that correct?

22 MR. COMLEY: If you said RPS Properties,  
23 LP?

24 JUDGE STEARLEY: Yes, and Sally Stump,  
25 doing business as Lake Utility Availability 1. Just want





1 arguments, and I -- I'll get to your first point in a  
2 second, but relevance arguments are really much more  
3 important when you're talking about, say, a jury trial  
4 than they are for this type of proceeding. Would you  
5 agree with that?

6 MR. COMLEY: I might take a step back and  
7 say, no, that's not true. I think you should not waste  
8 your time with things that are legally irrelevant before  
9 you.

10 COMMISSIONER GUNN: Granted. But we have  
11 the ability to -- we see -- the testimony's been filed in  
12 the case, and we have the ability to in our final Report  
13 and Order either rely on the testimony or disregard the  
14 testimony based on what the Bench decides is relevant or  
15 irrelevant.

16 So let's -- if we take out the wasting time  
17 issue, we have some ability to determine whether or not --  
18 a much better ability to determine whether something is  
19 relevant than, say, a lay jury?

20 MR. COMLEY: Oh, I think that your  
21 experience with regulatory matters does make you in a  
22 better position than a lay jury to make decisions about  
23 what would be probative of certain facts.

24 At the same time, the issue would be are  
25 these facts which you have jurisdiction to issue, to

1 listen to?

2 COMMISSIONER GUNN: Now, from the  
3 availability fees, they were originally assessed by the  
4 developer, correct?

5 MR. COMLEY: Yes, that's correct.

6 COMMISSIONER GUNN: And the developer most  
7 likely used that to recover his investment in the initial  
8 setup of the -- of the system, correct? Maybe -- I mean,  
9 I don't know. Maybe I'm speculating.

10 MR. COMLEY: I think the evidence is that  
11 not only has the developer done that, the developer  
12 continues to accept availability fees.

13 COMMISSIONER GUNN: But has he assigned  
14 that to the utility?

15 MR. COMLEY: There has been an assignment  
16 at the same time as a consequence of a lawsuit between the  
17 developer. Maybe -- hold on a minute.

18 COMMISSIONER GUNN: That's kind of where  
19 I'm trying to figure out. I know there's a lawsuit, and  
20 I'm just trying to figure out how this all kind of  
21 interacts. Everyone can weigh in on this after I finish  
22 some of these questions.

23 MR. COMLEY: Mr. Summers has indicated that  
24 the history of the availability fees in the area was  
25 described in Data Request 44.1, which I think is referred

1 to in Ted Robertson's testimony.

2 But there was a lawsuit. The developer and  
3 the parties in that lawsuit decided that the developer  
4 would continue to receive part of the availability fee  
5 revenue. So it's Ms. Stump, RPS Properties and the  
6 developer that receive that revenue.

7 COMMISSIONER GUNN: And according to the  
8 Secretary of State, Stump and RPS Properties is now Lake  
9 Utility?

10 MR. COMLEY: Lake Utility. They call that  
11 as a business name.

12 COMMISSIONER GUNN: So it's a revenue  
13 stream for Lake Utility?

14 MR. COMLEY: And the developer. Both of  
15 them do have rights to the availability fees.

16 COMMISSIONER GUNN: Right. But since we're  
17 just talking -- since we may not regulate the developer,  
18 the utility is getting a revenue stream from the  
19 availability fee?

20 MR. COMLEY: The utility is not getting a  
21 revenue stream. The shareholders of the utility are.

22 COMMISSIONER GUNN: So the shareholders are  
23 receiving a benefit from -- the shareholders of the  
24 utility are receiving a benefit from the availability  
25 fees?

1                   MR. COMLEY: I think they receive -- they  
2 receive the availability fees, yes. How much that cost  
3 them, I don't know.

4                   COMMISSIONER GUNN: But they receive the  
5 availability fees because they are shareholders of the  
6 utility? By right of being a shareholder to the utility,  
7 they are receiving these availability fees?

8                   MR. COMLEY: I don't think that's correct,  
9 Judge. I think they acquired them through negotiations  
10 with the developer.

11                  COMMISSIONER GUNN: As the utility?

12                  MR. COMLEY: As individuals.

13                  COMMISSIONER GUNN: So you're saying that  
14 the fact that they are shareholders has zero -- of the  
15 utility has zero relationship to their ability to receive  
16 these fees?

17                  MR. COMLEY: I can't speak for their  
18 motivations. They are not parties, and --

19                  COMMISSIONER GUNN: But do they have rights  
20 to availability fees because they are shareholders or in  
21 spite of the fact that they are shareholders?

22                  MR. COMLEY: They -- they are  
23 representative of assignees, and that is their  
24 classification. I don't think -- shareholdership did not  
25 play into the fact that they were entitled to or not

1 entitled to receive them.

2 COMMISSIONER GUNN: Let me ask it this way.

3 If I tomorrow bought shares in the utility, would I be

4 entitled to availability fees?

5 MR. COMLEY: No.

6 COMMISSIONER GUNN: From the mere fact of

7 being a shareholder grants me no rights to the

8 availability fees whatsoever?

9 MR. COMLEY: No.

10 COMMISSIONER GUNN: Okay. I'm -- so are

11 they -- so they're not collecting them as -- they're

12 collecting them as individuals. Is the utility an

13 assignee or is the shareholder the assignee?

14 MR. COMLEY: The shareholder would be the

15 assignee. Each one is an assignee.

16 COMMISSIONER GUNN: Individually or --

17 MR. COMLEY: Yes. Well, the assignment is

18 to both of them.

19 COMMISSIONER GUNN: As Stump and RPS?

20 MR. COMLEY: I think the assignment went

21 originally to Mr. Robert Schwermann and to Ms. Stump

22 individually, and I think Mr. Schwermann has since

23 conveyed his interest to the family limited partnership,

24 RPS Properties.

25 COMMISSIONER GUNN: Okay. But they're

1 still as -- even though collectively they are shareholders  
2 of Lake Utility, they are individually -- individually  
3 been assigned through whatever stream that it took as the  
4 assignees?

5 MR. COMLEY: That's my understanding.

6 COMMISSIONER GUNN: How are the -- how are  
7 the -- how are the people -- I'm sorry. Is there a  
8 clarification?

9 MR. COMLEY: The form of assignment, I  
10 think, has been disclosed to the parties, and it would be  
11 available.

12 COMMISSIONER GUNN: Sure. I apologize  
13 if -- and I understand there's evidence on this. I'm just  
14 trying to clarify. How are the -- how are the  
15 availability fees billed? Who bills -- who do they get a  
16 bill from?

17 MR. COMLEY: They get a bill from Lake  
18 Utility Availability.

19 COMMISSIONER GUNN: Why would they get a  
20 bill from Lake Utility if Lake Utility has no right or  
21 interest in the availability fees?

22 MR. COMLEY: Lake Region Water & Sewer does  
23 not bill for those. Lake Utility bills for those.

24 COMMISSIONER GUNN: Which is not the  
25 regulated utility?

1 MR. COMLEY: Yes, sir, that's correct.

2 COMMISSIONER GUNN: Even though they call  
3 themselves utility?

4 MR. COMLEY: Right.

5 COMMISSIONER GUNN: All right. I will  
6 now -- thank you very much. That's actually very helpful.  
7 I will now allow if any of the other parties want to  
8 clarify my questions or respond to my questions, I will  
9 give everybody an opportunity. Staff.

10 MS. OTT: Commissioner Gunn, first what I'm  
11 going to say is probably highly confidential, so we  
12 probably need to go in-camera.

13 JUDGE STEARLEY: All right.

14 MS. OTT: And this is first to address the  
15 assignment of availability fees.

16 JUDGE STEARLEY: Would you please hold.

17 MS. OTT: Sorry. Judge?

18 JUDGE STEARLEY: We are muted. You may  
19 proceed now.

20 MS. OTT: Lake Region has decided that it  
21 does not need to be highly confidential. I apologize for  
22 that.

23 JUDGE STEARLEY: Nothing to apologize for.  
24 I'd rather be cautious than have something go out on the  
25 web.

1 MS. OTT: So Commissioner Gunn, your  
2 question about the assignment of availability fees, there  
3 is a contract in which the company has provided Staff when  
4 Ms. Stump and RPS Properties or Mr. Schwermann acquired  
5 the availability fees, but the contract also says, and  
6 Lake Region Water & Sewer Company, and that contract was  
7 dated September 10th, 2004.

8 When they purchased Lake Region, they also  
9 purchased the availability fees along with it, and the  
10 contract states that it was for a dollar. We all know  
11 that a dollar is to show that there's some form of valid  
12 consideration. However, they were a together deal if you  
13 look at the contract.

14 COMMISSIONER KENNEY: Where is that  
15 document? I've seen it.

16 MS. OTT: It is filed in Jim Merciel's  
17 rebuttal -- or surrebuttal testimony, and it should be  
18 Attachment 1, and Staff had marked that highly  
19 confidential.

20 COMMISSIONER KENNEY: It's titled Contract  
21 Regarding Availability Fees?

22 MS. OTT: Correct.

23 COMMISSIONER GUNN: So the regulated entity  
24 is a party to that contract?

25 MS. OTT: Yes. Staff believes when Lake



1 Region originally came in for their certificate of  
2 convenience and necessity in 1995, they were charging the  
3 availability fees, as shown in Jim Merciel's rebuttal  
4 testimony. He has a bill, and I believe it is  
5 Attachment 7, and --

6 JUDGE STEARLEY: Counsel, I'm going to  
7 interrupt you just for a moment. It's fine, and I intend  
8 also to refer to some of the prefiled testimony and  
9 exhibits in this case for purposes of these arguments, but  
10 I'm making clear in the record, none of these have been  
11 formally offered into evidence yet and none of them have  
12 been received into evidence yet.

13 So for purposes of argument in fleshing out  
14 this discussion, this is fine, but I'm making clear that  
15 none of this information has been accepted into the record  
16 at this time.

17 COMMISSIONER GUNN: Right. And I want to  
18 be clear that my -- my questions are not about whether or  
19 not they're appropriate or whether they're appropriately  
20 recovered. I'm merely trying to get to both the  
21 jurisdictional -- I'm trying to get to the jurisdictional  
22 issue as well as the relevance.

23 MS. OTT: So as I was saying before, the  
24 company used to bill these availability fees, and that was  
25 when they came in for their certificate of convenience and

1 necessity. And at some point from 1995 when we have a  
2 bill showing that they billed for them and today, the  
3 first time Lake Region has come in for a rate case and has  
4 been subject to a complete audit by the Commission Staff,  
5 they transferred the assets to this fictitious name  
6 registration so the shareholders could collect the money  
7 themselves versus being put into the revenue of the  
8 company.

9                   We are not aware of when that exactly  
10 happened. I mean, we can kind of tell maybe from when  
11 they registered the fictitious name with the Secretary of  
12 State, but there has been no evidence of exactly when that  
13 happened. That was done without you guys' authority,  
14 which is a requirement per the statute that they come in  
15 and seek your permission to transfer an asset that is so  
16 key to their revenue stream.

17                   Also, no -- you have the authority to waive  
18 your own rules for good cause. Here, no party has been  
19 harmed, delayed or prejudiced by the raising of the issue  
20 of availability fees, and it should be heard by you today  
21 because it is relevant and material.

22                   Everyone has known about this since  
23 January 14th when direct testimony was filed. We believe  
24 that it should continue to go forward today. And if  
25 anybody had a problem with Mr. Featherstone's testimony,

1 they can respond to it today. Since surrebuttal when he  
2 filed it, Staff has not had any inquiry about  
3 Mr. Featherstone's adjustment that he made to his revenue  
4 requirement, and if they have questions about that with  
5 Mr. Featherstone, they can address it today.

6 COMMISSIONER GUNN: Thank you. I  
7 appreciate it very much.

8 Public Counsel, any response over and above  
9 that?

10 MS. BAKER: I mean, our response is again  
11 that basically the issue that we see is that there is an  
12 attempt somehow sometime to contract themselves and the  
13 availability fees away from the jurisdiction of the  
14 Commission and away from the customers getting their  
15 credits in their rates, and so we believe that that is an  
16 unjust situation.

17 And the Commission certainly has the  
18 ability to determine its own jurisdiction, and its major,  
19 major cause is to protect the utility and to protect the  
20 customers. And Public Counsel sees that moving a revenue  
21 stream away from the utility who is the entity who  
22 provides the service for which there is an availability  
23 fee is an illogical thing to say that now the Commission  
24 doesn't have jurisdiction because we've put it in someone  
25 else's name.

1 COMMISSIONER GUNN: Okay.

2 MS. LANGENECKERT: Yes, Commissioner. One  
3 point I want to add, it was mentioned that Lake Utility  
4 Availability and Lake Region Water & Sewer have the same  
5 P.O. box, the same phone number, the same billing system,  
6 the same shareholders. What wasn't mentioned was that  
7 apparently the monies for both bill payments go into the  
8 same exact bank account.

9 So in order to say that they are separate,  
10 they -- and they don't know how much is in there for the  
11 availability in their response to Data Request, they  
12 pretty much have to say they don't know how much money  
13 they're bringing in themselves because you can obviously  
14 subtract one from the other and get the result.

15 COMMISSIONER GUNN: Same bank account?

16 MR. COMLEY: No, they are not in the same  
17 bank account.

18 COMMISSIONER GUNN: Were they in the same  
19 bank account at any time?

20 MR. COMLEY: No.

21 MS. LANGENECKERT: That's a response to a  
22 Data Request, the same bank account for ease and not  
23 having to set up a separate one.

24 MR. COMLEY: I'd like to see it. I think  
25 they're management fees.

1                   COMMISSIONER KENNEY: Do you have that Data  
2 Request?

3                   COMMISSIONER GUNN: Well, let me ask this  
4 general question to the company. What harm is there in us  
5 making the jurisdictional question at the end of the  
6 testimony, at the end of the hearing rather than prior?  
7 You'll get a chance to respond, you'll be able to file  
8 testimony, and we will be able to kind of with evidence  
9 entered into the record make this determination.

10                   Is there any real harm in -- it's my time  
11 to waste if I so chose to, but is there any real harm to  
12 the company in dealing with this issue through the hearing  
13 process and making the determination whether we have  
14 jurisdiction at the end of the hearing?

15                   MR. COMLEY: I'm kind of at a -- tightrope  
16 walking there. There's harm in connection with paying me  
17 to be here during these two days of hearing, which is sort  
18 of a bittersweet kind of idea.

19                   My response would be, the Commission's  
20 going to have to measure what prejudice would be to its  
21 administrative resources to have the hearing continued and  
22 to consider an issue which our contention is it's beyond  
23 your review power. At the same time, I know that the  
24 Commission makes decisions regularly about considering  
25 evidence in the record and making decisions later about

1 its admissibility. Our preference would be that you make  
2 the decision now. That would give us guidance on what  
3 testimony to supply today and also how we would move our  
4 own evidence into the record.

5 MS. BAKER: Commissioner, if I may? Quite  
6 frankly, this is an issue that was brought up by the  
7 customers at the local public hearing. This is an issue  
8 that is very important to the customers. The customers  
9 are the ones who are going to be paying the rates that  
10 come out of this case. They brought up the issue. They  
11 want it to be heard.

12 I don't think the customers would have any  
13 problem paying a just and reasonable price for Mr. Comley  
14 to be here so that we could get this issue taken care of.

15 COMMISSIONER GUNN: Thank you.

16 MR. COMLEY: I'm going to raise my rates.

17 COMMISSIONER GUNN: We'll make sure to  
18 bring that up at the next local public hearing. I don't  
19 have anything further. I know Commissioner Kenney is  
20 going to have some questions, but thank you very much.

21 COMMISSIONER KENNEY: Good morning. Let me  
22 be -- RPS is the family partnership?

23 MR. COMLEY: Yes, your Honor. Yes,  
24 Commissioner.

25 COMMISSIONER KENNEY: RPS and Sally Stump

1 registered a fictitious name?

2 MR. COMLEY: Right.

3 COMMISSIONER KENNEY: They are also the  
4 shareholders of the utility?

5 MR. COMLEY: Exactly.

6 COMMISSIONER KENNEY: The utility is Lake  
7 Region, that's the regulated entity?

8 MR. COMLEY: Exactly.

9 COMMISSIONER KENNEY: Lake Utility  
10 Availability is a fictitious name, and I think as you  
11 correctly pointed out, it's not a corporate entity like an  
12 LLC or a corporation, correct?

13 MR. COMLEY: That's correct.

14 COMMISSIONER KENNEY: So then the  
15 fictitious name doesn't get the benefit of any corporate  
16 protections or any tax treatment. It's just a way to do  
17 business with a specific name that the parties decide to  
18 use, right?

19 MR. COMLEY: I think that's the intention  
20 behind that.

21 COMMISSIONER KENNEY: So for purposes of  
22 any type of civil litigation, would I sue the fictitious  
23 name or would I sue the two individual owners of the  
24 fictitious name?

25 MR. COMLEY: Oh, I think going back to some

1 Hornbook, I think what I'd probably do is sue both of them  
2 in their individual names d/b/a Lake Utility Availability.

3 COMMISSIONER KENNEY: So who would be the  
4 defendants in your answer to my hypothetical?

5 MR. COMLEY: I think both would be  
6 defendants.

7 COMMISSIONER KENNEY: RPS and --

8 MR. COMLEY: Ms. Stump.

9 COMMISSIONER KENNEY: -- and Ms. Stump.

10 Now, if RPS and Ms. Stump are the proper  
11 named defendants in that hypothetical and they also happen  
12 to be the shareholders of the regulated entity, do we not  
13 then gain jurisdiction over them by virtue of their dual  
14 role, in their dual nature?

15 MR. COMLEY: I think you gain jurisdiction  
16 over the company that's in front of you. It is a party to  
17 this case. I don't think the Commission has ever ruled,  
18 and I think it would be hard to rule, that the  
19 shareholders of a utility are automatically parties of a  
20 rate case. That would involve a great many other  
21 shareholders, financial or otherwise, institutional  
22 shareholders.

23 COMMISSIONER KENNEY: Well, I agree with  
24 you. Not automatically. Not automatically.

25 Well, let me -- let me move on to the next



1 question, then. Did the utility, the regulated entity at  
2 one point in time when the deal was first consummated, did  
3 the utility charge the availability fees?

4 MR. COMLEY: For every -- my understanding  
5 is that from every -- for everything built prior to 1998,  
6 Lake Region Water & Sewer Company did bill availability  
7 fees, and that was for donated plant.

8 COMMISSIONER KENNEY: That was for donated  
9 plant?

10 MR. COMLEY: All the plant was donated.

11 COMMISSIONER KENNEY: By the developer?

12 MR. COMLEY: By the developer. The  
13 developer retained the right to charge availability fees  
14 for anything that was built after 1998.

15 COMMISSIONER KENNEY: So the developer  
16 charged the availability fees to recoup his investment  
17 that he's donated?

18 MR. COMLEY: That's our understanding.

19 COMMISSIONER KENNEY: How was that donated  
20 plant treated by the utility?

21 MR. COMLEY: It is zero on the books.

22 COMMISSIONER KENNEY: Is it --

23 MR. COMLEY: I think Mr. Merciel might be  
24 able to verify this as well. It is approximately  
25 \$5.3 million of contribution in aid of construction.

1                   COMMISSIONER KENNEY: So it was treated as  
2 contribution in aid of construction?

3                   MR. COMLEY: Exactly.

4                   COMMISSIONER KENNEY: Which has what effect  
5 on rate base?

6                   MR. COMLEY: It's zero. It will -- it  
7 effectively would -- since there's no company investment  
8 in the plant --

9                   COMMISSIONER KENNEY: You don't get to  
10 include that in rate base?

11                  MR. COMLEY: Exactly. Which indirectly  
12 would be a credit for the customer. They don't have to  
13 pay for that plant.

14                  COMMISSIONER KENNEY: Right. So when the  
15 fictitious name was created, when was that?

16                  MR. COMLEY: I think it was first created  
17 by previous owners of Lake Region, the Childs. Excuse me.  
18 Roy and Sandy Slates. That was the first registration.

19                  COMMISSIONER KENNEY: The current  
20 fictitious name that we're dealing with owned by RPS and  
21 Sally Stump, when was that created?

22                  MR. COMLEY: 2004.

23                  COMMISSIONER KENNEY: Prior to that, it was  
24 the utility that was billing the availability fees? What  
25 I'm getting at, does your jurisdictional argument turn on

1 the nature of the availability fees or who was actually  
2 billing them? Do you understand my distinction?

3 Mr. COMLEY: Yes. I think -- I think the  
4 jurisdictional argument turns on whether availability fees  
5 are within your jurisdiction. It doesn't turn on who was  
6 billing them.

7 COMMISSIONER KENNEY: So if the regulated  
8 utility was billing them as a means of recouping the  
9 developer's donated plant, all right, it wouldn't have  
10 been regulated by us at that point either?

11 MR. COMLEY: No. I don't think you can  
12 regulate something that you have no authority to regulate.

13 COMMISSIONER KENNEY: Okay. So the answer  
14 to my question then, I think you said this, I just want to  
15 be clear, is that it doesn't matter, it's the nature of  
16 the availability fees themselves --

17 MR. COMLEY: Right.

18 COMMISSIONER KENNEY: -- that determines  
19 whether they're regulated or not?

20 MR. COMLEY: Exactly. I think the question  
21 also would center on whether or not you believe the  
22 availability fee revenue can be tariffed, and it may be  
23 something --

24 COMMISSIONER KENNEY: Your position is that  
25 it can't be?

1                   MR. COMLEY: Our position is that it  
2 shouldn't be, it cannot be.

3                   COMMISSIONER KENNEY: Well, that's two  
4 different things. It cannot be or it should not be?

5                   MR. COMLEY: It cannot lawfully be  
6 tariffed.

7                   COMMISSIONER KENNEY: What is the basis for  
8 that statement?

9                   MR. COMLEY: Again, availability fees are  
10 beyond the jurisdiction of the Commission. It would be  
11 non-regulated revenue. It's for a non-service. You can  
12 only tariff things for services.

13                  COMMISSIONER KENNEY: I have other  
14 questions about the availability fees, but I don't know if  
15 I should wait until we start. I mean, the difficulty  
16 here, and I understand you want a ruling on this before  
17 you move into evidence because it's going to determine how  
18 you put your evidence in, put your evidence on, but I'm  
19 not sure whether we can answer that without hearing from  
20 some of these witnesses first, and that's -- that's my  
21 dilemma personally.

22                  Judge, I don't think I have any other  
23 questions immediately.

24                  JUDGE STEARLEY: Commissioner Gunn.

25                  COMMISSIONER GUNN: Just a quick follow-up.

1 If we assume that the availability fees was an asset, and  
2 if we assume that that asset was transferred or assigned  
3 to the regulated utility, let's assume the contract is  
4 still in force and it's valid and the availability fees is  
5 an asset. Then do you believe that in order to transfer  
6 that asset the utility would need Commission approval or  
7 authority? Assuming. I'm not asking you to concede  
8 anything. I'm asking you to make those assumptions.

9 MR. COMLEY: Right. Assuming that the --  
10 assuming it would have been an asset subject to the  
11 statute 393.190, I think it was, I'd have to look and see  
12 the statute. I think even if you assumed it was an asset,  
13 that statute would provide that, even if it was  
14 transferred for a bona fide -- to a bona fide purchaser  
15 for value, the Commission would lack jurisdiction or  
16 authority to cancel it. So that comes into my mind.

17 I'd have to check the statute again, but I  
18 think that's on the tail end of the first section. If you  
19 were to conclude that it was part of the assets of the  
20 system and the works, then you would have jurisdiction  
21 over a complaint to hear about how it was transferred and  
22 whether it was transferred properly.

23 COMMISSIONER GUNN: And so do you think  
24 that that is a reasonable line of inquiry, not to make the  
25 conclusion, but a reasonable line of inquiry for this

1 Commission to make as to whether the assumptions that I  
2 just stated were correct or incorrect?

3 MR. COMLEY: No, that would not be correct  
4 in this case.

5 COMMISSIONER GUNN: I didn't ask if they  
6 were correct or incorrect. I asked if it was a reasonable  
7 line of inquiry.

8 MR. COMLEY: In a complaint case, yes.

9 COMMISSIONER GUNN: But not in a rate case?

10 MR. COMLEY: Not in a rate case.

11 COMMISSIONER GUNN: So issues that are  
12 subject to a complaint are not properly before the  
13 Commission in a rate case?

14 MR. COMLEY: No, they're not.

15 COMMISSIONER GUNN: So we can't take into  
16 account in an electric rate case reliability issues  
17 because they would be subject to a complaint?

18 MR. COMLEY: No, that's not true.

19 COMMISSIONER GUNN: What do you mean, no,  
20 it's not true? No, that it is subject -- we would be able  
21 to talk about it or we would not be able to talk about it?

22 MR. COMLEY: That would be a case where if  
23 reliability issues came up in a rate case showing that  
24 they were providing unreliable service, that would justify  
25 the Commission to ask the Staff to issue a complaint.

1                   COMMISSIONER GUNN:  If a company was  
2   substantially overearning and they came in for a rate case  
3   and the evidence showed that they were overearning, would  
4   we have to -- would we have to stop the proceeding and  
5   file a complaint case to reduce their ROE?

6                   MR. COMLEY:  You can take into account all  
7   relevant factors in connection with that, and the relevant  
8   factors would be economic factors for your rate  
9   adjustment.

10                  COMMISSIONER GUNN:  So would we be able to  
11   take into account in this case that there may be an income  
12   stream out there that's not being applied to the cost of  
13   service for the -- or not properly being applied to the  
14   cost of service or reducing the cost of service for this  
15   utility?

16                  MR. COMLEY:  Again, it would be the source  
17   of the income stream.  If they were trying to sell  
18   notebooks at Wal-Mart, I think that that would be a  
19   difficult thing for the Commission to take control over.

20                  COMMISSIONER GUNN:  But we can ask those  
21   questions, can't we?  What I'm trying to get at here is  
22   that -- is that we can ask the questions.  I'm not saying  
23   that we -- if we -- is it a proper inquiry for us to ask  
24   the questions?  Let's say you have a line on the books  
25   that says \$10,000 and we say, what are those?  And

1   somebody says, well, those are notebooks that we're  
2   selling to Wal-Mart. Okay. Then in our final Report and  
3   Order we do not take that bit of revenue into the account,  
4   but isn't it proper for us to be able to ask the question  
5   where is that revenue coming from, and is it proper for us  
6   to offset any other cost of service to that revenue  
7   stream?

8                   MR. COMLEY: You've assumed that the  
9   revenue shows up on the books. The revenue for  
10   availability doesn't show up on the books of Lake Region  
11   Water & Sewer Company.

12                  COMMISSIONER GUNN: But it did?

13                  MR. COMLEY: No, it didn't. It didn't show  
14   up on the books. It was an untariffed amount. It was  
15   never tariffed. It didn't show up on the books.

16                  COMMISSIONER GUNN: Can we ask whether it  
17   should be on the books or not?

18                  MR. COMLEY: Our contention is, again, it's  
19   been treated like an unregulated stream of revenue. It  
20   has been historically. Again, the Commission has  
21   concluded that availability fees are beyond your  
22   jurisdiction. No, I don't think you can. Our position  
23   would be no.

24                  COMMISSIONER GUNN: All right. I don't  
25   have anything further, Judge.



1                   COMMISSIONER KENNEY: I do. I don't know  
2     that we concluded that. I mean, didn't we conclude that  
3     availability fees -- and I think there are two Report and  
4     Orders that you referenced in your filing somewhere, that  
5     availability fees weren't necessarily payment for a  
6     service. I don't know that we took the next step and said  
7     that we had no jurisdiction over it.

8                   MR. COMLEY: I'll let the Commission  
9     interpret those documents. Our reading -- my reading was  
10    that there was a decision made by the Commission that,  
11    irrespective of how the Commission may have disliked the  
12    way the situation was, the Commission didn't have  
13    jurisdiction over those fees.

14                  COMMISSIONER KENNEY: How does PSC and OPC  
15    interpret those decisions?

16                  MS. BAKER: Basically, looking at the Big  
17    Island case, the only outcome from that case was whether  
18    that was a utility under the -- under the jurisdiction of  
19    the Commission itself, and it found that it was not. So  
20    honestly, the availability charge fee never came to light.  
21    It was dismissed at that point.

22                  The Central Jefferson case I believe was a  
23    complaint case.

24                  JUDGE STEARLEY: Transfer of assets case.

25                  MS. BAKER: A transfer of assets case. I'm

1     sorry. And for that I don't believe that they came to the  
2     jurisdictional issue in that. But again, these are  
3     administrative proceedings. The Commission can change  
4     their mind.

5                     COMMISSIONER KENNEY: We can change our  
6     minds. I do appreciate that fact.

7                     MS. BAKER: And they do.

8                     COMMISSIONER KENNEY: I am -- I think I'd  
9     like to pay a little closer attention to a jurisdictional  
10    question. A relevance question I'm not so concerned  
11    about. But if it's inappropriate to exercise  
12    jurisdiction, I think that that bears some discussion  
13    irrespective of whether we're bound by prior decisions or  
14    not.

15                    Were you going to say something, Jaime,  
16    Ms. Ott?

17                    MS. OTT: Yes. Commissioner Kenney, the  
18    Commission has asserted jurisdiction in the past over  
19    something that wasn't regulated or tariffed, and that was  
20    back in the '80s in the telephone Yellow Pages directory.  
21    While the directory advertisement was not tariffed in a  
22    telephone company's rate schedules, the revenues and  
23    revenue streams were included into its rates, and that is  
24    an instance when it is similar to this situation if you're  
25    going to consider that availability fees are not for

1 service.

2                   However, looking at the Declaration on  
3 Restrictive Covenants in which the developer had put into  
4 place, they referred to availability fees as an  
5 accommodation for utility service in the language. And  
6 further it goes in to saying that if these availability  
7 fees are going to be changed, then they -- it has to be  
8 done by the Commission, which clearly implies that they  
9 are to be regulated and included into the revenues of the  
10 company, the utility service revenues.

11                   COMMISSIONER KENNEY: And that's the Third  
12 Amended Restated Restrictive Covenants; is that right?

13                   MS. OTT: Yes.

14                   COMMISSIONER KENNEY: And then there was  
15 another one that was filed after that was undated or  
16 unsigned or something, I don't know if it was recorded or  
17 not, that doesn't contain that same language?

18                   MS. OTT: It refers -- I believe it refers  
19 to the water and sewer provisions of the third. I could  
20 be wrong on that.

21                   COMMISSIONER KENNEY: I mean, because that  
22 Third Amended -- this question is for Mr. Comley. The  
23 Third Amended Restated Declaration of Restrictive  
24 Covenants, that language seems to indicate that the  
25 parties contemplated that availability fees would be

1 regulated by the Commission.

2 MR. COMLEY: That may have been in the  
3 declaration. It is in the declaration. That's been  
4 amended, of course. That's no longer in the declaration.  
5 But as bitter experience has taught me, when this  
6 Commission is confronted with agreements that says the  
7 Commission is going to do something, the Commission looks  
8 at that and says, we only do things within our  
9 jurisdiction.

10 COMMISSIONER KENNEY: Sure. And I  
11 understand that doesn't obviously carry the day. It's at  
12 least instructive as to somebody at some point thought  
13 that the availability fees were subject to the  
14 Commission's jurisdiction, right?

15 MR. COMLEY: That could have been the case.

16 MS. LANGENECKERT: Judge, may I add  
17 something? I'm sorry. Commissioner Kenney.

18 COMMISSIONER KENNEY: Sure.

19 MS. LANGENECKERT: Later if I have the  
20 opportunity, I will put into evidence the First Amended  
21 Restrictive Covenants which started back in 1971 and also  
22 say that the Public Service Commission is the regulatory  
23 body that would determine the rates of service. There are  
24 HUD reports that are given by the developer that state  
25 that the Third Amended as you referred to state that.

1 There are contracts that are exhibits to Mr. Merciel's  
2 testimony that state that. Bills that state that the  
3 payment should be paid to Four Seasons Lakesites Water &  
4 Sewer.

5 So there are many documents that, if  
6 allowed, will be in the record that will show you that all  
7 these show intent by the original developer and its  
8 successors to put these before the Public Service  
9 Commission and also allow the property owners to rely on  
10 the fact that they'd be protected by the Public Service  
11 Commission.

12 COMMISSIONER KENNEY: I have just a couple  
13 more questions in this regard. If the utility --  
14 Mr. Comley, if your position and your assertion is that  
15 availability fees are not regulated, not subject to  
16 regulation by the Commission, why create a separate entity  
17 to bill and collect them? What's the point in having done  
18 that?

19 MR. COMLEY: I guess it's not illegal.  
20 It's a very valid way of doing it. I don't know exactly  
21 what the motivation would have been, but that does make  
22 sure that they are separate and distinct bodies, there's  
23 no confusion about who's getting what.

24 COMMISSIONER KENNEY: But the money's put  
25 in the same accounts?

1 MR. COMLEY: No, it's not.

2 COMMISSIONER KENNEY: I read somewhere, and  
3 I can't remember, somebody may have mentioned this, that  
4 at some point in time the availability fees were  
5 commingled with revenues from the utility.

6 MR. COMLEY: The testimony prefiled  
7 indicates that the management fees for Mr. Stump and  
8 Mr. -- Bob and Brian Schwermann are paid to the Lake  
9 Utility Availability account. The availability fee  
10 revenue is -- there is no -- it is going entirely to a  
11 different account. It never goes into the Lake -- an  
12 account owned by the shareholders receives the  
13 availability fee revenue and payment for management costs  
14 and expenses.

15 COMMISSIONER KENNEY: So it's not  
16 segregated by itself, the availability fees?

17 MR. COMLEY: If I take your question  
18 correctly, Lake Region's accounts and Lake Utility  
19 accounts are separate.

20 COMMISSIONER KENNEY: Okay.

21 MR. COMLEY: You also mentioned about  
22 non-regulated. Lake Region -- let's see. It was Ozark  
23 Shores, wasn't it? Ozark Shores is an affiliated company  
24 for Lake Region. It files an annual report, just as Lake  
25 Region does. If we get a chance, we can show you an

1 e-mail from Roberta Grissum of the Commission Staff  
2 challenging Ozark Shores on reporting availability fee  
3 revenue in its annual report. The accounting staff  
4 indicated that non-regulated revenue should not be  
5 reported in the annual report. As a consequence, it's not  
6 been reported by Ozark Shores since 2005.

7                   So we're seeing a great deal of apparent  
8 conflict between what the Staff expects to see in the  
9 annual report as regulated revenue and what it's saying in  
10 the prefiled testimony in this case.

11                   Ms. BAKER: If I may answer to that, just  
12 in 2009 the Staff, Public Counsel and the company Peaceful  
13 Valley came to an agreement whereas there is an  
14 availability charge and it is reflected in the rates.

15                   So this is an issue that, quite frankly,  
16 the Commission has gone multiple ways on, but just  
17 recently it has been put into tariffs and it has been  
18 reflected in rates.

19                   MS. OTT: Commissioner, I wanted to follow  
20 up on that. The Commission has asserted jurisdiction over  
21 availability fees in terms of signing off on a  
22 Stipulation & Agreement. Ozark Shores, their affiliate  
23 company, availability fees are included in their revenues,  
24 and here -- that was approved by Stipulation & Agreement.

25                   Here today they're saying that they would

1 be saying that Stipulation & Agreement is not valid that  
2 the Commission approved, as well as there's Peaceful  
3 Valley that has it in their tariffs, and IH Utilities used  
4 to have availability fees included in revenue. However,  
5 they have ceased to charge availability fees in the  
6 meantime.

7 MS. BAKER: They were voluntarily removed  
8 by the company.

9 MR. COMLEY: I'm hoping that the  
10 stipulation that was entered between the parties in that  
11 case contains some of the standard language that indicates  
12 that no party is endorsing any ratemaking principle as  
13 part of that or endorsing any of the other ways or  
14 arguments of parties. I think it can't be used against us  
15 in this proceeding.

16 COMMISSIONER KENNEY: I don't have any  
17 other questions. Thank you.

18 JUDGE STEARLEY: I have a number of  
19 questions. And to start with, I want to make clear I'm  
20 going to walk through this from a statutory authority of  
21 the Commission. RSP Properties, LP and Sally Stump, doing  
22 business as Lake Utility Availability 1 are not the  
23 parties to this case; is that correct?

24 MR. COMLEY: That's correct.

25 JUDGE STEARLEY: No one has sought to join



1    them as parties to this case.  Mr. Featherstone's  
2    testimony indicates they are a non-regulated entity.  Is  
3    anyone contesting that?

4                   MR. COMLEY:  The word entity may be a  
5    little strong, but I would agree they're non-regulated.

6                   MS. BAKER:  Public Counsel would agree that  
7    at the moment they are unregulated.  However, there is a  
8    question of whether they are charging a utility fee.

9                   JUDGE STEARLEY:  This is an unregulated  
10   business enterprise, not regulated by the commission.  Is  
11   any party going to offer this Commission evidence that  
12   Lake Utility Availability is a water company as defined in  
13   Section 386?  Do they own, operate, control or manage a  
14   water corporation?  I have not seen evidence that's being  
15   offered that establishes that, nor was any offered at the  
16   discovery conference we had on this issue.

17                   MS. BAKER:  I would say that that is  
18   certainly an issue that Public Counsel would look to as  
19   the subject of a future complaint case.

20                   JUDGE STEARLEY:  But it's not in this case?

21                   MS. BAKER:  Not at this moment, no.

22                   MS. OTT:  Judge, Staff is looking into that  
23   at this point.  Our discovery has not been fully --

24                   JUDGE STEARLEY:  There's nothing being  
25   presented in this case that would establish that this

1 business is a water corporation under our definitions, and  
2 the same question goes with whether or not this  
3 corporation or business entity, whatever it is, it's not a  
4 corporation, is a pseudo corporation. Lake Utility  
5 Availability 1, is there any party going to offer evidence  
6 that this business entity owns, operates, manages or  
7 controls a sewer corporation?

8 MS. BRUEGGEMANN: Your Honor, as this is a  
9 Lake Region Water & Sewer rate case, to go ahead and  
10 define Lake Utility Availability as a water corporation  
11 and file a complaint if they aren't certificated would be  
12 a separate matter.

13 However, Lake Region -- Lake Region in the  
14 Lake Region Water & Sewer case, as we look at the  
15 breakdown of how the availability fees are charged and if  
16 an availability fee is a charge for gain and if Lake  
17 Utility Availability does somehow have management control,  
18 ownership of some of the facilities or the selling of  
19 water for gain, that information will be properly vetted  
20 probably through this hearing. And if everything doesn't  
21 come out, well, then it will be looked into for the  
22 purpose of a complaint.

23 So the underlying information is there, and  
24 going ahead and making the assertion that Lake Utility  
25 Availability is a water corporation for purposes of this

1 rate case is really premature.

2 JUDGE STEARLEY: So are you suggesting the  
3 Commission can make that determination when this business  
4 entity's not even a party to this matter?

5 MS. BRUEGGEMANN: The Commission can go  
6 ahead and make a determination based upon the facts or it  
7 can make a finding of fact, and then as Ms. Ott went ahead  
8 and pointed out, the Commission can go revisit decisions,  
9 and then if a complaint was filed against Lake Utility  
10 Availability, then Lake Utility Availability 1 would be a  
11 proper party and could answer to those allegations in a  
12 complaint case for not being properly certificated.

13 JUDGE STEARLEY: And that would be in a  
14 complaint case, not in this rate case?

15 MS. BRUEGGEMANN: Correct.

16 MS. BAKER: In this rate case the  
17 Commission can certainly look at revenue streams that are  
18 based on the service that is being provided by the  
19 utility, and they can make the determination that the  
20 service for availability is properly with the company. It  
21 may be voluntarily allowed to be collected by someone  
22 else. But the Commission can certainly determine that the  
23 availability fee is a fee that the utility such as this  
24 could -- could collect.

25 And this also goes into other revenue

1 streams from the utility, such as a cell phone tower being  
2 put onto their water tower. We do not have to bring in  
3 the cell phone company to prove that they are a revenue  
4 stream of the utility.

5 JUDGE STEARLEY: So are you saying that if  
6 RPS Properties, LP and Sally Stump are lawfully engaging  
7 in multiple business activities, that this Commission has  
8 jurisdiction to consider all of their revenue streams in  
9 the operation of this water and sewer company?

10 MS. BAKER: You are able to look into the  
11 testimony of any of the revenue streams that is connected  
12 or has a nexus with the utility.

13 JUDGE STEARLEY: The nexus you're talking  
14 about is simply being a shareholder. So I asked this  
15 example in our discovery conference. If this business  
16 entity was selling tennis shoes, your argument would be we  
17 could consider the revenue they make from selling tennis  
18 shoes as part of the revenue of the water and sewer  
19 corporation?

20 MS. BAKER: Your hypothetical is very  
21 different from what is going on here.

22 JUDGE STEARLEY: Understood.

23 MS. BAKER: What they are selling,  
24 supposedly selling is a service being provided by the  
25 utility. That would be like me selling or renting my

1 neighbor's house while they're gone. That is not  
2 something -- it is connected to the neighbor's house. In  
3 this regard, it is connected to the utility.

4 JUDGE STEARLEY: And in this case, your  
5 witness Mr. Robertson offers up testimony from the prior  
6 case of Mr. Greg Meyer where he testifies availability  
7 fees are not services under the Commission's jurisdiction.

8 MS. BAKER: As we've been talking about all  
9 morning, we disagree with the fact that this is not a  
10 service. It is an accommodation or a commodity that is  
11 being provided to another individual, and that certainly  
12 meets the definition of service.

13 JUDGE STEARLEY: I understand your current  
14 argument, but we have that Staff subject matter expert has  
15 testified this is not a service.

16 MS. BAKER: And in -- go ahead. It's your  
17 witness. Go ahead.

18 MS. OTT: Judge, that witness is not an  
19 attorney. He is an accounting expert. He cannot  
20 properly -- or an engineer. He cannot properly define  
21 what service is under the law.

22 Here today, Staff is asking to impute the  
23 revenues from Lake Utility Availability. We are not  
24 seeking at this point to regulate them today. However,  
25 that may be the case in the future. The accommodation for

1 availability fees is related to service.

2 And also, the shareholders are the owners  
3 of a water and sewer company, the water and sewer company  
4 that is here today. They're also the owner of a water  
5 company, Ozark Shores, which does have availability fees  
6 included into their revenues. I think that is all very  
7 important, and this issue shouldn't be decided on a  
8 procedural ground. It should be decided by the  
9 Commissioners, and that's what we are asking.

10 JUDGE STEARLEY: Counsel, jurisdictional  
11 grounds are far beyond procedural grounds. I don't  
12 believe you can equate those two. I'm assuming by your  
13 argument that you've just given me, Mr. Merciel's  
14 testimony in this case you're saying is also, you're  
15 applying that argument to that. So when he testifies this  
16 is not a service, which he does on page 6 of his  
17 testimony, your argument is that he's not an attorney, so  
18 he can't give an opinion as to that?

19 MS. OTT: The testimony from Mr. Merciel  
20 will come in at that point, and everyone will have the  
21 opportunity to discuss it. Mr. Merciel can give his  
22 technical expertise on service, but not the legal  
23 determination on what service is in the statute.

24 JUDGE STEARLEY: All right. So just so I'm  
25 clear, at this point we may see something different happen

1 in a hearing process, but at this point I'm not seeing or  
2 hearing any party plans to offer evidence that Lake  
3 Utility Availability is a water company or a sewer company  
4 and therefore is not a public utility as defined under  
5 Chapter 386?

6 MS. BAKER: If the Commission -- the  
7 Commission has the ability to bring in necessary parties  
8 to any of its cases, and if that is something that the  
9 Commission feels is needed for this case, Public Counsel  
10 would be more than happy to file a motion to bring them in  
11 as necessary parties.

12 JUDGE STEARLEY: In order to bring them in,  
13 we'll have to assert a basis in jurisdiction.

14 MS. BAKER: And that's what we're here for.

15 JUDGE STEARLEY: Okay. Moving on, then,  
16 with regards to the availability fees themselves, counsel  
17 has cited in our discovery conference and today  
18 Chapter 393, cited 393.140.11 saying it covered services  
19 to be provided for in the future and that was your bridge  
20 to get to the service definition. Chapter 393 applies to  
21 electric corporations, gas corporations, water  
22 corporations and sewer corporations. You've also cited  
23 393.140.12 today.

24 So without establishing that RPS  
25 Properties, LP and Sally Stump, doing business as Lake

1 Utility Availability 1 is, in fact, a regulated entity,  
2 those statutes do not apply to this business entity. Is  
3 that correct or is that not correct?

4 MS. BRUEGGEMANN: The Commission  
5 findings -- and I'm trying to make sure I'm following you  
6 correctly, Judge Stearley, and not mischaracterizing what  
7 you're saying. Under 393.140, since it does apply to the  
8 Commission's general supervision of water corporations and  
9 sewer corporations, specifically for what we're talking  
10 about, and their power over, let's say, in sub 12 to look  
11 at those entities and operations that are not kept  
12 substantially separate and apart or under sub 11 where  
13 we're looking at the rates and other charges that are  
14 affiliated to utility service or related to utility  
15 service, we're looking at Lake Region Water & Sewer, water  
16 corporation and sewer corporation, and the fees of -- the  
17 availability fees that are charged by, right now by Lake  
18 Utility Availability, formerly charged by Lake Region  
19 Water & Sewer, that are related to service and that it's a  
20 company that's not kept substantially separate and apart.

21 As an aside, if the Commission deemed that  
22 Lake Utility Availability couldn't be -- because of their  
23 separate, because of this separation of RPS family  
24 corporation as a separate entity, that it needs to be a  
25 separate complaint filed to actually look into further



1   availability fees, then the underlying information to  
2   establish Lake Utility Availability as a water company  
3   charging services or the selling of water for gain is  
4   something that would come into play.  So --

5                   JUDGE STEARLEY:  Are you saying you're  
6   going to offer evidence in this case that Lake Utility  
7   Availability No. 1 is selling water for gain?

8                   MS. BRUEGGEMANN:  There are different  
9   documents, Restrictive Covenants, all kinds of  
10   documentation that the availability fee itself is an  
11   accommodation, it's to be regulated by the utility  
12   company.  So their assertions themselves are that at least  
13   initially that whoever's charging the availability fee  
14   should be regulated.

15                   But our primary case in this rate case is  
16   to get to the imputing of revenues into the revenue stream  
17   and to evaluate the charging of the availability fees as a  
18   separate matter in defining Lake Utility Availability as a  
19   water corporation.

20                   Now, if the Commission wants to go ahead  
21   and make that finding based off of the information that it  
22   hears presented in the testimony, it can do so.  It can  
23   make Findings of Fact based off of everything as it deems  
24   fit.  So I think to go ahead and predetermine what the  
25   Commission is going to make findings of fact on based upon

1 the hearing today that has not occurred is premature.

2 JUDGE STEARLEY: And you understand, I'm  
3 not making any findings of fact --

4 MS. BRUEGGEMANN: Right. Right.

5 JUDGE STEARLEY: -- on the part of the  
6 Commission.

7 MS. BAKER: And I guess I have an addition  
8 to that. Basically what we are here for is the rate case  
9 and to determine what rates are going to be applied to the  
10 customers. Inherent in that rate case is to determine  
11 what has been contributed by someone else and so,  
12 therefore, the customers are not required to pay for it  
13 again.

14 And so just the information of how much are  
15 these availability fees, what are they used for, where are  
16 they in the scheme of things, will help to determine how  
17 much the customers that do get service are on the hook  
18 for.

19 And if we're not allowed to get that  
20 information, which we've been stymied from, how do we know  
21 that the rates that we're giving to these customers are  
22 just and reasonable when we know in the back of our head  
23 that there's this revenue stream out there that may very  
24 well affect that?

25 JUDGE STEARLEY: And counsel, you didn't

1 file a motion to compel discovery in this case, did you?

2 MS. BAKER: No, I did not. We did get --  
3 we did get objections to it. Staff got the same  
4 objections that we got. Staff moved forward with theirs.  
5 We did not. That does not mean that the information is  
6 not relevant.

7 JUDGE STEARLEY: Nor did Staff file a  
8 motion to compel?

9 MS. OTT: No, we did not, but agree that it  
10 does not mean that we don't think the information is  
11 relevant and it should be heard here today.

12 JUDGE STEARLEY: Staff and some of the  
13 parties have brought up contracts existing between  
14 developers and lot owners. Are you suggesting that  
15 contracts between private parties outside this  
16 Commission's jurisdiction can expand this Commission's  
17 jurisdiction?

18 MS. LANGENECKERT: At the time the  
19 contracts were entered into or put upon the lot owners,  
20 the Commission's jurisdiction was spelled out within the  
21 contract. So it was imputed to be before the Commission  
22 by virtue of the fact that the developer put in its  
23 contract that the Commission would be the one making the  
24 determination. That was our understanding of the contract  
25 signing.

1                   It's not much different than a stipulation,  
2 I would think, where that's a contract between parties of  
3 what they're agreeing to, and this Commission reviews  
4 those all the time and makes decisions on whether they're  
5 just and reasonable or not.

6                   JUDGE STEARLEY: This Commission's  
7 jurisdiction is established by statute. It's not  
8 established by some other parties' contract. If you can  
9 find a statutory tie to link those together, it may become  
10 relevant.

11                  MS. LANGENECKERT: This Commission's  
12 jurisdiction does cover the Lake Region Water & Sewer  
13 customers, and as Ms. Baker noted, their rates for this  
14 service are what's going to be affected here by these  
15 decisions. If they are subsidizing the people who have  
16 not yet received any service, according to your definition  
17 of service, then --

18                  COMMISSIONER KENNEY: Go ahead. I'm sorry.  
19 Can I ask a question, Judge?

20                  JUDGE STEARLEY: Yes.

21                  COMMISSIONER KENNEY: Can I jump in? Let  
22 me see if I understand OPC's and Staff's argument. The  
23 focus of your inquiry is not on how we characterize the  
24 fictitious name, it's now we characterize the availability  
25 fees. Is that in a nutshell what you're saying? The

1 focus of the inquiry doesn't depend upon how we  
2 characterize Lake Availability -- Lake Utility  
3 Availability; it's how we characterize these availability  
4 fees themselves?

5 MS. OTT: That is correct.

6 MS. BAKER: That is -- that is correct.

7 COMMISSIONER KENNEY: Our jurisdiction  
8 then, therefore, springs from our jurisdiction in setting  
9 rates that are just and reasonable?

10 MS. BAKER: Yes, your Honor. Yes,  
11 Commissioner.

12 MS. OTT: Yes.

13 COMMISSIONER KENNEY: Thank you.

14 JUDGE STEARLEY: All right. Counsel, are  
15 there any other entities out there engaging in providing  
16 water and sewer services could be charging availability  
17 fees that are not subject to the Commission's  
18 jurisdiction?

19 MS. BAKER: That is an unknowable -- an  
20 unknowable question. There are a lot of entities out  
21 there. We even find new ones that are water and sewer  
22 corporations all the time.

23 JUDGE STEARLEY: Just by definition, the  
24 sewer company provides less than 25 hookups, it's not  
25 subject to this Commission's jurisdiction, correct?

1 MS. BAKER: Correct.

2 MS. OTT: Correct.

3 JUDGE STEARLEY: If a nonprofit entity is  
4 engaging in water or sewer service, they're not regulated  
5 entities under our definition and statutes there because  
6 you have to be providing services for profit?

7 MS. BAKER: A properly formed 393, that is  
8 correct.

9 MS. BRUEGGEMANN: And they are either  
10 exempt per statute specifically to say that their actions  
11 and their business, your Honor, are exempt under the 393  
12 provisions or, if they're a public water supply district  
13 or a sewer supply district under Chapter 247 or 249, it  
14 would specifically state it in the statutes, I believe,  
15 that the Commission won't have jurisdiction.

16 So those are specific exemptions to the  
17 availability fee discussion, I think, that come into play.  
18 And then on the other hand, as Ms. Baker pointed out, we  
19 are consistently finding other entities that do fall under  
20 the definition of water corporation, sewer corporation  
21 that should be regulated but have never been in for a rate  
22 case and aren't certificated. Just because they aren't  
23 certificated doesn't mean they don't fall under the  
24 definition. We're always looking for those entities.

25 JUDGE STEARLEY: Just so I understand,

1     then -- this gets back to Commissioner Kenney's  
2     question -- is your argument then seems to relate to the  
3     nature of the fees.  You're saying the Commission has  
4     jurisdiction over these fees?

5                     MS. BAKER:  Yes.

6                     MS. OTT:  Yes.

7                     JUDGE STEARLEY:  Even though they're  
8     charged by a non-regulated entity?

9                     MS. OTT:  That once was charged by the  
10    regulated entity but they diverted them to another company  
11    to avoid jurisdiction.

12                    JUDGE STEARLEY:  Which there's nothing  
13    illegal about in structuring a corporation, is there,  
14    counsel?

15                    COMMISSIONER GUNN:  Let me ask this, Judge.  
16    If it was a utility asset, the transfer would have needed  
17    to have been approved by the Commission, correct?

18                    JUDGE STEARLEY:  No, not exactly.  Let's go  
19    to Section 393.

20                    COMMISSIONER GUNN:  Can I -- I mean, I  
21    understand what you're saying.  I think the company's made  
22    some of these points already.  I don't know that we need  
23    to revisit them from the bench, but I don't know.  I  
24    just -- I'm starting to get a little uncomfortable with  
25    the manner of inquiry, but proceed.

1 JUDGE STEARLEY: I'm just trying to clarify  
2 for the record what these parties' arguments are. They're  
3 coming in and asking the Commission to assert  
4 jurisdiction, and we have statutory limitations to that.

5 COMMISSIONER GUNN: Maybe.

6 JUDGE STEARLEY: There has been an  
7 argument, and this argument didn't come out until position  
8 statements were filed, that there was an asset that was  
9 improperly transferred without Commission approval. And  
10 if you look at Section 393.190, it requires Commission  
11 approval if a regulated entity, a water corporation, sewer  
12 corporation, for example, disposed or encumbered in whole  
13 or in part of its franchise or works or system that is  
14 necessary or useful in the performance of its duties to  
15 the public.

16 So if Staff intends to pursue this  
17 argument, it will have to establish that the availability  
18 fee was part of a franchise, works or system, and that  
19 that availability fee is necessary or useful in  
20 performance of providing water and sewer service.

21 Does Staff or any other party intend to  
22 offer evidence of that in this case?

23 MS. BAKER: Again, this is an issue which  
24 would be ripe for a complaint. If this is something that  
25 the Commission feels that is necessary, we are not waiving



1 our ability to fill a complaint on this issue.

2 MS. OTT: Staff agrees with that.

3 MS. BAKER: While we're at a little lull, I  
4 do want to make a clarification on the issue of Public  
5 Counsel's Data Requests and the objections that we  
6 received. Yes, we did receive objections. We took steps,  
7 the first steps towards getting a motion to compel by  
8 sending a letter to the company.

9 A letter to the company was sent, and the  
10 company did answer our Data Request supposedly as best as  
11 they could. So, therefore, at that point we did not have  
12 the grounds to move forward to a motion to compel.

13 JUDGE STEARLEY: All right. Very well.  
14 And I believe it's Mr. Summers' testimony is also included  
15 some copies of Data Requests; is that correct, Mr. Comley?

16 MR. COMLEY: Yes. Yes, sir.

17 JUDGE STEARLEY: And what was Staff's  
18 response to the Data Request inquiring the identification  
19 of any Commission's regulations or statutes that would  
20 govern these availability fees?

21 MR. COMLEY: I think Staff's objections  
22 were that the questions were irrelevant.

23 JUDGE STEARLEY: Very well. Commissioners,  
24 do you have any other questions?

25 COMMISSIONER GUNN: No.

1 MS. BRUEGGEMANN: If we might, your Honor.

2 MS. OTT: Those Data Requests that were  
3 submitted to Staff were to the engineer and not to legal  
4 counsel; therefore, were not appropriate for the engineer  
5 to answer legal, make legal conclusions, and that's why  
6 they were objected to.

7 JUDGE STEARLEY: That wasn't the stated  
8 grounds of the objection, though, was it, counsel?

9 MS. OTT: It was one of the objections.

10 JUDGE STEARLEY: I believe the Data Request  
11 I referred to said they objected on the grounds of  
12 relevancy.

13 MS. BRUEGGEMANN: Then, your Honor, if you  
14 could point us to that Data Request if it's at issue  
15 today, but I don't really see how it's necessary to go  
16 into it any further.

17 JUDGE STEARLEY: At this point I don't  
18 believe so either. Do the parties have anything else  
19 they'd like to add to these arguments?

20 (No response.)

21 JUDGE STEARLEY: Commissioners have any  
22 other questions?

23 COMMISSIONER KENNEY: I don't want to  
24 belabor the point. I don't have any other questions.

25 JUDGE STEARLEY: Very well. At this point

1 we're going to take about a ten-minute recess. We'll come  
2 back and pick up and make a determination on where we're  
3 going to proceed in terms of presentation of evidence.

4 (A BREAK WAS TAKEN.)

5 JUDGE STEARLEY: All right. We are back on  
6 the record. We have heard the arguments from the parties  
7 on Lake Region's motion to strike testimony, and what the  
8 Commission is going to do at this time, Lake Region, I'm  
9 going to note for the record that you have a continuing  
10 objection on the basis of relevance and jurisdiction to  
11 the admission and receiving of the evidence on  
12 availability fees.

13 I'm going to note your objections with  
14 regard to striking the testimony in terms of potentially  
15 violating the Commission's rule in the rebuttal and  
16 surrebuttal as being appropriately responsive to prior  
17 testimony, and I am going to allow the testimony to be  
18 presented to the Commission so that it can hear all the  
19 facts that are going to be offered by the parties.

20 At the conclusion of hearing all the  
21 evidence, I will make a ruling at that time on whether or  
22 not to sustain the objections to relevance and whether or  
23 not to strike. Everyone understand?

24 Okay. All right. We're going to pick up  
25 with opening statements here shortly, but there's a couple

1 other housekeeping matters we need to attend to. First,  
2 there have been several items filed in the case I would  
3 like to have introduced as exhibits.

4 We have a Partial Nonunanimous Stipulation  
5 Respecting Adjustments to Sewer Charges Applicable to  
6 Intervenor Four Seasons Racket and Country Club  
7 Condominium Owners Association, Incorporated, to which  
8 there were no objections when that was filed. There is a  
9 Unanimous Stipulation as to Undisputed Facts, and there's  
10 a Reconciliation that's been filed by the parties.

11 Does any party have any objections to those  
12 items being admitted into the record?

13 MS. OTT: No.

14 MS. LANGENECKERT: No, your Honor.

15 MS. BAKER: No, your Honor.

16 MR. COMLEY: Your Honor, Lake Region did  
17 note an objection on the Reconciliation, and we would ask  
18 that be preserved in the record.

19 JUDGE STEARLEY: Very good, counsel.  
20 Staff, I'm going to make you the proponent of these  
21 documents. Well, Lake Region, I'll have you be the  
22 proponent of the Partial Nonunanimous Stipulation.

23 MR. COMLEY: That's fine.

24 JUDGE STEARLEY: And that will be Lake  
25 Region 1, Lake Region Exhibit 1. The Unanimous

1 Stipulation of Undisputed Facts will be Staff Exhibit  
2 No. 5. Reconciliation will be Staff Exhibit No. 6. And  
3 we'll note that the two stipulations will be admitted  
4 without objection. The reconciliation I will hold just  
5 like I'm holding the ruling on relevance to the other  
6 evidence to the end, noting that Lake Region has preserved  
7 its objection, but that will be marked Staff Exhibit 6.

8 (LAKE REGION EXHIBIT NO. 1 AND STAFF  
9 EXHIBIT NO. 5 WERE RECEIVED INTO EVIDENCE.)

10 JUDGE STEARLEY: And Ms. Baker, I believe  
11 you wanted to raise the public comments?

12 MS. BAKER: Yes, your Honor.

13 JUDGE STEARLEY: You want to offer those  
14 into evidence?

15 MS. BAKER: I do. I have 30 -- I believe  
16 37 customer comment cards that were received from the  
17 customers during the customer comment timeframe. I would  
18 like to enter those in as exhibits as well. They were  
19 also already entered into the electronic filing  
20 information system.

21 JUDGE STEARLEY: This would be your first  
22 exhibit?

23 MS. BAKER: Yes.

24 JUDGE STEARLEY: So it will be marked as  
25 OPC Exhibit No. 1. Are there any objections to the

1 admission of OPC's first exhibit?

2 MR. COMLEY: Your Honor, I'm unclear about  
3 the purpose for which the comment cards are being offered.  
4 They're obviously hearsay statements. None of those folks  
5 who wrote the comment cards would be subject to  
6 cross-examination today. So if I have some clarification  
7 on the purpose for which they are admitted, I will reserve  
8 objection.

9 JUDGE STEARLEY: Ms. Baker?

10 MS. BAKER: The purpose that they are being  
11 admitted is these are just like the comments that are put  
12 in at the local public hearings. These are comments that  
13 are given by the customers based on their own thoughts of  
14 the rate increase, and as the -- as the people who come in  
15 and give comments at the local public hearings are told  
16 that their comments would be made part of the record, so  
17 too, should the customer comment cards be made part of the  
18 record.

19 JUDGE STEARLEY: Counselor, how do you  
20 address the hearsay objection?

21 MS. BAKER: They are -- they are not  
22 necessarily offered for the proof. These are the people's  
23 own personal comments, and just like the -- just like the  
24 comments at the local public hearing, they are told that  
25 they are allowed to make comments to the Commission.

1 JUDGE STEARLEY: The comments at the local  
2 public hearing were taken as sworn testimony, and there  
3 was an opportunity for cross-examination of those  
4 witnesses providing it. So if I'm understanding you,  
5 you're saying you're not offering these for the purpose of  
6 the truth of what's been stated by these customers?

7 MS. BAKER: They are offered as just  
8 comments from the customers. They were available for  
9 anyone to review and to rely on for their expert testimony  
10 if they needed to, but it is not -- it is not intended to  
11 be sworn. It is not put forward as being sworn. These  
12 are just customer comment cards.

13 JUDGE STEARLEY: Mr. Comley?

14 MR. COMLEY: If they are being offered  
15 simply to show that comments were filed and that certain  
16 subjects were raised in the comments and not offered for  
17 proof of the truth of the matters asserted in those  
18 comment cards, I have no objection to them coming into the  
19 record.

20 JUDGE STEARLEY: Very well. Any other  
21 objections? Hearing none, I will allow them to be  
22 admitted for that limited purpose.

23 (OPC EXHIBIT NO. 1 WAS RECEIVED INTO  
24 EVIDENCE.)

25 JUDGE STEARLEY: Okay. There have been a

1 number of cases, prior Commission cases that have been  
2 referenced in parties' prefiled testimony, the Commission  
3 is going to take official notice of Case Nos. WA-95-164,  
4 WC-2006-0082, et al, it's consolidated cases, Case  
5 No. WO-2007-0277 and Case No. SO-2007-0071.

6 MS. BAKER: Could you repeat that list,  
7 please?

8 JUDGE STEARLEY: Certainly. Would be  
9 WA-95-164, WC-2006-0082, et al, WO-2007-0277 and  
10 SO-2007-0071.

11 Are there any other preliminary matters we  
12 need to take up before opening statements? Hearing none,  
13 we will begin with opening statements, starting with Lake  
14 Region.

15 MR. COMLEY: May it please the Commission?

16 On October 7th, 2009, Lake Region Water &  
17 Sewer Company, which I'll refer to for abbreviation  
18 purposes as Lake Region most of the time, submitted to the  
19 Commission tariff sheets that were designed to implement a  
20 general rate increase for water and sewer service provided  
21 to customers in its Missouri service area.

22 The tariff sheets were designed to produce  
23 an aggregate annual water and sewer revenue increase of  
24 approximately \$331,000, and had an effective date of  
25 November 6, 2009. Under the Commission's standard order,



1 the effective date of the tariffs have been suspended to  
2 September 6, 2010, the operation of law date.

3 As an exhibit will show, the parties have  
4 stipulated to certain facts that are detailed in that  
5 filing, and that was filed on March 16th as I recall, but  
6 there are a few background facts I would like to highlight  
7 for you.

8 First, Lake Region provides water service  
9 to approximately 600 customers and sewer service to  
10 approximately the same number in its Shawnee Bend service  
11 area. It serves approximately 140 sewer customers in its  
12 Horseshoe Bend service area. Approximately 40 percent of  
13 the company's revenues are derived from commercial sewer  
14 customers located on Horseshoe Bend.

15 One of its Horseshoe Bend customers is the  
16 Four Seasons Racket and Club Condominium Property Owners  
17 Association, Inc. The Partial Nonunanimous Stipulation,  
18 which was mentioned by Judge Stearley and marked as an  
19 exhibit in this case, was submitted to the Commission and  
20 it is now a -- considered unanimous.

21 But I wanted to mention, this discusses the  
22 installation of flow meters to measure wastewater  
23 generated by the racket club and another customer upstream  
24 from the racket club, namely the Country Club Hotel, and  
25 it also addresses the manner in which both of these

1 customers will be billed in the future and it addresses  
2 some past billings.

3                   And I think I can speak for all the  
4 signatories here, and one who is absent, that we would  
5 urge the Commission to approve it. We think it's a very  
6 good agreement. It helps, I think, a problem that the  
7 Staff and the company have been concerned about and the  
8 customers have been concerned about for some time.

9                   As part of this case the Staff engaged in a  
10 very comprehensive audit of the books and accounts of the  
11 company. Following publication of the audit's results and  
12 the Staff's direct testimony on January 21st, 2010, and  
13 given some time later, adequate time for updating, the  
14 parties reached accord on the method used for Lake  
15 Region's rate design, which is set out in Mr. Jim Russo's  
16 testimony, and have no quarrel with Staff's updated  
17 accounting schedules or updated cost of service studies,  
18 with the exception of two very important matters that now  
19 are going to frame the issues for you today.

20                   Separating the parties, as you've heard in  
21 arguments already this morning, are the availability fees  
22 issue, and the other issue is the amount of what -- the  
23 level of executive compensation that should be included in  
24 the revenue requirement for the company.

25                   Before reaching the argument again on the

1   availability fees and how it translates in the evidence,  
2   and I understand the ruling of the court, let me address  
3   the company's position on the level of executive  
4   compensation that should be allowed in the revenue  
5   requirement.

6                   The company records the sum of \$99,695 as  
7   the amount to which it is entitled for management fees in  
8   this case. Since the time of Staff's audit and some  
9   additional time to spend in thinking about this issue, the  
10   company recognizes that this amount should be split  
11   between the regulated companies. I think this may mark  
12   change and shift in what we have said before, so I'll note  
13   that for the companies -- for the parties. Mr. Stump can  
14   better explain how this would be, but basically we are at  
15   a stage where our number for executive compensation in  
16   this case would be approximately \$50,000.

17                  Mr. Vernon Stump explains in his rebuttal  
18   testimony that the company uses a management approach that  
19   he has developed over many years in the industry. You'll  
20   note from his attachment that he does greatly weigh in on  
21   the number of years involved in regulated utilities,  
22   particularly water and sewer companies.

23                  The executive management group for the  
24   company consists of Mr. Stump, Mr. Robert Schwermann and  
25   his -- and Mr. Brian Schwermann. The services that these

1 men provide to the company cannot be compared to what a  
2 board of directors may supply, something that Mr. Ted  
3 Robertson, a witness for the Office of the Public Counsel,  
4 has attempted to do in his testimony.

5                   They provide management oversight on  
6 advanced operational, technological and financial issues  
7 that are not expected to occur in the normal course of  
8 day-to-day operations for the company. What the  
9 management group provides exceeds dramatically what a  
10 director may be required to do.

11                   Here are some examples that are paraphrased  
12 a bit from Staff witness Bill Harris' prefiled surrebuttal  
13 testimony. The management group is or has been involved  
14 in developing and implementing plans to install capital  
15 improvements. They meet and negotiate with  
16 representatives of the company's large customers,  
17 particularly with respect to the unanimous --  
18 nonunanimous -- nonunanimous stipulation that we have  
19 filed.

20                   They have planned the implementation of new  
21 automated meter reading systems. They've identified  
22 solutions for water pressure issues. They -- a particular  
23 thing that this group does is arrange for the financing of  
24 capital projects and ongoing operations. They are  
25 responsible for maintaining the accounting system, the tax

1 reporting requirements and the overall records of the  
2 company.

3                   Furthermore, they maintain ongoing  
4 relationships with lending institutions and the outside  
5 auditors for the company. They communicate regulatory  
6 matters with the Public Service Commission, its staff and  
7 the other stakeholders on an ongoing basis, and they are  
8 responsible for maintaining the operations of the company  
9 in concert with the requirements of the Missouri  
10 Department of Natural Resources.

11                   It's true, the company does have a general  
12 manager, Mr. John Summers, and he will be testifying  
13 today, but the tasks I've just mentioned are not part of  
14 his duties.

15                   As far as the range of the proposed levels,  
16 Mr. Robertson of the Office of Public Counsel suggests  
17 that \$600 per year would be enough to cover the management  
18 duties that are done by upper management. Staff has  
19 proposed a sum of \$27,901 and I think Mr. Harris might  
20 testify that he believes this number is conservative.

21                   Something else should be mentioned at this  
22 stage about Mr. Harris' testimony. When it is offered,  
23 you will notice on page 2 of his surrebuttal that he  
24 mentioned the company had adopted his position about this  
25 number, but let me clarify. The company was prepared to

1 accept that recommendation if we were able to obtain a  
2 complete settlement of the case. We didn't get that far,  
3 and as a consequence we revived our interest in -- in  
4 advocating the number we want to use.

5                   The company is well managed by Mr. Stump,  
6 Mr. Schwermann and Mr. Brian Schwermann. They bring a  
7 great weight of professional experience and guidance to  
8 the management task, and it shows in the company's overall  
9 operations and efficiencies.

10                   Mr. Stump notes in his rebuttal that he  
11 reviewed 2008 annual reports for Aqua Missouri, Aqua RU,  
12 Inc., and U.S. Water Company. Schedule 1 of his rebuttal  
13 shows some comparisons to Lake Region. The amounts  
14 recorded in those reports for salary and benefits for top  
15 management and/or management fees range from \$31,562 to  
16 \$87,200, with the average being about \$56,826.

17                   The amounts as a percentage of revenue of  
18 those companies ranges from 6 percent to 12 percent, and  
19 that's an average of 8 percent. He notes that  
20 approximately 8 percent of Lake Region's revenues for 2008  
21 was \$56,741 which just happens to be equal to the  
22 Commission's assessment for the company that year.

23                   We also make the point that the management  
24 group should receive in the same range as the assessment  
25 for the Commission. We consider that an important

1 comparison. And the Commission does provide oversight,  
2 but it is not the nature of the oversight that's provided  
3 on a day-to-day basis by this group of managers. Lake  
4 Region contends that \$50,000 or half of the \$99,695, a  
5 little bit less than 50,000, is a fair and reasonable  
6 amount to include in the revenue requirement for executive  
7 management fees and expense.

8                   Regarding availability fees, at the outset,  
9 briefly repeat our objections on this. I think we've  
10 noted for the record that there has been winding through  
11 the Staff's testimony this idea that somehow the company  
12 was intractable about not releasing information concerning  
13 availability fees.

14                   Again, the Staff did request information by  
15 Data Requests. Company objected to those, and I think  
16 validly did so, and those objections were not overruled.  
17 The Data Requests remain unanswered for the most part  
18 because the objections still stand.

19                   The availability fee information requested  
20 by Staff is in the hands of other people that are not  
21 parties to this case, and I think Judge Stearley has  
22 pointed out that problem, and I think the Commissioners  
23 know as well. But the Staff was not content with  
24 following any other discovery devices in this case. So  
25 our point is the company cannot be faulted for its valid

1 objections to these Data Requests and cannot be cast as  
2 the reason Staff lacks accurate or enough information  
3 about the availability fee issue.

4                   As we put in our motion to strike, the  
5 present situation with the prefiled testimony has placed  
6 the company in a position of some peril, and the motion to  
7 strike was designed to help us do that. At the same time,  
8 you know that the company has sponsored a witness who is  
9 prepared to discuss what the company knows about  
10 availability fees, and as I mentioned earlier in  
11 arguments, our intention would be to offer this  
12 conditionally. It would be conditioned on a ruling by the  
13 Commission that it is relevant to this case.

14                   Again, if it's not relevant to this case,  
15 and the Commission so rules, we would withdraw that  
16 testimony. So that would be the nature of our offer this  
17 morning on Mr. Summers' testimony on availability fees.

18                   If the Commission should decide that the  
19 availability fee issue is a matter of Commission  
20 regulation, the prefiled testimony to date, specifically  
21 the surrebuttal testimony of Mr. Featherstone, creates a  
22 deeper concern for us.

23                   As you will learn, the record of  
24 proceedings in this case shows that Staff's direct case on  
25 revenue requirement was filed on January 14th, 2010, and a



1 week later, its case on rate design was filed. Rebuttal  
2 testimony was about a month after that on what Staff's  
3 revenue adjustments had been, if there had been any.

4 All of Staff's EMS runs were amended and  
5 updated on or about February 8th. Then on March 12, for  
6 the first time in this case, in Mr. Featherstone's  
7 surrebuttal, the Staff proposed a new adjustment to the  
8 revenue requirement in an alternative that involved  
9 reallocating cost of service components based upon an  
10 availability fee revenue amount.

11 Our contention is surrebuttal is limited to  
12 material which is responsive to matters raised in other  
13 surrebuttal testimony -- or in other rebuttal testimony.  
14 Our contention is Mr. Featherstone's rebuttal was --  
15 surrebuttal was merely a continuation of what he should  
16 have had in his direct, and it was a marked change from  
17 his direct testimony and the direct testimony of the other  
18 Staff witnesses who had sponsored their accounting  
19 schedules and EMS runs.

20 This is not a minor matter. It is a  
21 brand-new element of a cost of service recovery device,  
22 and it was inserted in surrebuttal the last round of  
23 testimony the rules of the Commission permit.

24 Again, we don't think that the rules of the  
25 Commission permit a party to delay until -- to delay until

1 surrebuttal a major change in its position on the revenue  
2 requirement particularly and the matter in which  
3 adjustments are to be justified to that revenue  
4 requirement.

5                   As far as the issue itself, again,  
6 providing that the Commission elects to hear that issue,  
7 availability fees are not included in the Commission -- in  
8 the company's filing. The company does not derive any  
9 income or revenue from availability fees. The company has  
10 no rights to the availability fees. The availability fees  
11 affecting lots in the company's Shawnee Bend service area  
12 are paid to persons who are entitled to those fees  
13 pursuant to a set of deed restrictions memorialized in the  
14 documents that we referred to this morning, the deed  
15 restrictions, I think it was referred to as the Amendment  
16 to the Third Amended and Restated Declaration of  
17 Restrictive Covenants in that subdivision.

18                   Again, the restrictions in that area have  
19 been further amended. The company's customers do not pay  
20 availability fees to Lake Region. If there's any  
21 confusion about that, I'll repeat it. The ratepayers of  
22 Lake Region do not pay availability fees to Lake Region.  
23 They pay only the rates and charges in the company's  
24 tariffs as approved by this Commission.

25                   If any company ratepayer happens to be

1    paying an availability fee, it is entirely because the  
2    ratepayer made an independent decision to purchase an  
3    undeveloped lot subject to the deed restrictions and the  
4    fee.

5                    The company has no power to enforce the  
6    payment of the availability fee against the lot owner even  
7    if the lot owner is a company ratepayer. The owner of the  
8    undeveloped lot is the sole decision-maker of whether to  
9    take regulated water and/or sewer service at the property  
10   or to continue to pay the availability fee. That is not a  
11   decision Lake Region makes. The legal rights of to  
12   availability fees have been assigned by the developer to  
13   RPS Properties, LP and Sally Stump as we have talked about  
14   this morning. We talked about Lake Utility Availability.  
15   I'll not talk about that again.

16                   I think it would be an accurate statement  
17   that Staff, the Office of the Public Counsel and Four  
18   Seasons Lakesites POA, our intervenor, all advance similar  
19   arguments on how availability fees should be applied.  
20   They assert that even though Lake Region has no legal  
21   right to use the fee revenue, that the revenue should be  
22   used as an offset, by how much is not clear, to the  
23   company's overall cost of service for its water and sewer  
24   operations.

25                   In his surrebuttal, Mr. Featherstone tries

1 to calculate the amount of availability fee revenue  
2 available. I'll say that again. That didn't come out  
3 right.

4 Mr. Featherstone tries to calculate an  
5 amount of availability fee revenue that he believes should  
6 be used as an offset to the revenue requirement, but the  
7 figures he relies on in his testimony are not accurate.  
8 They've not been verified.

9 If the parties' approach were adopted, it  
10 first assumes that the Commission may order shareholders  
11 of utilities it regulates to relinquish rights to personal  
12 assets in order to support the utilities they own. That  
13 would mean an alteration or reformation of otherwise  
14 lawful agreements.

15 The Commission has no equitable powers, and  
16 on this point I'd like to raise again the issue that the  
17 judge talked about, and that is, our contention continues  
18 to be that a revenue stream for availability is -- has  
19 been an unregulated thing for the Commission for years,  
20 and it cannot be arguably a part of the water works, the  
21 sewer works or a franchise. There's no part of that being  
22 assigned or transferred.

23 Also, the -- the stream of revenues  
24 referred to, the unregulated stream, one that I think even  
25 the testimony of the witnesses today should not be

1   tariffed, how that can be considered used or useful in  
2   connection with the water works or the water system or the  
3   sewer works or sewer system. We would think it is very  
4   arguable that that statute has any application at all.

5                   The approach advanced by the parties would  
6   also mean that property owners on Shawnee Bend could take  
7   no utility service from the company, would be paying part  
8   and perhaps all of the costs involved in providing utility  
9   services to the property owners who do take utility  
10   services from the company. This would be an unfair shift  
11   of costs to non-customers of the company and is unjust and  
12   unreasonable.

13                  As I mentioned, Mr. Featherstone is the  
14   first to try and quantify how much of the availability fee  
15   revenue should be used as an offset. No other party has  
16   attempted to do so. And the figures he uses are filled  
17   with assumption and supposition. There is no confirmation  
18   that they're accurate. The numbers are new to the  
19   company, having been asserted in the final round of  
20   testimony as provided by Commission rule.

21                 Mr. Featherstone also proposes an alternative to  
22   the idea of offsetting the revenue requirement in this  
23   case without an amount -- with an amount of availability  
24   fee revenue. He suggests that portions of the company's  
25   management costs and portions of the payroll costs for the

1 company be reallocated to Ms. Stump and RPS Properties.

2 Again, he uses incomplete data and  
3 estimates upon which to propose this, but most importantly  
4 the company has no right to availability fees and does not  
5 bill or collect them. The management group of Mr. Stump,  
6 Mr. Robert Schwermann and Brian Schwermann have no duties  
7 in managing the availability fee collection. The company  
8 has no costs related to the manner and to the  
9 fictionalized -- into fictionalized costs for duties the  
10 company does not and cannot legally perform is again  
11 unjust and unreasonable.

12 From what Mr. Featherstone has testified in  
13 his surrebuttal, we're seeing possibly four different rate  
14 proposals in this case. The opening position was in the  
15 Staff's direct case and was reflected in the January 21  
16 filings.

17 But for Mr. Featherstone's surrebuttal  
18 there are ostensibly three new ones. One, offset the  
19 company's revenue requirement by the entirety of any  
20 availability fee revenue received by Sally Stump and RPS  
21 Properties. Second, use the availability fee revenue  
22 estimate to deny the company its rate increase. And  
23 third, reallocate costs from the company cost of service  
24 to Ms. Stump and RPS Properties. These three proposals  
25 are first described in surrebuttal, and again, it places

1 the company at a severe disadvantage.

2                   Following some of the remarks this morning  
3 about what might be available to remedy this, let me pause  
4 in my remarks and ask if I may move the Commission to  
5 allow a witness for the company this morning, maybe this  
6 afternoon, to testify live today in response to the  
7 surrebuttal of Mr. Featherstone. Mr. Stump is prepared to  
8 provide that additional testimony for the company and the  
9 Commission.

10                   MS. OTT: Staff has no problem with that.

11                   MS. BAKER: Since Mr. Stump has been listed  
12 as a witness, Public Counsel has no problem.

13                   MS. LANGENECKERT: No problem for  
14 Lakesites.

15                   JUDGE STEARLEY: I think it would be  
16 appropriate that Lake Region be allowed to rebut that new  
17 evidence, whether it be by testimony or supplemental  
18 rebuttal filed testimony. Would Mr. Stump be able to  
19 fully address that issue?

20                   MR. COMLEY: I think we could do that. So  
21 I'm grateful for the offer of filing supplemental in  
22 written form. If there's any questions that the  
23 Commission may have following his testimony, maybe that  
24 would be the place to put that, but I think we'll go ahead  
25 and do the oral live testimony today on that issue.

1 JUDGE STEARLEY: All right. Very well.

2 MR. COMLEY: The company's position is that  
3 availability fees are beyond the Commission's  
4 jurisdiction. To repeat that one more time, they should  
5 not be considered in the case. If the Commission elects  
6 to hear the evidence on the topic, then the proposal  
7 suggested by the Office of the Public Counsel and those  
8 submitted by the Staff should be rejected.

9 JUDGE STEARLEY: Thank you, Mr. Comley.  
10 Opening statement from Staff?

11 MS. OTT: May it please the Commission? My  
12 name is Jaime Ott, and I'm here today on behalf of Staff  
13 of the Missouri Public Service Commission.

14 This matter began when Lake Region Water &  
15 Sewer Company filed tariff sheets that reflected a  
16 50 percent rate increase. That is over \$330,000 in  
17 additional revenue. Lake Region has since reduced that  
18 amount by -- to approximately \$215,000 or a 32 percent  
19 rate increase.

20 Some background information is necessary to  
21 understand the two remaining issues in this case,  
22 executive management compensation and availability fees.

23 Staff witness James Merciel provided a  
24 historical timeline of Lake Region in Attachment 2 of his  
25 surrebuttal. That timeline shows that in Lake Region's



1 30 years plus of existence, it has changed both its  
2 ownership and corporate identity several times.

3 I have provided a slide here, if it works,  
4 that kind of shows the area of the -- shows the area of  
5 the lake that we're referring to, Horseshoe Bend and then  
6 the Shawnee Bend area. And in 1993, Lake Region sold off  
7 a portion of its assets on the Horseshoe Bend side, and  
8 that company is now known as Ozark Shores Water Company.

9 In 1995, Lake Region was granted an  
10 additional certificate of convenience and necessity to  
11 provide water and sewer services to the area known as  
12 Shawnee Bend. So from 1993 to 1995, Lake Region was only  
13 providing regulated sewer service to the Horseshoe Bend  
14 area. Today, Lake Region provides only regulated sewer  
15 service to the Horseshoe Bend area and both water and  
16 sewer service to the Shawnee Bend area.

17 Each area and system operates under a  
18 separate tariff. Lake Region's last rate case was in 1998  
19 and only covered the Horseshoe Bend area. The Shawnee  
20 Bend area has not been subject to a Commission rate case  
21 since its CCN case.

22 The next slide shows you the organizational  
23 structure of this entity. Lake Region is owned equally by  
24 Sally Stump and RPS Properties, a Schwermann family  
25 partnership. Lake Region's executive management team

1 consists of Vern Stump, Sally's husband, and Bob and Brian  
2 Schwermann of RPS Properties. The same people, Ms. Stump  
3 and RPS Properties, also own Ozark Shores Water Company  
4 and Lake Utility Availability. Mr. John Summers is the  
5 general manager of all the entities as well as the Public  
6 Water Supply District No. 4 of Camden County.

7                   Keep this in mind. Lake Region has no  
8 employees. It hires under contract employees of the Water  
9 District to conduct all of its operations. Ozark Shores  
10 and Lake Utility Availability do the same thing. All of  
11 the entities, including the Water Supply District, share  
12 office space, equipment, supplies and employees.

13                   The first issue presented is the  
14 appropriate level of executive management compensation.  
15 Staff witness Bill Harris reviewed the activities,  
16 responsibilities and time the executive management team  
17 spend on the Lake Region system. In addition, he  
18 evaluated pay scales for similar sized water and sewer  
19 companies.

20                   Based on Staff's last EMS run, Staff  
21 believes that approximately a little under \$28,000 in  
22 executive management compensation should be included in  
23 Lake Region's cost of service. That is broken down to  
24 7,100 for Shawnee Bend Water, 7,500 for Shawnee Bend  
25 Sewer, and 13,300 to Horseshoe Bend Sewer.



11 OPC's witness, Ted Robertson, brought the  
12 issue of availability fees to light in his direct  
13 testimony. Two weeks later, at a local public hearing  
14 ratepayers complained adamantly about the potentially  
15 steep rate increase in light of current rates and  
16 availability fees.

25 Staff began investigating the issue of

1 availability fees with this new information. After such  
2 inquiry, Staff learned of the intervenors Four Seasons  
3 Lakesites Property Owners Association Declaration of  
4 Restrictive Covenants. Those restricted covenants are  
5 included in Staff witness James Merciel's rebuttal  
6 testimony at Attachments 3, 4 and 5.

7                   The restrictive covenants state that water  
8 and sewer availability -- water and sewer utility systems  
9 will be regulated by the Missouri Public Service  
10 Commission. They provide that lot owners will be charged  
11 an availability fee for the accommodation of water and  
12 sewer services until the lot owner hooks up to the system.  
13 The availability fee clause specifically states that those  
14 fees are subject to change only by an Order of the  
15 Missouri Public Service Commission.

16                   It appears initially Lake Region collected  
17 availability fees as shown in James Merciel's surrebuttal  
18 testimony Attachment 7. At some point thereafter, the  
19 owners hit upon this idea to get around having the  
20 availability fees count as revenue. They created a sham  
21 entity called Lake Utility Availability, to alienate the  
22 availability fees from Lake Region and circumvent  
23 Commission regulation.

24                   Their theory appears to be that the  
25 availability fees which pay for the accommodation or

1 capacity reservation of water and sewer service magically  
2 cease to be a utility service if they are paid to a  
3 company other than Lake Region. This is nonsense. A  
4 utility doesn't cease to be a utility service just because  
5 the insertion of another company as a pay agent.

6                   According to the fictitious name  
7 registration documentation on the Secretary of State's  
8 website, Sally Stump and RPS Properties, the Lake Region  
9 owners, receive the Lake Region availability fees. As I  
10 said before, they are all the same people.

11                   If the creation of a sham entity does  
12 successfully divert the availability fees from Lake Region  
13 to Lake Utility Availability, then the transfer of Lake  
14 Region's assets was done without Commission approval and  
15 authority.

16                   Finally, if Lake Utility Availability is  
17 really a separate entity with operations severable from  
18 Lake Region, then Lake Utility Availability needs to get a  
19 certificate of service authority from this Commission.

20                   Although it cannot be certain since Staff  
21 has not been able to complete its discovery, the Staff  
22 estimates that Lake Utility Availability collects over  
23 \$300,000 a year in availability fees, a number  
24 suspiciously similar to the rate increase requested by  
25 Lake Region.

1                   This number Mr. Featherstone came up with  
2   was also brought out from customers at the local public  
3   hearings in sworn testimony. Diversion of those assets  
4   without Commission authorization is to the detriment of  
5   ratepayers, resulting in unjust and unreasonable rates.  
6   The money collected for availability fees should be  
7   included as revenue.

8                   Staff witness Mr. Featherstone and  
9   Mr. Merciel have filed testimony on the issue of  
10   availability fees and will take the stand today for  
11   further examination.

12                  If the Commission disagrees with Staff  
13   about the inclusion of availability fees as revenue or  
14   applied against rate base, the staff believes that the  
15   costs associated with collecting and retaining  
16   availability fees should be excluded from rates. These  
17   costs should be assigned to Lake Utility Availability and  
18   removed from Lake Region's operating expenses.

19                  In conclusion, Staff asks the Commission to  
20   find the appropriate level of executive management  
21   compensation to be set at \$27,901 and that availability  
22   fees should be included in Lake Region's revenues.

23                  Thank you.

24                  JUDGE STEARLEY: Thank you, Ms. Ott.  
25   Opening statements from the Office of Public Counsel?

1                   MS. BAKER: Thank you, your Honor. May it  
2 please the Commission? Christina Baker appearing for the  
3 Office of the Public Counsel.

4                   Before the Commission today are basically  
5 two issues. One is the executive management compensation  
6 to be included in Lake Region's revenue requirement, and  
7 also should the charges for the availability fees  
8 collected from the undeveloped lots and retained by an  
9 affiliate company be classified as a revenue or applied  
10 against rate base, and then if the Commission finds that  
11 the charges of undeveloped lots are not to be classified  
12 as revenue, what costs should be identified and excluded  
13 from Lake Region's cost of service?

14                  The Commission's charge is to make sure  
15 that utility service is provided at -- that safe and  
16 adequate utility service is provided at just and  
17 reasonable prices.

18                  On the issue of management compensation,  
19 you will hear testimony today that the amount of the  
20 executive management compensation that's being charged in  
21 this case by -- that is being requested by the company and  
22 also that is being suggested by Staff is excessive and  
23 unnecessary for a utility the size of Lake Region.

24                  Basically, Lake Region has only 700  
25 customers. All of the utility operations have been



1   contracted out, and the management activities described by  
2   the company are more representative of the utility's board  
3   of directors rather than the employees.  So basically,  
4   just because the utility managers call themselves a  
5   management board, their activities are more likely to be  
6   seen as a board of directors.

7                   You will hear testimony that over \$50,000  
8   or -- or per Staff, around \$28,000, should be provided as  
9   management fees for 700 customers.  Some of them are both  
10  water and sewer customers.

11                   However, you will also hear testimony that  
12  Lake Region hires a manager to do all of the actual work,  
13  while the so-called executive management group is apprised  
14  of issues with policy or operations so orders can be given  
15  back to the manager to carry out.  Those are basically the  
16  duties of a board of directors, not a management group.

17                   Therefore, Public Counsel would give  
18  testimony today in support of management fees that are  
19  more likely in line with a board of directors.

20                   As to the issue of availability charges,  
21  we've talked about that extensively this morning.  Quite  
22  frankly, Public Counsel doesn't know what testimony will  
23  being given this afternoon regarding the availability  
24  fees.  The information has been quite -- quite small as to  
25  what the availability fees are, how many lots there are,

1    who has been collecting, how much it has been, how long  
2    and so forth.

3                    So, basically, the testimony that will come  
4    from Public Counsel would be that -- and from Staff as  
5    well, is that the availability fees is estimated to be in  
6    the hundreds of thousands of dollars per year. Taking  
7    that amount back to when the system was put in in  
8    1971/1972, that is an enormous amount of money for a very  
9    small system, and also taking into account that, per the  
10   documentation that will be seen with the deeds, this fee  
11   goes on forever. It will -- it has no end date, and so  
12   hundreds of thousands of dollars are being collected for a  
13   utility service, and the utility is not getting the  
14   benefit of it. The customers of the utility are not  
15   getting the benefit of it.

16                   And so basically the charge of the  
17   Commission is to ensure that the customers are given just  
18   and reasonable rates, and so the outcome of this case on  
19   whether the customers are getting just and reasonable  
20   rates will rely almost completely on the issue of the  
21   availability charges.

22                   With that, that ends my opening. Thank  
23   you.

24                   JUDGE STEARLEY: Thank you, Ms. Baker.  
25   Opening statements from Four Season Lakesites Property

1 Owners Association.

2 MS. LANGENECKERT: Almost as bad as my last  
3 name. May it please the Commission? My name is Lisa  
4 Langeneckert, and I am here to represent the Four Seasons  
5 Lakesites Property Owners Association.

6 The Property Owners Association was really  
7 torn about intervening in this case. They've had really  
8 good relationships with Lake Region, and they've had good  
9 service. They've been happy with their service. But when  
10 they realized that the availability fees that were being  
11 paid by over 1,200 lots was not being included in the  
12 revenues of the utility, they became very concerned.

13 I know that Ms. Ott showed us a map of the  
14 area, but I have just Porta Cima, and this is a color map  
15 of all of Porta Cima. These are the lots that are -- some  
16 of the lots that are served by the Four Seasons Lakesites  
17 Property Owners Association. They also have property  
18 on -- that they serve on Horseshoe Bend.

19 Now, of all of these lots, there's 1,607  
20 that are currently existing and platted out. Only 322 of  
21 those are developed. That leaves 1,278 that are  
22 undeveloped, plus 7 customers who have double lots, so  
23 they may have development on one lot and no development on  
24 the other or they may have their property in the middle of  
25 the lot, the building in the middle of the lot.

1                   We feel that the Lake Utility customers --  
2   I'm sorry, the Lake Utility Availability customers are  
3   being misled, as are the Lake Region Water & Sewer  
4   customers. All the declarations until July of 2009  
5   indicate that the availability fees will be paid to a  
6   public utility whose rates are formally approved and  
7   subject to change by order of the Missouri Public Service  
8   Commission.

9                   Property owners were sent bills telling  
10   them to make their checks payable to Lake -- I'm sorry to  
11   Four Season Lakesites Water & Sewer, the predecessor  
12   company to Lake Region Water & Sewer. Property owners  
13   were presented with contracts when they purchased their  
14   property indicating that they would pay an availability  
15   fee to a public utility authorized by a certificate of  
16   public convenience and necessity issued by the Missouri  
17   Public Service Commission or face a lien on their  
18   property.

19                  The availability fee are paid to the same  
20   people who own the water and sewer company under the  
21   fictitious name of Lake Utility Availability, as you have  
22   heard in many statements. While they claim -- while the  
23   claim is made, despite being called Lake Utility, it's not  
24   a utility. The payments are returned to the same address  
25   and phone number as the utility using the same lot number

1 and bill format.

2                   These fees are discriminatory, not only to  
3 all undeveloped lots in Lake Region's service area because  
4 they're charging an availability fee, only those receiving  
5 water and sewer service at Porta Cima on Shawnee Bend.  
6 Undeveloped lots in other subdivisions on Shawnee Bend  
7 receive no availability charge at all even though they're  
8 also served by Lake Region Water & Sewer.

9                   Ozark Shores charges water availability to  
10 customers on Horseshoe Bend, but these revenues offset  
11 expenses, although they are not tariffed.

12                   As I mentioned, currently there are 1,607  
13 lots, 322 developed, 1,278 that aren't. At \$300 a year,  
14 that's \$383,400 from ratepayers being thrown into an  
15 abyss. Is this a penalty for not developing their lots?  
16 I know that Mr. Comley indicated that if they wanted to  
17 get rid of this fee, they could just go ahead and develop  
18 their lots.

19                   There is no limit on these fees in dollar  
20 amount or in time. The Porta Cima properties have been  
21 developed or undeveloped, plats have been laid out for 15  
22 years. Some of these property owners have been paying  
23 this \$300 a year for 15 years.

24                   Now, \$300 a year probably doesn't seem like  
25 a lot of money to many of us, and you would think, well,

1    why are they bothering to get involved in this when maybe  
2    they have three or four years they don't develop their  
3    property or maybe even 15.  It's still not a gigantic  
4    amount of money, but yet when they see that the amounts  
5    they were paying were not going to keep up the pipe, were  
6    not going to protect the sewer system and the water system  
7    that they thought they were contributing to, it became a  
8    concern.

9                   All Lake Region Water & Sewer customers are  
10   paying to maintain pipes that availability customers will  
11   eventually use.  This harms Lake Region Water current  
12   customers, future customers, and Lake Utility Availability  
13   customers.

14                   Lake Region's witness Summers and their  
15   attorney Mr. Comley stated in his opening, they indicate a  
16   concern in their testimony that the availability customers  
17   will be subsidizing the utility customers if those fees  
18   are included in rates, but their concerns for the subsidy  
19   is one sided.  The subsidy of the Lake Region Water &  
20   Sewer customers of the pipes in the ground and the plant  
21   ready to serve the other 1,278 undeveloped lots needs to  
22   be addressed also.

23                   That's the end of my opening statement.

24                   JUDGE STEARLEY:  All right.  Thank you very  
25   much.  Mr. Comley, are you ready to call your first

1 witness?

2 MR. COMLEY: Yes, I am, Judge Stearley.  
3 I'd like to call Mr. John R. Summers.

4 MS. OTT: Judge, can I ask a question? I  
5 thought we were starting with executive management  
6 compensation and not -- I didn't know Mr. Summers was a  
7 witness to that.

8 JUDGE STEARLEY: Let me ask, the way the  
9 witness list was presented was broken out by issues, the  
10 first being executive management. Were the parties  
11 wanting to go on an issue basis? Did they plan to put  
12 their witnesses on and address all issues with those  
13 witnesses while they were on the stand at one time?

14 MR. COMLEY: Judge, what I had in my mind,  
15 and if I did confuse anybody, I apologize. Mr. Summers  
16 was, of course, the lead witness on the rate case. His  
17 direct testimony is the lead in to support the overall  
18 policy of the rate case. I thought we would go ahead and  
19 have him go on, his direct and his rebuttal and  
20 surrebuttal would be on, and then we could go to  
21 Mr. Stump.

22 JUDGE STEARLEY: All right. Are the  
23 parties not prepared for that order of examination this  
24 morning or --

25 MS. BAKER: Given that we are going to be

1 getting some new information from Mr. Stump, maybe it  
2 would be better if we stuck with management fees and then  
3 availability fees as separate issues.

4 MR. COMLEY: I'm fine with that, too,  
5 Judge. Let me call Mr. Stump to the stand.

6 JUDGE STEARLEY: Very well. Mr. Stump, if  
7 you would please raise your right hand.

8 (Witness sworn.)

9 JUDGE STEARLEY: Thank you. You may be  
10 seated.

11 MR. COMLEY: With respect to the marking of  
12 the exhibits, Judge Stearley, I would have the rebuttal of  
13 Mr. Stump marked as Lake Region No. 1.

14 JUDGE STEARLEY: Actually, I believe I  
15 marked your Partial Stipulation as 1, so the next one  
16 would be 2.

17 MR. COMLEY: No. 2, and his surrebuttal  
18 will be No. 3.

19 (LAKE REGION EXHIBIT NOS. 2 AND 3 WERE  
20 MARKED FOR IDENTIFICATION BY THE REPORTER.)

21 VERNON STUMP testified as follows:

22 DIRECT EXAMINATION BY MR. COMLEY:

23 Q. Mr. Stump, would you state your full name  
24 for the Commission, please.

25 A. Vernon L. Stump.



1 Q. And what is your occupation or profession?

2 A. I am a civil engineer by background and  
3 manager of water and sewer utilities.

4 Q. As part of this case, Mr. Stump, did you  
5 cause to be prefiled a set of prefiled testimony in this  
6 case?

7 A. Yes, I did.

8 Q. And do you have copies of that prefiled  
9 testimony in front of you?

10 A. Yes, I do.

11 Q. With respect to Exhibit 2, your prefiled  
12 rebuttal testimony, if I were to ask you the questions  
13 contained in that testimony today, would your answers be  
14 the same?

15 A. Yes, they would.

16 Q. With respect to the testimony that you have  
17 prefiled in your surrebuttal testimony, which has been  
18 marked as Exhibit 3, if I were to ask you the questions  
19 contained in your surrebuttal testimony today, would your  
20 answers be the same or substantially the same?

21 A. They, would.

22 Q. And with respect to both testimonies, were  
23 your answers true and correct to the best of your  
24 information and belief?

25 A. Yes, they were.

1                   MR. COMLEY: Your Honor, I would wait on  
2 tendering his -- the exhibits at this point but would like  
3 the opportunity to further examine Mr. Stump on the issues  
4 of Mr. Featherstone's testimony.

5                   JUDGE STEARLEY: All right. I believe no  
6 party raised any objection at the time Mr. Comley brought  
7 this up in his opening statement, so we will proceed.

8                   MR. COMLEY: And then cross-examination,  
9 you can have cross-examination on that new matter. Is  
10 that what you had in mind, Ms. Baker?

11                  MS. BAKER: Yes.

12                  MS. OTT: Okay. So just, Judge, for  
13 clarification, we are going to handle all issues  
14 pertaining to a witness when they're on the stand? We're  
15 not going to do executive management compensation and then  
16 later today do availability fees?

17                  MR. COMLEY: Well, I'm trying to make it  
18 efficient for the court.

19                  JUDGE STEARLEY: Mr. Comley, is that  
20 efficient for your witnesses as well in terms of their  
21 availability?

22                  MR. COMLEY: I think Mr. Stump could be  
23 available on the availability side of this if it's  
24 possible to recall him for direct examination during that  
25 time. Is that okay with everybody?

1 JUDGE STEARLEY: So I just want to  
2 understand what Staff's preference is here.

3 MS. OTT: Staff is just trying to be clear  
4 on what the process is going to be today, because some  
5 witnesses are only for executive management compensation  
6 and some are for just availability fees.

7 JUDGE STEARLEY: Right. I believe  
8 Mr. Comley's witnesses --

9 MR. COMLEY: It's executive management.  
10 His prefiled testimony was executive management.

11 JUDGE STEARLEY: And Mr. Summers addresses  
12 all other issues; is that correct?

13 MR. COMLEY: And then Mr. Stump would be  
14 the witness that would be offering material in response to  
15 Mr. Featherstone's surrebuttal, which is predominantly  
16 availability fees.

17 So what I'm gathering is you would prefer  
18 that he go ahead, stand cross-examination on the executive  
19 management issues in his rebuttal and surrebuttal, and  
20 later come back and give his direct on the additional  
21 information?

22 MS. OTT: Yes.

23 MR. COMLEY: I have no objection to that,  
24 and --

25 JUDGE STEARLEY: All right. So we'll go

1 issue by issue, dealing with executive management fees at  
2 this point.

3 MR. COMLEY: And given that being the case,  
4 I will offer Exhibits 2 and 3 into the record and offer  
5 also Mr. Stump for cross-examination.

6 JUDGE STEARLEY: Any objections to the  
7 offering of Exhibits No. 2 and 3?

8 (No response.)

9 JUDGE STEARLEY: Hearing none, they are to  
10 be received and admitted in the record.

11 (LAKE REGION EXHIBIT NOS. 2 AND 3 WERE  
12 RECEIVED INTO EVIDENCE.)

13 JUDGE STEARLEY: Cross-examination begins  
14 with Property Owners Association.

15 MS. LANGENECKERT: We have no questions for  
16 this witness, nor do we have any on the management fees.

17 JUDGE STEARLEY: Cross-examination by  
18 Staff.

19 CROSS-EXAMINATION BY MS. OTT:

20 Q. Good morning, Mr. Stump.

21 A. Good morning.

22 Q. The executive management team consists of  
23 you and Bob and Brian Schwermann?

24 A. That is correct.

25 Q. And you refer to yourself as the group?

1           A.       That's correct.

2           Q.       You're not an owner of Lake Region?

3           A.       No, I'm not.

4           Q.       Your wife is the owner?

5           A.       She's owner of the stocks of Lake Region,

6   yes.

7           Q.       Does your wife oversee or perform any

8   management duties?

9           A.       No.

10          Q.       Does she sit on the board of directors?

11          A.       Yes.

12          Q.       And what is her position?

13          A.       Just a director.

14          Q.       Are you on the board of directors?

15          A.       No.

16          Q.       On a monthly average, how much time do you

17   spend on the Lake Region water system?

18          A.       I spend approximately three days working on

19   Lake Region and Ozark Shores.

20          Q.       How much time does the group spend?

21          A.       The group spends probably around nine days

22   total per month.

23          Q.       And that's for both water and sewer and

24   Ozark Shores,> that's not each individually --

25          A.       No.

1           Q.       -- nine days for water, nine days for  
2 sewer, nine days for Ozark Shores?

3           A.       That includes nine days for both utilities.

4           Q.       Now, do you or any of the group members  
5 live near or around the Lake area? And I say Lake, I mean  
6 the Lake of the Ozarks.

7           A.       No, we do not.

8           Q.       Does any of the group have a second home or  
9 property around the Lake area?

10          A.       No, they do not.

11          Q.       How often do you visit the Lake Region  
12 Water and Sewer system?

13          A.       I come up once a month as a normal  
14 procedure. If there's something different going on, I'll  
15 come an additional time, but once a month is my normal  
16 schedule.

17          Q.       And how often do the other group members  
18 visit the water and sewer system?

19          A.       They also come once a month.

20          Q.       And do you plan your trips together or do  
21 you go on separate times?

22          A.       We plan the trips at the same time and meet  
23 at that time and try to conduct all our business at that  
24 time.

25          Q.       Are you ever down there at different times

1 from each other?

2 A. For certain occasions we are.

3 Q. How much time would you spend working on  
4 Lake Region projects or issues not onsite?

5 A. I would expect that I spend somewhere an  
6 average of one to two days a month if you add up all the  
7 hourly time that I spent.

8 Q. So what is your primary role with Lake  
9 Region?

10 A. My primary role is the overall direction of  
11 the company. I take care of all the engineering aspects  
12 that we need to decide on plant expansions, on major  
13 repair projects we have to do. I handle a lot of the  
14 decisions of what additions we make to our plants with  
15 respect to DNR requirements. I also establish our budget  
16 parameters, negotiate our contracts with the water  
17 district and keep track of how the performance of the  
18 company is going under our operational contract.

19 Q. Now, Brian and Robert Schwermann, they do  
20 more of the financial aspects?

21 A. That's correct.

22 Q. They do not provide any engineering  
23 services?

24 A. No.

25 Q. Do any of your duties overlap?

1           A.       Generally not.  They -- we tend to have  
2   them fairly separate in that they handle most of the --  
3   all of the financial services, tax returns, accounting  
4   issues and things like that, and I generally handle more  
5   of operational type items.

6           Q.       How often do you communicate with  
7   Mr. Summers?

8           A.       On an average of twice a week.

9           Q.       Now, I want to refer you to page 3 of your  
10   rebuttal testimony.

11          A.       Okay.

12          Q.       You state that the executive management  
13   team should get at least the same amount of money as Lake  
14   Region's PSC assessment; is that a fair characterization?

15          A.       That is.

16          Q.       Where does this idea come from?

17          A.       This idea comes from the fact that -- that  
18   our group manages the company on a routine basis, on a  
19   daily basis, and if we look at the services that we're  
20   provided by the Commission, we think we certainly provide  
21   more benefit and work to the company than what we see  
22   coming from the Commission Staff.

23          Q.       Now, are you aware of any utility in  
24   Missouri in which their executive management team  
25   compensation is directly correlated to the PSC assessment



1 amount?

2 A. No, I'm not.

3 Q. Now I'd like to direct you to page 3 and 4  
4 of your surrebuttal testimony, and I believe Mr. Comley  
5 might have cleared this up in his opening. When you talk  
6 about some middle ground between OPC, Staff and Lake  
7 Region and your position on executive management fees?

8 A. Yes.

9 Q. That position has now changed to roughly  
10 50,000?

11 A. Yes. When we looked at this and with our  
12 discussions with Staff, we realized that that would be  
13 logical that that number would be cut in half because half  
14 that time is spent with Ozark Shores Water Company.

15 Q. Okay. Now, do you ever meet with Lake  
16 Region customers?

17 A. Generally I do not.

18 Q. Have you, though?

19 A. I have in the past at certain times, yes.

20 Q. Do you ever go out into the field on your  
21 system?

22 A. I do frequently, yes.

23 MS. OTT: I don't have any further  
24 questions.

25 JUDGE STEARLEY: Cross-examination by the

1 Office of Public Counsel?

2 MS. BAKER: Thank you, your Honor.

3 CROSS-EXAMINATION BY MS. BAKER:

4 Q. Hello, Mr. Summers. In your direct  
5 testimony, on page 2, lines 5 through 6, you state that  
6 the, what I believe you call yourself, the executive  
7 management group devotes only as much time as necessary to  
8 meet the needs of the company; is that true?

9 A. That's true.

10 Q. Given that the company has hired a manager,  
11 do you believe that for a utility that only has 700  
12 customers that it is necessary for the executive  
13 management group to consist of three people?

14 A. Well, I think first your characterization  
15 of the company as only having 700 customers is -- is  
16 somewhat wrong.

17 Q. You will agree with me that the same -- the  
18 same -- most of those are both water and sewer customers,  
19 so they are the same people; is that correct?

20 A. The 700 you're referring to is correct, but  
21 we also have a large number of sewer customers and we have  
22 some very large condominium hotel customers, that we have  
23 substantial sewage treatment plants and capacity to serve  
24 those, which adds a lot of time and effort to this  
25 utility, making it really a much larger utility that you

1 are referring to.

2 Q. But as you said, of those 700 customers,  
3 most of them are both water and sewer, correct?

4 A. Well, the 700 that are on the Shawnee Bend  
5 side are. The 140 or so that are on the Horseshoe Bend  
6 side are just sewer customers.

7 Q. You're not an employee of Lake Region, are  
8 you?

9 A. No, I'm not.

10 Q. You're not an executive of Lake Region, are  
11 you?

12 A. No.

13 Q. And you are not a contracted manager of  
14 Lake Region as Mr. Summers is, are you?

15 A. We don't have direct contract, no.

16 Q. And the other members who have been  
17 identified as the executive management group, the  
18 Schwermanns, they are not employees either, are they?

19 A. No.

20 Q. They are not executives?

21 A. No.

22 Q. They are not contract managers either?

23 A. No.

24 Q. So basically the actions of the executive  
25 management group are to be apprised of the policy and

1 operations issues with the system?

2 A. No. It includes quite a bit of additional  
3 stuff beyond that. Our operational contract is simply a  
4 contract to operate the company and to take care of the  
5 day-to-day operations. It doesn't include all of the  
6 other decisions that must be made and all the other items  
7 relating to running the entire company.

8 Q. Right. But the day-to-day operation is  
9 what you pay Mr. Summers for?

10 A. We pay him for the day-to-day operations,  
11 yes.

12 Q. And you stated that you spend approximately  
13 three days per month on Lake Region and the other  
14 affiliates here in Missouri; is that correct?

15 A. Yes.

16 Q. And that you spend maybe one to two days  
17 per month from home dealing with the system?

18 A. That's correct.

19 Q. So you spend basically -- first off, of the  
20 three days to work onsite for Lake Region, you travel from  
21 Texas; is that true?

22 A. That's correct.

23 Q. So part of those three days includes your  
24 travel?

25 A. Yes.

1           Q.       So basically, let's say a day of travel in  
2 there; would that be correct?

3           A.       That would be close, yes.

4           Q.       So that leaves four days a month possibly  
5 that you are actually spending on Lake Region?

6           A.       Yes

7           Q.       And for that, you -- would you say that  
8 that is a similar amount for the other two members of the  
9 group?

10          A.       Yes.

11          Q.       And for that, you are requesting \$50,000  
12 for the three of you?

13          A.       Yes.

14          Q.       That comes out to a lot of money per hour,  
15 doesn't it?

16          A.       Comes out to approximately \$64 per hour,  
17 which is standard rate that would be charged for  
18 executives around Missouri.

19          Q.       You say that you work on additions to the  
20 plant; is that correct?

21          A.       That's correct.

22          Q.       Mr. Summers works on additions to the  
23 plant, doesn't he?

24          A.       Not really.

25          Q.       He is your management, onsite management?

1           A.       He is management, but actually I'm the one  
2       that decides what we're going to do and how we're going to  
3       do those things and works with our engineer to get those  
4       things done.

5           Q.       So basically your role is to give -- to  
6       make final decisions and then send the information to  
7       Mr. Summers to actually implement it?

8           A.       Actually, my role is to decide what we're  
9       going to do, to evaluate what we're going to do and figure  
10      out how we're going to do it, and then at that time, once  
11      we decide those things, then the-- if it's the staff  
12      that's going to do it or if we have an outside contractor  
13      do it.

14          Q.       So in your four days a month, you think  
15      about all these things and then you tell Mr. Summers what  
16      to do?

17          A.       No.   In my four days a month, I come up, I  
18      look at the system, I evaluate what's going on with the  
19      system, I decide if we need to increase or decrease  
20      personnel, look at our budgets, review what's going on,  
21      and those are closer to what I do.

22          Q.       And you say that the Schwermanns do  
23      financial work?

24          A.       That's correct.

25          Q.       They do financial work in their four days a

1 month?

2 A. Yes.

3 Q. It is -- it is part of Mr. Summers' job to  
4 protect the interests of Lake Region, isn't it?

5 A. Really Mr. Summers' job is to operate the  
6 company to the best of his ability. If you say protecting  
7 Lake Region, I'd say yes.

8 Q. And it is also your job to protect the  
9 interests of Lake Region and its customers; is that  
10 correct?

11 A. Certainly.

12 Q. You have heard of attending meetings via  
13 conference call or video conferencing, haven't you?

14 A. I have.

15 Q. You stated that one day of travel and two  
16 days onsite per month to attend meetings of the district;  
17 is that correct?

18 A. I attend -- during that time I do attend  
19 the meeting with the district, yes.

20 Q. And you would agree that those costs would  
21 be quite a bit less if you would conference call or video  
22 conference rather than traveling from Texas every month;  
23 is that correct?

24 A. No, I wouldn't agree with that.

25 Q. You wouldn't agree that an airplane ticket

1 and hotel and food and all that would not be less than a  
2 conference call?

3 A. Generally, what I found is if you try to  
4 conduct business like that in the water and wastewater  
5 business, typically what you find is that your business  
6 deteriorates and the overall cost for not doing that is  
7 much greater than -- than coming to the site, to looking  
8 at what problems you have, to evaluate those problems, and  
9 those are things that our contract operator is not hired  
10 to do.

11 Q. But he is certainly there to protect the  
12 interests of Lake Region; is that correct?

13 A. That's correct.

14 Q. And he attends those meetings; is that  
15 correct?

16 A. Yes.

17 Q. Then what -- what is beyond his scope of  
18 sitting in the meeting if he can contract -- if he can  
19 contact back to you and ask for the plan of action?

20 A. I think -- I think what you're looking at  
21 is Mr. Summers is an employee of the water district and  
22 water district is an employee of Lake Region. Lake Region  
23 management is responsible for making sure those things are  
24 done right, and we don't know if these things are done  
25 right unless we can come to the office, see what's going



1 on, go out in the field, see if things are maintained as  
2 they should be, if our plant are operating correctly or  
3 not. We can't do that by the telephone.

4 Q. So basically you don't trust Mr. Summers to  
5 take into account your needs because you pay him?

6 A. I think anyone that turns over the  
7 operation to any contract operating firm and never looks  
8 at it again is asking for problems.

9 Q. And it's not that you get a trip to Lake of  
10 the Ozarks once a month?

11 A. That's the last thing I really want.

12 Q. The name that you've given yourself, the  
13 management, the executive management group, that's just a  
14 name that you have given yourself; is that correct?

15 A. That's correct.

16 Q. You would normally consider management to  
17 be an employee or an executive of the utility; is that  
18 correct?

19 A. I don't -- I don't really understand what  
20 you're asking me, the terminology.

21 Q. I think I'll leave it there.

22 MS. BAKER: No further questions.

23 JUDGE STEARLEY: All right. Questions from  
24 the Commissioners. Commissioner Gunn?

25 COMMISSIONER GUNN: Yes. I just -- just a

1 couple.

2 QUESTIONS BY COMMISSIONER GUNN:

3 Q. Is there a separate board of directors  
4 separate and distinct from the three -- the management  
5 team, the three-member management team?

6 A. They're the same except Robert and Bob  
7 Schwermann are on the board of directors and they're in  
8 the management team I'm not a board of director.

9 Q. Okay. But there are two -- they are  
10 considered two different entities. There is a separate  
11 board of directors that performs the functions of a  
12 regular -- a regular board that exists?

13 A. Yes.

14 Q. Okay. Is there a -- is there a first among  
15 equals or is -- are all decisions made collaboratively by  
16 the management team?

17 A. This particular management team has been  
18 together for many years, and in general, if it's an  
19 engineering decision or an operational decision, I'm the  
20 leader. If it's a financial decision, it's the  
21 Schwermanns that are the leader. So we really don't have  
22 someone that is the all-encompassing decision-maker.

23 Q. And let me an -- I apologize because this  
24 is math, and I'm -- didn't think there was going to be  
25 math today. But the contention is we're looking at

- 1     \$50,000 a year divided up by the three of you, correct?
- 2             A.     That's correct.
- 3             Q.     And then so that comes to about \$16,660 a
- 4     person, right?
- 5             A.     Right. And that includes expenses.
- 6             Q.     And that includes expenses. And then that
- 7     is divided by 12 to get your monthly -- your monthly fee?
- 8             A.     That's correct.
- 9             Q.     Which I come to about 13, close to \$1,400 a
- 10    month.
- 11            A.     That's about correct, yes.
- 12            Q.     And then you work, you said it's about four
- 13    days a week?
- 14            A.     That's my best estimate, yes.
- 15            Q.     Of those --
- 16            A.     Four days a month, not a week.
- 17            Q.     That's right. I'm sorry. Four full days a
- 18    month?
- 19            A.     That's correct.
- 20            Q.     And on those four days, you spend eight
- 21    hours or more?
- 22            A.     Generally, yes. Usually it's all day and
- 23    sometimes night meetings, because we try to get in as much
- 24    as we can.
- 25            Q.     And that four days a month applies to all

1 three of you?

2 A. Yes.

3 Q. So we're talking about 350 bucks a day for  
4 those four days that you work, which translates up into  
5 that \$50,000?

6 A. Yes.

7 Q. Okay. I just wanted to be clear on that.  
8 If any of the other parties want to dispute my math,  
9 please feel free because that's why I went to law school.

10 COMMISSIONER GUNN: I don't think I have  
11 any other questions. Thank you.

12 JUDGE STEARLEY: Commissioner Kenney?

13 QUESTIONS BY COMMISSIONER KENNEY:

14 Q. I was in the room when you-all discussed  
15 this, but I forget, are we limiting ourselves to the  
16 discussion of executive management now? We're not talking  
17 about the availability fees yet?

18 Good morning. Thanks for being here. How  
19 are you currently compensated?

20 A. Currently compensated by Lake Region.

21 Q. Okay. What is your current compensation?

22 A. The current compensation is approximately  
23 the \$1,300 a month we were talking about.

24 Q. And you're not an employee. You're not an  
25 owner of the company. So how do you treat it as, ordinary

1 income, stipend? How do you treat that?

2 A. It's just ordinary income.

3 Q. Your wife is a director; is that right?

4 A. Yes.

5 Q. Do you attend the board of directors

6 meetings? Is there -- well, let me ask a different

7 question. Is there an annual meeting, I assume?

8 A. There is an annual meeting.

9 Q. Do you attend it?

10 A. No.

11 Q. Were you involved or are you involved in

12 the corporate running of the -- of the Lake Region

13 utility?

14 A. Yes.

15 Q. Do you have any involvement in drafting

16 bylaws or corporate resolutions?

17 A. No.

18 Q. Other than what you do when you come up to

19 visit from Texas, do you have any other involvement with

20 the corporate entity itself?

21 A. No, I don't.

22 Q. And the nine days, does that include both

23 Lake Region and Ozark Shores?

24 A. Yes.

25 Q. What do you do for a living the other 30 or

1 20-some-odd days of the month?

2 A. I have some past investments.

3 COMMISSIONER KENNEY: Okay. I don't have  
4 any other questions.

5 JUDGE STEARLEY: Any recross based upon  
6 questions from the Bench?

7 MS. OTT: Staff has none.

8 JUDGE STEARLEY: Okay. Redirect?

9 MR. COMLEY: Thank you, Judge. I have two  
10 questions as far as I know right now.

11 REDIRECT EXAMINATION BY MR. COMLEY:

12 Q. Dr. Stump -- that's something you haven't  
13 heard in a while. Mr. Stump, in discussions with  
14 Ms. Baker, you were talking about the numbers in the  
15 customer base for the company. Can you explain to the  
16 Commission why your answer did not agree that it was just  
17 600 customers?

18 A. Well, I think what we have, we have 600  
19 water customers --or 700 water customers and about that  
20 same number of sewer customers, and those are really two  
21 separate entities. It may be the same bill, but for every  
22 water customer you have to have a tower, you have to have  
23 wells, you have to have water meters, and for every sewer  
24 customer you have to have a treatment plant, a collection  
25 line. So it really is two separate -- separate groups.

1                   And then we also have the large numbers of  
2 condominiums in our big complexes, so that -- that in  
3 effect if you look at customer equivalents as if the  
4 number of the amount of water you sell or the amount of  
5 sewage you treat, it's more like a utility that has closer  
6 to 3,000 customers than 700.

7                   So it's easy to say this is a small  
8 utility, but it is a fairly large complicated utility with  
9 water towers, with four separate treatment plants with 40  
10 or 50 small lift stations, and it's much complicated than  
11 just a little subdivision with some water and sewer lines  
12 in it.

13               Q.       I think Ms. Baker also asked you about the  
14 officers of the company. Let me ask you, do the officers  
15 in the company change from time to time?

16               A.       Yes, they do.

17               Q.       And do you know who the current officers of  
18 the company are?

19               A.       I really don't keep real close track, but I  
20 think Brian Schwermann is still the secretary, and  
21 actually I am now the president of Lake Region Water &  
22 Sewer Company.

23                       MR. COMLEY: That's all I have. Thank you.

24                       JUDGE STEARLEY: All right. Thank you,  
25 Mr. Stump. If we're going to proceed issue by issue --

1 Mr. Stump, you may step down at this time, but the  
2 Commission is not releasing you as a witness. You will be  
3 called back and you will remain under oath.

4 If we're going to proceed issue by issue  
5 then, I assume we're going to Staff's witness Mr. Harris  
6 next; is that correct?

7 MS. OTT: That's correct.

8 JUDGE STEARLEY: And we are a quarter 'til  
9 noon. Let me inquire of the parties, is this a logical  
10 breaking time for lunch or do you want to proceed with the  
11 next witness first? What's your preference?

12 MR. COMLEY: I think it might be a logical  
13 time to break for lunch.

14 JUDGE STEARLEY: I see people smiling. I'm  
15 going to take that as an affirmative vote for lunch.  
16 Mr. Harris, we will put you on the stand first thing after  
17 lunch. Why don't we break and start up again at  
18 approximately 1:15.

19 (A BREAK WAS TAKEN.)

20 JUDGE STEARLEY: We are back on the record.

21 MS. OTT: Judge, before Mr. Harris takes  
22 the stand, can Staff go ahead and introduce its cost of  
23 service report and accounting schedules in as evidence?

24 JUDGE STEARLEY: Certainly. Where are we  
25 at here?



1 MS. BRUEGGEMANN: I believe Staff Exhibit  
2 No. 7.

3 JUDGE STEARLEY: Why don't we do your cost  
4 of service as Exhibit 7 and accounting schedules as Staff  
5 Exhibit 8.

6 (STAFF EXHIBIT NOS. 7 AND 8 WERE MARKED FOR  
7 IDENTIFICATION BY THE REPORTER.)

8 JUDGE STEARLEY: Does anyone have any  
9 objections to the offering of Staff Exhibit 7 and 8?

10 MR. COMLEY: Your Honor, I would note for  
11 the record that in the set of undisputed facts that were  
12 stipulated to by the parties, exceptions were noted with  
13 respect to the cost of service study and the accounting  
14 schedules. I think the rate design was -- had no  
15 exceptions. But subject to the exceptions in the  
16 undisputed stipulation of facts, we have no objection.

17 JUDGE STEARLEY: All right. Any others?

18 (No response.)

19 JUDGE STEARLEY: Hearing none, they will be  
20 received and admitted into evidence, noting those  
21 exceptions that Mr. Comley has noted in the unanimous  
22 stipulation.

23 (STAFF EXHIBIT NOS. 7 AND 8 WERE RECEIVED  
24 INTO EVIDENCE.)

25 JUDGE STEARLEY: So continuing with our

1 testimony by issue, and we're still on executive  
2 management compensation, picking up with Staff's witness  
3 Mr. William Harris. Mr. Harris, will you please raise  
4 your right hand for me.

5 (Witness sworn.)

6 JUDGE STEARLEY: Thank you very much.  
7 Counsel, you may proceed.

8 V. WILLIAM HARRIS testified as follows:

9 DIRECT EXAMINATION BY MS. OTT:

10 Q. Would you please state your name for the  
11 record.

12 A. V. William Harris.

13 Q. By whom are you employed and in what  
14 capacity?

15 A. I'm with the Staff of the Missouri Public  
16 Service Commission as -- I'm employed as a regulatory  
17 auditor.

18 Q. Are you the same William Harris that has  
19 previously caused to be filed prepared surrebuttal and  
20 portions of the cost of service report which have been  
21 previously marked for identification as Exhibits 7 and 9?

22 A. Yes, I am.

23 Q. With respect to your prepared surrebuttal  
24 and cost of service report testimony, was that prepared by  
25 you or under your direct -- under direct supervision?

1           A.       It was prepared by me.

2           Q.       Do you have any corrections to make to this  
3 testimony?

4           A.       Yes, I do.

5           Q.       And --

6           A.       Two minor ones on page 2. Both of these  
7 will be in the surrebuttal. Page 2, line 15, that  
8 obviously, as we've discussed earlier today, is not a true  
9 statement any longer. I thought at the time it was, but  
10 it should now read, Lake Region initially sought 99,695 in  
11 management fees but has since suggested a lesser amount,  
12 and the rest of that sentence should be stricken.

13                   Well, excuse me. The Staff's position  
14 should be picked up as a new sentence. To clarify, it  
15 should read, in management fees but has since suggested a  
16 lesser amount, period.

17                   Then the next -- in the next sentence  
18 should continue, and that's the only change really on that  
19 page. Oh, one other thing. I also want to insert the  
20 word is. Staff's position is that 27,901 is the proper  
21 cost.

22           Q.       Do you have any other changes?

23           A.       Yes. On line -- or on page 6, lines 4  
24 through 6, the last -- the last statement there after Lake  
25 Region slash Ozark Shores slash Water District Operation

1 period, that last sentence should be stricken.

2 Q. Do you have any other further changes?

3 A. No. That's it.

4 Q. If you -- if I were to ask you the same or  
5 similar questions contained in that surrebuttal testimony,  
6 would the answers today be substantially the same?

7 A. Yes, they would.

8 Q. And would they be true and accurate to your  
9 best information, knowledge and belief?

10 A. Yes.

11 MS. OTT: With that, I'd like to offer  
12 Exhibit 9 into the record and tender Mr. Harris for  
13 cross-examination.

14 JUDGE STEARLEY: All right. Any objections  
15 to the admission of Exhibit No. 9?

16 (No response.)

17 JUDGE STEARLEY: Hearing none, it shall be  
18 received and admitted into the record.

19 (STAFF EXHIBIT NO. 9 WAS MARKED AND  
20 RECEIVED INTO EVIDENCE.)

21 JUDGE STEARLEY: All right.  
22 Cross-examination, starting with the Property Owners  
23 Association.

24 MS. LANGENECKERT: No questions of this  
25 witness.

1 JUDGE STEARLEY: Public Counsel?

2 CROSS-EXAMINATION BY MS. BAKER:

3 Q. Good afternoon, Mr. Harris.

4 A. Good afternoon.

5 Q. I'm looking at your testimony in the class  
6 cost of service report, I believe it's page 24. And the  
7 last line going into the next page 27 says, the executive  
8 management group serving Lake Region/Ozark Shores must  
9 then approve, amend or reject the proposed expenditures  
10 and expansion; is that correct?

11 A. Yes.

12 Q. So basically what you mean here is that the  
13 actions of the so-called executive management group are to  
14 be apprised of the policy or operations issues, make any  
15 final decisions, which the district and Mr. Summers then  
16 implement; is that correct?

17 A. Could you rephrase or could you restate  
18 that again, please?

19 Q. So basically what you're meaning in this --  
20 in your testimony is that the actions of the executive  
21 management group are to be apprised of the policy and  
22 operations issues; you agree with that?

23 A. To be apprised of the issues, yes.

24 Q. And then to make any final decisions which  
25 they then have the district and Mr. Summers implement?

1           A.       I don't know that they can have the  
2   district implement them, but yes, it would have  
3   Mr. Summers and staff of the district.

4           Q.       And staff of the district?

5           A.       Yes.

6           Q.       Okay. And that is because Mr. Summers is a  
7   paid management -- a paid day-to-day manager for Lake  
8   Region; is that correct?

9           A.       Yes.

10          Q.       Also in your direct testimony on page 25,  
11   line 26 and 27, you state, executive management attends  
12   the monthly meetings of the district to determine if there  
13   are issues affecting Lake Region and/or Ozark Shores; is  
14   that correct?

15          A.       Yes.

16          Q.       In Staff's proposal, cost for attending  
17   these meetings are included, aren't they?

18          A.       No.

19          Q.       Okay.

20          A.       Staff's proposal is for the executive  
21   management group to meet to discuss issues involving both  
22   Lake Region and Ozark Shores to -- or tour the plant,  
23   discuss any operational issues with -- with the operations  
24   manager and staff, observe any -- any issues that may be  
25   going on, such as the implementation of infiltration issue

1 that was -- that is -- what the stipulated case was about  
2 or the stipulated section was about.

3 And during the course of their visit, they  
4 would also, one of the things they would do is meet with  
5 the board of the district. Actually, I wouldn't say they  
6 meet with. They would sit in on a board meeting to hear  
7 if there's any additional information that they need to be  
8 aware of concerning the two regulated companies.

9 Q. And Staff in its proposal does include  
10 travel for Mr. Stump from Texas; is that correct?

11 A. Yes.

12 Q. It also includes two other members of the  
13 executive group; is that correct?

14 A. Well, it includes a car. There's really  
15 the cost of a car trip. It doesn't really necessarily  
16 include any number of people. Actually, if you're talking  
17 about the number of people included, that would be in the  
18 top section of my analysis on Schedule VW1-3, and I --  
19 I've never included more than -- and again, I don't really  
20 look at it as two persons. I look at it as two functions.  
21 But I never included more than the compensation piece for  
22 two persons, if you will, actually two functions, two  
23 functional positions. The fact that there's three in the  
24 car really doesn't enter into anything to my -- as far as  
25 I see it.

1           Q.     Okay.  So you have -- you have built in to  
2     your case two people?

3           A.     Technically.

4           Q.     So the addition -- the additional travel of  
5     Mr. Stump, does that go above and beyond the two people  
6     that you have?

7           A.     Mr. Stump would represent the operational,  
8     functional, engineering, technical side or the technical  
9     function.  One of -- of the Schwermanns, and they can take  
10    their pick, they can alternate, it doesn't matter.  I  
11    think they're both qualified, but the other function would  
12    be satisfied by one of the Schwermanns.

13          Q.     Now, you have heard of attending meetings  
14    via conference calls or video conferencing, haven't you?

15          A.     Sure.  Do it all the time.

16          Q.     And you would agree that that -- that those  
17    costs would be less than Mr. Stump traveling from Texas?

18          A.     They would be less.

19          Q.     What did you rely on for your -- for your  
20    numbers and the costs, coming up with the cost of the  
21    duties that are performed by the executive management  
22    group?

23          A.     The cost of the duties?

24          Q.     Let's start with what did you rely on to  
25    come up with what those duties are?



1           A.       Okay.  What I relied on to determine what  
2   those duties were were extensive interviews both in the --  
3   in the Schwermanns' Overland Park office and in the Lake  
4   Region/Ozark Shores/District Water and Sewer office in  
5   Camdenton, or in Camden County.

6           Q.       Were those from interviews by?

7           A.       Interviews with the executive management  
8   team, with Mr. Summers, with administrative office  
9   personnel, to understand what the executive management  
10  team's functions were, what they did.  It's -- in addition  
11  to the firsthand interviews, toured the facilities, and  
12  I'm aware that Mr. Stump has met with engineers onsite,  
13  discussed firsthand the problems, and then they also  
14  prepared a resume, if you will, of qualifications  
15  outlining the financial background of the Schwermanns and  
16  Mr. Stump's operational background, and between the three  
17  of them, I think they have over 100 years in the -- in  
18  water and sewer utility business.

19          Q.       All right.  So you were here earlier for  
20  Mr. Stump's testimony; is that correct?

21          A.       Yes.

22          Q.       Did you -- do you remember him talking  
23  about how his -- his work for Lake Region was for working  
24  on additions to the plant?

25          A.       That's one of the things, yes.

1           Q.       Was there any documentation that you  
2 reviewed as to how much time Mr. Stump spent on reviewing  
3 additions to the plant?

4           A.       No, not specifically.

5           Q.       Did you hear Mr. Stump talk about how he  
6 was -- he was responsible for budgetary issues?

7           A.       I don't know if I heard him specifically  
8 mention it. I know that as a group, the executive  
9 management group discusses, I guess they each have a  
10 responsibility in determining what the budget will be.

11          Q.       Did you review any documentation as to how  
12 much time was spent on budgetary issues?

13          A.       No.

14          Q.       Did you hear Mr. Stump in his earlier  
15 testimony talk about negotiations and staffing issues?

16          A.       Yes.

17          Q.       Okay. Did you review any documentation as  
18 to how much time was spent on negotiation or staffing  
19 issues?

20          A.       As far as time sheets, no.

21          Q.       Now, did you hear Mr. Stump say that  
22 basically the Schwermanns were the financial reviewers of  
23 Lake Region? Do you remember that testimony this morning?

24          A.       I believe so.

25          Q.       Did you review any documentation as to how

1 much time the Schwermann spent on financial issues for  
2 Lake Region?

3 A. No concrete documentation, no. I'm just  
4 aware of what those documents would be and as far as tax  
5 reporting and accounting issues and that type of thing, I  
6 have a basic understanding how long something like that  
7 might take.

8 Q. Are you aware of any accountants who are  
9 employed or who are outside accountants for Lake Region?

10 A. They, I believe, do have an outside  
11 accountant that they hire to complete the annual report.  
12 I couldn't swear to that, but I think that's right.

13 Q. Did you also hear testimony this morning  
14 from Mr. Stump saying that the Schwermanns prepared the  
15 taxes for Lake Region?

16 A. Yes.

17 Q. Did you review any documentation as to how  
18 much time was spent on preparing taxes?

19 A. No, again, not specifically.

20 MS. BAKER: I think that's all the  
21 questions I have. Thank you.

22 JUDGE STEARLEY: Thank you, Ms. Baker.  
23 Cross-examination by Lake Region?

24 MR. COMLEY: Thank you, Judge Stearley.

25 CROSS-EXAMINATION BY MR. COMLEY:

1           Q.       Mr. Harris, I think I have just a very few  
2       questions for you, some for clarification. Could you  
3       explain to the Commission how much time you did spend in  
4       terms of interviewing the management group or members of  
5       it?

6           A.       I can give an estimate. Again, I don't  
7       have a detailed time sheet for that either, but I made a  
8       trip with two other Staff members, and we were actually  
9       joined by a third Staff member in mid December, and spent,  
10      I think it was -- well, the three of us that initially  
11      went down spent three days there.

12          Q.       Was this one of the non-mini vacations you  
13      referred to in your testimony?

14          A.       It was one of the non-mini vacations, yes.  
15      Unfortunately, I've never had a vacation since I've been  
16      on the Staff of the Commission. I mean, on my own time I  
17      did, but not during -- not through the work. But yeah,  
18      that was in the -- in the midst of winter, and the  
19      so-called resort that we were at, the restaurant wasn't  
20      even open, so, you know, we had to go across town to find  
21      something to eat. So I certainly didn't consider we were  
22      living in the lap of luxury.

23          Q.       And you say, again, how many days did you  
24      spend at the lake office?

25          A.       The first trip I think was three. Like I

1 say, there were three of us. We were joined on the second  
2 day by a fourth individual.

3 Q. Were there more than two days spent --

4 A. It was only one day for him, so --

5 Q. Excuse me. And so between you and the  
6 other members of the Staff, you spent two days at the Lake  
7 office?

8 A. I think the first trip was three days. I'd  
9 have to review my calendar actually. I'm not sure if it's  
10 in the one that I have with me because I've started a new  
11 one for this year. But the second trip, which would have  
12 been in January, that I may have, I think was two days,  
13 and that was just two Staff, myself and one other Staff  
14 member, or no -- I have to re -- again, there were two  
15 other Staff members. There were three of us total the  
16 second trip. There were four of us on the first trip.

17 In both instances I think we met someone  
18 else from the Jefferson City staff. The first instance we  
19 met someone from the management counsel -- or management  
20 audit or consultation. I forget the exact wording. It's  
21 changed the title. The department has changed recently.  
22 But basically they give management audits and advice  
23 from -- like on customer service and different things.

24 Also on the second trip we met someone from  
25 the water and sewer department, some engineers, and

1 actually -- actually, I think we did both -- both trips,  
2 and actually went out with the engineers on the tour to  
3 tour the plant, plant site. In fact, I toured the plant  
4 site on both -- on both visits, both the December and  
5 January visit.

6 And then myself and Mr. Featherstone met  
7 the Schwermanns, Mr. Stump and Mr. Summers at the Overland  
8 Park office one afternoon and interviewed the three of --  
9 or the four of them out there that afternoon.

10 Q. With respect to the documents you had  
11 available to inspect, were you also given telephone  
12 records showing the communications between members of the  
13 management group and Mr. Summers?

14 A. Yes, I was.

15 Q. With respect to those telephone records,  
16 did you examine those and evaluate how much time was  
17 involved and did you incorporate that into your study?

18 A. I examined those and got a basic idea of  
19 how much time was involved. I did not do any kind of  
20 detailed analysis or spreadsheet on it because most of the  
21 charges were like 14 cents or 23 cents. So I was not  
22 really looking at the time so much as I was the expense,  
23 but obviously, and if I were to go back and add them  
24 through and although, because like I say, it was short, or  
25 small amounts, I'm sure it was short minutes, too, but

1   there were numerous calls of anywhere from 2 to 20  
2   minutes, and obviously it doesn't take too many 20 minute  
3   calls to equal an hour. And so I felt it was pretty  
4   conservative to only build an hour from a remote location  
5   per month.

6           Q.     Did you also examine travel expenditures?

7           A.     Yes.

8           Q.     Were those expenses included in your -- or  
9   partially included in your recommendation to the  
10   Commission?

11          A.     There -- they were -- there was  
12   something -- I based something off of actual receipts.  
13   Actually what I did was, the actual expenditures, I used  
14   actual expenditures for the lodging receipts or for the  
15   lodging that I built into the case. For the meals I built  
16   into the case, it seemed a little exorbitant if you will,  
17   so what Staff discussed and what Staff allowed in the case  
18   was the per diem amount that -- that we're allowed, which  
19   is basically I think \$36 a month for that -- for that --  
20   or \$36 a day for that area, because I felt that \$36 a meal  
21   or more, and I think in some cases -- I shouldn't say in  
22   some cases. A lot of the receipts I looked at I think the  
23   executive management group as well as taking Mr. Summers  
24   out, may have taken out someone else. I don't know, but I  
25   didn't check to see how many, what the number was, but

1 obviously it was -- it was an amount that I would not  
2 include for one or even two, and we've only got two  
3 included in this case, or two functions. It was a larger  
4 amount than I would have included. So I adapted that  
5 amount to a smaller amount that -- that's allowed per diem  
6 rates.

7 Q. If I've looked at your exhibits correctly,  
8 you have travel -- you have the estimated travel expenses  
9 and use that estimate in connection with your overall  
10 figure; would that be a correct statement?

11 A. I'm sorry. What's --

12 Q. It looks to me like you estimated what the  
13 travel expenses should be and used that estimate rather  
14 than the actual figures that were given to you?

15 A. Yes.

16 Q. And what you talk about, travel expenses,  
17 did you look also at the lodging expenses that the  
18 management group have incurred in connection with their  
19 meetings?

20 A. Well, yes.

21 Q. You may have grouped those into travel  
22 expenses. I wasn't clear.

23 A. Yeah, I did.

24 Q. All right.

25 A. In fact, the lodging, the actual lodging



1 receipts are the only ones of the actual receipts I used  
2 because I did -- I did feel that some of the rest of the  
3 receipts for meals, for instance, and for mileage and auto  
4 travel, too, maybe were a little excessive. So those I  
5 used lesser amounts. The lodging I used the actual  
6 receipts because the last -- like I say, this was December  
7 and January. The last three or four that I'd reviewed  
8 were at -- were at the rate that I've got in there, in the  
9 case right now, which I think was 86.24 per night.

10 Q. I see that on W --

11 A. Obviously when they go down in the summer  
12 and it's during season, they're not going to be able to  
13 get an \$86 rate. So I just annualized it based on the  
14 off-season rate.

15 Q. You also reduced the price for some of the  
16 corporate office expense in Overland Park --

17 A. Yes.

18 Q. -- is that correct?

19 A. Yes, considerably. I think they had one-  
20 fourth of the lease amount in their -- or do have I should  
21 say in their numbers. And at the time of direct filing,  
22 the fourth was not split to Ozark Shores.

23 Q. So that's been split out?

24 A. Right. We included a tenth and then split  
25 that between the two regulated companies.

1           Q.       On page 6 of your surrebuttal, there's a  
2 line just above the one that you corrected recently, it  
3 says that Staff believes this amount, and I'm referring to  
4 the amount of \$27,901, Staff believes this amount is  
5 conservative given the size and complexity of the Lake  
6 Region/Ozark Shores/Water District operation.

7                    If I might, let's toy with it a little bit.  
8 If it is conservative, would it be possible that Staff  
9 might be able to support a figure above 27,901 in your  
10 opinion? And --

11           A.       Did you say is it conceivable?

12           A.       No. I said if Staff believes this amount  
13 is conservative given the size and complexity of the Lake  
14 Region/Ozark Shores/District, you say it's conservative,  
15 but conservative in the sense that it may be too low?

16           A.       It may be. I -- I obviously feel  
17 comfortable with the amount that I've included, but it  
18 could conceivably be higher.

19           Q.       Thank you. That's all.

20           A.       Based on my testing --

21           Q.       Go ahead.

22           A.       I was going to say, based on my testing,  
23 I'm happy with the amount.

24                    MR. COMLEY: Thank you. I have no other  
25 questions for Mr. Harris.

1 JUDGE STEARLEY: All right. Thank you very  
2 much, Mr. Comley. Questions from the bench?

3 COMMISSIONER GUNN: I don't have any.

4 COMMISSIONER KENNEY: No, thank you.

5 JUDGE STEARLEY: No questions. Any  
6 redirect?

7 REDIRECT EXAMINATION BY MS. OTT:

8 Q. Mr. Harris, do you remember when Ms. Baker  
9 was discussing whether or not you had reviewed any  
10 documentation in regards to specific functions, hiring,  
11 staffing, taxes, financing and budgets?

12 A. Yes.

13 Q. Now, I guess you indicated you didn't  
14 review actual documents?

15 A. Yes.

16 Q. Did you have any doubt with -- after  
17 meeting with the executive management team about their  
18 numbers regarding hiring and staffing?

19 A. No.

20 Q. How about taxes?

21 A. No.

22 Q. Financing?

23 A. No, I didn't have any -- any doubt. I had  
24 no reason to doubt anything that they were indicating at  
25 that time.

1 Q. And the budget you didn't doubt either?

2 A. Right. Actually, budget, if you're talking  
3 the payroll budget, Bret Prenger, Staff member who filed  
4 testimony in this case but is not a witness in this  
5 hearing, did an analysis of the actual labor costs per  
6 employee for all of the -- all of the district personnel.

7 And one thing that I probably -- I'd like  
8 to mention this time, too, as far as the district  
9 personnel are concerned, there are, as I indicated, I  
10 think there's seven operators, plant operators that would  
11 be at the beginning of my -- yeah, seven field operators.  
12 Those seven field operators, some of the operators are  
13 certified water engineers. Some of them are certified  
14 sewer engineers. Some of them are certified in both  
15 functions, both as a water and wastewater.

16 So there basically is different personnel  
17 to handle the different functions. So if -- if a customer  
18 say is a water and a sewer customer, they may be providing  
19 those -- they may be receiving those separate services  
20 from different personnel, and, of course, they'd be  
21 receiving them on a different infrastructure because you  
22 can't -- you can't provide water to somebody on a sewer  
23 line or expect them to be able to -- have potable water  
24 anyway. So he did do a Staff analysis, I mean an analysis  
25 of payroll and did actual hours of the field operators

1     that were used and the administrative personnel that were  
2     used.

3             Q.       Thank you.   And do you remember when you  
4     were discussing the different functions with Ms. Baker?

5             A.       Yes.

6             Q.       What are those functions, the two  
7     functions?

8             A.       The two functions are, one is operational,  
9     technical, engineering, if you will, and the other is  
10    financial tax accounting, and they're both uniquely suited  
11    to the individual skills of the group management as I --  
12    as I show in my cost of service report, and I can, you  
13    know, if anybody -- if a party here would like, I can  
14    refer back to that page, but Mr. Stump is a -- has a Ph.D.  
15    in engineering as a professional engineer in the state of  
16    Missouri, and the Stumps have, again, I could get into it,  
17    but they've been financial consultants for well in excess  
18    of 20 years.

19            Q.       And one last thing.   When Mr. Comley was  
20    discussing the meal amounts, how much you allotted, and  
21    you said it was \$36, is that per meal or per day?

22            A.       That's per day, and - no, that would be per  
23    day.

24                    MS. OTT:   Thank you.   I have no further  
25    questions.

1 JUDGE STEARLEY: Very well. Mr. Harris, it  
2 looks at this point that we've completed your testimony  
3 for the purposes of this issue, so you may step down at  
4 this time. You are not finally released in case any of  
5 the Commissioners would like to call you back up for some  
6 additional questions.

7 THE WITNESS: Sure.

8 JUDGE STEARLEY: I believe next on our list  
9 would be Mr. Robertson for Public Counsel. Mr. Robertson,  
10 if you'd please raise your right hand.

11 (Witness sworn.)

12 JUDGE STEARLEY: Thank you. You may  
13 proceed.

14 TED ROBERTSON testified as follows:

15 DIRECT EXAMINATION BY MS. BAKER:

16 Q. Could you state and spell your name for the  
17 record, please.

18 A. Ted Robertson, T-e-d, R-o-b-e-r-t-s-o-n.

19 Q. Could you state your -- who you -- by whom  
20 you are employed and what your title is?

21 A. I'm a Regulatory Accountant III with the  
22 Missouri Office of the Public Counsel.

23 Q. Are you the same Ted Robertson who prepared  
24 and filed direct testimony, rebuttal testimony and  
25 surrebuttal testimony in this case?

1           A.       I am.

2           Q.       Do you have any corrections to your  
3 testimony?

4           A.       I do not.

5           Q.       If I were to ask you the same questions  
6 from your testimony today, would your answers be  
7 substantially the same?

8           A.       They would.

9                   MS. BAKER:  At this time I would offer  
10 direct testimony, which I believe would be OPC No. 2, and  
11 then rebuttal testimony, OPC No. 3, and surrebuttal  
12 testimony, OPC No. 4.

13                   JUDGE STEARLEY:  Any objections to the  
14 offering of Public Counsel's Exhibits 2, 3 and 4?

15                   MR. COMLEY:  Your Honor, I recognize that  
16 the Bench did allow continuing objections based upon our  
17 motion to strike.  At the same time, let me renew our  
18 objection, since I think the offer has been made generally  
19 for Mr. Robertson's testimony, that on the grounds set  
20 forth on our motion to strike, we would ask and be  
21 objecting to Mr. Ted Robertson's testimony, direct  
22 testimony, which is Exhibit 2, page 3, line 2, page 14,  
23 line 2.  We object to the introduction of his surrebuttal  
24 testimony with respect to page 11, line 9 through page 18,  
25 line 13, and any exhibits that may be attached to his

1 testimony. I'm not too sure there are, but I wanted to  
2 bring that into the objection for both his testimonies,  
3 and that would be to Exhibits 2 and 4.

4 JUDGE STEARLEY: Thank you, Mr. Comley.  
5 And I'm going to hold in terms of a ruling. As I  
6 indicated earlier at the conclusion of our motion hearing,  
7 I was going to hold off 'til the end of the hearing to  
8 give a final ruling on whether or not the issue of  
9 availability fees was relevant or not. So we'll hold the  
10 admission of Mr. Robertson's testimony until that time.

11 MS. BAKER: Thank you, your Honor. And  
12 I'll tender the witness for questions.

13 JUDGE STEARLEY: We'll begin with  
14 cross-examination with -- with the Property Owners  
15 Association.

16 MS. LANGENECKERT: No questions for  
17 Mr. Robertson on this issue.

18 JUDGE STEARLEY: Staff?

19 CROSS-EXAMINATION BY MS. OTT:

20 Q. Good afternoon, Mr. Robertson.

21 A. Good afternoon.

22 Q. Does Lake Region have any employees?

23 A. Not to my knowledge.

24 Q. And Lake Region is owned by Sally Stump and  
25 RPS Properties?



1           A.       That's my understanding.

2           Q.       And Lake Region contracts with the Public  
3   Water Supply District No. 4 of Camden County for all  
4   operations of its business?

5           A.       Actually, the way it's been directed to me  
6   is they do operation, maintenance, capital additions and  
7   expansions.

8           Q.       Who enters into contracts on behalf of Lake  
9   Region?

10          A.       The board of directors, I believe.

11          Q.       It's not the executive management team?

12          A.       Are you asking who signs the contract?

13          Q.       Who enters -- who negotiates them and  
14   enters into them?

15          A.       Don't know. I guess it is the board of  
16   directors. That's the only other entity that the utility  
17   has.

18          Q.       You said it was an entity?

19          A.       As part of the organization, the Lake  
20   Region organization essentially contracts out everything  
21   to the water district. The only -- the only other part of  
22   the organization that exists is the board of directors.

23          Q.       Now, are you familiar with what Lake Region  
24   refers to as their executive management group?

25          A.       Yes.

1           Q.       And who are part of that group?  Who's part  
2 of that group?

3           A.       Mr. Robert Schwermann, Mr., I believe -- I  
4 believe his name's William, but I believe they call him  
5 Brian Schwermann and Mr. Vernon Stump.

6           Q.       Now, are you familiar with the duties that  
7 those three individuals you just named conduct on behalf  
8 of Lake Region?

9           A.       From the responses to their Data Requests,  
10 both OPC Data Requests and Staff Data Requests, as much as  
11 they responded to those.

12          Q.       And what are those duties?

13          A.       Well, they -- essentially they list a  
14 series of -- let me find my testimony.  I'll tell you  
15 exactly what it says.  Just bear with me for a moment,  
16 please.  Okay.

17          Q.       Will you please identify what part of your  
18 testimony you're referring to?

19          A.       I'm looking on my direct testimony, page  
20 19, and I'm starting on line 3, and what this is, this is  
21 a company response to Staff's Data Request 44.1, and --  
22 would you like me to read it?

23          Q.       Well, I'd like you to identify the duties  
24 that you're aware of.

25          A.       To answer your question, then, per the

1 company, Vernon Stump, Robert Schwermann and Brian  
2 Schwermann control all budgeting process including  
3 operational and capital budgets, all money spent by the  
4 company and all financing related to the operations of  
5 Lake Region Water & Sewer Company. Lake Region -- the  
6 Lake Region Water and Sewer Company remain -- retains an  
7 operator to provide daily operational maintenance  
8 services, operational and maintenance services. Vernon  
9 Stump, Robert Schwermann and Brian Schwermann provide all  
10 financial organization, engineering direction and  
11 management control. They negotiate annual contracts with  
12 the operator, establish compensation levels, establish  
13 insurance coverage and benefits to be provided to the  
14 operator and establish staff levels. They approve and  
15 develop all capital improvement projects, capital  
16 replacements and oversee these projects. They also work  
17 with their consulting engineer to develop capital projects  
18 and follow through to completion. They handle all  
19 corporate accounting functions and corporate funding, per  
20 the company's response, as I said, to Staff Data Request  
21 44.1.

22 Q. Did you have any reason to doubt that they  
23 participated in these duties?

24 A. I did.

25 Q. And what did you do to investigate your

1 doubts?

2           A.       Well, in my analysis of the company, once I  
3 discovered that Mr. Stump and the Schwermanns -- or that  
4 the company was paying these folks for services which  
5 initially I learned either from Mr. Summers or through  
6 reviewing their general ledger, I sent out Data Requests,  
7 I reviewed Staff Data Requests, to see what kind of  
8 documentation existed to verify that these folks did this  
9 and how much time it took them to do it.

10                   As part of the audit processes, I was  
11 trying to determine how much time they spent doing it,  
12 what they did, and then try to determine a reasonable  
13 level of compensation that should be provided to them.

14                   In the contract to Lake Region,  
15 Mr. Summers is the manager, and in responses to my Data  
16 Requests in what he does and what the management,  
17 so-called management group do, I reviewed those responses,  
18 and one of them, which was an update to my Data Request  
19 No. 10, stated that the general manager for the district  
20 oversees the day-to-day operations and approves payment of  
21 routine bills. He also recommends expenditures for  
22 repair, maintenance, capital additions and expansions to  
23 the management group who must then approve, amend or  
24 reject proposed expenditures.

25                   So what I was trying to do was verify what

1 the management group did. I reviewed those responses, and  
2 then I came upon another document, which was a deposition  
3 of Mr. Robert Schwermann provided in the suit with, I  
4 believe, Four Seasons regarding availability fees, and in  
5 that document Mr. Schwermann is deposed and he's asked  
6 many questions about what he knows about the operations of  
7 the utility, and almost all of the responses he knew  
8 almost nothing about what was going on.

9                   So my analysis was, try to determine what  
10 they do, how much they do, how much time they spend doing  
11 it, and then try to develop a reasonable level of  
12 compensation for them. Viewing the board minutes and  
13 responses to those various documents and the Data Request  
14 documents, even though Mr. Summers probably has contact  
15 with those folks, phone calls, to me, I believe it's in  
16 the capacity of he's running the operation, he informs  
17 them of what's going on, what needs to be done, and then  
18 he seeks their approval, which they either agree to, don't  
19 agree to, suggest modifications to, and based on that, I  
20 didn't -- I didn't believe that they should get a  
21 management fee compensation for the amount of time they  
22 spent doing what they're doing.

23                   Q.       Now, you just referenced a deposition that  
24 Mr. Schwermann gave and he didn't know anything about the  
25 operations. He's not the operational executive management

1     guy, is he?

2             A.       So they say.

3             Q.       He's -- his background is in finance, not  
4     engineering?

5             A.       My understanding is he has a financial  
6     company and he and both Brian are involved in. I believe  
7     they're partners. I don't know that they own the entire  
8     thing, but they're in a -- it's a private business of some  
9     sort.

10            Q.       If he's on the financial side, he doesn't  
11     necessarily have to understand the operational side of the  
12     company, does he?

13            A.       That's probably true, but to the extent  
14     that he's on the financial side I also found no  
15     documentation showing where he'd done any financial work  
16     for the company.

17            Q.       Now, did you do any studies on executive  
18     compensation in developing your testimony?

19            A.       Would you please clarify what you mean by  
20     study?

21            Q.       Did you evaluate any other water and sewer  
22     companies' executive management fees or look to any  
23     publications on executive management fees?

24            A.       I did. I did. And actually, that was in  
25     response to some of the testimony provided by Mr. Stump

1     regarding some of the other utilities in this state.

2             Q.       And what did you look -- what kind of  
3     publication did you look to in evaluating executive  
4     management compensation?

5             A.       In that documentation, Mr. Stump had taken  
6     several public utilities, primarily Aqua Missouri  
7     utilities and Lexington Water, I believe it is, Utility,  
8     and he'd pulled management fees, costs out of the annual  
9     reports, the Public Service Commission annual reports and  
10    used those as a surrogate to propose what he thought Lake  
11    Region should get as a management fee.

12                    I looked at that documentation, looked at  
13    what they consisted of, and in both cases those management  
14    fees, even though they may or may not be included in  
15    rates, they were listed in the annual reports, it's two  
16    different things. Those were employees of the company in  
17    some form or capacity. Neither the Schwermanns nor  
18    Mr. Stump were employees of the company.

19            Q.       Now, in preparing your audit, did you  
20    actually visit the Lake Region facility?

21            A.       I did not.

22            Q.       And did you interview any of the executive  
23    management group?

24            A.       Well, as a -- the primary contact in the  
25    case was Mr. Summers, Mr. John Summers, since he's the

1     contracted manager of the company. I talked to him  
2     numerous times. I did talk to Mr. Robert Schwermann and  
3     Mr. Stump, you know, prehearing conference is the only  
4     time I've ever talked to them face-to-face verbally in any  
5     capacity, except as I said, I sent several Data Requests  
6     to the company. I reviewed Staff's Data Requests to the  
7     company, and to the extent that those persons answered  
8     those responses that would have been the only other  
9     communication I had.

10           Q.     So other than the prehearing and through  
11     Data Requests, you have not met with the executive  
12     management group?

13           A.     As I communicated to you my communications,  
14     those folks are not employees and they were not the  
15     contact for the company.

16           Q.     Now, have you reviewed any customer  
17     complaints about the services provided by Lake Region?  
18     Not about whether or not this is a rate increase and they  
19     are unhappy or availability fees, just in terms of -- in  
20     terms of their operations.

21           A.     If I have, I don't recall them.

22           Q.     What is the annual revenue of Lake Region's  
23     system?

24           A.     I don't have that with me.

25           Q.     You didn't evaluate that when coming up



1 with your audit?

2 A. I would have seen the annual revenue -- the  
3 numbers through the general ledger and other  
4 documentation, but I don't recall off the top of my head.

5 Q. Would you know where it fits in terms of  
6 similar sized utilities in this state or where it fits in  
7 in the water and sewer companies?

8 A. I haven't done that comparison either.

9 Q. How many customers does Lake Region have?

10 A. Well, this is up for dispute, of course, as  
11 Mr. Summers and I have discussed on several occasions.  
12 It's my understanding in the -- in the Horseshoe Bend area  
13 they have approximately 140 sewer customers. In the  
14 Shawnee Bend area they have approximately 600 customers,  
15 water customers, of which I believe 540 or something in  
16 that range, or maybe -- somewhere in the 500 something,  
17 they're also sewer customers. So in total, same persons,  
18 you're talking about 700 people, of which on the Shawnee  
19 Bend people are water and sewer customers also. So if  
20 you're talking numerical, around 740.

21 Q. But if you're counting water and sewer on  
22 Shawnee Bend separately, it would be closer to about  
23 1,200?

24 A. Therein lies the discrepancy and the  
25 dispute, isn't it?

1           Q.       Now, isn't different plant used to serve a  
2   water customer and a sewer customer?

3           A.       It is.

4           Q.       And they receive, even though it may be on  
5   the same bill, they receive a bill for water and a bill  
6   for sewer?

7           A.       I agree.

8           Q.       And are you familiar with the revenue on  
9   the Horseshoe Bend side versus the Shawnee Bend side?

10          A.       As I said, I don't know. I don't recall  
11   these off the top of my head.

12          Q.       Would you disagree with me if I would say  
13   that the Shawnee Bend side and the Horseshoe Bend side are  
14   pretty comparable?

15          A.       As I said, in reviewing, in the audit we  
16   reviewed the company's direct testimony, and they  
17   allocated their costs via revenue, so I'm sure I looked at  
18   that. What the amount is, I don't know. If you know the  
19   amount and you want to state it, subject to check, I would  
20   agree with you.

21          Q.       Well, if they're -- I'm telling you they're  
22   pretty comparable in terms of size even though one has 140  
23   customers and the other would have you would say 600, I  
24   would say 1,200 customers?

25          A.       Well, as far as the Horseshoe Bend being

1 all sewer and the Shawnee Bend being both services, there  
2 are some differences in how the revenues are collected.

3 Q. I want to direct you to line -- page 6,  
4 line 19 of your rebuttal testimony. This is when you  
5 classify the trips to the Lake as a mini vacation. Is it  
6 your testimony that if an executive management team does  
7 not live in the town where the utility they're serving is,  
8 every time they visit their utility operation they're on a  
9 vacation?

10 A. My comment here is related to the Staff's  
11 proposed proposal for the management fees. Mr. Harris  
12 allowed in or proposed a -- that two individuals of the  
13 executive group would make monthly visits to the utility.  
14 So that's two persons 12 times a year, and included in  
15 such costs as the hotel, meals, travel, particularly  
16 travel for Mr. Stump all the way from Texas, airfare and  
17 such.

18 It's my belief that with Mr. Summers  
19 onsite, the contracted manager, the need for them to come  
20 down every month at best is a little bit ludicrous because  
21 any information that goes on at the district meetings or  
22 that they need to be apprised of he can do it with a phone  
23 call. He's -- they can be easily in daily contact with  
24 him, assuming he needs to be in contact with him at all  
25 given the fact that they're not even employees of the

1 company. If he wanted to contact somebody, he should  
2 probably be contacting the board of directors, who, of  
3 course, Mr. Robert Schwermann is a director, so --

4 Q. Now, do you know of any board of directors  
5 for utility companies in the state of Missouri that would  
6 oversee a meter installation?

7 A. You mean a single meter installation or a  
8 project to put --

9 Q. I mean just a meter installation.

10 A. A single meter installation, probably not.

11 Q. Do you know any board of directors that  
12 personally go out and meet with their customers?

13 A. Actually, let's take it to the level where  
14 I believe it is. This is a small company. A lot of small  
15 companies in this state of similar size or smaller,  
16 perhaps even slightly larger, their owners, their managers  
17 would probably go out and do a -- see a single meter  
18 installation if they had a customer that had a problem.  
19 So the answer to both your questions, and if you look at  
20 it in the sense of the size of the company, is a yes, it  
21 would.

22 Q. The board of directors would do that?

23 A. You sit there and think, you got a small  
24 utility. If they have a board of directors, usually the  
25 board of directors is just the owner of the small utility.

1 Often they're the one that's running the company,  
2 operating the company. So the fact that they have a board  
3 of directors, it would be a one, two, or three, or  
4 whatever it takes to form the board of directors is just  
5 an organizational forum to actually run the company they  
6 would take care of it themselves.

7 Q. Now, how often does the board of directors  
8 typically meet?

9 A. You mean given -- theoretically any board  
10 of directors?

11 Q. On average, do they meet annually,  
12 quarterly?

13 A. This company meets annually. Normally any  
14 company that sets up a board of directors, I'm not a  
15 lawyer, but I believe they have to meet at least once a  
16 year. If they meet more than that, it's probably up to  
17 their discretion.

18 Q. And this executive management team, they  
19 meet monthly, correct?

20 A. According to Mr. Williams and his proposal,  
21 he's allowed in costs for these persons to go see -- go to  
22 the Lake of the Ozark onsite to the utilities once a  
23 month, yes. It's my understanding it's to coincide with  
24 the board district monthly meetings.

25 Q. And is it your testimony that Mr. Stump and

1 the Schwermanns could effectively run this company by  
2 meeting once a year at an annual board meeting?

3 A. It's my contention that with Mr. Summers as  
4 the operator taking care of essentially all the operations  
5 of the utility, to the extent he needs their approval or  
6 advice or to consult with the board of directors, he can  
7 do that, and to the extent however many times it takes to  
8 do that, they should.

9 Q. And would you think that a company with  
10 roughly 1,500 customers and \$660,000 in revenue and more  
11 than 3 million in rate base, would you classify that as a  
12 small company?

13 A. Yes, I do. As a matter of fact, the --  
14 everything under I believe 8,000 customers is a small  
15 company in this state.

16 Q. So the revenues and rate base do not have  
17 anything in factor, you just look at the size of a company  
18 by the number of customers?

19 A. Well, the costs of the rate base is what it  
20 was. It was contributed for the most part. The revenues  
21 they bring in, it's a factor in the number of customers  
22 they have and how much use they have.

23 Whatever correlation you're trying to make  
24 towards that and this being a large company, I don't  
25 understand.

1 MS. OTT: One second. I don't have any  
2 other questions.

3 JUDGE STEARLEY: Cross-examination from  
4 Lake Region?

5 MR. COMLEY: Thank you, Judge.

6 CROSS-EXAMINATION BY MR. COMLEY:

7 Q. Mr. Robertson, in listening to the  
8 cross-examination from Ms. Ott, my understanding is that  
9 you did not visit the Lake and interview Mr. Stump or the  
10 Schwermanns in connection with your recommendation in your  
11 testimony; is that clear -- is that true?

12 A. It's true, I did not visit the Lake. In  
13 this day of technology with e-mails and computer systems,  
14 everything else, and telephones, which I talked to  
15 Mr. Summers numerous times, mostly e-mail, I did not visit  
16 the Lake. Got all the information mostly by e-mail or  
17 mail. Never discussed -- other than the prehearing, never  
18 talked to Mr. Schwermann, Robert Schwermann. I've never  
19 met Mr. Brian Schwermann or Mr. Stump at any time before.

20 Q. And was it because you decided they weren't  
21 employees and therefore didn't need to be interviewed?

22 A. Actually, what it was, in the analysis when  
23 I first discovered these costs were being booked by the  
24 company, the audit was to determine who they were, what  
25 they do, how much time is spent doing it, and then if it's

1 reasonable to build in a reasonable level of costs as  
2 such, I conducted that analysis from the information they  
3 requested. The company responded to them.

4                   If Mr. Schwermann or Mr. Stump answered  
5 those Data Requests, they are what they are, and found no  
6 documentation that shows the time they spent doing it or  
7 doing anything, other than phone calls. They did provide  
8 some phone records as I heard you mention earlier. Looked  
9 through that. Most of those phone calls, they lasted two  
10 or three minutes. There were a numerous amount, but even  
11 altogether summed up they wouldn't -- probably wouldn't be  
12 more than a few hours.

13                   So whether they're in communication with  
14 Mr. Summers or not, I don't doubt that, I believe somebody  
15 is, whether it's Mr. Stump or Mr. Schwermann. Looked in  
16 that analysis. Found no documentation, time sheets of  
17 them doing anything else.

18                   As far as the finance side, saw no bond  
19 issues being prepared, sent out. Could not find anything  
20 where the Schwermanns had done financial work for the  
21 company. For the operational side, Mr. Summers is the  
22 contracted manager of the contract and is responsible for  
23 the Data Requests. Essentially say he takes care of  
24 everything except for when he needs -- needs to contact  
25 the executive group to get their approval for something.



1           Q.       Let me go back to the question. Was your  
2 decision based upon whether they weren't employees or was  
3 your decision based on what you may have looked at?

4           A.       No. No. As I said, what I looked at, what  
5 I reviewed is what I made my determination on.

6           Q.       So you decided not to interview the  
7 management group because of what you were receiving in  
8 Data Requests; is that correct?

9           A.       I never had the intention -- let me put it  
10 this way. The idea of interviewing the management group,  
11 given the fact I'd sent questions, requests to the company  
12 for information and waited on those responses, which I --  
13 which I believed would give me all the information I'd  
14 need to do the analysis.

15          Q.       This isn't the first company of this size  
16 that you've been involved in in evaluating their rates;  
17 isn't that correct?

18          A.       I've worked for the Office of Public  
19 Counsel for almost 20 years.

20          Q.       Wouldn't you say that this company is  
21 fairly well managed if not superbly managed?

22          A.       I personally believe that Mr. Summers is  
23 very competent, and I think the company probably is well  
24 managed.

25          Q.       What you're saying is that Mr. Summers is

1 the one that has been managing this company irrespective  
2 of what the group has been doing for it; is that your  
3 testimony?

4 A. My testimony is that Mr. Summers is the  
5 manager. To any extent that he needs to get approval for  
6 projects that are not within the realm of his management,  
7 the company's board of directors are the next step up for  
8 that approval. The executive management group that you  
9 folks are discussing are not employees. Mr. Robert  
10 Schwermann and Mr. Brian Schwermann being a director and  
11 secretary/treasurer of the board of directors ,of course,  
12 to my view the executive management group is the board of  
13 directors.

14 Q. Has Mr. Summers admitted to you that he  
15 engages in the activities that Mr. Stump, Mr. Schwermann,  
16 Robert Schwermann and Brian Schwermann engage in?

17 A. As I read to you a moment ago, and I'll  
18 read it again if you wish.

19 Q. No. There's no reason to read it.

20 A. Staff Data Request No. -- or not Staff, but  
21 Public Counsel Data Request No. 10.

22 Q. It's your testimony --

23 A. Wait a minute. Can I answer my question?

24 Q. My question is --

25 A. Answer your question?

1 Q. Yes, please answer my question.

2 A. He talks about -- they responded that they  
3 provide operations maintenance, construction expansion.  
4 That's their duties. If they need to get approval, they  
5 say they didn't go to the executive group, but the  
6 executive group, they're not employees. The next step up  
7 is the board of directors. Now, of course, these people  
8 are one and the same.

9 Q. If you're -- are you suggesting, then,  
10 because they're not employees they cannot engage in any  
11 kind of management for the company? Are you overlooking  
12 the fact that they are engaging in --

13 A. No, absolutely not. I'm not saying that.  
14 If they were -- if they were truly doing some kind of  
15 management activity outside of what the realm of the board  
16 of directors, I would think there should be some kind of  
17 management contract. There is none, to my knowledge.  
18 That's a possibility, and now if there was we would look  
19 at that and we would review it --

20 Q. If you're saying that in order for them to  
21 engage in management activities it is a prerequisite that  
22 it be in a written contract, is that your testimony?

23 A. I know of no company that pays people to do  
24 work for them --

25 Q. So I'll take that as a yes.

1           A.       -- without some kind of agreement that what  
2   kind of work they will do.

3           Q.       That would be your testimony, then, that  
4   you would expect to have a model form of management  
5   contract in place before you would have to -- you would  
6   recognize management as being done by somebody else?

7           A.       I didn't say that.  What I said -- what I  
8   said was --

9           Q.       Your proposal --

10          A.       Now, wait a minute.  Let me answer the  
11   question.

12                   MS. BAKER:  Your Honor, please, please.  
13   Let him -- let Mr. Robertson answer the questions, one at  
14   a time, please.

15                   THE WITNESS:  If a management contract --

16                   JUDGE STEARLEY:  Excuse me.  I'm going to  
17   call a halt to this for just a moment.  Mr. Robertson, you  
18   do your best ability to answer the questions.  If they're  
19   yes or no questions, I would expect to hear a yes, no,  
20   sometimes maybe or I don't know.  Mr. Comley, if you  
21   believe Mr. Robertson's being unresponsive to your  
22   question, please speak up, and I will address that at that  
23   point.

24                   MR. COMLEY:  Thank you for the reminder,  
25   Judge.

1 BY MR. COMLEY:

2 Q. Mr. Robertson, I'll let you finish the  
3 answer to my question.

4 A. If there was a contract, we would certainly  
5 review it. We would determine what was being done. We'd  
6 get the information behind that and try to make a  
7 reasonable analysis and determination of what was being  
8 done and the compensation should be included in the costs  
9 of service for that contract.

10 Q. And you're saying in the absence of such a  
11 contract, you don't feel like you would need to interview  
12 the group that's been identified as managing the company;  
13 is that correct?

14 A. Given the company's response to the Data  
15 Requests I sent out and Staff sent out, I don't believe  
16 so, no.

17 Q. Your proposal is to allow a management fee  
18 or a management expense of \$600 per year in this case; is  
19 that correct?

20 A. What my proposal was that the board of  
21 directors --

22 Q. Now again -- let's see. Is it correct or  
23 not, or am I wrong?

24 A. Based on the board of directors, number of  
25 meetings of the board of directors, yes.

1 Q. It's \$600 a year?

2 A. Yes.

3 Q. Let's use your amount for the number of  
4 customers that we've talked about. Let's just use your, I  
5 think we're talking about 740 customers using your idea of  
6 how many customers there are. Can we use that figure for  
7 the moment?

8 A. Sure.

9 Q. And divide that among \$600. You're  
10 suggesting that there would be less than a dollar a year  
11 for the management group expenses per customer in the  
12 case, would that be a fair rendition? And I know I didn't  
13 want to do math in this place either, but would that be a  
14 fair analysis of your testimony?

15 A. I don't have a calculator with me, and even  
16 though I'm an accountant, I'll accept your number as  
17 you've stated it, of course. It's based on the number of  
18 meetings that the company currently has of its board of  
19 directors.

20 MR. COMLEY: That's all I have, Judge.

21 JUDGE STEARLEY: All right. Thank you very  
22 much. Questions from the Commissioners?

23 QUESTIONS BY COMMISSIONER GUNN:

24 Q. Would your opinion change if the -- if the  
25 management team lived in Horseshoe Bend?

1           A.       It would not.

2           Q.       So you are essentially advocating for the  
3 management team delegating all its authority to -- or any  
4 authority that it has to the operations person?

5           A.       First of all, the management team has no  
6 authority. They're not employees of the company. They're  
7 owners. At least Mr. Schwermann and his son Brian are  
8 owners through their trust. Mr. Stump's wife is an owner.  
9 They have no actual standing as an employee other than  
10 that with the company.

11          Q.       Okay. Well, what I'm trying to get at is,  
12 is what you're saying is is that the management team  
13 should take no interest in the operation of the utility,  
14 self-designated management team should take no interest in  
15 the operation of the utility and essentially should be the  
16 supervisor reporting directly to the board of directors  
17 and that's it?

18          A.       I believe that's right. The entity, next  
19 step up is the board of directors, of which Mr. Robert  
20 Schwermann and Ms. Stump and Brian Schwermann are members  
21 of. They are the next step up. They are the management  
22 of the company after -- after Mr. Summers.

23          Q.       Now, we've had some problems in this state  
24 with receivers that needed to be appointed to water  
25 companies where we've essentially had absentee management,

1 haven't we?

2 A. I don't know specifically which one you're  
3 talking about.

4 Q. I'm not talking specifically. I'm talking  
5 generally. I'm talking generally where there might be  
6 somebody on the ground that may be responsible for this,  
7 but the person, the board of directors or the actual  
8 owners of the company haven't done anything to allow them  
9 to -- haven't done anything to keep up the infrastructure  
10 or have -- have abrogated their responsibilities to the  
11 water company? Haven't we had that happen in this state  
12 before?

13 A. As I said, I don't know what you're  
14 referring to.

15 Q. I just -- it just seems to me that we have  
16 people that are -- that are -- let me ask this -- a  
17 question again. So if -- if they lived -- if these three  
18 people, two of whom are owners, if these two owners --  
19 let's exempt out Mr. Stump here for a second. If these  
20 two owners took -- lived in Horseshoe Bend and they took  
21 an interest in the operations and went out and supervised  
22 certain things, got together and talked about policy  
23 issues, gave direction to their -- to their operations  
24 person about what should be done and what shouldn't be  
25 done, do you think that they should receive no



1 compensation for that time?

2 A. In this case, we're talking about one and  
3 the same individuals and --

4 Q. I'm asking you about owners of a -- again,  
5 try to answer my questions. If you have owners of a water  
6 system and they take an interest in someone that is doing  
7 the operations, and they are actively involved in  
8 directing the operations person in what to do, and they  
9 are -- they are telling them what meters to replace, what  
10 meters not to replace. They're supervising some of the  
11 stuff to make it right. Do you think that they should  
12 receive any compensation?

13 A. In the case that you're talking about, the  
14 companies of this size, those people usually receive a  
15 salary as an employee of the company. I know of no  
16 instances other than this case --

17 Q. I'm asking --

18 A. -- where the contractor --

19 Q. Mr. Robertson, please, I'm asking a  
20 hypothetical. Okay? I'm not asking about this case. I'm  
21 asking a hypothetical, and I would ask you to answer my  
22 question. It's very frustrating when I ask a question and  
23 it doesn't get answered.

24 The question is, do -- in that  
25 hypothetical, would you support those people receiving

1 compensation for the time that they put in on the system?

2 A. Salary.

3 Q. So the answer is yes, you would support  
4 them getting compensation?

5 A. At a salary.

6 Q. As salary?

7 A. Yes.

8 Q. I will take that qualifier, but you would  
9 support them getting that compensation?

10 A. As an employee, and salary.

11 Q. What would you base that compensa -- what  
12 would you use to see whether or not that compensation was  
13 reasonable?

14 A. What we do on that, which we do on all  
15 these companies, we would look at what they do, how much  
16 time they spend doing it. We do it with all the companies  
17 we work on, what the activities are. As I said, then we  
18 go out and we review the information. There were several  
19 different databases out there, whether they're national,  
20 state such as merit to see what these individuals who are  
21 doing these type of activities earn in the specific  
22 geographical area. The state of Missouri is separated  
23 into several areas. You can go in, you can see what a  
24 wastewater operator gets in that area from a mean, median  
25 or a mode, a range, and from that range, we try to

1 determine, like I said, how long it takes them to do these  
2 activities, and then we try to apply those salaries that  
3 we find on those databases to the time spent and we build  
4 that into the cost of service.

5 Q. Now, have you done -- let's put aside the  
6 fact that these people are not employees for a second.

7 A. Okay.

8 Q. Have you done that analysis for this  
9 \$50,000 number?

10 A. You're going to have to let me explain a  
11 little bit more.

12 Q. Sure. Absolutely.

13 A. They're not employees. As Staff witness  
14 testified, they reviewed or found no documentation for the  
15 time spent doing this, these activities, whether they did  
16 them or not. And if they did, certainly Mr. Schwermann,  
17 Brian and Robert as board of directors, which is the next  
18 step up from the utility, they would have been responsible  
19 for doing that. Without finding supportable documentation  
20 for the time spent, without finding information showing  
21 that the board of directors did it, the only  
22 information provided was they had one meeting during the  
23 year. There's nothing to base allowing the compensation  
24 in.

25 And even if there was, let's say they did,

1 they're wanting to include compensation for three people  
2 on a small company like this, when they've got a  
3 contracted operator, manager to run the whole thing. Even  
4 if there was some communication between the board and  
5 there was some time spent as you say, it certainly  
6 wouldn't have took three people to do it. Maybe  
7 Mr. Robert Schwermann, may -- as former president, maybe  
8 some time should have been allowed in for him, but not  
9 three people.

10 Q. Well, and let me ask my question again,  
11 which is did you do an analysis of what a reasonable  
12 salary would be?

13 A. And as I did answer, there was no  
14 supportable documentation that these -- to find out what  
15 these activities were.

16 Q. I'm not asking --

17 JUDGE STEARLEY: Mr. Robertson, the  
18 Commission would appreciate a yes or no answer  
19 BY COMMISSIONER GUNN:

20 Q. Let me ask a clarifying question if this  
21 helps you out. I'm not asking you to determine whether  
22 they had proof that what they are getting right now is  
23 reasonable or that they've proven they've gotten that.  
24 What I'm asking is, did you do an analysis to determine  
25 what a reasonable salary would be for people that did this

1 work, whether it be an hourly wage or whether it be a  
2 salary? I'm asking for the benchmark that you would then  
3 go back and determine whether what number they came up  
4 with were reasonable. Put aside again the proof part for  
5 a second, because let's say you came back and found that  
6 \$10 an hour is what the comparable salaries were.

7 A. Sure.

8 Q. They would have to probably, I'm assuming,  
9 come back and determine they had documentation --

10 A. Right.

11 Q. -- and justify that \$10 --

12 A. Right.

13 Q. -- an hour salary?

14 A. Right.

15 Q. What I'm looking for is whether or not  
16 there was analysis done which showed what you believed or  
17 what OPC believes was a reasonable salary for the types of  
18 activities that were done, not the --

19 A. I think I understand your question. To the  
20 extent that I did any analysis at all to determine an  
21 amount, I looked at board of director fees to see what  
22 board of director fees are being paid by some of these  
23 companies. I looked at Raytown Water, which has 6,000-  
24 some customers. Okay. They paid their board of directors  
25 \$200 per meeting, and that's where I came up with the

1 figure, with the two board of directors and the  
2 secretary/treasurer. They had one meeting. If they had  
3 more, if they had three meetings, four meetings during the  
4 year, they didn't, but if they had, I would have  
5 recommended that \$200 per person per meeting.

6 Q. Okay.

7 A. So, yes, as far as the dollars, that's how  
8 I got those dollars.

9 Q. Thank you for that. I appreciate that.  
10 And that was the answer to my question.

11 A. I think I misunderstood your question, but  
12 that's how the analysis for the dollar amount was.

13 Q. My questions are very easily misunderstood,  
14 so I appreciate that. Let me ask you this question. So  
15 when you looked at those other boards, did you do an  
16 analysis as to what duties the board members were doing?  
17 For example, were there any board members that -- were the  
18 board members merely meeting and sitting around in a  
19 conference room for all day or was there any field work or  
20 field responsibility that those board of directors took  
21 on?

22 A. As far as the analysis there, you have to  
23 go kind of on -- or I did, went on my own knowledge base  
24 of doing these type of utilities for as long as I've done  
25 them. And what those board of directors on these

1 companies have, many of these small companies don't have  
2 board of directors. They're just single owners. The few  
3 that do, a board meeting is usually the same kind of  
4 scenario. They've got new projects. They discuss new  
5 projects, what they should do. They got financing. They  
6 discuss those, who they should contact, what banks, and  
7 how to come up with that financing. Essentially all board  
8 of directors do essentially the same kind of work.

9                   Now, having said that, small companies are  
10 a little bit different, recognizing that the board of  
11 directors may be the owners and the owners may be doing  
12 everything.

13           Q.       And then your contention is that if the  
14 board of directors is the owner, the owner should be -- it  
15 should be structured where the owner is an employee of the  
16 system and would receive a salary for any duties over and  
17 above that a normal board of directors member would --  
18 would occur if the owner did more than what a normal board  
19 member does?

20           A.       Absolutely. If the owner is doing the  
21 activities, they should be fairly compensated, absolutely.

22           Q.       But the structure that you recommend is  
23 either a written contract or an employee/employer  
24 relationship?

25           A.       Absolutely.

1           Q.       Now, just to go back, your own knowledge,  
2    did you look at the minutes of the other board?  Because  
3    most of the board activities should be, as a meeting  
4    should be in that.

5           A.       Every case that I've ever worked on that --  
6    that -- that I've been involved in -- in the scenario, I  
7    requested the board of directors meeting minutes, and I  
8    review those.

9           Q.       Did you do that for Lake?

10          A.       I did.  I have the copies of board minutes,  
11   yes.

12          Q.       You did.  Okay.  So they had -- they had --  
13   did they have monthly board meetings?

14          A.       No, sir.  Annually.  They met once a year.  
15   Usually I believe it's April of every year.

16          Q.       So the board of directors meets once a  
17   year, they don't -- the management meetings even though  
18   you have similar boards of directors, they -- the board of  
19   directors does not meet on a monthly basis?

20          A.       It varies.  It could be -- it could be  
21   three times a year, four times a year.  Could be even  
22   more.  It's not standard necessarily.  I mean, some of the  
23   larger -- larger corporations four times a year.

24          Q.       I'm asking about the Lake specifically.

25   You reviewed all their board of directors minutes?



1 A. I did.

2 Q. And they had one --

3 A. They did.

4 Q. -- minutes for the annual meeting that's  
5 required by the Secretary of State?

6 A. They did.

7 Q. So there were no other -- no other meetings  
8 of the board of directors?

9 A. No. Had there been more meetings, I would  
10 have proposed more --

11 Q. Right.

12 A. -- depending on, you know, other duties and  
13 the time they spent doing them, yes. And that's not to  
14 say they can't change at any time. It's up to them how  
15 often they meet to discuss whatever they need to discuss.

16 Q. If -- if the company restructured and  
17 had -- or if the company had an employee relationship with  
18 the management team, let's assume they do, it would still  
19 be your contention that the duties that are performed by  
20 the team could be performed by one person rather than  
21 three?

22 A. Absolutely on this size company, yes.

23 Q. So if we were -- if we were to -- even if  
24 we were to allow the -- that in the absence of an employee  
25 relationship work was done, we'd cut that 50,000 by a

1 third --

2 A. Yes.

3 Q. -- at the least?

4 A. At the least, yes.

5 Q. I'm not asking you to pick out a number.

6 A. And I would just qualify that if I may. As  
7 far as the financial aspect provided to the Schwermanns, I  
8 found no evidence, there was no bond issuances as far as I  
9 know. There was no discussion with the banks as far as I  
10 know. I don't know if -- they say they performed  
11 activities, but they haven't been documented. I have no  
12 documentation to prove that. And they provided none.

13 Q. Okay. Have you had -- have you heard any  
14 complaints from customers about the management, the  
15 management team?

16 A. I don't know that the customers even know  
17 they exist other than Mr. Summers in the district.

18 COMMISSIONER GUNN: All right. I don't  
19 think I have anything else. Thank you. I appreciate it.

20 THE WITNESS: Sorry if I was confusing or  
21 sounded argumentative earlier.

22 COMMISSIONER GUNN: No problem.

23 JUDGE STEARLEY: Commissioner Kenney?

24 QUESTIONS BY COMMISSIONER KENNEY:

25 Q. Mr. Robertson, thank you for your time. I

1 just want to be clear. Is what you're saying is that this  
2 structure as you've seen it is not the norm or is outside  
3 of what you're accustomed to seeing?

4 A. It is.

5 Q. And you've been doing this for how long?

6 A. Almost 20 years.

7 Q. There -- so it would be unusual for a  
8 management team to come and do the types of duties that in  
9 your estimation employees would do?

10 A. I'm not going to say it would be unusual,  
11 but it would certainly be unusual for three people to be  
12 doing it on a company this small.

13 Q. So is your issue the number of people and  
14 the structure or just the number of people?

15 A. First off, my issue is trying to determine  
16 what activities they performed and then try to develop a  
17 cost for them or whether there should be any costs  
18 incurred at all. When there's a board of directors who  
19 are essentially two of the same people and who should be  
20 in constant contact with the contracted manager, I don't  
21 understand why this, if they exist at all, what  
22 activities -- their activities aren't supported. They're  
23 also activities that should be moving between the board of  
24 directors and the manager itself.

25 Q. So some of the things -- some of the things

1 that need to be done are things that directors should do  
2 anyway?

3 A. I think so, yes.

4 Q. But then the things that the company is  
5 seeking compensation or the management team is seeking  
6 compensation for, you weren't able to verify whether those  
7 duties were actually performed at all?

8 A. That's true.

9 Q. So you weren't --

10 A. Neither was Staff.

11 Q. So you weren't able to undertake the  
12 analysis that you would normally undertake --

13 A. That's true.

14 Q. -- to determine what a proper rate of  
15 compensation would be?

16 A. If any at all was due, yes.

17 Q. Why did you not undertake to interview  
18 members of the management team?

19 A. Well, as I said, I sent Data Requests to  
20 the company. Staff sent Data Requests. We reviewed all  
21 the information. The questions we asked, all kinds of  
22 questions pertaining to what those activities are, who  
23 those persons are, what do they do for the company. The  
24 company responded. The responses in my view essentially  
25 stated that the contracted manager, Mr. Summers, pretty

1 much performs everything. If he needs guidance, it says  
2 it goes -- his response says he goes to the management  
3 group, but management group doesn't exist in structure of  
4 the company. They are not employees. There's no contract  
5 for a management group. But there is a board of  
6 directors. So his next step up actually is to the board  
7 of directors, of which the two Schwermanns are also  
8 supposedly members of the management group.

9                   One of the responses stated the management  
10 group will review stuff, make a determination and then go  
11 to the board to make a recommendation, which means they  
12 review stuff, determine what they want to do, then go to  
13 the board and make a recommendation to themselves. I mean,  
14 it's just -- it is what it is.

15                   COMMISSIONER KENNEY: Okay. Thanks for  
16 your time. I don't have any other questions.

17                   JUDGE STEARLEY: Mr. Chairman?

18                   CHAIRMAN CLAYTON: I have no questions.  
19 Thank you, Judge.

20                   JUDGE STEARLEY: Any recross based on  
21 questions from the Bench?

22                   MS. BAKER: Yes, thank you.

23                   JUDGE STEARLEY: Recross is first.

24                   MS. BAKER: I'm jumping ahead.

25 RE-CROSS-EXAMINATION BY MS. OTT:

1           Q.       I have a couple questions, Mr. Robertson.  
2   You were referring to the executive management group as  
3   not being employees. Mr. John Summers, he is not an  
4   employee of Lake Region, is he?

5           A.       He's a contracted manager, as I've stated.

6           Q.       And then also I want to go when  
7   Commissioner Gunn was asking you questions and you  
8   compared Lake Region to Raytown Water. When evaluating  
9   them, did you look at what their management salary was?

10          A.       I know approximately what their management  
11   salary is, yes.

12          Q.       And if I told you it was around \$140,000 a  
13   year, would you agree with me?

14          A.       If you include in all the benefits that he  
15   receives, the insurance kind of thing and his bonus, it  
16   may be.

17          Q.       And he is the owner?

18          A.       He is.

19          Q.       And that's included in that amount of  
20   money?

21          A.       Let me restate that a little bit. He is a  
22   shareholder, and I believe he's the majority shareholder,  
23   but he's not the -- he doesn't own 100 percent of it.

24          Q.       And his wife is the other -- the other  
25   shareholder?

1           A.       There are -- there are -- they have  
2 numerous shareholders. They hold a portion. There are  
3 other siblings, attorneys, outside people.

4           Q.       Did you review Mr. Harris' surrebuttal  
5 testimony?

6           A.       I have read his surrebuttal testimony.

7           Q.       And did you look at his Schedule 1?

8           A.       I think I need to look at it now I suppose.

9           Q.       Do you have a copy of it up there with you?

10          A.       Actually, I don't think -- I don't think I  
11 do. I do not. Thank you. Okay.

12          Q.       Now, do you see at the bottom of the page  
13 under Raytown Water and the management salary payroll?

14          A.       I do.

15          Q.       Now, approximately 80 to 90 percent of that  
16 money is considered for Mr. Clevenger and his wife, who  
17 are the owner and secretary, correct?

18          A.       Of the total payroll or of the management  
19 salary payroll?

20          Q.       The management salary payroll.

21          A.       As I said, I believe Mr. -- well, I won't  
22 say what I think his salary is exactly. I believe his  
23 salary is probably in the range of what Mr. Summers is  
24 earning, his actual salary. On top of that you have the  
25 benefits and you have -- they have a bonus kind of system.

1 His wife's salary and benefits and bonus may also be  
2 included in that. I'd have to check.

3 Q. So -- but you would agree that that is the  
4 management salary structure for Raytown and which you  
5 compare Lake Region to?

6 A. First off, I don't know that his wife is  
7 part of management. I don't recall her being listed as a  
8 vice president.

9 Q. Is she the secretary?

10 A. No. She does work for them in a different  
11 capacity. Certainly Neil is the president, but I don't  
12 recall about the -- any vice presidents and such. I'd  
13 have to look at that again.

14 Q. I believe on the annual report she is  
15 labeled as the secretary.

16 A. As secretary. As secretary of the board  
17 perhaps. That may be what that's referring to. She's not  
18 administrative secretary, let's put it that way.

19 Q. And being compensated for her time as a  
20 secretary of the board?

21 A. I -- I don't believe we built in a, in the  
22 last case, any board of director fees for employees.

23 Q. I thought you testified earlier to  
24 Commissioner Gunn that you based the \$200 --

25 A. There's more directors. They had several



1 directors. They have like six or eight, or five or six  
2 directors, I believe, on their board.

3 Q. Okay. I guess I just didn't follow your  
4 last answer when you said --

5 A. Perhaps I don't know your question then.

6 Q. Ms. Clevenger didn't receive any  
7 compensation?

8 A. I said I don't believe. I'd have to check,  
9 subject to check, she's an employee of the company and I  
10 don't believe we built in director fees to employees of  
11 the company that are on the board.

12 Q. And just once again, Lake Region doesn't  
13 have any employees, correct?

14 A. None that I know of.

15 MS. OTT: Thank you.

16 JUDGE STEARLEY: Recross, Lake Region?

17 MR. COMLEY: No, thank you, Judge.

18 JUDGE STEARLEY: Thank you, Mr. Comley. I  
19 didn't mean to skip over you.

20 MS. LANGENECKERT: I was not feeling  
21 slighted. I have no cross.

22 JUDGE STEARLEY: And redirect then by  
23 Ms. Baker?

24 REDIRECT EXAMINATION BY MS. BAKER:

25 Q. Okay. You were asked several times about

1    whether you had gone to Lake Region to interview the  
2    management board, and you had stated that you had sent out  
3    Data Requests instead. Did you find that the Data  
4    Requests were base -- would have been basically the same  
5    thing that you would have asked if you had interviewed  
6    them face to face?

7           A.       They would have been exactly the same thing  
8    whether I saw them face to face or through the Data  
9    Requests. I would have tried to determine -- we did  
10   determine who the members of the executive group are as  
11   they call them. We would have tried to determine what  
12   their activities were and how much time they spent doing  
13   those. Essentially that's what the data requests asked  
14   for, and the responses we got back were generalized  
15   topics, we did this, we did that, as I read into the  
16   record a few minutes ago. No support of actual time  
17   cards, activities such as bond financings.

18                   So I have to admit that the company did  
19   respond with some phone records and other kinds of  
20   receipts that show there has been some kind of  
21   communications going on between certain of these  
22   individuals alleged to be these individuals and  
23   Mr. Summers.

24           Q.       All right. Did you review and  
25   recommendations take into account both the water and the

1 sewer operations and the plant and the infrastructure?

2 A. Yes.

3 Q. And you were asked about this being a large  
4 company, and you stated that it was not. Can you explain  
5 why you were stating that this is not a large company?

6 A. Well, primarily because of the size of the  
7 customer base. They're not that much different than a  
8 company of a similar size. For example, I believe the --  
9 the facilities, they have several wastewater treatment  
10 facilities. I believe there's like four on Shawnee Bend.  
11 They have several lift stations on Horseshoe Bend. I  
12 believe they have one treatment plant. They have a well,  
13 a storage tank. Certainly they had the lines connecting.  
14 It's a good sized company, but it's not a huge company.  
15 Based on that, I believe it is relatively a small company.

16 Q. You were also asked about the financial  
17 aspects of Mr. Schwermann, maybe both Mr. Schwermanns, and  
18 you had said that in the deposition of Mr. Schwermann they  
19 did not seem to have knowledge of the operations of the  
20 system -- go ahead.

21 A. The deposition I believe was -- was in  
22 Camden County, and it's my understanding it was a case  
23 trying to determine the owner or who should recover the  
24 availability fees, the deposition that I read, and I  
25 believe it's currently attached -- I read it a while back.

1 I believe it's currently attached to the surrebuttal  
2 testimony in -- of Ms. Cason.

3 But it was Mr. Robert Schwermann, I believe  
4 the attorney was questioning him on numerous operations  
5 related -- functions related to the utility, and the  
6 responses say -- are what they are, and the way I read  
7 them to be is he knew almost nothing about the operation  
8 of the company. He pretty much deferred to Mr. Summers,  
9 who apparently was in the audience, to answer the  
10 questions where the attorney would let him.

11 Q. And --

12 MR. COMLEY: Your Honor, I'm going to  
13 object to the testimony that Mr. Robertson's just given.  
14 First, it's not a source of information that's a hearsay  
15 statement. Second, it appears to have been a statement  
16 made to him following the filing of his direct testimony.  
17 If the deposition is what he's talking about, the first  
18 time it came to light in this proceeding was an attachment  
19 to Ms. Cason's testimony. So my thoughts are that if he's  
20 referring to that as a basis for his direct testimony,  
21 then that testimony should be stricken.

22 MS. BAKER: Your Honor, this was brought up  
23 in the cross-examination. There was no -- no objections  
24 made whenever the cross-examination questions were done.

25 MR. COMLEY: Mr. Robertson has just

1 revealed when he talked about -- when he found the  
2 deposition, Judge.

3 MS. BAKER: He has stated that this is  
4 something that he reviewed as far as his position is  
5 concerned. I don't see that there's an objection to -- to  
6 looking at what the expert looks at for his testimony.

7 MR. COMLEY: There's been no foundation  
8 laid that this is the kind of thing an expert would look  
9 at. And furthermore, it's still quite a hearsay source.  
10 Mr. Schwermann is not a party here, and as far as that  
11 deposition is concerned, I'll just -- it suffers, it's not  
12 even verified.

13 JUDGE STEARLEY: Mr. Comley, at this point  
14 I'm going to overrule the objection. I believe the  
15 Commission can sift out the weight and credibility to be  
16 given to this testimony, and the deposition that you're  
17 talking about I believe is attached to Ms. Cason's  
18 testimony. We can take up foundational issues at the time  
19 that that's offered.

20 With regard to the statement that's -- that  
21 was made or an inquiry made after direct testimony, could  
22 you be a little bit more specific about that statement for  
23 me?

24 MR. COMLEY: My understanding was in his  
25 original testimony or at least during cross-examination he

1 claimed that, in looking at the deposition of  
2 Mr. Schwermann, he determined that he could not find any  
3 kind of financial duty done or rather operational duty  
4 done, and that was the support of his direct testimony.

5 Now, my understanding is the deposition was  
6 something he looked at following the filing of his direct  
7 testimony. So my proposal would be testimony relating to  
8 what he read in that deposition as pertaining to his  
9 opinions in his direct testimony, that should be stricken.

10 JUDGE STEARLEY: Ms. Baker?

11 MS. BAKER: I don't -- I don't see the same  
12 thing that Mr. Comley sees from the testimony of  
13 Mr. Robertson. His direct testimony has been filed in  
14 this case for some time. He has told the Commission  
15 through their questions, through all the parties through  
16 their questions what he relied on for his direct  
17 testimony. I don't see that -- that -- just because maybe  
18 he looked at it again after -- after the testimony was  
19 filed of Ms. Cason. I don't understand the objection.

20 JUDGE STEARLEY: I'm going to overrule, and  
21 again I will emphasize that the Commission will be able to  
22 evaluate the weight and credibility that should go to that  
23 testimony. You may continue.

24 BY MS. BAKER:

25 Q. I think basically the last question that I

1 have is, would you expect a person who is on the board of  
2 directors and a person who puts themselves out as being  
3 part of a management group, even though they are under  
4 just the financial post, that they would have some  
5 understanding of the operations of which they're asked to  
6 finance things for?

7 A. Yes, I do believe they should and would.

8 MS. BAKER: That's -- no further questions.  
9 Thank you.

10 JUDGE STEARLEY: All right. Very well.  
11 Mr. Robertson, I believe we're done in terms of this  
12 particular issue. You may step down. You will, as you  
13 know, be revisiting us a couple times and you'll still be  
14 under oath.

15 We are going to be moving on to the second  
16 issue which is availability fees. The list of witnesses I  
17 have in order would be Mr. Summers, Ms. Cason,  
18 Mr. Featherstone, Mr. Merciel and Mr. Robertson. Does  
19 that match everybody else's?

20 Okay. Before we pick up with the second  
21 issue, I'm going to take a short break, about a ten-minute  
22 recess. Yes.

23 MS. OTT: Is Mr. Stump going to be a part  
24 of the list?

25 JUDGE STEARLEY: My understanding is

1 Mr. Stump is going to offer additional testimony with  
2 regard to Issue 3. Is that correct, Mr. Comley?

3 MR. COMLEY: Wherever you want. Wherever  
4 would be convenient for people to have him. I think he  
5 may be responding to all of Mr. Featherstone's  
6 surrebuttal, including the proposal that would be, I  
7 think, addressed in No. 2. It's up -- I think his -- I  
8 will say that his schedule is flexible enough for him to  
9 accommodate the parties.

10 MS. OTT: Would it be possible to  
11 consolidate Issue 2 and 3 considering they're based on the  
12 same subject matter?

13 MR. COMLEY: I would have no objection to  
14 that, Judge.

15 MS. BAKER: I have no objection to that.

16 JUDGE STEARLEY: If all the parties are in  
17 agreement, we'll proceed in that manner, and we will then  
18 just follow the order of witnesses you have listed for  
19 Issue 2 and have Mr. Stump then as the last witness.

20 MR. COMLEY: Very well.

21 MS. OTT: Judge, can Staff witness Bill  
22 Harris be excused as he is no longer -- he's not a part of  
23 the availability issue?

24 JUDGE STEARLEY: I believe he can.  
25 Commissioners have not indicated to me that they have any



1 additional questions. So we'll go ahead and finally  
2 excuse you.

3 MS. OTT: Thank you.

4 JUDGE STEARLEY: And we will take a  
5 ten-minute recess.

6 (A BREAK WAS TAKEN.)

7 JUDGE STEARLEY: All right. We are back on  
8 the record. We are picking up with the second and third  
9 issues for the case regarding availability fees and  
10 regarding some excluded cost issues which have been  
11 brought up in Mr. Featherstone's surrebuttal testimony.  
12 We're going to start with Lake Region's first witness,  
13 Mr. John Summers. Mr. Summers.

14 (Witness sworn.)

15 JUDGE STEARLEY: Thank you. You may be  
16 seated.

17 MR. COMLEY: Your Honor, correct me on this  
18 if I've misunderstood the sequence. I think we are  
19 prepared for Lake Region Exhibit No. 4, and that would be  
20 the direct testimony of Mr. Summers, prefiled direct  
21 testimony. Exhibit No. 5 would be his prefiled rebuttal,  
22 and Exhibit 6 will be his surrebuttal.

23 JUDGE STEARLEY: That's what I have as  
24 well. So you are correct.

25 JOHN SUMMERS testified as follows:

1 DIRECT EXAMINATION BY MR. COMLEY:

2 Q. Mr. Summers, would you state your full name  
3 for the Commission, please.

4 A. John R. Summers.

5 Q. And would you state by whom you are  
6 employed.

7 A. I'm employed by Camden County Public Water  
8 Supply District No. 4.

9 Q. Are you also serving in a capacity as a  
10 general manager under contract for Lake Region Water &  
11 Sewer Company?

12 A. Yes, I am.

13 Q. Are you the same John Summers who caused to  
14 be prefiled in this case a series of prefiled testimonies  
15 which have been marked as Exhibits 4, 5 and 6?

16 A. Yes, I am.

17 Q. And Mr. Summers, if I were to ask you the  
18 same questions that are contained in this testimony, would  
19 your answers be the same?

20 A. I do have one correction.

21 Q. Very well.

22 A. I believe it's in the surrebuttal, and due  
23 solely to my poor typing skills. On line 6, page 3 of 4,  
24 that should read, were irrelevant and not calculated to  
25 lead to the discovery of relevant evidence. I left out

1 the words lead to.

2 Q. Do you have any other corrections? Is  
3 there --

4 A. Yes, I do. On my rebuttal testimony, again  
5 due to my typing skills, after the first page, the heading  
6 says direct testimony instead of rebuttal testimony.

7 Q. Do you have any other corrections to your  
8 testimony?

9 A. No.

10 Q. And again, if I were to ask the questions  
11 that are contained in the testimony, would your answers be  
12 the same as you have corrected them on the stand today?

13 A. Yes, they would.

14 MR. COMLEY: Your Honor, as I mentioned  
15 during opening remarks, we are offering portions of  
16 Mr. Summers' testimony on a conditional basis. This is  
17 because of the posture of the motion to strike, and I  
18 would like to point out that the areas that we are  
19 conditionally offering -- or offering on the condition  
20 would be on page 1, line 16 through page 8, line 9 of  
21 Mr. Summers' rebuttal, and with respect to his  
22 surrebuttal, we are conditionally offering page 1, line 15  
23 to page 4, line 12. Subject to that conditional offer, I  
24 would offer Exhibits 4, 5 and 6 into the record and tender  
25 Mr. Summers for cross-examination.

1 JUDGE STEARLEY: Any objections to the  
2 offering of Exhibits No. 4, 5 and 6?

3 (No response.)

4 JUDGE STEARLEY: Hearing none, they shall  
5 be received and admitted into the record.

6 (LAKE REGION EXHIBIT NOS. 4, 5 AND 6 WERE  
7 MARKED AND RECEIVED INTO EVIDENCE.)

8 JUDGE STEARLEY: Cross-examination,  
9 beginning with the Property Owners Association.

10 CROSS-EXAMINATION BY MS. LANGENECKERT:

11 Q. Good afternoon, Mr. Summers.

12 A. Good afternoon.

13 Q. By a series of transactions, is it your  
14 understanding that Lake Region Water & Sewer is the  
15 successor corporation to Four Seasons Lakesites Water &  
16 Sewer?

17 A. Yes.

18 Q. Do you have anyone else's testimony on the  
19 stand with you?

20 A. No, I don't.

21 Q. Did you review the surrebuttal of  
22 Mr. Merciel and specifically his Attachment 2 which  
23 indicated that historical events of Lake Region Water &  
24 Sewer, change of names and dates and such?

25 A. Yes, I did.

1 Q. And did that appear to you to be accurate?

2 A. Not entirely, no.

3 Q. Okay.

4 A. I believe there's a -- there's a more  
5 correct -- at least as far as -- as the issue that we're  
6 talking about here, the availability fees, there's a more  
7 correct explanation of those in the response to Data  
8 Request 44.1.

9 Q. I am going to hand you a document, and I'll  
10 show it to your counsel first to make sure it's okay.

11 A. Thank you.

12 Q. Would you please state the name of that  
13 document as it appears on this?

14 A. Amended Declaration of Restrictive  
15 Covenants.

16 Q. And could you go to page 29 and tell me  
17 what day it is signed at the top?

18 MR. COMLEY: Your Honor, before we go on  
19 much further, is this going to be offered as an exhibit?

20 MS. LANGENECKERT: I can if you'd like. I  
21 have enough.

22 JUDGE STEARLEY: Ms. Langeneckert?

23 MS. LANGENECKERT: Pardon?

24 JUDGE STEARLEY: Are you offering it as an  
25 exhibit or are you just --

1 MS. LANGENECKERT: I can. I have  
2 sufficient copies if Mr. Comley would like it as an  
3 exhibit. I was just going to ask him a few questions  
4 about it.

5 JUDGE STEARLEY: It's your choice.

6 MS. LANGENECKERT: I don't think it's  
7 necessary.

8 JUDGE STEARLEY: It's your questioning.

9 THE WITNESS: March 10th, 1971.

10 BY MS. LANGENECKERT:

11 Q. Thank you. And could you go to page 22,  
12 section 8 for me, please.

13 A. Okay. I'm there.

14 Q. And could you tell me what the heading of  
15 that column is, or that paragraph?

16 MR. COMLEY: Your Honor, I will object at  
17 this point. This document has not been identified. The  
18 witness has not been asked whether he's familiar with the  
19 document. There's been no foundation laid for him to even  
20 comment about the document. So I'm going to object to its  
21 use in this cross-examination at this time.

22 JUDGE STEARLEY: Ms. Langeneckert, how  
23 about you provide a little foundation first?

24 BY MS. LANGENECKERT:

25 Q. Well, I don't know if Mr. Summers was even

1     alive in 1971, but I can ask him about this. Are you  
2     aware of the various Amended Declarations of Restrictive  
3     Covenants that are part of the Four Seasons Lakesites?

4             A.     Yes, I'm aware of them.

5             Q.     And does this appear to you to be an  
6     example or one of the ones that you had seen previously?  
7     Have you ever seen this document previously?

8             A.     I probably have, but without reading it --  
9     but it does look familiar.

10            MS. LANGENECKERT: I'd like to just ask him  
11     three or four questions on it. It's not that I'm going to  
12     offer it into evidence. I'm not going to --

13            JUDGE STEARLEY: Let me ask, is this  
14     particular document attached to anyone else's testimony?

15            MS. LANGENECKERT: It is not.

16            JUDGE STEARLEY: If it's not attached to  
17     anyone else's testimony, then the Commission is going to  
18     ask you to go ahead and offer it into evidence as an  
19     exhibit.

20            MS. LANGENECKERT: I will do that. This  
21     will be Lakesites Property Owners 1, I guess.

22            JUDGE STEARLEY: That will be correct. And  
23     do you have copies for the Commission?

24            MS. LANGENECKERT: I do.

25            (LAKESITES PROPERTY OWNERS EXHIBIT NO. 1

1 WAS MARKED FOR IDENTIFICATION BY THE REPORTER.)

2 BY MS. LANGENECKERT:

3 Q. Perhaps I'll start off, before asking any  
4 further questions on this, to refer to Mr. Merciel's  
5 rebuttal testimony, the Third Amended and Restated  
6 Declarations of Restricted Covenants.

7 A. Would it be okay if I got a copy of that  
8 testimony to refer to? I've got one in the box over here.

9 JUDGE STEARLEY: If someone has a copy, if  
10 they'd please tender it to the witness.

11 THE WITNESS: Okay. Great. Thank you.

12 BY MS. LANGENECKERT:

13 Q. Try to do a little cross reference here.

14 A. If it would be easier, I can -- I can bring  
15 my copies of everyone's testimony up here. I have them  
16 with me.

17 MR. COMLEY: Could we give him time to come  
18 get the testimony?

19 JUDGE STEARLEY: You certainly may. Go  
20 right ahead.

21 THE WITNESS: Okay. I've got it. Sorry.

22 BY MS. LANGENECKERT:

23 Q. Do you have the attachment to Mr. Merciel's  
24 rebuttal testimony?

25 A. Yes. The Declaration of Restricted



1 Covenants?

2 Q. Correct. And this is titled the Third  
3 Amended and Restated Declaration of Restricted Covenants;  
4 is that correct?

5 A. That's correct.

6 Q. If you go to the second whereas paragraph,  
7 the very bottom of the first page, under your  
8 understanding of Declaration of Restrictive Covenants,  
9 generally is this where they start to describe the  
10 subsequent ones from the initial one on until the point  
11 that this one was filed?

12 MR. COMLEY: Your Honor, I'll object to the  
13 question thinking that the document itself can speak for  
14 itself, but to the extent Mr. Summers knows the answer, I  
15 don't object.

16 JUDGE STEARLEY: All right. I agree. The  
17 document can speak for itself, but Mr. Summers, you can go  
18 ahead and answer the question to the extent you have  
19 knowledge.

20 THE WITNESS: I believe that's correct.

21 BY MS. LANGENECKERT:

22 Q. There are a couple dates listed as  
23 subsequent documents to the initial filing where it says  
24 declarant filed a connection therewith of declaration of  
25 restrictive covenants. Apparently the first one is, as

1 this reads, is on the 2nd of December of 1969 and recorded  
2 on the 4th of September of '69 and it names a book and  
3 page.

4 A. Yes, I see that.

5 Q. And then the next one listed is an  
6 instrument dated the 10th day of March and recorded in  
7 book 162 at page 780?

8 A. Yes.

9 Q. And do you understand that to be the same  
10 document that I gave you as the Lakesites Property Owners  
11 Association No. 1 where it indicates on the left side of  
12 the top paragraph the book and page?

13 A. Yes. Yeah. Right here (indicating).

14 Q. So back to page 22, section 8, the heading  
15 of paragraph 8?

16 A. Central Sewage Disposal System and  
17 Waterworks System.

18 Q. And that's on page 22, and then if you go  
19 over to page 23, could you start reading on line 5 from  
20 the word the, the beginning of the sentence at the end of  
21 line 5?

22 A. The said owner or owners of said waterworks  
23 system and sewage disposal system will be a privately  
24 owned public utility authorized by a certificate of public  
25 convenience and necessity issued by State of Missouri

1 Public Service Commission to operate sewage disposal  
2 systems and/or waterworks systems. The aforesaid amount  
3 of said availability charges, times and methods of  
4 payments thereof by said owners and other matters shall be  
5 as provided in schedules of rates and rules, regulations  
6 and conditions of services for water services and for  
7 sewer service filed and published by said public utility  
8 or utilities with said Missouri Public Service Commission.

9 Q. Okay. And you can stop there and just skip  
10 down a little bit more, and I'm not going to make you read  
11 the whole thing. I promise.

12 A. All right.

13 Q. The fifth line from the bottom, the end of  
14 the sentence starts with the word the. Could you read  
15 that?

16 A. The amounts --

17 Q. Just to the end of the page.

18 A. Okay. The amounts of said availability  
19 charges and other charges are subject to change hereafter  
20 by order of the said Missouri Public Service Commission or  
21 its successors in accordance with then existing law, and  
22 the structure of said availability charges are likewise an  
23 end.

24 Q. I'm sorry. Continue to the end of that  
25 sentence, please.

1           A.       Same manner subject to change from  
2     available rates to another type of rate or rates.

3           Q.       Now, from what you just read in this  
4     document, would you believe that it was the intent of the  
5     original owners of Four Seasons when they developed this  
6     document, the developers who were also the owners of Four  
7     Seasons Water & Sewer, would it be your understanding that  
8     it was their intent for the availability charges to be  
9     subject to the Public Service Commission jurisdiction?

10           MR. COMLEY: I'll object on grounds that it  
11     asks this witness to speculate about what the developer  
12     may have intended by this language or may have intended  
13     despite the language.

14           JUDGE STEARLEY: Objection sustained.

15     BY MS. LANGENECKERT:

16           Q.       As a layperson, if you were to read that  
17     paragraph, how would you interpret it?

18           A.       I would probably interpret it in the way  
19     that you did.

20           Q.       That's all I have for that particular  
21     document.

22           A.       Okay.

23           JUDGE STEARLEY: Ms. Langeneckert, we did  
24     have you mark the exhibit and you've used it for  
25     testimony.



1 objections from any of the other parties? Okay. And you  
2 can file that as a late filing, Ms. Langeneckert, and  
3 let's try to have that here within ten business days.

4 MS. LANGENECKERT: Certainly.

5 BY MS. LANGENECKERT:

6 Q. I guess while we're in the objection stage,  
7 I might as well ask Mr. Summers to look at Ms. Cason's  
8 testimony and the attachment thereto. And that is the  
9 deposition of Mr. Robert Schwermann in the court case; is  
10 that correct?

11 A. Yes, that's what it says.

12 Q. Were you present for that court case at  
13 all?

14 A. Yes, I was. It was --

15 Q. You're actually quoted somewhat extensively  
16 here even though it was not your deposition; is that  
17 correct? Have you read it? I'm sorry. Have you had a  
18 chance to review it?

19 A. I haven't really reviewed it, no.

20 Q. Well, perhaps we'll -- after we've had a  
21 chance for a break, I'll get a chance to ask you to tell  
22 me whether your review indicates to you whether that was  
23 pretty much what you remember happening at that  
24 deposition, if the questions and answers are something  
25 that you recall.

1           A.       Yes, I was asked questions in that  
2 deposition.

3           Q.       And if you could look at the deposition and  
4 see if it appears as you sat there, how the questioning  
5 went, the answers, that appears to be accurate?

6           A.       Okay.

7           JUDGE STEARLEY: Ms. Langeneckert, did you  
8 want him to review it now?

9           MS. LANGENECKERT: No, we can -- no, unless  
10 you want to stop for a moment. I don't know how long it  
11 would take him to review.

12          JUDGE STEARLEY: I have no objections to  
13 stopping. I just don't want to interrupt the flow and  
14 progression of the examinations. We have the other  
15 parties lined up as well. I'd rather not be revisiting  
16 issues if we can address them all in sequence.

17          MS. LANGENECKERT: Maybe take a couple  
18 minutes to glance at it, if you don't mind, Mr. Summers,  
19 to see if it pretty much sets out when you were there, it  
20 appears to be what was said, and your statements at least  
21 are accurate as you recall them.

22          JUDGE STEARLEY: Take the time you need,  
23 Mr. Summers.

24          THE WITNESS: Okay. Thank you. Comments  
25 on page 15 and 16 are correct.

1 BY MS. LANGENECKERT:

2 Q. By comments, do you mean the typewritten  
3 things, not the handwritten things, right?

4 A. Yes, where my name is referred, yes. Where  
5 my name is referred. I'm sorry.

6 Page 18 is correct. Page 20 is correct.  
7 24 is correct. The next time I find my name is on page  
8 45, and that is correct. Page 58 is correct.

9 Q. Is that where they kicked you out?

10 A. I'm not sure.

11 Q. Page 58, I think.

12 A. My response was no, I think. Page 66 is  
13 correct. Page 72 I believe is correct. And those are the  
14 only responses of mine I find in the document, and I  
15 believe they were all correct.

16 Q. Do you -- again, since you I guess didn't  
17 have an opportunity to review this when it was filed,  
18 prefiled with Ms. Cason's testimony, do you believe that  
19 the correct description or the correct delineation of your  
20 answers and questions here would be representative that  
21 the transcript itself as to other parties who were  
22 questioned and -- questions that were asked would be  
23 correct?

24 MR. COMLEY: I'll object. I think  
25 Ms. Langeneckert is trying to ask Mr. Summers to verify



1 the testimony that was given by a witness. He may have  
2 been present, but he can only verify what he said.  
3 There's -- I'm not even sure that Mr. Summers was in the  
4 deposition throughout. So again, the only person I think  
5 that can verify that the transcript has been properly done  
6 is the court reporter herself. The Attachment 1 has not  
7 been signed by the court reporter. It's not been  
8 certificated.

9                   Furthermore, it is the testimony of a  
10 person not a party to this case. It is hearsay, and I  
11 object to its use.

12                   MS. LANGENECKERT: I am offering it to show  
13 Ms. Cason's -- an example of Ms. Cason's understanding of  
14 when she first learned of the availability fee issue. I  
15 am not offering it as to Mr. Schwermann's accuracy of his  
16 transcript or his testimony. All I'm doing is offering it  
17 to show that this is what Ms. Cason read, and I can do it  
18 through her testimony on the stand, too, that this was  
19 what she read that indicated to her --

20                   JUDGE STEARLEY: That's absolutely right,  
21 you can do that when you have Ms. Cason on the stand.  
22 I'll sustain the objection. Mr. Summers can confirm  
23 remarks specifically directed towards him, but he cannot  
24 confirm the remarks on an uncertified document being made  
25 by another person who's not here to verify those remarks.

1 BY MS. LANGENECKERT:

2 Q. I'd like to refer you to Mr. Merciel's  
3 Exhibit No. 7 to his rebuttal testimony, or attachment 7.

4 A. I apologize. I didn't -- I didn't number  
5 these, so will you tell me which one that is.

6 Q. It's the last one, or the last two.

7 A. Maybe I do have it. The very last page,  
8 sewer and water agreement?

9 Q. Last two pages, yes.

10 A. Last two pages. Okay. I have them in  
11 front of me.

12 Q. And the sewer and water agreement is the  
13 first of the two documents for Exhibit No. 7 of  
14 Mr. Merciel's rebuttal testimony. Could you tell me the  
15 date on the bottom of that document?

16 A. June 25th, 1994.

17 Q. And the title of the document?

18 A. Sewer and Water Agreement.

19 Q. And the lot number and the signatures are  
20 blocked out. Have you seen this document before, not this  
21 specific person's agreement, but have you seen this blank  
22 document before?

23 A. No. I may have seen one similar.

24 Q. Do you believe you've seen one that has  
25 text that refers to the Public Service Commission and an

1 agreement that the customers would sign indicating that it  
2 would be the regulatory body for these rates?

3 A. No. I think the -- I think the blank copy  
4 that I provided in response to a Data Request did not have  
5 that language.

6 Q. So you've not seen one that says this?

7 A. Not until this surrebuttal, no.

8 Q. Rebuttal.

9 A. I'm sorry. Rebuttal.

10 Q. Would documents that prior or predecessor  
11 companies from Lake Region Water & Sewer, would those  
12 documents also be documents that Lake Region would have to  
13 follow? Do they take on all the responsibilities of the  
14 company that they've taken over, purchased, as the case  
15 may be?

16 A. I believe they do, yes.

17 Q. So this would, even if you have not seen  
18 this, this -- if this is an accurate copy of a sewer and  
19 water agreement that property owners were asked to sign,  
20 Lake Region Water & Sewer would also have to abide by  
21 this?

22 A. Well, I don't see the name Four Seasons  
23 Lakesites Water & Sewer on this agreement.

24 Q. Do you know who the water and sewer company  
25 was for Grand Point Subdivision on June 25th, 1994?

1           A.       There was no water and sewer company  
2     certificated to provide service at that date.

3           Q.       Do you know what the first water and sewer  
4     company for Grand Point Subdivision, who that was?

5           A.       Four Seasons Lakesites Water & Sewer  
6     Company.

7           Q.       Now, on the next page, there is a bill.  
8     Fortunately, this one does have Four Seasons Lakesites on  
9     it. This bill is for what date, please?

10          A.       Therefore, the related billing begins on  
11     January 1, 1995. Is that the date you're looking for?

12          Q.       And it's due by? Yes.

13          A.       Due by December 31, 1995.

14          Q.       And you say it starts on January 31 -- or  
15     by January 1, 1995, as this reads?

16          A.       That's what the first paragraph states,  
17     yes.

18          Q.       So it's about six months after the date of  
19     the sewer and water agreement on the former page?

20          A.       If it's for the same lot, yes.

21          Q.       Okay. Well, it's six months either way,  
22     isn't it? Whether it's for the same lot or not, the date  
23     on the former document is June 25th and this says it  
24     starts January 1st?

25          A.       Yes. I'd agree with that, yes.

1 Q. And the invoice amount is for how much?

2 A. \$300.

3 Q. And could you read the second to the last  
4 paragraph for me?

5 A. Please make your check payable to Four  
6 Seasons Lakesites Water and Sewer Company. Should you  
7 have any questions, please call Georgeann at 314-365-8561,  
8 extension 16.

9 Q. If you were to get that bill as a customer  
10 of Four Seasons Lakesites Water & Sewer Company for  
11 availability fees, would you believe that by writing a  
12 check to Four Seasons Lakesites Water and Sewer Company,  
13 that that would be the entity billing you for it?

14 A. I probably would, yes.

15 Q. Now I'm going to take you back to the Third  
16 Amended Declaration, which was what you were looking at a  
17 few moments ago, Mr. Merciel's rebuttal, Attachment 3.

18 A. Okay. I'm there.

19 Q. And please go to page 18, and go to  
20 paragraph 9. Does subparagraph A of paragraph 9, does  
21 that appear to be substantially similar to the sewer and  
22 water agreement that is Attachment 7? The language is not  
23 exactly the same.

24 A. I haven't compared it, so I guess my answer  
25 would be I don't know.

1           Q.       Well, then I'll have you read a few lines  
2   through this.  Would you read the first sentence of  
3   paragraph A under paragraph 9?

4           A.       Okay.  The owner of each lot agrees to pay  
5   the owner of the waterworks system to be constructed  
6   within the development a minimum monthly availability  
7   charge for water, water service and the accommodations  
8   afforded the owners of said lots by said waterworks system  
9   commencing upon the availability of water and a waterworks  
10  system distribution main provided for the lot and  
11  continuing thereafter so long as water is available for  
12  use, whether or not adequate connection is made to a  
13  waterworks system distribution main and whether or not  
14  said owner actually uses or takes water.

15          Q.       Okay.

16          A.       Do you want me to keep going?

17          Q.       You can skip the next sentence -- two  
18  sentences, but then please read the last sentence which  
19  starts the fifth from the bottom of the paragraph on  
20  page -- the top paragraph on page 19.

21          A.       Starting with the said owner?

22          Q.       Correct.

23          A.       The said owner or owners of said waterworks  
24  system will be a privately owned public utility,  
25  authorized by a certificate of public convenience and

1 necessity issued by the State of Missouri Public Service  
2 Commission, PSC, to operate the waterworks system.

3 Q. Okay. And then lastly in the next  
4 paragraph down, if you could start reading the sixth line  
5 up, sentence starting with the amounts. Still on page 19,  
6 first full paragraph.

7 A. The amounts of said availability charges  
8 and other charges are subject to change hereafter by order  
9 of the said Missouri PSC or its successors in accordance  
10 with then existing law and the structure of said  
11 availability charges are likewise and in the same manner  
12 subject to change from availability rates to another type  
13 of rate or rates.

14 Q. Thank you. Now, in your testimony you  
15 referenced the -- I'm going to try to find the -- your  
16 surrebuttal, page 3, line 18. You're referencing  
17 Mr. Merciel's rebuttal testimony.

18 A. Yes, I see it.

19 Q. And could you read what you said in that  
20 answer?

21 A. On page 16, lines 4 and 5 of his rebuttal  
22 testimony he states that lot owners likely believe that  
23 indeed the Commission would provide oversight of  
24 availability charges.

25 Q. After reviewing all of the other documents

1     that we just went through and the language that you read,  
2     as a customer of Lake Region Water and Sewer, would you  
3     read those documents to indicate that the utility was  
4     going to have the availability fees regulated by the  
5     Public Service Commission?

6             A.       No.

7             Q.       How would you read that?

8             A.       I would read, going back to page 19 that  
9     you had me read from previously in the Third Amended,  
10    or -- well, where it starts with -- where it talks about  
11    the setting of the rates.

12            Q.       Where's that?

13            A.       In the second paragraph, the aforesaid  
14    amounts of said availability charges, times and methods of  
15    payments thereof by said owners and other matters shall be  
16    as provided in schedules of rates and rules, regulations  
17    and conditions of service for water services filed and  
18    published by said public utility or utilities with said  
19    Missouri PSC or any successor regulatory body of the state  
20    of Missouri in accordance with law and passed to file or  
21    formally approved by said PSC as the then effective  
22    schedule of rates and rules, regulations and conditions of  
23    service of said public utility or utilities or, if not so  
24    provided, as determined by the owner of the waterworks  
25    system.



1           Q.     Okay. And what would that lead you to  
2 believe?

3           A.     That would lead me to believe that since  
4 the Commission did not tariff those rates for 40 years,  
5 that they weren't going to and so they would be handled by  
6 the owner of the waterworks system.

7           Q.     So as a property owner for Lake Region --  
8 I'm sorry, for Four Seasons Lakesites, you would analyze  
9 whether the Commission never looked at any availability  
10 fee issue for the past 40 years and before you purchased  
11 your property you would do all this investigation to make  
12 sure that you knew exactly who was going to be giving you  
13 the availability fees; is that what you're stating?

14          A.     If I were to buy a piece of property, yes,  
15 I would do due diligence, and I am a Four Seasons  
16 Lakesites property owner.

17          Q.     So the contract that you read from or the  
18 bill that you saw would not lead you to believe that the  
19 Public Service Commission would be the regulatory body?

20          A.     I would not get that bill until after I'd  
21 purchased the property. I would have gone to these  
22 documents that you had me read from.

23          Q.     And are you assuming that everyone receives  
24 these documents before they purchase the property?

25          A.     I don't know if they receive the document,

1 but the documents are referenced in the warranty deeds.

2 Q. The warranty deeds that they would --

3 A. The warranty deeds for their property.

4 Q. -- receive before they purchased the

5 property?

6 A. Yes.

7 Q. So despite all that verbiage about the

8 Public Service Commission, you would be proactive enough

9 to do that investigation in the middle of a house

10 purchase?

11 A. Availability fee --

12 Q. Or a lot purchase even, I guess?

13 A. Availability fees only apply to houses.

14 But yes, I would do due diligence on -- I've learned to do

15 that the hard way.

16 Q. So apparently at one point you were much

17 like these customers and misled?

18 A. You might say that.

19 Q. Okay. Now I'd like you to go to

20 Mr. Robertson's -- or you can go to your answer to 44.1.

21 I'm going to refer to it in Mr. Robinson's testimony

22 because that's already in the record.

23 A. Okay. And it's in Mr. Robertson's which?

24 JUDGE STEARLEY: Just for clarity,

25 Mr. Robinson's testimony is on hold. I have not admitted

1     that into the record.

2                     MS. BAKER:   And I would also say that his  
3     name is Robertson, for clarity.

4                     THE WITNESS:   Sorry.   I actually knew that.  
5     I apologize.   I brought Merciel, Cason and Featherstone,  
6     but I forgot Mr. Robertson.

7     BY MS. LANGENECKERT:

8             Q.       Do you have your exhibit -- or your  
9     response to Data Request 44.1?   That's the one I'm going  
10    to refer you to.

11            A.       Thank you, Ted.   Okay.   Page number?   Can  
12    you give me the page number?

13            Q.       Are you on the testimony?

14            A.       Yes, I am.

15            Q.       Starts on page 3 of his direct.

16            A.       Yes, I'm there.

17            Q.       In your first response in the second  
18    sentence you say, the fees assessed to the owners of the  
19    undeveloped lots originated in the Declaration of  
20    Restricted Covenants filed by the developer of the  
21    subdivision.   Ownership of these fees have been outside  
22    the regulated utility since the inception of the fees.   Is  
23    that correct?

24            A.       Actually, I don't think that is correct.

25            Q.       You did not say that?

1           A.       No, no, no. This is my answer, but I have  
2 since found out that I don't believe that response is  
3 totally correct.

4           Q.       Okay. Why don't you tell us what your  
5 understanding is then?

6           A.       I think the correct is over on page 4.

7           Q.       Of Mr. Robertson's?

8           A.       Of Mr. Robertson's, yes. You would think  
9 that I would have the correct answer when it's in the same  
10 Data Request, but --

11          Q.       And where on page 4 is that?

12          A.       In item 3.

13          Q.       And in where in item 3?

14          A.       In the second paragraph, in 1998 Four  
15 Seasons -- and there I'm talking Four Season Lakesites  
16 Water & Sewer Company assigned the ownership of its  
17 availability fee rights on Shawnee Bend to Cindy and Roy  
18 Slates. These were assigned to Waldo Morris in 2000, and  
19 Waldo assigned them to RPS Properties and Sally Stump in  
20 2004.

21          Q.       So at one point they did have ownership of  
22 the fees?

23          A.       Yes. In fact, if you go back to the annual  
24 reports filed in 1997 and 1998 you'll see them listed as  
25 non-utility income.

1           Q.           Now, in paragraph 2, or I guess it's  
2   response 2 to 44.2, you say the company believes the  
3   availability fees assessed on Porto Cima/Shawnee Bend lots  
4   have been done outside the regulated utility since their  
5   inception. Does that answer also change?

6           A.           Yes, it does, and I can provide some  
7   clarification if that -- if that's allowed.

8           Q.           Well --

9                       JUDGE STEARLEY: It's your examination.

10   BY MS. LANGENECKERT:

11           Q.           Your attorney can ask you in redirect if  
12   you'd like.

13           A.           Okay.

14           Q.           And I may get there. You described the  
15   assignment from Shawnee Bend/Four Seasons Lakesites  
16   Water & Sewer, correct?

17           A.           Correct.

18           Q.           On Shawnee Bend to Cindy and Roy Slates,  
19   and then say these were assigned to Waldo Morris in 2000  
20   and Waldo assigned them to RPS and Sally Stump in 2004?

21           A.           That's correct.

22           Q.           And RPS Properties and Sally Stump are  
23   still the current owners of Lake Region Water & Sewer?

24           A.           Yes, they are the shareholder of Lake  
25   Region Water & Sewer Company.

1           Q.       And current owners of the availability fees  
2       purchased them from the previous shareholder of Lake  
3       Region in a purchase separate from the stock purchase of  
4       Lake Region. You said that in your testimony also? I'm  
5       sorry. In your Data Request.

6           A.       Yes, I believe that's true.

7           Q.       And subsequent to that -- I'm sorry. Is  
8       the previous shareholder to whom you refer Waldo Morris?

9           A.       Yes, it is.

10          Q.       And you refer to a purchase of stork  
11       separately -- I'm sorry. In an attachment to  
12       Mr. Merciel's surrebuttal, the last document, it's been --  
13       it was brought up this morning and determined not to be --

14          A.       You said Mr. Merciel's surrebuttal?

15          Q.       I did.

16          A.       Okay. I'm there.

17          Q.       The contract regarding availability fees.  
18       It's Attachment 1 to his surrebuttal. There were three  
19       pages.

20          A.       Actually, I didn't -- I didn't put that in  
21       my copy. Sorry.

22          Q.       You thought it was top secret.

23          A.       Thank you, Shelley.

24                    MS. BRUEGGEMANN: Thank you.

25                    THE WITNESS: Okay.

1 BY MS. LANGENECKERT:

2 Q. Now, does this document show that on the  
3 same day that the stock for Lake Region Water & Sewer was  
4 purchased, the availability fees were also purchased for  
5 one dollar, the rights to the availability fees as  
6 Mr. Morris had them were purchased for a dollar?

7 A. I don't know if this is the same day of the  
8 stock sale, although it does say done on the closing date  
9 of the stock purchase agreement. Yes, I'd agree with  
10 that.

11 Q. And then Mr. Morris has a note relating to  
12 the lawsuit?

13 A. Correct.

14 Q. What availability fees were included in the  
15 lawsuit to which Mr. Schwermann -- I'm sorry, Mr. Morris  
16 refers here?

17 A. It's my understanding that the developer  
18 claimed that the developer and not -- not the utility  
19 owned the availability fees for all lots sold after 1998.

20 Q. And there was a subsequent assignment after  
21 that lawsuit was over, and that is the next document?

22 A. No, that's not the next document. Are you  
23 talking about the assignment of availability fees that's  
24 made by Waldo Morris?

25 Q. Right.

1           A.       No. That's from -- that's Waldo assigning  
2 whatever rights he owns to Robert P. Schwermann and  
3 Sally J. Stump. That's not the assignment of the ones the  
4 developer claimed to own.

5           Q.       Right. I'm sorry. This is the ones he  
6 owns, yes. But it was after the suit or was it not?

7           A.       No, it was not. The suit wasn't settled  
8 until several months later, I believe.

9           Q.       This is dated October 13th, 2004, the  
10 assignment, and the contract is dated September 10th,  
11 2004. So do you know the difference in the month, one  
12 month between the two dates?

13          A.       No, I don't.

14          Q.       So did he assign, in your opinion, the same  
15 availability fees twice?

16          A.       I don't --

17          Q.       The contract and then the assignment, were  
18 they for the same availability fees?

19          A.       I don't know the answer to that question.

20          Q.       There was also an assignment attached to  
21 your response to 44.1. It was also responded under  
22 direct.

23          A.       Is it attached to someone's testimony?

24          Q.       It was attached to one of your data  
25 responses, actually.



1           A.       Yes, I believe I remember that, but I don't  
2   have a copy.

3           Q.       It's three or four pages long.  Let's see  
4   if I can find a copy for you.  It's to the same Data  
5   Request 44.1.

6           A.       Yes.

7           Q.       What day is that dated?

8           A.       15th day of April 2005.

9           Q.       Would that be after the lawsuit was  
10  settled?

11          A.       I don't know when the lawsuit was settled,  
12  but this appears to be since it's from Four Seasons  
13  Lakesites.

14          Q.       And in that assignment, he assigns -- I'm  
15  sorry, Four Seasons Lakesites assigns the availability  
16  fees to RPS Properties and Sally Stump; is that correct?

17          A.       That's correct.

18          Q.       Now, earlier I -- you were in the room when  
19  your attorney made his opening statement?

20          A.       Yes, I was.

21          Q.       And I believe he referenced that the  
22  developer also received some of the availability fees.  Do  
23  you recall that statement --

24          A.       Yes, I do.

25          Q.       -- after the lawsuit?

1                   Now this may be getting into dangerous  
2 territory. Do you -- can you state the percentage between  
3 the two companies?

4           A.       No, I can't.

5           Q.       Because you do not know it or because of  
6 confidentiality reasons?

7           A.       I believe it's covered by confidentiality  
8 agreement.

9           Q.       Now, earlier your attorney also stated in  
10 his opening statements that a water -- the towers and the  
11 water meters were all -- I believe it was Mr. Comley --  
12 were all items that were bought by the water company for  
13 availability -- I'm sorry, just for the water company for  
14 water customers. Do you remember that statement?

15          A.       I'm not sure I do, but I would agree that  
16 water utility plant is to serve water utility customers,  
17 if that helps.

18          Q.       My question is, what types of water utility  
19 plant items are needed for availability for undeveloped  
20 lots? What do you need to serve an undeveloped lot?

21          A.       You actually don't know anything to serve  
22 an undeveloped lot because they're not taking service.

23          Q.       Well, is there pipe that goes up to their  
24 property that they will then connect to when --

25          A.       Generally runs past their property to a

1 customer that is taking service, yes.

2 Q. And they can tap into that when they  
3 finally do develop their lot; is that correct?

4 A. That's correct.

5 Q. Do you know the cost associated with that  
6 water line for that specific lot? Do you have --

7 A. For a specific lot?

8 Q. For any specific lot. I imagine it would  
9 differ between the distance from the main and the size of  
10 the pipe, or are they all the same?

11 A. No, I couldn't -- I couldn't give you that  
12 number.

13 Q. Because you don't know it?

14 A. Because I don't know it, yes. Sorry.

15 Q. Would that be the same for a sewer system?

16 A. Yes. Yes.

17 Q. What do the undeveloped lot customers get  
18 for their \$300 a month?

19 A. My guess -- I'm not sure I know what you  
20 meant.

21 Q. What is their benefit?

22 A. Their benefit I suppose is they were able  
23 to purchase the lot since it was in the deed restrictions.

24 Q. So their benefit of paying you -- I'm  
25 sorry. Their benefit of paying Lake Utility Availability

1     \$300 a year is their ability to purchase the lot?

2             A.       Yes, because it was a deed restriction put  
3     on by the developer.

4             Q.       Would they then not be paying the developer  
5     for that luxury?

6             A.       They initially were.

7             Q.       And that is when the developer had the  
8     Public Service Commission as the regulatory body in its  
9     contracts and agreements, whether that was right or wrong  
10    or accurate or inaccurate?

11            A.       Prior to 1998, yes.

12            Q.       You're saying prior to 1998. Are you  
13    saying after 1997 that was no longer the understanding?

14            A.       That's my understanding, yes.

15            Q.       I know that the developer, under the  
16    lawsuit there's a question whether the developer was the  
17    rightful owner of them, but the developer also transferred  
18    those rights to someone else, and he obviously could not  
19    transfer rights to someone that he did own. Is that an  
20    accurate understanding?

21            A.       He could not transfer --

22            Q.       Rights to something he doesn't own. He  
23    could not transfer rights to the availability fees to Roy  
24    and Cindy Slate -- I'm sorry, to Vern or Waldo or anyone  
25    if he did not own them, if he did not have rights to them?

1           A.       I don't know the legalities of that, but I  
2 would agree with that. I would agree with that statement.

3           Q.       How many lots are there on Shawnee Bend,  
4 developed and undeveloped?

5           A.       I heard a number of 1,607 this morning, but  
6 that only includes Porto Cima. I have no idea how many  
7 undeveloped lots are on Shawnee Bend.

8           Q.       You're not aware of how many lots you  
9 receive payment for sewer service and water service from?

10          A.       Yes. Yeah. That's been testified to and  
11 is in the Staff's accounting schedules.

12          Q.       And as the Lake Utilities Availability  
13 manager also, do you not know how many people pay you \$300  
14 a year for undeveloped lots?

15          A.       No. I'm not the manager of Lake Utility  
16 Availability.

17          Q.       Do you receive information about Lake  
18 Utility Availability and the amount that they bill for  
19 undeveloped lots?

20          A.       No.

21          Q.       Do you know how many lots beyond Porto Cima  
22 Lake Region serves?

23          A.       No, although we could get to that number  
24 probably by subtracting the Porto Cima lots from the total  
25 customers, although that number includes --

1           Q.       That wouldn't tell you undeveloped lots,  
2   that would only tell you the customers that are on Lake  
3   Region, unless you --

4           A.       That's correct.

5           Q.       -- have a number for the Lake Utility  
6   Availability?

7           A.       That's correct.

8           Q.       Now, aren't there lots on Shawnee Bend that  
9   Lake Region serves that aren't part of the Four Seasons  
10   development?

11          A.       Yes, there are.

12          Q.       And do you charge availability fees for  
13   those lots that are undeveloped?

14          A.       Lake Region does not charge any  
15   availability fees to anyone.

16          Q.       Does Lake Utilities Availability charge  
17   availability fees for --

18          A.       I don't believe they do.

19          Q.       And why is that?

20          A.       Because they have no legal right to do so.

21          Q.       From a standpoint of a water or sewer  
22   manager, would you not see that that is subsidizing the  
23   customers who are paying availability fees for their  
24   undeveloped lots by the customers who are and the Lake  
25   Region Water & Sewer customers since the Lake Region

1 Water & Sewer customers are the ones who are paying for  
2 all of the pipe and plant.

3 A. The Lake Region Water & Sewer customers are  
4 not paying for the pipe and the plant because it was  
5 donated by the developer and is included as CIAC, which is  
6 a reduction to rate base.

7 Q. So the maintenance of the pipe and plant  
8 that -- are Lake Region customers not paying for that?

9 A. Yes, they are, because they are the ones  
10 receiving the service.

11 Q. Are they also not paying for maintenance of  
12 the pipe and plant for the undeveloped lots?

13 A. No, because you don't need to maintain the  
14 pipe and plant for the undeveloped lots because they don't  
15 receive service.

16 Q. There is no risk of the pipe being in the  
17 ground and cracking or going bad or going past a lot  
18 that's undeveloped to one that is developed and needing  
19 service?

20 A. Yes, there is, but if there were no  
21 customers on that line, you could easily turn a valve and  
22 not fix it until there were customers.

23 Q. So are you saying that where you have  
24 undeveloped lots, there are no customers on that line at  
25 all?

1           A.       No, I don't believe that is what I said.

2           Q.       Well, you just stated that if there are no  
3 customers on the line, you could easily turn it off?

4           A.       Yes, I did.

5           Q.       Do you have any areas of undeveloped lots  
6 where you have turned off as you state and --

7           A.       Not on Shawnee Bend, no.

8           Q.       Okay. So that's not the case, then?

9           A.       Not on Shawnee Bend.

10          Q.       And that's where the undeveloped lots pay  
11 the availability fee is Shawnee Bend only?

12          A.       For Lake Utility, yes.

13                   MS. LANGENECKERT: That's all my questions.

14 Thank you.

15                   JUDGE STEARLEY: Cross-examination by  
16 Staff.

17                   MS. OTT: Yes. Before I begin questioning,  
18 Ms. Langeneckert -- I apologize for butchering your  
19 name -- discussed a lot about this contract regarding  
20 availability fees. I would like to go ahead and offer  
21 that into evidence because I'm going to question about it.

22                   JUDGE STEARLEY: If you can bring the  
23 copies forward.

24                   MS. OTT: I had previously marked this HC  
25 so I did not forget and say something I wasn't supposed to



1 on the record, but as established earlier, the company has  
2 deemed that it's not HC. So I apologize for it being  
3 marked incorrectly.

4 JUDGE STEARLEY: I believe this would be  
5 Staff Exhibit No. 10.

6 (STAFF EXHIBIT NO. 10 WAS MARKED FOR  
7 IDENTIFICATION BY THE REPORTER.)

8 CROSS-EXAMINATION BY MS. OTT:

9 Q. I'll get to that in a minute, just so you  
10 know. Mr. Summers, what entity or company are you  
11 representing here today?

12 A. I'm representing Lake Region Water & Sewer  
13 Company.

14 Q. Are you an employee of Lake Region Water &  
15 Sewer Company?

16 A. No, I'm not.

17 Q. But you're a contract general manager; is  
18 that correct?

19 A. That's correct.

20 Q. Are you also contract general manager of  
21 Ozark Shores?

22 A. That's correct.

23 Q. And you're an actual employee, I believe  
24 you stated earlier, of Public Water Supply District No. 4  
25 of Camden County?

1           A.       That's also correct.

2           Q.       Now, I'm assuming from your conversations  
3 with Ms. Langeneckert that you are familiar with Lake  
4 Utility Availability I; is that correct?

5           A.       Somewhat, yes.

6           Q.       And you stated you're not the general  
7 manager of Lake Utility Availability?

8           A.       That's correct.

9           Q.       Does Lake Utility Availability have any  
10 employees?

11          A.       No.

12          Q.       Does it contract with any employees?

13          A.       Not to my knowledge.

14          Q.       Now, how long have you been the manager of  
15 the water district?

16          A.       I believe I became the manager of the  
17 district in 2003.

18          Q.       When did you become the general manager of  
19 Ozark Shores?

20          A.       September of 2002.

21          Q.       And how long have you been in your role as  
22 general manager of Lake Region?

23          A.       Since October of 2004.

24          Q.       Now, Lake Region Water & Sewer issues bills  
25 to its customers, correct?

1           A.       Yes.

2           Q.       And Lake Utility Availability issues bills  
3 to its customers?

4           A.       Yes.

5           Q.       Now, Lake Utility Availability bills and  
6 collects the availability fees from those living on the  
7 Shawnee Bend water and sewer service areas, correct?

8           A.       Yes.

9           Q.       And Lake Region, Ozark Shores and the water  
10 supply district share office space, correct?

11          A.       Yes.

12          Q.       And the bills that Lake Utility  
13 Availability sends out, they are mailed to the same office  
14 space in which Lake Region, Ozark Shores and the public  
15 water supply district headquarters office is, correct?

16          A.       Yes.

17          Q.       So if you're the general manager of all  
18 three of those entities and Lake Utility Availability is  
19 mailing their bills to the same place, who's -- which one  
20 of your employees is overseeing those billing and  
21 collections?

22          A.       Cynthia Goldsby.

23          Q.       And is she an employee of the water  
24 district?

25          A.       Yes.

1           Q.       And you're the general manager over -- did  
2   you say Cynthia Goldsmith?

3           A.       Goldsby.

4           Q.       Goldsby?

5           A.       Yes.

6           Q.       And who's overseeing her duties with Lake  
7   Utility Availability if you're not?

8           A.       The shareholders.

9           Q.       So she's also employed by the shareholders  
10   as well as the water district?

11          A.       No.

12          Q.       Then when she's working for Lake Utility  
13   Availability, does she work -- who's she working for?

14          A.       She works for the district. I -- as far as  
15   I know, the district does not get any compensation from  
16   Lake Utility. She does the billing and the collecting.  
17   She deposits the funds directly into a shareholder bank  
18   account.

19          Q.       So when she's doing these activities, are  
20   you not overseeing her?

21          A.       To the extent that I oversee her on Lake  
22   Region, the district and Ozark Shores, yes.

23          Q.       Does she rent out -- does she rent office  
24   space from you or the water district?

25          A.       No. The office is owned by Ozark -- or

1 actually by North Suburban.

2 Q. So she's using North Suburban office space  
3 for free when she's working for Lake Utility Availability?

4 A. Yes.

5 Q. And she's using either the water district,  
6 Lake Region or Ozark Shores' resources when she is sending  
7 out bills for Lake Utility Availability?

8 A. Yes.

9 Q. So is she on the water district payroll  
10 when she's doing the work for Lake Utility Availability?

11 A. She's on the water district payroll when  
12 she works for all of those companies.

13 Q. Including Lake Utility Availability?

14 A. Yes.

15 Q. Now, as stated in the document that I  
16 handed you earlier where it shows that the availability  
17 fees were assigned over to --

18 A. Yes.

19 Q. -- Lake Region, and that was for a dollar,  
20 correct?

21 A. Yes, that appears to be the number on both.

22 Q. The consideration was a dollar?

23 A. Yes.

24 Q. Now, I want you to turn to the second page  
25 of that document, the assignment of availability fees.

1 Earlier you stated that they were assigned to --

2 JUDGE STEARLEY: Excuse me, Ms. Ott. Just  
3 to be clear, it appears there's three documents here in  
4 the exhibit you handed me. It's not just a contract  
5 regarding availability fees.

6 MS. OTT: Yes. That's correct,

7 JUDGE STEARLEY: Okay. Just wanted to be  
8 clear that all the parties are aware we're looking at  
9 three pages which appear to be three separate documents.

10 BY MS. OTT:

11 Q. I would like you to read the entire second  
12 paragraph, because I don't know want to have you start  
13 in --

14 A. Of which one?

15 Q. Of the second sheet that it states  
16 assignment of availability fees.

17 A. That's dated 13th of October?

18 Q. Correct.

19 A. Okay. In consideration of one dollar and  
20 other good and valuable consideration, the receipt and  
21 sufficiency of which is hereby acknowledged, effective as  
22 of October 13th, 2004, assignor hereby transfers, assigns,  
23 conveys and delivers to assignee all of assignor's current  
24 and future rights, title and interest in and to any and  
25 all water, sewer service standby fees, availability fees

1 and connection fees in which assignor may be entitled to  
2 receive now or in the future relating to existing water  
3 and/or sewer customers located in and around Camden  
4 County, Missouri, including without limitation such rights  
5 that were acquired by Roy Slates and Cindy Slates from  
6 Four Seasons Lakesites, Inc. and Four Seasons Water &  
7 Sewer Company by an assignment dated on or about  
8 August 17th, 1998.

9                   Lake Region Water & Sewer Company received  
10 an assignment of all water and sewer standby fees,  
11 availability fees and connection fees from Roy and Cindy  
12 Slates on April 12th, 2000. Assignor received an  
13 assignment of all water and sewer standby fees,  
14 availability fees and connection fees from Lake Region  
15 Water & Sewer Company on April 12th, 2000 as well.

16           Q.       Previously you had stated that Lake Region  
17 Water & Sewer, correct me if I'm wrong, did not receive  
18 these availability fees, was not assigned these  
19 availability fees; is that correct?

20           A.       I believe I did say that.

21           Q.       Now, reading this, do you -- is that still  
22 your testimony?

23           A.       No. Looks like they were assigned on one  
24 day and assigned back the same day.

25           Q.       As well as Four Seasons Water & Sewer

1 Company once owned these availability fees?

2 A. Yes. I think I stated that earlier and in  
3 Data Request 44.1.

4 Q. Now, Ms. Stump and RPS Properties are both  
5 shareholders of Lake Utility Availability and Lake Region,  
6 correct?

7 A. Yes, that's my understanding. Well,  
8 actually, no. Lake Utility is not an entity. It's a  
9 fictitious name. So there are no shareholders.

10 Q. Okay.

11 A. I believe that's correct.

12 Q. They're beneficiaries of whatever Lake  
13 Utility Availability collects?

14 A. I agree.

15 Q. And they receive the profits from Lake  
16 Region?

17 A. Yes.

18 Q. Now, bills for availability fees collected  
19 by Lake Utility Availability are deposited in the same  
20 bank account as the executive management compensation fees  
21 that Lake Region pays to its shareholders?

22 A. Yes, I believe that's correct.

23 Q. And that was done for convenience?

24 A. Yes.

25 Q. Now, is it your understanding that Lake



1 Utility Availability was set up to separate the billing  
2 and collections of availability fees from Lake Region  
3 Water & Sewer System?

4 A. Please say that again.

5 Q. Is it your understanding that Lake Utility  
6 Availability was set up to separate the billing and  
7 collection of availability fees so they were no longer  
8 collected from Lake Region Water & Sewer?

9 A. No. I think it was set up basically to  
10 provide a billing vehicle for the shareholders. The fees  
11 had already been transferred from Lake Region Water &  
12 Sewer Company.

13 Q. Okay. I thought you said there wasn't any  
14 shareholders of Lake Utility Availability?

15 A. There aren't. It's a fictitious name.

16 Q. Now, have you ever had -- then I believe in  
17 your last answer you said something about the  
18 shareholders. I'm confused who you're talking about.

19 A. I may be confused, too. I'm sorry.

20 Q. Can you clarify?

21 A. Could you restate the question?

22 Q. Lake Utility Availability was set up to  
23 separate the billing and collections of availability fees  
24 so they'd be outside Lake Region Water & Sewer?

25 A. Are you talking about the current Lake

1 Utility Availability or the one that was set up in 1998?

2 Q. 19-- or current. Let's start with the  
3 current one, and I believe that was established in 2005?

4 A. I think that's correct, and that -- that  
5 was established solely to carry on what had been done  
6 previously by the previous shareholders, or shareholder  
7 actually.

8 Q. Do you know when the first Lake Utility  
9 Availability was set up?

10 A. I believe it was either the late 1990s or  
11 2000.

12 Q. Now, when you're talking about the late  
13 1998, are you referring to when it was -- was it not  
14 called Lake Utility Availability at that point?

15 A. I'm not sure. That was well before my  
16 Judge, may I approach?

17 JUDGE STEARLEY: You may.

18 BY MS. OTT:

19 Q. Can you read what that document states?

20 A. Yes. Lake Utility Availability, 802  
21 Bittersweet Road, Lake Ozark, Missouri 65049.

22 Q. And what is the title on this actual  
23 document?

24 A. Registration of fictitious name.

25 Q. And what is the date on that document?

1           A.       11/30/04.

2           Q.       And who signed this document?

3           A.       I did.

4           Q.       All right. You just stated that you

5 weren't around when Lake Utility Availability was created.

6 Is that not your testimony now?

7           A.       I think I said when the first Lake Utility

8 Availability was created. I think there's another one out

9 there. In fact, I think there's --

10          Q.       Would it be under another name?

11          A.       I don't know. But I was -- I was the

12 person who filed this document, but this fictitious name

13 has never been used. The billing that we currently -- the

14 billing that Lake Utility currently operates under is

15 under Lake Utility Availability I, which is owned by RPS

16 Properties and Sally Stump, not North Suburban Public

17 Utility Company.

18          Q.       Yes, but if you were to search on the

19 Secretary of State's website, there's two entries of Lake

20 Utility Availability. There's one Lake Utility

21 Availability and one Lake Utility Availability I.

22          A.       Okay.

23          Q.       So are you not aware of what the entity was

24 called prior to you setting up Lake Utility Availability?

25          A.       No, I guess I'm not.

1           Q.     Are you aware of any other type of filing  
2     that could demonstrate who -- what the name of the  
3     registration would be?

4           A.     No.

5           Q.     Now, you -- prior to this, you had stated  
6     that Lake Utility Availability was -- I'm trying to  
7     remember exactly what you said -- was set up to, I guess,  
8     continue on what you were saying the first Lake Utility  
9     Availability was to, like, further the collection of the  
10    availability fees?

11          A.     Yes, and I got that information from an  
12    employee we inherited from the previous shareholder.

13          Q.     Do you recall any conversations with  
14    Mr. Cary Featherstone on availability fees?

15          A.     Not in detail.

16          Q.     Let me refresh your memory a little bit.  
17    Do you remember telling Mr. Featherstone that Lake Utility  
18    Availability was set up to avoid to -- to separate the  
19    billing availability fees from Lake Region?

20          A.     I think I told Mr. Featherstone that I  
21    believed that Four Seasons Lakesites Water & Sewer Company  
22    changed the way they were handling availability to take it  
23    outside the regulated utility, yes.

24          Q.     Now, isn't it true that availability fees  
25    collected from the lot owners of Ozark Shores are included

1 as an offset to revenues?

2 A. No. I don't believe there's any evidence  
3 to that effect.

4 Q. So availability fees for the Ozark Shores  
5 system are not considered in any way into their rates?

6 A. Not as far as I know.

7 Q. Have you ever done a rate case with that  
8 company?

9 A. No, I haven't.

10 Q. Now, Lake Region owns and maintains all the  
11 water and sewer lines within the Shawnee Bend water and  
12 sewer area, correct?

13 A. Correct.

14 Q. And when you were -- when you set up the  
15 master plan for a utility system, do you put in all the  
16 pipes or do you put in pieces of pipes? Tell me how that  
17 works.

18 A. I've never started a utility, so I -- I  
19 can't really tell you.

20 Q. I believe earlier you testified that in  
21 Porto Cima all the lines are already laid for the platted  
22 out lines?

23 A. All the lines that exist were laid, yes.

24 Q. So anybody --

25 A. There may be areas that are not served.

1           Q.       -- purchasing a lot in Porto Cima and built  
2 immediately could immediately hook up to the system,  
3 correct?

4           A.       They could now, yes.

5           Q.       There wouldn't have to be any more  
6 infrastructure laid?

7           A.       No.

8           Q.       Now, you're compensated through Public  
9 Water Supply District, correct?

10          A.       Yes.

11          Q.       And do you receive any compensation from  
12 Lake Region?

13          A.       No.

14          Q.       So it all comes from the Public Water  
15 Supply District billing Lake Region for your services?

16          A.       No. In Data Request, I think it's 57 or  
17 67, my additional compensation is set forth in that. I  
18 get approximately \$37,000 a year from North Suburban  
19 Public Utility.

20          Q.       So you receive a paycheck from the Public  
21 Water Supply District and then you also receive a paycheck  
22 through North Suburban Utility?

23          A.       I don't receive a paycheck. I'm actually  
24 paid as an independent contractor.

25          Q.       For your --

1 A. Consultant.

2 Q. -- services at Lake Region?

3 A. For my services in total, Lake Region,  
4 Ozark Shores, Northern Illinois Investment Group, North  
5 Suburban.

6 Q. Now, do you receive a bonus or any  
7 compensation for the availability fees collected?

8 A. No.

9 Q. So none of the funds that are collected  
10 from availability fees are then transferred over to your  
11 compensation?

12 A. I don't know the answer to that question.

13 Q. You don't know how you get paid or where  
14 your paycheck comes from?

15 A. I think I testified that it comes from  
16 North Suburban Public Utility.

17 Q. What is North Suburban Utility?

18 A. It's a holding company. It owns the stock  
19 of Ozark Shores Water Company, and I'm not sure, it may  
20 own the stock also of Northern Illinois Investment Group.

21 Q. So the owner of North Suburban Utility  
22 would be Ms. Stump and RPS Properties?

23 A. Ultimately, yes. I'm not sure who the  
24 exact shareholders are.

25 Q. So is it not -- you recall having

1 conversations with Mr. Featherstone?

2 A. Yes, I do.

3 Q. And you don't recall telling him that  
4 \$40,000 a year of your paycheck comes from availability  
5 fees?

6 A. I think I told him 37,000, which is what's  
7 in writing.

8 Q. So \$37,000 of your annual salary comes from  
9 the amount of money that is collected through availability  
10 fees?

11 A. No. It comes from North Suburban Public  
12 Utility Company.

13 Q. You just said that -- when I asked you if  
14 \$40,000 a year comes from Lake Utility, the availability  
15 fees, you said no, it was 37,000.

16 A. If I did, I misspoke.

17 Q. So do you recall telling Mr. Featherstone  
18 that a portion of your money is actually allocated from  
19 availability fees?

20 A. Would have been Ozark Shores Water Company  
21 availability fees, because I'd been getting this  
22 compensation long before of the current shareholders  
23 purchased Lake Region Water & Sewer Company.

24 Q. So your total paycheck all comes out of  
25 North Suburban Utility?



1           A.       No. I get paid as a contractor out of  
2 North Suburban Public Utility. My paycheck comes from  
3 Camden County Public Water Supply District.

4           Q.       Okay. And how much is that for?

5           A.       Which one?

6           Q.       The Camden County.

7           A.       Approximately 81,000.

8           Q.       And that is what -- a portion of that  
9 81,000 is what in this rate case is attributed to as your  
10 salary?

11          A.       That's correct.

12          Q.       So for your contracting service with North  
13 Suburban Utility, what type of services are you doing to  
14 receive that compensation?

15          A.       I handle business for North Suburban Public  
16 Utility, Lake Region, and Ozark Shores Water Company,  
17 Northern Illinois Investment Group.

18          Q.       Okay. But part of your roughly 80,000  
19 that's coming from the Public Water Supply District is for  
20 Lake Region. Are you being double compensated for your  
21 time on Lake Region through what is contracted with the  
22 Public Water Supply and then what you contract out with  
23 North Suburban?

24          A.       I don't believe I am, no.

25          Q.       But your Lake Region -- your work for Lake

1 Region you have stated is being billed -- you're receiving  
2 funds from North Suburban as well as the Water District?

3 A. That's correct.

4 Q. And that's just and reasonable to be  
5 billing your services twice?

6 A. Not billing my services twice. The level  
7 of compensation I'm paid is a negotiated matter between me  
8 and the owners of Lake Region Water & Sewer Company and  
9 Ozark Shores Water Company, and neither I nor they believe  
10 that the amount paid through the district is adequate.

11 Q. So if availability fees cease to exist,  
12 would you still be receiving the 37,000 from North  
13 Suburban Water Utility Service?

14 A. You'd have to ask North Suburban that  
15 question.

16 Q. Now, are availability fees used to provide  
17 maintenance or repair to the utility infrastructure?

18 A. No.

19 Q. Then what are the availability fees used  
20 for?

21 A. I don't know.

22 Q. And you agreed with the statement earlier  
23 on how many undeveloped lots or un-- what I referred to as  
24 unbuilt lots in the Shawnee Bend area was roughly 1,600?

25 A. I believe that was the total number of

1    lots.

2            Q.        Do you know how many lots have not been  
3    purchased that the developer still owns in the Shawnee  
4    Bend area?

5            A.        No, I don't.

6            Q.        Do you know how many lots are purchased but  
7    unbuilt?

8            A.        No, I don't.

9            Q.        As the general manager of Lake Region, how  
10   are you able to plan for future expansion of the service  
11   if you don't know how many lots are being capable of being  
12   served at any point?

13           A.        We base our expansion plans on the actual  
14   flows. This is an area that is probably never going to be  
15   built out. I mean, if you look at Horseshoe Bend, I've  
16   heard figures ranging from 25 to 31 percent buildout after  
17   it's been there 40 years.

18           Q.        Hypothetically, though, let's say everyone  
19   decided to build on the exact same day and hooked up at  
20   the exact same moment. Could Lake Region serve all of  
21   those customers at that point?

22           A.        No. We wouldn't have enough wells or  
23   towers or treatment capacity.

24           Q.        So the availability fees which are being  
25   charged to these lot owners, you don't know if that's

1 being used or set aside to expand the utility in the event  
2 that would happen?

3 A. No, I don't.

4 Q. How does Lake Utility Availability know  
5 when to charge a lot owner availability fees?

6 A. We inherited it from the previous owner.  
7 They're not making any more lots.

8 Q. Correct. But not everyone has purchased a  
9 lot?

10 A. I don't know the answer to that question.

11 Q. So if somebody does purchase a lot, how do  
12 you know to start charging them an availability fee?

13 A. If someone purchases a lot? Generally we  
14 send the bill to the old owner, who then calls us and  
15 says, I don't own this anymore.

16 Q. What if the owner is the developer and the  
17 developer sells that lot, how do you know when to start  
18 charging an availability fee?

19 A. If the developer didn't tell us, I don't  
20 think we would.

21 Q. If Lake Region Water & Sewer did not exist,  
22 would there be availability fees?

23 A. If there were water and sewer pipe  
24 available, yes. In fact, there were availability fees  
25 before that area was certificated.

1           Q.       Okay.  If there were not water and sewer  
2     pipes in the ground, would there be availability fees?

3           A.       No.

4           Q.       And you stated earlier that Lake Region or  
5     its predecessor, Four Seasons, used to bill customers for  
6     the availability fees?

7           A.       Yes.

8           Q.       And those were the documents that  
9     Ms. Langeneckert was going through with you?

10          A.       Yes.

11          Q.       Now, if these availability fees are to be  
12     paid to a utility company, how would the developer recover  
13     capital expenses of these funds?

14          A.       I don't believe they were to be paid to the  
15     utility company.

16          Q.       In those Declaration of Restrictive  
17     Covenants that Ms. Langeneckert went through with you, it  
18     stated that the availability fees should be paid to the  
19     utility company?

20          A.       Those are very old documents.  They no  
21     longer say that.

22          Q.       And the most recent one that took that out  
23     was in 2009, correct?

24          A.       That's correct.

25          Q.       So prior to 2009 when it stated that they

1    were paid to a utility company, how would the developer,  
2    if the fees were being paid to the utility company,  
3    recover the capital costs for those -- that investment?

4           A.     Okay.  Prior to 2009, the sewer  
5    availability fees were not in the document.  They were in  
6    a contract between the developer and the lot purchaser.  
7    The water fees were -- were in the document.

8           Q.     So the developer who put in the water  
9    infrastructure how was he going to recover the capital  
10   cost of that investment of putting water pipes in the  
11   ground if the availability fees were going to be paid to  
12   the utility company and not him?

13          A.     I don't know the answer to your question.

14          Q.     Could it be that there's a premium on a lot  
15   already when you purchase the property for the  
16   infrastructure in place?

17          A.     No.  I don't believe there's any evidence.  
18   In fact, I think Mr. Merciel testified that that's not the  
19   case.

20          Q.     But could it be the case that when you buy  
21   a lot, you pay extra money because there's plant already  
22   in the ground?

23          A.     Sure, in a hypothetical world.

24          Q.     And here, the landowner when they developed  
25   the Declaration of Restrictive Covenants specifically

1     stated that these fees were going to go to the utility  
2     company and not to himself?

3             A.       The water fees.

4             Q.       Yes.  Now, is there authority -- strike  
5     that.

6                     So if these availability fees were intended  
7     to be paid to the utility company, is it harmful to the  
8     company and the ratepayers to assign that amount away?

9             A.       No.

10            Q.       So if the fees were intended to go back  
11   into the utility system for maintenance and repair of the  
12   pipes and the infrastructure or potentially expanding the  
13   infrastructure, it's not harmful to the ratepayers to  
14   assign that amount of money away?

15            A.       If that were the intent, probably so.  I  
16   don't believe any such intent exists.

17            Q.       Were you there in 1971 when the document  
18   was created?

19            A.       No.

20            Q.       So can you testify to the intent of what  
21   the developer had in mind?

22            A.       No.

23            Q.       Now, I want to direct you to page 2 of your  
24   surrebuttal.

25            A.       Okay.  I'm there.

1           Q.       You state that it was -- that the tariffing  
2 of availability fees for Peaceful Valley and IH Utility  
3 was inappropriate?

4           A.       I believe so, yes.

5           Q.       And are you an attorney?

6           A.       No, I'm not.

7           Q.       And so this is just your opinion?

8           A.       It's the opinion of somebody that's been  
9 involved in utilities for 30 years.

10          Q.       Now, you go on to talk about the Central  
11 Jefferson and Big Island cases?

12          A.       Yes.

13          Q.       And were you involved in any of those  
14 cases?

15          A.       No, I wasn't.

16          Q.       Do you know what the underlying issues were  
17 in those cases?

18          A.       No, I don't.

19          Q.       Do you know if availability fees were fully  
20 investigated in those cases?

21          A.       It appears from the transcript they were.

22          Q.       Do you know if Staff did a complete  
23 investigation into the issue of availability fees?

24          A.       No. I just know that --

25          Q.       Or if the Public Counsel --



1           A.       -- there's several pages of testimony from  
2 Mr. Merciel on the issue.

3           Q.       And do you know if availability fees was  
4 the basis of that complaint or the transfer of asset  
5 cases?

6           A.       No, I don't.

7           Q.       So would you agree with me that the  
8 Commission has allowed availability fees to be either  
9 included in revenue or tariffed?

10          A.       It certainly appears they have allowed it  
11 to be tariffed. I don't know how the revenue treatment  
12 was in the case.

13          Q.       Can you refer to Mr. Merciel's rebuttal, I  
14 believe it's Exhibit 6?

15          A.       Okay. Yes, I see it.

16          Q.       Do you see that bill?

17          A.       Yes.

18          Q.       And what is the company billing that?

19          A.       Lake Utility Availability.

20          Q.       Who is Lake Utility Availability?

21          A.       It's the fictitious name registration for  
22 the owners of the availability fees.

23          Q.       Now, previously you stated that your  
24 registration at the Secretary of State, the fictitious  
25 name Lake Utility Availability was never used; is that

1 correct?

2 A. That's correct.

3 Q. But they're billing under that name?

4 A. This is an abbreviation of Lake Utility  
5 Availability I.

6 Q. Is that abbreviation registered with the  
7 Secretary of State?

8 A. Lake Utility Availability I is registered  
9 with the Secretary of State. I'm not aware that it has to  
10 be registered this way.

11 Q. So when the -- Ms. Stump and RPS Properties  
12 are operating under a fictitious name and they're  
13 operating under Lake Utility Availability, that's not the  
14 name they have registered with the Secretary of State?

15 A. That's correct.

16 Q. And so it's your testimony that there is a  
17 registration for Lake Utility availability I with the  
18 Secretary of State?

19 A. Yes.

20 Q. You're just not operating under that name?

21 A. Yes.

22 Q. So who is currently paying the upkeep and  
23 maintenance of all of the infrastructure in the ground for  
24 Lake Region?

25 A. The owner of the infrastructure, Lake

1     Region Water & Sewer Company.

2             Q.       So the ratepayers would be paying the costs  
3     for repairs and maintenance on the system?

4             A.       Yes. I think that's proper.

5             Q.       Now, is it possible that -- you know,  
6     obviously Porto Cima is not fully developed. There could  
7     be a house at one part of the street and a house at the  
8     other part of the street and the line in the middle,  
9     there's no homes in between?

10            A.       Yes, that's possible.

11            Q.       Say you have five lots.

12            A.       Sure.

13            Q.       There's a home on lot 1 and a home on lot 5  
14     and not in the middle. Now, the pipe cracks between lot  
15     owner 3. Are lot owner 1 and 5 paying that expense or  
16     should the lot owner of lot 3 be paying that expense?

17            A.       All of the customers of Lake Region Water &  
18     Sewer Company are going to pay for that because it's  
19     necessary to provide service to those customers.

20            Q.       And the person paying availability fees on  
21     lot 3, that money shouldn't be paying for that expense --

22            A.       No.

23            Q.       -- of that wear and tear on the pipe?

24            A.       No. That money -- that money is paid to  
25     recoup the cost of the \$5.3 million that was donated to

1 the utility.

2 Q. One second, please. I want to go back to0  
3 earlier when you were talking about Ms. Cynthia Goldsby  
4 who does the billing and collecting of Lake Utility  
5 Availability.

6 A. Okay.

7 Q. And you -- I'm not sure if I understood  
8 exactly what you were saying because I -- you said there  
9 weren't any -- Lake Utility Availability wasn't  
10 overseeing, the shareholders weren't overseeing what  
11 Ms. -- what's her name again?

12 A. Goldsby.

13 Q. Goldsby?

14 A. Yeah.

15 Q. I apologize.

16 A. That's fine. She's not here. She'll never  
17 know.

18 Q. Unless she reads the record. So you were  
19 saying that shareholders oversee Lake Utility  
20 Availability?

21 A. I believe that's correct, yes.

22 Q. And they're overseeing her work on billing  
23 and collection?

24 A. Yes, to the extent that if they're not  
25 getting what they expect to get, they're going to be

1 giving her a call.

2 Q. So Lake Utility Availability doesn't have  
3 any shareholders because it's a fictitious name?

4 A. That's correct.

5 Q. So who's overseeing Ms. Goldsby?

6 A. The shareholders who own the utility fees.  
7 I just said that to the extent that they're not getting  
8 what they expect to get, they're going to be giving her a  
9 call. I mean, there's not much to oversee. You send out  
10 a bill once a year.

11 Q. So Lake Utility Availability has no  
12 shareholders; is that what your testimony is?

13 A. I believe that's correct, yes.

14 Q. Then who oversees Cynthia Goldsby?

15 A. For Lake Utility Availability?

16 Q. Yes.

17 A. The shareholders, RPS Properties and Sally  
18 Stump.

19 Q. Who are they shareholders of? They're not  
20 shareholders of Lake Utility Availability because that's a  
21 fictitious name.

22 A. They're the shareholders of the rights to  
23 those availability fees. They are the owners of those  
24 availability fees.

25 Q. Now, does Ms. Goldsby use a computer to do

1 any of her billing?

2 A. Yes, she does.

3 Q. And who owns that computer?

4 A. I don't know which of the companies we have  
5 that on the books for.

6 Q. Is it one of the companies you're the  
7 general manager for?

8 A. Yes.

9 Q. Now, does Ms. Goldsby do the billing for  
10 Lake Region?

11 A. Yes.

12 Q. So she is using the same computer to bill  
13 customers of Lake Region and the same computer to bill  
14 Lake Utility Availability the availability fees?

15 A. And Ozark Shores and Camden County Public  
16 Water District No. 4 and Northern Illinois Investment  
17 Group.

18 Q. And none of her time using any of the  
19 office supplies or computers is billed out to any of those  
20 entities, correct?

21 A. That's correct. There really wouldn't be  
22 any office supplies. Like I say, we send out a bill once  
23 a year.

24 Q. Paper. Paper to print the bills, that  
25 would be a supply.

1           A.       No.  Those are paid for out of Lake  
2   Utility.

3           Q.       So they --

4           A.       They have their separate bill, which is  
5   Exhibit 6 to Mr. Merciel's.

6           Q.       So they reimburse or they provide the paper  
7   themselves to the shared office space?

8           A.       Yes.

9           Q.       Is there a contract between Lake Utility  
10   Availability or I guess the shareholders who she's  
11   actually working for, because I'm assuming you're  
12   referring to Ms. Stump and RPS Properties, between  
13   Ms. Goldsby or -- I don't know why I can't remember.

14          A.       I know who you're talking about.

15          Q.       And is there a contract for her to do this  
16   service?

17          A.       The answer is no.  Not to my knowledge.

18          Q.       There's no contract.  Then how is she  
19   employed by them?

20          A.       I don't think she is employed by them.

21          Q.       So this is charity?

22          A.       That would be a matter for you to take up  
23   with the district since she's an employee of the district.

24          Q.       Who also contracts her time with Lake  
25   Region and Ozark Shores?

1           A.       That's correct.

2           Q.       And you're the general manager, but yet you  
3 don't oversee anything that she does?

4           A.       No. I think I testified earlier that I  
5 oversee her to the extent that I oversee her for Ozark  
6 Shores and the other companies.

7           Q.       Then I just don't get how you don't  
8 understand how she does the billing and collecting for the  
9 fictitious name Lake Utility availability.

10          A.       I do understand how she does the billing.  
11 She does it the same way she does for the other companies.

12          Q.       Then how is it set up that she does this  
13 activity for the billing and collecting?

14          A.       I'm not sure I'm following your question  
15 there.

16          Q.       If there's no contract between her and  
17 Ms. Stump and RPS Properties and there's no contract  
18 between RSP Properties and Ms. Stump with the water supply  
19 district, how is she doing this work?

20          A.       Same way she was doing it under the  
21 previous -- the previous owner.

22          Q.       And those --

23          A.       She's always done that to my -- she's  
24 always done it ever since the previous owners bought the  
25 company and I became involved.



1           Q.       And those previous owners also billed  
2   availability fees under the name Four Seasons Water &  
3   Sewer Company?

4           A.       No. No. The previous owner was Waldo  
5   Morris.

6           Q.       Then going back to that contract regarding  
7   availability fees when it said they were assigned to Four  
8   Seasons Water & Sewer Company --

9           A.       Yes.

10          Q.       -- Ms. Goldsby wasn't employed with them at  
11   that time?

12          A.       No, she wasn't.

13          Q.       When did she come onto to the team?

14          A.       It's my understanding she came onto the  
15   team in early 2004.

16          Q.       So do you know who was in her position  
17   prior to 2004?

18          A.       I might be able to remember a first name.  
19   Cody I believe was the first name of the lady that was  
20   there.

21          Q.       So acting in her -- Cody in her capacity as  
22   the billing and collecting employee, could Cody have been  
23   billing under Four Seasons Water & Sewer the availability  
24   fees to the lot owners?

25          A.       Could have been, but I don't think anyone

1 has billed under Four Seasons Lakesites Water & Sewer  
2 Company since the name was changed to Lake Region Water &  
3 Sewer Company in 1998.

4 Q. And did you come in to get Commission  
5 approval to have -- to change your operations of no longer  
6 having the water -- did the water company come in and seek  
7 Commission approval to transfer those assets out of the  
8 regulated utility?

9 A. I don't know the answer to that question.

10 MS. OTT: I have no further questions.

11 Thank you.

12 JUDGE STEARLEY: Cross-examination by  
13 Public Counsel?

14 MS. BAKER: Mine will take a while. How  
15 long are we going today and all that because I need to  
16 make arrangements?

17 JUDGE STEARLEY: I've got the recording  
18 running until 9:30 tonight. We've been going about two  
19 hours, though. I'd be happy to let everyone take a short  
20 break. We will go off the record for about ten minutes.

21 (A BREAK WAS TAKEN.)

22 JUDGE STEARLEY: Back on the record. I  
23 understand we have a couple quick housing things. Staff,  
24 we had marked an exhibit for you as Exhibit No. 10. Are  
25 you going to offer that into evidence at this time?

1 MS. OTT: Yes, Judge I would like to offer  
2 previously marked Staff Exhibit No. 10 into the record.

3 JUDGE STEARLEY: Are there any objections  
4 to the offering of Exhibit No. 10, which was the  
5 three-page page document, first being Contract Regarding  
6 Availability Fees, second being Assignment of availability  
7 fees, third being Closing statement?

8 MR. COMLEY: Your Honor, our objection  
9 would be to the exhibits of Mr. Merciel based upon the  
10 objections we raised in the motion to strike. We renew  
11 that objection.

12 JUDGE STEARLEY: And as I've done with the  
13 prior testimony, I'm going to hold a ruling on that until  
14 we get to the end, the submission of all the evidence. So  
15 that one will be on hold.

16 MS. OTT: And the next one I'd like to  
17 offer into evidence would be the registration of the  
18 fictitious name.

19 JUDGE STEARLEY: All right. Do you have  
20 for copies the Bench? And if I recall correctly, we had a  
21 couple of different registrations. So to clarify, this is  
22 a registration of a fictitious name date filed 12/1/2004.  
23 Name of the owners, individuals or business entities,  
24 North Suburban Public Utility Company. Is that correct,  
25 counsel?

1 MS. OTT: That is correct.

2 JUDGE STEARLEY: This would be marked as  
3 Staff Exhibit No. 11.

4 (STAFF EXHIBIT NO. 11 WAS MARKED FOR  
5 IDENTIFICATION BY THE REPORTER.)

6 JUDGE STEARLEY: Again, are there  
7 objections? Mr. Comley, would this be a document you  
8 would include in your objections?

9 MR. COMLEY: Yes, your Honor. I would  
10 continue to raise a relevancy objection like we did in the  
11 motion to strike and have it covered with this exhibit as  
12 well.

13 JUDGE STEARLEY: And I will again withhold  
14 a ruling at this point.

15 Before we took our break, Ms. Baker, you  
16 indicated that your cross-examination of Mr. Summers may  
17 be lengthy?

18 MS. BAKER: It may be.

19 JUDGE STEARLEY: And I know we are a little  
20 after five, and I know we do have hearing time reserved  
21 for the entire week if needed, and I know there are  
22 various individuals in the room that have family  
23 obligations and other things to attend to. So I just want  
24 to get a feel. I don't know if you can give me an hourly  
25 estimate on that or if this is worth that we just adjourn

1 for the day and pick up again in the morning.

2 MS. BAKER: I think that I can finish  
3 cross-examination of Mr. Summers probably within an hour  
4 and a half, maybe two hours at the most, I would say,  
5 depending upon how easily we go. I will try to keep it  
6 under an hour, but --

7 JUDGE STEARLEY: Ms. Feddersen, our court  
8 reporter, I know you have some family obligations. Are  
9 you going to be able to go that long?

10 THE REPORTER: Yes. That's fine.

11 JUDGE STEARLEY: I'll tell you what, why  
12 don't we go 'til six. We will reevaluate if we need to  
13 continue in the morning at that point.

14 MS. BAKER: Sounds fine.

15 JUDGE STEARLEY: All right. You may  
16 proceed.

17 CROSS-EXAMINATION BY MS. BAKER:

18 Q. Mr. Summers, I apologize, but I am going to  
19 take you through this step by step, step by slow step.

20 A. That's fine.

21 Q. All right. I'm going to start off with  
22 information about the lots. Lake Region has different  
23 sections within it, one of them being Porto Cima, correct?

24 A. Correct.

25 Q. Can you list for us the different entities

1 within Lake Region?

2 A. Are you talking about different  
3 subdivisions?

4 Q. Different subdivisions, different plats.

5 A. I'll do my best. Porto Cima, which has Fox  
6 Run, Eagles Cove, Champions Run, Grand Point, Ariva  
7 Estates, Heritage Isle. I'm sure I'm missing something  
8 there. But then there's The Villages, which consists of  
9 Forest Ridge, Stone Bridge, Forest Ridge West, I believe.  
10 I think there's a subdivision of about seven, five to  
11 seven homes called Thornwood. And then we run -- we run  
12 out along Chimney Point Road, which is just known as I  
13 think Shawnee Bend 2, and I'm sure there are subdivisions  
14 in Shawnee Bend 2, 3 and 4, but I don't -- don't really  
15 know the subdivision names there, just as Shawnee Bend 2,  
16 3 and 4, and then we also serve 5 and 6, I think, or at  
17 least portions thereof.

18 Q. Is that the extent of Lake Region?

19 A. On Shawnee Bend, yes. They also serve over  
20 and Horseshoe Bend.

21 Q. Okay. Keep going.

22 A. Country Club Estates, Seasons Ridge, and  
23 then there's several areas in which there's not really a  
24 subdivision name.

25 Q. Do you call it a specific area?

1           A.       Treetop Village, Waters Edge, Charleston  
2       Condominiums, The Lodge, the Racket Club, Country Club  
3       Hotel, Wilmore Road. And again, I'm sure I'm missing  
4       something. I'm sure it's not all inclusive.

5                   JUDGE STEARLEY: Ms. Baker, I'm having a  
6       little trouble with the audio. Just want to make sure  
7       your microphone --

8                   MS. BAKER: It is on, but it's pushed back  
9       away. All right.

10                  JUDGE STEARLEY: Thank you.

11       BY MS. BAKER:

12           Q.       Okay. Let's start with Porto Cima.

13           A.       Okay.

14           Q.       How many lots are there in Porto Cima?

15           A.       I heard a number of 1,607 this morning.

16           Q.       How many bills are provided to customers at  
17       Porto Cima?

18           A.       I don't know the answer to that question.

19           Q.       How many undeveloped lots are there at  
20       Porto Cima?

21           A.       I don't know the answer to that question.

22           Q.       Do you have a plat or an as-built of the  
23       system in Porto Cima?

24           A.       I'm sure we have an as-built of the system  
25       with our engineer.

1           Q.       Does it designate the number of lots in  
2   Porto Cima?

3           A.       I'm not sure.  It probably does.

4           Q.       What is the design capacity -- let's start  
5   with a different question.  For Porto Cima, is it a water  
6   supply or a sewer supply or both?

7           A.       Both.

8           Q.       What is the design capacity for the water  
9   system at Porto Cima?

10          A.       I don't know the answer to that question.

11          Q.       How about the design capacity for the sewer  
12   system at Porto Cima?

13          A.       The sewer system currently has a treatment  
14   plant permitted for 100,000 gallons per day.

15          Q.       100,000 per day?

16          A.       Yes, per day.

17          Q.       Do you know the customer design for that  
18   sewer plant?

19          A.       No, but it is on the operating permit.

20          Q.       Is it a typical 2.5 or 3.2 person operating  
21   permit, do you know?

22          A.       I don't know, but I'm sure -- I'm sure it's  
23   the standard Department of Natural Resources calculation.

24          Q.       And do you know when that permit was  
25   issued?



1           A.       2005, I believe. It's actually expired and  
2     in the process of being renewed. So actually it would  
3     have been 2004, I'm sorry, because it expired in November,  
4     I believe.

5           Q.       Do you know when it was originally  
6     permitted by the Department of Natural Resources?

7           A.       No. I believe -- I believe that plant was  
8     completed in 2000 -- well, it's probably 2004 actually.  
9     That may be the first -- first permit for that plant.

10          Q.       For the sewer plant?

11          A.       For the sewer plant.

12          Q.       What about the water plant, do you know  
13     when it was installed?

14          A.       No.

15          Q.       Do you have a guess? Would it also have  
16     been around the 2004 time frame?

17          A.       No. I think there was water and sewer  
18     plant on Shawnee Bend probably in the mid '90s when the  
19     first tariffs were approved.

20          Q.       For --

21          A.       Just not the -- the existing treatment  
22     plant is fairly new.

23          Q.       This is for Porto Cima?

24          A.       It's for all of Shawnee Bend.

25          Q.       Let's go to what you called The Villages;

1 is that correct?

2 A. That's correct.

3 Q. Is that a water, sewer or both?

4 A. Both.

5 Q. How many lots in The Villages?

6 A. I don't know.

7 Q. How many bills are sent out to customers in

8 The Villages?

9 A. I don't know. It totals around 640 for all

10 of Shawnee Bend, but I don't ever split them up between

11 subdivisions.

12 Q. How many undeveloped lots are there in The

13 Villages?

14 A. I don't know.

15 Q. Do you have a plat or an as-built of that

16 system?

17 A. I'm sure we do.

18 Q. Does it show the number of lots in The

19 Villages?

20 A. It probably does, yes.

21 Q. Do you know what the design capacity is for

22 the water system that is supplied to The Villages?

23 A. No. It's the same system that serves Porto

24 Cima.

25 Q. Do you know the design capacity for the

1 sewer system for The Villages?

2 A. It's the same 100,000 a day treatment plant

3 that I discussed earlier.

4 Q. Also the one for Porto Cima?

5 A. Yes.

6 Q. So the permit would be the same for that --

7 for that one or is it permitted separately?

8 A. No. It would be the same permit.

9 Q. Okay. The next one that you mentioned was

10 Thornwood, correct?

11 A. Yes.

12 Q. Is that water and sewer?

13 A. Yes, I believe it is.

14 Q. Both water and sewer?

15 A. Yes.

16 Q. How many lots are there in Thornwood?

17 A. I'm not sure.

18 Q. How many bills are sent to customers of

19 Thornwood?

20 A. I believe five.

21 Q. How many undeveloped lots are there in

22 Thornwood?

23 A. I'm not sure.

24 Q. Do you own a plat or an as-built for

25 Thornwood?

1           A.       I'm sure we have as-builts for the system.

2           Q.       Do you know the design capacity for the

3   water system that supplies Thornwood?

4           A.       It's the same as serves Porto Cima and The

5   Villages.

6           Q.       The same for the sewer as well?

7           A.       Yes.

8           Q.       The next one that you mentioned was Shawnee

9   Bend 2, 3, 4, 5 and 6. Do you take those together or do

10   you take those as separate numbered entities?

11          A.       I really don't consider them entities.

12   It's just an area. If we happen to be talking to one of

13   the field personnel that, hey, where are you? I'm over in

14   Shawnee Bend 3.

15          Q.       Okay. For Shawnee Bend 2, 3, 4, 5 and 6,

16   is it water, sewer or water and sewer?

17          A.       I believe they would all be water and

18   sewer, and in some of those areas it would be very, very

19   limited. We don't go very far into some of those.

20          Q.       Okay. So for Shawnee Bend 2, how many lots

21   are there?

22          A.       I don't know.

23          Q.       How about for No. 3?

24          A.       Don't know.

25          Q.       No. 4?

1           A.       Don't know.

2           Q.       No. 5?

3           A.       Don't know.

4           Q.       How many customers do you bill in No. 2?

5           A.       I'm not sure.

6           Q.       No. 3?

7           A.       I'm not sure.

8           Q.       4?

9           A.       Not sure.

10          Q.       5?

11          A.       Not sure.

12          Q.       6?

13          A.       Not sure.

14          Q.       How many undeveloped lots are there in 2?

15          A.       Don't know.

16          Q.       3?

17          A.       Don't know.

18          Q.       4?

19          A.       Don't know.

20          Q.       5?

21          A.       Don't know.

22          Q.       6?

23          A.       Don't know.

24          Q.       Are they under the same treatment water

25          supply system as Porto Cima?

1           A.       Yes.

2           Q.       And the sewer system is the same?

3           A.       Yes.

4           Q.       But you were indicating that some of these  
5 are not fully supplied by Lake Region; is that correct?

6           A.       That's correct. There are many areas that  
7 are still on wells and septic.

8           Q.       All of them, No. 2, No. 3, No. 4, No. 5,  
9 No. 6?

10          A.       Yes.

11          Q.       Are there any of them that are fully  
12 supplied?

13          A.       I don't believe any of them are fully  
14 supplied.

15          Q.       The next one that you mentioned is  
16 Horseshoe Bend, correct?

17          A.       Yes.

18          Q.       Are there any that were missed from the  
19 previous section, the Shawnee Bend section?

20          A.       There may very well be. If they are, I  
21 can't recall them.

22          Q.       We go to Horseshoe Bend. Is that water,  
23 sewer, water and sewer?

24          A.       Sewer only.

25          Q.       How many lots in Horseshoe Bend?

1           A.       I don't know.

2           Q.       How many bills are given to customers of  
3 Horseshoe Bend?

4           A.       I think there are about 140 bills rendered.

5           Q.       How many undeveloped lots are there in  
6 Horseshoe Bend?

7           A.       I don't know.

8           Q.       What is the design capacity of the water  
9 system that is provided to -- I'm sorry, not the water  
10 system, the sewer system?

11          A.       There are four treatment plants on  
12 Horseshoe Bend. The Lodge plant I believe is 325 or  
13 26,000 gallons a day. The Racket Club treatment plant is  
14 292,000 gallons. Charleston Condominium is 30,000  
15 gallons, and Blackhawk Estates I believe is around 2,500  
16 gallons per day.

17          Q.       And were these permitted again with the  
18 standard customer counts for design for DNR purposes?

19          A.       I'm sure they were.

20          Q.       And when were these permitted?

21          A.       Most of them very long ago. I'm going to  
22 give you only general time frames that I believe to be  
23 correct, unless you'd prefer me just to tell you I don't  
24 know.

25          Q.       No. General time frames are fine.

1           A.       I believe the Racket Club plant probably  
2       was first permitted in the mid '80s. The Lodge I believe  
3       would have been the late '70s, maybe even before that.  
4       Charleston Condominiums would have been in the, I believe,  
5       early '90s. And Blackhawk Estates I believe was in the  
6       late '90s or very early this decade or in the early 2000s.

7           Q.       The last section that you mentioned was the  
8       Treetop Village, and then you mentioned some others --

9           A.       Yes.

10          Q.       -- in that area. For that area, how many  
11       lots are there?

12          A.       I'm not sure.

13          Q.       Is this a sewer only?

14          A.       Yes.

15          Q.       How many bills are given to customers in  
16       that area?

17          A.       I'm not sure.

18          Q.       How many undeveloped lots are there in that  
19       area?

20          A.       I'm not sure.

21          Q.       Do you have a plat or an as-built for that  
22       area?

23          A.       I'm sure one exists, yes.

24          Q.       I don't believe I asked you this for the  
25       Shawnee Bend. Do you have a plat or an as-built for the



1 Shawnee Bend 2, 3, 4, 5 and 6?

2 A. I'm sure we have as-builts, yes.

3 Q. And do you know the design capacity of the

4 sewer system that provides service to the Treetop Village?

5 A. It flows to the Racket Club treatment

6 plant, 292,000 gallons per day.

7 Q. 292,000 gallons per day?

8 A. Yes.

9 Q. And you called that the Racket?

10 A. Racket Club treatment plant.

11 Q. And is the permit for the Racket Club

12 treatment plant held by Lake Region?

13 A. Yes.

14 Q. And again, that would be a standard DNR

15 customer count design?

16 A. Yes.

17 Q. And when was that permit issued?

18 A. That's the one I believe was permitted in

19 the mid '80s.

20 Q. So do these separate entities pretty much,

21 as far as you know, cover the entire Lake Region area?

22 A. The five treatment plants that I've

23 mentioned, yes.

24 Q. All right. For Porto Cima, do the

25 customers pay a water availability charge?

1           A.       Yes. Well, no, actually. Are we talking  
2 about the customers of Lake Region?

3           Q.       No. I'm just saying are the customers who  
4 have undeveloped lots within the Porto Cima area, are they  
5 subject to an availability fee?

6           A.       Yes, they are.

7           Q.       For water?

8           A.       Yes.

9           Q.       Are they subject to a sewer availability  
10 fee?

11          A.       Yes.

12          Q.       And how much is that water availability  
13 fee?

14          A.       It's \$10 a month, I believe.

15          Q.       How about the sewer fee?

16          A.       \$15 a month, I believe.

17          Q.       For The Villages, the undeveloped lots  
18 within The Villages, are they subject to a water  
19 availability fee?

20          A.       I don't know the answer to that question.

21          Q.       How about a sewer availability fee?

22          A.       I don't know.

23          Q.       For Thornwood, are the lots there subject  
24 to a water availability fee?

25          A.       I don't know.

1           Q.     A sewer availability fee?

2           A.     I don't know.

3           Q.     For Shawnee Bend 2, 3, 4, 5 and 6, they

4     were water and sewer, so are the undeveloped lots within

5     Shawnee Bend 2, 3, 4, 5 and 6 subject to an availability

6     fee for water?

7           A.     I don't know.

8           Q.     Are they subject to a sewer availability

9     fee?

10          A.     I don't know.

11          Q.     For Horseshoe Bend, are the undeveloped

12     lots within Horseshoe Bend subject to a sewer availability

13     fee?

14          A.     The Four Seasons lots are not. I don't

15     know about the other subdivisions.

16          Q.     How many lots are within the Four Seasons?

17          A.     I don't know.

18          Q.     For Treetop Village and the others that you

19     lumped together under that, are they under -- are they

20     subject to a sewer availability fee?

21          A.     I don't know. They're basically

22     condominium associations.

23          Q.     So you do not know?

24          A.     That's correct.

25          Q.     Going back to the Porto Cima water

1 availability fee, you stated that you thought it was \$10  
2 per month; is that correct?

3 A. That's correct.

4 Q. Do you know when this availability fee was  
5 first made to be applicable to an undeveloped lot in Porto  
6 Cima?

7 A. I can't specifically state that, but I have  
8 seen Mr. Merciel's bill here dated 1994.

9 Q. So at least from 1994 until today?

10 A. Actually, the bill was in 1995. I'm sorry.  
11 The contract was in 1994. So yes, that would be my  
12 supposition.

13 Q. Do you have any indication that the  
14 availability fee was applicable to the undeveloped lots  
15 before 1994 and '95?

16 A. No, I don't.

17 Q. What about the sewer availability fee, when  
18 did it become applicable to the undeveloped lots of Porto  
19 Cima?

20 A. Would have been the same answer, 1995.

21 Q. Now I'm going to go into questions about  
22 billing information. Who handles the billing for the  
23 customers of Porto Cima?

24 A. For Lake Region?

25 Q. Yes, for Lake Region.

1           A.       Cynthia Goldsby.

2           Q.       And she is an employee of the district?

3           A.       That's correct.

4           Q.       And who provides Ms. Goldsby with the list

5 of the customers to bill in Porto Cima?

6           A.       For water and sewer?

7           Q.       Yes.

8           A.       The company develops that through

9 applications from the customers.

10          Q.       So Lake Region is the holder of the master

11 list of customers?

12          A.       For water and sewer, yes.

13          Q.       For Porto Cima, who bills for the

14 availability fee for water and sewer?

15          A.       Cynthia Goldsby.

16          Q.       And again, she is an employee of the

17 district, correct?

18          A.       That's correct.

19          Q.       Who holds the master list of those who are

20 subject to availability fees for the Porto Cima billing?

21          A.       Cynthia Goldsby would have that.

22          Q.       She has it or she maintains it?

23          A.       She maintains it for billing purposes, yes.

24          Q.       Where did she get the original list of

25 availability fees to bill?

1           A.       From the previous owner.

2           Q.       Previous owner of who, of what?

3           A.       Of the fees.

4           Q.       And that would be?

5           A.       Waldo Morris. I suppose I should state,  
6       that's assumption. I don't know for a fact that's where  
7       it came from.

8           Q.       And you are Ms. Goldsby's supervisor; is  
9       that correct?

10          A.       That's correct.

11          Q.       Who bills for The Villages on behalf of  
12       Lake Region?

13          A.       Cynthia Goldsby.

14          Q.       And again, she is an employee of the  
15       district?

16          A.       Yes.

17          Q.       And is that for both water and sewer?

18          A.       Yes.

19          Q.       And who has the master list of the  
20       customers to be billed for The Villages?

21          A.       For water and sewer, it would be Cynthia  
22       Goldsby.

23          Q.       She maintains the list?

24          A.       Yes.

25          Q.       Why is it that for Porto Cima Lake Region

1 has the master list and maintains the master list, whereas  
2 for The Villages Cynthia Goldsby maintains the master  
3 list?

4 A. I'm not sure, but I believe I testified  
5 that Cynthia Goldsby did maintain that for Lake Region.

6 Q. So whenever you said that Lake Region has  
7 the master list for water and sewer for billing Porto  
8 Cima, what you meant to say is that Ms. Goldsby maintains?

9 A. Yes. I thought I said Ms. Goldsby. I'm  
10 sorry.

11 JUDGE STEARLEY: Counselor, just so there's  
12 no confusion, are you talking about availability fees or  
13 fees for water and sewer service?

14 MS. BAKER: At this point for The Villages,  
15 the witness said he did not know of any availability fees  
16 at The Villages, so therefore my question was for the  
17 water and sewer customers.

18 JUDGE STEARLEY: Okay.

19 BY MS. BAKER:

20 Q. So you had stated that you did not know  
21 whether there were any availability fees charged to The  
22 Villages, correct?

23 A. That's correct.

24 Q. So do you know if Ms. Goldsby as your  
25 employee sends out any bills for The Villages for

1 availability fees?

2 A. To my knowledge, she does not.

3 Q. The next one for Thornwood, who bills the  
4 customers, the water and sewer customers for Thornwood on  
5 behalf of Lake Region?

6 A. Cynthia Goldsby.

7 Q. And who maintains the master list of  
8 customers for Thornwood?

9 A. Cynthia Goldsby maintains the master list  
10 for Lake Region Water & Sewer Company in all areas.

11 Q. Are you aware of any bills that are being  
12 sent by Ms. Goldsby regarding availability fees in the  
13 Thornwood area?

14 A. No.

15 Q. For Shawnee Bend 2, 3, 4, 5 and 6, that was  
16 water and sewer, who bills on behalf of Lake Region for  
17 Shawnee Bend 2, 3, 4, 5 and 6?

18 A. Cynthia Goldsby.

19 Q. And who maintains the master list of  
20 customers for Shawnee Bend 2, 3, 4, 5 and 6?

21 A. Cynthia Goldsby.

22 Q. And are you aware of any bills being sent  
23 for availability charges in the Shawnee Bend, 2, 3, 4, 5  
24 and 6 area?

25 A. No, I'm not.



1           Q.       For horseshoe Bend, is it just a sewer  
2   system?

3           A.       Yes.

4           Q.       Who sends out the bills on behalf of Lake  
5   Region to the customers of Horseshoe Bend?

6           A.       Cynthia Goldsby handles that.

7           Q.       Who maintains the master list of customers  
8   for Horseshoe Bend?

9           A.       Cynthia Goldsby.

10          Q.       And are you aware of any availability fees  
11   being billed to the customers of -- or to anyone within  
12   Horseshoe Bend?

13          A.       Yes, through Ozark Shores Water Company.

14          Q.       Are any of the availability fees that are  
15   being charged for the Lake Region section of Horseshoe  
16   Bend?

17          A.       There are customers -- there are vacant  
18   lots within the Lake Region Horseshoe Bend area that  
19   are -- that have water availability fees assessed by Ozark  
20   Shores Water Company, yes, but there are no -- there are  
21   no sewer availability fees on Horseshoe Bend that I'm  
22   aware of.

23          Q.       So correct me if I'm wrong. All of the  
24   water that is being provided to Horseshoe Bend is with the  
25   Ozark Shores entity, correct?

1           A.       No.   Ozark Shores probably covers about,  
2   I'd say, 40 to 45 percent of Horseshoe Bend.   The  
3   district, the water district probably covers 10 to 15, and  
4   the rest are on private wells.

5           Q.       Lake Region does not provide any water to  
6   that area?

7           A.       That is correct.

8           Q.       None of the Lake Region area is being  
9   charged or billed an availability fee for sewer?

10          A.       To the best of my knowledge, that's  
11   correct.

12          Q.       And the availability fees that those in  
13   Horseshoe Bend are being charged are because they are a  
14   part of Ozark Shores?

15          A.       Yes, that's correct.

16          Q.       And who bills for the availability fees  
17   with Ozark Shores?

18          A.       Cynthia Goldsby.

19          Q.       For the Treetop Village and that area, who  
20   bills on behalf of Lake Region for sewer service?

21          A.       Cynthia Goldsby.

22                   MR. COMLEY:   Your Honor, I think  
23   Mr. Summers has already indicated that Ms. Goldsby  
24   maintains the account list for all of Lake Region's  
25   service area.   We've been patient with Ms. Baker on this.

1 First, I don't think that the testimony that she's asking  
2 Mr. Summers to give is actually relevant to the  
3 availability fee issue, and I can't tell whether that's  
4 ever been addressed in his rebuttal or surrebuttal  
5 testimony, and I think maybe it's time to say this kind of  
6 testimony should come to a close.

7 MS. BAKER: This kind of testimony is  
8 basically because this is an extremely confusing issue,  
9 and through the questions of Ms. Ott and on my part and  
10 certainly I'm sure on the part of the Commission, what we  
11 need is a detailed list of what is going on in this  
12 system. This is -- this is the last system that I'll ask  
13 about the billing, and that's fine, but what we need to  
14 know is who is doing what, what is there, when was it  
15 there, and what is going on, and that's the information  
16 that we're here to try to find out because we were not  
17 able to get this type of detailed information through our  
18 Data Requests.

19 MR. COMLEY: I don't think the Data  
20 Requests asked for that detail. Furthermore, it's already  
21 in the cost of service studies on how these things are  
22 allocated and what people do.

23 MS. BAKER: It's my cross-examination. I  
24 feel that these are necessary questions. And like I said,  
25 this is the last one and we'll move on to another issue

1 about who collects.

2 JUDGE STEARLEY: Ms. Baker, since this is  
3 your last one, by all means please continue. And I think  
4 at that point we may have a good breaking point for  
5 wrapping things up this evening. You'll have your  
6 groundwork laid out for you for resuming your questions in  
7 the morning.

8 MS. BAKER: I did warn you it was going to  
9 be detailed.

10 JUDGE STEARLEY: You did. I'm paying close  
11 attention because I'm looking for a logical breaking point  
12 for everyone.

13 MS. BAKER: I do agree. All right. Let me  
14 finish this one about Treetop. It's the same type of  
15 questions.

16 JUDGE STEARLEY: Please continue.

17 BY MS. BAKER:

18 Q. Who bills on behalf of Lake Region for the  
19 customers of Treetop? And I believe it's just sewer.

20 A. That's correct, and that's Cynthia Goldsby.

21 Q. And who maintains the master list of  
22 customers for sewer service?

23 A. Cynthia Goldsby.

24 Q. Are you aware of any availability fees that  
25 are -- that are being assessed to the lots within the

1 Treetop and the other areas?

2 A. No. But as I said, it's a condo  
3 association, so I'm sure they get assessed for all of  
4 their infrastructure.

5 Q. But not an availability fee per se as what  
6 we are talking about in this case?

7 A. No.

8 Q. You don't know?

9 A. I don't know.

10 MS. BAKER: I will agree that that is a  
11 good stopping point, but I'm not done.

12 JUDGE STEARLEY: Understood. And we are  
13 going to go ahead and recess for today and pick up  
14 tomorrow morning at 9 a.m. Mr. Summers, when you come  
15 back in the morning, please remember you will still be  
16 under oath at that time.

17 THE WITNESS: Yes, sir.

18 JUDGE STEARLEY: Very well. We are  
19 recessed.

20 WHEREUPON, the hearing of this case was  
21 recessed until March 30, 2010.

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## C E R T I F I C A T E

3

STATE OF MISSOURI                    )  
  ) ss.

4

COUNTY OF COLE                    )

5

I, Kellene K. Feddersen, Certified

6

Shorthand Reporter with the firm of Midwest Litigation

7

Services, do hereby certify that I was personally present

8

at the proceedings had in the above-entitled cause at the

9

time and place set forth in the caption sheet thereof;

10

that I then and there took down in Stenotype the

11

proceedings had; and that the foregoing is a full, true

12

and correct transcript of such Stenotype notes so made at

13

such time and place.

14

Given at my office in the City of

15

Jefferson, County of Cole, State of Missouri.

16

17

\_\_\_\_\_  
Kellene K. Feddersen, RPR, CSR, CCR

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