

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

March 30, 2010  
Jefferson City, Missouri  
Volume 4

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

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

HAROLD STEARLEY, Presiding  
SENIOR REGULATORY LAW JUDGE  
ROBERT M. CLAYTON, III, Chairman,  
ROBERT S. KENNEY,  
COMMISSIONER

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1 P R O C E E D I N G S

2 JUDGE STEARLEY: Today is Tuesday, March 30th,  
3 2010. We are back on the record in our evidentiary  
4 hearings in SR-2010-0110 and WR-2010-0111. We are picking  
5 up with the Public Counsel's cross-examination of Mr. John  
6 Summers.

7 And, Mr. Summers, I will remind you before we  
8 get started that you are still under oath today.

9 MR. SUMMERS: Yes, sir.

10 JUDGE STEARLEY: All right. Ms. Baker, you may  
11 proceed.

12 MS. BAKER: Thank you, your Honor.

13 CROSS-EXAMINATION

14 BY MS. BAKER:

15 Q Okay. We're going to pick up now by going  
16 through the basic entities that have been mentioned in --  
17 in your testimony and in the other -- other testimony so  
18 far. Let's start with what's been called The District.  
19 Can you give us their -- their full name?

20 A Public Water Supply District No. 4. No. I'm  
21 sorry. Public Water Supply District of Camden County, No.  
22 4.

23 Q And what is their affiliation with Lake Region?

24 A They are a contractor for Lake Region.

25 Q And you are an employee of The District?

1 A That's correct.

2 Q And Ms. Goldsby is also an employee of the  
3 District?

4 A Yes.

5 Q When did this -- this arrangement with Lake  
6 Region come about with The District?

7 A When the current shareholders purchased the  
8 stock of Lake Region Water & Sewer Company, which would  
9 have been September or October of 19 -- or I'm sorry.  
10 2004.

11 Q Let's go to Lake Region itself. Lake Region is  
12 a public water -- or is a public water supply and a public  
13 sewer system regulated by the Public Service Commission?

14 A Yes.

15 Q And who are the Board of Directors for Lake  
16 Region?

17 A I believe it's the Schwermanns and Sally Stump.

18 Q Who is the executive management board or group  
19 for Lake Region?

20 A That would be Vern Stump, who is the President,  
21 and Robert and Brian Schwermann.

22 Q And it's been stated before that Lake Region has  
23 no employees; is that correct?

24 A That is correct.

25 Q Let's go to Lake Utility Availability. Now, we

1 talked yesterday, and it sort of came to light that there  
2 are two entities, a Lake Utility Availability and a Lake  
3 Available -- Lake Utility Availability 1; is that correct?

4 A Well -- and, again, I'm not a lawyer, but I  
5 don't believe there are any entities. Those are both  
6 fictitious name registrations.

7 Q Okay.

8 A It's more of a -- what I would consider a d/b/a.

9 Q Okay. There are two fictitious name  
10 registrations, one of them Lake Utility Availability and  
11 one of them Lake Utility Availability 1?

12 A Yes. I believe that's correct.

13 Q Okay. Let's start with Lake Utility  
14 Availability.

15 A Okay.

16 Q And we'll save No. 1. You say that that -- that  
17 is a fictitious name. Who registered that fictitious  
18 name?

19 A I registered it for North Suburban Public  
20 Utilities.

21 Q North Suburban --

22 A Public Utility Company.

23 Q Public Utility Company. And when was that  
24 registered?

25 A 2004, I believe.

1 Q And what was the purpose of registering it as a  
2 fictitious name?

3 A It was originally registered to provide the  
4 d/b/a for billing the availability fees.

5 Q Does it do the billing for -- does it do the  
6 billing for the availability fees?

7 A No.

8 Q Has it ever done the billing for the -- for the  
9 availability fees?

10 A I'm not sure.

11 Q Can you explain?

12 A Yes. I don't think Lake Utility Availability 1  
13 was actually registered until after the billing that went  
14 out in January of 2005.

15 Q Okay. But that's Lake Utility 1. We're talking  
16 about just Lake Utility Availability.

17 A No. No. I -- maybe I misspoke. But Lake  
18 Utility 1 was not registered until after that billing went  
19 out. And so we would have used Lake Utility Availability,  
20 the one that was filed in 2004, for that billing.

21 Q Okay. So between 2004 and the time that Lake  
22 Utility Availability 1 was registered, did it bill for the  
23 availability fees?

24 A I believe so. Yes.

25 Q Okay. Let's go to Lake Utility Availability 1.

1 Who registered this as a fictitious name with the  
2 Secretary of State?

3 A I'm not sure if I registered that or if Brian  
4 Schwermann registered that. But I'm sure somebody in this  
5 room has that information.

6 Q We'll get to them. Thank you. Do you know when  
7 it was registered as a fictitious name?

8 A I believe in 2005.

9 Q And what was the reason for registering it as a  
10 fictitious name?

11 A I believe it was just to -- to make clear that  
12 Lake Utility Availability was actually representing RPS  
13 Properties and Sally Stump rather than North Suburban  
14 Public Utility Company.

15 Q Okay. So it was registered on behalf of who?

16 A RPS Properties and Sally Stump.

17 Q So it was also registered to bill availability  
18 fees?

19 A Yes.

20 Q Does it bill for availability fees?

21 A Yes. On behalf of those two entities.

22 Q Was Lake Region -- Lake Utility Availability, is  
23 it used as a d/b/a at this -- at this point?

24 A I believe so. Yes.

25 Q What is it used for now?

1 A The same.

2 Q I'm talking Lake Utility Availability, not 1.

3 A Not one. I'm not sure it's used for anything.  
4 Someone at North Suburban may -- may do something with it,  
5 but I don't think so.

6 Q But it is no longer used to bill availability  
7 fees?

8 A No.

9 Q Okay. Let's go to North Suburban Public Utility  
10 Company.

11 A Okay.

12 Q And what is the purpose of this company?

13 A I believe it's a hold-over from a utility that  
14 Mr. Stump and Mr. Schwermann owned in Illinois years ago.  
15 And it currently owns the stock of Ozark Shores Water  
16 Company. And it may own the stock of Northern Illinois  
17 Investment Group, but I'm not sure.

18 Q Who are the Board of Directors for North  
19 Suburban Public Utility Company?

20 A I'm not sure.

21 Q Who are the owners of North Suburban Public  
22 Utility Company?

23 A I'm not sure how that's structured either.

24 Q And is it registered with the Secretary of  
25 State's office?



1 A I believe so. Yes.

2 Q Has the ownership or Board of North Suburban  
3 Public Utility Company changed since 2005 when it no  
4 longer did business as Lake Utility Availability, not 1?

5 A Not to my knowledge.

6 Q Okay. All right. Let's go to RPS Properties.  
7 Is that the correct name?

8 A I believe so. Yes.

9 Q What is RPS Properties?

10 A I believe it's the Schwermann Family Trust.

11 Q So the -- the Schwermann Family Trust as RPS  
12 Properties is part of those who do business as Lake  
13 Utility Availability 1?

14 A Yes.

15 Q One moment, please.

16 A Sure. For Ozark Shores, can you tell me who the  
17 Board of Directors is for Ozark Shores?

18 A I'm not sure, but I believe it's -- I believe  
19 it's the Schwermanns and Sally Stump again.

20 Q And who is the executive management group for  
21 Ozark Shores?

22 A That would be Vern Stump, Robert Schwermann,  
23 Brian Schwermann.

24 Q What entity bills for availability fees for  
25 Ozark Shores?

1           A     Ozark Shores Water Company.

2           Q     And Ozark Shores also contracts The District; is  
3 that correct?

4           A     That's correct.

5           Q     And we talked about your compensation yesterday.  
6 And you stated that you received compensation from The  
7 District; is that correct?

8           A     That's correct.

9           Q     You also stated that you received compensation  
10 from North Suburban Public Utility Company; is that  
11 correct?

12          A     That's also correct.

13          Q     Who else do you receive compensation from?

14          A     I -- could you define compensation?

15          Q     Do you receive any other salaries?

16          A     No. And -- and the payment that I received from  
17 North Suburban is not the salary either.

18          Q     Okay. What would you describe the payment that  
19 you received from North Suburban?

20          A     As I stated yesterday, it is a consulting fee.

21          Q     Do you receive consulting fees from any other  
22 entity?

23          A     I also have a real estate license for which I am  
24 compensated for --

25          Q     Okay.

1           A     -- that work.

2           Q     All right. Any other utility-based?

3           A     No.

4           Q     And you stated yesterday that you are a customer  
5 for or that you -- you -- yes. That you are a customer of  
6 Lake Region; is that correct?

7           A     No. No. I stated yesterday I was a Four  
8 Seasons Lakesites property owner. I'm a customer of Ozark  
9 Shores Water Company.

10          Q     Do you pay an availability fee?

11          A     No. I only own a house.

12          Q     Have you ever paid an availability fee?

13          A     No.

14          Q     Also, yesterday, we were talking a little bit  
15 about maintenance and -- and basically what the  
16 availability fee is for. And you stated that you do not  
17 believe that the current customers of Lake Region were  
18 subsidizing the maintenance of an undeveloped lot. Do you  
19 remember that yesterday?

20          A     Yes, I do.

21          Q     All right. And the reason that you said that is  
22 because the -- the pipes are used to distribute water to  
23 the customers, and they just so happen to go past  
24 undeveloped lots?

25          A     Yes. Just as they do in The Villages and other

1 areas.

2 Q All right. Do you have any dead end lines  
3 within Lake Region, or is it strictly a -- a circular  
4 system?

5 A No. There are dead end lines. Most -- most  
6 roads at the lake end at the lake.

7 Q Okay. For those dead end lines, if a dead end  
8 line dead-ended in front of an undeveloped lot and there  
9 was a break in that line, would Lake Region fix that line?

10 A Probably.

11 Q But according to you yesterday, you said that  
12 undeveloped lots received no benefit from maintenance,  
13 correct?

14 A Correct.

15 Q Would you not say that an undeveloped lot at the  
16 end of a line who has no other customers beyond it would  
17 gain a benefit from fixing the line in front of that  
18 undeveloped lot at the end of the line?

19 A I don't see how if they're not taking service.

20 Q You would let the line just run?

21 A No. I'd turn the valve off up the street.

22 Q Then you would agree that there would be no  
23 water availability to that line?

24 A No, I would not agree with that.

25 Q Have you ever not fixed a line and just turned

1 it off?

2 A Not at Lake Region, no.

3 Q Okay. And you would agree that whenever a plant  
4 is put in and designed, it is designed for the full plat  
5 of the subdivision; is that correct?

6 A That would be proper. Yes.

7 Q Okay. For -- for Porta Cima, we've heard  
8 estimates of about 1600 lots. Is that what we --

9 A Yes. I heard that yesterday, too.

10 Q We've also, in the testimony, heard estimates of  
11 there being about 1200 undeveloped lots. Do you remember  
12 seeing that in the testimony?

13 A Yes. I've seen that.

14 Q All right. So that would mean that for rough  
15 purposes of my hypothetical, which is coming, there is 25  
16 percent build-up in Porta Cima?

17 A 300 into 1600, I'd say it's a little closer to  
18 20. But for your hypothetical, yes.

19 Q 20 percent build-up, 80 percent undeveloped?

20 A Correct.

21 Q All right. You have a plant that is built for  
22 and designed for a full build-up?

23 A The distribution system, yes. The capacity, no.

24 Q Explain what you mean.

25 A The distribution system is the lines running in

1 front of the property that will carry the water in, the  
2 sewer out. The capacity is actually the wells, towers and  
3 treatment facilities necessary to serve those lots.

4 Q Correct.

5 A Those are built as needed.

6 Q Okay. And -- but in order to get a permit from  
7 the Department of Natural Resources, you go in with the  
8 plat of the subdivision, and it is assumed that it is to  
9 be built up either in phases or to be built up 100  
10 percent?

11 A No. I don't believe that's correct. None of  
12 the permits that we have are designed for total build-out.

13 Q Okay. How much of a percentage build-out is the  
14 plant in Porta Cima designed for?

15 A I -- I don't know the percentage. It's built  
16 out for a 100,000 gallons per day.

17 Q Is that more than 20 percent of the lots?

18 A I don't know the answer to that question.

19 Q Okay. In the hypothetical, let's say that it is  
20 built out for, let's say, half of the lots. And you have  
21 it designed for half of the lots. All right? The pumps  
22 and the plant are designed for that number of houses  
23 whether those houses are built or not, correct?

24 A In your hypothetical, yes, that's correct.

25 Q If something breaks in the plant and you have to

1 repair a pump or something that is in the plant that is  
2 required for the design size of the plant per DNR, do you  
3 go in and make a determination of how many lots are  
4 unavailable or how many lots are unbuilt so that you only  
5 fix a certain amount of the plant? Or do you fix the  
6 plant per the design?

7 A You -- you fix the plant. As I stated  
8 yesterday, it's the utility's responsibility to maintain  
9 the plant to provide service to the customers taking  
10 service.

11 Q All right.

12 A And that would be necessary. You have to fix  
13 the entire plant.

14 Q Okay. So you don't just fix the plant for those  
15 percentage of developed lots. You fix the plant for the  
16 design?

17 A That's correct.

18 MS. BAKER: Okay. I think that's all the  
19 questions that I have. Thank you.

20 JUDGE STEARLEY: All right. Thank you,  
21 Ms. Baker. Questions from the Bench? Commissioner  
22 Kenney?

23 CROSS-EXAMINATION

24 BY COMMISSIONER KENNEY:

25 Q Good morning.

1           A     Good morning.

2           Q     I missed the first couple minutes of today's,  
3 but I was hear for everything after that, so I'll try not  
4 to be too redundant.  What is the purpose -- what is the  
5 over-arching purpose of availability use, just generally  
6 speaking?

7           A     As I stated in my testimony, the -- the fees  
8 were instituted by the developer to recoup the \$5.3  
9 million worth of plant that he donated to the utility.

10          Q     Okay.  And at the point at which that 5.3  
11 million is recuperated, do you keep charging availability  
12 fees, or is it appropriate to continue charging  
13 availability fees?

14          A     Probably not.

15          Q     How do you determine -- because -- because the  
16 way that the restrictive covenants are written, there's no  
17 end point to the -- to the recovery of these availability  
18 fees; is that right?

19          A     That's correct.  The -- the sole decision-maker  
20 on whether or not an availability fee is paid is by the  
21 owner of the lot and whether or not they build on that  
22 lot.

23          Q     In essence, what you're saying is they don't  
24 have to continue paying the availability fees if they go  
25 ahead and build a house?



1           A     No.  No one who builds a house pays an  
2     availability fee.

3           Q     So you're saying the choice that they have is to  
4     the extent that they do or do not decide to build a house?

5           A     Correct.

6           Q     But absent that, they don't have a choice?

7           A     That's also correct.

8           Q     Okay.  Do you know who -- because there were a  
9     couple of questions that were asked of you yesterday, and  
10    you said you did not know.  So I want to ask you who would  
11    know?

12          A     Okay.

13          Q     Who would know whether the \$5.3 million has been  
14    re -- was recouped by the developer or not?

15          A     The developer.

16          Q     Who is was the original developer?

17          A     Four Seasons Lakesites.

18          Q     Okay.  And at some point, the developer has  
19    signed the right to collect availability fees to some  
20    other folks.  And, ultimately, it got to Lake Availability  
21    1 and Lake Availability --

22          A     To RPS Properties and Sally Stump, yes.

23          Q     Is it correct that the other way in which a  
24    developer will recoup the contributions that he's made to  
25    the infrastructure is through the sale of the lots

1 themselves? Can he build that into the price of the lots?

2 A If the market would bear it, I think he could.

3 Yes.

4 Q Do you know if that was done in this case?

5 A No, I don't.

6 Q Do you know what the difference is if the  
7 availability fees are included in -- calculated in the  
8 rate base or revenue requirement in some way versus it  
9 being segregated away from the regulated entity, do you  
10 know what the practical effect of that is?

11 A If the -- if the 5.3 million were brought back  
12 into rate base --

13 Q Or for the availability fees that are  
14 continually being collected, right?

15 A Yes. If the 5.3 million were brought back in,  
16 we'd earn a return on that 5.3 million less the  
17 depreciation. So it would increase the rates to the  
18 existing customers, yes.

19 Q It's your opinion that it would increase the  
20 rates?

21 A Yes.

22 Q What if the 5.3 million has already been  
23 recouped by the developer and the lot owners, the  
24 undeveloped lot owners, are still paying that amount of  
25 money? What benefit are they reaping from that?

1           A     I'm not sure they'd be reaping any benefit from  
2 that.

3           Q     Okay. We've got two -- two different Lake  
4 Utility Availability registration of fictitious names.  
5 There was the one that you registered in '04, right?

6           A     Yes.

7           Q     How did you come to be the one that registered  
8 that from the North Suburban Public Utility Company?

9           A     I was asked by the folks at North Suburban to  
10 take care of that for them.

11          Q     Who specifically at North Suburban Public  
12 Utility?

13          A     I believe it was Brian Schwermann.

14          Q     Okay. And that's an Illinois corporation?

15          A     I believe that's correct.

16          Q     Do you know -- and you may not know the answer  
17 to this. Do you know if there's any particular tax  
18 advantage to collecting the fees through a d/b/a versus  
19 through an actual corporation, if you know?

20          A     I'm not sure I know the answer to that question.

21          Q     Why did they -- why did you create this one in  
22 '04 and then not use it and then create a -- was why was a  
23 second one created by Sally Stump?

24          A     It's my understanding there was -- there was  
25 some consideration given to having North Suburban Public

1 Utility Company own the stock of Lake Region Water & Sewer  
2 Company as well as the stock of Ozark Shores Water  
3 Company. And then the decision was made not to do that.

4 Q So, initially, it was contemplated that North  
5 Suburban Public Utility Company would be the beneficiary  
6 of the availability fees?

7 A That's correct.

8 Q And then the decision was changed, and it was  
9 decided that Sally Stump and RPS Properties would be?

10 A Yes.

11 Q Who are the shareholders of North Suburban  
12 Public Utility Company?

13 A I'm not sure I know the answer to that question.  
14 Ultimately, I think it goes back to RPS Properties and/or  
15 Sally -- you know, and Sally Stump.

16 Q If that's correct, then what would be the  
17 practical difference between having North Suburban Public  
18 Utility Company be the beneficiary versus RPS and Sally  
19 Stump?

20 A I believe there are some tax advantages, but I'm  
21 not sure what they are.

22 Q Okay. Why do you believe that?

23 A Because I -- I was told that -- their accountant  
24 told them that.

25 Q By whom were you told that?

1           A     I believe it was Mr. Stump.

2           Q     Told you that their accountant told them that it  
3 was a tax advantage doing it one way versus the other?

4           A     Yes.

5           Q     Mr. Stump told you that?

6           A     I believe it was Mr. Stump.

7           COMMISSIONER KENNEY: Mr. Stump's going to  
8 testify again, right? Okay. I don't have any other --

9           A     As far as I know. Yes.

10          COMMISSIONER KENNEY: Okay. I don't have any  
11 other questions. Thank you.

12          JUDGE STEARLEY: Mr. Chairman?

13          CHAIRMAN CLAYTON: Thank you, Judge. I don't  
14 have any questions. Thank you.

15          JUDGE STEARLEY: Okay. Mr. Summers, I have a  
16 couple for you.

17          MR. SUMMERS: Yes, sir.

18                                    CROSS-EXAMINATION

19 BY JUDGE STEARLEY:

20          Q     You know the availability fees are being charged  
21 until a person actually connects to water or sewer,  
22 correct?

23          A     That's correct.

24          Q     All right. Does Lake Region charge any fees for  
25 the hook-up itself?

1           A     We charge a -- a CAAC fee for setting the meter,  
2 the cost of the meter and -- and plant to make the  
3 connection.

4           Q     Okay. What is that charge?

5           A     I believe it's \$680, Judge.

6           Q     Is that the same for water and sewer, or is  
7 there just one charge for both?

8           A     Actually, it's 680 for water, 210 for sewer on  
9 Shawnee Bend, and I believe it's 150 for sewer on  
10 Horseshoe Bend.

11          Q     Okay. So property owner would build -- while  
12 they're building and paying their availability fees. And  
13 when they connect, they would pay this connect fee. And  
14 that after, that the available fee ends; is that correct?

15          A     That's correct.

16          Q     Yesterday, you were shown an exhibit by Staff,  
17 which we marked as Exhibit 10, regarding a contract for  
18 the availability fees. It was a three-page document. I  
19 don't know if you have that.

20          A     Yes, sir. It's got the HC stamped at the bottom  
21 of it? That --

22          Q     On the second page of that has -- it was  
23 captioned Assignment of Availability Fees.

24          A     Yes.

25          Q     And I'm just trying to straighten out the time

1 line here. And the --

2 A Okay.

3 Q -- predecessor company, Four Seasons Water &  
4 Sewer Company and Lake Region, I think you mentioned that  
5 yesterday, but I just wanted to clarify.

6 A I believe the name change was done in 1988. It  
7 -- it was -- I believe when -- when Roy and Cindy Slates  
8 purchased the stock.

9 Q All right. And this particular assignment of  
10 the availability fees, as the last statement indicates,  
11 assigner received an assignment of all water and sewer  
12 stand-by fees, availability fees and connection fees from  
13 Lake Region Water & Sewer Company on April 12th. Am I  
14 reading that correctly?

15 A Yes, you are.

16 Q And that the sentence above that was, Lake  
17 Region Water & Sewer Company received an assignment of the  
18 same fees from Roy Slates and Cindy Slates on April 12th.  
19 Is that correct?

20 A That's correct, also.

21 Q So I guess my question is -- and then we have on  
22 the next page another assignment, appears to be, or  
23 closing statement. It appears to be a transaction  
24 occurring in 2004. Can you tell me how long Lake Region  
25 Water & Sewer Company held the right to collect these fees

1 before they were assigned to them?

2 A Based on what we've just read?

3 Q Yes.

4 A I -- my -- I would suspect -- I don't know for a  
5 fact, but I would suspect that -- that the two documents  
6 were signed at the same time. So it would have been a  
7 matter of minutes or seconds.

8 Q All right. Was Lake Region Water & Sewer  
9 Company, to your knowledge, in possession -- possession of  
10 the rights to collect those fees other than this few  
11 moment in times in which they were transferred?

12 A I don't believe so. No.

13 JUDGE STEARLEY: All right. Thank you very  
14 much. Are there any other questions based on questions  
15 from the Bench.

16 CROSS-EXAMINATION

17 BY MS. OTT:

18 Q Good morning.

19 A Good morning.

20 Q A few minutes ago, Commissioner Kenney was  
21 asking you what the purpose of the availability fees were  
22 for the developer. Do you remember that conversation?

23 A I do.

24 Q So if the purpose was for the developer to  
25 recoup the -- the cost of the plant in place from the



1 availability fees, then why would the developer assign  
2 availability fees away if the whole point was for them to  
3 recoup the \$5.3 million in plant?

4 A That's --

5 MR. COMLEY: I'm going to object to the question  
6 on the grounds that it -- it's going to ask Mr. Summers  
7 what the motivation would be for the developer to make  
8 that assignment.

9 JUDGE STEARLEY: Ms. Ott, it sounds like you're  
10 calling for speculation.

11 MS. OTT: The entire conversation was  
12 speculation. And I just want to follow up on the  
13 conversation that he had with Commissioner Kenney.

14 JUDGE STEARLEY: I don't believe there was an  
15 objection raised at that point on that.

16 MR. COMLEY: I'm trying to remember now exactly  
17 how she posed the question. Perhaps if she rephrased it,  
18 I will withdraw the objection.

19 MS. OTT: I'll rephrase.

20 Q (By Ms. Ott) Hypothetically, if a developer was  
21 to recover put in plant the cost \$5.3 million and then was  
22 going to charge an availability fee to recover those costs  
23 of the plant in place, why would he sign the availability  
24 fees away for a dollar that he is no longer collecting  
25 being able to recoup those costs?

1           A     I don't think he signed them away for a dollar.  
2     But to answer -- to answer the first part of your  
3     question, there's several ways to recoup your money. One  
4     is you can bill it over time and recoup it over time. The  
5     other is to sell that revenue stream to another person and  
6     recoup your money from that person, which I believe is  
7     what was -- what was done here.

8           Q     So Lake Region and Sally Stump and RPS  
9     Properties bought the revenue stream for a dollar?

10          A     No. I don't believe that's correct.

11          Q     Does the -- the contract says it was a dollar.  
12     Is that not true?

13          A     That -- that is a contract between Waldo Morris  
14     and -- and Lake Region and Sally Stump. And I've been  
15     involved in between 30 and 35 company acquisitions in my  
16     career. And, normally, when you're doing a deal, you get  
17     everybody and their brother, if you can get him, to sign  
18     any rights away that they may have to anything. And I  
19     believe what was done here.

20                 And, again, we're talking hypothetically,  
21     because I don't know, but I believe what was done here was  
22     a request for Waldo Morris to assign whatever rights he  
23     did have for a dollar because nobody knew what rights he  
24     had at that time because there was a lawsuit pending that  
25     Four Seasons had -- had sued Waldo Morris claiming he was

1 taking fees he had no right to.

2 Q You were around when Ms. Stump and RPS  
3 Properties acquired Lake Region Water & Sewer Company,  
4 correct?

5 A I was.

6 Q Do you know if in the purchase price for the  
7 Lake Region Water & Sewer Company that there was  
8 consideration for these availability fees to be assigned  
9 to them on the side?

10 A No, I don't.

11 Q So they were two complete, separate  
12 transactions?

13 A As far as I know.

14 Q There was no inter-relation between the two of  
15 them that you are aware of?

16 A As far as I know, they bought the stock and  
17 whatever rights Waldo may have to these availability fees.

18 Q Now, back to the question about the developer  
19 recouping the -- the cost of plant through availability  
20 fees. How would the developer recover the costs from the  
21 utility customers that have already hooked up to the  
22 system or that built a house immediately?

23 A He couldn't because he's not the utility.

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

25 JUDGE STEARLEY: Ms. Baker?

1 MS. BAKER: I do have some that -- that also go  
2 with Commissioner Kenney's questions.

3 RE CROSS EXAMINATION

4 BY MS. BAKER:

5 Q These go to the question of -- of what happens  
6 when the investment is paid for. Now, you have said that  
7 the original investment for the plant was 5.1 or  
8 5.3 million?

9 A From the books of the company, it appears to be  
10 5.3 million.

11 Q 5.3 million. And when was that investment made?

12 A I'm not sure. It was recorded on the books of  
13 the company in 2002, I believe. I -- I'm not exactly sure  
14 of the date, but I did provide that in a data request.

15 Q Okay. When was the plant built?

16 A Prior to 2002.

17 Q Is that the 1970 plant?

18 A No.

19 Q That is --

20 A This area wasn't even certificated until the mid  
21 '90s.

22 Q Okay. All right. So availability charges for  
23 this particular area with the \$5.3 million plant would  
24 have been '95?

25 A I would suspect '95 since that was the first --

1 that was the first evidence we have of a billing.

2 Q Okay. And 5.3 million?

3 A I -- I doubt there was 5.3 million in '95. But  
4 -- but between '95 and 2002, it was reported on the books  
5 of the company, yes.

6 Q Okay. All right. Availability charges would  
7 have been attached beginning 1995?

8 A Yes.

9 Q All right. And that's \$300 a year?

10 A That's correct.

11 Q And we're estimating about 1200 lots?

12 A Not in 1995, we're not.

13 Q Okay. How many in 1995?

14 A I don't know.

15 Q All right. Let's assume that there were 1200  
16 lots, which is what there are today. Is that what we're  
17 estimating?

18 A I don't know what there are today. I've seen --  
19 I've seen testimony, but --

20 Q You've seen testimony that there are 1200  
21 undeveloped lots today?

22 A I've seen testimony ranging from 1200 to 1285 to  
23 1300.

24 Q Well, let's use the 1300 number because back in  
25 '95, there were more undeveloped lots, correct?

1 A No.

2 Q Explain.

3 A As I understand it, there was only one -- one of  
4 those subdivisions in place in 1995, which is Grand  
5 Pointe.

6 Q Okay. Well, let's still use the 1300 number.  
7 All right. 1300 lots, \$300 a month. Okay?

8 A Yes.

9 Q And then -- so '95, that would be 15 years?

10 A Yes. But I -- I believe I can give you a better  
11 number.

12 Q Okay.

13 A In the 1998 annual report, I believe the number  
14 is around \$51,000.

15 Q For what?

16 A For availability fees.

17 Q Per year?

18 A Yes.

19 Q \$51,000 per year in 1998?

20 A Correct.

21 Q Let me see if that's a better number or not.

22 A Well, I don't know if it's a better number for  
23 you, but it's accurate.

24 Q Well, I mean, at 1200 lots, right?

25 A No.

1 Q Okay. How many lots are undeveloped?

2 A Divide 51,000 by 300.

3 Q 170 lots are undeveloped --

4 A That's -- that's --

5 Q -- out of 600 --

6 A That's correct. In 1998. And that is what was  
7 reported in the report annual report to the Missouri  
8 Public Service Commission.

9 Q Okay. Let's go through this again. In 1998,  
10 you're saying there are 170 undeveloped lots?

11 A Based on your calculation, I -- I think that's  
12 correct.

13 Q All right. How many undeveloped lots were there  
14 in 2000?

15 A I don't know.

16 Q How many undeveloped lots are there now?

17 A I don't know.

18 Q So you don't know if the entire plant has been  
19 recouped by availability fees or not?

20 A No, I don't.

21 Q But it is quite possible that they have been  
22 recouped already just by availability fees alone, correct?

23 A 50,000 over ten years? No. That wouldn't begin  
24 to pay off 5 million.

25 Q This is a big difference between 170 undeveloped

1 lots in 1998 and the testimony that's been given of 1200  
2 undeveloped lots, correct?

3 A That's correct.

4 Q So the availability fees that have been  
5 collected have increased tremendously since 1998?

6 A I don't know the answer to that question.

7 Q But if it is true that now there are 1200  
8 undeveloped lots as compared to 170 lots in 1998, then,  
9 logically, the amount of money would have increased for  
10 availability fees?

11 A That's correct.

12 MS. BAKER: That's all the questions I have.  
13 Thank you.

14 JUDGE STEARLEY: All right. Thank you,  
15 Ms. Baker. Mr. Summers, I have a couple additional  
16 questions for you.

17 MR. SUMMERS: Yes, sir.

18 RE CROSS EXAMINATION

19 BY JUDGE STEARLEY:

20 Q Please refresh my memory. When did you start  
21 providing services for Lake Region Water & Sewer?

22 A October 2004.

23 Q October 2004. So you weren't there in 2000 when  
24 this assignment of the availability fees was made?

25 A No, sir, I wasn't.



1 Q And you weren't involved in the decision-making  
2 process, obviously, for that assignment?

3 A No. No, I'm not involved in -- in those  
4 decisions.

5 Q Do you have an opinion as to the prudence of  
6 that assignment?

7 A Not really, Judge. I think that was a decision  
8 for the developer. And -- and he made it.

9 JUDGE STEARLEY: Thank you very much. Any other  
10 questions from the Bench? Any follow-up questions, any  
11 recross after my additional questions? Okay. Well,  
12 hearing none, we're at redirect, Mr. Comley.

13 MR. COMLEY: Thank you, Judge Stearley. In  
14 connection with my redirect, I need to have an exhibit  
15 marked. It's the end report of Lake Region Water & Sewer  
16 Company for 1998. Forgive me. I've lost count of where  
17 we are.

18 JUDGE STEARLEY: I believe this would be Lake  
19 Region Exhibit No. 7.

20 MR. COMLEY: And I would also like to have  
21 marked -- these are certified copies of the annual  
22 reports, and, also, the annual report for the year ending  
23 1999.

24 JUDGE STEARLEY: And that will be Lake Region  
25 No. 8.

1 (Recording came on.)

2 COMMISSIONER CLAYTON: Hearing's over.

3 JUDGE STEARLEY: The room is talking to us.

4 I'll ask the parties' indulgence here. I'm going to take  
5 a short intermission to confirm with our IT people if, in  
6 fact, our recording has ceased because, obviously, the  
7 Commission would like to keep the recording going. So we  
8 will have about a ten-minute recess here.

9 MR. SUMMERS: Maybe this is where the tape was  
10 going to run out last night.

11 JUDGE STEARLEY: Could be.

12 (Break in proceedings.)

13 JUDGE STEARLEY: All right. We are back on the  
14 record. Mr. Comley, you were getting ready to begin your  
15 redirect.

16 MR. COMLEY: Thank you, Judge. Thank you very  
17 much.

18 REDIRECT EXAMINATION

19 BY MR. COMLEY:

20 Q Mr. Summers, I have a few questions that will  
21 follow up on the cross-examination first of Ms.  
22 Langeneckert. During questioning, she inquired of you  
23 about the unregulated income that was reportable on  
24 certain unregulated income of Lake Region.

25 MR. COMLEY: May I impose on the court reporter

1 to hand him Exhibit 7 that has been marked? He already  
2 has them.

3 Q (By Mr. Comley) Would you take a look at  
4 Exhibit 7, Lake Region Exhibit 7, and identify that for  
5 the Commission, please?

6 A Annual report of Lake Region Water & Sewer  
7 Company to the Public Service Commission of Missouri for  
8 the year ended December 31, 1998.

9 Q And, Mr. Summers, in connection with your  
10 duties, have you become familiar with contents of this  
11 annual report?

12 A Yes.

13 Q Let me take your attention to page F-42 of that  
14 report.

15 A I'm there.

16 Q Also, with respect to questions that were asked  
17 by Ms. Baker concerning the amount reported during 1998  
18 for availability fees, would page F-42 have that amount  
19 listed?

20 A Yes. It's -- it's a different amount than what  
21 I -- what I gave. The amount -- actually, it's \$52,648  
22 for availability.

23 Q And that represents the availability fees  
24 collected by Lake Region during the calendar year of 1998;  
25 is that correct?

1           A     Yes.  It says availability fees assigned to  
2 water and sewer company.

3           Q     To your knowledge, were availability fee  
4 revenues reported on the 1997 report?

5           A     I believe they were.  Yes.

6           Q     And in what year was Lake Region first fully  
7 operational under its certificate on Shawnee Bend?

8           A     I believe the name change actually occurred in  
9 1998.  Four Seasons Lakesites Water & Sewer Company was  
10 certificated.  I believe those tariffs are effective in  
11 mid-1997.

12          Q     There's an amount that's located -- there's an  
13 amount set out for uncollectible accounts.  Can you  
14 describe what that represents for the Commission?

15          A     The -- the \$11,000?

16          Q     Yes, sir.

17          A     That's an estimate of uncollectible accounts.  
18 And I'm not sure whether it's applicable to the  
19 availability fees or whether it was applicable to regular  
20 revenue.  But I would assume if it was applicable to  
21 regular revenue, it would have been put on the -- would  
22 have been put on the page with that operating revenue.

23          Q     So, basically, the amount of uncollectible  
24 accounts covers all the other four categories of revenue  
25 reported there as far as you know?

1           A     As far as I know.  Yes.

2                   MR. COMLEY:  Your Honor, this is a certificated  
3 copy of the annual report on file with the Commission.  I  
4 would offer it into evidence on the strength of its  
5 certificate.

6                   JUDGE STEARLEY:  Any objections to the admission  
7 of Lake Region's Exhibit No. 7?  Hearing none, it shall be  
8 received and admitted into the record.

9                   (Lake Region Exhibit No. 7 was offered and  
10 admitted into evidence.)

11           Q     (By Mr. Comley)  Let me draw your attention to  
12 what has been marked as Lake Region Exhibit No. 8.  Can  
13 you identify that for the Commission, please?

14           A     Annual report of Lake Region Water & Sewer  
15 Company to the Public Service Commission of Missouri for  
16 the year ended December 31, 1999.

17           Q     Let me draw your attention to, again, page F-42  
18 of that document.

19           A     I'm there.

20           Q     Is there a difference between the report in the  
21 1990 report of other income and deductions compared to the  
22 1998 report?

23           A     Yes, there is.  The availability fees are no  
24 longer listed.

25           Q     Can you explain why they're no longer listed?

1           A     I -- I believe we've explained that earlier in  
2 that -- in 1998, the developer transferred those fees or  
3 assigned those fees to Roy and Cindy Slates. And so the  
4 amount in the 1998 report would have been the amount  
5 billed in early -- early 1998. And I'm making the  
6 assumption that they build once a year in January as they  
7 are today.

8           Q     Now, with respect to the annual reports filed by  
9 the company since 1999, has there been reports on  
10 availability fee revenue?

11          A     No.

12          Q     Ms. Langeneckert also asked you a question about  
13 I think a -- a part of your testimony in which you said  
14 that you did not believe that there had been ownership of  
15 the availability fees since their inception. And would  
16 you mind clarifying your statement about that?

17          A     Yes. I -- I misspoke there. And I believe the  
18 -- I believe I then referred later to the response to Data  
19 Request 44.1 and the assignment that we've seen during my  
20 testimony in which Four Seasons Lakesites Water & Sewer  
21 Company actually did own those prior to 1998.

22          Q     Also, during your testimony -- your testimony  
23 and cross-examination with Ms. Langeneckert, there was a  
24 discussion about whether or not you believed that there  
25 were benefits that undeveloped lot owners received from

1 the -- the undeveloped -- or, rather, from the  
2 infrastructure. Can you describe for the Commission what  
3 benefit is obtained by the undeveloped lot owners by  
4 having the infrastructure in place?

5 A I suppose the benefit would be that they are not  
6 going to have to drill a well or -- or build a septic  
7 system as -- as lots to some other parts of the lake.

8 Q Is there a rate-making benefit derived from  
9 having the plant donated to the operation of the utility?

10 A Yes.

11 Q Can you explain that?

12 A Donated plant is a reduction to rate base and,  
13 thereby, reduces the rate paid by the customers.

14 Q With respect to some questions from Ms. Ott,  
15 there was a question about the manner in which management  
16 fees for Lake Region were paid. Can you explain, just to  
17 clarify, how are management fees for Lake Region paid?

18 A Management fees are paid into the same account  
19 in which the availability fees are deposited, an account  
20 titled Lake Utility Availability Fees. And that account  
21 is owned by the -- by RPS Properties and Sally Stump. And  
22 for convenience purposes, we use that same account for the  
23 management fees.

24 Q There was a question about whether Ozark Shores  
25 -- let's back up. Does Ozark Shores charge an

1 availability fee?

2 A Yes.

3 Q Who owns that availability fee?

4 A Ozark Shores Water Company.

5 Q Are the availability fees part of the rates?

6 MS. BRUEGGEMANN: I'd object at this point. I'm  
7 confused as to what this is redirecting or in what line of  
8 questioning?

9 JUDGE STEARLEY: Mr. Comley?

10 MR. COMLEY: Ms. Ott asked whether Ozark Shores  
11 had availability fees in their rates.

12 JUDGE STEARLEY: I believe that's correct. You  
13 may continue.

14 Q (By Mr. Comley) Do you remember the question?

15 A I remember. I remember the question. I have  
16 seen exhibits treating availability fees several different  
17 ways in past rate cases for Ozark Shores Water Company.

18 It's my understanding that a stipulation doesn't  
19 necessarily set the rates -- doesn't necessarily set  
20 what's in the rates as an agreement between the parties.  
21 But I've -- I've seen in some cases the Staff has included  
22 those fees as revenue. And when they do that, they  
23 increase the rate base by the plant.

24 And I have seen other exhibits in which they  
25 have not included the availability fees and, therefore,



1 reduced the plant, which reduced the rate base.

2 Q Is it clear in your mind how those availability  
3 fees are allocated or accounted -- are accounted for in  
4 the Ozark Shores rates?

5 A No.

6 Q And -- and in connection with the annual reports  
7 for Ozark Shores, are the availability fees -- is the  
8 available fee revenue reported in your annual -- in the  
9 annual report for Ozark Shores?

10 A No. It's not. It used to be.

11 Q Has it been? Can you explain why it's no longer  
12 reported in the Ozark Shores' annual report?

13 A I was instructed in 2006 by Staff Auditor  
14 Roberta Grisham to remove it as it was unregulated.

15 MS. BRUEGGEMANN: I would object as to hearsay  
16 statements.

17 MR. COMLEY: I'll withdraw the question.

18 MS. BRUEGGEMANN: Thank you.

19 MR. COMLEY: Can I have an exhibit marked?

20 JUDGE STEARLEY: Certainly, Mr. Comley.

21 MR. COMLEY: I think this will be No. 9.

22 Q (By Mr. Comley) As part of your duties, Mr.  
23 Summers, do you engage regularly in communication with  
24 Commission Staff and accounting Staff?

25 A I do.

1           Q     Have you had occasion to communicate with  
2     Roberta Grisham of the Staff concerning the form of your  
3     annual report for Ozark Shores?

4           A     Yes.

5           Q     Have you received any information from her in  
6     November of 2006 concerning the nature of the annual  
7     report you should file for Ozark Shores as well as Lake  
8     Region or The Meadows?

9           A     Yes.

10          Q     With respect to what has been marked as Lake  
11     Region Exhibit 9, can you identify that for the  
12     Commission, please?

13          A     Yes. This is an e-mail when I forwarded to you,  
14     that I received from Staff Auditor Roberta Grisham with  
15     copies that went to Helen Davis and Jim Russo.

16          Q     And as a consequence of this e-mail, what steps  
17     did you take with respect to the annual report for Ozark  
18     Shores?

19          A     I filed an amended annual report for the year  
20     2005 and removed the availability fees. And I have  
21     followed that precedent since.

22                 MS. BRUEGGEMANN: I would -- I would object as  
23     to -- I don't see where in this document it advises to  
24     take out availability fees. And so it's mischaracterizing  
25     the document.

1           MR. COMLEY: I haven't offered it yet, and I've  
2 let the witness say what he did in response.

3           JUDGE STEARLEY: Overruled.

4           Q     (By Mr. Comley) With respect to the e-mail and  
5 what it talks about, were you -- were you clear on what it  
6 said to you or what it meant to you?

7           A     Yes. When it said file amended calendar year  
8 2005 annual reports for each company referenced above,  
9 including unregulated services activities, the only -- the  
10 only change in the amended annual report is the exclusion  
11 of availability fees and the expense that went with them.

12          Q     Since that time, have you received any  
13 information from Ms. Grisham about correcting your Ozark  
14 Shores annual report concerning the reporting of  
15 availability fees?

16          A     No. This is the last -- I've been doing it this  
17 way ever since, and I've not heard anything different.

18          MR. COMLEY: Your Honor, I would offer Exhibit  
19 No. 9 into evidence.

20          JUDGE STEARLEY: Any objections to the offering  
21 of Exhibit No. 9? Hearing none, it shall be received and  
22 admitted into the record.

23                 (Lake Region Exhibit No. 9 was offered and  
24 admitted into evidence.)

25          JUDGE STEARLEY: Mr. Comley, would you have a

1 copy or two for the Bench?

2 MR. SUMMERS: Would you like these back before  
3 I walk off with them?

4 THE COURT REPORTER: Yeah. Thanks.

5 MR. COMLEY: I know I have some copies  
6 somewhere, Judge.

7 JUDGE STEARLEY: You can find them on a break.  
8 That's fine, Mr. Comley. You may proceed at this point.

9 MR. COMLEY: I can spare one. Excuse me.

10 JUDGE STEARLEY: Thank you.

11 Q (By Mr. Comley) Ms. Baker asked you several  
12 questions about the design for treatment plants and design  
13 for water treatment, portable water treatment facilities  
14 and the capacities for those. Are treatment plants for  
15 sewer companies or treatment plants for areas, are they  
16 actually designed to cover the entire amount of the  
17 subdivision?

18 A Not in our case. I -- I can't speak to the rest  
19 of the state.

20 Q Is the Lake of the Ozarks different from other  
21 populated areas in the state concerning how facilities are  
22 designed to treat wastewater and to provide water  
23 distribution systems?

24 A I don't know for certain. But I'm -- but I  
25 would suspect that they are.

1 Q And is the reason -- can you explain the reason  
2 why that would be?

3 A The reason would be there are very few  
4 subdivisions at the Lake of the Ozarks which are built out  
5 completely because people don't move to the lake to live  
6 in the interior.

7 Q There were other questions -- there was a  
8 hypothetical concerning having a treatment capacity --  
9 treatment capacity set up for 500 lots even though there  
10 may be 200 built out. Can you explain to the Commission  
11 what would happen if there were excess capacity built into  
12 a -- a regulated company's rate base?

13 A Well, if it were built into the rate base, the  
14 rates would obviously be higher than -- than necessary.

15 Q Would the Staff allow a return on excess  
16 capacity?

17 A I don't think they would knowingly.

18 Q If they didn't do it knowingly, what would  
19 happen then?

20 A The rates -- that plant would be disallowed and  
21 you would not earn a return on it.

22 Q Judge -- Commissioner Kenney asked you questions  
23 about the purpose of the availability fees and the  
24 recouping of investment and talked about whether or not --  
25 what would happen if the investment were fully recouped.

1 Let me ask you this question: Is there ever an end to  
2 fully recovered rate base as a rate-making principle?

3 A I don't believe so. No.

4 MR. COMLEY: Thank you very much, Judge. I have  
5 no other redirect.

6 JUDGE STEARLEY: All right. Very well.  
7 Mr. Summers, this concludes your examination at this  
8 portion of the hear -- of the hearing. I am not going to  
9 fully release you as a witness, though, at this time, in  
10 case the Commissioners would like to call you back for  
11 further questioning.

12 MR. SUMMERS: Yes, sir. Thank you.

13 JUDGE STEARLEY: All right. Thank you. And I  
14 believe our next witness on our list is Ms. Nancy Cason  
15 from the Property Owners Association.

16 JUDGE STEARLEY: And just so we're clear, since  
17 we consolidated these last two cases, Ms. Cason is  
18 providing testimony strictly on the availability fees; is  
19 that correct?

20 MS. LANGENECKERT: That is correct.

21 JUDGE STEARLEY: Ms. Cason, if you'd please  
22 raise your right hand.

23 NANCY CASON,  
24 being first duly sworn to testify the truth, the whole  
25 truth, and nothing but the truth, testified as follows:

1 DIRECT EXAMINATION

2 BY MS. LANGENECKERT:

3 JUDGE STEARLEY: Thank you. You may proceed.

4 Q (By Ms. Langeneckert) Good morning. Would you  
5 please state your name for the record and spell it for the  
6 court reporter?

7 A Nancy Cason, C-a-s-o-n.

8 Q And you are here today for before the Public  
9 Service Commission because you filed testimony; is that  
10 correct?

11 A Correct.

12 Q And that testimony, and I've given it to the  
13 court reporter, is marked as Four Seasons Lakesites  
14 Property Owners Association Exhibit No. 2. What -- in  
15 what capacity do you work for Four Seasons Lakesites  
16 Property Owners Association?

17 A The Property Owners Association has a Board of  
18 Directors of six members. I'm the President of the Board.

19 Q And is the testimony that I have presented your  
20 testimony to the best of your knowledge, information and  
21 belief?

22 A (Witness nods head.)

23 Q And have -- if you were to give that testimony  
24 today, would your answers be substantially the same?

25 A Yes.

1           Q     Okay. I tender the witness for  
2 cross-examination.

3           JUDGE STEARLEY: All right. Cross-examination,  
4 beginning with the Office of Public Counsel.

5           MR. COMLEY: Your Honor, has there been an offer  
6 of her testimony?

7           MS. LANGENECKERT: I'd like to offer her  
8 testimony into evidence.

9           MR. COMLEY: And because of that offer, I have  
10 another objection I'd like to tell.

11          JUDGE STEARLEY: All right. Very well, Mr.  
12 Comley.

13          MS. LANGENECKERT: I'm shocked.

14          MR. COMLEY: In addition to the subject matter  
15 jurisdiction issues that are in our Motion to Strike, I  
16 have additional objections to Ms. Cason's testimony  
17 starting on page 5, lines 3 through 12.

18                 On those lines, she purports to give her  
19 understanding of all the property owners' perception of  
20 what was going to be done with revenue, and she also has  
21 in her testimony what all the property owners believed.  
22 There is no foundation for the statements made in those  
23 lines. The statement would be speculation on her part.  
24 She is stating the state of mind or beliefs of individuals  
25 that are not present at the hearing. And, therefore, it



1 is hearsay if she is currently reading what some property  
2 owners may have told her with their perceptions, and that  
3 is not admissible.

4 MS. LANGENECKERT: Ms. Cason is the President of  
5 the Property Owners Association, so in that regard, all of  
6 the property owners go to her with their concerns about  
7 their properties. And what she's doing here is no more  
8 than what any other witness has done in his or her  
9 testimony indicating their understanding of and what they  
10 accept to be facts in the case.

11 JUDGE STEARLEY: Mr. Comley, any further  
12 remarks?

13 MR. COMLEY: Well, I think what differs here is  
14 that, for the most part, people who have talked about  
15 opinions on what documents -- they based their opinions on  
16 the documents. Ms. Cason is basing what's she's saying on  
17 what I perceive to be remarks or statements from property  
18 owners. And I don't think she can make statements on all  
19 the -- on all property owners' behalf.

20 There is one next to me that probably differs  
21 substantially from what she says. As a consequence, this  
22 constitutes hearsay, and it should not be permitted.

23 JUDGE STEARLEY: Ms. Langeneckert?

24 MS. LANGENECKERT: She says the concerns  
25 include. She didn't say that these concerns were of every

1 property owner, nor did she say that these were all the  
2 concerns the property owners. I asked her -- or her  
3 question responded -- was, Explain the concerns of the  
4 Four Seasons Property owners with regard to availability  
5 fees. And she said, Concerns include these four.

6 JUDGE STEARLEY: All right. The qualifications  
7 you're providing essentially provide a different answer.  
8 And the Commission has no objection to allowing Ms. Cason  
9 to qualify those statements. But a general proclamation  
10 about all property owners would, as Mr. Comley say,  
11 constitute hearsay.

12 I believe Ms. Cason can testify to her  
13 perception in speaking with X number or those property  
14 owners that have responded to her or something of that  
15 sort, which is of a qualifying nature. But I do find  
16 Mr. Comley's objections persuasive in terms of making  
17 global statements for all of the property owners and the  
18 Property Owners Association when those -- those people are  
19 not here to testify.

20 MS. LANGENECKERT: Okay. Well, I --

21 JUDGE STEARLEY: So to that extent, I'm going to  
22 sustain Mr. Comley's objection. When you come back to  
23 redirect, if you wish to try to qualify these statements,  
24 you'll certainly be given the opportunity to do so.

25 MS. LANGENECKERT: Okay. If the objection is on

1 this part of the testimony, does that mean no questions  
2 can be asked on it?

3 JUDGE STEARLEY: No. You may ask qualifying  
4 questions on it, or the parties may ask cross-examination  
5 questions on it.

6 MS. LANGENECKERT: All right.

7 MR. COMLEY: Another objection, Judge. The  
8 attachment to Ms. Cason's testimony purports to be a  
9 deposition in Case No. 07-CM-CC00013 in Camden County. It  
10 is not signed by the court reporter. It is testimony of a  
11 person who is not a party to this case or who is a witness  
12 to this case.

13 The caption of the -- the caption on the first  
14 page of the deposition is quite at odds with the caption  
15 of the original case. Again, it is hearsay. It's  
16 unverified.

17 Oh, and another thing is it contains a great  
18 deal of marginal comments, underlining. And there is no  
19 way of knowing who did that from the text of the  
20 testimony. And we would -- we would -- our objection is  
21 that it is hearsay in connection with this case. It is  
22 not an appropriate use of a deposition under the Circuit  
23 Court rules.

24 JUDGE STEARLEY: Ms. Langeneckert?

25 MS. LANGENECKERT: Ms. Cason was one of the

1 parties to this case. And Mr. Summers testified in this  
2 deposition and he has stated in his testimony that the  
3 statements in this deposition that are attributed to him  
4 are acc -- are correctly transcribed.

5           And as I indicated yesterday, my goal to put  
6 this attachment into Ms. Cason's testimony is to show when  
7 she first learned that availability fees were not part of  
8 the revenues of Lake Region Water & Sewer. This  
9 deposition is not submitted to prove the truth of the  
10 information as to Mr. Schwermann's answers. And that is  
11 why it's been submitted.

12           JUDGE STEARLEY: Well, you can go about this two  
13 ways. If you can provide the Commission with a clean and  
14 certified copy, we can substitute that. If -- however, if  
15 you're using it for a limited purpose and want to use the  
16 document as a reference with your witness and have  
17 testimony entered if it's not already entered in her  
18 prefiled testimony, it can be used in that manner also to  
19 confirm whatever portions just like Mr. Summers did when  
20 he was on the stand.

21           MS. LANGENECKERT: Okay.

22           JUDGE STEARLEY: But the document as filed --  
23 the Commission will not accept as filed because it is  
24 hearsay, and we do have all these extraneous markings on  
25 there. We have no idea where they've come from.

1           MS. LANGENECKERT: Well, I'll obtain a clean  
2 copy, signed and present that to the Commission if that's  
3 your preference.

4           JUDGE STEARLEY: That -- that would be the  
5 Commission's preference. And, Mr. Comley, I'm assuming  
6 you would not have any objections to the submission of a  
7 certified, clean copy of the deposition?

8           MR. COMLEY: May I reserve my arguments on that,  
9 Judge?

10          JUDGE STEARLEY: You certainly may.

11          MR. COMLEY: Okay. Thank you.

12          JUDGE STEARLEY: Ms. Langeneckert, you can  
13 provide that as a late-filed exhibit.

14          MS. LANGENECKERT: I will.

15          JUDGE STEARLEY: And at that point, once it's  
16 filed, Mr. Comley will be open to any objections. Ms.  
17 Brueggemann, any --

18          MS. BRUEGGEMANN: I just thought it might be  
19 more efficient to go ahead and vet out whether or not the  
20 certified copy presented be -- if Ms. Langeneckert is  
21 going to go to all the trouble to file it, since we have  
22 enough filings in this case, if we could find out what the  
23 objection is and get a ruling on a clean and certified  
24 copy presumably that -- if that's what it is and go ahead  
25 and get a ruling on an objection. But that's just an

1 efficiency argument of mine.

2 JUDGE STEARLEY: Very well. And we'll continue  
3 as I have been instructed. I am not going to admit this  
4 document at this time. I'm going to hold it as I've done  
5 in the others because I have not yet given a final ruling  
6 as to relevance and Mr. Comley's Motion to Strike at this  
7 time.

8 MS. LANGENECKERT: By this document, you mean  
9 her full testimony?

10 JUDGE STEARLEY: I do mean the testimony  
11 portion. We've already made a ruling with regard to the  
12 deposition itself, the attachment.

13 MS. LANGENECKERT: Okay.

14 JUDGE STEARLEY: And with that, Ms. Baker, I'm  
15 back to you for cross-examination.

16 MS. BAKER: No problem.

17 CROSS-EXAMINATION

18 BY MS. BAKER:

19 Q Good morning, Ms. Cason.

20 A Good morning.

21 Q You state that you are the President of the Four  
22 Season Lakesites Property Owners Association, is that  
23 correct?

24 A Correct.

25 Q You were here for Mr. Summers' testimony

1 yesterday where we went through and divided up the  
2 property of Lake Region; is that correct?

3 A Yes, I was.

4 Q Okay. Do you have members in Porta Cima?

5 A Yes, we do.

6 Q Do you have members in Villages?

7 A No.

8 Q Do you have members in Thornwood?

9 A No.

10 Q How about members in Shawnee Bend 2, 3, 4, 5 or  
11 6?

12 A No.

13 Q Horseshoe Bend?

14 A Excuse me.

15 Q You can pull it towards you, too.

16 A Okay. Yes. In Horseshoe Bend, we do.

17 Q Treetop Village and what he considered a  
18 grouping?

19 A Yes.

20 Q So, basically, it's Porta Cima, Horseshoe Bend  
21 and the Treetop Village section?

22 A Many areas of Horseshoe Bend. Not the entirety  
23 of Horseshoe Bend, but a good portion of it.

24 Q Okay. And as the President of the Property  
25 Owners Association, I assume that people bring their

1 issues to you regarding their utility service; is that  
2 correct?

3 A Yes. Among all the issues, that's one of them.

4 Q Okay. Do you keep a list or documentation of  
5 some of the issues that your members have?

6 A Yes, I do.

7 Q All right. What -- what utility issues are on  
8 your list that have been related to you?

9 A Actually, the service that we received,  
10 everybody is quite happy with. The only issue with  
11 utilities that anyone has ever brought up to me is the  
12 issue of availability fees on -- on Porta Cima, in Porta  
13 Cima, not on Horseshoe Bend.

14 Q Okay. How about Treetop? They do not have --

15 A That's in Horseshoe Bend. And no, they do not  
16 have availability fees.

17 Q All right. So dealing with just Porta Cima, you  
18 heard Mr. Summers' testimony yesterday. He estimated or  
19 maybe had indicated that he had heard that there were  
20 about 1607 lots in Porta Cima. Are you aware of how many  
21 lots there are in Porta Cima?

22 A I -- I can give you the actual numbers as we  
23 believe them to be since we assess people.

24 Q Okay.

25 A We sort of have to know those numbers.



1 Q That's true.

2 A They are 1285 unimproved lots. There are 462  
3 improved lots.

4 Q And when you say improved lots, what do you mean  
5 by that?

6 A With homes.

7 Q And those are homes that are taking utility  
8 service?

9 A Correct.

10 Q So there are 1285 lots who are not taking  
11 utility service at this time?

12 A Correct. And let me just add, there are seven  
13 questionable indentured lots where someone built on one  
14 lot or might have built in between two lots, and the other  
15 lot may not be receiving availability fees.

16 Q An additional seven or --

17 A Additional seven.

18 Q Did you include those in the 462?

19 A Deduct that from the 1285. So I think that  
20 takes us to 1278 if my math is right.

21 Q Okay. So the 1285 includes seven that are  
22 double lots?

23 A Yes.

24 Q I understand. And are you a homeowner in Porta  
25 Cima?

1           A     Yes, I am.

2           Q     Have you ever paid a utility -- a -- an  
3 availability fee?

4           A     I believe I did.  Although the bank records, I  
5 tried to find them, and I can't -- it's over seven years,  
6 so they don't have those records.  But I bought my  
7 property in 1999 and built on it.  And I was receiving --  
8 received bills in 2001 and 2002 for availability fees.  
9 Actually, in three and four as well.  I believe I paid in  
10 2001 and 2002.

11          Q     Okay.  And then in 2003, you were considered a  
12 utility customer and were not charged an availability fee?

13          A     Actually, what happened is I went to the manager  
14 of the company, and he went to the owners of the company,  
15 and I said, We built our house in between two lots, so  
16 there was actually no way the availability could be  
17 available because -- unless you tore the house down.  And  
18 so that, I believe, is when they started the policy of  
19 when someone built in between two lots, they did not  
20 charge you for the availability fee on the -- on the lot  
21 that is considered undeveloped.

22          Q     Do you recall how much you paid in availability  
23 fees in 2001?

24          A     \$300.

25          Q     And in 2002?

1           A     \$300.

2           Q     When did you become the President of the  
3 Property Owners Association?

4           A     I think three years ago.

5           Q     Okay. Were you provided any documentation of  
6 the previous Property Owners Association President?

7           A     Yes.

8           Q     Within that documentation, were you given any  
9 information on availability fees or undeveloped lots that  
10 were present before you became President?

11          A     Yes. I -- I -- numbers and things like that.  
12 Yes.

13          Q     Okay. And so you -- you do have documentation.  
14 How far back does that documentation go?

15          A     1994.

16          Q     All right. Do you -- or are you aware of how  
17 many undeveloped lots there were in 1994?

18          A     No. I can get that for you if you want that.  
19 But I don't have that.

20          Q     Okay. Do you have any indication from that  
21 documentation of the number of availability lots any time  
22 before you became President?

23          A     In 19 -- I want to say in 2000, what the  
24 developer did is he started selling property clumps at a  
25 time, if you will. And the first one was Grand Pointe 1

1 and 2, which is where we live. Then he -- as he would  
2 sell out one area, then he would open a new area for the  
3 consumers. He has -- he has, up until recently, still  
4 owned a few lots. But he has ended that -- that sale of  
5 property. It's all sold out in this one area. And I  
6 could probably find you the actual year when that would be  
7 considered sold out. I'm thinking it's probably around  
8 2004.

9 Q And that was called Grand View?

10 A Grand Pointe --

11 Q Grand Pointe.

12 A -- is -- is our subdivision.

13 Q Okay.

14 A But when you look at that map, you have Grand  
15 Pointe. You have Champion's Run. You have Heritage  
16 Island and you have Areva Es (ph.), which all of those  
17 were sold out, I would say mid 2000s.

18 Q Okay. And when -- you said you were in the  
19 original Grand Pointe?

20 A Uh-huh.

21 Q When did sales for Grand Pointe begin,  
22 approximately?

23 A I have documentation back to 1993. This was an  
24 issue because there were no roads and no way to get there.  
25 So there was a community bridge that was built. And the

1 original -- the original property owners bought their  
2 property by taking a ferry over from the Lodge of the Four  
3 Seasons to the area, and the land salespeople would sell  
4 them land that way. So I have documentation back to 1993.  
5 That's when one of the oldest property owners bought.

6 Q Okay. When you bought your property, were you  
7 aware of the -- the availability fee covenants on -- in  
8 the -- in the documents for your property?

9 A No, I was not.

10 MS. BAKER: I think that's all questions I have.  
11 Thank you very much.

12 JUDGE STEARLEY: Thank you, Ms. Baker.  
13 Cross-examination by Staff.

14 CROSS-EXAMINATION

15 BY MS. OTT:

16 Q Good morning, Ms. Cason.

17 A Good morning.

18 Q I'm going to try not to go back all the way  
19 through what Ms. Baker discussed with you, but I wanted to  
20 clarify a few things. You purchased your lot in what  
21 year?

22 A 1999.

23 Q And when you purchased your lot, did you buy the  
24 two lots simultaneously?

25 A Yes. We did not buy them from the developer,

1     however.  We bought them from someone who had already  
2     bought them from the developer.

3           Q     So there was a structure already on one lot?

4           A     No.

5           Q     But not the other?

6           A     No.  It's undeveloped pieces.

7           Q     And the previous owner owned both lots --

8           A     Correct.

9           Q     -- next to each other?

10          A     Correct.

11          Q     Okay.  And it took you till 2002 to build your  
12     home?

13          A     No.  2000.

14          Q     Oh, you built your home -- once you bought the  
15     lot, you immediately started building?

16          A     Uh-huh.

17          Q     And you -- you don't recall if you paid  
18     availability fees in -- in 2000?

19          A     I believe I paid in 2000 and 2001.  However, I  
20     can explain this if you -- for purposes of indenturing,  
21     when a piece of property -- when someone -- when somebody  
22     buys two pieces of property together, when you do  
23     indenture property, which we can no longer do, my lots  
24     were 27 and 28.  Well, my lots became 27 for all recording  
25     purposes for the Assessor.  In addition, however, 28 is

1 still there. And they were still requesting availability  
2 -- availability fees to be paid for that lot, although the  
3 house was built in the center of the two.

4 Q Okay. Now, you stated that you called the  
5 manager?

6 A Yes.

7 Q The manager of what? Lake -- Lake Region or  
8 Lake Utility?

9 A It was Lake Region at that time, I believe. And  
10 his name was Fritz Ritter.

11 Q So you spoke with Fritz Ritter?

12 A Yes, I did.

13 Q And then what did he do with your concern about  
14 paying availability fees on a lot your house was half on?

15 A He went to his bosses, I would assume. I know  
16 he consulted with their attorney, which was Tom Lorraine  
17 at the time. And he got back to me, although it took two  
18 years. About 18 months, he got back to me and said that  
19 they had thought about it and they had decided that when  
20 people did what we had done, they would no longer charge  
21 for availability for the second lot.

22 Q Do you know who Fritz Ritter's -- I believe  
23 that's the name you just said --

24 A Yes.

25 Q -- boss was?

1           A     No, I do not.

2           Q     Now, do you know if -- was Fritz Ritter the  
3 manager of Lake Region Water & Sewer?

4           A     I believe it was Lake Region.  At that time, it  
5 was -- that's what our bills said.

6           Q     And what did your --

7           A     Not -- not the availability bill, the regular  
8 water bill when we -- when we built.

9           Q     So when you called in concern about your  
10 availability fees on that lot, did you call the number on  
11 the bill for the availability fees or --

12          A     No.  Actually, the office is right down the  
13 street from us, so I went to the office.

14          Q     You went to the office.  And it was the same  
15 office for the availability fee as well as the water and  
16 sewer company?

17          A     Correct.

18          Q     And did they direct you to an individual that  
19 only works on availability fees or --

20          A     No.

21          Q     So it was the same people?

22          A     Yes.

23          Q     Okay.  I want to also go to the Declaration of  
24 Restrictive Covenants.

25          A     Okay.



1 Q Were you in the room yesterday when Mr. Summers  
2 was discussing the -- going over some of the questions  
3 with the Declaration of Restrictive Covenants?

4 A Yes.

5 Q And were you in the room when he said that there  
6 is a Fourth Amended Declaration of Restrictive Covenants?

7 A Yes.

8 Q And that he said that the previous ones no  
9 longer apply?

10 A Okay.

11 MS. OTT: Judge, I would like to have a Staff  
12 exhibit marked.

13 JUDGE STEARLEY: All right. I believe you'll be  
14 up to Staff Exhibit No. 12.

15 Q (By Ms. Ott) Do you have that document in front  
16 of you, Mrs. Cason?

17 A Yes, I do.

18 Q Could you read what the document title is?

19 A Fourth Amended and Restated Declaration of  
20 Restrictive Covenants.

21 Q What's the date on that document?

22 A October 1st, 2009.

23 Q Can you turn to the last page of that document?

24 A Yes.

25 Q And can you read who signed that document?

1 A Nancy Cason. And Michael Becker, the Secretary.

2 Q And is that Nancy Cason you?

3 A Yes, it is.

4 Q Okay. So you were a part of this -- this  
5 document --

6 A Yes, I was.

7 Q -- being developed? Can you turn to where it's  
8 nicely tabbed for you on page 17?

9 A Yes.

10 Q Can you please read paragraph 9?

11 A "All provisions relating to water and sewer  
12 systems and treatment are set forth in the Amendment to  
13 Third Amended and Restated Declaration of Restrictive  
14 Covenants relating to water and sewer systems dated July  
15 22nd, 2009, recorded July 29th, 2009, Book 681, page 760  
16 in the office of the Recorder of Deeds of Camden County,  
17 Missouri." It gives you the parentheses of the title.  
18 And then all provisions of water and sewer amendment shall  
19 survive the recording of this declaration.

20 Q So is it your understanding that this document  
21 is referring you back to the Third Amended and Restated  
22 Declaration of Restrictive Covenants for the water and  
23 sewer systems?

24 A Yes.

25 Q So it would be that Third Amended document which

1 -- which still stands today in this Fourth Amendment?

2 A As well as -- yes. Okay.

3 MR. COMLEY: Your Honor, I think --  
4 clarification. I don't think Mr. Summers has ever denied  
5 that the July 22nd, 2009, Amended Declarations have been  
6 rescinded. I don't think that's what he said.

7 But at any rate, we -- we can stipulate that the  
8 water and sewer systems are still governed by that  
9 particular amendment for the Third Amended and Restated  
10 Declaration of Restrictive Covenants that were filed on --  
11 filed and recorded July 29th.

12 MS. OTT: Judge, it was my -- I interpreted  
13 Mr. Summers' testimony yesterday as saying that the  
14 document he was reading from, the Third Restated  
15 Declaration on Restrictive Covenants was no longer  
16 applicable because of this Fourth Amended document.

17 And I'm trying to show that the language he was  
18 reading yesterday is still valid and good and is what is  
19 carried forth in this Fourth Amendment.

20 JUDGE STEARLEY: I understand what you're trying  
21 to demonstrate, Counsel. And I don't really think there  
22 was an objection raised. And I believe Mr. Comley's, in  
23 fact, offered to stipulate.

24 MR. COMLEY: Right. We --

25 MS. OTT: I just wanted to make sure that was

1 clear. I --

2 MR. COMLEY: We have no objection to the  
3 exhibit. So --

4 MS. OTT: All right. Well, I have no further  
5 questions, Ms. Cason. Thank you.

6 MS. CASON: Okay.

7 JUDGE STEARLEY: Were you going to offer this,  
8 Ms. Ott?

9 MS. OTT: Yes. I would like to offer it into  
10 evidence.

11 MR. COMLEY: No objection.

12 JUDGE STEARLEY: Mr. Comley, you stated no  
13 objections. Any other objections to the Staff offering  
14 Exhibit No. 12? Hearing none, it shall be received and  
15 admitted into the record.

16 (Staff Exhibit No. 12 was offered and admitted  
17 into evidence.)

18 JUDGE STEARLEY: Ands it's now cross-examination  
19 by Lake Region.

20 MR. COMLEY: Thank you, Judge.

21 CROSS-EXAMINATION

22 BY MR. COMLEY:

23 Q I think my questions are mostly going to be to  
24 clarify some things.

25 A Okay.

1 Q And that's the purpose of my cross-examination,  
2 Ms. Cason. A little history, though. Did you and your  
3 husband buy the lot in 1998?

4 A No.

5 Q Buy your lots in 1998?

6 A No. 1999.

7 Q 1999. So you built on your lots the same year  
8 you bought them?

9 A We began building right away.

10 Q So -- and your construction was complete in  
11 1999?

12 A Actually, in 2000.

13 Q Oh, okay. And to make -- I think you said in  
14 your testimony with Ms. Baker you built in between the  
15 lots?

16 A Right.

17 Q But it's on -- it's on two lots; is that  
18 correct?

19 A Right.

20 Q Let me ask you this: When you bought your lots,  
21 Lake Region was not a party to the contract; is that  
22 correct?

23 A We bought our lots from a previous owner.

24 Q And the developer was a part of that contract?

25 A No.

1 Q And you mentioned that you visited with Fritz  
2 Ritter at the utility office about the availability fee  
3 that was being charged on one of your lots?

4 A Right.

5 Q The second lot?

6 A Right.

7 Q Were you ever introduced to Mr. Waldo Morris?

8 A No, I was not.

9 Q Did you confirm with Mr. Ritter that he was an  
10 employee of the Lake Region? Or was he working for  
11 Mr. Morris?

12 A He was -- he indicated he was the manager.

13 Q He didn't tell you the manager -- did he tell  
14 you the manager of what?

15 A Of -- I believe at that time it was Lake Region.

16 Q So he said he was the manager of the utility  
17 company?

18 A Yes.

19 Q All right. But you're not billed availability  
20 fees by Lake Region at this time, are you?

21 A No. Not after 2004.

22 Q 2004. You were billed for them between -- okay.  
23 All right.

24 A In three and four. One, two, three and four.  
25 And in three, I got my dander up, and I decided I didn't

1 want to --

2 Q You went down there and said, I'm going to  
3 complain about it?

4 A Yes, I did.

5 Q Let me ask you this: Does the property owners  
6 association charge you assessments on both lots?

7 A Yes. They -- they charge you an assessment,  
8 though, which is considered one developed lot and one  
9 undeveloped lot.

10 Q So even though you have built on two lots, the  
11 property owners association still considers that you have  
12 two lots?

13 A Well, that was up until the Fourth Amended.

14 Q So now that's changed?

15 A In the Fourth Amended, property owners who have  
16 multiple lots can -- can replat and make this all one big  
17 lot.

18 Q And that way, you'll be referred to as Lot 27 in  
19 perpetuity and be billed one assessment?

20 A Correct.

21 Q During the course of Ms. Langeneckert's opening  
22 statement, I took down some notes. And according to what  
23 she said then, there were 1607 lots in Porta Cima. But I  
24 thought she said there were 1278 lots that were  
25 undeveloped.

1           A     Correct.

2           Q     Now, your -- what I gather from you, you said  
3 there were 1285.

4           A     Well, there are seven lots that could be in the  
5 same position as we are where they bought two lots and --  
6 and built on one, and one is considered built on and one  
7 is not considered built on. They may or may not be paying  
8 availability fees. We don't know.

9           Q     You don't know?

10          A     No. So there's seven lots in question.

11          Q     She also said there were 322 developed lots --

12          A     422, I believe.

13          Q     Okay. So your testimony today would be there  
14 were -- instead of 322, there was 462, according to what  
15 you said?

16          A     Excuse me. 462.

17          Q     All right. Tell me where you acquired the  
18 numbers for that.

19          A     We have a management company that oversees the  
20 day-to-day operations. They provide all kinds of  
21 documentation for us. We have -- they have historical  
22 data and so on and so forth, which is why I said I could  
23 help with some historical data.

24                     This is our 2010 projected -- or budget for 2010  
25 where we have to know exactly how many homes, how many



1 undeveloped property and actually what kind of on-site  
2 wastewater system they have as well.

3 Q Do you have people that have on-site wastewater  
4 systems in Porta Cima?

5 A Yes. We have 22.

6 Q Let me direct you to page 2 of your testimony,  
7 line 5 -- 4 and 5. How many property owners are in your  
8 Property Owners Association? You say there are  
9 approximately 7200?

10 A Correct.

11 Q Would it be more accurate to say there are about  
12 7200 properties in the association?

13 A No. It would be property owners, actually. You  
14 know, we have people who have condominiums over on  
15 Charleston, Treetop, Racket Club, Vintage Landing.

16 Q I may have misread your web site. I saw that on  
17 your web site. That's where I saw it.

18 A Okay.

19 Q And I may have misread it.

20 A Okay.

21 Q But that's why I -- I raise the question with  
22 you. Oh, and I think I -- yes. That's -- I may have  
23 misread your web site. But the other reason -- one of the  
24 things I wanted to clear up with you, too, is the reason  
25 you filed your testimony is primarily to support

1 Mr. Merciel in his position?

2 A Prior to me filing my testimony?

3 Q It said here that you agree with the testimony  
4 of Jim Merciel. It's in the bottom of page 1.

5 A Well, at that point, I had read some stuff. But  
6 no, my -- this began -- Mr. Summers can tell you that the  
7 day that we filed the Declaration of Restrictive Covenants  
8 -- or the developer filed the Declaration of Restrictive  
9 Covenants, I think the next day the Lake Region Water &  
10 Sewer applied for their rate increase and the phone calls  
11 started coming to me and to other board members about a  
12 rate increase, which we knew nothing about at that point.  
13 And so that's when we first became involved -- involved in  
14 it.

15 Q You were involved at that point. You got the  
16 notice of the local public hearing, didn't you?

17 A With it -- exactly.

18 Q And you saw that?

19 A Yes.

20 Q And then ultimately, you decided to file your  
21 testimony. And I noticed that it was primarily to agree  
22 with the rebuttal testimony of Mr. Merciel. Would that be  
23 the reason that you filed?

24 A No. I --

25 Q Do you disagree with Mr. Merciel?

1           A     No, I do not.

2           Q     Okay.

3           A     But that's not the reason I filed.  The reason I  
4 filed is that the Board of Directors voted and said that  
5 this is what -- the course that we should take.  I don't  
6 do things as a member of the Board without the Board's  
7 approval.

8           Q     So I take it that you have been given a  
9 resolution of some sort authorizing you all to intervene  
10 and also authorizing your testimony here today?

11          A     It -- I don't know if it was in the form of a  
12 resolution.  It's certainly in the minutes of the meeting.

13          Q     On page 3, you say there are 1250 lots paying  
14 the \$300 per year.  Again, that is a figure that you are  
15 estimating.  You really don't know?

16          A     That was -- I was actually estimating that  
17 number.  And now I have the actual number.

18          Q     You would not know either how many people are  
19 not paying them even though they're obligated to pay?

20          A     I would not.

21          Q     That information would be kept by the developer  
22 and -- and probably the -- the people that are billing for  
23 that fee; is that correct?

24          A     Whoever is receiving the availability fees  
25 should know that.

1           Q     On line 12, you say that you were not aware of  
2 the availability fee charge until after you closed on your  
3 property?

4           A     Right.

5           Q     So I take it that you and your husband did not  
6 read the Declaration of Restrictive Covenants and  
7 restrictions on the property before you closed on the  
8 property; is that correct?

9           A     Absolutely.

10          Q     And then would it also be fair to say, Ms.  
11 Cason, that neither you or your husband had any  
12 expectation that the availability fee mentioned in those  
13 restrictions was going to be regulated by the Missouri  
14 Public Service Commission or the owner of the facility or  
15 somebody else; is that correct?

16          A     Well, before I read it. But after I read it, I  
17 did expect that because that's what the Third Amended  
18 says.

19          Q     Well, let me ask you this: Did you consider  
20 that in connection with the purchase of your property from  
21 the -- the seller?

22          A     No.

23          Q     No. It wasn't a factor in your decision to buy?

24          A     No.

25          Q     Or in the price?

1 A (Witness shakes head.)

2 Q That was based entirely on material that you and  
3 the seller decided irrespective of what the contents of  
4 the restrictions were --

5 A Right.

6 Q -- is that correct? On line 19, you say that  
7 the availability fees are paid to a company called Lake  
8 Utilities Availability. During the course of the hearing,  
9 you've learned that it is not a company. Is that your  
10 understanding now?

11 A I've learned that it has -- it's a fictitious  
12 name.

13 Q Fictitious name registration. And it's for who?  
14 Have you learned who it's for?

15 A Well, who -- who Lake Utilities Availability is  
16 for?

17 Q The -- for the registration. Have you learned  
18 who that registration is for?

19 A The Schwer -- the two Schwermanns and  
20 Mrs. Stump.

21 Q I think we -- well, subject to confirmation, it  
22 could be Mrs. Stump and RPS Properties?

23 A Okay. RPS Properties.

24 Q On page 4, you talk about a suit between Camden  
25 County Public Water Supply District No. 4 and various

1 concerned property owners. Let me ask you your memory of  
2 that suit. Are you talking about an annexation Petition  
3 that was filed by The District?

4 A Yes.

5 Q Were you a party to that case?

6 A Yes, I was.

7 Q Were you also a Petitioner for annexation?

8 A Yes, I was.

9 Q So you were on the same side as The District; is  
10 that correct?

11 A Yes, I was.

12 Q There were a number of property owners that  
13 joined The District in that annexation request; is that  
14 correct?

15 A Correct.

16 Q And you were all represented by the same  
17 attorney, Larry Marshall; is that correct?

18 A I don't -- I didn't consider him as representing  
19 us. I -- he was representing the company, Camden County  
20 Water District No. 4, I believe.

21 Q Did you have an attorney with you? Did you have  
22 an attorney representing you at all?

23 A No, we did not.

24 Q You just signed the Petition to annex?

25 A Yes.

1           Q     And did you want The District to annex the area  
2 you had in your Petition?

3           A     We wanted The District to annex because that was  
4 the only way we were going to get fire hydrants in an area  
5 where we had already had seven arson fires. And we had  
6 gone to Lake Region Water & Sewer asked them to put in  
7 fire hydrants. They determined that they couldn't afford  
8 to do so. And so this was the resolution in order to get  
9 fire hydrants in our community.

10          Q     I see. So the lawsuit generally dealt with how  
11 to get fire hydrants into Porta Cima?

12          A     Correct.

13          Q     On line 15 of your testimony, you say there were  
14 3,348 undeveloped lots on Horseshoe Bend. Can you tell me  
15 how you got that number?

16          A     From our budget analysis.

17          Q     Your budget analysis?

18          A     Uh-huh.

19          Q     Did you confirm that with anyone who -- on the  
20 plat?

21          A     Yes.

22          Q     Or -- you did confirm that with the plat?

23          A     Yes.

24          Q     It's true, isn't it, that there are properties  
25 on Horseshoe Bend that are not subject to availability

1 fees; is that correct?

2 A I believe so.

3 Q And the number you're giving us, 300 -- 3,348,  
4 does that include all the lots?

5 A Those are undeveloped -- those are unimproved  
6 lots on Horseshoe Bend.

7 Q But you don't know which of those are subject to  
8 availability fees or not?

9 A No, I do not.

10 Q Okay. On page 5, at the top of the page, in  
11 paragraph 1, just about the two paragraphs that I objected  
12 to, you say there are no apparent limits on the amount of  
13 the fees. Now, with respect to the amount of the fees  
14 now, who can control the change in the amounts of those  
15 fees now?

16 A I would imagine -- I don't know, quite honestly,  
17 who can. I would assume the owners of Lake Utility  
18 Availability.

19 Q Aren't the fees set by the Declarations?

20 A The fees were set by the previous declaration, I  
21 believe. And I do --

22 Q Now that's -- now that's part of the Fourth  
23 Amended; is that correct?

24 A I believe it -- I believe the amount is stated  
25 in there.



1 Q Now, as a consequence of this --

2 A But I don't believe -- I don't believe it limits  
3 it.

4 Q Oh. Can you change it?

5 A I can't change it.

6 Q Well, according to Staff Exhibit No. 12 in  
7 paragraph 19.3 --

8 A Are you referring to the Declaration now?

9 Q Yes. The fourth one that was recorded in  
10 October of 2009.

11 A The water -- water and sewer system?

12 Q It would be on page 38 is where I'm reading.

13 A Okay.

14 Q But it appears in paragraph 19.3 that the owner  
15 of the area and the developer now have new powers changing  
16 the declarations.

17 A Correct.

18 Q So -- and yet the Board is involved in that,  
19 too. So would you propose changes to the -- the developer  
20 now to change the declarations?

21 A The -- the Declaration of Restrictive Covenants  
22 is the developer's document. He is the only one that  
23 could change it before. And, yes, there are some powers  
24 that are given. And you'll see that they are -- it would  
25 be difficult to change anything in this document without

1 close to 7200 people agreeing.

2 Q You'd have to have two-thirds support to change  
3 them?

4 A Correct.

5 Q But right now, with the Board having authority  
6 to propose changes to the developer, you do have some  
7 control about changing that, don't you?

8 A The declaration. But not --

9 Q Okay. Keep in mind that fees are set out in the  
10 declaration. That's what the fees are. The fees are set  
11 by the declaration.

12 A Not in this declaration.

13 Q In the previous declaration which this amends.

14 A In the previous declaration. Correct.

15 Q So if I'm reading this correctly, your Board and  
16 the direct -- and the developer would have the authority  
17 to go ahead and change the amount of those fees?

18 A May I explain something? Why?

19 Q No.

20 A Okay.

21 Q Let me ask the next question. Would you like to  
22 explain something?

23 A The reason that this became a surviving  
24 instrument, this was -- was removed is -- not removed, but  
25 put into another document was also for the fact that the

1 Board cannot condone the availability fee issue. And the  
2 Board would not agree to that.

3 Q In section 19.3, irrespective of your agreement,  
4 you now have some control over changing it?

5 A We can change things.

6 Q And I know this sounds like the obvious. You  
7 mentioned that -- I'm not too sure whether you said this,  
8 but would you agree with me that they are not limited in  
9 time?

10 A I would agree that they are not limited in time  
11 in the fact that if someone couldn't afford to build a  
12 home, they would still have to continue paying those fees.

13 Q They'd still have to pay though fees or they'd  
14 have to sell the lot to somebody who wanted to build on  
15 there?

16 A Correct.

17 Q That it may become uneconomical for them to hold  
18 onto the lot in terms of -- and the market would make the  
19 trick?

20 A Right.

21 Q But they would end when somebody built the lot,  
22 built on it?

23 A Correct.

24 Q On page 6, lines 5 through 7, you mentioned that  
25 availability fees are going to Lake Utility Availability

1 as well as some to the developer. I just wanted to  
2 confirm, do you understand that the availability fee  
3 revenue derived from Shawnee Bend is payable to Ms.  
4 Stump, RPS Properties and to some extent, the developer,  
5 which is Four Seasons Lakesites?

6 A I do understand that now. Yes.

7 Q You have no idea how that revenue is split  
8 between them?

9 A No, I do not.

10 Q Now -- let's see. Somewhere on page 6 here you  
11 say that to your knowledge -- I'll direct you to lines 11  
12 through 13. You do not know that the neighboring areas of  
13 Shawnee Bend or The Villages of Shawnee Bend pay  
14 availability fees. Is that still your testimony? You  
15 don't know?

16 A No. I actually can give you other testimony. I  
17 did check to -- with the managers of The Villages of  
18 Shawnee Bend, and they -- they said there are no  
19 availability fees. And I own four lots over on Shawnee  
20 Bend 6, and I get no bills for availability fees, so I  
21 assume that there's none there as well.

22 Q All right. Mrs. Langeneckert referred to  
23 discrimination between these customers. Would the  
24 Property Owners Association have any objection if Lake  
25 Region decided to tariff an availability charge for all

1 the other undeveloped lots within its service territory?

2 A I imagine they would have an objection. Yes.

3 Q Would -- the Property Owners Association would?

4 A I believe so.

5 Q They would? They'd have objections to you  
6 paying them as well as everybody else?

7 A Wait. I think I might have lost you on this  
8 one.

9 Q Right now, they're not being charged for Shawnee  
10 Bend 6 or The Villages.

11 A Correct.

12 Q And I mentioned that in her opening statement,  
13 Mrs. Langeneckert referred to that there's some  
14 discrimination there. It's unfair for you all to pay them  
15 and these big folks not. And then my -- my question was,  
16 would the Property Owners Association object to having an  
17 availability fee charged by Lake Region for all the  
18 undeveloped lots in Shawnee Bend 6 and in The Villages?

19 A Yes. We would -- they would probably not agree  
20 with that because we don't agree with the availability  
21 fees to begin with.

22 Q So you're saying that availability fees  
23 shouldn't be charged for you to Porta Cima and they  
24 shouldn't be charged to people in The Villages and --

25 A Correct.

1 Q And isn't the difference between those two areas  
2 -- those areas, as far as you know, there's nothing in the  
3 Declaration of Restrictions in those areas requiring the  
4 payment of availability fee?

5 A Correct.

6 MR. COMLEY: That's all I have, Judge.

7 JUDGE STEARLEY: All right. Thank you,  
8 Mr. Comley. Questions from the Bench? Commissioner  
9 Kenney?

10 COMMISSIONER KENNEY: No. I don't have any  
11 questions. Thank you, ma'am.

12 JUDGE STEARLEY: Nor do I. Ms. Cason, I thank  
13 you for your testimony.

14 MS. CASON: Thank you.

15 JUDGE STEARLEY: As with the other witnesses, I  
16 am -- I'm sorry. I'm getting ahead of the game. We do  
17 want to allow Ms. Langeneckert to do redirect.

18 MR. COMLEY: I think that's a comment on my  
19 cross-examination.

20 REDIRECT EXAMINATION

21 BY MS. LANGENECKERT:

22 Q Ms. Cason, there's a deposition attached to your  
23 testimony; is that not correct?

24 A Yes, there is.

25 Q And that deposition was the one that was

1 referred to by Mr. Comley and has been talked about at  
2 some length here in this hearing; is that correct?

3 A Yes.

4 Q Now, when you received that deposition and read  
5 it, what did -- what was your impressions? What -- what  
6 caused you to -- you reviewed that because you were part  
7 of the suit. But when you looked at that, what other  
8 things did you notice?

9 A Well, the -- my initial reaction was I truly  
10 believed that the fees that these property owners were  
11 paying was going to Lake Region Water & Sewer.

12 Q The fees for --

13 A The availability fees was going to Lake Region  
14 Water & Sewer. That would make some sense. For the  
15 infrastructure and for maintaining the good quality of  
16 service that they have.

17 However, through that deposition, it was  
18 demonstrated that the -- the availability fees go to  
19 individuals in RPS and Mrs. Stump. And then through  
20 further investigation, that those fees are not set aside  
21 for utilities. So it seemed a little difficult to  
22 swallow.

23 Q And of your impression up until reviewing that  
24 deposition that your fees were being paid to Lake Region  
25 Water & Sewer?

1           A     Or to a -- or an affiliate that would contribute  
2 to the infrastructure of the utility.

3           Q     So when you went down to the company office to  
4 say that you didn't think it was fair for you to pay these  
5 availability fees, didn't you think that you were going to  
6 Lake Region to ask them to remove the availability fees  
7 from their bills?

8           A     Yes. Yes.

9           Q     Now, in your testimony, you heard some  
10 discussion about the statements you made with reference to  
11 the property owners and their concerns on availability  
12 fees.

13          A     Yes.

14          Q     And in that testimony, you talk about the  
15 availability fees that are -- are being paid and why they  
16 wanted to get involved in this case?

17          A     Yes.

18          Q     And you indicated that you had talked to many of  
19 the property owners, and they indicated to you their  
20 concerns with these availability fees?

21          A     Correct.

22          Q     And the Board, through those concerns that both  
23 you received and they received as members of the Board,  
24 voted to allow participation in this case. And that's  
25 obviously not a -- I'm not the most expensive, but it's



1 not a cheap undertaking.

2 A No, it's not.

3 Q And so that -- in your testimony, when you  
4 indicate the concerns of the property owners, those are  
5 the ones that have been indicated to you by those members  
6 of your association?

7 A Correct.

8 Q And you -- you put those there as President of  
9 the Association; is that not correct?

10 A Correct. With the approval of the -- of the  
11 Board.

12 Q And did the Board review your testimony at all,  
13 or was that --

14 A They --

15 Q Did you review it as the President of the Board  
16 and --

17 A Yes. They -- my surrebuttal, you mean?

18 Q Yes.

19 A Yes. They all reviewed that.

20 Q And they -- they agreed that that was acceptable  
21 for you to file as President of the Board?

22 A Yes.

23 Q Okay. Now, Mr. Comley asked you about some  
24 undeveloped lots on Horseshoe Bend. And there were  
25 discussion also about undeveloped lots on Lake Region and

1 how many there were.

2 A Uh-huh.

3 Q Now, you indicated that you have in your control  
4 or possession the numbers that include those undeveloped  
5 lots; is that correct?

6 A Correct.

7 Q And you have those from the time that Porta Cima  
8 was first developed?

9 A Yes.

10 MS. LANGENECKERT: Mr. -- if the Commission  
11 would be interested, we'd be happy to file those numbers  
12 as late-filed exhibit. So far, no one seems to be able to  
13 testify as to how many there actually are or how many  
14 there have been. And if we have documents that show that,  
15 I think that would help the Commission in its decision.

16 JUDGE STEARLEY: You may certainly file those  
17 documents as a late-filed exhibit. Upon their filing,  
18 though, they will be subject to the normal round of  
19 objections that come from the other parties.

20 MS. LANGENECKERT: I would be shocked if that  
21 would happen. That's all I have.

22 JUDGE STEARLEY: All right. And I --

23 MS. LANGENECKERT: I would like --

24 JUDGE STEARLEY: We've talked about several  
25 exhibits, Ms. Langeneckert, in terms of being filed.

1 MS. LANGENECKERT: I've got little arrows.

2 JUDGE STEARLEY: I think yesterday I said ten  
3 business days.

4 MS. LANGENECKERT: We'll probably have the one  
5 later today. The First Amended we've already ordered, and  
6 we'll work on getting the deposition.

7 JUDGE STEARLEY: Okay.

8 Ms. LANGENECKERT: And then we'll be able to get  
9 the others to you, I guess, certified by the Property  
10 Owners Association.

11 JUDGE STEARLEY: Okay. So let's -- let's shoot  
12 for a common deadline, then. You know, if you get them in  
13 earlier, that's certainly fine.

14 MS. LANGENECKERT: Okay.

15 JUDGE STEARLEY: But let's say --

16 MS. LANGENECKERT: Tax day when everything else  
17 is due?

18 JUDGE STEARLEY: April -- yes. No later than  
19 April 12th.

20 MS. LANGENECKERT: Okay. Thank you.

21 JUDGE STEARLEY: All right. Now, Ms. Cason --

22 MS. CASON: Yes.

23 JUDGE STEARLEY: Now you may step down.

24 MS. CASON: Thank you.

25 JUDGE STEARLEY: I didn't mean to jump the gun

1 there.

2 MS. LANGENECKERT: I'd like to offer --

3 JUDGE STEARLEY: As with the other witnesses,  
4 though, I am not finally excusing you just in case the  
5 Commissioners would like to recall you.

6 MS. CASON: Absolutely.

7 JUDGE STEARLEY: And that leads us -- brings us  
8 to Staff, I guess. Mr. Featherstone.

9 CARY FEATHERSTONE,  
10 being first duly sworn to testify the truth, the whole  
11 truth, and nothing but the truth, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. OTT:

14 JUDGE STEARLEY: Thank you. You may be seated.

15 MS. OTT: I would like to have  
16 Mr. Featherstone's direct and surrebuttal marked as Staff  
17 exhibits.

18 JUDGE STEARLEY: All right. And you're up to  
19 Staff Exhibit 13 at this point for his direct. And you  
20 have surrebuttal as well?

21 MS. OTT: Yes.

22 JUDGE STEARLEY: That would be Exhibit 14 for  
23 Staff.

24 Q (By Ms. Ott) Good morning.

25 A Good morning.

1 Q Would you please state your name for the record?

2 A Cary G. Featherstone.

3 Q And whom are you employed and in what capacity?

4 A Missouri Public Service Commission. I'm a  
5 regulatory auditor.

6 Q And are you the same Cary Featherstone that has  
7 previously caused to be prepared direct and surrebuttal  
8 and portions of the cost of service report which have been  
9 previously marked for identification as Exhibits 13, 14  
10 and 7?

11 A Yes.

12 Q And with respect to your direct and surrebuttal  
13 testimony, was that prepared by you?

14 A It was.

15 Q Do you have any corrections to make to the  
16 testimony at this time?

17 A I -- I have a few on the surrebuttal.

18 Q Would you like to tell me which ones, what  
19 corrections you have?

20 A At page 2, line 11, there is an amount that is  
21 \$330,000 that should have been \$360,000. That was a typo.  
22 And on page 3, line 8, the \$6,571 figure should have been  
23 18,125.

24 MR. COMLEY: Say that page again. I'm sorry. I  
25 missed it.

1 A Page 3, line 8.

2 Q (By Ms. Ott) Are there any other changes?

3 A Page 10, Line 4, the \$330,000 should be 360,000.

4 And page 11, Line 2, the 6,571 should be the 18,125.

5 Q Are there any other changes?

6 A And my last one is on page 20, line 6, under  
7 Horseshoe Bend Sewer in the middle column, the \$6,571  
8 should be 18,125.

9 Q Is that all of your changes?

10 A That I'm aware of. Yes.

11 Q Now, if you were asked the same or similar  
12 questions as contained in this direct and surrebuttal  
13 testimony, would your answers given today be the same?

14 A They would.

15 Q And would they be true and accurate to your best  
16 knowledge, belief and information?

17 A Yes.

18 MS. OTT: With that, I would like to offer  
19 Exhibit Nos. 13 and 14 into the record and tender  
20 Mr. Featherstone for cross-examination.

21 JUDGE STEARLEY: Very well. And I'm -- I'm  
22 going to ask if there are objections. Mr. Comley, I'm  
23 assuming you're going to have the same objections we've  
24 already gone over with other witnesses?

25 MR. COMLEY: Yes, your Honor. Yes. We would

1 renew our objections as set forth in our Motion to Strike,  
2 particularly with the surrebuttal testimony of  
3 Mr. Featherstone starting on page 4, line 3. We would  
4 object to all lines between there and page 21, line 7 on  
5 the grounds stated in our Motion to Strike.

6 JUDGE STEARLEY: All right. And, again, as I've  
7 done with those other portions of testimony, I'll hold on  
8 ruling until we get to the conclusion of the presentation  
9 of evidence.

10 MR. COMLEY: I have no objection -- I think --  
11 we have no objection to Exhibit 13, which would be his  
12 direct.

13 JUDGE STEARLEY: 13. Okay. Any other  
14 objections to 13? Very well. Exhibit 13 will be received  
15 and admitted into the record.

16 (Staff Exhibit No. 13 was offered and admitted  
17 into evidence.)

18 JUDGE STEARLEY: And we dealt with Exhibit 7  
19 yesterday, the cost of service report, which was admitted  
20 subject to the objections of Lake Region.

21 MR. COMLEY: There were some exceptions I think  
22 we noted for the record.

23 JUDGE STEARLEY: That's correct. We'll begin  
24 cross-examination of the Property Owners Association.

25 MS. LANGENECKERT: No questions for

1 Mr. Featherstone.

2 JUDGE STEARLEY: Office of the Public Counsel?

3 CROSS-EXAMINATION

4 BY MS. BAKER:

5 Q Good morning, Mr. Featherstone.

6 A Good morning.

7 Q What is the purpose of availability fees? What  
8 are they used for?

9 A It is my understanding in talking with Staff  
10 members and with the company, primarily Mr. Summers, that  
11 they have been used in the past to, if you will, pay for  
12 or help offset the maintenance and repair and the  
13 construction of the service lines or the distribution  
14 system for the collection of the sewer -- collection  
15 system for the sewer and the water lines for the -- for  
16 the water utility.

17 Q All right. In your review of the books of Lake  
18 Region, are availability fees booked to the books and  
19 records of Lake Region?

20 A They are not. Not to my knowledge.

21 Q Okay. To your knowledge, are availability fees  
22 booked to the -- booked to the books and records of Ozark  
23 Shores?

24 A I believe they are.

25 Q Is there an affiliate relationship between Lake



1 Region and Lake Utility Availability 1, I believe, now who  
2 collects the availability fees?

3 MR. COMLEY: I'll object. This will call for  
4 the legal conclusion of a witness concerning what would be  
5 regarded as an affiliate of a company. And I think we  
6 need to figure out what -- what affiliate is defined as,  
7 if he's got a definition.

8 Q (By Ms. Baker) I will rephrase and say, is  
9 there a relationship between Lake Region and Lake Utility  
10 Availability now No. 1?

11 A I believe they're all under common ownership.  
12 They are owned by the same individuals and enterprises.

13 Q And those individuals would be?

14 A Well, it's the -- the Schwermanns under the --  
15 the estate. I believe it's RPS Properties and then  
16 Mrs. Sally Stump.

17 Q Regarding the bank accounts for Lake Region, is  
18 there a comingling of utility costs such as management  
19 fees, et cetera, and availability fees into a  
20 non-regulated shareholder bank account?

21 A It's my understanding they have a common bank  
22 account that is used when the Ozark Shores regulated  
23 company and the Lake Region regulated company makes  
24 payment for the management, the consulting fees, if you  
25 will. Those fees will go into a common bank account with

1 the Lake Utility Availability fees.

2 Q Okay. So if I understand you right, there is a  
3 -- a bank account that has been set aside, and into that  
4 bank account go management fees and availability fees?

5 A It's my understanding that's what happens.

6 Q Okay. And that is management fees for the  
7 management group or for the owners of Lake Region?

8 A It's -- well, the way it was conveyed to me  
9 during the course of the audit was the -- the management  
10 group, the executive management group, their -- their fees  
11 for consulting work, some of their travel, out-of-pocket  
12 costs as well as a debt service on a -- on a loan that  
13 they used to purchase Lake Region. Those costs that are  
14 -- if you will, are transferred or charged from the  
15 utility to the bank account is for the management fee side  
16 of that.

17 Then there is the Lake Utility Availability fees  
18 that is billed and collected by The District employees,  
19 the water district employees, that those amounts of money  
20 are then also transferred to -- or deposited into this  
21 bank account.

22 Q All right. What is the effective comingling of  
23 these costs and fees for regulatory purposes?

24 MR. COMLEY: I object to the form of the  
25 question. The word "comingling," I think is not

1 established at all.

2 MS. BAKER: Okay. I'll rephrase.

3 Q (By Ms. Baker) What is the effect of putting  
4 all of this money into the same -- into the same bank  
5 account for regulatory purposes?

6 A Well, certainly, the -- the ownership group,  
7 however you define that, has access to the monies. And  
8 those monies are -- the monies that are -- are charged  
9 from the regulated utility to this bank account certainly  
10 -- that's -- that's something that we would look at in  
11 terms of our audit. And did.

12 And, in fact, we made an adjustment for the  
13 management fees, to remove those in total. And then we  
14 identified some other amount that we felt was appropriate.  
15 I believe that issue was heard yesterday.

16 Then -- then in addition, the Lake Utility  
17 Availability fees are -- are included in that account.  
18 Now, we have not seen or have access to nor do we know  
19 anything about the Lake Utility Availability fees in terms  
20 of how much amounts that those are and who actually -- how  
21 that mechanically works billing and collecting from the --  
22 the District employees, moving those funds into this --  
23 this account. That, we haven't been able to -- to grasp  
24 or identify.

25 Q I see. In Staff's proposal, there is an amount

1 that is put in for maintenance and repairs; is that  
2 correct?

3 A In terms of our rate presentation or our rate  
4 recommendation --

5 Q Yes.

6 A -- for Lake Region? Yes. We -- we would  
7 examine -- we would have examined all of the costs of the  
8 -- of the company which would have included repair and  
9 maintenance costs.

10 Q Okay.

11 A And we would have -- certainly would have put an  
12 amount in what we would have normalized to a level that we  
13 thought was appropriate. And we would have included that  
14 in our revenue requirement calculation.

15 Q Okay. And for any maintenance or repair items  
16 that happened, say, on the lines that are in front of a --  
17 or would serve an undeveloped lot, those maintenance  
18 repair costs are included as a reasonable cost of Lake  
19 Utility -- of Lake Region?

20 A Absolutely. We made no distinction between the  
21 lines that were running in front of properties that were  
22 undeveloped as opposed to developed. So all -- all  
23 maintenance costs, again, normalized maintenance costs  
24 would have been included in our cost of service report.

25 Q So the customers who will be paying the rates

1 that come out of this case, a portion of that will include  
2 costs for that type of maintenance, correct?

3 A Yes.

4 Q Okay. In the Staff's proposal, are the current  
5 owners provided a return on their investment in Lake  
6 Region?

7 A Yes.

8 Q And so, therefore, the availability fees  
9 collected are above and beyond return for investment for  
10 the plant of Lake Region; is that correct?

11 A Well, the availability fees have not been  
12 included in rates or in our presentation in our cost of  
13 service report. So any monies that would not be used as a  
14 -- as a revenue source would go directly to the  
15 partnership.

16 Q And that would be in addition to what the owners  
17 get as return on investment?

18 A Yes. It would be over and above.

19 Q All right. You -- you've heard that there are  
20 approximately -- is it 1285 unimproved lots at Porta Cima.  
21 Does that --

22 A I think Ms. Cason has provided that. She  
23 provided that information to -- to Staff and she also has  
24 testified to that.

25 Q Okay. And would you agree that at -- even

1 taking off the -- the seven double lots so that's 1285  
2 minus seven, 1200, or 1,278 lots, at \$300 per year, that  
3 is \$383 and \$400 -- \$383,400 per year?

4 A Not -- not having a calculator, but I will  
5 accept that -- that number.

6 Q And the investment we've heard on the plant is  
7 around \$5.3 million?

8 A The investment might have been at the time of --  
9 perhaps when the developer donated the contributed  
10 property. In our case for the Shawnee Bend Water & Sewer,  
11 we have a net of about \$4.1 million of -- of CAAC or  
12 contributions and amount of construction, what we would  
13 call contributive profit.

14 Q And are you assuming that that is -- has been  
15 recouped by the developer through the availability fees,  
16 through any lot sales that he has made?

17 A I think that in the water and sewer industry,  
18 there's sort of a fundamental tenant or principle that the  
19 -- that the developers recoup their monies for invested  
20 property for improvements of the land sale prices of the  
21 lots themselves.

22 I think the availability fees were very likely  
23 intended to recover ongoing maintenance and repairs and  
24 any ongoing construction that was necessary for the -- to  
25 contribute to the utility so that it could service the

1 infrastructure.

2 Q But in your review, you have not seen \$383,400  
3 available for the utility to use for that type of  
4 maintenance and repairs --

5 A No.

6 Q -- through the availability fees?

7 A No. Not at all.

8 MS. BAKER: No further questions. Thank you.

9 JUDGE STEARLEY: Thank you, Ms. Baker.

10 Cross-examination, Lake Region?

11 CROSS-EXAMINATION

12 BY MR. COMLEY:

13 Q Mr. Featherstone, before going page by page and  
14 line by line with your surrebuttal and your testimony, I  
15 -- I've got a few points I wanted to make with you or try  
16 to make with you.

17 A Okay.

18 Q First, it's true, after your review of  
19 everything that you've talked about, that Lake Region does  
20 not have legal rights to the availability revenue?

21 MS. OTT: Objection. Mr. Comley's asking for  
22 Mr. Featherstone to make a legal conclusion, and he's not  
23 an attorney.

24 MR. COMLEY: I'll rephrase the question.

25 Q (By Mr. Comley) In your review, does Lake

1 Region have authority to collect that revenue, the  
2 availability fee revenue?

3 A I don't know if they have the authority or not.

4 Q The assignment that you've seen in the  
5 testimony, isn't it your understanding that the rights to  
6 that revenue belong to someone other than Lake Region?

7 A Well, I think it's difficult to -- to -- to --  
8 to definitively say that since the -- the entities that  
9 are involved are the same ownership group.

10 Q So you're saying that because there is an  
11 interlocking ownership of these entities that that makes  
12 the availability fee revenue legally belong to Lake  
13 Region?

14 A I think it's interlocked and intertwined.

15 Q Let me ask you this question: If the developer  
16 that we're talking about in this case decided that it did  
17 not want to assign any of the availability fee revenue to  
18 anyone, would the Staff be in this case arguing that that  
19 availability fee revenue on Shawnee Bend should be imputed  
20 to Lake Region?

21 A I think if the availability fees were selected,  
22 sort of an underlying view that it's for the utility  
23 infrastructure and if we had a developer who was  
24 collecting those fees and -- and had a different developer  
25 then a utility owner, I think it would go to the utility



1 who would be regulated and ask them why that relationship  
2 -- or why that would be permitted.

3 Q So you think the utility would have control over  
4 the developer in that case?

5 A Well, in many instances, the developer and the  
6 utility are one in the same.

7 Q Well, in this case, when we're dealing with Four  
8 Seasons Lakesites, if the developer decided not to assign  
9 any of the availability fee revenue to anyone, decided to  
10 keep that all to itself, would it still be your  
11 position --

12 MS. BRUEGGEMANN: I'm going to object at this  
13 point to the speculation and -- and the hypotheticals.  
14 We're -- he's saying for this situation, if the developer  
15 would have. We're getting a little off course, I think,  
16 with what I feel comfortable with Mr. Featherstone making  
17 comments on. So I'd object to the speculation.

18 MR. COMLEY: Your Honor, what Mr. Featherstone  
19 is trying to establish, I think, is a fairly new  
20 rate-making principle. The facts are clear that Lake  
21 Region has no rights to this revenue. And I think the  
22 hypothetical posed would determine, well, under what  
23 conditions would availability fees not be imputed to the  
24 utility. I think it's a perfectly reason reasonable  
25 question for purposes of his rate-making understanding.

1 MS. BRUEGGEMANN: And I think if we get into  
2 that, we'll be here all day with all the different  
3 potential issues and hypotheticals and unknowns that --  
4 that could be, should be and might be. And I think we  
5 have to deal with the facts as they are right now, your  
6 Honor.

7 JUDGE STEARLEY: I believe Staff has opened the  
8 door to this. They have made a number of different  
9 comparisons between other utility companies where  
10 availability fees were an issue, they're structured into  
11 rates, et cetera. So I believe Mr. Comley can explore  
12 this. So the objection is overruled.

13 Q (By Mr. Comley) Do you understand the question,  
14 Mr. Featherstone?

15 A I think so. You may want to re --

16 Q I'll try to redirect you on this. The question  
17 is, if Lake Seasons -- Four Seasons, rather. If Four  
18 Seasons Lakesites decided, the developer in this case  
19 decided not to assign any of the availability fee revenue,  
20 would your position still be that with respect to Lake  
21 Region's operations in Shawnee Bend the availability fee  
22 revenue received by the developer should be imputed to  
23 Lake Region?

24 A That's not -- what has happened your  
25 hypothetical is not in reality.

1 Q And I'm not saying it is.

2 A But -- but I think we would have to give a great  
3 deal of internal discussion among the -- the Staff to see  
4 what remedies, if any, would be available to Staff.

5 Q So you haven't really explored that among the  
6 Staff yet?

7 A We would not -- we have not explored your  
8 hypothetical since that's not the reality of what's  
9 happened here.

10 Q But isn't it true that there are developers in  
11 the -- in water and sewer fields, they have maintained  
12 availability fees and the utility operates without any  
13 connection to the developer?

14 A We learn all the time that there are developers  
15 that are operating utility systems that are not even --

16 Q Certificated?

17 A -- certificated. So there -- I suspect that  
18 there is a lot of different scenarios that exist.

19 Q And it's true in this case, isn't it, that the  
20 developer was charging availability fees even before  
21 certification?

22 A I -- I'm not -- I'm not the witness on the  
23 history and the evolution of the availability fees.  
24 That's really Mr. Merciel's area.

25 Q So you don't know?

1           A     I don't know.

2           Q     I know I've -- I brought this up before.  On  
3 page 8, line 22 of your testimony --

4           A     Surrebuttal?

5           Q     Of the -- no.  We're dealing with your  
6 surrebuttal completely.  Forgive me.  I'm going to be  
7 talking exclusively about your surrebuttal.  On page 8,  
8 line 22, you've mentioned that the company has repeatedly  
9 refused to provide any information on a formal basis  
10 concerning availability charges.  And I -- I wanted to  
11 clarify.

12                     The reason that the information didn't -- was  
13 not forthcoming is because the company objected to the  
14 data requests in which that information was requested.  
15 Isn't that what you're getting at in that part of your  
16 testimony?

17          A     Yes.

18          Q     With respect to the information you're using in  
19 calculating the amount of the availability revenue, you're  
20 using \$360,000.  Do I have that amount correct?

21          A     You do.

22          Q     That amount -- that amount has been based on  
23 information you have received primarily from Ms. Cason of  
24 the Property Owners Association.  Would that be a fair  
25 statement?

1           A     The actual number itself was, yes. It was -- it  
2 was really based upon the one 1285 undeveloped lots,  
3 unbuilt lots. We used 1200 to be conservative because it  
4 also was testimony that was provided very similar to the  
5 public hearing that occurred at the -- at the lake that I  
6 attended.

7                     We used 1200 to be conservative because we were  
8 concerned about the double lots. And I think at one point  
9 I even heard somebody had three lots. So we wanted to  
10 make sure that we didn't have any overlapping.

11           Q     You have not done any calculations even today of  
12 what costs may have gone into the process employed by Ms.  
13 Stump or RPS Properties in acquiring their rights to that  
14 revenue, have you?

15           A     No. I talked with the company and was told that  
16 there may be some confidentiality -- in the  
17 confidentiality agreement there may be some amounts that  
18 were paid over and above or may be continuing amounts  
19 paid. Those were all things that we would have liked to  
20 have seen.

21           Q     Right. And -- and, again, Mrs. Stump and RPS  
22 Properties were not subpoenaed for information as you  
23 know; is that correct?

24           A     Not that I'm aware of.

25           Q     The only thing that came were data requests to

1 the company?

2 A I believe that's correct.

3 Q Have you taken into account any of the costs  
4 that might be involved in collecting the availability fee  
5 revenue by Ms. Stump and RPS Properties?

6 A You're talking about the administrative costs  
7 mechanically to collect, bill through the water district  
8 employees.

9 Q Any costs. Any costs?

10 A No.

11 Q Even litigation. You have not even calculated  
12 how much that may have been during test year?

13 A No. Any -- any information that the company  
14 would like for us to consider in terms of cost, we would  
15 be happy to look at.

16 Q Well, you're talking company cost. We've --  
17 we've given you company cost information, haven't we?

18 A I understand that there are legal distinctions.  
19 I'm not an attorney. I see this as very simply, they have  
20 a common ownership group. They're the same people.

21 Q So you are not distinguishing between the  
22 shareholders and the company they own. You are saying  
23 that they're one in the same?

24 A I'm -- I'm saying that the individuals that  
25 we're dealing with -- with who are in this room today are

1 the same, yes.

2 Q So you would not differentiate between a  
3 shareholder of the company in this situation or the  
4 company?

5 A Not in this instance, no.

6 Q Well, you said there are two in the room. Are  
7 there shareholders in the room?

8 A We have the President of -- of Lake Region.

9 Q You're talking about the President?

10 A The President. His wife is the shareholder.  
11 Assuming they have a good -- good relationship, they can  
12 share information. And Mr. --

13 Q That may not be an assumption you can make.

14 A Yeah. I'm willing to do that in this case.

15 Q There may be a lot of assumptions going on in  
16 this case.

17 A And Mr. Summers is the General Manager of the --  
18 all employees in the water district. And from my  
19 perspective, he oversees all of their activities  
20 work-wise.

21 Q Let me ask you this about -- I've termed it as a  
22 revenue shift in my opening remarks. You've heard  
23 testimony today, and I think I'll just mention it to you.  
24 We understand that there are 1200 -- I think it was 1285  
25 lots.

1           A     Yes.  Of which I used 1200.

2           Q     And they are undeveloped?

3           A     It's my understanding, yes.

4           Q     Out of a project of 1607 lots, there's  
5 approximately 28 percent that have been built on in that  
6 subdivision development out of 1607, 420 -- 462 lots that  
7 have been built on.  That represents about a 28 percent  
8 build-out.  If the Commission were to adopt your proposal,  
9 at least the one we think is in there by which you would  
10 take the entire amount of availability fee revenue that  
11 you've computed and assigned it to the revenue requirement  
12 for Lake Region, wouldn't it be true that 70 percent of  
13 the cost of service would be paid for by people not  
14 accepting service?

15          A     Well, it would be paid for by people who -- who  
16 I think in large measure in Ms. Cason has testified to  
17 this, that there are people who are paying availability  
18 fees who -- who believe that they were for the intended  
19 purpose of utility operations.

20          Q     And they would be paying for the bulk of the  
21 cost of service for the people who lived there.  Wouldn't  
22 that be correct?

23          A     Yes.  In this sense, the -- the development, as  
24 you say, it's about one-third developed, if I can just use  
25 just rough numbers.



1 Q I think we've gone up by 5 percent now.

2 A Well, let me use your 28 percent then. If -- if  
3 you look at it from the -- when the developer developed  
4 this system, they -- they piped, if I can use that  
5 expression, the entire development at one. Instead of  
6 phasing it in over time, they just went and put all of the  
7 -- the pipe in to support 1600 or thereabout lots. In  
8 essence, the -- if you don't use availability fees, what  
9 you -- what you have is the existing utility customers  
10 grossly subsidizing the undeveloped lots.

11 Q And how would that be?

12 A They have a very large system. As we said, it's  
13 28 percent, one-third developed. Those undeveloped lots  
14 are piped for utility service to, in essence, prepare for  
15 in anticipation of the utility customers. Because they  
16 haven't developed and they're not taking utility service,  
17 all of that repair and maintenance, all of the costs  
18 associated with that, with the entire system has to be  
19 paid for and by the customers of Lake Region.

20 Q And those are the ones taking service?

21 A Yes.

22 Q So we have donated plant. All of it's been  
23 donated to the company; isn't that correct?

24 A The -- the -- the plant -- which -- what we're  
25 talking about the availability fees are associated with

1 have been -- have been donated.

2 Q Have been donated.

3 A Yes.

4 Q And there's been two figures. There's been 5.3  
5 -- Mr. Summers talked about a 5.3 donation, which you  
6 think was probably at inception of the company. There's  
7 4.1 on the books right now or 4.1 considered as  
8 contribution?

9 A There's \$4.1 million, and that's net of CAAC  
10 related depreciation on the Shawnee Bend side. That's  
11 what we have in our case. I used that -- those numbers  
12 came from the cost of service report.

13 Q And let me follow up on -- really quickly on  
14 what Ms. Baker was talking to you about. Are you allowing  
15 Lake Region to have a return on any of the donated plant  
16 that's in its system?

17 A No.

18 Q So, basically, the return on equity for the  
19 donated plant to the shareholders is zero?

20 A Well, since the shareholders -- they don't have  
21 any investment.

22 Q They don't have any investment. It's a donated  
23 plant.

24 A That's right. It is zero.

25 Q So they -- with respect to the donated plant,

1 the only thing that the shareholders would be getting  
2 would be when the availability revenue they are requiring  
3 pursuant to the assignments and other agreements they've  
4 reached with the developer. Wouldn't that be correct?

5 A No.

6 Q They get more than that?

7 A What they get --

8 Q On the donated plant.

9 A For the shareholders of --

10 Q Lake Region?

11 A -- Lake Region, they get the return for their  
12 utility properties, plus their reimbursement costs.

13 Q Well, we're talking about return on equity. And  
14 return on equity would not be -- would be zero on the  
15 donated plant?

16 A On the donated plant. Yes.

17 Q Getting back to the question of the effect of  
18 the revenue -- and I kind of lost the train there. It  
19 kind of went out, and it -- it's trying to come back. But  
20 let me -- let me -- I'll just ask you a question directly.  
21 Is it fair and just for the people who don't live there,  
22 take water and sewer service from the company, to pay for  
23 almost all, if not a big part of the maintenance costs and  
24 service costs that are imposed by people actually taking  
25 service?

1           A     Well, they've incurred a good part of that cost.  
2     They were responsible for a good part of the cost for that  
3     infrastructure.  If -- if --

4           Q     So they need to pay more for the people that are  
5     doing that?

6           A     They're not paying more.  They're paying their  
7     share.  They're paying an amount that was not determined  
8     by the Staff or determined by this Commission but  
9     determined by -- I'm not sure whether it was the developer  
10    or if it was agreed to by the Property Association.  But  
11    an amount of money that was determined to be reasonable.  
12    And --

13          Q     So they should pay -- so you're telling me  
14    because they did that in the Declarations, they agreed to  
15    pay those availability fees, then they should be the one  
16    responsible for paying for the people that live there and  
17    get service?

18          A     Well, they will pay a portion to maintain the  
19    system.

20          Q     Now, you say --

21          A     A system that was designed to accommodate them  
22    when they were ready to hook up to the system.

23          Q     Now, you're saying a portion.  That may be the  
24    next step.  In your proposal, are you proposing that the  
25    availability fee revenues that are acquired by the

1 shareholders would be imputed to the company to cover the  
2 rate increase that the company is seeking, or are you  
3 saying that it should cover more than that?

4 A I think if you read the -- the testimony, the  
5 amount of availability fees that we compute is greater  
6 than the -- the two revenue requirements. And we're not  
7 suggesting zero. We're not suggesting to take the money  
8 and -- at least at this point and recommend a rate  
9 reduction.

10 Q Is it true that you haven't developed a --  
11 excuse me. Would it be true, Mr. Featherstone, that you  
12 have not identified any costs on Lake Region's books that  
13 can be identified with those undeveloped lots?

14 A I -- I think that was a specific question that I  
15 asked in a data request. And the information was objected  
16 to. I think it was the company's position that that  
17 amount was zero. I don't agree with that.

18 Q You would agree with that?

19 A I do not agree with that.

20 Q There are costs on the company's books that  
21 would show costs related to undeveloped lots?

22 A If -- if the company is responsible, which I --  
23 I believe they are, and I believe it's appropriate that  
24 they are, to maintain the entire infrastructure, which  
25 would be in excess of 1600 lots, infrastructure to support

1 1600 customers, if you will, if and when they decide to  
2 take that service, if -- if the repairs and maintenance of  
3 that system is -- is included in the company's cost of  
4 service, we have picked it up in our revenue requirement  
5 calculation.

6           So I believe that there are costs associated  
7 with repairs of a larger system than the company is  
8 currently serving.

9           Q     Would you go so far as to agree with me that  
10 there is no cost imposed on the company for pumping water  
11 or for treating sewer from undeveloped lots?

12          A     Yes.  However, those weren't the kind of costs I  
13 thought we were discussing.  I thought we were discussing  
14 the infrastructure.

15          Q     Well, let me just shift you a little bit.

16          A     Okay.  I think a customer who is not taking  
17 water service is not then imposing, say, pumping costs.  A  
18 cust -- a customer who is not taking sewer service is not  
19 then incurring treatment of that sewage.

20          Q     Talking more about your proposal to impute the  
21 revenue, talking more in terms of assumptions here, would  
22 it be fair to say that your proposal -- the proposal I'm  
23 talking about is where you impute the revenue to do away  
24 with the rate increase, or even more, wouldn't you be  
25 assuming that the shareholders would voluntarily give up

1 the revenue as you've computed and give that to the  
2 company?

3 A Well, those are -- those are, I think, legal  
4 distinctions I'm not prepared to -- to make. I think just  
5 from my perspective as an auditor, the -- it was -- it was  
6 through some type of -- of -- and perhaps it was the  
7 previous developer or owner, whoever the individuals were  
8 that created the Lake Utility Availability entity -- I  
9 call it an entity just to keep it distinct. It serves a  
10 purpose.

11 It seems to me that there was a -- a structure  
12 deliberately set in place so that this issue would not be  
13 brought before the Commission or that we would not have  
14 those -- those revenues to use as offsets.

15 Q When you say deliberately, you're saying that it  
16 was an unlawful thing?

17 A No. I'm not saying it was unlawful.

18 Q All right. So --

19 A I think it was just intended to -- to maybe  
20 somehow keep the -- the revenues out of the regulated  
21 process.

22 Q So --

23 A I'm speaking of revenues here. I'm talking  
24 about availability fees.

25 Q Right. In other words, lawful transactions

1 could have occurred to do that?

2 A Sure.

3 Q If the Commission would impute the availability  
4 fees to company revenue, what offset would be necessary to  
5 reflect the past treatment of rate base?

6 A I'm not -- I'm not -- I'm not following your  
7 question.

8 Q Would there be a corresponding re-evaluation of  
9 rate base if the availability fee were applied to revenue?

10 A No. I don't -- I don't see that there is a  
11 distinction or a connection between the rate base and the  
12 availability fees.

13 Q Hasn't that been done by the Staff in the past  
14 for their companies?

15 A Not that I'm aware of.

16 Q Do you know of any decision of the Commission  
17 that has ordered shareholders of a utility company to  
18 relinquish any rights they may have to personal property  
19 in order to cover the cost of service for the company?

20 A I've -- it's been a number of years. I've  
21 worked in the telecommunications industry a number of  
22 cases. And we used to take the directory advertising  
23 revenues that was treated as a -- for the Yellow Pages  
24 advertising, it was a separate subsidiary with common  
25 ownership to the company. It was an affiliated related



1 relationship. But we would take those revenues, and we  
2 would use those in the rate determination of the telephone  
3 rates. Many times, those were over the objection of the  
4 company.

5 Q Let me represent to you that I'm an AT&T  
6 shareholder, and I get dividends. Do you know of any case  
7 involving AT&T when its cost of service got so low that  
8 you expected the shareholders to give up those dividends  
9 or pay them back to the company?

10 A No. But I'm -- I'm not -- this is -- I don't --  
11 and I'm assuming you're not indicating that the  
12 availability fees are somehow a return of ownership or  
13 dividend.

14 Q Well, my stock share is a way I get money. And  
15 it looks to me like the assignment allows them to have a  
16 revenue stream. So in many respects, that assignment  
17 represents the stock certificate. But we'll get -- that's  
18 all right. I'm going to leave that alone. I'm not going  
19 to go any further.

20 On page 7, lines 4 through 6 of your testimony,  
21 of your surrebuttal, you say, "Any repairs necessary to  
22 the utility infrastructure will be made by either Lake  
23 Region or Ozark Shores to make the necessary repairs or  
24 construct new line replacement to restore service to the  
25 regulated utility customers."

1           I may be taking this out of context, but I  
2 wanted to make sure. You're not saying that Ozark Shores  
3 has any duty to maintain facilities that are owned by Lake  
4 Region?

5           A     No. That -- this statement, I think it's  
6 probably clear to the company by now, is -- the filing was  
7 made in -- I think it was October. When we set out to --  
8 to do the work, the audit process, while we were looking  
9 at Lake Region rates, because that's who filed the case  
10 and that's whose rates we're determining in this case,  
11 because of the inter-relationship, the common facilities  
12 and common equipment and personnel, we always spoke of in  
13 terms of Ozark Shores and Lake Region. And that's what  
14 this statement addresses.

15          Q     And still -- but so I'm clear, you're not  
16 expecting Ozark Shores to take up any duties or  
17 obligations with respect to regarding Lake Region  
18 facilities?

19          A     No, sir.

20          Q     I can't remember if I asked this, but let me --  
21 the -- the use of the number that you have for 1200  
22 undeveloped lots, you say is a number you think is  
23 conservative. But in the field, you have not confirmed  
24 this yourself, that there are at least 1200 lots that are  
25 undeveloped out there?

1           A     No.  And, again, this information was something  
2     that we had specifically asked the company for.  I would  
3     have much rather used the company information.

4           Q     Again, the company doesn't have that  
5     information.  I -- I think that was made plain by our  
6     objections.  And I'll -- I want to clear that up.  We --  
7     we have made no representation to Staff that the company  
8     has that information?

9           A     When you say company, you're saying combined,  
10    shareholders and -- I'm saying the shareholders and --

11          Q     I see what you mean.  I see what you mean.

12          A     Mr. Summers, the individuals that control the  
13    company that are here in this room, they have access to  
14    the information.

15          Q     And they're -- again, they're -- so you're not  
16    differentiating between them as separate parties?

17          A     That's right.

18          Q     With respect to the surrebuttal testimony, just  
19    so it's clear and -- and to give you a chance to explain  
20    if you want to, but it's true that your proposal regarding  
21    the availability fee revenue imputation and your alternate  
22    cost reallocation, this was first presented in your  
23    surrebuttal; isn't that correct?

24          A     Well, the alternate position, certainly.  The --  
25    the primary position was presented in Mr. Merciel's

1 rebuttal testimony.

2 Q Not in your direct, though?

3 A It was not in my direct.

4 Q Not in your direct. That's what I wanted to  
5 confirm.

6 A No. And we were unaware of -- of -- that Lake  
7 Region had any availability fees -- had any availability  
8 fees that even were related to Lake Region service  
9 territory. We had asked for that information through a  
10 discovery.

11 My read of that discovery then had some  
12 follow-up information that I -- that I addressed with  
13 Mr. Summers on my visit to the -- the company's  
14 headquarters in the Lake of the Ozarks in December. And I  
15 -- I left that discussion with the clear indication that  
16 there were no availability fees that we needed to consider  
17 for your direct case.

18 Q We responded to Staff Data Request DR0044.1 on  
19 December 10th, 2009. And in that response, indicated the  
20 availability fees were being charged by the developer and  
21 Lake Utility Availability. That was before your direct.

22 A Right. And my read of that response is what  
23 prompted my follow-up discussions with the company. And I  
24 was assured that there were no availability fees relating  
25 to Lake Region.

1 Q And we didn't object to your data request prior  
2 to the filing of your direct case, isn't that true

3 A Are you speaking of Data Request 44 now?

4 Q Yes. Well, any data request before that time.

5 A No. No. There's two -- maybe I should make it  
6 clearer for the record. Data request 44 was an initial  
7 data request. And there was some information that was  
8 provided. And the primary focus of that data request was  
9 the manage the fees.

10 We saw -- I believe there was something on the  
11 books and records called Lake Utility Availability. And  
12 we asked -- we inquired about that, and we were told it  
13 was primarily the -- the management fees. And then they  
14 -- we did the follow-up Data Request 44.1, neither of  
15 which 44 -- the original data request or the 44.1 was  
16 objected to.

17 But they formed the basis of my view that we did  
18 not have to worry about availability fees in our direct  
19 filing, that there was no revenue stream at the time --

20 Q Right. Right.

21 A -- for that -- for that filing in January.

22 Q Okay. My thoughts are that the annual reports  
23 of the company beginning in -- when they first -- there  
24 was availability fee revenue on that. And I -- I -- but  
25 that's true. You've seen the exhibit. The availability

1 fee revenue was reported for this company as early as  
2 1998.

3 A I -- and I can tell that you I did not go back  
4 and look at 10-year-old or 12-year-old annual reports.

5 Q I think another witness may have. But thank  
6 you. All right. On page 16 of your surrebuttal, it would  
7 be line 18 --

8 A Yes.

9 Q -- you referred to non-regulated infrastructure.  
10 Did Staff include any non-regulated infrastructure in its  
11 case?

12 A Could you -- could you ask that again, please?

13 Q Did the Staff include any non-regulated  
14 infrastructure in their case? Maybe I should back up. To  
15 what non-regulated infrastructure are you referring to in  
16 that line?

17 A Well, I think we're looking at the -- trying to  
18 make the distinction that there is infrastructure in place  
19 to serve utility customers and those that are potential  
20 utility customers that may or may not ever hook up to the  
21 system. I think that's what -- the distinction I'm trying  
22 to make here. If I --

23 Q When you differentiate them, it's a -- it's a  
24 subcategory. Isn't it all regulated under the company's  
25 certificate? It's all regulated?

1           A     Certainly.  Certainly.  This may be a poor  
2 choice of words here.  But, certainly, the infrastructure  
3 that's in place for all 1600 lots, and I'm estimating just  
4 that number, is included in the cost of service.

5           Q     Let's go back to page 16, line 21 through 23.  
6 You stated that Staff believes that --

7           A     What page are you on?

8           Q     Page 16.

9           A     Okay.

10          Q     Lines 21 through 23.  You say, "staff believes  
11 that time spent on billing and collecting the availability  
12 charges should also be assigned to Lake Utility entity."  
13 At first it's -- it's a -- you're going to refer to it as  
14 an entity.  For purposes and convenience in your  
15 testimony, you realize it's not an entity.  It's a  
16 fictitious name for two other people?

17          A     I had talked to Mr. Summers and the company  
18 about this and made it clear that it was not incorporated,  
19 it was not a company, it was not an LLC.  I had to call it  
20 something.

21          Q     Okay.

22          A     While it's fictitious, it does have -- it has  
23 duties and responsibilities.  It does serve a purpose.  
24 And so we have to refer to it as something.

25          Q     And the shareholders -- okay.  It's something

1 for the shareholders and it's a place for the account. I  
2 may have a question about that, too. But with respect to  
3 that, would it be fair to say that you lack information  
4 right now to assign accurately the billing and collection  
5 activity of Ms. Stump and RPS Properties?

6 A Are we speaking of the alternative position now?

7 Q I guess so. Yes.

8 A Well, I think that if you treat Lake Utility  
9 Availability, and that's either one or two, I don't know  
10 what -- what the number is, but if you treat it as an  
11 entity, we -- we have information at least to allocate  
12 Mr. Summers' salary and the executive management costs  
13 that we spoke about yesterday.

14 Q You have information, you say, on how to do  
15 that?

16 A Sure. Yeah. On the same basis that we assign  
17 costs to the water district, Mr. Summers and Lake Region  
18 and Ozark Shores, I used the same methodology and just  
19 identify the Lake Utility Availability as an entity in and  
20 of itself.

21 Q I guess the information would be how long  
22 Cynthia Goldsby spent on sending out tickets. Wouldn't  
23 that be --

24 A And how much time that Mr. Summers oversees that  
25 process and how much of the office --



1 Q And you're presuming he does?

2 A Yes, I am.

3 Q And his testimony yesterday was he doesn't.

4 A I understand.

5 Q So you're assuming that he does, even though he  
6 doesn't?

7 A No. I'm taking the position that --

8 Q That he does?

9 A -- that he does because she reports directly to  
10 him. There is no interface of anyone else with her. It's  
11 Mr. Summers. He is the -- he is the water district  
12 manager.

13 Q I think his testimony -

14 A She is an employee of the water district. He  
15 supervises her.

16 Q I think his testimony was that The District  
17 makes decisions about some of her activities, too.

18 MS. BRUEGGEMANN: I'd object. I think that's a  
19 mischaracterization of the answers Mr. Summers gave  
20 yesterday. I believe he kept referencing that the  
21 shareholders were talking -- were somehow overseeing her  
22 activities regarding LUA, which was never -- which was  
23 never really clarified through his testimony. So I'd ask  
24 him to --

25 JUDGE STEARLEY: Mr. Comley's question is not

1 testimony, so I'm not sure I understand the basis of your  
2 objection.

3 MS. BRUEGGEMANN: I would object that he's  
4 mischaracterizing the testimony in his question in posing  
5 it to -- to Mr. Featherstone and that he -- I would ask  
6 that he rephrase because it's inappropriate to  
7 mischaracterize yesterday's testimony.

8 JUDGE STEARLEY: Okay. Mr. Comley?

9 MR. COMLEY: I'll withdraw the question.

10 Q (By Mr. Comley) Mr. Featherstone, in your cost  
11 of service study, did you assign an amount of time for  
12 Mr. Summers working on Northern Illinois Investment  
13 Company?

14 A We did not.

15 Q Did you assign it a cost for him to work on  
16 North Suburban?

17 A We did not. We probably will next time.

18 Q If you were to assign a cost to Mr. Summers  
19 management duties or duties with respect to either of  
20 those entities, wouldn't you have to examine his salary?

21 A Would we have to examine his salary?

22 Q Wouldn't that be the cost you'd consider?

23 A We have, in the context of the case, examined  
24 his salary.

25 Q Right.

1           A     So I'm -- I guess I'm confused by the question.

2           Q     I think in order for you to make a cost  
3 allocation of Mr. Sal -- Mr. Summers' salary to each  
4 utility, you'd have to examine the salary, wouldn't you?  
5 Is he getting any salary from Lake Utility?

6           A     He is getting a salary from the water district,  
7 and the water district is under contract to pay the  
8 reimbursement costs under this contract to manage Lake  
9 Region and Ozark Shores.

10                   I have extended that on the alternative proposal  
11 to say that he would be overseeing the billing and  
12 collection function of Lake Utility Availability fees. So  
13 his salary is already examined. It's cost. We don't --  
14 unless you want me to, we don't need to identify that  
15 amount.

16           Q     But, basically, what you've done is not examine  
17 Mr. Summers' duties or time records or the time actually  
18 spent by The District employee in connection with billing  
19 for Lake Utility Availability; is that correct?

20           A     Actually, I've understated the cost. I haven't  
21 assigned any of the individual who is doing the billing,  
22 the actual billing and collections.

23           Q     You say you understate it. You haven't even  
24 examined it yet; isn't that correct? You haven't even  
25 examined the cost of that person?

1           A     Of that individual?

2           Q     Right.

3           A     Yes.  We have her in the part -- part of the  
4 Lake Region payroll and benefits.  We have examined her  
5 cost.

6           Q     And you --

7           A     The costs are total.

8           Q     And you figured out how much it costs for her to  
9 make one billing a year for 1200 people.  Is that what  
10 you're saying?

11          A     No.  I'm not saying that.

12          Q     You're saying you're putting costs in for her to  
13 do more than that?

14          A     We have included all of her costs.  So, in  
15 essence, if -- the alternative position is that if the  
16 Commission doesn't adopt --

17          Q     Right.

18          A     -- the Lake Utility Availability fees as part of  
19 the revenue source to Lake Region, the regulated utility,  
20 then Lake Utility should not be given a free ride.  They  
21 should pay for, just like Lake Region is required to pay  
22 for, just like Ozark Shores and just like the water  
23 district has to pay for the costs that they are using.

24          Q     And you have just calculated those costs.  You  
25 haven't really gone to them and found out what they really

1 are?

2           A     I -- we have not made any disallowance, if you  
3 will, or allocation is a better way of saying it, of the  
4 individual who is actually doing the billing. I've only  
5 addressed the executive management group and Mr. Summers.  
6 I did not go to -- I believe it's Goldsby. I did not take  
7 her salary or compensation, benefits or any costs  
8 associated with the office, the computer, all the  
9 infrastructure that's in place that she uses to do the  
10 Lake Utility Availability.

11                     Those costs have been left in the district cost  
12 structure of which we pick up the allocation to move those  
13 costs over to Lake Region.

14           Q     If I have your alternative correct, you're  
15 assigning \$17,493 to the costs of Lake Utility  
16 Availability for Lake Region. That would be on page 18.  
17 You're assigning \$17,493 in costs for its relationship to  
18 Lake Utility Availability?

19           A     It -- it is -- this table is -- is basically to  
20 identify the costs of what's -- what's included in Lake  
21 Region's proposed revenue requirement --

22           Q     Right.

23           A     -- calculated by the Staff.

24           Q     Yes.

25           A     If you reallocate the costs, including Lake

1 Utility as an entity and you reallocate the executive  
2 management and the salaries and benefits of Mr. Summers,  
3 then the differential is the \$17,000 for Lake Region.  
4 There would be a corresponding impact of doing this same  
5 calculation to Ozark Shores if we were to have done a  
6 revenue requirement calculation for Ozark Shores.

7 Q Well, let me make it clear in my own mind here.  
8 What you're saying is with respect to total cost down here  
9 on the bottom of page 18, your estimate is that Lake  
10 Region spent \$17,493 in connection with its relationship  
11 with Lake Utility Availability. Is that a fair statement?  
12 Is that right? Am I reading the draft correctly?

13 A Well, yes. The incremental is \$17,000  
14 difference.

15 Q So that would be taken out of the cost of  
16 service?

17 A Yes.

18 Q And, again --

19 A Lake Region's cost of service.

20 Q Right. You've assumed that Mr. Summers spends  
21 that much of his time on Lake Utility Availability?

22 A I've treated Lake Utility Availability --

23 Q As a --

24 A -- as an entity.

25 Q As a fourth entity?

1           A     As a fourth entity.

2           Q     And that's how you divided it.  You did not go  
3 down and find out how much those costs actually were?

4           A     That's right.

5           Q     On page 17, lines 13 through 15, you say that,  
6 "Even though the Lake Utility entity directly benefits  
7 from a well-maintained utility infrastructure, it makes no  
8 contribution to Lake Region or Ozark Shore's utility  
9 systems."

10                     Let me ask you this:  Isn't it true that had it  
11 not been for the donation of the infrastructure of the  
12 Lake Region and Ozark Shores, the customers of those  
13 companies would be paying for it in their rates?

14           A     The donation made by Lake Utility?

15           Q     Wouldn't the donation by the developer --  
16 wouldn't it be true that the donation of the  
17 infrastructure by the developer to Lake Region and Ozark  
18 Shores, wouldn't the customers -- if it hadn't been  
19 donated, wouldn't the customers be paying for it in rate  
20 base?

21           A     I think I answered that that if the -- if the  
22 developer donated the property and we did not then make  
23 the CAAC reduction --

24           Q     That's not the question I asked,  
25 Mr. Featherstone.  Please be --

1           MR. COMLEY: Your Honor, would you ask the  
2 witness to be responsive to the question?

3           JUDGE STEARLEY: Mr. Featherstone, please answer  
4 the question asked. That response will be stricken for  
5 being non-responsive.

6           A     Could you ask me your question again?

7           Q     (By Mr. Comley) Isn't it true that had it not  
8 been for the donation of the infrastructure by the  
9 developer to Lake Region and Ozark Shores, the customers  
10 would be paying for it in their rates?

11          A     Yes. They would be over-paying in their rates.

12          Q     Without that, the -- without that contribution,  
13 would the customers -- without that contribution of the  
14 plant by the developer, the developers wouldn't be  
15 benefiting at all. Wouldn't that be a correct statement?

16          A     Are you saying are the -- without the  
17 contribution, the customers wouldn't be benefited?

18          Q     At all?

19          A     At all. I -- I believe they are benefiting for  
20 a plant that was donated that the utility doesn't have any  
21 investment in.

22          Q     I think I've got the answer. Let's go to page  
23 17, line 22, lines 21 and 22. "If a lot owner of the  
24 unconstructed lots perceive no value, they would not be  
25 willing to pay the availability charges to Lake Utility."



1           In that connection, Mr. Featherstone, let's --  
2 let's say that a property owner sees no value in the  
3 ability to connect to the system and refuses to pay the  
4 availability fee. If the availability fee is not paid,  
5 the developer or his assigns as stated in the deemed  
6 restrictions can assert -- can assert a lien. Isn't that  
7 your understanding?

8           A     Yes.

9           Q     If the lien is not paid to the developer or his  
10 assigns, aren't they able to foreclose on that lot? Isn't  
11 that correct?

12          A     I don't know.

13          Q     Let's assume the developer would have that  
14 right. Wouldn't the property owner or the -- of the  
15 unconstructed lots see value in paying the availability  
16 fee to prevent foreclosure of his lot?

17          A     I would assume so.

18          Q     Page 18, line 11. You say that Lake Utility  
19 receives all the benefits of this utility infrastructure  
20 but paid none of the costs. Do you know -- well, just --  
21 you don't know how much Mrs. Stump and RPS Properties paid  
22 to acquire the rights to the availability fees?

23          A     I have seen a document that they paid a dollar.

24          Q     But you don't know?

25          A     Well, I just told you I --

1 Q You said the document said a dollar.

2 A I was provided a document that said that they  
3 acquired the rights for a dollar. So the answer is that I  
4 do know.

5 Q You know you saw that document. But you did not  
6 -- you did talk to Ms. Stump or you did not talk to RPS  
7 Properties about the conditions of the sale?

8 A I did not talk to them about the conditions of  
9 the sale. No.

10 Q And you would agree with me that the document  
11 you reviewed was from Waldo Morris, who is a shareholder  
12 and not the developer?

13 A It was an assignment to Mrs. Stump and RPS  
14 Properties.

15 Q It would be Exhibit 10, Staff Exhibit 10. I  
16 think it did not have any -- the developer was not part of  
17 the assignment; is that correct?

18 A I -- that may very well be. I think it was --  
19 at one point, it was Lake Region, and then it was turned  
20 over to our --

21 MS. BRUEGGEMANN: If I may, I believe Staff's  
22 Exhibit 10 is on the other side. So if they're referring  
23 to the document that he's trying to recall off the top of  
24 his head --

25 JUDGE STEARLEY: I believe Mr. Comley has it in

1 his hand.

2 MR. COMLEY: I do have one, if I may have leave  
3 to approach Mr. Featherstone.

4 JUDGE STEARLEY: You may.

5 Q (By Mr. Comley) This is my markings at the top.  
6 I've marked it as Staff's Exhibit 10. Was the document I  
7 handed you, Mr. Featherstone, Staff Exhibit -- marked as  
8 -- I've marked as Staff Exhibit 10, the document you're  
9 referring to as the assignment?

10 A Yes.

11 Q Can you -- can you tell me who the assignor is  
12 in that document?

13 A Well, it's Waldo Morris is the seller, and the  
14 buyers are Robert P. Schwermann and Sally Stump.

15 Q All right. The developer of Four Seasons  
16 Lakesites is not on that assignment; is that correct?

17 A That's correct.

18 Q Would you agree with me that a chief benefit for  
19 the infrastructure being in place is the availability of  
20 permanent sewer treatment and portable water distribution  
21 at the lot, undeveloped lot?

22 A Yes.

23 Q And the lot owner has the benefit of those  
24 assets, don't -- doesn't it?

25 A The undeveloped lot owner would have the

1 anticipation of being able to connect to the utility, the  
2 central system in a future time frame. And that would be  
3 a benefit to that lot owner.

4 Q And would -- let's also confirm, Lake Region has  
5 not paid any of the costs for that infrastructure. That's  
6 correct, isn't it?

7 A I don't know.

8 Q Well, can we confirm that the infrastructure was  
9 donated to Lake Region?

10 A The original infrastructure to the extent that  
11 there's been construction and additions.

12 Q I understand.

13 A Replacements to that infrastructure, that would  
14 have been paid for by the Lake Region utility and  
15 ultimately paid for by the Lake Region customers.

16 Q The original infrastructure that was donated,  
17 we're talking about \$5.3 million in the plant. None of  
18 the customers have paid for that. Wouldn't that be a fair  
19 statement?

20 A No, it would not. The -- if you assume that the  
21 customer of a utility is the -- one in the same as the lot  
22 owner, they paid for that infrastructure when they bought  
23 the lot itself.

24 Q They did?

25 A Sure.

1 Q Well, then why isn't it in rate base?

2 A Well, the reason why it's not in rate base is  
3 for that very reason. You can't ask the customer to pay  
4 for the lot --

5 Q Donated plant?

6 A -- infrastructure-wise. That's why you have the  
7 CAAC concept.

8 Q Right. Let me ask you, how do you know it was  
9 in the lot price?

10 A It's -- in the water utility industry, it's just  
11 a fundamental understanding that when you're developing  
12 lots, in particular, lots that -- 1600 lots that we have  
13 in this case that it's going to take many, many years to  
14 sell those lots, that any -- any infrastructure that's put  
15 in place, any improvements that's made to that land to get  
16 it ready for a sale that it's going to be recovery of --  
17 the costs associated with those improvements is going to  
18 come from the sale price.

19 Q So what you're saying is that in addition to the  
20 sale price in which the developer in this case acquired  
21 all the investment that was made for 1607 lots has been  
22 paid for by the sale and 462 lots? Or excuse me. That's  
23 not right.

24 A There are over 1600 lots have been sold.

25 Q 1600 lots have been sold, and all of the

1 investment has been recouped by the sale of the lots.

2 That's what you're saying?

3 A That's a -- that's a tenant, an assumption that  
4 is made for almost exclusively any water and sewer case  
5 I've been involved in.

6 Q And that is what your testimony is today?

7 A Yes.

8 Q And the developer, by asking for fees on top of  
9 that, is getting it twice or more than that? That's what  
10 your testimony is?

11 A I thought your question went to if -- if the  
12 customers had to pay for the CAAC or the donated property,  
13 they would be paying for that investment twice. That's  
14 why we take the CAAC as a reduction to rate base.

15 Q All right. So in other words, they are not  
16 paying for it in their rates?

17 A They're not paying -- they're not paying for  
18 that CAAC investment or the donated property in their  
19 utility rates.

20 Q Okay. On page 18, line 5, you talk about when  
21 the individuals purchase and construct lots, the  
22 Restriction of Covenants state the availability charges  
23 would be tariffed and regulated by the Commission. Isn't  
24 it true, Mr. Featherstone, that the declaration was also  
25 subject to amendments?

1 A It's my understanding. Yes.

2 Q And it has been amended?

3 A My understanding, yes.

4 Q And the amendment now is such that this

5 information is not part of the deed restrictions.

6 Wouldn't that be a fair statement?

7 A That's my understanding.

8 Q Page 19, line 11, your graph there. To confirm

9 with the Commission, the -- the subdivision called The

10 Villages is also in the Lake Region service territory; is

11 that your understanding?

12 A Yes.

13 Q The Villages. And they do not pay availability

14 fees. Is that your understanding?

15 A Based on Ms. Cason's testimony, yes.

16 Q Okay. There are commercial customers in Lake

17 Region's service territory as well. Is that a fair

18 statement?

19 A Yes.

20 Q And there are customers on Horseshoe Bend that

21 don't pay availability fees; is that correct?

22 A There are customers receiving sewer service on

23 Horseshoe Bend that do not pay availability fees.

24 Q All right. If I have your graph correctly, you

25 are reallocating costs over all of Lake Region's systems

1 to account for availability fee matters. Would that be a  
2 fair statement?

3 A Yes.

4 JUDGE STEARLEY: Mr. Comley, if you could --  
5 looks like a good time because you're checking there, but  
6 our court reporter needs to switch paper, so --

7 MR. COMLEY: You know what I'd appreciate? I  
8 would really appreciate if we could take a break. I think  
9 I'm nearly done with Mr. Featherstone, but it would give  
10 me an opportunity to check my notes and give everybody a  
11 break.

12 JUDGE STEARLEY: Okay. Why don't we take about  
13 a ten-minute recess?

14 (Break in proceedings.)

15 JUDGE STEARLEY: All right. We are back on the  
16 record. And, Mr. Comley, you may continue with your  
17 examination.

18 MR. COMLEY: Thank you, Judge.

19 Q (By Mr. Comley) In your cross-examination,  
20 Mr. Featherstone, Ms. Baker talked to you about the bank  
21 account situation, the bank account arrangement at Lake  
22 Region. I want to confirm with you, there is no Lake  
23 Region account in which management fees or availability  
24 fees are deposited; isn't that correct?

25 A I thought there was a checking account where



1 those two are deposited together.

2 Q But that's not a Lake Region account, right?

3 That is an account in the name of the either Lake Utility  
4 Availability or the names of the shareholders?

5 A I do not know the name that is on the account.

6 It is not a Lake Region --

7 Q It is not a Lake Region account?

8 A Utility account as far as I know.

9 Q All right. In other words, those -- the  
10 management fees and the availability fees are in an  
11 account separate from the account set aside for Lake  
12 Region?

13 A I believe so.

14 MR. COMLEY: All right. That's all I have.

15 JUDGE STEARLEY: Thank you, Mr. Comley.

16 Questions from the bench? Commissioner Kenney?

17 CROSS-EXAMINATION

18 BY COMMISSIONER KENNEY:

19 Q Good afternoon.

20 A Good afternoon.

21 Q I thought that I was starting to understand  
22 this. It's about as clear as mud to me.

23 MS. LANGENECKERT: Welcome to our world.

24 Q (By Commissioner Kenney) Do you know why the  
25 availability fees were originally collected by the

1 developer?

2 A I -- I don't.

3 Q Okay. All right. And as a general rule of  
4 rate-making -- and I asked this question of someone else,  
5 and I think you might have answered it already. If the  
6 developer builds the infrastructure to the water and sewer  
7 system, does he typically recoup that cost by building it  
8 into the price of the lots?

9 A Yes.

10 Q Okay. Do you know if that's what was done in  
11 this case?

12 A I would be shocked if it wasn't. I do not know  
13 for certain.

14 Q Okay. Do you know if that question -- do you  
15 know who the original developer was? Let me ask that  
16 question.

17 A I think it really dates back even to like the --  
18 maybe the Lodge of the Four Seasons. And maybe I've got  
19 my history wrong. But it's -- Lake Region is -- of  
20 course, the Shawnee Bend and Horseshoe Bend is different.  
21 But there's been -- there's been a developer and two or  
22 three owners.

23 Q Okay. In the typical case, the developer  
24 contributes the infrastructure to the water and sewer  
25 system. The utility that takes over doesn't get to either

1 -- doesn't get a return of or a return on that rate base;  
2 is that right?

3 A That's correct.

4 Q Okay. And the rationale behind that being that  
5 they are -- the entity that paid for it and contributed  
6 put it in service?

7 A That's right. And further, the rationale is  
8 that the utility customers, the lot owners, part of  
9 development have paid for it through the price of the lot  
10 or the price of the building that they purchased.

11 Q Okay.

12 A And so, therefore, to require them to pay  
13 utility service return of and on for that investment would  
14 require them to pay twice.

15 Q Okay. So where does the utility's revenue  
16 stream come from, then? Is it just the -- where does  
17 their revenue stream come from?

18 A Well, the revenue stream comes from -- there are  
19 -- there are assets that -- that the utility has to incur  
20 for a sewer company, a large part of it is the treatment  
21 facility, of those are fairly expensive.

22 Q And that gets put into rate base?

23 A That gets put into rate base. And so they get a  
24 return on that. They get a return on any investment that  
25 they -- that's prudent and that's reasonable that's

1 included in rates.

2 Q So the only thing that they're prevented from  
3 getting a return of and a return on is the original cost  
4 of whatever the development put into the ground?

5 A That's right.

6 Q They're not sitting there with the inability to  
7 earn anything?

8 A No.

9 Q Okay.

10 A Typically not. Now, there are companies that  
11 we've seen, not this one, but there are companies that we  
12 see that virtually -- have virtually no rate base. And so  
13 it becomes then -- you -- you -- they recover their costs  
14 to operate the system.

15 Q Okay. All right. So this -- these availability  
16 fees that are -- that are -- we don't know how many  
17 unimproved lots there are, right, at this point, that are  
18 being charged the availability fee?

19 A We know there are 1200 and I think 85  
20 undeveloped lots through Ms. Cason's testimony. And so we  
21 know that there -- that number.

22 Q Do we know if all of those unimproved lots are  
23 paying the availability fee?

24 A We do not.

25 Q Okay. And we don't know what that availability

1 fee is supposed to be used for, what purpose it serves.  
2 It's to recoup the cost of the original 5.3 million? I  
3 think there was some testimony that that's what it was  
4 for. Do you know that to be the case?

5 A I think that's -- that's the company position is  
6 what it was for. I think the -- I think the logic that  
7 the availability fees originally were for was to support  
8 the utility system infrastructure.

9 Q Okay.

10 A It's maintenance. It's repair and any future  
11 construction that was necessary.

12 Q If it was intended as a means by which the  
13 developer would be able to recoup his original costs to  
14 that donated plant, the outcome, as relates to the  
15 utility, would still be the same, right? I mean, it would  
16 still be a plant that they didn't contribute?

17 A It would still be -- it would still be treated  
18 as a contributed plant and not included in rate base.

19 Q So is it your proposal that it be -- that these  
20 availability fees -- the amount of which were not we're  
21 not entirely sure of would be deducted from the revenue  
22 requirement? Or how -- how are you proposing that we  
23 treat them?

24 A That it basically -- we think that they're  
25 sufficient enough that it would eliminate the need for a

1 rate increase on the Shawnee Bend water and sewer side of  
2 their proposal.

3 Q Just the Shawnee Bend, not the Horseshoe Bend?

4 A Right.

5 Q But, I mean -- so we take a dollar amount, and  
6 we deduct it where on the balance sheet? I mean, where  
7 does it get deducted?

8 A If we were to include the revenues, it would  
9 just be a revenue source. If we ran it through our  
10 models --

11 Q Right.

12 A -- the numbers would appear in revenues. And if  
13 the company has some additional costs that they would like  
14 us to examine and look at, we'd be happy to do that. We  
15 try to do that.

16 But weren't able -- we weren't successful. But  
17 if there are some costs, additional costs that we need to  
18 consider, we'd be more than happy to look at it. We're  
19 doing the true-up in this case. So that would be the time  
20 that we would do it.

21 But if there are no costs, we don't get a chance  
22 to look at and examine costs. And then the revenues would  
23 be a corresponding offset to the proposed increases that  
24 they we -- that we set out in our -- what we call our EMS  
25 require -- revenue requirement model.

1 Q Okay. So then Staff's proposal is that this 300  
2 per lot per year revenue -- or availability fee should be  
3 treated as revenue to Lake Region?

4 A Yes.

5 Q Okay.

6 A Lake Region Shawnee Bend water and sewer since  
7 there are no availability fees for the Horseshoe Bend  
8 sewer side.

9 Q Got you. And when we say availability fees I  
10 mean, ostensibly, or presumably, that means availability  
11 of what? I mean, what is the -- what is the common  
12 parlance? What does the name mean?

13 A I don't know where the name came from. I'm  
14 assuming that it's water and sewer is available. The --

15 Q To make water and sewer available to the lot?

16 A The pipe is in the ground, and it's -- it's to  
17 designate to the lot owner that they can hook up to the  
18 system. And that's I think a big advantage if you're a  
19 lot owner and you want to build a house. If you don't  
20 have to worry about a septic tank, if you don't have to  
21 worry about digging a well, those are significant costs.  
22 And if you can hook to a central system, that's --  
23 generally, I think most people would be -- would find that  
24 more preferable.

25 Q So it's basically to reserve your right to get

1 onto the system?

2 A Yes.

3 Q Is there any additional infrastructure that  
4 would need to be built to connect an unimproved lot to the  
5 existing system?

6 A Sure. The -- the company would have to do some  
7 additional infrastructure, and that's paid for by a  
8 service connection fee. I think Mr. Summers testified  
9 that -- that in one instance it's like \$650.

10 Q That's a separate fee from the \$300 a month?

11 A Oh, yes. The utility doesn't get the  
12 availability fee. That's \$300 is for all of the lot  
13 owners who -- who have unimproved lots or undeveloped  
14 lots. The service connection fee is when their house is  
15 built, they're ready to connect to the utility or water  
16 service.

17 Q The utility charges them 650 or whatever it is?

18 A Utility charges a connection fee. In addition,  
19 the lot owner also -- the builder of the improved lot now  
20 has to incur some costs that can be fairly substantial  
21 costs to actually run the pipe from their house to the --  
22 you know, to the mains.

23 Q So the \$300 that the lot owner is paying per  
24 month -- or per year, rather, per lot, and it's at least  
25 called an availability fee, which using a common



1 understanding of it, it's designated or it's presumed to  
2 be to make the water system and sewer system available to  
3 them at some future point in time?

4 A Yes.

5 Q But the money doesn't actually go to anything  
6 having to do with the water and sewer system?

7 A Not in this instance for Lake Region, no. Lake  
8 Region never sees any of that money.

9 COMMISSIONER KENNEY: Okay. All right. I don't  
10 have any other questions.

11 JUDGE STEARLEY: Any recross based on questions  
12 from the Bench?

13 MR. COMLEY: None.

14 JUDGE STEARLEY: Redirect?

15 MS. OTT: Yes. One second.

16 JUDGE STEARLEY: And let me ask Counsel, is  
17 redirect going to be lengthy? I'll be considerate and see  
18 -- and poll and see if they'd rather have lunch break  
19 first and come back for redirect.

20 MS. OTT: I'm not sure how long it's going to  
21 be. So in fairness to everyone else here, we could break  
22 for lunch and then come back if that's okay with them.

23 JUDGE STEARLEY: Any preference?

24 MS. BAKER: That's fine.

25 JUDGE STEARLEY: All right. I'm seeing some

1 head nodding, so why don't we do that? We'll go ahead and  
2 break for lunch at this time. We will come back and pick  
3 up with redirect at -- why don't we say 2:30?

4 (Lunch recess.)

5 JUDGE STEARLEY: All right. We are back on the  
6 record. Mr. Featherstone is still on the stand, and Staff  
7 is getting ready to commence their redirect examination.  
8 Mr. Featherstone, I will remind you you're still under  
9 oath.

10 MR. FEATHERSTONE: Thank you.

11 MS. OTT: Ready?

12 JUDGE STEARLEY: You may proceed.

13 REDIRECT EXAMINATION

14 BY MS. OTT:

15 Q Good afternoon, Mr. Featherstone.

16 A Good afternoon.

17 Q Do you recall having a conversation with  
18 Mr. Comley about whether or not Lake Region had the -- the  
19 authority to collect these availability fees?

20 A Yes.

21 Q And can you refresh my memory on what your  
22 answer was to that? I wasn't clear.

23 A I think at one point, perhaps called a different  
24 predecessor name, but the company did have the authority  
25 and did collect the fees.

1           Q     Thank you.  Let's see.  Now, Mr. Comley was also  
2 asking you some questions on if the developer was  
3 collecting these availability fees would Staff impute the  
4 revenues.  Can you please clarify your answer?

5           A     Well, we'd certainly want to know the nature of  
6 how those fees were collected, what they were for, and we  
7 would assume that if they were utility related we would  
8 impute the fees.  We certainly would want to know how the  
9 utility got at the point where they didn't have the right  
10 or the responsibility for the fee.

11          Q     Mr. Comley was also asking you about repairs and  
12 maintenance associated with the Lake Region system.  Do  
13 you remember -- recall that conversation?

14          A     Yes.

15          Q     In your audit, did you include cost of serving a  
16 system that's larger than what Lake Region is currently  
17 serving?

18          A     Absolutely.  The system is much larger than what  
19 the existing customer base is.  And we've included the  
20 entire cost to maintain and repair that system to the  
21 extent that those repairs occurred in the time period that  
22 we looked at.  We looked at several years.  And we would  
23 normalize the maintenance and reflect those costs in our  
24 rate structure.

25          Q     He was also asking you some questions about

1 whether it cost the utility system more money for pumping  
2 water through the system. Can you explain how the cost  
3 could be associated with the unbuilt lots?

4 A Well, there wouldn't be any cost associated with  
5 the undeveloped lots -- unbuilt lots related to the --  
6 like for providing water service to customers that aren't  
7 there yet. So there would not be any increased cost for  
8 pumping or increased cost for processing sewage for -- for  
9 the unbuilt lots.

10 Q Now, do you recall a conversation when  
11 Mr. Comley was asking you whether or not the Commission  
12 ever asked -- required shareholders to pay for cost of a  
13 utility? Does the -- can the Commission disallow  
14 expenses?

15 A Yes.

16 Q Can you explain that a little bit?

17 A During the rate-making process, the Commission  
18 examines the cost component of -- of a utility's  
19 operations, and there are many times that the Commission  
20 will disallow costs for prudence or based on ability or  
21 the benefit to the -- to the customers. So disallowances  
22 and normalization adjustments are made frequently by the  
23 Commission.

24 Q Does the Commission ever impute revenues that  
25 the company should have collected but didn't?

1           A     They have in the past.

2           Q     And --

3           A     And certainly can.

4           Q     Pardon me. Can this affect the shareholders?

5           A     It -- it can.

6           Q     Now, Mr. Comley had directed you to page 16,  
7 line 18 of your surrebuttal and asked you a question about  
8 non-regulated infrastructure. Can you clarify your  
9 response to that?

10          A     As I indicated to Mr. Comley, it was probably a  
11 poor choice of words. What I was really saying in that  
12 section of my testimony, my surrebuttal testimony, I was  
13 really trying to really identify the -- the system from  
14 the point of view trying to maybe segregate it a little  
15 bit, make a distinction between the lots that were built  
16 and the lots that were not.

17                     And the lots that were not, I think I -- I  
18 called them non-regulated. The fact of the matter is for  
19 -- for the cost of service, there really is no  
20 distinction. We have developed a cost structure for the  
21 entirety of the system, which includes infrastructure  
22 that's been put in place for the unbuilt as well as the  
23 developed lots.

24          Q     Thank you. Then later on, Mr. Comley was asking  
25 you questions about if the developer did not contribute

1 the property, who would own the plant?

2 A The developer would.

3 Q Now, if the utility put in the pipes, who would  
4 own -- own the property?

5 A The utility.

6 Q He also was asking you a question about how do  
7 you know the developer constructs and pays for additional  
8 line? Can you clarify your answer there?

9 A Well, the -- if the -- if the developer puts any  
10 improvements to the lots, it could be road, it could be  
11 bridges, it could be sidewalks, curbs, could be utility  
12 infrastructure, that -- those -- those improvements would  
13 be included in the price of the -- of the lot.

14 Q Now, what if the developer puts any regulated  
15 plant? Where does that authority come from?

16 A There is a -- in most cases, there's a tariff  
17 that's done under tariff. And the -- the utility would  
18 have -- I've heard of it called a line extension. So  
19 there's --, there's language within the tariff that would  
20 require a developer to do that and essentially donate the  
21 property.

22 Q Now, do you know if Lake Region has that  
23 language contained within their tariff?

24 A I believe they do.

25 JUDGE STEARLEY: Mr. Featherstone, is your

1 microphone on?

2 A I -- I -- I don't know.

3 JUDGE STEARLEY: That's -- that's better. Maybe  
4 if you just want to speak into that.

5 MS. OTT: Well, I have no further questions,  
6 though. So, hopefully, the mic. is not an issue.

7 JUDGE STEARLEY: All right. Well, if your  
8 redirect is complete, Mr. Featherstone, you may step down.

9 MR. FEATHERSTONE: All right. Thank you.

10 JUDGE STEARLEY: As with the other witnesses,  
11 though, you are not finally excused in case the  
12 Commissioners would like to call you back.

13 Mr. FEATHERSTONE: Okay.

14 JUDGE STEARLEY: And I believe that brings us to  
15 Mr. Merciel.

16 MS. OTT: Judge, may I have one moment? I left  
17 something up in my office.

18 JUDGE STEARLEY: Certainly.

19 MS. OTT: In -- in the meantime, can I go ahead  
20 and premark Mr. Merciel's rebuttal and surrebuttal  
21 testimony?

22 JUDGE STEARLEY: You sure may. And I will go  
23 ahead and swear Mr. Merciel in.

24 JAMES MERCIEL, JR.,

25 being first duly sworn to testify the truth, the whole

1 truth, and nothing but the truth, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. OTT:

4 JUDGE STEARLEY: Thank you. You may be seated.

5 And I believe we're up to Staff Exhibit -- this would be  
6 15 for his rebuttal and 16 for the surrebuttal.

7 MS. OTT: Okay. I'll start. And if I need to  
8 stop before Shelly gets back, I'll let you know.

9 JUDGE STEARLEY: Okay.

10 Q (By Ms. Ott) Would you please state your name  
11 for the record?

12 A James A. Merciel, Jr..

13 Q And who are you employed and in what capacity?

14 A I'm employed by the Public Service Commission.  
15 I work in the Water & Sewer Department, Assistant Manager  
16 of Engineering.

17 Q And are you the same James Merciel who prepared  
18 rebuttal and surrebuttal testimony as pre-filed testimony  
19 previously marked as Exhibit 15 and 16?

20 A Yes.

21 Q Do you have any changes or corrections?

22 A Yes, I do.

23 Q Can you please tell me what those changes are?

24 A In the rebuttal testimony, Exhibit 15, on page  
25 4, line 6, it says, "Approved rate cases where



1 availability charges were applied as," and it should say  
2 ordinary revenue, not a reduction to rate base. Where  
3 charges were applied as ordinary revenue but did not exist  
4 in a tariff.

5 Q Do you have any other changes?

6 A Yes. Two more in this one. Next page, page 5,  
7 this is a simple typo. Line 13, there's a comma that's  
8 misplaced. The line starts, Since it is paid, and it  
9 should be, Since it's paid upfront comma. The comma  
10 should be after the word front, not in front of it.

11 And one more. Page 7, on line 15, there is some  
12 underlining that -- the word "years" is not underlined.  
13 The underlining should go all the way across so that years  
14 is underlined. It throws off your thought sometimes if  
15 you read that. I have one in surrebuttal. Should I go  
16 ahead with that as well?

17 Q Yes, please.

18 A Okay. In Attachment 2, it's -- that's the time  
19 line. The first page, at the very bottom, it says Case  
20 No. WR-98-564. That should be Case No. SR-98-564.

21 Q Now, was this rebuttal and surrebuttal testimony  
22 prepared by you or under direct supervision?

23 A It was prepared by me.

24 Q And if I were to ask you -- today ask you the  
25 same or similar questions, would your answers contained

1     therein be the same?

2             A     Yes.

3             Q     And would they be true and accurate to your best  
4     knowledge, belief -- and belief?

5             A     Yes.

6             MS. OTT:   With that, I would like to offer  
7     Exhibit No. 15 and 16 into evidence.

8             JUDGE STEARLEY:   All right, then.   Mr. Comley,  
9     I'm assuming that you're going to have the same objections  
10    that we've noted before?

11            MR. COMLEY:   Yes, you're correct, Judge.  
12    And, specifically, with respect to Mr. Merciel's rebuttal,  
13    we lined out an objection to page 2, Lines 14 through page  
14    18, line 16 and all the exhibits in his testimony that are  
15    referred to in those sections.   And then, finally, his  
16    surrebuttal, we object to page 1, line 19 through page 8,  
17    line 11 and all the exhibits referred to in those  
18    passages.

19            JUDGE STEARLEY:   And as I have done with prior  
20    testimony and exhibits, for the moment, the Commission is  
21    holding on giving final ruling on that and will allow the  
22    cross-examination to continue.

23            MS. OTT:   I tender Mr. Merciel for  
24    cross-examination.

25            JUDGE STEARLEY:   All right.   Cross-examination

1 begins with the Property Owners Association.

2 CROSS-EXAMINATION

3 BY MS. LANGENECKERT:

4 Q Good afternoon, Mr. Merciel.

5 A Good afternoon.

6 Q I just have a couple questions. In your opinion  
7 as a public Service Commission person and the Staff  
8 working in the water and sewer area, what are availability  
9 fees used for? What is the purpose of them? How are they  
10 defined?

11 A The last part first. I don't think they're  
12 defined very well. When you read them, you really can't  
13 tell what they're supposed to be for. There are several  
14 things that they could be used for, which I explained in  
15 my rebuttal testimony.

16 Among them -- well, what the Staff normally does  
17 with -- with availability charge revenue is treats it as  
18 ordinary utility revenue. That would mean it's used for  
19 day-to-day operating expenses. They could be used as an  
20 offset to investment. I guess they could be used for any  
21 of a number of other things. But the -- the Staff  
22 believes they're logically normally used for revenue.

23 Q And you believe that that's appropriate?

24 A I do. As far as availability charges go,  
25 personally, I don't -- I don't think availability charges

1 are very equitable, just generally speaking.

2 Q Please explain.

3 A Well, every way I can think of to use  
4 availability charges, somebody is subsidizing somebody  
5 else. And, again, I explained that in my -- in my written  
6 testimony. If -- if it's used for utility revenue, then  
7 -- then the people paying the availability charge, they  
8 are not receiving -- directly receiving service, as in --  
9 as in other customers if you pay a rate and you get water  
10 using your premises or you have -- you're able to  
11 discharge sewage. They don't do that.

12 It's -- it's just something that -- that these  
13 customers are considered to be obligated to pay for the  
14 upkeep of the utility system. And they've agreed to do  
15 it. But whether it's equitable is a matter of opinion.  
16 If it's used to offset capital investment as in some of  
17 the testimony today, we've talked about the developer  
18 having the ability to write off some of his investment  
19 that he's contributed to the utility.

20 Well, if you use it for that, then the customers  
21 paying -- or I should say the lot owners paying  
22 availability charges are paying the developer for that.  
23 But the people who are connected to the utility system are  
24 not paying the developer for that. There's no money built  
25 into the rates, and there's nothing that the developer is

1 able to recover. And in my opinion, that's inequitable.

2 Q Now, is it your understanding that originally  
3 the developer was also the owner of the utility?

4 A Yes, it is.

5 Q So would it follow that when the developer  
6 donated 5 million, or 5.3 is the numbers that have been  
7 passed out today, pretty much was donating it to himself?

8 A Yeah. Maybe I should back-track a little bit.  
9 It's probably better to say the development company was  
10 owned by the same people that owned the utility company.  
11 Really, the developer and the utility were not the same  
12 entity.

13 They had separate corporations set up. So --  
14 but it was kind of an ownership. So that -- that's really  
15 -- that's really the case. But I -- I believe -- I would  
16 agree with you that -- that the developer and the utility  
17 with the common ownership, one is the same -- pretty much  
18 the same -- well, they're dealing with themselves. That's  
19 the best way I can say that.

20 Q Now, were you the at Commission when the  
21 developer sold off the utility to the next -- in your --  
22 your list, your exhibit which indicates the chronology of  
23 the utility? Were you with the Commission at that time?

24 A I was.

25 Q Okay.

1           A     I -- I've worked here since 1977.

2           Q     And did the utility at that time come before the  
3 Public Service Commission and indicate that they were  
4 going to be selling? Or were they required to, is the  
5 first question, I guess.

6           A     Well -- well, when Four Seasons Lakesites sold  
7 its water system to Ozark Shores Water Company, that was a  
8 transfer of assets. And -- and they did come in to get  
9 Commission approval for that transfer.

10          Q     And at that time, were availability fees  
11 discussed in that case?

12          A     I don't think they were discussed in the -- in  
13 the sale case. It really wasn't an issue. They were  
14 there. The utility was collecting them. And -- and it  
15 really -- I mean, they were there, but there wasn't really  
16 an issue to discuss as far as I know.

17          Q     Were they included in the assets, are you aware,  
18 when they described what the assets of the utility were?

19          A     They did indeed go with the -- with the utility  
20 assets. Four Seasons Lakesites Water & Sewer Company had  
21 been collecting them. And when the water system assets  
22 were transferred to Ozark Shores, Ozark Shores began  
23 collecting them.

24          Q     And when they came and transferred, they came  
25 into the Public Service Commission and -- and went through

1 that transfer. They described those availability fees as  
2 part of their revenues or the amount of the value of the  
3 company?

4 A I'm -- I'm sure to the extent revenue were  
5 discussed they would have been included. I don't remember  
6 that specifically. From a practical standpoint, Ozark  
7 Shores would have come in and adopted the rates. Whatever  
8 -- whatever the revenue was, they would have -- they would  
9 just kind of automatically transferred over. There  
10 probably was not much discussion on rates and revenues.

11 Q And then when Ozark Shores turned around and  
12 made a separate company of Lake Region, is that the  
13 chronology of how it went?

14 A Well, no. Ozark Shores still exists today.

15 Q Right. But the Lake Region portion.

16 A Okay. After -- after the -- after Ozark Shores  
17 bought the water system, Four Seasons Lakesites Water &  
18 Sewer Company remained in business as a sewer utility.  
19 And this was on Horseshoe Bend. They were a sewer  
20 utility. Then we got to this -- the case in 1995. I have  
21 the case number someplace here.

22 Q Is that listed on your exhibit as WA-95-164?

23 A Yes. That would be the one. The 160 -- yes.  
24 WA-95-164. At that point, Four -- Four Seasons Lakesites  
25 Water & Sewer Company expanded its sewer system -- or its

1 sewer service area to Shawnee Bend. And then it again  
2 became certificated as a water utility on Shawnee Bend.

3 Q And when they became certificated, did they have  
4 in there -- do they describe what is inside the rates and  
5 what they're going to be charging their customers for?

6 A Yes. In that case, there was a feasibility  
7 study. In fact, still today, there are separate rates on  
8 Horseshoe Bend and Shawnee Bend to sewer. And, of course,  
9 they only have water rates on Shawnee Bend. Yes. There  
10 was a feasibility study with some projected capital  
11 expenses and projected day-to-day operating expenses.

12 Q Okay.

13 A And some kind of a customer forecast. That's  
14 how rates were set at that time.

15 Q And do they tell you what they believe the  
16 revenues will be or what the revenues were currently for  
17 the company before it was sold?

18 A There -- there was a revenue projection. I  
19 think we're finding out in this case there were some  
20 availability charges being charged at that time. And I  
21 don't remember that from that case. Maybe it was  
22 discussed, but I don't have recollection of it. I -- I  
23 don't think there were very many lots, so there probably  
24 was not very much revenue.

25 It probably just didn't really consider it while



1 we were looking at a, you know, five-year projection of  
2 the state of the company.

3 Q And then in '95 is when the lots started being  
4 built out more and sold?

5 A It's my understanding at that time, maybe  
6 beginning a year or two before that and continuing for the  
7 next several years is when quite a few of the lots got  
8 sold. I don't really have a history of lot sales, but  
9 that's my understanding of it.

10 Q Now, you've been here for most of the testimony  
11 of everyone in the past couple days?

12 A Yes, I have.

13 Q And you've heard in the testimony that it does  
14 not appear that there are availability fees charged on  
15 other Lake Region properties other than what's in Four  
16 Seasons Lakesites?

17 A Correct. That's what I've heard.

18 Q And do you feel that availability fees -- you've  
19 indicated that you didn't think availability fees really  
20 were a value for what they provided to a customer. Is  
21 that a correct --

22 A I'm not sure I said it quite that way. I did  
23 say I don't think they're equitable. And to the extent  
24 Four Seasons development customers are paying them and  
25 other development customers are not paying them, there is

1 some inequity subdivision to subdivision. And, frankly,  
2 I'm not sure how you can fix that.

3 Q Well, if there is an assumption that the  
4 customers or the undeveloped lot owners who are paying  
5 them receive some sort of benefit, whether it's the  
6 ability to connect in the future or not, don't you believe  
7 that the other lot owners would also need that type of  
8 benefit in order to have it be equitable?

9 A Well --

10 Q Don't the -- I'm sorry. Doesn't that benefit  
11 already exist for those other customers who aren't paying  
12 the availability fees?

13 A Yes. That's what I was going to try to get an  
14 answer to. Utilities have a defined service area, this  
15 one and -- and they pretty much all do. Basically,  
16 anybody within the service area has a right to -- to get  
17 utility service under the rules.

18 Q Okay.

19 A It might require a pipeline extension. But  
20 there's -- you don't have to pay some reservation or get  
21 on some list in order to connect. Just by being in the  
22 service area, you -- you have the right to connect, and  
23 the utility has the obligation to provide service to you.  
24 I do see availability charges when we -- when we use the  
25 revenue as ordinary utility revenue. They can be used to

1 maintain the system that is in place out there even though  
2 you may not be connected. It could be -- could be a  
3 select few lots that are not connected. It could be a  
4 fairly large area. But those customers paying the  
5 availability charge, you could consider that revenue to be  
6 used to pay for maintenance to that pipeline. Instead of  
7 paying utility rate, they're paying the availability  
8 charge to maintain it.

9 MS. LANGENECKERT: That's all my questions for  
10 now. Thank you.

11 JUDGE STEARLEY: All right. Thank you.  
12 Cross-examination from Public Counsel?

13 MS. BAKER: I have no questions. Thank you,  
14 Mr. Merciel.

15 JUDGE STEARLEY: Lake Region. Mr. Comley?

16 MR. COMLEY: Thank you, Judge.

17 CROSS-EXAMINATION

18 BY MR. COMLEY:

19 Q Mr. Merciel, let's go to page 4 of your rebuttal  
20 testimony. And the lines that are starting there, lines 1  
21 through 7 are the lines that you did change.

22 A Right.

23 Q Can you tell me which regulated utilities you  
24 are referring to in your answer there about which  
25 companies the Commission is permitted to have charges for

1 availability -- let me rephrase. Can you tell me who  
2 you're referring to in that -- in that answer, what  
3 regulated utilities you're referring to for which it has  
4 permit charges to appear in the utility rate?

5 A Okay. This complete sentence talks about  
6 revenue that's included but does not exist in the tariff.  
7 That complete sentence only applies to one company, and  
8 that would be Ozark Shores Water Company.

9 Now, there are two other companies where the  
10 revenue was included, but the charge was in the tariff.  
11 That would be Peaceful Valley and I.H. Utilities.

12 Q So Peaceful Valley, the revenue for the  
13 availability fee is included and a tariff for the rate is  
14 included?

15 A Correct.

16 Q And Ozark Shores, there is no rate, but the  
17 revenue has been included?

18 A Correct.

19 Q And that was in Ozark Shores' last case before  
20 the Commission?

21 A Yes, it was.

22 Q Do you know whether there have been any gas  
23 utilities that have been involved in setting availability  
24 fee rates?

25 A I don't know. I -- I have to admit my

1 ignorance. I don't work on gas utilities, and I really  
2 have no knowledge of -- of how that might have been  
3 handled.

4 Q Would you have similar knowledge about electric  
5 utilities as well?

6 A No.

7 Q You have no knowledge about them, rather?

8 A No. I don't. I -- I really only have knowledge  
9 about water and sewer. I've not worked with the other  
10 industries.

11 Q You say that the Commission has also approved  
12 rate cases where availability charges were applied as  
13 ordinary revenue but did not exist in the tariff, and that  
14 would be Ozark Shores?

15 A Correct.

16 Q Now, isn't it true that there have been rate  
17 cases in which the Commission, in some way or the other,  
18 allowed the availability charges collected by the -- the  
19 utility to be an offset to rate base?

20 A I don't know of any. It -- there could be some,  
21 but I don't know of any.

22 Q Do you have a recollection of the 1990 rate case  
23 with Ozark Shores? And in that case, wasn't it the  
24 decision to apply availability fees to reduction for --

25 MS. BRUEGGEMANN: Objection. Hold on a sec.

1 Can we let him answer the first part of question, whether  
2 he has any recollection to 1990?

3 MR. COMLEY: Sure. I'll split it up.

4 Q (By Mr. Comley) Do you have a recollection of  
5 the Ozark Shores 1990 rate case?

6 A I don't have rec -- recollection of that  
7 specific case, and I have not looked it up.

8 Q All right. So -- okay. We'll just set that  
9 aside. But you know of no cases in which -- apparently  
10 you had some thought that somewhere there were because  
11 you've changed your testimony from the way you filed it  
12 back in March and -- I mean, late February and now.

13 A Well, no. No, I don't. I apologize for making  
14 this change. I think something happened with the editing.  
15 There was some train of thought --

16 Q Is that it?

17 A Yeah. I never intended to say this because I  
18 never believed that. Frankly, I don't remember anything  
19 even with Ozark Shores or Four Seasons Lakesites Water &  
20 Sewer Company before it. And I don't know everything  
21 about all of the rate cases, but I -- I never heard of the  
22 money being used to offset rate base. I thought it was  
23 always used to -- as a supplement to revenue.

24 Q All right. So, we'll just go on from that. My  
25 understanding is you have no recollection of the 1990 rate

1 proceeding involving Ozark Shores?

2 A Correct.

3 Q On page 4 again, line 22, you say that assuming  
4 the subdivision project is successful, the developer  
5 generally recovers the handling cost of all of the  
6 subdivision improvements, including utilities for the sale  
7 of the lots which are attractive and valuable to potential  
8 purchasers because of the improvements. This is a direct  
9 question for you. What, in your estimation, would be a  
10 successful subdivision?

11 A Where the developer is able to sell lots and  
12 make some money off of it.

13 Q So you would say any subdivision where the  
14 developer sells a lot would be a successful subdivision?

15 A Well, no, I didn't say that.

16 Q All right. It takes more than one lot, in other  
17 words?

18 A Usually, it would, yes.

19 Q So --

20 A And I'm --

21 Q We're dealing with 1607 lot allotment of lots in  
22 this subdivision. Now, have you got an opinion about  
23 whether or not this one has been a successful subdivision?

24 A From the developer's point of view, I -- I  
25 really don't. I mean, the subdivision is there. Some

1 lots have been sold. I doubt if all of them have. But I  
2 don't know. I don't know how many have and haven't.

3 Q All right. Well, we talked about that this  
4 morning. Let's assume there was just a 28 percent  
5 build-out right now, that there's 462 lots that have been  
6 improved, and the remainder have not been improved, and  
7 this has been done over 15 years. Are you in a position  
8 to say that, in your estimation, from a rate-making  
9 principle here that that's a successful subdivision?

10 A Well, I don't think I am. And to be honest, my  
11 position here at Commission, I'm not inclined to make a  
12 judgment whether a subdivision is -- is successful or not.  
13 That's -- to a great extent, that's the developer's  
14 business.

15 If -- if the utility is -- is able to provide  
16 the service, that's really what my concern is. If -- if  
17 it's a -- and we do see subdivisions that maybe only a few  
18 lots were sold. Might have a big area, and in some cases,  
19 a fairly good size treatment plant or -- for example, we  
20 have a -- well, I don't want to get too far off on a  
21 tangent. But we do see utilities that have a hard time  
22 operating their systems because the subdivision is not  
23 developed and you don't have enough customers to support  
24 it.

25 Q And in this case, that's not the case with Lake



1 Region. They're operating their system very efficiently,  
2 and they're very good at what they do. Wouldn't that be  
3 your estimation?

4 A I would agree with you. I think it's a well-run  
5 system. I have respect for the people that are running  
6 the company and running the system. I think there are  
7 enough customers to where this is a, I will say,  
8 successful, stand-alone utility that does not need outside  
9 support any longer.

10 Q All right. Another thing, I don't know whether  
11 this was something you would feel comfortable in  
12 answering. Given the fact that the area of Shawnee Bend  
13 is predominantly a recreation area, do you expect to have  
14 a hundred percent build-out of all those lots out there?

15 A Not really. I would agree with you. In a -- in  
16 a lake development, whether it's a place like Lake of the  
17 Ozarks or a subdivision of the lake, you almost never get  
18 a hundred percent build-out.

19 Q Let's see. On page 6 of your rebuttal, near the  
20 close of the page on page -- line 22 and following, you  
21 say that -- you testify that in your opinion availability  
22 charge can be a lawful rate in a utility's tariff. Is  
23 that a correct reading of your testimony?

24 A Yes.

25 Q Then on page 7, you state on line 9 that you do

1 not share the opinion that this is a service provided by a  
2 utility. And today, is that still your opinion?

3 A As -- as prefaced, I think, in my answer, I'm  
4 saying this from a technical standpoint, not trying to  
5 make a legal conclusion. I don't think it's the utility  
6 service in that I think of a service as you pay your  
7 monthly bill and you get a monthly service, maybe water as  
8 a commodity or the ability to discharge sewage or whatever  
9 the utility is. And this is not a service in that  
10 traditional sense.

11 Q And that has been your testimony consistently on  
12 a number of occasions?

13 A That's -- yes. In occasions besides this, that  
14 has been my opinion. Again, it's not a legal conclusion.

15 Q From a practical technical sense, you're saying  
16 that this is not a utility service?

17 A That's my opinion.

18 Q All right. Now, are you proposing that the  
19 availability charge in -- that we're talking about in this  
20 case should be a tariff charge for Lake Region?

21 A I haven't proposed that.

22 Q But you have permitted that for Peaceful Valley;  
23 isn't that correct?

24 A Correct.

25 Q If you -- is the Staff proposing that it is

1 appropriate for sewer or water utilities to tariff rates  
2 for non-services?

3 A In -- in a case like this, yes. That is the  
4 Staff's position. It's -- it's a charge that the utility  
5 is assessing. And it is -- it is a rate in some sense and  
6 should be included in the utility's revenue.

7 Q I want to go back a little bit. I forgot to ask  
8 you a question about your ideas about the value of a lot.  
9 In a perfect world, a developer could buy a lot, determine  
10 how much the lot would have to recover for infrastructure  
11 and recover that in the sale of the lot. Would that be a  
12 fair statement?

13 A Yes, it would.

14 Q But isn't it also true that the developer is  
15 subject to market conditions over which he has no control?

16 A Absolutely. There are market conditions. There  
17 are also unforeseen expenses, including utilities.

18 Q And with those kinds of elements out there,  
19 those kind of factors, whether or not a -- a developer  
20 could recover all of the investment in infrastructure  
21 through lot sales is an issue that would depend entirely  
22 upon market conditions?

23 A Well, at least to a great extent. It depends on  
24 market conditions. That's the risk the developer takes.

25 Q Okay. And this kind of segways into my next

1 question. On page 7, line 12, you say, The value of any  
2 given lot anywhere is what it is based on any number of  
3 factors, including utility availability and an extra  
4 recurring payment does not do anything to increase the  
5 value of the lot. So in that -- did I say that correctly?

6 A Yes, you did.

7 Q Okay. And then the extra recurring payment  
8 referred to in your line 12, that's the availability  
9 charge --

10 A Yes.

11 Q -- that you're talking about?

12 A Yes.

13 Q Would you agree with me that there is value to  
14 the lot owner to keep paying that availability charge?  
15 And this is a question I asked Mr. Featherstone.

16 A I can think of a couple of different  
17 perspectives to answer it.

18 Q Well, let me ask it a different way.

19 A Okay.

20 Q If the lot owner doesn't pay the availability  
21 charge, doesn't the lot owner face economic consequences?

22 A Okay. That's one of the perspectives. In that  
23 sense, it -- it is beneficial for him to pay it so he  
24 doesn't get a lien on his property.

25 Q All right. Let's see. On page 7, again, in

1 lines 14 through 17, you were describing the ways in which  
2 an availability charge can be useful to a utility in the  
3 early stages of utility life?

4 A Yes.

5 Q When -- when Lake Region came in for its  
6 certificate case or the Lake Region predecessor came in  
7 for the certificate case on Shawnee Bend, how long had  
8 that utility been certificated by the Commission?

9 A Well, you're asking me to subtract some years.  
10 I started in about 1972. And this was about 1995.

11 Q So about --

12 A Whatever the difference is.

13 Q Twenty-three years -- 23 years?

14 A That sound right.

15 Q They had been in -- in service at that time?

16 A In service in some fashion, yes.

17 Q So, really, we were -- you're dealing here with  
18 a utility coming in for expanded territory, but a utility  
19 that had really dusted off some of the early parts of its  
20 development; isn't that correct?

21 A That would be correct.

22 Q It -- it really wasn't a new utility in the  
23 sense that it was brand new?

24 A It wasn't a start-up. I agree. I might point  
25 out these -- this is more of a general background. I'm

1 trying to describe what availability charges are in this  
2 part of testimony as well, so not necessarily specifically  
3 applicable to Lake Region.

4 Q All right. All right. On page 9, starting with  
5 line 8, you list a series of disadvantages that -- which I  
6 understand -- these are -- these disadvantages would be  
7 your opinion as a rate regulator, a technical expert in  
8 connection with rate regulation with the Commission; isn't  
9 that correct?

10 A Correct. Correct. And, again, generally, not  
11 necessarily applying specifically here.

12 Q Looking at all these disadvantages, wouldn't it  
13 be true, Mr. Merciel, that if the lot owner decides to  
14 purchase a lot subject to availability fees, that is a  
15 choice the lot owner can make irrespective of what  
16 disadvantages there may be to the lot owner or what  
17 advantages there may be to the developer? Wouldn't that  
18 be a fair statement?

19 A The lot owner does have a choice in the matter.  
20 I would agree with that.

21 Q Okay. They can decide not to buy the lot. They  
22 can consider if the availability fees or assessments are  
23 too much for them to economically bear. Wouldn't that be  
24 a correct statement?

25 A They could.

1           Q     Let's see. Kind of similar to what I just asked  
2 you, but on page 10 at the top of the page, you state that  
3 it's -- the question is whether it's reasonable for land  
4 developers to charge regularly recurring fees or occurring  
5 fees for utility related matters. Your opinion is that  
6 no, they shouldn't?

7           A     That is my opinion.

8           Q     Okay. And again, just sort of repeating this --  
9 we're not in a position of controlling the choice of the  
10 property owner in this situation. The property owner can  
11 go ahead and decide to buy the lot whether we think it's a  
12 disadvantage or inequitable at all?

13          A     That's correct. I -- I am not saying the  
14 developers can't do it. I just don't personally think  
15 it's reasonable because of the disadvantages on the  
16 previous page. Or including some of those.

17          Q     Page 11, lines 27. This is your discussion of  
18 the Peaceful Valley Company, I think -- yes. Lines 27  
19 through 31. Can you tell us when Peaceful Valley was  
20 certificated?

21          A     Not off the top of my head. But I did look it  
22 up. And I might have some stuff in my stack that would  
23 tell me.

24          Q     Do you mind getting that for me?

25          A     I can look and see what I have here, if I may.

1 Q If that would refresh your memory, I would  
2 really appreciate it.

3 A Well, you actually asked me about their  
4 certificate, when their certificate was issued. And I --  
5 I guess I misspoke. I didn't really look that up. But  
6 their original tariff indicates the 1975. Let's see here.

7 Q And is that tariff on the back of your rebuttal  
8 testimony?

9 A That's not the one.

10 Q Oh, okay.

11 A I think -- I think that's the current one that I  
12 included in the rebuttal. Let me check that for you to be  
13 sure. Right. The one that's Attachment 2 in my rebuttal  
14 testimony, that's -- that's the one currently in effect  
15 for Peaceful Valley. This particular tariff sheet went in  
16 effect May 7th, 2009.

17 Q Did the -- did the company come in for a rate  
18 relief in connection with the filing of this tariff?

19 A Yes. Well, I -- I believe -- yes. There was a  
20 rate case.

21 Q Was it stipulated or was there a -- did the  
22 Commission have a chance to review --

23 A No. It was -- it was stipulated. What I wanted  
24 to say was the rate -- they ended up with a rate decrease.

25 Q I see.



1           A     They didn't get a rate increase.  And what we  
2 did is they got an across the board decrease.  The  
3 availability charge originally was \$9 per quarter.  And --

4           Q     How did they -- how did you come up with that  
5 figure?

6           A     Everything was reduced by some percentage, and I  
7 don't know offhand what the percentage was.  But the --  
8 the company's revenue was reduced by some percentage.  All  
9 of the rates were decreased by that percentage, including  
10 the availability charge.

11          Q     The availability charge for Peaceful Valley, was  
12 that set by separate covenants and deed restrictions?

13          A     That's the one I -- I -- I looked through our  
14 files, and I don't have any information.  I -- I assume  
15 that it was in some kind of a deed restriction, but I  
16 don't have the documentation to show that.

17          Q     Let me ask you this:  The condition of service  
18 at the bottom of the page says that the property owner  
19 will be required to pay any availability charge owed since  
20 the effective date of this provision, July 1, 1985, before  
21 the company is required to provide water service.  Can you  
22 tell me what provision was effective on July 1st, 1985?  
23 Do you know?

24          A     Well, yes, I do.  I don't know why this date is  
25 in here.  Actually, I think we're going on a previous

1 question. I have the other tariff sheets. I'll give you  
2 the whole story of Peaceful Valley. On July 1st, 1985,  
3 there was a tariff sheet filed. This is the second  
4 revised to PSC Missouri No. 1. This would be their first  
5 tariff, and this is the second revision. Could have been  
6 a rate case. I didn't look up the background of the  
7 tariff. But there could have been a rate case. But  
8 anyway, it does have a -- it does have an availability  
9 charge listed on it, \$9 per quarter.

10 Q What's the date of that tariff, effective date  
11 of that tariff?

12 A July 1st, '85. Prior to that would have been  
13 the first revised. That one also has the availability  
14 charge of \$9. That tariff became effective March 31st,  
15 1981. So I can tell for sure that it goes back -- goes  
16 back to '81.

17 Why the current tariff just goes back to 85, I  
18 don't know. I don't know what the reasoning is for that.  
19 There was a -- an original tariff. As I said, this one  
20 was the first revised, the 1981. The one prior to that,  
21 at least the copy that I can find around here is dated  
22 1975, but it's a blank sheet, and then right behind it,  
23 there's a copy of a water bill. And I don't see that it  
24 has an availability charge on it. So I -- I don't know if  
25 availability -- availability charges existed prior to '81

1 or not. I can't tell.

2 Q In connection with that case, did you or members  
3 of the Staff determine whether or not the company was  
4 having difficulty collecting availability fees?

5 A I don't -- I don't know. I don't know if we did  
6 that or not.

7 Q If a potential customer in Peaceful Valley filed  
8 a complaint in this Commission alleging that service was  
9 denied because a 25-year-old availability fee was not  
10 paid, would the Staff agree with the company that service  
11 should be denied?

12 A The Staff has taken the position during the  
13 years that I've worked here that if -- if utilities had an  
14 availability charge and if it was in the tariff, then  
15 service could be refused for non-payment of the  
16 availability charge.

17 If -- our position was if it was not in the  
18 tariff, then the utility would not be able to refuse  
19 service. They might be able to go to court or take some  
20 other means to correct it. But if they put the charge in  
21 the tariff, then it was a Commission-approved tariff  
22 charge, and they could refuse service based on non-payment  
23 of the availability charges.

24 Q If Lake Region elected to tariff its  
25 availability charge -- an availability charge for water

1 and sewer on Horseshoe -- excuse me -- on Shawnee Bend and  
2 had a provision in there that the property owner would be  
3 required to pay any availability charge owed since the  
4 original date of the declarations, which I think has been  
5 suggested by Mrs. Langert -- Langeneck -- I'm sorry, Lisa.  
6 Langeneckert.

7 MS. LANGENECKERT: I want to object that he  
8 keeps marrying me off to my brother.

9 A Okay.

10 MS. LANGENECKERT: I don't care about the last  
11 name. But I don't like the Mrs.

12 A Okay. If I understand your -- your question,  
13 would the Staff allow Lake Region to go back and enforce  
14 collections by refusing service? I doubt the Staff would  
15 agree to going back some period of time. If -- if the  
16 charge wasn't in the tariff today, I could see the Staff  
17 agreeing that any charges paid -- or not paid from today  
18 forward could be -- collections could be enforced by  
19 refusing service.

20 Q (By Mr. Comley) But you would not agree to a  
21 retroactive way to --

22 A I don't think so. I wouldn't agree to it, and I  
23 don't see the Staff doing that.

24 Q But you agreed to it for Peaceful Valley?

25 A I don't think so. It was -- it was already in

1 the tariff. I knew -- this current tariff sheet it says  
2 going back to July 1st, 1985. But it was in the tariff on  
3 July 1st, 1985. So I don't think it's retroactive.

4 Q Oh, I see. But the current tariff still permits  
5 somebody to go back 25 years to enforce an availability  
6 charge?

7 A It does do that. Yes.

8 Q On page 12, line 15, if I'm reading the last  
9 part of your testimony on -- let see. Your last sentence  
10 up to line 15, it's your testimony that availability  
11 charges have never been addressed for Four Seasons  
12 Lakesites Water & Sewer Company. Would that be correct?  
13 Or for Lake Region.

14 A I think that's correct. Now, what -- what line  
15 -- I thought you were on line 15.

16 Q I'm on line 15, page 12.

17 A Okay. Line 15 starts with the words rate case?

18 Q Yes, it does. It's the sentence, Lake Region  
19 Water & Sewer has never had a rate proceeding since its  
20 certification in 1970 -- '97 until this current one, and,  
21 thus, availability charges have never been addressed for  
22 it.

23 A Okay. Correct. Yeah.

24 Q Now, my understanding is that when the  
25 certificate was considered in '95, Greg Meyers did testify

1 that availability fee revenue was expected to be about  
2 \$49,000. Is that your understanding?

3 A I -- it was talked about. But I don't remember  
4 the 49,000, but Greg Meyer did talk about it. And we did  
5 expect to review availability charges in the future. Yes.

6 Q Now, did Mr. Hummell participate in that  
7 proceeding as well?

8 A Yes.

9 Q Okay.

10 A Yes.

11 Q Now, Mr. Summers has testified that Mr.  
12 Hummell's testimony was that \$45,000 was cost of service  
13 for the company at that time. Isn't it true that the  
14 tariffs were designed to recover the 45,000?

15 A I believe that's right. We were doing a -- a  
16 proforma rate setting procedure since it was certificated  
17 case. There were not any customers. Or at least very few  
18 customers. We were looking into the future to set -- to  
19 set rates. And we -- I don't believe we did take  
20 availability charges into consideration at the time.

21 Q That's my understanding, too. There was no  
22 availability charge revenue offset against the cost of  
23 service.

24 A But we also said that we would look at them in  
25 the future.

1           Q     And it's been how many years since that time  
2 since they were --

3           A     Well, it's been a lot of years, but this is the  
4 first rate case where that's being done. So it is the  
5 future.

6           Q     You were waiting to see a rate case before you  
7 looked at it again. Is that what you're saying?

8           A     Yes. Now, we -- some of our staff people may  
9 have looked at it informally. You know, I don't know  
10 who's reviewed annual reports. Or it's possible we even  
11 went on-site and did some informal work. But there's  
12 never been a case and never been any formal work in  
13 actually reviewing rates and trying to make any kind of  
14 adjustment until now.

15          Q     But the certification case was a case in which  
16 there was an opportunity to use availability revenue as an  
17 offset for cost of service, correct?

18          A     Well, I guess we could have.

19          Q     It would have set rates pretty near zero at that  
20 point?

21          A     Well, yeah. We -- it -- what we would have used  
22 for availability would be a wild card. You know, again,  
23 this was the early stages of development. There were not  
24 -- not many lots sold.

25          Q     Enough to produce 49,000.

1           A     Well, I think that might have been a future --  
2     that might have been a future revenue. We might have been  
3     looking three or five years into the future, set those  
4     rates as we typically do in certificate cases when there  
5     aren't enough customers.

6           Q     On page 13, lines 1 through 2 -- and this kind  
7     of follows up from our visit -- what I visited with Ms.  
8     Cason about this morning. You say that you are aware of a  
9     civil proceeding in which availability charges were an  
10    issue but in which the Staff was not involved. And you  
11    had Cause No. 07CM-CC00013 in Camden County.

12          A     Yeah.

13          Q     Isn't it true, Mr. Merciel, that that is -- that  
14    was the case involving an annexation for The District?  
15    Have you been advised of that since the -- this morning's  
16    cross-examination in this case?

17          A     I think I've been told that. I don't really  
18    know that firsthand other than hearing it and maybe being  
19    told.

20          Q     And you -- this statement that you made in your  
21    testimony, was that based upon what Ms. Cason said in her  
22    testimony or what you had learned from the Property Owners  
23    Association in some way?

24          A     Well, it's -- what I learned is from a  
25    deposition and a portion where Mr. Schwermann testified.



1 We -- we might have gotten the document from -- I mean, I  
2 got it from our attorney. We might have gotten it from  
3 the homeowners. I'm not real sure where it came from.

4 Q You looked at the deposition in that case.  
5 Okay. And -- but did you see the Petition in that case?

6 A I have not.

7 Q All right. So it's just based upon what you  
8 understood was the matter in the deposition?

9 A Correct. All I know is the deposition was in  
10 the case and the deposition was -- had availability  
11 charges as something that was discussed.

12 Q On page 15, bottom of the page going into the  
13 top of page 16, you say, To the extent these lot owners  
14 relied on the declaration, they likely believed that,  
15 indeed, the Commission would provide oversight of  
16 availability charges.

17 Now, this is another follow-up to Ms. Cason.  
18 She was the witness for the Property Owners Association  
19 this morning. And you know that she owns a lot in Porta  
20 Cima. In fact, she owns two lots in Porta Cima on which  
21 she built a house. Is that your understanding?

22 A That's my understanding.

23 Q Would you agree with me that she would probably  
24 be a pretty well-informed property owner?

25 A Yes.

1 Q Pretty well-informed property purchaser?

2 A Seems to be today.

3 Q And would you expect property purchasers in  
4 Shawnee Bend to be as diligent as Ms. Cason in the  
5 examination of their -- their property purchase?

6 A Well, I -- I don't know. Some people would read  
7 the stuff pretty closely, and some probably would not.

8 Q So would it be fair, Mr. Merciel, that some of  
9 those owners paid no attention at all to what those  
10 declarations said and had no expectations at all at the  
11 time they bought their property of how the availability  
12 fees would be collected and paid?

13 A That could well be true of some of them.

14 Q Okay.

15 A I'm going on to -- I mean, I -- I have copies of  
16 the declaration. And I don't -- I certainly don't want to  
17 represent that I've read through the whole thing. But I  
18 was interested in the portions about water and sewer. And  
19 I'm not an attorney.

20 But I can read it as well as probably most lot  
21 owners could. And -- and I see what I read. And to a  
22 great extent, this is my impression. And I don't think I  
23 would be that much different than somebody purchasing a  
24 lot and seeing what's written about water and sewer in  
25 there.

1 Q Well, not everybody in the world has 23 --  
2 almost 30 -- over 30 years worth of experience regulating  
3 water and sewer companies, Mr. Merciel.

4 A Well, that -- that may be.

5 Q All right. Now, they have been amended. These  
6 declarations have been amended, haven't they?

7 A A great number of times.

8 Q And the amendments are permitted by the  
9 declarations; is that correct?

10 A That's correct.

11 Q And isn't it true now that as of July 22nd,  
12 2009, those declarations do not contain the kind of  
13 language that they did before concerning how the  
14 availability fees would be monitored or owned by a  
15 utility? Isn't that true?

16 A Well, not -- not entirely.

17 Q Well, let's go to your -- let's go to your  
18 attachments. On page 5 of Attachment 4 to your rebuttal  
19 testimony, paragraph 3.1 involving the water systems and  
20 central water system availability fee, hasn't that section  
21 been modified so that no longer is there a reference to  
22 having oversight by the Missouri Public Service  
23 Commission?

24 A Actually, I don't believe this one's been  
25 modified. This is the amendment to the Third Amended and

1 Restated Declaration. And this is the one that's  
2 referenced in the Fourth Amended.

3 Q Yes. Is your understanding that the July 22nd,  
4 2009, filing is still in force and effect?

5 A Yes.

6 Q And with respect to paragraph --

7 A Did I miss -- did I miss your question? I feel  
8 like I'm missing something.

9 Q Mis -- we're miscommunicating. But with respect  
10 to paragraph 3.1 --

11 MS. BRUEGGEMANN: Can we clarify what attachment  
12 we're looking at? I think that's part of the issue.

13 Q (By Mr. Comley) Attachment No. 4 to your  
14 rebuttal.

15 A Okay.

16 Q Page 5.

17 MS. BRUEGGEMANN: And just for clarification  
18 real quick, the Attachment 4 that I have is the amendment  
19 to the Third Amended and Restated Declaration of  
20 Restrictive Covenants.

21 MR. COMLEY: Yes.

22 MS. BRUEGGEMANN: Okay. Thank you.

23 Q (By Mr. Comley) Which I think was recorded on  
24 July 22nd. Excuse me. It was recorded July 29th. The  
25 date of the document is July 22nd.

1           A     Okay.  I believe you were looking at paragraph  
2  3.1?

3           Q     Have you found it for me?

4           A     Yes.  I do have it.

5           Q     All right.  And do we agree that this is the  
6  current declaration concerning Shawnee Bend lots and  
7  central water system?

8           A     Yes.  I believe that it is.

9           Q     And isn't it true that this amendment no longer  
10 contains language concerning the Public Service Commission  
11 oversight or approval of any availability charges?

12          A     That's correct.  This one does not say PSC  
13 oversight.  But it does say that the availability charges  
14 paid to the owner of the central water system.  That would  
15 be Lake Region.  I know it has assigns and designee  
16 provisions, but it says it will be paid to the utility  
17 company.

18          Q     Or developer's assigns?

19          A     It doesn't say developer.  It says or its  
20 assigns.

21          Q     Let's see.

22          A     It says, The owner of each lot located on  
23 Shawnee Bend, this a subdivision serviced by a central  
24 water system, agrees to pay the owner of the central water  
25 system or its assigns or designees a monthly bill for the

1 charges --

2 Q Unless the owner of the lot is contractually  
3 obligated to the developer or the developer's assigns.

4 A It does have that provision, too, yes.

5 Q And that -- and on page 6, paragraph 4.1,  
6 that regards the central sewer system availability charge  
7 for Shawnee Bend?

8 A And I believe it's substantially maybe -- maybe  
9 identical language pertaining to the sewer system.

10 Q Very well.

11 A It does not say PSC, but it does say the owner  
12 of the central sewer. Again, that would be Lake Region.

13 Q On page 17, lines 7 through 10 --

14 A I'm sorry. Is this still in the same --

15 Q In your rebuttal.

16 A Okay. That's it.

17 Q You say that, Staff does not have a specific  
18 revenue amount at this time and thus far -- and has thus  
19 far not included any such revenue because of the  
20 objections to the Staff's data request.

21 Let me ask a question about this. It would be  
22 true, Mr. Merciel, that Lake Region does not collect this  
23 availability fee revenue?

24 A It's my understanding Lake Region, in fact, does  
25 not collect it. I am not convinced that's the proper way

1 it should be handled.

2 Q Would you agree with me the rights to that  
3 revenue are not vested in Lake Region?

4 A Well, again, I'm -- after reading the  
5 declarations, I'm not sure that's proper. That may be the  
6 way it is.

7 Q But you would agree with me that that revenue is  
8 not vested in Lake Region whether you like it or not?

9 A I -- yeah. I would agree with that. Yes.

10 Q Okay.

11 A Again, I don't consider it proper.

12 Q Yes. I understand that. Yes, I understand.  
13 And I was hoping that would go unsaid. But -- on the same  
14 page, lines -- page 17, line 20, you say that it was after  
15 the current owners of Lake Region created Lake Utility  
16 Availability that the availability charges were separated.

17 The -- earlier in the day, we were talking about  
18 an assignment that occurred in 2004. But weren't --  
19 weren't availability fee revenues -- weren't they  
20 separated from the utility long before this?

21 A Yes. I -- I think -- I think I have to admit.  
22 My information in this testimony at the time it was  
23 written is now outdated. I believed this at the time. I  
24 might -- might say I've learned more about availability  
25 charges in the history of Lake Region than I care to

1 admit, and just in the process of writing this testimony  
2 and the surrebuttal testimony. And, frankly, every time I  
3 read the declarations, I -- I learn something that I  
4 didn't know before.

5           So, again, at the time, this statement would  
6 have been a true statement in my -- you know, to my  
7 knowledge. I think even that's correct that in my  
8 surrebuttal where I delineate some historical events that  
9 show that there was a -- some entities prior to -- prior  
10 to this time, prior to the current owners.

11           Q     We should rely on your surrebuttal more?

12           A     Yes. Correct.

13           Q     And, also, you say there was a creation of Lake  
14 Utility Availability. We've talked about it, but I just  
15 want to make sure you understand that it was a fictitious  
16 name registration and not the creation of a separate  
17 corporate entity or entities.

18           A     I do understand that. Yes.

19           Q     As Attachment 7 to your rebuttal, you've  
20 submitted a -- a -- a sewer and water agreement and an  
21 invoice. And can you tell me where you acquired that?

22           A     I got it from Mr. Featherstone. It's my  
23 understanding he got it, I think, from John Summers. In  
24 fact, I think he might have referred to that earlier  
25 today.



1 Q All right. Now, did -- this was a billing for  
2 availability fees even before the company was certificated  
3 at Shawnee --

4 A Wait.

5 Q Go ahead.

6 A I'm sorry. Wrong exhibit.

7 Q Wrong attachment?

8 A This is not what I got from Mr. Featherstone.

9 Q It's the last one. It's --

10 A Yeah. It's -- yeah. Yeah. I'm sorry. I  
11 misspoke. This is the one -- I believe we got it from the  
12 Property Owners Association. And I don't know if it came  
13 directly from Ms. Cason or Ms. Langeneckert. I'm not  
14 sure. But -- I'm sure that Staff got it from them.

15 Q You would agree with me, wouldn't you, that this  
16 billing was done before the property was even certificated  
17 -- or, rather, the service territory was certificated?

18 A It -- it was. Yes. I -- I did notice that.

19 Q All right.

20 A But the point being it was -- well, it wasn't  
21 Lake Region. It was Four Seasons then.

22 Q At that time?

23 A It was the same company. But they're the ones  
24 who did the availability charge billing.

25 Q I have some questions about your surrebuttal.

1 Let's go to page 3, lines 1 and 2. You say that you  
2 believe that the most logical reason for developers to  
3 create availability charges is simply to assist in  
4 supporting the utility operations.

5 A Yes.

6 Q Is that your statement?

7 A Yes.

8 Q Let me ask you this: In your experience -- you  
9 have never been a real estate developer, have you?

10 A I've never been one.

11 Q Not that you'd like to be one.

12 A I -- I've dealt with them enough, I don't think  
13 I would want to be one.

14 Q All right. But your -- your opinions on those  
15 subjects are based entirely as -- from your experience as  
16 a rate regulator?

17 A From my experience in working with small water  
18 and sewer companies. And we really do often deal with  
19 developers, so I do have some knowledge of it.

20 Q Would you happen to know how much plant is shown  
21 to have been contributed by the developer of Shawnee Bend  
22 properties to Lake Region? Mr. Featherstone had that  
23 figure. But do you know?

24 A I -- I don't. And if I gave you an answer, it  
25 would be something that Mr. Featherstone would tell me. I

1 don't -- I don't know firsthand.

2 Q All right. Would it be your testimony that it  
3 would not be logical for a developer to charge an  
4 availability fee in a deed restriction arrangement to  
5 recover costs of infrastructure the developer donated to a  
6 utility? Would it be illogical for a developer to charge  
7 an availability fee in a deed restriction arrangement to  
8 recover the costs of infrastructure he just -- the  
9 developer just devoted -- or donated to the utility?

10 A In my opinion, it would be because to do so  
11 would be for the developer to assume that he's going to  
12 sell a lot and a house is not going to be built on it. In  
13 other words, if -- if you sell a lot, if he expects to  
14 collect availability charge, he has to hope a house isn't  
15 going to be built on it. If a house gets built, then he  
16 doesn't collect the availability charge and wouldn't be  
17 recovering what he's trying to recover.

18 Q Isn't that kind of the situation in Porta Cima?  
19 We only have a 28 percent build-out in 15 years? There is  
20 expectations that those lots would never be built on;  
21 isn't that correct?

22 A At the risk of sounding like I'm getting in the  
23 developer's head and his thinking, that could well be the  
24 case.

25 Q All right.

1           A     And it's inequitable, in my opinion.

2           Q     We may have covered this earlier.  On page 4,  
3 you state that, in your opinion, Staff did not have a good  
4 estimate to use for availability fees on a -- on a  
5 proforma basis.  I think that's in lines 21 through 23.  
6 And that was in Case No. -- that was in the certification  
7 case.

8           A     Correct.

9           Q     Are you saying that in this case the Staff does  
10 have a reasonable estimate of -- or a reliable estimate of  
11 what those fees are now?

12          A     Not as reliable as I wish it were.  But I think  
13 the Staff is getting as close as we can based on the  
14 information we have available to us, that being the amount  
15 of availability charges as stated in the documents and the  
16 information we can gather as to how many lots are out  
17 there.

18          Q     And the information that you have is -- the data  
19 requests that were submitted by the Staff were objected  
20 to, isn't that correct, Mr. Merciel?

21          A     That is correct.

22          Q     So the information you have now is -- is -- what  
23 you're trying to do right now is just use as much  
24 information as you can without reliable data?

25          A     Well, it's as reliable as we can -- we can

1 obtain. And I -- I should also add it doesn't take into  
2 consideration any -- any -- any -- well, it -- it assumes  
3 that Lake Region, as stated in the documents, is the one  
4 collecting availability charges.

5 To the -- to the extent Lake Region or the  
6 predecessor name lost those availability charges, we don't  
7 have any documentation to show us that they're not  
8 legitimately being collected.

9 I hope that made sense. I -- I -- I contend  
10 that Lake Region Water & Sewer is the one who should be  
11 collecting the availability charges. I hear things that  
12 the developer collects it and maybe a previous owner of  
13 the company collects it. And we don't have anything to  
14 show us how that came about. And I'm -- I'm not convinced  
15 it's legitimate at this point in time.

16 Q And you were convinced that the company had this  
17 information. Is that what you're saying?

18 A Yes. We asked the company, believing they  
19 should have that type of information.

20 Q No other party -- no other non-party was asked  
21 for that information?

22 A The parties are the owners of the company.

23 Q The owners weren't parties to the case; isn't  
24 that correct?

25 A Well, I don't know if that's true.

1           Q     All right.  You consider the owners to be  
2 parties to the case?

3           A     Do you mean this case?

4           Q     The shareholders.

5           A     Well, they're -- the company they own is.  It  
6 seems to me they're kind of inherently involved with it.

7           Q     Can you tell me how long the Staff has known the  
8 availability fees have been charged in the Shawnee Bend  
9 area?

10          A     Based on the certificate case in 1995, I think  
11 we always knew there was some existence of availability  
12 charges.

13          Q     How long have you had a file on this,  
14 Mr. Merciel?

15          A     On availability charges?  Since -- truthfully,  
16 since about two years ago when we were exploring some  
17 issues with availability charges with Ozark Shores Water  
18 Company.  Slightly different than the issues in this case.  
19 It -- it really never was a -- a big issue before then.

20          Q     Had Staff known about availability fees at the  
21 time Shawnee Bend was starting to be developed back in  
22 1970, '71?

23          A     Well, again, we knew they were there.  I don't  
24 think the Staff ever expected to have to -- have to dig  
25 for information.  And this is based on experience with

1 other companies, including Ozark Shores and Four Seasons  
2 Lakesites before it, it was never an issue where -- where  
3 information was, if I may say, hidden from the Staff or --  
4 or intentionally separated from the utility, which may or  
5 may not be improper. I think it may be, but that may be a  
6 legal conclusion. I don't think we ever expected to have  
7 to pay a lot of attention like we are in this case.

8 Q You always had, as a Staff member or group of  
9 Staff, to independently investigate the company's  
10 operations during the 15 years since its certification and  
11 follow-up on the availability fee issue, didn't you?

12 A We did. If we had any reason to believe there  
13 was a need to do that, certainly, we would have done it  
14 again. I -- I -- I -- I never -- I never saw an issue  
15 like this come in the way we're having to handle it now.

16 I would have expected -- I would have expected  
17 the utility to file a rate case. We would go and do our  
18 audit. We would find the availability revenue and treat  
19 it the way we would expect to treat it. I didn't expect  
20 this to be turning out this way.

21 Q Mr. Merciel, do you look at annual reports of  
22 the water and sewer companies?

23 A Not regularly. You mean me or the Staff? I  
24 look at them if I have some question that comes up and I  
25 might need to look at it. There are some of the auditors

1 that -- that look at them as they get filed. That's --  
2 that's not so much in the context of treating it like an  
3 audit. But make sure it's actually filled out and that  
4 sort of thing, see if the numbers add up.

5 Q Have you had input on how to handle availability  
6 fee remedy -- I'll check -- just a second. It will come.  
7 Have you had occasion to give input to the accounting  
8 Staff on how availability fee revenue should be reported  
9 in the annual reports?

10 A I have not. I didn't learn until yesterday --  
11 yesterday morning that there was a question about that.

12 Q And the question was raised by Mrs. Grisham's  
13 e-mail?

14 A Yes. And I -- I had no knowledge of that e-mail  
15 until yesterday.

16 MR. COMLEY: I have no other cross.

17 JUDGE STEARLEY: Thank you, Mr. Comley.

18 Questions from the Bench. Commissioner Kenney?

19 CROSS-EXAMINATION

20 BY COMMISSIONER KENNEY:

21 Q I won't keep you long, Mr. Merciel.

22 A That's fine, sir.

23 Q Do you -- and we may have asked this. I'm going  
24 to clarify. What do the original the lot owners --  
25 unimproved lot owners, what value do they receive from the



1 availability to their knowledge?

2 MS. LANGENECKERT: I'm sorry.

3 Q (By Commissioner Kenney) Is my mic. not on?

4 Can you hear me? I'm sorry. Hello?

5 MS. LANGENECKERT: We can hear you now.

6 Q (By Commissioner Kenney) What value do the  
7 unimproved lot owners receive for the availability, if you  
8 know?

9 A Well, I only have an opinion. The way it's  
10 treating now -- treated now where Lake Region does not  
11 charge the availability, it's going somewhere else.  
12 Frankly, I don't think they're getting any value for it.  
13 I think they're paying money and it's going in somebody's  
14 pocket.

15 If it were treated the way Staff believes it  
16 should be treated, that being it's the utility revenue, I  
17 -- I don't think they're getting a direct benefit at the  
18 time they're paying it, but at least they're contributing  
19 to the upkeep of a system that they may connect to in the  
20 future.

21 Q That's assuming that revenue went to the utility  
22 and is kept in some account for the use of maintenance and  
23 upkeep?

24 A Correct. It really wouldn't be kept in an  
25 account. It would be used on a day-to-day basis as other

1 revenue is.

2 COMMISSIONER KENNEY: That's all the questions I  
3 have. Thank you.

4 MR. MERCIEL: Okay.

5 JUDGE STEARLEY: Mr. Merciel, I have a couple  
6 questions for you.

7 MR. MERCIEL: Yes, sir.

8 CROSS-EXAMINATION

9 BY JUDGE STEARLEY:

10 Q You had mentioned in your cross-examination  
11 three other companies where there's been utility  
12 availability fees --

13 A Yes.

14 Q -- involved. Ozark Shores, Peaceful Valley, and  
15 I think you said I.H. Utilities?

16 A Correct. I.H. Utilities.

17 Q And Ozark Shores, you said the revenue was  
18 included, but there was no tariffed rate; is that correct?

19 A That's correct.

20 Q Is there any other difference between the way  
21 those rates are handled in Ozark Shores compared to this  
22 case or the way those availability fees are handled?

23 A Well, I -- you're asking is there? I don't  
24 think there should be any difference. With respect to  
25 this case, they have set up the separate company, Lake

1 Utility Availability 1, to collect them. And then they go  
2 somewhere else. They're not -- not even available for  
3 utility use.

4 Q So in Ozark Shores, the fees are being paid to  
5 the company?

6 A That's my understanding. It has been in the  
7 past, and it's my understanding it still is today. It's  
8 being paid to Ozark Shores Water Company, and its  
9 available for their use in operating and maintaining the  
10 utility system.

11 Q Okay. Is that something the property owners  
12 have contracted with Ozark Shores to do since these are  
13 not tariffed rates?

14 A I don't -- I don't think there's any contract.  
15 There -- I believe that it stems from originally when --  
16 when Four Seasons Lakesites Water & Sewer Company was a  
17 utility, it was basically collected as the declarations  
18 say.

19 You know, it said that it would be paid to a  
20 regulated utility company. And that's what they were  
21 doing. When the assets transferred to Ozark Shores, there  
22 may be an agreement where it specifies assets and -- and  
23 availability charges. Everything gets transferred to  
24 Ozark Shores.

25 Ozark Shores, in fact, did collect availability

1 charges after they acquired the -- the assets.

2 Q Okay. So --

3 A Since the last rate case, they did.

4 Q So it's your belief that the obligation to pay  
5 those fees to Ozark Shores comes from the covenants or  
6 deed restrictions?

7 A Yes. Yes, I do.

8 Q And you submitted in your attachments a tariff  
9 sheet for Peaceful Valley; is that correct?

10 A Yes.

11 Q And do you have a copy of that in front of you,  
12 that sheet?

13 A I can get to it real quick.

14 Q And I believe it's PSC MO No. 2, first revised  
15 sheet No. 6, original sheet No. 6. Is that correct?

16 A That's correct. No. 2, first revised sheet, No.  
17 6. Yeah. And I have it here.

18 Q And about halfway down is the availability  
19 charge of \$8.16 per quarter?

20 A Yes.

21 Q And then under that, there's a paragraph. Would  
22 you please read that paragraph?

23 A Okay. The availability charge is applicable  
24 where the company has a water main located adjacent to a  
25 lot or lots in Peaceful Valley Lake Estates subdivision

1 and the owner of said property is subject to contract  
2 agreement with or an assignment to the company wherein it  
3 is agreed that the property owner will pay to the company  
4 an availability charge until the water service line is  
5 connected to the property. At the time service line is  
6 connected, other rates in the tariff will apply.

7 Q Okay. So the word company in there refers to  
8 Peaceful Valley service company, correct?

9 A It would. Yes.

10 Q So in this instance, the property owner has a  
11 contract directly with Peaceful Valley Service Company; is  
12 that correct?

13 A I think it could be a contract with the original  
14 developer and the developer assigned it to Peaceful  
15 Valley.

16 Q So it would -- it would include either a  
17 contract directly with Peaceful Valley or some type of  
18 contractual arrangement with the developer that has since  
19 been assigned, basically?

20 A Yes. That's correct.

21 Q Okay. Do we know what the circumstances are  
22 with I.H. Utilities and the way that's structured?

23 A Yes. I.H. Utilities, we do have documentation.  
24 I may have it down here with me. But that was a -- a -- I  
25 don't remember the name of the document. It was either a

1 declaration or -- or a land sales agreement between the  
2 developer and the lot purchaser. And it provides for an  
3 availability charge. In their case, it was \$2 per month.  
4 And there's -- there was an assignment that the developer  
5 made to the utility company to I.H. Utilities.

6           Those -- those availability fees were charged to  
7 the utility. And, again, there's some history of it.  
8 I.H. put it in the tariff sometime, whenever it was, in  
9 the mid '70s or so. I.H., in a recent rate case, agreed  
10 to cease charging the availability charges. So they are  
11 no longer charging it, and it's no longer in the tariff.

12           Q     So I.H. Utilities had the rates -- or the  
13 availability cease in their tariffs?

14           A     They did have, do not anymore.

15           Q     But do not anymore?

16           A     Right.

17           Q     And they received the rights to collect those by  
18 an assignment from the developer?

19           A     Yes, they did.

20           Q     And this type of assignment -- I mean, you've  
21 offered an opinion that you expressed. You're not sure  
22 about the type of assignment that's occurred in this case  
23 if it's proper. But the type of assignment in I.H.  
24 Utilities, would you consider that proper?

25           A     Not being an attorney, but based on what I've

1 seen, it -- it appears that it would be. It was a --  
2 originally, you could see that as between the developer --  
3 well, it's probably lot seller. I presume that's the  
4 developer and the purchaser. And then that lot seller  
5 assigns the right to the -- to the utility.

6 In the case of Lake Region here, I'm going  
7 largely on the declarations. And they say the fee is to  
8 be paid to the utility company.

9 Q Okay. Do you recall any case in which the  
10 Commission has ordered some business entity to assign  
11 rights such as collection of these fees to a company?

12 A I really can't think of any instances.  
13 Certainly not that I've dealt with where the Commission  
14 ordered anybody other than either a regulated utility or  
15 someone subject to regulation to do anything.

16 Q All right. Thank you, Mr. Merciel. A couple of  
17 other just real quick questions. You mentioned in how the  
18 concept of providing a service you look at in terms of  
19 being practical.

20 A Yes.

21 Q And so your definition of service is that  
22 there's actually some type of exchange of water and/or  
23 sewer between a structure in the mains?

24 A Yes. That would be -- that would be accurate.

25 Q Okay. So with these undeveloped lots, there's

1 no structure on the lot?

2 A Correct.

3 Q And there's no service line that connects a  
4 structure to the main; is that correct?

5 A That's correct.

6 Q Okay. And -- and why, in your opinion, do you  
7 think they call that a service line?

8 A I would have to defer to counsel. There's --  
9 there could be some legal arguments that I'm really not in  
10 a position to give you. But I think our attorneys don't  
11 completely agree with my technical analysis of the term  
12 service.

13 Q And service line is generally the responsibility  
14 of the property owner, is it not?

15 A Yes, it is. In some cases, the utility will own  
16 the service line up to the property line. For example,  
17 water -- the water system might own the pipeline to the  
18 property line, set a meter, and then it's the customer's  
19 from there on in.

20 JUDGE STEARLEY: All right. Thank you very  
21 much, Mr. Merciel.

22 MR. MERCIEL: You're welcome.

23 JUDGE STEARLEY: Recross based on questions from  
24 the Bench?

25 MS. LANGENECKERT: I have one question.





1 opposed to if they did because that way they would get the  
2 availability charge?

3 A Yes. I did state something along that line.  
4 Assuming the developer is the one who collects the  
5 availability charges, it would be to the developer's  
6 advantage to sell a lot and the house not get built on it.

7 Q Okay. And is it your understanding that almost  
8 all of the lots on Shawnee Bend have been sold?

9 A I don't really know that firsthand. I know  
10 what's been thrown around in testimony today. I have not  
11 counted lots. I -- I wouldn't really be comfortable  
12 speaking to it.

13 MS. LANGENECKERT: Okay. That's all my  
14 questions.

15 JUDGE STEARLEY: Counsel.

16 RE CROSS EXAMINATION

17 BY MS. BAKER:

18 Q I have a couple of questions regarding the  
19 questions about the assignment to I.H. Utilities, from the  
20 developer to I.H. Utilities.

21 A Uh-huh.

22 Q In that case, was the developer the same as the  
23 owner of I.H. Utilities at that time?

24 A I think so. But I'm not positive.

25 Q And for --

1           A     Again, I might have papers in my stack I could  
2 dig if we wanted to look at them.

3           Q     Do you believe that that -- that it was?

4           A     It -- it could have been. I kind of think so,  
5 but I'm not positive.

6           Q     All right. And then for Peaceful Valley where  
7 it was assigned from the developer to the utility, was  
8 that the same person?

9           A     That one, I have no idea. I've not even seen  
10 the documents on Peaceful Valley.

11           MS. BAKER: All right. Those are the questions  
12 I have. Thank you.

13           JUDGE STEARLEY: Thank you, Ms. Baker. Lake  
14 Region?

15           MR. COMLEY: I would like the Court to give me  
16 leave to ask Mr. Merciel a question that came as a  
17 consequence of Ms. -- if I said it right this time -- Ms.  
18 Langeneckert asking about the value of lot, if the court  
19 would give me leave to do that. It may not necessarily be  
20 in response to one of your questions, but I think she may  
21 have taken a liberty or two with what her  
22 cross-examination should have been.

23           MS. LANGENECKERT: Commissioner Kenney asked  
24 about the value of a lot, undeveloped lot.

25           MR. COMLEY: Oh, well then I can do this. Thank

1 you.

2 JUDGE STEARLEY: Please proceed.

3 MS. LANGENECKERT: I'll send you my bill.

4 MR. COMLEY: Thank you very much.

5 RECROSS EXAMINATION

6 BY MR. COMLEY:

7 Q Wouldn't the developer of a -- a subdivision  
8 like Porta Cima have an incentive to make sure that lots  
9 were developed? Wouldn't that --

10 A Well --

11 Q -- add value to the unsold lots the developer  
12 may have?

13 A Yes. Yes, it would. I -- I guess the complete  
14 answer, you don't want to say -- you know, the developer  
15 does not live or die by availability charges. So when  
16 we're studying availability charges and if we're talking  
17 about the concept of the developer recovering his capital  
18 funds from collecting availability charges, in that  
19 respect, it would be beneficial to not have a house built  
20 on it because then he would be collecting money beyond the  
21 sale of the lot.

22 I understand what you're saying. If -- if the  
23 developer is going to have a subdivision and he wants to  
24 -- he wants to preserve his good name as a developer and  
25 wants to promote himself by the subdivision, it would sure

1 be nice to have a nice subdivision with nice-looking  
2 houses and all that sort of thing. So, yeah, those are  
3 the factors that would come in.

4 Q And as more houses are built, the likelihood is  
5 that it will attract more people to come live there?

6 A He might sell more lots maybe for more money.  
7 Sure. There are other factors that could come in.

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

9 JUDGE STEARLEY: All right. We're back for  
10 redirect. Ms. Ott? Unless Commissioner Kenney has any  
11 other questions.

12 COMMISSIONER KENNEY: I do not. Thank you.

13 JUDGE STEARLEY: All right.

14 REDIRECT EXAMINATION

15 BY MS. OTT:

16 Q Mr. Merciel, do you recall when Ms. Langeneckert  
17 was discussing the -- the water application case back from  
18 1995?

19 A Yes.

20 Q Do you recall that? And she was discussing a  
21 little bit how the rates were established. And you stated  
22 they were proforma rates?

23 A Yes.

24 Q Is that traditional rate-making here at the  
25 Commission?

1           A     It's not traditional rate-making. In rate cases  
2 for -- for established utilities, it is pretty common on  
3 certificate cases because you have to. You don't have any  
4 customer, and there are no expenses.

5                     So when it's a certificate case, particularly a  
6 start-up company, not -- not so much with expansion and --  
7 and -- but when you have a start-up company, you -- you  
8 have to take an educated guess on the -- on the expenses.  
9 That's why they have to file a feasibility study so we can  
10 see what the plan is.

11           Q     So all relevant factors aren't considered when  
12 establishing proforma rate?

13           A     All relevant factors that we can think of. We  
14 may not have considered availability charges. I think we  
15 were trying to predict customers and be able to actually  
16 recover some expenses from those customers to operate a  
17 utility system.

18                     I don't think we would have known if there would  
19 have been five empty lots paying availability charges or a  
20 hundred or a thousand. There wouldn't have been any way  
21 of knowing. I -- I am not sure, but I think we ignored  
22 that situation at the time and just planned on looking at  
23 it in the future.

24           Q     Okay. Now, when Mr. Comley first began asking  
25 you questions, he was discussing -- let's see. Back when,

1 I guess -- would you know how much each lot was sold for  
2 by the developer of Lake Region?

3 A No. I don't -- I don't have -- I don't have a  
4 clue what they were sold for.

5 Q And do you know how much the developer paid for  
6 that initial plot of land?

7 A No. I don't know that either. No idea.

8 Q And then a little bit afterwards, he was  
9 discussing what Staff's position is and whether or not you  
10 were proposing the availability fees to be tariffed. Can  
11 you just clarify or restate what Staff's position is in  
12 regards to that?

13 A Okay. I think, for purpose of this case, our  
14 main concern is we believe the availability fee revenue  
15 should be included in Lake Region Water & Sewer's revenue.  
16 As to being tariffed, that's kind of taking the question  
17 to the next level. Should they be tariffed or not?

18 Probably arguments both ways. It's -- it's not  
19 -- in the -- in the property restrictions, it's does say  
20 something about that for the Horseshoe Bend area, but it  
21 does not for Shawnee Bend. So to a great extent, we're  
22 relying on our position on what the declarations say. And  
23 so -- so far, we haven't -- I haven't been inclined to  
24 pursue arguing that they should be in the tariff.

25 Q Okay. Thank you. And Mr. Comley was also

1 asking you about Ozark Shores and whether or not the  
2 Commission decided if availability fees should be included  
3 in revenues. Did the Commission approve the stipulation  
4 and agreement that the parties entered into?

5 A Yes.

6 Q So they approved that availability fees would be  
7 included in revenues?

8 A Yes. It would have been approved.

9 Q Mr. Comley was also referring to when Ms. Cason  
10 was on the stand earlier today. Were you in the room for  
11 that?

12 A Yes, I was.

13 Q And do you recall if Ms. Cason bought the lot  
14 from the developer or from a subsequent purchaser?

15 A She stated she bought the lot from someone who  
16 -- who bought it from the developer. And I think she said  
17 it was 1999. So the answer is no, she did not buy it from  
18 the developer.

19 Q Okay. Mr. Comley was also having you look at --  
20 I believe it's Attachment 4 of your surrebuttal and page  
21 5. And he had you read a portion. However, you didn't  
22 finish the sentence. I would like you to read the entire  
23 -- entire sent -- pardon -- sentence up until the period.

24 A Okay. If I recall correctly, that was the first  
25 sentence of paragraph 3.1?



1 Q Yes. That's correct.

2 A Okay. The owner of each lot located on Shawnee  
3 Bend in a subdivision serviced by a central water system  
4 agrees to pay the owner of the central water system or its  
5 assigns or designees a monthly availability charge of \$10.  
6 In parentheses, unless the owner of the lot is  
7 contractually obligated to the developer or developer's  
8 assigns to pay a different amount.

9 Q Thank you. So with reading the complete  
10 sentence where you ended with to pay a different amount,  
11 how do you -- how do you interpret that sentence if you  
12 read the -- read it in its entirety?

13 A With respect to the different amount, you mean?

14 Q Yes.

15 A Okay. Well, there could be -- there could be a  
16 contract with the sale of the lot. And I think we've seen  
17 one or two of them that maybe have a different amount.  
18 Could even be -- could even provide that as paid to the  
19 developer and not to the utility. I don't know what all  
20 is out there. But I read that to say that there could be  
21 some other obligation that the lot owner entered into.

22 Q Now, were you in the room when Mr. Summers was  
23 testifying yesterday?

24 A Yes, I was.

25 Q And I guess this morning as well?

1           A     Yes.

2           Q     And you included in your rebuttal testimony, I  
3 believe Attachment No. 6?

4           A     Okay. Okay.

5           Q     And Mr. Comley was talking about it was a  
6 fictitious registered entity -- or fictitious name  
7 registration.

8           A     Yes.

9           Q     And on the name on the top of that bill, is that  
10 what is current with the Secretary of State's name for  
11 this fictitious name registration?

12          A     It says here Lake Utility Availability. I  
13 believe the company they're using is Lake Utility  
14 Availability 1. So slight difference. I also noticed in  
15 my cover sheet, I'm not sure it makes any difference to  
16 anyone, I said Lake Utility Availability, Incorporated,  
17 and that is not correct. It's not an incorporation. The  
18 cover sheet on the attachment. It is a fictitious reg --  
19 fictitious registration. But it's my understanding the  
20 one they're using is Lake Utility Availability 1.

21          Q     So with this bill, is Lake Utility Availability  
22 1 billing the customers of Lake Region?

23          A     Well, I don't know. That's not the name on the  
24 bill. I'm not completely sure if it has to be or not.

25          Q     Okay. And a little bit afterwards, Mr. Comley

1 was going back to the inception of whatever -- I believe  
2 it was Four Seasons Lakesites Water & Sewer Company. And  
3 he went back to 1971 and was asking you questions about  
4 what Staff knew at that time. Were you employed here in  
5 1971?

6 A In '71, I was not.

7 Q So are you able to speak to what would have  
8 happened back in 1971 when this company came in?

9 A No, I can't. All I can do is go on what the  
10 record was and what I was told by others when I -- when I  
11 got here.

12 Q Now, I believe Mr. Comley was asking you some  
13 questions about how Lake Utility -- or Lake Region is run.  
14 Do you know of any company, in your 33 years of experience  
15 at the Commission, that has created a structure that is  
16 similar to Lake Utility Availability and Lake Region's  
17 relationship?

18 A No, I don't, other than some of the predecessors  
19 -- predecessor owners had some similar ones in this same  
20 company as shown on the attachment. But no. Other than  
21 these, I've never -- can't say that I've ever seen this.

22 Q So you've never seen a water and sewer company  
23 create a fictitious name for its shareholders to collect  
24 revenues such as availability fees?

25 A No, I have not.

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

2 Thank you, Mr. Merciel.

3 JUDGE STEARLEY: All right. Mr. Merciel, your  
4 testimony is done for the day. As with the other  
5 witnesses, I will not finally excuse you in case the  
6 Commissioners would like to call you back for additional  
7 questions.

8 MR. MERCIEL: Certainly.

9 JUDGE STEARLEY: Okay. At this point, I want to  
10 inquire of the parties. We have two witnesses remaining.  
11 Mr. Robertson and Mr. Stump. And I'm trying to determine  
12 a logical breaking time for today. I kept you all late  
13 last night.

14 I know people in the room have other obligations  
15 starting around five or 5:30, so I definitely do not want  
16 to go beyond 5:00 tonight. So I -- I'm wondering if it's  
17 going to be better to start Mr. Robertson tomorrow  
18 morning.

19 MS. BAKER: Somehow, I can't see 45 minutes as  
20 being enough time for him today.

21 JUDGE STEARLEY: That's -- that's what I'm  
22 thinking as well. Is -- is Mr. Stump available tomorrow?

23 MR. COMLEY: Yes.

24 MR. STUMP: Yes.

25 COMMISSIONER KENNEY: Could we do him tonight?

1 JUDGE STEARLEY: Do you think Mr. -- yes.

2 MS. BAKER: Well, I know Mr. Stump isn't going  
3 to be 45 minutes.

4 COMMISSIONER KENNEY: All right.

5 JUDGE STEARLEY: Okay. All right. I'm  
6 anticipating two long examinations of these witnesses.  
7 Tomorrow we have one other glitch in that we have an  
8 agenda meeting 9:00 in the morning. I do have an order  
9 that I need to be present for it. Are any other parties  
10 here needing to be present in the agenda room tomorrow,  
11 Counsel? Besides Commissioner Kenney.

12 MS. OTT: I believe I have one case, but I think  
13 it's the first case on there. But I don't know if there  
14 will be questioning or not.

15 JUDGE STEARLEY: Yeah. I'm trying to pick a  
16 start time for the morning. I'm thinking 9:30 or 10:00.

17 MS. BAKER: Probably ten.

18 MS. BRUEGGEMANN: To give Commissioners an  
19 opportunity, it would be wonderful if it could be 10:00

20 JUDGE STEARLEY: Why don't we set -- why don't  
21 we go ahead and adjourn for today and pick up tomorrow  
22 morning at then ten, then? All right. I thank you all  
23 very much.

24 MS. BRUEGGEMANN: Thank you.

25 (The proceedings were concluded at 4:20 p.m. on

1 March 30, 2010.)

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## 1 REPORTER'S CERTIFICATE

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3 STATE OF MISSOURI )  
 )ss.  
4 COUNTY OF OSAGE )

5

6 I, Monnie S. Mealy, Certified Shorthand Reporter,  
7 Certified Court Reporter #0538, and Registered  
8 Professional Reporter, and Notary Public, within and for  
9 the State of Missouri, do hereby certify that I was  
10 personally present at the proceedings as set forth in the  
11 caption sheet hereof; that I then and there took down in  
12 stenotype the proceedings had at said time and was  
13 thereafter transcribed by me, and is fully and accurately  
14 set forth in the preceding pages.

15

16 IN WITNESS WHEREOF, I have hereunto set my hand and  
17 seal on April 2, 2010.

18

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20

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21 Monnie S. Mealy, CSR, CCR #0539

22

Registered Professional Reporter

23

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2	Surrebuttal Testimony of Nancy Cason	*	*	

(Original exhibits were retained by the Public Service Commission.)