

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5

6 Evidentiary Hearing
7 June 24, 2010
8 Jefferson City, Missouri

9 Volume 8

10 In the Matter of Lake)
Region Water & Sewer)
11 Company's Application to)
Implement a General Rate) File No. SR-2010-0110
12 Increase in Water and)
Sewer Service.)
13
14 In the Matter of Lake)
Region Water & Sewer)
Company's Application to) File No. WR-2010-0111
15 Implement a General Rate)
Increase in Water and)
16 Sewer Service.)

17

18 HAROLD STEARLEY, Presiding
19 SENIOR REGULATORY LAW JUDGE.

20

21 REPORTED BY:

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

2 JUDGE STEARLEY: All right. Good
3 morning. Today's Thursday, June 24th, 2010. The
4 Commission has set this time to hopefully complete
5 its evidentiary hearing in File Nos. SR-2010-0110 and
6 WR-2010-0111, in the Matter of Lake Region Water &
7 Sewer Company's Application to Implement a General
8 Rate Increase in Water and Sewer Service.

9 My name is Harold Stearley, and I'm the
10 regulatory law judge presiding over this proceeding.
11 Our court reporter this morning is Pam Fick. And we
12 will begin by taking entries of appearance from
13 counsel, starting with Lake Region Water & Sewer.

14 MR. COMLEY: On behalf of Lake Region
15 Water & Sewer Company, let the record reflect the
16 entry of appearance of Mark W. Comley, Newman,
17 Comley & Ruth. Our address is 601 Monroe Street,
18 Suite 301, Jefferson City, Missouri 65101.

19 JUDGE STEARLEY: Thank you, Mr. Comley.
20 Let's see. For Four Seasons Lakesite Property Owners
21 Association.

22 MS. LANGENECKERT: Good morning, Judge.
23 On behalf of Four Seasons Lakesite Property Owners
24 Association, I'd like to enter the appearance of
25 Lisa Langeneckert, law firm of Sandburg, Phoenix &

1 von Gontard, one -- I'm sorry -- 600 Washington
2 Avenue, 15th Floor, St. Louis, Missouri 63101.

3 JUDGE STEARLEY: Okay. Thank you,
4 Ms. Langeneckert. For the Office of the Public
5 Counsel.

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

10 JUDGE STEARLEY: Thank you, Ms. Baker.
11 And for the Staff of the Missouri Public Service
12 Commission.

13 MS. OTT: Judge, let the record reflect
14 Jaime Ott and Rachel Lewis, P.O. Box 360, Jefferson
15 City, Missouri 65102, on behalf of the Staff of the
16 Missouri Public Service Commission.

17 JUDGE STEARLEY: All right. Thank you,
18 Ms. Ott. And I believe the Racquet and Country Club
19 Condominium Property Owners Association have settled
20 all their issues, and they -- I don't believe they're
21 in attendance today.

22 Initially, as I start all the hearings,
23 I need to remind you all to please turn off
24 BlackBerries, cell phones and any other electronic
25 devices that may interfere with our recording and our

1 webcasting.

2 And my understanding is this hearing's
3 been noticed up, there's been notices filed by Staff
4 with the intent to offer certain affidavits into
5 evidence. In addition to that, let me inquire of the
6 parties, is there any plans for the presentation of
7 witnesses or testimony today?

8 MS. OTT: Judge, Staff does not intend
9 on any witnesses today.

10 JUDGE STEARLEY: Okay.

11 MR. COMLEY: Neither does the Company.

12 MS. LANGENECKERT: Nor does Four --

13 MS. BAKER: None for Public Counsel.

14 JUDGE STEARLEY: All right. Well, I --

15 MS. LANGENECKERT: Nor does Four Seasons
16 Lakesite Property Owners.

17 JUDGE STEARLEY: All right. I see --
18 see the witnesses are present, so I wanted to make
19 sure. The Commission's certainly willing to hear
20 from anybody if things change over the course of this
21 hearing. I'm also assuming that there's no need for
22 opening statements, then?

23 MR. COMLEY: We have -- the Company has
24 no opening remarks.

25 JUDGE STEARLEY: All right.

1 MS. OTT: Staff's only opening remark is
2 the evidence and documents and affidavits that we are
3 about to introduce are all obtained in -- pursuant to
4 the Commission's April 8th order directing Staff to
5 further discovery on the issue of -- of -- pardon
6 me -- of availability fees.

7 JUDGE STEARLEY: All right. Thank you,
8 Ms. Ott. Hearing -- hearing nothing from the other
9 parties, we'll go ahead and proceed, then. Ms. Ott,
10 you may offer your affidavits and other documents
11 into evidence. I don't know if you've got your
12 exhibits premarked at this point.

13 MS. OTT: They are not premarked.

14 JUDGE STEARLEY: Okay. If we continue
15 on from prior hearing dates, I believe we had gotten
16 through Staff Exhibit No. 19. I believe you'd be
17 starting with Exhibit No. 20.

18 MS. OTT: And Judge, just for the
19 record, Staff would like to keep all original
20 documents and introduce a copy in to the court
21 reporter if that is okay with all the parties. We do
22 have all the originals here today if somebody would
23 like to review and verify.

24 JUDGE STEARLEY: Okay. Any objections
25 from any of the parties?

1 MS. BAKER: No objection.

2 MR. COMLEY: No objection.

3 JUDGE STEARLEY: All right. Hearing
4 none, you may proceed.

5 MS. OTT: As Staff Exhibit No. 19 [sic],
6 we'd like to introduce the affidavit of Sally Stump
7 signed on June 1st, 2010.

8 MR. COMLEY: Your Honor, I think
9 Exhibit 19 is already covered.

10 JUDGE STEARLEY: Yes, we would be
11 starting with No. 20. And sorry, Counselor, the
12 affidavit of -- so Ms. Goldsby?

13 MS. OTT: No. It would be Ms. Stump,
14 but --

15 JUDGE STEARLEY: Ms. Stump. And the
16 date again, please?

17 MS. OTT: June 1st, 2010. Judge,
18 actually --

19 JUDGE STEARLEY: Why don't we go ahead
20 and mark them all and you can offer them en masse.

21 MS. OTT: Okay. Judge, there's actually
22 a sheet missing from that, and Staff is going to go
23 upstairs and fix that.

24 (EXHIBIT NO. 20 WAS MARKED FOR
25 IDENTIFICATION BY THE COURT REPORTER.)

1 MS. OTT: No. 21 would be the affidavit
2 of Brian Schwermann dated May 6th, 2010.

3 (EXHIBIT NO. 21 WAS MARKED FOR
4 IDENTIFICATION BY THE COURT REPORTER.)

5 MS. OTT: No. 22 would be the May 20th
6 affidavit of Brian Schwermann.

7 (EXHIBIT NO. 22 WAS MARKED FOR
8 IDENTIFICATION BY THE COURT REPORTER.)

9 MS. OTT: Just for the record, Brian
10 Schwermann's May 20th affidavit had three documents
11 attached to it. The first one was Exhibit A.
12 Exhibit A has already been introduced into evidence
13 through the evidentiary hearing as well as an
14 attachment to Jim Merciel's rebuttal testimony, so we
15 will not offer that one again.

16 However, Exhibit B was the confidential
17 settlement agreement in the Circuit Court case
18 between Four Seasons Lakeside and Lake Region Water &
19 Sewer Company's Sally Stump and RPS Properties. This
20 document is highly confidential.

21 JUDGE STEARLEY: What was Exhibit C to
22 that?

23 MS. OTT: I was gonna get to that
24 afterwards --

25 JUDGE STEARLEY: Okay.

1 MS. OTT: -- if -- if that's okay to be
2 separate exhibits?

3 JUDGE STEARLEY: That's fine.

4 MS. OTT: This would be 23.

5 (EXHIBIT NO. 23 HC WAS MARKED FOR
6 IDENTIFICATION BY THE COURT REPORTER.)

7 MS. OTT: Staff Exhibit 24 would be
8 Exhibit C to Brian Schwermann's May 20th affidavit
9 which is RPS's simple audit receipts. And this is
10 also marked HC.

11 (EXHIBIT NO. 24 HC WAS MARKED FOR
12 IDENTIFICATION BY THE COURT REPORTER.)

13 MS. OTT: Are we on 25?

14 JUDGE STEARLEY: Yes.

15 MS. OTT: Would be Cynthia Goldsby's
16 May 6th, 2010 affidavit.

17 (EXHIBIT NO. 25 WAS MARKED FOR
18 IDENTIFICATION BY THE COURT REPORTER.)

19 MS. OTT: Staff Exhibit 27 would be
20 Cynthia Goldsby's May 20th affidavit.

21 MR. COMLEY: What was 26?

22 JUDGE STEARLEY: Yes, I believe we're at
23 26.

24 MS. OTT: 26. Sorry. I'm probably
25 going to get confused on some of these.

1 (EXHIBIT NO. 26 WAS MARKED FOR
2 IDENTIFICATION BY THE COURT REPORTER.)

3 JUDGE STEARLEY: Apparently they're
4 troubleshooting the audio for us now so everyone can
5 see us but no one can hear us.

6 MS. OTT: Staff Exhibit 27; is that
7 correct?

8 JUDGE STEARLEY: That's correct.

9 MS. OTT: Would be the affidavit of
10 Peter N. Brown dated the 29th of April, 2010.

11 (EXHIBIT NO. 27 WAS MARKED FOR
12 IDENTIFICATION BY THE COURT REPORTER.)

13 MS. OTT: Staff Exhibit 28 would be the
14 affidavit of Peter N. Brown dated June 3rd, 2010, and
15 this is a business record affidavit.

16 (EXHIBIT NO. 28 WAS MARKED FOR
17 IDENTIFICATION BY THE COURT REPORTER.)

18 MS. OTT: Staff Exhibit 29 would be
19 pursuant to Peter N. Brown's June 3rd business
20 affidavit. It is the Four Seasons Lakesite sales
21 brochure.

22 (EXHIBIT NO. 29 WAS MARKED FOR
23 IDENTIFICATION BY THE COURT REPORTER.)

24 MS. OTT: Staff Exhibit 30 would be also
25 pursuant to Peter N. Brown's June 3rd business record

1 affidavit. It is the Four Seasons Lakesite HUD
2 documents.

3 (EXHIBIT NO. 30 WAS MARKED FOR
4 IDENTIFICATION BY THE COURT REPORTER.)

5 MS. OTT: Staff Exhibit 31 would be
6 pursuant to Peter N. Brown's June 3rd, 2010 business
7 record affidavit. It would be Four Seasons
8 Lakesite -- sorry. Let me correct the record. The
9 last document was the sales packet, this document is
10 the HUD documents. I apologize for that.

11 JUDGE STEARLEY: So Exhibit 30 is a
12 sales packet and 31 is the HUD document?

13 MS. OTT: Correct. Sorry about that.

14 MS. BAKER: Is -- is that Four Seasons
15 Lakesite sales packet?

16 MS. OTT: Four -- correct.

17 MS. BAKER: And what's 29?

18 JUDGE STEARLEY: The sales brochure.

19 (EXHIBIT NO. 31 WAS MARKED FOR
20 IDENTIFICATION BY THE COURT REPORTER.)

21 MS. OTT: Staff Exhibit No. 32 is
22 pursuant to Peter N. Brown's June 3rd, 2010 business
23 record affidavit. It is the Four Seasons Lakesite,
24 Inc. and Subsidiaries financial statement from 1994.
25 This is a highly confidential document.

1 (EXHIBIT NO. 32 HC WAS MARKED FOR
2 IDENTIFICATION BY THE COURT REPORTER.)

3 MS. OTT: Staff Exhibit 33 is pursuant
4 to Peter N. Brown's June 3rd, 2010 business record
5 affidavit. It is Four Seasons Lakesite, Inc. and
6 Subsidiaries financial statements from 1995. It is
7 highly confidential.

8 (EXHIBIT NO. 33 HC WAS MARKED FOR
9 IDENTIFICATION BY THE COURT REPORTER.)

10 MS. OTT: Staff Exhibit 34 is also from
11 Peter N. Brown's June 3rd, 2010 business record
12 affidavit. It is Four Seasons Lakesite, Inc. and
13 Subsidiaries financial statements from 1996. It is
14 highly confidential.

15 (STAFF EXHIBIT NO. 34 HC WAS MARKED FOR
16 IDENTIFICATION BY THE COURT REPORTER.)

17 MS. OTT: Staff Exhibit 35 is pursuant
18 to Peter N. Brown's June 3rd, 2010 business record
19 affidavit. It is Four Seasons Lakesite, Inc. and
20 Subsidiaries financial statement from 1997 and it's
21 marked highly confidential.

22 (EXHIBIT NO. 35 HC WAS MARKED FOR
23 IDENTIFICATION BY THE COURT REPORTER.)

24 MS. OTT: Staff Exhibit 36 is from
25 Peter N. Brown's June 3rd, 2010 business record

1 affidavit. It is Four Seasons Lakesite, Inc. and
2 Subsidiaries financial statement from 1999 marked
3 highly confidential.

4 JUDGE STEARLEY: 1999?

5 MS. OTT: Sorry. 1998.

6 (EXHIBIT NO. 36 HC WAS MARKED FOR
7 IDENTIFICATION BY THE COURT REPORTER.)

8 MS. OTT: Staff Exhibit 37 is Peter N.
9 Brown's June 3rd, 2010 business record affidavit.
10 It's Four Seasons Lakesite, Inc. and Subsidiaries
11 financial statements for 1999 marked highly
12 confidential.

13 (EXHIBIT NO. 37 HC WAS MARKED FOR
14 IDENTIFICATION BY THE COURT REPORTER.)

15 MS. OTT: Staff Exhibit 38 is pursuant
16 to Peter N. Brown's May -- I mean June 3rd, 2010
17 business record affidavit. It is Four Seasons
18 Lakesite, Inc. and Subsidiaries financial statements
19 for the year 2000, and it is marked highly
20 confidential.

21 (EXHIBIT NO. 38 HC WAS MARKED FOR
22 IDENTIFICATION BY THE COURT REPORTER.)

23 MS. OTT: Staff Exhibit 39 is from Peter
24 Brown's June 3rd, 2010 business record affidavit. It
25 is Four Seasons Lakesite, Inc. and Subsidiaries

1 financial statements for the year 2001 marked highly
2 confidential.

3 (EXHIBIT NO. 39 HC WAS MARKED FOR
4 IDENTIFICATION BY THE COURT REPORTER.)

5 JUDGE STEARLEY: Just to update you,
6 I've been advised that they have been unable to get
7 the audio to function on the webcasting. So not --
8 not that it matters to us, we're all here and we've
9 got a court reporter, so I'm -- I've asked them to
10 just discontinue the webcast.

11 MS. OTT: Staff Exhibit 40 would be
12 pursuant to Peter N. Brown's June 3rd, 2010 business
13 record affidavit. It is Four Seasons Lakesite, Inc.
14 and Subsidiaries financial statements for the year
15 2002 marked highly confidential.

16 (EXHIBIT NO. 40 HC WAS MARKED FOR
17 IDENTIFICATION BY THE COURT REPORTER.)

18 MS. OTT: Staff Exhibit 41 is pursuant
19 to Peter N. Brown's June 3rd, 2010 business record
20 affidavit. It is Four Seasons Lakesite, Inc. and
21 Subsidiaries financial statements for the year 2003
22 marked highly confidential.

23 (EXHIBIT NO. 41 HC WAS MARKED FOR
24 IDENTIFICATION BY THE COURT REPORTER.)

25 MS. OTT: Staff Exhibit 42 would be a

1 certified copy from the Secretary of State for
2 fictitious name registration of Lake Utility
3 Development and its cancellation. The document's
4 dated -- the registration of the fictitious name Lake
5 Utility Development is dated March 30th, 1999, and
6 the notice of expiration for the fictitious name
7 registration is dated October 17th, 2009.

8 (EXHIBIT NO. 42 WAS MARKED FOR
9 IDENTIFICATION BY THE COURT REPORTER.)

10 MS. OTT: Staff Exhibit 43 would be
11 Staff's response to Commission's April 8, 2010 order
12 regarding availability charges previously filed in
13 EFIS under the sewer case as EFIS No. 148 [sic].

14 (EXHIBIT NO. 43 WAS MARKED FOR
15 IDENTIFICATION BY THE COURT REPORTER.)

16 MS. OTT: Staff Exhibit 44 would be
17 Staff's response to Commission's April 8, 2010 order
18 regarding -- regarding availability charges to
19 Staff's accounting schedule Volume No. 1; EFIS number
20 in the sewer case, 168.

21 (EXHIBIT NO. 44 WAS MARKED FOR
22 IDENTIFICATION BY THE COURT REPORTER.)

23 MS. OTT: Staff Exhibit 45 would be
24 Staff's response to Commission's April 8, 2010 order
25 regarding availability charges, Staff accounting

1 schedules, Volume No. 2, EFIS No. 168.

2 (EXHIBIT NO. 45 WAS MARKED FOR
3 IDENTIFICATION BY THE COURT REPORTER.)

4 MS. OTT: Staff Exhibit 46 would be
5 Staff's response to Commission's April 8, 2010 order
6 regarding availability charges, Staff accounting
7 schedules, Volume 3. I believe actually all of these
8 EFIS numbers should be 149, not 168. I apologize.

9 (EXHIBIT NO. 46 WAS MARKED FOR
10 IDENTIFICATION BY THE COURT REPORTER.)

11 MS. OTT: Staff Exhibit 47 is Staff's
12 June 7, 2010 response to Commission's May 27, 2010
13 order regarding availability charges, EFIS No. 190.

14 (EXHIBIT NO. 47 WAS MARKED FOR
15 IDENTIFICATION BY THE COURT REPORTER.)

16 MS. OTT: Staff Exhibit 48 would be
17 Staff's June 23rd, 2010 refiling of Staff's
18 June 21st, 2010 response to the Missouri Public
19 Service Commission's June 16th, 2010 order regarding
20 clarification to plant additions.

21 (EXHIBIT NO. 48 WAS MARKED FOR
22 IDENTIFICATION BY THE COURT REPORTER.)

23 MS. OTT: Staff Exhibit 49 would be a
24 party of record inquiry for Four Seasons Lakesite
25 Water and Sewer Company certified by the data center.

1 (EXHIBIT NO. 49 WAS MARKED FOR
2 IDENTIFICATION BY THE COURT REPORTER.)

3 MS. OTT: Judge, at this time can we go
4 ahead and offer all of those documents into evidence?
5 We may have another document.

6 JUDGE STEARLEY: Certainly.

7 MS. OTT: Staff would like to offer
8 Exhibits Nos. --

9 JUDGE STEARLEY: 20 through 49.

10 MS. OTT: -- 20 through 49.

11 JUDGE STEARLEY: Any objections to the
12 offering of Exhibits No. 20 through 49?

13 MR. COMLEY: Your Honor, with respect to
14 the affidavits that have been identified by Ms. Ott,
15 these would be Exhibits 20 through 41, and the
16 contents of those affidavits which are also part of
17 those exhibit numbers, Ms. Ott and I visited about
18 whether or not Lake Region would have any objection
19 to these and the nature of any hearsay objections or
20 any objections as to whether they're in the form of
21 an affidavit. We have waived all those objections.

22 The only objection we would pose to
23 those is our continuing objection as to the relevancy
24 of the issue of availability fees in this case. We
25 would reassert that the Commission lacks subject

1 matter jurisdiction over the analysis of those and
2 they are irrelevant.

3 With respect to Exhibits 43 through
4 49 -- excuse me -- 43 through 48 -- and let me back
5 up a minute. I am presuming with respect to the
6 affidavits, which I have not looked at the copies
7 that Ms. Ott did supply today, I am presuming that
8 the copies she supplied to the court reporter will be
9 identical, genuine reproductions of those that have
10 been previously filed in EFIS. And on the strength
11 of that, I have no objection to their form.

12 Going back to Exhibits 43 through 48,
13 these have been pleadings filed in the case in
14 response to the Commission's order. They contain the
15 Commission's reports -- or the Staff's reports to the
16 Commission, and they also contain verifications of
17 affidavits of several Staff members. I would object
18 on the grounds that these have not been
19 cross-examined. These are simply responses to orders
20 and they should not be in the record.

21 The objection I would have is they are
22 strictly pleadings, they are not evidence in the case
23 and they should not be evidence in the case, subject,
24 of course, to cross-examination. There are
25 statements made in those -- in those reports that we

1 had differed with. Lake Region has filed responses
2 almost every time the Staff has filed a response to
3 the Commission order. If -- I can't see the
4 relevance of these things. We are just repeating
5 what has already been filed in the record.

6 JUDGE STEARLEY: All right. Ms. Ott?

7 MS. OTT: Judge, they are responsive to
8 specific questions that the Commission asked Staff to
9 do and conduct this additional discovery pursuant to
10 their April 8, 2010 order. Staff would be more than
11 willing to have Mr. Comley introduce his responses
12 into the record if that would make him more
13 comfortable with Staff's responses. But I think that
14 they are direct responses to the specific questions
15 and should be admitted.

16 MR. COMLEY: Your Honor, I like the
17 invitation. At the same time, I see that we're
18 overburdening the record with pleadings that have
19 been filed and we're -- we're creating new issues for
20 evidence in this case.

21 JUDGE STEARLEY: With regard to
22 Exhibits 20 through 41 and the continuing
23 objection -- excuse me -- objection to relevancy,
24 that will be overruled. Those documents will be
25 admitted and received into the record.

1 (EXHIBIT NOS. 20 THROUGH 22, 23 HC AND
2 24 HC, 25 THROUGH 31, AND 32 HC THROUGH 41 HC WERE
3 RECEIVED INTO EVIDENCE AND MADE A PART OF THE
4 RECORD.)

5 JUDGE STEARLEY: With regard to 43
6 through 48 on the pleadings, that objection will be
7 sustained. Those documents are already in the file.
8 They are pleadings and -- and that's the status at
9 which they will remain. We're not going to engage in
10 producing witnesses, taking cross-examination. The
11 pleadings are what they are, and they do not need to
12 be formally entered into the record.

13 MR. COMLEY: With respect to Exhibit 49,
14 I was going to inquire about what the purpose was for
15 this exhibit.

16 MS. OTT: The purpose of the complete
17 party of record for cases is to show all of the cases
18 in which Four Seasons Lakesite has come before the
19 Commission. There have been several cases referenced
20 on -- during the evidentiary hearing and true-up in
21 which after further review, they weren't actual case
22 numbers.

23 So to be clear for a complete record, I
24 think the document shows every time that Four Seasons
25 Lakesite has come in before the Commission with the

1 correct case number.

2 JUDGE STEARLEY: All right. Ms. Ott,
3 are you aware if that includes unreported cases?

4 MS. OTT: It would be only cases filed
5 with our data center and on record.

6 JUDGE STEARLEY: Right, but there --
7 there may be ones that orders are issued and they're
8 not reported in the PSC reporters, so I'm wondering
9 if you've captured all the cases. That's why I
10 asked.

11 MS. OTT: It is every case filed with
12 the Commission by Four Seasons Lakesite Water & Sewer
13 Company.

14 MS. BAKER: I'd say that -- that as far
15 as Public Counsel is concerned, this is a
16 clarification of a lot of the testimony that came
17 through where we were talking about previous cases.
18 And so to have a document that lists out what those
19 cases are, we find that to be very good. We would
20 support.

21 JUDGE STEARLEY: That is -- that is
22 fine. And I believe -- I can't quote you the exact
23 page number in the record at this point, but the
24 Commission took official notice of all prior cases.

25 MS. LANGENECKERT: Judge, we can't hear.

1 Your microphone may --

2 JUDGE STEARLEY: My microphone is on, so
3 Jason, you were checking the connections. Is my
4 microphone now disconnected?

5 MR. COMLEY: Your Honor, meaning no
6 disrespect to the secretary, but the seminal case
7 involving Four Seasons, Case No. 17924, is not listed
8 on this list. And that case has been quoted by not
9 only Lake Region but also the Staff. So I would
10 question the veracity of the report.

11 JUDGE STEARLEY: Well, Mr. Comley, I --
12 I -- I will make sure, and I'll note specifically by
13 that case number, that case, the Commission does take
14 official notice of. If there's any discrepancies, if
15 there are additional cases, if any party locates
16 them, they're certainly welcome to file those case
17 numbers with the Commission.

18 This document may or may not be
19 complete, I do not know. But it's -- I mean, for
20 what limited purpose it serves, I see no harm in
21 admitting it into the record.

22 (EXHIBIT NO. 49 WAS RECEIVED INTO
23 EVIDENCE AND MADE A PART OF THE RECORD.)

24 MR. COMLEY: I think that covers all of
25 our objections, Judge.

1 JUDGE STEARLEY: All right.

2 MS. LANGENECKERT: Judge, I'd like to
3 make one comment. It's not necessarily an objection,
4 but I note that many of the documents that have been
5 filed have been marked HC, the financial records and
6 things like that. And I think according to the
7 regulations, they would be more appropriately marked
8 proprietary.

9 Now, we're not going to make an
10 objection, but it seems that in this case, things
11 just were stamped HC. There was no explanation of
12 why they were HC as is required in the regulation.
13 And I just hate for that to continue in other cases
14 just by virtue of the fact that someone stamps a HC
15 mark on it.

16 JUDGE STEARLEY: At this point, the
17 Commission will err on keeping those documents HC.
18 If some party would like to file a motion to
19 declassify, we'll certainly give people an
20 opportunity to respond to that and we can take it up
21 at a later date.

22 MS. LANGENECKERT: Yeah, that's not my
23 intent. I just want to note for the record that
24 that -- it seems to have gotten rather loose in its
25 interpretation --

1 JUDGE STEARLEY: I -- I understand.

2 MS. LANGENECKERT: Thank you.

3 MR. COMLEY: Following up a bit on
4 Ms. Langeneckert's concern, I think Lake Region will
5 probably -- if the HC-classified material is utilized
6 extensively in the briefing on the availability fee
7 issue, I think we would request that that be
8 declassified or reclassified to a proprietary level.

9 JUDGE STEARLEY: All right. We'll --
10 we'll see what comes in in the briefing, and we can
11 all go from that point.

12 MS. OTT: Judge, I have a few of the
13 things Staff is going to check on. I have Sally --
14 Sally Stump's complete affidavit which was marked as
15 Exhibit 20.

16 JUDGE STEARLEY: The Commission has some
17 instruction for the parties, but before I get to
18 that, I want to be sure that you've completed your
19 offerings, Counsel, and if there's anything else we
20 need to take up.

21 MS. OTT: I actually realized there is a
22 couple other things. Staff Exhibit -- well, one
23 clarification first. Staff Exhibit 43 was actually
24 EFIS No. 167, and Staff Exhibit 44, 45 and 46 were
25 EFIS numbers 168.

1 JUDGE STEARLEY: Okay. 167 and 168?

2 MS. OTT: Correct.

3 JUDGE STEARLEY: Thank you.

4 MS. OTT: Staff would also like to offer
5 as Staff Exhibit 45 the reconciliation filed by
6 parties on June 23rd. Pardon me. 50. These numbers
7 are... Staff Exhibit No. 50.

8 Staff would just like to make clear
9 that -- or of official notice of the annual reports
10 for Lake Region Water & Sewer from the years 1972
11 through 2008. And we have --

12 JUDGE STEARLEY: In case we have --

13 MS. OTT: -- I think that might have
14 already happened, but --

15 JUDGE STEARLEY: Yeah. In case we have
16 not taken official notice of those, the Commission
17 will take official notice of all annual reports filed
18 with regard to Lake Region and its predecessors.

19 (EXHIBIT NO. 50 WAS MARKED FOR
20 IDENTIFICATION BY THE COURT REPORTER.)

21 MS. OTT: Can I offer the reconciliation
22 Exhibit 50 into the record?

23 JUDGE STEARLEY: Any objections to the
24 offering of Exhibit No. 50?

25 MR. COMLEY: No objection.

1 MS. BAKER: No objection.

2 JUDGE STEARLEY: Okay. It shall be
3 received and admitted into the record.

4 (EXHIBIT NO. 50 WAS RECEIVED INTO
5 EVIDENCE AND MADE A PART OF THE RECORD.)

6 JUDGE STEARLEY: Any other items,
7 Ms. Ott?

8 MS. OTT: Yes. Staff would like to
9 offer an -- as Exhibit No. 51 the petition in the
10 Circuit Court Case CV103760CC. It is Four Seasons
11 Lakesite, Inc. versus Lake Region Water & Sewer
12 Company and Waldo Morris.

13 JUDGE STEARLEY: What was the case
14 number again on that, Ms. Ott?

15 MS. OTT: CV1037603 -- or 760CC.

16 JUDGE STEARLEY: What's the purpose of
17 this offering?

18 MS. OTT: The purpose is with the
19 confidential settlement agreement that was offered
20 in, that it -- for the rule completeness, to
21 understand the nature behind the matter in which that
22 settlement agreement arose from. And as well as
23 Staff Exhibit No. 50 -- 52, we would like to offer
24 the answer filed by Lake Region Water & Sewer Company
25 and Waldo Morris in the matter.

1 MR. COMLEY: I haven't seen the exhibit.

2 JUDGE STEARLEY: I was just going to
3 inquire. Do you have copies for the other parties,
4 Ms. Ott?

5 MS. OTT: I do. I have a complete
6 certified copy of the case. I don't think it's
7 necessary to put the whole case into the record,
8 but --

9 JUDGE STEARLEY: Do the parties need a
10 little time to look over those documents before we
11 take up the offering? Because we can take a
12 ten-minute recess here.

13 MR. COMLEY: I think that would be a
14 good idea.

15 JUDGE STEARLEY: Ms. Ott, before we do
16 that, are there going to be any other documents you
17 intend to offer?

18 MS. OTT: No, this would be the end, the
19 last document in which Staff would like to offer into
20 evidence.

21 JUDGE STEARLEY: All right. Why don't
22 we go ahead and take a ten-minute recess so the
23 parties -- other parties have a chance to examine
24 these documents and come back on the record and we
25 can take up their offering.

1 (EXHIBIT NOS. 51 AND 52 WERE MARKED FOR
2 IDENTIFICATION BY THE COURT REPORTER.)

3 (A RECESS WAS TAKEN.)

4 JUDGE STEARLEY: There has been an
5 offering of exhibits from Staff, Nos. 51 and 52
6 regarding the petition, Circuit Court Case CV103760CC
7 and the answer filed in that case. Are there any
8 objections to the offering of those exhibits?

9 MR. COMLEY: Your Honor, we would
10 reassert the relevancy objection to any kind of
11 testimony, any kind of evidence concerning
12 availability fees or how they were litigated between
13 Four Seasons Lakesite and Lake Region Water & Sewer
14 Company or the shareholders at the time. We think
15 that that's far beyond the jurisdiction of the
16 Commission.

17 Further, I -- the -- it was my
18 understanding that the purpose of this hearing this
19 morning was to allow the Staff to introduce the
20 evidence that it had taken in connection with
21 responding to the April 8th order, and that was the
22 discovery that they conducted of the other parties
23 and the affidavits that were produced as part of
24 that.

25 The pleadings that we're seeing in

1 Exhibit 51 and 52 are matters that could have been
2 presented either during the course of the original
3 evidentiary hearing or the hearing that was scheduled
4 for true-up. So I -- I look at the tender of these
5 exhibits as far beyond what the scope of this hearing
6 was intended to do.

7 JUDGE STEARLEY: All right. Ms. Ott,
8 before you answer that, I'd also like to know more on
9 the purpose of these offerings. It was the
10 Commission's understanding that the confidential
11 settlement agreement which has been provided,
12 although remains highly confidential, was to
13 demonstrate to the Commission basically who's
14 receiving what portion of what availability fees are
15 being collected.

16 So the Commission's a little unclear as
17 to the purpose of having the petition and answer
18 filed in association with this case as to how that is
19 supposed to add anything more than what the actual
20 settlement agreement offers.

21 MS. OTT: Judge, it's being offered for
22 completeness of the record. This is part of the
23 evidence we found along with the affidavits that we
24 obtained from each of the parties. And Lake Region
25 Water & Sewer Company was a defendant to the case,

1 and in their answer, they -- their admissions against
2 interest directly related to the availability fees
3 and all of the evidence that has been previously
4 taken in this case that refute that.

5 And the petition is being offered for
6 completeness because you cannot read an answer where
7 it says admit or deny and not understand what the
8 defendant is admitting or denying.

9 MR. COMLEY: And if that's the purpose
10 for it, I think it's time for the Staff to identify
11 which paragraphs of this pleading are admissions
12 against interest. And then the next thing we need to
13 do is find out if the court actually ruled on those
14 because affirmative defenses are part of that -- are
15 part of that --

16 JUDGE STEARLEY: And you're getting in
17 at a late stage of this, Counselor, and Staff is
18 interjecting new arguments in this case. The Company
19 hasn't had an opportunity or any other party to
20 respond to that, provide any type of rebuttal.

21 MS. OTT: We are not asserting any new
22 argument in this case. The -- the -- actually, the
23 answer supports Staff's argument in its -- in its
24 case the entire time. Page 8, paragraph 2, the
25 defendant admits the assignment availability fees

1 expressly was stated consideration for the
2 purchase -- stock purchase of Lake Region, previously
3 Four Seasons Water & Sewer Company.

4 It's -- additionally, it's an admission
5 against a party opponent, it's a judicial
6 admission -- admission. It was an answer in a court
7 case, Lake Region was a party, Lake Region's attorney
8 signed it. The answer in that matter clearly relates
9 to the matter at hand as availability fees was -- was
10 the issue in -- in the petition which is the issue
11 here today. Additionally, the Commission has asked
12 for specific answers related to availability fees,
13 and this -- this helps Staff --

14 JUDGE STEARLEY: Counsel, if you could
15 please bring your document up. I'm not finding the
16 specific document in the information you gave me, and
17 if you could show me this paragraph.

18 MS. OTT: This also explains the
19 difference between owners when the Slates and Waldo
20 Morris had it and when the Stumps and Meshwarmans
21 [phonetic spelling] took it over.

22 MR. COMLEY: Your Honor, I think
23 paragraph 2 on page 8 is consistent with our
24 testimony. It's -- it's not an admission against
25 interest.

1 JUDGE STEARLEY: It's also consistent
2 with the filed documents on the stock purchase
3 agreements to my knowledge.

4 MR. COMLEY: And exhibit -- the exhibit
5 to the answer is already in evidence in this case.

6 MS. OTT: Well, paragraph -- page 11,
7 paragraph 23 states that Waldo Morris spends the
8 availability fees for the benefit of Lake Region
9 to -- to guarantee capacity and services for the
10 system. Paragraph 27 says that Lake Region uses
11 availability fees to build a new sewage treatment
12 plant, a new water tower to invest in capital
13 improvements and otherwise increase capacity for
14 water and sewer services.

15 Page 12, paragraph 28 states that Lake
16 Region uses fees for their intended purpose which
17 only Lake Region can do, that the plaintiff in this
18 case, the developer, would have been stopped long ago
19 had the defendant, Lake Region Water & Sewer Company,
20 had not continued to use the funds to increase the
21 capacity. That is clearly a statement against
22 interest and it's relevant to this case. It is the
23 exact subject matter which is the subject matter that
24 brought on this additional evidentiary hearing today.

25 MR. COMLEY: I think it's unfair that

1 the Staff is using this opportunity as another bite
2 at getting its face in. One of the items I think is
3 a -- is an admission against Waldo Morris's interest,
4 not Lake Region.

5 MS. OTT: Lake Region was a defendant,
6 they filed a joint answer in this case; therefore,
7 they were asserting their own position in that
8 answer. Had they had a different position, they
9 would have filed two separate answers.

10 MS. BAKER: Your Honor, for -- for what
11 it's worth, Public Counsel would certainly support
12 these documents going into the record because one of
13 the issues that we've had in this case all along is
14 the lack of the ability to get information from the
15 Company, and this is information that is -- is
16 publicly available.

17 We would certainly support it going in
18 because it helps with the record, it helps with the
19 testimony, and the petition itself gives a backing as
20 far as how come there is a settlement agreement. And
21 these are -- you know, this is the heart of what the
22 Commission is -- is looking for information on.
23 That's why Staff was sent out to get the extra
24 information.

25 MR. COMLEY: I think what's happening,

1 Judge, is that more explanations are going to be
2 needed in order to fully understand the consequences
3 of the filing of the petition and what was in the
4 answer and how the facts were eventually resolved in
5 that settlement agreement. These are pleadings.

6 MS. OTT: They are judicial admissions
7 which may be introduced into evidence in another
8 proceeding even when the parties are not identical.
9 And here Lake Region was a party to that case and
10 they are a party to the case here today. It's a
11 public record, it's certified by the court.

12 JUDGE STEARLEY: Ms. Ott, this is a
13 pleading signed by David Shore. Do you want to cite
14 me the case law that states that a pleading filed by
15 an attorney is an admission of the party?

16 MS. OTT: I believe that's Circuit Court
17 Rule 55.

18 JUDGE STEARLEY: Last case law I saw
19 said statements of attorneys and arguments and
20 pleadings are not evidence. If you've got a
21 different case with some case law to support a
22 different argument, you can illuminate me now.

23 MS. OTT: Admissions of an attorney
24 relevant for the -- of an attorney relevant to the
25 purpose for which he was employed and may well engage

1 in that employment are admissible in evidence
2 against -- against the client. And that would be --

3 JUDGE STEARLEY: That's the definition
4 of an admission, a judicial admission by an attorney.

5 MS. OTT: I mean a judicial admission
6 that --

7 JUDGE STEARLEY: In order -- in order
8 for an attorney's statement to be considered a
9 judicial admission, there is case law on that and
10 there's a specific definition for that.

11 MS. OTT: Case 452 SW 2d 164, Supreme
12 Court of Missouri.

13 JUDGE STEARLEY: And what does the Court
14 say?

15 MS. OTT: The Court states that,
16 "Opening statements are not considered as judicial
17 admissions unless they are clear, unequivocal
18 admissions of fact in which they are binding on the
19 party in whose interest they are made and may be
20 considered by the jury as admitted facts." And in
21 this case they affirmatively state their position as
22 a statement of fact which is admissible in this
23 hearing -- proceeding.

24 JUDGE STEARLEY: This is not testimony
25 from a witness. Lake Region hasn't -- has not had an

1 opportunity to rebut this. You're hearing --
2 introducing this on the last day of this evidentiary
3 hearing.

4 MS. OTT: Staff obtained this evidence
5 in relation to the April 8th order directing Staff to
6 file -- to find certain answers to specific questions
7 related to availability fees. This was obtained
8 within that discovery process.

9 This is an additional evidentiary
10 hearing to produce different -- to produce the
11 evidence which we obtained pursuant to that order,
12 and that is why it's being offered today. It can
13 be -- the petition and answer can be considered as
14 evidence and weighed by the trier of fact to
15 determine whether or not it's persuasive.

16 JUDGE STEARLEY: It certainly can. The
17 statement that you're quoting on 11 here talks about
18 the use of availability fees.

19 MS. OTT: And it states that they are
20 used for capital improvements and operating expenses
21 in which Lake Region in this matter has stated that
22 it has not ever been used for that. Additionally,
23 Mr. Comley had notice --

24 JUDGE STEARLEY: I don't believe your
25 statement is correct, Counselor. I don't believe

1 Lake Region stated at any time during this hearing
2 that they have not used this money for capital
3 improvements to their company. There was a great
4 deal of discussion about intent of creating
5 availability fees, but I don't believe the conclusory
6 remark you just made is in evidence at all.

7 MS. OTT: I apologize if I incorrectly
8 stated the record. If I might, your Honor, if it's
9 an issue of Lake Region being given the opportunity
10 to rebut the statements in it, they are here.

11 MR. COMLEY: We would like to have about
12 an hour and a half worth of a hearing on this too.
13 We have a lot of people to bring in.

14 The other thing I bring up, Judge, is
15 that this case and the opportunity to review these
16 pleadings was -- was given to the Staff at the
17 beginning of this case. The existence of this case
18 was brought to the Staff's attention before it filed
19 its direct case, before Mr. Robertson filed his
20 testimony.

21 This is public information that could
22 have been acquired well in advance of today. And
23 again, I -- I think the weight of my objection would
24 be this is a misuse of the hearing that was scheduled
25 today. This is yet another opportunity for Staff to

1 somehow supplement the record it expected to have on
2 this issue, and I think that's unfair to Lake Region.

3 MS. OTT: This information was equally
4 accessible to Lake Region.

5 MR. COMLEY: We've known about it, sure,
6 but we didn't offer it. I'm not offering it.

7 MS. BAKER: And I think that goes to the
8 heart of the whole issue in this entire case is Lake
9 Region has had this information the whole time.

10 JUDGE STEARLEY: Lake Region has no
11 burden to offer this information.

12 MS. BAKER: No, but they were asked in
13 several data requests from Public Counsel --

14 JUDGE STEARLEY: They were asked and
15 they raised objections. Those objections were never
16 overruled and no party here filed a Motion to Compel.
17 Quite frankly, the Commission is getting tired of
18 this late stage in this game for there to be this
19 type of offering and for parties to be complaining
20 about discovery requests.

21 MS. LEWIS: Your Honor, this was, I
22 mean, equally available to all parties. Lake Region
23 was aware of it. There's a presumption that if a
24 party has possession of information and they choose
25 not to present it, that there's a presumption that

1 it's not to their benefit to present it.

2 MR. COMLEY: We haven't tried to
3 excoriate any evidence. This is public information
4 that's available to all parties.

5 JUDGE STEARLEY: All right. The
6 objection is sustained. These documents are excluded
7 from this record.

8 MS. LEWIS: Your Honor, could we take a
9 quick recess at this point?

10 JUDGE STEARLEY: For what purpose?

11 MS. LEWIS: Staff needs to consult with
12 each other. Could we take a quick recess?

13 JUDGE STEARLEY: You may take a recess.

14 MS. LEWIS: Thank you.

15 JUDGE STEARLEY: And be back on the
16 record in ten minutes.

17 MS. LEWIS: Thank you.

18 (A RECESS WAS TAKEN.)

19 JUDGE STEARLEY: All right. Back on the
20 record. Staff had asked for a recess. Staff, do you
21 wish to make any further argument at this time?

22 MS. OTT: Staff would request that you
23 take official notice of a Circuit Court case, Case
24 No. CV103760CC.

25 JUDGE STEARLEY: All right. The

1 Commission will take official notice of the case that
2 counsel just enumerated, CV103760CC. Am I reading
3 that back correct?

4 MS. OTT: That is correct. I'd also
5 like to make an offer of proof on the objection.

6 JUDGE STEARLEY: Certainly, Counselor.
7 You may proceed.

8 MS. OTT: Staff would like to adopt all
9 of our previous arguments for admission of the
10 petition and the answer, that they are relevant, they
11 are judicial admissions and should be admitted into
12 this case as statements against interest of the
13 defendant, Lake Region -- or of the party in this
14 case, Lake Region, who was the defendant in that --
15 in that matter.

16 JUDGE STEARLEY: Any additional
17 argument?

18 MR. COMLEY: Lake Region asserts the
19 same objections it did to -- in objecting to
20 Exhibits 51 and 52 when they were first offered.

21 JUDGE STEARLEY: All right. And
22 Mr. Comley, I'm assuming that should the Commission
23 reconsider on the offer of proof, that you would
24 assert that you'd be entitled to time for rebuttal
25 and/or additional evidentiary hearing?

1 MR. COMLEY: Yes, that would be our
2 request.

3 JUDGE STEARLEY: All right. Very well.
4 Ms. Baker, Ms. Langeneckert, anything you'd like to
5 add to this record on the offer of proof?

6 MS. BAKER: We would support the offer
7 of proof.

8 MS. LANGENECKERT: We support it as
9 well.

10 MS. OTT: And Staff would not oppose
11 additional hearing in Lake Region's ability to
12 respond to the document.

13 JUDGE STEARLEY: All right. Very good.
14 Any other offerings of exhibits at this time?

15 MS. OTT: There was one exhibit in which
16 Staff offered which has not been admitted yet. It
17 was Exhibit No. 42. It was the Secretary of State's
18 fictitious name registration of Lake Utility
19 Development.

20 MR. COMLEY: We had no objection to
21 that, Judge.

22 JUDGE STEARLEY: All right. Exhibit
23 No. 42 will be admitted and received into the record.

24 (EXHIBIT NO. 42 WAS RECEIVED INTO
25 EVIDENCE AND MADE A PART OF THE RECORD.)

1 JUDGE STEARLEY: Does that complete the
2 offerings of exhibits?

3 MR. COMLEY: Your Honor, I have three
4 exhibits I'd like to offer. Your file should reflect
5 that Lake Region filed a response to one of Staff's
6 responses, and I think that was on Tuesday. And in
7 that response, I identified some documents in
8 schedule 1 and in a footnote notified the parties
9 that we would be having certificates of those records
10 prepared by Mr. Reed. And I have those documents.
11 In fact, I have three separate documents that are
12 reflected in that schedule that I have had Mr. Reed
13 certify.

14 JUDGE STEARLEY: All right. Very well.
15 Have the other parties seen these documents?

16 MR. COMLEY: They've seen excerpts.
17 They have not seen the certificates that we've
18 prepared today. And I think we're at 13?

19 JUDGE STEARLEY: Yes, you'd be starting
20 at Staff -- or excuse me -- Lake Region Exhibit
21 No. 13.

22 MR. COMLEY: I would like to mark the
23 engineering report in Case No. 17954 as Lake Region's
24 Exhibit 13. It is a certified copy of that
25 engineering report. It's covered by a letter to

1 Harold Coppler [phonetic spelling] over signature by
2 James French. And these are offered as certified
3 copies of documents in the case.

4 (EXHIBIT NO. 13 WAS MARKED FOR
5 IDENTIFICATION BY THE COURT REPORTER.)

6 MR. COMLEY: Exhibit 14 is the
7 transcript of hearing in Case No. 17954 certified by
8 the secretary.

9 (EXHIBIT NO. 14 WAS MARKED FOR
10 IDENTIFICATION BY THE COURT REPORTER.)

11 MR. COMLEY: Exhibit 15 is the Report
12 and Order in Case No. 17954, and I did this simply
13 for ease of reference for the parties and the
14 Commission. It's also covered by the Four Seasons
15 Lakesite's Water & Sewer Company balance sheet.
16 Apparently the archivist had this in front of the
17 Report and Order. The balance sheet was referred to
18 in schedule 1, and I just had it certified that way.
19 So if it confuses anybody, my apologies.

20 (EXHIBIT NO. 15 WAS MARKED FOR
21 IDENTIFICATION BY THE COURT REPORTER.)

22 JUDGE STEARLEY: All right. We have the
23 offering of Lake Region Exhibits 13, 14 and 15. Any
24 objection to the offerings?

25 (NO RESPONSE.)

1 JUDGE STEARLEY: Hearing none, they
2 should be received and admitted into the record.

3 (EXHIBIT NOS. 13, 14 AND 15 WERE
4 RECEIVED INTO EVIDENCE AND MADE A PART OF THE
5 RECORD.)

6 JUDGE STEARLEY: Any other offerings at
7 this time?

8 (NO RESPONSE.)

9 JUDGE STEARLEY: Hearing none, the
10 Commission has some questions for counsel and some
11 instructions. There's been a number of filings and
12 scenarios over the past month, and so the Commission
13 just wants to clarify with the parties some of the
14 details with that and the current reconciliation
15 that's been filed.

16 Staff's late-filed exhibit dated
17 June 23rd that came in yesterday as a -- on page 5, a
18 May 18th corrected rate base. I don't know if the
19 parties have that document in front of them or not.
20 The rate base listed for Shawnee Bend Water is
21 874,282; for Shawnee Bend Sewer, 1,486,680 and for
22 Horseshoe Bend Sewer, 584,138. I wanted to inquire,
23 are all the parties in agreement on Staff's filing as
24 to the rate base on the Company?

25 MR. COMLEY: Judge Stearley, could you

1 read those numbers one more time?

2 JUDGE STEARLEY: Certainly. We have
3 Shawnee Bend Water, 874,282; Shawnee Bend Sewer,
4 1,486,680; Horseshoe Bend Sewer, 584,138.

5 MR. COMLEY: Lake Region agrees with
6 those figures.

7 MS. BAKER: Public Counsel agrees as
8 well.

9 JUDGE STEARLEY: Okay. And if I can
10 inquire, then, that would include the additions to
11 plant for the new Horseshoe Bend Sewer addition?

12 MR. COMLEY: Yes.

13 MS. OTT: Yes.

14 JUDGE STEARLEY: All right. Thank you.
15 Looking at the reconciliation that was updated and
16 filed yesterday and has now been admitted as
17 Exhibit No. 50, on the first page of what's marked
18 appendix A, the middle of the page, there's a set of
19 numbers corrected for May 18th, titled "Revenue
20 Requirement At Time of True-Up Hearings." We have the
21 numbers 22,252 for Shawnee Bend Water; \$112,327,
22 Shawnee Bend Sewer; \$44,552 for Horseshoe Bend Sewer.
23 And this would be exclusive of the issues of
24 availability fees, executive compensation, rate case
25 expense?

1 MS. OTT: That is -- that's correct.

2 MR. COMLEY: That is correct.

3 JUDGE STEARLEY: All right. Are all the
4 parties in agreement on those base numbers?

5 MR. COMLEY: Yes.

6 MS. BAKER: Yes, your Honor.

7 JUDGE STEARLEY: All right. And for
8 clarity, I believe it's pointed out in the
9 reconciliation that those numbers include Staff's
10 recommendations for executive compensation.

11 MS. OTT: Yes.

12 MR. COMLEY: That is correct.

13 JUDGE STEARLEY: And those numbers --

14 MS. BAKER: No, I do not think so.

15 JUDGE STEARLEY: On page 3 of the
16 appendix, the very bottom sentence says, "The amount
17 of executive compensation for staff is reflected in
18 each of the operating systems for the starting
19 true-up revenue requirements at true-up hearings
20 above." So I just wanted to clarify and see if
21 Staff's recommendations is a part of those three
22 numbers or not.

23 MS. BAKER: I -- I'll probably have
24 to -- to take back my statement on that because
25 really, this just came out late last night, and we've

1 not gone through it detail by detail.

2 JUDGE STEARLEY: Understood.

3 MS. BAKER: We still have differences of

4 opinion on the executive management fees.

5 JUDGE STEARLEY: Right, right.

6 MS. BAKER: So if that is --

7 JUDGE STEARLEY: That's not --

8 MS. BAKER: -- part of the -- that --

9 JUDGE STEARLEY: Right. Staff -- this

10 is including Staff's recommendation. The way I'm

11 reading the reconciliation, I want to be clear on

12 that.

13 MS. BAKER: Okay. So on the -- on the

14 appendix A, first page, the Commission requested most

15 current reconciliation, the May 18th line.

16 JUDGE STEARLEY: Right.

17 MS. BAKER: If that includes Staff's

18 numbers for executive management fees, then Public

19 Counsel does not agree with those.

20 JUDGE STEARLEY: Right. Understood.

21 MS. BAKER: Okay.

22 JUDGE STEARLEY: Understood. But would

23 you agree that those would be the numbers including

24 Staff's recommendation?

25 MS. BAKER: Yes.

1 JUDGE STEARLEY: If we subtract it --

2 MR. COMLEY: We don't agree with it
3 either.

4 MS. BAKER: Okay.

5 JUDGE STEARLEY: If we subtracted
6 Staff's recommended numbers for executive --
7 executive compensation from those three numbers, we
8 would have Shawnee Bend Water, 15,137. I didn't tell
9 you all to bring your calculators today. I have one
10 if you need to borrow it.

11 MS. BAKER: So basically what you're
12 doing is the 22,252 minus 7,115?

13 JUDGE STEARLEY: Correct. For Shawnee
14 Bend Sewer would be 112,327 minus 7,477 for 104,850.
15 And for Horseshoe Bend Sewer would be 44,552 minus
16 the 13,309 for 31,243. So that would truly be the
17 numbers exclusive completely of the parties'
18 positions on executive management, rate case
19 expense --

20 MS. BAKER: There's a difference of
21 opinion on rate case expense.

22 JUDGE STEARLEY: -- and availability
23 fees. Yes, there is.

24 MS. BAKER: Okay. Okay.

25 JUDGE STEARLEY: Right. These would be

1 the base numbers, not adding or subtracting anything
2 else to them, if I'm understanding the reconciliation
3 correctly, and I wanted to be sure all the parties
4 agree with that. From that point forward, whatever
5 the Commission does in terms of these issues would be
6 additions and subtractions.

7 MS. OTT: Yes.

8 MS. BAKER: Just like the executive
9 management fees was a subtraction.

10 JUDGE STEARLEY: Correct. But if all
11 those issues remain in dispute, the Commission still
12 would have to determine those numbers and add them
13 into these baseline numbers or subtract them if that
14 be the case. And I just want to be sure everyone's
15 clear on -- including the Commission, on what this
16 reconciliation sheet is telling the Commission.

17 MS. BAKER: Because our understanding is
18 these are base numbers. You would subtract out like
19 Staff's position and add back in Public Counsel's
20 position to get to --

21 JUDGE STEARLEY: Or whichever --

22 MS. BAKER: Or whichever way --

23 JUDGE STEARLEY: -- whichever position
24 the Commission would adopt would be their addition or
25 subtractions on those numbers.

1 MS. BAKER: Yes.

2 JUDGE STEARLEY: On those outstanding
3 issues, availability fees, executive management
4 compensation, rate case expense.

5 MS. OTT: Judge, the Commission could
6 issue an order with the scenario and we could verify
7 that that is correct if this reconciliation isn't
8 clear.

9 JUDGE STEARLEY: I -- I think it is,
10 actually.

11 MS. OTT: Okay.

12 JUDGE STEARLEY: I think -- think the
13 parties seem to be nodding their head in agreement.

14 MS. OTT: Okay.

15 JUDGE STEARLEY: So I -- I will take the
16 parties at their word here today. We went through
17 those numbers and we all know what the baseline
18 numbers are depending on what the Commission does
19 with these outstanding issues.

20 Okay. Now, the Commission does want to
21 direct its Staff to complete and file a scenario, and
22 it's going to give you hopefully all the parameters
23 you need for the scenario. And the Commission would
24 like the Company and Staff to jointly file the
25 scenario. Mr. Comley, I know you're gonna be out of

1 the country, so theoretically, the due date for
2 briefs on availability fees of July 16th could
3 potentially be the date due for this scenario.

4 MR. COMLEY: Thank you very much.

5 JUDGE STEARLEY: So you would have
6 adequate time to make sure that you're all on the
7 same page. Okay. So we have an agreement on rate
8 base from the parties. This would use the capital
9 structure that was presented originally in the cost
10 of service report January 14th from Staff.

11 For purposes of imputing or counting as
12 revenue an amount for availability fees, you would be
13 directed to use the amount of \$330,655 for that
14 number.

15 MS. OTT: Can you state that again?

16 JUDGE STEARLEY: \$330,655. For the
17 purpose of any potential offset to rate base, you
18 would use the number 2,990,981. The scenario should
19 include if the availability fees are added and
20 there's no offset to rate base and if the
21 availability fees are added and there is an offset to
22 rate base. So we'd basically be looking at two
23 columns of numbers.

24 And based upon what I have just told
25 you, let me make perfectly clear the Commission has

1 made no determination, a predetermination or decision
2 on any of this. The Commission is just asking for a
3 specific scenario giving you specific guidelines and
4 does not want any deviation from those guidelines.

5 MS. OTT: Judge, I do have one
6 clarification on the amount of availability fees.
7 That's both water and sewer given that there's three
8 systems and a different amount goes to each --

9 JUDGE STEARLEY: Well, what --

10 MS. OTT: -- how would you divide up
11 because Horseshoe Bend does not have any availability
12 fees?

13 JUDGE STEARLEY: Correct. The
14 availability fees would be attributed to Shawnee Bend
15 Water and Sewer which is my understanding are the two
16 entities collecting them; is that correct?

17 MS. OTT: That is --

18 JUDGE STEARLEY: Or -- or actually not
19 the two entities collecting them, but we have the
20 entity of Lake Utility availability.

21 MS. OTT: Okay. So then we use the
22 60/40 split for that number on how they're collected
23 underneath --

24 JUDGE STEARLEY: Yes.

25 MS. OTT: Okay.

1 JUDGE STEARLEY: Given those parameters,
2 and I appreciate your question of clarification,
3 Counsel, are there any other parameters the parties
4 need to complete this scenario?

5 MS. OTT: Judge, can I have a
6 five-minute recess so I can see if the chief auditor
7 has any clarifications?

8 JUDGE STEARLEY: Certainly. You can
9 take a ten-minute recess if you like. What the
10 Commission wants to be sure is, is that we have
11 everyone using the same capital structure and the
12 same numbers and no new additions for things like
13 customer advances or anything else, changes in rate
14 bases. So we'll take a ten-minute recess.

15 (A RECESS WAS TAKEN.)

16 JUDGE STEARLEY: All right. We are back
17 on the record. I inquired of the parties if there
18 were any additional parameters they needed in order
19 to complete the scenario the Commission has directed.

20 MS. OTT: Staff just has a clarification
21 on the 2.9 million CIAC. Is that inclusive of
22 nonrelated availability fee CIAC?

23 JUDGE STEARLEY: No. That would only be
24 related to availability fees.

25 MS. OTT: So there is about 900,000 CIAC

1 nonrelated to availability fees, so should that
2 amount in that scenario be included or not?

3 JUDGE STEARLEY: That should be
4 included.

5 MS. OTT: In the nonavailability fee
6 CIAC.

7 JUDGE STEARLEY: The nonavailability
8 CIAC should still be included in the analysis.

9 MS. OTT: In addition to the 2.9?

10 JUDGE STEARLEY: Yes.

11 MS. OTT: Thank you. That answers my
12 question. And it is due July 16th?

13 JUDGE STEARLEY: July 16th, that's
14 correct, along with the briefing on the availability
15 fees. And the last we left it, the briefs for
16 true-up were due today, the end of the day.

17 And that brings me to one other issue
18 regarding the reconciliation regarding rate case
19 expense. And it appears that Lake Region, you have
20 updated the amounts for rate case expense from the
21 true-up time periods.

22 MR. COMLEY: Yes, we communicated an
23 update to Staff and I think to OPC.

24 JUDGE STEARLEY: What date is that
25 through?

1 MR. COMLEY: I think the end of May,
2 May 10th, maybe. No, it's the end of May.

3 JUDGE STEARLEY: And Company and Public
4 Counsel will have updated their positions on the
5 issues in relation to those numbers, correct?

6 MS. BAKER: That's correct.

7 JUDGE STEARLEY: And have all the
8 parties seen the invoices for those fees?

9 MR. COMLEY: I'm getting a nod from
10 Mr. Summers, yes.

11 MS. OTT: Yes.

12 MS. BAKER: Yes.

13 JUDGE STEARLEY: Ms. Ott, why -- why
14 didn't Staff update its position or recommendation on
15 it?

16 MS. OTT: Staff did not update its
17 numbers because consistent with past treatment in
18 rate cases, Staff only updates rate case expense
19 through the true-up period.

20 JUDGE STEARLEY: Right. Well, I'm going
21 to direct Staff to update its rate case expense
22 through May 31st, providing the Commission with a
23 recommendation on that.

24 MS. OTT: Would you like that included
25 in our brief or filed subsequent?

1 JUDGE STEARLEY: You can file it
2 separately. I note that in your filings June 21st on
3 page 8, it appeared that you had updated the
4 recommendation on rate case expense.

5 MS. OTT: The June 21st has been -- the
6 23rd updated that filing because that was based on
7 what Staff believed we had a principle and agreement
8 which turned out not to be. So we wanted to stay
9 consistent with the unanimous stipulation of
10 unanimous facts [sic] which all the parties agreed to
11 and Staff's treatment in the past. So Staff will
12 file an update to its rate case expense.

13 JUDGE STEARLEY: All right.

14 MR. COMLEY: Following up on what
15 Ms. Ott said, the agreement she referred to I think
16 dealt with advances in aid of construction. We
17 didn't have, I think, an agreement about rate case
18 expense.

19 MS. OTT: No, but that filing was
20 updating --

21 MR. COMLEY: It covered a lot of things
22 including rate cases.

23 JUDGE STEARLEY: All right. How soon
24 can you file that update, Counsel? It looks like the
25 numbers are already prepared for the June 21st

1 filing. Let me ask it this way: Can Staff file its
2 update by Monday?

3 MS. OTT: No, Staff cannot. Can we have
4 until July 9th?

5 JUDGE STEARLEY: Can you have until
6 July 9th, is that your question?

7 MS. OTT: Yes, that's my question.

8 JUDGE STEARLEY: Okay. Are you
9 expecting some material change from what you had
10 recommended in the June 21st filing?

11 MS. OTT: Staff's witness thinks there
12 might be.

13 JUDGE STEARLEY: All right. Well, if
14 you want -- go ahead, complete your discussions.

15 MS. OTT: Staff would request to
16 July 9th to complete it.

17 JUDGE STEARLEY: All right. We'll set
18 July 9th for the filing. If there is a material
19 change from the recommendation in the June 21st
20 filing, Staff shall offer an explanation for the
21 change.

22 MS. OTT: Staff will note so if there is
23 a material change.

24 JUDGE STEARLEY: Thank you very much,
25 Counselor.

1 MS. BAKER: And your Honor, given that
2 true-up briefs are due today, how are the parties
3 supposed to respond?

4 JUDGE STEARLEY: Understood, Counsel.
5 And that's why I'm a little bit confused why Staff is
6 requesting additional time when they apparently
7 already made some determination on this back at the
8 beginning of this week and they've had access to all
9 these invoices.

10 Since we're going to grant Staff
11 additional time and then Staff can explain in that
12 filing any material differences, the parties will be
13 given until July 16th with the filing of those briefs
14 for availability fees to respond in any manner they
15 wish to Staff's.

16 MS. OTT: I'm sorry. Can you clarify
17 that?

18 MS. BAKER: So -- yeah. So I guess are
19 we having briefs today, true-up briefs today?

20 JUDGE STEARLEY: True-up briefs were
21 supposed to come in today, yes.

22 MS. BAKER: Okay. And so we will have
23 another true-up portion?

24 JUDGE STEARLEY: Well, you'll want --
25 you -- you can add a response on the issue of rate

1 case expense to your briefing on availability fees
2 which is scheduled for July 16th.

3 MS. BAKER: Okay. So we will have to be
4 very specific in what we do today that all we are
5 responding to is Staff's numbers as of --

6 JUDGE STEARLEY: As of this
7 reconciliation.

8 MS. BAKER: Which will change
9 dramatically, most likely.

10 JUDGE STEARLEY: Well, I don't know if
11 it will or not, but you can thank Staff for the
12 additional briefing on this. I don't think it will
13 take a great deal of briefing. This appears to be a
14 smaller issue. Are there any additional matters we
15 need to take up at this time?

16 MR. COMLEY: The Company has none.

17 JUDGE STEARLEY: And are Lake Region and
18 Staff clear on the parameters of the scenario the
19 Commission has directed you to file?

20 MR. COMLEY: Yes, we think so.

21 MS. OTT: Yes.

22 JUDGE STEARLEY: And there will be a
23 joint filing.

24 MR. COMLEY: (Nodded head.)

25 JUDGE STEARLEY: All right. If there's

1 nothing further, the evidentiary hearing in files
2 numbered SR-2010-0110 and WR-2010-0111 is adjourned.
3 Thank you all very much.

4 (WHEREUPON, the hearing in this case was
5 concluded.)

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3 EXHIBITS INDEX

4		MARKED	RECEIVED
5	Exhibit No. 20		
6	Affidavit of Sally Stump		
	signed on June 1st, 2010	817	830
7	Exhibit No. 21		
8	Affidavit of Brian Schwermann		
	dated May 6th, 2010	818	830
9	Exhibit No. 22		
10	May 20th affidavit of		
	Brian Schwermann	818	830
11	Exhibit No. 23 HC		
12	Confidential settlement agreement		
13	in the Circuit Court case		
14	between Four Seasons Lakesite		
	and Lake Region Water & Sewer		
	Company's Sally Stump and		
	RPS Properties	819	830
15	Exhibit No. 24 HC		
16	Exhibit C to Brian Schwermann's		
17	May 20th affidavit which is		
	RPS's simple audit receipts	819	830
18	Exhibit No. 25		
19	Cynthia Goldsby's May 6th,		
	2010 affidavit	819	830
20	Exhibit No. 26		
21	Cynthia Goldsby's		
	May 20th affidavit	820	830
22	Exhibit No. 27		
23	Affidavit of Peter N. Brown		
	dated April 29th, 2010	820	830
24	Exhibit No. 28		
25	Business record affidavit		
	of Peter N. Brown dated		
	June 3rd, 2010	820	830

1	EXHIBITS INDEX (CONTINUED)		
2		MARKED	RECEIVED
3	Exhibit No. 29		
4	Four Seasons Lakesite sales brochure	820	830
5	Exhibit No. 30		
6	Four Seasons Lakesite sales packet	821	830
7	Exhibit No. 31		
8	Four Seasons Lakesite HUD documents	821	830
9	Exhibit No. 32 HC		
10	Four Seasons Lakesite, Inc. and Subsidiaries		
11	financial statement from 1994	822	830
12	Exhibit No. 33 HC		
13	Four Seasons Lakesite, Inc. and Subsidiaries financial		
14	statements from 1995	822	830
15	Exhibit No. 34 HC		
16	Four Seasons Lakesite, Inc. and Subsidiaries financial		
17	statements from 1996	822	830
18	Exhibit No. 35 HC		
19	Four Seasons Lakesite, Inc. and Subsidiaries financial		
20	statements from 1997	822	830
21	Exhibit No. 36 HC		
22	Four Seasons Lakesite, Inc. and Subsidiaries financial		
23	statements from 1998	823	830
24	Exhibit No. 37 HC		
25	Four Seasons Lakesite, Inc. and Subsidiaries financial		
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1	EXHIBITS INDEX (CONTINUED)		
2		MARKED	RECEIVED
3	Exhibit No. 38 HC		
4	Four Seasons Lakesite, Inc.		
5	and Subsidiaries financial		
6	statements from 2000	823	830
7	Exhibit No. 39 HC		
8	Four Seasons Lakesite, Inc.		
9	and Subsidiaries financial		
10	statements from 2001	824	830
11	Exhibit No. 40 HC		
12	Four Seasons Lakesite, Inc.		
13	and Subsidiaries financial		
14	statements from 2002	824	830
15	Exhibit No. 41 HC		
16	Four Seasons Lakesite, Inc.		
17	and Subsidiaries financial		
18	statements from 2003	824	830
19	Exhibit No. 42		
20	Certified copy from the		
21	Secretary of State for		
22	fictitious name		
23	registration of Lake Utility		
24	Development and its		
25	cancellation	825	851
26	Exhibit No. 43		
27	Staff's response to		
28	Commission's April 8, 2010		
29	order regarding availability		
30	charges previously filed		
31	in EFIS	825	*
32	Exhibit No. 44		
33	Staff's response to		
34	Commission's April 8, 2010		
35	order regarding availability		
36	charges to Staff's		
37	accounting schedule Volume		
38	No.1	825	*

1	EXHIBITS INDEX (CONTINUED)		
2		MARKED	RECEIVED
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6	Commission's April 8, 2010		
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9	schedules, Volume No.2	826	*
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12	Staff's response to		
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16	schedules, Volume 3	826	*
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18	Exhibit No. 47		
19	Staff's June 7, 2010		
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22	availability charges	826	*
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24	Exhibit No. 48		
25	Staff's June 23rd, 2010		
26	refiling of Staff's June 21st,		
27	2010 response to the Missouri		
28	Public Service Commission's		
29	June 16th, 2010 order		
30	regarding clarification to		
31	plant additions	826	*
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34	Party of record inquiry for		
35	Four Seasons Lakesite Water		
36	and Sewer Company certified		
37	by the data center	827	832
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41	parties on June 23rd	835	836
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44	Petition in the Circuit		
45	Court Case CV103760CC	838	*
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1	EXHIBITS INDEX (CONTINUED)		
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3	Exhibit No. 52		
4	Answer filed in Circuit		
5	Court Case CV103760CC	838	*
6	Exhibit No. 13		
7	Engineering report in		
8	Case No. 17954	853	854
9	Exhibit No. 14		
10	Transcript of hearing in		
11	Case No. 17954 certified by		
12	the secretary	853	854
13	Exhibit No. 15		
14	Report and Order in		
15	Case No. 17954	853	854
16			
17	* Offered but not received into evidence.		
18			
19			
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21			
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C E R T I F I C A T E

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

I, Pamela Fick, Registered Merit Reporter
and Certified Shorthand Reporter do hereby certify
that I was personally present at the proceedings had
in the above-entitled cause at the time and place set
forth in the caption sheet thereof; that I then and
there took down in Stenotype the proceedings had; and
that the foregoing is a full, true and correct
transcript of such Stenotype notes so made at such
time and place.

Given at my office in the City of
Jefferson, County of Cole, State of Missouri.

PAMELA FICK, RMR, CCR #447, CSR