

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Lake Region Water & Sewer)	File No. SR-2010-0110
Company's Application to Implement a General)	Tariff No. YS-2010-0250
Rate Increase in Water & Sewer Service)	

In the Matter of Lake Region Water & Sewer)	File No. WR-2010-0111
Company's Application to Implement a General)	Tariff No. YW-2010-0251
Rate Increase in Water & Sewer Service)	

STAFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW, the Staff of the Public Service Commission (Staff) by and through counsel, and respectfully provides the following to the Missouri Public Service Commission (Commission) as its proposed Findings of Facts and Conclusions of Law on the issue of availability fees.

Findings of Fact

1. On December 1973, the Commission granted Four Seasons Lakesites Water & Sewer Company a Certificate of Convenience and Necessity in Case No. 17,975 to provide water and sewer service in a development commonly referred to as Horseshoe Bend, Lake Ozark, Missouri.

2. Peter N. Brown was the former president of Four Seasons Lakesites Water and Sewer Company and the developer of the Shawnee Bend water and sewer systems.¹

3. Four Seasons Lakesites, Inc. donated the water and sewer utility infrastructure to Four Seasons Lakesites Water & Sewer Co.²

4. In 1994, Ozark Shores Water Company (Ozark Shores) was granted the authority to acquire Four Seasons Lakesites Water & Sewer Co. water systems assets on Horseshoe Bend,

¹ Staff Exhibit 27, Peter N. Brown April 29, 2010 affidavit, p. 1.

² Transcript, p. 581, lines 21-23; p. 582, lines 7-24.

in Commission Case No. WM-93-59. When Four Seasons Lakesites Water & Sewer Co. sold its water assets to Ozark Shores, availability fees were an asset that transferred with the company.³

5. In 1995, Four Seasons Lakesites Water & Sewer Co. was granted a Certificate of Convenience and Necessity to expand its water and sewer utility service territory to the Shawnee Bend area of Lake Ozark in Case No. WA-95-164.

6. In March 1997, Four Seasons Lakesites Water & Sewer Co. changed its name to Four Seasons Water & Sewer Company.⁴

7. On August 17, 1998, Four Seasons Water & Sewer Co. sold 100% of its stock to Roy and Cindy Slates.⁵

8. In March 1999, Roy and Cindy Slates changed the name of the company to Lake Region Water & Sewer Company (Lake Region).⁶

9. On March 30, 1999, Roy Slates filed a Registration of Fictitious Name with the Missouri Secretary of State, entitled “Lake Utility Development.”⁷ At this point, Lake Utility Development billed and collected availability fees, rather than Lake Region.

10. On April 12, 2000, Waldo Morris, through foreclosure in the Slates’ stock in Lake Region, became the sole shareholder and obtaining the interest in availability fees.⁸

11. On September 10, 2004, Waldo Morris assigned his interest in availability fees to Robert P. Schwermann, Sally J. Stump, and Lake Region for \$1.00.⁹

³ Transcript, p. 485, lines 19-23; Staff Exhibit 15, James Merciel Rebuttal Testimony, p. 14, lines 1-3.

⁴ Staff Exhibit 15, James Merciel Rebuttal Testimony, p. 13, lines 11-21.

⁵ Staff Exhibit 27, Peter N. Brown April 29, 2010 Affidavit.

⁶ Staff Exhibit 27, Peter N. Brown April 29, 2010 Affidavit; Staff Exhibit 10, Contract and Assignment of Availability Fees, p. 2.

⁷ Staff Exhibit 42, Secretary of State Fictitious Name Registration of “Lake Utility Development.”

⁸ Answer of Defendant at ¶ 8, Four Seasons Lakesites, Inc., v. Lake Region [sic] Water and Sewer Co., et al, No. CV103-760CC; Staff Exhibit 10, Contract and Assignment of Availability Fees, p. 2.

⁹ Staff Exhibit 10, Contract and Assignment of Availability Fees, p. 1.

12. In October 2004, Waldo Morris sold his interest in Lake Region's stock to Sally Stump and RPS Properties, LLP (RPS Properties) and assigned his interest in availability fees to Sally Stump and RPS Properties.¹⁰

13. Lake Region operates its company through a contractual relationship with the Public Water Supply District No. 4 of Camden County (PWSD#4).¹¹

14. On November 20, 2004, Mr. Summers (contract general manager for Lake Region) filed on behalf of North Suburban Public Utility Co. (North Suburban) a *Registration of Fictitious Name* with the Missouri Secretary of State entitled Lake Utility Availability.¹² North Suburban and Lake Region have the same shareholders. Lake Utility Availability was setup to do business as (d/b/a) Lake Utility Availability for the billing and collecting of availability fees.¹³

15. On August 24, 2005, Sally Stump filed on behalf of herself and RPS Properties a fictitious name registration of "Lake Utility Availability 1."

16. Lake Utility Availability and Lake Utility Availability 1 were created so the Sally Stump and RPS Properties could bill and collect availability fees under a legal name.

17. Bills for availability fees are sent under the name Lake Utility Availability. However, the fictitious name of Lake Utility Availability is used in conjunction with the registration for Lake Utility Availability 1 in regard to billing and collection of availability fees.¹⁴

¹⁰ Staff Exhibit 52, Answer of Defendant at p. 2, Four Seasons Lakesites, Inc., v. Lake Region [sic] Water and Sewer Co., et al, No. CV103-760CC.

¹¹ Transcript, p. 322, lines 20-24.

¹² Staff Exhibit 11, Secretary of State Fictitious Name Registration, "Lake Utility Availability".

¹³ Transcript, p. 324, line 8.

¹⁴ Transcript, p. 265, lines 11-17.

18. Four Seasons Lakesites Water & Sewer Co. billed and collected availability fees from lot owners¹⁵ from 1973 to 1998.¹⁶ During this time, availability fees were recorded on the books of Four Seasons Water & Sewer Co.¹⁷

19. In 1998, Roy and Cindy Slates, under the fictitious name registration “Lake Utility Development” billed and collected availability fees.¹⁸

20. From August 1998 until October 2004, Waldo Morris billed and collected availability fees under the fictitious name registration “Lake Utility Availability.”¹⁹ Mr. Morris spent availability fees collected for the benefit of Lake Region’s water and sewer system to guarantee capacity and services for Four Seasons Lakesites, Inc. development.²⁰

21. Availability fees are billed and collected by Cynthia Goldsby, employee of PWSD#4 on behalf of Sally Stump and RPS Properties.²¹

22. There is no contract for employment between Ms. Goldsby and Sally Stump or RPS Properties.²²

23. Ms. Goldsby uses the same office space, equipment, and supplies of the PWSD#4 for billing and collecting availability fees.²³

24. John Summers is the general manager of PWSD#4, and contract general manager of Lake Region and Ozark Shores.²⁴

¹⁵ Transcript, p. 242, lines 21-25.

¹⁶ Transcript, p. 275, lines 4-7; p. 250, lines 7-12; p. 700, line 24 – p. 701 line 3.

¹⁷ Staff Exhibit 28, Peter N. Brown June 3, 2010 Affidavit, p. 3.

¹⁸ Staff Exhibit 42, Secretary of State Fictitious Name Registration, “Lake Utility Development.”

¹⁹ Staff Exhibit 52, Answer of Defendant at p. 11 ¶ 23, Four Seasons Lakesites, Inc., v. Lake Region [sic] Water and Sewer Co., et al, No. CV103-760CC.

²⁰ Staff Exhibit 52, Answer of Defendant at p. 11 ¶ 23, Four Seasons Lakesites, Inc., v. Lake Region [sic] Water and Sewer Co., et al, No. CV103-760CC.

²¹ Staff Exhibit 25, Cynthia Goldsby May 6, 2010 Affidavit.

²² Transcript, p. 285, lines 9-17.

²³ Transcript, p. 258, lines 23-25.

²⁴ Transcript, p. 216, lines 7-12; p. 255, lines 17-22; p. 256, line 1;

25. Mr. Summers does not supervise Ms. Goldsby's billing and collection of availability fees.²⁵

26. Ms. Stump does not supervise Ms. Goldsby's billing and collection of availability fees.²⁶

27. RPS Properties does not supervise Ms. Goldsby's billing and collection of availability fees.²⁷

28. Ms. Goldsby is not compensated for billing or collecting availability fees on behalf of Sally Stump or RPS Properties.²⁸

29. Lake Utility Availability bills contain the same address, phone number and formatting as bills for Lake Region.²⁹

30. Lake Region shareholders, Sally Stump and RPS Properties, are beneficiaries of the availability fees that Lake Utility Availability collects.³⁰ The shareholders receive the profits from availability fees and do not use the money for maintenance, repairs, or expansion to either the water or sewer system.³¹

31. Lake Region has a distribution system built for 1600 lots, when approximately 330 are developed.³²

32. In January 2010 Lake Utility Availability sent out 1,345 bills to Shawnee Bend lot owners for availability fees.³³

²⁵ Transcript, p. 258, lines 6-11; p. 286, lines 2-6.

²⁶ Staff Exhibit 20, Sally Stump June 1, 2010 Affidavit.

²⁷ Staff Exhibit 21, RPS Properties May 6, 2010 Affidavit.

²⁸ Staff Exhibit 22, RPS Properties May 20, 2010 Affidavit.

²⁹ Staff Exhibit 15, James Merciel Rebuttal Testimony, attachment 6.

³⁰ Transcript, p. 262, lines 12-14.

³¹ Transcript, p. 262, lines 15-17.

³² Transcript, p. 332, lines 7-23.

³³ Staff Exhibit 21, RPS Properties May 6, 2010 Affidavit, p. 2; Staff Exhibit 25, Cynthia Goldsby May 6, 2010 Affidavit, p. 2.

33. Roughly 90% of lot owners pay their bill for availability fees, resulting in 10% uncollected.³⁴

34. RPS Properties has collected the following amounts in availability fees: (2006) \$416,536.19; (2007) \$393,644.82; (2008) \$396,154.00; and (2009) \$365,413.61,³⁵ for a total amount of \$2,309,019.³⁶

35. Four Seasons Lakesites, Inc.'s financial statements reflect that the developer's investment in water and sewer infrastructure was fully recovered.³⁷

36. Lake Region used availability fee revenue to build a sewage treatment plant and water tower, invest in capital improvements, and to increase capacity and services in order to provide capacity for Four Seasons Lakesites, Inc. development of Porto Cima.³⁸ These availability fees were also used for operating and maintenance expenses and capital improvements.

37. Lake Region's use of availability fees provided the utility with supplement revenue to support the utility operation until such time as the lot owner connects to the water and/or sewer system, or until the lot owners begins to receive the utility service.³⁹

38. Lake Region's availability fees arose in Four Seasons Lakesites, Inc.'s Declaration of Restrictive Covenants and the Four Seasons Sewer and Water Agreement in which lot owners sign at the time they purchase their lot.⁴⁰

³⁴ Transcript, p. 571, line 12.

³⁵ Staff Exhibit 21, RPS Properties May 6, 2010 Affidavit, p. 3; Staff Exhibit 22, RPS Properties May 20, 2010 Affidavit, p. 2.

³⁶ Staff Exhibit 21, RPS Properties May 6, 2010 Affidavit, p. 4.

³⁷ Staff Exhibits 32-41, Four Seasons Lakesites, Inc. Financial Statements for years 1994-2003.

³⁸ Staff Exhibit 52; Answer of Defendant at p. 11 ¶ 27, Four Seasons Lakesites, Inc., v. Lake Region [sic] Water and Sewer Co., et al, No. CV103-760CC.

³⁹ Staff Exhibit 15, James Merciel Rebuttal Testimony, p. 3, lines 1-8.

⁴⁰ Staff Exhibit 15, James Merciel Rebuttal Testimony, attachment 3.

39. Four Seasons Lakesites, Inc.'s, Declaration's of Restrictive Covenants states that the availability fees for water will be paid to the utility company under Commission regulation.⁴¹

40. The Four Seasons Lakesites, Inc.'s, sales contract states that the "buyer agrees to pay an availability fee for water service when the central water system is completed to the point that the main water lines runs in front of buyer's property . . ."; and that the ten (\$10.00) monthly availability fee "shall be paid to the sell or seller's assignee, Lake Region Water & Sewer Company."⁴²

41. The Four Seasons Lakesites, Inc.'s, sale contract states that the buyer agrees to pay a monthly availability fee to the seller or seller's assignee until buyer constructs a home on the property, and notes that "Lake Region Water & Sewer Co. is certificated to provide sewer service as a public utility"⁴³

42. Four Seasons Lakesites, Inc.'s initial investment in the water and sewer system has been recovered and yielded a profit.⁴⁴

Conclusions of Law

43. Lake Region is a water corporation pursuant to Section 386.020(59) RSMo, (2009), a sewer corporation pursuant to Section 386.020(49) RSMo, (2009), and subsequently a public utility within the meaning of 386.020(43) RSMo, (2009); thereby subject to the jurisdiction of the Commission pursuant to Section 386.250 RSMo.⁴⁵

44. Section 393.140(11), gives the Commission authority to regulate the rates Lake Region may charge its customers for water and sewer.

⁴¹ Staff Exhibit 12, Fourth Amended and Restated Declaration of Restrictive Covenants. Staff Exhibit 15, James Merciel Rebuttal Testimony, attachments 3, 4.

⁴² Staff Exhibit 30, ¶ 9.B.

⁴³ Staff Exhibit 30, ¶ 9.C.

⁴⁴ Staff Exhibits 32-41, Four Seasons Lakesites, Inc. Financial Statements for years 1994-2003.

⁴⁵ All statutory references are to the Revised Statutes of Missouri 2000, unless otherwise noted.

45. Lake Region has the burden of proving its proposed rates are just and reasonable.⁴⁶

46. The Commission has authority to impute availability fees once collected by Lake Region into its revenue stream.⁴⁷ Section 386.020(48) RSMo (Supp. 2009) service is defined as follows:

Service includes not only the use and accommodations afforded consumers or patrons, but also any product or commodity furnished by any corporation, person or public utility and the plant, equipment, apparatus, appliances, property and facilities employed by any corporation, person or public utility in performing any service or in furnishing any product or commodity and devoted to the public purposes of such corporation, person or public utility and to use an accommodation of consumers or patrons.

47. The Commission has jurisdiction over the availability fees once billed, collected, and retained by Lake Region. Lot owners pay availability fees for the accommodation of having water and sewer infrastructure in place as referenced in the Third Amended Declarations of Restrictive Covenants, so they are able to hook-up to the system upon construction of a home without having to wait for the utility company to expand its infrastructure.⁴⁸

48. The current shareholders have unjustly removed availability fees from Lake Region's revenue to the detriment of ratepayers.

49. Availability fees are for contributed plant which is part of the utility, and that the developer has already recovered.⁴⁹ Availability fees would not exist if the water and sewer system was not operating.⁵⁰

⁴⁶ Section 393.150.2, RSMo.

⁴⁷ Staff Exhibit 52; Answer of Defendant, Four Seasons Lakesites, Inc., v. Lake Region [sic] Water and Sewer Co., et al, No. CV103-760CC.

⁴⁸ Staff Exhibit 15, James Merciel Rebuttal Testimony, attachment 3, p. 18-19.

⁴⁹ Transcript, p. 581, lines 21-23; p. 582, lines 7-24.

⁵⁰ Transcript, p. 594, lines 1-5.

50. Four Seasons Lakesites, Inc. acknowledges availability fees are within the jurisdiction of the Missouri Public Service Commission.⁵¹

51. Availability fees are paid by lot owners at the time each such owner purchases a lot in order to reserve sewer and water capacity on the Lake Region water and sewer system.⁵² A lot owner is responsible for paying availability fees until the time the owner connects to the water and sewer system.⁵³

52. The Lake Region ratepayers have been harmed by Lake Region's deliberate shifting of availability fees from the Company's revenue directly to the shareholders pockets. The availability fees should have continued to be used for maintenance and repair of the infrastructure or expanding the utility infrastructure. It was harmful to the utility and ratepayers for the money to be separated out of utility revenue.⁵⁴

53. Lake Region's witness, John Summers' testimony regarding availability fees and the supervision of Cynthia Goldsby is not credible.

54. Commission will impute availability fee revenues for the Shawnee Bend water and sewer service territory in the amount of \$324,000.⁵⁵ This number is based up 1200 lots times a \$10 per month availability fee for water resulting in a revenue amount of \$144,000 per year [Shawnee Bend Water], and \$15 per month availability charge for sewer resulting in a revenue amount of \$216,000 [Shawnee Bend Sewer],⁵⁶ less a ten percent uncollectible rate.⁵⁷

⁵¹ Staff Exhibit 15, James Merciel Rebuttal Testimony, attachment 3, p. 18-19.

⁵² Answer of Defendant at p. 8 ¶ 6, Four Seasons Lakesites, Inc., v. Lake Region [sic] Water and Sewer Co., et al, No. CV103-760CC.

⁵³ Answer of Defendant at p. 8 ¶ 6, Four Seasons Lakesites, Inc., v. Lake Region [sic] Water and Sewer Co., et al, No. CV103-760CC.

⁵⁴ Transcript, p. 277, lines 10-16.

⁵⁵ Staff Exhibit 14, Cary Featherstone Surrebuttal Testimony, p. 9, lines 21-22.

⁵⁶ Staff Exhibit 14, Cary Featherstone Surrebuttal Testimony, p. 2, lines 11-16.

⁵⁷ Staff Exhibit 14, Cary Featherstone Surrebuttal Testimony, p. 10, lines 3-4.

55. The amount should be allocated in the amount of \$129,600 for Shawnee Bend Water and \$194,400 for Shawnee Bend Sewer.⁵⁸

56. The Commission will not decrease rates for the Shawnee Bend water and sewer systems. It is just and reasonable for Lake Region to maintain its current rates for the Shawnee Bend water and sewer service territories.

57. There will be no corresponding shift in rate base with the imputation of availability fee revenues.⁵⁹

58. The Missouri Supreme Court has construed 393.270(5) “to mean that the value of the plant is one of the elements to be considered by the PSC in arriving at a rate base, but that it does not authorize the PSC to include in the rate base property donated or paid for by the rate payers by contributions in aid of construction.”⁶⁰

59. The shareholders of Lake Region did not invest the initial infrastructure of the Shawnee Bend water and sewer system.⁶¹ Four Seasons Lakesites, Inc. donated the plant to Four Seasons Lakesites Water and Sewer Company in 1994.⁶² Ratepayers do not pay a return on donated plant.

WHEREFORE, the Staff submits the foregoing as its Findings of Fact and Conclusions of Law on the issue of availability fees in this matter.

⁵⁸ Staff Exhibit 17, Cary Featherstone True-up Testimony, p. 5 line 17 – p. 6 line 3; p. 9, lines 16-18.

⁵⁹ Transcript, p. 439, lines 8-12.

⁶⁰ State ex rel. Martigney Creek Sewer Co. v. Public Service Commission, 537 S.W.2d 388, 396 (Mo. 1976).

⁶¹ Transcript, p. 253, lines 3-6.

⁶² Transcript, p. 253, lines 3-6.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 16th day of July 2010.

/s/ Jaime N. Ott