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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
TRANSCRIPT OF PROCEEDINGS
True-Up Hearing
April 26, 2010
Jefferson City, Missouri
Volume 6

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

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

HAROLD STEARLEY, Presiding,
REGULATORY LAW JUDGE

TERRY M. JARRETT,
KEVIN GUNN,
ROBERT S. KENNEY
COMMISSIONERS.

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR, CCR
MIDWEST LITIGATION SERVICES

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FOR: Staff of the Missouri Public
Service Commission.

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

2 JUDGE STEARLEY: All right. Good morning.
3 Today is Monday, April 26, 2010. The Commission has set
4 this time for a true-up hearing in the matter of lake
5 Region Water & Sewer Company's application to implement a
6 general rate increase in water and sewer service, File
7 Nos. SR-2010-0110 and WR-2010-0111.

8 My name is Harold Stearley. I'm the
9 Regulatory Law Judge presiding over today's hearing. The
10 court reporter this morning is Kellene Feddersen.

11 And we will begin by taking entries of
12 appearance from counsel, starting with Lake Region Water &
13 Sewer.

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

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

22 MS. LANGENECKERT: Good morning. This is
23 Lisa Langeneckert, last name is L-a-n-g-e-n-c-k-e-r-t,
24 appearing on behalf of the Four Seasons Lakesites Property
25 Owners Association, with the law firm of Sandberg,

1 Phoenix & von Gontard, 515 North 6th Street, 15th Floor,
2 St. Louis, Missouri 63101.

3 JUDGE STEARLEY: Thank you,
4 Ms. Langeneckert. I'll note that you are appearing by
5 phone. Should we get disconnected or have some type of
6 technical problems, we'll take a recess and make sure we
7 try and get hooked back up with you.

8 MS. LANGENECKERT: Thank you for your
9 consideration in allowing me to appear by phone also,
10 Judge Stearley.

11 JUDGE STEARLEY: You're quite welcome.
12 Four Seasons Racket and Country Club Property Owners
13 Association was excused earlier in this case, having
14 settled their issue by stipulation, and I don't believe
15 anyone is appearing today on behalf of the Racket Club.

16 For the Office of Public Counsel.

17 MS. BAKER: Thank you, your Honor,
18 Christina Baker, P.O. Box 2230, Jefferson City, Missouri
19 65102, appearing on behalf of the Office of the Public
20 Counsel and the ratepayers. And it's a possibility that
21 Marc Poston may also be appearing for the Office of the
22 Public Counsel this afternoon.

23 JUDGE STEARLEY: Thank you, Ms. Baker. For
24 the Staff of the Missouri Public Service Commission.

25 MS. OTT: Thank you, Judge. Let the record

1 Jaime Ott and Shelly Brueggemann on behalf of Staff of the
2 Missouri Public Service Commission, P.O. Box 360,
3 Jefferson City, Missouri 65102.

4 JUDGE STEARLEY: Thank you, Ms. Ott. And
5 initially, as you-all know, I drone on about it every
6 hearing, if you'd all please shut off all electronic
7 devices, cell phone, Blackberries, et cetera, that could
8 interfere with our webcasting or recording, it would be
9 greatly appreciated.

10 Our witness list today for true-up, if I
11 have it correctly, is John Summers for Lake Region, Cary
12 Featherstone for the Staff, and Ted Robertson for the
13 Office of the Public Counsel. Is that correct?

14 MS. OTT: That is correct.

15 JUDGE STEARLEY: All right. We have a
16 number of pending matters to take up before we get started
17 with testimony. To begin with, I would like to address a
18 filing that came in from the Property Owners Association
19 that was captioned Update to Four Seasons Lakesites
20 Property Owners Association Exhibit 3.

21 Ms. Langeneckert, can you hear me all
22 right?

23 MS. LANGENECKERT: Yes, I can.

24 JUDGE STEARLEY: All right. This was filed
25 as an update to that exhibit. However, this document is

1 this document is filed, it's just a statement from an
2 attorney. So that is why it cannot be used to supplant
3 that exhibit. Now --

4 MS. LANGENECKERT: Well, it's signed by
5 Ms. Cason and Mr. Becker as the Property Owners
6 Association board members. Perhaps I'm not understanding.

7 JUDGE STEARLEY: Well, the copy that I have
8 I don't believe has any signatures, other than yours,
9 Ms. Langeneckert.

10 MS. LANGENECKERT: All right. I'm looking
11 at the -- my response to the Staff's Property Owners
12 Association data request. I apologize.

13 JUDGE STEARLEY: That's not a problem. And
14 the Commission I'm sure would entertain updating that
15 exhibit. It just needs to be done in the proper format so
16 that it actually can be subject to parties' objections and
17 the Commission can make a ruling thereon. If this had
18 come in with a signed and sworn affidavit, the Commission
19 could have issued an Order allowing for parties to file
20 objections thereto.

21 Plus, there are going to be other
22 opportunities as the hearing progresses for correcting
23 that. Now, we're here for true-up today. I note
24 Ms. Cason is here and present. However, if you wanted
25 Ms. Cason to attest to this today, that would have to be

1 at the consent of all the other parties since this hearing
2 was scheduled for true-up testimony.

3 MS. LANGENECKERT: Okay. Well, I will beg
4 leave of the parties, and if that is not acceptable, then
5 I will file the appropriate affidavits to submit it.

6 JUDGE STEARLEY: And as I noted, we are
7 going to be having additional hearing time for the main
8 portion of the evidentiary hearing as well.

9 What we can do is we'll go ahead and
10 proceed with the true-up portion of this, and at the
11 completion of that, Ms. Langeneckert, we'll seek leave
12 from the parties to offer Ms. Cason's testimony today or
13 figure out how to proceed with that later.

14 MS. LANGENECKERT: Okay. Thank you.

15 JUDGE STEARLEY: That's not a problem.
16 Next we have a filed objection from Lake Region to the
17 late-filed exhibit of the Property Owners Association,
18 which involved Mr. Schwermann's deposition that was
19 offered in a prior civil case, No. 07CM-CC00013. That was
20 before the Circuit Court of Camden County. Do the parties
21 wish to offer any additional oral argument on this
22 late-filed exhibit before I give a ruling on that?

23 MR. COMLEY: I have none.

24 MS. BAKER: No.

25 MS. LANGENECKERT: Judge, I would -- I

1 would just like to add, as I mentioned in the hearing, we
2 do not offer this for the truth of the matters asserted in
3 the deposition. We do not believe it's hearsay. It's
4 being offered to show that Ms. Cason first learned the
5 amounts paid for availability fees were not being put back
6 in the company to help pay for the infrastructure and
7 repairs.

8 Not allowing this information in would
9 prejudice our case because it's not hearsay, and I'm
10 confident that the Commissioners will be able to give it
11 the appropriate weight.

12 JUDGE STEARLEY: Given the --

13 MS. LANGENECKERT: The Property Owners
14 Association would be fine with having only the portions of
15 this deposition that relate to availability fees as the
16 attachment to Ms. Cason's surrebuttal testimony which has
17 become our late-filed exhibit No. -- I assume it's No. 4.
18 That would be pages 33, line 6 of the deposition to
19 page 44, line 18.

20 Furthermore, to say that none of the
21 parties to this case were present during the taking of
22 Mr. Schwermann's deposition is disingenuous. Both
23 Mr. Schwermann and Mr. Summers are quoted in this
24 deposition on the availability fee issue and the
25 discussion of Lake Region Water & Sewer, even though it

1 was only the deposition of Mr. Schwermann.

2 Mr. Schwermann's family trust is half owner
3 of Lake Region Water & Sewer, and Mr. Summers is the
4 manager of the Public Water Supply District and is
5 contracted out to Lake Region Water & Sewer. It's pretty
6 clear from the deposition that Mr. Summers is the person
7 who knows the most about Lake Region Water & Sewer and the
8 other companies and fictitious names involved.

9 As for the caption in the case differing
10 from the original caption or the official caption, as
11 Mr. Comley has stated, the transcribed portion of this
12 deposition has been in existence for almost two and a half
13 years, and if the parties to this case had an issue with
14 the caption, they had ample time to file an errata sheet
15 and ask that it be corrected. I'm certain that Capital
16 City Reporting would have been willing to correct any
17 errors in the transcript despite the fact that
18 Mr. Schwermann waived reading and signing of the
19 transcript of the deposition.

20 Thank you.

21 JUDGE STEARLEY: Thank you. Ms. Ott, did
22 you have something?

23 MS. OTT: Yes. I'd also like to also add
24 that during the evidentiary hearing Mr. Summers testified
25 to the deposition as being present and being the

1 statements that he remembers during the hearing.

2 JUDGE STEARLEY: All right. Thank you,
3 Ms. Ott.

4 MS. LANGENECKERT: Could you speak up a
5 little, Ms. Ott? I'm sorry. I heard what you said, but I
6 have a feeling that won't always be the case.

7 JUDGE STEARLEY: Mr. Comley, given that
8 Ms. Langeneckert has qualified that this is being offered
9 solely for the purpose to demonstrate when Ms. Cason
10 became aware of the availability fee issue, do you still
11 have your objections?

12 MR. COMLEY: Yes, your Honor. I think that
13 the deposition is inappropriately used in this case, even
14 by trying to restrict the uses to particular pages and
15 lines.

16 I think that there's been no showing that
17 Lake Region was given notice of the deposition. Mr.
18 Summers, of course, is a representative of the Water
19 District. Lake Region was not a part of that proceeding.
20 Even though he was there, it doesn't mean that Lake Region
21 was officially represented or given proper notice of the
22 deposition. Again, it's an inappropriate use of the
23 deposition for purposes of this case.

24 As far as the caption goes, Lake Region was
25 not a party to that case and had no obligation to correct

1 the caption for those parties or correct the court
2 reporter. I think it's worthwhile for the Commission to
3 note that the caption indicates that there's adversity
4 between those parties when indeed they were properly
5 aligned as petitioners. And I think it's confusing to the
6 point that it should be rejected by the Commission.

7 Mrs. Cason can testify to what she believes
8 happened in that deposition, but I think the deposition
9 itself is inadmissible.

10 JUDGE STEARLEY: All right. Anything
11 further?

12 MS. BAKER: I would just say that it is
13 being offered for a very limited purpose, to explain the
14 testimony of Ms. Cason, and, therefore, Public Counsel
15 would support that it be allowed.

16 JUDGE STEARLEY: All right. Noting the
17 various deficiencies that Mr. Comley has noted with the
18 offering of this, the Commission will accept it for the
19 limited purpose and that purpose only of demonstrating
20 when Ms. Cason became aware of the availability fee issue.
21 And actually, I believe she's testified to that effect on
22 the stand when she was on the stand, so I don't know that
23 it really adds anything, but I don't see any harm in
24 admitting it for that very limited purpose.

25 Certainly cannot go to the truth of the

1 matter of anything stated in that deposition because
2 obviously multiple parties here were not present at that
3 deposition, couldn't have defended that deposition.

4 To my understanding, is it RPS Properties
5 was subject of one of Staff's subpoenas and requesting an
6 officer of the company be provided for deposition. If
7 Mr. Schwermann, if he gives a deposition in this case
8 subject to that subpoena, obviously any inquiry about his
9 prior deposition could be directed to him at that time if
10 any party is trying to establish any facts regarding that
11 deposition.

12 So for the limited purpose it's being
13 offered, it will be accepted.

14 MR. COMLEY: Your Honor?

15 MS. LANGENECKERT: Thank you, Judge.

16 MR. COMLEY: Is this Exhibit 4 for the
17 Property Owners Association?

18 JUDGE STEARLEY: Actually, I believe this
19 was attached to the Property Owners' Exhibit 2, which was
20 the surrebuttal of Nancy Cason, and I don't know that we
21 need to separately designate it unless you think it would
22 make things clearer.

23 All right. Very well. Staff at the
24 evidentiary hearing which was recessed at the end of March
25 had asked the Commission to take official notice of a

1 particular case, and they did not have the case number at
2 that time. Staff has since provided that case number, and
3 the Commission will at this time take official notice of
4 WO-2007-0410, captioned in the matter of the transfer of
5 assets of Swiss Villa Utilities, Incorporated to the Black
6 Oak Mountain Resort Property Owners Association.

7 The Commission will also take official
8 notice of all prior cases involving Lake Region and its
9 predecessors which expanded its certificate of convenience
10 and necessity and which rate increase requests were
11 pending and ruled upon by the Commission. These cases
12 have been referenced in various pleadings and testimony,
13 so the Commission just makes it official that it is taking
14 official notice of these cases.

15 This brings us to, I believe we have four
16 pending objections and motions to quash subpoenas that
17 were issued by the Commission with regard to depositions
18 and documents to be produced that were directed to Peter
19 Brown, Cynthia Goldsby, RPS Properties, Vernon Stump and
20 John Summers. And I believe those depositions are all
21 scheduled to take place tomorrow; is that correct?

22 MS. OTT: That is correct.

23 JUDGE STEARLEY: Those motions to quash
24 will all be overruled. Are there any other preliminary
25 matters we need to take up at this time? Counsel for a

1 couple of those individuals that were subject to the
2 subpoena are not present here today, so Ms. Ott, I'm going
3 to direct you at our first break this morning to please
4 make contact with those counsel and inform them in case
5 they aren't watching our web cast that those motions have
6 been overruled.

7 MS. OTT: I will take care of that.

8 JUDGE STEARLEY: All right. Thank you very
9 much. Would the parties like to make any opening
10 statements for true-up?

11 MR. COMLEY: I have a brief opening.

12 JUDGE STEARLEY: Very well. Mr. Comley,
13 please come forward.

14 MR. COMLEY: May it please the Commission?

15 For this true-up phase of the case, Lake
16 Region brings to the Commission's attention certain
17 updates on the amounts of plant additions and rate case
18 expense which should be included.

19 With respect to plant additions, the
20 company completed construction of a sewer pumping station
21 and sewer force main to serve Horseshoe Bend operations in
22 its service area. The parties have agreed in their
23 prefiled testimonies to date that the plant is operational
24 and in service under the Commission's criteria.

25 Mr. Summers will be testifying today to the total of the

1 plant additions, and that number is \$242,604.

2 The regarding rate case expense, direct
3 costs including legal expenses are now at \$26,449 as of
4 the filing of rebuttal testimony in this true-up phase on
5 April 23rd, 2010. On the rate case expenses, the company
6 is recommending an amortization of those expenses over
7 three years rather than the five years that had been
8 proposed by OPC. I think Staff may be changing its -- may
9 have changed its position on that. I'm not too clear.
10 We'll find out during cross-examination.

11 I wanted to bring up that contrary to the
12 phase, the purpose of the phase of this case, the Staff
13 has attempted to use the true-up again as a means of
14 further arguing for application of availability fee
15 revenue collected by the company shareholders.
16 Mr. Featherstone has capitalized on the opportunity in
17 true-up to file direct testimony repeating themes and
18 theories and positions that were set out in surrebuttal
19 testimony already. There's much to object to his
20 testimony, and those objections will be made in due
21 source.

22 I would note that after the evidentiary
23 hearing scheduled or concluded on March 31st, the Staff
24 submitted additional data requests to Lake Region about
25 availability fees. These data requests were again

1 objectionable, and Lake Region asserted those objections.
2 Mr. Featherstone's prefiled testimony, direct true-up
3 testimony also carries forward a theme from Staff's
4 earlier filed testimony, its rebuttal and surrebuttal in
5 this case, and that is that the company has refused to
6 give information and the Staff has lacked information
7 because the company has refused to supply it.

8 As before, no motion to compel was filed by
9 the Staff testing the sufficiency of the company's
10 objection to their data requests. Those objections have
11 not been overruled. And again, the company cannot be
12 faulted for validly objecting to improper data requests
13 and should not be cast by the Staff or by the Commission
14 as the cause for any absence of information the Staff may
15 have about availability fees.

16 In addition, it appears that
17 Mr. Featherstone believes that Dr. Stump and Mr. Summers
18 were able to testify -- believes that since they were able
19 to testify to their personal knowledge about how
20 availability fees are handled on Shawnee Bend, the company
21 was or these two people were authorized to produce all the
22 records that were in the hands of non-parties to this
23 case.

24 It appears that Mr. Featherstone presumes
25 that Mr. Stump and Mr. Summers have access to information,

1 they or the regulated company they work for should
2 automatically disclose those records. This is an error.
3 Access to information does not grant the person having
4 access the lawful authority disclose or distribute or
5 publish that information. Mr. Summers has no more right
6 to acquire and disclose records maintained by RGS
7 Properties, LP, for instance, than Mr. Featherstone does
8 to disclose records under subpoena or otherwise of utility
9 companies he has had access to in determining his audits.

10 It bears repeating for the company's sake
11 that the topic of availability fees that are authorized in
12 deed restrictions of properties located in Lake Region's
13 service territory are not relevant or material to any
14 issue in this rate case. Simply because a developer
15 charges and collects those things, simply because there
16 are infrastructure, these are issues beyond the regulatory
17 jurisdiction of the Commission.

18 JUDGE STEARLEY: Thank you, Mr. Comley.
19 Any other party wish to make an opening statement.

20 MS. OTT: Staff will make a small opening.

21 JUDGE STEARLEY: All right.

22 MS. OTT: Good morning. May it please the
23 Commission? My name is Jaime Ott, and I'm here to
24 represent the Staff of the Missouri Public Service
25 Commission in this true-up proceeding. I also have with

1 me today Staff witness Cary Featherstone who you've
2 previously heard testify in this matter.

3 Today we're here to talk about the two
4 remaining issues for true-up, availability fees to be
5 included in revenue and rate case expense. Parties do not
6 dispute Lake Region's plant addition that went into
7 service in mid March.

8 Mr. Featherstone's true-up direct executive
9 summary illustrates Staff's position in this proceeding.
10 Mr. Featherstone included in amounts of availability fees
11 to be imputed into revenues base on information obtained
12 during the evidentiary hearing. During this evidentiary
13 hearing, Lake Region's witness, Dr. Stump, testified that
14 10 percent of the lot owners who are billed availability
15 fees simply do not pay.

16 With this information, Staff then reduced
17 the total amount of availability fees it believes Lake
18 Utility Availability and/or lake Utility Availability One
19 collect by 10 percent. Staff's total amount of
20 availability fee revenue is based upon its estimated
21 number of undeveloped lots in the Shawnee Bend region.

22 Staff has been unable to be verify this
23 number to be true and accurate from Lake Region, Lake
24 Utility Availability and/or Lake Utility Availability One.
25 Staff is not advocating that the inclusion of availability

1 fees result in a rate reduction, but the inclusion of
2 availability fees does eliminate any rate increase for the
3 Shawnee Bend water and sewer operating system. This
4 inclusion of availability fees does not affect the
5 recommended rate increase for the Horseshoe Bend sewer
6 system.

7 The next issue is rate case expense and
8 it's recovery period. Staff believes that \$22,498 is the
9 appropriate amount to be included in rates and to be
10 amortized over a three-year period. This total amount
11 would then be allocated to each of the operating entities
12 as a 33 percent share.

13 Mr. Featherstone is here today to answer
14 any questions that you have about Staff's proposal. Thank
15 you.

16 JUDGE STEARLEY: Thank you, Ms. Ott.
17 Ms. Baker?

18 MS. BAKER: Public Counsel has no opening
19 but will offer testimony at the appropriate time.

20 JUDGE STEARLEY: Ms. Langeneckert, would
21 you like to make an opening?

22 MS. LANGENECKERT: No, thank you, Judge
23 Stearley.

24 JUDGE STEARLEY: Very well. We'll proceed
25 with witness examination. Mr. Comley, you may call your

1 witness.

2 MR. COMLEY: Thank you, Judge. A little
3 bookkeeping. Can you remind me where we are on the
4 exhibit numbers for Lake Region? I think it may be 8 or
5 9.

6 JUDGE STEARLEY: We had got up to
7 Exhibit No. 10, so new exhibits for Lake Region will start
8 with No. 11.

9 MR. COMLEY: Then I would call John
10 Summers, please.

11 (LAKE REGION EXHIBIT NOS. 11 AND 12 WERE
12 WAS MARKED FOR IDENTIFICATION BY THE REPORTER.)

13 (Witness sworn.)

14 JOHN SUMMERS testified as follows:

15 DIRECT EXAMINATION BY MR. COMLEY:

16 Q. Mr. Summers, would you identify yourself
17 for the Commission, please.

18 A. My name is John R. Summers, and I'm an
19 employee of Camden County Public Water Supply District
20 No. 4.

21 Q. And, Mr. Summers, in connection with the
22 true-up phase in this proceeding, did you cause to be
23 prefiled a series of written testimony, a direct set of
24 testimony and rebuttal testimony?

25 A. I did.

1 Q. And have those been premarked by the
2 reporter as Exhibits 11 and 12 respectively?

3 A. Yes.

4 Q. Mr. Summers, if I were to ask you the
5 questions propounded in the testimony marked as
6 Exhibits 11 and 12, would your answers today be the same?

7 A. Yes, they would.

8 Q. In other words, you have no changes to your
9 testimony today?

10 A. No, I do not.

11 Q. And were your answers supplied with the
12 best of your knowledge, information and belief?

13 A. Yes.

14 MR. COMLEY: Your Honor, we would offer
15 into evidence Exhibit 11, which is Mr. Summers' direct
16 testimony. With respect to Mr. Summers' rebuttal
17 testimony, we would make a conditional offer of a portion
18 of his testimony that's devoted to availability fees. The
19 testimony that would be offered conditionally starts on
20 page 1, and I lack a copy of that testimony, but I think
21 it's on line 14, where availability fees commences. And
22 if I may take a look at the marked exhibit. And that
23 conditional offer would continue to page 14, line 17.

24 The reason for the conditional offer is
25 that, again, Lake Region considers that issues concerning

1 availability fees are irrelevant, but because of the
2 ruling on the evidence so far the Commission's made, we
3 feel it important to make sure the record is fully
4 complemented with the information.

5 And I tender Mr. Summers for
6 cross-examination.

7 JUDGE STEARLEY: Any objections to the
8 admission of exhibits for Lake Region No. 11 and 12?

9 (No response.)

10 JUDGE STEARLEY: Hearing none, they shall
11 be received and admitted into the record.

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

14 JUDGE STEARLEY: And begin with
15 cross-examination with the Property Owners Association.

16 MS. LANGENECKERT: I have no questions for
17 Mr. Summers on the true-up testimony.

18 JUDGE STEARLEY: Thank you,
19 Ms. Langeneckert. For Staff.

20 CROSS-EXAMINATION BY MS. OTT:

21 Q. Good morning, Mr. Summers.

22 A. Good morning.

23 Q. Do you have a copy of your direct in front
24 of you?

25 A. Yes, I do.

1 Q. Can you turn to page 2, line 16. What
2 increases in operating expenses and capital improvements
3 is Lake Region anticipating?

4 A. As our -- as our permits expire, our
5 operating permits for the sewer plants, virtually every
6 sewer plant at least in the lake area, maybe the state of
7 Missouri, is now requiring not only chlorination for
8 disinfection, but then dechlorination before we discharge
9 back into the Lake of the Ozarks.

10 We expect that we may have to expand either
11 one or more of our sewage treatment plants ue to customer
12 growth. We've already been connected -- or contacted by
13 two condominium complexes in regard to the new project
14 that we just -- that this true-up actually discusses.

15 Q. And that is on the Horseshoe Bend side?

16 A. That's correct.

17 Q. And are these operational -- the sewer
18 permits then will affect both the Shawnee Bend and
19 Horseshoe Bend side?

20 A. Yes.

21 Q. Now, can you turn to your rebuttal
22 testimony, page 4, and it's kind of lines 1 through 10.
23 You discuss what the developer's intent was with
24 availability fees. Do you know what the developer's
25 intent was?

1 A. No. But I don't think I'm --

2 Q. Thank you.

3 A. -- discussing what the developer intended
4 there either.

5 Q. Now, can you turn to page 5, and you make a
6 statement that Lake Region was forced to contributing --
7 forced into contributing plant in the certification case?

8 A. Yes.

9 Q. Do you have documentation that says you
10 were forced into contributing plant?

11 A. If you'd like to use another word, but yes,
12 our general ledger reflects that.

13 Q. That you were forced or was this by
14 agreement?

15 A. I don't know.

16 Q. So you don't really know whether or not
17 Lake Region was forced into contributing the plant or if
18 it was just by agreement?

19 A. No, I don't.

20 Q. Or maybe Lake Region or the developer
21 wanted to contribute the plant?

22 A. It's been my experience the developer
23 rarely wants to contribute the plant, but no, I don't have
24 any information.

25 Q. Now, a little bit further down on lines 14

1 through 20, the availability fees were transferred out of
2 Lake Region Water & Sewer in 1998?

3 A. Yes, I see that.

4 Q. And to your knowledge, did they come before
5 the Commission to have those transferred out of Lake
6 Region's revenue?

7 A. I don't know.

8 A. Now, can you turn to page 10?

9 A. Okay. I'm there.

10 Q. And when you're discussing Mr. Russo's
11 proposal for rate design, are you aware of any situation
12 when Staff developed rate design on a per subdivision
13 basis?

14 A. Per subdivision?

15 Q. Yes.

16 A. I'm not aware of any.

17 Q. Is it a fair characterization that Staff
18 develops rate designs based on districts?

19 A. I don't know what the criteria is. I know
20 we have two separate rates in this case for sewer,
21 Horseshoe Bend and Shawnee Bend. I don't think it would
22 be any harder to do Horseshoe Bend/Shawnee Bend
23 availability and Shawnee Bend non-availability.

24 Q. Have you -- has Lake Region proposed that
25 to be an option for rate design?

1 A. Lake Region's not proposing anything to do
2 with availability.

3 Q. But hypothetically, if Lake Region was to
4 propose something with availability, would Lake Region be
5 willing to then create a new district for the lots that
6 are charged availability fees?

7 A. I really haven't given that any thought. I
8 was just addressing Mr. Featherstone's theory here.

9 Q. Do you mean Mr. Russo's?

10 A. No. This is Mr. Featherstone's theory that
11 the availability fees are for ongoing maintenance in the
12 area. Mr. Feather-- or Mr. Russo is only doing the rate
13 design. Mr. Featherstone has proposed a theory.

14 Q. That's correct, and this estimate was
15 addressing how Mr. Russo has not proposed a different rate
16 design for the area of Porto Cima at the Lake.

17 A. That's correct, butt the earlier part of
18 that testimony is addressing Mr. Featherstone's theory.

19 Q. Now, can you turn to page 12, line 14
20 through 16. You state that you do not believe that the
21 developer has recouped its investment. Do you know that
22 for a fact?

23 A. No, I don't.

24 Q. If you don't know if the developer has
25 recouped the entire amount of availability fees, on

1 page 12 you state that they have developed -- they have
2 recouped a portion of it. How do you know that
3 information?

4 A. I'm not sure where you're referring to.

5 Q. Page 12, line 6 through 13.

6 A. I assume since they've collected some of
7 the availability, that that went to recoup some of their
8 costs. Again, I don't do the accounting for the
9 developer.

10 Q. But that wouldn't be through the
11 availability fees; that would have been through the lot
12 sales that they recouped part of their investment?

13 A. No. They've recouped investment through
14 the availability fees. They've collected availability
15 fees.

16 Q. As well as -- question on page 12, line 4
17 discusses through lot sales. So they've also recouped
18 part of the initial investment through the sales of lots?

19 A. I think that's entirely possible, yes.

20 Q. How do you know that the developer has
21 collected the availability fees?

22 A. I saw it in the annual report.

23 Q. That the developer --

24 A. I testified to that in the evidentiary
25 hearing.

1 Q. The developer files an annual report here?

2 A. He owned the utility back in 1998.

3 Q. That would have been the utility collecting

4 available fees, not the developer?

5 A. That's correct.

6 Q. So you don't know if the developer has

7 actually collected any of the availability fees?

8 A. No, other than I do believe -- I do believe

9 that through the lawsuit that was settled, the developer

10 has taken a portion of those fees.

11 Q. Do you know if the developer is still

12 taking a portion of those fees?

13 A. I assume that he is. I don't know that for

14 a fact.

15 Q. Do you know how much the developer has

16 collected?

17 A. No, I don't.

18 Q. Do you have an estimate?

19 A. Only what I've seen in the annual reports.

20 Q. But again, the annual reports reflect the

21 water and sewer company and not the developer?

22 A. That's correct.

23 Q. Can I have a second?

24 Can you turn to page 5, line 4 through 20?

25 A. Yes, I'm there.

1 Q. Now, I want to go back to what we were
2 discussing a little bit earlier how the plant was placed
3 by the Commission to contribute the plant.

4 A. Okay.

5 Q. Now, isn't that because it was in the
6 tariff that the plant was contributed and it wasn't
7 forced -- the Commission didn't force you to contribute
8 the plant, it was put into the tariff?

9 A. What was put into the tariff?

10 Q. That the infrastructure would be
11 contributed.

12 A. That is what the tariffs reflect, that's
13 correct.

14 Q. So I'm just kind of hung up on the word
15 forced.

16 A. That's fine. We can use another word.
17 Ordered, stipulated. Probably a poor choice of words.

18 Q. Okay. Because when you say forced, it
19 sounds like they're making you do something you don't want
20 to do, and I just want to make sure that's not you what
21 mean here.

22 A. Well, based on the testimony that Mr. Stump
23 gave as the consultant for the group, I believe that is
24 something that the company did not want to do. It was my
25 understanding that --

1 Q. But you don't know that for sure?

2 A. That's correct, I don't know.

3 MS. OTT: I have no further questions.

4 JUDGE STEARLEY: Thank you, Ms. Ott.

5 Cross-examination, Ms. Baker?

6 MS. BAKER: I just have one question.

7 CROSS-EXAMINATION BY MS. BAKER:

8 Q. On the issue of rate case expense, the
9 amount of rate case expense is still an ongoing amount; is
10 that correct?

11 A. Yes, it is.

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

14 JUDGE STEARLEY: Questions from the Bench?

15 COMMISSIONER JARRETT: I have no questions.

16 Thank you, Mr. Summers.

17 JUDGE STEARLEY: Commissioner Gunn?

18 COMMISSIONER GUNN: No questions, Judge.

19 QUESTIONS BY COMMISSIONER KENNEY:

20 Q. Good morning.

21 A. Good morning.

22 Q. Let me ask about your surrebuttal testimony
23 or your rebuttal testimony on page 4.

24 A. Okay.

25 Q. This is a variation on the question I think

1 Ms. Ott may have already asked. On lines 4, 5 and 6 it
2 reads, Staff now wants to give the customer the revenue
3 stream that was created by the developer to recoup the
4 investment in the donated plant.

5 So the developer donated the amount of the
6 plant and then the availability fees were created as a
7 mechanism by which he would recoup that investment?

8 A. I believe that's the case, yes.

9 Q. On what do you base that belief?

10 A. Well, it logically follows that once the
11 developer sold the business in 1998, if it was not to
12 recoup the investment in the plant that he was donating,
13 there was no need for him to create availability fees. He
14 no longer owned the utility.

15 Q. So your -- okay. The basis of your belief
16 is that that's the only logical reason why the developer
17 would agree to this proposal --

18 A. Yes, sir.

19 Q. -- was to recoup his investment?

20 A. Yes, sir.

21 Q. Okay. And you said when he sold the
22 company in 1998?

23 A. Yes.

24 Q. When he sold the utility to --

25 A. Yes. When he sold the utility -- prior to

1 him selling the utility, the fees were owned within Lake
2 Region Water & Sewer Company.

3 Q. Got you.

4 A. I believe that the develop once -- once the
5 order was out that the plant was going to be contributed,
6 he moved those fees out of the company to recoup his
7 investment, and then when he sold the company, he
8 transferred those fees that were already in place for the
9 plant that's already been donated, he transferred those
10 fees to the new shareholders, but he kept anything after
11 1998 for himself.

12 Q. Okay. You make reference in another part
13 of your testimony that it's completely feasible that the
14 developer was recouping some of his investment through the
15 sale of lots?

16 A. Yes, I think that's possible.

17 Q. So is it your belief that he would have
18 been recouping some of the investment through the creation
19 of availability fees and some of the investment through
20 the purchase price of the lots?

21 A. That's what I believe, but I've never been
22 a developer either. I should say that.

23 Q. So what's the basis of your belief as to
24 that second portion, the portion that he was recouping
25 some of his investment through the sale of the lots?

1 A. Simply listening to the testimony in this
2 case.

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

5 JUDGE STEARLEY: Commissioner Gunn?

6 COMMISSIONER GUNN: Actually, I have just a
7 couple questions popped in my head.

8 QUESTIONS BY COMMISSIONER GUNN:

9 Q. You said that he sold the company, the
10 utility. Was there a purchase price for that? When the
11 developer sold the utility, do you know what the purchase
12 price was or if there was a purchase price?

13 A. No, sir. It was a stock sale, and I've
14 never seen that agreement.

15 Q. So you don't know if there was a purchase
16 price or not?

17 A. No, I don't.

18 Q. So is it -- so you don't know whether any
19 of the purchase price would also have been used to offset
20 some of the investment in plant?

21 A. That's correct, I don't know that.

22 Q. If the availability fees were used to
23 recoup the investment in the plant for the developer, was
24 there an end date to these availability fees or were they
25 meant to go on in perpetuity?

1 A. The way the document's are written, it goes
2 in perpetuity.

3 Q. So at some point these availability fees
4 have gone beyond recouping investment for either the
5 utility or for the developer?

6 A. I think that is possible, yes.

7 Q. And because of that, another logical reason
8 for a developer to hold on to this is to create a fairly
9 generous revenue stream for himself over and above any
10 investment, to make money?

11 A. It would be an awfully long hold.

12 Q. Well, we don't -- what are -- currently
13 what's the -- what are the current utility fees for the
14 utility? I'm sorry. What are the current availability
15 fees?

16 A. Total of \$300 a year per lot.

17 Q. So what, \$300,000 a year, approximately?

18 A. At the 1,200 from Mr. Featherstone, it's
19 360.

20 Q. \$360,000 a year?

21 A. Uh-huh.

22 Q. Only a portion of which goes to the
23 developer?

24 A. Correct.

25 Q. But again, you said it's possible that he

1 recouped some of that through the lot, through the
2 purchase price of the lot?

3 A. It's possible, yes.

4 Q. And we just discussed that you don't know
5 whether he recouped any of the investment through the
6 purchase price or the stock swap, correct?

7 A. That's correct.

8 Q. So why are you saying it would necessarily
9 have to be awful long hold? It may not have been an
10 awfully long hold if it's recovered significant portions
11 of that investment through either sale of the lots or
12 through the purchase price of the utility.

13 A. Yeah. You're correct.

14 Q. So this whole idea that it would be an
15 awful long hold, we don't know the answer to that
16 question?

17 A. I would agree with that.

18 Q. And now would you then agree that a
19 potential reason why a developer might construct
20 availability fees would be merely to -- or another logical
21 possibility that you would put the availability fees in
22 would be to create a revenue stream for the developer in
23 perpetuity?

24 A. Given those assumptions, that's very
25 possible.

1 COMMISSIONER GUNN: Thanks. I don't have
2 anything further.

3 JUDGE STEARLEY: Any other questions from
4 the Bench? Okay. Recross based on questions from the
5 Bench, beginning with the Property Owners Association.

6 MS. LANGENECKERT: No recross.

7 JUDGE STEARLEY: Staff?

8 MS. OTT: I have a couple questions.

9 RE-CROSS-EXAMINATION BY MS. OTT:

10 Q. This one goes off the question Commissioner
11 Kenney was asking you. If the developer wanted to collect
12 availability fees from the beginning, then why did he
13 write within the Declaration of Restrictive Covenants and
14 require that the lot owners pay the utility and not
15 directly the developer himself?

16 MR. COMLEY: I'll object on the grounds
17 it's asking what the developer's intentions may have been,
18 and I think that is speculation on the part of this
19 witness who has said anything is possible.

20 MS. OTT: I believe the whole conversation
21 was speculation. We're discussing what Mr. Summers
22 thinks, and he was discussing with Commissioner Kenney
23 what he thought the developer's intent was.

24 JUDGE STEARLEY: That's correct, but I
25 didn't have an objection before me for that question,

1 Ms. Ott, and I do have an objection on this one, and I
2 will sustain that objection because it requires
3 speculation.

4 BY MS. OTT:

5 Q. So Mr. Summers, in your belief, if the
6 developer wanted to collect availability fees from the
7 beginning, then why did he write it in the Declaration of
8 Restrictive Covenants that the lot owners would pay the
9 utility and not the developer himself?

10 MR. COMLEY: Same objection.

11 MS. OTT: It's his belief. It's not the
12 developer's intent.

13 JUDGE STEARLEY: Overruled.

14 THE WITNESS: He didn't for sewer. What's
15 in the Restrictive Covenants only requires what's for
16 water. And I believe there's also lot sales contracts
17 that state that it will be paid to the developer.

18 BY MS. OTT:

19 Q. Do you have copies of those lot sales
20 contracts?

21 A. No, I don't.

22 Q. Do you know where -- can you get a copy?

23 A. I think we had some as exhibits here.

24 Q. A lot sale contract?

25 A. I think there's one behind Mr. Merciel's

1 testimony.

2 Q. Now, also when you were having a
3 conversation with Commissioner Kenney, you discussed that
4 the developer did keep some of the availability fees for
5 himself. What availability fees did he keep for himself?

6 A. I believe that he kept the ones that were
7 reported in the annual report.

8 Q. So would that be any of the original
9 availability fees or would that be --

10 A. When you say original, are you talking
11 about the original on Shawnee Bend or are you talking
12 about going all the way back to '72?

13 Q. No. I'm just talking about Shawnee Bend
14 here.

15 A. Okay.

16 Q. So if he would have kept all the original
17 availability fees, that would have been only for the lots
18 sold prior to that confidential settlement agreement, is
19 that what you're referring to?

20 A. No. It was the lots sold prior to 1998, I
21 believe.

22 Q. So the developer collects availability fees
23 from any of the lots that were sold prior to 1988?

24 A. He did until he sold those to Roy and Cindy
25 Slates in 1998.

1 Q. Now, any of those new lots that were sold
2 after 1998, where do the availability fees go for that?

3 A. That was the purpose of the lawsuit. The
4 developer believed that those belonged to him, and
5 apparently Roy and Cindy Slates and then Waldo Morris
6 believed that they belonged to them. And that's why --
7 it's my understanding that's why Four Seasons filed the
8 lawsuit against Waldo Morris.

9 Q. So do we know for any of those lots sold
10 after 1998 where that money goes?

11 A. No. I mean, other than we know where it
12 goes today.

13 Q. And where does it go today?

14 A. It goes to RPS Properties, Sally Stump, and
15 a portion to the developer.

16 Q. I want to go back to that land sales
17 contract. Can you identify where in Mr. Merciel's
18 rebuttal testimony that's located?

19 A. I thought it was the last exhibit to his
20 testimony. Maybe I'm incorrect.

21 MS. OTT: May I approach?

22 JUDGE STEARLEY: You may.

23 THE WITNESS: Apparently I am incorrect
24 because this is just for water. I apologize.

25 BY MS. OTT:

1 Q. So do you know where Staff could get a copy
2 of one of the land sale contracts that would include where
3 the availability fees were to go?

4 A. My understanding is you subpoenaed
5 Mr. Brown. I believe he has all of them.

6 MS. OTT: I have no further questions,

7 JUDGE STEARLEY: Thank you, Ms. Ott.

8 Public Counsel?

9 MS. BAKER: I just have one question.

10 RE-CROSS-EXAMINATION BY MS. BAKER:

11 Q. You'll agree that, in general, the reasons
12 for an availability fee is to provide a revenue stream for
13 the utility, for a new utility until there are enough
14 homes or customers attached to support that utility?

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

16 Q. And in what way do you disagree?

17 A. I don't know that there is a set theory for
18 availability.

19 Q. Do you know of any case before the
20 Commission where that is not what an availability fee is
21 generally used for?

22 A. Outside this one?

23 Q. Yes.

24 A. No. I'm not aware of what other cases are
25 before the Commission, period.

1 MS. BAKER: No further questions. Thank
2 you.

3 JUDGE STEARLEY: All right. Redirect,
4 Mr. Comley.

5 MR. COMLEY: Thank you, Judge Stearley.

6 REDIRECT EXAMINATION BY MR. COMLEY:

7 Q. Mr. Summers, there were questions posed to
8 you on page 5 of your rebuttal testimony -- excuse me,
9 your direct testimony. Excuse me. You didn't have page 5
10 of your direct testimony, did you?

11 A. No, I didn't.

12 Q. Page 5 of your rebuttal testimony. On
13 line 5 you say that the developer paid for the plant and
14 was forced by the Commission to contribute the plant to
15 the company in order to keep the rates at a reasonable
16 level. Can you explain to the Commission what you meant
17 by the word forced?

18 A. Yes. Based on Mr. Stump's knowledge of the
19 case and our discussions, my understanding was that the
20 company intended to put the plant into the rate base and
21 the availability fees into the company, and the
22 Commission -- and I don't know whether it was Staff, and I
23 don't know whether it was an agreement between the Staff
24 and the company, but for whatever that was not the route
25 that was chosen to go.

1 Q. You had questions about Mr. Russo's rate
2 design. Let's take you to page 10 of your rebuttal
3 testimony. Explain what Mr. Featherstone's theory is
4 concerning the use of availability fees.

5 A. Well, I think -- I think if you read page 9
6 of my rebuttal testimony, Mr. Featherstone's theory is
7 that since there are a large number of undeveloped lots,
8 that obviously the availability fees should have been used
9 to support the utility in those areas.

10 Q. What about the other areas of the service
11 territories in which there are no availabilities charged
12 by a developer, those areas being served by Lake Region?

13 A. Well, that's my point. To me, it would be
14 logical that if you believe the availability fees are to
15 offset costs, then in the areas that don't have
16 availability fees, the rates for those areas should
17 logically be higher since there are no availability fees
18 to offset costs.

19 Q. What would be the overall effect of
20 Mr. Featherstone's idea on Mr. Russo's rate design?

21 A. If -- the rates are to be lowered because
22 of availability in certain areas of the service territory,
23 then logically the rates should be raised accordingly in
24 the areas that do not have availability fees.

25 Q. And why is that?

1 A. Because there are no availability fees to
2 offset costs in those other areas.

3 Q. Will there be a subsidy involved?

4 A. If the availability fees are implemented in
5 the case, yes.

6 Q. And who would be subsidizing whom in that
7 situation?

8 A. The lot owners that are not taking service
9 would be subsidizing the lot owners who are taking
10 service.

11 Q. And would others be subsidizing them
12 besides the ones paying availability fees?

13 A. I'm not sure I understand.

14 Q. Would people paying availability fees
15 subsidize not only the ratepayers --

16 A. Yes.

17 Q. -- of Porto Cima but elsewhere?

18 A. Yes. They would not only subsidize the
19 lakefront homes in Porto Cima, they would also be
20 subsidizing the two convenience stores and car washes that
21 are in areas that do not have availability fees.

22 Q. Commissioner Kenney and Commissioner Gunn
23 asked you several questions about what the developer may
24 have done in this case. Mr. Summers, tell the Commission
25 what your basis of knowledge, if any, is about what the

1 developer did or did not do in connection with creating
2 the development of Porto Cima and Shawnee Bend.

3 A. Well, my knowledge is only from looking at
4 some of the work papers from previous cases. I have
5 discussed the case with Mr. Stump, who was a consultant,
6 and I have had conversation with Lane Roberts, who is the
7 current president of Four Seasons Lakesites Development.

8 Q. As general manager of the district, have
9 you ever had access to records of Four Seasons Lakesites
10 Property Owners Association or the developer?

11 A. No.

12 MR. COMLEY: That's all I have.

13 JUDGE STEARLEY: All right. Thank you,
14 Mr. Comley.

15 COMMISSIONER KENNEY: I have something.

16 JUDGE STEARLEY: Commissioner Kenney.

17 FURTHER QUESTIONS BY COMMISSIONER KENNEY:

18 Q. I apologize, but it's because of something
19 you said. You said that you thought that the contracts,
20 the land sale contracts were contained in Mr. Merciel's
21 testimony. You looked at it and saw that you were
22 mistaken in that regard?

23 A. That's correct.

24 Q. Have you seen the land sale contract
25 somewhere?

1 A. Yes, I have.

2 Q. Where?

3 A. I actually think I supplied one in response
4 to one of the data requests, one that I had gotten ---
5 it's a blank contract, and the fax sheet at the top of it
6 showed a date of 2007.

7 Q. And you also testified that you think
8 Mr. Brown is in possession of all these land sale
9 contracts?

10 A. He's the developer. He would have been the
11 one that -- he would have been one of the contracting
12 parties.

13 Q. Have you had a conversation with him or
14 anybody else that forms the basis for that belief?

15 A. Which belief?

16 Q. That Mr. Brown is in possession of these
17 land sale contracts.

18 A. No, I haven't.

19 Q. You've never had any conversations with
20 Mr. Brown about what his intent was when he drafted the
21 land sale contract?

22 A. No, I haven't.

23 Q. Or anybody else that would have been
24 involved in the initial development of the land, of the
25 project?

1 renew the motion to quash the subpoena that's been issued
2 for Mr. Summers' deposition. It's apparent that he's been
3 extensively examined on the issues that he is aware of and
4 the extent of his knowledge about these things.

5 There has been no contrary evidence to what
6 has been asserted by Mr. Summers and the company, that he
7 lacks the documentation that has been requested in the
8 subpoena. I think that if -- if Staff has anything else
9 to ask him, it should have been asked today, and that's
10 why I renew the motion to quash. This is just another
11 opportunity for him to testify. It's adding to the
12 expense of this case. I see no justifiable reason for him
13 to be deposed.

14 JUDGE STEARLEY: Ms. Ott?

15 MS. OTT: Staff believes he will be Lake
16 Region's corporate designee and will be present at all of
17 the depositions, as well as we were given ten explicit
18 questions and/or topics in which the Commission would like
19 us to inquire on. This is a true-up hearing. This was
20 not the appropriate venue for all of those questions to be
21 addressed on the witness stand.

22 Staff believes that Mr. Summers could
23 possibly have additional information. We may find out
24 more information from the fellow deponents that will lead
25 Staff to asking him further questions to obtain the

1 information that the Commission is seeking us to do. And
2 we think it is important that he -- we have the
3 opportunity to depose him.

4 JUDGE STEARLEY: Anything further,
5 Mr. Comley?

6 MR. COMLEY: Your Honor, I'll take a look
7 at the subpoena, but it doesn't ask him to be designated.
8 He's been individually subpoenaed. There is no corporate
9 designation in connection with Mr. Summers. He's been
10 sought as an individual witness.

11 And again, Staff has not indicated to the
12 Commission exactly what additional material he will be
13 required to testify to. I think that at this stage he was
14 expected to be deposed tomorrow. If they're expecting to
15 have follow-up questions for him at some later time, his
16 deposition either needs to be rescheduled or canceled.

17 MS. OTT: Judge, there has been no order
18 established yet for the witnesses that will be deposed
19 starting tomorrow. It is four days of depositions
20 scheduled. There may be information that is obtained in
21 there, as well as the Commission's Order directed Staff to
22 inquire of any other matters that it may find relevant,
23 and just because it didn't explicitly say Mr. Summers or
24 Lake Region's corporate designee does not mean that we
25 will not have questions for Mr. Summers regarding

1 information obtained within the next four days.

2 JUDGE STEARLEY: The motion will be
3 overruled.

4 MR. COMLEY: We have no other witnesses.

5 JUDGE STEARLEY: Thank you, Mr. Comley. I
6 believe, Staff, you have Mr. Featherstone for your
7 witness.

8 MS. OTT: Judge, can you refresh my memory
9 on what exhibit numbers we are at?

10 JUDGE STEARLEY: Yes. The last marked
11 exhibit for Staff was No. 16, so anything further will
12 start with Staff Exhibit No. 17.

13 (STAFF EXHIBIT NOS. 17 AND 18 WERE MARKED
14 FOR IDENTIFICATION BY THE REPORTER.)

15 (Witness sworn.)

16 CARY G. FEATHERSTONE testified as follows:

17 DIRECT EXAMINATION BY MS. OTT:

18 Q. Good morning. Please state your name for
19 the record.

20 A. Cary G. Featherstone.

21 Q. And by whom are you employed and in what
22 capacity?

23 A. I'm a regulatory auditor with the Missouri
24 Public Service Commission.

25 Q. Are you the same Cary Featherstone that

1 previously caused to be prepared and filed true-up direct
2 testimony which has been previously marked for
3 identification an Exhibit 17 and the Staff accounting
4 Schedules as Exhibit 18?

5 A. Yes.

6 Q. With respect to your prepared true-up
7 direct, was that prepared by you?

8 A. It was.

9 Q. Do you have any corrections to make to this
10 testimony at this time?

11 A. Well, I do, and I've actually prepared some
12 replacement pages, if I could take leave having to go
13 through each and every correction and just insert the
14 pages. I tried to keep them in the exact same order by
15 line and page number, and they are in red strikeout.

16 MS. OTT: Judge, can Mr. Featherstone be
17 relieved from going through each and every change made in
18 that document?

19 JUDGE STEARLEY: Yes, he may.

20 BY MS. OTT:

21 Q. If you were asked the same or similar
22 questions as contained in that testimony, would your
23 answers today be the same or substantially the same or
24 similar?

25 A. Yes.

1 Q. Would they be true and accurate to the best
2 of your information, knowledge and belief?

3 A. They would be.

4 MS. OTT: With that, I'd like to offer
5 Exhibits No. 17 and 18 into the record and tender
6 Mr. Featherstone for cross-examination.

7 JUDGE STEARLEY: Any objections to Exhibits
8 No. 17 and 18?

9 MR. COMLEY: Yes, your Honor. We have a
10 series of objections to Mr. Featherstone's direct
11 testimony, starting with page 4, line 7 to page 5, line 7;
12 page 5, line 13 through page 6, line 14; page 9, lines 1
13 -- or line 1 to page 10, line 7; page 10, line 13 to page
14 11, line 11; page 13, line 9, to page 43 line 2.

15 And the grounds for the objections to those
16 pages I've just identified, pages and lines I've just
17 identified, they concern availability fees and the Staff's
18 proposal on how to treat them in this case. I realize
19 that the Commission has rejected our objections
20 previously, but we want to renew our objections that the
21 issue of the charging and collection of availability fees
22 is beyond the subject matter jurisdiction of the
23 Commission, and evidence about them is not probative to
24 any fact for proper Commission consideration.

25 Furthermore, Mr. Featherstone has used his

1 true-up direct testimony as argument in support of a Staff
2 motion to compel answers, which was never filed. His
3 testimony at pages 18 through 38 address true-up discovery
4 where he complains that Lake Region refused to provide
5 information in data requests which he contends Lake Region
6 was able to disclose. In truth, he complains that Lake
7 Region objected to the data requests, nothing more.

8 Again, the record in this proceeding will
9 show that no motion to compel answers to the data request
10 was filed or ruled on. Lake Region is entitled to stand
11 on its objections.

12 Mr. Featherstone should not be allowed to
13 have argumentative or conclusionary statements in his
14 testimony, and the lines of Mr. Featherstone's testimony
15 that we think are argumentative or inappropriate are as
16 follows: Page 28, lines 27 through 21. There he assumes
17 that Lake Region has this information that's described
18 there as or has authority to disclose it. He further
19 assumes that non-parties to this matter are subject to
20 data requests, specifically Ozark Shores Water Company and
21 Camden County Public Water Supply District No. 2.

22 On page 28, line 28 through 29, and again
23 through page 29, lines 1 through 3, Mr. Featherstone
24 assumes that non-parties to this matter are subject to
25 data requests, specifically Camden County Water District.

1 On page 29, lines 13 through 14, he assume
2 Lake Region has this information or has authority to
3 disclose it. He further assumes that non-parties to this
4 matter are subject to data requests.

5 On page 30, lines 13 through 17, here he
6 assumes that because Dr. Stump has personal knowledge
7 about the history of Shawnee Bend Development starting
8 when he was consultant for the company, that he has
9 authority to disclose developer records or records of
10 entities that are not parties to this matter and not
11 subject to data requests or not subject to PSC regulation.

12 On page 32, lines 4 through 5, he assumes
13 Lake Region has this information or authority to disclose
14 it.

15 On page 32, lines 15 through 17, again he
16 makes the assumption that Lake Region has the information
17 he's asking for or its officers or its contract management
18 has this information.

19 Page 32, lines 21 through page 33, line 13.
20 This is strictly argument. It has nothing to do with the
21 figures necessary to consider in true-up.

22 Page 33, line 14 to page 34, line 3. There
23 he quotes a transcript of hearing and comments on the
24 testimony of other witnesses and speaks for the Staff in
25 general. All of this is legal argument for a motion to

1 compel that was never filed.

2 Lines -- let's see. Page 34, lines 4
3 through 11. Again, there's continued argument about the
4 organization of Lake Region. He concludes that either
5 Lake Region is illegitimate or its shareholders are. He
6 presumes to know the basis for Lake Region's claim that it
7 lacks knowledge and has no right to the information he
8 asks for. He assumes the shareholders of the corporation
9 actually have operations. This all argument. It's not
10 valid expert opinion.

11 Page 34, line 16. It's speculation,
12 speculative. It should be stricken.

13 Page 35, particularly lines 19 to 23. This
14 is all speculation on the Staff's part.

15 Page 36, line 7 through 8. I'll withdraw
16 that.

17 Page 37, line 21 through 23. He assumes
18 that valid objections to data requests constitute
19 suppression of information. This is argumentative.

20 Page 38, lines 12 through 17. Again, these
21 are conclusionary remarks and they're argumentative and
22 should be stricken.

23 Page 41, line 14 to page 42, line 18. I'll
24 say it again. Page 41, line 14 to page 42, line 18. Here
25 the true-up direct is his way of rebutting Dr. Stump's

1 live testimony at the initial hearing. That is in an
2 inappropriate use of the true-up proceeding. It
3 underscores how late in the process Staff proposed to do
4 anything respecting availability fees. He comments on
5 Dr. Stump's testimony, all of which should be a part of
6 legal briefing and analysis of the evidence. That is not
7 testimony. Those lines specifically, they're
8 argumentative, they're conclusionary, in addition to
9 assuming facts that are just not correct.

10 So those are our objections to his
11 testimony.

12 JUDGE STEARLEY: Ms. Ott?

13 MS. OTT: Mr. Featherstone's true-up direct
14 is all based on the new numbers which Staff is proposing.
15 Staff learned of new numbers during the evidentiary
16 hearing, such as Dr. Stump's 10 percent of lot owners do
17 not pay the availability fees. Staff then took those
18 numbers into consideration and actually reduced the amount
19 of availability fees that it was going to include into
20 revenue. It is the basis for -- these new numbers are the
21 basis for Mr. Featherstone's true-up direct. That is why
22 it's included in true-up direct.

23 The Commission has the ability to weigh the
24 credibility of Mr. Featherstone's testimony. The
25 Commission can decide whether or not to accept his

1 testimony or disregard it. Mr. Comley has the opportunity
2 today to cross Mr. Featherstone on any of the information
3 contained within his true-up direct, and we believe that
4 it -- that his true-up direct should be admissible, should
5 be admitted.

6 JUDGE STEARLEY: All right. Anything else?

7 MR. COMLEY: One more thing, Judge
8 Stearley. Ms. Ott reminded me. I think that there are
9 portions of the schedules to Mr. Featherstone's testimony
10 that are also objectionable. I didn't bring that part of
11 my objection to the court, but I would object to any part
12 of the schedules of Mr. Featherstone's direct that are
13 dealing with revenue requirements reflecting availability
14 fees as well as Schedule 2, page 2 of 3 on the Lake
15 Utility billing.

16 That would be the extent of my remarks in
17 response to Ms. Ott.

18 JUDGE STEARLEY: Thank you, Mr. Comley.
19 The objections will be overruled and the exhibits will be
20 admitted and received into evidence. To the extent that
21 Mr. Featherstone has offered legal argument or opinion,
22 the Commission does note he's certainly not a subject
23 matter expert as to that. The Commission will assign the
24 appropriate weight and credibility to any such testimony.

25 (STAFF EXHIBIT NOS. 17 AND 18 WERE RECEIVED

1 INTO EVIDENCE.)

2 MS. OTT: Thank you.

3 JUDGE STEARLEY: Cross-examination,
4 beginning with Property Owners Association.

5 MS. LANGENECKERT: No questions.

6 JUDGE STEARLEY: Public Counsel.

7 MS. BAKER: No questions. Thank you,
8 Mr. Featherstone.

9 JUDGE STEARLEY: Thank you. Lake Region.

10 MR. COMLEY: Thank you, Judge. Just a
11 moment here.

12 CROSS-EXAMINATION BY MR. COMLEY:

13 Q. First, Mr. Featherstone, I wanted to bring
14 up that I understand that you and Mr. Summers have had
15 discussions this morning about what may be a formulaic
16 issue with respect to plant in service; is that correct?

17 A. That is correct, and I indicated to
18 Mr. Summers that we would work with Lake Region, we tried
19 to do that throughout the proceeding, and that we would
20 endeavor to see if we can see what the problem is. And I
21 think it has an effect of maybe a few thousand dollars on
22 the plant side.

23 Q. On plant in service?

24 A. Plant in service. I think it relates to
25 the new plant addition.

1 Q. And that may affect the Staff Accounting
2 Schedules at some point?

3 A. It may. And, in fact, if indeed
4 Mr. Summers is correct, it will.

5 Q. We did not object to the Staff's Accounting
6 Schedules on the strength of your conversation with
7 Mr. Summers this morning. So I wanted to make clear that
8 you do expect to go through the process of examining that
9 and perhaps making a correction; would that be fair?

10 A. Yes. And I think that if it bears out,
11 that we would probably have to -- we would probably file
12 something with the Commission, late file an exhibit. I'm
13 not sure how that would work out. We'll try to work with
14 the company and the other parties.

15 Q. Thank you. Thank you. Now, I said quite a
16 few things in my opening statement and in connection with
17 your objections, but I'm going to take you to page 18 of
18 your rebuttal testimony, line 11 through 14.

19 A. Yes, sir.

20 Q. And there you say that data requests were
21 submitted to Lake Region to provide billings and
22 collections information on availability fees.
23 Mr. Featherstone, would you agree with me that the billing
24 and collection information on availability fees is held by
25 RPS Properties, LP, and not by Lake Region?

1 A. I think it's held on -- within the confines
2 of the offices of the water district, Camden County.

3 Q. In that case, you would think that because
4 they are in the water district, the water district would
5 have the authority to disclose them? Is that basically
6 what you're contending?

7 A. Well, I'm -- I don't know whether they have
8 the authority or not. I'm not an attorney. So I can't
9 address whether they have the authority or not. It would
10 seem that -- I think it would be -- it would behoove the
11 company, Lake Region, water district and those involved.

12 As I indicated in my earlier testimony in
13 March, I don't make a distinction between the
14 shareholders, the owners of -- the owners of Lake Region
15 and the owners of Lake Utility Availability.

16 Q. And that's still your testimony today; is
17 that true?

18 A. It is.

19 Q. That's all I wanted to clarify on that.
20 And page 29, lines 13 and 14, you asked the question --
21 the question was asked, did Lake Region identify the
22 amount of contributed plant it claims was donated by the
23 developer, and in your answer you say no.

24 Didn't this information -- wasn't this
25 information submitted to Staff in a Data Request 72? Do

1 you have a copy of Data Request 72?

2 A. I do. I have a copy of the response and
3 the question.

4 Q. Can you take a look at Data Request 72 and
5 the response?

6 A. Okay.

7 Q. Isn't it true that Data Request 72 does
8 contain how much Lake Region contends was contributed, how
9 much plant was contributed by the developer?

10 A. Well, this's a figure of approximately
11 \$5.3 million that's identified. I think there's several
12 confusing points relating to CIAC or contributions in aid
13 of construction. We call it just contributed plant. That
14 figure is what's referred to as the donated property. The
15 5.3 figure, which is what I used in my testimony, that was
16 also part of the hearings originally, I think back in
17 March. I think Mr. Summers identified that several times.

18 There's actually \$6.2 million of
19 contributed or contributions in aid of construction, some
20 of which applies to Horseshoe Bend and Shawnee Bend water
21 and sewer companies. I think Mr. Summers in his testimony
22 has some perhaps through the reflection of whether any
23 should supply to Horseshoe Bend.

24 I think it's Staff's view that
25 contributions in aid of construction not only refers to

1 the contributed or donated property by the developer, but
2 also monies that the lot owners who are then building and
3 constructing property on the lots themselves and getting
4 ready to hook to the -- take service, service connection
5 fees, those also would be CIAC or contributions in aid of
6 construction.

7 And so while the 5.2 million is a figure
8 that is held out by the company, by Lake Region as the
9 donated property, it is Staff's view as one of the reasons
10 for the data requests and further follow-up that we want
11 to identify with the developer, with -- we want to
12 identify to see if that is truly the amount. There is
13 some confusion on this point.

14 Q. Let me take you to page 34 of your
15 testimony.

16 A. Did you say 34?

17 Q. Yes, page 34. Look at line 6 through 10.

18 A. Yes, sir.

19 Q. The sentence that begins on line -- excuse
20 me, 7 through 10. The corporate entity of Lake Region is
21 hiding behind a corporate organization that was
22 consciously and deliberately created to circumvent
23 regulatory oversight by the Commission.

24 Could you identify for me the corporate
25 organization that you're referring to that was consciously

1 and deliberately created?

2 A. I think that you have common ownership
3 between Lake Region, Ozark Shores, and ultimately the
4 entity that we referred to as Lake Utility Availability
5 One or just Lake Utility Availability, and it is that
6 organizational structure that is what I'm referring to.

7 Q. You're talking about an organization of
8 shareholders and the way in which the ownership is done?
9 Is that the corporate organization you're referring to?

10 A. Absolutely.

11 Q. Do you know who created this organization?

12 A. In a discussion that I had with
13 Mr. Summers, it's my impression it was a previous owner.

14 Q. The previous owner created the
15 organization. So the current ownership didn't do that?

16 A. I think they kept it in place.

17 Q. So it was --

18 A. For the same reasons.

19 Q. It was there before the current
20 shareholders bought the company; isn't that correct?

21 A. Yes.

22 Q. Page 36 of your testimony, lines 2 through
23 4, and I think the question that is posed on line 7 and 8
24 apply to the same subject. You say there that you
25 continue to believe the fees are being charged for the

1 purpose of maintaining, repairing and replacing with new
2 construction by the Lake Region Water & Sewer Company
3 infrastructure.

4 Can you point to anything in the deed
5 restrictions for Shawnee Bend that suggests that those
6 fees are being collected on charged for that purpose?

7 A. I think they were originally part of the
8 utility, and I think that all was codified in the deed,
9 the covenant of the -- the real estate transactions.

10 Q. Specifically, is there anything in writing
11 in the deed restrictions that says that the availability
12 fee is charged for the purpose of maintaining, repairing,
13 replacing, new construction?

14 A. I'm certain that there's nothing that is
15 specific using that language. I think the lot owners
16 themselves would -- only logic would tell you that they
17 would pay the fees, the \$300 a year for water and sewer
18 hookups with the promise or the idea that there was going
19 to be an infrastructure in place.

20 Q. But this is your supposition about what the
21 lot owners may believe. We had testimony already from
22 Ms. Cason that she didn't even understand that those fees
23 were going to be charged at the time she purchased her
24 property, for instance? I know I've compounded this
25 question. Forgive me. But it's really your supposition

1 that the lot owners believe this to be the case? There's
2 nothing -- isn't that true?

3 A. I think logic would tell you that. I think
4 Ms. Cason further once she discovered, once she found out
5 what the availability fees were for and she paid them for
6 two or three years, I think was her testimony, she clearly
7 understands what they're for now.

8 Q. But she didn't understand it at the time
9 she bought her property; isn't that correct?

10 A. I think her testimony -- and she's here
11 today. She may want to speak up. But I think her
12 testimony was that she didn't even know that they were
13 being charged to her until she got her first bill.

14 Q. And isn't it her testimony that she didn't
15 even think about availability fees at the time she
16 purchased her lot?

17 A. Well, she was a little unusual, as I
18 understand, that she purchased not -- her property not
19 from the developer but rather from another individual who
20 may have gone through all of that with the developer but
21 did not provide the information to her for whatever
22 reason.

23 Q. So there was an unusual sale to Ms. Cason
24 in which she was not allowed to understand the full
25 obligation of deed restrictions on her property; is that

1 your testimony?

2 A. No. I don't know that she was allowed to
3 or not. She purchased it from another individual. That's
4 my testimony.

5 Q. I think we're getting a little bit beyond
6 what your range of knowledge is. I'll go on to another
7 question.

8 Page 38, line 6 through 7. There you say
9 that the inclusion of revenues in this case -- excuse me.
10 The inclusion of availability for revenues in this case is
11 necessary so customers of Lake Region do not subsidize the
12 undeveloped lot owners and that those lot owners are not
13 paying a fee that provides them no benefit.

14 Now, isn't it true, Mr. Featherstone, that
15 Lake Region has other customers outside the Porto Cima
16 area where availability fees are being changed? I'm
17 talking about the Shawnee Bend service territory.

18 A. Yes.

19 Q. And isn't it true that if you use the
20 availability fees as you have proposed in this case, then
21 the undeveloped lot owners will be paying a fee that
22 subsidizes the rates of customers who don't pay utility --
23 I mean who don't pay availability fees?

24 A. No. What I'm -- what my testimony's
25 addressing here and throughout, Dr. Stump indicated in his

1 company earlier that this is an unusual and unique
2 development at the Lake of the Ozarks. There are many
3 many lots that may never be developed. And as we
4 indicated -- we had discussions about this. I think we
5 went back and forth on what the percentage was. We used
6 your percentage of 30 percent development. That means
7 that 70 percent of the undeveloped lots have to be
8 supported by the existing customers. Those are the
9 customers that either pay availability fees or do not pay
10 availability fees.

11 The way rates are set is that all of those
12 repairs, maintenance, all of that infrastructure is being
13 supported by the entire ratepayers, whether they're people
14 who are required to pay these fees or not.

15 Q. I think I understand that part of your
16 testimony. What I'm trying to get at is that there are
17 customers in the Shawnee Bend area that pay no
18 availability fees or don't have any subdivision
19 requirements to pay availability fees. Would you take
20 that as granted?

21 A. Yes.

22 Q. As part of your proposal, the owners of
23 undeveloped lots in Porto Cima, they're going to be paying
24 revenue in to the revenue structure of Lake Region, which
25 in turn will lower the rates not only for those in Porto

1 Cima, but also lower the rates for customers in
2 subdivisions where they pay no availability fees; isn't
3 that correct?

4 A. That's right.

5 Q. And would it be also true that the
6 undeveloped -- the lot owners of undeveloped lots in Porto
7 Cima are going to be adding revenues that keeps the rates
8 lower, in other words subsidizing the rates for other
9 customers that are not in subdivisions where availability
10 fees are paid?

11 A. Well, as I indicated to you, those
12 individuals who are not paying availability fees, they're
13 having to support a rather large undeveloped system, a
14 system that would be smaller and would be less costly if
15 it was a more compressed system where it would have more
16 of the lots that would be connected to the system.

17 Q. Could we take it as a given that the system
18 could not be smaller because it's necessary to reach
19 lakefront homes?

20 A. I think that was Dr. Stump's testimony. I
21 don't know if you could have designed the system any
22 differently to compress. You could have possibly -- many
23 developments are done in phases, so that you would develop
24 the system and have your properties' infrastructure in
25 place, and you would do it by phase and sell the lots and

1 complete those sales before you went to the next phase.
2 That's very common in developments. Could that have been
3 done at the Lake? I do not know.

4 Q. Let's talk about outside Porto Cima.
5 That's where the development or absence of development is.
6 You think 28 and 30 percent of the lots are not, 70 to 72
7 percent are not. But aren't there other subdivisions on
8 Shawnee Bend that are served by Lake Region? There
9 aren't, aren't there?

10 A. I believe there are, yes.

11 Q. And there's commercial customers?

12 A. Yes.

13 Q. Are you suggesting that the 70 percent of
14 the undeveloped lots, those owners should pay to reduce
15 the rates of the commercial customers I just talked about
16 or others in subdivisions where availability fees are not
17 involved at all?

18 A. What I'm saying is that originally the
19 utility, Lake Region and its predecessor company,
20 identified the need to have availability fees, and they
21 were part of the rate structure. They were part of the
22 utility. And at some point some action was taken, I think
23 it was a date of 1998, that those were separated. And at
24 one point those revenues were not distinguished between
25 one subdivision to another. They were just part of the

1 rate structure in total.

2 Q. I'm confused. I'm thinking of a
3 certification case in 1994, '95 --

4 A. '95.

5 Q. -- that the availability fee revenue was
6 not included in the rate structure; isn't that correct?

7 A. Well, it was a certification case. It was
8 not a rate case. It was not a ratemaking case.

9 Q. Tariffs were approved without the
10 benefit --

11 A. Which was very important.

12 Q. Tariffs were approved without the
13 availability fee revenue being taken into account; is that
14 correct?

15 A. Well, the testimony said that they should
16 be, and it would be looked into in the future.

17 Q. The stipulation was approved that the
18 availability fee revenue was not part of the rate
19 structure during that case?

20 A. And I think it's good to point out that it
21 was a stipulation. They were not included, but it was a
22 stipulation.

23 Q. And the tariffs right now are set up so
24 that availability fee revenue is not included in the rate
25 structure; is that correct?

1 A. I think at this point it's uncertain
2 whether they are or are not. I think more importantly,
3 these were all stipulated cases. There was not a decision
4 by the Commission that said put in availability fees or
5 not.

6 Q. Let me see if I can go back to my other
7 question. And I understand the history of the
8 availability fee issue and how it's gone through, but with
9 respect to your proposal, are you saying that the
10 70 percent of the Porto Cima non-residents, the people who
11 own undeveloped lots, that money used from availability
12 fees be placed into the rate structure for only the Porto
13 Cima residents, but also the rate structure for non-Porto
14 Cima residents or non-Porto Cima undeveloped lot owners,
15 that the rates for those people would go down as a
16 consequence of the availability fees paid for by Porto
17 Cima owners of undeveloped lots?

18 Do you understand my question?

19 A. Think I do. I would say that I'm not a
20 rate design person, and I'm not proposing the rate design
21 in this proceeding. That's Mr. Russo. It's my
22 understanding that he is not proposing a different rate
23 structure for those who have availability fees, Porto Cima
24 subdivision, and the subdivisions that do not have
25 availability fees.

1 Q. Would you agree that, consistent with what
2 your testimony is on line 6 and 7 on page 38, it would be
3 important for the Commission to come up with a way in
4 which application of availability fees would not be used
5 to subsidize the rates of those who are not paying
6 availability fees?

7 A. I think that, as I said before, and maybe I
8 haven't been very clear, the subsidization issue is that
9 all customers are paying higher rates and will be paying
10 higher rates absent availability fees because they have to
11 support and sustain a much larger territory than
12 otherwise. They have to maintain that entire system where
13 only 30 percent of the lots are providing a revenue source
14 to the utility. Costs are higher than they otherwise
15 would be.

16 Q. Would your testimony be the same if, say,
17 for instance, The Villages in Shawnee Bend has a smaller
18 buildout than even Port Cima?

19 A. I didn't hear a question there. Maybe I
20 missed --

21 Q. Would your testimony be the same if you
22 knew that The Villages, for instance, had a smaller
23 buildout than Porto Cima, the Villages being another area
24 where Lake Region serves water and sewer customers?

25 A. I think all of Lake Region's customers are

1 paying a -- paying for the entire infrastructure, and so,
2 therefore, the repairs, the maintenance on the system is
3 higher, whether it's the Villages, Porto Cima or any other
4 customer of Lake Region.

5 Q. Would Staff then permit an availability fee
6 for The Villages area?

7 A. Staff -- and I think Mr. Merciel has really
8 identified this in his testimony. We haven't advocated
9 availability fees, and he's indicated in a limited use of
10 availability fees that we've seen, they have a finite
11 timeframe and they're for a specific purpose. They're not
12 just for the enrichment of shareholders who provide really
13 limited benefit or no benefit to these customers who have
14 to pay -- I'm talking about the lot owners now -- who have
15 to pay for these fees forever because there's no end time.

16 So while we're not advocating availability
17 fees, they are what they are. They are a revenue source.
18 They were part of the utility operations. I guess where
19 we differ is that when you say that they belong to the
20 shareholders, we think that they belong actually to the
21 utility, Lake Region. If there's an end time set up so
22 that the availability fees terminate, then we wouldn't use
23 them as a revenue source.

24 Q. My understanding from your testimony is
25 that you believe that there's a benefit from paying

1 availability fees so that the undeveloped lot owners know
2 that there is an infrastructure in place for them to
3 connect to; would that be a fair characterization of your
4 testimony?

5 A. Yes.

6 Q. So if there's a benefit to availability
7 fees, are you saying that Staff would not allow an
8 availability fee for that benefit in areas where there's
9 no availability fee now?

10 A. Again, I want to state that it's for a
11 limited basis, we would support availability fees. We've
12 seen them in rare instances. It's somewhat of a unique
13 proposal. If it has a finite termination date, we would
14 support that as well.

15 Q. Let me ask you this: Do you know whether
16 or not in the Peaceful Valley tariff there is a finite
17 application of the availability fee?

18 A. I do not. Mr. Merciel is here, and he
19 would have that information, I believe.

20 Q. Let's go to page 42 of your testimony.

21 A. Yes, sir.

22 Q. On lines 14 through 18, you say that Lake
23 Region made no attempt in this case to identify and
24 support costs relating to the operations of the
25 shareholders, Lake Utility.

1 A. Yes.

2 Q. In the Staff's audit, did you find any
3 charges or costs assigned by Lake Region to Northern
4 Illinois Investment Group?

5 A. There's nothing specifically identified in
6 the general ledger. You couldn't go to the general ledger
7 and say here is costs for either Lake Utility Availability
8 or Northern Illinois.

9 Q. Northern Illinois Investment Group is a
10 water utility, isn't it?

11 A. I believe there's some small operations,
12 perhaps outside of Chicago. I think maybe it's a very
13 small facility. They used to have a larger operation, and
14 then they sold that, and I think there's like a very
15 small -- I think it's even being sold or it wants -- they
16 want to sell it. It's like 39 customers, I believe.

17 Q. Do you know who does the billing for
18 Northern Illinois Investment Group?

19 A. The water district employees.

20 Q. Does the district provide any management
21 for that?

22 A. Absolutely.

23 Q. There are no costs assigned to Northern
24 Illinois Investment Group in the Lake Region's general
25 ledger, is there?

1 A. There aren't. I guess I'm going to regret
2 that I didn't. I had discussions with Mr. Summers about
3 that very matter, and because the information that he
4 provided in particular that the company was -- that the
5 share owners were trying to sell the system, I made a
6 judgment that I probably will regret --

7 Q. All right.

8 A. -- that I did not allocate cost.

9 MR. COMLEY: I have no other questions.

10 JUDGE STEARLEY: All right. Questions from
11 the Bench.

12 COMMISSIONER KENNEY: I don't.

13 COMMISSIONER JARRETT: Yes.

14 QUESTIONS BY COMMISSIONER JARRETT:

15 Q. Good morning, Mr. Featherstone. How are
16 you this morning?

17 A. Good morning.

18 Q. Do you remember the conversation you had
19 with Mr. Comley about stipulations?

20 A. Yes.

21 Q. Are you aware that the Commission has to
22 approve stipulations --

23 A. Yes, sir.

24 Q. -- in cases? And that the Commission
25 issues an Order approving those stipulations?

1 A. Yes.

2 Q. And are you aware that the Commission has a
3 statutory obligation to consider whether those
4 stipulations are in the public interest before they
5 approve them?

6 A. I believe so.

7 Q. Okay. Do you remember there were questions
8 from Mr. Comley regarding your true-up direct testimony on
9 page 34, lines 7 through 9, I believe, specifically the
10 statement in your testimony that says, the corporate
11 entity of Lake Region is hiding behind a corporate
12 organization that was consciously and deliberately created
13 to circumvent regulatory oversight of the Commission? Do
14 you remember the conversation you had with Mr. Comley
15 about this?

16 A. I don't.

17 Q. And I just want to make sure I understand.
18 You say that a corporate organization was consciously and
19 deliberately created. Who created that organization?

20 A. It was the previous owner, and the name
21 escapes me now, but Lake Region indicated to me that -- in
22 fact, the statement was that they learned their lesson
23 based upon the use of availability fees in the Ozark
24 Shores rate structure to not leave those availability fees
25 exposed to use as a revenue source.

1 Q. And when you say -- when you say Lake
2 Region told you that, who specifically?

3 A. Mr. Summers, representing Lake Region.

4 Q. What information do you have that the
5 people that created this corporate organization
6 consciously and deliberately created it to circumvent
7 regulatory oversight?

8 A. Just that. Just what I've stated.

9 Q. And what was that again? I'm sorry.

10 A. The conversation was, is that they wanted
11 to do something different with those revenue sources for
12 Lake Region because they didn't like the outcome of how
13 they were treated on Ozark Shores, and so that they were
14 taken out of the utility, the regulated entity itself.

15 COMMISSIONER JARRETT: All right. Thank
16 you. No further questions.

17 JUDGE STEARLEY: Commissioner Gunn?

18 COMMISSIONER GUNN: I don't have any
19 questions.

20 JUDGE STEARLEY: Okay. Recross based on
21 questions from the Bench?

22 MR. COMLEY: No questions. Thank you.

23 MS. BAKER: No questions.

24 MS. LANGENECKERT: No questions.

25 JUDGE STEARLEY: Redirect?

1 REDIRECT EXAMINATION BY MS. OTT:

2 Q. Mr. Featherstone, you were just previously
3 having a conversation with Commissioner Jarrett as well as
4 Mr. Comley about who created this corporate entity. Who
5 created Lake Utility Availability?

6 A. Well, I think that whole concept was
7 created by the predecessor and then was taken over in some
8 fashion. I'm not sure whether the current owners actually
9 made Lake Utility Availability One, Lake Utility
10 Availability the entity, but there was a similar, I think,
11 structure in place, I believe.

12 Q. And that was when it was Four Seasons
13 Lakesites, Four Seasons Water & Sewer Company?

14 A. I believe so. I think it was the
15 predecessor owner. The name escapes me now. Waldo
16 something or other, but I don't remember his last name.

17 Q. And that was when the water and sewer
18 company was charging availability fees?

19 A. Well, they were charging availability fees,
20 and then at some point there was a separation. There was
21 a -- they removed those fees as part of the utility
22 structure. I think it was around maybe 1998 or 1999
23 timeframe.

24 Q. Now, along the lines of discussing the
25 corporate entity, did you have any conversations with

1 Mr. Summers regarding availability fees?

2 A. Several times.

3 Q. And were any of the conversations about the
4 creation or separation of availability fees?

5 A. Well, it -- my first conversations really
6 dealt with there was a notation on their general ledger of
7 Lake, I believe it was availability fees or Lake Utility
8 Availability. So we submitted some data information
9 requests, I believe it was Data Request 44, and there was
10 some relationship between the management fees and the
11 availability fees. As it turned out, the availability
12 fees were not part of Lake Region. I misunderstood. And
13 they said that Lake Region did not have availability fees.

14 We submitted a follow-up Data Request 44.1,
15 and I still was confused by some of the responses. So I
16 had conversation with Mr. Summers about that when I
17 visited in December, and I was assured that Lake Region
18 did not have availability fees in any way, shape or form.
19 They weren't entitled to them, did not have them. So I
20 took from that that there were no availability fees
21 associated with this utility.

22 Q. Did you have any follow-up conversations
23 when you realized that availability fees were --

24 A. It wasn't until the public hearings when I
25 listened to some of the testimony of the witnesses. They

1 gave sworn testimony that -- one of the things that
2 triggered this was Mr. Summers assured me that no one on
3 Lake Region was paying availability fees and paying
4 utility rates. One of the witnesses indicated that they
5 were paying both, and they also identified an amount.

6 It's a fairly large number of undeveloped
7 lots. I knew that the water and sewer lot price was about
8 \$300 for the availability fees per undeveloped lot. So I
9 sort of did some math in my head, and at the public
10 hearing I had a discussion with Mr. Summers about the
11 testimony, and he assured me that again there was no
12 availability fees at Lake Region, that they did not charge
13 availability fees, and more importantly, that there was no
14 one that was paying both availability fees and utility
15 services.

16 Q. Earlier you were having a conversation with
17 Mr. Comley and he brought up Northern Illinois Investment
18 Group. Did Lake Region provide any information on
19 Northern Illinois Investment Group when Staff asked?

20 A. Well, for me, when I'm asking questions of
21 Mr. Summers, I don't make a distinction, him wearing the
22 hat of water district and they provide services under
23 contract. So when I'm talking to Mr. Summers, I'm
24 considering I'm talking to Lake Region. He's their
25 representative. He's the individual that they give me in

1 terms of doing the audit.

2 So I had discussion with him about Northern
3 Illinois, and I made a conscious decision not to assign
4 costs. I'm not sure there would be a great amount of
5 costs, but there would be some assignment of time for
6 their activities.

7 Q. Do you know if Staff submitted any data
8 requests related to Northern Illinois Investment?

9 A. I'm sure we submitted some broad data
10 requests that probably would have identified all the
11 entities that we knew, but I can't -- I can't recall any
12 off the top of my head.

13 Q. Now, I want to go back to Mr. Comley was
14 discussing the Stipulation & Agreement in the
15 certification of convenience and necessity, and I believe
16 Commissioner Jarrett was discussing some of those
17 questions. Who were rates set in that certificate case?

18 A. Well, there was agreement reached between
19 the parties, and you know, I assume that -- in a
20 certificate case it's difficult to develop rates because
21 you don't have a -- you don't really have a history of
22 costs. It's a fairly new system. And so what do you in a
23 certificate case is you sort of come up with a revenue
24 requirement calculation based upon a lot of assumptions
25 and estimates. So our rates were developed in that case.

1 They were stipulated to.

2 Q. Now, is that what you consider pro forma
3 rates?

4 A. They would be probably identified as pro
5 forma. You make a lot of assumptions and a lot of -- a
6 lot more leeway with actual cost because the cost
7 structure just isn't there.

8 Q. Now, Mr. Comley was also discussing with
9 you the rate structure and Mr. Russo has not changed his
10 rate design. Has Lake Region proposed a change in their
11 district for rate design?

12 A. I'm not the rate design witness. I do
13 not -- with that caveat, I do not think so.

14 Q. Do you think Staff would entertain a
15 proposal if they did create different districts based on
16 the areas of Shawnee Bend charging availability fees
17 versus the areas that are not?

18 A. I won't speak for Mr. Russo. He's the
19 witness. But certainly anything that the company would
20 like to discuss about this issue, and rate design
21 included, I'm sure that we would entertain the discussion.

22 MS. OTT: I have no further questions.
23 Thank you.

24 JUDGE STEARLEY: All right. Very well.

25 Mr. Featherstone, thank you for your testimony.

1 THE WITNESS: Thank you.

2 JUDGE STEARLEY: Ms. Baker, before we get
3 started, we've been going about two hours, and I'd like to
4 give my court reporter a break.

5 MS. BAKER: That would be appreciated.

6 JUDGE STEARLEY: I'm wondering, in light of
7 your timetable today, is it going to be better to take an
8 early lunch and come back and have Mr. Robertson?

9 MS. BAKER: I don't know that -- I don't
10 know that there will be a lot of cross for Mr. Robertson.

11 JUDGE STEARLEY: Let me ask that, then,
12 before we go to break.

13 MR. COMLEY: We don't have any
14 cross-examination for Mr. Robertson.

15 MS. LANGENECKERT: Nor do we, Property
16 Owners.

17 MS. BAKER: I can do it before the break, I
18 guess.

19 JUDGE STEARLEY: Let's do that. At this
20 time you may step down. Mr. Robertson may step up.

21 MS. BAKER: I'll even do it from here.

22 (Witness sworn.)

23 TED ROBERTSON testified as follows:

24 DIRECT EXAMINATION BY MS. BAKER:

25 Q. Could you state and spell your name for the

1 record, please.

2 A. Ted Robertson, T-e-d, R-o-b-e-r-t-s-o-n.

3 Q. Are you the same Ted Robertson who prepared
4 and filed true-up direct testimony in this case?

5 A. I am.

6 Q. Do you have any changes to your true-up
7 direct testimony?

8 A. I do not.

9 Q. If you were asked the questions today,
10 would your answers be significantly the same?

11 A. They would.

12 MS. BAKER: I believe the Public Counsel is
13 on No. 5.

14 JUDGE STEARLEY: That's correct.

15 MS. BAKER: And Public Counsel would offer
16 Mr. Robertson's true-up direct testimony and offer him for
17 cross-examination.

18 JUDGE STEARLEY: Very well. Any objections
19 to the admission of Exhibit No. 5 from Public Counsel?

20 MR. COMLEY: In general, Judge, to the
21 extent that Mr. Robertson has raised issues concerning
22 availability fees and the way they may relate to the rate
23 case expenses in this case, we would object to those
24 portions of his testimony. Aside from that, we have no
25 objection.

1 MS. BAKER: I don't believe that he has
2 raised availability fees in his true-up direct at all. It
3 is just rate case expense.

4 JUDGE STEARLEY: Very well. The objection
5 will be overruled.

6 (OPC EXHIBIT NO. 5 WAS MARKED AND RECEIVED
7 INTO EVIDENCE.)

8 JUDGE STEARLEY: And I believe the parties
9 indicated they had no cross-examination. Are there any
10 questions from the Bench for Mr. Robertson?

11 COMMISSIONER JARRETT: Good morning,
12 Mr. Robertson. How are you doing this morning?

13 THE WITNESS: I'm doing fine, sir.

14 COMMISSIONER JARRETT: I have no questions.
15 Thank you.

16 JUDGE STEARLEY: Okay. Very well. Then we
17 don't have to have redirect. Mr. Robertson, I thank you
18 for your coming. You may step down. And we will take
19 about a 20-minute break because Ms. Ott, I want to give
20 you sufficient time to contact other counsel as I
21 mentioned earlier at the start of the hearing. So we'll
22 go back on the record about 11:20.

23 MS. LANGENECKERT: I will call back in,
24 Judge, if that's acceptable.

25 JUDGE STEARLEY: That's fine,

1 Ms. Langeneckert.

2 (A BREAK WAS TAKEN.)

3 JUDGE STEARLEY: All right. We are back on
4 the record. The witness testimony is complete for today.
5 We have a few housekeeping matters.

6 One, I did want to take up,
7 Ms. Langeneckert, the issue regarding updating Property
8 Owners Association Exhibit 3, and Ms. Cason being present
9 today, do the parties present have any objection to her
10 offering additional testimony on that at this time --

11 MS. BAKER: No, your Honor.

12 JUDGE STEARLEY: -- while she's present --

13 MS. OTT: No, your Honor.

14 MR. COMLEY: No, your Honor.

15 JUDGE STEARLEY: Hearing no objection,
16 Ms. Langeneckert, you are free to call Ms. Cason to the
17 stand.

18 MS. LANGENECKERT: I think I heard I was
19 free to call her to the stand; is that correct?

20 JUDGE STEARLEY: That's correct.

21 MS. LANGENECKERT: Okay. I'd like to call
22 Ms. Nancy Cason to the stand for the Property Owners
23 Association.

24 (Witness sworn.)

25 JUDGE STEARLEY: You may be seated,

1 Ms. Langeneckert, you may proceed.

2 NANCY CASON testified as follows:

3 DIRECT EXAMINATION BY MS. LANGENECKERT:

4 Q. Good morning, Ms. Cason.

5 A. Good morning.

6 Q. We have submitted a Property Owners
7 Association Updated Exhibit No. 3. You have received a
8 copy of that, and you were an integral part of the
9 preparation of that updated exhibit; is that correct?

10 A. Yes, I was, and I also have additional
11 copies with me.

12 Q. Do you have copies of that exhibit or do
13 you have copies of our response to the Staff's data
14 request to the Property Owners?

15 A. I have the Missouri Public Service
16 Commission Staff data request to Four Seasons Lakesites
17 Property Owners Association, the response to the Staff
18 data request.

19 Q. Right. Right. And many of the numbers
20 were taken from that, and that was signed by you and
21 Mr. Becker?

22 A. Correct.

23 Q. But the document to which I'm referring is
24 an update that we did to the exhibit that we filed on the
25 last day of hearing that was the e-mail that you received

1 from Donna Porr and you handwrote a few numbers in
2 addition.

3 A. Oh, correct. Yes. I do have that now.

4 Q. Okay. And you'll recall that after the
5 hearing, did we not discuss those numbers and realize that
6 there were some inaccuracies in what we presented at the
7 last day of hearing?

8 A. Yes, we did.

9 Q. Okay. And then we worked together as we
10 were preparing the response to the Staff data request,
11 which the Office of the Public Counsel and Staff have both
12 seen but I don't believe any other party or the judges
13 have seen, and we realized in preparation of the response
14 to that Staff data request that the numbers we had
15 submitted on the POA Exhibit 3 had an inaccurate basis for
16 their submission. The initial numbers that were given to
17 you by Ms. Porr through the e-mail were actually numbers
18 that were estimated and budgeted as opposed to actual
19 numbers for those four years; is that correct?

20 A. Correct.

21 Q. Okay. So when we submitted the exhibit, we
22 updated it and we showed the accurate numbers for 2003
23 through 2006, which, much to our dismay, are not as
24 positive for us but still accurately reflect what the
25 actual developed and undeveloped lot numbers were?

1 A. Correct.

2 Q. Is that correct?

3 A. Yes.

4 MS. LANGENECKERT: Okay. So if necessary,
5 I'm sure that Ms. Cason would be happy to submit a sealed
6 and signed one, much like we did the first one, and we
7 actually did do a seal and sign on the data request
8 response, and if the Commission prefers, we could submit
9 that as well, but I know that's additional evidence, so we
10 probably don't want to get into that.

11 So I would like to tender Ms. Cason for
12 cross-examination on the updated Exhibit No. 3.

13 JUDGE STEARLEY: Okay. The document with
14 the update, which is the date of April 14, 2010 written
15 above the table, I'm going to mark that as Property Owners
16 Association Exhibit No. 4.

17 MS. LANGENECKERT: 4? Okay.

18 JUDGE STEARLEY: Are there any objections
19 to the admission of Property Owners Association Exhibit
20 No. 4?

21 MR. COMLEY: No objection.

22 MS. BAKER: No objection.

23 MS. OTT: None.

24 JUDGE STEARLEY: Hearing none, it shall be
25 received and admitted in the record.

1 (POA EXHIBIT NO. 4 WAS RECEIVED INTO
2 EVIDENCE.)

3 JUDGE STEARLEY: Does any party wish to
4 question this witness regarding this exhibit?

5 MR. COMLEY: No questions.

6 JUDGE STEARLEY: Hearing none, you may step
7 down, Ms. Cason. Thank you very much.

8 MS. LANGENECKERT: Thank you.

9 JUDGE STEARLEY: Okay. During the break, I
10 asked Staff to contact the other attorneys who had filed
11 motions to quash Staff subpoenas. Ms. Ott, if you would
12 please for the record indicate what responses we've gotten
13 with regard to I believe it's RPS Properties and
14 Mr. Peter Brown's subpoenas.

15 MS. OTT: Judge, I spoke with Russ Mitten,
16 the attorney for Cynthia Goldsby and RPS Properties. He
17 stated that he has not entered his appearance in this
18 case, and if he was going to do so, it would be for the
19 limited purpose of responding to the motion to quash. He
20 indicated that he will wait for the Commission's order to
21 decide how to proceed in this matter.

22 JUDGE STEARLEY: And for clarity,
23 Mr. Mitten did not request a hearing on his motions; is
24 that correct?

25 MS. OTT: That is correct. And I spoke

1 with Mr. Terry Allen, who represents Peter Brown. He also
2 indicated that he had not entered his appearance in this
3 matter, and if it was, it was for the limited purpose for
4 the motion to quash, and that he was going to wait until
5 there was an order to speak with his client to decide how
6 to proceed. And he did file a request for a hearing, and
7 both of them addressed the potential issue of not having
8 adequate notice of this hearing.

9 JUDGE STEARLEY: Right. Well, with regard
10 to Mr. Brown, Staff currently has him scheduled for
11 deposition tomorrow, correct?

12 MS. OTT: That is correct.

13 JUDGE STEARLEY: So my question I guess
14 would be to Staff, is Staff willing to postpone that date
15 to allow us to assemble for a hearing on behalf of
16 Mr. Brown?

17 MS. OTT: Yes, Staff is willing to postpone
18 Mr. Brown's deposition until after a hearing. Staff would
19 also be willing, not knowing if RPS Properties or
20 Ms. Goldsby will decide to show up tomorrow, that we will
21 go ahead and go down to the room we have reserved for the
22 depositions and wait 'til nine o'clock to see if anyone
23 shows up instead of -- and then we could call Mr. Comley
24 and Ms. Baker with OPC and let them know if we're going to
25 proceed with the depositions.

1 We are willing to make an agreement with
2 the parties to execute the subpoenas at a later date as we
3 would like for judicial economy and efficiency and
4 attorney resources to do them all at one time versus
5 having several days once these issues are all resolved.

6 JUDGE STEARLEY: Very well. Why don't you
7 give us a status report tomorrow, file a status report
8 with the Commission.

9 With regard to the parties who haven't
10 requested a hearing, today's ruling from the Bench stands
11 and that motion's been denied.

12 MS. BRUEGGEMANN: Is your Honor planning on
13 issuing anything in writing as they've indicated -- there
14 won't be a transcript, and as they've indicated that our
15 passing along the information isn't sufficient for their
16 purposes.

17 JUDGE STEARLEY: Correct. I'm not sure if
18 we can get an Order out today or not, but we can try and
19 get an Order out.

20 MS. BRUEGGEMANN: Will an Order be
21 forthcoming, does your Honor think?

22 JUDGE STEARLEY: Yeah. We can have a
23 written Order, but I can't guarantee it will get issued
24 today.

25 With regard to Mr. Brown, we will -- I'll

1 withdraw that ruling from this morning, and we'll hold and
2 see if after you've had a chance to talk with counsel, if
3 they want to proceed, proceed with having a hearing on
4 that motion, or if you rescheduling a different day
5 alleviates their issues of notice. If, in fact, he'll still
6 want a hearing on their, I'd suggest you get some
7 recommended dates for the Commission. We could even do a
8 motion hearing by telephone.

9 MS. BRUEGGEMANN: And I believe Mr. Allen
10 represented on the phone that he would have still wanted a
11 hearing if he'd been given the opportunity. Of course, I
12 can't totally speak for him, but I believe that he
13 conveyed that to Ms. Ott and myself.

14 JUDGE STEARLEY: All right. I'll plan on
15 you trying to arrange a date for that hearing.

16 MS. BRUEGGEMANN: And just for the record,
17 Mr. Comley, is that acceptable that we don't -- that you
18 don't have to actually drive down to be at the Lake at
19 nine o'clock, we would go ahead and offer that we would
20 wait to start a deposition until you could arrive if
21 others actually showed up to be deposed, and then
22 basically we go ahead and postpone Mr. -- Dr. Stump's
23 deposition and Mr. Summers' deposition until the point at
24 which some of these others can be taken into account also?
25 As you've already stated, that Dr. Stump -- you believe

1 Dr. Stump and Mr. Summers don't have anything additional
2 to offer.

3 MR. COMLEY: I think what you're describing
4 is something -- well, first I need to visit with them, but
5 I think that that's not out of the question, what you're
6 describing there. So to accommodate the witnesses under
7 the procedures you're talking about, I think that would be
8 helpful.

9 JUDGE STEARLEY: Okay. In terms of having
10 a motion hearing, I have a conflict on May 10th. I may
11 have a conflict on May 19th. I don't know how soon a
12 timeframe you'll be looking at. This week, 28th, 29th,
13 I'll also be in another hearing.

14 MS. BRUEGGEMANN: Judge Stearley, also as
15 one other side matter, there's a scenario due from Staff
16 on April 30th, and with all of this going on --

17 MR. COMLEY: It's been extended?

18 MS. BRUEGGEMANN: Has it been extended?
19 Okay. It's been officially extended?

20 JUDGE STEARLEY: Yes, that was extended to
21 May 18th?

22 MS. BRUEGGEMANN: Thank you.

23 JUDGE STEARLEY: Is there anything else we
24 need to take up regarding those motions?

25 MS. BAKER: Not that I know of.

1 JUDGE STEARLEY: Staff, did you want to
2 offer your true-up accounting schedules as an exhibit? I
3 don't think we've --

4 MS. OTT: That was Exhibit 18.

5 JUDGE STEARLEY: I thought that was
6 Mr. Featherstone's true-up direct.

7 MS. OTT: I believe that was 17. His
8 corrections were --

9 JUDGE STEARLEY: Were considered part of
10 17?

11 MS. OTT: -- were the same. Thank you.

12 JUDGE STEARLEY: I wrote that down wrong.

13 MS. LANGENECKERT: Ms. Ott, will you
14 sending those around by e-mail or something or filing them
15 in EFIS?

16 MS. OTT: We can send you a copy. I handed
17 out a copy to everyone here today. I'm sorry I didn't
18 e-mail one to you prior.

19 MS. LANGENECKERT: That's fine. I just
20 appreciate receiving one. Thank you.

21 JUDGE STEARLEY: Also, Staff filed an
22 update reconciliation on the 23rd of April, and I know
23 that's subject to objections from Mr. Comley. I would
24 like you to go ahead and offer that as an exhibit, and
25 that would be Exhibit No. 19 for Staff, and similar to the

1 first reconciliation that was filed and the Commission
2 took that in as an exhibit subject to your objections,
3 Mr. Comley, the issues involving the executive management
4 fees and the availability fees.

5 MR. COMLEY: Thank you.

6 JUDGE STEARLEY: So any objections, then,
7 to the reconciliation which I've now marked as Exhibit
8 No. 19?

9 MR. COMLEY: Just the ones you've
10 mentioned.

11 JUDGE STEARLEY: All right. And I'm
12 assuming also the dispute between what's the appropriate
13 amount recovered in rate case expense, is there an
14 objection or a disagreement as far as that goes?

15 MR. COMLEY: I think the amounts
16 recommended by the company and OPC differ. I think all
17 three, Staff and --

18 JUDGE STEARLEY: Right. There are
19 differences that are outlined in that. All right. And I
20 did have one question I wanted to ask revolving around the
21 reconciliation and the unanimous stipulation of undisputed
22 facts that came in that was filed earlier.

23 In paragraph 23 of the unanimous
24 stipulation, the parties agreed that the information
25 within Staff's cost of service report as filed at that

1 point in time was the cost of service of Lake Region with
2 the exceptions of those earlier objections, and I guess
3 what I want to try to confirm, based on that stipulation
4 and the reconciliation, are the parties agreeing to the
5 baseline revenue requirement that's been outlined in the
6 reconciliation by Staff, with the exception of whatever's
7 going to be added or subtracted in terms of those issues,
8 or is that baseline revenue requirement still in dispute?

9 MR. COMLEY: Mr. Summers is confirming for
10 me that the only issue we have is the plant in service
11 figure that we discussed with Mr. Featherstone in his
12 cross-examination, and I think the difference there may
13 be -- it's in the thousands of dollars, but that would be
14 the only thing I think that would in some way differ with
15 what's been stipulated in paragraph 23.

16 JUDGE STEARLEY: All right. Staff,
17 whenever that issue is addressed, I'll have you file an
18 updated reconciliation.

19 MS. OTT: Will do.

20 MR. COMLEY: Another thing, Judge Stearley.
21 This was done pre true-up, so at that point it was
22 undisputed, and post true-up, there may still be that
23 dispute. Just so that's clear.

24 JUDGE STEARLEY: All right. Any
25 differences I'll have you be sure and outline in that

1 updated reconciliation. If the Commission has some type
2 of baseline point where you're all in agreement, that will
3 certainly make things much more simpler in determining
4 these various other issues that are in dispute.

5 Are there any other matters that we need to
6 take up today or do any of the parties want to give
7 closing statements?

8 MR. COMLEY: I have no closing, Judge. We,
9 of course, reserve our right to file a brief.

10 JUDGE STEARLEY: Yeah. The briefing
11 schedule remains as it's already been set. There will be
12 no changes to that, unless the parties were to ask for
13 some type of an extension. I believe we have different
14 dates for the evidentiary hearing and the true-up briefs.

15 And as I indicated earlier, the evidentiary
16 hearing has only been recessed. It's not been adjourned.
17 And depending on what evolves with these depositions,
18 we'll have to have another day of evidentiary hearings if
19 additional evidence is to be offered into the record. So
20 we may be having an additional briefing should there be
21 another day of evidentiary hearings. We'll set a schedule
22 for that at that time.

23 Is there anything else we need to take up
24 today? Very well. The true-up hearing in Lake Region
25 Water & Sewer File Nos. SR-2010-0110 and WR-2010-0111 is

1 adjourned.

2 WHEREUPON, the true-up hearing in this case

3 was concluded.

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1		
2		
3	Opening Statement by Mr. Comley	683
3	Opening Statement by Ms. Ott	686
4		
5	JOHN SUMMERS	
	Direct Examination by Mr. Comley	689
6	Cross-Examination by Ms. Ott	691
	Cross-Examination by Ms. Baker	699
7	Questions by Commissioner Kenney	702
	Questions by Commissioner Gunn	702
8	Recross-Examination by Ms. Ott	705
	Recross-Examination by Ms. Baker	709
9	Redirect Examination by Mr. Comley	710
	Further Questions by Commissioner Kenney	713
10		
11		
12	CARY FEATHERSTONE	
	Direct Examination by Ms. Ott	718
13	Cross-Examination by Mr. Comley	726
	Questions by Commissioner Jarrett	744
	Redirect Examination by Ms. Ott	747
14		
15		
16	TED ROBERTSON	
	Direct Examination by Ms. Baker	752
17		
18	NANCY CASON	
	Direct Examination by Ms. Langeneckert	756
19		
20		
21		
22		
23		
24		
25		

1			
2			
		MARKED	RECEIVED
3	EXHIBIT NO. 11		
4	True Up Direct Testimony of John R. Summers	689	691
5	EXHIBIT NO. 12		
6	True Up Rebuttal Testimony of John R. Summers	689	691
7			
8			
9	EXHIBIT NO. 5		
10	True-Up Direct Testimony of Ted Robertson	754	754
11			
12	EXHIBIT NO. 17		
13	True-Up Direct Testimony of Cary G. Featherstone	718	725
14	EXHIBIT NO. 18		
15	Staff Accounting Schedules True-Up Direct	718	725
16	EXHIBIT NO. 19		
17	Updated Reconciliation	765	
18			
19	EXHIBIT NO. 4		
20	Update to Four Seasons Lakesites Property Owners Association Exhibit 3	758	759
21			
22			
23			
24			
25			

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C E R T I F I C A T E

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

I, Kellene K. Feddersen, Certified
Shorthand Reporter with the firm of Midwest Litigation
Services, 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.

Kellene K. Feddersen, RPR, CSR, CCR