

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

May 3, 2010  
Jefferson City, Missouri  
Volume 7

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

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

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

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1                                   A P P E A R A N C E S

2       For Staff of the Missouri Public Service Commission:

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4                                   and Ms. Shelley Brueggemann  
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1 P R O C E E D I N G S

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

8 My name is Harold Stearley, and I'm the  
9 Regulatory Law Judge presiding over today's hearing, which  
10 is actually a motion hearing regarding a subpoena that was  
11 issued for Peter N. Brown, and he has moved to quash the  
12 subpoena.

13 I apologize for us starting a little bit late  
14 here. We were trying to get our web casting and recording  
15 working and apparently have had some technical  
16 difficulties. So I appreciate your patience.

17 We'll start by taking entries of appearance,  
18 beginning with Lake Region Water & Sewer.

19 MR. COMLEY: On behalf of Lake Region Water &  
20 Sewer, let the record reflect the entry of Mark W. Comley  
21 of Newman, Comley & Ruth, 601 Monroe Street, Jefferson  
22 City, Missouri.

23 JUDGE STEARLEY: Okay. Mr. Peter N. Brown?

24 MR. ALLEN: Terry Allen, Allen Law Offices, Bar  
25 No. 19094, 612 East Capitol, P.O. Box 1702, Jefferson

1 City, Missouri.

2 JUDGE STEARLEY: Okay. Thank you, Mr. Allen.

3 And for Staff of the Missouri Public Service Commission?

4 MS. OTT: Thank you, Judge. Jaime Ott and  
5 Shelley Brueggemann on behalf of the Staff of the Public  
6 Service Commission, P.O. Box 360, Jefferson City,  
7 Missouri, 65102.

8 JUDGE STEARLEY: All right. Thank you, Ms. Ott.  
9 Christina Baker from the Office of the Public Counsel had  
10 stopped in before we started and let me know that the  
11 Office of Public Counsel would not be participating today,  
12 so we'll let the record reflect that. Are there any  
13 preliminary matters we need to take up before the  
14 company --

15 MR. ALLEN: Judge, if you please.

16 JUDGE STEARLEY: Yes, Mr. Allen.

17 MR. ALLEN: I have filed through your EFIS  
18 system an affidavit of Peter N. Brown. I'm assuming that  
19 you'd like to have that marked as an exhibit with the  
20 original as opposed to just the copies that have been  
21 filed. Or I'll -- however you want to do it.

22 JUDGE STEARLEY: Okay. We can -- we can  
23 certainly do that. I don't think we need to do that  
24 immediately. You do have it in our EFIS system. It is in  
25 the file.

1 MR. ALLEN: That's correct.

2 JUDGE STEARLEY: We'll come back to that --

3 MR. ALLEN: All right.

4 JUDGE STEARLEY: -- here shortly. And the  
5 Commission does express its appreciation to Mr. Brown for  
6 filing the affidavit in attempting to get some of the  
7 questions answered that its directed its Staff to pursue.

8 MR. ALLEN: That was the purpose of it, Judge.

9 JUDGE STEARLEY: All right. Barring that, is  
10 there any anything -- is there anything else we need to  
11 take up? Would the parties like to make additional  
12 arguments other than what's been made in their pleadings?

13 MR. ALLEN: I would.

14 JUDGE STEARLEY: All right, Mr. Brown.

15 MR. ALLEN: You can't keep a lawyer from not  
16 talking, I suspect, Judge.

17 CHAIRMAN CLAYTON: Before you -- before you do  
18 that, Judge, can I jump in here and ask a real quick  
19 question from a procedural standpoint?

20 JUDGE STEARLEY: Sure.

21 CHAIRMAN CLAYTON: With the affidavit that's  
22 been filed by Mr. Brown, it may be helpful for us to get  
23 an idea with the information that's added what is Staff's  
24 position, what is -- is Staff satisfied, not satisfied to  
25 get an idea of what information -- I haven't had an

1 opportunity to review the pleadings, but I want to give  
2 you a chance to -- to make that statement. And then,  
3 certainly, then -- maybe Mr. Brown's attorney could then  
4 reply to that because that's kind of where we are rather  
5 than starting fresh with the whole Motion to Quash.

6 JUDGE STEARLEY: Don't worry, Mr. Allen. I'll  
7 let you speak.

8 MR. ALLEN: Oh, I'm not -- I'm not worried. I  
9 appreciate Commissioner Clayton -- there is a Staff  
10 response on file now. And Ms. Ott asked if I had reviewed  
11 it. I did receive it, and I have reviewed it. If they  
12 want -- however you all want to proceed. I'm here at your  
13 leisure.

14 JUDGE STEARLEY: Since the Chairman has directed  
15 this, it looks like you're up, Ms. Ott.

16 MS. OTT: Chairman Clayton, Staff is not  
17 satisfied with the affidavit provided by Mr. Brown. As  
18 you can see in my response filed this morning, Staff  
19 believes there are several holes still in -- from the  
20 information in the affidavit from what we believe  
21 Mr. Brown has and has knowledge of.

22 We think it's necessary to -- to continue and to  
23 depose Mr. Brown in hopes to get more accurate and  
24 detailed information. I can go specifically into the  
25 holes.

1                   CHAIRMAN CLAYTON: I don't want you to go into  
2 specifics. The next question I want to ask, apart from  
3 actually the Commission allowing the deposition to go  
4 forward, is there any other means by which the Staff could  
5 retrieve the information that it seeks from Mr. Brown?  
6 Whether it be submitting some questions that would be  
7 answered under oath, is there any other way -- is  
8 basically a deposition the only way to satisfy the  
9 concerns that Staff has with regard to this information?

10                  MS. OTT: Staff believes that a deposition is  
11 necessary. We are willing to possibly do a two-part  
12 deposition, the first one being going through and  
13 identifying documents that might be in Mr. Brown's  
14 possession, going back and then looking at what documents  
15 Mr. Brown says he has or can get access to and then  
16 determining specifically what documents we want.

17                  As we understand, there's like 1600 lots in the  
18 Shawnee Bend area. We don't want every single land sale  
19 contract of each lot that Mr. Brown has sold, but maybe a  
20 representative sample. And from the first deposition,  
21 then we can identify all the documents and then have  
22 Mr. Brown obtain those documents and then come back and  
23 depose him on those specific documents that we have  
24 referenced.

25                  CHAIRMAN CLAYTON: So Staff does not believe

1 from -- from your perspective that there is any way to --  
2 to negotiate a way by which Staff can retrieve this  
3 information aside from a deposition?

4 MS. OTT: I don't think that we're saying we  
5 -- we want to negotiate. Staff doesn't know exactly  
6 what documents Mr. Brown has.

7 CHAIRMAN CLAYTON: Okay. Okay. Mr. Allen, and  
8 I suppose, Judge, at this point, I just wanted to get that  
9 out first. And if you want to go ahead, that would be  
10 fine.

11 MR. ALLEN: And -- and, you know, you all kind  
12 of know what the arguments are that I've presented. And  
13 some other things have caused me to file an amended  
14 objection and motion.

15 First of all, as to the subpoena itself, when it  
16 was requested, it had some shortcomings when you look at  
17 the Exhibit 1 that we filed, which is the April 14th, 2010  
18 letter of Ms. Ott to Steven Reed to attention, I guess,  
19 Judge Stearley, basically.

20 And when you look at that, it really -- it talks  
21 about Mr. Brown as being a former president of Four  
22 Seasons Water & Sewer. It subpoenas him without  
23 identifying him as an officer or custodian of any records.

24 Then it purports to ask for records with regard  
25 to several entities, one of which he admittedly has been



1 and is a President of that is this Lakesites, Inc.

2 But then they subpoena records from Lakesites  
3 Development. So there's a lot of inconsistencies and --  
4 and vagueness to the purpose for which they subpoenaed him  
5 or his identity for the purpose of the records.

6 He tried to resolve that in part with the  
7 affidavit. He was served as an individual, not as an  
8 officer of anything nor as a custodian of records. He  
9 indicates in his affidavit, as I said, that he is the  
10 President of Four Seasons Lakesites and that Lakesites has  
11 no staff or anything. It really -- it just kind of sits  
12 there, if you will.

13 And it's not clear for whom do they want  
14 records, the water & sewer company, Lakesites or whomever.  
15 They just kind of lump it all together. They don't even  
16 mention, as I said, the development company in the letter  
17 or in the subpoena.

18 Now, if we're talking about records of  
19 Lakesites, Inc., then while he does not have immediate  
20 access to records, he's indicated and -- he didn't do this  
21 to be inconsistent even though this was the argument in  
22 their -- in their -- Staff's response, such effort would  
23 require substantial work.

24 Now, here now, we're talking about just a  
25 sample. Well, that's not what the subpoena asked for. If

1   you -- if you take the subpoena in its broadest sense,  
2   it's asked for every document, everything they've got.  
3   And if you also take in the broadest sense that your  
4   subpoena powers under your statute and under your rules as  
5   a Commission, dovetail with Rule 57 -- 57.09, the Staff is  
6   obligated to -- actually, it says right in 57.09, it's  
7   obligated to determine how burdensome, how troublesome  
8   this could be.

9                   And -- and this is a lot of effort. Again, you  
10   know, the idea of sitting down and trying to figure this  
11   out is a good idea. I appreciate that from Commissioner  
12   Clayton. But this isn't the way you get it done, folks.

13                   And, you know, if they didn't got out and say,  
14   Well, what kind of trouble is this going to cost you,  
15   we're telling you, it's going to cost a lot of money to do  
16   this without people to do it. So we're going to have to  
17   have somebody to do it. And the rule requires that they  
18   pay for it.

19                   Now, my point is simply that the subpoena  
20   process not only has to follow your all's rules, but it  
21   also has to follow the Rules of 57.09, which, by the way,  
22   it -- it gives credence to that when you read the statute.  
23   Your statute 38 -- 386.440.

24                   Again, this is a non-party. We're not a party.  
25   So, obviously, even under the Civil Rules, a party is in a

1 different position, and that's so pointed out. You know,  
2 either clarify the subpoena, advance the costs, or let's  
3 sit down and try to figure out some way to deal with this  
4 because all it's going to do is just create a lot of extra  
5 time.

6 And, obviously, from the comments of the  
7 Chairman, it would seem that -- you know, that good people  
8 ought to get together and try to figure out something as  
9 opposed to ending up in Circuit Court.

10 And let me tell you, I've been up in Circuit  
11 Court on these many times. Not on this type, but just  
12 recently on Proposition B. So -- and it has to do with  
13 enforcement of subpoenas and -- you know, if we want -- if  
14 we don't clarify the subpoena, provide for the advancement  
15 of expenses, then the other thing is to quash it.

16 And the other thing is just to get together and  
17 try to figure it out. And that's my argument, and I'll  
18 leave it at that. And I really appreciate you all taking  
19 the time to hear me. And I appreciate Ms. Ott. She does  
20 a good job, and, particularly, Ms. Brueggemann.

21 JUDGE STEARLEY: Ms. Ott, do you have any  
22 response?

23 MS. OTT: Yes. In regards to Mr. Allen's first  
24 issue of how Mr. Brown was identified and served as an  
25 individual, this was done because he has various roles in

1    regards to the relation of availability fees and to serve  
2    -- he was the developer of Porta Cima, which is the area  
3    in concern of the availability fees. He was the President  
4    of the water and sewer company as well as he is the  
5    current President of Four Seasons Lakesites.

6                Staff was unaware until just recently that  
7    Lakesites is really not -- it's winding up its corporate  
8    entity and it's just kind of existing in name. We didn't  
9    know that there wasn't a Staff or individuals that are --  
10   were able of producing those documents.

11               We still believe that Mr. Brown received some of  
12   the funds for availability fees. And that is why he was  
13   served as an individual and not as his capacity of an  
14   officer or corporate designee.

15               COMMISSIONER KENNEY: Ms. Ott, what's the basis  
16   of that belief? What's the basis of that belief that he's  
17   still receiving some of the availability fees?

18               MS. OTT: That comes from that confidential  
19   settlement agreement between RPS Properties and Sally  
20   Stump as well as -- with the documents in which we don't  
21   have access to that's been brought up several times  
22   throughout the evidentiary hearings.

23               COMMISSIONER KENNEY: Okay. Okay.

24               MS. OTT: And that is something, you know, Staff  
25   would like to talk to Mr. Brown about during the

1 deposition or through a different arrangement with  
2 Mr. Brown.

3           Additionally, the initial subpoena may appear to  
4 be really broad, but Staff doesn't know what documents are  
5 out there. We have been ordered to comply with specific  
6 questions and obtain information. And our goal is to --  
7 to our best ability and belief obtain -- get the  
8 information and present it to you, the Commission.

9           And if we would have worded the subpoena any --  
10 in a more narrow fashion, we may have missed our  
11 opportunity of seeing a document that we want. Not  
12 everyone classifies a document as the same title.  
13 Somebody may say it's a bill. Somebody may say it's a  
14 record, a report, a memorandum. And if we would have  
15 limited the scope, we could miss a document that would be  
16 necessary and important to this matter.

17           And, you know, Staff would be willing to come  
18 with Mr. Brown and potentially do this two-part deposition  
19 so it does limit the burden and the expense that will be  
20 involved in producing the documents and the time involved  
21 in getting the documents.

22           JUDGE STEARLEY: All right. Mr. Allen, anything  
23 further?

24           MR. ALLEN: Well, that's not what you've got on  
25 the table right now, a two-part deposition, in all

1 honesty. And, you know, you can start over if you want  
2 to. But, again, there is a burden on a party or attorney  
3 responsible for the issuance and service of a subpoena  
4 that they will take reasonable steps to avoid imposing  
5 undue burden and expense on a non-party subject to the  
6 subpoena. And that was never done.

7 COMMISSIONER KENNEY: Mr. Allen, what's your  
8 opinion with respect to the requirement of Rule 57.09 that  
9 places a burden on the person resisting the subpoena to  
10 come forward with something more than just a statement  
11 that it's going to be too burdensome?

12 MR. ALLEN: I think -- I think they can come  
13 forward with the statement that it is too burdensome and,  
14 as we've done in the affidavit, spell out -- we've tried  
15 to spell out precisely why. I think you always have a  
16 burden of proof when you raise something in the  
17 affirmative.

18 COMMISSIONER KENNEY: Have you -- I -- I looked  
19 at the affidavit briefly. Have you put forth what it's  
20 going to cost in terms of time and manpower?

21 MR. ALLEN: No. We would have to -- we would  
22 have to sit down and, you know, in a short time really  
23 that we haven't had the ability to figure it out, but we  
24 wanted to spell out at least for these purposes the type  
25 of things that you would have to have.

1           There may be copying. There's certainly -- you  
2 know, now we're hearing we're not talking about 1700 lots.  
3 We're talking about samples. Again, that's not what the  
4 subpoena said. And I -- I'm not trying to avoid your  
5 question. I'm just trying to answer it sincerely.

6           COMMISSIONER KENNEY: No. I understand. But at  
7 some point, if you guys are going to sit down, Staff's  
8 going to need to know if you're going to assess fees what  
9 you're talking about, right?

10          MR. ALLEN: Beg your pardon?

11          COMMISSIONER KENNEY: If Staff is going to  
12 advance fees, we need to know what we're talking about.

13          MR. ALLEN: Oh, absolutely. And I think that's  
14 true. That's imperative of us to present to them at some  
15 point.

16          COMMISSIONER KENNEY: My question is, do you --  
17 do you concede that Mr. Brown is a potential person with  
18 knowledge and information of the facts of this case?

19          MR. ALLEN: I don't --

20          COMMISSIONER KENNEY: His deposition is not --  
21 not irrelevant. Would you --

22          MR. ALLEN: I don't know. Depositions -- you  
23 know, discovery is very broad anyway.

24          COMMISSIONER KENNEY: Yes.

25          MR. ALLEN: And I think you would -- I would

1     assume that you could make it broad enough to say that  
2     he's subject as a non-party to some kind of discovery,  
3     whether it be depositions or whatever.

4                 COMMISSIONER KENNEY:   So you're not arguing  
5     there -- that the inquiry is irrelevant?

6                 MR. ALLEN:   I think if they do it right.   I  
7     don't think they've done it right.   I'm sorry.   That's my  
8     -- my opinion.

9                 COMMISSIONER KENNEY:   You don't think the  
10    request is correct.   The subpoena on its face is too  
11    broad?

12                MR. ALLEN:   I don't think they followed the  
13    rules.   That's my opinion.   And I think when they made --  
14    what they're obligated to do is tell the Judge the purpose  
15    for which they want the subpoena, which they sent out this  
16    letter.   And it's not -- to me, it's not entirely clear.

17                You can say, Well, you just have Peter Brown.  
18    Well, you know, he's got access to -- to something in  
19    here.   So as she said, you know, we made it a shotgun  
20    approach so we're going to catch flies in our net.   And  
21    that's what you're talking about.   And I don't think  
22    that's the idea of it.

23                And by the way, my experience with this is,  
24    also, you're taking someone's deposition and you've got  
25    this so-called limited scope.   I mean, you try to really



1 zero in on what you want, so you don't have issues about  
2 -- like this come up.

3 And in the middle of a deposition, you ask about  
4 some other documents, and then you get access to them that  
5 way. You don't just take a broad brush approach to get  
6 everything in the manner in which this was done. And I  
7 think it's -- I think it's vague, and I think it's  
8 unenforceable. But that's my view.

9 COMMISSIONER KENNEY: Well, I want -- I want to  
10 be clear. I mean, are we talking about procedural defects  
11 or substantive defects? Your argument is that -- let me  
12 finish. Your argument is that the subpoena itself is  
13 overly broad, but not that Mr. Brown isn't a relevant  
14 party or relevant person with information relevant to this  
15 case.

16 MR. ALLEN: For the purpose of this hearing  
17 alone, my argument is procedural, and it is also  
18 substantive. And procedurally, it has to do with the  
19 failure to follow the rules.

20 Substantively, I think in part, he has responded  
21 to it substantively in his affidavit. So he may have some  
22 substantive information. He so indicated that in his  
23 affidavit, and the effort was to try to provide, you know,  
24 a short -- a short way to get to whatever they were  
25 interested in short of taking all this time and money and

1 effort to do this.

2 COMMISSIONER KENNEY: So are you asserting that  
3 the affidavit addresses all the substantive questions?

4 MR. ALLEN: I don't know.

5 COMMISSIONER KENNEY: Okay. Okay.

6 MR. ALLEN: I don't know because --

7 COMMISSIONER KENNEY: And we can't know that  
8 until they depose him, right?

9 MR. ALLEN: I don't know until I have more  
10 information.

11 COMMISSIONER KENNEY: From whom?

12 MR. ALLEN: Pardon?

13 COMMISSIONER KENNEY: From whom would you need  
14 the additional --

15 MR. ALLEN: From them and from my client.

16 COMMISSIONER KENNEY: Okay.

17 JUDGE STEARLEY: Mr. Allen, you had a chance to  
18 review Staff's response. Do you have a copy of that in  
19 front of you?

20 MR. ALLEN: I can get a copy of it right here,  
21 yes.

22 JUDGE STEARLEY: Paragraph 7, I believe Staff  
23 tries to articulate a little more clearly some of the  
24 questions that it believes the affidavit did not cover.

25 MR. ALLEN: I thought some of that was covered.

1 But I may be wrong.

2 JUDGE STEARLEY: Some of it may -- may have  
3 been. Some of it may not have been covered in sufficient  
4 detail for Staff's inquiry.

5 MR. ALLEN: Well, there may be an issue of the  
6 confidentiality of the settlement agreement. You know,  
7 that may be an issue. We mention it. But we're not  
8 disclosing --

9 JUDGE STEARLEY: The question -- right.  
10 Question No. 2, for example, on there, I don't believe was  
11 addressed.

12 MR. ALLEN: No. Well --

13 JUDGE STEARLEY: The -- the original purpose was  
14 addressed, but not whether, in fact, there was a portion  
15 of the price included in the -- for recovery of  
16 infrastructure included in the lot price. And that this  
17 is --

18 MR. ALLEN: Probably not specifically.

19 JUDGE STEARLEY: Right. The reason I'm trying  
20 to make those distinctions is I'm wondering if, before we  
21 go further in having Staff revise the subpoena, if you  
22 believe Mr. Brown can perhaps answer some more of these  
23 questions or provide more detail per another affidavit?

24 MR. ALLEN: And I would be happy to attempt  
25 that. And I -- and let me say this to the Judge. He has

1 corporate counsel that I deal with, Mr. Lane Roberts. And  
2 I did -- when I got this, I did e-mail it to him. He has  
3 not had time to see it. He was coming back from St.  
4 Louis. And I need to discuss those specific items with  
5 him and Mr. Brown.

6 JUDGE STEARLEY: Okay. Let me inquire of Staff  
7 if -- is that an adequate starting point, at least, to  
8 perhaps try to get some of your inquiries answered by  
9 supplementing this affidavit before we proceed further?

10 MS. OTT: Staff would be okay with that.  
11 But we'd still like to reserve the right to depose him.

12 JUDGE STEARLEY: Certainly. Certainly. And I  
13 don't believe the Commission's looking at quashing that  
14 subpoena today either. I'm just trying to see if there's  
15 a means where perhaps we can get these questions answered  
16 perhaps more efficient and be more cost effective for the  
17 parties.

18 MR. ALLEN: I would like to have that  
19 opportunity.

20 JUDGE STEARLEY: And then as a second step,  
21 perhaps the parties could get together and try to ferret  
22 out which documents they actually would need produced for  
23 a deposition if it should need to go to a deposition.

24 MS. BRUEGGEMANN: Absolutely.

25 MS. OTT: Yes.

1 JUDGE STEARLEY: Okay. Does that sound like a  
2 reasonable course?

3 MR. ALLEN: I think it's a very reasonable  
4 suggestion, Judge, with the leave of you all.

5 JUDGE STEARLEY: Does that seem like a  
6 reasonable course, Commissioners?

7 CHAIRMAN CLAYTON: So, basically, the parties  
8 are going to work together to try to identify the material  
9 that may be available and -- and then refine your -- your  
10 request?

11 JUDGE STEARLEY: As a first step, they may be  
12 able to get answers to some of these questions from  
13 Mr. Brown without having to get any further.

14 So second step would be to identify which  
15 documents you would need to completely answer your  
16 questions if he's not able to provide that information for  
17 you upfront.

18 If you can work on that together, fine. If you  
19 need to revise the subpoena and then the Commission  
20 re-issue a new subpoena and we follow through with the  
21 deposition, that would be fine, too. But it may be  
22 possible for some resolution prior to getting to that  
23 step.

24 MR. ALLEN: I'd like to have an opportunity.

25 JUDGE STEARLEY: Or at least narrowing it down

1 so if it proceeds to deposition, you know more  
2 specifically just exactly which documents you need and  
3 which questions you need to have answered.

4 CHAIRMAN CLAYTON: How quickly can these  
5 conversations occur? Is this something that could occur  
6 prior to Wednesday's agenda?

7 MS. BRUEGGEMANN: It depends on how quickly the  
8 affidavit could come forth, I think. That's the first  
9 step.

10 MR. ALLEN: I would have to be in touch with  
11 Mr. Roberts and Mr. Brown to be able to answer that. I  
12 will do my best to get it done before Wednesday given  
13 everything, other PSC matters.

14 COMMISSIONER KENNEY: Let me say that --

15 MR. ALLEN: Yes, sir.

16 COMMISSIONER KENNEY: -- I think part of the  
17 difficulty, as I perceive it, is in the course of the  
18 original hearing, additional information came out that  
19 revealed that Mr. Brown had discoverable information.

20 So to -- to assert -- to a certain degree, I  
21 think that what Mr. Brown may or may not have to say will  
22 either satisfy or not satisfy what the Commission's  
23 looking for. And an affidavit, I think, is a good first  
24 step.

25 But I just want to be clear that we're not, at

1    this point, precluding the possibility of still taking  
2    Mr. Brown's deposition.

3               MR. ALLEN:   And I understand that fully,  
4    Commissioner Kenney.  That -- that is -- I understand that  
5    from your questions and, obviously, from what you've just  
6    said.  No problem with that.  And we reserve all our  
7    remedies and rights and whatnot as -- as good lawyers to  
8    respond to those things.

9               JUDGE STEARLEY:  All right.  And there's a  
10   number of arguments in your pleadings we haven't  
11   addressed, so --

12              MR. ALLEN:  Yes.  I understand.  So should we go  
13   forth with grace and work on it on that basis this  
14   afternoon and --

15              JUDGE STEARLEY:  I would think so.  And perhaps  
16   Staff can file a status report.

17              MS. OTT:  Judge, I'd also just want to make  
18   clear on the record that Staff is concerned about the time  
19   -- with the timing and delays that could come with, you  
20   know, trying to come to an agreement to get specific  
21   documents because there is an operation of law date in  
22   September.

23              JUDGE STEARLEY:  September.

24              MS. OTT:  It still has to be briefed and  
25   potentially another hearing on the matter.  So --

1 JUDGE STEARLEY: That's true. Right now, the  
2 briefing schedule is May 28th for preliminary briefs,  
3 reply briefs June 25th, and true-up briefs July 9th. And  
4 with an operational law date of September sixth, I believe  
5 we -- we have enough time that we can work on this within  
6 the next week or so.

7 I know the Commission has already authorized  
8 Staff to seek enforcement of three other subpoenas. And I  
9 also believe you've made arrangements with Lake Region for  
10 perhaps scheduling a different time in terms of Mr. Stump  
11 and -- what was our other --

12 MS. OTT: Mr. Summers.

13 JUDGE STEARLEY: Mr. Summers.

14 MS. BRUEGGEMANN: One other note for the record,  
15 just for clarification, your Honor, Ms. Ott probably  
16 wanted to go ahead and address the -- she had tried to  
17 attempt to contact Peter Brown's counsel.

18 MS. OTT: Yes. I contacted Mr. Lane Roberts,  
19 and he was the individual that told me to go ahead and  
20 serve the subpoena on Peter Brown, that he would probably  
21 not be forthcoming with information without a subpoena.

22 And that is why we did serve him with the  
23 subpoena in the manner we did. So we believe we fully  
24 abided by the rules. And we don't know what documents  
25 Mr. Brown has. And if he didn't have any documents, he



1 would have had that opportunity during a deposition to  
2 indicate so on the record that he's not in possession,  
3 custody or control of those documents and then identify  
4 who is so we would have the opportunity to go back and  
5 then serve a subpoena on the individual that would be in  
6 control and custody of those documents.

7 JUDGE STEARLEY: That's another thing which can  
8 be flushed out in a supplement to the affidavit is that if  
9 -- if there's somebody else in possession of these  
10 documents, he can identify who that -- that person for us  
11 upfront right now.

12 MS. OTT: And one other thing I would like to  
13 point out is in the Commission Rule 38 -- or in the  
14 Statute 386.440, subsection 4, the -- the person serving  
15 the subpoena is required to pay -- pay costs.

16 However, that is, under the Commission rule with  
17 presentment of a voucher. So that is an after the fact.  
18 If, you know, Mr. Brown incurs expenses, the Commission  
19 will pay them afterwards and not prior to. But, you know,  
20 we're still going to talk to him about it and try to  
21 figure out issues. But I just wanted to point that out  
22 for the record.

23 JUDGE STEARLEY: Okay.

24 MR. ALLEN: Well, a couple things. You know, I  
25 don't want to sit here and belabor this. First, if Ms.

1 Ott had called me for Mr. Brown and said, you know, I want  
2 all this stuff, I'd have said, Get a subpoena. I think  
3 that's the appropriate thing.

4 As to what goes into the subpoena is up to her.  
5 As to whether it complies with rules is up to her. It's  
6 not up to Mr. Roberts. Now -- and that's in all due  
7 respect with regard to the other matter.

8 I think when you read the Civil Rule, that's not  
9 what it says. It says you advance the expenses. And,  
10 also, it says, as I read to you all earlier, that you have  
11 an affirmative duty to find out if this is going to cost  
12 folks money and time and effort. And that's part of this  
13 process. It's part of the process that a lot of us  
14 ignore. We don't think about it. It's not a criticism,  
15 by any means.

16 They had a short time to try to do something,  
17 and you try to do the best you can. And I thought they  
18 did a reasonably good job with it. It's just we've got  
19 this gripe, if you will, Judge. Sorry. Thank you.

20 JUDGE STEARLEY: Thank you, Mr. Allen. Do the  
21 Commissioners have any other questions?

22 CHAIRMAN CLAYTON: Mr. Allen, we want to help  
23 with that gripe.

24 MR. ALLEN: Thank you so much.

25 CHAIRMAN CLAYTON: And we want to find a way

1 through this. I think the important point here today is I  
2 think the Commission -- and I can't speak for all of my  
3 colleagues or the majority of my colleagues -- that this  
4 information is important to the resolution of the  
5 underlying matter.

6 And aside from procedure and how things were set  
7 up and how questions were asked, I think there is  
8 important information that needs to be contributed to this  
9 case, but I think the Commissioners want it to be done in  
10 the most efficient and, you know, least onerous manner.

11 And, obviously, your client is a non-party. But  
12 we do need this information, and I think Staff is trying  
13 to organize this under tight time lines. And, obviously,  
14 we have a drop dead date out there.

15 So I really hope when I opened up these  
16 questions that -- today, I'm hoping that there's a way  
17 that we can refine some of this information and get Staff  
18 some satisfaction with regard to this information because,  
19 obviously, Mr. Brown is not a party and we're mindful of  
20 that. But we still need -- we still need the information.

21 MR. ALLEN: Appreciate your comments.

22 CHAIRMAN CLAYTON: Appreciate you coming in.

23 MR. ALLEN: Thank you so much.

24 CHAIRMAN CLAYTON: And we are -- as Chairman,  
25 I'm prepared to bring up this case for our weekly agenda

1 meeting where we vote out decisions and orders and  
2 everything, and we will do that this Wednesday and see  
3 where the parties stand. I just think on a timing basis,  
4 we need an idea that if things are not -- you all can't  
5 come to a meeting of the minds on the information, then we  
6 need to be aware of that so then the Commissioners can  
7 make a decision on how to move forward.

8 MR. ALLEN: What time is your meeting, just as a  
9 matter of curiosity?

10 CHAIRMAN CLAYTON: Well, thankfully, another  
11 case settled, so we'll be at 9:30 on Wednesday as opposed  
12 to noon.

13 MS. BRUEGGEMANN: One quick note, then, on the  
14 status reports. There's a bunch of status reports that  
15 are outstanding, Judge Stearley, and it's for the  
16 Commission's benefit. So can we merge this status report  
17 into the other status reports so that we don't have --

18 JUDGE STEARLEY: Which ones do I have pending at  
19 this point?

20 MS. BRUEGGEMANN: Well, there's a biweekly one  
21 that's due --

22 MS. OTT: This Thursday.

23 MS. BRUEGGEMANN: There's one due. So maybe we  
24 can merge those two together?

25 JUDGE STEARLEY: Sure. That's right, because we

1 did bi-weeklies on the discovery issues. Certainly.

2 MS. BRUEGGEMANN: Okay. Thank you.

3 JUDGE STEARLEY: I have just a couple other  
4 quick housekeeping things to take up. I did want to  
5 direct Staff to the annual reports filed by the company.

6 MS. BRUEGGEMANN: This year's, your Honor? This  
7 year's?

8 JUDGE STEARLEY: All of them.

9 MS. BRUEGGEMANN: Oh, okay.

10 JUDGE STEARLEY: It was brought up during the  
11 evidentiary hearing that basically availability fees were  
12 no longer listed in the annual report starting year 1999.  
13 And I had back-tracked and checked and found that they  
14 are, in fact, listed for prior years.

15 And I'm going to direct Staff to pull the prior  
16 annual reports and file for the Commission a list of  
17 availability fees that have been collected for each year.  
18 The annual reports were in a little bit different format  
19 at that time, and I have a couple of them with me if you  
20 want to look at these afterwards.

21 But the form on that report was called an F-42  
22 where they would be listed. The Commission would like to  
23 see a composite total of what is known out there to have  
24 been collected. Since those informations are within the  
25 control of the Commission, it should not be an onerous

1 task to go back.

2           The database reflects they've been filed every  
3 year since -- you know, going forward from '73. Also, on  
4 the annual reports from 2005 forward, there is a section  
5 in those reports under the caption Payment for Services  
6 Rendered by Other Than Employees. It occurs at  
7 approximately page 8 of your reports.

8           Under each of those reports, there is a listing  
9 for Lake Utility Availability Management. And separate  
10 expense to items are listed for water and sewer. And not  
11 being an accountant, I would -- and the Commission would  
12 appreciate a filing from Staff explaining to us what that  
13 is since it relates to Lake Utility Availability.

14           Is there -- is everyone clear at least on the  
15 procedure we're going to follow hereafter? Okay. All  
16 right.

17           COMMISSIONER KENNEY: Judge, let me make one  
18 more point. And this is not to belabor the issue or tell  
19 anybody how to litigate their case. My experience is that  
20 an affidavit is helpful in narrowing the issue, but it's  
21 not always an adequate substitute for a deposition.

22           The cold piece of paper doesn't allow you to  
23 assess the credibility of the person that you're  
24 questioning. Additional matters may occur during the  
25 course of the deposition that lead to additional

1 questions. So I don't -- I don't want anybody to be left  
2 with the idea that a affidavit is all we're looking for.

3 MR. ALLEN: I have no delusions, Judge.

4 COMMISSIONER KENNEY: All right. Go forward  
5 with grace and use that.

6 MR. ALLEN: Thank you.

7 JUDGE STEARLEY: Is there anything else we need  
8 to take up at this time?

9 MR. ALLEN: Did you want that? The original  
10 affidavit. That's the original affidavit

11 JUDGE STEARLEY: Oh, yes.

12 MR. ALLEN: I thought you might prefer to have  
13 that in your file.

14 JUDGE STEARLEY: Why don't we go ahead and mark  
15 that, as you suggested, for Exhibit 1 of the Motion  
16 Hearing?

17 MR. ALLEN: I did attach to my motion Exhibits 1  
18 and 2. You might do that as 3. The Exhibit 1 was the  
19 April 14th letter. And 2 was the subpoena. And this  
20 would be 3. And I'd ask that they all be admitted.

21 JUDGE STEARLEY: All right. We will mark them  
22 accordingly.

23 MR. ALLEN: Do you need a copy? Jaime, have you  
24 got one?

25 MS. OTT: No. I've got that.

1 JUDGE STEARLEY: Are there any objections to  
2 offering Exhibits 1, 2 and 3 for this motion? Hearing  
3 none, they shall be received.

4 (Exhibit Nos. 1, 2 and 3 were offered and  
5 admitted into evidence.)

6 MR. ALLEN: I brought a couple extra copies if  
7 you need them for any reason.

8 JUDGE STEARLEY: I'll -- I'll take a copy,  
9 Mr. Allen.

10 MR. ALLEN: Okay.

11 MR. COMLEY: Your Honor, with respect to Ms.  
12 Ott's remarks about having a two-step deposition, that is  
13 prologged for the remainder of the depositions. Lake  
14 Region would oppose the idea of having two depositions for  
15 each witness if the Commission is going to consider that.  
16 This can all be done in one deposition if the depositions  
17 are going to be considered necessary.

18 JUDGE STEARLEY: I think Ms. Ott was referring  
19 to this specifically with Mr. Brown.

20 MS. OTT: That is correct.

21 JUDGE STEARLEY: So --

22 MR. COMLEY: So what I'm gathering is that the  
23 other depositions, you're -- you're contemplating would be  
24 one setting?

25 MS. OTT: Yes.



1 JUDGE STEARLEY: Yes.

2 MR. COMLEY: The other thing that the Commission  
3 may already know, on April 30th, Lake Region went ahead  
4 and filed a scenario with the Commission that reflects  
5 what was requested of the Staff.

6 It's based upon the estimates the Staff supplied  
7 during the course of their rebuttal and surrebuttal case  
8 as well as their true-up. It's, again, based upon their  
9 estimates. But it does provide the Commissioners with a  
10 scenario of how availability fees and rate base would  
11 coalesce.

12 The -- the other thing I'll bring up is that if  
13 this is the means by which the Commission is considering  
14 resolving the revenue requirement in this case, if that is  
15 the direction the Commission is going, there may be a way  
16 of finding the actual numbers that the Commission is -- is  
17 asking for in connection with the questions in the April  
18 8th order. There may be a way to get those voluntarily.  
19 So I'll leave that with you today.

20 COMMISSIONER KENNEY: That's intriguing. What  
21 is -- you sound like you might have something in mind.

22 MR. COMLEY: If there's a way of shortening this  
23 up, I think all of us are interested in -- I'm very  
24 sensitive in rate case expense. I think everybody should  
25 be. That was the point about having two depositions for

1 each witness.

2 I think Lake Region is in a position where it  
3 would prefer to dispense with the remainder of the  
4 discovery that's going on. It's -- it's -- again, I think  
5 we're seeing something far too extensive for what the  
6 purposes might be behind it.

7 Again, if -- if Commissioners have come to a  
8 point where the scenario that's described in the April 8th  
9 order is the direction where this case is going to go with  
10 respect to calculating the revenue requirement, there may  
11 be a way of coming to terms and settling with respect to  
12 what the actual data would be to fit into that scenario.

13 MS. OTT: Judge, if I can respond to that, while  
14 Staff is very interested in what Mr. Comley is saying and  
15 what information he could potentially have, at this point,  
16 Staff is not sure if it would support the revenue  
17 requirement in this scenario requested by the Commission.

18 Staff is in the process of investigating all the  
19 prior cases with Ozark Shores and it believes that it  
20 could be inaccurately reflected throughout this hearing on  
21 what was -- how availability fees were treated against  
22 rate base in that manner.

23 So Staff is investigating that right now. But  
24 at this point, we're not sure if we would -- would support  
25 that type of revenue requirement. But we are very

1 interested in hearing what Mr. Comley has to offer.

2 JUDGE STEARLEY: And I would -- I would say I'm  
3 glad you did bring that up, Mr. Comley, because,  
4 essentially, Staff, you have a settlement offer before  
5 you. And perhaps this will open the door to further  
6 discussions between the parties, and they may be able to  
7 reach an amicable -- amicable settlement, which could  
8 avoid some additional costs and inefficiencies with this  
9 litigation. So --

10 MR. ALLEN: Well, if they're going to get all  
11 that information, what are we talking about? I mean, we  
12 need to know, given these Commissioners and the Chairman's  
13 comments about their agenda meeting on Wednesday morning  
14 at 9:30, you know, what do we need to know about in  
15 advance of that?

16 JUDGE STEARLEY: In terms -- right. In terms of  
17 that, Mr. Allen, I believe you've got your marching  
18 orders.

19 MR. ALLEN: I've got my marching orders.

20 JUDGE STEARLEY: It's for the parties to  
21 continue on with these discussions. I can't predict any  
22 time line or what information may be forthcoming from Lake  
23 Region or any other party, for that matter, or where  
24 Staff's position would be on that. So until such time as  
25 we get further statements from the parties, we're going to

1 keep marching along here.

2 MR. ALLEN: Thank you, sir. I intend to. I  
3 just wanted to give the opportunity to everybody to also  
4 get together besides us.

5 JUDGE STEARLEY: And I'd be happy to arrange  
6 a --

7 COMMISSIONER KENNEY: You should avail  
8 yourselves of that opportunity.

9 JUDGE STEARLEY: -- either additional prehearing  
10 time or remind the parties that mediation is available to  
11 the parties through the Commission if there is a point  
12 that the parties are getting closer to an agreement.  
13 So --

14 CHAIRMAN CLAYTON: It comes back to my original  
15 point. I think as efficiently as we can progress in this  
16 case mindful of the size of the utility and the numbers  
17 that are at stake, I just think we all need to act  
18 efficiently.

19 So on Wednesday, you can listen on the web cast.  
20 You don't even have to come over here.

21 MR. ALLEN: I probably won't listen, but I  
22 probably won't come over either.

23 CHAIRMAN CLAYTON: I'm a little sensitive to  
24 that.

25 MR. ALLEN: It's just I have some other

1 obligations.

2 CHAIRMAN CLAYTON: I understand. Well, you can  
3 watch it after the fact, sir. You may record. You --

4 MR. ALLEN: I'll do that, sir.

5 CHAIRMAN CLAYTON: Maybe the thing didn't work  
6 today, but it usually works pretty well and you can  
7 actually see what the Commissioners say.

8 MR. ALLEN: Okay. I heard it's a very good  
9 device, very well-received.

10 JUDGE STEARLEY: And, Staff, are you clear on  
11 the instructions regarding the annual reports?

12 MS. OTT: Yes.

13 JUDGE STEARLEY: Okay. Very good. Is there  
14 anything else we need to take up?

15 MR. ALLEN: No, your Honor.

16 JUDGE STEARLEY: All right. Well, hearing none,  
17 the motion hearing in SR-2010-0110 and WR-2010-0111 is  
18 hereby adjourned. Thank you all very much.

19 MR. ALLEN: Thank you.

20 (The proceedings were concluded at 2:00 p.m. on  
21 May 3, 2010.)

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## 1 REPORTER'S CERTIFICATE

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3 STATE OF MISSOURI )  
 )ss.  
4 COUNTY OF OSAGE )

5

6 I, Monnie S. Mealy, Certified Shorthand Reporter,  
7 Certified Court Reporter #0538, and Registered  
8 Professional Reporter, and Notary Public, within and for  
9 the State of Missouri, do hereby certify that I was  
10 personally present at the proceedings as set forth in the  
11 caption sheet hereof; that I then and there took down in  
12 stenotype the proceedings had at said time and was  
13 thereafter transcribed by me, and is fully and accurately  
14 set forth in the preceding pages.

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21 \_\_\_\_\_  
Monnie S. Mealy, CSR, CCR #0539  
22 Registered Professional Reporter

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## E X H I B I T S

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EXHIBIT

DESCRIPTION

OFFERED

ADMITTED

3

1

April 14, 2010 Letter

700

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Subpoena

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Original Affidavit

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(Original exhibits were retained by Public Service

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Commission.)

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