

Exhibit No.:	_____
Issue:	Availability Fees, Capital Structure, Labor Costs, Executive Management Costs, Revenue Requirements
Witness:	John R. Summers
Sponsoring Party:	Lake Region Water & Sewer Company
Case Nos.:	SR-2010-0110 and WR-2010-0111

## LAKE REGION WATER & SEWER COMPANY

Case Nos. SR-2010-0110 and WR-2010-0111

### REBUTTAL TESTIMONY

OF

JOHN R. SUMMERS

Four Seasons, Missouri  
February, 2010

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of Lake Region Water )  
& Sewer Company for Authority )  
to File Tariffs Increasing Rates for )  
Water and Sewer Provided to )  
Customers in the Company's )  
Missouri Service Area )

Case No. WR-2010-  
Case No. SR-2010-

**AFFADAVIT OF JOHN R. SUMMERS**

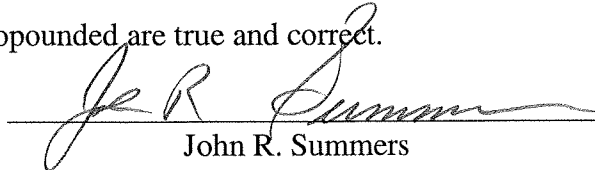
**STATE OF MISSOURI** )  
 ) ss  
**VILLAGE OF FOUR SEASONS** )

John R. Summers, being first sworn on his oath, states:

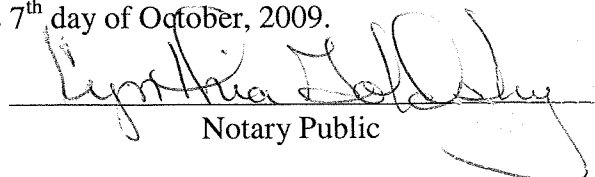
1. My name is John R. Summers. I work in The Village of Four Seasons, Missouri, and I am employed by Public Water Supply District Number Four of Camden County as General Manager.

2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony on behalf of Lake Region Water & Sewer Company consisting of 14 pages, Exhibit 1 and Schedules 1, 2, 2.1 and 3, all of which have been prepared in written form for introduction into evidence in the above referenced dockets.

3. I here by swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct.

  
John R. Summers

Subscribed and sworn before me this 7<sup>th</sup> day of October, 2009.

  
Notary Public

My commission expires:

10/31/11

1 REBUTTAL TESTIMONY

2 OF

3 JOHN R. SUMMERS

4 CASE NOS. SR-2010-0110 AND WR-2010-0111

5 **Q. Please state your full name and business address.**

6 A. My name is John R. Summers. My business address is 62 Bittersweet Road, Four  
7 Seasons, MO 65049.

8 **Q. Are you the same John R. Summers who filed direct testimony in the two**  
9 **cases referenced above?**

10 A. Yes.

11 **Q. What is the purpose of your rebuttal testimony?**

12 A. In general, I will be responding to portions of the direct testimony submitted by  
13 the Staff and the Office of Public Counsel regarding availability fees,  
14 management fees and labor costs. I also will address comments made by certain  
15 customers during the local public hearing.

16 **AVAILABILITY FEES**

17 **Q. Has the Company included the availability fees in its filing?**

18 A. No, the availability fees are not included in the Company's filing because they are  
19 not income or revenue for the Company. I must emphasize that the Company has  
20 no rights to the availability fees. Additionally, it has been my experience and  
21 understanding based on previous Missouri Public Service Commission  
22 (Commission) cases that the Commission does not regulate availability fees.

1       **Q.     On page 3 of his direct testimony, Mr. Robertson claims that the issue**  
2               **concerns the collection of availability fees from regulated ratepayers. Does**  
3               **LRWS charge its ratepayers availability fees?**

4       A.     No. Regulated ratepayers do not pay availability fees. They pay only the rates and  
5               charges in the Company's tariffs as approved by the Commission. The availability  
6               fees to which he refers are paid to persons who are entitled to those fees pursuant  
7               to a contract between the property owner and the developer. This contractual  
8               obligation is also memorialized in a document titled Amendment to the Third  
9               Amended and Restated Declaration of Restrictive Covenants Relating to Water  
10              and Sewer Systems ("Amendment"). This document is recorded with the Camden  
11              County Recorder of Deeds in Book 681 at Page 760 and a copy is attached hereto  
12              as Exhibit 1. The fees referenced by Mr. Robertson are set forth in Paragraphs 3.1  
13              and 4.1 on pages 5 and 6, respectively of the Amendment.

14       **Q.     Mr. Robertson refers to testimony of Four Seasons Lakesites Water & Sewer**  
15               **Company ("FSLWS") in Case No. WA-95-164 on page 5 of his testimony.**  
16               **Are the availability fees referred to in Case No. WA-95-164, still in force**  
17               **today?**

18       A.     Yes. The legal rights to these fees are currently assigned to RPS Properties, LP  
19               and Sally Stump. The Company has no legal claim to these fees and I am  
20               unaware of any authority for the Commission to consider the value of assets not  
21               owned by the Company in the ratemaking process.

1       **Q.     Have you reviewed pages 6 through 9 of Mr. Robertson’s testimony in which**  
2               **he refers to testimony of MPSC Staff Witness, Mr. Gregory R. Meyer in Case**  
3               **No. WA-95-164?**

4       A.     Yes, I have.

5       **Q.     Is there any piece of Mr. Meyer’s testimony, as quoted by Mr. Robertson,**  
6               **which has any significance in these cases?**

7       A.     I agree with Mr. Meyer’s recommendation that availability fees not become part  
8               of the Company’s tariffs and that he noted that a potential water/sewer customer  
9               should not be denied a request for service from the Company due to unpaid  
10              availability fees. He stated that “This position is consistent with 4 CSR 240-  
11              13.050 Discontinuance of Service, and with the practice of other utilities in the  
12              state that bill unregulated charges for affiliates.” It is clear that Mr. Meyer  
13              believed that the fees are unregulated.

14       **Q.     Did FSLWS agree with Staff’s position regarding availability fees in Case**  
15               **No. WA-95-164?**

16       A.     No. FSLWS opposed Staff’s proposed treatment of the fees. Its position on the  
17               issue is referenced on page 12 of Mr. Robertson’s Direct Testimony.

18       **Q.     Did the Commission rule on the treatment of availability fees in Case No.**  
19               **WA-95-164?**

20       A.     No. The case was settled through stipulation which did not address availability  
21               fees. Therefore, there was no decision or agreement on either the purpose or  
22               future use of availability fees.

1       **Q.     Why, in general, would a developer impose availability fees on undeveloped**  
2       **lots?**

3       A.     There are several likely reasons a developer would impose such a fee. The most  
4       logical reason for the fee would be to recoup a portion, if not all, of the cost of the  
5       infrastructure the developer contributed to the utility. With respect to LRWS, by  
6       the end of 2002 the Company had recorded approximately \$5,300,000 in water  
7       and sewer plant contributed by Four Seasons Lakesites. If the Commission were  
8       to adopt Mr. Robertson's and Mr. Meyer's position, utility customers would  
9       derive not only the benefit of having the water and sewer infrastructure  
10      contributed but would also get free operation and maintenance paid for by the  
11      owners of undeveloped lots who are not yet receiving utility service. This is  
12      unreasonable. Mr. Robertson's position, as stated on pages 13 and 14 of his  
13      Direct Testimony, seems to advocate reducing the rates charged to customers to  
14      zero and then lowering the rate base again by any amounts not necessary to  
15      reduce rates. In essence, he is advocating that after eleven years of operation, the  
16      Commission restructure the terms and rate structure authorized by the  
17      Commission in Case No. WA-95-164. If the availability fees are to be included in  
18      the utility's rate structure in any manner, the plant costs associated with those fees  
19      should not be classified as contributions but rather as rate base upon which the  
20      utility may earn a return.

21      **Q.     In Case WA-95-164, if Staff had recommended a rate structure as proposed**  
22      **by Mr. Robertson what would have been the result?**

1       A.     Mr. Robertson's approach appears to advocate using the availability fees to  
2             reduce operating and maintenance expense and then use the excess to reduce rate  
3             base. Mr. Meyer stated in his testimony in Case WA-95-164 that the availability  
4             fees represented annual income of approximately \$49,000. In that same case Staff  
5             Witness Hummel filed Schedules 1 and 2 estimating annual expenses of \$45,031.  
6             According to Mr. Robertson's recommendation the rates set for Shawnee Bend  
7             customers should have been zero with the excess reducing rate base. The fact that  
8             the Staff actually proposed, and the Commission approved, rates to fund the  
9             \$45,031 which are currently in effect supports the Company's position that these  
10            fees are unregulated and not to be used in the ratemaking process.

11       **Q.     On page 13, line 9 of his direct testimony, Mr. Robertson lists as a primary**  
12             **concern whether the assessment and collection of the availability fees are**  
13             **within the regulatory responsibility of the Commission. In your experience,**  
14             **has the Commission asserted jurisdiction over availability fees?**

15       A.     No, it has not. On the occasions I know of when this matter has been considered  
16             by the Commission, it has declined to include availability fees within its  
17             regulatory responsibility or jurisdiction. I know our counsel will have some  
18             treatment of this matter at some point, but I am aware of the Commission's  
19             analysis and disposition of this issue in Case Nos. WC-2006-0082 and WO-2007-  
20             0277.<sup>1</sup> In the Report and Order dated June 14, 2007 and effective June 24, 2007  
21             the Commission states, in part:

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<sup>1</sup> *Cathy Orler et al. v. Folsom Ridge LLC consolidated with In the matter of the Application of Folsom Ridge LLC and Big Island Water and Sewer Association, Inc. for an Order Authorizing the Transfer of Certain Water*

1                   As defined in Section 386.020(47): “Service includes not only  
2                   the use and accommodations afforded consumers or patrons, but also  
3                   any product or commodity furnished by any corporation, person or  
4                   public utility and plant, equipment, apparatus, appliances, property and  
5                   facilities employed by any corporation, person or public utility in  
6                   performing any service or in furnishing any product or commodity and  
7                   devoted to the public purposes of such corporation, person or public  
8                   utility, and to the use and accommodation of consumers or patrons.’  
9                   The reservation of a tap-on is not the provision of water or sewer  
10                  service and does not involve a use, accommodation, product or  
11                  commodity. Indeed, Mr. Merciel, from the Commission’s Staff,  
12                  testified at hearing that other Commission regulated companies charge  
13                  similar reservation/maintenance fees, that these are untariffed charges  
14                  and that these fees do not constitute a charge for utility service.  
15

16               **Q.     Do Mr. Merciel and Mr. Meyer disagree about availability fees?**

17               A.     No, I do not believe they disagree completely. There are two items in Mr.  
18                   Meyer’s testimony in Case No. WA-95-164 that give support to Mr. Merciel’s  
19                   position above and the Company’s position in both Case WA-95-164 and these  
20                   cases: 1) On page 8 of Mr. Meyer’s testimony (see Mr. Robertson’s Direct  
21                   Testimony, page 9, lines 27-32) he testifies that service cannot be denied to a lot  
22                   owner for non-payment of the availability fees. If this were a tariffed utility  
23                   service under the Commission’s jurisdiction the Company would be able to deny  
24                   service under 4 CSR 240-13.035 Denial of Service, and 2) also on page 8 of Mr.  
25                   Meyer’s testimony he states Staff would perform an annual review of the  
26                   availability fee revenue. Staff did not include the fees in their proposed rate  
27                   structure and has never performed such a review which suggests that Mr.  
28                   Merciel’s position ---that these fees do not constitute a charge for utility service---  
29                   is being followed.



1       **Q.     Also on page 13, at line 10 of his direct testimony, Mr. Robertson lists as a**  
2               **second primary concern whether a non-regulated entity should be allowed to**  
3               **charge regulated ratepayers fees for access to a regulated water or sewer**  
4               **system. Are availability fees being charged to the Company's ratepayers?**

5       A.     As stated earlier in my testimony, availability fees are not being charged to  
6               regulated ratepayers. Regulated ratepayers are those customers who have taken  
7               water and/or sewer service at their property and they are being charged only the  
8               amounts allowed by tariff at their property. These ratepayers may pay an  
9               availability fee for an undeveloped lot where they do not take water and/or sewer  
10              service. Stated another way, if any Company ratepayer happens to be paying an  
11              availability fee it is entirely because the ratepayer made an independent decision  
12              to purchase an undeveloped lot subject to the deed restrictions assessing the fee.  
13              The Company has no power to enforce the payment of the availability fee against  
14              the lot owner even if the lot owner is a Company ratepayer. The owner of the  
15              undeveloped lot is the sole decision maker of whether to take regulated water  
16              and/or sewer service at the property or to continue to pay the availability fee  
17              agreed to in the real estate contract and memorialized in the Amendment  
18              referenced on page 2, line 9, earlier in my testimony.

19       **Q.     Please address Mr. Robertson's third primary concern set forth on page 13,**  
20               **line 14 of his Direct Testimony.**

21       A.     Availability fees should not be used to reduce the operation, maintenance or  
22               investment costs of the regulated utility. The fees cannot be classified as an asset  
23               of LRWS. LRWS has no legal claim to the fees. I am unaware of any authority

1 granted to the Commission to classify or treat income from unregulated activities  
2 that is received by a shareholder as income of the utility. The Commission itself  
3 has concluded, in Case Nos. WC-2006-0082 and WO-2007-0277, that these fees  
4 are not for the provision of utility service and, thus, not within the Commission's  
5 jurisdiction.

6 **Q. Do you agree with Public Counsel's position on this issue?**

7 A. No. For the reasons I have set forth in my rebuttal testimony I do not think Public  
8 Counsel's position on this issue is in accordance with the rules or authority of the  
9 Commission.

10 **CAPITAL STRUCTURE**

11 **Q. Have you reviewed the capital structure proposals from both Staff and**  
12 **Public Counsel?**

13 A. Yes. Staff has recommended a capital structure consisting of 16.36% Common  
14 Stock and 83.64% Debt applied to the computed rate base of the Company. Public  
15 Counsel has recommended using the Company's actual capital structure and to  
16 disallow any acquisition premium or related debt service costs.

17 **Q. Did the Company record any acquisition premium at the time the current**  
18 **shareholders purchased the stock of Lake Region?**

19 A. No. There is no acquisition premium recorded on the Company's books.

20 **Q. Does the Company have an opinion on which approach the Commission**  
21 **should adopt in this case?**

22 A. I believe the approach proposed by Staff most accurately reflects the costs of the  
23 capital employed in Company's operation. However, I am authorized to state that

1 the Company has no objection to Public Counsel's recommendation of using the  
2 actual capital structure recorded on Company's books.

3 **EXECUTIVE MANAGEMENT COSTS**

4 **Q. Do you agree with Public Counsel's position regarding the executive**  
5 **management group?**

6 A. No I do not. Because Mr. Vernon Stump addresses this issue more specifically in  
7 his separate rebuttal testimony I will simply say that the amounts recorded by the  
8 Company for management costs are reasonable and the duties performed by the  
9 team are representative of duties performed by top executives in other like  
10 companies.

11 **LABOR COSTS**

12 **Q. In his Direct Testimony, Mr. Robertson takes issue with the allocation and**  
13 **amount of the Company's labor costs. Please address the amounts referred**  
14 **to in Mr. Robertson's Direct Testimony as allocated labor costs?**

15 A. The personnel who handle the daily administrative functions and field operations  
16 are actually employees of Public Water Supply District Number Four of Camden  
17 County (the "District").

18 **Q. Explain why the Company uses District employees to handle these functions.**

19 A. There are actually three distinct legal entities which operate in the areas generally  
20 known as Horseshoe Bend and Shawnee Bend at the Lake of the Ozarks. The  
21 third entity is Ozark Shores Water Company ("Ozark Shores"). In 2003 I made a  
22 proposal to combine the staffs of Ozark Shores and the District as District  
23 employees in order to take advantage of having a larger group to cover workload

1 as needed and to possibly gain better benefits at a lower cost for the employees.  
2 This was before the current Lake Region shareholders purchased the stock of  
3 Lake Region in late 2004. I have been involved in many different businesses both  
4 large and small since 1978. In every company with which I have been associated  
5 there have always been periods in which the workload fluctuated. There are three  
6 general approaches to managing this fluctuation: 1) hire additional personnel and  
7 then go through the lay off process when the workload subsides; 2) pay overtime  
8 to existing personnel to cover the heavy workload; or 3) hire contractors to  
9 perform the work. I believe approaches 1 and 2 take a human toll on the  
10 employees and hiring contractors presents its own unique challenges. By  
11 combining the staff under one entity we are able to assign personnel to handle the  
12 workload fluctuations as needed and provide benefits at a reasonable cost.

13 **Q. Explain how the District allocates the labor costs.**

14 A. The District develops its budget based on historical time studies based on the bi-  
15 weekly time sheets of the employees except for me. I perform essentially the same  
16 function for each entity and charge one third of my time to each entity. While I  
17 obviously am spending more time on Lake Region business during this process  
18 the time spent on each entity evens out over the long run. The labor contracts with  
19 Lake Region and Ozark Shores are based on historical results including the cost  
20 of payroll taxes, health insurance and pension. Each contract includes a provision  
21 allowing either party to the contract to request reimbursement if the contract  
22 amount varies from actual charges by more than five percent.

23 **Q. Are the Company's labor costs excessive for a company this size?**

1       A.     Absolutely not. When I first became involved with the District and Ozark Shores  
2             in 2002, Ozark Shores had eight (8) employees including me. When the  
3             shareholders purchased the stock of Lake Region there were six (6) employees on  
4             the payroll of Lake Region. All three entities have enjoyed significant growth  
5             over the years while, at the same time, we have reduced the total number of  
6             employees from 14 to 10.

7       **Q.     Has your approach to combining staff worked well?**

8       A.     Yes. The attached Schedule 1 prepared from the Annual Reports of Ozark Shores  
9             and Lake Region for the last full year prior to moving their staff to the District  
10            reflects the total payroll and benefits costs incurred by each for 2002 and 2003,  
11            respectively. The \$203,557 reflected in Staff's filing based on the work done by  
12            Mr. Prenger is more than 14% less than the \$237,816 booked by the Company in  
13            2003. Staff did not develop a number for Ozark Shores since it is not a party to  
14            this case but the \$201,600 booked by Ozark Shores in 2009 is more than 22% less  
15            than the \$259,450 booked in 2002.

16      **Q.     Is Public Counsel's analysis of customer counts correct?**

17      A.     The count is accurate but the analysis is flawed in that it assumes a sewer  
18             customer that is also a water customer should only count as one customer.

19      **Q.     Is this an appropriate way to count customers?**

20      A.     No, it is not. Even though the customer may receive water and sewer at the same  
21             location and receive a combined bill it is not appropriate to consider them as one  
22             customer for purposes of staffing. The services are provided under separate tariffs  
23             and Company obviously serves water and sewer out of separate infrastructure



1       A.     Company did have an issue with the revenue number in the Staff's case as filed  
2             January 14, 2010 but believes this issue has been resolved with Staff.

3       **Q.     Please explain the issue.**

4       A.     Based on input from Staff and the Missouri Department of Natural Resources in  
5             2008 Company changed the billing measurement for Four Seasons Racquet Club  
6             POA, an intervener in this case, from water usage to sewer usage as allowed in  
7             the tariff. Although Company used the local manufacturer's representative to  
8             calibrate the sewage flow meter prior to using it for billing subsequent events  
9             have led Company, the customer and Staff to believe the usage recorded during  
10            the time the meter was used for billing is incorrect. Staff initially used the revenue  
11            number based on this incorrect usage figure in computing the revenue  
12            requirement for the Horseshoe Bend sewer system.

13      **Q.     How was the issue resolved?**

14      A.     Company, Staff and the customer have agreed to a stipulation to be filed with the  
15             Commission which would adjust the billing rendered to the customer back to the  
16             water usage method from January, 2009 until the sooner of the installation and  
17             proper calibration of additional sewer flow meters as well as re-calibrating (and  
18             possibly relocating) the existing sewer flow meter or May 31, 2010. The May 31,  
19             2010 date may be adjusted if cause is shown.

20      **Q.     Has Staff revised the revenue number to be included in this case for the**  
21             **customer?**

22      A.     Yes. Staff has revised the revenue number for this customer to be included and  
23             Company has agreed to the number.

- 1        **Q.     Does this conclude your Rebuttal Testimony?**
- 2        A.     Yes, it does.