

Exhibit No.:	_____
Issue:	Availability Fees, Capital Structure, Legal Fees, Miscellaneous Expenses
Witness:	John R. Summers
Sponsoring Party:	Lake Region Water & Sewer Company
Case Nos.:	SR-2013-0459 and WR-2013-0461

## LAKE REGION WATER & SEWER COMPANY

Case Nos. SR-2013-0459 and WR-2013-0461

### REBUTTAL TESTIMONY

OF

JOHN R. SUMMERS

Four Seasons, Missouri  
January, 2014

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of Lake Region Water & Sewer Company     )  
Application to Implement a General Rate Increase     ) Case Nos. WR-2013-0461 and  
in Water and Sewer Service.     ) SR-2013-0459

**AFFIDAVIT OF JOHN R. SUMMERS**

STATE OF MISSOURI     )  
  ) ss.  
COUNTY OF CAMDEN     )

I, John R. Summers, of lawful age, and being duly sworn, do hereby depose and state:

1. My name is John R. Summers. I am presently General Manager for Lake Region Water & Sewer Company, Applicant in the referenced matter.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my personal knowledge, information and belief.

  
John R. Summers

Subscribed and sworn to before me, a Notary Public, this 10th day of January, 2014.

My Commission expires:

10/31/15

  
Notary Public



1 REBUTTAL TESTIMONY

2 OF

3 JOHN R. SUMMERS

4 CASE NO. WR-2013-0461 AND CASE NO. SR-2013-0459

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 on behalf of**  
9 **Lake Region Water and Sewer Company (Company) in the case referenced**  
10 **above?**

11 A. Yes.

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

13 A. In general, I will be responding to portions of the direct testimony submitted by  
14 the Staff and the Office of Public Counsel regarding availability fees, cost of  
15 capital/rate of return and various expense items.

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.     Has the Commission considered this issue in past cases in which the**  
2               **Company has been involved?**

3       A.     Yes, most recently in Case No. SR 2010-0110 and Case No. WR-2010-0111 (the  
4               “2010 Rate Case”).

5       **Q.     Did the Commission include the availability fees in those cases?**

6       A.     No. On Page 105-106 of the order in the 2010 Rate Case the Commission ruled  
7               that “the Commission has not found an example of when it has ever completely  
8               reclassified revenue and imputed that revenue to the company for ratemaking  
9               purposes, and to do so now after Lake Region has legitimately relied on the  
10              Commission’s past treatment of this revenue would be the very definition of an  
11              arbitrary and capricious ruling.”

12      **Q.     Did the Commission develop a lengthy record regarding the issue in these**  
13              **cases?**

14      A.     Yes, the Commission dedicated 92 paragraphs and over 23 pages in its Report and  
15              Order simply to set forth the Findings of Fact regarding availability fees. The  
16              Commission took an additional 16 pages to set forth its decision regarding the  
17              disposition of the issue. I understand that a stipulation of facts regarding this  
18              issue, which is soon to be jointly filed, or filed at the time my rebuttal testimony is  
19              submitted, by the parties in this case addresses the issue in greater detail.

20      **Q.     Have there been any significant changes in the facts regarding availability**  
21              **fees changed since the last cases?**

22      A.     No.

1       **Q.     Did the Commission advise the Company and the other parties to the 2010**  
2       **Rate Case on how availability fees would be treated in future cases?**

3       A.     No. The Commission decided to open a workshop docket to lead to a rulemaking  
4       to “delineate the definitive policy for the prospective treatment of availability  
5       fees, reservation fees, standby fees, connection fees or any other similar fees, their  
6       proper use as mechanisms of capital recovery and their proper ratemaking  
7       treatment.” The dockets created were SW-2011-0042 and WW-2011-0043.

8       **Q.     Did the Commission indicate why it believed a rulemaking docket was**  
9       **necessary?**

10      A.     On Page 104 of the order in the 2010 Rate Case the Commission stated  
11      “[a]gencies cannot engage in this type of rulemaking by an adjudicated order.  
12      Pursuing a major change in the Commission’s interpretation, implementation and  
13      prescription of its definitional statutes and long-standing policy regarding  
14      ratemaking treatment of availability fees, requires compliance with the more  
15      stringent and lengthy process as required under section 536.021.”

16      **Q.     Did a proposed rule result from the dockets mentioned above?**

17      A.     No, to the best of Company’s knowledge no meetings or discussions were ever  
18      held in connection with these dockets.

19      **Q.     What was the outcome of these dockets created to develop the rulemaking?**

20      A.     At Staff’s request, on June 16, 2011 the dockets were closed and the availability  
21      rulemaking was consolidated into the small utility workshop docket WW-2009-  
22      0386.

23      **Q.     What rule was proposed during the small utility workshop docket?**

1       A.     None. On November 1, 2012, the Staff moved to close the small utility workshop  
2             docket.

3       **Q.     Did Staff investigate the availability fee issue during the small utility**  
4             **workshop?**

5       A.     Not to my knowledge. The Company participated in the docket and based upon  
6             my monitoring of the progress of the case and its various filings, I do not recall  
7             that the issue was ever brought up for discussion. Filings subsequent to Staff's  
8             motion to close the docket confirms this. Upon receipt of Staff's motion to close  
9             the docket the Commission directed the Staff to file a comprehensive report  
10            identifying the issues discussed at the workshop, the solutions and the entities  
11            participating in the discussions. Staff's report on the docket identified only four  
12            issues:

- 13                       1. Surcharges  
14                       2. PSC Assessment  
15                       3. Contingency/Emergency Funds  
16                       4. Rate Cases

17       **Q.     Has a rule on treatment of availability fees been adopted as directed by the**  
18             **Commission the 2010 Rate Case?**

19       A.     No. There has been no rulemaking procedure regarding prospective treatment of  
20             availability fees.

21       **Q.     Have you reviewed the current positions of both Staff and Office of Public**  
22             **Counsel ("OPC") regarding treatment of availability fees in this case?**

1       A.     Yes. Staff has proposed including the availability fee revenue to reduce the  
2             revenue requirement and OPC has proposed treating the availability fees, “current  
3             and past,” as additional Contribution in Aid of Construction (“CIAC”) to reduce  
4             rate base.

5       **Q.     Do you agree with either approach?**

6       A.     No. The Commission made the correct decision nearly 20 years ago to record the  
7             plant investment in the area for which availability fees exist as CIAC and not to  
8             include the availability fees in the ratemaking process.

9       **Q.     Do you know the specific case in which this decision was made?**

10      A.     Yes. Case No. WA-95-164 was the case in which the Certificate of Convenience  
11             and Necessity and associated tariffs for the Shawnee Bend area were approved.

12      **Q.     Do you have other issues with the Staff’s proposed treatment of availability**  
13             **fees?**

14      A.     I found numerous problems with Staff’s filing. For example, Staff filed an  
15             estimated revenue number for availability based upon an estimate the  
16             Commission found to be not credible in the 2010 Rate Case. Staff made no effort  
17             to discover evidence prior to filing their case.

18      **Q.     Staff stated on page 14 of its Revenue Requirement Cost of Service report**  
19             **that availability charges are “required to be paid to the owner of the utility**  
20             **system.” Is this statement correct?**

21      A.     No. Staff has misquoted, or failed to quote the entirety of a section of the  
22             recorded covenants and restriction that applies to portions of the Company service  
23             territory. These covenants and restrictions have not changed since the 2010 Rate

1 Case to the best of my knowledge. As found by the Commission, the language  
2 of the applicable section of the covenants actually contains the additional phrase  
3 “or its assigns or designees” (Page 48, Paragraph 139 a) and d)). In addition, the  
4 Commission noted in the same section that the developer continues to receive a  
5 portion of the fees (Pages 56-57, Paragraph 175).

6 **Q. Is Lake Utility Availability 1 an unregulated affiliate of the Company as**  
7 **claims by Staff in its report?**

8 A. Not at all. Again, this issue was reviewed at length in the last case and the  
9 Commission determined that Lake Utility Availability 1 is a fictitious name  
10 registered with the State of Missouri by the owners of the rights to the availability  
11 for the purpose of collecting said fees (Page 60, Paragraph 190). This is still the  
12 case today.

13 **Q. Do you agree that Staff’s proposed treatment of availability fees is**  
14 **“substantially consistent” with the treatment of such fees in past cases as**  
15 **Staff claims in its report?**

16 A. No. Staff’s proposal is significantly inconsistent with the Commission’s historic  
17 treatment of availability fees. In every case reviewed by the Company in which  
18 availability fees have been considered by the Commission, the Commission either  
19 included both the fees and the associated rate base or excluded the fees and  
20 treated the plant investment as contributed plant. I have updated the exhibit filed  
21 as JRS Schedule 2 which was attached to my True Up Rebuttal Testimony in the  
22 2010 Rate Case and am attaching it hereto as JRS Exhibit 1. The Commission has  
23 been consistent in every case for the Company and its predecessor over the past



1           41 years in using proper ratemaking technique of matching costs and revenues. In  
2           proposing their respective treatments or applications of the availability fees in this  
3           case, Staff and OPC have not only ignored the guidance of and precedent set by  
4           the Commission's decisions over the past 41 years but also the Commission's  
5           specific declaration in its order from the 2010 Rate Case that it could not  
6           implement such a drastic policy change without first going through a formal  
7           rulemaking procedure. Neither Staff nor OPC has offered testimony on any  
8           justification for departing from the Commission's previous rulings, or for their  
9           insistence that the Commission act without a proper rule in place.

10       **Q. Did the Commission consider including the availability fees as revenue of the**  
11       **Company and treating the plant investment as rate base in the last case?**

12       A. The Commission ordered the Staff to prepare an exhibit showing this very  
13       scenario in the 2010 Rate Case.

14       **Q. What was the result of that scenario?**

15       A. The rates would have been higher than the rates ultimately ordered by the  
16       Commission had the approach been adopted.

17       **Q. Staff states in its report that Lake Utility Availability 1 does not have a**  
18       **certificate to provide service to the area in which the availability fees are**  
19       **charged. Does Lake Utility Availability 1 provide service?**

20       A. No. Lake Utility Availability 1 provides no utility service, and the Commission  
21       has so found. In the 2010 Rate Case, the Commission concluded that "[t]he  
22       purpose for establishing the availability fees was to recover the developer's

1 investment in the water and sewer system, not to maintain or repair the existing  
2 operations of the systems once they were constructed.”

3 **Q. Mr. Robertson testifies that the Commission determined that it has**  
4 **jurisdiction over availability fees. Has this issue been determined by the**  
5 **Commission?**

6 A. No. The language to which Mr. Robertson refers to in his testimony does exist in  
7 the Report and Order for the 2010 Rate Case. However, Mr. Robertson repeats an  
8 OPC misinterpretation of the Commission’s Report and Order, one which OPC  
9 made when requesting the Commission to disapprove the compliance tariffs Lake  
10 Region filed in the 2010 Rate Case. In the Commission’s “Order Approving  
11 Tariff Filings in Compliance with Commission Order dated August 25, 2010” the  
12 Commission dismissed OPC’s objection to approval of the tariffs with the  
13 following language on Page 2: “The determination that the Commission made  
14 was that it was going to assert jurisdiction over availability fees **in future actions**  
15 **after undertaking a formal rulemaking process (emphasis added).** The  
16 Commission specifically noted that it could not assert jurisdiction based upon the  
17 adjudicatory process in this single action. Public Counsel’s objection is based  
18 upon a misreading of the Commission’s order.” Again, the formal rulemaking  
19 has not commenced and the rule contemplated by the Commission has not been  
20 adopted.

21 **Q. Mr. Robertson testifies that the current owners of the utility “are collecting**  
22 **in rates a return on their purchase of the utilities.” Is this correct?**

1       A.     Absolutely not. The current owners purchased the stock of the company from a  
2             previous shareholder in a market transaction. The Company's tariffs are based  
3             entirely upon the rate base and cost of service approved by the Commission in the  
4             2010 Rate Case. Additionally, the owners of the rights to collect availability fees  
5             are not the same as the owners of the Company's outstanding shares.

6       **Q.     Was the plant investment for the area in which availability fees are charged**  
7             **included in the rate base in the 2010 Rate Case?**

8       A.     No, the plant investment made by the developer has always been treated as CIAC  
9             and subtracted from the rate base upon which the company earns a return for  
10            ratemaking purposes

11      **Q.     Did the Commission investigate the amount of CIAC associated with the**  
12            **availability fees in the 2010 Rate Case?**

13      A.     Yes, in the Staff exhibits I mentioned earlier in my testimony the Staff identified  
14            \$5,300,000 as the CIAC amount associated with the availability fees.

15      **Q.     Do you have an estimate of how long it would take the developer and/or his**  
16            **assigns or designees to recoup this investment through the availability**  
17            **revenue stream?**

18      A.     Yes. Using Staff's estimated revenue number of \$342,090 and an interest rate of  
19            6% it would take more than 45 years to recoup the developer's investment of  
20            \$5,300,000 per the attached schedule identified as JRS Exhibit 2. In actuality, it  
21            would probably take many more years than shown on my schedule as the number  
22            of lots drops over time due to homes being constructed or lots being combined as  
23            allowed by the restrictive covenants.

1       **Q.     Earlier you mentioned that Mr. Robertson is proposing to use the availability**  
2           **fees, both current and past, to reduce rate base. Is there any merit to this**  
3           **approach?**

4       A.     Absolutely none. Mr. Robertson is proposing retroactive ratemaking which the  
5           Commission simply does not allow.

6       **Q.     What would be the effect of implementing Staff's or OPC's position**  
7           **regarding availability fees?**

8       A.     The effect of Staff's approach would be to deny the developer and/or his assigns  
9           or designees the opportunity to recover the original investment while giving the  
10          customers the double benefit of not only having the plant contributed, thereby  
11          reducing rates, but then further reducing the rates through the use of the revenue  
12          stream created by the developer to recoup the amount he was forced by the  
13          Commission to donate to these same customers. OPC's approach would not only  
14          constitute retroactive ratemaking but would also deny the developer and/or his  
15          assigns the opportunity to recover the original investment and again give the  
16          customers the double benefit of reducing rates through the forced contribution of  
17          the plant when rates were originally set and also in the 2010 Rate Case and then  
18          further reducing the remaining rate base through the use of the revenue stream  
19          which was created to recoup the original investment. Either approach would  
20          result in rates which would be neither just nor reasonable and would threaten the  
21          financial viability of the utility.

22

1       **Q.     Why would the financial viability of the Company be threatened if**  
2               **availability fee revenue is imputed.?**

3       A.     Because imputing this revenue is merely a fictitious entry made only on the  
4               Staff's and OPC's version of the Company's books which in turn holds the rates  
5               at an artificially low level. The Commission allowing the Staff and OPC to  
6               impute revenues does not actually give the Company access to the funds. I am  
7               unaware of any authority the Commission may have to compel the current owners  
8               of the rights to the fees, including the developer, to turn over this revenue stream  
9               to the Company. With Company rates held artificially low by imputing a revenue  
10              stream then eventually the actual cash flow generated by the Company will not be  
11              adequate for the Company to provide safe and adequate service. Lake Region  
12              could potentially be another candidate for receivership at some future date.

13       **Q.     In your opinion, what would be the expected response of the shareholders if**  
14               **the Commission were to reduce rates below the level approved in the 2010**  
15               **Rate Case?**

16       A.     The most likely response would be the same as discussed by Dr. Stump in his  
17               testimony regarding Meadows Water Company. The shareholders would reduce  
18               operating efficiency by slashing costs and postponing maintenance to attempt to  
19               earn a reasonable return. At some point the shareholders would determine they  
20               could invest their funds at a better return elsewhere and sell the Company.

21       **Q.     Would the sale of the Company require Commission approval?**

22       A.     An asset sale would require Commission approval but the shareholders could sell  
23               their stock or do a tax free exchange of stock without Commission approval.

**CAPITAL STRUCTURE AND RATE OF RETURN**

**Q. Have you reviewed the capital structure proposed by Staff?**

A. Yes. Staff has recommended a theoretical capital structure consisting of 25% Common Stock and 75% Debt applied to the computed rate base of the Company. Staff has used what they refer to as the Small Utility Return on Equity (ROE)/Rate of Return (ROR) Methodology to compute the ROE and overall ROR.

**Q. Is Staff's methodology appropriate?**

A. No. The Staff should use the Company's actual debt balance for the loan approved by the Commission in File No. WF-2013-0118 to compute the actual capital structure. The Company's intent when it applied to the Commission to issue this debt was to create an actual capital structure of approximately 60% debt and 40% equity to support the Company's rate base investment.

**Q. Staff has included a loan made to the shareholders in their analysis of the Company's capital structure. Is this proper?**

A. No, only the debt which the Company is obligated to pay should be included in the Company's capital structure. All other funds made available to the Company, from whatever source, are equity contributions.

**Q. Please explain.**

A. Consider the example of the Company selling all of its assets after first receiving Commission approval to do so. In order to sell all assets and deliver clear title, all debt obligations secured by Company assets would have to be paid in full. The only such debt obligations are listed on the current balance sheet of the Company.

1 Shareholders would not be required to retire any of their debt for purposes of  
2 selling Company assets. Debts incurred by shareholders, for any purpose  
3 unrelated to their ownership in the Company, are not obligations of the Company  
4 and should not be included in the Company's capital structure.

5 **Q. Has Staff advised of additional reasons for its capital structure proposal?**

6 A. Staff mistakenly assumes a Negative Pledge Agreement, which was signed by  
7 RPS Properties Inc. and Sally Stump in connection with their loan, grants Alterra  
8 Bank an additional security interest in the assets of the Company. Staff then  
9 concludes that the RPS Properties/Stump loan could be classified as additional  
10 debt for the Company. Staff provided this explanation for denying the  
11 Company's recent Request for Admission #8:

12 a) Reasons for denial: Because Lake Region's assets are owned  
13 by the Company's shareholders, and the shareholders have pledged  
14 their shares as collateral, Staff believes Alterra Bank would take  
15 ownership of the assets in the event of default. Although Lake  
16 Region's assets are not directly pledged as collateral under Loan  
17 No. 7016782, the nature of the negative pledge agreements the  
18 shareholders signed for this loan indicates the intent of the loan  
19 agreement is to preserve Lake Region's assets and equity interests  
20 in the assets as collateral for the loan.

21  
22 In response to Staff's subpoena to RPS Properties, LP in the matter  
23 of Lake Region Water & Sewer Company, File No. WR-2013-  
24 0461, RPS Properties provided the current promissory note  
25 between RPS Properties and Alterra Bank and the corresponding  
26 personal guaranties and pledge agreements to this note. The  
27 current promissory note provided in the response, Loan No.  
28 7016782, stated a principal amount of \$1,303,849, a loan date of  
29 May 10, 2013, and a maturity date of August 10, 2014. This loan  
30 states collateral as "Borrower acknowledges this Note is secured  
31 by a Commercial Pledge Agreement dated August 10, 2011,  
32 executed by Sally J. Stump; a Commercial Pledge Agreement  
33 dated August 10, 2011, executed by RPS Properties, LP; a  
34 Negative Pledge Agreement dated August 10, 2011, executed by  
35 RPS Properties, LP and Sally J Stump.

1  
2 The commercial pledge agreements provided to Staff list RPS  
3 Properties, LP as a grantor on one and Sally J Stump as the grantor  
4 on the other. Each Commercial Pledge Agreement lists 75,000  
5 shares of Lake Region Water & Sewer Co. (150,000 total shares  
6 combined). The negative pledge agreement states that all assets of  
7 Lake Region Water Company shall not be pledged as collateral on  
8 any other indebtedness, which shows the bank expected to preserve  
9 those assets for recovery of any remaining balances due in the  
10 event of default.

11  
12 **Q Do any of the Company's shareholders own any of the Company assets.**

13 A. No, they do not.

14 **Q. Is the Negative Pledge Agreement referred to in the Staff's response you have**  
15 **quoted in your testimony still in force and effect.**

16 A. My understanding is that effective January 1, 2014, the Negative Pledge  
17 Agreement was released and is no longer in force.

18 **Q. Is Staff's theoretical capital structure approach is reasonable?**

19 A. It is not. Company witness Michael Gorman of Brubaker & Associates, Inc. will  
20 address this subject in greater detail in his testimony.

21 **LABOR COSTS**

22 **Q. Has the Company identified any issues with the labor costs proposed by**  
23 **Staff?**

24 A. Yes, Dr. Stump will address the Company's concerns with Staff's numbers in his  
25 testimony.

26 **EXPENSES**

27 **Q. Does the Company disagree with the level of legal fees allowed by Staff in the**  
28 **case?**



1       A.     Yes, Staff has disallowed all the legal fees associated with the Company's defense  
2             of a trial judgment in a lawsuit involving a local developer.

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

4       A.     The issue involved a lawsuit filed by Shawnee Bend Development Company,  
5             LLC (SB Development) in 2009.   SB Development claimed a breach of a 1998  
6             contract and sought damages for alleged nonpayment of sums due for road  
7             crossings, a sewer trunk extension line and a well SB Development constructed  
8             for the Villages, a real estate development at the Lake of the Ozarks.

9       **Q.     Did the Company contend that no payment was due the developer?**

10      A.     No, the Company believed a payment was due the developer but, based on the  
11             contract terms, the Company disagreed with SB Development's interpretation of  
12             the contract and its calculation of amounts due.   The matter was tried before  
13             Judge Kenneth Hayden in Camden County and the Circuit Court agreed with the  
14             Company's interpretation of the 1998 contract and two others between SB  
15             Development and the Company.   SB Development disagreed with the result  
16             claiming it was entitled to more compensation under the contracts and appealed to  
17             the Southern District Court of Appeals.

18      **Q.     Was the contract with the developer approved by the Commission?**

19      A.     Whether the document was officially approved by the Commission is unclear but  
20             attached as JRS Exhibit 3 is a memorandum from Greg Meyer & Janis E. Fischer  
21             dated March 12, 1998 in which they reviewed the contract and gave direction on  
22             the contract to the Company.

23      **Q.     Did the contract contain a clause regarding resolution of disputes?**

1       A.     Yes. Paragraph F on Page 14 of the contract stated the parties should “submit the  
2             dispute to the Water and Sewer Department of the PSC for informal and non-  
3             binding mediation. If no resolution is produced by such informal mediation, the  
4             parties agree to submit such controversy to the PSC with the commissioners to act  
5             as arbitrators under the provisions of section 386.230 RSMo.”

6       **Q.     Did the Company seek the Staff’s guidance on this contract dispute?**

7       A.     Both the Company and SB Development sought Staff’s guidance on the contract  
8             interpretation. Attached as JRS Exhibit 4 is a memorandum from Mr. Dale  
9             Johansen, Manager – Water & Sewer Department dated April 25, 2007 addressing  
10            the issue. A meeting was held in the Staff’s offices in 2008 in which members of  
11            the Staff and the Company were physically present and the SB Development’s  
12            representative participated via phone. During this meeting the Staff indicated the  
13            Company should make payments due under the terms of the contract.

14      **Q.     Did the parties consider this meeting the informal mediation?**

15      A.     No. The Company agreed with Staff’s interpretation and offered a settlement,  
16             based on the contract terms, which was not accepted by SB Development.

17      **Q.     Why did the developer refuse to accept the offer?**

18      A.     SB Development took the position that any customers connected to the well, even  
19             though outside the boundaries of the geographical area agreed to by the parties in  
20             the contract, would qualify for the \$1,000 connection payment contemplated in  
21             Rule 14 of the tariff.

22      **Q.     Did the parties request additional guidance from the Commission?**

1       A.     Yes, SB Development petitioned the Commission for arbitration on September  
2             25, 2008 resulting in Case No. WC-2009-0116. The Company opposed the  
3             petition and it was dismissed by the Commission effective March 28, 2009.

4       **Q.     Why did the Company oppose arbitration?**

5       A.     The Company believed the proper course of action was to go through the informal  
6             mediation process before proceeding to arbitration.

7       **Q.     Did the developer agree?**

8       A.     No, SB Development filed suit in Camden County Circuit Court in October 2009.

9       **Q.     What was the basis for the developer's appeal of the original judgment?**

10      A.     Contrary to the trial court's findings and conclusions, SB Development argued  
11             that Rule 14 of the Company's tariff required payment of well connection costs  
12             for customers outside the area which had been specifically described in the  
13             contract. The Company's position was that the rule required such payment only  
14             in accordance with the terms of the contract. The Southern District Court of  
15             Appeals agreed with SB Development and reversed the trial court.

16      **Q.     Do you believe the Company's interpretation of the tariff is correct?**

17      A.     Yes, the language of Rule 14 requires a contract to be executed with the developer  
18             and the Company believes the terms of the contract should apply in concert with  
19             the terms of the tariff. The Company does not believe the tariff can or should be  
20             used to expand the scope of the written agreement between the developer and the  
21             Company. If it were otherwise, there would be no need for the contract  
22             requirement provision in the tariff.

1       **Q.     Why did Lake Region oppose SB Development’s appeal of the the trial**  
2               **court’s judgment.**

3       A.     The trial court rendered a judgment consistent with the Company’s understanding  
4               of Rule 14’s provisions and consistent with the series of contracts entered  
5               between the parties in accordance with Rule 14’s requirements. The judgment as  
6               entered favored the Company. The Company was justified in challenging SB  
7               Development on appeal to protect and preserve that judgment in order to avoid  
8               increased costs should the judgment be reversed. The legal fees for pursuing the  
9               appeal were reasonably incurred and should be allowed.

10       **Q.     Do you disagree with other expense amounts Staff has disallowed?**

11       A.     Yes, Staff has disallowed the actual contracted amounts for the equipment rented  
12               from Public Water Supply District Number Four of Camden County (the  
13               “District”) and replaced it with a theoretical cost of ownership calculation.

14       **Q.     What issues do you have with this approach?**

15       A.     I believe the proper course is to use the actual amount negotiated between the  
16               parties as opposed to a theoretical approach. The contract amount of \$1,575 per  
17               month for rental of 18 separate pieces of equipment with an original value of  
18               \$307,000 is reasonable.

19       **Q.     Please explain why you believe the Company’s approach is reasonable.**

20       A.     The Company could not purchase the equipment today at the values reflected in  
21               the current contract amount. As a governmental entity the District is eligible for  
22               certain municipal discounts on equipment purchases, does not pay property taxes  
23               on the equipment and liability when using the equipment is capped due to

1 sovereign immunity. I contacted Crown Power and Equipment in Eldon,  
2 Missouri to obtain the current rental rates for a single backhoe. The daily rate is  
3 \$300, the weekly rate is \$900 and the monthly rate is \$2,700.

4 **Q. Are there other reasons to share the equipment rather than each entity**  
5 **purchasing separately?**

6 A. Certainly. Heavy construction equipment is an absolute necessity in the operation  
7 of a water and sewer company to install services, extend lines and make repairs to  
8 underground facilities. The equipment is used on a sporadic basis but needs to be  
9 accessible 24/7 due to the unpredictable nature of when repairs need to be made.  
10 By spreading the cost over three entities both the companies and their customers  
11 benefit.

12 **Q. Did you find specific issues with Staff's calculation?**

13 A. Yes. Staff did not account for increased costs associated with purchasing the  
14 equipment in the current market, the lack of government agency discounts,  
15 property taxes which the Company would have to pay and the increased insurance  
16 cost due to the lack of sovereign immunity. Staff's position assumes the  
17 Company purchasing certain equipment even before the current rental relationship  
18 began as well as assuming the District would agree to sell and then rent  
19 equipment it already owns. In addition, Staff used the 5.01% Weighted Rate of  
20 Return from the 2010 Rate Case rather than Staff's Weighted Rate of Return of  
21 8.09% proposed in the current case.

**SERVICE QUALITY**

1

2       **Q.    Have you reviewed Staff's recommendation regarding procedures for**  
3       **estimating bills?**

4       A.    Yes. The Company agrees these procedures should be included in the tariff.

5       **Q.    Do you believe there is some specific language the tariff should include that**  
6       **may not be applicable to most utilities?**

7       A.    Yes. When the Company estimates a bill it has historically been due to extremely  
8       inclement winter weather. Most of the homes served by the Company are second  
9       homes and are unoccupied during the winter months, particularly when the  
10      weather forecast is for inclement weather. The Company suggests that the tariff  
11      include language allowing the Company to charge the minimum bill in such cases  
12      since most customers will have zero usage during these events. The Company  
13      will then true up the usage amounts with an actual reading in the following  
14      month. This procedure will eliminate many customer inquiries as to why the  
15      Company assumed they had usage when they have not occupied the home during  
16      the winter months.

17      **Q.    Does this conclude your Rebuttal Testimony?**

18      A.    Yes, it does.

Lake Region Water & Sewer Company  
Case No. 2013-0461

	Availability fees owned by Company	Infrastructure Original Rate Base	cost included in Availability fees Imputed to Company Revenue	Commission Position Consistent With Past Decisions
Lakesites Water and Sewer Company Original Certification case 1972	Yes	Yes	Yes	Yes
Lakesites Water and Sewer Company 1991 Rate Case	Yes	No	No	Yes
Ozark Shores Water Company 1997 Rate Case	Yes	Yes	Yes	Yes
Lakesites Water and Sewer Company Expansion to Shawnee Bend 1997	No	No	No	Yes
Lake Region Water and Sewer Company Rate Case 2010	No	No	No	Yes
2010 Rate Case	No	No	No	Yes

Lake Region Water & Sewer Company

Case No. 2013-0461

Example Amortization Schedule

Staff Estimated Availability Revenue	342,090
Staff CIAC Identified in 2010 Rate Case	5,300,000
Annual Interest Rate	6%

<u>Year</u>	<u>Interest</u>	<u>Principal</u>	<u>Balance</u>
1	318,000	24,090	5,275,910
2	316,555	25,535	5,250,375
3	315,022	27,068	5,223,307
4	313,398	28,692	5,194,616
5	311,677	30,413	5,164,202
6	309,852	32,238	5,131,965
7	307,918	34,172	5,097,792
8	305,868	36,222	5,061,570
9	303,694	38,396	5,023,174
10	301,390	40,700	4,982,475
11	298,948	43,142	4,939,333
12	296,360	45,730	4,893,603
13	293,616	48,474	4,845,129
14	290,708	51,382	4,793,747
15	287,625	54,465	4,739,282
16	284,357	57,733	4,681,549
17	280,893	61,197	4,620,352
18	277,221	64,869	4,555,483
19	273,329	68,761	4,486,722
20	269,203	72,887	4,413,835
21	264,830	77,260	4,336,575
22	260,195	81,895	4,254,680
23	255,281	86,809	4,167,871
24	250,072	92,018	4,075,853
25	244,551	97,539	3,978,314
26	238,699	103,391	3,874,923
27	232,495	109,595	3,765,328
28	225,920	116,170	3,649,158
29	218,949	123,141	3,526,017
30	211,561	130,529	3,395,488
31	203,729	138,361	3,257,128
32	195,428	146,662	3,110,465
33	186,628	155,462	2,955,003
34	177,300	164,790	2,790,213
35	167,413	174,677	2,615,536
36	156,932	185,158	2,430,378
37	145,823	196,267	2,234,111
38	134,047	208,043	2,026,068
39	121,564	220,526	1,805,542
40	108,333	233,757	1,571,784
41	94,307	247,783	1,324,001
42	79,440	262,650	1,061,351
43	63,681	278,409	782,942
44	46,977	295,113	487,829
45	29,270	312,820	175,009
46	10,501	331,589	(156,581)



# interoffice

## MEMORANDUM

**to:** Doug Bowden  
**from:** Greg Meyer & Janis E. Fischer  
**subject:** Review of Contract with Shawnee Bend Development Corp.  
**date:** March 12, 1998

The purpose of this memorandum is to describe the areas of concern and provide points of clarification regarding the proposed contract between Four Seasons Water & Sewer Company (Company) and Shawnee Bend Development Co. L.L.C.(Developer). The comments regarding the contract will hopefully follow consistently with the order of the contract.

**A. Construction and Plan Approval**

To the extent that the Company desires to increase the size of the necessary investment in order to provide for future development in the area, the Company will pay the Developer the incremental cost for the increased capacity investment and installation if applicable. The Staff understands from a telephone conversation that if this occurs, the Company will list this investment in Exhibit B-1 of the contract.

**C. New Source Water Well**

At the expiration of the ten year period, the Developer will contribute to the Company any unrecovered investment in the well and appurtenances. This investment will be recorded on the Company's books as Contributed Plant. If the Developer contributes the well and appurtenances to the Company after construction of the well, but prior to any collection of customer connection fees, the Company would simply classify any unrecovered investment as Contributed Plant at the end of the ten year time frame

**D. Conveyance of Main Extension**

The Developer will contribute to the Company all investment associated with the main extension.

**F. Fire Hydrants**

The Developer will contribute to the Company all investment associated with the fire hydrants.

## ARTICLE II

### A. Construction and Plan Approval

To the extent that the Company desires to increase the size of the necessary investment in order to provide for future development in the area, the Company will pay the Developer the incremental cost for the increased investment and installation if applicable. The Staff understands from a telephone conversation that if this occurs, the Company will list this investment in Exhibit B-1 of the contract.

### C. Trunk Sewer Line

The Staff agrees with the contract language at the beginning of this section where the Company will pay the Developer for any costs associated with larger pipe sizes to be installed. However, the Staff has some concerns regarding the remaining portions of the contract within this section. It appears that the contract may suggest that if allowed by the P.S.C., the Company may pay the Developer for portions of the remaining trunk sewer lines that would be necessary to transport the Developer's sewage. This is being proposed due to the belief that the trunk sewer line would not be for the sole benefit of the Developer. This point was also discussed during the telephone conversation with the Company on March 11, 1998.

It continues to be the Staff's position that the entire trunk sewer line must be installed and paid for by the Developer. However, if the Company desires a larger pipe to meet future development, the Company would be responsible to reimburse the Developer for the incremental costs to install those larger quantities.

### D. Conveyance of Sewer Extension

The Developer will contribute to the Company the investment associated with the sewer extension and trunk line except as specified in these comments.

## ARTICLE III

### B. Developer to be Independent Contractor for Road Crossings: Develop Detailed Data

As a result of our telephone conversation the following details were discussed and agreed upon:

1. The Developer will provide all the materials and labor to perform the road crossings.
2. The Company will perform the actual water and sewer connections to the system.
3. The Company will perform all the necessary inspections.
4. The connections will be performed when requested by the customer.

Doug, we believe the above comments summarize the Staff's thoughts regarding this

Doug Bowden  
Page 3  
March 12, 1998

contract. If you have any questions or would like to discuss this in further detail, feel free to contact the Staff at any time. The Staff would again express its appreciation for being allowed to provide input into the contract before it was executed.

c.c. Dale Johansen  
Randy Hubbs  
Jim Merciel  
Martin Hummel



Commissioners

JEFF DAVIS  
Chairman

CONNIE MURRAY

STEVE GAW

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

## Missouri Public Service Commission

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KEVIN A. THOMPSON  
General Counsel

### MEMORANDUM

(Sent via E-Mail)

**TO:** Fritz Ritter  
(on behalf of Shawnee Bend Development Co., LLC)

**FROM:** Dale W. Johansen - Manager  
Water & Sewer Department

**SUBJECT:** Lake Region Water & Sewer Company's Tariff Provisions  
Regarding Payments for the Water Well at The Villages

**DATE:** April 25, 2007

Based upon my review of the main extension rule contained in Lake Region Water & Sewer Company's tariff (copy attached), and the existence of a contract between LRWSC's predecessor (Four Seasons Water & Sewer Company) and Shawnee Bend Development Co., LLC, I see no reason why LRWSC would not be required to make payments of \$1,000 per customer to SBDC for customers receiving service from the well constructed by SBDC in the development known as The Villages. Regarding the main extension policy in LRWSC's tariff (which was originally FSWSC's tariff), I believe that Rule 14(c) and 14(f)(3) apply to this situation.

Regarding SBDC's available courses of actions, if it is not successful in obtaining the payments from LRWSC on a voluntary basis, I believe a formal complaint filed with the Commission would be appropriate.

Please let me know if you have any questions or need anything further. My contact information is set out below.

Phone: 573-751-7074

Fax: 573-751-1847

E-Mail: [dale.johansen@psc.mo.gov](mailto:dale.johansen@psc.mo.gov)

Attachment: LRWSC Main Extension Rule

Copies (via e-mail): Jim Merciel - PSC Staff  
Jim Russo - PSC Staff

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