

Exhibit No.:	_____
Issue:	Rate Case Expense
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

TRUE-UP REBUTTAL TESTIMONY

OF

JOHN R. SUMMERS

Four Seasons, Missouri  
March, 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 true-up 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 11<sup>th</sup> day of March, 2014.

My Commission expires:

10/31/15

  
Notary Public



1 TRUE UP REBUTTAL TESTIMONY

2 OF

3 JOHN R. SUMMERS

4 CASE NO. WR-2013-0461

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, rebuttal, surrebuttal**  
9 **and true up direct testimony in the case referenced above?**

10 A. Yes.

11 **Q. What is the purpose of your true up direct testimony?**

12 A. In my testimony I will confirm the amount of rate case expense through March 5,  
13 2014 and respond to Staff's changing position on the amortization period for this  
14 expense.

15 **Q. Please state the amount of rate case expense incurred to date by the**  
16 **Company.**

17 A. I agree with OPC witness Keri Roth's true up direct testimony that the  
18 Company's out of pocket expenses, excluding labor and benefits, currently total  
19 \$63,257.98.

20 **Q. In your true up direct testimony you stated that you expect to incur**  
21 **additional costs? Is this still your expectation?**

22 A. Yes, for the reasons stated in my true up direct testimony.

23 **Q. How has Staff changed their position on the amortization period?**

1       A.     Page 26 of Staff's Cost of Service Report in their direct case contains the  
2             statement "Staff is proposing to evenly spread this expense across the three  
3             operating systems and then to normalize the cost over a three-year period." In  
4             Staff Witness Erin Carle's true up direct testimony she is now proposing to spread  
5             the cost over a five-year period.

6       **Q.     Was the amortization period originally proposed in Staff's direct case a**  
7             **disputed item during the evidentiary hearing?**

8       A.     No. The amortization period was never discussed or addressed by any party  
9             during the evidentiary hearing or the testimony filed as exhibits except on Page 26  
10            of Staff's direct case as noted earlier. There was no reason for discussion since the  
11            Company agreed with Staff's proposal.

12       **Q.     Has Ms. Carle provided an explanation for changing her position from**  
13             **Staff's direct case?**

14       A.     Yes. Ms. Carle has provided the following reasons for changing her position: (1)  
15             "the Company has given no indication as to when it anticipates filing its next rate  
16             case" and (2) "Staff believes that a five-year normalization will help reduce the  
17             burden of the ratepayers to pay the large amount of rate case expense incurred to  
18             process this case from start to finish."

19       **Q.     Do you agree with Ms. Carle's reasons for changing her position?**

20       A.     No, I do not.

21       **Q.     Please explain.**

22       A.     Regarding Ms. Carle's first stated reason of when the Company might file another  
23             case; this is not a reason for changing her position from the direct case. Staff's

1 knowledge regarding Company's future actions is the same now as it was when  
2 they filed their direct case.

3 **Q. Did Ms. Carle state a reason for her concern regarding the level of rate case**  
4 **expense?**

5 A. Yes. On line 11, page 4, of her true up direct testimony she states "Due to Lake  
6 Region filing a rate case under the large rate case procedures, Lake Region has  
7 incurred quite a bit more rate case expense than they would incur using the small  
8 rate case procedures."

9 **Q. Did Ms. Carle provide any support for this statement?**

10 A. No. The Company provided supporting documentation for the amounts agreed to  
11 by the parties and Ms. Carle did not identify any costs she believed could have  
12 been avoided.

13 **Q. Are you concerned with the level of rate case expense incurred in this case?**

14 A. Yes, these expenses are higher than what they should be but the Commission  
15 should consider the reason why those costs have been incurred.

16 **Q. Why are the costs as high as they are?**

17 A. First, I think it is important for the Commission to understand that it was not the  
18 Company's choice whether or not to file a rate case. This filing was mandated by  
19 the Commission in the order from the previous case. The Company is using the  
20 same attorney retained for the previous case. The high levels of attorney and  
21 consultant time and fees in this case are the result of two issues, specifically,  
22 availability fees and capital structure. The issue of availability fees was injected  
23 in the case by Staff and Office of Public Counsel, not the Company. Availability

1 fees are not owned or controlled by the Company and are not recorded on its  
2 books of account. Regarding capital structure, Staff's recommendation takes into  
3 account a loan that is not an obligation of the Company and is not recorded on the  
4 Company's books of accounts. Availability fees and capital structure were the  
5 only two issues contested by the Company at hearing. The impact of responding  
6 to these issues during discovery and the hearing process can be readily ascertained  
7 by reviewing the legal and consulting fees listed on Schedule JRS-1 attached  
8 hereto. You will quickly see that the legal fees were very low until the discovery  
9 process began in August, 2013. I will address the consulting fees later in my  
10 testimony.

11 Availability fees should not have been an issue in this case. As it did in the  
12 previous case, the Company mounted a defense to its consideration. The Staff's  
13 position on the Company capital structure was unreasonable and the Company  
14 was justified in seeking expert help in opposing it.

15 **Q. Explain why availability fees should not be an issue in this case.**

16 A. Aside from the legal reasons already expressed in counsel's objections and  
17 various related motions, the reason from my perspective as manager of a  
18 regulated utility is very simple; the rulemaking procedure ordered by the  
19 Commission in the previous case was never done and therefore the issue should  
20 not have been presented to the Commission. In the "Order Regarding Motions for  
21 Rehearing, Motion for Reconsideration and Request for Clarification" dated  
22 September 1, 2010 the Commission stated on Page 3 "Indeed, the Commission  
23 painstakingly delineated how rulemaking is necessary for redefining service,

1 reclassification of revenue streams and a complete reversal of its statement of  
2 general applicability that implements, interprets, or prescribes law, policy,  
3 procedure and practice after at least 37 years of following one practice, based  
4 upon its interpretation and applications of the law. The Commission provided  
5 additional clarification regarding the declaration of its intent to address its  
6 jurisdiction over availability fees prospectively where found appropriate in the  
7 future in its order approving Lake Region's compliance tariffs." The Company's  
8 expenses incurred to address availability fees could have been avoided or  
9 significantly reduced if a proper rule had been promulgated. In fact, the  
10 Commission could have declined jurisdiction altogether.

11 **Q. Has the Staff explained why they did not engage in a rulemaking?**

12 A. Jim Merciel, a witness for the staff, testified at hearing that the rulemaking was  
13 too difficult and so the decision was made to set policy on a case by case basis.  
14 On page 279, line 23 of the hearing transcript he testified "We had the opinion  
15 that trying to do a rulemaking was a lot more cumbersome than was practical."  
16 He further testified though that he was not involved with that decision.

17 **Q. Are you aware of any request made by the Staff or any other party to vacate**  
18 **or modify the Commission's order in the Company's previous case directing**  
19 **a rulemaking on the subject of availability fees?**

20 A. No, I am not.

21 **Q. Explain why Staff's position on the Company's capital structure is**  
22 **unreasonable?**

1       A.     The Company, in accordance with Commission rules, filed a financing case, WF-  
2             2013-0118, for the express purpose of creating a verifiable and transparent capital  
3             structure for the Company. Both the Company and the Office of Public Counsel  
4             believe the Commission should use the actual capital structure per the Company's  
5             books and records instead of the hypothetical capital structure proposed by Staff.

6       **Q.     Has the Company's capital structure consultant been involved in the case**  
7             **from the beginning?**

8       A.     No, at first it was thought the Company could demonstrate to the Staff that it had  
9             created a transparent and verifiable capital structure which was recorded on the  
10            Company's books.

11      **Q.     When did the Company decide to engage a consultant on the issue?**

12      A.     It became apparent that Staff did not intend to recognize the Company's efforts on  
13             the capital structure during the discovery process and this was confirmed during  
14             the settlement conference held December 18, 2013. I contacted Mr. Gorman  
15             between Christmas and New Year's Day to analyze the issue and offer an opinion.

16      **Q.     What portion of the total rate case expense to date do the legal and**  
17             **consulting fees represent?**

18      A.     Per attached Schedule JRS-1, the legal and consulting fees represent \$60,109.77  
19             of the \$63,257.98 total, or approximately 95%.

20      **Q.     Did the Commission address the rate case expense issue regarding the**  
21             **Company defending its position in the last case?**

22      A.     Yes, on page 117 of the order in the last case the Commission stated "Lake  
23             Region was justified in raising its jurisdictional challenges and it could have



1           conceivably constituted legal malpractice for Lake Region's attorney to overlook  
2           the jurisdictional arguments as they pertain to availability fees" in allowing the  
3           Company's rate case expense.

4       **Q.   Is it your opinion that Ms. Carle's stated reasons for changing her original**  
5       **position on this issue have no merit?**

6       A.   Yes.

7       **Q.   Why, then, do you believe she has recommended the longer amortization**  
8       **period?**

9       A.   It is simply Staff's way of lowering the revenue requirement by approximately  
10       \$8,400.00 from Staff's position in its direct case.

11      **Q.   Please state the Company's position on the amortization period for rate case**  
12      **expense.**

13      A.   Rate case expense should be amortized over the three-year period proposed by  
14      Staff in its direct case. Ms. Carle provided no support for her statement that the  
15      Company has incurred additional rate case expense due to our method of filing.  
16      The Company disputes that statement. The Company filed its case using the  
17      Commission's approved procedures and the overwhelming majority of costs  
18      incurred are solely due to the unreasonable positions taken by Staff and the Office  
19      of Public Counsel during discovery and the hearing. The Commission should not  
20      penalize the Company for defending its positions.

21      **Q.   Does this conclude your True Up Rebuttal Testimony?**

22      A.   Yes, it does.

**Lake Region Water & Sewer Company**  
**Case No. WR-2013-0461**  
**Analysis of Legal & Consulting Fees**

<b>Line</b>	<b>Month</b>	<b>Vendor</b>	<b>Amount</b>
1	April-13	Newman, Comley & Ruth, PC	279.50
2	May-13	Newman, Comley & Ruth, PC	520.10
3	May-13	Newman, Comley & Ruth, PC	167.50
4	June-13	Newman, Comley & Ruth, PC	980.00
5	July-13	Newman, Comley & Ruth, PC	676.00
6	August-13	Newman, Comley & Ruth, PC	903.00
7	September-13	Newman, Comley & Ruth, PC	2,587.10
8	October-13	Newman, Comley & Ruth, PC	2,961.00
9	November-13	Newman, Comley & Ruth, PC	2,842.00
10	December-13	Newman, Comley & Ruth, PC	8,197.40
11	January-14	Newman, Comley & Ruth, PC	9,768.00
12	February-14	Newman, Comley & Ruth, PC	11,945.20
13	February-14	Brubaker & Associates, Inc.	18,282.97
14			<u><u>\$ 60,109.77</u></u>
15	<b>Total Rate Case Expense Through March 5, 2014</b>		<b>\$ 63,257.98</b>
16	<b>Legal &amp; Consulting as Percentage of Total</b>		<b>95%</b>