

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Evidentiary Hearing
8 February 18, 2014
9 Jefferson City, Missouri
Volume VIII

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18 (Start time of hearing: 8:30 a.m.)

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2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Evidentiary Hearing
8 February 18, 2014
9 Jefferson City, Missouri
Volume VIII
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12 In the Matter of Lake)
Region Water & Sewer)
13 Company's Application To) Case No. WR-2013-0461
Implement A General Rate)
14 Increase In Water And)
Sewer Service)
15
16
17 MICHAEL BUSHMANN, Presiding,
Regulatory LAW JUDGE.
18
19 ROBERT S. KENNEY, Chairman
STEPHEN M. STOLL,
20 WILLIAM KENNEY,
DANIEL Y. HALL,
21 COMMISSIONERS.
22
23 REPORTED BY:
24 PAMELA S. GENTRY, CCR NO. 426
MIDWEST LITIGATION SERVICES
25

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1 (Start time of hearing: 8:30 a.m.)

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

3 JUDGE BUSHMANN: Let's bring the
4 proceedings to order. Can we bring the proceedings
5 to order, please. We're on the record.

6 Good morning. Today is February 18th,
7 2014. The Commission has set this time for an
8 Evidentiary Hearing and In The Matter Of Lake
9 Region Water And Sewer Company's Application To
10 Implement A General Rate Increase In Water And
11 Sewer Service, Filing No. WR-2013-0461.

12 My name's Michael Bushmann. I'm the
13 Regulatory Law Judge that's to be presiding over
14 this hearing.

15 Let's begin with counsel making their
16 entries of appearance. For Lake Region Water and
17 Sewer Company?

18 MR. COMLEY: Thank you, Judge
19 Bushmann. Let the record reflect the entry of
20 appearance of Mark W. Comley of Newman, Comley &
21 Ruth, P.C., 601 Monroe Street, Jefferson City,
22 Missouri, on behalf of Lake Water and Sewer.

23 JUDGE BUSHMANN: And for Staff of the
24 Public Service Commission?

25 MS. MOORE: Thank you, Judge.

1 Appearing on behalf of the Staff of the Public
2 Service Commission, Amy Moore, Tim Opitz, and Kevin
3 Thompson, P.O. Box 360, Jefferson City, Missouri,
4 65102.

5 JUDGE BUSHMANN: And Office of Public
6 Counsel.

7 MS. BAKER: Thank you. Christina
8 Baker, P.O. Box 2230, Jefferson City, Missouri,
9 65102, appearing on behalf of the Office of Public
10 Counsel and the Ratepayers.

11 JUDGE BUSHMANN: Thank you.

12 Just a couple of initial remarks. I
13 would like to advise anybody in the audience to
14 please silence any cell phones or other electronic
15 devices that you have right now.

16 Also, for Counsel, please remember to
17 push the button for your microphone when you talk
18 so that people who are listening on the webcast can
19 understand what you're saying.

20 I don't believe there are any pending
21 motions at this time unless Counsel would tell me
22 otherwise.

23 I would like to take official notice
24 of some things. The parties have filed two joint
25 stipulations of non-disputed material facts, and I

1 would like to commend the parties for all their
2 hard work in preparing these stipulations and the
3 partial settlement in this case which will all
4 result in a reduction in both hearing times and
5 cost to the ratepayers. Those stipulations are
6 fact, and their attached appendices are received
7 into the record.

8 Also, as requested by the parties, the
9 Commission takes official notice of the following:

10 1, All Commission orders issued in
11 Lake Region's 2010 rate case SR-2010-0110 and
12 WR-2010-0111;

13 2, All admitted exhibits and hearing
14 transcript pages referred to in the stipulations;

15 And, 3, the following exhibits or
16 other filings that were made in the 2010 rate case:
17 Exhibits 43 through 48; Lake Region's reply to
18 Staff's response to request from agenda on April
19 7th, 2010; and Lake Region's response to May 19th,
20 2010, order of the Commission.

21 As far as witnesses today, we'll
22 follow the order that was filed by the parties in
23 their amended joint list of issues and witnesses.
24 Since many of the witnesses are going to be
25 testifying multiple times, I think it would be

1 appropriate to wait until they offer -- to offer
2 their prefiled testimony into the record until the
3 final time that they're on the stand.

4 And I know that we've done some
5 premarking of exhibits. Does anybody need to mark
6 any additional exhibits at this time before we
7 proceed?

8 MS. BAKER: I do have a copy of the
9 timeline that was attached to Mr. Robertson's
10 testimony. I believe it was his Surrebuttal
11 Testimony.

12 If the Commission would find that
13 useful, I will enter that in as an exhibit, not
14 something that I would admit, just something for
15 handy reference.

16 JUDGE BUSHMANN: Since it was already
17 listed as a schedule -- is that correct?

18 MS. BAKER: That's correct.

19 JUDGE BUSHMANN: -- that's attached to
20 his testimony? That would either come in or not
21 with the testimony. So, why don't we just see
22 later how that goes; and, if you want to offer that
23 at that time, you can.

24 MS. BAKER: That sounds fine.

25 MS. MOORE: I don't have anything else

1 right now, except I do need to make a correction to
2 the Staff's exhibit list.

3 JUDGE BUSHMANN: Okay.

4 MS. MOORE: For the Staff's accounting
5 schedules. We have it listed as 2A, B, and C; and
6 when we printed it, we printed it all together, all
7 the accounting schedules together. For purposes of
8 efficiency, I let the Court Reporter -- we're just
9 going to mark it as 2.

10 JUDGE BUSHMANN: Okay. And that would
11 encompass all you listed here in 2A, B, and C?

12 MS. MOORE: Correct.

13 JUDGE BUSHMANN: Okay. Anything
14 further we need to do about exhibits? I think, Mr.
15 Comley, you already marked all yours, didn't you?

16 MR. COMLEY: Yes, I did, Judge.

17 JUDGE BUSHMANN: Okay. In that case,
18 I don't think there are any more preliminary
19 matters that need to be taken care of. We can now
20 start with opening statements. The first opening
21 statement will be by Lake Region.

22 OPENING STATEMENT BY LAKE REGION

23 MR. COMLEY: May it please the
24 Commission. On August 18th, 2010, the Commission
25 entered a report and order in Case Nos.

1 SR-2010-0110 and WR-2010-0111. The Commission will
2 recognize those case numbers as the 2010 rate case
3 for Lake Region.

4 In that report and order, the
5 Commission ordered Lake Region to file a new
6 general rate increase no later than three years
7 following the effective date of that order.

8 In timely obedience to that order, on
9 July 16th, 2013, Lake Region submitted tariff
10 sheets designed to implement a general rate
11 increase for water and sewer service provided to
12 its Missouri customer base. The tariff sheets were
13 designed to produce an aggregate annual water and
14 sewer revenue increase of approximately \$218,762,
15 exclusive of applicable gross receipts, sales or
16 franchise fees. The tariff sheets had effective
17 dates of August 15, 2013.

18 On July 31st, 2013, the Commission
19 entered its order suspending those tariffs for 120
20 days plus six months, so that they would become
21 effective or have an operation of law date of June
22 13th, 2014. As Judge Bushmann has noted, the
23 parties have stipulated at length to certain facts
24 that are detailed in our February filings. Several
25 facts, I will highlight.

1 First, Lake Region provides water
2 service to approximately 658 customers and sewer
3 service to approximately 635 customers in its
4 Shawnee Bend service area. It provides sewer
5 service to approximately 245 customers in its
6 Horseshoe Bend service area. Lake Region's water
7 system is comprised of two deep wells, each with a
8 pumping capacity of 360,000 gallons per day; a
9 200,000 gallon elevated storage tank; and a total
10 of approximately 96,847 feet of water mains. Lake
11 Region's sewer system is comprised of seven sewage
12 treatment plants and a total of approximately 8,924
13 feet of collecting sewers.

14 The Staff engaged in a comprehensive
15 audit of the books and accounts of the Company and
16 its cost of service report was filed on November
17 15th, 2013. There were a variety of issues
18 separating the parties; but, as noted by Judge
19 Bushmann --

20 COMMISSIONER KENNEY: Keep going.
21 Don't mind me. My apologies.

22 MR. COMLEY: -- as Judge Bushmann
23 noted, there are -- there was a partial stipulation
24 filed, and I think the issues were narrowed as of
25 February 11th. There are principally three issues

1 that are dividing the parties at this hour, and not
2 necessarily in the order of importance. Those
3 issues involve legal fees incurred by the Company
4 in an appeal that was favorable -- an appeal of a
5 favorable Camden Count Circuit Court judgment. The
6 Company's capital structure-return on equity and
7 the issue of availability fees which the Company
8 has repeatedly contended in this case is actually a
9 non-issue.

10 Now, before reaching my remarks about
11 the availability fees, I would like to address the
12 Company's position on the other issues; legal fees,
13 capital structure, and return on equity.

14 With respect to the legal fees issues,
15 this issue involved a lawsuit filed by Shawnee Bend
16 Development Company in 2009. Shawnee Bend
17 Development claimed a breach of a 1998 contract and
18 sought damages for alleged nonpayment of payments
19 due for road crossings, a sewer trunk extension
20 line, and a water well that Shawnee Bend
21 Development constructed for The Villages, which is
22 a very popular development at the Lake of the
23 Ozarks.

24 The Company believed payment was due
25 in some form or the other. But based upon contract

1 terms, the Company disagreed with the developer's
2 demand. Shawnee Bend Development contended that it
3 was due approximately \$200,000 more than what the
4 Company asserted was owed. The matter was tried
5 before Judge Kenneth Hayden at Camden County, and
6 Judge Hayden agreed with Lake Region's
7 interpretation of the 1998 contract as well as two
8 others that the parties had entered about the
9 development there.

10 The issue turned, essentially, on the
11 application of the Company's main extension rule,
12 Rule 14. The trial court rendered a judgment
13 consistent with the Company's understanding of Rule
14 14's provisions and consistent with the series of
15 contracts entered between the parties in accordance
16 with Rule 14's requirements. The judgment, as
17 entered, favored the Company. Shawnee Bend did not
18 accept the trial court's conclusions and filed an
19 appeal with the Southern District.

20 The Company, at that point, had before
21 it a judgment that was entirely in its favor with
22 the risk that, if it were overturned at any rate,
23 there would be an excess of amount of money due on
24 the judgment. The Company was justified in
25 challenging that on appeal to protect and preserve

1 that favorable judgment so to avoid any increased
2 costs or liability. The legal fees for pursuing
3 that appeal were reasonably incurred by the Company
4 and should be allowed in this case.

5 Mr. Keith Foster, a witness for the
6 Staff, has proposed a means of amortizing the legal
7 fee expense over a period of five years with a
8 tracking mechanism so as to avoid over-recovery.
9 This is acceptable to the Company. I understand
10 that Office of Public Counsel does oppose this
11 method.

12 With respect to the capital structure
13 and return on equity, since the last rate case in
14 2010, Lake Region applied to the Commission and
15 received approval to enter a long-term debt
16 arrangement for debt not to exceed \$2 million.
17 Proceedings on that application were in File No.
18 WR-2013-0118. Before this financing application
19 was approved and before Lake Region drew down on
20 the note that was approved in that case, Lake
21 Region had no debt recorded on its books.

22 Judged by the Company's actual debt
23 and equity that's reflected on its books now, the
24 Company, as testified to by Mr. John Summers, is
25 proposing a ratio of 60 percent debt to 40 percent

1 equity to support its rate-based development. The
2 Staff has recommended a theoretical capital
3 structure consisting of 75 percent debt and 25
4 percent common stock.

5 The Staff's proposal includes in its
6 analysis a loan which was first entered by the
7 Company shareholders to acquire their respective
8 shares in the Company along with some other
9 property. Staff then stacks that loan on top of
10 the one recently approved at the Company level to
11 arrive what it considers the total debt of the
12 Company. The Company is not a party to that
13 shareholder loan. That loan is independent and
14 disconnected from Company's operations, and it
15 should not be a consideration in its debt or
16 capital structure.

17 Additionally, although the idea of a
18 hypothetical structure for the Company might be
19 reasonable, the Staff's approach in setting that
20 structure is not. Mr. Michael Gorman will testify
21 on behalf of the Company concerning Staff's
22 hypothetical structure. He'll also confirm
23 Mr. John Summers' proposal that there be a 60
24 percent debt to 40 percent equity capital structure
25 to support the Company's rate development.

1 Mr. Gorman is also concerned by which
2 the way the shareholder loan has been included in
3 this analysis. Mr. Gorman also applies Standard
4 and Poor's criteria to Lake Region's proxy bond
5 rating in connection with the financial risk
6 profile and business risk profile for the Company.
7 He concludes that Staff's proposed capital
8 structure departs significantly from the one most
9 appropriate to Lake Region using these standards.

10 S&P's criteria would equate to a total
11 debt ratio of approximately 60 percent. This is
12 the same as Lake Region's proposed capital
13 structure. Another observation is that S&P metric
14 guidelines do not support a finding that a capital
15 structure with a 75 percent debt ratio is
16 reasonable. The Commission should adopt the
17 Company's capital structure and its return on
18 equity should be set at 13.89 percent as supported
19 by Lake Region's testimony.

20 With respect to the availability fees,
21 at the outset, I must repeat the Company's
22 objection that this topic, a topic regarding fees
23 that are authorized in the deed restrictions on
24 properties located in Lake Region's service
25 territory is not relevant or material to any issues

1 in this matter simply because a developer's charge
2 and collection of availability fees for water and
3 sewer system infrastructure, or the developer's
4 sale or assignment of those fees or part of those
5 fees, are issues beyond the regulatory jurisdiction
6 of this Commission, and it has so ruled in the
7 past.

8 The Company has filed a motion to
9 strike certain testimony of Staff and the Office of
10 Public Counsel, and a motion in limine, and the
11 reasons for the Company's positions on this issue
12 and its objection are set out in detail in those
13 motions and any suggestions filed in support. And
14 I can see you're relieved that I'm not going to
15 repeat all those things in those motions.

16 The Company's testimony addressing
17 this issue is offered conditionally. It is on the
18 condition that, at some point, you overrule those
19 objections and you go ahead and hear this evidence.

20 I mentioned earlier the report and
21 order of Lake Region's 2010 rate case. In that
22 case and, eventually, in that same report and
23 order, the Commission, over these same objections
24 that I've noted moments ago, deliberated upon an
25 extensive record on the availability fees that are

1 charged against property owners in Lake Region's
2 service territory, and it rendered a decision on
3 the subject which, for the first time, had been
4 raised in the context of a contested case.

5 You will notice that the record in
6 this case will closely resemble the one the
7 Commission deliberate upon before regarding
8 availability fees.

9 Some things have not changed. As they
10 did in the 2010 case, Staff and Office of Public
11 Counsel submitted data requests to the Company
12 about the availability fees. The Company objected
13 to them on the jurisdictional ground that I
14 mentioned and, also, on the additional fact that
15 the information was actually in the hands of
16 nonparties.

17 As they did in 2010, Staff and Office
18 of Public Counsel have sponsored written testimony
19 in which they complain that the Company refused to
20 give needed information or that these parties lack
21 information because the Company refused to supply
22 it. Even so, I want the Commission to know that
23 the record in this case will confirm that the
24 Company has complied with all its discovery orders
25 and none are outstanding. The Company should not

1 be faulted for validly objecting to improper data
2 requests in this proceeding.

3 Staff and OPC still propose to use the
4 availability fee revenue charged to the undeveloped
5 lot owners as an offset to cost of service or as an
6 offset to rate base which, in either case, means a
7 marked reduction in the Company's revenue
8 requirement. The parties filed a Joint Stipulation
9 of Undisputed Material Facts on January 31st, 2014,
10 which, in largest parts, paralyzed -- parallel,
11 excuse me -- the findings of fact made by the
12 Commission on the availability fee issue in the
13 2010 report and order.

14 The facts have not changed. The
15 essential facts on this issue are the same as they
16 were in 2010. Four Seasons Lakesites, a developer
17 in the Lake of the Ozarks, installed the water and
18 wastewater connections for each lot in its real
19 estate development. The lots in the development
20 are subject to recorded covenants and restrictions
21 which impose upon owners of undeveloped lots the
22 obligation to pay monthly fees in exchange for
23 available water and sewer connections. Four
24 Seasons imposed those fees and the covenants to
25 recover the costs it occurred in installing the

1 water and sewer infrastructure.

2 If lot owners failed to pay the
3 availability fee, the obligation becomes a lien on
4 the lot and it is enforceable by foreclosure or
5 other remedies set out by the covenants. The
6 owners of the lots in the Four Seasons Lakesite
7 development may vote to end the obligation to pay
8 availability fees. By a series of sales,
9 transfers, and assignments originating with the
10 developer of Four Seasons, the rights to collect
11 the availability fees are now owned in part by a
12 shareholder in Lake Region, a non-shareholder, a
13 former shareholder in Lake Region, and the
14 developer itself.

15 I'll mention this. In 2010, both
16 shareholders of Lake Region owned the rights to the
17 fees. Sally Stump, who was a shareholder at that
18 time, still owns the rights to the availability
19 fees, but her shares have been transferred to
20 Vernon Stump. Mr. Stump, Vernon Stump, has no
21 rights to the availability fees. The ownership of
22 the availability fees was disputed.

23 A court proceeding was initiated by
24 the developer and, pursuant to a confidential
25 settlement agreement which the Commission has at

1 its disposal, the developer retained the right to
2 receive a portion of those availability fees. The
3 developer's also taken security interest in those
4 fees. Lake Region shareholders registered Lake
5 Utility Availability 1 as a fictitious name, as a
6 business name, to facilitate collection of those
7 fees. Lake Region does not own or control the
8 collection, distribution, enforcement or the
9 termination of the availability fees.

10 It does not charge availability fees
11 by tariff. It does not collect availability fees.
12 Its customers do not pay availability fees. It was
13 in view of these facts and others that were related
14 that the Commission decided in 2010 that it could
15 not assert jurisdiction over these availability
16 fees; that to satisfy the standards of due process
17 and avoid unpredictability with such a significant
18 issue involved with the determining a Company's
19 operational revenues, the Commission would open a
20 workshop to lead to a rulemaking. The Commission
21 decreed that it would delineate the definitive
22 policy for the prospective treatment of
23 availability fees for that rulemaking.

24 In its later orders, Commission did
25 not order this directive. The workshop was opened,

1 proceedings ensued, but no rule has been
2 recommended, proposed, or adopted regarding the
3 perspective treatment of availability fees, as far
4 as the issue itself.

5 Availability fees are not included in
6 the Company's filing. To repeat, the Company
7 derives no income or revenue of availability fees.
8 It has no right to availability fees. The
9 availability fees affecting lots in the Company's
10 shawnee Bend area paid to persons entitled to those
11 fees pursuant to the deed restrictions memorialized
12 in the document titled Amendment to the Third
13 Amendmended and Restated Declaration of Restrictive
14 Covenants Relating to Water and Sewer Systems.
15 These restrictions have been further amended, and
16 they are noted in the joint stipulation the parties
17 have filed.

18 The Company's customers do not pay
19 availability fees to Lake Region. They take
20 service under and they pay only the rights and
21 rates and charges in the Company's tariffs as
22 approved by this Commission. If any Company
23 ratepayer happens to be paying an availability fee,
24 it is entirely because that ratepayer made an
25 independent decision to purchase an undeveloped lot

1 subject to the deed restrictions assessing the fee.

2 The Company has no power to enforce
3 the payment of the availability fee against the lot
4 owner, even if the lot owner is a company
5 ratepayer. The owner of the undeveloped lot is the
6 sole decision maker whether to take regulated water
7 and/or sewer service at the property or to continue
8 to pay the availability fee.

9 The legal rights to the availability
10 fees on Shawnee Bend have been assigned by the
11 developer of that area to RPS Properties and Sally
12 Stump. They are still the owners, or partial
13 owners, of the rights of those fees. RPS is a
14 shareholder; Mrs. Stump is not. Mrs. Stump's
15 husband has acquired those shares, as I mentioned.

16 Staff and Office of Public Counsel
17 have somewhat similar proposals on how the
18 Commission should treat the availability fee
19 revenue. Even though Lake Region has no legal
20 right to the availability fee revenue, Staff
21 proposes that part of the revenue collected during
22 the test year should be used as an offset to the
23 Company's overall cost of service for its water and
24 sewer operations. Even though Lake Region has no
25 legal right to the availability fee revenue, OPC

1 proposes an unverified estimate of the total amount
2 of the availability fee revenue, not an accurately
3 calculated figure of that revenue, something
4 calculated over the past 17 years or more should be
5 used as an offset to Lake Region's rate base, a
6 rate base that has been approved by this Commission
7 in two previous rate cases.

8 If the parties approach were adopted,
9 it first assumed that the Commission may order
10 shareholders of utilities it regulates to
11 relinquish rights to personal assets for cost of
12 service support. That would mean an alteration or
13 reformation of otherwise lawful agreements. The
14 Commission has no equitable powers to do so.

15 This approach would also mean that
16 property owners on Shawnee Bend who take no utility
17 services from the Company would be paying part, and
18 perhaps all, of the costs involved in providing
19 utility services to the property owners who do take
20 utility services from the Company. This is an
21 unfair shift of costs to non-customers of the
22 service, and it is unreasonable. As it stands now,
23 if Staff's approach to the use of the availability
24 fees were adopted, the owners of undeveloped lots
25 on Shawnee Bend at the Lake of the Ozarks would pay

1 more for availability fees than the Company's
2 customers would pay in monthly rates for delivery
3 of water service to the premises.

4 If the Staff's proposal or the Office
5 of Public Counsel's proposals accepted, reduction
6 of the Company's rates for service would be
7 astonishing. They will return to levels below
8 those that were approved by this Commission in
9 1997. This is certainly the wrong regulatory
10 message to send to customers, investors, and
11 generally members of the public in a time of
12 stricter and costlier environmental regulation, and
13 higher costs and expenses related to utility
14 service.

15 Availability fees may be related to
16 utility infrastructure construction. They may have
17 been mentioned in applicable deed restrictions as
18 payable to the Company and governed by an approved
19 tariff, it may be that the Staff and Office of
20 Public Counsel believe they are unreasonable and
21 should not be used, that their transfer, if they
22 were ever done, is imprudent and they should not be
23 used. All of these things still beg the question
24 whether the Commission's jurisdiction goes so far
25 as to ignore legal assignments of those revenues

1 from the developer to someone else, to modify those
2 agreements, or to review deed restrictions and
3 decide subdivision by subdivision whether the
4 availability fee charged by the developer and
5 collected by the developer is reasonable.

6 The use of availability fees to help
7 finance the original investment in infrastructure
8 of a water and sewer utility does not give the
9 customers of that utility a property interest in
10 availability fees going forward or in perpetuity.
11 As a public utility, Lake Region is legally
12 entitled to earn a reasonable return on
13 development, whatever its source, and the recovery
14 in rates of its reasonable operating expenses,
15 including debt services.

16 The availability fees at issue in this
17 case have clearly become a distinct matter of
18 contractual rights between and among the assignees,
19 one of which is the original developer, only one of
20 which is a shareholder in Lake Region. Those fees
21 have no ongoing relevance to Lake Region. They are
22 a matter of private contractual rights between the
23 developer and lot owners.

24 The developer had the ability to share
25 or sell those rights to whomever it wanted to. The

1 Lake Region shareholder, RPS, who has the right to
2 availability fees, could sell its shares in Lake
3 Region at any time without giving its right -- its
4 contractual right to those availability fees.

5 I'm going to digress just a moment
6 before concluding. As the Commission hears the
7 evidence today, you will observe that Staff is
8 proposing to set the Company capital structure
9 based in principal part on a loan taken out by the
10 Company shareholders that was not approved by the
11 Commission, nor subject to Commission approval in
12 which Lake Region is not a party to that loan, its
13 assets are not at risk in that loan, and Lake
14 Region has no control over that loan or its
15 payment. Staff and OPS is both proposing to reduce
16 the Company's revenue requirement by imputing
17 income to the Company or reducing rate base in an
18 amount reflecting revenue the Company does not own,
19 has no rights to collect, does not collect, over
20 which it has no control.

21 On availability fees, the Company's
22 position is that they are beyond the Commission's
23 jurisdiction. They should not be considered in
24 this case. If the Staff's proposal or Office of
25 Public Counsel's proposal is accepted, it will be a

1 violation of the Company's rights of due process as
2 guaranteed by the 14th Amendment to the United
3 States Constitution and the corresponding due
4 process of Article 10, Section -- Article 1,
5 Section 10.

6 The result will be a taking without
7 compensation of an investor's right of a reasonable
8 return on investment made in the Company, a
9 violation of the 5th Amendment to the United States
10 Constitution as guaranteed to the states through
11 the 14th Amendment. For these reasons, the
12 proposals on the treatment of availability fees
13 advocating by the Office of Public Counsel and
14 Staff should be rejected by the Commission.

15 JUDGE BUSHMANN: Thank you, Mr.
16 Comley.

17 Next opening statement will be by
18 Staff.

19 OPENING STATEMENT BY STAFF

20 MS. MOORE: Good morning. May it
21 please the Commission. As you know, as it has
22 become fairly obvious here, the largest issue
23 presented for your determination in this case, both
24 in time spent on it and in financial impact, is the
25 issue of availability fees. However, there are a

1 few other decisions to be made, and I would like to
2 mention those first this morning.

3 The other issues left for your
4 consideration are related to capital structure,
5 return equity, and also to certain legal fees the
6 Company incurred during the test year as Mr. Comley
7 discussed.

8 First, as to capital structure, it is
9 Staff's position that Lake Region is currently
10 financed to 100 percent debt. This is based on
11 Staff's conclusion that there are two loans to
12 consider in determining Lake Region's capital
13 structure, which added together equal more than the
14 value of the utility. First, there's what can be
15 described as the acquisition loan which is issued
16 to Lake Region's shareholders; and, second, there's
17 a loan issued directly to Lake Region. The main
18 point of contention on this issue is with the
19 acquisition loan.

20 Staff includes this loan on its
21 calculation of Lake Region's capital structure
22 because the loan creates a security interest in
23 Lake Region's assets. In other words, the
24 practical effect of default on that loan is that
25 the lender, the bank, take possession of Lake

1 Region. The evidence shows that, up until this
2 case, the Company considered this acquisition loan
3 to be a responsibility of Lake Region and agreed
4 with Staff that the loan was appropriately
5 classified as Lake Region debt. Staff believes
6 that's still the case and believes the Company's
7 historical perspective of the loan shows us that it
8 also believes the loan was used to finance Lake
9 Region.

10 Now, although Staff's calculations
11 shows a hundred percent debt, Staff has proposed
12 that the Commission apply a hypothetical capital
13 structure to the Company as 75 percent debt and 25
14 percent equity. As Staff's expert Shana Atkinson
15 testified and will testify, it is increasingly
16 difficult to accurately estimate the cost of equity
17 for companies with extreme amounts of leverage in
18 their capital structure, and Staff's approach to
19 address this, the 75 percent/25 percent, fits with
20 past practices of Staff and with industry standards
21 or guidelines.

22 Related to this, Staff has recommended
23 a return on equity for Lake Region of 13.89 percent
24 based on its standard methodology of calculating
25 that. This is a fair and reasonable return as long

1 as the Company's capital structure is set at 75
2 percent debt and 25 percent equity, Staff's
3 proposed hypothetical structure. However, if the
4 Commission were to accept the Company's proposed
5 capital structure, Staff would recommend a lower
6 return on equity at 11.93 percent, which is also
7 calculated using Staff's standard methodology, just
8 with the new capital structure numbers.

9 The last issue you will hear in this
10 case is regarding whether Lake Region's costs
11 incurred to defend a court case should be included
12 in the rates. Mr. Comley gave a bit of a history
13 of that case; so, briefly, Staff finds these costs
14 were incurred reasonably. The case involved a
15 contract interpretation issue between Lake Region
16 and a developer. The trial court found in favor of
17 Lake Region. The developer appealed, and the costs
18 in discussion were incurred in defending the
19 appeal. Ultimately, the appellate court found in
20 favor of the developer, but this does not negate
21 the reasonableness of the cost itself.

22 Because the cost was reasonable and
23 occurred within the test year, Staff is in favor of
24 including the cost in rates. However, because this
25 is a nonrecurring cost and shouldn't be normalized

1 like you would office supplies or chemicals
2 expenses that happen on a regular basis, Staff has
3 proposed that this cost be amortized over five
4 years with a tracker in order to prevent
5 over-recovery. As you heard, the Company agrees
6 with the Staff's proposed treatment of this
7 expense.

8 And, so, for the main issue,
9 availability fees, much has already been said and
10 Motions, Discovery Conferences, more Motions, and,
11 as Mr. Comley said, I won't go into all of the
12 arguments. But the issue comes down to this:
13 Staff and Public Counsel believe availability fees
14 should be considered in the calculation of rates
15 for the Company; the Company disagrees. In fact,
16 Lake Region has argued that any information
17 regarding the availability fees charged to lot
18 owners in its service area is irrelevant to the
19 Commission's duty to set just and reasonable rates
20 for Lake Region and its customers. That was in the
21 objections, Motions to Strike, Motion in Limine, et
22 cetera.

23 These Company arguments are largely
24 variations on a theme of keeping the Commission
25 from evaluating the availability fees at issue

1 here, removing them from your consideration in this
2 hearing. These are diversions distracting from the
3 simple facts. The fact is that Lake Region
4 imprudently assigned away a stream of revenue that
5 can only be appropriately charged by a utility, a
6 stream of revenue that the utility and the
7 customers benefited from in the past and should
8 continue benefitting from.

9 As I've discussed before, this
10 Commission in the past, the role of Staff has
11 recommended to the Commission positions that
12 balance the needs of the utility and the customers.
13 In this case, there doesn't even have to be a
14 nuanced balancing act. The interest of the company
15 and the customers should be aligned in that the
16 availability fees revenue benefits them both if the
17 revenue remains with the Company as it was. The
18 only interest that is not served by keeping the
19 revenue with the Company is the interest of
20 shareholders that now receive that revenue directly
21 as personal gain.

22 Staff cannot be concerned with
23 shareholders' personal gain. What is of concern to
24 Staff is that Lake Region's cost of service fully
25 reflect all of the revenues and costs that belong

1 in that cost and service, and that is why Staff
2 must, again, recommend that the Commission include
3 availability fees in its calculation of rates for
4 the Company.

5 So, Staff urges the Commission to not
6 be waylaid about the Company's attempts to divert
7 us from examining availability fees, but instead to
8 hear all the evidence and facts about what these
9 fees are, what they were meant for, and what these
10 types of fees have been and are used for by other
11 regulated utilities in Missouri.

12 Despite conclusions to the contrary,
13 in the Commission's previous order, Staff proposed
14 treatment of availability fees of revenue is not
15 radical. It's not a departure from Commission's
16 policy or practice. The departure from Commission
17 practice would be to allow a regulated utility to
18 assign away a part of its revenue to an unregulated
19 entity. In Staff's knowledge, that has never been
20 done except by Lake Region's shareholders, not
21 other companies' availability fees and not with any
22 other revenue stream of a utility. And to the best
23 of Staff's knowledge, such a maneuver has never
24 been approved by the Commission, not even in a
25 previous Lake Region order in which the Commission

1 stated it should assert jurisdiction over these
2 availability fees. Allowing the Company to proceed
3 as if doing this was fine, that would be the
4 radical decision.

5 Finally, Staff is asking the
6 Commission to impute availability fees revenue to
7 the Company, for all the reasons laid out in
8 testimony, and as you'll here today, but only
9 insofar as future effect. Staff is not asking the
10 Commission to go back to the last rate case and
11 compute from there. Staff isn't asking that the
12 admitting back to the date which Lake Region
13 imprudently assigned away this revenue stream.
14 Staff is only asking that the Commission determine
15 from this case forward how this revenue should be
16 treated for purposes of Lake Region's rates.

17 Staff believes the most just and
18 reasonable treatment of availability fees revenue,
19 the treatment that balances the needs of the
20 Company and the customers, is to impute this
21 revenue to Lake Region, the entity the fees were
22 originally designed for and the only entity that
23 provides a service in exchange for the fees.
24 However, whether the Commission ultimately agrees
25 with Staff's proposed treatment of availability

1 fees or not, Staff urges this Commission to decide
2 this issue within this case. I think we could all
3 agree the needs of the customers and of the Company
4 would be best met by having this issue laid to
5 rest. Thank you.

6 CHAIRMAN KENNEY: Ms. Moore?

7 MS. MOORE: Yes, your Honor.

8 CHAIRMAN KENNEY: Thank you for your
9 opening statement. I have a question. Can you
10 hear me okay?

11 MS. MOORE: Yes, I can.

12 EXAMINATION BY CHAIRMAN KENNEY:

13 Q. You referred -- you said that the
14 acquisition loan places the Company's assets,
15 there's a security interest in the Company's
16 assets, and Mr. Comley said exactly the opposite,
17 that the Company's assets were not at risk. So, I
18 take it that you guys are diametrically opposed in
19 that assertion?

20 A. Right.

21 Q. Is there a security agreement, some
22 document that we will be able to look at to
23 determine that issue? It seems like that should be
24 a pretty easy determination, whether the assets are
25 at risk or not.

1 A. I'm going to have to refer you to our
2 expert witness, Shana Atkinson, about any other
3 documents that are included -- the specifics of the
4 documents included and the loan. However, my
5 understanding in general of the question and the
6 answer to your question is that, if the
7 shareholders were to default on that loan, the bank
8 would then take possession of their shares, and
9 because they would then have possession of their
10 shares, they would then have the assets of the
11 utility.

12 We had a similar situation in the past that
13 you might remember where a loan was defaulted upon
14 and the small water and sewer company and the bank
15 ended up having the utility in their hands and they
16 had to go out and find a sewer to run it, and then
17 it came to us and we had to determine how do we
18 handle a situation where the bank is, essentially,
19 the owner of a utility. That case was unique in
20 its resolution, but it was definitely a sticky
21 issue.

22 **Q. So, the security is in the**
23 **shareholders' securities. I mean, their shares of**
24 **the company?**

25 A. That's my understanding.

1 Q. Not any specific asset that's used to
2 provide service?

3 A. Correct.

4 Q. So, if they default on the loan, the
5 shares become anew to the bank and the bank owns
6 the utility?

7 A. Yes. Correct.

8 Q. All right. Thank you.

9 JUDGE BUSHMANN: Any other questions.

10 (No response.)

11 JUDGE BUSHMANN: Thank you, Ms. Moore.

12 Opening statement by Office of Public
13 Counsel.

14 OPENING STATEMENT BY PUBLIC COUNSEL

15 MS. BAKER: May it please the
16 Commission. Most of the issues in this case have
17 been agreed upon by the parties. However, the
18 issues of availability fees, cap structure, return
19 on equity, and legal fees remain for Commission
20 determination. Public Counsel would ask that the
21 Commission keep in mind that the courts have
22 determined that the Commission's principal purpose
23 is to serve and protect the ratepayers.

24 On the issue of availability fees, in
25 Lake Region's previous cases, the Commission's

1 report and order specifically stated, because the
2 utility had at different intervals direct use of or
3 access to this revenue stream, and because the fees
4 can be defined as a commodity falling under the
5 definition of utility service, the Commission
6 concludes that it should assert jurisdiction over
7 availability fees.

8 This is completely opposite to what
9 Mr. Comley stated in his opening statement claiming
10 that the Commission determined that it should not
11 take jurisdiction. This particular quote shows the
12 Commission did take jurisdiction over the
13 availability fees. And the evidence will show that
14 it is just and reasonable for availability fees to
15 be applied against rate base as contributions in
16 aid of construction, is estimated as of the end of
17 the calendar year 2013 approximately \$6.6 million
18 of availability fees has been billed and collected,
19 and using a 40 percent water/60 percent sewer split
20 based on the monthly charges of \$10 for water and
21 \$15 for sewer, approximately 2.6 million of water
22 related and 4 million of sewer related availability
23 fees has been collected.

24 As agreed to by Lake Region, the
25 collection of availability fees from undeveloped

1 lots by the terms and time of the original
2 agreements began prior to construction or
3 completion of the water and sewer systems and were
4 collected to make construction of the systems fees,
5 I believe. The purpose for establishing the
6 availability fees was to recover the development in
7 the water and sewer systems, not to maintain or
8 repair the existing operations of the system once
9 they were constructed.

10 However, the evidence will show that
11 the availability fees were intended to be collected
12 far beyond merely the recovery of the original
13 construction. Estimates show that the amount of
14 availability fees presumed collected far exceeds
15 the cost of the original development in the water
16 and sewer systems. For the Shawnee Bend Water
17 System, it is estimated that approximately \$331,000
18 has be collected through availability fees above
19 and beyond the original cost to develop that
20 system. Similarly, it is estimated for the Shawnee
21 Bend Sewer System approximately \$706,000, at the
22 very least, has been collected through availability
23 fees above and beyond the original cost of that
24 system.

25 So, the evidence will show that there

1 is no specific time between the original
2 development costs and the amount of availability
3 fees that will be collected. There is no provision
4 that states that once this certain amount of money
5 is collected the availability fees will go away.
6 In fact, the way the declaration is written that
7 contains the requirement for undeveloped lots to
8 pay availability fees is that the default is that
9 the availability fees will never go away.

10 The declaration is binding until
11 January 15, 2015, after which it is automatically
12 renewed unless the owners of 90 percent of the lots
13 vote to terminate the declaration. Owners of
14 undeveloped lots have no specific timeline to
15 connect to utility service. And you would agree
16 that 90 percent agreement is a huge hurdle to meet
17 even in the best circumstances. Therefore,
18 availability fees could continue for the
19 foreseeable future just as they were intended.
20 But in a way that does make some sense, an
21 undeveloped lot may sit there for years until the
22 owner decides to connect to the utility. All the
23 while things are changing at the utility, plant is
24 getting older, and new regulations become
25 applicable.

1 Development is needed to make the
2 utility state-of-the-art for its customers. When
3 the owner of an undeveloped lot decides to take
4 service in, say, 2014, they're not connecting to
5 the utility as it was originally developed. They
6 are connecting to a state-of-the-art utility that
7 is in 2014. So, the place holder of paying
8 availability fees to recover the development in the
9 water and sewer systems helps guaranty that
10 whenever the lot becomes developed there will be a
11 state-of-the-art system there ready to serve it.

12 Availability fees ensure that all
13 those who use the system help pay for it rather
14 that current customers footing the entire bill.
15 Because the contributed plant associated with the
16 availability fees lowers rate base and lowers
17 utility rates for customers, it's important that
18 the Commission ensure that Lake Region's customers
19 receive the full benefit from the availability
20 fees.

21 As the Commission found in the
22 previous case, there is a nexus between the
23 availability fees, rate base, and rates. Customers
24 of Lake Region have benefitted from the
25 construction of the original Shawnee Bend plant.

1 However, as stated before, the evidence will show
2 that the -- will show that for the Shawnee Bend
3 Water System is estimated at approximately \$331,000
4 has been collected through availability fees above
5 and beyond the original cost; and, similarly, for
6 the sewer system, approximately \$706,000 has been
7 collected above and beyond.

8 It's just and reasonable that the
9 availability fees be applied against rate base as
10 contributions in aid of construction. The result
11 of this would be to lower rate base and less rates
12 for customers. However, the evidence will show
13 that, for the Shawnee Bend Sewer System, the
14 calculated amount of availability fees collected so
15 far exceeds the amount of rate base development.
16 In fact, the adjustment to rate base would actually
17 bring rate base to a negative number. Therefore,
18 it is just and reasonable to set the rate base for
19 Shawnee Bend Sewer System at zero.

20 Admittedly, the numbers of Public
21 Counsel -- that Public Counsel will present are
22 estimations based on documentation that is
23 available. Only Lake Region and/or its
24 shareholders have access to the information on the
25 actual amount that has been collected. But Lake

1 Region and its shareholders refused to provide
2 specific values for the amount of availability fees
3 that have been collected over the years.

4 Lake Region and its shareholders know
5 perfectly well that in it's last rate case the
6 Commission found a nexus between availability fees,
7 rate base, and utility rates. So, estimates are
8 what we have to present to the Commission. But the
9 evidence will show that these estimates are a
10 reasonable approximation of the availability fees
11 billed and/or collected, and the comparisons with
12 the developer donated development result in
13 reasonable approximations of the access money
14 collected over and above the cost of the original
15 developer donated investments. Lake Region is
16 certainly free to provide -- to provide evidence as
17 to the reasonableness of a different actual amount.

18 On the issue of cap structure, the
19 evidence will show that it is just and reasonable
20 for the cap structure for Lake Region to be based
21 on the Company's actual cap structure of 68.9
22 percent debt and 31.1 percent equity. The evidence
23 will also show that Staff's position that a
24 hypothetical cap structure of 75 percent debt and
25 25 percent equity should be imposed has no basis in

1 reality of the utility.

2 Staff's broad-based -- broad-brushed
3 position that all small water and sewer systems
4 should be treated as having 25 percent equity may
5 help to prop up a troubled system that has no
6 equity and is in need of a cash flow, but there is
7 no evidence that this position is just and
8 reasonable for all small systems or for this
9 particular system where it can be shown that there
10 is more than 25 percent equity. There is also no
11 evidence that Staff's position is a fair balance of
12 the needs of the utility versus the needs of the
13 customer. Therefore, it is just and reasonable
14 that Lake Region's actual cap structure be utilized
15 in this case.

16 And another part of a just and
17 reasonable rate is an authorized return on equity
18 that is needed excessive nor confiscatory. A
19 reasonable return on equity as developed by the
20 United States Supreme Court decisions in the
21 Bluefield and Hope cases is one adequate to attract
22 cap at reasonable terms thereby enabling the
23 utility to provide safe and reliable service; 2,
24 sufficient to ensure the Company's financial
25 integrity; and, 3, commensurate with returns on

1 development on enterprise having corresponding
2 risks.

3 The evidence will show that Lake
4 Region's current commission-authorized return on
5 equity of 8.5 percent continues to be just and
6 reasonable in this case. The evidence will show
7 that the Company's equity ratio has increased
8 significantly since the prior case, and the Company
9 is likely to be subject to less risk than it was in
10 the last case. The economy is still suffering and
11 reasonable returns are lower as a result. Since
12 Lake Region's last rate case, the overall return in
13 equity the seen -- has seen in its variate rate
14 cases has decreased, not increased.

15 The only risk that Lake Region has
16 incurred lately revolves around the shareholder
17 decision to remove equity from the Lake Region
18 Water and Sewer System to fund a cash payout to the
19 shareholders. That decision was purely shareholder
20 driven, and any risk and result in lowering of
21 return should not be placed on Lake Region but,
22 instead, should be borne by the shareholders
23 themselves. Shareholders also specifically removed
24 the payment of availability fees from Lake Region
25 as a separate cash flow and, as a result,

1 eliminated a good deal of risk on behalf of the
2 shareholder.

3 Customers have no say in shareholder
4 actions and are at the mercy of Commission decision
5 on how much return is reflected in rates. There is
6 no evidence that Staff's recommended 13.89 or 11.93
7 percent, depending on Commission's decisions, or
8 that the Company's original 11.07 return on equity
9 recommendation are reflections of just and
10 reasonable shareholder risk. Therefore, Lake
11 Region's current authorized return on equity of 8.5
12 percent continues to be just and reasonable in this
13 case.

14 The last issue is that of legal fees.
15 As stated before, the issue before the Commission
16 is whether the legal fees incurred during the test
17 year for Shawnee Bend Development Company, LLC, and
18 Lake Region Water and Sewer should be included in
19 the calculation of rates for Lake Region. As the
20 Commission has already heard, the developer won
21 this case, and the customers received no benefit
22 from the costs of this legal action. Utilization
23 of the test year concept assumes that reasonable
24 and prudent expenses included in the development of
25 rates should be representative of costs which will

1 be incurred each year during the period that the
2 new rates are in effect.

3 The evidence will show that a judgment
4 was entered on July 10th, 2013, indicating the case
5 was resolved at that time. There are no similar
6 legal actions currently outstanding and none are
7 foreseen in the near future. Therefore, legal fees
8 are a nonrecurring expense and should not be
9 included in the calculation of the rates for Lake
10 Region. Thank you.

11 JUDGE BUSHMANN: Thank you, Ms. Baker.

12 We're now ready to start with witness
13 testimony. As I mentioned before, we're going to
14 do that by issue; and the first issue to be
15 discussed is capital structure, and the first
16 witness will be Lake Region's witness, John
17 Summers.

18 CAPITAL STRUCTURE

19 JUDGE BUSHMANN: Mr. Summers, could
20 you come forward, please.

21 (Whereupon, the witness, John Summers,
22 was administered the oath by Judge Bushmann.)

23 JUDGE BUSHMANN: You may be seated.

24 MR. COMLEY: Judge Bushmann, so I'll
25 be clear, we're going to wait to make formal offers

1 of the testimony until each witness testifies fully
2 on the issues in which their testimony addresses?

3 JUDGE BUSHMANN: Yes. Since they'll
4 be coming up and down several times, I think it
5 will be best to offer it the last time they're up.

6 MR. COMLEY: Very well. I do have a
7 series of questions for Mr. Summers in connection
8 with all of that, kind of preparatory things, and
9 I'll defer the offer until after he's been
10 cross-examined.

11 JUDGE BUSHMANN: That's fine.

12 DIRECT EXAMINATION BY MR. COMLEY:

13 Q. Mr. Summers, would you state your full
14 name for the record, please?

15 A. John R. Summers.

16 Q. And what is your position with Lake
17 Region?

18 A. I'm the General Manager.

19 Q. Mr. Summers, did you cause to be
20 prepared for filing in this case a -- three
21 separate pieces of written testimony?

22 A. Yes, I did.

23 Q. And they have been marked by the
24 Reporter, I think, as Lake Region's Exhibits 1, 2,
25 and 3, and they are direct, rebuttal, and

1 **surrebuttal testimony respectively; is that**
2 **correct?**

3 A. Yes.

4 Q. **Mr. Summers, do you have any**
5 **corrections or additions to your testimony in any**
6 **one of those exhibits?**

7 A. I would correct the exhibit, I believe
8 it's in my rebuttal testimony, where I added the
9 actual case numbers to the exhibit stating how
10 availability fees had been historically treated.

11 MR. COMLEY: With the permission from
12 the Judge, I would like to show this to Mr. Bush --
13 Judge Bushmann, I would like to show this to
14 Mr. Summers for identification, please.

15 (Whereupon, Mr. Comley handed a
16 document to the Witness.)

17 Q. **(By Mr. Comley) Mr. Summers, I'm**
18 **handing you what has been marked at the bottom as**
19 **JRS Exhibit No. 1. Is this the resized JRS Exhibit**
20 **No. 1 to the rebuttal testimony you have just**
21 **mentioned?**

22 A. Yes it is.

23 Q. **It is your decision this should be**
24 **replaced for the exhibit that is on the current set**
25 **of rebuttal testimony?**

1 A. Yes.

2 Q. Are there any other additions or
3 corrections to your direct, rebuttal, or
4 surrebuttal testimony as it's been submitted to the
5 Commission?

6 A. No.

7 MR. COMLEY: Your Honor, I'll defer
8 the offer of the testimony and submit Mr. Summers
9 for cross-examination.

10 JUDGE BUSHMANN: Okay.

11 MR. COMLEY: I will hand out this.

12 JUDGE BUSHMANN: Yes. Thank you.

13 Just to be clear, Mr. Comley, what you
14 just handed the Staff, is that the revision to the
15 testimony that you referred to?

16 MR. COMLEY: On the rebuttal
17 testimony, it's the exhibit that was attached to
18 his testimony on rebuttal.

19 JUDGE BUSHMANN: And this is the only
20 thing that's changed?

21 MR. COMLEY: Yes. My understanding.

22 JUDGE BUSHMANN: Okay. Thank you.

23 All right. Cross-examination by Staff.

24 MR. OPITZ: Your Honor, Staff has no
25 cross at this time.

1 JUDGE BUSHMANN: Public Counsel.

2 MS. BAKER: No questions. Thank you.

3 JUDGE BUSHMANN: Are there any
4 questions from the bench?

5 (No response.)

6 JUDGE BUSHMANN: Any questions,
7 Mr. Chairman?

8 CHAIRMAN KENNEY: I'm sorry. I
9 couldn't hit the mute button. No. Thank you.

10 JUDGE BUSHMANN: Any other questions?

11 A. No questions.

12 JUDGE BUSHMANN: Since there's no
13 cross and no questions from the bench, we don't
14 need to have re-cross or redirect, so you may step
15 down at this time.

16 (Whereupon, the Witness left the
17 witness stand.)

18 MR. COMLEY: Lake Region would call
19 Mr. Michael Gorman.

20 (Whereupon, the witness, Michael
21 Gorman, was administered the oath by Judge
22 Bushmann.)

23 JUDGE BUSHMANN: You may be seated.

24 DIRECT EXAMINATION BY MR. COMLEY:

25 Q. Mr. Gorman, state your full name for

1 the Commission, please.

2 A. Michael Gorman.

3 Q. How are you professionally employed,
4 sir?

5 A. Managing Principal of Brubaker and
6 Associates.

7 Q. Mr. Gorman, as part of the testimony
8 in this case, did you cause to be prepared a set of
9 written testimony which has been marked as Exhibit
10 5, your rebuttal testimony in this case?

11 A. Yes.

12 Q. Are there any changes or corrections
13 to your testimony?

14 A. No.

15 Q. And if I were to ask the same
16 questions that are propounded in your testimony,
17 would your answers today be the same?

18 A. They would.

19 MR. COMLEY: Your Honor, I offer
20 Mr. Gorman at this time; and he is also testifying
21 on only one issue, and given the procedures you
22 announced, I will go ahead and offer his testimony
23 into evidence at this time.

24 JUDGE BUSHMANN: I'm sorry. am I
25 incorrect that he won't be testifying about return

1 on equity?

2 MR. COMLEY: Oh, I'm presuming that
3 maybe we will handle both of those at the same
4 time. But if we can't --

5 JUDGE BUSHMANN: Are we doing those
6 together combined?

7 MR. OPITZ: Yes.

8 MR. COMLEY: I'm sorry. I was
9 presuming maybe the issues were so closely
10 connected that you were going to cross Mr. Summers
11 on that same issue when he was up there.

12 MR. OPITZ: Yes.

13 JUDGE BUSHMANN: Can we do both at the
14 same time?

15 MR. OPITZ: I have no cross on that
16 issue from Mr. Summers.

17 JUDGE BUSHMANN: And does Public
18 Counsel have any?

19 MS. BAKER: I did not. So, putting
20 them together was fine.

21 JUDGE BUSHMANN: Moving things along
22 with the agreement of the parties, why don't we
23 combine these two issues of capital structure and
24 return on equity, and cross-examination could cover
25 both issues.

1 And, so, Mr. Comley, you're going to
2 offer your exhibit?

3 MR. COMLEY: I would offer Exhibit No.
4 5 into evidence. That's Mr. Gorman's rebuttal
5 testimony.

6 JUDGE BUSHMANN: Any objections to the
7 receipt of that exhibit?

8 MR. OPITZ: None from Staff, your
9 Honor.

10 MS. BAKER: No objection.

11 JUDGE BUSHMANN: Hearing none, then
12 Lake Region Exhibit 5 will be received into record.

13 MR. COMLEY: I tender Mr. Gorman for
14 cross-examination.

15 JUDGE BUSHMANN: And cross-examination
16 by Staff.

17 MR. OPITZ: No cross at this time,
18 your Honor.

19 JUDGE BUSHMANN: Any cross-examination
20 by Office of Public Counsel?

21 MS. BAKER: Yes, your Honor.

22 CROSS-EXAMINATION BY MS. BAKER:

23 Q. Starting first with the issue of cap
24 structure. Were you able to calculate the actual
25 cap structure for Lake Region?

1 A. Mr. Summers calculated that cap
2 structure, but it was approximately 60 percent debt
3 and 40 percent. I did verify his calculation of
4 the numbers, but he sponsored the Company's actual
5 cap structure.

6 **Q. All right. You're aware that Staff**
7 **says it has a rule of thumb to apply a 25 percent**
8 **debt -- or a 75 percent debt/25 percent equity cap**
9 **structure to any small water and sewer system?**

10 A. That's highly leveraged. Yes, that's
11 my understanding of the Staff's position.

12 **Q. All right. In your experience, is it**
13 **reasonable to apply a rule of thumb hypothetical**
14 **structure to every small water and sewer system**
15 **without making a determination that it balances the**
16 **need of the utility and the customers?**

17 A. I think that is not a reasonable
18 position.

19 **Q. Did you yourself calculate a**
20 **reasonable range of return of equity for Lake**
21 **Region?**

22 A. I reviewed Staff's methodology, and as
23 far as they recommend using risk preliminary
24 methodology, based on their assessment of target
25 bond rating, Lake Region doesn't have a bond

1 rating. So, the imputed a bonding rate based on
2 its financial characteristics, that imputed bond
3 rating was around B plus.

4 Based on that bond rating and yield spreads
5 of Treasury securities relative to corporate bonds,
6 they developed their return on equity estimate. I
7 found that a proxy bond rating of B plus based on
8 the Company's actual cap structure was reasonable
9 and yield spreads provided a reasonable estimate of
10 a preliminary to current Treasury bond yields to
11 produce a fair return on equity for below
12 development grade company in this marketplace.

13 **Q. You're aware that Lake Region has no**
14 **bonds, is not a publicly-traded company, correct?**

15 A. There are no bonds, but it does have a
16 loan, but it has no bond rating.

17 **Q. And it's not publicly-traded, correct?**

18 A. The equity shares are privately-owned,
19 that's correct.

20 **Q. And, in your testimony, you mentioned**
21 **a 10-percent return on equity for Missouri Ameren**
22 **in its last rate case; is that correct?**

23 A. Yes.

24 **Q. Were you aware that the last Missouri**
25 **Ameren rate case involved a global settlement were**

1 **return on equity for the company was not stated?**

2 A. Was not stated, but it was used for
3 ISRIS, Infrastructure System Replacement Surcharge,
4 pricing that followed the global settlement in that
5 case.

6 Q. And is ISRS, or Infrastructure System
7 Replacement, is just one portion of Missouri
8 Ameren, is not their entire company, correct?

9 A. It is one rate mechanism for the
10 Company. It's not all the rate mechanisms, that's
11 correct.

12 Q. You're aware that Lake Region agreed
13 to 8.5 percent return of equity in their last rate
14 case?

15 A. I'd have to verify that, but that is
16 -- I believe that is correct.

17 Q. Are you aware of any significant
18 increased risk faced by Lake Region since its last
19 rate case?

20 A. Well, I didn't review the methodology
21 to establish 8.5 percent, in the last case. I did
22 review the methodology to establish a return on
23 equity based on the risk characteristics of the
24 Company in this case.

25 Q. So, the answer is no, you did not

1 review any increased risks since the last rate
2 case, whether there were any increased risks?

3 A. Well, not specifically for the return
4 on equity. I did review the change in the
5 financing structure of the Company in this case
6 relative to what it was in the last case, and in
7 this case, there is a direct Company loan.

8 Q. Okay. And you would agree that the
9 Company or shareholder actions specifically with
10 the loan that you just mentioned affect the amount
11 of risk faced by the utility?

12 A. I'm sorry. Can you repeat that
13 please.

14 Q. You would agree that Company or
15 shareholder actions affect the amount of risk
16 that's faced by the utility?

17 A. I would agree that Company management
18 actions can impact the development risk of the
19 Company. I'm not confident that shareholder
20 actions can have a direct impact on the development
21 risk of the Company.

22 MS. BAKER: No further questions.

23 JUDGE BUSHMANN: Any questions from
24 the bench.

25 CHAIRMAN KENNEY: Yes.

1 JUDGE BUSHMANN: Mr. Chairman.

2 EXAMINATION BY CHAIRMAN KENNEY:

3 Q. Can you hear me okay?

4 A. I can. Good morning, Mr. Chairman.

5 Q. Thank for being here. I just have a
6 couple of questions about the business loan
7 agreement and how you analyze it in arriving at
8 your cap structure versus Staff's recommendation,
9 and I just want to make sure I understand your
10 testimony.

11 You don't take issue with Staff's
12 methodology. Is it essentially your opinion that
13 Staff's cap structure is inconsistent with S&P's
14 financial and business risk profiles for a strong
15 rating because they impute them?

16 A. My position is that Staff's
17 methodology didn't necessarily attempt to identify
18 what a reasonable cap structure is using the S&P
19 methodology. The methodology Staff uses, I think,
20 is reasonable. The reason I think it's reasonable
21 is because it's transparent, it's verifiable.

22 And in the issue I have with Staff is that
23 they didn't test the reasonableness of the
24 Company's actual capital structure, first to see
25 whether or not it is consistent with the business

1 risk and the financial risk included in that
2 Standard & Poor's methodology that they are
3 advocating to use in this case.

4 In employing that methodology to test
5 whether or not the Company's actual capital
6 structure is reasonable shows that it is. Sixty
7 percent debt ratio is consistent with a
8 highly-leveraged company. It is consistent with
9 the business risk profile score based on Staff's
10 finding as well as my finding.

11 The disconnect I have with Staff is when
12 they moved away from the Company's actual capital
13 structure to impute a capital structure with
14 significantly more debt than the Company's actual
15 capital structure. I don't think Standard & Poor's
16 methodology supports Staff's decision to do that.
17 I don't think the ultimate finding is necessarily
18 inconsistent with the highly-leveraged company but,
19 nevertheless, I don't think that Staff's
20 methodology demonstrates that the Company's actual
21 capital structure is not reasonable. In fact, I
22 think it's quite the opposite, that that
23 methodology shows that the actual capital structure
24 is reasonable.

25 Q. Doesn't the determination of what is

1 the actual capital structure turn on whether that
2 loan is imputed to the Company or not?

3 A. Yes.

4 Q. So, are you taking exception with the
5 imputation of the loan, the acquisition to the
6 Company in the first place?

7 A. Yeah. I don't think that's a complete
8 or an accurate analysis to determine how the
9 Company funded its equity ownership of the shares
10 in Lake Region. Normally, when Staff and others
11 review the financing structure between the parent
12 company and the utility subsidiary, one looks at
13 the total capital mix of the parent company. You
14 don't select specific loans of the parent company
15 and attribute those to the funding source the
16 parent company used to procure the equity shares.
17 But, rather, you recognize the equity shares as an
18 asset of the parent company on the essence side of
19 the balance sheet, then you go to the liability
20 side of the balance sheet and make an assessment of
21 how they funded all of their assets. Staff didn't
22 do that. So I don't think their analysis is
23 complete in identifying how the Company funded
24 those equity shares.

25 Q. So, what you're saying is they imputed

1 **that loan to the Company without necessarily**
2 **looking at what that loan was used to fund?**

3 A. They did not do a complete analysis of
4 identifying how the Company was funding all of its
5 assets, including the Lake Region equity shares and
6 all of the other assets owned by the partnership.
7 Those are assets on the partnership's balance
8 sheet, the liability describes how they funded all
9 of those assets, and there's equity and debt in the
10 liability side of the balance sheet that should
11 have been evaluated to get a better estimate and
12 more accurate estimate of what the funding source
13 was available to the partnership to fund its
14 investments and all of its business including its
15 development in the equity shares of Lake Region.

16 **Q. Okay.**

17 CHAIRMAN KENNEY: That's all I have.
18 Thank you very much for your time.

19 THE WITNESS: Thank you.

20 JUDGE BUSHMANN: Any cross based on
21 questions from the bench.

22 (No response.)

23 JUDGE BUSHMANN: Does Staff have any
24 questions.

25

1 CROSS-EXAMINATION BY MR. OPITZ:

2 Q. Good morning, Mr. Gorman.

3 A. Good morning.

4 Q. Were you involved with Lake Region and
5 its shareholders at the time that this acquisition
6 loan was established?

7 A. No.

8 Q. And were you involved with Lake Region
9 or its shareholders when the funds from that
10 acquisition loan were originally invested?

11 A. In 2002?

12 Q. I believe so, yes.

13 A. No.

14 Q. Were you involved with Lake Region or
15 its shareholders when the loan was the subject of a
16 finance case before the Commission?

17 A. I believe the shareholder loan was not
18 the subject of a financing case before the
19 Commission, but there was a separate loan on behalf
20 of Lake Region that was. But I was not involved in
21 that proceeding.

22 MR. OPITZ: No further cross, your
23 Honor.

24 JUDGE BUSHMANN: Recross by Public
25 Counsel?

1 MS. BAKER: No questions. Thank you.

2 JUDGE BUSHMANN: Redirect?

3 MR. COMLEY: May I? Thank you, Judge.

4 REDIRECT EXAMINATION BY MR. COMLEY:

5 Q. Mr. Gorman, in response to questions
6 from the Office of Public Counsel and Ms. Baker,
7 she was mentioning some matters of the last case
8 and percentages used in the last case for Lake
9 Region. Has there been any market condition or any
10 economic factor since Lake Region's last rate case
11 which affects your opinions in this matter today?

12 A. Well, what we've been seeing in the
13 capital markets, particularly since the 2008-2009
14 period, is a flight to quality where the market is
15 looking for secure and predictable investments to
16 put their capital. And if you are what the market
17 perceives as a low-risk investment opportunity,
18 you're in high demand. So, development-grade
19 utility companies' securities are in very high
20 demand right now. Their capital cost is very low.
21 Treasury securities are in very high demand right
22 now and cost of Treasury securities are very low.

23 For other companies perceived as not part of
24 that quality development grouping of the capital
25 market, capital market costs are not low for those.

1 Staff has made an analysis, and I think it's a good
2 one, that a proxy bond rating for this company is
3 below investment grade. Several notches below
4 development grade bond rating.

5 They found appropriate bond rating proxy for
6 this cost is B plus. I think that's reasonable
7 based on the S&P methodology that they used to try
8 to target a reasonable bond rating.

9 Capital costs for below investment grade
10 companies has not been low and stable since 2008.
11 It's been rather volatile, and I think that's
12 evidence from Ms. Atkinson's work papers where she
13 shows the yield spread for various investment grade
14 bond ratings and below investment grade bond
15 ratings over a relatively short number of months
16 last year. That spread jumps around quite a bit,
17 particularly for the lower grade non-investment
18 grade bonds. But her analysis also shows that this
19 spread for below investment-grade companies
20 relative to Treasury bonds is somewhere between 300
21 or more basis points for a utility below
22 investment-grade bond rating of around B plus.

23 The Lake Region negotiated loan since the
24 last rate case and that loan even with shareholder
25 guarantees on the loans still added minute interest

1 rate of 5 percent. That 5 percent interest rate is
2 in line with the yield spreads of B plus bond
3 rating based on the spread shown in Ms. Atkinson's
4 work papers in this case. All of that was for the
5 example that I used to judge the Staff's return on
6 equity estimate to be reasonable based on that B
7 plus bond rating target which I also found to be
8 reasonable.

9 **Q. Commissioner (sic) Kenny asked**
10 **questions about your position on imputation of**
11 **shareholder loan acquisition loan be referred**
12 **evidence. With respect to the Lake Region loan,**
13 **direct loan approved in the financing case, do you**
14 **know how the proceeds of the Lake Region loan, the**
15 **one that was approved in the financing case, were**
16 **used in respect to the shareholder loan?**

17 **A.** Well, it's my understanding of the
18 proceedings of the Lake Region loan were not
19 retained in the utility but they were distributed
20 up to the parent company to, essentially,
21 restructure the shareholders' original acquisition
22 cap -- capitalization of the company.

23 **Q. Is that a factor in your significance**
24 **in your case, in your testimony for this case?**

25 **A.** Well, it is, because it's my

1 understanding that Lake Region's management has
2 made an explicit decision to try to develop a
3 transparent and verifiable capital structure mix
4 for Lake Region. And I think that is important for
5 several reasons, particularly if the Staff and the
6 Commission endorse that effort. And the reason I
7 think it's important is because Lake Region can
8 quite literally take the Commission's determination
9 of that capital structure mix being reasonable and
10 be used to set rates to the bank when it applies to
11 extend that existing Lake Region loan. I think
12 it's important because, when they are asking the
13 bank to extend that Lake Region loan, they're going
14 to set an interest rate based on the risk of that
15 loan.

16 Having that regulatory structure supporting
17 the financing mix and the ratemaking mix tied to
18 that loan is important when the Lake Region
19 management interacts with the banking institutions
20 or other capital sources of cap to negotiate actual
21 capital that will be used to support their
22 investment in Lake Region.

23 **Q. During the course of your analysis,**
24 **did you compute the amount of money in Lake**
25 **Region's rate base for purposes of this case?**

1 A. I didn't compute it but I looked at
2 the Staff's estimate of it.

3 **Q. Have you analyzed the amount of debt**
4 **that the Staff is imposing on the Company compared**
5 **to the amount of rate base?**

6 A. Yes. Staff is imputing debt similar
7 in excess of \$4 million, and the rate base estimate
8 is around \$2.6 million.

9 MR. COMLEY: That's all the questions
10 I have.

11 JUDGE BUSHMANN: Thank you,
12 Mr. Gorman. You may step down.

13 (Whereupon, the Witness left the
14 witness stand.)

15 JUDGE BUSHMANN: Seems to me this
16 would be a good time for a break. Why don't we
17 stand in recess until about 10:15.

18 (Whereupon, a recess was taken at 9:55
19 a.m.)

20 (Whereupon, the record resumed at
21 10:13 a.m.)

22 JUDGE BUSHMANN: The next witness that
23 we have for the combined issues of cap structure
24 and return on equity is Shana Atkinson.

25 MR. OPITZ: Your Honor, Staff calls

1 Shana Atkinson.

2 (Whereupon, the witness, Shana
3 Atkinson, was administered the oath by Judge
4 Bushmann.)

5 DIRECT EXAMINATION BY MR. OPITZ:

6 Q. Ms. Atkinson, can you state your name,
7 and spell that, too?

8 A. Shana Atkinson, S-h-a-n-a
9 A-t-k-i-n-s-o-n.

10 Q. And where are you employed and in what
11 capacity?

12 A. I'm employed by Missouri Public
13 Service Commission as a Utility Regulatory Auditor
14 III.

15 Q. Are you the same Shana Atkinson to
16 prepare or caused to be prepared the testimony
17 that's been marked as exhibit -- a portion of
18 Exhibit 1, the Staff's cost of service requirement
19 report, and Exhibit 7, Staff's Exhibit 7, the
20 surrebuttal of Shana Atkinson?

21 A. Yes.

22 Q. Do you have anything that you wish to
23 correct in that testimony?

24 A. No.

25 Q. If I ask you those same questions

1 **today within that testimony and report, would your**
2 **answers be the same?**

3 A. Yes.

4 **Q. Is the information in each of those**
5 **exhibits true and correct, to the best of your**
6 **knowledge and belief?**

7 A. Yes.

8 MR. OPITZ: Your Honor, Staff would
9 like to offer Exhibit 7, the surrebuttal of Shana
10 Atkinson, into evidence; and, as is my
11 understanding, we'll wait to offer Exhibit 1 until
12 all of the witnesses have testified in the cost of
13 service report. And, with that, Staff tenders the
14 witness for cross.

15 JUDGE BUSHMANN: Any objection to the
16 receipt of Staff Exhibit 7 into the record?

17 MR. COMLEY: No objection.

18 MS. BAKER: No.

19 JUDGE BUSHMANN: Staff Exhibit 7 will
20 be received into the record.

21 And first cross would be Office of
22 Public Counsel.

23 MS. BAKER: Thank you.

24 CROSS-EXAMINATION BY MS. BAKER:

25 **Q. Good morning, Ms. Atkinson.**

1 A. Good morning.

2 **Q. Were you able to calculate an actual**
3 **capital structure for Lake Region?**

4 A. I have not computed that since I got
5 an updated rate base yet.

6 **Q. But at the moment that you had a**
7 **previous rate base number, you were able to**
8 **calculate an actual capital structure?**

9 A. Yes.

10 **Q. And is it Staff's rule of thumb to**
11 **apply a 75 percent debt/25 percent equity capital**
12 **structure to any small water and sewer system where**
13 **Staff believes there's less than 25 percent equity?**

14 A. Yes.

15 **Q. Does Staff's rule of thumb**
16 **hypothetical capital structure make any**
17 **determination on how it balances the needs of the**
18 **utility and the needs of the customers?**

19 A. We compute a fair and reasonable rate
20 determined by our methodology.

21 **Q. So, you don't do a specific balance**
22 **between the utility needs and the customer needs?**

23 A. No.

24 **Q. All right. Are you aware that Lake**
25 **Region agreed to an 8.5 percent return on equity in**

1 **their last rate case?**

2 A. Could you repeat that?

3 Q. Are you aware that Lake Region agreed
4 to an 8.5 percent return on equity on their last
5 rate case?

6 A. Yes.

7 Q. Are you aware of any significant
8 increased risk faced by Lake Region since its last
9 rate case?

10 A. No.

11 Q. And you would agree that Company or
12 shareholder actions do affect the amount of risk
13 that's faced by the utility?

14 A. Yes.

15 Q. And did you take into account Lake
16 Region or its shareholders' actions, like
17 shareholder removal of equity to provide cash
18 payments to shareholders, when you developed your
19 position on return on equity?

20 A. Yes.

21 MS. BAKER: No further questions.

22 JUDGE BUSHMANN: Cross by Lake Region.

23 CROSS-EXAMINATION BY MR. COMLEY:

24 Q. I have a whole lot of stuff, Ms.
25 Atkinson. That's why I'm up here at the podium.

1 A. Okay.

2 Q. I have a few questions that will start
3 with the cost of service portion. Your cost of
4 service portion. On page 6, lines 19 through 21, I
5 think we're talking about the two loans that are a
6 part of your analysis for the case. Would that be
7 fair?

8 A. Yeah.

9 Q. What is the acquisition loan? And
10 sometimes I'll refer to that as the shareholder
11 loan. Would that be okay with you?

12 A. Yeah.

13 Q. And the other loan would be the loan
14 that was approved during the financing case, and
15 I'll say I think I've got this right, WF-2013-0118?

16 A. Yes.

17 Q. And if I refer to the financing case,
18 that's what I'm referring to. Now, on the
19 acquisition loan or shareholder loan, to make this
20 clear, this is the loan that Altera Bank first
21 issued in October of 2004, would that be correct?

22 A. No. It was issued by Gold Bank in
23 2004.

24 Q. Gold Bank issued that. And the debt
25 was -- the debt was used for the acquisition of the

1 **shares; is that correct?**

2 A. Yeah, the pickup of that loan was to
3 acquire Lake Region Water and Sewer Company.

4 **Q. Now, was there other property involved**
5 **in that loan, to your knowledge?**

6 A. No. It said the purpose of the loan
7 was to acquire Lake Region Water and Sewer Company.

8 **Q. So, the only purpose that you saw was**
9 **for the acquisition of the shares?**

10 A. Yes.

11 **Q. Now, that loan has been renewed; is**
12 **that correct?**

13 A. It has been refinanced over the years.

14 **Q. And the most recent financing would**
15 **have been in May of 2011 -- no -- May of 2012?**

16 A. Hold on. Let me see if I have it.

17 **Q. Excuse me. I'll say May of 2013.**

18 A. Yes.

19 **Q. Okay. Commissioner (sic) Kenny in his**
20 **remarks earlier talked about the loans, and my**
21 **understanding is that, in connection with the**
22 **subpoena issued to RPS Properties, the Staff**
23 **acquired copies of the commercial loan agreement as**
24 **well as pledge agreements and the other documents**
25 **related to the Altera Bank loan; is that correct?**

1 A. The shareholder loan.

2 **Q. Shareholder loan?**

3 A. Yes.

4 MR. COMLEY: I have an exhibit I would
5 like for the witness to review.

6 JUDGE BUSHMANN: Okay.

7 (Whereupon, a document was handed to
8 the witness.)

9 **Q. (By Mr. Comley) Ms. Atkinson, I've**
10 **handed you a document that's covered by a business**
11 **records affidavit, and I'm going to ask you, is**
12 **that affidavit and the documents following the**
13 **response to the subpoena that the Staff received**
14 **from RPS Properties?**

15 A. Hold on just a second.

16 (Whereupon, the Witness looked at the
17 document.)

18 A. (By the Witness) Yes. It's the same.

19 **Q. Now, is this the loan that you have**
20 **reviewed in connection with your testimony?**

21 A. Yes.

22 **Q. And is that a true and correct copy of**
23 **the loan as it was received by you and reviewed?**

24 A. Yes.

25 MR. COMLEY: I would like to have that

1 marked as Lake Region's next exhibit, I think we're
2 on to No. 7.

3 Q. (By Mr. Comley) And while you were
4 thumbing through Exhibit 7, I noticed you may have
5 a copy handy.

6 A. Yes.

7 Q. With respect to Exhibit 7, this
8 represents the current version of that shareholder
9 loan. Would that be a correct statement?

10 A. Yes.

11 Q. And the shareholders have changed
12 since originally -- since the time the first loan
13 was taken out for the shares; is that correct?

14 A. Yes. It is my understanding that
15 Vernon Stump now has Sally Stump's shares.

16 Q. And the shareholder loan was not
17 approved by the Commission; is that correct?

18 A. Correct.

19 Q. And would it be Staff's position that
20 this kind of loan would not be subject to
21 Commission approval?

22 A. Within the limitations of Missouri
23 Revised Statutes 39380.

24 Q. Under that, the Commission would
25 necessarily be required to approve --

1 A. Not necessarily. It's within the
2 statute.

3 Q. Now, the other one in your analysis
4 was one that the Commission approved in the
5 financing case; is that correct? The other loan
6 that you analyzed in your testimony was the one
7 that was approved by the Commission in the
8 financing case?

9 A. The Greechen (ph), yes.

10 Q. And in that loan, Lake Region
11 collateralized that loan with its assets. Would
12 that be a correct statement?

13 A. Yes.

14 Q. And in the way you imputed the debt of
15 the Company, you have added the shareholder loan,
16 the acquisition loan, to the Lake Region loan, the
17 one that was approved in the financing case, for
18 the total debt. Is that correct?

19 A. The current amount of the acquisition
20 loan, that's 1.3 million, then about 1.4 million at
21 the Lake Region level.

22 Q. So, how much have you calculated the
23 debt to the Company to be? What is the total debt
24 that you have calculated?

25 A. The total debt is -- hold on just a

1 second. It's about 2.7 million. Under that.

2 Q. You calculate the amount of debt for
3 the whole company at 2.7 million?

4 A. Under that.

5 Q. 2.7. Do you know what the rate base
6 is?

7 A. The counter rate base then is about
8 two-and-a-half million.

9 Q. I think Mr. Gorman mentioned that your
10 calculation of the the entire debt was around 4
11 million?

12 A. In direct testimony, we didn't have
13 the information. We had to subpoena RPS Properties
14 for the current documentation of the loan to make
15 sure that Lake Region disbursed the amount from the
16 finance case to pay down the shareholder loan.

17 Q. All right.

18 A. So, that's why there's a discrepancy
19 there.

20 Q. So, you know that the amount that was
21 borrowed at the Lake Region level, the financing
22 loan, financing case loan, that was used to pay
23 down the shareholder loan?

24 A. Correct.

25 Q. And that's why the figures now differ?

1 A. We had to make sure that the
2 disbursement actually took place. We didn't have
3 the current RPS loan and Sally Stump loan
4 documentation to verify that. So, we included the
5 whole entire amount of 2.8 million in the original
6 direct testimony and added that to the Lake Region
7 loan, and that's why that was about 4.3 million.

8 Q. But right now, given your figure that
9 you just testified to, you're saying that the total
10 debt would approximate the amount of the rate base?

11 A. Correct.

12 Q. Now, as part of the shareholder loan,
13 the makers of that note executed a negative pledge
14 agreement. Remember that?

15 A. Yes.

16 Q. And that, basically, provides that the
17 shareholder would take no action that pled the
18 assets of Lake Region for collateral for any
19 indebtedness than what you understand that?

20 A. Yes.

21 Q. And that negative pledge agreement is
22 part of the Exhibit No. 7?

23 A. Yes.

24 Q. So, a copy of that is involved in
25 Exhibit 7?

1 A. Yes.

2 Q. Okay. Would it be fair to say that
3 the negative pledge agreement terms and provisions
4 were significant to you in determining that the
5 shareholder loans should be imputed to Lake
6 Region's debt structure?

7 A. I would say it helped reinforce our
8 opinion on the debt structure. I wouldn't say it
9 was the main reason.

10 Q. It was very important, though, wasn't
11 it?

12 A. Because Altera Bank now has a loan
13 held by -- that Lake Region has a loan by them, the
14 negative pledge agreement doesn't really change any
15 interest that they have with the Company.

16 Q. Let's go through this a little bit.
17 You may recall that Lake Region sent requests for
18 admissions to the Staff --

19 A. Uh-huh.

20 Q. -- that were directed toward the cap
21 structure testimony. Do you remember that?

22 A. Yes.

23 Q. And would it be fair to say, Ms.
24 Atkinson, that you had some role in answering those
25 requests for admissions?

1 A. Yes.

2 Q. And the interrogatories that were
3 involved with those?

4 A. Yes.

5 (Whereupon, a certain document was
6 marked for identification by the Court Reporter as
7 Exhibit No. 7, psg, 2/18/14.)

8 MR. COMLEY: I'm going to try to use
9 the ELMO a little bit, and I don't know how much
10 it's going to affect the ability for people to hear
11 me, but I'm going to have to be over here a little
12 bit and direct the witness to some pleadings over
13 here. I'll try to yell.

14 Q. (By Mr. Comley) Ms. Atkinson, I'm
15 going to try to direct your attention to that
16 television over there (indicating).

17 A. Okay.

18 Q. I think that this is going to show up.
19 I'm hoping that people can see it. Some of these
20 things are going to be, maybe, out of scope, but
21 I'm hoping that we can get these things so people
22 can see it.

23 You know this is titled Response to the
24 Missouri Sewers Company Combined First Set of
25 Request for Admissions; is that correct?

1 A. Yes.

2 Q. And, again, you were part and parcel
3 of preparing these responses?

4 A. Yes.

5 Q. I'm going to direct your attention to
6 No. 13, -- No. 13, Request No. 13. And I'm hoping
7 that this will expand enough so you can read it.

8 The request is debts of regulated utility
9 shareholders are not debts of the regulated
10 utility, and your answer is, Staff cannot
11 truthfully admit or deny this statement. While it
12 is usually true that personal debt of utility
13 shareholders is not considered a debt of a utility,
14 Lake Region's shareholders demonstrate an exception
15 to this standard.

16 Lake Region has only two shareholders, both
17 of whom have specifically signed negative pledge
18 agreements, do not pledge Lake Region assets as
19 collateral in any other loans. The intent of the
20 structure of this debt instrument is to prevent the
21 Lake Region; therefore, in this case, the
22 shareholders debt should be considered a debt of
23 Lake Region for the purposes of assessing Lake
24 Region's capital structure.

25 Have I read that correctly?

1 A. Yes.

2 Q. Let's look at Request for Admission
3 No. 14. It asks to admit or deny the debts of
4 shareholders even occurred for purposes of
5 purchasing shares and regulated utilities are not
6 debts of the utility. And I think the answer you
7 give to that is identical to the one for 13?

8 A. Yes.

9 Q. So, for purposes of these requests for
10 admissions, you end with, therefore, in this case,
11 the shareholders' debt should be considered a debt
12 of Lake Region for the purposes of assessing Lake
13 Region's cap structure on the basis of the negative
14 pledge agreement. Is that correct?

15 A. Yes.

16 MR. COMLEY: Your Honor, at this time,
17 I would like to move for the admission of Lake
18 Region Exhibit No. 7.

19 JUDGE BUSHMANN: Any objections?

20 MS. BAKER: Do we have a copy of that?

21 JUDGE BUSHMANN: Did you give that to
22 the Counsel? Have they seen that?

23 MR. COMLEY: I think the copy was sent
24 by agreement, the RPS subpoena was sent to
25 everybody. Mr. Opitz was sent that.

1 MS. BAKER: This is what is attached
2 to --

3 MR. COMLEY: This was attached to --

4 MR. OPITZ: You're talking about the
5 loan?

6 MR. COMLEY: It was attached to an
7 email sent by Mr. Opitz on Friday, November 22nd.

8 MS. BAKER: Okay. I get a lot of
9 e-mails.

10 MR. COMLEY: I don't have another
11 copy.

12 JUDGE BUSHMANN: Can Ms. Baker look at
13 the one that's been marked?

14 MR. COMLEY: Absolutely.

15 JUDGE BUSHMANN: Are you through with
16 the document reader?

17 MR. COMLEY: I've got several more
18 things to use.

19 (Whereupon, Ms. Baker looked at the
20 document.)

21 MS. BAKER: I'm assuming I have the
22 entire document available to me.

23 MR. COMLEY: I hope you do. I'm
24 assuming you do.

25 MS. BAKER: Okay. With that caveat,

1 no objection.

2 JUDGE BUSHMANN: Staff, any objection?

3 MR. OPITZ: No objection, your Honor.

4 JUDGE BUSHMANN: Then, Lake Region

5 Exhibit 7 is received into the record.

6 Q. (By Mr. Comley) I've got a few more
7 of the admissions I want to work with you on.

8 A. Okay.

9 Q. Let's take a look at No. 6, -- excuse
10 me -- No. 4. The Staff has admitted that the
11 outstanding shares in or of Lake Region are not
12 classified of assets for Lake Region for accounting
13 purposes. And that's correct, isn't it?

14 A. Yes.

15 Q. And the Staff is admitted that the
16 outstanding shares in or of Lake Region are not
17 classified as assets of Lake Region for purposes of
18 the Staff report?

19 A. Yes.

20 Q. Number 6. RPS Properties, LP, does
21 not own any Lake Region assets. In their response,
22 the Staff has insufficient knowledge to either
23 admit or deny this statement. Lake Region and its
24 owners have not provided information showing RPS
25 Properties, LP's real financial and/or personal

1 assets. Is that a correct reading of that?

2 A. Yes.

3 Q. No. 7, Sally Stump does not own any
4 Lake Region assets, and your answer is the same as
5 it was for 6?

6 A. Yes.

7 Q. Would that be correct?

8 A. Uh-huh.

9 Q. No. 8, Lake Region assets are not
10 collateral or security for the RPS/Stump loan, and
11 that is denied. Is that correct?

12 A. Yes.

13 Q. On December 31st, you said -- 2012 --
14 this is No. 9 -- Vernon Stump shared in Lake
15 Region?

16 A. Yes.

17 Q. But he does not own Lake Region. Your
18 answer there is like the ones you had for 6 and 7?

19 A. Yes.

20 Q. Let me ask you this: For purposes of
21 the auditor examination to the Lake Region
22 accounts, did you or any member of the Staff
23 discover that assets used by Lake Region for
24 regulatory purposes were owned by any others than
25 Lake Region?

1 A. I don't know if they are or not.

2 Q. Would that have been something that
3 you or a Staff member would have done to determine
4 whether there were assets being used that weren't
5 owned by Lake Region?

6 A. Repeat the question, please.

7 Q. Would you or another Staff person
8 during the course of the audit confirm that Lake
9 Region's regulatory office were in Lake Region's
10 name?

11 A. I don't know.

12 Q. With respect to the denial of request
13 for admission No. 8-S, you answered interrogatories
14 with respect to that denial, did you not?

15 A. Yes.

16 Q. Can you see -- can you see that on
17 your television there?

18 A. Yes.

19 Q. I have the reasons for denial that
20 because Lake Region's assets are owned by the
21 company shareholders and the shareholders have
22 pledged their shares as collateral, Staff believes
23 Altera Bank would take ownership of the assets in
24 the event of default. Is that your answer?

25 A. They are owned, in effect, that the

1 two shareholders own the equity shares and,
2 therefore, control the assets.

3 Q. But here (indicating), you're saying
4 that the shareholders own the assets. So, is that
5 correct?

6 A. That's what that says, yes.

7 Q. I have a few questions about your
8 surrebuttal. One of the parts of your surrebuttal
9 is that, because Mr. Summers agreed with the cap
10 structure that was in the last case, whether he
11 agreed with the proposal the structure of the last
12 case, that it should not be any different for this
13 case. Would that be a fair reading of your
14 testimony?

15 A. Um, he said that including the
16 acquisition loan in the cap structure most
17 accurately reflects the cost of cap employ in the
18 company.

19 Q. Your testimony would be, because he
20 said it, then it should be the same as it is now;
21 is that correct?

22 A. Nothing has changed since the last
23 case to not include the acquisition loan.

24 Q. Isn't it true that there's been a
25 financing case since that time?

1 A. Yes.

2 Q. And isn't it true that there's been
3 kind of a remarkable change in market conditions
4 since that time?

5 A. What do you mean by remarkable change?

6 Q. We did have a financial reversal
7 starting in 2008 and continuing, we still have
8 conditions in the economic markets that are less
9 than the ultimate; isn't that correct?

10 A. Yes.

11 Q. I suspect you wouldn't agree that if a
12 Staff witness would say something in a previous
13 case that that should stay the same no matter what?

14 A. No.

15 Q. Okay. That's what I thought. Would
16 it be fair to say that, until the loan authorized
17 in the financing case, the Staff of the Commission
18 was concerned that the Company's cap structure was
19 not entirely transparent?

20 A. I don't know.

21 Q. Does this loan, through the financing
22 case, give Staff a better view of what is on the
23 Lake Region books as for debt?

24 A. I wouldn't say a better view, no.

25 Q. So, are you saying that it would --

1 the loan that is in the financing case was
2 unnecessary for the company for its debt structure?

3 A. Staff views that they have the same
4 amount of debt, whether its at the Lake Region
5 level or at the shareholder level.

6 Q. So, if it wanted to, it could go ahead
7 and get debt not approved by the Commission and add
8 to the shareholder loan which the Staff would use
9 for debt structure for the company?

10 A. No. The shareholder loan was used to
11 acquire Lake Region Water and Sewer Company, and
12 that's why we include that acquisition loan.

13 Q. Well, in the absence of an approval of
14 the Commission, let's say, for instance, the
15 shareholders decided to increase the amount of the
16 shareholder loan and collateralize it with not only
17 the shares of the company but other property that
18 they own, would the Staff then use the amount of
19 the total loan as the debt structure for the
20 Company?

21 A. It's been represented to Staff that
22 that acquisition loan used to acquire Lake Region
23 Water and Sewer Company could have been issued at
24 the Lake Region level. They only chose that to do
25 for their own reasons.

1 Q. Even so, would it be your testimony
2 that, if that loan amount is increased, the loan
3 amount is increased to the the point where other
4 property is collateralizing --

5 MR. OPITZ: Objection, your Honor.
6 Calls for speculation.

7 MR. COMLEY: She's been qualified as
8 an expert. This goes to her opinion and the
9 credibility of her opinions on this.

10 JUDGE BUSHMANN: Objection overruled.

11 Q. (By Mr. Comley) The question is,
12 would Staff use the acquisition loan as the total
13 debt of the Company if that loan were increased in
14 value without Commission approval, of course, and
15 there would be other property collateralizing that
16 loan?

17 A. Staff would do discovery to see why
18 that acquisition loan increased.

19 Q. Let's go this way. They decided to
20 purchase property for RPS and RPS was going to use
21 that in connection with their public business and
22 say its a billed. And it would be collateralized
23 by the real estate owned by RPS. Would the Staff,
24 in turn, use that entire loan as the debt structure
25 for the Company?

1 A. Staff would do discovery to see what
2 amount is attributed to that real estate property.

3 Q. So, the amount attributed to the real
4 estate property would be deducted?

5 A. Yes.

6 Q. Now, the shareholders guaranteed the
7 Lake Region loan, did they not? The one that's
8 tied to the Company, the one that was approved in
9 the financing.

10 A. Yes.

11 Q. Did they need to do so?

12 A. I don't know if it was required,
13 because Altera Bank had said they looked favorably
14 upon issuing more debt to Lake Region in the
15 future.

16 Q. Do you think it would be as favorable
17 if the shareholders weren't willing to guarantee
18 personally the note?

19 A. I don't know.

20 Q. Do you think the owner guarantee had
21 anything to do with the interest rate on the note?

22 A. I don't know.

23 Q. If it were an economic decision to --
24 or for the shareholders or the borrowers to
25 guarantee that loan, would you believe it was

1 **necessary?**

2 A. I'm sorry. Can you repeat the
3 question?

4 Q. If guaranteeing that loan was
5 something necessary for the shareholders to
6 guarantee a lower rate of interest, would you agree
7 it was a good thing to do?

8 A. Yes.

9 Q. If the owners who gave the guarantee
10 to lower the interest rate, it means they gave that
11 to lower the interest rate, did the guarantee limit
12 any of their total debt issuance guaranteed
13 capacity?

14 A. Can you repeat that.

15 Q. See if I can do it right. If the
16 owners gave the guarantee to lower the interest
17 rate on the loan, did the guarantee create a limit
18 on their total debt issuance or guarantee capacity?

19 A. I don't know.

20 Q. Another question. Did you ever
21 consider that the common equity cap of the
22 shareholder RPS was a component of the cap
23 available to fund the original equity acquisition,
24 the shareholder loan?

25 A. The acquisition loan stated that the

1 sole purpose of that loan was to purchase acreage
2 and water sewer company.

3 Q. So, I take it you did not consider the
4 common equity of RPS?

5 A. No.

6 Q. Does it make economic sense for Lake
7 Region to have much larger amounts of debt than it
8 has in utility rate base investments?

9 A. I'm sorry. Can you repeat that.

10 Q. Does it make economic sense for Lake
11 Region to have larger amounts of debt than it has
12 in utility rate base?

13 A. It's been represented that the Lake
14 Region assets can support all that debt.

15 Q. But does it make economic sense for
16 them to have more debt than they have invested in
17 their rate base?

18 A. No.

19 Q. We've tended to cover this a little
20 bit. I think it's on page 5 of your surrebuttal.
21 Lines 18 through 22, and through page 6. I think
22 it's there that you say that the negative pledge
23 agreement was not essential for purposes of your
24 analysis, and your decision to impute the
25 shareholder loan for the debt structure of the

1 **Company.**

2 A. I'm sorry. What lines?

3 **Q. I think it was on page 5, I'm looking**
4 **at lines 18 through 22.**

5 A. You said page 5.

6 **Q. Of your surrebuttal.**

7 A. I have on page 5 that question to that
8 answer from 18 through 22, what would have happened
9 if all the debt had been happened to move to Lake
10 Region.

11 **Q. What people looking at the bottom of**
12 **page 5, lines 21 through 22, something like the**
13 **lender could, ultimately, take possession of Lake**
14 **Region if there was a same -- same effect lender**
15 **foreclosed on Lake Region assets; is that fair? Is**
16 **that right?**

17 A. Yes.

18 **Q. In the right spot?**

19 A. Yes.

20 **Q. On page 60, lines 13 through 15, you**
21 **say, The release of the negative pledge agreement**
22 **does not diminish Altera's Bank security interest**
23 **in the bank of bank operations. Is that the**
24 **correct reading of your testimony?**

25 A. Yes. (Check)

1 Q. Now, with respect to Lake Region
2 Exhibit 7, is it fair to say that nowhere in the
3 commercial pledge agreements is there a reference
4 to Lake Region assets?

5 A. I don't believe so.

6 Q. And there is no description of Lake
7 Region assets in the note itself; is that correct?

8 A. Correct.

9 Q. And the only place, as I recall, from
10 your testimony that the assets may have been
11 involved in this loan was as they were mentioned in
12 the negative pledge agreement. Is that a correct
13 statement?

14 A. Correct.

15 Q. And isn't it true that the negative
16 pledge agreement has be released?

17 A. Yes.

18 Q. I have a copy of that somewhere.
19 Excuse me just a minute. I think the Court
20 Reporter will verify that we have already marked --
21 premarked the affidavit of Mr. Timothy A. Gervy who
22 is an employee of Altera Bank. And I would like to
23 show you a copy of that exhibit.

24 MR. COMLEY: May I borrow your
25 exhibit. What was that number? No. 6.

1 (Whereupon, Mr. Comley handed the
2 Witness a document.)

3 Q. (By Mr. Comley) Let me state for the
4 record I've handed Ms. Atkinson a Lake Region's
5 Exhibit No. 6. Can you identify that for the
6 record, please?

7 A. This is a release of the negative
8 pledge agreement.

9 Q. And it's covered by Mr. Gervy's
10 affidavit; is that correct?

11 A. Yes.

12 Q. And you have seen this release before?

13 A. Yes.

14 Q. And doesn't this, in effect, release
15 any obligation of the shareholders in connection
16 with further collateralization of the Lake Region
17 assets?

18 A. Yes.

19 MR. COMLEY: Your Honor, I would offer
20 into evidence Lake Region Exhibit No. 6.

21 JUDGE BUSHMANN: Any objections?

22 MR. OPITZ: No objection, your Honor.

23 JUDGE BUSHMANN: Ms. Baker?

24 MS. BAKER: No objection.

25 JUDGE BUSHMANN: Lake Region Exhibit

1 No. 6 is received into the record.

2 Q. (By Mr. Comley) I'm getting to the
3 end of my examination I think. Now, in connection
4 with the -- your testimony, did you review a
5 Reuter's Yield Spreadsheet?

6 A. The bonds online?

7 Q. I think it was in one of your work
8 papers.

9 A. Yeah.

10 Q. And do you have a copy of that?

11 A. Yeah. I found it.

12 Q. And can you tell me, was this used in
13 preparing your testimony and the bond information
14 you had in your testimony?

15 A. Yes.

16 Q. And I know that Mr. Gorman mentioned
17 it during his cross-examination. Do you have a
18 copy that we can mark as an exhibit?

19 A. Yeah. Is this the one you're talking
20 about (indicating)?

21 Q. Yes, it is. Yes, it is. And, again,
22 Lake Region 8 was used by you in the preparation of
23 your testimony in the bond yields that you referred
24 to in your testimony; is that correct?

25 A. Yes.

1 MR. COMLEY: Your Honor, I would offer
2 into evidence Lake Region No. 8.

3 JUDGE BUSHMANN: Any objections?

4 MR. OPITZ: No objection, your Honor.

5 MS. BAKER: No objection.

6 JUDGE BUSHMANN: Lake Region Exhibit 8
7 is received into the record.

8 MR. COMLEY: I have no other questions
9 for the witness.

10 JUDGE BUSHMANN: Any questions from
11 the bench.

12 CHAIRMAN KENNEY: I did earlier, but I
13 think I've had my questions answered. Thank you
14 for your time.

15 THE WITNESS: Thank you.

16 COMMISSIONER HALL: I have no
17 questions.

18 JUDGE BUSHMANN: Redirect by Staff.

19 MR. OPITZ: Thank you, your Honor.

20 REDIRECT EXAMINATION BY MR. OPITZ:

21 Q. Ms. Atkinson, Mr. Comley asked you in
22 relation to the request for admissions that you
23 answered on behalf of Staff that there was a
24 negative pledge agreement as a determining factor
25 in your decision to include the acquisition loan in

1 the cap structure. Were there other factors that
2 you based your decision to include that acquisition
3 loan in the capital structure?

4 A. Yes.

5 Q. And can you, I guess, explain what
6 those factors are?

7 A. One of the main factors was that it
8 was represented to Staff by the Company that they
9 could have issued the acquisition loan at the Lake
10 Region level and they didn't do so because of their
11 own reasons.

12 Q. Is that the only other consideration
13 that you took into your decision?

14 A. Also, that they took out the
15 acquisition loan to acquire Lake Region Water and
16 Sewer Company, and because of the equity interest
17 that the bank then, in a default, would take over
18 control of the assets.

19 Q. On the same topic of the negative
20 pledge agreement that Mr. Comley brought up, why
21 was it important for the bank to have a negative
22 pledge agreement which the loan is under, when the
23 acquisition loan was solely under the shareholders?

24 A. They didn't have the assets as
25 collateral under any other loan, but now they do

1 since they took out the Lake Region middle loan.

2 So, the negative pledge agreement doesn't matter in
3 regard to their security interest in Lake Region.

4 **Q. Can you explain why it doesn't matter?**

5 A. It's the same bank. Altera Bank has
6 the acquisition loan and Region loan. Before the
7 Lake Region loan, they had a negative pledge
8 agreement to make sure the Company wouldn't use
9 assets collateral for any of the loan. Because if
10 they took out the Lake Region level loan, they have
11 a secured interest in the assets. The assets are
12 collateral in that loan, so the negative pledge
13 agreement doesn't matter.

14 **Q. Mr. Comley asked you or mentioned that**
15 **in your testimony, surrebuttal testimony, you**
16 **discuss John Summers agreeing to the capital**
17 **structure as most accurately reflecting the debts**
18 **of Lake Region in the last case. Is that -- is the**
19 **fact that he agreed to the capital structure in the**
20 **last case the basis of your decision in including**
21 **it in the capital structure in this case?**

22 A. No.

23 MR. COMLEY: I'll object to
24 mischaracterization of the testimony. It's a bit
25 late, but I'll object anyway.

1 Q. (By Mr. Opitz) If that wasn't the
2 basis of mentioning that, if mentioning that was
3 the only -- excuse me. Since there was an
4 agreement on the capital structure in the last case
5 that most accurately reflected the capital
6 structure of Lake Region and you've said that that
7 wasn't the only reason for including it in the
8 capital structure, can you expound upon some of the
9 other reasons and why that was important to state
10 that it was important?

11 A. It was important to state Mr. Summers
12 testimony in the last rate case in his agreement to
13 include the acquisition loan just to show that the
14 Company viewed that position as a most accurate
15 representation of the cost of capital by including
16 that acquisition loan which happened in the this
17 case, also.

18 Q. Mr. Comley mentioned the financing
19 case in which Lake Region took out a loan on the
20 Lake Region level. What was the practical impact
21 of that loan on the capital structure of Lake
22 Region?

23 A. It simply moved -- they took out debt
24 to pay down the shareholder loan, so it just simply
25 switched debt from the shareholder level to the

1 Lake Region level.

2 Q. Mr. Comley asked you if Lake Region
3 had needed a personal guarantee to get the Lake
4 Region loan in the finance case. Has the Company
5 ever represented to the Staff that the lender
6 relied primarily on Lake Region or the personal
7 guarantee?

8 A. No. They relied on the Lake Region
9 assets.

10 Q. There was discussion of the total debt
11 of the company, and that seemed to be different
12 than what was mentioned earlier. Can you explain
13 why the total debt has changed?

14 A. Originally, in direct, it was 4.3
15 million, because Staff was using the 2.85 million
16 acquisition loan because they hadn't received the
17 documentation from RPS Properties to clarify what
18 the current amount was as of June 30th, 2013. So,
19 now, Staff is of the understand it's about 2.7
20 million combined with Lake Region level loan and
21 the acquisition loan.

22 Q. Thank you. Working in your
23 department, do you often deal with evaluating the
24 financial effects of loans?

25 A. Yes.

1 **Q. What is the financial effect of a**
2 **default on the acquisition or sometimes called the**
3 **shareholder loan?**

4 A. It is my understanding that if it was
5 defaulted upon that the bank would take control,
6 take control of the assets through acquiring the
7 equity interest in the Company.

8 **Q. And on the same page, what is the**
9 **financial -- what would the financial effect of**
10 **default on the Lake Region loan be?**

11 A. The default on the Lake Region loan,
12 they would take control of the assets since there
13 are personal guarantees. It's my understanding
14 they would also take personal control of the
15 interests.

16 **Q. So, under both of the levels of loan**
17 **that are at issue here, is there a difference in**
18 **the financial effect that a default would have?**

19 A. No.

20 **Q. A way back, Ms. Baker asked you about**
21 **the rule of thumb of 75 percent to 25 percent. Is**
22 **that the initial recommendation that Staff makes**
23 **for all small water and sewer companies?**

24 A. No. It's just small water and sewer
25 companies that are above 75 percent debt. We cap

1 it at 75 percent debt if they're over it, in
2 regards to their capital structure.

3 Q. Okay.

4 MR. OPITZ: That's all I have at this
5 time, your Honor.

6 JUDGE BUSHMANN: Ms. Atkinson, that
7 concludes your testimony today. Thank you. You
8 may step down now.

9 THE WITNESS: Thank you.

10 (Whereupon, the Witness left the
11 witness stand.)

12 JUDGE BUSHMANN: Last witness on these
13 two issues is Ted Robertson.

14 (Whereupon, the witness, Ted
15 Robertson, was administered the oath by Judge
16 Bushmann.)

17 DIRECT EXAMINATION BY MS. BAKER:

18 Q. Please state and spell your name for
19 the Court Reporter?

20 A. Ted Robertson, R-o-b-e-r-t-s-o-n.

21 Q. And by whom are you employed?

22 A. I'm the Chief Accountant for the
23 Missouri Office of the Public Counsel.

24 Q. Are you the same Ted Robertson who
25 filed direct, rebuttal, and surrebuttal testimony

1 in this case numbered OPC 2, OPC 3, and OPC 4?

2 A. Yes.

3 Q. Do you have any changes or corrections
4 to your testimony?

5 A. I do not.

6 Q. Do you have any updates to your
7 testimony?

8 A. I do not.

9 Q. Did you have a change in your cap
10 structure from your testimony?

11 A. No.

12 Q. Okay. Is the testimony true and
13 accurate, to the best of your knowledge and belief?

14 A. It is.

15 Q. If asked the same questions today,
16 would your answers be essentially the same?

17 A. They would.

18 Q. Okay.

19 MS. BAKER: I will wait to move for
20 the admission of testimony, but I will go ahead and
21 tender the witness for cross-examination.

22 JUDGE BUSHMANN: Very good. First
23 cross would be by Staff.

24 MR. COMLEY: Your Honor, for the point
25 of order, I will have objections at this point into

1 Mr. Robertson's testimony, but it's not on an issue
2 he's testifying at this point. I wanted to make
3 sure I would reserve my chance to make those
4 exceptions later.

5 JUDGE BUSHMANN: You've preserved it.

6 CROSS-EXAMINATION BY MR. OPITZ:

7 Q. Good morning, Mr. Robertson.

8 A. Good morning.

9 Q. In your testimony, have you testified
10 as to any independent analysis to come up to the
11 8.5 percent return on equity?

12 A. No.

13 Q. And have you submitted any work papers
14 in calculating your return on equity?

15 A. No.

16 Q. So, in coming up with the 8.5 percent,
17 was that based on Staff's analysis in the last
18 case?

19 A. That, and the fact that I thought the
20 risk profiled company had improved since the equity
21 percentage had increased since the last case.

22 MR. OPITZ: That's all I have, your
23 Honor.

24 JUDGE BUSHMANN: Cross by Lake Region.

25 MR. COMLEY: No questions.

1 JUDGE BUSHMANN: Any questions from
2 the bench.

3 CHAIRMAN KENNEY: No. Thank you.
4 Thank you, Mr. Robertson.

5 COMMISSIONER HALL: No questions.
6 Thank you.

7 THE WITNESS: Thank you.

8 JUDGE BUSHMANN: Redirect by OPC?

9 MS. BAKER: No, thank you.

10 JUDGE BUSHMANN: Mr. Robertson, you
11 may step down, sir.

12 (Whereupon, the Witness left the
13 witness stand.)

14 JUDGE BUSHMANN: My schedule shows
15 that the next issue that we're going to be talking
16 about is the issue of availability fees; and, for
17 that, the first witness would be Mr. Summers again.
18 AVAILABILITY FEES

19 JUDGE BUSHMANN: Mr. Summers, I'll
20 remind you you're still under oath.

21 THE WITNESS: Yes.

22 JUDGE BUSHMANN: Any further direct,
23 Mr. Comley?

24 MR. COMLEY: No, I have no other
25 direct.

1 JUDGE BUSHMANN: And, then, cross-
2 examination by Staff.

3 MS. MOORE: Thank you.

4 CROSS-EXAMINATION BY MS. MOORE:

5 Q. Good morning, Mr. Summers.

6 A. Good morning.

7 Q. First, do you have a copy of your
8 rebuttal testimony in front of you?

9 A. No, but I'll be happy to get one.
10 I've got it in my --

11 Q. If you wouldn't mind.

12 (Whereupon, the Witness got a
13 document.)

14 A. (By the Witness) I apologize. Takes
15 a little while with these bifocals to find things
16 sometimes.

17 Q. That's okay. If you wouldn't mind,
18 could you go to page 5, please?

19 A. This was on the rebuttal?

20 Q. Correct.

21 A. Okay.

22 Q. Would you please read lines 1 through
23 8 on page 5 for us?

24 A. Yes. Staff has proposed including
25 availability fee revenues to reduce the revenue

1 requirement, and OPC has proposed treating
2 availability fees current and past as additional
3 contribution in construction CAIC to reduce rate
4 base. Do you agree with either approach? No. The
5 Commission made the correct decision there 20 years
6 ago to record the plant investment in the area with
7 availability fees as CAIC and not to include the
8 availability fees in the ratemaking process.

9 Q. So, is it your testimony that the
10 Commission decided that in Case No. WR-95-194 that
11 availability fees would not be included in the
12 ratemaking process for Lake Region?

13 A. Yes, that's the way I read that.

14 Q. Do you happen to have a copy of that
15 order with you?

16 A. No, I don't.

17 Q. First, is it your understanding that
18 that was a certificate case for the Company?

19 A. That is my understanding.

20 Q. Okay.

21 A. It was the case in which the rates
22 were first set for Shawnee Bend.

23 MS. MOORE: Judge, may I approach the
24 witness?

25 JUDGE BUSHMANN: You may.

1 Q. (By Ms. Moore) Mr. Summers, what I
2 have handed you is a copy of the order in Case No.
3 WR-95-164. Can you confirm for us that that's what
4 that appears to be?

5 A. Yes, that's what it appears to be.

6 Q. Okay. Can you read the caption of the
7 order for us, beginning in the matter of?

8 A. Yes. In The Matter Of The Application
9 Of Four Seasons Lakesites Water And Sewer Company
10 For Certificate Of Convenience And Necessity
11 Authorizing It To Construct, Install, Own, Operate,
12 Control, Manage, And Maintain Water And Sewer
13 Utility Companies For The Property Located In An
14 Unincorporated Area, Generally Comprising Either --
15 Of The Area Known As Shawnee Bend.

16 Q. And if you could take a moment, would
17 you please review that order quickly? Take what
18 time you need, though.

19 A. Okay. Thanks.

20 (Whereupon, the Witness looked at a
21 document.)

22 A. (By the Witness) Okay.

23 Q. Okay. After reviewing that order,
24 would you agree that there is no ruling stated here
25 specifically regarding the ratemaking treatment of

1 **availability fees?**

2 A. I would agree there's nothing in this
3 order on it.

4 **Q. Would you then agree the first rate**
5 **case for the Shawnee Bend rate service area was the**
6 **2010 rate case just prior to that one?**

7 A. No. I wouldn't agree with that,
8 because availability fees were included in the
9 testimony of Greg Meyers in this case, and then
10 they were not included in the rates.

11 **Q. You're discussing the certificate**
12 **case?**

13 A. Yes.

14 **Q. And what I asked you was would you**
15 **agree the first rate case for Shawnee Bend service**
16 **area Lake Region was the 2010 rate case prior to**
17 **this one?**

18 A. There were rates set in this case.

19 **Q. Okay.**

20 A. I have the tariffs with me.

21 **Q. That's not the question I asked you,**
22 **sir.**

23 A. I believe that is a rate case. If
24 rates were set, that is a rate case.

25 **Q. Your testimony is the rate case and**

1 the certificate case is the same thing?

2 A. Yes.

3 Q. Did you participate in the certificate
4 case?

5 A. No, I didn't.

6 Q. So, you have no personal knowledge of
7 what happened in that case, correct?

8 A. No, I don't.

9 MS. MOORE: Judge, I have this copy of
10 the order in that case. I could either submit it
11 as Staff Exhibit, I believe it would be 13, or ask
12 that you take official notice of it, whichever you
13 prefer.

14 JUDGE BUSHMANN: Is there any
15 objection from the parties to admitting that into
16 the record?

17 MS. BAKER: No.

18 JUDGE BUSHMANN: I would prefer we
19 mark it as Staff Exhibit 13 --

20 MS. MOORE: Sure.

21 JUDGE BUSHMANN: -- just to clarify
22 the record. Since there's no objection, I will
23 receive that into the record.

24 MS. MOORE: I have extra copies here.
25 Would you like me to pass that out?

1 JUDGE BUSHMANN: Yes, please.

2 MS. MOORE: Okay.

3 (Whereupon, a certain document was
4 marked for identification by the Court Reporter as
5 Staff Exhibit No. 13, psg, 2/18/14.)

6 JUDGE BUSHMANN: You may proceed.

7 MS. MOORE: Thank you.

8 Q. Mr. Summers, I just have a few more
9 questions. This will be brief. All right. Would
10 go back to your rebuttal testimony, page 3, this is
11 your testimony about the workshop docket or what
12 you call a rulemaking docket in 2011. Can you read
13 lines 19 through 22?

14 A. What was the outcome of these dockets
15 created to develop the rulemaking. At Staff's
16 request on June 17th, 2011, the dockets were closed
17 and availability rulemaking was consolidate into
18 the small utility workshop docket WW-2009-0386.

19 MS. MOORE: Judge, may I approach?

20 JUDGE BUSHMANN: You may.

21 Q. (By Ms. Moore) Mr. Summers, what I've
22 handed you is a copy of the docket sheet in that
23 workshop docket. Can you confirm for us that that
24 is what it appears to be?

25 A. That is what it appears to be, yes.

1 **Q. Okay. First, can you read the style**
2 **of the case for us there at the top?**

3 A. In The Matter Of Working Docket To
4 Investigate Appropriate Methods For Ratemaking
5 Treatment Of Fees Or Other Mechanisms Used For
6 Capital Recovery Of Sewer And Water Infrastructure
7 Investment.

8 **Q. Okay. And if you could review the**
9 **docket real quickly?**

10 (Whereupon, the Witness looked at a
11 document.)

12 A. (By the Witness) Okay.

13 **Q. Would you agree there is no Staff**
14 **request to close the docket showing here?**

15 A. I would agree that's the case.

16 **Q. Okay. After reviewing this, would you**
17 **change your testimony about Staff requesting that**
18 **this docket be closed?**

19 A. No, I wouldn't.

20 **Q. But you agree that it does not show**
21 **that Staff requested this docket be closed?**

22 A. I agree that's what this docket shows,
23 yes.

24 **Q. Thank you.**

25 MS. MOORE: I would like to also

1 submit this as Staff Exhibit 9 -- no -- 14.

2 JUDGE BUSHMANN: That document has
3 been offered. Are there any objections?

4 MS. BAKER: No objections.

5 CHAIRMAN KENNEY: Say again.

6 JUDGE BUSHMANN: Ms. Moore, could you
7 explain what the document is again?

8 MS. MOORE: The document is a printout
9 of the docket sheet of Case No. SW-2011-0042.
10 There was a water and a sewer docket that were the
11 same, and this is just the sewer side.

12 CHAIRMAN KENNEY: 0042 was the sewer,
13 the WW was 2011-0043; is that right.

14 MS. MOORE: I believe so, yes.

15 CHAIRMAN KENNEY: Okay. And you're
16 just referencing the SW-2011-0042 docket sheet,
17 that will be Staff Exhibit 14?

18 MS. MOORE: Correct.

19 CHAIRMAN KENNEY: Okay. Thank you

20 JUDGE BUSHMANN: Staff Exhibit 14 will
21 be received into the record.

22 (Whereupon, a certain document was
23 marked for identification by the Court Reporter as
24 Staff Exhibit No. 14, psg, 2/18/14.

25 Q. (By Ms. Moore) Okay. If we could go

1 back to rebuttal testimony, page 6. Point out here
2 that the covenants about the availability fees say,
3 These fees are to be paid to the owners of the
4 utility or their assigns and designees. Is that
5 correct?

6 A. That's correct.

7 Q. To what version of the covenants are
8 you referring in your testimony?

9 A. I am referring to the covenants in
10 2009.

11 Q. Okay. I have here a copy of the
12 covenants as of 1971, one of the first versions.
13 This version was included in the request for
14 official notice in the parties joint stipulation of
15 undisputed facts in this case. Do you have a copy
16 of that with you?

17 A. No.

18 (Whereupon, Ms. Moore handed the
19 Witness a document.)

20 Q. (By Ms. Moore) I know that copy's a
21 little difficult to read, but if you could find
22 page 22 for me. I think I have it tabbed in that
23 copy.

24 A. Oh, yes, you do.

25 Q. Okay. If you can, can you read

1 **Section 8 beginning with the title of the section**
2 **as far as I have underlined?**

3 A. Central Sewage Disposal System And
4 Water Work System. The owner of each lot agrees to
5 pay to the owner or owners of the sewage disposal
6 system and water work system to be constructed
7 within the development a minimum monthly
8 availability charge for water, water service, and
9 the accommodations afforded the owners of said lots
10 by said water works system. Commencing upon the
11 availability of the water and water work system
12 distribution line provided for the lot and
13 continuing thereafter, so long as water is
14 available for use.

15 Q. Thank you. And I believe the copy
16 you're referring to are of the covenants of 2009,
17 the assigns and designees, was right there about
18 the -- about who it should be paid to owner, owners
19 of the utilities, or the assigns and; designees, is
20 that correct?

21 A. I believe that's correct.

22 Q. Okay. So, looking at this in 1971
23 when these -- looking at the 1971 version, you
24 would agree that the language of that assigns and
25 designees was added sometime later?

1 A. Yes, I would.

2 **Q. Okay. And if you would flip to the**
3 **next page, could you continue reading where I've**
4 **marked? Still within Section 8 on Central Sewage**
5 **Disposal System And Water Work System?**

6 A. The said owner or owners of said water
7 works system and sewage will be a privately-owned
8 public utility authorized by certificate of public
9 convenience and necessity issued by the State of
10 Missouri Public Service Commission to operate
11 sewage disposal systems and/or water work systems.
12 Aforesaid amounts of said available charges, times,
13 and method payments said owners, and other matters,
14 shall be as provided in schedule or rates and
15 rules, regulations, and conditions of services for
16 water services and for sewer services filed and
17 published by said public utility or utilities with
18 said Missouri Public Service Commission.

19 **Q. Wouldn't you agree, then, that the**
20 **availability fees for Lake Region were originally**
21 **intended for the utility to be regulated by the**
22 **Commission?**

23 A. No, I would not. The subdivisions at
24 issue in this hearing are not included in this
25 document.

1 **Q.** That was the original. Can you read
2 the title of the whole document there on the front?

3 A. Amended Declaration of Restrictive
4 Covenants.

5 **Q.** And the covenants you referred to in
6 2009 was a later version of that document, correct?

7 A. Yes, that's correct.

8 **Q.** Thank you.

9 MS. MOORE: I don't have any other
10 questions.

11 JUDGE BUSHMANN: Cross-examination by
12 Public Counsel.

13 MS. BAKER: Thank you. Just a couple
14 of questions.

15 CROSS-EXAMINATION BY MS. BAKER:

16 **Q.** Did Lake Region provide a total amount
17 of availability fees that would be collected?

18 A. No.

19 **Q.** Did Lake Region provide a comparison
20 of the amount of availability fees collected to the
21 amount of original system costs for the Shawnee
22 Bend Water and Shawnee Bend Sewer Systems?

23 A. No.

24 MS. BAKER: No further questions.

25 JUDGE BUSHMANN: Any questions from

1 the bench.

2 COMMISSIONER STOLL: I have no
3 questions.

4 EXAMINATION BY CHAIRMAN KENNEY:

5 Q. Mr. Summers, good morning. Can you
6 hear me okay?

7 A. Yes, I can. Thank you.

8 Q. You were asked about Docket No. SW-
9 2011-0042. What's your understanding of why that
10 docket was opened?

11 A. My understanding is contained in the
12 last report and order which essentially said that a
13 rulemaking was necessary before the Commission made
14 such a major change in policy.

15 Q. And what's your understanding of what
16 happened with that docket?

17 A. I don't think anything happened with
18 that docket.

19 Q. What's your basis for thinking that?

20 A. Because the Company was never
21 contacted regarding that docket, and we were the
22 reason for the docket.

23 Q. So, you never participated in that
24 docket at all?

25 A. No, sir.

1 **Q. Okay. How long have you been with the**
2 **Company?**

3 A. I've been with the Company since the
4 current shareholders bought it in 2004, October
5 2004.

6 **Q. What is your understanding of what is**
7 **done with the availability fees as they are**
8 **collected? Were do they go?**

9 A. They go into a bank account that is
10 owned by RPS Properties and Sally Stump.

11 **Q. And what happens to the money?**

12 A. They disburse it as they see fit,
13 although I believe that they are contractually
14 obligated to pay a portion of that to the
15 developer.

16 **Q. And when you say "they", who are you**
17 **referring to, the shareholders of RPS?**

18 A. Of RPS and Sally Stump.

19 **Q. Then, what is the purpose of**
20 **collecting the availability fee just as a general**
21 **proposition as you understand it?**

22 A. I agree with what the developer
23 testified to in the last case, that he created
24 those fees to collect -- to collect back the monies
25 that he invested in the water and sewer system.

1 Q. So, your understanding is the same as
2 the developer's testimony in the last case?

3 A. Correct.

4 Q. Okay. Do you have any specific
5 knowledge separate and apart from what the
6 developer testified to in the last case as to what
7 is done with the availability fees?

8 A. No, sir.

9 Q. Okay.

10 CHAIRMAN KENNEY: I don't have any
11 other questions. Thanks for your time.

12 THE WITNESS: Thank you.

13 JUDGE BUSHMANN: Any other questions?

14 COMMISSIONER STOLL: No questions.

15 COMMISSIONER HALL: No questions.

16 JUDGE BUSHMANN: Recross based on
17 questions from the bench, starting with Staff.

18 MS. MOORE: Just one.

19 RE CROSS-EXAMINATION BY MS. MOORE:

20 Q. Mr. Summers, you were asked about what
21 was done with the money that's collected for
22 availability fees, and I believe you testified --
23 correct me if I am wrong -- that it's your
24 understanding that these fees are currently paid
25 because of an attempt to recoup investment of the

1 **developer; is that correct?**

2 A. That's correct.

3 **Q. Were RPS Properties or Sally Stump**
4 **developers of Lakesite, predecessor of Lake Region?**

5 A. No. They reached an agreement with
6 them separately.

7 **Q. Thank you.**

8 MS. MOORE: No further questions.

9 JUDGE BUSHMANN: Public Counsel.

10 MS. BAKER: No questions. Thank you.

11 JUDGE BUSHMANN: Redirect by Lake
12 Region.

13 MR. COMLEY: Thank you.

14 REDIRECT EXAMINATION BY MR. COMLEY:

15 **Q. Mr. Summers, Ms. Moore directed you to**
16 **the order, and I think in Case No. WA-95-164. Is**
17 **that the correct number?**

18 A. That is the order, yes.

19 **Q. With respect to your testimony on the**
20 **results of that application case, did you review**
21 **any of the testimony that was filed by the Staff in**
22 **that case?**

23 A. Yes, I did.

24 **Q. Do you remember which testimony you**
25 **reviewed?**

1 A. I reviewed the testimony of both Greg
2 Meyers and Martin Hummel.

3 MR. COMLEY: Your Honor, I would like
4 to show the testimony to Mr. Summers.

5 JUDGE BUSHMANN: Go ahead.

6 **Q. (By Mr. Comley) Mr. Summers, I've**
7 **handed you copies of what purports to be the**
8 **testimony of Mr. Gregory Meyers and Mr. Martin**
9 **Hummel in Case No. WA-95-164. Can you identify**
10 **those documents as the documents you've reviewed in**
11 **connection with your testimony for this case?**

12 A. Yes, they are the same.

13 MR. COMLEY: Your Honor, what I would
14 like to do, instead of admitting them as evidence
15 or admitting them as exhibits, I think that these
16 are within the Commission's files, and I would ask
17 that the Commission take official notice of the
18 testimony that was filed in that case, particularly
19 the testimony of Mr. Hummel and Mr. Meyers.

20 JUDGE BUSHMANN: Is there any
21 objection of the Commission taking official notice
22 of those documents?

23 MS. MOORE: No objection.

24 MS. BAKER: No objection.

25 JUDGE BUSHMANN: Commission will take

1 official notice of the testimony that you
2 described.

3 Q. (By Mr. Comley) Subject to the
4 Commission's check and the parties check,
5 Mr. Summers, would you mind referring to the
6 testimony of Mr. Meyers? Under the topic of
7 availability fees -- and there is a question and
8 answer there about his recommendations on treatment
9 of availability fees. Can you locate that for the
10 Commission, please?

11 A. Yes.

12 Q. Let me borrow that a minute. Let me
13 point you to the question and answer on page 6. At
14 the top of the page starting at line 3, am I
15 reading this correctly? Question, Please describe
16 the Staff's position regarding availability fees.
17 The answer is, The Staff recommends that
18 availability fees not become part of the Company's
19 tariffs. Instead, the Staff will search the
20 development company needs to enter into a written
21 agreement whereby the developer assigns the right
22 of the company to bill and receive availability
23 fees. Is that the correct reading of that
24 testimony?

25 A. Yes.

1 Q. Is your understanding in connection
2 with that case that there were no tariffs for
3 availability fees in that case?

4 A. That's correct.

5 Q. Public Counsel asked you questions
6 about whether Lake Region provided actual data
7 concerning the collection of availability fees.
8 Does Lake Region maintain data concerning the
9 collection of availability fees?

10 A. No, we do not.

11 Q. Office of Public Counsel asked
12 questions about whether Lake Region provided a
13 reconciliation of the amounts of availability fees
14 collected during the course of collection of
15 availability fees. Does Lake Region prepare
16 reconciliations of that nature?

17 A. No, we do not.

18 MR. COMLEY: I have no other
19 questions.

20 JUDGE BUSHMANN: Mr. Summers, that
21 concludes this part of your testimony.

22 THE WITNESS: Thank you.

23 JUDGE BUSHMANN: You may step down.

24 (Whereupon, the Witness left the
25 witness stand.)

1 JUDGE BUSHMANN: We're getting close
2 to the lunch hour, and I hesitate to start a new
3 witness, that might have a lengthy examination.
4 So, I'm thinking that since we're ahead of schedule
5 we might just now break for lunch, and why don't we
6 come back at, say, 1:00.

7 Any objections to that?

8 (No response.)

9 JUDGE BUSHMANN: All right. Then,
10 we'll be in recess until 1:00.

11 (Whereupon, a luncheon recess was
12 taken at 11:33 a.m.)

13 AFTERNOON SESSION

14 (Whereupon, the record resumed at 1:00
15 p.m.)

16 JUDGE BUSHMANN: I'm going to go back
17 on the record. The next witness we have on
18 availability fee issue is Staff witness Kimberly
19 Bolin.

20 (Whereupon, the Witness, Kimberly
21 Bolin, was administered the oath by Judge
22 Bushmann.)

23 JUDGE BUSHMANN: You may proceed.

24 MS. MOORE: Thank you.

25

1 DIRECT EXAMINATION BY MS. MOORE:

2 Q. If you would please state your full
3 name for the record?

4 A. Kimberly Bolin.

5 Q. Could you spell that, please?

6 A. Bolin is spelled B-o-l-i-n.

7 Q. Where are you employed and in what
8 capacity?

9 A. I am a Regulatory Auditor V with the
10 Missouri Public Service Commission.

11 Q. Are you the same Ms. Bolin who
12 prepared or caused to be prepared the testimony
13 that's been marked as Exhibit 2, Staff Accounting
14 Schedules; Exhibit 3, Direct Testimony; Exhibits
15 8A and 8B, as well as portions of Exhibit 1, Cost
16 of Service Report?

17 A. Yes, I am.

18 Q. Do you have anything you wish to
19 correct any of that testimony?

20 A. On the accounting schedules, on the
21 cover page, currently, the cover page reads
22 Horseshoe Bend Sewer Service Area. It should --
23 it's for all three service areas, and it should
24 read Horseshoe Bend Sewer Service Area, Shawnee
25 Bend Sewer Service, and Shawnee Bend Water Service

1 Area.

2 Q. Okay. Any other corrections?

3 A. No, there's not.

4 Q. Okay. With those corrections in mind,
5 if I ask you the same questions today, would your
6 answers be the same?

7 A. Yes, they would.

8 Q. And is the information in those
9 documents true and correct, to the best of your
10 knowledge and belief?

11 A. Yes, they are.

12 MS. MOORE: Your Honor, this is Ms.
13 Bolin's last subject for testimony, so I would like
14 to offer now Exhibits 2, 3, 8A, and 8B, and we'll
15 hold that Cost of Service Report for one more
16 witness, and I would tender the witness for cross.

17 JUDGE BUSHMANN: Any objections to
18 those three exhibits?

19 MR. COMLEY: Remind me which exhibits
20 are being offered? The direct testimony to --

21 JUDGE BUSHMANN: The Accounting
22 Schedules; 3 is Ms. Bolin's direct; and 8A and B is
23 Ms. Bolin's surrebuttal.

24 MR. COMLEY: I have objections to
25 portions of Ms. Bolin's direct testimony or

1 surrebuttal, and to the extent and, perhaps, part
2 of the accounting schedules. And to the extent
3 that Ms. Bolin's referring to availability fees and
4 any application they may have in this case, I would
5 object in her direct testimony page 10, line 13;
6 page 12, lines 4 through 5; page 13, lines 12
7 through 16; and her surrebuttal testimony, page 1,
8 lines 16 through 21; page 2, lines 3 through 22;
9 page 4, lines 7 through 23; page 5, lines 1 through
10 2, and then 7 through 23; page 6, lines 1 through
11 23; page 7, lines 1 through 23; page 8, lines 1
12 through 22 --

13 (Whereupon, Commissioners Stoll and
14 Hall entered the room.)

15 MR. COMLEY: -- and page 9, lines 1
16 through 11.

17 I think on page 9, lines 12 through
18 25, she refers to a pleading in the case in Camden
19 County. There is no foundation for the attachment
20 of that exhibit. There has be no authentication
21 supplied by the Circuit Clerk, so it is
22 inadmissible. It's not admission against Lake
23 interest -- Lake Region's interest and does not
24 qualify for that even if it was properly
25 authenticated.

1 I would note for the record, in a
2 previous case, this filing was rejected. Exhibit
3 52 is referred to in the footnote on her testimony,
4 but Exhibit 5 2 from previous case was not
5 admitted. This matter involving a Circuit Court
6 case, and the pleadings filed in the Circuit Court
7 case has been first raised on surrebuttal; and if,
8 for any reason, the Court -- the Commission should
9 use this exhibit or if it's admitted for any
10 purpose, Lake Region would seek an additional
11 hearing to address the statements made and what
12 proof there was in the case to support any of the
13 allegations contained in the answer, counterclaim
14 or in the petition.

15 Page 10, we object to lines 1 through
16 23, and page 11, lines 1 through 6, and this is all
17 on grounds of this discussion of availability fees
18 which the topic's been objected to previously, and
19 on the grounds previously asserted, we'd object to
20 this line of testimony. Furthermore, to the extent
21 that her testimony is extended through the
22 accounting schedules, if there are entries made
23 with respect to adjustments to cost of service
24 based upon her testimony and the accounting
25 schedules, particularly any entries that would

1 reduce cost of service by the amount that they
2 calculate in availability fees, we'd object to
3 those entries.

4 JUDGE BUSHMANN: Let me make sure I
5 understand the nature of your objection. It
6 sounded to me like there were two objections, most
7 of them to the fact that they discuss availability
8 fees because of your allegation that the Commission
9 does not have jurisdiction over availability fees
10 and are not a proper subject for this hearing. Is
11 that correct?

12 MR. COMLEY: Correct.

13 JUDGE BUSHMAN: And the other
14 objection was to attachment KKB2?

15 MR. COMLEY: Yes.

16 JUDGE BUSHMANN: And I understand your
17 objection there relates to authentication of that
18 document?

19 MR. COMLEY: Exactly. And the other
20 -- the other objection we go is unclear for what
21 purpose it is being offered. If it's offered as an
22 admission against Lake Region's interest, it is
23 improper use of that exhibit. It cannot constitute
24 admission against Lake Region's interest because of
25 the way it's been fashioned. Again, Exhibit 52,

1 which is referred to in footnote to her testimony,
2 refers to Exhibit 52 in the 2010 rate case.
3 Exhibit 52 is not admitted in that rate case and
4 there is no way for the Commission to take notice
5 of it.

6 JUDGE BUSHMANN: As far as the more
7 general objection to the lines and pages that you
8 mentioned in the transcript, I'm going to reserve
9 ruling on that objection. I'm going to take that
10 with the case, and we won't need to resolve that at
11 this time.

12 As far as the exhibit, or Attachment
13 KKB2, Ms. Moore, do you want to respond to that
14 objection?

15 MS. MOORE: Yes. I think that the
16 purpose of that exhibit is only insofar as Ms.
17 Bolin testified as an expert about the content of
18 that. So, her testimony would be based on
19 documents, evidence, that she gathered as an expert
20 within the regular course of business as an expert.

21 JUDGE BUSHMANN: Where does it make
22 reference in her testimony to that attachment?
23 This is the surrebuttal; is that correct?

24 MS. MOORE: I believe that what Mr.
25 Comley is referring to is on the surrebuttal

1 testimony, page 9, there's a footnote to which
2 corresponds to lines 12 and 13. Ms. Bolin then
3 goes on to quote the -- a portion of the
4 attachment. I believe that's it.

5 JUDGE BUSHMANN: And I don't
6 understand what you're asserting is the purpose of
7 this document or the reason that you're --

8 MS. MOORE: I would say the only
9 purpose of the document is insofar as she testifies
10 here.

11 JUDGE BUSHMANN: Any further response,
12 Mr. Comley?

13 MR. COMLEY: If Ms. Moore cannot
14 identify a purpose for this exhibit, then I think
15 it's inadmissible. The other explanation given for
16 use of this exhibit was that it was something that
17 an expert in this field would necessarily rely on
18 in making opinions.

19 The first, I don't think Ms. Bolin is
20 an expert in determining the valuation of Circuit
21 Court pleadings. Second, an expert can't rely on
22 incompetent evidence. And this is incompetent
23 evidence because it lacks proper foundation.

24 JUDGE BUSHMANN: This exhibit was a
25 matter of contention in the previous rate case, and

1 I would have to say that I agree with the analysis
2 in the previous order that excluded this document
3 from the record. I don't believe it's
4 authenticated, I don't think it can be used as a
5 judicial admission, so I would sustain the
6 objection to Attachment KKB-2. And all the other
7 objections, we will take the with the case.

8 MS. MOORE: Point of clarification.
9 He mentioned some objection to the accounting
10 schedules, and I'm not sure or clear what that is.

11 JUDGE BUSHMANN: Am I correct that is
12 also the general objection, just to the nature of
13 availability fees as being used in the hearing?

14 MR. COMLEY: Yes, and I apologize. I
15 don't have the lines or the entries which would be
16 involved in that, but to the extent Ms. Bolin's
17 testimony has been extended into the accounting
18 schedules and been used to make adjustments to the
19 cost of service, I think, particularly, her entry
20 that would apply or impute availability fees to the
21 revenue requirement, we'd object to it's entry on
22 the accounting schedules.

23 And if it's necessary to make an
24 entry-by-entry analysis later, I ask leave to be
25 able to do that.

1 JUDGE BUSHMANN: I'll grant the leave
2 to do that for now, because that's just going to be
3 a reserved objection. We can deal with that later.

4 So, in that case, Staff Exhibits 2, 3,
5 and 8 will be received into the record subject to
6 Lake Region's objection regarding availability
7 fees. On Exhibit 8, Attachment KKB-2 is not
8 received into the record.

9 Any parties need any clarification on
10 that?

11 MS. MOORE: No. Thank you.

12 JUDGE BUSHMANN: All right. In that
13 case, we're ready for cross-examination; and first
14 cross would be by Public Counsel.

15 MS. BAKER: Thank you.

16 CROSS-EXAMINATION BY MS. BAKER:

17 Q. Good afternoon?

18 A. Good afternoon.

19 Q. Staff's position is to include
20 availability fees as revenue on a going-forward
21 basis; is that correct?

22 A. That is correct.

23 Q. And you are aware that availability
24 fees automatically renew in 2015 unless the owners
25 of -- unless 90 percent of the lots vote to

1 **terminate the declaration?**

2 A. I believe that's correct.

3 **Q. And you would agree that 90 percent**
4 **agreement is a huge hurdle to meet in the best of**
5 **circumstances?**

6 A. It probably is, yes.

7 **Q. So, therefore, you would agree that**
8 **availability fees will most likely continue in the**
9 **foreseeable future?**

10 A. I believe they will continue in the
11 future.

12 MS. BAKER: No further questions.

13 JUDGE BUSHMANN: Cross by Lake Region.

14 MR. COMLEY: I'm going to try to do it
15 from here.

16 THE WITNESS: That's fine.

17 MR. COMLEY: So, I may get up there.
18 I don't know yet. But, at any rate, we'll try to
19 do this from here, and I hope you can hear me all
20 right.

21 CROSS-EXAMINATION BY MR. COMLEY:

22 **Q. First, with respect to the portion of**
23 **the cost of service report that you participated**
24 **in, do you have that handy? It would be Exhibit 3.**

25 A. Yes, I have it.

1 JUDGE BUSHMANN: I believe that's
2 Staff Exhibit 1.

3 Q. (By Mr. Comley) Excuse me. Staff
4 Exhibit 1.

5 A. I have pages 14 through 16 in front of
6 me of that report.

7 Q. Would you happen to have page 3 of
8 that handy?

9 A. I do not. I just brought up the
10 availability fee.

11 Q. Is it something I could show you?

12 A. Yes.

13 Q. Or do you have another copy from your
14 counsel you could pick up and I'll take it to the
15 stand?

16 (Whereupon, the Witness was handed a
17 document.)

18 A. (By the Witness) Thank you.

19 Q. It's a statement on page 3 at the top
20 of the page, and I don't know whether you were the
21 author of that or not, but I thought another
22 company owned by RPS Properties and Sally Stump is
23 Lake Utility Availability 1?

24 A. Yes. That is my statement.

25 Q. That's your statement?

1 A. Yes.

2 Q. But isn't it true that it's not a
3 company?

4 A. It's a fictitious registered.

5 Q. Right. It's a fictitious name. You
6 don't know that RPS or Sally Stump have
7 incorporated a separate company called Lake --

8 A. I do not believe it's incorporated,
9 that is correct.

10 Q. Strictly a fictitious name
11 registration?

12 A. Yes.

13 Q. Your direct testimony, page 13, lines
14 14 through 16, is where I'll start first.

15 A. I don't have that one, either.

16 Q. Okay.

17 A. I'm sorry.

18 Q. All right.

19 (Whereupon, the Witness was handed a
20 document.)

21 A. (By the Witness) Okay. I've got it
22 now.

23 Q. Lines 14 through 16, you're describing
24 the adjustment?

25 A. Which page?

1 Q. Page 13.

2 A. Okay.

3 Q. It's taking me a minute to get there
4 myself. And I'm looking page 13, lines 14 through
5 16.

6 A. Okay. Got them.

7 Q. Okay. The inclusion of the
8 availability fees in Staff's revenue requirement
9 decreases the revenue requirement for Shawnee Bend
10 Water by \$136,836 and for Shawnee Bend Sewer by
11 \$2,000 -- \$205,254. This adjustment is the largest
12 adjustment in Staff's cost of service for this
13 case.

14 And my question is, the numbers have changed
15 slightly since your filing of the direct testimony.

16 A. You are correct. We received
17 information from RPS during our surrebuttal writing
18 phase that these numbers have changed.

19 Q. And those numbers are under
20 confidential seal, I understand?

21 A. Yes, they are.

22 Q. Is it still the largest adjustment
23 that Staff is proposing in this case?

24 A. I believe it is.

25 Q. Let me ask you this. Is it correct to

1 say that there is no account on the Company's books
2 or records where this adjustment to the revenue
3 requirement will be entered?

4 A. The Company does not book availability
5 fees into any accounts for Lake Region Water and
6 Sewer.

7 Q. Is it true that the Staff understands
8 that Lake Region does not own this revenue?

9 A. Lake Region does not collect this
10 revenue, does not book this revenue, it is booked
11 -- it is collected by Lake Utility Availability
12 One.

13 Q. Would it be fair to say that the Staff
14 has nothing -- no evidence to the contrary that
15 Lake Region does not own this revenue?

16 A. At one time, Lake Region -- its
17 predecessor did own this revenue, and it has been
18 subsequently assigned elsewhere.

19 Q. Do you recall when it owned that
20 revenue?

21 A. It was prior to 1999.

22 Q. Do you know what kind of document
23 transferred that revenue?

24 A. It was a document of sell, if I
25 remember right, a contract.

1 **Q. Is it true that Lake Region's**
2 **customers don't pay this revenue?**

3 A. Lot owners who are in Lake Region's
4 service territory pay this revenue.

5 **Q. But customers of Lake Region do not;**
6 **is that correct?**

7 A. Current customers do not.

8 **Q. If there was going to be a customer**
9 **that paid this revenue, it would be because that**
10 **customer owned an undeveloped lot as well as being**
11 **a customer of Lake Region? Would that be a correct**
12 **statement?**

13 A. Could you repeat that statement?

14 **Q. If a customer of Lake Region were to**
15 **pay availability fee revenue, it was because that**
16 **person owned an undeveloped lot in the service**
17 **territory?**

18 A. A person has to have an undeveloped
19 lot to pay availability fees. Once they develop on
20 to the lot, they no longer pay availability fees.

21 **Q. Do you have a copy of your surrebuttal**
22 **handy?**

23 A. Yes, I do.

24 **Q. That's Exhibit 8. And I will be**
25 **looking -- I'm going to be looking at your highly-**

1 confidential version which, I think, is Staff
2 Exhibit 8B, but I'm going to do my best to avoid
3 any kind of expression of the highly-confidential
4 sections of it. I don't anticipate doing any kind
5 of in-camera examination on this.

6 On page 2, line 11, if I'm reading your
7 answer correctly, I hope that Staff believes that
8 Lake Region is an entity providing a guarantee of
9 water and sewer service availability to the lot
10 owners who are paying the availability fees and
11 also is the entity supporting the utility plant
12 facilities and infrastructure that exists in order
13 to provide that service.

14 Have I read that correctly?

15 A. You've read that correctly.

16 Q. Would it also be true that Lake Region
17 is guaranteeing water and sewer service based upon
18 its tariffs?

19 A. Lake Region holds the certificate of
20 convenience and would provide -- and would
21 guarantee service to people in their region.

22 Q. And isn't it true that Lake Region is
23 not a party to the covenants or restrictions that
24 establishes the availability fees?

25 A. That is correct.

1 Q. Your reading of the covenants and
2 restrictions, does it indicate that there is a
3 guarantee for water or sewer service expressed in
4 the covenants?

5 A. I believe there is a -- by having that
6 in the covenants, it is guaranteeing water and
7 sewer service.

8 Q. But those covenants do not contain any
9 kind of rules and regulations governing water or
10 sewer service in the subdivision?

11 A. It does not have any rules or
12 regulations concerning sewer, or water service.

13 Q. Would it be fair to say that the
14 Company's tariffs are also the source of a
15 guarantee of adequate water and sewer service in
16 areas not covered by availability fees in the
17 service territory?

18 A. Could you repeat that question again?

19 Q. Would it also be true that the
20 Company's tariffs are the source of guarantees for
21 adequate service for areas within the service
22 territory of the company that are not covered by
23 availability fees?

24 A. It's true.

25 Q. Let's go to page 4, line 17 through

23. And this is an area where there have been some confidential figures that fall in your testimony, but what I'm going to ask you about is the total availability fee revenue in the test year. And of that total availability fee collection in the test year, you have deducted the amount of fees collected and paid to the developer pursuant to the settlement agreement, is that fair to say?

9 A. That is correct.

10 Q. And my understanding is that
11 Mr. Merciel believes or he would assert that the
12 developer's rights to those fees was a part of an
13 improper or Imprudent service of those fees?

14 A. You would have to address that to
15 Mr. Merciel.

16 Q. Assuming that's the case, can you tell
17 me why the fees to the developer were removed from
18 your calculation?

19 A. Because of the settlement of the court
20 case required that that money be paid to the
21 developer.

22 Q. If it was -- if the developer is
23 receiving availability fees, you're saying that,
24 simply because of the settlement agreement, those
25 fees should not be used against Lake Region's

1 **revenue requirement?**

2 A. That is what I believe, yes.

3 Q. So, if RPS Properties, the developer,
4 and Sally Stump were to enter another agreement
5 with the developer in which one or the other may
6 give up their availability fees, would that further
7 reduce the amount that the Staff would impute?

8 A. We'd have to see the circumstances
9 behind that. In this case, it was a settlement,
10 and we believed to get the proper amount that would
11 be going to Lake Region if they owned the
12 availability fees would be that amount.

13 Q. Ms. Stump is not a shareholder in the
14 Company. Why would you impute fees going to her as
15 Company revenue?

16 A. She was not -- she is not currently a
17 shareholder. She was as of December 31st, 2012.

18 Q. So, I'm assuming that --

19 A. When she transferred her rights, the
20 Company, to her husband Vernon Stump.

21 Q. So, in future rate cases for this
22 Company, any availability fee revenue paid to Ms.
23 Stump would not be, according to Staff's
24 recommendation, imputable to the Company?

25 A. I do not believe that, no.

1 **Q. It would be imputable?**

2 A. I believe it could be imputable.

3 **Q. And that's why?**

4 A. Because she has been an owner of this
5 Company previous years.

6 **Q. If the developer were an owner of this**
7 **company at some point, would the Staff then**
8 **conclude that the developer's portion, pursuant to**
9 **a settlement agreement, should be imputed to the**
10 **Company?**

11 MS. MOORE: I have to object. I think
12 this calls for speculation. I know we addressed
13 that earlier in a similar situation, but what Mr.
14 Comley is asking Ms. Bolin about what Staff's
15 position would be in a future. Ms. Bolin, as an
16 expert, currently cannot answer that question.

17 MR. COMLEY: Somewhere along the line,
18 principal has been established by the Staff how to
19 impute this revenue. I'm exploring the extent of
20 that principal and how it may be working in future
21 cases and in this case. And I think it's a
22 legitimate question, Counsel.

23 JUDGE BUSHMANN: I'll overrule the
24 objection.

25 A. (By the Witness) Could you repeat the

1 question.

2 Q. You know, I'm going to ask the
3 Reporter if she can help us.

4 (Whereupon, the pending question was
5 read by the Court Reporter.)

6 A. (By the Witness) We believe those
7 availability fees belong with Lake Region. They
8 were originally with Lake Region and they should
9 have stayed with Lake Region. I was trying to
10 impute an amount that I believed was a fair amount
11 of revenue to include in Lake Region's revenues,
12 and I viewed that the developer had -- had filed a
13 suit against Lake Region and the parties had agreed
14 on a settlement of it, and I viewed it reasonable
15 to extract the amount of the settlement of the
16 availability fees that should be paid to the
17 developer.

18 Q. Would it be fair to say, then, that if
19 a person receiving these availability fees
20 contractually alters their rights to the
21 availability fees by the court case -- or by the
22 settlement agreement in a court case or any other
23 contractual means, that would affect the way the
24 Staff imputes the way of the availability fees --

25 A. Staff would have to look at the

1 circumstances and facts of that time to determine
2 that.

3 Q. Let's presume that RPS is no longer a
4 shareholder with the company, that it sells its
5 shares. Would Staff then impute the revenue from
6 availability fees to the Company?

7 A. Staff would have to look at that
8 circumstance, what, who, what grounds it was sold
9 on. If the availability fees were also sold to the
10 other party, also.

11 Q. And if you take a look at it, what I'm
12 gathering is, that the price that the RPS Company
13 or partnership received for the availability fee
14 streams revenue, would that be imputed to the
15 Company?

16 A. I would have to look at the
17 circumstances in the future on that.

18 Q. I'm kind of jumping around here, Ms.
19 Bolin. Forgive me. Page 3, line 16. You
20 mentioned that the distribution system was
21 installed by the developer, Mr. Harold Coplar (ph).
22 Now, I'm not sure about this, but I think
23 Mr. Copler himself was deceased about the time that
24 this infrastructure was installed; but, by that, do
25 you mean the Four Seasons Lakesites that was owned

1 either by Mr. Copler or his successors?

2 A. Yes. Four Seasons Lakesites.

3 Q. All right. On page 2 -- on page 2,
4 line 14, you have a answer that talks about the
5 purpose of paying the availability fees. You say
6 that the lot owners are paying the fees in order to
7 support the utility system which was built for the
8 purpose of providing service to their lines. Is
9 that correct reading --

10 A. To their lots.

11 Q. To their lots, rather?

12 A. Yes.

13 Q. You said in several other places -- I
14 wanted to point out, you said in page 4, line 13
15 through 14, you say the owners of unimproved lots
16 are paying a fee for the purpose of having the
17 water and sewer system to connect to in the future.
18 Is that a fair reading of your testimony there?

19 A. That is.

20 Q. And, then, on page 5, lines 12 through
21 21, you talk about the only logical explanation for
22 their payment of these fees. Wasn't it true that
23 in the last case -- and I'm presuming that you have
24 been familiar with the reporting order in that case
25 -- isn't it true, in the last case, the Commission

1 on almost identical facts determined that the
2 purpose of the fees was to recover the developer's
3 cost of installing the lines and not for purposes
4 of maintenance?

5 A. I know the Commission referred to what
6 the developer claimed his purpose or his intent of
7 the availability fees were. Staff believes
8 availability fees can be used for any other
9 purposes. I've not found any written documents
10 binding the utility to cap purposes only.

11 Q. Well, again, Lake Region's not a party
12 to the covenants. Is that still the case?

13 A. That is correct. Lake Region is not a
14 party to the covenants.

15 Q. The parties in this case are jointly
16 stipulated in a document that says it's undisputed
17 that the reason the developer initiated the fees
18 was to receive a recoup -- or recoup the costs of
19 infrastructure?

20 A. Could you point me to where that is in
21 the joint stipulations of facts?

22 Q. I think it's paragraph 42.

23 A. And that is footnoted with being an
24 affidavit of Peter and Brown, the previous
25 developer. Staff takes the position that, while

1 the developer may intended to recover his
2 investment through the availability fees, these
3 availability fees can be used in whatever manner
4 that the utility desires.

5 Q. In terms of your testimony, you have
6 no other testimony besides the developer's
7 affidavit for purposes of determining that the only
8 logical explanation by payment of lot owners is for
9 purposes of maintenance?

10 A. That is correct.

11 Q. And the only evidence we have for the
12 purpose of those fees is the developer's affidavit
13 in the previous case. Wouldn't that be correct?

14 A. That is the only statement he made.
15 Staff does not belief that. Staff has not treated
16 other availability fees in other cases in that
17 manner.

18 Q. Let me put it this way. You're not
19 intending, by your testimony, to refute what are
20 the undisputed facts in the jointly-filed
21 stipulation. Would that be a correct statement?

22 A. That is correct.

23 Q. Could we agree that an owner of a
24 undeveloped lot fails to pay an availability fee,
25 pay the availability fees, that the owner would be

1 subject to the enforcement provision in the
2 covenants?

3 A. That is correct.

4 Q. Would you agree with me that it would
5 be logical for a lot owner to pay that fee to avoid
6 foreclosure on the lot?

7 A. He would prevent it being placed on
8 the lot if he paid the fine.

9 Q. And it would avoid the lien as well?

10 A. Yes.

11 Q. So, it would be logical for them to do
12 that?

13 A. Yes, it would.

14 Q. All right. I'm still kind of skipping
15 around. On page 4, line 4, you say, If
16 availability fee revenue did not exist, then a
17 utilities operation might require subsidation --
18 excuse me -- subsidation -- I'll say it in a
19 minute, -- subsidation by the developer for
20 revenue in order to meet operating expenses,
21 particularly in early growing years when most lots
22 are largely unimproved. Did I read that correctly,
23 Ms. Bolin?

24 A. Yes, you did.

25 Q. Hasn't the Company operated without

1 **availability fee revenue for quite some time?**

2 A. They have at a higher rate of tariff
3 rate to the customers, yes.

4 **Q. Their tariffs have been set in 2**
5 **cases, would you agree?**

6 A. I agree that they first established
7 their rates with the CCN case.

8 **Q. Okay. That's the WA-95-164 case?**

9 A. Yes.

10 **Q. And the rates are 2010?**

11 A. Yes. Those are the two, the only rate
12 case has 2010, the other CCN.

13 **Q. Commission found rates fair and**
14 **reasonable?**

15 A. Yes, they did.

16 **Q. Company's been operating by approved**
17 **tariff rates by this Commission for quite some**
18 **time?**

19 A. Yes, they have.

20 **Q. The Company did not include**
21 **availability fee revenue in the cost of service**
22 **initially and in the last case; isn't that correct?**

23 A. The Company did not include it in the
24 last case. I'm not sure if they included it in the
25 CCN case, the initial case.

1 **Q. All right. Do you know whether the**
2 **tariffs reflected a --**

3 **A. The tariffs do not have that, but I**
4 **don't know if the rates that were developed have**
5 **that in there.**

6 **Q. Let's move the clock to the present.**
7 **Let's move it to the present. With respect to**
8 **subsdization, if the Staff's proposal is adopted,**
9 **wouldn't the owners of undeveloped lots that do not**
10 **have water delivered to their premises and do not**
11 **discharge water into the collection system help pay**
12 **the costs the Company incurs in serving those who**
13 **do?**

14 **A. They would help pay the cost, and they**
15 **would also help pay the cost to keep the system**
16 **available for them when they want to hook up.**

17 **Q. So, they are paying for the right in**
18 **the future to connect to a system that they're**
19 **supporting for other people who are getting**
20 **service?**

21 **A. And the current customers are paying**
22 **to support their availability of these lines.**

23 **Q. Now, there are places within Lake**
24 **Region's service territory where people aren't**
25 **paying availability fees. Is that correct?**

1 A. I believe that is correct.

2 Q. So, the people on Shawnee Bend paying
3 availability fees, if Staff's proposal is adopted,
4 would be helping to pay the cost of service for
5 areas within Lake Region's service territory that
6 are not paying availability fees?

7 A. For in the Shawnee Bend area. Not any
8 in the Horseshoe Bend area. Those are separate
9 rates. And I've not applied any availability fees
10 to the Horseshoe Bend area.

11 Q. Strictly to the --

12 A. Shawnee Bend water area and the sewer
13 area.

14 Q. To the extent that there are areas on
15 Shawnee Bend who don't pay availability fees, your
16 proposal would have people paying availability fees
17 cover cost of service for areas in Shawnee Bend
18 that aren't paying availability fees?

19 A. I believe there is some of that, yes.

20 Q. Ms. Baker asked you about the
21 difficulty of having 90 percent of the lot owners
22 on Shawnee Bend or the lot owners affected by the
23 covenants' termination or changing them. If I were
24 a customer on Shawnee Bend and my rates were
25 subsidized by lot owners that are not on, that do

1 not have a piece of property -- or rather do not
2 have a residence and are not connected to service,
3 would I be more likely to vote to terminate those
4 fees or would I be more likely to say, Let's keep
5 them going?

6 A. That would be speculation on my part.

7 Q. Is it an economic decision?

8 A. That, I'm not sure. I would have to

9 --

10 Q. If my rates are subsidized by somebody
11 else, what should I do?

12 A. And it would be hard to get 90 percent
13 of the vote. That's why availability fees will
14 continue.

15 Q. And some of those lots owners have a
16 vested interest in keeping the lot owners -- the
17 unimproved lot owners paying those fees?

18 A. Ninety percent would be hard to reach
19 then, yes.

20 Q. Page 5, line 6 through 9. You're
21 talking there, I think, on cost of repair, meaning
22 and intending constructing the distribution water
23 included in the requirement, and you say this
24 includes cost relating to the unimproved lots. It
25 would be the Company's responsibility to maintain

1 the Company's infrastructures regardless of whether
2 the developer imposed availability fees in the area
3 or not; isn't that correct?

4 A. They would have to maintain them for
5 their customers, that's correct.

6 Q. Wouldn't there be vacant lots that --
7 or other land parcels that may separate customers
8 one from the other?

9 A. There may be vacant lots, yes.

10 Q. Wouldn't it be true that for most
11 water, and maybe even sewer companies, there are no
12 customer basis 100 percent contiguous. Would that
13 be a fair statement?

14 A. For most, they are not; but for most,
15 there are not availability fees also charged to lot
16 owners.

17 Q. Even so, there is an obligation to
18 maintain those lines if they are between customers?

19 A. There is an obligation.

20 Q. On page 6, lines 4 through 23, you're
21 talking about a -- I think a cost of billing and
22 collection service for the availability fees. Just
23 for the record, this was not included in your
24 direct case.

25 A. That is correct. It was not included

1 in my direct case.

2 **Q. And it could have been?**

3 A. It could have been, but our case was
4 to include the availability fees in our case, and
5 if you include the availability fees, I think the
6 cost of billing and collection should also be
7 included in the cost of service. If it's not -- if
8 the availability fees are not included in the cost
9 of service, then Lake Utility Availability is
10 getting their billing and collection for free and
11 the customers are subsidizing that.

12 **Q. Another observation. This figure was**
13 **known to you at least for three years, isn't it?**

14 A. It has, but our direct case did not
15 reflect the exclusion of availability fees.

16 **Q. Let's go to page 8 of your**
17 **surrebuttal. There are questions there about**
18 **collection of availability fees. On line 16**
19 **through 19 is where I'm looking. Your analysis of**
20 **the annual reports, wouldn't your testimony be**
21 **somewhat of a guess rather than a comprehensive**
22 **analysis on this?**

23 A. Ours would be estimated. We did not
24 get that information from RPS.

25 **Q. And there's no calculations to refute**

1 what Mr. Summers has calculated in his rebuttal on
2 this, isn't that correct? Do you recall that he
3 had a schedule in the back of his rebuttal
4 testimony that set out what he considers the
5 collection of that?

6 A. There is nothing to give me evidence
7 to prove it one way or the other, correct or
8 incorrect.

9 Q. It's true as well that, according to
10 the Company's annual reports on file with the -- on
11 file with the Commission, that there are no fees
12 collected in certain years. Would that be a
13 correct statement?

14 A. Reported in the annual report to the
15 Commission, there are years where no availability
16 fees are reported in that report.

17 Q. The total amount of availability fees
18 that were collected and reported during the years
19 of 1974 through 2004 is not accurate because the
20 data is missing for some years. Would that be
21 correct?

22 A. It was not reported in the annual
23 report, so I guess you would say it was missing.

24 Q. Is it also true, in those annual
25 reports, there is no breakdown of the dollars

1 collected to know whether the fees were connected
2 for water and sewer at Shawnee Bend rather than
3 Horseshoe Bend?

4 A. I believe that's correct.

5 Q. Is it also true that, based on the
6 time of the certification cases and the transfer of
7 assets, availability fees collected between the
8 years 1974 and 1992 are comprised primarily, if not
9 totally, from fees collected in relation to
10 Horseshoe Bend Water System, the system that's been
11 sold to Ozark Shores?

12 A. That, I'm not sure. We cannot
13 distinguish between who they were collected for and
14 the annual reports, and we were not provided any
15 information on that.

16 Q. Horseshoe Bend availability is not
17 involved in this case, correct?

18 A. That is correct. Horseshoe Bend Sewer
19 does not have availability fees. Horseshoe Water
20 does, but they are owned by Ozark Shores.

21 Q. Also, on pages 8 through 9, you talk
22 about the developer may have recouped some of the
23 money spent to install a water and sewer system
24 through the sales -- sale of lots and development.
25 Basically, Ms. Bolin, there is no proof in this

1 record or in your testimony that Four Seasons
2 Lakesites designed the lot price to recover the
3 costs of water and sewer systems; is that correct?

4 A. There is no proof, but I would hope
5 that a developer would want to profit from the sale
6 of his lots and would include the costs in the sale
7 of the lots.

8 Q. Aside from your own personal belief of
9 what the developer may try to do, there is no
10 evidence in this record of the elements of the
11 price per lot contained, either, for infrastructure
12 improvement?

13 A. That is correct.

14 Q. Would it be fair to say that Lake
15 Region had no control over the way in which the
16 developer sought to sell the lots in the
17 development?

18 A. That is correct.

19 Q. On page 10 -- I've talked about this a
20 little bit before in the cost of service report --
21 you mention on lines 1 through 3 about Lake Utility
22 Availability 1, and you say it's an affiliate of
23 Lake Region. We've confirmed already and will
24 confirm, Lake Region -- I mean Lake Utility
25 Availability 1 is actually a fictitious name used

1 by the shareholders or now used by the people who
2 own the availability fees. Would that be correct?

3 A. That is correct.

4 Q. And there are no rules affecting
5 affiliated transactions for water and sewer
6 companies for the PSC. Would that be correct?

7 A. That is correct, but we believe the
8 gas and electric would apply.

9 Q. And you're trying to extend those
10 rules to the water and sewer companies?

11 A. That is correct.

12 Q. And you're saying that, because,
13 actually, an alias was the shareholder or people
14 that owned those availability fees constitute an
15 affiliate with which Lake Region has transactions?

16 A. The Company -- the people who collect
17 the availability fees are employees of Lake Region.
18 They are also common shareholders of Lake Region.
19 So, I believe under the definition they would
20 qualify as an affiliate.

21 Q. Well, just to make it clear, there is
22 only one shareholder now that's collecting the
23 availability fees.

24 A. You have two shareholders under Lake
25 Utility Availability that collect the availability

1 fees. Sally Strump and RPS.

2 **Q. Sally's no longer a shareholder.**

3 A. As of when in RPS? Or in Lake Utility
4 Availability, she is. But RPS has the common
5 ownership of Lake Utility Availability 1 and Lake
6 Region, and Sally Stump was a previous owner in
7 Lake Region until she transferred her stock to her
8 husband Vernon Stump.

9 **Q. I think the record will show that RPS**
10 **has a 50 percent ownership in the fictitious name**
11 **and also owns half the shares in Lake Region.**

12 A. That's correct, and then bills are
13 billed by the Camden County Public Water Supply
14 District No. 4 and have the same address as Lake
15 Region customer's bills.

16 **Q. You're not contending that Public**
17 **Water Supply District No. 4 is an affiliate of Lake**
18 **Region?**

19 A. It could be, yes. An unincorporated
20 association or political subdivision can be an
21 associate, an affiliate, yes. They have common
22 management; they have common employees, yes.

23 **Q. But that would be under the rules**
24 **governing gas and electric companies?**

25 A. That is under the definition that is

1 included in the gas and electric companies, but we
2 believe it could apply in this situation to define
3 what an affiliate is.

4 Q. Thank you.

5 MR. COMLEY: That's all the questions
6 I have.

7 JUDGE BUSHMANN: Do the Commissioners
8 have any questions?

9 CHAIRMAN KENNEY: No questions. Thank
10 you.

11 COMMISSIONER HALL: No questions.
12 Thank you.

13 COMMISSIONER STOLL: No questions,
14 your Honor.

15 JUDGE BUSHMANN: Okay. Redirect by
16 staff.

17 MS. MOORE: Thank you.

18 REDIRECT EXAMINATION BY MS. MOORE:

19 Q. Okay. Ms. Bolin, I believe you were
20 asked in several different ways about the purpose
21 of availability fees. I would like to start,
22 first, you were asked in reference to page 2 of
23 your, I believe it's rebuttal testimony about these
24 fees guaranteeing service from the company? Do you
25 remember that?

1 A. Page 2, my surrebuttal, yes.

2 Q. Yes. If these fees are not for
3 setting aside any monies going to the developer, if
4 these fees are not for guaranteeing service, what
5 are they being paid for?

6 A. I would not know. The only logical
7 explanation for the purpose of these fees is the
8 person, the lot owners is getting expectation to
9 pay for a water and sewer system to be hooked to in
10 the future.

11 Q. And setting aside that of what are
12 they actually being paid for, can you elaborate for
13 us on what availability fees in general are paid
14 for by regulated utilities in Missouri?

15 A. Are paid to regulated utilities?

16 Q. Why are they paid?

17 A. Why are they paid? To help support
18 the system that is in place.

19 Q. And I think you were asked about that
20 as well in the form of whether or not these fees
21 can be used to maintain the system. Do you recall
22 that?

23 A. Yes.

24 Q. I believe you testified in answer to
25 those questions that the fees benefit the current

1 customers and that it supports the system. Did I
2 quote you correctly?

3 A. I believe that's what I said.

4 Q. Could you elaborate on that for us?

5 A. The fees help maintain the system
6 which would incorporate all the current customers
7 also that are hooked to the system. They help to
8 pay for repairs, maintenance, and any capital costs
9 they would need.

10 Q. And, then, how would it benefit
11 someone who is not yet a customer to be paying
12 these fees?

13 A. They would have a system in place that
14 is more than capable of serving them and would be
15 in good condition.

16 Q. What would happen if these lot owners
17 were not holding their place on that lot and paying
18 those fees? Would there be anyone to help support
19 the system for future use?

20 A. No, there would not be.

21 Q. Other than the customers?

22 A. Yes. Current customers. But if the
23 lot owned -- if they did not have availability
24 fees, the lot owners, these would not be in
25 existence.

1 Q. I believe you were asked about the
2 utility's obligation to maintain the system whether
3 or not there were availability fees. Do you
4 remember that?

5 A. Yes.

6 Q. And you agreed that, yes, they do have
7 that obligation to maintain the system?

8 A. Yes. They have an obligation to
9 maintain a system.

10 Q. Can you describe for us what other
11 regulated utilities use these fees for in relation
12 to maintaining a system? Is that something that
13 has been outlined ever as a reason for regulated
14 utilities in Missouri to charge these fees?

15 MR. COMLEY: I'll object on grounds
16 it's beyond the scope of cross.

17 MS. MOORE: I believe Counsel
18 specifically asked Ms. Bolin about whether or not
19 these should be used for maintaining the system.
20 I'm asking her if that is how they have been used
21 for other regulated utilities.

22 JUDGE BUSHMANN: Objection overruled.

23 A. (By the Witness) I believe they have
24 been included as revenue for other utilities that
25 have availability fees. And, then, when they're

1 included revenue, they could be used for
2 maintaining or for any type of plant capital
3 investment needed.

4 Q. Thank you. You were also asked about
5 the difference between who is a shareholder for the
6 Company and who is an owner of the availability
7 fees through Lake Utilities No. 1. Do you remember
8 that?

9 A. Yes.

10 Q. Can you tell us again, who are the
11 owners for each entity?

12 A. The shareholders for Lake Region Water
13 and Sewer are Vernon Stump and RPS Properties. The
14 owners of Lake Utility Availability 1 are RPS
15 Properties and Sally Stump, the wife of Vernon
16 Stump.

17 Q. And when did that become the case?

18 A. As of December 31st, 2012.

19 Q. When was that in relationship to when
20 this case was filed?

21 A. That would have been in the middle of
22 our test year. It was before this case was filed.

23 Q. How far before this case was filed?

24 A. I believe this case was filed in
25 August, July? It would have been six, seven

1 months.

2 Q. Six months?

3 A. Yes.

4 Q. Thank you.

5 MS. MOORE: That's all the questions
6 that I have right now. Thank you.

7 JUDGE BUSHMANN: Thank you, Ms. Bolin.

8 THE WITNESS: Thank you.

9 (Whereupon, the Witness left the
10 witness stand.)

11 JUDGE BUSHMANN: Next witness is James
12 Merciel.

13 (Whereupon, the witness, James A.
14 Merciel, was administered the oath by Judge
15 Bushman.)

16 JUDGE BUSHMANN: Please be seated.

17 DIRECT EXAMINATION BY MS. MOORE:

18 Q. Mr. Merciel, could you please state
19 your name for the record?

20 A. James A. Merciel, Jr.

21 Q. And could you spell your last name for
22 us?

23 A. Last name is spelled M-e-r-c-i-e-l.

24 Q. Where are you employed and in what
25 capacity?

1 A. I am employed at the Public Service
2 Commission. I'm on the Staff in the Water and
3 Sewer Unit. I'm a -- I'm a Supervising Engineer.

4 Q. Are you the same Mr. Merciel who
5 prepared or caused to be prepared the testimony
6 that's be marked as Exhibit No. 11 as well as
7 portions of Exhibit 1?

8 A. I believe those are the right exhibit
9 numbers. The answer would be yes.

10 Q. Do you have anything you wish to
11 correct or add to that testimony?

12 A. No, I do not.

13 Q. If I asked the same questions today,
14 would your answers be the same?

15 A. Yes.

16 Q. Is the information in those documents
17 true and correct, to the best of your knowledge and
18 belief?

19 A. Yes.

20 MS. MOORE: Your Honor, this is the
21 only issue for Mr. Merciel, so Staff would offer
22 Exhibit 11 and tender the witness for cross.

23 JUDGE BUSHMANN: Any objections?

24 MR. COMLEY: Yes, your Honor. We have
25 portions to Exhibit 11.

1 For the reasons I've stated earlier
2 about the inadmissibility of evidence on
3 availability fees, we'd object to page 2, lines 13
4 through 23; page 3, lines 1 through 23; page 4,
5 lines 1 through 23; page 5, lines 1 through 23;
6 page 6, lines 1 through 22; page 7, lines 1 through
7 23; page 8, lines 1 through 22; page 9, lines 1
8 through 24; page 10, lines 1 through 2.

9 And, again, those would be on the
10 basis of the objections I've raised on the
11 admissibility of evidence about availability fees
12 in this case.

13 JUDGE BUSHMANN: In that case, I'll
14 treat that objection the same way with Ms. Bolin's
15 testimony and reserve judgment on that and take it
16 with the case. And, so -- let's see. We're not
17 offering Exhibit 1 yet, are we?

18 MS. MOORE: Not yet.

19 JUDGE BUSHMANN: All right. Then,
20 Exhibit -- Staff Exhibit 11 is received into the
21 record subject to the objection. And first cross
22 would be by Office of Public Counsel.

23 MS. BAKER: Thank you.

24 CROSS-EXAMINATION BY MS. BAKER:

25 Q. Good afternoon.

1 A. Good afternoon.

2 Q. You would agree that the original
3 development for Shawnee Bend Water and Sewer had a
4 specific dollar amount?

5 A. I'm sorry. The original?

6 Q. That the original development, when
7 Shawnee Bend Water and Sewer was put in by the
8 original developer, there was a dollar amount
9 associated with that?

10 A. You mean the cost of the system?

11 Q. The cost --

12 A. Yes, I would agree.

13 Q. And, so, you would also agree that
14 there is no cap on availability fees to be
15 collected per the declaration?

16 A. I would. I would agree.

17 Q. And, so, you would agree that the way
18 the availability fees are set up, they would
19 continue even if the original development is paid
20 for?

21 A. They could. They certainly could.

22 Q. And you would agree that the
23 availability fees will most likely continue for the
24 foreseeable future?

25 A. It seems likely, yes.

1 MS. BAKER: No further questions of
2 the witness.

3 JUDGE BUSHMANN: Cross-examination by
4 Lake Region.

5 MR. COMLEY: Thank you.

6 CROSS-EXAMINATION BY MR. COMLEY:

7 Q. Mr. Merciel, you've been a -- I'll
8 call you a subject matter expert on the issue of
9 availability fees in this Commission for a number
10 of cases. Wouldn't that be a fair statement?

11 A. Fair enough, yes, sir.

12 Q. You've been an expert on operation and
13 engineering and maintenance of water and sewer
14 systems as well?

15 A. Yes, sir.

16 Q. Would it be fair to say that the
17 Commission has, indeed, relied upon your knowledge
18 in this area for making decisions in previous
19 cases?

20 A. On some cases, yes, that would be
21 true.

22 Q. And there have been cases where you
23 told me under cross-examination that an
24 availability fee is not a utility service; is that
25 correct?

1 A. I have said that as I think I had a
2 disclaimer that was stated as a technical -- from
3 the technical perspective.

4 **Q. Do you want me to get the testimony**
5 **out?**

6 A. It's there. I will concede it is
7 there. But, as stated, it was said as a technical
8 -- as a technical person. There are some legal
9 ramifications that could paint a different picture
10 on that matter.

11 **Q. Okay. Aside from the legal part of**
12 **this, you have testified in the past that in your**
13 **opinion as a subject matter expert that**
14 **availability is not a utility service?**

15 A. I testified that it's not a service in
16 that the customer does not pay the availability
17 charge this month and directly receive some benefit
18 that particular month, as, for example, paying a
19 commodity charge where you get a certain number of
20 gallons when you pay a dollar amount. It's
21 different in that respect.

22 **Q. For example, do you remember an**
23 **exchange between you and I in a complaint involving**
24 **a lady name Cathy Hummel?**

25 A. I do remember.

1 Q. Well, let me point you, if I can, to a
2 transcript that I have here. Let's start at -- I'm
3 going to represent to you that this is from
4 WC-2006-20 -- 0082. It's a transcript from Boyd,
5 and 7, part 2, in that case on March the 2nd, 2006.
6 Let's go down to line 22. This is you and me
7 exchanging questions and answers.

8 Now, are availability fees like this charged
9 by other regulated public utilities. Answer, There
10 are two presently that have availability charge --
11 well -- well, there are two that, in some fashion,
12 have an availability charge. Am I reading that
13 correctly?

14 A. I think you are. I couldn't see the
15 lines you were reading before you turned the page
16 there.

17 Q. I'm sorry.

18 A. You had line 22, and that wasn't
19 showing up.

20 Q. Let's go down to line 12. Has the
21 Staff taken any stand on the tariffing of those
22 availability fees? Answer, Not since the
23 certificate case in 1972. Am I clear that that's
24 referring to Lake Region?

25 A. That would be correct. It was Four

1 Seasons Lakesites Water and Sewer at the time.

2 That was the name of the company.

3 Q. And question, Would it be safe to say
4 the Staff has not recommended for that company that
5 those availability fees be tariffed? And I know
6 it's 1972, before your time. Answer, Yes or yea,
7 yeah. Can you ask the question again the way you
8 asked it. Isn't it true that the Staff has not
9 recommended that those fees be tariffed by the
10 company that is charging them. That would be true.
11 Is that correct?

12 A. That is correct.

13 Q. Page 1095. Question, Isn't it true
14 that availability fees are not necessarily for
15 republic utility service. Answer, Well, the ones
16 that I'm familiar with are for the utility service.
17 The revenue is used to operate the utility. Even
18 though the revenue is used for the utility, is the
19 rate charged for a specific utility service. Oh,
20 well, no. I am reading that correctly?

21 A. That's correct.

22 Q. And do you recall that exchange
23 between you and I?

24 A. I do.

25 Q. There is some difference between the

1 parties about whether the Commission is actually
2 asserted jurisdiction over availability fees. Is
3 it Staff's position through your voice that, in the
4 last rate case, the Commission did assert
5 jurisdiction over availability fees?

6 A. You're talking about the last rate
7 case for Lake Region Water and Sewer?

8 Q. Lake Region Water and Sewer.

9 A. Yeah. And I agree the Commission did
10 not in that particular case.

11 Q. You mentioned cases in your
12 surrebuttal -- not cases, perhaps -- but maybe
13 cases involving Peaceful Valley and IH Utilities,
14 Inc. Were those cases, Mr. Merciel, in which the
15 Company consented to having availability fees
16 included in their cost of service?

17 A. Well, I would have to answer yes.
18 There has be no controversy with respect to
19 availability fees until this Company's most recent
20 rate case.

21 Q. And then you kind of put my next
22 question. My understanding is, except in the Lake
23 Region case, there has be no contested case
24 concerning the jurisdiction of the Commission over
25 availability fees.

1 A. To my knowledge, it's never been
2 contested other than that case. If I may, since
3 you mentioned Peaceful Valley, I would mention, for
4 ex parte reasons, that company does have a rate
5 case filed before the Commission at present. Just
6 so everybody understands that.

7 **Q. Would it be fair to say that the**
8 **Commission has not imputed revenue from**
9 **availability fees to any company that did not own**
10 **the rights to that revenue?**

11 A. I think the answer would be yes. The
12 rights might be the question involved there,
13 though.

14 **Q. Regarding the ownership of the rights**
15 **to the availability fees referred to in this case,**
16 **when do you believe Lake Region under its present**
17 **or former names may have acquired rights to those**
18 **fees?**

19 A. My answer is Lake Region had the
20 rights to the fees by the terms of the subdivision
21 restrictive covenants. So, I think the answer
22 would be, from its inception, Lake Region had the
23 rights to those fees.

24 **Q. So, you're saying the document that**
25 **would -- should the Commission should look at for**

1 the termination of when those fees were owned would
2 be the covenants that's where we look for
3 ownership?

4 A For determination?

5 Q. For ownership. For ownership of those
6 fees.

7 A. Okay. For -- I think you were asking
8 me about originally when did Lake Region, correct?

9 Q. Right. Right.

10 A. Okay.

11 Q. Mutual ownership of those fees.

12 Excuse me. Excuse me. Yes.

13 A. Okay.

14 Q. You're telling the Commission that we
15 should look at the covenants and restrictions to
16 determine when Lake Region initially owned those
17 fees?

18 A. That's correct. Very simply, that's
19 what the covenants say. They be paid to the owner
20 of the utility systems. That would be Lake Region.

21 Q. We've talked about the certification
22 case, WA-95-164.

23 A. Yes.

24 Q. Do you know whether the Staff believed
25 the Company owned the rights of those fees then?

1 A. I believe the Staff believed that the
2 Company did own the rights. I think you'll see
3 something in Greg Meyer's testimony who is on the
4 -- he was one of the Staff auditors at the time --
5 talking about the developer signing rights. And
6 I'm not sure exactly where that statement comes
7 from, but, again, going on what the restrictive
8 documents say, it's payable to the utility.

9 **Q. At least --**

10 A. That's what they say.

11 **Q. -- to Mr. Meyers' perspective, as you**
12 **understand his testimony, it was unclear to him**
13 **whether the Company had the ownership of those**
14 **availability fees?**

15 A. It could -- I don't want to testify
16 that it wasn't clear to them. That's certainly a
17 possibility. His testimony was that the developer
18 should have signed the rights to the utility. I
19 personally don't think that was necessary, but
20 that's what he said, and it is what it is.

21 **Q. You mentioned -- on page 4 of your**
22 **testimony, you mention that there was an assignment**
23 **in March of 1999, and I was going to ask you, do**
24 **you mean there's assignments in our stipulation of**
25 **undisputed facts that occurred in 2002, as I**

1 recall? Do you know of another assignment that
2 you're referring to in March of 1999? If you need
3 to find something in your notes to confirm that, by
4 all means look in your notes or your work papers.
5 That seemed to be out of sync with what we
6 understood the case to be.

7 A. Okay. To be honest, I'm not sure what
8 I mean by assignment. In '99, that was about the
9 time that we saw some utility owners -- I might not
10 say it's the present owners, it was some previous
11 owners -- Bam (ph) Lake Utility, availability type,
12 either corporate names or fictitious names. There
13 were several of them that were formed. And that
14 was about the time frame that they started showing
15 up. I'm not sure if we know exactly when the
16 assignment was made out of the utility company. It
17 would have been after 1995, and very likely about
18 the time you're talking about there, but I don't
19 know exactly.

20 Q. Did -- in terms of a document, an
21 actual assignment document, that does not show up
22 until April of 2002? Would that be fair, to your
23 recollection? If you don't know, you don't know.

24 A. Yeah. I may have seen it. We might
25 have talked about that last case. I don't recall

1 it right off --

2 Q. Accounting for availability fees. Let
3 me ask you this. This may be something that's a
4 little bit on the fringe of your area of expertise,
5 but is it your recommendation that Lake Region
6 should tariff the availability fee?

7 A. Well, I and the Staff were not making
8 that recommendation. I will point out, again, back
9 to the restrictive covenants, those documents say
10 that it would be put in the tariff and approved by
11 the Commission. It's been that way since this
12 company first started back in whenever it was, '73.
13 That provision never actually occurred, so the
14 Staff has never -- never tried to actually enforce
15 that or promote it.

16 Q. Is it your recommendation that Lake
17 Region should bill and collect this fee?

18 A. Yes.

19 Q. Would it be booked then as an accounts
20 receivable on Lake Region's books?

21 A. For that, an accounting term, I
22 suppose it would. It should be revenue. That's
23 receivable by the company. I may not be using the
24 terms properly. I'm not an auditor.

25 Q. In your position, do you want to see

1 that on the Lake Region books as an account
2 receivable of some sort?

3 A. I would. I think it's revenue that
4 belongs to the utility company. Again, that's
5 referring back to the subdivision documents. I
6 think that's what lot owners agreed to.

7 Q. On page 7 of your surrebuttal, you
8 talk about the workshop docket that was ordered by
9 the Commission in the last case. Now, I would
10 propose to the Commission that that order speaks
11 for itself. But, in general, would you agree that
12 the Staff was directed to deduct that workshop
13 toward a rulemaking addressing availability fees on
14 a perspective basis?

15 A. Yes. That direction was given.

16 Q. And wasn't the intent to have that
17 rule in place before we came back for rate relief
18 in this case?

19 A. That was probably the Commission's
20 intent. I don't wish to speak for the Commission,
21 but that's probably true.

22 Q. Well, at the same time, I wanted to
23 get your Staff's analysis, too.

24 A. Okay.

25 Q. But was it your understanding from the

1 **Staff's perspective that this should have been done**
2 **before the next case?**

3 A. Well, my best answer to that to the
4 extent it's possible to arrive at a rule that could
5 actually be published and approved, I think that
6 would have been the intent. I think it's Staff's
7 position, ultimately, was it's a lot easier said
8 than done. Like a rule, it's like writing an
9 audit, company expenses are more of a case-to-case
10 --

11 Q. That's why I want -- if your
12 surrebuttal has some more, I have more questions
13 about that.

14 A. Yeah.

15 Q. Do you know that whether you or other
16 members of the Staff contacted any company,
17 including Lake Region, regarding if rulemaking and
18 availability fees would be considered in that
19 rulemaking?

20 A. I don't have specific knowledge on
21 that issue. I wasn't working directly on it
22 myself. In the workshop docket, there were
23 companies that were participating in various
24 aspects. I just don't know about that particular
25 issue. The docket was already existing and this

1 issue got rolled in at some later time.

2 Q. But the Staff did not promulgate a
3 rule specifically for availability fees?

4 A. There was no rule promulgated by
5 Staff.

6 Q. I mean -- I'm sorry. There's no rule
7 recommended by Staff for formal ruling?

8 A. There was no rule drafted and
9 recommended by the Staff, nor by any company or any
10 industry organization, correct.

11 Q. And right now there is no rule adopted
12 by the Commission on the subject matter?

13 A. There is nothing down that I know of
14 right now.

15 Q. Were you involved in preparing the
16 Staff report on the history of a workshop docket,
17 it's initial creation, and it's rollover into the
18 other cases?

19 A. No, I was not. I don't think I even
20 reviewed it. I didn't prepare it. I'm not sure I
21 even saw it before it was filed.

22 Q. Did you prepare -- did you give any
23 guidance to people on what issues were actually
24 identified in the workshop dockets and the rollover
25 docket? I'll call it the rollover docket.

1 A. Okay. Well, not to a great extent. I
2 may have -- I may have provided some background
3 information, more like answering somebody's
4 question. I didn't review documents, or I didn't
5 have a highly active role in that -- in that -- in
6 that docket.

7 Q. Do you know if a decision was made to
8 drop the rulemaking from the docket for
9 availability fees? Was a decision made to drop the
10 rulemaking for availability fees from consideration
11 of the docket?

12 A. By the?

13 Q. By the Staff?

14 A. By the Staff? Not to my knowledge.

15 Q. Do you know why it was not considered
16 in the docket? And I'm presuming it wasn't
17 considered in the docket because of the report that
18 was issued by the Staff in identifying the issues
19 addressed.

20 A. Yeah. Well, again, I don't -- I don't
21 have a lot of firsthand knowledge about it. I do
22 remember we, as the Staff, took the position that
23 availability fees were largely case-by-case. We
24 had the opinion that trying to do a rulemaking was
25 a lot more cumbersome than was practical. How that

1 fell out into any Staff recommendation, I'm not
2 really sure. I wasn't -- I wasn't involved with
3 those decisions.

4 Q. Do you know if your analysis that you
5 just described was put into written form and given
6 to General Counsel or a member of the higher level
7 management of the Staff?

8 A. I do not. I don't know. I would have
9 to review it to see.

10 Q. Did you attend meeting where the issue
11 of treating availability fees on a case-by-case
12 basis were held?

13 A. I don't think I did. I don't think I
14 attended any meetings on it. Doesn't mean some
15 didn't happen, but I don't believe I attend --
16 didn't attend any.

17 Q. Was treating availability cases fee on
18 case-by-case basis you and other members of the
19 Sewer Staff made?

20 A. The Water and Sewer Staff would be
21 involved in it. Yes.

22 Q. Do you know who approved the decision
23 to treat availability fees on a case-by-case basis?

24 A. I could guess, but I don't know for
25 sure.

1 **Q. Did you participate in the workshop**
2 **docket directly?**

3 A. No.

4 **Q. Did you provide advice to Staff**
5 **members that were working in that docket?**

6 A. Only possibly in the form of maybe
7 answering questions from time to time. Mostly in
8 the context, like, maybe somebody coming in and
9 asking a question or talking about it out in the
10 hall, that sort of thing.

11 **Q. All right. Refer to the rollover**
12 **docket, I'm thinking that would be the SW-2011-0042**
13 **and WW-2011-0043. Does that make sense to you?**

14 A. Yes.

15 **Q. And the WW-2009 -- no, that's not**
16 **right. No. That was -- that was the case that was**
17 **combined with the other two dockets I mentioned.**

18 A. Okay. Maybe to help out there. There
19 was a -- there was an existing workshop docket --
20 well, two. I think one for water, one for sewer.
21 And, as I recall -- could be wrong -- but, as I
22 recall, there was a spin-off docket from this
23 Company's last rate case. And I think that's the
24 combination you're speaking of.

25 **Q. All right.**

1 A. That case was -- I don't know if the
2 cases were consolidated or the issue just went into
3 workshop docket. I don't know exactly how it was
4 handled procedurally.

5 MR. COMLEY: Your Honor, I'm going to
6 ask the Commission to take official notice of all
7 the docket sheets in the cases. I think we've
8 taken it -- we've filed an exhibit of the docket
9 sheet for one of these cases, but I think it would
10 be appropriate to have all the docket sheets and,
11 perhaps, even take official notice of the orders of
12 the Commission in each of the dockets that we
13 referred to, and that would be the workshop docket
14 that was spun off of the 2010 Lake Region rate case
15 and the cases in which that workshop docket was
16 eventually consolidated. And I don't -- I think I
17 have the case numbers here.

18 JUDGE BUSHMANN: Make sure that I'm --
19 the ones you're referring to, would that be
20 WW-2011-0043, SW-2011-0042, and WW-2009-0386?

21 MR. COMLEY: Yes.

22 JUDGE BUSHMANN: Those the three
23 you're referring to?

24 MR. COMLEY: Yes, your Honor.

25 JUDG BUSHMANN: You're asking the

1 Commission take official notice of Commission
2 orders entered in those cases and filed in those
3 cases, and also the job docket sheet identifying
4 the different filings?

5 MR. COMLEY: Yes. And I think, if
6 conceivably, the filing would be important, too. I
7 think they've been referred to in the evidence. At
8 any rate, the filing of the parties in those cases
9 I think would be important to the Commission
10 decision in that.

11 JUDGE BUSHMANN: You're asking for
12 official notice on all documents filed in those
13 three cases?

14 MR. COMLEY: Yes.

15 JUDGE BUSHMANN: Any objection from
16 any party to do that?

17 MS. MOORE: I have no objection. I
18 think it may be cumbersome. Perhaps the docket
19 sheets and orders, but, otherwise, I really have no
20 objection to all of it.

21 MS. BAKER: And I have no objection,
22 but I'm not sure that there's -- everything in
23 there is relevant.

24 JUDGE BUSHMANN: Well, considering
25 that the Commission can take official notice of its

1 own files, and all the filings in those docket
2 numbers would constitute files of the Commission, I
3 will go ahead and take official notice of those
4 three docket numbers and the associated filings
5 that were made in them.

6 MR. COMLEY: Thank you very much. I
7 was hoping that official notice would relieve some
8 of the cumbersome nature of paper exhibits. So, in
9 my own defense, thank you.

10 Q. (By Mr. Comley) Mr. Merciel, on page
11 3 of your surrebuttal, lines 11 and 12, you refer
12 to language in subdivision covenants and
13 restrictions applicable to most lot owners in the
14 Company's service fees which prevent the
15 availability fees. Do you know which covenants you
16 were referring to?

17 A. Oh, well --

18 Q. We have several, of course.

19 A. Yes. There are a lot of them. I
20 can't off the top of my head say specifically.
21 There was a -- there was an amendment to the third
22 amend. And there was a fourth amendment, and some
23 of them refer back to previous documents. And I
24 can't tell you off the top of my head exactly which
25 one it is. I think it's actually in -- it's in --

1 I might have some pages in my testimony in this
2 case.

3 Q. You do have one --

4 A. It was previous to this case.

5 Q. I'm sorry. I didn't mean to interrupt
6 you.

7 A. Yeah. I say the documents are there.
8 I can't tell you off the top of my head what
9 documents they were there.

10 Q. I was going to ask you if you knew
11 which subdivisions you're referring to.

12 A. There's a long list of subdivisions in
13 those documents on both Shawnee Bend and Horseshoe
14 Bend.

15 Q. Your schedule GAM-2, I think the pages
16 1 through 3 are only to the availability fees
17 charged for water and sewer -- rather for water on
18 Horseshoe Bend. Did you understand that the
19 various declarations and amendments may have had
20 different applications to subdivisions?

21 A. Yes. There are some different
22 applications.

23 Q. And they were graduated?

24 A. Yeah. And I think where you're
25 talking there's -- if I recall correctly, there

1 were different paragraphs for Horseshoe Bend and
2 Shawnee Bend. I might be on the wrong document,
3 but I recall seeing that. Certainly for sewer. No
4 question sewer is handled completely different on
5 Horseshoe Bend and Shawnee bend.

6 **Q. Basically, the Commission would need**
7 **to look at each of the documents, look at their**
8 **entirety, to see what subdivision is involved in**
9 **each of them; is that correct?**

10 A. Well, yes. And, yeah, at that time, I
11 would say in the last case, it was in either my
12 surrebuttal testimony or rebuttal testimony. We
13 had the documents in there entirety. Many many
14 voluminous pages, just so I would be in context.

15 **Q. I think they are part of the record**
16 **here; and if they aren't, we can get them.**

17 A. Right.

18 **Q. So, I think we do have stipulation --**

19 A. The information is out there, yes.

20 **Q. All right. Would it be your memory**
21 **that water and sewer availability fees first appear**
22 **in the restrictive covenants for Shawnee Bend in**
23 **about 2009?**

24 A. No. I don't -- no. We looked at them
25 in the -- well, we were aware -- Staff was aware of

1 it in the certificate case in 1995, and I believe
2 -- I believe they existed back then.

3 Q. For Shawnee Bend?

4 A. For Shawnee Bend, yes.

5 Q. Would that have been for sewer only?

6 A. I don't think so. I could be -- could
7 be wrong about that.

8 Q. So, it would be for water?

9 A. I just recall that we were talking
10 about availability charges in that certificate
11 case.

12 Q. Was it for both or just for one?

13 A. Well, I thought both, but I could be
14 wrong on that. I'm not a hundred percent sure.

15 Q. You and Mr. Summers had debated about
16 the regulation of these fees in your testimony. I
17 was going to ask you, in the initial case in 1973
18 when the Company was formed, in that same case,
19 were these fees involved to pay for plant and
20 service? Do you know?

21 A. From what I can gather, the fees were
22 at least initially, if not beyond that, they were
23 -- they were there to support operation of the
24 utility system, and I'm basing that statement
25 largely on the engineering report in that case

1 where -- where the engineers said that
2 approximately -- well, in the first -- first one to
3 six years, 20 to 30 percent of the revenue would
4 actually be from fees for getting service. In
5 other words, the commodity and customer charge like
6 you typically see. And the remainder of the
7 revenue would be availability fees.

8 And I read that to mean that this was a new
9 system. The system was getting built, very few
10 customers, but yet, you know, as we've discussed in
11 other cases, when you build a utility system, you
12 have to start it when your first customer connects.
13 You might have revenue from one customer, maybe two
14 or three customers, but you have to operate the
15 entire system. So, to the extent you have other
16 lots that are sold but not connected, this
17 availability fee revenue is available to the
18 utility to do the operations.

19 **Q. The availability fee revenue was not**
20 **tariffed, though; is that correct?**

21 A. It was not, even though it's in the
22 restrictions that it would be. But it, in fact,
23 was not. Never was with this company.

24 **Q. With --**

25 A. With other companies, it has been, but

1 not with this company.

2 Q. The extent to which availability fees
3 have been collected for the life of the company, is
4 it correct that those fees have paid for plant and
5 service?

6 A. I wish I could answer that question.
7 I have not done that analysis, so we'd have to sit
8 down with a cost of the system and look at revenue
9 that's been checked over the years. Maybe other
10 expenses such as billing expenses should come out
11 of the the revenue, and certainly some maintenance
12 expenses. I think somebody would have to sit down
13 and do an analysis to be able to answer that
14 question, and I have not done that.

15 Q. Let's go to 1997, 1998. My
16 understanding is that the Company did book
17 availability and revenue in its annual reports. Do
18 you have an understanding of that history or not?

19 A. I believe that's true. I don't recall
20 specifically what's in the annual reports.

21 Q. Do you remember at all how much it
22 was?

23 A. Well, no, I don't remember that. But
24 it was my understanding -- let's see, the time
25 frame you're talking about --

1 **Q. That would have been after the**
2 **WA-95-164 case.**

3 A. Right. And for this company, that
4 would have been after the Ozark Shores sale. I
5 should say the sale of water system assets to Ozark
6 Shores, which did have availability as revenue, as
7 far as I know, it was going in the annual report at
8 the time. It was being included in the rate
9 calculations. But this company, I can't testify
10 here right off what was included in the annual
11 reports.

12 If it wasn't, I would say it should have
13 been, because I believe it was utility revenue.
14 And had we done a rate case at that time, I believe
15 Staff would have included that as revenue on the
16 rate calculation.

17 **Q. Do you know who prepared the rate**
18 **design for the WA-95-164 case?**

19 A. Probably me.

20 **Q. If it was Martin Hummel, would you be**
21 **surprised?**

22 A. Could have been Martin Hummel who was
23 working under my supervision at the time. He
24 probably did it, and might have been with my help.

25 MR. COMLEY: Judge Bushmann, I would

1 like to show the witness a piece of testimony.

2 JUDGE BUSHMANN: All right.

3 (Whereupon, a document was handed to
4 the Witness.)

5 Q. (By Mr. Comley) Mr. Merciel, I'm
6 going to represent to you that I'm handing you a
7 copy of testimony of Mr. Martin Hummel from Case
8 No. WA-95-164.

9 A. Yes.

10 Q. I'm going to ask you if you can take
11 just a moment to review that and look at the rate
12 design that Mr. Hummel has in that testimony.

13 A. Okay. I will look through it.

14 Q. All right.

15 A. I can tell you you're not going to
16 find availability revenue that Staff built into
17 this case.

18 Q. I was going to ask you, Mr. Merciel,
19 if after looking at that testimony whether you saw
20 if Staff built in any availability fee revenue in
21 the rate design.

22 A. And we do not. I do remember at the
23 time of that case we talked about it, but at the
24 time there were -- there might have been some lots
25 sold, but this system was very new. Probably no

1 actual customers and could have been some lots
2 sold. I don't -- I could be wrong. I don't think
3 the system was built yet. The punch line is there
4 wasn't enough revenue for us to really -- really
5 include. We just wanted to try to design some
6 rates that would be realistic rates that this
7 company could live with, and we chose to ignore
8 availability revenue at the time. Doesn't mean
9 ignore it for good, but for purposes of doing the
10 calculations for this case, we did not include
11 availability revenue.

12 **Q. Now, you mentioned that the system had**
13 **not been built. Do you recall when the system was**
14 **fully constructed?**

15 A. I don't. We probably have that in the
16 files. I don't remember off the top of my head.

17 **Q. Do you recall when the developer**
18 **contributed the plant to the company?**

19 A. No. I'm sorry, I don't.

20 **Q. Do you -- we have --**

21 A. This testimony -- this testimony might
22 even say what was in service at the time, if it
23 was. I don't know. The information would be out
24 there. I just don't know offhand.

25 **Q. Let me ask you this. Just reviewing**

1 **Mr. Hummel's testimony in that case, did it refresh**
2 **your recollection if availability rate design was**
3 **there for the company in the case?**

4 A. Again, it was not in the rate design
5 in this case, but primarily through Mr. Meyers'
6 testimony, we recognized that availability revenue
7 was there and would be there and that the Staff
8 would consider it in the future, in future rate
9 reviews. That was really all we did in this case.

10 MR. COMLEY: For the sake of
11 everyone's benefit, I can supply copies of the
12 testimony of Mr. Meyers and Mr. Hummel in those
13 cases.

14 I would ask the Commission take
15 official notice of the testimony that was filed in
16 that record. I think we did that with Mr. Meyers'
17 testimony. I don't think we -- I don't think we
18 marked that as an exhibit.

19 JUDGE BUSHMANN: I don't think we did,
20 either. And what was the exact testimony?

21 MR. COMLEY: It would be the testimony
22 of Martin Hummel. His rebuttal testimony, as I
23 remember.

24 THE WITNESS: Yes, that's correct.

25 MR. COMLEY: Case No. WA-95-164.

1 JUDGE BUSHMANN: That name sounds
2 familiar. Was that one of the testimonies that we
3 took initial notice of earlier?

4 MR. COMLEY: You know, I can't
5 remember if we did take initial notice of both. If
6 we did, I'll sit down and be quiet.

7 THE WITNESS: Mr. Hummel's name was
8 mentioned but I don't think you talked about his
9 testimony.

10 MR. COMLEY: That was my thoughts
11 initially.

12 THE WITNESS: Yeah.

13 JUDGE BUSHMANN: Okay. Any objection
14 to taking official notice of that testimony in that
15 case?

16 MS. MOORE: None.

17 JUDGE BUSHMANN: In that case, we'll
18 take official notice of Mr. Hummel's rebuttal
19 testimony in that case.

20 Q. (By Mr. Comley) As parts of the
21 recommendations in Case No. WA-95-164, Mr. Meyers
22 suggested -- Mr. Meyer, rather, suggested that
23 there be reviews of the Company and the
24 availability fees. Has the Staff ever reviewed
25 that except in the context of the 2010 rate case?

1 A. To my knowledge, not on the Shawnee
2 Bend side. At least not in the context of any
3 case. I don't know if it was looked at informally.
4 It could have been. I don't remember whether it
5 was or not. Sometimes we do that. The Company did
6 have a rate case on its sewer rates on the
7 Horseshoe Bend side but, as Ms. Bolin stated
8 before, those are stand-alone rates and we may not
9 have looked at the availability issue for Shawnee
10 Bend at all in that particular case.

11 **Q. Do you recall that Mr. Meyers wanted**
12 **to have a quarterly review of the availability**
13 **fees?**

14 A. I don't remember that. If it says --
15 it may say that. If it does, it does.

16 **Q. All right.**

17 A. I'm not sure if we did it. Possibly
18 Mr. Meyer, another auditor could have done some
19 reviews.

20 JUDGE BUSHMANN: Hello, Commissioner.

21 COMMISSIONER KENNEY: Hello. Thank
22 you.

23 JUDGE BUSHMANN: Proceed.

24 **Q. (By Mr. Comley) Reviewing Staff's**
25 **proposal in this case, would it be fair to say that**

1 **you're looking back 17 years or so and trying to**
2 **change the rate structure for the Company for the**
3 **future? Is that a correct statement?**

4 A. Well, I think it's a correct
5 statement. That's what -- that's what happens in
6 rate cases.

7 Q. And why wouldn't going back that
8 distance consider -- be considered retroactive
9 ratemaking?

10 A. Oh, well, rate may have been in effect
11 for all that time, but with rate cases and revising
12 rates, that's from a point going forward. So, we
13 may be changing rate at a minimum effect for that
14 long, but I don't know that it's retroactive.
15 We're not trying to force the Company to refund
16 monies that were collected or make adjustments in
17 that nature. It's only on a going-forward basis.

18 Q. You're proposing to impute the
19 availability of revenue to the Company but still
20 treat the plant as contributed. Is that correct?

21 A. Yes. I don't know that all the plant
22 is contributed. Some would be; perhaps a
23 significant amount.

24 Q. I would say the plant that's been
25 covered or the plant that's involved with the

1 **payment of availability fees?**

2 A. Well, I don't think you can tie
3 availability fees to specific plant.

4 Q. **Would it be the plant that's installed**
5 **in the subdivisions where availability fees are**
6 **enforced?**

7 A. That would be true.

8 Q. **Would it be fair to say that this**
9 **approach is exactly opposite from the way the**
10 **Company was financially approved by the Commission**
11 **in its certificate case?**

12 A. If I understand your question, I don't
13 think that's true.

14 Q. **So, what you're doing here is the same**
15 **as was done in the certificate case?**

16 A. Yes, with the exception that, at the
17 time, we did ignore availability fees because of --
18 hesitate to say lack of data -- but being a new
19 company, there just wasn't any cost. Certificate
20 cases done pro forma basis routinely, if you have a
21 new system, it's got an estimate cost and estimated
22 revenues, and that's what we did in that
23 certificate case.

24 Q. **If the availability fee revenue would**
25 **have been tariffed and included in the revenues**

1 given to the Company in the 1997 case and the plant
2 continued on the books as contributed, would have
3 been the rates been reduced in that 1997 case?

4 A. I'm sorry. Which '97 case is that?

5 Q. That would be the WA-95 -- I say '97

6 --

7 A. Okay. The '95 case?

8 Q. The '97 comes from the effective date.

9 A. Oh, okay.

10 Q. I will ask the question again.

11 A. Yes, if you would, please.

12 Q. If the availability fees were tariffed
13 and included in the revenue treatment of the
14 Company and the plant contributed on the books
15 state contributed the rates for the Company and, as
16 a consequence of the certificate case, would have
17 been reduced, wouldn't that have been correct?

18 A. That could have happened. I'm not --
19 don't know that that's for sure. It could have
20 been in effect.

21 Q. This seems to be a simple question,
22 and maybe you can tell me. There's never been
23 a real estate developer come before the Commission
24 and ask to have an availability fee approved.
25 Isn't that correct?

1 A. Well, we've had some requests that --
2 or seem to be similar to that. Maybe informal --
3 well, developers do like to collect whatever
4 revenue they can get, whether availability fees,
5 connection charges. We do see requests like that
6 from time to time.

7 **Q. And the Staff gets those requests, but**
8 **do you know of any formal applications filed with**
9 **the Commission in which a real estate developer**
10 **said, I'm going to have an availability fee for a**
11 **subdivision lots and I want to have it approved?**

12 A. No. I can't think of one where they
13 requested the rate be approved. The -- certainly,
14 some of the companies we've been talking about,
15 including this Company and Peaceful Valley and
16 Indian Hills Utility, have included the
17 availability revenue as part of their feasibility
18 analysis. So, to that extent, they've come to the
19 Commission with the revenue on the table so to
20 speak.

21 **Q. But these are the companies. These**
22 **are utility companies?**

23 A. Yes. Peaceful Valley started --
24 actually, the developer was the utility, the same
25 entity at that time.

1 Q. But it became a public utility?

2 A. Yes, with a transfer of assets case.

3 Q. And, by agreement, the availability
4 fee revenue was included in there?

5 A. I would say it was by agreement.

6 There was no controversy. That was part of the
7 feasibility. It was all -- it was intended as the
8 utility revenue, and that's the way it was treated.

9 Q. Would you agree with me that Lake
10 Region does not own the availability fee revenue?

11 A. I think I would agree that they don't
12 own it. That's not to say that they shouldn't own
13 it.

14 Q. All right. Have you compared the
15 rates for service that the Staff is proposing in
16 this case to the rates that were approved in 1997,
17 and that's with the certificate case?

18 A. I have not. I've not done a rate
19 analysis. I'm not the one on the Staff who would
20 necessarily do that. I'm not sure that's been done
21 at all yet.

22 Q. Did you review Mr. Summers' schedule
23 in which it was revised, the revised schedule with
24 case numbers that talk about how the revenue was
25 included and how plant services was treated

1 **accordingly?**

2 A. I've seen a schedule. I think -- I
3 think a schedule. I don't --

4 **Q. Do you disagree with it?**

5 A. Well, I don't really disagree with it
6 as such, but I think it goes on the premise that
7 the availability revenue is for capital recovery or
8 pipeline infrastructure that's in service, and I
9 don't think that's a valid premise.

10 **Q. But, at the same time, that represents**
11 **the way the Commission treated the availability fee**
12 **revenue in those cases?**

13 A. I -- no. I don't agree with that.

14 **Q. Okay.**

15 A. That might be from the perspective of
16 Lake Region and Ozark Shores, there might be some
17 validity when you include IH Utilities and Peaceful
18 Valley. I don't think it's -- I don't think it's
19 representative.

20 **Q. I have some questions about the**
21 **Company company service. Basically, would you**
22 **agree that the Company has provided safe and**
23 **adequate service ever since it started service**
24 **about 40 years ago?**

25 A. I would say this Company's provided

1 good service to its customers. We have problem
2 water and sewer companies. This is not one of
3 them.

4 Q. It's been doing that regularly, and it
5 provides very good service?

6 A. It's been a good company for as long
7 as I've be working here.

8 Q. On page 4, line 15, of your testimony,
9 you say that it was imprudent for the Company to
10 transfer availability fee. Would you agree that
11 this is a new contention from the Staff?

12 A. Well, it was -- it was -- no, it's not
13 new now. It was new in the last case, back in
14 2010.

15 Q. I think in that case you mentioned
16 that it was unreasonable. You didn't say it was
17 imprudent.

18 A. Perhaps that's true.

19 Q. All right.

20 A. But my point was going to be that was
21 the first time this has been brought up as a
22 controversial issue. First time it's had to be
23 addressed by the Staff.

24 Q. Let me ask you this. There has be no
25 complaint filed by the Staff in connection with the

1 assignment of the availability fee revenue that's
2 referred to in our statement of undisputed facts?

3 A. That's correct. There's been no
4 complaint.

5 Q. The rates were approved in the 2010
6 rate case despite the fact that Staff did contend
7 that it was unreasonable for the availability of
8 revenue to be assigned?

9 A. That's true. That did happen.

10 Q. Do you know if the assignment of this
11 revenue was at all a topic in the workshop docket
12 or the rollover dockets?

13 A. I don't know. If it was discussed, I
14 wasn't involved with the discussions.

15 Q. Did you attend the Company public
16 hearing held in December of 2013? Were you there?

17 A. No. I was not there. That was the
18 local hearing, I think you're referring to?

19 Q. That's right.

20 A. Okay. No. I was not there.

21 Q. Did you ever learn that there was no
22 complaint from members of the public or any Lake
23 Region customers at that hearing?

24 A. That's what I recall hearing, that
25 there were no complaints. Again, this is not a

1 problem company. They take care of their
2 customers.

3 Q. On page 9 of surrebuttal, you state,
4 Availability fee revenues of the utilities would
5 actually be an enhancement to utility viability.
6 Is that a correct reading of your testimony?

7 A. Yes.

8 Q. That is basically the core issue here,
9 isn't it?

10 A. Well, yes. Also, considering this
11 company having grown to the size that it has, it is
12 past the point of having viability problems like we
13 often see with small utilities. So, short of that
14 --

15 Q. The Company's operated without
16 availability fee revenues for quite some time and
17 it's still financially viable?

18 A. It has, yes.

19 Q. Now, if Staff's proposals are
20 accepted, Lake Region's viability would depend upon
21 the transfer of that availability fee revenue to
22 the Company. Would you agree?

23 A. Yes.

24 Q. Do you think that Lake Region can
25 compel the owners of that availability fee revenue

1 **to relinquish it?**

2 A. Well, I can't answer that. I'm only
3 recommending to the Commission that the revenue
4 belongs with the utility, and I'm recommending the
5 Commission take that into consideration. Whether
6 -- whether that can -- can happen again now is --
7 is a question I can't answer.

8 **Q. Let's presume this. If Lake Region**
9 **cannot acquire rights to the availability fee**
10 **revenue and cannot collect it for itself, and**
11 **Staff's proposals are accepted, are the rates**
12 **designed in Staff's proposals sufficient to**
13 **generate and cover Lake Region's cost of service?**

14 A. I can't really give you a definitive
15 answer. I think the answer you're looking for is
16 to say without the availability revenue, if that's
17 taken out, the rates may not be sufficient. But,
18 again, Staff takes the position that, you know,
19 this money's being collected, it's being billed,
20 it's out there, it's getting paid to somebody, and
21 it's Staff's position is it belongs with the
22 utility. How we get there after these actions,
23 that's what I can't give you a good answer to.

24 **Q. If the proposal goes into place and**
25 **Lake Region cannot collect this revenue for itself,**

1 **doesn't that place the Company's economic viability**
2 **in peril?**

3 A. I guess that depends on what the
4 owners of the Company do. Some of the owners have
5 control over the availability revenue, and I think
6 it's fixable.

7 **Q. It depends on the owners?**

8 A. It depends on the owners.

9 MR. COMLEY: Thank you, Mr. Merciel.
10 I have no other questions.

11 THE WITNESS: Okay. Yes, sir.

12 JUDGE BUSHMANN: Any questions from
13 the Commissioners.

14 (No response.)

15 CHAIRMAN KENNEY: Mr. Merciel, no.
16 Sir, thank you for your time.

17 THE WITNESS: Okay. Thank you,
18 Mr. Chairman.

19 EXAMINATION BY COMMISSIONER STOLL:

20 **Q. I'm not sure if you're the right**
21 **person to ask this, but as I was sitting here**
22 **listening, how is the amount of the availability**
23 **fee determined? Is it standard based on each lot,**
24 **\$25 a month or --**

25 A. Well, it is in the subdivision

1 restrictive covenants. I may not use the right
2 name.

3 Q. Okay.

4 A. It's in there. I might have it
5 backwards. I believe it's \$10 for water per month
6 and \$15 for sewer.

7 Q. Okay. Do you know if Lake Regional
8 (sic) has a customer charge or a minimum charge on
9 their water bill?

10 A. On their rates, yes, they do.

11 Q. Water and sewer?

12 A. Yes. Well, water.

13 Q. Yeah.

14 A. Yeah. The water, there is. Sewer, I
15 can't remember. Might be a flat rate on sewer.

16 Q. Yeah. How about tap on fees? Do you
17 recall if they have a --

18 A. There's -- I don't think there's a
19 tap-on fee. There might. I'd have to look at the
20 tariff. Might be an inspection fees, like there's
21 not a large cap offset on, you know -- on making a
22 connection.

23 Q. Okay.

24 COMMISSIONER STOLL: That's all I have.

25 Thank you.

1 EXAMINATION BY COMMISSIONER HALL:

2 Q. Good afternoon.

3 A. Good afternoon.

4 Q. It sounds like from your testimony so
5 far that it's not uncommon for water and sewer
6 utilities to charge availability fees?

7 A. Well, it's -- I wouldn't really quite
8 say that. Most of the companies don't have the
9 availability fees. We have this one and Ozark
10 Shores, the predecessor, and the two other
11 companies we've talked about. I don't know of any
12 other companies that we regulate that do have.
13 There could have been some in the distant past, but
14 I'm only aware of these four companies, out of the,
15 oh, I don't know, 60 or 70 water companies and same
16 amount of sewer companies we regulate at the
17 present time.

18 Q. And of those four companies, of those
19 four companies, are there any examples of that
20 revenue being treated as revenue for rate
21 calculation?

22 A. Yes, sir. In my testimony in Indian
23 Hills which no longer charges the availability fee.
24 It's gone away with that company, but there was a
25 small company rate case in -- I don't remember the

1 year now, it was in the '80s -- and in the Staff
2 work paper, it clearly assigned the availability
3 revenue to maintenance and some depreciation.
4 Might have been some return on the utility plant.
5 It was included as revenue.

6 Peaceful Valley, I haven't yet found a rate
7 case where it actually makes the assignment. But
8 in the last case -- and, again, that's the company
9 that has the case before the Commission right now,
10 so I don't want to do any ex parte -- but in the
11 last case, there was an across-the-board change in
12 all the tariff rates which included the
13 availability charge. To my knowledge, that was
14 included in the revenue with that company as well
15 in past cases.

16 Ozark Shores does not have it in the tariff,
17 but the revenue over the years, I think there's
18 been some different treatments, you know, a little
19 bit of variation, but, basically, it's been
20 included in revenue in the rate calculation.

21 Q. Okay.

22 COMMISSIONER HALL: Thank you.

23 THE WITNESS: Yes, sir.

24 JUDGE BUSHMANN: Recross after
25 Commission questions. Public Counsel?

1 MS. BAKER: No questions. Thank you.

2 JUDGE BUSHMANN: Lake Region?

3 MR. COMLEY: No questions.

4 JUDGE BUSHMANN: And redirect by
5 Staff.

6 MS. MOORE: Thank you.

7 REDIRECT EXAMINATION BY MS. MOORE:

8 Q. Mr. Merciel, towards the beginning of
9 your discussion with Mr. Comley, I believe you were
10 asked about your previous statements regarding
11 whether availability fees can be considered utility
12 service.

13 A. Yes.

14 Q. Can you elaborate for us on how
15 availability fees can be considered part of a
16 utility service?

17 A. Well, they could be a part of service.

18 And, again, might back up, my statement was the
19 context of customer paying for something this month
20 that he's getting this month. In that sense, it
21 may not be a service but it could be considered a
22 service in that, first of all, just the fact that
23 they're paying a required fee to the utility
24 company. But my opinion, in paying this fee and
25 providing revenue to support the utility, they're

1 participating in the upkeep of this utility for the
2 present and for the future when they may want to
3 connect to it. So, in essence, they are
4 maintaining a system that's there for their
5 benefit. And it could be considered service in
6 that respect.

7 Q. Okay. And I think this has be
8 covered, but just to be sure, there was discussion
9 about whether or not availability fees are
10 tarified. Are they always tarified for the
11 companies that we're aware of?

12 A. No, they're not. Again, I think I
13 mentioned they are in the tariff of Peaceful Valley
14 presently. They were in the tariff of Indian
15 Hills, IH Utilities, Indian Hills subdivision.
16 They no longer are because that company's not
17 charging it. They weren't in the tariff from the
18 inception. The availability revenue existed, and
19 at some point, those companies choose to put it in
20 the tariff.

21 And, then, Ozark Shores and this company,
22 Lake Region, the availability is there but it's not
23 in the tariff.

24 Q. What is Ozark Shores' relationship to
25 Lake Region?

1 A. Ozark Shores acquired the water system
2 assets on Horseshoe Bend. Lake Region was
3 originally the owner; at the time, the Four Seasons
4 Lakesite Water and Sewer Company. They have --
5 they had the water sewer utility Horseshoe Bend.
6 That company sold the water assets to Ozark Shores.
7 Coincidentally, that company sold to largely the
8 present owners of Lake Region, the other owners of
9 Lake Region at the time. But they sold to Ozark
10 Shores. The owners of Ozark Shores are largely the
11 same people that, ultimately, bought Four Seasons,
12 now called Lake Region.

13 **Q. Okay. I think you were also asked**
14 **whether the Commission had ever imputed**
15 **availability fees revenue to a utility that does**
16 **not have the rights to the availability fees**
17 **revenue. Do you remember that question?**

18 A. I do remember. I think I answered
19 that, to my knowledge, that was never -- never done
20 before with the Commission's approval.

21 **Q. To your knowledge, have there ever**
22 **been any companies that have given up the rights to**
23 **a stream of revenue in order for the Commission to**
24 **have to impute it?**

25 A. To my knowledge, that's never

1 happened. The companies that I'm aware of that
2 have it, they always had it and never -- never did
3 or never tried to give it up.

4 **Q. Okay. You were also asked about the**
5 **workshop in regards to availability fees. There**
6 **was first --**

7 A. Yes.

8 **Q. -- the original workshop as a result**
9 **of Lake Region, and then the rollover docket, I**
10 **think, is what are we calling it?**

11 A. Right.

12 **Q. You mentioned in your response to that**
13 **there was some difficulty in making a rule without**
14 **availability fees. Can you elaborate on that?**

15 A. My position -- I think I'm safe to say
16 would be the Staff's position -- that to make a
17 rule on availability fees would either have to be
18 very complex in order to try to capture all
19 situations that could be out there. These fees can
20 be set up by the developer; they can be set up by
21 the utility. They, in fact, can be transferred
22 around; they can be called different things. I
23 think it's hard to capture exactly -- exactly how
24 to handle it in a rule.

25 Or the rule would be just so simple, for

1 example, rule that just says, if a utility company
2 ever has availability revenue, it can't transfer it
3 out without Commission approval. That's probably
4 overly simplified, but I like to compare, writing a
5 rule for that, it's like writing a rule on what
6 gets included with a ratemaking in an audit. It's
7 inherently case-by-case. That's why we have to
8 have auditors go in and look at it and make
9 decisions on every line item they see. Every line
10 item they see. You know, is this reasonable, is
11 not reasonable, should a portion be included,
12 should it be allocated. You can't write a rule,
13 you couldn't write a computer program and just plug
14 in numbers and expect it to spit out rates.

15 It's just more, more, more complicated and
16 more convoluted than trying to -- trying to write
17 some rule that captures everything. So, the bottom
18 line is we thought availability revenue should be
19 handled on a case-by-case basis. That's what it
20 really comes down to.

21 **Q. You mentioned that engineering report**
22 **in response to a question about the certificate**
23 **case. Can you elaborate more on what that is and**
24 **what it has to do with availability fees?**

25 **A. Yes. When utilities file before the**

1 Commission with a certificate of convenience and
2 necessity, and not always, but a lot of times that
3 will be somebody coming in, it's a new service
4 area, maybe new subdivision as was the case here on
5 Horseshoe Bend. They come in, it's pro forma, they
6 use estimated expenses, estimated revenue based on
7 a growth forecast. It's what we call a feasibility
8 study.

9 The utilities are required to file a
10 feasibility study. That's what the Staff uses to
11 evaluate their business plan and evaluate expenses,
12 and set rates initially. And this was a report
13 that Four Seasons Lakesites had filed in this case
14 back in '73, and that's the engineering report I
15 was talking about. It had some estimated plan
16 expenses, estimated operating expenses, basically
17 described how the company was going to operate its
18 business, and it mentioned availability fees.

19 Q. What did it say about availability
20 fees?

21 A. It said that this water system is
22 unusual in that it's -- don't remember if we used
23 the term recreational area -- but unlike a
24 subdivision in the city, this is a recreational
25 area where people might buy lots, they may or may

1 not build a house on it. Some people may build on
2 a lot, live somewhere else on the lake, but buy a
3 lot, have access to the boat dock or swimming pool.
4 They buy a lot without actually building a lot
5 (sic) on that, and that was anticipated with this
6 company.

7 So, that was the unusual nature of it. What
8 the engineer forecasted was that, in the first six
9 years, between 20 and 30 percent of the Company's
10 revenue would be from people actually taking water
11 service and the remainder would be availability
12 revenue. And that's what I read as that was the --
13 well, that was part of the feasibility in starting
14 this system. They were depending on the
15 availability of revenue to support the utility
16 system operation.

17 Q. In relation to the certificate case,
18 you also mentioned that Staff had made the decision
19 to bypass a recommendation on availability fees
20 until later? Was that correct?

21 A. Correct. That was in the '95 case.

22 Q. Would that be normal as a decision to
23 make in a certificate case?

24 A. Oh, I guess you could call it normal.
25 That's the only one we've ever done that on, but

1 it's -- I've never, you know -- availability
2 revenue is rare enough. That's the only one I've
3 ever worked on, you know, from its inception.

4 **Q. Perhaps the better question is what is**
5 **the difference in Staff's review for a certificate**
6 **case versus a ratemaking case?**

7 A. The difference is a certificate case
8 is done on pro forma data. You're forecasting
9 what's going to happen. On a normal rate case with
10 an existing company, you use a test year or some
11 method to go back and look at actual expenses and
12 actual revenue.

13 **Q. Okay. I believe Commissioner Stoll**
14 **asked you about availability fees, and I believe it**
15 **was about revenue. How is it -- and without saying**
16 **any amounts, because some of those amounts are**
17 **confidential -- but how does this availability fee**
18 **for Lake Utility Availability 1 in the amount that**
19 **is charged compare to other availability fees that**
20 **you're familiar with?**

21 A. Well, I could say amounts of other
22 companies if it's for comparison. I think it's all
23 public record.

24 **Q. The other companies, yes, that would**
25 **be fine.**

1 A. Well, the other companies -- this only
2 applies to water. This is the only one where we
3 have a sewer availability. But on this company,
4 water availability is \$10. With Peaceful Valley,
5 the current rate -- it's in the tariff, and I don't
6 have the exact amount -- I think it's like \$8.51,
7 or some amount like that. A little bit lower.

8 **Q. Uh-huh.**

9 A. IH Utilities, it was \$2 per month,
10 which was set back in the mid '60s when that
11 company first came in.

12 q. And I think Commissioner Hall asked
13 you about availability fees being treated as
14 revenue; and, to your knowledge, has there ever
15 been any company that has availability fees
16 regulated by Missouri that does not treat it as
17 revenue?

18 A. To my knowledge, all the availability
19 fee revenue we deal with has been dealt with as
20 utility revenue except for what's been happening
21 with this company in the last case and this case.

22 **Q. Thank you.**

23 MS. MOORE: No further questions.

24 JUDGE BUSHMANN: Thank you,

25 Mr. Merciel. You may step down now.

1 THE WITNESS: Yes, sir. Thank you.

2 (Whereupon, the Witness left the
3 witness stand.)

4 JUDGE BUSHMANN: Seems to be a good
5 time for a break. Why don't we go into recess
6 until about 3:25.

7 (Whereupon, a recess was taken at 3:12
8 p.m.)

9 (Whereupon, the record resumed at 3:25
10 p.m.)

11 JUDGE BUSHMANN: Back on the record.
12 Our last witness today dealing with the issue of
13 availability fees is Mr. Robertson.

14 Mr. Robertson, you're already under
15 oath; and for cross-examination, first party would
16 be Staff.

17 MS. BAKER: Beforehand, since this is
18 his last issue, I will go ahead and tender his
19 testimony OPC 2, OPC 3 and OPC 4 for admission.

20 JUDGE BUSHMANN: Are there any
21 objections to the receipt of those exhibits?

22 MR. COMLEY: Yes, your Honor. With
23 respect to Mr. Robertson's direct testimony which I
24 believe has been marked as OPC 2, on the basis of
25 the objections that Lake Region has raised to

1 testimony about availability fees in this case, we
2 have the following objections to pages and lines in
3 his direct line as follows: Page 2, lines 18
4 through 21; page 3, lines 2 through 23; page 4,
5 lines 1 through 26; page 5, lines 1 through 31;
6 page 6, lines through 1 through 5; page 7, lines 9
7 through 22; page 8, lines 1 through 2.

8 With respect to OPC Exhibit 3,
9 Mr. Robertson's rebuttal testimony, we have these
10 objections based upon the same grounds that I have
11 raised before with respect to availability
12 testimony. These objections apply to his rebuttal
13 of page 1, lines 18 through 21; page 2, lines 1
14 through 23; page 3, lines 1 through 22; page 4,
15 lines 1 through 16.

16 And with respect to Mr. Robertson's
17 surrebuttal testimony which is Exhibit OPC Exhibit
18 4, we have these objections based upon those
19 grounds I have voiced about availability fees
20 already. These objections apply to page 1, lines
21 14 through 26; page 2, lines 1 through 22; page 3,
22 lines 1 through 23; page 4, lines 1 through 23;
23 page 5, lines 1 through 23; page 6, lines 1 through
24 23; page 7, lines 1 through 21. Also, the
25 objections would be posed to Schedules TJR 1, 2.1,

1 2.2, 3.1, and 3.2, and so much of TJR Schedule 4
2 that refers to the availability fees.

3 JUDGE BUSHMANN: And those are all
4 based on those same grounds as in prior
5 availability fee witnesses?

6 MR. COMLEY: Yes, your Honor.

7 JUDGE BUSHMANN: In that case, I'll
8 reserve judgment as before, will take that with the
9 case, and receive Office of Public Counsel Exhibits
10 2, 3, and 4 into the record subject to the
11 objections as noted.

12 All right. Now, cross. Staff?

13 MS. MOORE: No questions. Thank you.

14 JUDGE BUSHMANN: Questions by Lake
15 Region.

16 MR. COMLEY: Thank you.

17 CROSS-EXAMINATION BY MR. COMLEY:

18 Q. Turning to your direct testimony,
19 Mr. Robertson, on page 6.

20 A. Okay.

21 Q. On page 6, lines 2 through 4, you
22 mentioned that the Commission did not address in
23 the previous case, I think, Public Counsel's
24 primary concern the collection of the funds
25 represent contributions in aid of construction and

1 all such contributions have not be properly
2 identified and included in the utilities cost of
3 service. Did I read your testimony correctly
4 there? Would it be fair to say that there is
5 nothing in Commission's 2010 order that rules that
6 the availability fees collected on Shawnee Bend
7 should somehow be reflected in rate base?

8 A. Are you asking if the order says they
9 should be reflected in rate base as in an offset?

10 Q. I'm saying would you agree that there
11 is nothing in the order that directs or agrees with
12 the idea that availability fees collected on
13 Shawnee Bend should somehow be reflected in rate
14 base?

15 A. I agree that the order does not use
16 the availability fees as an offset in rate base in
17 that order.

18 Q. On page 3, lines 21 through 23, of the
19 direct, there is some mention of your research on
20 availability fees.

21 A. Excuse me. Excuse me. Again, what
22 page?

23 Q. Page 3, lines -- I'm kind of skipping
24 around.

25 A. Yes, I know.

1 Q. It's at the bottom of the page at page
2 3. You say your research indicates that
3 availability fees are usually utilized by various
4 governmental entities and ongoing through there.
5 Let me direct your attention to that answer. Do
6 you recall, through Ms. Baker's office or directed
7 to you, that you received data requests from Lake
8 Region?

9 A. I did.

10 Q. Through your research?

11 A. Yes.

12 Q. And my understanding you had offered
13 in response to Internet links about availability
14 fees, and one was a link to revenue of availability
15 fees in the State of Virginia?

16 A. Yes, that's correct.

17 Q. And another link, I think, was also to
18 a site involving a county in Virginia?

19 A. That's right. Could you hold on just
20 one moment. I actually have the response to that
21 DR. Thank you. That's correct.

22 Q. And I take it, Mr. Robertson, that you
23 did not do any specific research with respect to
24 how availability fees are treated in Missouri?

25 A. No, that's not true. I was involved

1 in the last case, so I was aware of how
2 availability fees have been treated in Missouri.

3 Q. Oh, okay. So, your research, the
4 research you're talking about, though, is it
5 strictly in other counties in other states?

6 A. As I told you in response, that
7 response on it said I included reviewing various
8 testimony and exhibits in the prior case and I also
9 did some additional NS search.

10 Q. Let's turn to your surrebuttal. Let's
11 go to page 2, line 3.

12 A. Okay.

13 Q. You mention there that Company's --
14 you say, However, Company's refusal to provide the
15 actual data has not prevented OPC from preparing an
16 analysis for the Commission that shows the
17 estimated amounts for availability fees collected
18 win the Shawnee Bend Water and Sewer District
19 operations in comparison to the companies in the
20 PMSC Staff by developers. Did I say that
21 correctly?

22 A. You read that correctly.

23 Q. All right. I wanted to confirm with
24 you that, in more than one place, you had mentioned
25 that the Company has refused to supply information

1 to your office. But do you quarrel with the idea
2 at this time -- do you recall with the the fact at
3 this time that the actual data was not in Lake
4 Region's possession and control?

5 A. Really depends on what data you're
6 referring to. In several data requests, I saw that
7 plan investment contributions wee made by the
8 developer, year by year coming forward for each
9 operation. I think that's probably within the
10 Company's control. So, yes, that is within the
11 Company's control.

12 As far as the availability fees, which I
13 think is what your question is, Lake Region, at
14 least for the least several years since the last
15 owners have owned it, I guess they shifted it off
16 into a different fund, so that --

17 Q. Actual data about availability fees is
18 not kept by Lake Region in its records?

19 A. Well, you know, that may or may not be
20 accurate. We've got some response -- a response
21 from the Company that said some of that information
22 is kept on Lake Region's computers. So, it's on a
23 utility computer; I think the utility does have
24 access to it.

25 Q. And the Commission did handle that,

1 **didn't they, in a discovery order?**

2 A. As far as I can tell. I didn't get
3 the information.

4 **Q. You didn't get the discovery order?**

5 A. I didn't get the availability fees,
6 the information I requested.

7 **Q. You did see the discovery order,**
8 **though?**

9 A. I have read the orders, yes.

10 **Q. All right. Is it pretty true, fairly**
11 **true -- I'll withdraw that.**

12 **Isn't it true that your position about**
13 **availability fees is the same as it was in the 2010**
14 **case?**

15 A. It is -- it's extremely similar. If
16 you look back in my testimony in the the 2010 case,
17 I think what we initially said was that, to treat
18 the money collected from the fees as owing to the
19 benefit of the company to the extent that's
20 satisfied, it should be treated, and it actually
21 should be treated as SEAC (ph). In this case,
22 we're recommending after further analysis that all
23 excess be treated as additional SEAC.

24 **Q. So, it's some of the extension of your**
25 **position, then, in this case or are you saying it's**

1 **the same?**

2 A. I think you've got to look at the
3 entire picture of what these two -- these were for.
4 As Mr. Merciel testified, these companies, when
5 they first started for a CNN, they estimate, try to
6 forecast on pro forma basis what it's going to take
7 to operate them.

8 **Q. That was in the feasibility report he**
9 **was talking about?**

10 A. I think that was part of it, yes, in
11 the '95 case.

12 **Q. And I think it was CD -- maybe he was**
13 **talking about the 17 -- 754 case. The original**
14 **case, I think, is what the feasibility studies --**

15 A. You've had discussed on both
16 occasions. I'm referring specifically only to the
17 Shawnee Bend which is, I believe, the W-95 case.

18 **Q. All right.**

19 A. Since you don't know what it's going
20 to take to operate those companies, I think in
21 those instances the fees were believed to be
22 utilized to help develop the Company, help maintain
23 the Company, open it properly until such time they
24 got enough ratepayers to support the system. So,
25 in that system, it would be treated as OM

1 maintenance costs.

2 Q. Moving back to the question that I did
3 ask, and I know you tried to answer it. I know you
4 have. But your position in this case is nearly
5 identical to the position that Office of Public
6 Counsel took in the 2010 case?

7 A. Yes. Nearly identical. That's true.

8 Q. Is it also fair to say that you're
9 relying on estimates for purposes of your position,
10 estimates of availability fees?

11 A. Well, if you look at the schedule
12 where I define those costs that you're talking
13 about, some of the costs are estimates, some of
14 them were obtained from affidavits, from Brian
15 Swearngen, and some of them were obtained from the
16 annual reports. So, not all of the costs are
17 estimates. Some are; some aren't.

18 Q. Let me see. You have -- looking at
19 your schedule TJR 1, would that be where those
20 estimates are recorded?

21 A. That's -- exactly.

22 Q. 1995 to '97, these were pro forma
23 financials, so they had be estimates; is that
24 correct?

25 A. They would be estimates. And, then,

1 below that, or after that, we have costs that
2 related -- identified by the POA in the prior case,
3 and then we also had costs that are identified,
4 fees that were identified by Staff in the report
5 they put together for the Commission and, to some
6 degree, was supported by the Company and they
7 updated it from Mr. Swearengen.

8 So, to answer your questions, some of the
9 costs are estimates based on available information
10 that we do have, and I believe some of the costs to
11 be from what the Company provides us to be actual.

12 **Q. Would you agree with me that the**
13 **verifiable data would be in the annual report**
14 **analysis done in 2006, 7, and 8, and 9?**

15 A. I would tell you that I asked the
16 Company for this information so we could have the
17 actual information to provide the Commission. They
18 would not provide it, so based on available
19 information which we did have, access to that is
20 what we developed here.

21 **Q. So, even the Staff annual report**
22 **analysis you would consider to be inaccurate?**

23 A. I would consider it to be very close
24 because, if I recall correctly from
25 Mr. Swearengen's affidavit, the sum of the numbers

1 or the amounts between the years 2005 and 2010,
2 what Staff put together and what Mr. Swearengen
3 said the Company collected in his affidavit was
4 very close. He was only different by a few
5 thousand dollars.

6 Q. Aren't their annual report estimates
7 for the years '95 through '98 available?

8 A. For the years again?

9 Q. '95 through '98?

10 A. I don't recall that they are for --
11 the early years, '95, '96, and '97. As far as the
12 annual reports after that, I'm not sure that
13 they're broken out between -- between the
14 utilities.

15 I will tell you also that the annual report
16 information, for what it's worth, even in this
17 analysis as I stated in my testimony, is probably
18 not completely accurate. I really wish the Company
19 had provided the information so that we could give
20 the Commission, you know, the actual data. They
21 didn't. So, based on what we did have access to,
22 this is what we put together, and we believe it's
23 at least a reasonable representation of the fees
24 that the Companies and the shareholders or its
25 owners have collected over the years.

1 **Q. Regarding Schedule TJR 1, would it be**
2 **fair to say that you have not considered cost of**
3 **capital in determining the figures you are trying**
4 **to determine?**

5 A. Would you further explain the
6 question? I don't completely understand.

7 **Q. Would cost of capital be a factor in**
8 **the analysis you're working on here?**

9 A. Well, from what we're looking at here
10 is we're looking at the comparison of the fees
11 they've collected in the comparison to the plant
12 they contributed to the company, to see if they
13 recovered the developer, they recovered the cost
14 they incurred to build out the system.

15 **Q. And wouldn't cost of capital be a cost**
16 **for the developer that we should consider in**
17 **turning what would be contributions in aid of**
18 **construction?**

19 A. That's a possibility. That is a
20 possibility. What their cost of capital would be.

21 **Q. And that's not included in your**
22 **analysis?**

23 A. And neither did the Company provide
24 information that cost of capital was required or
25 needed by them.

1 **Q. You would assume that there would be**
2 **cost of capital for the investment?**

3 A. I would not assume it. I would tell
4 you that there is a possibility.

5 **Q. If a developer invests that much money**
6 **in an infrastructure, there's going to be cost of**
7 **capital, wouldn't you agree?**

8 A. Well, if they donated the Company a
9 hundred thousand dollars, they want to recover that
10 hundred thousand dollars back, would they earn a
11 return on it at the same time they're getting the
12 hundred thousand dollars back. There are many
13 instances in ratemaking where the Commission allows
14 utility to recover costs incurred but no return on
15 it.

16 **Q. Would you agree with me the Company**
17 **ratepayer's not paying availability fees?**

18 A. Yes, I agree.

19 **Q. Would you agree with me that, since**
20 **the owners of the undeveloped lots are not**
21 **customers of the Company, they are not subject to**
22 **the Company's tariffs?**

23 A. Since they're not a customer, they're
24 not subject to their tariffs while they're not a
25 customer.

1 Q. Would I be correct in assuming that if
2 the Commission accepts your position on this that,
3 if the Company should come back in for rate relief
4 in a few years, you would again try to compute the
5 amount of availability fees paid by the non-
6 customers of the Company and again make that an
7 offset to rate base?

8 A. If the -- if the fees continue to be
9 collected, yes.

10 Q. At some point, assuming availability
11 fees paid by the non-customers reduce the rate base
12 of the Company additionally, non-customers of the
13 Company would fund all capital purchases of the
14 company, all they make toward the regulatory
15 assets. Is that conceivable?

16 A. If you look at the reconciliation in
17 this case, we believe that's already occurred for
18 Shawnee Bend Sewer. Of the Counsel's
19 recommendation as far as reconciliation rate base,
20 Shawnee Bend Sewer be set at zero because we
21 believe the Company's over collected or collected
22 an amount of availability fees far greater than
23 what they actually contributed to the utility.

24 Q. So, in essence, it's possible that the
25 non-customers would be paying through availability

1 fees all the capital assets the Company might need
2 in the future for service?

3 A. It's also possible that, if the
4 Commission takes control of these fees, they can
5 seize them, also. They can end them, stop it, so
6 that doesn't -- no longer collected.

7 Q. So, the answer to the question I asked
8 you is yes?

9 A. As I've told you earlier, yes, it
10 could happen. It has happened in our view already.

11 Q. Would you agree with me that the
12 Company's rate base has been reviewed and
13 determined in two previous rate cases?

14 A. You're referring to the CNN case and
15 the 2010 case. I will tell you the CNN case were
16 estimates pro forma numbers, and I will tell you
17 that the 2010 case, which was the last case, we do
18 not agree with the outcome of it.

19 Q. You don't agree with it, but the rate
20 base was approved by the Commission, don't you --

21 A. They issued an order, yes.

22 Q. Would it be fair to say that your
23 proposal needs to be restructure the rate base of
24 the Company as far back as, I'll say, 19 years?

25 A. I will tell you that my testimony is

1 trying to show the Commission that the developers
2 contributed a certain amount of money to the
3 operations, and since that time they've collected
4 these fees, and the amount of fees they collected
5 far exceed the amount of money that they
6 contributed. So, in essence, they're collecting
7 these fees with no cost behind it and no future
8 costs at any time behind it.

9 MR. COMLEY: That's all the questions
10 I have, JudgeBushmann.

11 JUDGE BUSHMANN: Do the Commissioners
12 have any questions?

13 CHAIRMAN KENNEY: I do.

14 EXAMINATION BY CHAIRMAN KENNEY:

15 **Q. Good afternoon, Mr. Robertson. Can**
16 **you hear me okay?**

17 A. I can. Thank you.

18 **Q. I just want to ask you a few questions**
19 **about the workshop dockets that we were discussing,**
20 **SW-2011-0042 and WW-2011-0043?**

21 A. Maybe.

22 **Q. WW-2 --**

23 A. I hate to interrupt you, but it may
24 slow you down a little bit here. I wasn't involved
25 in those workshops.

1 **Q. That was my question. Was OPC**
2 **involved at all?**

3 A. I don't have an answer to that. I can
4 say I wasn't, but I'm sure Christina Baker, one of
5 our attorneys in our office, probably was.

6 **Q. Who is actually in the hearing room**
7 **right now right?**

8 A. Yes, sir, she is.

9 **Q. And I can't question her because she's**
10 **not a witness. Okay. All right.**

11 CHAIRMAN KENNEY: Well, no questions
12 then. Thank you.

13 THE WITNESS: Thank you, sir.

14 JUDGE BUSHMANN: Do you have any
15 questions?

16 COMMISSIONER STOLL: I have no
17 questions. Thank you for your testimony, though.

18 THE WITNESS: Thank you.

19 JUDGE BUSHMANN: Recross after
20 Commission questions. Any questions by Staff?

21 MS. MOORE: No. Thank you.

22 JUDGE BUSHMANN: Lake Region?

23 MR. COMLEY: None. Thank you.

24 JUDGE BUSHMANN: Redirect by OPC.

25 MS. BAKER: Just a couple of

1 questions.

2 REDIRECT EXAMINATION BY MS. BAKER:

3 Q. You were asked by Mr. Comley about
4 whether the rate base had been reviewed in previous
5 cases, the certificate case and the previous rate
6 case for Lake Region. Do you remember that?

7 A. I do.

8 Q. Okay. And was it made very clear in
9 front of the Commission in that case that
10 information was not being provided regarding
11 availability fees?

12 A. We had the same problems in the 2010
13 case that we've had in this case getting
14 information from the Company so we can provide the
15 Commission with accurate information so they can
16 base their decision on that information. We didn't
17 get it done, and we didn't get it here, either.

18 Q. And, so, your understanding that the
19 Commission issued that order on the rate base and
20 on everything in the case with the information that
21 they had in front of it?

22 A. That's correct.

23 Q. Also, going to the question of the
24 rate base amounts for Shawnee Bend Sewer, I believe
25 it was -- your estimations that put it at rate

1 **base, that would be a negative, so it was your**
2 **position to set it at zero?**

3 A. That is correct. We believe they
4 collected more fees than the developers actually
5 contributed in billing out the operation. But we
6 believe that, if you try to create a negative rate
7 base, you would get into problems with ratemaking,
8 and, so, we just decided to recommend that the rate
9 base for Shawnee Bend Sewer be set at zero.

10 **Q. And there were also some questions**
11 **about future offsets. Would you feel that those**
12 **would still be appropriate in the future?**

13 A. I think, if the fees continue to be
14 collected, the more that's collected, the greater
15 the excess over what the developers contribute to
16 the utilities is going to grow. Eventually, the
17 only other utility would be Shawnee Bend Water that
18 still has a rate base, in our opinion, would
19 eventually -- would actually go negative. But, in
20 that case for the same reason we're dealing with
21 the Shawnee Bend Sewer, we'd recommend a zero rate
22 base there, also, if that occurred.

23 **Q. And the amount that is collected right**
24 **now would set at 10 and 25, I believe, per month**
25 **per lot?**

1 A. 10 and 15.

2 **Q. 10 and 15. I'm sorry. 10 and 15.**

3 **That could be adjusted so that maybe the rate base**
4 **would not go down quite so fast?**

5 A. I'm sure, if the Commission takes the
6 responsibility for these cost fees and whether they
7 should be charged or not, they could be adjusted in
8 an amount or they could be eliminated. It would be
9 up to the Commission.

10 **Q. And the owners of the availability**
11 **fees could also adjust the amount that they**
12 **collect?**

13 A. So, the way it's set up is that the
14 restricted covenants would have to occur through
15 there, it's my understanding.

16 **Q. And you were asked about the numbers**
17 **that you had in to your surrebuttal testimony being**
18 **estimates or whether they were verifiable**
19 **information. Can you explain a little bit again**
20 **about the difference that you believe between them**
21 **not being estimates and them being verifiable?**

22 A. Well, essentially, the information
23 except for what came out of the Brian Swearengen's
24 affidavit were the Company alleges certain amounts
25 were collected, at least they didn't provide any

1 support other than what he put in there after date
2 of. We've got no support of what they actually
3 collected from the Company or the owners or the
4 shareholders. We've got his affidavit; we've got
5 affidavits from the homeowners association in the
6 prior case for the number of lots that were out
7 there; we've got the pro forma numbers that were
8 actually in the CCN case.

9 That's not -- not necessarily the actual
10 information. I mean, the Company has that. Only
11 the Company has that, or the shareholders has that
12 as the case may be. It used to belong to the
13 Company itself but was transferred to shareholders.
14 If it's not been transferred, the Company would
15 have had it. It's not actual information, but
16 based on what we do have and information we have
17 got from, like, Mr. Swearengen's affidavits, we
18 know the amounts are fairly close.

19 I mean, for example, like I said in his
20 affidavit, the amount that the Company collected
21 between the year 2005 and 2010 is, according to
22 what he said, the Company collected is very close
23 to what the Staff put together in the report for
24 the Commission in the last case. If you look at
25 the customer numbers that the POA provides, those

1 numbers are not that -- the number of lots that
2 where a house hadn't been built or building hadn't
3 been put on connected to the systems, those
4 numbers, customer numbers are not that far off.
5 There's not that much.

6 So, if you multiply it out 300 per year per
7 customer, dollar difference, not that much. Early
8 years, the dollars are a lot smaller. So, even if
9 they're off a little bit, it's not going to be a
10 material amount. And, then, of course, the later
11 years after 2010, in the analysis I put together, I
12 relied on Mr. Swearengen's affidavit there and the
13 customer numbers that rolled forward.

14 Of course, that could be different, too, but
15 I don't see any information that would show that
16 it's -- the customer numbers are a lot fewer on
17 than the dollar amount would be.

18 **Q. And one last question. You were asked**
19 **whether the undeveloped lot owners were subject to**
20 **the tariffs of Lake Region. Have you seen tariffs**
21 **that do include availability fees for undeveloped**
22 **lot owners?**

23 A. Well, what I can think right now, I
24 don't know of any that do.

25 **Q. Okay.**

1 A. Mr. Merciel testified on the -- for
2 utilities on the state they occurred with.

3 **Q. Do you see any reason why an**
4 **availability fee for an undeveloped lot owner**
5 **couldn't be put on to a tariff?**

6 A. No. Absolutely. If Commission agrees
7 it's within their purview to for the utility, I'm
8 sure it could be.

9 MS. BAKER: I have no further
10 questions.

11 JUDGE BUSHMANN: Thank you,
12 Mr. Robertson.

13 THE WITNESS: Thank you.

14 JUDGE BUSHMANN: You may step down.

15 (Whereupon, the Witness left the
16 witness stand.)

17 JUDGE BUSHMANN: One more issue to
18 deal with. It's scheduled for tomorrow. Do the
19 parties have objection to dealing with it today and
20 trying to wrap it up?

21 (No response.)

22 MR. COMLEY: Call John Summers.

23 JUDGE BUSHMANN: Yes. Mr. Summers is
24 our first witness.

25 LEGAL FEES

1 JUDGE BUSHMANN: You're already sworn
2 in, sir, so you can just have a seat.

3 MR. COMLEY: Just a brief direct, your
4 Honor, brief direct.

5 JUDGE BUSHMANN: Yes.

6 DIRECT EXAMINATION BY MR. COMLEY:

7 Q. In connection with the offering of
8 Mr. Summers' testimony at this hour and at this
9 time your appearing, Mr. Summers, if I were to ask
10 you the questions contained in Exhibits 1, 2, and
11 3, your redirect, rebuttal, and surrebuttal
12 testimonies that you filed in this case, subject to
13 the revision, the modification we testified to --
14 you testified to this morning, would your answers
15 be the same to the questions propounded in your
16 testimony?

17 A. Yes, they would.

18 MR. COMLEY: Your Honor, I offer
19 Exhibits 1, 2, and 3 -- Lake Region Exhibits 1, 2,
20 and 3 into evidence.

21 JUDGE BUSHMANN: Any objections?

22 (No response.)

23 JUDGE BUSHMANN: Hearing none, Lake
24 Region's Exhibits 1, 2, and 3 will be received into
25 the record.

1 And for cross-examination, first is
2 Staff.

3 MS. MOORE: No questions. Thank you.

4 JUDGE BUSHMANN: Public Counsel.

5 MS. BAKER: Just a couple of
6 questions.

7 CROSS-EXAMINATION BY MS. BAKER:

8 Q. This issue is revolving around a case
9 called Shawnee Bend Development Company, LLC, v.
10 Lake Region Water and Sewer; is that correct?

11 A. That's correct.

12 Q. All right. There was a judgment that
13 was entered on this case in July of 2013; is that
14 correct?

15 A. Yes.

16 Q. And the judgment that was entered was
17 in favor of the developer; is that correct?

18 A. Yes.

19 Q. And there are no similar legal actions
20 currently outstanding for Lake Region, are there?

21 A. No, there are not.

22 Q. And are there any foreseen similar
23 legal issues in the near future for Lake Region
24 that you hope --

25 A. I certainly hope not.

1 MS. BAKER: No further questions.

2 JUDGE BUSHMANN: Any questions by
3 Commissioners.

4 (No response.)

5 CHAIRMAN KENNEY: No questions. Thank
6 you.

7 COMMISSIONER STOLL: No questions.
8 Thank you.

9 THE WITNESS: Thank you.

10 JUDGE BUSHMANN: And redirect by Lake
11 Region.

12 MR. COMLEY: I have no redirect for
13 Mr. Summers.

14 JUDGE BUSHMANN: Mr. Summers, that
15 completes your testimony, sir.

16 THE WITNESS: Thank you.

17 JUDGE BUSHMANN: You may step down.

18 (Whereupon, the Witness left the
19 witness stand.)

20 MR. COMLEY: Your Honor, I'm
21 wondering, in order for there to be support for our
22 stipulations and the issues that have settled, the
23 testimony of the other witnesses should probably be
24 submitted to the record at this point.

25 MS. BAKER: We're not done.

1 MR. COMLEY: I'm sorry. Never mind.

2 JUDGE BUSHMANN: I suggest you save
3 that thought because we'll need to take that up
4 soon. We still have Mr. Foster. Is he available?

5 MS. MOORE: Yes, he is.

6 (Whereupon, the witness, Keith Foster,
7 was administered the oath by Judge Bushmann.)

8 JUDGE BUSHMANN: Please be seated.

9 DIRECT EXAMINATION BY MS. MOORE:

10 Q. If you could, would you state your
11 full name for the record?

12 A. Keith Foster.

13 Q. And could you please spell it for us?

14 A. F-o-s-t-e-r.

15 Q. Where are you employed and in what
16 capacity?

17 A. I'm with the Missouri Public Service
18 Commission as a Utility Regulatory Auditor IV.

19 Q. Are you the same Mr. Foster that
20 prepared or cause to be prepared the testimony
21 that's been marked as Exhibit No. 12 as well as
22 portions of Exhibit No. 1?

23 A. Yes, I am.

24 Q. Do you have anything you wish to
25 correct in those piece of testimony?

1 A. No, I do not.

2 Q. If I asked the same questions today,
3 would your answers be the same?

4 A. Yes, they would.

5 Q. And is the information in those
6 documents true and correct, to the best of your
7 knowledge and belief?

8 A. Yes, they are.

9 MS. MOORE: Your Honor, Staff offers
10 Staff Exhibit 12; and, at this time, there are no
11 more witnesses, I would also offer Staff Exhibit 1
12 and tender the witness for cross.

13 JUDGE BUSHMANN: Any objections?

14 MR. COMLEY: Your Honor, I have no
15 objection to Mr. Foster's surrebuttal testimony. I
16 do need to register objections to the Staff report
17 at this time. I don't think that they have been
18 voiced before.

19 The Staff report refers to
20 availability fees on the following pages and line
21 numbers: Page -- small case -- 2, lines 7 through
22 8; page 14, lines 16 through 30; page 15, lines 1
23 through 30; page 16, lines 1 through 2. And I
24 object to that part of the Staff report on the
25 grounds that I have raised unavailability fees in

1 previous objections.

2 JUDGE BUSHMANN: Very good. SB-4,
3 then, Staff Exhibit 1 will be reserved as before to
4 those records, subject to those objections from
5 Lake Region regarding availability fees, and Staff
6 Exhibit 12 will be received into the record.

7 MS. MOORE: Thank you.

8 JUDGE BUSHMANN: For cross-
9 examination, first is OPC.

10 MS. BAKER: No questions. Thank you.

11 JUDGE BUSHMANN: Any questions by Lake
12 Region?

13 MR. COMLEY: No, your Honor.

14 JUDGE BUSHMANN: Would the
15 Commissioners have any questions?

16 CHAIRMAN KENNEY: No. Thank you.

17 COMMISSIONER STOLL: No. Thank you.

18 COMMISSIONER HALL: No questions.

19 Thank you.

20 JUDGE BUSHMANN: And any redirect by
21 Staff.

22 MS. MOORE: No. Thank you.

23 JUDGE BUSHMANN: Mr. Foster, you're
24 fished, sir.

25 THE WITNESS: Thank you.

1 JUDGE BUSHMANN: Thank you.

2 (Whereupon, the Witness left the
3 witness stand.)

4 JUDGE BUSHMANN: And our last witness,
5 Kerri Roth.

6 (Whereupon, the witness, Kerri Roth,
7 was administered the oath by Judge Bushmann.)

8 JUDGE BUSHMANN: You may be seated.

9 DIRECT EXAMINATION BY MS. BAKER:

10 Q. Please state and spell your name for
11 the Court Reporter.

12 A. Keri Roth, R-o-t-h.

13 Q. And by whom are you employed and in
14 what position?

15 A. Missouri Office of the Public Counsel
16 as a Public Utility Accountant I.

17 Q. Are you the same Keri Roth who filed
18 rebuttal and surrebuttal testimony in this case
19 numbered OPC 5 and OPC 6?

20 A. Yes.

21 Q. Do you have any changes or corrections
22 to your testimony?

23 A. No.

24 Q. Is the testimony true and accurate to
25 the best of your knowledge and belief?

1 A. Yes.

2 Q. If I ask the same questions today,
3 would your answers essentially be the same?

4 A. Yes.

5 MS. BAKER: And, as this is the last
6 witness of the day, I would move for admission of
7 OPC 5, OPC 6, which is Roth rebuttal and Roth
8 surrebuttal, and tender the witness for
9 cross-examination.

10 JUDGE BUSHMANN: Any objections to
11 receipt of those exhibits?

12 (No response.)

13 JUDGE BUSHMANN: Hearing none, OPC
14 Exhibits 5 and 6 are received into the record.

15 And for cross-examination, first is
16 staff.

17 MS. MOORE: No questions.

18 JUDGE BUSHMANN: Lake Region.

19 MR. COMLEY: No questions.

20 JUDGE BUSHMANN: Any Commissioners
21 have any questions for Ms. Roth.

22 CHAIRMAN KENNEY: No. Thank you.

23 COMMISSIONER HALL: No questions.

24 COMMISSIONER STOLL: No questions.

25 JUDGE BUSHMANN: Any redirect from

1 OPC.

2 MS. BAKER: No. No. Thank you.

3 JUDGE BUSHMANN: Thank you, Ms. Roth.

4 THE WITNESS: Thank you.

5 JUDGE BUSHMANN: You're finished.

6 (Whereupon, the Witness left the
7 witness stand.)

8 JUDGE BUSHMANN: And now I think would
9 be a good time to address Mr. Comley's suggestion
10 regarding exhibits.

11 MR. COMLEY: I'm sorry.

12 JUDGE BUSHMANN: Parties have left --
13 or have listed a lot of the other testimony as
14 exhibits to be received into the record; and, Mr.
15 Comley, from your comments, I think you think it
16 would be wise to include that to support the
17 partial stipulation; is that correct?

18 MR. COMLEY: That would be my
19 proposal. We have one exhibit that we'd offer and
20 that would be Vernon Stump's testimony, and we'd
21 propose to put that in on the basis of foundation
22 of his affidavit and ask the witness to appear that
23 way.

24 JUDGE BUSHMANN: Are there any
25 objections?

1 MS. MOORE: None.

2 JUDGE BUSHMANN: Then Lake Region
3 Exhibit 4, Mr. Stump's surrebuttal will be received
4 into the record. And as far as the remaining Staff
5 exhibits?

6 MS. MOORE: Yes. We'd also have the
7 same request. I believe what we have left are
8 Staff Exhibits 4, 5, 6, 9, and 10.

9 JUDGE BUSHMANN: That's what I have,
10 also. Any objections to the receipt of those
11 records?

12 MR. COMLEY: With respect to Staff's
13 report on rate design, Mr. Russo has, I think,
14 extended the availability fee position of the Staff
15 into the rate design; and to the extent it does, it
16 would be objectionable.

17 I have not taken the time to look at
18 each entry on the Staff rate design to see what
19 portion would be objectionable and would ask leave
20 of the Commission to, once again, prepare a
21 detailed list of entries that we'd find
22 objectionable to that. But, again, it would be on
23 the grounds of the objection that I voiced several
24 times today in connection with the jurisdiction of
25 the Commission on availability fees.

1 JUDGE BUSHMANN: I would request that
2 and grant that request, and also receive Exhibits 4
3 and 5 into the record subject to your objection.

4 In regard to the other exhibits, are
5 there any objections to those?

6 (No response.)

7 JUDGE BUSHMANN: Hearing none, then
8 those remaining exhibits, 6, 9, and 10, are
9 received into the record. And I think that -- that
10 is all Staff's exhibits.

11 As far as Office of Public Counsel,
12 there was one additional exhibit.

13 MS. BAKER: Yes. We have the rebuttal
14 testimony of Mr. Addo, and we'd offer that.

15 JUDGE BUSHMANN: Any objections?

16 (No response.)

17 JUDGE BUSHMANN: Hearing none, OPC
18 Exhibit 1 is received into the record. I believe
19 that's all the exhibits.

20 Originally, the transcript was
21 supposed to be available on February 27th, but
22 since we're fishing so quickly, I think it would be
23 preferable if we could speed that up a little bit.
24 So, I would have the transcripts available on
25 February 25th.

1 I'm also seeing that we have a true-up
2 testimony due on March 6th, with rebuttal on March
3 11th, and, if necessary, a true-up hearing on March
4 18th. i haven't had any indication from the
5 parties whether you think that's necessary or not.

6 if you know now, you can tell me; if
7 not, you can tell me later. If you have not had
8 time to discuss that, that's fine.

9 MS. MOORE: We haven't discussed it.

10 JUDGE BUSHMANN: That's fine.

11 I also show initial briefs are due on
12 March 21st. Are there any other matters that need
13 to be addressed before we adjourn here?

14 MS. BAKER: I guess there is one
15 issue. I did see some of the joint stipulations on
16 agenda for tomorrow.

17 JUDGE BUSHMANN: That's correct.

18 MS. BAKER: There was a notice that we
19 filed with the reconciliation stating that the
20 attachments to the latest one had some errors in it
21 --

22 JUDGE BUSHMANN: Correct.

23 MS. BAKER: -- and would be corrected
24 later. I just wanted to make sure that was known
25 and taken into account.

1 JUDGE BUSHMANN: Just so you know --
2 just so you know, that was taken into account in
3 the order. The order was given a 30-day effective
4 date, and the parties were given until the full 30
5 days to file your adjusted accounting schedule
6 since you said in your -- somebody said in a
7 footnote that you were anticipating in doing that
8 by March 17th anyway, which was the date of the
9 true-up hearing. So, this would give you enough
10 time to then file your amended schedules and
11 appendices before the effective date of the order.

12 MS. BAKER: Yes.

13 JUDGE BUSHMANN: So, that should take
14 care of that problem, I think.

15 MS. BAKER: That would be fine. Thank
16 you.

17 JUDGE BUSHMANN: And any other further
18 matters?

19 (No response.)

20 JUDGE BUSHMANN: Hearing none, we're
21 adjourned.

22 MS. MOORE: Thank you.

23 JUDGE BUSHMANN: We're off the record.

24 (Whereupon, the record ended at 4:06
25 p.m.)

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1 C E R T I F I C A T E

2 STATE OF MISSOURI)

3) ss.

4 COUNTY OF COLE)

5 I, Pamela S. Gentry, Certified Court

6 Reporter with the firm of Midwest Litigation

7 Services, do hereby certify that I was personally

8 present at the proceedings had in the

9 above-entitled cause at the time and place set

10 forth in the caption sheet thereof; that I then and

11 there took down in Stenotype the proceedings had;

12 and that the foregoing is a full, true and correct

13 transcript of such Stenotype notes so made at such

14 time and place.

15 Given at my office in the City of

16 Jefferson, County of Cole, State of Missouri.

17

18

19

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PAMELA S. GENTRY, CCR #426

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