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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

In the Matter of Lake Region )  
Water & Sewer Company's Application )Case No. WR-2013-0461  
to Implement a General Rate Increase )  
in Water and Sewer Service. )

TRANSCRIPT OF PROCEEDINGS

DISCOVERY CONFERENCE

October 10, 2013  
Jefferson City, Missouri  
Volume II

JUDGE MICHAEL BUSHMANN, Presiding  
REGULATORY LAW JUDGE

REPORTED BY: Monnie S. Mealy, CCR, CSR, RPR  
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1 A P P E A R A N C E S

2

3 For Staff of the Missouri Public Service Commission:

4 Ms. Amy Moore

5 Mr. Tim Opitz

6 Mr. Kevin Thompson

7 Public Service Commission

8 200 Madison Street

9 P.O. Box 360

10 Jefferson City, MO 65101

11 (573) 751-4140

12

13 For Lake Region Water & Sewer Company:

14 Mr. Mark W. Comley

15 Newman, Comley & Ruth

16 601 Monroe, Suite 301

17 Jefferson City, MO 65101

18 (573) 634-2266

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

2 JUDGE BUSHMANN: We'll go on the  
3 record. Today is October 9th, 2013, at 2:00 p.m.  
4 The Commission has set this time for a discovery  
5 conference in the case captioned In the Matter of  
6 Lake Region Water & Sewer Company's Application to  
7 Implement a General Rate Increase in Water and  
8 Sewer Service, File No. WR-2013-0461, et al.

9 I am Mike Bushmann. I'm the  
10 Regulatory Law Judge assigned to this matter.  
11 Let's begin by Counsel making their entries of  
12 appearance. For Lake Region Water & Sewer Company?

13 MR. COMLEY: Appearing on behalf of  
14 Lake Region Water & Sewer Company, let the record  
15 reflect the entry of Mark W. Comley of Newman,  
16 Comley & Ruth, 601 Monroe Street, Suite 301,  
17 Jefferson City, Missouri.

18 JUDGE BUSHMANN: And for Commission  
19 Staff?

20 MS. MOORE: Appearing on behalf of  
21 Staff, Amy Moore, Kevin Thompson and Tim Opitz,  
22 P.O. Box 360, Jefferson City, Missouri, 65102.

23 JUDGE BUSHMANN: And I was notified  
24 by Ms. Baker that she won't be here, so she is  
25 excused.

1                   The only thing that I have pending, I  
2   guess, is the Staff issues relating to discovery,  
3   And I have your written information about that.

4                   I have reviewed everybody's  
5   submissions. I guess what I'll do is I'll give  
6   everybody a chance, if they want to, to make any  
7   additional comments in addition to what you've  
8   already written.

9                   So, Mr. Opitz, or, Ms. Moore, did you  
10   want to say anything about your request?

11                  MS. MOORE: Certainly. I believe  
12   that the original set of objections were related  
13   to, for the most part, whether or not Lake Region  
14   has possession or control of the information and  
15   the documents that Staff requested, as well as  
16   whether or not the requests were reasonably  
17   calculated to lead to admissible evidence.

18                  For the second point, Staff believes  
19   it's -- it's fairly clear that the information we  
20   are requested -- requesting is all information that  
21   goes to a normal procedure that allows us to do a  
22   full audit, a full investigation in order to  
23   recommend to the Commission what are just and  
24   reasonable rates. That's -- in our minds, that's  
25   clear. There's really no question there.

1           The other main issue is whether or  
2   not the information was requested of non-parties is  
3   in the possession or control of Lake Region.

4           Again, in our view, as we described  
5   in our filing, the -- the way these companies that  
6   we have referenced in our data requests are related  
7   to each other is -- can be described as affiliated.

8           Whether we have an affiliate  
9   transaction rule for water corporations or not,  
10   which we don't, doesn't really matter in whether or  
11   not these companies behave as if they are  
12   affiliated in the normal sense of the word in that  
13   they -- they share resources. They have common  
14   management.

15           In this case, I know we've had -- in  
16   the past in PSC regulation, we have had cases where  
17   Staff or a company or OPC has attempted to get  
18   information from parent companies or subsidiaries  
19   and there have been disputes along those lines  
20   several times.

21           This is not even as distant a request  
22   as asking for information from a parent company or  
23   a subsidiary.

24           We're not asking Lake Region to go to  
25   its affiliated parent company and ask them for

1 documents that they don't have control of already.  
2 We're not asking them to go to a subsidiary and,  
3 say, ask for data that we need to -- them to  
4 analyze that they haven't already analyzed or don't  
5 already have.

6 I think a good analogy would be we're  
7 pretty much asking them to click on a different  
8 file folder on their computer or go to a different  
9 file cabinet and pull out the information.

10 These are people that work for all of  
11 the companies in that they're so inter-related that  
12 they have actual access -- the information we're  
13 requesting reasonably available to them. So that's  
14 Staff's position.

15 JUDGE BUSHMANN: Mr. Comley, any  
16 response?

17 MR. COMLEY: I -- I think that we're  
18 not going to raise any issues at this point about  
19 whether things are relevant or not.

20 I think the critical issue is the  
21 extent to which a Data Request can reach out as far  
22 as what Staff purports it can do.

23 The critical objection, I think, is  
24 the one that we've made about they're asking for  
25 information from non-parties to this case.

1                   We've pointed out the variety of  
2     discovery devices that are available to the Staff.  
3     And to condense what we've written, I think Staff  
4     has available all the possible information  
5     gathering devices available by law, whether the  
6     information they have is in the hands of Lake  
7     Region or in another party.

8                   They also have their general  
9     investigatory power, the power of the Staff to go  
10    ask a regulated company for information. And if  
11    that company doesn't comply, then the Staff can  
12    gets a subpoena duces tecum pursuant to statute and  
13    have that compelled.

14                  The other thing available, and that  
15    is with respect to the District that's involved in  
16    their request, that District is a public entity.  
17    It's also subject to Sunshine Law requests.

18                  And there's no compelling reason that  
19    I can see from what the Staff has filed why they  
20    can't engage in those other discovery requests.

21                  The Commission has some regulatory  
22    authority over what is regarded as an affiliate,  
23    and that is not defined particularly in the  
24    statute.

25                  But there is a statute that says if

1 the regulated company is engaging in a business  
2 that is not the same business that it's engaging in  
3 under regulation, then the Commission may have  
4 authority to go and investigate that.

5 But even under that definition, the  
6 enabling Legislation itself, Lake Region is not  
7 engaging in any other business but water and sewer  
8 business. It really has no affiliates that could  
9 be described under the statute.

10 The Data Request is a -- is a -- is a  
11 creature of the Public Service Commission. It has  
12 a variety of functions.

13 But I don't think anybody can -- can  
14 say that a Data Request can be used -- say, for  
15 instance, apply it to Kansas City Power & Light for  
16 purposes of this -- this question. Would it be  
17 possible for a Data Request to reach so far as to  
18 request the bank that loaned money to a shareholder  
19 to buy shares to give up information about that  
20 loan? No. I don't think so.

21 And we have data requests in this --  
22 the material that Staff filed asks for personal  
23 banking information, even to the point of asking  
24 the bank to prepare that information.

25 Well, the bank's not a party to this

1 case. A shareholder's loans with that bank --  
2 again, I'm not going to raise the relevancy  
3 objections, but there's some question about that.

4 And the other thing is, how far can a  
5 Data Request go to pick up information that's  
6 definitely financial in nature, definitely has  
7 confidentiality issues about it from the bank's  
8 perspective, and the bank is not a party here to  
9 protect it? And Lake Region doesn't have custody  
10 or control or any way of maintaining that.

11 I thought I'd go through the requests  
12 themselves and point this out. You know, in Data  
13 Request 23, they've asked to provide copies of  
14 invoices for any other entity that the District  
15 provides management and operation functions to.

16 Because Lake Region may have a  
17 contract with the Water District to provide  
18 contract services doesn't mean that the contract  
19 service provider is the custodian of records for  
20 the Public Water Supply District. The Lake Region  
21 person is not the custodian of records for the  
22 district.

23 This -- this is asking for  
24 information that is specific to the Public Water  
25 District. It's a Sunshine Law request. It's not a

1 Data Request.

2 No. 24, identify all the services,  
3 functions and responsibilities the Distract  
4 provides to Ozark Shores. Ozark Shores is not a  
5 regulated -- is not a party to this case. But  
6 Ozark Shores is a regulated entity.

7 And there have been occasions and we  
8 pointed that out in our response that Mr. Summers,  
9 who is the General Manager for Ozark Shores, has  
10 responded to an informal request from the Staff to  
11 provide information.

12 He's done that pursuant to the  
13 Staff's general authority to investigate things  
14 like that, not pursuant to a Data Request.

15 Provide the current management and  
16 operating contract for Ozark Shores. I think this  
17 is one that's already been supplied by Mr. Summers  
18 pursuant to that informational request.

19 Please provide any other management  
20 and operating contract for Public Water Supply  
21 District No. 4 that provides management company  
22 services to water and sewer utilities.

23 Well, again, this is information  
24 that's kept by the Public Water Supply District.  
25 Lake Region does not have control over those kinds

1 of documents.

2 The general ledger for Ozark Shores.

3 I think we have directed the Staff to the annual  
4 reports for those. We don't see how a Data Request  
5 is required. Again, Ozark Shores is not a party to  
6 this case. There should be some separation here.

7 We've talked about in DR-28, the  
8 representation that Ozark Shores and North Suburban  
9 are affiliates. Again, the only connection that we  
10 could think -- North Suburban owns the shares of  
11 Ozark Shores. It is a shareholder. Being a  
12 shareholder of a company does not make it an  
13 affiliate of the company.

14 DR-64 and 60 -- DR-64 and 20 -- I  
15 guess it's 28 and 63 talks about debts of the  
16 affiliates. I think we talked about how affiliate  
17 doesn't apply.

18 64, provide the 12-month end weighted  
19 average for the following loans: Lake Region  
20 Alterra Bank. Well, that would be a legitimate  
21 one. Sally Stump and Alterra Bank loan. RPS  
22 Properties Bank loan.

23 RPS Properties is a shareholder. Sally  
24 Stump is a former shareholder. Again, the Staff  
25 has indicated that these represent affiliates to

1 the company.

2 Again, these are shareholders. It  
3 would be hard, I think, to imagine a Data Request  
4 being so forceful that it would reach beyond the  
5 company's records and into records of a bank or a  
6 private shareholder. I think that's stretching it  
7 far too -- far too far.

8 And, again, these would be accessible  
9 by subpoena, deposition for records, all of which  
10 are available to the Staff. So that's why we  
11 asserted those objections.

12 Again, as far as relevancy and  
13 whether or not the information requested is  
14 relevant to this, or jurisdictional, I won't bring  
15 that up right now, but that would be something we  
16 will probably include in a response to a Motion to  
17 Compel.

18 JUDGE BUSHMANN: Okay. Well, here's  
19 where I am on this. This is not a formal Motion to  
20 Compel, so you're -- I'm just giving you what I  
21 think at this point and the way, at least based on  
22 this, how I would rule if it was a formal Motion to  
23 Compel.

24 It seems to me that it's perfectly  
25 appropriate for Staff to request information and

1 obtain information regarding business relationships  
2 of Lake Region and persons or entities with which  
3 Lake Region does business, but only to the extent,  
4 I think, that that information is actually in the  
5 possession of Lake Region.

6 I don't think it's appropriate for a  
7 Data Request to ask Lake Region to obtain  
8 information from a non-party that it doesn't  
9 already have. So I wouldn't go that far.

10 And to that extent, I think  
11 Mr. Comley's objections will take. So if there is  
12 information that is in the possession of Lake  
13 Region that is -- relates to a business  
14 relationship or business transactions that Lake  
15 Region engages in, that seems to me to be an  
16 appropriate source of discovery.

17 So that's kind of how I would go at  
18 this point. Again, it -- if anybody -- if you want  
19 to bring a Motion to Compel more formal, then we  
20 could, you know, do it in writing and take it up at  
21 that time. And at least preliminarily, that's how  
22 I would rule.

23 Any other matters that need to be  
24 taken up today? Anybody else have anything they  
25 need to address?

1 All right. Hearing none, then we're  
2 adjourned. We're off the record.

3 (The proceedings were concluded at 2:13 p.m.  
4 on October 9, 2013.)

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1 REPORTER'S CERTIFICATE

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3 STATE OF MISSOURI )

4 ) ss.

5 COUNTY OF OSAGE )

6

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

15

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\_\_\_\_\_  
Monnie S. Mealy, CSR, CCR #0538

21

Registered Professional Reporter

22

23

24

25

<p><b>A</b></p> <p><b>access</b> 14:12</p> <p><b>accessible</b> 20:8</p> <p><b>accurately</b> 23:13</p> <p><b>actual</b> 14:12</p> <p><b>addition</b> 12:7</p> <p><b>additional</b> 12:7</p> <p><b>address</b> 21:25</p> <p><b>adjourned</b> 22:2</p> <p><b>admissible</b> 12:17</p> <p><b>affiliate</b> 13:8</p> <p>15:22 19:13,16</p> <p><b>affiliated</b> 13:7,12</p> <p>13:25</p> <p><b>affiliates</b> 16:8</p> <p>19:9,16,25</p> <p><b>al</b> 11:8</p> <p><b>allows</b> 12:21</p> <p><b>Alterra</b> 19:20,21</p> <p><b>Amy</b> 10:4 11:21</p> <p><b>analogy</b> 14:6</p> <p><b>analyze</b> 14:4</p> <p><b>analyzed</b> 14:4</p> <p><b>annual</b> 19:3</p> <p><b>anybody</b> 16:13</p> <p>21:18,24</p> <p><b>appearance</b></p> <p>11:12</p> <p><b>Appearing</b> 11:13</p> <p>11:20</p> <p><b>Application</b> 9:5</p> <p>11:6</p> <p><b>apply</b> 16:15</p> <p>19:17</p> <p><b>appropriate</b></p> <p>20:25 21:6,16</p> <p><b>asked</b> 17:13</p> <p><b>asking</b> 13:22,24</p> <p>14:2,7,24 16:23</p> <p>17:23</p> <p><b>asks</b> 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