

Exhibit No.:
Issues: *Management Fees, Payroll – Consulting Fee, Legal Fees, Sludge Hauling, Payroll – Life Insurance*
Witness: *Keith D. Foster*
Sponsoring Party: *MoPSC Staff*
Type of Exhibit: *Surrebuttal Testimony*
Case No: *WR-2013-0461*
Date Testimony Prepared: *January 31, 2014*

MISSOURI PUBLIC SERVICE COMMISSION

**REGULATORY REVIEW DIVISION
UTILITY SERVICES - AUDITING**

SURREBUTTAL TESTIMONY

OF

KEITH D. FOSTER

LAKE REGION WATER & SEWER COMPANY

CASE NO. WR-2013-0461

Jefferson City, Missouri
January 2014

1
2
3
4
5
6
7
8
9
10
11

TABLE OF CONTENTS
SURREBUTTAL TESTIMONY OF
KEITH D. FOSTER
LAKE REGION WATER & SEWER COMPANY
CASE NO. WR-2013-0461

EXECUTIVE SUMMARY 1

MANAGEMENT FEES 2

PAYROLL – GENERAL MANAGER CONSULTING FEE..... 3

LEGAL FEES 27

SLUDGE HAULING..... 27

PAYROLL – LIFE INSURANCE..... 28

1 **SURREBUTTAL TESTIMONY OF**

2 **KEITH D. FOSTER**

3 **LAKE REGION WATER & SEWER COMPANY**

4 **CASE NO. WR-2013-0461**

5 Q. Please state your name and business address.

6 A. Keith D. Foster, 200 Madison Street, Suite 440, Jefferson City, MO 65101.

7 Q. Are you the same Keith D. Foster who participated in the preparation of the
8 Staff's Cost of Service Report, filed November 15, 2013, for this case?

9 A. Yes.

10 Q. What is the purpose of your surrebuttal testimony?

11 A. My surrebuttal testimony addresses the rebuttal testimonies of Lake Region
12 Water & Sewer Company ("Lake Region" or "Company") witness Vernon Stump
13 regarding management fees and the General Manager's consulting fee; Lake Region
14 witness John R. Summers regarding legal fees; and the Office of the Public Council ("OPC")
15 witness Keri Roth regarding sludge hauling expense and payroll expense for Company
16 employee life insurance.

17 **EXECUTIVE SUMMARY**

18 Q. What topics are addressed in your testimony?

19 A. I will be addressing Staff's inclusion of a recommended level of management
20 fees expense in its Cost of Service Report. I will be rebutting the Company's desire to
21 include in rates, for the first time, the consulting fee that has been paid to the Camden County
22 Water Supply District Number 4's ("PWSD4") General Manager since he was hired in 2002.

1 Staff believes this is an expense that should continue to be borne by the shareholders. I will
2 also be rebutting Lake Region's concern about the exclusion of legal fees incurred in its
3 defense of a *Shawnee Bend Development Company, LLC v. Lake Region Water & Sewer*
4 (09CM-CC00372) appeal. Staff recommends that these expenses be amortized over
5 five years with a tracker to prevent over-recovery in rates. I will also address OPC's
6 concerns about sludge hauling expense, for which Staff recommends no adjustment, and the
7 payroll-related employee life insurance costs for which Staff will consider including in
8 true-up.

9 **MANAGEMENT FEES**

10 Q. Mr. Stump states in his rebuttal testimony filed on January 10, 2014, that he
11 has "not seen Staff's recommendations for management fees and therefore cannot
12 comment on specifics." Did Staff include a recommendation for management fees in its Cost
13 of Service Report?

14 A. Yes, Staff's recommendation can be found on pages 23 through 24 of the Cost
15 of Service Report for this case filed on November 15, 2013. In the section entitled
16 "**4. Executive Management Fees**" Staff provided an explanation of how it calculated the
17 adjustment for management fees.

18 Q. Were more exact details about Staff's calculation provided to the Company?

19 A. Yes. Staff provided the Company, through its legal counsel, workpapers
20 containing the detailed calculations supporting Staff adjustments on November 19, 2013.
21 Included with these workpapers was a Microsoft Excel file entitled "Foster - WR-2013-0461
22 Executive Management Fees Workpaper" that shows Staff's detailed calculations of its
23 Executive Management Fees adjustment. Detailed calculations were provided for all the

1 factors that went into Staff's recommended executive management fee, including: executive
2 pay, lodging expense, travel meals, mileage reimbursement, air travel, corporate office lease,
3 and communications expense.

4 Q. Did Staff calculate its executive management fee adjustment in the same
5 manner as Staff calculated the expense in the last Lake Region rate case?

6 A. Yes. The only differences were to use more current Chief Executive wage rate
7 and travel rates.

8 Q. Does Staff have any concerns regarding Mr. Stump's testimony?

9 A. Yes, it is not clear from his testimony what his position is in relation to what
10 Staff presented.

11 **PAYROLL – GENERAL MANAGER CONSULTING FEE**

12 Q. In response to a question concerning Staff's proposed rate treatment of Lake
13 Region's general manager's consulting fee, specifically about his past experience of Staff
14 disallowing compensation being paid to existing staff, Mr. Stump refers in his direct
15 testimony to a prior Staff disallowance of salaries for two The Meadows Water Company
16 ("The Meadows") employees. Would you care to comment?

17 A. Staff presumes Mr. Stump is referring to his March 15, 2001 request to the
18 Commission for an increase in The Meadows' water and sewer rates under the Commission's
19 informal rate case procedure (File Nos. 2001-00966 and 2001-00967). Although Staff's
20 recommended revenue requirement included some salary adjustments to the test year,
21 ultimately there was no change to the rates charged to the ratepayers as a result of the
22 informal rate case. Staff reviewed The Meadows' tariffs and discovered that the last change
23 in rates was effective April 1, 1996. So, Staff believes that, effectively, there was neither a

Surrebuttal Testimony of
Keith D. Foster

1 disallowance of any salaries, nor of any other expense, reflected in The Meadows' ongoing
2 rates as a result of the informal rate case.

3 Q. If Staff proposes a reduction to employee salaries for ratemaking purposes, and
4 assuming that this adjustment is accepted by the utility or the Commission, is that utility
5 required to actually reduce its employees' salaries?

6 A. No. Staff develops an overall revenue requirement that is designed to allow
7 the utility company an *opportunity* to earn a reasonable rate of return while providing safe,
8 reliable, and adequate service to its customers. However, it is up to the company to manage
9 itself, including its expenses, in whatever way it must in order to achieve that rate of return
10 and provide safe, reliable, and adequate service to its customers.

11 Q. Was The Meadows required to reduce its staff as a result of Staff's findings in
12 the 2001 informal rate case?

13 A. No.

14 Q. If The Meadows was "struggling with the company operations," as stated by
15 Mr. Stump in his testimony, would you expect it to file a rate case?

16 A. If a utility company is "struggling" with its operations to reach its authorized
17 rate of return, after making any changes it deems fit to improve its financial condition and still
18 provide reliable, safe, and adequate service to its customers, Staff and the Commission would
19 expect that utility to file a rate case with the Commission.

20 Q. In the time between the 2001 informal rate case and the sale of The Meadows
21 to the City of Willard, Missouri in 2008 (Case No. WO-2007-0424), did The Meadows file
22 any rate cases with the Commission?

Surrebuttal Testimony of
Keith D. Foster

1 A. No. Staff reviewed the Commission records and did not find any record of The
2 Meadows filing any rate cases, formal or informal, with the Commission in that timeframe.

3 Q. Do you know if The Meadows was struggling as indicated by Mr. Stump?

4 A. No, since The Meadows did not file a rate case since 2001, Staff does not have
5 copies of The Meadows' books and records to make an informed assessment. However, Staff
6 did review the unaudited annual reports filed by The Meadows for 2002-2007 and noted The
7 Meadows reported, on average, a yearly negative net income of \$14,450. Staff also noticed
8 The Meadows reported, on average, annual management fee expenses of \$122,902. The
9 management fees were paid to North Suburban Public Utility Company ("North Suburban")
10 in all years, RPS Properties in all years, Sally Stump in 2003-2007, and Vernon Stump in
11 2002-2003.

12 Q. One final question about The Meadows before we move on. Who was the
13 General Manager of The Meadows?

14 A. John R. Summers was the General Manager from at least 2004 until The
15 Meadows was purchased by the City of Willard in 2008.

16 Q. What is the total annual base compensation amount paid to John R. Summers,
17 the current General Manager of the PWSD4, Lake Region, and Ozark Shores Water Company
18 ("Ozark Shores")?

19 A. For the test year ending June 30, 2013, the base pay is \$85,998.

20 Q. Does this include the cost of payroll taxes and employee benefits, or the
21 General Manager's annual consulting fee?

22 A. No. In its payroll adjustment, Staff computed the annual cost of payroll taxes
23 at \$6,655 and the cost of benefits (health, dental, and retirement) at \$15,039. So the total base

Surrebuttal Testimony of
Keith D. Foster

1 compensation payroll-related cost for the General Manager is \$107,692, exclusive of the
2 consulting fee.

3 Q. Who currently pays the General Manager's base compensation?

4 A. The PWSD4.

5 Q. Has the PWSD4 always paid the current General Manager's base
6 compensation?

7 A. Yes, since January 2003.

8 Q. How is PWSD4 reimbursed for the General Manager's work on Lake Region?

9 A. Through a Contract for Labor between PWSD4 and Lake Region. The
10 PWSD4 charges Lake Region a flat monthly fee that is computed annually. The monthly fee
11 is based on the PWSD4's total budgeted annual payroll costs (including payroll taxes and
12 employee benefits) which are then allocated to the three utilities (PWSD4, Lake Region, and
13 Ozark Shores).

14 Q. What portion of the General Manager's base compensation payroll-related
15 costs are allocated or charged to Lake Region?

16 A. One-third, or \$35,897, which includes \$28,666 for base pay and \$7,231 for
17 payroll taxes and employee benefits.

18 Q. Has the cost of the current General Manager's base compensation as allocated
19 to Lake Region always been specifically included in Lake Region's rates?

20 A. No. The cost of the current General Manager's base compensation as
21 allocated to Lake Region was first specifically included in rates in the last rate case
22 (Case Nos. SR-2010-0110 and WR-2010-0111). The rates in effect prior to that rate case
23 were established for the Horseshoe Bend sewer service area on August 2, 1998 (Case No.

Surrebuttal Testimony of
Keith D. Foster

1 SR-98-564) and for the Shawnee Bend water and sewer service area on July 11, 1997 (Case
2 No. WA-95-164), when the Company was known as Four Seasons Water and Sewer
3 Company. Those rates would have been based on revenues and expenses that were incurred
4 prior to the time services were being performed by PWSD4 and allocated to Lake Region.

5 Q. What is the total annual consulting fee amount paid to the General Manager of
6 the PWSD4, Lake Region, and Ozark Shores?

7 A. For the test year ending June 30, 2013, the consulting fee is \$38,896.

8 Q. Does this include the cost of payroll taxes and benefits?

9 A. No, the PWSD4 included in its 2013 budget the annual cost of payroll taxes at
10 \$2,995 and the cost of retirement benefits at \$3,423. So the total payroll-related cost for the
11 consulting fee is \$45,314.

12 Q. And this is compensation paid in addition to the General Manager's base
13 compensation?

14 A. Yes.

15 Q. What portion of the General Manager's consulting fee costs are allocated or
16 charged to Lake Region?

17 A. 70%.

18 Q. Has the cost of the current General Manager's consulting fee as allocated to
19 Lake Region always been included in rates?

20 A. The cost of the current General Manager's consulting fee has never been
21 included in rates.

22 Q. Who pays the General Manager's consulting fee?

23 A. The PWSD4.

Surrebuttal Testimony of
Keith D. Foster

1 Q. Has the PWSD4 always paid the current General Manager's consulting fee?

2 A. No.

3 Q. Who used to pay the General Manager's consulting fee?

4 A. North Suburban.

5 Q. What relation does North Suburban have to Lake Region?

6 A. They have one or more owners or officers in common. Lake Region is
7 currently owned equally by RPS Properties and Vernon Stump. Vernon Stump acquired his
8 Lake Region shares from Sally Stump (Vernon Stump's wife) on December 31, 2012.
9 Vernon Stump is the President of both Lake Region and Ozark Shores. RPS Properties is a
10 limited partnership for the Schwermann family with Robert Schwermann being the General
11 Partner. Robert Schwermann was also the former President of Lake Region. Members of the
12 Schwermann family are limited partners; one of those family members is Brian Schwermann
13 who is the Secretary of both Lake Region and Ozark Shores. Ozark Shores provides water
14 service to customers in Lake Region's Horseshoe Bend sewer service area. Ozark Shores is
15 wholly owned by North Suburban. North Suburban is owned 51.76% by Robert Schwermann
16 and 48.24% by Sally Stump.

17 Q. How long did North Suburban pay the General Manager's consulting fee?

18 A. From the time Mr. Summers was hired until the end of 2010 after the
19 conclusion of the prior Lake Region rate case (Case Nos. WR-2010-0111 and SR-2010-0110).

20 Q. Was this change made because the consulting fee was included in Lake
21 Regions' rates in that case?

22 A. No, in fact the General Manager's consulting fee was not included in rates by
23 Staff nor requested to be included in rates by the Company in the 2010 rate case.

Surrebuttal Testimony of
Keith D. Foster

1 Q. When was John Summers hired?

2 A. Based on the transcript of proceedings from the last rate case and other
3 sources, Mr. Summers was hired in 2002 as the General Manager of Ozark Shores and
4 became General Manager of PWSD4 in January 2003. According to the August 22, 2002,
5 PWSD4 Board Meeting Minutes, Agenda Item #7, Vernon Stump was authorized by the
6 board to offer a position to Mr. Summers, for which Mr. Summers would work a four-day
7 week; part time for Ozark Shores and part time for PWSD4. The Company's response to
8 Staff Data Request No. 0068 in the current case states the PWSD4 board agreed to split
9 Mr. Summers' annual salary of \$50,000 at that time with Ozark Shores.

10 Q. Is this when the additional consulting fee was negotiated?

11 A. Yes. According to the Company's response to Staff Data Request No. 0068 in
12 the current case, "the additional fee was negotiated by Mr. Summers in 2002 with the officers
13 of Ozark Shores, Meadows Water Company and Northern Illinois Investment Group."

14 Q. How much was the negotiated annual consulting fee?

15 A. \$37,000.

16 Q. When did Mr. Summers start receiving payments for the consulting fee?

17 A. According to the Company's response to Staff Data Request No. 0068 in the
18 current case, "immediately upon employment with PWSD in January 2003."

19 Q. When did Mr. Summers become the General Manager of Lake Region?

20 A. October 2004, according to Mr. Summers' testimony in the last rate case
21 hearings.

22 Q. So Mr. Summers received payment for the negotiated consulting fee over a
23 year before he took on the General Manager position for Lake Region?

Surrebuttal Testimony of
Keith D. Foster

1 A. That's what the timeline, as provided by the Company, shows.

2 Q. What was the basis of the consulting fee?

3 A. "It was based on what Mr. Summers was willing to accept to stay in the lake
4 area" per the Company's response to Staff Data Request No. 0068 in the current case.

5 Q. And this consulting fee was never included in rates?

6 A. Certainly not for Lake Region.

7 Q. And it was never paid by PWSD4?

8 A. Not until 2011. The PSWD4 Board Meeting Minutes for November 18, 2010,
9 Agenda Item 9: 2011 Budget, states: "The proposed [PWSD4] budget does not include a rate
10 increase for water and sewer. John Summers' consulting fee is budgeted as payroll. It will
11 not increase the District's expenses. This fee will be paid by Ozark Shores Water Company
12 and Lake Region Water and Sewer Company."

13 Q. What services did Mr. Summers say he performed for his consulting fee in the
14 prior rate case?

15 A. At the March 29, 2010 hearings for the prior 2010 rate case (Case Nos.
16 SR-2010-0110 and WR-2010-0111), Mr. Summers testified on the Availability Fees issue,
17 during which a series of questions were asked of him about his consulting fee. According to
18 the Transcript of Proceedings from the prior 2010 rate case, in response to Staff Counsel's
19 question, "So for your contracting service with North Suburban Utility, what type of services
20 are you doing to receive that compensation?" Mr. Summers replied, "I handle business for
21 North Suburban Public Utility, Lake Region, and Ozark Shores Water Company, Northern
22 Illinois Investment Group."

Surrebuttal Testimony of
Keith D. Foster

1 Q. What happened to The Meadows Water Company, which was responsible for a
2 portion of the original consulting fee?

3 A. As discussed earlier in my testimony, The Meadows was sold to the City of
4 Willard in 2008, so Mr. Summers would not have been performing any General Manager
5 work for that company after that time.

6 Q. When did North Suburban Public Utility take responsibility for a portion of
7 the consulting fee?

8 A. That is not known. However, North Suburban is the entity that paid his
9 consulting fee through 2010.

10 Q. When was Lake Region assigned responsibility for a portion of the consulting
11 fee?

12 A. Presumably in 2004, when Lake Region was acquired and he became General
13 Manager of that entity.

14 Q. What services does Mr. Summers say he performs for his consulting fee now?

15 A. It's not really clear. When asked in Staff Data Request No 0068, "What
16 specific activities exclusive to Lake Region Water & Sewer and Ozark Shores Water
17 Company are performed by John Summers for the consulting fee that are not performed for
18 the 'base' salary?" Lake Region's response was:

19 There are no specific duties exclusive to Ozark Shores and Lake
20 Region performed by Mr. Summers for the consulting fee. The PWSD
21 Board agreed in 2002 to split Mr. Summers salary of \$50,000 annually
22 with Ozark Shores for a 4 day work week. The additional fee was
23 negotiated by Mr. Summers in 2002 with the officers of Ozark Shores,
24 Meadows Water Company and Northern Illinois Investment Group.
25 Both parties agreed that regulated entities incur a significantly higher
26 administrative burden than does a non-regulated entity. Mr. Summers'
27 total compensation including the consulting fees was significantly less

1 than his compensation at his previous job. At the time, Lake Region
2 was owned and operated by different shareholders and management.

3 Q. What happened to the Northern Illinois Investment Group, which was included
4 in his original consulting fee?

5 A. In May, 2010, the Northern Illinois Investment Group sold the water company
6 serving the Fairhaven Estates in Cuba Township, Lake County, Illinois to Aqua Illinois, Inc.
7 So that eliminated any work Mr. Summers was performing for that entity.

8 Q. And what about North Suburban? Is Mr. Summers still doing business for it?

9 A. It is not clear if his business with North Suburban ended in January 2011 when
10 the PWSD4 started paying the consulting fee originally paid by North Suburban. The
11 PWSD4 budget for 2011, as developed by John Summers, only includes a 50/50 allocation of
12 the total consulting fee costs to Lake Region and Ozark Shores and to no other entity.

13 Q. So, in summary, is it fair to say, from all appearances, Mr. Summers currently
14 receives the consulting fee for work performed for two existing entities versus the three
15 entities for which he was originally hired?

16 A. Yes, that is how it appears to Staff. Only one of the current entities, Ozark
17 Shores, remains from the original assignment of responsibility for the consulting fee.

18 Q. Has the original consulting fee of \$37,000 changed since it became effective
19 January 2003?

20 A. Yes. According to the approved PWSD4 2011 budget, the first time the fee
21 began to be paid by the PWSD4, the fee was \$37,800, split evenly between Lake Region and
22 Ozark Shores. It is not clear from the budget file if this was the amount paid in 2010 or if this
23 represented an \$800 increase. Then, in the approved PWSD4 2012 budget, the fee was
24 increased 2.5% to \$38,745, split 70% to Lake Region and 30% to Ozark Shores. This is the

Surrebuttal Testimony of
Keith D. Foster

1 same calendar year as the Company's proposed test year in this case. In the approved
2 PWSD4 budget for 2013, the fee was increased to \$38,896, split 70% to Lake Region and
3 30% to Ozark Shores. There does appear to be an error in the calculation of the 2013
4 consulting fee, because the starting amount to which a 2.9% increase was applied is the same
5 as the starting amount used in 2012.

6 Q. Who prepares the budgets for PWSD4, which contain the recommended wage
7 increases?

8 A. The General Manager, John Summers.

9 Q. Who approves the budgets for PWSD4?

10 A. The PWSD4 board.

11 Q. So if I understand correctly, the consulting fee has increased \$1,896 since
12 payment started in January 2003?

13 A. Yes.

14 Q. And the increases did not begin until the PWSD4 started paying the consulting
15 fee in place of North Suburban?

16 A. That's how it appears to Staff.

17 Q. Please remind me when Northern Illinois Investment Group sold its Illinois
18 water facility to Aqua, Illinois, Inc.?

19 A. The date of the Illinois Commerce Commission order (Case No. 09-0369)
20 approving the transfer from Northern Illinois Investment Group to Aqua, Illinois, Inc. is
21 May 5, 2010.

Surrebuttal Testimony of
Keith D. Foster

1 Q. And that is when John Summers would no longer be doing business for
2 Northern Illinois Investment Group as an independent contractor for North Suburban
3 Public Utility?

4 A. That would appear to be the case.

5 Q. What was Mr. Summers' responsibility for the Illinois water facility that was
6 eventually sold to Aqua, Illinois, Inc.?

7 A. He ran the operation. This is according to a September 12, 2007, sworn
8 deposition of Robert P. Schwermann, attached to the Surrebuttal Testimony of Nancy Cason,
9 Four Seasons Lakesites Property Owners Association, Inc. Exhibit No. 2 filed in Case Nos.
10 SR-2010-0110 and WR-2010-0111. Robert P. Schwermann was one of the owners of the
11 Northern Illinois Investment Group. The following is the relevant discussion from pages
12 15-16 of the deposition. Unless otherwise noted, the person asking the questions (Q) is
13 Gregory D. Williams, counsel representing the City of Sunrise Beach, Missouri, and the
14 person answering the questions (A) is Robert P. Schwermann. Mr. Harms is Gregory "Jay"
15 Harms, counsel representing The City of Lake Ozark, Missouri:

16 Q. All right. Now, Mr. Summers, who is listed as the
17 manager of the Water District, do you have any business relationship
18 with him?

19 A. **No. No. We own no properties jointly or anything**
20 **like that.**

21 Q. All right. With respect to - - is he employed by any
22 corporations in which you are a shareholder?

23 A. **We own a small water utility. I think it has 65 or 100**
24 **customers, which is a remnant of a utility - - large utility that we**
25 **owned up in the Chicago area, and John runs that for us.**

26 Q. And what water company is that?

27 A. **Can I ask John the official name of that company?**

28 MR. SUMMERS: Is that okay?

29 MR. WILLIAMS: Absolutely.

30 MR. SUMMERS: The official name is Northern Illinois
31 Investment Group. We call it the Fairhaven Water Subdivision.

1 THE WITNESS: Yeah. That's what I was going to say.
2 It's a very small subdivision up by a town called Barrington in
3 Chicago.

4 MR. WILLIAMS: Okay.

5 MR. HARMS: Fairhaven Water District.

6 MR. SUMMERS: We call it Fairhaven Water
7 Company. We just use the name of the subdivision.

8 MR. HARMS: This is in northern Illinois.

9 Q. And did the consulting fee paid by North Suburban include Mr. Summers'
10 responsibility for running the Fairhaven Water Company owned by the Northern Illinois
11 Investment Group?

12 A. Yes, as stated previously the consulting fee included Mr. Summers business for
13 the Northern Illinois Investment Group. This was also addressed in the September 12, 2007,
14 sworn deposition of Robert P. Schwermann, referenced in the prior question. The following
15 is the relevant discussion from pages 28-29 of the deposition. The person asking the
16 questions (Q) is Gregory D. Williams, counsel representing the City of Sunrise Beach,
17 Missouri, and the person answering the questions (A) is Robert P. Schwermann:

18 Q. Okay. Who does the utility billing for your public
19 utilities?

20 A. **The District.**

21 Q. All right. So did you also transfer, I suppose, the
22 employees who actually worked in the office?

23 A. **Yes. Everyone was transferred.**

24 Q. Okay. And then any billings, software or record keeping
25 systems, stuff like - - things of that nature, were those also transferred?

26 A. **Yes.**

27 Q. Okay. So at the present time do your public utility
28 companies have any employees?

29 A. **No.**

30 Q. Is there anyone on payroll for any of those companies?

31 A. **No.**

32 Q. Okay. So the District does all your billing --

33 A. **Yes**

34 Q. -- for all these water companies?

35 A. **Well, wait a minute. I take that back. We do pay**
36 **John some for helping -- or managing separate from the water**
37 **companies a little 65 or 100 subdivision, you know, up in Chicago.**

Surrebuttal Testimony of
Keith D. Foster

1 Q. Are you aware of any other references to Mr. Summers' responsibilities to the
2 Northern Illinois Investment Group?

3 A. Yes, in the Company's December 7, 2009, response to Staff Data Request No.
4 0055 in the prior rate case (Case Nos. SR-2010-0110 and WR-2010-0111), the following
5 response was provided to the request to please "identify where Mr. Summers assigns time
6 spent on the Illinois properties:"

7 Mr. Summers does not allocate time to the Illinois property as he
8 spends only about 20 hours per year on activities for this property. The
9 majority of that time is spent outside normal business hours while
10 completing the Annual Report for the Illinois Commerce Commission.

11 Q. Were there ever any adjustments made to the consulting fee when there were
12 changes in the entities for which Mr. Summers received the consulting fee?

13 A. Not to my knowledge. As I stated earlier, the first difference Staff noted was
14 the fee was \$37,800 in the 2011 budget for PWSD4, which may or may not have represented
15 an \$800 increase in effect for the first time that year.

16 Q. So, despite the fact Mr. Stump stated in his rebuttal testimony at page 5, lines
17 3-7, that he terminated a previous employee's consulting fee "for managing another water
18 system that was remote from his home office" when the employee transferred to Ozark
19 Shores, he has not done the same with Mr. Summers' consulting fee?

20 A. Apparently not. Even though Mr. Summers is no longer managing The
21 Meadows Water Company and the Northern Illinois Investment Group's Fairhaven Water
22 Company, both of which were included in his original consulting fee, no adjustment has been
23 made. Instead, as I noted earlier, the consulting fee has gone up \$1,896.

24 Q. And this is the same consulting fee, one that was designed for work
25 Mr. Summers no longer performs, that Mr. Stump wants to include without adjustment in

Surrebuttal Testimony of
Keith D. Foster

1 the rates of the Missouri-regulated utilities of Lake Region and Ozark Shores to be funded
2 by the ratepayers?

3 A. Yes.

4 Q. Has Mr. Summers' annual base salary changed since he was hired in 2002?

5 A. Yes. It has increased over time from \$50,000 in 2002 to \$85,998 for the test
6 year ending June 30, 2013, an increase of \$35,998 over an 11-year period.

7 Q. In his rebuttal testimony, Mr. Stump addresses additional functions that
8 Mr. Summers provides including senior accounting and regulatory expertise. Has the
9 Company ever provided you with a job description for the General Manager of PWSD4, the
10 utility for which Mr. Summers is employed and that pays his salary?

11 A. No. In fact the Company has repeatedly stated that the PWSD4 does not
12 maintain job descriptions for its employees. The most recent example is in the Company's
13 response to Staff Data Request No. 0007 in this case. Staff requested job descriptions for all
14 employees. The Company's response was "Camden County PWSD4 does not maintain
15 formal job descriptions as the job titles are considered self-explanatory."

16 Q. Does Staff consider the title "General Manager" to be self-explanatory?

17 A. No.

18 Q. Does the PWSD4 require job descriptions of its employees?

19 A. The Camden County Public Water Supply District #4 Employee Handbook
20 dated February 2012 has a Job Description section on pages 7-8. However, it does not
21 explicitly state that the job descriptions should be in writing. What it does state is as follows:

1 **Job Description**

2 Here at Camden County PWSD4 we use job descriptions in several
3 ways. They are helpful in staffing, wage and salary administration and
4 training.

5 Job descriptions also help employees and supervisors communicate
6 about job responsibilities. However, job descriptions are not fixed
7 District policy. On the contrary, they are merely guidelines and can be
8 expected to change over time.

9 From time to time, employees are asked to perform duties and handle
10 responsibilities that are not in their job descriptions. If over the months
11 new duties and responsibilities remain a significant part of the
12 assignment the job description is changed.

13 Q. Even though this explanation from the employee handbook doesn't explicitly
14 state the job descriptions are in writing, do you agree it implies that job descriptions exist?

15 A. Yes. However, as noted above, PWSD4 assures Staff it has none.

16 Q. In calculating Staff's recommended payroll adjustment, did you review the
17 physical timesheets completed by the PWSD4 employees?

18 A. Yes. I reviewed, in detail, all of the hardcopy timesheets for the PWSD4
19 employees that were in PWSD4's physical files for the test year period.

20 Q. Did you review the timesheets for Mr. Summers?

21 A. No, there were no timesheets for Mr. Summers. Staff was informed that he
22 does not fill out timesheets for his work.

23 Q. How does this impact Staff's ability to validate Mr. Summers work?

24 A. Without a detailed job description specifically describing the duties
25 Mr. Summers is required to perform, and without timesheets showing how much time he
26 actually spends on those duties, Staff can only make a subjective judgment on the activities he
27 performs and how his time is spent for each utility.

Surrebuttal Testimony of
Keith D. Foster

1 Q. Would you expect to see in a job description for the PWSD4 General Manager
2 the additional functions that Mr. Summers provides as addressed in Mr. Stump's testimony to
3 justify the consulting fee?

4 A. Yes, particularly since the PWSD4 now pays the consulting fee.

5 Q. Do you agree that the General Manager position of managing multiple utilities
6 requires special skills?

7 A. Yes, but primarily to the extent of keeping track of which utility work is being
8 performed and meeting the reporting requirements of both regulated and non-regulated
9 utilities. A lot of the tracking between utilities is mostly a bookkeeping function. Since the
10 three utilities have been organized the way they are for nearly ten years, Staff would expect
11 the tracking of activities to now be fairly routine.

12 Q. Do you believe that one of the functions of a General Manager is to minimize
13 costs?

14 A. Staff would expect reducing expenses to be an objective of the General
15 Manager of any utility as long as the utility continued to provide safe, reliable, and adequate
16 service to its ratepayers.

17 Q. If a General Manager uses his or her skills to reduce costs, who would you
18 expect to benefit from that reduction?

19 A. Initially, the shareholders would benefit due to "regulatory lag," since the rates
20 paid by the ratepayers would not reflect the cost savings until after the next rate case is filed.
21 Once a rate case is filed that includes the cost reductions, and new rates are established and
22 put into effect, then I would expect the ratepayers to benefit.

23 Q. Does the Company agree with that?

Surrebuttal Testimony of
Keith D. Foster

1 A. One would think so. The January 17, 2013, Contract for Labor between
2 PWSD4 and the Company states, in part: “Whereas, both parties desire to cooperate in the
3 development of the best possible water supply and sewer system *at the least cost to the*
4 *consumer*, ...” [Emphasis added]. But this does not seem to be Mr. Stump’s position as
5 stated in his rebuttal testimony. As addressed later in my testimony, he is proposing to
6 eliminate most of the cost-savings that he alleges are generated out of the consulting fee paid
7 to Mr. Summers by including the consulting fee in rates. He expects the consumer, or
8 ratepayer, to bear the whole of these costs, which is not consistent with the interest expressed
9 in the labor contract to provide the best possible water and sewer service at the least cost to
10 the consumer.

11 Q. Mr. Stump presents in his testimony calculations for a monetary benefit the
12 Company derives annually as a result of the consulting services Mr. Summers provides in his
13 capacity as General Manager. Do you agree with the calculations?

14 A. No, Staff does not agree with the calculations. Staff believes these were
15 simply derived to justify an expense that has been borne by the owners of North Suburban
16 since 2002 to their benefit, which they now want ratepayers to fund. The estimates provided
17 by Mr. Stump to justify the cost savings are mostly subjective and use numbers from
18 unaudited annual reports that represent expenses that Staff may or may not include in rates.

19 Q. Can you be more specific?

20 A. Yes. For the outside accounting services, Mr. Stump compares Raytown
21 Water Company, the second largest regulated water company in the State of Missouri, and
22 Tri-States Utility, Inc. (“Tri-States”) to Lake Region, calling them “comparable regulated
23 utilities.” Mr. Stump does not provide any explanation as to why he considers these

Surrebuttal Testimony of
Keith D. Foster

1 two companies to be comparable to Lake Region. Contrary to the information reported in
2 Mr. Stump's Chart 1 attached to his testimony, Raytown Water Company reported \$3,388,624
3 in total revenue in its unaudited 2012 annual report to the Commission, which is nearly three
4 and a half (3.5) times the \$978,515 in Lake Region's reported water and sewer revenues.
5 Raytown Water Company also reported a total of 6,536 water customers, which is nearly
6 seven and a half (7.5) times the 879 Lake Region water and sewer customers. Based on these
7 large disparities, Staff does not consider Raytown Water to be comparable to Lake Region
8 and, therefore, concludes that the cost of its outside accounting services is irrelevant for
9 comparison purposes.

10 Staff is unclear as to why Mr. Stump chose to use Tri-States' 2009 annual report data
11 "since it was the company's last full year of operation before its Chapter 11 filing." (Stump
12 Surrebuttal; page 5, lines 21-22). Using the most recent unaudited 2012 annual report filed by
13 Tri-States, shows a total of \$1,145,504 in revenues, which is \$166,989 more than Lake
14 Region's revenues for the same time period. Tri-States reported a total of 3,472 water
15 customers which is nearly four (4) times the 879 Lake Region water and sewer customers.
16 Tri-States also reported its total outside accounting services for that period at \$11,917. Staff
17 also reviewed its cost of service recommendation for the last filed Tri-States informal rate
18 case (WR-2011-0037) and found that \$12,333 is the annualized amount included in Staff's
19 revenue requirement that was included in Tri-States' current rates. Both of these amounts are
20 less than the \$14,200 in outside accounting costs incurred by Lake Region.

21 Therefore, Staff concludes that Mr. Stump has not demonstrated that there is any cost
22 savings to the Company related to outside accounting services.

1 Q. What about Mr. Stump's testimony concerning the need for an additional
2 employee to assist in collection and accounting activities?

3 A. Staff is unaware of what collection and accounting functions Mr. Summers
4 performs for Lake Region that are not already performed by his staff. Staff understands that
5 Ms. Bernadette Whittle is the Accountant performing the accounting functions, and Ms.
6 Cynthia Goldsby is the Billing Clerk performing the billing and collection functions. In fact
7 Staff recalls being directed to Ms. Whittle for any questions concerning the General Ledger
8 and allocations during this audit. The only accounting-related functions that Mr. Summers
9 performs that Staff is aware of is the preparation of the annual PWSD4 budget, entering totals
10 from employee timesheets into a spreadsheet to calculate pay, and entering the data into the
11 PayChex system that creates employee paychecks, all of which are performed for PWSD4.

12 Staff believes it is subjective to assume that another General Manager would not be
13 able to perform the accounting direction and controls the current General Manager performs,
14 and that another employee would need to be hired to provide assistance if the present general
15 manager was not employed by Lake Region. Therefore, not knowing the capabilities a
16 different General Manager would provide, it is Staff's opinion that it is speculative to assume
17 any cost savings in the billing and collection area, particularly if these are part of the General
18 Manager's defined job duties.

19 Q. And what about Mr. Stump's testimony concerning rate case savings?

20 A. Staff has worked with many General Managers and owners of Missouri-
21 regulated utilities in support of their rate cases. Some large companies have their own
22 regulatory departments with staff who work primarily on rate cases. Most of the smaller
23 utilities cannot support this. In many of those cases, the General Manager provides rate case

Surrebuttal Testimony of
Keith D. Foster

1 support, acquiring any additional resources when needed to address specific issues. For other
2 utilities, Staff does not include any additional compensation outside of the General Managers'
3 base salary compensation for their work on rate cases. Participation in rate case activities is
4 generally expected to be part of their job duties. Therefore, it is Staff's opinion that
5 Mr. Stump has not demonstrated any cost savings related to rate cases.

6 In addition, Lake Region always has the opportunity to use the Commission's small
7 company rate case procedures for filing purposes in order to minimize rate case expense, and
8 Staff encourages Lake Region to consider doing so for future rate cases.

9 Q. So does this mean Staff does not believe there are any proven cost savings to
10 the ratepayers related to the consulting fee paid to Mr. Summers?

11 A. That is correct. Mr. Stump has not convinced Staff to change its original
12 conclusion presented in Staff's cost of service report.

13 Q. And that was?

14 A. "Based on Staff's investigation, Staff determined that the consulting fee was
15 neither a necessary nor reasonable additional expense to be funded by ratepayers and,
16 therefore, Staff excluded this fee in the calculation of payroll adjustments." Further,
17 Mr. Stump has not demonstrated how the consulting fee further contributes to providing safe,
18 reliable, and adequate service at reasonable rates to the ratepayers.

19 Q. Mr. Stump presents a comparison of the General Manager's compensation
20 and other costs for Lake Region between 2003 and now. Do you find this relevant to the
21 current case?

22 A. Not at all.

23 Q. Why not?

Surrebuttal Testimony of
Keith D. Foster

1 A. There are several reasons. First of all, as I stated previously in this testimony,
2 the consulting fee that was negotiated for Mr. Summers in 2002 did not include Lake Region,
3 as it was not purchased until October 2004. Second of all, Mr. Stump is comparing an
4 unallocated cost for Lake Region as a standalone entity in 2003 to an allocated cost of Lake
5 Region in 2013. Thirdly, the current arrangement whereby PWSD4 provides all the services
6 to Lake Region and Ozark Shores happened years ago, and since that change there has already
7 been a rate case (Case Nos. SR-2010-0110 and WR-2010-0111) that reflects the costs of
8 PWSD4 services in current rates. In fact, any supposed cost-savings that were generated by
9 combining the three utilities' services are reflected in the rates established in that rate case,
10 which were established without the expense associated with the consulting fee. So the
11 \$37,772 in cost savings presented in Chart 3 attached to Mr. Stump's rebuttal testimony, is the
12 savings that would already be reflected in the Company's current rates. If Staff now includes
13 70% of the \$45,314 consulting fee (inclusive of payroll taxes and employee benefits), which
14 is \$31,720, the actual cost savings will be reduced by that amount in the current case. That
15 would effectively wipe-out all but \$6,052 in alleged cost savings passed on to the ratepayers
16 in the prior rate case.

17 Q. On page 9, lines 1-2 of his rebuttal testimony, Mr. Stump asks the
18 question: "Why does Lake Region and Ozark Shores pay all of the consulting fees to the
19 General Manager while the PWSD4 does not participate?" He responds with two reasons
20 (1) the accounting/reporting functions are more detailed for the two regulated utilities and
21 (2) the PWSD4 does not file rate cases. Would you care to comment?

22 A. Staff doesn't dispute the additional reporting requirements that come with
23 being an investor-owned Missouri-regulated utility. However, Staff also knows that there are

1 additional complexities such, as in this case, when Mr. Summers has to manage three utilities
2 (two of which are regulated) with three different sets of owners, and he must manage to the
3 various owners' needs as well. The expense for those tasks that are directly related to the
4 benefit of the owners that do not directly contribute to safe, reliable and adequate service to
5 the ratepayers, should be borne by the shareholders.

6 It is important to note a general problem with the way Mr. Stump asked the question.
7 Lake Region and Ozark Shores do not directly pay the consulting fee to the General Manager.
8 As addressed earlier in my testimony, from the time the consulting fee was effective, January
9 2003, until the end of 2010, the consulting fee was paid directly to Mr. Summers by North
10 Suburban. Then, starting in January 2011, the consulting fee was paid by the PWSD4. The
11 consulting fee is factored into the monthly reimbursement covered by the Contract for Labor
12 between PWSD4 and the Company. Staff questions why, if "PWSD4 does not participate" in
13 the consulting fee, North Suburban asked the PWSD4 to start paying the consulting fee in the
14 first place? What does PWSD4 gain from this arrangement?

15 Q. What about Mr. Stump's statement that "a major portion of the General
16 Manager's consulting fee is related to rate case expense?"

17 A. The consulting fee was negotiated as an amount over and above the base salary
18 that Mr. Summers would receive as his condition for accepting the job to move to the Lake of
19 the Ozarks in 2002. The consulting fee has been paid ever since that time. He began with
20 Lake Region in October, 2004. Five (5) years later, the first Lake Region rate case filed under
21 Mr. Summers' watch was on October 7, 2009, resulting in a Report and Order issued with an
22 August 28, 2010, effective date. Three (3) years later, the current Lake Region rate case was
23 filed with the Commission on July 17, 2013. No rate case has been filed for Ozark Shores in

1 this timeframe. Staff questions how a portion of Mr. Summers' consulting fee, that was
2 negotiated for him to move to the Lake, is for rate case expense when only two rate cases
3 have been filed in the eleven (11) years he has been employed. Mr. Summers has been paid
4 the consulting fee regardless of what work he performs and regardless of any of the changes
5 in the utilities he has been General Manager of since January 2003. And, as addressed earlier
6 in my testimony, participation in rate case activities is generally expected to be part of the
7 General Manager's duties without additional compensation.

8 Q. Mr. Stump states in his testimony that he believes that if the Staff's
9 recommendation to disallow the General Manager's consulting fee is accepted by the
10 Commission it "will cause substantial harm to the operations of Lake Region." What do you
11 have to say about that?

12 A. I disagree. As stated previously in this testimony, the General Manager's
13 consulting fee that has been paid since January 2003, eleven (11) years ago, has never been
14 included in the rates for Lake Region. And, as I addressed earlier, it was not even an issue in
15 the last rate case. So, if the consulting fee has never been in rates, and was not included in
16 rates in the last rate case, how is it any different now? Staff would expect that if the absence
17 of the consulting fee in rates was to cause substantial harm to Lake Region, this would have
18 happened years ago. If shareholders want to continue to pay this consulting fee out of
19 their own pockets, as they have done in the past, that is their choice. Staff is convinced that
20 this consulting fee was the premium North Suburban Public Utility was willing to pay
21 Mr. Summers over and above a base wage for him to move to the Lake of the Ozarks area,
22 and that expense should continue to be borne by the shareholders, not by the ratepayers.

1 **LEGAL FEES**

2 Q. Regarding John R. Summers rebuttal testimony at pages 14-18, does Staff now
3 agree the legal fees incurred by the Company related to the *Shawnee Bend Development*
4 *Company, LLC v. Lake Region Water & Sewer* (09CM-CC00372) appeal should be recovered
5 by the Company in rates?

6 A. Staff now agrees that the test year legal fees incurred by the Company in
7 defending this appeal were reasonable and should be recovered through a five-year
8 amortization with a tracker mechanism to prevent over-recovery. Since these expenses are
9 not a normal recurring cost that would otherwise be included in rates indefinitely, Staff has
10 determined that amortization is a more appropriate mechanism to recover these expenses.
11 Staff understands the Company will likely receive this proposal favorably.

12 **SLUDGE HAULING**

13 Q. Does Staff agree with OPC witness Keri Roth's rebuttal testimony concerning
14 adjustment of sludge hauling expense?

15 A. No. Staff copied and reviewed the actual sludge hauling invoices paid by the
16 Company for expenses incurred from January 2011 through June 2013, for the purpose of
17 determining if there was any identifiable trend in the expense. Each invoice represents the
18 actual charges for the sludge hauling and the resulting payment made by the Company for the
19 expense that is reflected in its General Ledger. The Company identified, on each invoice,
20 how much of the expense was applicable to Horseshoe Bend Sewer, and how much of the
21 expense was applicable to Shawnee Bend Sewer. Staff did not review the corresponding
22 tickets written for each sludge haul occurrence, as OPC did, expecting that Lake Region
23 would know better as to what sewer entity an actual ticket was for than would the sludge

Surrebuttal Testimony of
Keith D. Foster

1 hauling company. Staff, in its review of the expenses, did not discover any discernable trends
2 in the number of gallons hauled year-to-year and did not recommend an adjustment. Staff
3 still agrees with its original conclusion.

4 **PAYROLL – LIFE INSURANCE**

5 Q. Does Staff agree with OPC witness Roth’s rebuttal testimony that PWSD4 life
6 insurance premium expense was not included in Staff’s revenue requirement?

7 A. Yes, and since payroll is an ordered true-up item, Staff will review this
8 expense for proper inclusion in payroll expense in the true-up phase of this case.

9 Q. Does this conclude your surrebuttal testimony?

10 A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Lake Region Water & Sewer)
Company's Application to Implement a)
General Rate Increase in Water & Sewer)
Service)

Case No. WR-2013-0461

AFFIDAVIT OF KEITH D. FOSTER

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

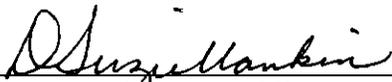
Keith D. Foster, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Surrebuttal Testimony in question and answer form, consisting of 28 pages to be presented in the above case; that the answers in the foregoing Surrebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.



Keith D. Foster

Subscribed and sworn to before me this 31st day of January, 2014.

D. SUZIE MANKIN Notary Public - Notary Seal State of Missouri Commissioned for Cole County My Commission Expires: December 12, 2016 Commission Number: 12412070



Notary Public