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Exhibit No.:

Issue:

Witness:

Sponsoring Party:

Case Nos.:

Availability Fees

John R. Summers

Lake Region Water & Sewer Company

SR-2013-0459 and WR-2013-0461

Missouri Public  
Service Commission

## LAKE REGION WATER & SEWER COMPANY

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

### SURREBUTTAL TESTIMONY

OF

JOHN R. SUMMERS

Four Seasons, Missouri  
January, 2014

*Lake Region* Exhibit No. 3  
Date 2/18/14 Reporter PSG  
File No. WR-2013-0461

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

STATE OF MISSOURI )  
 ) ss.  
COUNTY OF CAMDEN )

1. My name is John R. Summers. I am presently General Manager for Lake Region Water & Sewer Company, Applicant in the referenced matter.

2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.

  
John R. Summers

10/31/15

CYNTHIA GOLDSBY  
Notary Public, Notary Seal  
State of Missouri  
Camden County  
Commission # 11340510  
My Commission Expires October 31, 2016

## SURREBUTTAL TESTIMONY

OF

JOHN R. SUMMERS

CASE NO. WR-2013-0461

**Q. Please state your full name and business address.**

A. My name is John R. Summers. My business address is 62 Bittersweet Road, Four Seasons, MO 65049.

**Q. Are you the same John R. Summers who filed direct and rebuttal testimony in the case referenced above?**

A. Yes.

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

A. I will be responding to the rebuttal testimony submitted by Mr. Robertson of the Office of Public Counsel (“OPC”) regarding availability fees. Mr. Robertson’s rebuttal is a continuation of his direct in which he has also explained some research. I am responding in part to his direct as well.

## AVAILABILITY FEES

**Q. On page 3 of his direct testimony Mr. Robertson refers to research he did on availability fees. Have you reviewed the research to which Mr. Robertson refers?**

A. Yes, in response to a data request, Mr. Robertson supplied the Company with two internet links to information regarding availability fees. One was a link to a review of availability fees in the State of Virginia by The Mussman Group, a financial and management consulting practice in Frederick, Maryland. They

1 provide advisory services to municipalities. This review was based upon a survey  
2 of water and sewer rates from 1995. The other link was to the Schedule of Water  
3 and Sewer User Rates and Fees of the Service Authority of Prince William  
4 County in Virginia.

5 **Q. Did Mr. Robertson indicate that he researched how availability fees have**  
6 **been handled by the Missouri Public Service Commission?**

7 A. No, the only data supplied in response to the Company data request was the two  
8 links which dealt solely with government entities in the State of Virginia.

9 **Q. Are the availability fees addressed in Mr. Robertson's sources of research the**  
10 **same kind of availability fees charged to undeveloped lot owners on Shawnee**  
11 **Bend?**

12 A. No, both sources of Mr. Robertson's research relate to availability fees charged by  
13 government entities at the time a customer connects to the system and are charged  
14 for the purpose of recovering anticipated future infrastructure costs due to new  
15 customers.

16 **Q. Is this difference noted in the linked studies?**

17 A. Yes, on Page 5 of The Mussman Group study the following statement was made:  
18 "The \$900 median value would tend to indicate that most respondents interpreted  
19 availability fee to represent costs for front-end capital cost recovery." The  
20 statement on the Service Authority of Prince William County website is even  
21 more specific: "All new customers connecting to the system are required to pay in  
22 full the appropriate Availability Fees. These fees are designed to recover the cost  
23 of **additional** (emphasis added) treatment capacity and other water and sewer

1           infrastructure, such as line extensions and pumping stations required to serve  
2           customers.”

3       **Q.    How do these fees differ from the availability fees discussed in this case?**

4       A.    The fees discussed in Mr. Robertson’s research apply to funding future  
5           infrastructure costs due to new customers while the availability fees discussed in  
6           the current case were created by the developer to recover developer costs for  
7           infrastructure already in place which the developer was forced to donate to the  
8           utility.

9       **Q.    Are there other significant differences?**

10      A.    There is another very significant difference. The fees Mr. Robertson researched  
11           were created by a governmental utility to assist in funding future projects and are  
12           therefore owned by the utility. The fees involved in this case were not created by  
13           nor are they owned by the utility. They were created by a real estate developer  
14           and the terms and conditions under which they are charged and collected are part  
15           of restrictive covenants that apply to unimproved lots in the Four Seasons  
16           Lakesites real estate development. The current owners of Lake Region, and Lake  
17           Region itself, have no control over the provisions in the declaration of restrictive  
18           covenants executed by the property developer or any amendments to those  
19           covenants. Lake Region has no legal claim to the fees. The Commission so  
20           found in Case No. SR 2010-0110 and WR 2010-0111 (the “2010 Rate Case”),  
21           Lake Region’s 2010 rate proceeding. The Joint Stipulation of Facts I anticipate  
22           to be filed in the current case has more details regarding how the fees were  
23           created, ownership of the fees and the original purpose of the fees.

1       **Q.**     On page 4 of his rebuttal testimony, Mr. Robertson testifies that lot owners  
2               are "required to pay availability fees until they connect to the Shawnee Bend  
3               Water and Sewer systems, whenever that might be. Lot owners are paying  
4               these fees to guarantee that a state of the art utility system will be available  
5               when they are ready to connect." Has the Commission agreed with his  
6               testimony?

7       **A.**     No. On Page 99 of the Report and Order in the 2010 Rate Case the Commission  
8               commented and found that "Mr. Summers' testimony and the confidential  
9               settlement agreement of Civil Case No. CV103-760CC demonstrate that the  
10              original developer is still collecting a portion of fees and as Mr. Summers has  
11              deduced, the purpose must be related to the recovery of his initial investment  
12              since the developer has nothing to do with maintaining the water and sewer  
13              systems." I will also note here that the Commission stated in Paragraph 164  
14              found on Page 54 of its Report and Order in the 2010 Rate Case "Lake Region  
15              customers have benefited from the availability fees, because the contributed plant  
16              associated with those fees lower the rate base and lowers utility rates for the  
17              ratepayers." These Commission findings add strong support to the fact that  
18              imputing availability fees to Lake Region's revenue in any manner in the current  
19              case would yield an improper double benefit to the ratepayers. Furthermore, Mr.  
20              Robertson's testimony is similar to that of Staff Witness Featherstone in his  
21              surrebuttal testimony in the 2010 Rate Case. My testimony, and the  
22              Commission's determinations on Page 99 of its Report and Order from the 2010

1           Rate Case, clearly demonstrate the Commission considered and rejected this  
2           statement.

3           **Q.   Mr. Robertson further testifies on page 4 of his rebuttal “[t]herefore, these**  
4           **fees are designed to recover the original cost of the utility investment along**  
5           **with any other additional treatment capacity or other water and sewer**  
6           **infrastructure, such as line extensions and pumping stations, etc., required to**  
7           **build a state of the art system to serve customers at the time they are ready to**  
8           **take service.” Has Mr. Robertson accurately stated the purpose for the**  
9           **availability fees charged to owners of unimproved lots on Shawnee Bend?**

10          **A.**   No, he has not. As I mentioned earlier the availability fees in the current case  
11           were created by the developer to recover the developer’s costs for infrastructure  
12           already in place which the developer was forced to donate to the utility. They  
13           were not created to recover costs of demand additions and line extensions. Mr.  
14           Robertson’s testimony appears to reflect or rely on the research he identified in  
15           the data request response. That research involves types of fees unlike those  
16           before the Commission in this case.

17          **Q.   Has the Commission treated availability fees as additional CIAC as proposed**  
18           **by OPC?**

19          **A.**   No, JRS Exhibit 1 filed with my rebuttal testimony illustrates the Commission’s  
20           approach to availability fees since the Company’s original certificate case in  
21           1972. The Commission has never taken the approach of having the utility record  
22           plant as contributed and then using the availability fees created to recover that

1 cost to give the customers a double benefit by recording these fees as additional  
2 CIAC.

3 **Q. Mr. Robertson has testified that it is the Company's burden to prove the**  
4 **costs associated with plant investment, donated plant and availability fees.**  
5 **Do you agree?**

6 A. No. Lake Region has no right or claim to availability fee revenue. Hence it is not  
7 accounted for on its books and records. With respect to the proof of Lake  
8 Region's costs associated with plant investment and donated plant, I agree that  
9 Lake Region shoulders that burden and Lake Region has unmistakably met that  
10 burden successfully. The Company has gone through two previous rate cases in  
11 which its books of record were examined and the appropriate rate bases were  
12 determined for ratemaking purposes. The Company has provided both Staff and  
13 OPC complete access to the Company's books of record in this case and both  
14 Company and Staff have proposed rate bases comparable to those in previous  
15 cases.

16 **Q. Have you ever received communication from a staff member concerning how**  
17 **to report availability fee revenue for Lake Region or Ozark Shores?**

18 A. Yes, I have. On November 13, 2006, I received an e-mail from Roberta Grissum  
19 of the Commission's Staff, instructing Ozark Shores, which is one of the  
20 companies I manage in conjunction with Lake Region, to file an amended Annual  
21 Report for the calendar year of 2005. The e-mail directed Ozark Shores to  
22 include only regulated revenues in its annual reports. The e-mail gave me specific  
23 instructions to remove any revenue the company collected as availability fees



1 from its annual report because Staff classified these fees as unregulated revenue.

2 Ms. Grissum's email message was filed in the 2010 Rate Case as Lake Region  
3 Exhibit 9 and is attached to my testimony as JRS Exhibit 5. I have continued to  
4 follow the practice of not including availability fees on the Ozark Shores annual  
5 reports after receiving Staff's instructions in this email.

6 **Q. The parties are trying to reach a stipulation regarding the charging and**  
7 **collection of availability fees. Are you aware of the basis for that**  
8 **stipulation?**

9 A. Yes, the parties have used many of the findings of fact from the Report and Order  
10 in the 2010 Rate Case as a source for the stipulation but at the time I prepare this  
11 surrebuttal no stipulation has been filed. To the extent any stipulation filed might  
12 omit facts that were found by or were before the Commission in Lake Region's  
13 previous case three years ago, I intend to supplement my surrebuttal testimony for  
14 purposes of completing the record.

15 **Q. To the best of your knowledge, are the findings made by the Commission in**  
16 **paragraphs 121-212 of its Report and Order in the 2010 Rate Case regarding**  
17 **availability fees true and correct today?**

18 A. Yes, with the following explanation and exceptions:

19 Paragraph 175: Only the availability fees created prior to August 6, 1998 were  
20 transferred to Roy and Cindy Slates per Civil Case CV103-  
21 760CC;

22 Paragraph 194: Cynthia Goldsby's current hourly wage is \$14.44; and

23 Paragraph 197: Cynthia Goldsby sent 1.322 bills in January 2014.

1       **Q.**     **Does this conclude your Surrebuttal Testimony?**

2       **A.**     Yes, it does.

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**From:** Grissum, Roberta [<mailto:roberta.grissum@psc.mo.gov>]  
**Sent:** Monday, November 13, 2006 2:02 PM  
**To:** [jrsummers@lakeozarks.com](mailto:jsummers@lakeozarks.com)  
**Cc:** Davis, Helen; Russo, Jim  
**Subject:** Re: Lake Region W&S, The Meadows Water Co and Ozark Shores Water Co.  
**Importance:** High

Dear Mr. Summers:

I have reviewed your responses explaining the differences the MoPSC has identified between the Calendar Year 2005 Annual Reports and Calendar Year 2005 Statements of Revenue for the above referenced companies.

Here are the following steps you will need to take to resolve this matter:

1) File "AMENDED" Calendar Year 2005 Annual Reports for each Company referenced above excluding "unregulated services/activities." For MoPSC purposes, the Annual Report should only include regulated revenues. Please follow the established procedures for filing Annual Reports with the MoPSC. However, please be sure to identify each report you will be filing as "AMENDED."

Please contact James Russo of the MoPSC Water and Sewer Department if you have further questions. Mr. Russo may be reached at 573-751-7494.

2) Submit "AMENDED" Calendar Year 2005 Statements of Revenue for each Company referenced above showing the "audited" amounts. Please follow the established procedures for submitting Statements of Revenue with the MoPSC. However, please be sure to identify each report you will be submitting as "AMENDED."

Please contact Helen Davis of the MoPSC Budget & Fiscal Services Department if you have further questions. Ms. Davis may be reached at 573-751-4274.

Once these reports have been filed/submitted, the reconciliation questions we have identified should be satisfactorily resolved. If further action is required, someone will contact you.

Thank you.

Roberta Grissum, Utility Regulatory Auditor  
Missouri Public Service Commission  
9900 Page Avenue, Suite 103  
Overland, MO 63132  
314-877-2778 Ext. 237

Quotes:

*"We cannot all do Great Things, but we can do Small Things with Great Love" - Mother Teresa*

*"Ours is not to do the extraordinary, only to do the ordinary extraordinarily well. - Catherine McAuley Sister of Mercy Patron Saint*