

Exhibit No.:
Issue(s):

Capital Structure
Management Fees
Availability Fees
Allocated Labor Costs

Witness:
Type of Exhibit:
Sponsoring Party:
Case Numbers:

Ted Robertson
Surrebuttal
Public Counsel
SR-2010-0110 &
WR-2010-0111
March 12, 2010

Date Testimony Prepared:

SURREBUTTAL TESTIMONY

OF

TED ROBERTSON

Submitted on Behalf of
the Office of the Public Counsel

LAKE REGION WATER & SEWER COMPANY

Case Nos. SR-2010-0110 & WR-2010-0111

March 12, 2010

OPC Exhibit No. 4
Date 3-29-10 Reporter KF
File No. SR-2010-0110
WR-2010-0111

**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.)

File No. SR-2010-0110

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

File No. WR-2010-0111

AFFIDAVIT OF TED ROBERTSON

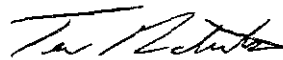
STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Ted Robertson, of lawful age and being first duly sworn, deposes and states:

1. My name is Ted Robertson. I am a Public Utility Accountant for the Office of the Public Counsel.

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

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.



Ted Robertson, C.P.A.
Public Utility Accountant III

Subscribed and sworn to me this 12th day of March 2010.



JERENE A. BUCKMAN
My Commission Expires
August 23, 2013
Cole County
Commission #09754037



Jerene A. Buckman
Notary Public

My Commission expires August 23, 2013.

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1 SURREBUTTAL TESTIMONY
2 OF
3 TED ROBERTSON
4

5 LAKE REGION WATER AND SEWER CO.
6 CASE NOS. SR-2010-0110 AND CASE NO. WR-2010-0111
7

8 I. INTRODUCTION

9 Q. ARE YOU THE SAME TED ROBERTSON THAT HAS PREVIOUSLY FILED
10 DIRECT AND REBUTTAL TESTIMONY IN THIS CASE?

11 A. Yes.
12

13 II. PURPOSE OF TESTIMONY

14 Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

15 A. The purpose of this Surrebuttal Testimony is to address the Rebuttal Testimonies of
16 Company witnesses, Mr. John R. Summers and Mr. Vernon Stump regarding the
17 issues of Capital Structure, Management Fees, Availability Fees and Allocated
18 Labor Costs. I will also address the Rebuttal Testimony of MPSC Staff ("Staff")
19 witness, Mr. James A. Merciel, Jr., regarding the issue of Availability Fees.
20

21 III. CAPITAL STRUCTURE

22 Q. ON PAGE 9, LINES 1 -2, OF MR. SUMMERS TESTIMONY, HE STATES,
23 "COMPANY HAS NO OBJECTION TO PUBLIC COUNSEL'S
24 RECOMMENDATION OF USING THE ACTUAL CAPITAL STRUCTURE
25 RECORDED ON COMPANY'S BOOKS." DID PUBLIC COUNSEL MAKE THE
26 RECOMMENDATION AS STATED BY MR. SUMMERS?

1 A. No. In my Direct Testimony, page 18, lines 26 -30, what I actually stated was,

2
3 Furthermore, Public Counsel recommends that the authorized
4 revenue requirement of the Lake Region utilities be based on the
5 actual book values of the utilities, their actual capital structures and
6 the debt/equity returns associated with those capital structures and
7 not on the personal debt issuances of shareholders.

8
9 (Emphasis by OPC.)
10
11

12 Mr. Summers' inference that the Company's recorded book value is the actual book
13 value I referenced in my Direct Testimony is incorrect.
14

15 Q. DOES PUBLIC COUNSEL BELIEVE THAT STAFF'S PROPOSED CAPITAL
16 STRUCTURE, AS REFERENCED IN MR. SUMMERS' TESTIMONY, PAGE 8,
17 LINES 13 - 14, IS THE MOST ACCURATE REFLECTION OF THE COSTS
18 CAPITAL EMPLOYED IN THE COMPANY'S OPERATION?

19 A. That is subjective call. However, what I do know is that the Company has little to
20 no material debt of its own. The debt Staff chose to include in the capital structure
21 represents the personal debts of the utility's owners to purchase the utility's
22 investment and operations. Furthermore, the value of the equity balance recorded
23 on the Company's books of record is likely inflated due to increases booked to
24 represent the payoff, by the current owners, of unsubstantiated liabilities that the
25 prior owner had recorded in the financial records.
26

1 Q. DOES THE PUBLIC COUNSEL OPPOSE THE CAPITAL STRUCTURE AND
2 RELATED COST RECOMMENDATIONS PROPOSED BY STAFF?

3 A. Since the Company believes the Staff's proposal to be the most accurate reflection
4 of employed capital, Public Counsel will not oppose the recommendations
5 proposed by Staff and identified by Mr. Summers on page 8, lines 13 - 14, of his
6 testimony.

7
8 IV. MANAGEMENT FEES

9 Q. DOES MR. SUMMERS' TESTIMONY ADD ANYTHING TO SUPPORT THE
10 COMPANY'S POSITION ON THIS ISSUE?

11 A. Not in my opinion. Beginning on page 9, line 3, of his testimony, he merely states
12 his disagreement with Public Counsel's position, passes the task of rebuttal off to
13 Mr. Vernon Stump and states that the amounts recorded by the Company for
14 management costs are reasonable and the duties performed by the team are
15 representative of duties performed by top executives in other like companies.

16
17 Q. DID HE PROVIDE ANY SUPPORT FOR HIS CONCLUSIONS THAT THE COSTS
18 ARE REASONABLE AND THE DUTIES PERFORMED ARE REPRESENTATIVE
19 OF OTHER TOP EXECUTIVES?

20 A. No. He merely expressed his opinion and left the support of the Company's
21 position to Mr. Stump.
22

1 Q. ON PAGE 2, LINES 2 - 3, OF MR. VERNON STUMP'S REBUTTAL TESTIMONY
2 HE STATES HE IS NOT AN EMPLOYEE OF THE COMPANY. IS THAT
3 CORRECT?

4 A. Yes.

5
6 Q. HAS MR. STUMP BEEN IDENTIFIED TO PUBLIC COUNSEL AS THE CURRENT
7 PRESIDENT OF THE COMPANY?

8 A. Yes, but, based on Mr. Stump's testimony that he is not an employee of the
9 Company, his role as President is apparently only a titular position.

10
11 Q. ARE MSSRS. ROBERT SCHWERMANN OR BRIAN SCHWERMANN
12 EMPLOYEES OF THE COMPANY?

13 A. No.

14
15 Q. ARE MSSRS. ROBERT SCHWERMANN OR BRIAN SCHWERMANN
16 MEMBERS OF THE COMPANY'S BOARD OF DIRECTORS?

17 A. It is my understanding that Mr. Robert Schwermann is one of two directors on the
18 Company's current Board of Directors (with Mrs. Vernon Stump being the other)
19 while Mr. Brian Schwermann has been identified to OPC as the Board of Directors
20 Secretary.

21
22 Q. ON PAGE 2, LINE 4 - 5, OF MR. VERNON STUMP'S REBUTTAL TESTIMONY,
23 HE STATES THAT THE EXECUTIVE MANAGEMENT GROUP CONSISTS OF

1 HIMSELF, MR. ROBERT SCHWERMANN AND MR. BRIAN SCHWERMANN.

2 IS THAT CORRECT?

3 A. Yes.

4
5 Q. DO THE MEMBERS OF MR. STUMP'S EXECUTIVE MANAGEMENT GROUP
6 RECEIVE SALARIES AS EMPLOYEES OF THE COMPANY?

7 A. No.

8
9 Q. DO THE MEMBERS OF MR. STUMP'S EXECUTIVE MANAGEMENT GROUP
10 HAVE A CONTRACT WITH COMPANY FOR THE PROVISION OF
11 MANAGEMENT SERVICES?

12 A. Not to my knowledge.

13
14 Q. AS PRESIDENT OF THE COMPANY AND MEMBERS OF THE COMPANY'S
15 BOARD OF DIRECTORS WOULD THE AFOREMENTIONED PARTIES
16 ALLEDGED ACTIVITIES WITHIN THE COMPANY BE MORE REPRESENTATIVE
17 OF THOSE PERFORMED BY EMPLOYEES OR THOSE PERFORMED BY
18 MEMBERS OF THE COMPANY'S BOARD OF DIRECTORS?

19 A. The parties identified as the Executive Management Group are not executives or
20 employees of the Company nor are they contracted as managers (the only
21 management position I'm aware of is held by Mr. John R. Summers); therefore, it is
22 my belief that they are more representative of those performed by members of the

1 Company's Board of Directors. For example, on page 2, lines 16 - 20, of his
2 testimony, Mr. Stump states,

3
4 Board members typically review data prepared by the management
5 team, set policy and provide direction for the management team.
6 Negotiations with banks on financing, meeting with field personnel
7 and consulting engineers to develop solutions and meetings with
8 both vendors and customers are not customary duties for members
9 of the board.

10
11
12 However, in this Company's case, the parties which he describes are, as described
13 by the Company, one and the same - both management and board members. I
14 find it highly irrational that the activities of the so-called management team are
15 distinctly separate from the duties of the Company's Board of Directors given that
16 the parties involved are the same. Mr. Stump would have this Commission believe
17 that he and the Schwermanns perform various activities as a management group
18 which they then present to themselves for guidance and approval as members of
19 the Board of Directors. His position, if nothing else, shows that the owners of the
20 Company are attempting to bleed ratepayers for additional revenues for activities
21 which could and should be performed by the actual manager of the Company, Mr.
22 John R. Summers and the Company's Board of Directors.

23
24 Q. DOES PUBLIC COUNSEL BELIEVE IT CUSTOMARY THAT THE DUTIES OF A
25 COMPANY'S BOARD OF DIRECTORS INCLUDE NEGOTIATIONS WITH
26 BANKS ON FINANCING, MEETING WITH FIELD PERSONNEL AND

CONSULTING ENGINEERS TO DEVELOP SOLUTIONS AND MEETINGS
WITH BOTH VENDORS AND CUSTOMERS.

A. Yes. In fact, given the small size of this utility, I would find it highly unusual if its Board of Directors (i.e., Company's owners) were not actively involved in such activities. Most similarly-sized utilities in this State are managed and operated by their owners whether they have a Board of Directors or not.

In Company's case it has contracted with the Camden County Public Water Supply District No. Four ("District") to manage the operation of the utility. In fact, the January 2009 contract between the parties states,

The District has employed such construction, operation and administrative personnel as are necessary to operate both the District and Lake Region. Lake Region has agreed to reimburse the wage and benefit costs of said personnel hired to operate Lake Region.

(source: Company's response to OPC DR No. 14)

Thus, Company's business structure does not maintain employees and management guidance is or should be provided by the Board of Directors. Furthermore, it is quite common that, in similar entities, the Board of Directors is actively involved in all facets of the utility's management. Meeting with bankers, field personnel and others is the norm not the exception. That is why I have recommended that costs associated with the Board of Directors meetings be included in the cost of service even though Mr. Stump states, "...Company has not

1 asked for or included such fees in its filing (source: Stump Rebuttal Testimony,
2 page 3, line 12).

3
4 Q. DOES PUBLIC COUNSEL BELIEVE THAT THIS COMPANY HAS A NEED FOR
5 OR SHOULD SUPPORT THE COST OF AN EXECUTIVE MANAGEMENT
6 GROUP CONSISTING OF THREE NON-EMPLOYEES?

7 A. No. The utility has approximately 700 customers (some of which are both water
8 and sewer customers). To my knowledge, I know of no other similarly-sized and
9 structured utility in this State that requires three executive managers, in fact, I
10 believe that most of those utilities are managed by a single person. Mr. Stump's
11 proposal would, if authorized, result in an excessive amount of duplicative costs
12 being recovered from ratepayers because the only management costs that should
13 be included in the cost of service are an appropriate level of those incurred for the
14 activities of Mr. John R. Summers since he is the only employed manager of the
15 Company.

16
17 Q. BEGINNING ON PAGE 2, LINE 20, OF HIS TESTIMONY, MR. STUMP
18 REFERENCES VARIOUS SALARY AND BENFIT COSTS OF OTHER UTILITIES
19 HE HAS REVIEWED IN COMMISSION ANNUAL REPORTS. ARE THE COSTS
20 HE REFERENCES RELEVANT TO THE COSTS AT ISSUE IN THIS CASE?

21 A. No. The costs he references come from the 2008 Commission Annual Reports for
22 Aqua Missouri, Inc., Aqua RU, Inc. and U.S. Water Company, and they represent
23 the companies reported amounts for management fees (Aqua companies) and

1 payroll for the executive employees of U.S. Water Company not what the
2 Commission has authorized for recovery from Missouri ratepayers. Furthermore,
3 the amounts he identifies, whether included in rates or not, are specific to the
4 operations of each company. For example, Aqua Missouri, Inc. (includes both
5 Aqua Missouri and Aqua RU as referenced by Mr. Stump) is a small subsidiary of
6 Aqua America Inc., a publicly traded company located in Bryn Mawr, PA. that
7 operates in 14 states. Currently Aqua America Inc. has annual revenue of \$627
8 million and serves 2.8 million customers (source: Aqua America Inc. website) and
9 employs a staff of approximately 1,540 (source: www.manta.com). As identified in
10 the Commission's 2008 Annual Reports, Aqua America Inc. has a fully-staffed
11 executive team on its payroll and presumably those executive employees along
12 with the many other corporate employees perform the corporate level activities (i.e.,
13 accounting, human resources, strategic planning, etc.) for Aqua Missouri Inc. which
14 employs a staff of only 10 to 19 statewide (source:www.manta.com). Whereas, the
15 payroll for the executive employees of U.S. Water Company is as stated; payroll for
16 company employees.

17
18 Q. ISN'T MR. SUMMERS THE CURRENT MANAGER OF THE COMPANY?

19 A. Yes. Mr. Summers is the manager of the District which is contracted to operate the
20 utility and the Company's rate increase request includes salary and benefits costs
21 associated with his services and the services of the other District employees also.
22 It is not a disputed fact that the Company itself has no employees of its own
23 because the District is contracted to provide all construction, operation and

1 administrative personnel necessary to operate the Company. Thus, there is no real
2 need for inclusion of costs for any other personnel excluding the Company's Board
3 of Directors.

4
5 Q. ON PAGE 3, LINES 2 - 8, OF HIS TESTIMONY, MR. STUMP REFERENCES THE
6 COMPANY'S COMMISSION ASSESSMENT ALONG WITH HIS BELIEF THAT
7 COMPANY'S EXECUTIVE MANAGEMENT GROUP SHOULD RECEIVE AT
8 LEAST THE SAME LEVEL OF COMPENSATION AS THE COMPANY'S ANNUAL
9 COMMISSION ASSESSMENT. IS THE COMMISSION'S ANNUAL
10 ASSESSEMENT FOR THE COMPANY RELEVANT OR COMPARABLE TO THE
11 COMPANY'S COMPENSATION REQUEST FOR MR. STUMP AND THE
12 SCHWERMANNNS?

13 A. No. I believe Mr. Stump's comparison of his management compensation request is
14 completely irrelevant to the activities and costs associated with the Commission.
15 The Commission's annual assessment and a utility's management costs have little
16 or nothing in common. The Commission's annual assessment, to my
17 understanding, is based on an allocation of recorded time that Commission
18 personnel have spent working on utilities of a similar service; whereas, a utility's
19 management costs are normally incurred by employees of the utility and/or its
20 Board of Directors which are also supported by documentation which verifies the
21 accuracy and need for the costs incurred. Except for the Company's Board of
22 Directors and Mr. Summers, and his employees, time no such credible
23 documentation has been provided by the Company.

Furthermore, given the size of the utility in question, Public Counsel does not believe that there is any necessity for an "Executive Group," other than the Company's Board of Directors and Mr. Summers to manage the utility. The owners have hired Mr. Summers and the District to operate the facilities and any matters that he cannot order directly can surely be addressed by the Company's Board of Directors.

V. AVAILABILITY FEES

Q. ON PAGE 3, LINES 12 -13, OF HIS TESTIMONY, MR. SUMMERS STATES, "IT IS CLEAR THAT MR. MEYER BELIEVED THAT THE FEES ARE UNREGULATED." IS HIS STATEMENT CORRECT?

A. He is correct that Mr. Meyer's position was availability fees not become part of the Company's tariffs, but he failed to identify for the Commission the rest of Mr. Meyer's position which is identified in my Direct Testimony, page 7, lines 19 - 32, as,

Q. Please describe the Staff's position regarding availability fees.

A. The Staff recommends that availability fees not become part of the Company's tariffs. Instead, the **Staff asserts that the Developer and the Company need to enter into a written agreement whereby the Developer assigns the right to the Company to bill and receive availability fees.**

Q. How should the Company account for the availability fees received?

1 A. **The receipt of availability fees would be treated as**
2 **revenue and would help cover the operations and**
3 **maintenance expenses of the Company.**
4

5 (Emphasis added by OPC.)
6
7

8 Q. ON PAGE 4, LINES 7 -12, OF HIS TESTIMONY, MR. SUMMERS STATES, "IF
9 THE COMMISSION WERE TO ADOPT MR. ROBERTSON'S AND MR.
10 MEYER'S POSITION, UTILITY CUSTOMERS WOULD DERIVE NOT ONLY
11 THE BENEFIT OF HAVING THE WATER AND SEWER INFRASTRUCTURE
12 CONTRIBUTED BUT WOULD ALSO GET FREE OPERATION AND
13 MAINTENANCE PAID FOR BY THE OWNERS OF UNDEVELOPED LOTS
14 WHO ARE NOT YET RECEIVING UTILITY SERVICE. THIS IS
15 UNREASONABLE." DOES PUBLIC COUNSEL HAVE CONCERNS WITH HIS
16 STATEMENT?

17 A. Yes, I find his comments to be ironic. Mr. Meyer's Rebuttal Testimony, page 5,
18 lines 15 - 20, Case No. WA-95-164, stated the purpose of an availability fee as,
19

20 Q. What is the purpose of an availability fee?
21

22 A. The purpose of an availability fee is to defray the operation
23 and maintenance costs of a utility during the growth or
24 development of the system. Availability fees reduce the
25 financial risk a utility encounters in the early years of operation.
26 To the extent that a developer must subsidize the utility in the
27 first years of operation, availability fees reduce the developer's
28 risk also.
29
30

1 Public Counsel agrees with Mr. Meyer's that the purpose of availability fees is to
2 help defray operation and maintenance costs that exceed tariff revenues received
3 by Company, and to the extent those excess costs were satisfied any additional
4 availability fee monies should have be utilized to reduce investment costs incurred
5 by the utility.

6
7 What I find ironic is Mr. Summers's comments, and apparent disdain, that owners
8 of undeveloped lots would have had to pay operation and maintenance costs; thus,
9 providing free service to the utility's customers. His concern for the "fair" treatment
10 of owners of undeveloped lots apparently does not extend to the behavior of the
11 shareholders of the Company which are his contracted employers. Given that
12 owners of undeveloped lots have been paying Company's past and current owners
13 availability fees for more than a decade and have received nothing for their trouble,
14 I find his comments to be a bit disingenuous.

15
16 Q. ON PAGE 4, LINES 12 -15, OF HIS TESTIMONY, MR. SUMMERS STATES, "MR.
17 ROBERTSON'S POSITION, AS STATED ON PAGES 13 AND 14 OF HIS
18 DIRECT TESTIMONY, SEEMS TO ADVOCATE REDUCING THE RATES
19 CHARGED TO CUSTOMERS TO ZERO AND THEN LOWERING THE RATE
20 BASE AGAIN BY ANY AMOUNTS NOT NECESSARY TO REDUCE RATES."
21 DOES PUBLIC COUNSEL HAVE CONCERNS WITH HIS STATEMENT?

22 A. Yes. Public Counsel's actual position, as referenced in Mr. Summers's comment,
23 is,

1
2 Q. WHAT IS THE PUBLIC COUNSEL'S POSITION ON THIS
3 ISSUE?
4

5 A. Public Counsel believes that the availability fees assessed and
6 collected, current and past, should be remitted to the regulated
7 utility to meet the needs of its authorized operation and
8 maintenance, and to the extent those needs are/were
9 satisfied, the excess should be used to reduce the regulated
10 utility's investment costs.
11
12

13 Public Counsel believes that Mr. Summers's concerns are not for the ratepayers of
14 the Company or the owners of undeveloped lots who have paid availability fees to
15 the owners of the Company. His concern is purely for the benefit of the owners of
16 the Company which employ his services for if Public Counsel's position is
17 authorized by the Commission, the Company, its ratepayers and the owners of
18 undeveloped lots who pay availability fees would all benefit from the recovery of the
19 past and future monies.
20

21 Q. ON PAGE 4, LINES 17 -20, OF HIS TESTIMONY, MR. SUMMERS STATES, "IF
22 THE AVAILABILITY FEES ARE TO BE INCLUDED IN THE UTILITY'S RATE
23 STRUCTURE IN ANY MANNER, THE PLANT COSTS ASSOCIATED WITH
24 THOSE FEES SHOULD NOT BE CLASSIFIED AS CONTRIBUTIONS BUT
25 RATHER AS RATE BASE UPON WHICH THE UTILITY MAY EARN A
26 RETURN." DOES PUBLIC COUNSEL HAVE CONCERNS WITH HIS
27 STATEMENT?

1 A. Yes. Mr. Summers's comment is non sequitur. Any plant that was contributed to
2 the utility does not change its character. Plant is often contributed by developers
3 and in Company's case, as stated on page 7, lines 7 - 9, in Mr. Meyer's Rebuttal
4 Testimony, Case No. WA-05-164, the developer and the Company had an affiliate
5 relationship (it is Public Counsel's understanding that the utility was owned by the
6 developer). Thus, the fact that the developer contributed plant to the utility does not
7 appear to be questionable. In any event, if Mr. Summers's proposal were to be
8 taken seriously, and it should not, any availability fees repatriated back to the utility
9 would likely be utilized to eliminate the cost of his fictitious rate base. Again, Mr.
10 Summers's comments are directed to protect the financial position of his employers
11 not the utility or its customers.

12
13 Q. ON PAGE 5, LINES 1 -3, OF HIS TESTIMONY, MR. SUMMERS STATES, "MR.
14 ROBERTSON'S APPROACH APPEARS TO ADVOCATE USING THE
15 AVAILABILITY FEES TO REDUCE OPERATING AND MAINTENANCE
16 EXPENSE AND THEN USE THE EXCESS TO REDUCE RATE BASE." DOES
17 HIS STATEMENT ACCURATELY REFLECT PUBLIC COUNSEL'S POSTION?

18 A. Yes. With regard to the use of the availability fee monies, Public Counsel's position
19 is the same as that stated on page 6, lines 9 - 10 and page 8, lines 8 - 10, in the
20 Rebuttal Testimony of Staff witness, Mr. Greg Meyer, Case No. WA-95-164.

21
22 Q. ON PAGE 8, LINES 2 -5, OF HIS TESTIMONY, MR. SUMMERS STATES, "THE
23 COMMISSION ITSELF HAS CONCLUDED, IN CASE NOS. WC-2006-0082 AND

1 WO-2007-0277, THAT THESE FEES ARE NOT FOR THE PROVISION OF
2 UTILITY SERVICE AND, THUS, NOT WITHIN THE COMMISSION'S
3 JURISDICTION." DOES HIS STATEMENT ACCURATELY REFLECT THE
4 COMMISSION'S DECISION IN THOSE CASES?

5 A. No. Mr. Summers' comment is a misleading and inaccurate representation of the
6 Commission's actual decision. The Commission's decision in Case Nos. WC-
7 2006-0082 and WO-2007-0277 did not rule on availability fees as he incorrectly
8 states. In fact, the only issue that the Commission decision addresses was whether
9 or not it had jurisdiction over the cases referenced. Beginning on page 65 of the
10 *Report and Order*, Case Nos. WC-2006-0082 and WO-2007-0277, it states,

11
12 Burden of Proof

13
14 Section 386.390, RSMo 2000, authorizes the individual
15 complainants in Case No. WC-2006-0082 to bring a complaint
16 before the Commission regarding a public utility. "In cases where a
17 complainant alleges that a regulated utility is violating a law, its own
18 tariff, or is otherwise engaged in unjust or unreasonable actions,
19 the complainant has the burden of proof."²⁰⁶ The complaining
20 parties in consolidated Case No. WC-2006-0082 bear the burden of
21 proving the allegations in their complaints. The Complainants have
22 failed to establish, by competent and substantial evidence, that the
23 Commission has jurisdiction over these matters. Consequently, the
24 Commission must dismiss these actions as it has no authority to
25 make a determination with regard to the complaints or the transfer
26 of assets.

27
28 As noted in finding of fact numbers 15 and 80, numerous parties to
29 these actions were subject to dismissal.²⁰⁷ Had the Commission
30 determined that it had jurisdiction over these matters, it would have
31 ruled on whether those parties should be dismissed. Because the
32 Commission has determined that it lacks jurisdiction in these
33 matters, and because the Commission is dismissing these actions
34 in their entirety, there is no need to rule on the posture of those
35 parties to these actions.

Decision

The Commission in making this decision has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision. After applying the facts, as it has found them, to its conclusions of law, the Commission has reached the following decision. Case numbers WC-2006-0082, WC-2006-0090, WC-2006-0107, WC-2006-0120, WC-2006-0121, WC-2006-0122, WC-2006-0138, WC-2006-0139 and WA-2007-0270 shall be dismissed for lack of jurisdiction.

Q. WHAT WAS THE BASIS FOR THE COMMISSION'S DECISION IN CASE NOS. WC-2006-0082 AND WO-2007-0277?

A. It is my understanding that the Commission determined it did not have jurisdiction pursuant to §386.250, RSMo Supp. 2006 in the matters and therefore had no authority to make a determination on either the complaint or the transfer of assets. On page 63 of the *Report and Order*, Case Nos. WC-2006-0082 and WO-2007-0277, it also states,

Under the specific facts of this case, not only have the Rocky Ridge Ranch criteria been sufficiently satisfied, but Folsom Ridge and the Association are currently in the process of transferring all of the assets of the water and sewer system to newly formed Chapter 393 Companies. The provisions of Chapter 393 essentially secure all of the criteria of the public interest analysis of the Rocky Ridge Ranch, and expressly remove any such water and/or sewer company from the jurisdiction of the Commission and place jurisdiction over such operations with the DNR.

1 Q. REGARDING THE REBUTTAL TESTIMONY OF MPSC STAFF WITNESS, MR.
2 JAMES A. MERCIEL, JR., PAGE 17, LINES 5 - 7, DOES PUBLIC COUNSEL
3 AGREE THAT AVAILABILITY FEE MONIES SHOULD BE INCLUDED AS
4 REVENUE FOR THE COMPANY?

5 A. Yes. Mr. Merciel's entire Rebuttal Testimony succinctly explains the history and
6 regulatory impact of availability fees within this State along with how the monies at
7 issue should be treated for regulatory purposes in the instant case. Public Counsel
8 believes that allowing the current owners of the utility to charge the owners of
9 undeveloped lots, located within the utility's franchised area, hundreds of thousands
10 of dollars on an annual basis should not be allowed. Those monies, if necessary at
11 all, represent funds that rightly belong to the utility so that it can provide its required
12 services. The monies should not be allowed to continue as an unregulated cash
13 flow, unsupported by the provision of any services, to the owners of the utility.

14
15 VI. ALLOCATED LABOR COSTS

16 Q. WHAT WAS PUBLIC COUNSEL'S POSITION ON THIS ISSUE IN ITS DIRECT
17 TESTIMONY?

18 A. In my Direct Testimony, page 26, lines 7 - 12, Public Counsel's position was stated
19 as,

20
21 Q. WHAT DOES PUBLIC COUNSEL RECOMMEND THAT THE
22 COMMISSION DO REGARDING THIS ISSUE?

23
24 A. Public Counsel recommends that the Commission authorize
25 and include in the Company's cost of service, for the instant
26 case, an annual labor cost which approximates, but does not

1 exceed, that of similar sized utilities with similar sized
2 operations within the State of Missouri.
3
4

5 Q. HAS PUBLIC COUNSEL SINCE MODIFIED ITS POSTION?

6 A. Yes. Attached as Schedule 3 to Mr. Summers Rebuttal Testimony was an analysis
7 which provided a comparison of revenues, payroll/benefits and customers for Aqua
8 Missouri, Inc. (water and sewer), Aqua RU, Inc. (water) and U.S. Water Company.
9 The analysis was provided to show that the MPSC Staff's proposed annual payroll
10 and benefit costs was reasonable. Public Counsel reviewed the document and the
11 source documents from which it was developed. Though there were errors in Mr.
12 Summers's numbers, Public Counsel corrected the errors and further developed
13 the analysis to determine what the Company's annual payroll and benefits cost
14 should be if its costs per customer were inline with that of Aqua Missouri, Inc.
15 Aqua RU, Inc. and U.S. Water Company amounts were rejected because, 1) they
16 only provide water service and 2) U.S. Water Company has not been in for a rate
17 review for quite some time. The results of my analysis show that when compared
18 to the annual payroll and benefits cost of Aqua Missouri, Inc. (as shown in its 2008
19 Commission Annual Report), Company's annual payroll and benefits costs should
20 be approximately (\$11,449) less than the amount determined by the MPSC Staff.
21 However, since the amount is subject to distortion for a number of reasons,
22 including the fact that the Aqua Missouri, Inc. amounts are from the 2008 Annual
23 Report and not derived from an actual rate case review, I believe the difference is
24 basically immaterial. Therefore, Public Counsel will not pursue its objection to the

Surrebuttal Testimony of Ted Robertson
Lake Region Water and Sewer Company
Case Nos. SR-2010-0110 & WR-2010-0111

1 annual payroll and benefits cost proposed by the MPSC Staff and agreed to by the
2 Company.

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4 Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

5 A. Yes, it does.

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