

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Lake Region Water & Sewer) File No. SR-2010-0110
Company's Application to Implement a General) Tariff No. YS-2010-0250
Rate Increase in Water & Sewer Service)

In the Matter of Lake Region Water & Sewer) File No. WR-2010-0111
Company's Application to Implement a General) Tariff No. YW-2010-0251
Rate Increase in Water & Sewer Service)

**LAKE REGION WATER & SEWER COMPANY'S
MOTION TO STRIKE PORTIONS OF STAFF'S POST HEARING BRIEF,
PART II--- REGARDING AVAILABILITY FEES
AND ITS PROPOSED FINDING OF FACTS AND CONCLUSIONS OF LAW**

Comes now Lake Region Water & Sewer Co. (Lake Region) and moves to strike certain portions of the Post Hearing Brief Part II---Regarding Availability Fees (Staff's Brief) and Proposed Findings of Fact (Staff's Findings) filed by the Staff of the Missouri Public Service Commission on July 16, 2010. In support, Lake Region submits the following to the Commission:

1. On June 24, 2010, the Commission convened an evidentiary hearing the purposes of which ostensibly were to allow the Staff to offer into evidence sworn affidavits of several witnesses. (Tr. 815). In addition to the affidavits, Staff sought to introduce into evidence, among other documents, the Petition filed in Case No. CV103760CC, marked as Exhibit 51, and the Answer filed in Case No. CV103760CC, marked as Exhibit 52. Lake Region objected to the introduction of both Exhibit 51 and 52 and those objections *were sustained*. (Tr. 838-849). An offer of proof was made by the Staff thereafter but there was no change in the rulings on

admissibility of these exhibits. (Tr. 849-850). Neither Exhibit 51 nor Exhibit 52 was admitted as evidence in the record.¹

2. Staff's Brief relies upon Exhibit 52 extensively. In its brief, Staff cites Exhibit 52 in support of its rendition of the facts and its arguments on the pages and in the footnotes identified below:

Page 4, footnotes 4 and 5

Page 7, footnote 24

Page 8, footnote 28

Page 15, footnotes 93, 94, 95, 96, 97, and 98

Page 16, footnote 99

Page 18, footnotes 116 and 117

Page 19, footnote 120

Page 20, footnotes 122 and 123

Page 24, footnote 154

Page 25, footnote 162 and 163

Page 29, footnotes 197 and 198.

3. Staff carries reliance on Exhibit 52 into its proposed findings of fact and conclusions of law at the pages and in the footnotes identified below:

Page 2, footnote 8

Page 3, footnote 10

¹ The Commission took official notice of Case No. CV103760CC at the Staff's request. Staff did not request that the Commission take official notice of the pleadings or other records in that case. Even if Staff made that request, official notice of such records is generally refused. [C]ourts in general do not take judicial notice of records in one proceeding in deciding another and different proceeding, as a party is entitled to have the merits of his case reviewed upon evidence properly introduced. [citation omitted]" *Sher v. Chand*, 889 S.W.2d 79, 84-85 (Mo.App. E.D. 1994).

Page 4, footnotes 19 and 20

Page 6, footnote 38

Page 8, footnote 47

Page 9, footnotes 52 and 53.

4. Staff's use and dependence upon matters outside the record in this proceeding for purposes of briefing and argument, and for purposes of Staff's Findings, is inappropriate and objectionable. Consequently, Staff's citations to Exhibit 52; any textual references to Exhibit 52 or its content within the body of Staff's Brief or Staff's Findings; any facts and inferences derived from the content of Exhibit 52; or otherwise any use or reliance on Exhibit 52 in support of Staff's arguments or rendition of the facts should be stricken from Staff's Brief and Staff's Findings.

WHEREFORE, Lake Region requests that the Commission strike from Staff's Brief and Staff's Findings any citation to Exhibit 52; any textual references to Exhibit 52 or its content within the body of Staff's Brief or Staff's Findings; any facts and inferences derived from the content of Exhibit 52; or otherwise any use of or reliance on Exhibit 52.

Respectfully submitted,

/s/ Mark W. Comley

Mark W. Comley Mo. Bar 28847

Newman, Comley & Ruth P.C.

601 Monroe Street, Suite 301

P.O. Box 537

Jefferson City, MO 65102-0537

(573) 634-2266 (voice)

(573) 636-3306 (facsimile)

comleym@ncrpc.com

Attorneys for Lake Region Water & Sewer Co.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via email, on this 22nd day of July, 2010, to:

Jaime Ott at jaime.ott@psc.mo.gov;
Craig Johnson at craigsjohnson@berrywilsonlaw.com;
Lisa Langeneckert at llangeneckert@sandbergphoenix.com;
Office of Public Counsel at opcservice@ded.mo.gov; and
General Counsel's Office at gencounsel@psc.mo.gov.

/s/ Mark W. Comley