

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

Case No. SR-2013-0459

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

STATE OF MISSOURI            )  
                                          )  
COUNTY OF COLE            )            SS

1. On January 17, 2014 Office of Public Counsel (OPC) was notified by electronic mail, a copy of which is attached as Exhibit 1, of Lake Region Water & Sewer Co.'s (Lake Region) conclusion that electronically stored files owned by RPS Properties, LP and saved on Lake Region's computer (the "RPS Data") were not in Lake Region's possession, custody or control as interpreted by the Missouri Supreme Court in *Hancock v. Shook*, 100 S.W. 3d 786 (Mo. 2003).

2. Today the undersigned contacted William D. Steinmeier, attorney for RPS Properties, LP, and asked if RPS Properties, LP would voluntarily release or disclose to Lake Region the RPS Data. Mr. Steinmeier advised on the partnership's behalf that it would not so release or disclose the RPS Data. A copy of my letter confirming that the RPS Data would not be voluntarily made available is attached as Exhibit 2.

3. Lake Region obtained a Commission Subpoena and Order to Appear, Produce Documents and Give Deposition for service upon the custodian of records for RPS Properties, LP. A Notice of Deposition and Production of Documents will be filed today in these matters and served on counsel of record. The records deposition is scheduled for January 22, 2014, the final day permitted for discovery.

Respectfully submitted,

/s/ Mark W. Comley

Mark W. Comley MBE #28847  
NEWMAN, COMLEY & RUTH P.C.  
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Attorneys for Lake Region Water & Sewer  
Co.

Subscribed and sworn to before me, a Notary Public, on this 17th day of January, 2014.

/s/ Annette M. Borghardt

Annette M. Borghardt  
Notary for Cole County, Missouri  
Commission #10436657  
MCE March 11, 2014

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was sent via email, on this 17th day of January, 2014, to Amy Moore at [Amy.Moore@psc.mo.gov](mailto:Amy.Moore@psc.mo.gov) ; General Counsel's Office at [staffcounsel@psc.mo.gov](mailto:staffcounsel@psc.mo.gov); Christina Baker at [christina.baker@ded.mo.gov](mailto:christina.baker@ded.mo.gov), and Office of Public Counsel at [opc@psc.mo.gov](mailto:opc@psc.mo.gov)

/s/ Mark W. Comley

## Mark Comley

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**From:** Mark Comley  
**Sent:** Friday, January 17, 2014 11:31 AM  
**To:** 'Baker, Christina'  
**Cc:** 'Moore, Amy'; Opitz, Timothy; Annette Borghardt  
**Subject:** Lake Region Rate Cases  
**Attachments:** notice of deposition rps properties.PDF

Christina:

Because the Electronic Communications Privacy Act of 1986 (ECPA) or the Stored Communications Act (SCA) and their amendments may have application in connection with electronic media stored by others, including RPS Properties LP, on computers owned or under the authority of Lake Region Water & Sewer Co., Lake Region's right, authority or practical ability to obtain those stored files from RPS Properties is nonexistent, or at least highly questionable, under the present circumstances. Lake Region faces civil or criminal liability for improper disclosure of records protected under the ECPA or SCA.

Therefore, these stored electronic files are not in Lake Region's possession, custody or control as interpreted by the court in *Hancock v. Shook*, 100 S.W. 3d 786 (Mo. 2003).

I contacted Mr. William Steinmeier, attorney for RPS Properties LP and asked whether the partnership would consent to release of the files stored on Lake Region's computer and was advised that RPS would not voluntarily disclose or release those files. I am in the process of requesting a subpoena from the Commission for purposes of deposing the custodian of records for the partnership and acquiring the rights to inspect those records. The Notice of Deposition is attached and I will file it sometime today.

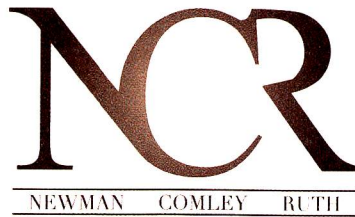


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JOHN A. RUTH  
THOMAS C. SMITH  
NICOLE L. SUBLETT  
ALICIA EMBLEY TURNER

January 17, 2014

**VIA EMAIL [wdspc@mchsi.com](mailto:wdspc@mchsi.com)  
AND U.S. MAIL**

William D. Steinmeier, P.C.  
2031 Tower Drive  
P.O. Box 104595  
Jefferson City, MO 65110-4595

Re: Lake Region Water & Sewer Company  
MoPSC Case Nos. SR-2013-0459 and WR-2013-0461

Dear Bill:

Thank you for the time on the phone today.

You will recall that my call was in connection with the Commission's recent Notice Regarding Discovery Motion in the referenced cases. Office of Public Counsel has requested information concerning billing and collection of availability fees which I understand is stored on a computer owned by Lake Region. In the Notice, the Commission has ordered Lake Region to take certain actions respecting that data.

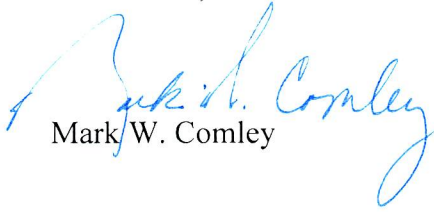
This is simply to confirm that on RPS Properties LP's (RPS) behalf you advised that RPS will not voluntarily release or disclose to Lake Region the RPS records concerning billing and collection of availability fees for Lake Utility Availability 1 that are stored on Lake Region's computer or other electronic media.

Thank you very much.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:

  
Mark W. Comley

MWC:hbb