

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

March 31, 2010  
Jefferson City, Missouri  
Volume 5

In the Matter of Lake Region Water    )  
& Sewer Company's Application to    )File No. SR-2010-0110  
Implement a general Rate Increase    )  
in Water and Sewer Service            )  
  
In the Matter of Lake Region Water    )  
& Sewer Company's Application to    )File No. WR-2010-0111  
Implement a General Rate Increase    )  
in Water and Sewer Service            )

HAROLD STEARLEY, Presiding  
SENIOR REGULATORY LAW JUDGE  
ROBERT S. KENNEY, via Telephone,  
COMMISSIONER

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1 P R O C E E D I N G S

2 JUDGE STEARLEY: All right. Good morning. It's  
3 Wednesday, March 31st, 2010. We are back on the record in  
4 File Nos. SR-2010-0110 and WR-2010-0111, in which Lake  
5 Region is seeking an increase of its water and sewer rates  
6 for its service territory in Missouri.

7 We have ready to go on the stand witness Ted  
8 Robertson and picking up with the issues today,  
9 availability fees and potential excluded management costs  
10 that Mr. Featherstone had raised in his surrebuttal.

11 Mr. Robertson, you've been on the stand before.  
12 And I will remind you that you are still under oath today.

13 MR. ROBERTSON: Yes, sir.

14 JUDGE STEARLEY: And you may proceed.

15 MS. BAKER: All right. We have already entered  
16 in -- or have requested to enter in --

17 JUDGE STEARLEY: Offered.

18 MS. BAKER: -- the testimony of Mr. Robertson,  
19 so we will go on ahead and tender him for cross.

20 JUDGE STEARLEY: All right. Very well. We'll  
21 begin cross with the Property Owners Association.

22 MS. LANGENECKERT: I have no questions at this  
23 time, Mr. Robertson.

24 JUDGE STEARLEY: All right. Commission Staff?

25 MS. OTT: Staff has no questions at this time.

1 Thank you.

2 JUDGE STEARLEY: All right. Lake Region?

3 MR. COMLEY: I have one question.

4 (Phone interruption.)

5 MR. ROBERTSON: It's not me.

6 JUDGE STEARLEY: Please excuse me while I answer  
7 the phone. This should be Commissioner Kenney calling.

8 JUDGE STEARLEY: Hello?

9 COMMISSIONER KENNEY: Hello?

10 JUDGE STEARLEY: Is this Commissioner Kenney?

11 COMMISSIONER KENNEY: Yes, it is.

12 JUDGE STEARLEY: All right. Commissioner  
13 Kenney, you're just in time for the single question that  
14 Lake Region has for Mr. Robertson.

15 COMMISSIONER KENNEY: Fantastic. Thank you.

16 CROSS-EXAMINATION

17 BY MR. COMLEY:

18 Q If you could turn to page 3 of your direct  
19 testimony, Mr. Robertson, at the top of the page.

20 A Okay.

21 Q You describe the issue as concerning  
22 availability fees being collected from ratepayers by the  
23 current shareholders of the company. Would it be fair to  
24 say that after the testimony and the other evidence that's  
25 submitted today to say that you're clear now that the

1 ratepayers of Lake Region aren't paying the availability  
2 fees?

3 A That's correct.

4 MR. COMLEY: All right. That's all I have.  
5 Thank you.

6 JUDGE STEARLEY: All right. Thank you,  
7 Mr. Comley. Commissioner Kenney, do you have any  
8 questions for Mr. Robertson.

9 CROSS-EXAMINATION

10 BY COMMISSIONER KENNEY:

11 Q Did I -- did I hear him correctly that the  
12 ratepayers are or are not paying the availability fees?

13 JUDGE STEARLEY: They are not, if I understood  
14 that correctly.

15 Q (By Commissioner Kenney) And that's because  
16 they're not hooked up to the system yet, correct?

17 A That is correct.

18 Q Okay. So the property owners are paying the  
19 availability fees, but they're not ratepayers yet because  
20 they're not hooked up to the system?

21 A That is also correct.

22 COMMISSIONER KENNEY: Thank you. Thank you.

23 JUDGE STEARLEY: Any --

24 COMMISSIONER KENNEY: That's it for me.

25 JUDGE STEARLEY: Okay. Thank you, Commissioner.

1 Any recross?

2 MR. COMLEY: None for me.

3 JUDGE STEARLEY: Any redirect, Ms. Baker?

4 MS. BAKER: No. Thank you very much.

5 JUDGE STEARLEY: All right. Mr. Robertson, you  
6 may step down. Thank you very much.

7 MR. ROBERTSON: Thank you. And the last witness  
8 we have scheduled for today is Vernon Stump.

9 MR. COMLEY: I call Vernon Stump to the stand,  
10 please.

11 JUDGE STEARLEY: And, Mr. Stump, you have also  
12 been on the stand before, and I'll remind you that you  
13 remain under oath as well.

14 MR. STUMP: Yes, Judge.

15 DIRECT EXAMINATION

16 BY MR. COMLEY:

17 Q Mr. Stump, during my direct examination of you,  
18 we will -- we will be referring to Mr. Featherstone's  
19 surrebuttal. And I don't know -- did you happen to bring  
20 a copy of that with you?

21 A I have a copy.

22 Q You do have a copy?

23 A Yes.

24 JUDGE STEARLEY: You may proceed, Mr. Comley.

25 MR. COMLEY: Thank you, Judge, and thank you for

1 giving me a little time to collect my notes here.

2 Q (By Mr. Comley) Mr. Stump, if you would look on  
3 page 2, line 10 of Mr. Featherstone's surrebuttal, there  
4 he states that Staff has included a total level of  
5 availability charges in the rate calculation of \$360,000.  
6 Does Mr. Featherstone present any costs related to this  
7 amount?

8 A No, he does not.

9 Q Has he made any provision to account for any  
10 costs after imputing \$360,000 in revenue?

11 A No. He does not appear to have done so.

12 Q Let me ask you this: In past cases before the  
13 Commission or with the Staff, has the Staff made offsets  
14 to costs when availability fees are included in company  
15 revenues?

16 A Yes, sir. Yes, they have.

17 Q And do you have -- can you identify the cases  
18 that you know of where that treatment was given to  
19 availability fees?

20 A Yes, I can. In Case No. WR-92-59, which was a  
21 rate case with Lakesites Water & Sewer Company, at that  
22 time, the Staff removed the availability fees from the  
23 revenue stream, and they also reduced the rate base a  
24 certain amount as an offset for the reduction of the  
25 availability fees.

1           Q     Now, with respect to -- are there other cases  
2     where those -- that kind of treatment was made?

3           A     Only that in -- in the next rate case that Ozark  
4     Shores had in -- I believe that was in '97, '98 and '99,  
5     it took a couple of years to get that done, the  
6     availability fees were then added back into the revenue  
7     stream of the company. But the Staff also added  
8     additional rate base to the company.

9           Q     And do you remember what case number that was?

10          A     I have that case. And it is Case No.  
11     WR-98-990.

12          Q     So what I'm understanding from your -- your  
13     statements today is that there are two cases that you know  
14     of where the Staff removed availability fees and reduced  
15     rate base. But then in the next case, they added the  
16     availability fees back into revenue and increased the rate  
17     base?

18          A     That's correct.

19          Q     How then does this rate treatment proposed in  
20     Mr. Featherstone's testimony differ from the way  
21     availability fees were treated in the past cases you've  
22     just described?

23          A     Well, in Mr. Featherstone's presentation, they  
24     -- similar to what was done in the '97 Ozark Shores case,  
25     they -- they added availability revenues into the case,



1 but they make no provision for adding back the cost of  
2 plant.

3 Q Let's go to page 4 of the surrebuttal testimony.  
4 I -- let's see. I think it's page 4 in his first answer  
5 under -- the first answer on the page. I think it's there  
6 that he says that availability fees can and should be used  
7 to offset the costs of the repairs and construction of  
8 infrastructure that benefit the owner of unconstructed  
9 lots. Do you agree with that statement?

10 A Not completely. It appears to us that in the  
11 past cases, availability fees had primarily been used to  
12 offset infrastructure costs and cost of capital, not so  
13 much maintenance costs.

14 Q Let's go to page 6, lines 16 through 18. He  
15 makes reference to two systems, which may or may not be  
16 interconnected. Are there two systems in place in the  
17 Shawnee Bend area?

18 A No. There's only one system. And that's the  
19 system that supplies service to all the customers and is a  
20 system owned by Lake Region.

21 Q On page 7, lines 4 through 6, Mr. Featherstone  
22 states that repairs to the infrastructure benefit  
23 unconstructed lots. Is this an accurate statement?

24 A In general, I don't believe so. Those repairs  
25 only benefit those lots at such time that those owners

1 build houses.

2 JUDGE STEARLEY: Please excuse me just a moment.  
3 Looks like we've lost Commissioner Kenney. Let me make a  
4 quick attempt to call him back. I told you I had the  
5 technology curse. Oh, okay. Is that you Commissioner  
6 Kenney?

7 COMMISSIONER KENNEY: Sorry about that.

8 JUDGE STEARLEY: That's all right. We're glad  
9 to have you back.

10 COMMISSIONER KENNEY: Thanks.

11 JUDGE STEARLEY: Please continue.

12 Q (By Mr. Comley) Again, on page 7, lines 16  
13 through 17, Mr. Featherstone testifies that it is  
14 equitable to include availability charges in rates because  
15 the utility has to maintain the infrastructure crossing  
16 the property. Do you agree with his opinion there?

17 A I -- I do not agree with that opinion.

18 Q Can you explain why?

19 A I think this is -- is completely out of the norm  
20 of the way regulation works in the state. State-wide,  
21 lots that do not have homes do not have charges that are  
22 levied on them for maintenance of the water and sewer  
23 lines.

24 Those charges are -- are almost entirely paid by  
25 the customers that use the service. So I just don't think

1    this applies in this case.  I think the availability fees  
2    are most appropriately used for capital costs.

3           Q     You mentioned that this may be a change in  
4    rate-making principles across the state.  Could you  
5    explain that?

6           A     Well, I -- I think if -- if -- for example, you  
7    could tariff that -- that any vacant lot would pay a fee  
8    for maintenance and operation.  I think most of the  
9    subdivisions in the state have vacant lots.

10                  Currently, the only place that those particular  
11   lots pay any fees are those in specialized developments  
12   such as Shawnee Bend or Horseshoe Bend.  And so I think to  
13   apply that on a -- on a large basis would certainly change  
14   the economics of how utility systems are operated.

15           Q     Turning to page 9 of the surrebuttal,  
16   Mr. Featherstone reports on the sources of information  
17   that he has used in determining the number of undeveloped  
18   or unconstructed lots in Shawnee Bend.  For purposes of  
19   the revenue requirement calculation that he has made, are  
20   these sources of information reliable with respect to  
21   rate-making principles?

22           A     I think that -- that the information are, in  
23   general, probably correct in terms of the number of lots.  
24   But, certainly, the only entity that could really  
25   determine those exact costs are the -- the people that

1 billed those -- those particular fees. So it still  
2 remains an estimate.

3 Q Getting down to his proposals, can you explain  
4 what your understanding is of Mr. Featherstone's proposals  
5 with respect to availability fees in this case?

6 A If -- if I understand correctly, the  
7 availability fees would be simply an imputed fee that the  
8 company would not have that particular revenue to use  
9 because they don't own that revenue. But it would be a --  
10 I guess the word is an imputed fee out of the air that the  
11 company would supposedly have. But they -- they actually  
12 would not have.

13 Q The alt -- are you clear on the alternate that  
14 he's proposed?

15 A The -- the alternate, I'm assuming, is that if  
16 the availability fees are not included in the rate case,  
17 then he is proposing reallocating certain management costs  
18 and certain executive management costs away from Lake  
19 Region.

20 Q On page 11, line 15, Mr. Featherstone testifies  
21 that the purpose of the availability fee is to maintain  
22 utility infrastructure. Do you agree with that statement?

23 A No, I do not. I think I stated earlier that in  
24 my experience with Lake Region and Ozark Shores, the  
25 availability fees are used primarily for capital recovery.

1           Q     Turning to page 12 of his surrebuttal, on -- and  
2     probably pages 12 through 17, he discusses the -- the  
3     theory and calculation of his alternative to including  
4     availability fees in revenue, that being the reallocation  
5     of the executive management costs and the results of that.  
6     Do you agree with this theory and the manner of  
7     reallocation?

8           A     No, I do not.

9           Q     Can you explain why you do not?

10          A     It seems to be completely different than the way  
11     that the Staff develops its cost of service. Generally,  
12     the Staff audits costs. They look at costs. They  
13     calculate those in detail and present what those -- they  
14     think those costs are. And this appears to be just an  
15     overall pure estimate saying, I need to do something, so  
16     let's go for allocating one-third.

17          Q     If you were to be asked to do so, do you have a  
18     manner in mind about how those costs might be reallocated?

19          A     If -- if I was going to look at reallocating  
20     those costs, I would first look at what service or what --  
21     what does Lake Utility do, what work do they do. They  
22     send out 1200 bills a year, and they collect 1200 bills a  
23     year. So I'd look at what would -- what would be the  
24     effort to collect those bills.

25                     And to do that, as was testified earlier, there

1 is a clerk in -- at the water district's office that does  
2 that particular function. My best estimate is that  
3 overall, she sends out about 38,000 bills a year. 1200 of  
4 those are for the availability. And that calculates to  
5 about 3 percent of -- of her time.

6           So I would -- would say that it would be fair to  
7 estimate 3 percent of her time for providing that  
8 function. I would say that, certainly, there's a cost of  
9 probably 50 cents a bill for -- for stamps and buying  
10 paper.

11           There is a cost for the management of providing  
12 that service. If you relate that cost to the functions  
13 that Ozark Shores provides and the functions that Lake  
14 Region provides, they are a utility company. They -- they  
15 read meters. They repair lines. They operate wells.  
16 They operate sewage treatment plants. They provide  
17 emergency service. They provide a pretty substantial  
18 function where, again, Lake Utility collects the bills.

19           If you compare the time spent by the clerk to  
20 collect those bills versus all of the staff, that  
21 translates down to maybe three-tenths of a percent of  
22 management time is related to that function.

23           And comparing that to the -- the amount that we  
24 have requested for management fees, it would probably be  
25 about \$600 a year for that function. So if we add those

1 functions all together, I think a reasonable cost for  
2 providing that service is in the \$2,000 a year range.

3 Q And compared to what the Staff has proposed, how  
4 much of a difference is there?

5 A The Staff is proposing a little in excess, I  
6 believe, of 18,000. And if you -- if you look at that on  
7 a -- on a per bill basis, as a small company, effectively,  
8 they're sending out a hundred bills a month. And \$1500 a  
9 month for collecting a hundred bills is a pretty -- pretty  
10 nice contract.

11 Q On page 17 of his surrebuttal, he states -- and  
12 I can't find the line. But I will represent to you that  
13 on that page, he has stated that Staff has made no attempt  
14 to assign costs to maintain and -- excuse me. On page 17,  
15 line 11. Thank you, John. Yes. He said it would be --  
16 Staff has made no attempt to assign costs to maintain and  
17 construct the utility infrastructure to -- to Lake  
18 Utility. Can you comment on that for us?

19 A Well, the -- the -- in this particular case, I  
20 don't believe that that would be a function that should be  
21 a function of a cost of Lake Utility. That is a cost of  
22 Lake Region to provide service to its customers.

23 Q On page 17 through 18, I think this is -- down  
24 at the bottom of the page starting with lines 21 and 22,  
25 he states that, It is because of the perceived value to

1 the vacant lot owners that they are willing to pay  
2 availability fees. Do vacant lot owners have other  
3 reasons to pay the availability fee?

4 A I believe the primary reason they pay those fees  
5 is because it's a contractual agreement that if they do  
6 not pay those fees, then there is a negative effect in  
7 that a lien can be placed on the property.

8 MR. COMLEY: Those are all the questions I have  
9 for Mr. Stump. I want to thank the Commission and the  
10 parties for the opportunity to bring this -- this forward.

11 JUDGE STEARLEY: All right. Thank you,  
12 Mr. Comley. Commissioner Kenney, are you still with us?

13 COMMISSIONER KENNEY: Yes, I am.

14 JUDGE STEARLEY: All right. Okay. We'll begin  
15 cross --

16 COMMISSIONER KENNEY: My turn, Judge?

17 JUDGE STEARLEY: Yes, Commissioner.

18 COMMISSIONER KENNEY: Okay. Dr. Stump, thank  
19 you.

20 A Yes.

21 MS. BAKER: He asked if it was his turn.

22 COMMISSIONER KENNEY: Sorry I'm not there to  
23 talk with you in person.

24 JUDGE STEARLEY: Commissioner Kenney, we're  
25 going to begin cross on this.



1 COMMISSIONER KENNEY: Oh.

2 JUDGE STEARLEY: The reason I wanted to confirm  
3 you were still present is I wanted to make sure if you  
4 wanted to ask some questions first or if you want to hear  
5 the other parties give their cross.

6 COMMISSIONER KENNEY: No. I'll let the other  
7 parties go first. I think since I'm not in the room, I  
8 shouldn't be able to go first. My questions may be --  
9 somebody may ask my questions.

10 JUDGE STEARLEY: All right. Very well.

11 COMMISSIONER KENNEY: Thank you for asking.

12 JUDGE STEARLEY: That's all right. We'll begin  
13 cross with the Property Owners.

14 CROSS-EXAMINATION

15 BY MS. LANGENECKERT:

16 Q Good morning Mr. Stump.

17 A Good morning.

18 Q How many lot owners are paying Lake Region as  
19 customers on Shawnee Bend?

20 A Water and sewer?

21 Q Correct.

22 A That -- that number is in the range of 650.

23 Q Who are paying both? So 600 paying water, 600  
24 paying sewer?

25 A Yes. And that's an approximate number.

1           Q     And how many lot owners are paying availability  
2 fees to Lake Utility Availability for undeveloped lots on  
3 Shawnee Bend?

4           A     That number is probably in the range of 12 to  
5 1300 bills are sent out. The number that actually pay  
6 varies.

7           Q     I was just going to ask you that. How many are  
8 not paying their availability charges?

9           A     Again, that varies at -- at different times a  
10 little bit on how the economy is and --

11          Q     How about this past year?

12          A     A typical number is probably 90 percent pay.

13          Q     Okay. So 10 percent don't pay?

14          A     That -- that's -- that's an average number. We  
15 would like to have that at about 95 percent.

16          Q     Zero.

17          A     But in general, I think that's a reasonable  
18 number.

19          Q     So between 120 and 130 aren't paying their 500  
20 -- or their \$300 a year for water and sewer availability?

21          A     Over time, I think that's what we'd see.

22          Q     All right. Have you put liens on the properties  
23 of those people who have not paid?

24          A     We haven't.

25          Q     Do you intend to?

1           A     That's a decision that we'll make.  If the -- if  
2     the collections would drastically go down, we would look  
3     at doing that.  We don't -- we don't like to put liens on.  
4     And we try to avoid it.  So if the collections stay at  
5     what we think is a reasonable amount, we -- we don't do  
6     that.

7           Q     For each individual customer.  So if a customer  
8     were to miss a year or two, it wouldn't be something you  
9     would require a lien.  But if they were to miss ten years  
10    or a higher amount, then you may?

11          A     That's probably correct.

12          Q     What's the process for putting a lien on the  
13    property of a property owner who doesn't pay his or her  
14    availability charge?

15          A     There's a document prepared, and it's filed at  
16    the courthouse.

17          Q     And has that process changed since the  
18    amendment, the Third Amended Declaration?

19          A     I couldn't answer that.  I don't know.

20          Q     So you don't know how the liens were handled  
21    before the Third Amended Declaration --

22          A     No.

23          Q     -- amendment, which is the water and sewer  
24    amendment that's been so strongly talked about in this  
25    case?

1           A     Yes.  I'm not sure.

2           Q     Well, would you accept, subject to check, that  
3     prior to that amendment the Property Owners Association  
4     was required to put the liens on the properties?

5           A     Okay.  I would -- I would accept that.

6           Q     Do you know why the water and sewer amendment  
7     came to be?

8           A     I -- I do not know what -- what the reason for  
9     that was.

10          Q     So you weren't aware that it was because the  
11     Property Owners Association no longer wanted to be  
12     required to collect those amounts or have that obligation?

13               MR. COMLEY:  Your Honor, I would object to the  
14     testimony provided in the question.  There is no evidence  
15     that that was the reason why it was -- why it was changed.

16               JUDGE STEARLEY:  Okay.  It will be sustained and  
17     that will be stricken from the record.

18               MS. LANGENECKERT:  All right.

19               JUDGE STEARLEY:  You may rephrase and ask a  
20     question.

21               MS. LANGENECKERT:  I believe he already said he  
22     didn't know why, so --

23          Q     (By Ms. Langeneckert)  Now, Cynthia Goldsby,  
24     what is her position with Camden County Water District?

25          A     She's the billing clerk.

1           Q     Okay.  She's not an accountant?

2           A     No.

3           Q     Okay.  Do you know that she holds herself out as

4     an accountant on her linked-in web page?

5           A     No.

6           Q     Okay.  What is her salary for her work in

7     sending out all these bills and doing all of the other --

8           A     I would have to check her salary, but it's

9     probably in the range of 35,000 a year.

10          Q     So you say she spends three-tenths of a percent

11     of her time on the billing for --

12          A     Three percent.

13          Q     -- the organization?  3 percent, not three-tenths

14     of a percent?

15          A     Three-tenths of a percent is what I calculated

16     that management would have spent on -- on Lake Utility

17     collections.

18          Q     Now, are you the management that you referred

19     to?  Are you one of the members of the groups?

20          A     I am one of them.

21          Q     Do you oversee Mrs. Goldsby's activities in

22     collecting?

23          A     No, I do not.

24          Q     Who does?

25          A     Brian Schwermann.

1           Q     Okay.  Now, Lake Utilities Availability is a not  
2     a corporation, right?  We've made that pretty clear in  
3     these hearings?

4           A     Yes.

5           Q     And your wife is -- is one of the shareholders  
6     along with RPS Properties?

7           A     Yes.

8           Q     Now, if Lake Utility Availability were to be  
9     sued for not having a pipe available for someone who  
10    builds property, does that worry you that you -- your  
11    finances and your homes and money would be at risk in that  
12    suit since your wife is involved in this and it's not a  
13    corporation?

14          A     We've lived with that problem since 1977.

15          Q     Since 1977, availability fees have been paid?

16          A     No.  Since 1977 is when we bought our first  
17    utility.  And we've owned utilities in three states since  
18    that time.  And there's always liability.

19          Q     And is there a reason that you're aware of that  
20    it's decided to do it individually as opposed to a  
21    corporation?  Or it is in this case.

22          A     No.

23          Q     There's no reason or you're not aware of what  
24    the reason is?

25          A     There's -- there's no reason.  I have found over

1 the years that the corporate veil for small, closely-held  
2 utilities, if you get sued, you still get sued personally.

3 Q So if Lake Region were to get sued, do you think  
4 that you would also be sued personally?

5 A I'd say there's probably a hundred percent  
6 chance of that.

7 MS. LANGENECKERT: I think that's all my  
8 questions for now.

9 JUDGE STEARLEY: Okay. Thank you, Ms.  
10 Langeneckert. Cross-examination by Staff.

11 CROSS-EXAMINATION

12 BY MS. OTT:

13 Q Good morning.

14 A Good morning.

15 Q It is clear from the -- the record that you are  
16 familiar with these availability fees.

17 A I am.

18 Q Kind of going off what Mrs. Langeneckert was  
19 just talking about, you bill these available fees under  
20 the name Lake Utility Availability?

21 A Yes.

22 Q But that's not how you've registered this  
23 fictitious name with the Secretary of State, correct?

24 A That's correct.

25 Q So if someone were to sue Lake Utility

1 Availability and they were doing their research in which  
2 the Secretary of State's web site, they would actually  
3 think they'd be suing North Suburban Public Utility,  
4 correct?

5 MR. COMLEY: I object to the question. I think  
6 she's trying to ask the witness to speculate what somebody  
7 might think when they sue.

8 MS. OTT: I'll rephrase.

9 Q (By Ms. Ott) If -- if you were to go to the web  
10 site to look up Lake Utility -- the Secretary of State's  
11 web site and look up Lake Utility Availability, what  
12 corporate -- corporate entity or the owner of Lake Utility  
13 Availability would you find?

14 A I would -- I would assume I would find North  
15 Suburban Public Utility, and I would find RPS Properties  
16 and Sally Stump.

17 Q And how would you find both of them?

18 A I would find the name Lake Utility.

19 Q So you would look up both Lake Utility  
20 Availability -- you'd look up Lake Utility Availability  
21 and click on -- on the link that allows you to look at  
22 their registration?

23 A Being an old engineer, I probably would.

24 Q And have you seen the registration for Lake  
25 Utility Availability?



1           A     Only what's been presented here at the hearing.

2           Q     And do you know what name is on that  
3 registration?

4           A     No.

5                   MS. OTT: May I approach?

6                   JUDGE STEARLEY: You may.

7           Q     (By Ms. Ott) This is Staff Exhibit No. 11. I  
8 don't know if you have a copy or not, but can you read  
9 what names are actually on that document?

10          A     The document says business name to be registered  
11 is Lake Utility Availability.

12          Q     And who is it registered?

13          A     North Suburban Public Utility Company.

14          Q     And who signed it?

15          A     And it's signed by John Summers.

16          Q     So do you see Sally Stump or RPS Properties on  
17 that document?

18          A     No, I do not.

19          Q     Thank you. So who would be responsible if  
20 someone would bring suit against Lake Utility  
21 Availability?

22                   MR. COMLEY: Your Honor, again, I'll object to  
23 this. The witness --

24          Q     (By Ms. Ott) In your opinion, who would be  
25 responsible if somebody sued Lake Utility Availability?

1 JUDGE STEARLEY: I believe he can answer that  
2 question.

3 A I'm not sure. If -- if someone sued North  
4 Suburban, it would be the stockholders of North Suburban.

5 Q Okay. Now, let's talk about North Suburban.  
6 Who are the owners of that entity?

7 A Robert and Brian Schwermann and Sally Stump.

8 Q And what kind of entity is that?

9 A It's a corporation.

10 Q And what is its corporate identity? What does  
11 it hold itself out to be as?

12 A It -- since with about 1977, it was a holding  
13 company for water and sewer utilities.

14 Q And currently, what -- what water and sewer  
15 utilities are held by North Suburban Public Utility?

16 A Ozark Shores Water Company.

17 Q And that -- that is the only stream of revenue  
18 that North Suburban Public Utility receives?

19 A No.

20 Q What other type of revenue stream does it  
21 receive?

22 A It has investment income.

23 Q And where is that investment income coming from?

24 A I'm not sure, as a part of this proceedings,  
25 where North Suburban receives its investment income.

1 MS. OTT: Judge, can you please direct the  
2 witness to answer the question?

3 JUDGE STEARLEY: Mr. Stump, your attorney has  
4 not raised an objection, and, unfortunately, you cannot  
5 raise one from the witness stand. So I will direct you to  
6 answer the question.

7 A It primarily receives its income from a  
8 \$3 million note owned by the city of Glenview, Illinois.

9 Q (By Ms. Ott) Does it have any other income?

10 MR. COMLEY: And now I'll make the objection.  
11 This is far beyond the relevance of this proceeding to  
12 find out what non-regulated income is going into a  
13 corporate holding company.

14 MS. OTT: This is relevant as Mr. Summers  
15 indicated that part of his salary -- or his consulting  
16 fees come from North Suburban Utility earlier in the  
17 testimony.

18 MR. COMLEY: None of the amount that's given to  
19 -- the consulting fees for Mr. Summers are not part of  
20 this case. There has never been anything concerning Mr.  
21 Summers' stipend or contract with North Suburban that is  
22 relevant to the cost in this case.

23 MS. OTT: He did indicate that he gets  
24 consulting fees from North Suburban Public Utility for  
25 work he does on Lake Region and Ozark Shores. And if he's

1 receiving a salary from Lake Region and Ozark Shores, he  
2 receives -- that the Commission has authorized, then he  
3 could be double recovering for his work in Lake Region and  
4 Ozark Shores.

5 MR. COMLEY: And then how is that -- how is that  
6 relevant to the availability fee issue or the cost of  
7 service for Lake Region? Your Honor, I would object.  
8 There is no relevance attached to this question.

9 JUDGE STEARLEY: I'm going to sustain the  
10 objection. We have gone issue by issue in this case.

11 Q (By Ms. Ott) Now, you said with these  
12 availability fees that the money does not go back in for  
13 maintenance and repairs of the system?

14 A That's correct.

15 Q And you also stated that the money for  
16 availability fees is for the initial investment?

17 A That's what I believe available fees should be  
18 used for.

19 Q And that initial investment was contributed  
20 plant?

21 A Are you speaking of Lake Region's developers  
22 contributed plant?

23 Q Yes.

24 A That's what I believe it -- it is.

25 Q So if the available fees are paying for plant,

1    how is that not part of the utility?

2                   MR. COMLEY:  I'll object on the grounds it's  
3    argumentative.

4                   MS. OTT:  It's a leading question on cross.

5                   JUDGE STEARLEY:  I'll overrule.

6           A     Okay.  Can you restate it?

7           Q     (By Ms. Ott)  If the availability fees are  
8    paying for the contributed plant, how is the contributed  
9    plant -- what is paying for it, how is that not part of  
10   the utility?

11          A     That's part of the developer's funds that he  
12   provided.

13          Q     But the contributed plant is now part of the  
14   utility?

15          A     That's correct.  And the contributed -- and the  
16   availability fees are not part of the utility.

17          Q     So you agree that the plant is part of the  
18   availability -- of the utility?

19          A     The -- the plant -- that's correct.  The plant  
20   is part of the utility.

21          Q     And these fees are being collected for what has  
22   been contributed?

23          A     The fees are being collected for the funds that  
24   the developer originally spent for the system.

25          Q     Which is now plant?

1           A     The -- the -- currently -- yes.

2           Q     Now, I know your wife is the -- the named owner  
3     -- one of the named owners of Lake Region. Were you part  
4     of the negotiations when you acquired Lake Region?

5           A     No.

6           Q     Was your wife part of those negotiations?

7           A     No.

8           Q     So you bought a company without being  
9     involved --

10          A     Yes.

11          Q     -- in the process?

12          A     That's correct.

13          Q     Were you involved in the process when you  
14     acquired Ozark Shores?

15          A     Yes.

16          Q     And when you acquired Ozark Shores, what was  
17     your understanding of availability fees?

18          A     When -- when Ozark Shores was acquired, at that  
19     time, the availability fees were owned by the company, and  
20     they're still owned by the company

21          Q     So after acquiring Lake Region, it didn't cross  
22     your mind that availability fees and the -- and the  
23     company weren't one in the same?

24          A     I knew they were not one in the same.

25          Q     But you didn't know that when you acquired the

1 company?

2 A Yes. I knew that when -- when the company was  
3 acquired.

4 Q But you just stated you weren't a part of the  
5 process of acquiring the company.

6 A I said I wasn't part of the negotiations of  
7 acquiring the company.

8 Q So were you a part of the process of acquiring  
9 Lake Region?

10 A No.

11 Q When you became interested in Lake Region, what  
12 was your involvement?

13 A How far back?

14 Q Were you -- how about were you interested in  
15 Lake Region in the year 2000?

16 A I was interested in Lake Region in the year  
17 1994.

18 Q Okay. So what stopped you from acquiring Lake  
19 Region in 1994?

20 A It wasn't for sale at that time.

21 Q So when did you first become aware that Lake  
22 Region was for sale?

23 A In 1998.

24 Q So in 1998, what steps did you take and --

25 A I spent a significant amount of time negotiating

1 with the owners in an attempt to buy the system.

2 Q But you didn't buy the system at that point?

3 A No.

4 Q And why not?

5 A The price was too high, and it included a golf  
6 course, some islands, a whole bunch of other things that I  
7 was not interested in owning.

8 Q So when did you become -- obviously, that 1998  
9 deal did not go through. But isn't that when you acquired  
10 Ozark Shores?

11 A Can you restate that again?

12 Q When you did acquire Ozark Shores?

13 A 1991.

14 Q Now, going back to 1998, that deal obviously  
15 didn't go through. When did you become interested in  
16 buying Lake Region again for the possible second time?

17 A I talked about it on and off for two or three  
18 years and then kind of dropped any interest in it.

19 Q So come 2004, when it was up for sale again,  
20 what was your involvement at that time?

21 A I received a phone call from Robert Schwermann,  
22 and he said he had just made a deal to acquire Lake Region  
23 and would you like to be a partner.

24 Q So you were not a part -- you just got a phone  
25 call, and that's how your involvement began?



1           A     That's correct.

2           Q     So you -- when acquiring -- when Mr. Schwermann  
3     called you to become a part of this deal, you didn't do  
4     your due diligence in investigating this company at this  
5     point?

6           A     After that -- after that contract was signed, of  
7     course, we did due diligence.

8           Q     But that was after the contract was signed?

9           A     That's correct.

10          Q     So you weren't aware that Four Seasons Lakesites  
11     used to bill these availability fees?

12          A     At the day of the contract signing?

13          Q     You knew about them?

14          A     I -- I said is that what you're asking me?

15          Q     Before you signed -- you -- you didn't know  
16     before you signed the contract about these availability  
17     fees being charged by Four Seasons Lakesites?

18          A     I actually knew about that in 1994.

19          Q     So it never crossed your mind to seek if they  
20     had come before the Commission to have that asset  
21     transferred from their utility?

22          A     They were not regulated, and there's no reason  
23     to come before the Commission. They are not a regulated  
24     item.

25          Q     Should they have been regulated?

1           A     No.

2           Q     They weren't in the business of selling water  
3     and sewer service?

4           A     Are you talking availability fees now, or are  
5     you talking the -- the company?

6           Q     Well, Four Seasons Lakesites Water & Sewer  
7     Company --

8           A     Right.

9           Q     -- was providing water and sewer services.  
10    Should they have been regulated?

11          A     Yes. For providing water and sewer services.

12          Q     And those availability fees were being charged  
13    by Lake Season -- Four Seasons Lakesites Water & Sewer  
14    Company?

15          A     As far as I know, yes.

16          Q     But you're saying they were not regulated?

17          A     That's correct.

18          Q     Was their water and sewer regulated?

19          A     The sewer was regulated in '94. There's a  
20    certificate case going on at that time to get that area  
21    regulated.

22          Q     So they were selling water service at that time.  
23    Were they operating without Commission authority?

24          A     They weren't selling water service.

25          Q     When did they first begin selling water service?

1           A     As far as I know, it was at the time they  
2     received their certificate.

3           Q     Do you know how many customers were receiving  
4     sewer service at that point?

5           A     No. Because they -- they had been serving sewer  
6     service on Horseshoe Bend for 20-some years. So -- so I  
7     -- I knew that they served the racket club, several  
8     subdivisions and the lodge.

9           Q     Now, were they providing sewer service to the  
10    Shawnee Bend side at that point?

11          A     As far as I know, they didn't provide service  
12    until they received their certificate.

13          Q     I guess I just didn't understand you. I thought  
14    you said they were providing water and sewer service on  
15    the Shawnee Bend side before they were -- or sewer service  
16    before they were certificated. Is that not correct?

17          A     Oh, no. Not -- not that I know of.

18          Q     Do you know how long you plan on charging  
19    availability fees?

20          A     This is not a time -- a time line with them.

21          Q     So if the point of availability fees was to  
22    recover the initial investment the developer put in, did  
23    you have any records to track whether or not the  
24    availability fees have recouped the cost?

25          A     Those records would be available in the company

1 books, but I don't -- I don't keep those records.

2 Q Who would keep those records?

3 A They -- they would be in the -- with respect to  
4 keeping the records, our accounting system, and our  
5 accountants keep those. They're held in Kansas City at  
6 the Schwermanns' office.

7 Q So the Schwermanns would have records of how  
8 much the initial investment was and how much availability  
9 fees have been charged throughout the years?

10 A Sure.

11 Q So if and when there is a point where -- and  
12 this could have happened, I'm not aware -- where you reach  
13 that 5.4 million initial investment, will you cease to  
14 charge availability fees?

15 A I -- I would assume what would happen, there is  
16 -- you're looking at some mechanism that could do that.  
17 And as far as I'm concerned, if availability fees become  
18 part of the company, then that contribution should become  
19 part of rate base, and it would go through the normal  
20 accounting system of the administration if -- if that was  
21 the case. The way it's set up now, there's not a  
22 mechanism for that.

23 Q So once -- if you have not already recovered the  
24 5.4 million, you did not plan on ceasing charging  
25 availability fees any time at any point?

1           A     I -- I haven't looked at that issue, and there  
2     isn't a plan for that. And there's nothing in the  
3     covenants and things that states that.

4           Q     Now, the -- you've been in the room this week  
5     when we were discussing the Fourth Amended and Restated  
6     Declaration of Restrictive Covenants?

7           A     Yes.

8           Q     Do you have a copy in front of you?

9           A     No, I do not.

10          Q     Hold on one second.

11                MS. LANGENECKERT: Jamie?

12          Q     (By Ms. Ott) This is Staff Exhibit No. 12. And  
13     it -- it was brought out in testimony yesterday that the  
14     property owners could remove the -- remove the  
15     availability fees, that they now have the right to change  
16     the document. Were you in here for that?

17          A     Yes, I was.

18          Q     Can you now turn to page 38? And that -- and  
19     then look at paragraph 19.3.

20          A     Okay.

21          Q     Will you read --

22          A     That paragraph?

23          Q     Well, read it up -- and I'll tell you when to  
24     stop because you don't need to read the entire thing.

25          A     The provisions of this declaration as amended

1 from time to time shall effect and run with the land and  
2 shall exist and combine all parties claiming interest in  
3 the development until January 1st, 2015, after which time  
4 the same --

5 Q You can go ahead and stop. That's great.

6 A Okay.

7 Q So would you agree with me that the property  
8 owners are not allowed to change this document until  
9 January 1st, 2015?

10 A Well, that appears to be so.

11 MR. COMLEY: I will object, your Honor. This is  
12 asking the -- this is asking the witness to interpret this  
13 document, and it's not the full paragraph. The paragraph  
14 speaks for itself. And the Court will note that after  
15 January -- at any time during the course of the covenants,  
16 the -- the property owners have a right to change that.  
17 It's set out in the rest of the paragraph.

18 So I'd object to the use of this in asking the  
19 witness to make legal determinations concerning when the  
20 property owners can make changes. It's unfair to do that.  
21 The thing speaks for itself. We can talk about that right  
22 now and see what it says.

23 MS. OTT: Judge, yesterday, Lake Region had Ms.  
24 Cason read this and interpret it in her mind what it said  
25 and stated that they -- they have the ability to change

1 it. And this goes directly to what Ms. Cason was  
2 testifying to yesterday and which Lake Region brought in.

3 MR. COMLEY: Your Honor, let me read the last  
4 sentence of 19.3.

5 MS. OTT: And he already answered the question.

6 MR. COMLEY: The declaration may be amended at  
7 any time by the developer at the request or consent of the  
8 Board until such time as a lot has been sold.

9 MS. OTT: Objection. He's testifying.

10 MR. COMLEY: I'm not testifying. I'm reading a  
11 document into evidence.

12 JUDGE STEARLEY: All right. All right, Counsel.  
13 The question has been asked and answered. But I am going  
14 to note that the answer was given on a partial reading of  
15 that section. The answers that were given yesterday, I  
16 believe, were based on the full reading. Since the  
17 question has been asked and answered, there's no objection  
18 for me to sustain or overrule.

19 Mr. Comley, you will get a chance to redirect  
20 since we haven't allowed Mr. Stump to address this issue  
21 that was interjected late in the proceedings by Staff. So  
22 you will have a chance to come back to that.

23 Q (By Ms. Ott) Mr. Stump --

24 JUDGE STEARLEY: You all may proceed.

25 Q (By Ms. Ott) Mr. Stump, yesterday, Ms. Cason

1 discussed how she is a lot owner and which built in the  
2 middle of two properties. Are you aware of the procedure  
3 in place for individuals that are in that same situation?

4 A Yes.

5 Q Is there a policy or procedure that addresses  
6 how to handle an individual that purchases multiple lots?

7 A I don't know if there's a policy. Generally, if  
8 someone would -- will come in -- we've dealt with this for  
9 many years on Ozark Shores. And if they have built a  
10 garage on a second lot or if they have developed that lot  
11 to the point that they will not be able to build a house,  
12 we'll drop that availability fee.

13 Q Now, is there a limit to that? Is it only if  
14 somebody buys two lots? Or what if they buy three lots  
15 and build in the middle of the -- build on Lot No. 2 and 1  
16 and 3 are on the other side or if four lots and they build  
17 between 2 and 3? Do you -- is this on a case by case  
18 basis or --

19 A It's on a case by case basis. But there's not a  
20 limit. If -- if there's not a -- an ability to build a  
21 house or structure on that lot, we do not charge  
22 availability fees. If, for example, the lot is in a gully  
23 that it would take a -- frankly, a house to be built  
24 there, we don't charge an availability fee for that type  
25 of lot, also.



1           Q     Now, in your opinion, if there wasn't -- if Lake  
2     Region Water & Sewer Company did not exist or there was  
3     not water or sewer infrastructure, would lot owners pay  
4     availability fees?

5           A     No.

6           Q     And that would be because the availability fees  
7     are related to the infrastructure?

8           A     The availability fees are something that's set  
9     up so that a person that owns a lot has the ability to  
10    receive water and -- and sewer service. Or water alone,  
11    depending on what he's paying for.

12          Q     I want to go back to kind of your relationship  
13    with the Schwermann family partnership. Is your wife and  
14    the Schwermanns in a partnership together? Do they have a  
15    partnership agreement?

16          A     Yes.

17          Q     And you're not a part of that partnership?

18          A     That's correct.

19          Q     And when did you first meet the Schwermanns?

20          A     1983.

21          Q     And were you business partners at that point?

22          A     We were actually business competitors.

23          Q     When did you form a relationship to no longer be  
24    competitors, but to be on the same team?

25          A     That was at a time that I was trying to acquire

1 a water system and Mr. Schwermann was trying to acquire  
2 the water system. And so we decided that it would be  
3 better to work together than against each other. And that  
4 was in 1983.

5 Q And you guys essentially have been business  
6 partners ever since?

7 A Yes.

8 Q Now, you're not a shareholder of Lake Utility  
9 Availability, I believe? You stated that earlier.

10 MR. COMLEY: I will object to the form of the  
11 question. It implies Lake Utility Availability is a  
12 corporate entity.

13 JUDGE STEARLEY: Please rephrase -- rephrase.

14 Q (By Ms. Ott) Are you one of the partners of  
15 Lake Utility Availability?

16 A No.

17 MR. COMLEY: I'll object to the form of the  
18 question. It implies that Lake Utility Availability is a  
19 general partnership. There is no evidence that it is a  
20 partnership.

21 JUDGE STEARLEY: Please rephrase, Ms. Ott.

22 Q (By Ms. Ott) Do you have any relationship with  
23 Lake Utility Availability?

24 A No.

25 Q Are you an employee of Lake Utility

1 Availability?

2 A No.

3 Q Going back to yesterday, Mr. Featherstone  
4 testified that you and your wife had a good working  
5 relationship. That was an assumption. Do you and your  
6 wife have a good relationship?

7 MR. COMLEY: I will object to the question as to  
8 what his marital status may be in connection with this.

9 MS. OTT: It has directly to do with their  
10 business relations being as Ms. Stump is not actively  
11 involved in any of these corporations or names being used,  
12 and it has been clearly shown in evidence that Mr. Stump  
13 is the primary actor.

14 JUDGE STEARLEY: I believe you can ask a  
15 question regarding his business relationship.

16 Q (By Ms. Ott) Mr. Stump, do you and your wife  
17 have good business relations?

18 A We do.

19 Q So do you ever discuss Lake Utility  
20 Availability?

21 A Not often. But we do discuss it.

22 Q Do you ever provide any management or oversight  
23 for Lake Utility Availability?

24 A No.

25 Q And you do not provide any billing -- management

1 in regards to the billing or collection of availability  
2 fees?

3 A No. That's not a function that I provide.

4 Q But Mr. Schwermann or the Schwermanns provide?

5 A Generally, Brian handles most of that.

6 Q Now, going back to when Mr. Comley was asking  
7 you a question about past cases that you brought up, do  
8 you have a copy of those cases or reports and orders with  
9 you?

10 A I do.

11 Q And were those cases that were stipulated, or  
12 were they decided by the Commission?

13 A They're stipulated.

14 Q Now, does Ms. Stump provide any oversight to the  
15 billing or collections of the availability fees?

16 A No.

17 Q Now, Ms. Langeneckert was asking if you had ever  
18 put a lien on a property owner for availability fees. And  
19 you indicated that was a no.

20 A On Lake Region, I don't believe we have.

21 Q And then you indicated that approximately 90  
22 percent pay their availability fees, but if that number  
23 would stop, you would consider putting availability -- a  
24 lien on individuals' properties?

25 A Yes.

1           Q     Is that discriminatory to not be putting a lien  
2     on property now but when you're not collecting enough  
3     money then to go ahead and put a lien?

4           A     I have no idea.

5           Q     So if an individual that is listening to this  
6     case finds out they're not going to put a lien on my  
7     property and they tell all their friends and all of a  
8     sudden nobody is paying availability fees anymore, then  
9     you're going to go out and put a lien on all their  
10    property?

11          A     We certainly would consider that.

12          Q     But you're not saying you would?

13          A     No. We'd have to evaluate the conditions.

14          Q     Now, why are availability fees treated  
15    differently on Lake Region than Ozark Shores?

16          A     If you look back at the history of -- of Ozark  
17    Shores, which is the beginning of the first availability  
18    fees, the -- the availability fees were originally  
19    established with, I believe it was Lakesites at that time,  
20    in which the utility invested in plant and their  
21    availability fees in the rate.

22                 The first rate case comes along. The Staff  
23    pulls out the availability fees and reduces rate base.  
24    Next rate case comes along with Ozark Shores, availability  
25    fees are thrown back in. Rate base is -- is changed.

1 Next case in the '94 period with Shawnee Bend, at the same  
2 time the Staff was including availability fees in Ozark  
3 Shores, the Staff was setting up rates for the Shawnee  
4 Bend that did not include availability fees and did not  
5 include the utility invested in plant.

6 So we're now on our -- kind of our -- our fifth  
7 time here. And each time, the Staff has flipped its  
8 position. And so it's kind of hard for the companies to  
9 -- to know what's going on out there.

10 And so we took the approach in '98 -- or '97  
11 that availability fees would be separated from the utility  
12 and the developer would contribute that -- that capital to  
13 the -- to the utility company.

14 Q Now, when you said we took that approach back in  
15 1997, are you talking about yourself or the company?

16 A The company.

17 Q And at that point, it was Four Seasons  
18 Lakesites?

19 A Yes, it was.

20 Q And Lakesites also was the developer for Ozark  
21 Shores?

22 A That's correct.

23 Q So same developer decided to treat them  
24 different for the two entities?

25 A Well, I think it was -- what happened there is

1 the seller at that time took the approach that the  
2 Commission -- or attempted to take the approach that the  
3 Commission was using in which, I believe, when they came  
4 in for their certificate, they actually proposed at the  
5 beginning that they would include availability fees in the  
6 -- in the company, and they would have the company invest  
7 in plant.

8 And -- and the Staff did not set that up and  
9 that particular proposal wasn't accepted. And so the  
10 Commission -- the company took the approach that the Staff  
11 set up which Mr. Hummell recommended.

12 Q And you were not a part of that case, correct?

13 A I was not part -- a direct part of the case. I  
14 was -- I worked for the developer at that time as a  
15 consultant.

16 Q And rates in the initial CCN case were set  
17 proforma, correct?

18 A That's correct.

19 Q Now, you just indicated that you were -- you  
20 worked for the developer at that time in '97, correct?

21 A I provided a feasibility study for -- for the  
22 developer at that time as a contractor.

23 Q Did you recommend two separate availability fees  
24 from revenue?

25 A No.

1           Q     So you recommended to keep availability fees in  
2     as revenue?

3           A     I my -- my recommendation at that time, which  
4     was the same as the Staff was handling the Lake -- the  
5     Ozark Shores case, was that availability fees would be  
6     part of the company and that the company would invest in  
7     -- in the plant.

8           Q     Today, if you were faced with the same question,  
9     would you make that same recommendation?

10          A     I probably wouldn't because every the time, it's  
11     become clear to me that, in my mind, availability fees are  
12     not subject to -- to Commission regulation. And so it's  
13     -- it's a -- a cleaner set-up to keep that development  
14     cost and the availability fees separate from the -- the  
15     utility. It makes the utility run more as, say, most the  
16     other utilities are operated.

17          Q     Now, you have involvement with Ozark Shores,  
18     correct?

19          A     Yes.

20          Q     And in -- availability fees for Ozark Shores are  
21     included in revenues, correct?

22          A     As of the last case. We're not sure what will  
23     happen next time around.

24          Q     And you were a party to that case. Or involved  
25     in that case?



1           A     Yes.

2           Q     Now -- and that was signed by stipulation and  
3 agreement, correct?

4           A     Yes.

5           Q     Now, if you believed availability fees were not  
6 subject to Commission jurisdiction, why would you sign a  
7 stipulation and agreement agreeing that the Commission has  
8 regulation authority over it?

9           A     We filed as a small company rate case at that  
10 time. And we spent two years attempting to get a -- a  
11 rate increase. And it was pretty much a stalemate with  
12 anything that the company did.

13                     And the company stockholders finally reached a  
14 point that they said, Take what you can get and get this  
15 case over with. So -- so after two years, we signed off.

16          Q     Now, you are aware in a small company rate  
17 proceeding that you can go before the Commission and hire  
18 an attorney, correct?

19          A     I'm not sure that was the case in -- at that  
20 time. Again, I -- this was in ninety -- '97. And I know  
21 at that time there was no time limit on the time that the  
22 -- the Staff could have on a small case, which I think  
23 maybe has changed now. But at that time, it was just a  
24 two-year stonewall.

25          Q     Now, if Staff were to ask for the costs

1 associated with the billing, collecting and managing for  
2 the availability fees that Lake Utility Availability sends  
3 out, would Lake Region or Ms. Stump and Mr. Schwermann  
4 provide those answers to Staff for a true-up?

5 A I -- I think so. Yes.

6 Q Now, are you aware of any other water or sewer  
7 utility system in the state that has approximately 70  
8 percent of undeveloped lots and not have utility tracking  
9 service?

10 A And not have what?

11 Q I'm sorry. Let me rephrase. Do you know of any  
12 other utility water and sewer system in the state that has  
13 approximately 70 percent of the lots that are not  
14 developed and not -- and not tracked -- and not -- hold on  
15 one second. Oh, and not taking utility service. I  
16 apologize.

17 A I probably know of -- of one or two. Some of  
18 the places like the Branson area have some big  
19 developments that have -- have platted a lot of lots and  
20 never had more than a few homes built.

21 Q Do they have availability fees?

22 A I -- I do not know whether they have -- have  
23 availability fees or not.

24 Q Isn't it rather unusual to have built a system  
25 the size -- the size of the Lake Region system on the

1 Shawnee Bend area with two-thirds of the lots undeveloped  
2 over -- over the years?

3 A Well, I think the Horseshoe Bend and Shawnee  
4 Bend developments are -- are very unique developments that  
5 there -- as far as I know, there are none really  
6 comparable to them in the state.

7 They're a very different structure from most  
8 utilities in that, most utilities, you build from the  
9 center and you develop your lots outward. You start at  
10 the back and go to the front or you start at the front and  
11 you go to the back.

12 On Horseshoe Bend and Shawnee Bend, you see  
13 everyone builds around the lake. So everyone builds at  
14 the far outreaches of the system, which leaves the  
15 interior with very few homes. And yet you have to have  
16 water and sewer lines throughout the whole system to get  
17 to those outlying areas.

18 So -- so rather than having a -- a -- what I  
19 might call a circular system that keeps expanding outward  
20 like a -- a city might develop where the suburbs grow and  
21 it grows around it, you have just the opposite on  
22 Horseshoe Bend and Shawnee Bend in which the outer reaches  
23 are developed first, and the development moves inward. So  
24 it's an entirely different structure than you see in most  
25 developments.

1           Q     Now, back to the functions of Lake Utility  
2     Availability. They also utilize office space shared with  
3     Ozark Shores, Lake Region and the Public Water Supply  
4     District, correct?

5           A     Yes. Cynthia has -- has a desk.

6           Q     And she uses a computer?

7           A     Yes.

8           Q     And there's a billing program for the  
9     availability fees?

10          A     It's the same -- same program we use for all the  
11     systems.

12          Q     And she uses all the same office furniture,  
13     equipment?

14          A     Yes.

15          Q     And does she use their supplies, their paper,  
16     their pens?

17          A     Yes. I think I addressed that when -- when I  
18     said that those would be reasonable costs to -- to  
19     reimburse.

20          Q     I just want to be clear because Mr. Summers  
21     indicated yesterday that she did not use any of that.

22                 MR. COMLEY: Did we include paper clips?

23          Q     (By Ms. Ott) So when you said that 3 percent of  
24     Ms. Goldsby's salary would be a fair number, did that  
25     include all of the office supplies, space, rent,

1 utilization of the computer, the furniture?

2 A The -- the 3 percent was referring to her -- her  
3 salary, not office space.

4 Q And why is it Mr. Schwermann -- Brian  
5 Schwermann's responsibility to oversee the activities of  
6 billing and collection of availability fees?

7 A He's a CPA and is a little more qualified than  
8 good old engineers.

9 Q And why hasn't he delegated that authority to  
10 Mr. Summers?

11 A I think that goes back to the -- the question  
12 that was asked earlier about how you manage your company  
13 and how you run your company. And, quite frankly, one of  
14 our theories are that the person that holds the checkbook  
15 runs the company. And so we -- we believe in that theory,  
16 and -- and we handle those -- those type of functions.

17 Q But you allow Mr. Summers to handle all of the  
18 day-to-day operations of Ms. Goldsby in terms of the  
19 billing and collecting of Lake Region's water and sewer  
20 bills?

21 A That's correct.

22 Q But he --

23 A But he does not have -- he does not handle the  
24 final bank accounts.

25 Q So Ms. Goldsby's collection of Lake Utility

1    Availability bills is the final collection -- the -- the  
2    final bank amount? I'm sorry. I guess can you repeat  
3    your answer to the last question?

4            A    The corporate office handles our bank accounts I  
5    think is the answer to that question.

6            Q    And that is the office in Kansas City?

7            A    Yes.

8            Q    So are bills mailed to Kansas City?

9            A    No. The bills are -- are mailed to the office.  
10   And the money is deposited into accounts that Kansas City  
11   handles.

12           Q    Now, are availability fees deposited into  
13   accounts in -- in the Lake Ozark area and then Kansas City  
14   handles them?

15           A    I couldn't tell you that at the moment because  
16   we're in the process, and I'm not sure -- it could be  
17   completed last week. But all -- all bank accounts are  
18   going to be handled out of Kansas City. So I'm not sure  
19   if every account is there now.

20                    We have had some local accounts in the past.  
21   But our -- our status right now is that all accounts are  
22   -- are going to be out of Kansas City.

23           Q    So in the future, all of the bills would be sent  
24   to Kansas City for depositing?

25           A    Actually, we've got a -- somewhat of an

1 automated system that the bills are run through the magic  
2 machine. And that's -- then that is automatically  
3 deposited in the Kansas City accounts.

4 Q So are you referring to one of those little  
5 check machines they have in stores which if you write a  
6 check these days, it's as if you used a debit card?

7 A Right.

8 Q Now, do you have a number of what percentage of  
9 office costs and expenses for rent, equipment use, office  
10 supplies which should be attributed to Ms. Goldsby's  
11 efforts on Lake Utility Availability?

12 A No, I do not.

13 Q Could you get -- get Staff one?

14 A Yes. I -- I could -- could certainly come up  
15 with that.

16 MS. OTT: I have no further questions at this  
17 time. Thank you.

18 JUDGE STEARLEY: Thank you, Ms. Ott. Ms.  
19 Baker, cross-examination?

20 MS. BAKER: Thank you.

21 CROSS-EXAMINATION

22 BY MS. BAKER:

23 Q Good morning.

24 A Good morning.

25 Q I'm a little bit confused about one aspect of

1 the questioning before. You had stated that -- that you  
2 understood that Lake Utility Availability was a -- a  
3 fictitious doing business as registered name, correct?

4 A Yes.

5 Q Okay. You also stated that you thought that the  
6 availability fees -- or that the entity behind Lake  
7 Utility Availability was the North Suburban -- North  
8 Suburban Public Utility; is that correct?

9 A If I did, I don't -- that wasn't correct.

10 Q Okay. Explain to me -- or were you here for  
11 Mr. Summers' testimony where we went through each  
12 individual entity or doing business as?

13 A Yes.

14 Q Okay. Can you tell me the difference between  
15 Lake Utility Availability and Lake Utility Availability 1?

16 A The -- the only difference I know of is the  
17 original intent of the Lake Availability relating to North  
18 Suburban is that at the time the company was purchased,  
19 our plan was to transfer ownership of that to Lake Region.

20 We found that that was more complicated than we  
21 thought it was going to be and abandoned doing that. So  
22 that's -- that's the whole reason for the two filings was  
23 there was just some approach we had started with and an  
24 approach we found that we just really couldn't follow  
25 through with.



1           Q     Okay.  So the -- the billing for the  
2     availability charge is being done by Lake Utility  
3     Availability 1; is that correct?

4           A     That is correct as far as I know.

5           Q     Okay.  Are you aware of any contract between  
6     Lake Utility Availability 1 and The District for  
7     collection of the availability fees?

8           A     No.  There is not a contract.

9           Q     Okay.  In some of the other questions, you said  
10    that you were interested in Lake Region since -- was it  
11    1994?

12          A     Yes.

13          Q     Okay.  And when did you actually become involved  
14    in Lake Region?

15          A     I -- I did some consulting work, prepared the  
16    feasibility study for their certificate case -- or did the  
17    preliminary work, they finished it, in I want to say about  
18    1995.

19          Q     All right.

20          A     And then I didn't have any involvement with the  
21    company until it was purchased.

22          Q     Okay.  All right.  And you -- you stated that  
23    you understood that availability fees -- that there were  
24    about 1200 to 1300 bills that were being sent out this  
25    year; is that correct?

1           A     I think that's correct.

2           Q     Isn't it true that new houses are being built  
3 each year in Porta Cima?

4           A     Not many now. In the past, there has been.

5           Q     All right. So you would agree that there have  
6 been more undeveloped lots in the past than there are now?

7           A     Actually, what's happened with the availability  
8 fees is that over the years, the developer has continued  
9 to develop, and so there has been a reduction as houses  
10 are built.

11                     And then there have been new subdivisions or  
12 sections added on as -- as time has gone on. So -- so  
13 those numbers have gone kind of steadily upward until  
14 about, I want to say, two years ago. And now they're  
15 starting that downward trend because there's no more  
16 development going on.

17           Q     Clarify that for me. Until about two years ago,  
18 the number of undeveloped lots was going up or going down?

19           A     Up until -- and, again, I -- time flies, so I  
20 may not be real -- real clear on this. But I know that up  
21 until about -- I want to say 2005, 2006 is when a lot of  
22 the availability fees started coming online. And then  
23 since that time, based on the number of houses, they've  
24 started going down.

25           Q     Okay. So -- so you think about 2005 or so,

1     there were more undeveloped lots than there are today?

2             A     Oh, yes. I think so.

3             Q     Okay. All right. How many availability fee  
4     bills were rendered in 2009?

5             A     You know, I don't have that exact number, but I  
6     think it -- it is in that range of 12 -- 1200.

7             Q     At what point did it become more than 1300?

8             A     I don't think it was ever more than 1300 as far  
9     as -- as far as I know. I don't think it was more than  
10    1300. I think that that was probably a peak at most.

11            Q     But you don't know that?

12            A     I'm not positive of that, no.

13            Q     Okay. Did you pay any money for the original  
14    plant? Were you the original developer of --

15            A     No.

16            Q     Did Sally Stump or RPS pay any money for the  
17    original plant?

18            A     No.

19            Q     How much money did Sally Stump or RPS pay for  
20    Lake Region?

21            A     They paid for the stocks of -- of Lake Region  
22    and the availability fees. The total cost was \$3 million.

23            Q     Was there any other consideration that was in  
24    that agreement, or 3 million is about the total?

25            A     Three million one I think was the total -- total

1 -- total payment.

2 Q Okay. All right. And you are aware that in  
3 Staff's proposal that capital plant is part equity and  
4 part debt interest that's been included?

5 A Yes.

6 Q And you're aware that, in Staff's proposal,  
7 there is a return on the investment in capital  
8 improvements?

9 A Yes.

10 Q Okay. And you would agree that the availability  
11 fees are separate from the capital improvement and the  
12 return on investment from the utility?

13 A They're separate in this case from the rate  
14 base. Yes.

15 Q Okay. And so, basically, what are the  
16 availability fees to the shareholder if they have no  
17 investment or purchase in the plant?

18 A Can you state that one more time and make sure I  
19 understand what you're saying here?

20 Q If the shareholders of Lake Region that are  
21 there now, you stated that they -- they had no -- they  
22 paid no money for the original plant. They were not the  
23 original developer. What are the availability fees to  
24 them if they have no money in the original plant?

25 A Well, I -- I think the -- the first part of your

1 question is -- is that RPS and Sally Stump acquired stocks  
2 of Lake Region. So that's a separate, I want to say,  
3 acquisition, not related to how the capital structure of  
4 the company is. I don't know if that answers your  
5 question or not.

6 Q When people are required -- are people required  
7 to pay back owed availability fees before they are allowed  
8 to take utility service?

9 A No. We feel that that -- that that's in  
10 violation of PSC regulations.

11 Q Are they informed that back availability fees  
12 are owing?

13 A When they connect? Is that --

14 Q When they come to you for service or come to the  
15 utility for service, are they made aware that there are  
16 back utility fees -- or availability fees are owing?

17 A When they come for service, they are -- they  
18 apply for service, and they -- they tie in. We don't --  
19 there's not any ability to collect those back fees like  
20 Pleasant Valley or whoever that was yesterday.

21 MS. BAKER: I think that's all the questions I  
22 have. Thank you.

23 JUDGE STEARLEY: All right. Thank you,  
24 Ms. Baker. Commissioner Kenney, are you still with us?

25 COMMISSIONER KENNEY: I am, indeed.

1 JUDGE STEARLEY: All right. Feel free to  
2 question Mr. Stump.

3 CROSS-EXAMINATION

4 BY COMMISSIONER KENNEY:

5 Q Mr. Stump -- Dr. Stump, can you hear me?

6 A I -- I can hear you, and I guess I'll talk to  
7 the microphone this morning.

8 Q Thank you. I'm sorry I'm not able to be there  
9 with you. And I will try not to duplicate areas that have  
10 already been covered. Can you tell me what the  
11 availability fees -- or strike that. What value do the  
12 unimproved lot owners get for those availability fees?

13 A The value they get is they have that ability to  
14 build a house on their property and connect to water and  
15 sewer without an alternate, which would be to dig a well  
16 and put a on-site treatment plant in.

17 Q So if I'm understanding your answer correctly,  
18 in the absence of availability fees, the unimproved lot  
19 owners would not have the ability to connect to the  
20 existing system?

21 A I -- if I can answer that, if there is -- if  
22 there's a utility there and there's a water and sewer line  
23 there, those customers would always be able to connect to  
24 -- to that water and sewer line if it's a regulated  
25 company or a municipality, I'm assuming.

1           Q     So then that -- so then irrespective of whether  
2     they pay the availability fees or not, they would be able  
3     to connect to the existing system, right?

4           A     That's -- that's correct.  They --

5           Q     Okay.

6           A     If they refuse to pay those fees, the utility  
7     does not have that ability to say, no, you cannot connect.  
8     They can connect anyway.

9           Q     Well, then -- then let me re-ask my question.  
10    What value does the unimproved lot owner receive for those  
11    availability fees, then?

12          A     I -- I'm not sure -- I can't answer that in  
13    terms of the -- the value that -- that he receives.  Those  
14    fees are what is paid for getting those lines there in the  
15    first place.

16          Q     Okay.  So -- so what you're telling me is that  
17    the availability fees are paying for infrastructure that  
18    was already there?

19          A     It's paying for that infrastructure that has  
20    been put in to serve those lots.

21          Q     It's paying for the infrastructure that was put  
22    in by the developer?

23          A     Yes.

24          Q     Okay.  Do you know whether or not the original  
25    price of the lot that the lot owner paid included some

1 premium for the developer's infrastructure?

2 A You know, I -- I can't answer that because I --  
3 I'm not -- not the developer. I -- I've worked with the  
4 developer. And -- and I do know that this particular area  
5 and subdivision that the market conditions have always  
6 been such that it -- it was hard to recover all the costs  
7 of the lots -- all the utilities in the lots.

8 Q All right. So is it your belief and is it your  
9 testimony, then, that the developer initially charged  
10 these availability fees in an attempt to recoup his  
11 investment in the infrastructure?

12 A That's correct.

13 Q And how do you know that?

14 A I -- I know that because I prepared a  
15 feasibility study for the developer when he brought this  
16 to the Commission. And that was one of the -- the tasks  
17 that he -- he defined, which was that he had to recover  
18 some of those infrastructure costs to make the development  
19 feasible.

20 Q He had to -- he had to recover some of those  
21 infrastructure costs to make the development feasible.  
22 But did he have to recover them via availability fees?

23 A That was -- that was his decision. And that's  
24 -- that's one of the ways that he structured his  
25 development.



1           Q     So you do know, based upon your personal  
2     knowledge and discussion with the developer, that one of  
3     the ways in which he was going to recoup his investment in  
4     the infrastructure was by the charging of availability  
5     fees?

6           A     That is correct.

7           Q     But you do not know whether the -- the sale  
8     price of the lots had some of that cost built into it?

9           A     I do not know that.

10          Q     Who was the developer of the property? Who was  
11     the developer of the subdivision?

12          A     I -- I think the official name was Four Seasons  
13     Lakesites. And the primary developer, I would assume,  
14     major shareholder is Peter Brown.

15          Q     Is that who you contracted with as a consultant?

16          A     I contracted with that organization and worked  
17     with his accountant and with -- with Peter and their  
18     attorneys.

19          Q     Who were his attorneys?

20          A     At that time, it was Hawkins, Brydon &  
21     Swearengen. Gary Duffey.

22          Q     And who were his accountants?

23          A     Doug Boden.

24          Q     So then you dealt with attorneys from  
25     Swearengen, and you dealt with the accountant Doug Boden?

1           A     Yes.  And with Peter Brown.

2           Q     And with Peter Brown.  So all three of those  
3 individuals would be the ones with the most knowledge  
4 about what was built in the sale price of the lots?

5           A     Yes.  I -- I think that Doug Boden no longer  
6 works for that organization.  But he did live in the lake  
7 area.  And Peter Brown is still living in the area and is  
8 still active.

9           Q     How do you know that?

10          A     I see him frequently.

11          Q     Do you still have continuous business dealings  
12 with him?

13          A     We have -- we have -- yes, because they still  
14 continue to do different projects.  Our -- our last  
15 business dealing with them was we had to obtain an  
16 easement across some of their property and a lot for  
17 building a lift station and line.  So we -- we generally,  
18 because of all the property they own, have contact with  
19 them fairly frequently.

20          Q     Would you know whether his -- whether it is  
21 Mr. Brown's practice to build into the price of the lots  
22 any cost that he needs to recover for infrastructure?

23          A     I do not know that.  I'm not that close to their  
24 organization.

25          Q     Let me ask you a hypothetical question.  If some

1 -- if some developer hypothetically built into the price  
2 of their lots the -- the recovery of infrastructure  
3 development costs, what purpose or what value would  
4 availability serve in that circumstance, assuming my  
5 hypothetical?

6 A I don't think it would serve a purpose if -- if  
7 -- if that was the case.

8 Q Okay. You -- do you have your surrebuttal  
9 testimony in front of you? I'm sorry. Your rebuttal  
10 testimony.

11 A Let me see. I -- I do not have it in front of  
12 me. I have it back at the desk.

13 Q I bet your attorney has it, though.

14 A It's -- I think it's on its way here.

15 Q Thank you. I can see you on the computer, but  
16 there's a delay.

17 A Okay. Okay. I have the surrebuttal and the  
18 rebuttal.

19 Q Can you turn in your rebuttal testimony to your  
20 -- to your resume and your CV?

21 A Yes.

22 Q And I think it's the second page. Okay. It's  
23 Exhibit 1, the second page, and it's 1977 to present. It  
24 indicates you're a regulated utility owner and then it  
25 lists the facilities under Missouri that you own. Do you

1 see where I am?

2 A Yes.

3 Q All right. I want to ask you about each of  
4 these Missouri regulated -- these are all regulated  
5 utilities?

6 A These -- these are actually -- are you on the --  
7 the regulated utility section?

8 Q Second page of your resume.

9 A Yeah. Right. I'm there.

10 Q And it reads 1977 to present regulated utility  
11 owner, and there's a paragraph at that reads since 1967,  
12 Dr. Stump and his wife?

13 A Yes. I'm there.

14 Q And it lists -- these facilities are listed  
15 below by state?

16 A Yes.

17 Q And you have Missouri. And Mid Missouri  
18 Sanitation, 500 customers?

19 A Right.

20 Q All right. We're on the same place?

21 A Yes, we are.

22 Q Those are all regulated entities?

23 A Actually, at -- at one time, Mid-Missouri  
24 Sanitation is actually the predecessor of North Suburban  
25 Public Utility, so that -- that company has changed over

1 the years. At this time, it does not own any regulated  
2 utilities. So Mid-Missouri Sanitation was originally a  
3 subdivision area out of Columbia, Missouri, that was  
4 regulated. It was sold to the Boone County Regional Sewer  
5 District.

6 Q Okay. And that was the predecessor to North  
7 Suburban Public Utility?

8 A That was.

9 Q Okay. And that one's no longer a regulated  
10 entity --

11 A Right.

12 Q -- under our jurisdiction? What about sewer  
13 companies?

14 A Actually, I can go down the entire list here,  
15 and only Ozark Shores and Lake Region are regulated sewer  
16 companies.

17 Q What's -- what's the status of the rest of  
18 these?

19 A The rest of these, Cedar Lake, Clearview, El  
20 Chaparrelle, Clear Meadows, Crestview were sold to the  
21 Boone County Regional Sewer District. Saline Sewer  
22 Company was sold to the Jefferson County Public Sewer  
23 District. The Meadows Water Company was sold to the City  
24 of Willard, Missouri. And those -- so none of those are  
25 regulated now.

1           Q     So Mid-Missouri down through Crest View were all  
2 sold?

3           A     Yes.

4           Q     To Boone County?

5           A     Yes.

6           Q     When was that sale?

7           A     Those -- those sales started in 1985. Mid  
8 Missouri Sanitation, Cedar Lake, Clearview, El Chaparelle,  
9 Prairie Meadows, Crestview were all sold at one time in  
10 1985. Saline Sewer Company was sold in, I want to say, 19  
11 -- early 1980 -- or '98, '99, something like that. And  
12 Meadows was sold two years ago.

13          Q     You were a shareholder in each of the  
14 corporations that owned or was affiliated with each of  
15 those regulated entities?

16          A     Yes, I was.

17          Q     And were those all owned by the holding company,  
18 North Suburban Public Utility?

19          A     No. Actually, only Mid-Missouri Sanitation.  
20 The rest of those were owned by either me -- and in the  
21 case of Saline and Meadows, it was me and Robert  
22 Schwermann.

23          Q     Individually or as shareholders of a  
24 corporation?

25          A     Shareholders of the corporation.

1           Q     And was that the corporation -- Saline Sewer  
2 Company was the corporation?

3           A     Yes, it was.

4           Q     Okay. Meadows Water Company was a corporation?

5           A     Yes.

6           Q     These weren't owned by holding companies?

7           A     No. All -- all of these except -- except  
8 Mid-Missouri Sanitation were individual corporations.

9           Q     Okay. Now, am I correct -- are you a  
10 shareholder in North Suburban Public Utility today?

11          A     I'm not. My wife is.

12          Q     Okay. North Suburban Public Utility was the  
13 owner of the fictitious name Lake Public Utility, right?

14          A     Let's see. No. No. That's --

15          Q     Lake Public Utility 1?

16          A     No. Well, I'll take that back. North Suburban  
17 Public Utility was the owner of the fictitious name Lake  
18 Utility Availability.

19          Q     Thank you. I'm sorry. Lake Utility  
20 Availability. And RPS Properties and your wife are the  
21 owners of the fictitious name Lake Utility Availability 1?

22          A     Yes. That's correct.

23          Q     Were you -- you were present yesterday in the  
24 room when Mr. Summers was testifying?

25          A     Yes, I was.

1           Q     And Mr. -- and you heard him say that he was the  
2     one that signed off North Suburban Public Utility's  
3     registration of Lake Availability, the first one?

4           A     Yes.

5           Q     And then he also testified that you told him  
6     that there was a tax advantage to establishing the other  
7     fictitious name owned by RPS and your wife. Were you  
8     present for that testimony?

9           A     Yes. And I -- and I think I -- I probably  
10    should correct that. I think what he was referring to --

11          Q     Wait. Let me ask you a question. Are you  
12    correcting Mr. Summers?

13          A     Yes.

14          Q     Okay. All right. Go ahead.

15          A     Yes. I -- I think he was referring to the fact  
16    that when Lake Region stocks were purchased, there was a  
17    consideration for North Suburban to acquire those stocks  
18    thinking there might be some tax benefits with the  
19    Schwermann family holdings.

20                 And as they reviewed that, they found that it --  
21    it really wasn't -- wasn't beneficial. So it was never  
22    pursued.

23          Q     Was that why the second fictitious name  
24    registration was set up?

25          A     Yes.



1           Q     And you have personal knowledge of -- of these  
2 facts and the rationale behind setting up the second Lake  
3 Utility Availability?

4           A     Yes, I do.

5           Q     And -- and how do you have those facts? Were  
6 you involved in that process?

7           A     Yes, I was. I was, again, working with the  
8 Schwermanns on that issue.

9           Q     And working with them in what capacity?

10          A     Representing my wife, I would say, would have  
11 been my capacity.

12          Q     Okay. So Lake Availability 1 is the entity now  
13 that is entitled to receive the availability fees,  
14 correct?

15          A     It -- it's the entity that -- it's the  
16 fictitious name that -- that's sending out the bills. RPS  
17 and Sally Stump are the owners of those fees.

18          Q     Into whose account do those fees go?

19          A     It goes into an account owned by RPS Properties  
20 and Sally Stump entitled Lake Utility. But that is owned  
21 by Sally Stump and RPS Properties.

22          Q     Sally Stump as an individual?

23          A     Yes.

24          Q     And RPS Properties as a partnership?

25          A     It's a family trust.

1           Q     Who is the trustee?

2           A     Of RPS Properties? That would be probably  
3 Robert Schwermann.

4           Q     And who are the beneficiaries of that trust?

5           A     Robert Schwermann, his wife, his son Brian, and  
6 his daughter Susan.

7           Q     So RPS Properties, LP is a Kansas limited  
8 partnership, right?

9           A     I would -- I would agree. I'm not sure, but I  
10 would suspect that's probably what it is.

11          Q     And that's a separate and distinct entity from  
12 the RPS Properties Family Trust?

13          A     I couldn't answer that. I'm not sure how that  
14 -- that -- I wasn't aware that there was a difference  
15 there.

16          Q     Well, there is an RPS Properties limited  
17 partnership that is a Kansas limited partnership, and its  
18 general partner is Schwermann Properties Limited. Are you  
19 aware of that fact?

20          A     The Schwermanns have substantial real estate  
21 holdings in Kansas. And I am not aware of -- of exactly  
22 how -- I'm not part of the ownership of their real estate  
23 properties, so I really can't say exactly how they've  
24 structured everything.

25          Q     So you're not a partner in any of those general

1 partnerships or limited partnerships?

2 A No, I'm not. And my wife is not.

3 Q Okay. And your wife is not either?

4 A Yes.

5 Q Okay. Are you aware of what, if any, tax  
6 consequences there are of the d/b/a collecting the  
7 availability fees versus the corporate entity collecting  
8 the availability fees?

9 A No, I'm not. Only -- only that if a corporate  
10 entity was a Sub S corporation, my understanding is it  
11 would be just about the same as the d/b/a.

12 Q That it would be just a pass-through to the  
13 individual -- RPS and your wife?

14 A Yes. And North Suburban, as we discussed  
15 earlier, is a Sub S corporation.

16 Q Okay. Now, there was a question yesterday or  
17 there was a statement made yesterday that the revenue --  
18 the availability fees go to RPS, Mrs. Stump and, to some  
19 extent, to the developer. Is -- is that your  
20 understanding of the availability fees as they're still  
21 being charged today? Do any of them still go to the  
22 developer?

23 A Yes, they do.

24 Q Okay. How much?

25 A There was a court case with -- that was filed

1 previous to the time that we acquired the stocks, and that  
2 that court case was between Waldo Morris and the utility  
3 and the seller of which the developer had claim to the  
4 availability fees. That court case was settled shortly  
5 after we acquired the company. There was a  
6 confidentiality agreement that prohibits me from -- from  
7 stating how much that is.

8 Certainly, from our position, we would have no  
9 problem divulging it, but it would have -- you'd have to  
10 have approval from the Four Seasons Lakesites to -- to  
11 obtain that information.

12 Q Okay. But the developer is still receiving some  
13 -- some portion of the availability fees?

14 A Yes. We are free to divulge that.

15 Q So is the developer still receiving some of  
16 these availability fees to offset his investment in the  
17 infrastructure?

18 A Yes, he is.

19 Q Is there -- and other than the -- the  
20 confidential settlement agreement, is there some document  
21 that you're aware of that reflects that the availability  
22 fees were intended to offset the developer's original  
23 investment in the infrastructure?

24 A I'm not sure that I know of -- of a document  
25 like that. It might exist, but I'm not aware of one.

1           Q     If -- if the availability fees that the  
2     unimproved lot owners are paying today, some portion of  
3     them is going to the developer, functionally, what do  
4     those proceeds represent in your mind?

5           A     They represent, in my mind, the repayment of the  
6     original investment made by the developer.

7           Q     Would it be akin to contributions at the end of  
8     construction?

9           A     They would -- they would be accounted for as  
10    contributions made in construction on Lake Region's books  
11    of which I think we referred to earlier that that is  
12    somewhere between 5.3 and \$4.1 million.

13          Q     And so that amount is reflected on Lake Region's  
14    books as CAAC?

15          A     Yes, it is.

16          Q     If a lot of them are never billed -- and this  
17    question may have been asked of you. If a lot of them are  
18    never billed, are they just paying those availability fees  
19    in perpetuity?

20          A     The way it's structured now, yes. And it's the  
21    same way with Ozark Shores.

22          Q     So there conceivably, hypothetically, could come  
23    a point in time where enough land owners, let's say, never  
24    build, right?

25          A     Yes.

1           Q     And they continue to pay availability fees in  
2     perpetuity, and the developer recoups his whole  
3     \$5.3 million worth of investment.  There could come a  
4     point in time where that -- where those availability fees  
5     just amount to excess revenue?

6           A     That could happen.  Yes.

7           Q     Do you know how much in availability fees have  
8     been collected to date?

9           A     I haven't calculated those numbers.  They're  
10    certainly -- I'm sure would be available in the Lake  
11    Utility books and the -- the books of the utility prior to  
12    1998.

13          Q     So there is an accounting of it somewhere?

14          A     Yes, there is.

15          Q     Have you looked at it recently?

16          A     I -- I actually haven't added that number up and  
17    looked at that number.

18          Q     Would you be able to give me a ballpark figure  
19    or a best guess?

20          A     If I took a minute or two, I could probably --

21          Q     Okay.  Go ahead.

22          A     Yeah.  Just -- just let me -- let me think a  
23    second on this.  My ballpark guess might be a million and  
24    a half to \$2 million.  But that -- again, that's -- that's  
25    without having a calculator and -- and not having exact

1 numbers up here.

2 Q Fair enough. And it's also your understanding  
3 that the developer didn't build anything into his lot --  
4 into the lot prices? Or I would have to ask the developer  
5 that question?

6 A I -- I think that that would have to come from  
7 the developer because I certainly don't have that -- that  
8 knowledge.

9 Q All right. And just so I'm clear, are you a  
10 shareholder in any of these corporate entities that we've  
11 discussed, either North Suburban or the company that owns  
12 Lake Region?

13 A No. I -- I am not a shareholder in either  
14 corporation.

15 Q When did you divest your interest in North  
16 Suburban?

17 A In 2001 or two, I believe.

18 Q And why did you do that?

19 A My wife and I were -- were kind of restructuring  
20 our -- our estate and wanted to have some assets in my  
21 name, some in her name and some in community name.

22 Q And you're the President of Lake Region Water &  
23 Sewer Company?

24 A Yes, I am.

25 Q Do you earn a salary?

1           A     No, I do not earn a salary as -- as President.

2           Q     A consulting fee?

3           A     No.

4           Q     Candy?

5           A     I have a very generous wife.

6           Q     You have a very generous wife.

7                   COMMISSIONER KENNEY:  Okay.  Dr. Stump, thank  
8     you for your time.  I don't think I have any others at  
9     this time.

10                  MR. STUMP:  Thank you.

11                  JUDGE STEARLEY:  All right.  MR Stump, I have a  
12     couple quick questions for you.

13                  MR. STUMP:  Sure.

14                               CROSS-EXAMINATION

15     BY JUDGE STEARLEY:

16           Q     If the infrastructure wasn't in place for water  
17     and sewer, what would a property owner down there need to  
18     do to establish those services?

19           A     Actually, if they were not there, under today's  
20     current DNR standard, you couldn't build a house because  
21     you couldn't get a permit to build an on-site sewer  
22     system.

23           Q     Could -- could you put in a well for water?

24           A     You could drill a well for water.  But sewer  
25     would be the real problem.



1           Q     Okay.  Staff showed you one of their exhibits  
2     that was marked Exhibit No. 11 earlier.

3                   JUDGE STEARLEY:  Ms. Ott, do you still have your  
4     copy of that?

5                   MS. OTT:  Yes.

6                   JUDGE STEARLEY:  If you could please give that  
7     back to Mr. Stump?

8                   MS. OTT:  Does he not have it?

9           Q     (By Judge Stearley)  Is it -- are you talking --

10          A     Do I have it?

11                   MS. OTT:  You should.

12          A     I've got it.  I guess this is it?

13                   MS. BRUEGGEMANN:  Uh-huh.

14          Q     (By Judge Stearley)  And Staff's attorney asked  
15     you to look at that in determining the underlying business  
16     entity under the fictitious name, I believe; is that  
17     correct?

18          A     Yes.

19          Q     Could you look up at the upper right-hand corner  
20     of that document and tell me what you see there?

21          A     This -- well, I think -- I think I've got the  
22     wrong one.

23                   MS. OTT:  He's got the wrong document.

24          Q     (By Judge Stearley)  Okay.  This is Staff  
25     Exhibit No. 11.

1           A     The upper right-hand corner?

2           Q     That's correct.

3           A     Clear up where the file number is or just the --

4           Q     Yes. Where the file number is.

5           A     Okay. It's File No. 200433608008X00624914.

6           Q     Okay. Keep reading.

7           A     Filed 12/01/2004. Expiration date, 2001 -- I'm

8     sorry. Expiration date, 1/21/2009.

9           Q     All right. Thank you very much. I have one

10    final question for you. From your testimony on time, you

11    were working with the -- with Lake Region at the time that

12    2000 -- year 2000 assignment was made; is that correct?

13           A     I was attempting to acquire the system at that

14    time. And one of the other acquisition people, obviously,

15    I was in competition with was Roy and Cindy Slate -- Roy

16    and Cindy Slate. So I was attempting to buy the company

17    at that time from the developer.

18           Q     Okay. And are you familiar with that series of

19    assignments that took place?

20           A     Actually, I was not part of that and was not

21    familiar with what happened at that time. In other words,

22    I was -- I lost. I was out of the picture.

23           Q     Okay. So you weren't a part of the business

24    decision?

25           A     No. I was -- I was not part of that at all.

1           Q     All right. Did you have an opinion regarding  
2 the prudence of that decision to make that assignment?

3           A     I -- I'm not sure if -- if I could answer that.  
4 I -- it appeared to me that as they established the  
5 company, they -- they weren't quite sure what -- what was  
6 happening there. And when they made that assignment, I'm  
7 not sure that they did exactly what they thought because  
8 that's what resulted in a lawsuit.

9                     JUDGE STEARLEY: All right. Thank you very  
10 much. Recross based on questions from the Bench?

11                    MS. LANGENECKERT: Yes. I have a couple  
12 questions.

13                                 RE CROSS EXAMINATION

14 BY MS. LANGENECKERT:

15           Q     Commissioner Kenney asked you about what  
16 customers get when they pay availability fees. And you  
17 indicated that you felt that they could have the future  
18 allowance to get water and sewer service; is that correct?

19           A     Well, I -- I think I answered that those  
20 availability fees are what has provided the funding for  
21 those lines that are in the ground.

22           Q     Okay. Now, can customers from Lake Region on  
23 Shawnee Bend get water and sewer service from someone  
24 else?

25           A     In our certificated area, no.

1           Q     Okay. Can someone else lay the pipes for the  
2 undeveloped lots?

3           A     Yes. The -- a municipality could come in and  
4 overlay our system.

5           Q     Okay. Does the amended restricted covenants say  
6 that once you have water and sewer service available that  
7 they have to take it from you?

8           A     I don't know if I can answer that. I'm -- I'm  
9 not sure if it does or not.

10          Q     Okay. So you say that the customers cannot get  
11 water and sewer service from someone else?

12          A     I said, at this point, they cannot get it from  
13 another regulated company that would build there. But a  
14 City or a water district could -- could over-build and  
15 provide service.

16          Q     So they could provide service as well as  
17 building the pipes?

18          A     Right.

19          Q     Putting them in?

20          A     Right.

21          Q     So you wouldn't say that you are a monopoly?

22          A     We are a monopoly for a regulated entity there.  
23 We are not a monopoly with respect to municipal services.

24          Q     So any customer who is taking Lake Region  
25 service right now could change their mind and decide to

1 get their water service from a municipal group instead, or  
2 do they have to use your services, then, your pipes?

3 A If -- if someone would build a water and sewer  
4 line to their home, they could take service from -- from  
5 either.

6 Q Okay. If the water and sewer line they used is  
7 the one that's currently in the ground, can they get water  
8 service from someone else --

9 A No.

10 Q -- water services? Okay. So you have a  
11 monopoly on those lines that are in the ground?

12 A Yes. We own those lines.

13 Q Now, you indicated that when you started being  
14 interested in the utility and worked with the developer --  
15 when was that?

16 A It was in '95, ninety --

17 Q But you had indicated much earlier than that  
18 that you were first interested in the utility when you  
19 were discussing your --

20 A Well, we acquired Ozark Shores in 1991.

21 Q No. Lake Region Water & Sewer, you had  
22 indicated that you had an interest many years ago.

23 A That was in '94 and '95.

24 Q So when you first discussed this work with the  
25 developer and said that you worked closely with him and

1     were contracting to him --

2             A     Yes.

3             Q     -- you indicated that developer was Peter Brown?

4             A     Yes.

5             Q     But he's not the original developer, is he?

6             A     He's the developer of Shawnee Bend.

7             Q     Did you see the Property Owners Association  
8     Exhibit No. 1 that is the First Amended Declaration of  
9     Restricted Covenants?

10            MS. LANGENECKERT:   Which I said I would late  
11     file an exhibit, but I have the certified copy, the  
12     certificated copy today.  Ms. Cason was able to bring it  
13     with her, so I will be happy to provide that to the --

14            JUDGE STEARLEY:   Okay.  Very good.

15            Q     (By Ms. Langeneckert)  Did you see that?

16            A     I've -- I've seen it being passed around.  I  
17     haven't read it in detail.

18            Q     Okay.  Well, this First Amended Declaration of  
19     Restrictive Covenants --

20            MS. LANGENECKERT:   If I could approach, Judge,  
21     I'd be happy to show it.

22            JUDGE STEARLEY:   You may.

23            Q     (By Ms. Langeneckert)  I guess we should be  
24     calling you Doctor instead of Mister.  I'm sorry.  After  
25     all that work for that.

1           A     I forgot all of it.

2           Q     I'd like you to look on the last page. But the  
3 staple is a little tenuous, so -- yeah. I'm sorry. The  
4 second --

5           A     Right here?

6           Q     Yes. And who does it say -- who signed that on  
7 behalf of Four Seasons Lakesites?

8           A     You really have to know who this is to read this  
9 one.

10          Q     Well, since you're so familiar with the company,  
11 I'm sure you will.

12          A     It's Harold Koppler.

13                MS. LANGENECKERT: Okay. Okay. And I'm going  
14 to present to the Commission the certificated copy. Does  
15 anybody need to see it? That's one.

16                JUDGE STEARLEY: I believe we marked this as --

17                MS. LANGENECKERT: POA 1.

18                JUDGE STEARLEY: That's right.

19                MS. LANGENECKERT: Yeah.

20                JUDGE STEARLEY: And as I recall, Mr. Comley, at  
21 the time this was offered, you had agreed that if a  
22 certified copy was submitted, you would have no objection;  
23 is that correct?

24                MR. COMLEY: Certainly. If we can get copies of  
25 the certified document, that would be fine.

1                   MS. LANGENECKERT: It should be in the record,  
2 right? Won't it be copied for the --

3                   MR. COMLEY: You want me get it off the web  
4 site?

5                   MS. LANGENECKERT: I mean, if we late-filed it,  
6 that would have been the procedure, would it not?

7                   MR. COMLEY: I have no objection.

8                   JUDGE STEARLEY: Okay. Any other objections?  
9 We will go ahead and admit the Property Association's  
10 Exhibit No. 1 at this time.

11                   (Four Seasons Property Owners Association  
12 Exhibit No. 1 was offered and admitted into evidence.)

13                   MS. LANGENECKERT: Thank you.

14           Q        (By Ms. Langeneckert) So Harold Koppler was the  
15 original owner?

16           A        He was the original developer --

17           Q        Right.

18           A        -- of -- of the Horseshoe Bend side of the area.

19           Q        Okay. And then Peter Brown is what relationship  
20 to Harold Koppler?

21           A        His son-in-law.

22           Q        Okay. So it was Harold's -- I guess Peter's  
23 wife sued and who is on later documents is --

24           A        Yes.

25           Q        -- Harold's daughter?



1           A     Yes.

2           Q     If I were married as well as Mr. Brown and you,  
3     I would allow Mr. Comley to call me Mrs.

4                     MR. COMLEY:   It's too high a price.

5                     MS. LANGENECKERT:   Pardon?

6                     MR. COMLEY:   Never mind.   It's not important.

7                     MS. LANGENECKERT:   I believe that's all my  
8     questions.

9                     JUDGE STEARLEY:   All right.   Thank you.  
10    Recross, Staff?

11                                     RE CROSS EXAMINATION

12    BY MS. OTT:

13           Q     Mr. Stump, I believe Commissioner Kenney was  
14    asking you a line of questions going back to your  
15    relationship with Mr. Brown and the attorneys and the  
16    accountants.

17                     And you had indicated that it was the  
18    developer's intent to recoup the cost of the availability  
19    fees -- or recoup the cost of infrastructure with the  
20    availability fees.   Do you recall that?

21           A     Yes.

22           Q     Then why would the developer include in the  
23    Declaration of Restrictive Covenants that the availability  
24    fees would be paid to the utility company and not the  
25    developer?

1           A     I can't answer that.

2           Q     So you don't know if it was his intent to  
3     recover the cost of the infrastructure through the  
4     availability fees?

5           A     I do know that was his intent.

6           Q     Then, in your opinion, why would he put in the  
7     Declaration of Restrictive Covenants that the money was  
8     supposed -- the availability fees was to be paid to the  
9     utility company?

10          A     I'm not sure why that was done that way.

11          Q     Okay.  Would you have been a part of drafting  
12     the Declaration of Restrictive Covenants?

13          A     I don't think I can answer that.  I -- I'm not  
14     sure how they were developed.

15          Q     Now, you had indicated earlier that you had paid  
16     3 million for the Lake Region water and sewer system?

17          A     Yes.

18          Q     And that did not include the infrastructure  
19     because that was already contributed plant, correct?

20          A     I think I indicated that we paid \$3 million for  
21     the stocks of Lake Region Water & Sewer Company.

22          Q     So the stocks did not include the -- the  
23     infrastructure?

24          A     Stocks are stocks.

25          Q     So by purchasing the stocks and not paying for

1 the infrastructure, you're paying availability fees that  
2 are to go to the availability -- your charging  
3 availability fees is not for the infrastructure but  
4 straight revenue?

5 A I don't follow that one.

6 Q Okay. So you paid -- your \$3 million went for  
7 the stock, and you did not -- you were paying for the  
8 infrastructure of the Lake Region system, but you --

9 A I was paying \$3 million for the stocks of Lake  
10 Region Water & sewer company, period. And with that  
11 purchase -- and when I say I, I mean Sally Stump and RPS.  
12 With that purchase, they also received the rights to the  
13 availability fees. It was a -- a part and parcel close on  
14 the same day agreement.

15 Q But the availability fees you are collecting are  
16 not going to pay -- they're not being used to pay for the  
17 infrastructure or to recoup the cost of the  
18 infrastructure?

19 A I don't -- I don't think we can say that.

20 Q But you're not certain?

21 A I'm -- quite frankly, I don't understand that --  
22 that exact line. But as far as I know, I don't -- I don't  
23 think that's correct.

24 Q Now, Commissioner Kenney was asking you about  
25 the line of questioning that went back to that lawsuit in

1     which there is a confidentiality agreement?

2             A     Yes.

3             Q     Could you get a release from the developer to  
4     identify the confidential settlement amount?

5             A     I've actually asked for that.  And they didn't  
6     seem inclined to release it.

7                     MS. OTT:  I don't have any further questions.

8                     JUDGE STEARLEY:  Thank you.  Recross, Public  
9     Counsel?

10                    MS. BAKER:  Thank you.

11                                 RE CROSS EXAMINATION

12     BY MS. BAKER:

13             Q     Going to Commissioner Kenney's question about a  
14     ballpark figure of how much the availability fees -- how  
15     many availability fees were collected already, you and I  
16     talked about the fact that there were 1300 lots, 1200 to  
17     1300 lots now.  And you said that you didn't know for  
18     sure, but that there could have been more than 1300 lots  
19     in the past?

20             A     I don't -- I don't think there were, but --

21             Q     All right.  Well, let's take that -- that 1300  
22     number for our ballpark number for the 13 years that  
23     availability fees have been available, \$300 a year, 1300  
24     lots.  Would it surprise you that it's \$5,070,000?

25             A     I -- I think your -- your assumption is

1 incorrect. The most or large portion of the availability  
2 fees didn't really come online until 2005, 2006. So  
3 before that time, there were not a large number of  
4 availability fees. And that's where I made my estimate.  
5 I just used --

6 Q And -- and so would you be willing to provide to  
7 the Commission billing records for that in the past?

8 A I -- I'd have to discuss that with our attorney.

9 Q Okay. But, certainly, my ballpark number is  
10 based on -- on your testimony today. And -- and so --

11 A I think your ballpark number is not based on my  
12 testimony today. I think it's way high.

13 Q All right. If you just go 2005, that's about  
14 \$2 million.

15 A That's -- that's probably correct. And that's  
16 -- that's about how I -- I calculated it. I think that --  
17 that number is closer.

18 Q But there were availability fees that were  
19 collected for 13 years before that?

20 A They were collected that -- yes. Before that.  
21 But they were -- if you remember the annual reports that  
22 were submitted in '98 and '99, '99, of course, didn't  
23 include any. But '98, I think, was the \$50,000 range,  
24 so --

25 Q But without -- without the billing records,

1 those annual reports could be wrong, correct?

2 A I'm assuming anything in the annual report could  
3 be wrong. I don't have any information to think it is.  
4 But --

5 Q Okay. So exactly what year did the availability  
6 fees begin to be collected?

7 A I couldn't say for sure. I've seen numbers here  
8 of ninety -- starting in '94. I think there's a contract  
9 that -- that's been in testimony.

10 Q All right. And so how -- how far back do  
11 billing records exist, even if you aren't willing to  
12 provide them?

13 A You know, I -- I don't know. We -- we acquired  
14 the company -- or the stocks of the company in -- in 2005.  
15 I'm -- I'm pretty sure we would have those up to that  
16 time. I have no idea about before that time.

17 MS. BAKER: No further questions. Thank you.

18 JUDGE STEARLEY: Okay. Thank you, Ms. Baker.  
19 Mr. Comley, we're going to come back for some redirect  
20 here. And I'm not sure how much you have. But I thought  
21 this might be a good time to take a short break and give  
22 our court reporter a break. Do you anticipate a long  
23 redirect?

24 MR. COMLEY: Maybe -- I'd say maybe 15 to 20  
25 minutes, I think.

1 JUDGE STEARLEY: Okay. So I'll give the parties  
2 their preference if they want to break for lunch or if  
3 they want to just take a short break, come back, finish  
4 up.

5 MS. BRUEGGEMANN: Staff would prefer the short  
6 break and be able to just finish this up.

7 MS. BAKER: That's fine.

8 JUDGE STEARLEY: All right. Very good. Let's  
9 take about a 10, 15-minute recess, and we'll come back and  
10 complete it.

11 (Break in proceedings.)

12 JUDGE STEARLEY: All right. We are back on the  
13 record. And we are picking up with recross of Mr. -- or  
14 Dr. Stump. Mr. Comley?

15 MR. COMLEY: All right. Thank you very much,  
16 Judge Stearley.

17 REDIRECT EXAMINATION

18 BY MR. COMLEY:

19 Q Mr. Stump, in connection with questions that Ms.  
20 Ott asked you, a question concerning whether availability  
21 fees were regulated revenue connected with the utility,  
22 has the revenue from availability fees for Lake Region  
23 ever been reported as regulated revenue in its annual  
24 report?

25 A No.

1           Q     There were questions about records of the  
2     availability fee, billings and collections and where those  
3     records were kept. Can you tell the Commission how many  
4     years Mr. Schwermann might have copies of these records or  
5     have the records available?

6           A     I would -- I'm pretty sure he would have since  
7     the time that the stocks were acquired of the company,  
8     which would have probably been about 2005. So it would be  
9     five or six years of records I would -- would feel  
10    confident we would have. And before that, I -- we may or  
11    may not have those records. I don't know if we've ever  
12    looked for them.

13          Q     In other words, the records before the time that  
14    the company was acquired -- the stock purchase, those  
15    records would not be in the possession of Mr. Schwermann  
16    as far as you know?

17          A     We -- I just wouldn't know if they had ever been  
18    provided or not.

19          Q     All right. Ms. Ott also had questions  
20    concerning your knowledge of other developments where a  
21    water and sewer utility was involved and where the  
22    build-out was less than 70 percent. Do you -- do you --  
23    do you -- do you know of others besides those you  
24    mentioned that have a built-out like that?

25          A     Well, I -- at the -- at the moment, I -- of



1 course, Ozark Shores is that way. The build-out is about  
2 30 percent, and it was started in 1972.

3 Q Were there others besides that that you could  
4 recall?

5 A One of the others I -- I mentioned Branson which  
6 would -- I had to check the name. It's Swiss Villa or  
7 Black Oak Mountain Estates is its latest name. And I  
8 think it had three to 4,000 lots. And it's had a  
9 build-out of about a hundred homes. So that's a -- a real  
10 good example of -- of -- of a lake-type resort community  
11 that did not build out.

12 Q Ms. Baker and Commissioner Kenney and our --  
13 Judge Stearley have asked questions about the fictitious  
14 name registrations. And during the time that the North  
15 Suburban registration was still in full force, do you know  
16 whether North Suburban ever objected to Ms. Stump or RPS  
17 Properties' use of the fictitious name of Lake Utility  
18 Availability?

19 A No. They would not have objected to that.

20 Q Okay. Would -- do you know of any objection by  
21 Ms. Stump or by RPS Properties, LP, to North Suburban's  
22 use, if any, of the fictitious name of Lake Utility  
23 Availability?

24 A No.

25 Q There was discussions about the developer and

1    what amount of division there would be under the  
2    confidentiality agreement on the developer's return on the  
3    -- not say return, but how much of the availability fee  
4    revenue is given to the developer.  Do you know whether  
5    the developer has filed a financing statement with the  
6    Secretary of State's office concerning the obligation it  
7    is given with respect to the availability fees?

8           A     Yes, I have.

9           MR. COMLEY:  Your Honor, I'd like to have an  
10   exhibit marked.

11          JUDGE STEARLEY:  All right.  Very well.

12          MR. COMLEY:  And forgive me.  I have forgotten  
13   exactly what the number is.

14          JUDGE STEARLEY:  I believe we're at Lake Region  
15   Exhibit No. 10.

16          Q     (By Mr. Comley)  Mr. Stump, let me direct your  
17   attention to what has been marked as Lake Region Exhibit  
18   No. 10.  Are you familiar with this document?

19          A     Yes, I am.

20          Q     Can you describe this document to the  
21   Commission, please?

22          A     Yes.  This is a UCC filing relating to the --  
23   that was filed by Four Seasons Lakesites, Inc.  And it  
24   relates to the availability fees in which the Four Seasons  
25   Lakesites holds a -- holds a security interest.

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3           A     Yes, it is.

4 MR. COMLEY: Your Honor, I'd offer into evidence  
5 Lake Region No. 10.

6 JUDGE STEARLEY: Any objections to the offering  
7 of Exhibit No. 10 from Lake Region? Hearing none, it  
8 shall be received and admitted into the record.

9 (Lake Region Exhibit No. 10 was offered and  
10 admitted into evidence.)

11 Q (By Mr. Comley) Final question, Dr. Stump. And  
12 that is with respect to the Exhibit No. 1, which Ms.  
13 Langeneckert supplied to you --

14 MS. LANGENECKERT: I took it back.

15           A     Okay.

16 MS. LANGENECKERT: I mean, I don't know if you  
17 ever had a copy way back when. But I can give you one.

18 Q (By Mr. Comley) Do you know whether Exhibit 1  
19 covers the Shawnee Bend expansion?

20           A     To -- to my knowledge, it does not.  And it  
21     appears that it does not.  But it -- it's quite hard to  
22     tell here.

23 MR. COMLEY: All right. That's all I have on  
24 redirect, Judge Stearley.

25 JUDGE STEARLEY: All right. Very well.

1           MS. BRUEGGEMANN: Judge Stearley, just a point  
2 of official notice on the Swiss Villa Mountain Estates  
3 that Dr. Stump just mentioned. There was a transfer of  
4 assets case that was -- the Commission just decided. I  
5 don't have the case number off the top of my head. It was  
6 from 2007, but just decided probably three months ago that  
7 -- that the Commission may want to take official notice  
8 of. It was Swiss Villa Black Mountain Estates.

9           JUDGE STEARLEY: Okay.

10          MS. BRUEGGEMANN: I can provide that case number  
11 and e-mail it to everybody -- all the parties and yourself  
12 if that's acceptable.

13          JUDGE STEARLEY: That would make things much  
14 easier than for me trying to take notice of a case without  
15 a file number.

16          MS. BRUEGGEMANN: Right. Okay. Thank you.

17          JUDGE STEARLEY: Mr. Stump, I believe that  
18 concludes -- that concludes your examination. And you may  
19 step down.

20          MR. STUMP: Thank you.

21          JUDGE STEARLEY: I want to inquire of the  
22 parties if they'd like to make closing statement or  
23 argument.

24          MR. COMLEY: I have no closing.

25          MS. BAKER: I'm fine on briefs.

1                   MS. LANGENECKERT: I don't have to give one if  
2 no one else is. But I do -- I do have the other exhibit  
3 that we talked about yesterday. And I didn't know when  
4 the appropriate time would be to present that, a  
5 certificated copy of the list of the --

6                   JUDGE STEARLEY: That's correct. And at that  
7 time, Mr. Comley, I believe, you had wanted to reserve any  
8 potential objection you had to that document.

9                   MR. COMLEY: Yes.

10                  JUDGE STEARLEY: And before Ms. Langeneckert  
11 offers that, I don't know if we need to get Ms. Cason back  
12 on the stand to lay any additional foundation.

13                  MS. LANGENECKERT: Right. We're happy to bring  
14 Ms. Cason up on the stand to lay a foundation. Oh, do you  
15 need one from -- you may or may not need one.

16                  JUDGE STEARLEY: And, Ms. Cason, I remind you  
17 that you are still under oath.

18                  MS. CASON: Yes. I am turning my phone off,  
19 too. I almost forgot.

20                  MS. LANGENECKERT: That would be worse. Unless  
21 mine rings over there.

22                  FURTHER REDIRECT EXAMINATION OF NANCY CASON

23 BY MS. LANGENECKERT:

24                  Q I have given to the parties and Judge Stearley  
25 what we will be marking as Property Owners Exhibit No. --

1 I believe it's 3.

2 JUDGE STEARLEY: That's what I was checking  
3 here.

4 MS. LANGENECKERT: The next Property Owners  
5 exhibit.

6 JUDGE STEARLEY: Right. That would be correct.

7 Q (By Ms. Langeneckert) And I've given you a  
8 copy. You brought this with you today?

9 A Yes.

10 Q Could you tell me what this document is?

11 A I called the management company on the way back.  
12 They have the records for the Association as best as we  
13 can have them back to 2003. And they can go further back,  
14 I believe, but that will take more than a night, I think.

15 But these are the -- this is the list -- if  
16 anybody has the accurate record, it would be them. And  
17 this is the list of the Porta Cima improved lots and  
18 unimproved lots.

19 Now, you'll take a look at this, and you'll see  
20 that this does not jive when you first look at it, which  
21 is exactly what I said, too. We started out in 2003 with  
22 1418 and 155 improved. And in 2005, we had 236  
23 improvements, but we had more unimproved lots. So I said,  
24 Well, how is that possible?

25 And what happened is as this area was being

1 developed, we -- we did not record undeveloped lots until  
2 those undeveloped lots were sold, at which point our  
3 management gets a copy of the deed, and then we find out  
4 who the owners are. And at that point in time,  
5 assessments begin, and I would assume at that point in  
6 time, water availability begins, also.

7 Q And there's a certain time of year that these  
8 numbers are calculated?

9 A Those numbers are calculated at budget time,  
10 which used to be the May/June time frame. However, under  
11 the new declaration now, it's in September, August or  
12 September.

13 Q And the new declarations, when you refer to  
14 that, you mean the one in October 2009, the Fourth  
15 Amendment?

16 A Right. Correct.

17 Q Okay. All right. And this was signed by the  
18 Secretary, which is Mike Becker?

19 A Right.

20 Q And by you as the President?

21 A Right.

22 Q And there is an official Lake Region Property  
23 Owners seal on the one that I gave to the Judge; is that  
24 correct?

25 A Right.

1 MS. LANGENECKERT: I'd like to offer this  
2 exhibit as Property Owners 3. I'm not sure if Mr. Comley  
3 will have comments.

4 JUDGE STEARLEY: Okay. Any objections?

5 MR. COMLEY: We've not going to object to this  
6 exhibit.

7 (Property Owners Exhibit 3 was offered and  
8 admitted into evidence.)

9 MS. LANGENECKERT: Would you like the numbers to  
10 go further back? As we had stated yesterday, we would  
11 provide it if you need it. It would just take a little  
12 more time. I think it would be still be by April 12th.

13 JUDGE STEARLEY: I think we're going to get a --  
14 more information from the Commissioners not too far off in  
15 the future.

16 MS. LANGENECKERT: We will do as you direct.

17 JUDGE STEARLEY: I do have a question for you.

18 CROSS-EXAMINATION

19 BY JUDGE STEARLEY:

20 Q Ms. Cason, here -- your numbers here, you've got  
21 typed numbers from 2003 to 2006. You have handwritten  
22 numbers for 2007 through 2010.

23 A The management had given me those numbers on  
24 another document. So this came obviously off of my  
25 e-mail, the 2003 to 2006 last night. So we just merged



1 the other numbers that I already had from a previous  
2 e-mail and put them all on there.

3 Q All right. On the copy, where it's typewritten,  
4 you have improved lots and unimproved lots?

5 A Right. I do not have the improved lots for you  
6 on 2007 through 2010. But I can get it if need be.

7 JUDGE STEARLEY: All right. Thank you.

8 CROSS-EXAMINATION

9 BY MR. COMLEY:

10 Q We are understanding that there was 462 improved  
11 lots in 2010; is that correct?

12 A That's right.

13 Q That was your testimony earlier, so that's what  
14 we're assuming you --

15 A Yes.

16 JUDGE STEARLEY: I believe that was what I heard  
17 as well.

18 A That's right. 462.

19 JUDGE STEARLEY: All right. At this point,  
20 then, we have that housekeeping matter out of the way.

21 MS. LANGENECKERT: And Ms. Cason is released?

22 JUDGE STEARLEY: And, Ms. Cason, you are free to  
23 step down.

24 MS. CASON: Thank you.

25 JUDGE STEARLEY: Was there anyone who wanted to

1 give a closing argument? If not, I'll proceed to some  
2 housekeeping matters. All right. Well, I'm hearing no  
3 request for that, so moving on to housekeeping matters.

4 MS. OTT: Judge, I do have one clarification on  
5 the -- I believe what we're going to be getting to, the  
6 housekeeping matter, the Motion to Strike, will there be  
7 arguments heard for that?

8 JUDGE STEARLEY: No. I believe we've already  
9 had time for oral argument on that. Okay. The first  
10 matter I want to take up with regard to that, Mr. Comley,  
11 Lake Region has laid out a couple of reasons for its  
12 Motion to Strike. One has to do with the relevancy  
13 objection. One has to do with procedural -- alleged  
14 procedural violations in the filing of testimony.

15 MR. COMLEY: Yes.

16 JUDGE STEARLEY: With regard to  
17 Mr. Featherstone's surrebuttal, which offered up this new  
18 theory about excluding certain management costs, do you  
19 feel the Commission has given you significant or enough  
20 opportunity to provide a rebuttal for that?

21 MR. COMLEY: Yes. Thank you.

22 JUDGE STEARLEY: All right.

23 MR. COMLEY: With respect to that, under the  
24 circumstances, the objection based on the procedural  
25 issues in our Motion to Strike can be withdrawn.

1 JUDGE STEARLEY: Okay. I wanted to be sure  
2 because we can give you opportunity to file supplemental  
3 surrebuttal if you felt you didn't have adequate time to  
4 address those.

5 MR. COMLEY: Thank you. I will not take the  
6 opportunity.

7 JUDGE STEARLEY: All right. Very well. With  
8 regard to the other procedural objections, there was a  
9 data request, No. 44.1, that was referred to at several  
10 points during this case, which was, I believe, sent to  
11 Lake Region back on November 20th, 2009.

12 MR. COMLEY: Yes.

13 JUDGE STEARLEY: Do you recall the date in which  
14 that was answered, Mr. Comley?

15 MR. SUMMERS: December 10th.

16 MR. COMLEY: December 10th, 2009.

17 JUDGE STEARLEY: All right. Very well. So as I  
18 read that response, the issue of availability fees was at  
19 least made aware -- made available for all the parties at  
20 that time. They should have been aware of that being an  
21 issue in this case.

22 Mr. Robertson filed direct testimony which bore  
23 on that issue, and responsive testimony came in. And I  
24 believe that it was fair for the rebuttal testimony to  
25 address those issues, although the Commission is a little

1 bit surprised they weren't part of the direct case of the  
2 other parties because it's been clear throughout the  
3 testimony of Mr. Merciel and others that this issue of  
4 availability fees has been out there for years and there  
5 was responsive -- responses to this data request, which  
6 should have made that issue plainly available.

7 And although the Commission is not going to  
8 strike based upon the procedural objection, the Commission  
9 is a little displeased the issue wasn't more fully  
10 developed in the direct testimony.

11 With regard to the objection as to relevance,  
12 the Commission is going to overrule that objection. All  
13 of the exhibits that I've placed on hold throughout this  
14 proceeding will now be received and admitted into  
15 evidence.

16 MR. COMLEY: Is the Commission --

17 JUDGE STEARLEY: Yes, Mr. Comley.

18 MR. COMLEY: Is the Commission in the position  
19 to reconsider that decision today?

20 JUDGE STEARLEY: Not today. But the Commission  
21 would certainly take up any Motions for Reconsideration on  
22 this in a locutory order.

23 That being said, I also want to advise the  
24 parties that the Commission is not closing the evidence in  
25 this case at this time.

1           The Commission may want additional hearing time  
2   in this case. I know we are scheduled for a true-up  
3   hearing April 26th. And I'm looking at the calendar, and  
4   I know there's potentially another hearing I'm going to be  
5   scheduling for that same week as well. And I want the  
6   parties to be either thinking about -- I don't know if  
7   they can give me an answer today of any conflict dates  
8   they might have, per se, the 27th or the following week,  
9   the first week of May, in case the Commission would like  
10  to have additional time for a hearing.

11           MS. BAKER: I have a final on -- on Thursday,  
12  May the 6th, during the morning. So I would -- I would at  
13  least ask that it not be during my final.

14           JUDGE STEARLEY: That's the day we're going to  
15  pick, Ms. Baker. No. I think we --

16           MS. LANGENECKERT: You want it to be during your  
17  final.

18           JUDGE STEARLEY: Not that day. Well, if the  
19  parties would please file by Monday for me, end of the day  
20  Monday any list of conflict dates for those two weeks --

21           MS. LANGENECKERT: Do you want that on the  
22  record or just send it to you by e-mail? Or do you want  
23  it in EFIS?

24           JUDGE STEARLEY: That can be filed in EFIS.

25           MS. LANGENECKERT: Okay.

1 JUDGE STEARLEY: The Commission will be taking  
2 this matter up for case discussion in agenda and will be  
3 getting some additional directions at that point. The  
4 briefing schedule at this point will remain unchanged  
5 unless later down the line, depending on additional  
6 hearing time, the parties would require more time for  
7 briefing.

8 The operation of law date for the tariff has  
9 been suspended to September 6th. And I know we were  
10 looking at a briefing schedule that would take true-up  
11 briefs out to July 9th.

12 MS. LANGENECKERT: When is the record -- I'm  
13 sorry. I know that we didn't ask for an expedited  
14 transcript, so I don't know when we can expect to see the  
15 transcript of the hearing.

16 JUDGE STEARLEY: Well, I may address that right  
17 now.

18 MS. LANGENECKERT: I'm sorry. I'm getting ahead  
19 of you.

20 JUDGE STEARLEY: Besides the -- the Commission,  
21 are there any parties here who would like an expedited  
22 transcript? Mr. Comley, you're talking about filing a  
23 Motion for Reconsideration. I don't know if you would  
24 benefit from a copy of the transcript early as well.

25 MR. COMLEY: I think we'd like to have a copy of

1 an expedited transcript.

2 JUDGE STEARLEY: All right. Monnie, you're up.  
3 It's Wednesday. If possible, we'd like a copy of the  
4 transcript filed by the end of the day Friday. Do you  
5 think that's possible?

6 THE COURT REPORTER: That should be okay.

7 MR. COMLEY: All right. Thank you.

8 JUDGE STEARLEY: Okay. I believe I've addressed  
9 all of the exhibits. We've addressed the transcript. Are  
10 there any other matters I need to take up at this time?

11 MS. LANGENECKERT: None for POA.

12 MR. COMLEY: Nothing further.

13 JUDGE STEARLEY: I'm sorry.

14 MS. BRUEGGEMANN: Your Honor, just as a  
15 housekeeping matter -- and this may be that I just didn't  
16 mark it. But was Lake Region -- John Summers's direct,  
17 rebuttal and surrebuttal offered and admitted, also?

18 JUDGE STEARLEY: Yes.

19 MS. BRUEGGEMANN: Okay. Thank you.

20 MR. COMLEY: In that regard, I lack an exhibit  
21 number for Ms. Cason's surrebuttal. And I'm sorry.

22 MS. LANGENECKERT: It's No. 2.

23 MS. BRUEGGEMANN: Thank you.

24 JUDGE STEARLEY: That's what I had marked it as  
25 well. So -- all right. Any other matters we need to take

1 up?

2           Okay. At this point, I will finally release the  
3 witnesses at this point in time. They're not going to be  
4 on hold forever here. But understand, depending on what  
5 the Commission determines, they may want to call some of  
6 these witnesses back, and we'll re-swear them at that  
7 time. So -- all right. Very well.

8           The evidentiary hearing, at least in terms of  
9 this schedule week -- maybe I shall say we're not  
10 adjourned, but we are recessed for File Nos. SR-2010-0110  
11 and WR-2010-0111. And thank you all very much.

12           (The proceedings were concluded at 1:00 p.m. on  
13 March 30, 2010.)

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## 1 REPORTER'S CERTIFICATE

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3 STATE OF MISSOURI )  
 )ss.  
4 COUNTY OF OSAGE )

5

6 I, Monnie S. Mealy, Certified Shorthand Reporter,  
7 Certified Court Reporter #0538, and Registered  
8 Professional Reporter, and Notary Public, within and for  
9 the State of Missouri, do hereby certify that I was  
10 personally present at the proceedings as set forth in the  
11 caption sheet hereof; that I then and there took down in  
12 stenotype the proceedings had at said time and was  
13 thereafter transcribed by me, and is fully and accurately  
14 set forth in the preceding pages.

15

16 IN WITNESS WHEREOF, I have hereunto set my hand and  
17 seal on April 2, 2010.

18

19

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21 \_\_\_\_\_  
Monnie S. Mealy, CSR, CCR #0539  
22 Registered Professional Reporter

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# E X H I B I T S

LAKE REGION EXHIBITS	DESCRIPTION	OFFERED	ADMITTED
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FOUR SEASONS EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
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3	List of Improved and Unimproved Lots at Porta Cima	657	657

(Original exhibits were retained by the Public  
Service Commission.)