

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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

OBJECTIONS TO SUBPOENA AND MOTION TO QUASH

COMES NOW RPS Properties, L.P. ("RPS"), by and through undersigned counsel, and moves the Missouri Public Service Commission for an order quashing the *Subpoena and Order to Appear, Produce Documents and Give Deposition* served upon RPS by Lake Region Water & Sewer Co. in this matter on January 17, 2014. In support thereof, RPS states as follows:

1. RPS is a limited partnership duly organized and existing under and by virtue of the laws of the State of Kansas and is duly authorized to conduct business in Missouri. RPS's principal place of business is 10777 Barkley, Suite 210, Overland Park, Kansas (KS) 66211. Its telephone number is 913-385-1555. RPS does some of its business in Missouri under a fictitious name, duly registered with the Missouri Secretary of State, of "Lake Utility Availability 1." RPS is a shareholder of Lake Region Water & Sewer Company.

2. On Friday, January 17, 2014, Lake Region Water & Sewer Co. (Lake Region) caused to be served on RPS a *Subpoena and Order to Appear, Produce Documents and Give Deposition* ("the Subpoena"). A copy of the Subpoena is attached to this Motion as **Exhibit A** (filed as a separate pdf file). RPS respectfully requests that the Commission quash the Subpoena for the reasons set out below.

3. RPS does not contest the legitimacy of service of the Subpoena. Counsel for Lake Region requested that RPS agree that the Subpoena could be served upon counsel

for RPS, and RPS agreed to that procedure. The instant *Objections to Subpoena and Motion to Quash* are timely filed under the Commission's rules, 4 CSR 240-2.100 (3).

4. The Subpoena served by Lake Region should be quashed because the information sought thereby is irrelevant and immaterial, imposes undue burden and expense on RPS and is unreasonable and oppressive. The Subpoena is overbroad and does not specify the particular document(s) or record(s) to be produced. The Subpoena is not reasonably calculated to lead to the discovery of admissible evidence in this case.

5. The documents sought by Lake Region's Subpoena relate or pertain solely to an entity that is not regulated by this Commission. RPS is not a party to this case, has not filed testimony in this case and is not a public utility under the jurisdiction of the Missouri Public Service Commission. RPS Properties, L.P. d/b/a Lake Utility Availability 1 is not a water company nor a sewer company. The utility customers of Lake Region Water & Sewer Company do not pay the "availability fees" about which Staff asks and the revenue stream generated by the availability fees is not generated by the provision of a regulated utility service. That revenue stream is the result of a contractual relationship between subdivision developers and lot owners.

6. Lake Region Water & Sewer Company has no access to the revenue stream generated by the availability fees and has no legally enforceable right to acquire the revenue stream generated by the availability fees. The private business information of RPS sought by the Subpoena is irrelevant to any legitimate issue in this case.

7. This Commission has no legal jurisdiction over the shareholders of the public utilities under its jurisdiction, nor any legal right to subpoena the private business records of the shareholders of public utilities, and Lake Region has cited no such jurisdiction or right.

The Commission has no more right to subpoena the records of RPS Properties, L.P. than it does to subpoena the personal or business records of any individual or institutional shareholder of Ameren or AT&T.

8. The Subpoena should be quashed under Rule 57.03 because it is unreasonable and oppressive. The litany of documents sought to be produced could amount to thousands of pages and are only vaguely defined or described in the Subpoena. In addition, the Subpoena did not proffer the reasonable cost of attending the deposition and producing the books, papers, documents or tangible things sought by the Subpoena. (Section 386.440.1, RSMo; Rule 57.09 (b)(2); *State ex rel. Weinstock*, 916 S.W.2d 861, 862-63 (Mo.App. E.D. 1996).)

9. To the extent the Subpoena is based on Court Rule 58.01 (“Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes”), the Subpoena should be quashed because RPS is not a party to the case (58.01 (b) (2) (B)), the Subpoena requests production of documents within five (5) days instead of 30 (58.01 (c) (1)) and it does not list the items to be inspected in consecutively numbered paragraphs or with reasonable particularity (58.01 (b) (1)).

10. To the extent the Subpoena is based on Rule 58.02, it is further objectionable because the Subpoena is overbroad and imposes undue burden and expense on RPS. Rule 58.02 (e) (1). The documents requested are not specified and have no date limitations. The Subpoena requests:

all reports, notes, memoranda, receipts, correspondence, or other documentation and records depicting or regarding charges for available water and sewer connections – sometimes referred to as availability fees – assessed against owners of lots in areas known as Shawnee Bend and Horseshoe Bend at or near Lake Ozark, Missouri, or the Lake of the Ozarks

generally including, but not limited to, documents and records regarding the maintenance, collection, billing, administration, disbursement, deposit, or withdrawal of availability fees; (Exhibit A, last page.)

The broad scope of this request would force RPS personnel to expend an enormous and excessive amount of time and resources locating, identifying, copying and delivering these records. Consequently, the Subpoena is unreasonable and oppressive and should be quashed on that basis. See *State ex rel. Horenstein v. Eckelkamp*, 228 S.W.3d 56, 56-58 (Mo.App. E.D. 2007) (finding that a discovery order compelling an expert to produce current list of testimonial history, tax forms for a period of four years, and appointment books, calendars, and schedules for a period of four years was intrusive and unduly burdensome.)

11. The Subpoena should be quashed because it does not “specify the particular document or record to be produced” as required by 4 CSR 240-2.100 (1). Rather, it appears to be a fishing expedition for any and all documents of whatever shape or size relating in any way to “availability fees.”

12. In addition to the multiple procedural grounds stated above, substantial substantive grounds exist for the Commission to quash the Subpoena in this matter. In a nutshell, the Subpoena is in furtherance of Staff and OPC’s pursuit of an “availability fee” issue that should not be an issue in this case. This question was addressed extensively in Lake Region’s last rate case, Case No. WR-2010-0111. The Report and Order in that case (issued August 18, 2010) contains 23 pages of discussion of the “availability fee” issue under *Findings of Fact* (from pages 43-65) and another 22 pages of discussion of the issue under *Conclusions of Law* (from pages 86-107).

13. For more than 40 years now, these availability fees have been untariffed and have not been included by the Commission in ratemaking for Lake Region and its predecessors. In Lake Region's immediately preceding rate case (SR-2010-0110 and WR-2010-0111), the Commission considered a different treatment of availability fees. However, the Commission also acknowledged that such a different treatment "would be a substantial departure from past Commission decisions, policy and practice" on which Lake Region has relied. **The Commission further acknowledged that such a change in treatment would affect entities not parties to that rate case and that a *rulemaking* would be necessary** for redefining service, reclassification of revenue streams and a complete reversal of the Commission's historic practice after at least 37 years (at that time) of following existing practice. Although the Commission established a workshop proceeding to begin such a rulemaking process, **no such rulemaking has occurred and neither Staff nor OPC has filed proposed rules to implement the change in policy to which the Commission expressed openness in 2010.** Instead, Staff and OPC clearly want to re-open this issue anew, and drag RPS into it as the contractual custodian of availability fees (which are not the property of Lake Region), in yet another contested case. **Further, as acknowledged by the Commission in 2010, a definitional change (after rulemaking) would not answer the question of whether the Commission has the jurisdiction to reach the assets or income of a non-utility such as RPS and bring them into the ratemaking process, even if the Commission finally determined it wished it could do so.**

14. RPS hereby incorporates by reference into the instant pleading, Paragraphs 14 through 25 (inclusive) of its *Objections to Subpoena(s) and Motion to Quash* filed in this matter on January 13, 2014. Those paragraphs detail the treatment of availability fees

historically and in the immediately previous rate case of Lake Region (WR-2010-0111) and support the argument of RPS that Staff and OPC did not follow the directives of the Commission in that case in order to pursue the position they now advocate concerning availability fees. For that reason, Staff and OPC should be precluded from raising the availability fee issue in the instant case. The instant Subpoena being merely an extension of OPC and Staff discovery on this issue, it should be quashed.

WHEREFORE, RPS Properties, L.P., respectfully requests that the Commission issue an order quashing the *Subpoena and Order to Appear, Produce Documents and Give Deposition* caused to be served upon it by Lake Region Water & Sewer Company in this case.

Respectfully submitted,

/s/ William D. Steinmeier

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ATTORNEY FOR RPS PROPERTIES, L.P.

Dated: January 21, 2014

Exhibit A attached as separate pdf file

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been served electronically on all parties of record in this case on this 21st day of January 2014.

/s/ William D. Steinmeier

William D. Steinmeier