

Exhibit No.:
Issue: Availability Fees
Witness: Kimberly K. Bolin.
Sponsoring Party: MoPSC Staff
Type of Exhibit: Surrebuttal Testimony
Case No.: WR-2013-0461
Date Testimony Prepared: January 31, 2014

MISSOURI PUBLIC SERVICE COMMISSION

**REGULATORY REVIEW DIVISION
UTILITY SERVICES - AUDITING**

SURREBUTTAL TESTIMONY

OF

KIMBERLY K. BOLIN

LAKE REGION WATER & SEWER COMPANY

CASE NO. WR-2013-0461

*Jefferson City, Missouri
January 2014*

**** Denotes Highly Confidential Information ****

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EXECUTIVE SUMMARY

Q. What topic is addressed in this piece of testimony?

A. I will be addressing the Staff's recommendation that "availability charges," also called "availability fees," should be included in Lake Region's revenue requirement calculation for the Shawnee Bend Water and Shawnee Bend Sewer service areas. No availability fees are charged to lot owners for sewer service availability in Lake Region's Horseshoe Bend Sewer service area. Staff is recommending that availability fees in the amount of \$93,136 be included in revenue for the Shawnee Bend Water service area and \$139,704 for Shawnee Bend Sewer service area. Staff's calculation of the availability fees are based upon new information provided to the Staff after Staff's direct filing.

Staff believes that Lake Region is the entity providing a guarantee of water and sewer service availability to the lot owners who are paying the availability fees and also is the entity supporting the utility plant facilities and infrastructure that exists in order to provide that service. The lot owners are paying the fees in order to support the utility system, which was built for the purpose of providing service to their lots. The entity presently collecting the availability fees, Lake Utility Availability 1, is not providing anything in consideration of the money that is being paid to them by the lot owners.

Staff will also address the rebuttal testimony of Public Counsel witness Robertson, in which he recommends that the prior availability fees collected should be considered as Contributions in Aid of Construction and offset Lake Region's rate base. Staff believes availability fees are not limited to capital uses only and can be used to maintain the system, thus they should be considered a revenue stream and not as an offset to capital.

AVAILABILITY FEES

Q. What are unimproved lots?

A. Unimproved lots are parcels of land in a subdivision that are sold by a developer with utilities, streets, rainwater drainage, and perhaps other amenities that are all available to the lot owner, typically for the purpose of constructing a house or some type of dwelling or commercial structure requiring water and sewer services. When a buyer has not constructed houses or buildings on the property, the lot owner is not connected to the water and sewer utility. Once the house or building is constructed, the utility needs to ensure water and sewer facilities are available to the homeowners and businesses to connect to.

Q. Is the utility infrastructure necessary to the provision of utility service provided under tariff by Lake Region?

A. Yes. The infrastructure is necessary to provide utility service to both existing Lake Region customers and future Lake Region customers (unimproved lots), which are intermixed through the regulated service area.

In order to serve water customers in Lake Region's service territory, a distribution system was installed by the developer, Mr. Harold Koplar, to ensure there was adequate water flow to the residences and businesses in its service area. The original developers also installed a waste water collection system for the Lake Region service area. When these water mains and collecting sewers were installed, all the lots along the water and sewer lines were initially unimproved. As the lots were sold, construction took place on some but not all lots. Any repairs necessary to the utility infrastructure have been or will be made by Lake Region or its predecessor utility companies. The repairs to and the construction of the utility system also benefits the owners of the unimproved lots because the system must be able to continue to operate when the owners of the unimproved lots connect to the systems and, further, Lake

1 Region must have sufficient funds to undertake necessary repairs whether or not there are
2 enough customers connected paying rates. As such, the ability of the regulated utility to
3 provide service to the unimproved lots is directly related to availability of the existing utility's
4 infrastructure. If availability fee revenue did not exist, then a utility's operations might
5 require subsidization by a developer for adequate revenue in order to meet operating
6 expenses, particularly in early growing years when most lots are unimproved.

7 Q. Why is Staff proposing to include availability fees in rates?

8 A. The infrastructure in place for the unimproved lots is the same as that in place
9 for developed lots that are currently connected to the water and sewer systems. Since the
10 regulated utility must maintain the integrity of the utility infrastructure, in place for both the
11 built and unconstructed lots, it is only equitable to include the availability fees in rates as a
12 revenue source for the purpose of maintaining the costs of the entire water and sewer systems.
13 Additionally, the owners of unimproved lots are paying a fee for the purpose of having a
14 water and sewer system to connect to in the future.

15 Q. Has Staff updated the amount of availability fees to include in rates since
16 Staff's Cost of Service Report filing?

17 A. Yes. RPS Properties LP ("RPS") responded in an answer to Staff's subpoena
18 for information that RPS had collected ** _____ ** in availability fees for the period of
19 July 1, 2012 thru June 30, 2013, which is the test year in this case. To calculate Staff's
20 recommended level of imputed availability fees, Staff removed ** _____ ** from the
21 amount of availability fees collected for the availability fees paid on an annual basis
22 to the developer during the same time frame. The payment to the developer (Four
23 Seasons Lakesites, Inc.) was a result of a settlement agreement between Lake Region,

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Surrebuttal Testimony of
Kimberly K. Bolin

Ms. Sally Stump, RPS and Four Seasons Lakesites, Inc. to settle a civil court case filed in Camden County regarding the collection of availability fees.

Q. Has Staff included costs relating to the unimproved lots which give rise to availability fees in its cost of service?

A. Yes. Costs incurred to repair, maintain and construct the water distribution and waste water collection systems were included in the revenue requirement. This includes costs relating to the unimproved lots. Since these costs were included in rates, it is appropriate to include the availability fees as revenues in the rate calculation as well, as the purpose of collecting these fees are to maintain the utility infrastructure.

Q. Would it be reasonable for lot owners to pay availability fees if there was no water or sewer system available to connect to when the owner needed utility service?

A. No. Availability fees would not be charged and collected from the unimproved lot owners if water and/or sewer facilities were not adjacent to their lots and they were not able to connect to a water and sewer system. The only logical explanation for the purpose of the availability fees is the expectation that there is a water and sewer system that is continually supported and remains available to connect to when the need arises. Unimproved lot owners are making a contribution to the on-going operations of the utility so this utility system is maintained and in place when the lot owners need to connect to the system. The lot owners are not paying these fees to pay for the construction and maintenance of roads or common use areas within the subdivisions. They are paying the availability fees for the availability of adequately maintained water and sewer system, and nothing else.

Staff continues to believe the availability fees are being charged for the purpose of maintaining, repairing and replacing Lake Region's infrastructure. This is the only logical

1 reason why unimproved lot owners would agree to pay \$300 annually for a promise to be
2 able to receive utility service when these owners decide to build a house in Lake Region's
3 service territory.

4 Q. If the Commission does not include the availability fees in the determination of
5 rates, should the Commission adjust the expenses of Lake Region to disallow costs associated
6 with the billing and collection of the availability fees?

7 A. Yes. In the Report and Order for the previous rate cases for Lake Region, Case
8 Nos. SR-2010-0110 and WR-2010-0111, page 65, paragraph 212, the Commission concluded
9 that \$2,000 annually was a reasonable cost for providing the billing and collection service for
10 the availability fees. If the Commission does not include availability fees in the cost of
11 service, then at a minimum the Commission should excluded \$2,000 from the Company cost
12 of service; \$1,000 from both Shawnee Bend Sewer and Shawnee Bend Water service areas.

13 The Camden County Water District No. 4 (Water District) bills the unimproved lot
14 owners and collects the availability fees for Lake Utility Availability 1. However, nowhere
15 on the time sheets for the Water District employees was there any time recorded for the
16 billing and collection of the availability fees for Lake Utility Availability 1. Thus, Staff was
17 unable to calculate an estimate as to the costs of billing and collecting availability fees for
18 Lake Utility Availability 1. Also in Note 11 of Lake Region's Audited Financial Statements
19 for 2012, it was stated that the availability fees were billed and collected by Lake Region but
20 not recorded on the financial statements as either income or expense. Therefore, the only
21 evidence Staff has of the billing and collection of availability fees shows that this function is
22 attributable to Lake Region, and Staff believes the costs of billing and collecting availability
23 fees the Commission decided upon in its last rate proceedings are reasonable.

1 Q. On page 10, lines 8 thru 13, of Lake Region's witness Summers' rebuttal
2 testimony, he claims that Staff's approach would deny the developer and/or his assigns or
3 designees the opportunity to recover the original investment and provide the customers a
4 double benefit by not including contributed plant in rate base and including the revenue from
5 the availability fees in Staff's case. Is this accurate?

6 A. No. Contributed plant is just that – donated property in which the owners of
7 Lake Region have no investment. It would be improper and completely contrary to the way
8 the Commission has established rates in the past for water and sewer utilities to allow a
9 Company to earn a "return on" assets in which it has no investment dollars. In any event,
10 Staff is not recommending adjusting rate base to account for prior availability fees that were
11 collected. However, Staff is recommending that the present amount of annual availability
12 fees collected be considered as revenue of the Company.

13 Q. On page 9, lines 18 through 20 and JRS Exhibit 2 of Mr. Summers Rebuttal
14 testimony, he cites it would take more than 45 years to recoup the developer's investment in
15 the water and sewer infrastructure donated to Lake Region. Does Staff know how much of
16 the developer's investment has been recouped since the developer built the system?

17 A. No. Staff has not been able to determine the total amount of availability fees
18 collected in the past. Staff had requested information in a subpoena to RPS regarding all
19 availability fees collected in the past, but due to the amount of information RPS would have
20 had to provide per this request, the subpoena was modified to require only information from
21 the test year for this case. Also, Staff reviewed the response to OPC Data Request No. 1007
22 in this proceeding, in which Lake Region stated that it was unable to provide the amount of
23 water availability fees billed and collected by the PWSD No. 4 because Lake Region was not

1 in possession, custody or control of such information. Thus, Staff was unable to determine an
2 amount of availability fees that have been collected and cannot determine what part of the
3 developer's investment has been recouped at this point.

4 Q. Does Staff know the amount of availability fees which have been collected by
5 RPS from some point in 2005 thru May 2010?

6 A. Yes. In **five** years RPS collected over **\$2.3 million** in availability fees.
7 Included as Attachment KKB 1 (HC and NP) to this testimony is the affidavit¹ of W. Brian
8 Schwermann, a designated representative of RPS, which is an owner of Lake Region and
9 Lake Utility Availability 1, in which he states, "RPS began collecting availability fees
10 sometime in 2005. From that time through May 12, 2010, at total of approximately
11 \$2,309,019 has been collected."

12 Q. What amount of availability fees did RPS collected during the test year in the
13 case (July 1, 2012 thru June 30, 2013)?

14 A. RPS Properties collected **_____** in availability fees.

15 Q. Approximately when did unimproved lot owners start paying availability fees?

16 A. I believe availability fees were collected since at least 1993 in the Company's
17 Shawnee Bend service area. Thus, availability fees have been paid by unimproved lot owners
18 for at least **20** years. Common sense tells us that, when considering the known previous
19 amounts that were collected in only six years, that any investment by the developer would
20 have long since been recouped.

21 Q. Is it also possible that the developer may have recouped some of the money
22 spent to install the water and sewer system when it sold the lots in the development?

¹ WR-2010-0111, Staff Exhibit No. 21, Response to Question No. 17.

1 A. Yes, it is. The developer may have considered that it had recouped some of the
2 costs to build the water and sewer systems when it sold undeveloped lots, just as other
3 development costs are recovered. The developer made improvements to ready the lots for
4 market. Improvements made to the real estate, which include the water and sewer
5 system installation among the many other costs of undertaking subdivision development,
6 would need to be recovered in the sale of lots, or otherwise the developer would not profit
7 from its investment.

8 Q. On page 11, lines 1 thru 12 of Mr. Summer's rebuttal testimony, he states a
9 belief that the financial viability of the Company could be hurt if availability fees are imputed
10 in Lake Regions' revenue requirement calculation. In the past, has the Company benefited
11 from and used availability fees?

12 A. Yes. Attachment KKB 2 to this testimony is an answer to a petition in a
13 lawsuit in Camden County,² in which Lake Region was the defendant. At page 11,
14 paragraph 3 of Attachment 2, it states:

15 Since August, 1998, Plaintiff has continued attaching the requirement
16 to pay availability or standby fees to the lots it sells, has continued to
17 allow Defendant Waldo Morris to collect fees, and has continue to
18 allow Defendant Waldo Morris to spend the fees for the benefit of
19 Defendant Lake Region Water & Sewer Company to guarantee
20 capacity and service for Plaintiff's developments.

21 Also on the same page, paragraph 27, the Company states:

22 Lake Region Water & Sewer Company has used the availability or
23 standby fees to build a new storage treatment plant and new water
24 tower, invest in capital improvements, and otherwise increase capacity
25 and service in order to provide capacity for Plaintiff's developments.

² WR-2010-0111, Staff Exhibit No. 52.

1 Q. On page 6 of Mr. Summers' Rebuttal testimony he claims that Lake
2 Utility Availability 1 is not an affiliate of Lake Region. Does Staff believe Lake Utility
3 Availability 1 is an affiliated entity of Lake Region?

4 A. Yes. Per the affiliate transactions rules for electric and gas companies, an
5 affiliated entity is any person, including an individual, corporation, service company,
6 corporate subsidiary, firm, partnership, incorporated or unincorporated association, political
7 subdivision including a public utility district, city, town, county, or a combination of political
8 subdivisions, which directly or indirectly, through one or more intermediaries, controls, is
9 controlled by, or is under common control with the regulated utility corporation. Staff
10 believes this definition is consistent with the general understanding of an affiliate and is
11 useful in understanding the business relationships of Lake Region.

12 In this case Lake Utility Availability 1 and Lake Region both have a common owner,
13 RPS. Ms. Sally Stump was also a common owner until December 31, 2012, when she
14 transferred her ownership of Lake Region to her husband, Mr. Vernon Stump. Both entities
15 use the same employees to conduct business, the same phone number and address. In fact, the
16 information concerning the billing and collecting of availability fees is stored on Lake
17 Region's computer.

18 Q. On page 4 of OPC witness Ted Robertson's rebuttal testimony he states at
19 lines 8 through 11: "Therefore, these fees are designed to recover the original cost of the
20 utility investment along with any other additional treatment capacity or other water and sewer
21 infrastructure, such as line extensions and pumping stations, etc., required to build a state of
22 the art system to serve customers as the time they are ready to take service." Does Staff agree
23 that availability fees must be used for capital purposes only?

Surrebuttal Testimony of
Kimberly K. Bolin

1 A. No. Staff believes availability fees are not limited to capital uses only. Staff
2 believes the availability fees can also be used to maintain the system, thus the fees should be
3 considered as revenue in the costs of service. In fact this is the treatment afforded availability
4 fees for this and other regulated utilities.

5 Q. Does this conclude your surrebuttal testimony?

6 A. Yes.

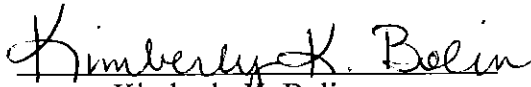
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

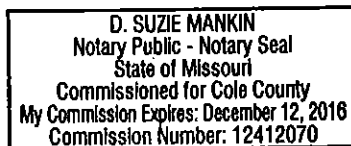
AFFIDAVIT OF KIMBERLY K. BOLIN

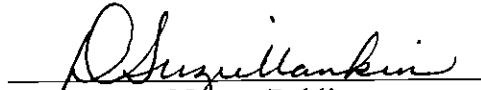
STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Kimberly K. Bolin, of lawful age, on her oath states: that she has participated in the preparation of the foregoing Surrebuttal Testimony in question and answer form, consisting of // pages to be presented in the above case; that the answers in the foregoing Surrebuttal Testimony were given by her; that she has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of her knowledge and belief.


Kimberly K. Bolin

Subscribed and sworn to before me this 31st day of January, 2014.




Notary Public

STATE OF KANSAS)
)
COUNTY OF JOHNSON)

FILED
July 12, 2010
Data Center
Missouri Public
Service Commission

Staff Exhibit No. 21
Date 6-24-10 Reporter DF
File No. SR-2010-0110
WJR-2010-011

AFFIDAVIT OF W. BRIAN SCHWERMANN

I, W. Brian Schwermann, of lawful age and being first duly sworn on oath, hereby state that I am a designated representative of RPS Properties, L.P. ("RPS"), and that each of the following responses to the questions posed by the Missouri Public Service Commission Staff, in its letter dated May 6, 2010, which I am providing on behalf of RPS, is true and correct to the best of my knowledge, information, and belief.

QUESTIONS AND RESPONSES

1. [REDACTED]

[REDACTED]

2. [REDACTED]

[REDACTED]

3. [REDACTED]

[REDACTED]

[REDACTED]

4. [REDACTED]

[REDACTED]

5. [REDACTED]

[REDACTED]

6. [REDACTED]

[REDACTED]

7. [REDACTED]

[REDACTED]

8. [REDACTED]

[REDACTED]

9. [REDACTED]

[REDACTED]

10. How much money did RPS receive for these availability fees for the calendar year 2008?

RESPONSE: During 2008, the total amount of availability fees collected was \$396,154; however, RPS retained only a portion of that total.

11. [REDACTED]
[REDACTED]
[REDACTED]

12. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

13. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

14. [REDACTED]
[REDACTED]

- [REDACTED]

15. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

16. [REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]

17. Provide the total amount collected for availability fees and the time period since RPS has been involved in collecting them.

RESPONSE: RPS began collecting availability fees sometime in 2005. From that time through May 12, 2010, a total of approximately \$2,309,019 has been collected.

18. [REDACTED]

W. Brian Schwermann

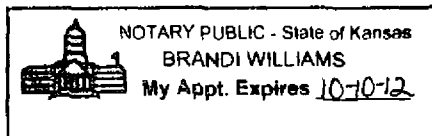
W. Brian Schwermann

The foregoing was subscribed and sworn before me this 13 day of May, 2010.

Brandi Williams

Notary Public

My commission expires: 10-10-2012





FILED
July 12, 2010
Data Center
Missouri Public
Service Commission

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1200 G Street, N.W.
Suite 800
Washington, D.C. 20005
(202) 434-8984, Fax (202) 434-8992

December 29, 2003

From: Susan Kliethermes

413533

Matt

To:	Company:	Fax Number:
Clerk of the Court, Circuit Court, Camden County, MO	Circuit Court, Camden County	(573) 346-5422

Number of Pages Transmitted (including this cover sheet): 17

Message:

Staff
Exhibit No. 52
Date 12/24/10 Reporter PF
File No. SR-2010-12410
WR-2010-041

If you have a problem receiving this facsimile, please call: (573) 893-4336

Fax Attendant: _____

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JCDOCS 14854v1

Attachment KKB 2



SUSAN C. KLIETHERMES
(573) 761-5001
EMAIL: SKLIETHERMES@LATHROPGAGE.COM
WWW.LATHROPGAGE.COM

314 EAST HIGH STREET
JEFFERSON CITY, MISSOURI 65101
(573) 893-4336, FAX (573) 893-5398

December 29, 2003

Via Facsimile (573) 346-5422 and U.S. Mail

Clerk of the Court
Circuit Court of Camden County
Courthouse
One Court Circle
Camdenton MO 65020

Re: Four Seasons Lakesites, Inc. v Lake Region Water & Sewer Co.
Case No. CV103-760CC

Dear Madam or Sir:

Attached for fax filing with your Court today is,

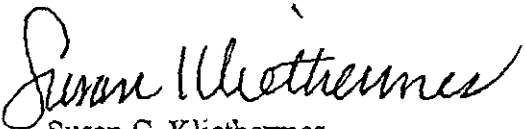
**Answer of Defendants Lake Region Water & Sewer Co.
and Waldo Morris to Plaintiff's Petition.**

The original of this Answer will be placed in the U.S. Mail to you today.

Thank you for your assistance.

Sincerely,

LATHROP & GAGE L.C.

By: 
Susan C. Kliethermes
Paralegal

Attachment

cc: Attorneys of Record

JCDOCS 14846v2

Change Your Expectations.

Attachment KKB 2

KANSAS CITY • OVERLAND PARK • ST. LOUIS • JEFFERSON CITY • SPRINGFIELD • BOULDER • WASHINGTON D.C.

IN THE CIRCUIT COURT OF CAMDEN COUNTY, MISSOURI

FOUR SEASONS LAKESITES, INC.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CV103-760CC
)	
LAKE REGION WATER & SEWER CO.,)	
et al.,)	
)	
Defendants.)	

ANSWER OF DEFENDANTS LAKE REGION WATER & SEWER CO.
AND WALDO MORRIS TO PLAINTIFF'S PETITION

GENERAL ALLEGATIONS

COME NOW Defendants Lake Region Water & Sewer Co. and Waldo Morris (hereinafter "Lake Region," "Morris," or collectively "Defendants"), through undersigned counsel, and for their answer to the General Allegations in Plaintiff's Petition state as follows:

1. Admit.
2. Admit.
3. Admit.
4. Admit. In answering further, Defendant Lake Region states that it provides water and sewer service to those in its certificated service area as approved by the Missouri Public Service Commission.
5. Defendants admit that Defendant Waldo Morris is the sole shareholder of all Lake Region stock. All allegations contained in paragraph 5 not specifically admitted are denied.

Attachment KKB 2

6. Admit. In answering further, Defendant Lake Region states that the name of the company was changed as required by Plaintiff.

7. Defendants admit that as part of the consideration for the sale of stock in Four Seasons Water and Sewer Company by Four Seasons Group, Inc., to Roy and Cindy Slates, any rights or interest Plaintiff Four Seasons Lakesites, Inc., may have had in availability or standby fees were assigned to Roy and Cindy Slates personally. Defendants deny that Exhibit A to the Assignment represents the only availability or standby fees for which Plaintiff's rights or interests were assigned. All allegations contained in paragraph 7 not specifically admitted are denied.

8. Defendants admit that as a result of Slates pledging stock in Lake Region Water & Sewer Company and pledging any rights and interest in the availability or standby fees to Morris, Morris is now the sole shareholder of Lake Region Water & Sewer Company and possesses the rights and interest in the availability or standby fees. In answering further, Defendants deny Plaintiff's categorization and limitation of availability or standby fees assigned as only those listed on Exhibit A. All allegations contained in paragraph 8 not specifically admitted are denied.

COUNT I

1. Defendants reassert the answers to all above numbered paragraphs.

2. Defendants admit that since acquiring the rights and interests in the availability or standby fees, Morris has collected those availability and standby fees. Defendants deny that Morris collected any standby fees that were not assigned to him. In answering further, Defendants deny Plaintiff's categorization and limitation of availability or standby fees assigned to Roy and Cindy Slates as only those listed on Exhibit A. All allegations contained in paragraph 2 not specifically admitted are denied.

3. Paragraph 3 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 3 requires an answer, Defendants deny paragraph 3. In answering further, Defendants assert that Plaintiff has no legal interest in the availability or standby fees and no standing to request access to the amount of those fees collected.

4. Paragraph 4 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 4 requires an answer, Defendants deny paragraph 4.

5. Paragraph 5 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 5 requires an answer, Defendants deny paragraph 5. In answering further, Defendants assert that Plaintiff has no legal interest in the availability or standby fees and no standing to request access to the amount of those fees collected.

6. Paragraph 6 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 6 requires an answer, Defendants deny paragraph 6. In answering further, Defendants assert that Plaintiff's alleged damages are an ascertainable amount of money, which by definition is an adequate remedy at law.

COUNT II

1. Defendants reassert the answers to all above numbered paragraphs.
2. Denied.
3. Denied.
4. Paragraph 4 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 4 requires an answer, Defendants deny paragraph 4.

COUNT III

1. Defendants reassert the answers to all above numbered paragraphs.

2. Defendants are without sufficient information to answer paragraph 2; therefore, paragraph 2 is denied.

3. Defendants are without sufficient information to answer paragraph 3; therefore, paragraph 3 is denied.

4. Defendants are without sufficient information to answer paragraph 4; therefore, paragraph 4 is denied.

5. Defendants are without sufficient information to answer paragraph 5; therefore, paragraph 5 is denied.

6. Denied.

7. Paragraph 7 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 7 requires an answer, Defendants deny paragraph 7.

8. Paragraph 8 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 8 requires an answer, Defendants deny paragraph 8.

COUNT IV

1. Defendants reassert the answers to all above numbered paragraphs..

2. Defendants are without sufficient information to answer paragraph 2; therefore, paragraph 2 is denied.

3. Defendants are without sufficient information to answer paragraph 3; therefore, paragraph 3 is denied.

4. Defendants are without sufficient information to answer paragraph 4; therefore, paragraph 4 is denied.

5. Defendants are without sufficient information to answer paragraph 5; therefore, paragraph 5 is denied.

6. Paragraph 6 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 6 requires an answer, Defendants deny paragraph 6.

7. Paragraph 7 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 7 requires an answer, Defendants deny paragraph 7.

COUNT V

1. Defendants reassert the answers to all above numbered paragraphs.

2. Defendants are without sufficient knowledge to answer paragraph 2; therefore, paragraph 2 is denied.

3. Defendants are without sufficient knowledge to answer paragraph 3; therefore, paragraph 3 is denied.

4. Defendants are without sufficient knowledge to answer paragraph 4; therefore, paragraph 4 is denied.

5. Denied.

6. Denied.

7. Paragraph 7 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 7 requires an answer, Defendants deny paragraph 7.

8. Paragraph 8 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 8 requires an answer, Defendants deny paragraph 8.

COUNT VI

1. Defendants reassert the answers to all above numbered paragraphs.

2. Denied.

3. Defendants admit that Plaintiff charged a total of \$18,164.43 for its services. In answering further, Defendants deny that Plaintiff is entitled to \$18,164.43 for excavation and rock drilling.

4. Denied.

5. Denied.

6. Paragraph 6 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 6 requires an answer, Defendants deny paragraph 6.

7. Paragraph 7 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 7 requires an answer, Defendants deny paragraph 7.

COUNT VII

1. Defendants reassert the answers to all above numbered paragraphs.

2. Denied.

3. Defendants admit that Lake Region has not paid the \$18,164.43. In answering further, Defendants deny that Plaintiff is entitled to \$18,164.43 for rock drilling and excavation.

4. Paragraph 4 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 4 requires an answer, Defendants deny paragraph 4.

5. Paragraph 5 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 5 requires an answer, Defendants deny paragraph 5.

COUNT VIII

1. Defendants reassert the answers to all above numbered paragraphs.

2. Denied.

3. Defendants admit that Plaintiff charged Lake Region \$5,489.54, but deny that it was for concrete work for Defendant Lake Region.

4. Defendants admit the charges were fair and reasonable, but deny that the charges were for concrete work.

5. Admit.

6. Paragraph 6 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 6 requires an answer, Defendants deny paragraph 6.

7. Paragraph 7 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 7 requires an answer, Defendants deny paragraph 7.

COUNT IX

1. Defendants reassert the answers to all above numbered paragraphs.

2. Denied.

3. Denied.

4. Denied.

5. Paragraph 5 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 5 requires an answer, Defendants deny paragraph 5.

6. Paragraph 6 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 6 requires an answer, Defendants deny paragraph 6.

COUNT X

1. Defendants reassert the answers to all above numbered paragraphs.

2. Denied.

3. Denied.

4. Denied.

5. Denied.

6. Denied.

7. Denied. In answering further, Defendants assert that Plaintiff's alleged damages are an ascertainable amount of money, which by definition is an adequate remedy at law.

8. Denied.

WHEREFORE, having fully answered Plaintiffs' Petition and Plaintiff having failed to plead a cause or causes of action, Defendants respectfully request that Plaintiffs' Petition be dismissed and Defendants be granted such other and further relief as deemed just and proper.

ADDITIONAL AND AFFIRMATIVE DEFENSES

1. Defendants state that all allegations not specifically admitted in the answer above are denied, and all answers above are incorporated herein.

2. The assignment of availability and standby fees contested by Plaintiff in this action was expressly stated consideration in a July, 1998, Stock Purchase Agreement whereby Four Seasons Group, Inc. transferred all stock, rights, and interest in Four Seasons Water & Sewer Company (now renamed Lake Region Water & Sewer Company, Defendant herein) to Roy and Cindy Slates.

3. As part of that consideration, Four Seasons Group, Inc. had its subsidiary, Four Seasons Lakesites, Inc., assign all interest it had in the availability or standby fees to Roy and Cindy Slates.

4. The rights, interests, and obligations for which Plaintiff seeks relief in this action were conveyed by the Stock Purchase Agreement and assignment of rights and interests in the availability or standby fees, and Plaintiff has no claim for relief.

Standing

5. Plaintiff cannot assert rights or interests in the availability or standby fees.

6. The availability or standby fees are paid by individual private lot owners at the time that each such individual purchases a lot in order to reserve sewer and water capacity until the time the individual finishes building a home and connects the finished home to Four Season's Water & Sewer Company.

7. Plaintiff does not pay the fee, Plaintiff does not, and cannot, provide water or sewer service, nor does Plaintiff have any other legally cognizable interest in the availability or standby fees which Plaintiff admits are to provide sufficient sewer and water capacity.

8. Plaintiff has no standing to assert an interest in the availability or standby fees for itself or any third party.

9. The assignment of availability and standby fees was an assignment by Plaintiff Four Seasons Lakesites, Inc., and Four Seasons Water & Sewer Co. (which is now Defendant Lake Region Water & Sewer Co.).

10. If Plaintiff is correct in its assertion that availability and standby fees for lots sold after August 6, 1998, were not assigned to Roy and Cindy Slates, which Defendants deny, any interest in those fees would remain in the company now named Lake Region Water & Sewer Co, Defendant herein.

Failure to State a Claim Against Defendant Four Seasons Water & Sewer Co., Failure to State a Claim Against Defendant Waldo Morris, Improper Uniting of Claims and Parties

11. Plaintiff Four Seasons Lakesites, Inc., assigned its interest in the availability and standby fees to Roy and Cindy Slates personally.

12. Roy and Cindy Slates assigned their interests and rights in the availability and standby fees to Defendant Waldo Morris.

13. Counts I, II, and X of Plaintiff's Petition seek relief against both Waldo Morris and Lake Region Water & Sewer Co. for allegedly exercising rights and interests in the availability or standby fees that purportedly belong to Plaintiff.

14. Plaintiff has failed to assert any facts, or state any claim, which if true would establish that Defendant Lake Region Water & Sewer Co. has exercised any right or interest in the availability or standby fees allegedly held by Plaintiff.

15. Count VII of Plaintiff's Petition seeks relief from Defendant Waldo Morris for alleged acts of Lake Region Water & Sewer Co. on the sole basis that Waldo Morris is a shareholder of Lake Region Water & Sewer Co.

16. Lake Region Water & Sewer Co. is a duly authorized corporation, and Mr. Morris cannot be sued on the basis that he is a shareholder.

17. Plaintiff's Petition alleges ten counts against Defendants based upon unrelated acts over a five-year period, and intermixes requests for relief between Lake Region Water & Sewer Co. and its shareholder Waldo Morris without stating specific bases or facts establishing that each defendant is allegedly liable for the relief requested by Plaintiff.

Estoppel, Laches, and Course of Conduct

18. Plaintiff alleges that it is entitled to availability or standby fees, and interest, for all lots Plaintiff sold subsequent to August 6, 1998.

19. The obligation of the individual property owners to pay the availability or standby fees is created when Plaintiff sells a lot to a lot purchaser and the obligation of the lot purchaser to pay the fees is attached as a covenant on the lot.

20. Plaintiff knows who it has sold lots to since August 6, 1998.

21. Plaintiff has known since August 6, 1998, that those lot owners have paid the availability or standby fees to Defendant Morris.

22. Plaintiff has waited over five years to bring this action alleging that Defendants have been collecting availability or standby fees that Plaintiff alleges belong to it.

23. Since August, 1998, Plaintiff has continued attaching the requirement to pay availability or standby fees to the lots it sells, has continued to allow Defendant Waldo Morris to collect the fees, and has continued to allow Defendant Waldo Morris to spend the fees for the benefit of Defendant Lake Region Water & Sewer Company to guarantee capacity and services for Plaintiff's developments.

24. Pursuant to Chapter 644, RSMo, and its implementing regulations, Plaintiff cannot sell lots without first demonstrating to the Missouri Department of Natural Resources that the entity certificated by the Missouri Public Service Commission to provide sewerage to the geographic area where the lots are located has sufficient capacity to provide sewer service for the lots Plaintiff sells.

25. Defendant Lake Region Water & Sewer Co. is the entity certified by the Missouri Public Service Commission to provide sewerage to Plaintiff's developments.

26. When Four Seasons Group, Inc., transferred the water and sewer company through the July, 1998, Stock Purchase Agreement, Plaintiff Four Seasons Lakesites, Inc., was limited by the State of Missouri to sell no more than fifty lots because of insufficient sewage capacity.

27. Lake Region Water & Sewer Company has used the availability or standby fees to build a new sewage treatment plant and new water tower, invest in capital improvements, and otherwise increase capacity and services in order to provide capacity for Plaintiff's developments.

28. Plaintiff has never had to stop selling lots due to lack of capacity from Lake Region Water & Sewer Company, and Plaintiff has been able to develop and sell more lots because of Lake Region Water & Sewer Company's use of the availability or standby fees. Had Lake Region Water & Sewer Company not used the fees for their intended purpose, which only Lake Region Water & Sewer Company can do, Plaintiff's development would have stopped long ago.

29. Since August, 1998, Plaintiff has received the benefit of Lake Region Water & Sewer Company using the availability or standby fees to increase capacity so Plaintiff could sell more lots.

30. Plaintiff is equitably estopped from claiming availability or standby fees from August, 1998, to present, because Plaintiff has already received the benefit of those fees.

31. Plaintiff has waited an unreasonable amount of time to bring this action.

32. Plaintiff's unreasonable delay has worked to Plaintiff's benefit and Defendants' detriment.

33. Plaintiff's course of conduct is an admission that Plaintiff does not have rights or interest in the availability or standby fees.

Failure to Join an Indispensable Party and Failure of Consideration

34. Plaintiff Four Seasons Lakesites, Inc., now challenges in this action the assignment of the availability or standby fees which was express consideration granted by Four Season Group, Inc., by alleging that the assignment transferred something less than all interest in the availability or standby fees to the detriment of Defendants.

35. Four Season's Group, Inc. is an indispensable party to this litigation in that Plaintiff is now disputing the consideration expressly granted by Four Seasons Group, Inc.

Statute of Frauds

36. Counts III and IV of Plaintiff's Petition seek relief for an alleged oral contract for real and personal property for a value of \$87,500.00.

37. Count V of Plaintiff's Petition seeks relief for an alleged oral contract for goods and services worth \$81,750.00.

38. Counts VI and VII of Plaintiff's Petition seek relief for an alleged oral contract for services worth \$18,164.43.

39. Counts VIII and IX of Plaintiff's Petition seek relief for services worth \$5,489.54.

40. Pursuant to §400.2-201, RSMo, contracts for goods, the price of which is \$500.00 or more, are not enforceable unless in writing.

41. The alleged oral contracts Plaintiff seeks to enforce in this action are for "goods" as defined at §§400.2-105 - 400.2-107, RSMo, and therefore not enforceable.

42. The alleged oral contracts Plaintiff seeks to enforce in this action are for real property or an interest therein, and therefore were required to be in writing to be enforceable. §432.010, RSMo.

43. The alleged oral contracts Plaintiff seeks to enforce in this action are for services for a time longer than one year or not to be performed within one year of the making, and therefore were required to be in writing to be enforceable. §432.010, RSMo.

Statute of limitations

44. Counts I, II, and X seek relief based upon the July, 1998, Stock Purchase Agreement and assignment of availability or standby fees dated August, 1998.

45. Pursuant to §516.120, RSMo, such an action based upon a contract must be commenced with five years.

46. Plaintiff did not commence this action within five years as required by §516.120.

Plaintiff Drafted the Assignment

47. Plaintiff drafted the assignment of availability or standby fees.

48. Plaintiff seeks to use ambiguities in the assignment to Plaintiff's advantage in establishing that Plaintiff allegedly did not assign availability or standby fees for lots sold after August, 1998.

49. Plaintiff's assertion that it did not assign availability or standby fees for lots sold after August, 1998, is based solely on ambiguity in the assignment.

50. Because Plaintiff drafted the assignment, any ambiguity in the assignment must be construed against Plaintiff.

WHEREFORE, having fully answered Plaintiffs' Petition and Plaintiff having failed to plead a cause or causes of action, Defendants respectfully request that Plaintiff's Petition be dismissed and Defendants be granted such other and further relief as deemed just and proper.

Respectfully submitted,

LATHROP & GAGE L.C.

By: 

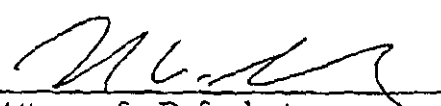
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent by facsimile and U.S. Mail, postage prepaid, this 29th day of December, 2003, to the following:

John E. Curran
Brook McCarrick
P O Box 600
Osage Beach, MO 65065
Facsimile: (573) 348-3093


Attorney for Defendants