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STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Discovery Conference

December 30, 2013

Jefferson City, Missouri

Volume 6

File No. WR-2013-0461

(Starting time of conference: 10:00 a.m.)

1 STATE OF MISSOURI

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3 PUBLIC SERVICE COMMISSION

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6 TRANSCRIPT OF PROCEEDINGS

7 Discovery Conference

8 December 30, 2013

9 Jefferson City, Missouri

10 Volume 6

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13 In The Matter Of Lake Region)

Water & Sewer Company's)

14 Application To Implement A) File No. WR-2013-0461

General Rate Increase In)

15 Water And Sewer Service)

16

17

18 MICHAEL BUSHMANN, Presiding

REGULATORY LAW JUDGE

19

20

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1 (Starting time of conference: 10:00 a.m.)

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

3 JUDGE BUSHMANN: I'll go on the record. Today's
4 date is December 30th, 2013, at 10:00 a.m. Commission has
5 set this time for a Discovery Conference in the case
6 captioned as In The Matter Of Lake Region Water And Sewer
7 Company's Application To Implement A General Rate Increase
8 In Water And Sewer Service, File No. WR-2013-0461.

9 My name is Michael Bushmann. I'm the Regulatory
10 Law Judge for this hearing. I will have counsel enter
11 their appearance for Lake Region Water and Sewer Company.

12 MR. COMLEY: Appearing for Lake Region Water and
13 Sewer Company, the record should reflect the entry of Mark
14 W. Comley, Newman, Comley and Ruth. Our business address
15 is 601 Monroe, Suite 301, Jefferson City, Missouri.

16 JUDGE BUSHMANN: For Commission Staff.

17 MS. MOORE: Appearing on behalf of the Commission
18 Staff, Amy Moore, Tim Opitz, and Kevin Thompson, P.O. Box
19 360, Jefferson City, Missouri, 65102.

20 JUDGE BUSHMANN: And for Office of Public Counsel.

21 MS. BAKER: Thank you. Christina Baker, P.O. Box
22 2230, Jefferson City, Missouri, 65102, appearing on behalf
23 of the Office of the Public Counsel and the Ratepayers.

24 JUDGE BUSHMANN: Okay. Thank you. The reason

1 we're here today is because Office of Public Counsel has
2
3 requested this Discovery Conference to talk about a
4 dispute regarding some data requests sent to Lake Region
5 by the Missouri Company.

6 And I've looked at the data requests. I've also
7 looked at Lake Region's objections. So, I guess, Ms.
8 Baker, how did you respond to the objections that were
9 submitted by Lake Region?

10 MS. BAKER: The objections, basically, were
11 relevance and the issues of availability fees as being a
12 part of this case. And, certainly, it's our position that
13 availability fees are certainly relevant within this case.
14 They affect the rate base that is to be put in and is
15 being requested by the Company for what their rates are
16 going to be, how much are contributed, how much have been
17 paid for by people who are owners of lots that are
18 expecting state-of-the-art facilities when they are ready
19 to hook into the water and sewer systems.

20 So, we certainly believe that they are -- they are
21 relevant. In the last case, the Commission did make a
22 finding that availability fees did affect rates through
23 rate base, and that is something that we are trying to
24 figure out with some of these data requests because they

1 are based on the Company's request for rates and what the
2 rate base is.

3 The Company is requesting, we're trying to figure
4
5 out. Some of these are asking for reconciliation of the
6 total availability fees that were collected, the total
7 amount of plant that the company is requesting, the total
8 amount of contributions that the Company has on its books.
9 That's all very relevant to this case.

10 JUDGE BUSHMANN: What about the other objection
11 regarding the fact that Lake Region claims it doesn't have
12 the information, that it's in the possession of a non-
13 party?

14 MS. BAKER: I mean, for example, just to start off
15 a little bit, we did meet about these on Friday, so some
16 of them have been answered by the Company or is in the
17 process of being answered by the Company.

18 But, for example, Data Request 1007, where we are
19 looking for a listing of the lots that are being billed
20 for availability fees, the people who are the co-assesseees
21 for the availability fees are the shareholders of Lake
22 Region. They are -- they are the only shareholders of it.
23 They are -- they are affiliates, they are interested
24 parties in Lake Region, they are the only shareholders of

1 Lake Region. Lake Region knows that information but they
2 are not giving it to us.

3 JUDGE BUSHMANN: Mr. Comley, what's your position
4 on this?

5 MR. COMLEY: Well, I would renew the arguments
6
7 that Lake Region made in earlier Discovery Conference that
8 this information is in the position of a non-party. Lake
9 Region does not have control over this information. Um,
10 the data requests, in fact, talks about information that
11 would be more directly known by Public Water Supply
12 District No. 4. Um, and again, since it is a different
13 party than Lake Region, I don't look at the data request
14 as a means of one discovery advice fits all situations.
15 And a data request to Lake Region is not a data request to
16 Public Water Supply District No. 4, a non-party.

17 Public Counsel has at its disposal a variety of
18 discovery devices just as Staff does. Sunshine water
19 request of the public water, it would be sufficient to and
20 any defenses it may have, Sub Water District No. 4 has.

21 Shareholders are shareholders. It is not the
22 authority of the Commission that shareholders are
23 affiliates of that authority whether it's closely held or
24 otherwise. So, that would be my response to that.

1 And I wanted to echo some things that Mrs. Baker
2 said. The parties did meet on Friday, and Lake Region is
3 preparing a response, subject to the objections that had
4 been submitted. And that is partly in compliance with
5 your directive that we go ahead on this availability fee
6 issue as much as we can to develop the record and get that
7 issue out in front of you again -- out in front of the
8
9 Commission again.

10 But, I think, as I remember, 1007 --

11 MS. BAKER: Yes.

12 MR. COMLEY: -- and 1010, No. 10, and there was
13 another one probably involved in the settlement agreement
14 as I recall, but those were three of them that we were
15 still divided on.

16 MS. BAKER: 1007, asking for the availability
17 fees, billing, and collections.

18 MR. COMLEY: Each block owner billed, how many
19 lots each owner was billed.

20 MS. BAKER: Right. And, then, 1008, providing a
21 reconciliation of the total availability fees that have
22 been collected, because the amount of availability fees
23 that's collected, we believe, has a direct affect on the
24 rate base of the company.

1 And, then, 1010, which is asking for documentation
2 of the total number of lots that were -- that were
3 developed by Lake Region -- or, I'm sorry -- by Four
4 Seasons Lake Sites and their subsequent assessees.

5 MR. COMLEY: Which number is that now?

6 MS. BAKER: 1010.

7 MR. COMLEY: Oh, yes.

8 MS. BAKER: Uh-huh. And, from that, is finding
9 out how many lots are sitting there waiting to get utility
10
11 service once they determine or once they decide to,
12 because the issue of availability fees is trying to pay
13 for a plant that is put in by those who are not taking
14 service quite yet because it's a stand-by plant, state-of-
15 the-art plant, that has to be given to them once they are
16 ready. And, so, they are helping to contribute money into
17 that enterprise.

18 JUDGE BUSHMANN: Okay.

19 MR. COMLEY: We would disagree with the premise
20 that Mrs. Baker is talking about. All this plant has been
21 contributed and it has been recorded on the books of Lake
22 Region as contributed plant since for the history of the
23 company. So, there is no return on that rate base, that
24 contribution.

1 But, again, the development of the Four Seasons
2 Lake Sites Subdivision, again, the number of lots that
3 Four Seasons Lake Sites developed would not be something
4 that Lake Region has any connection with. Lake Region is
5 not in the real estate development business.

6 Again, I think that this issue is something the
7 Commission struggled with in the last rate case and came
8 to the conclusion that, you know, there's other ways
9 besides going and asking Lake Region for this material for
10 the record to be developed assuming it's relevant to the
11 first place.

12

13 We don't abandon our objections to that in any
14 way. We try to observe any -- observe any availability
15 fees from Lake Region and any other party.

16 JUDGE BUSHMANN: Okay.

17 MS. BAKER: I mean, it really comes down to like
18 the answers that were given for 1013, 1016, and 1017
19 asking for reconciliations of the plant that's been put
20 in, the contributions in aid of construction that are put
21 into the company's books. All of those, the company said,
22 Well, we don't have it. Look at our annual reports.

23 Well, I mean, these are what rates are supposed to
24 be based on. It is the company's burden to prove these

1 things. They can't just say, We don't have it, look at
2 our annual reports, and then later on go, Oh, my, the
3 annual reports are just estimates. You know, everything
4 is estimated, so it can't be right. And that's -- that's
5 what is happening in between the last case and this case.
6 It is the company's burden to prove what its rate base is,
7 what its contributions are, what has been donated to it,
8 what availability fees have been paid to take care of some
9 of this state-of-the-art utility that's supposed to be
10 waiting for new people.

11 So, if it's their burden to, I can't see how they
12 would then just say to us, We don't have it, and throw
13 their hands up in the air. Man, man, I don't. I think
14
15 that the reconciliation you're talking about is something
16 that's not required by the rules. The Company has
17 supplied all of it's books and records and that is what
18 it's basing its case on.

19 Now, the injection of availability fees is not
20 something the Company has injected, and I submit Lake
21 Region's burden is to establish it rates based upon what
22 the Commission has required in terms of its account
23 structure and the nature of the reconciliations that are a
24 part of the rate case, rate case procedures. I look at

1 this as something additional. It's not required. They
2 don't. Again, looking at Data Request 1013, and it
3 doesn't have that reconciliation. All the records have
4 been supplied to the Staff and the OPC.

5 Like, from 1016, for all plants and service
6 installed within the Shawnee Bend Water and Sewer
7 Jurisdiction by Four Seasons Lake Site, Inc., and
8 subsequent assessees, please provide a reconciliation
9 provided by year, the total actual costs incurred and
10 booked to the USOA plant accounts that were donated to the
11 utility by the developers.

12 So, if they are going to say that these things are
13 already included in the contributions, then we want to see
14 what was put in by year, the actual costs that were
15 incurred, and what has been booked. Because, without that
16
17 knowing exactly what plant was put in when, how can we
18 find out what the total plant is, what the total rate base
19 is, and what the total contributions should be. We can't
20 just look at the annual report for that.

21 MR. COMLEY: This is all donated plant. And it's
22 --

23 MS. BAKER: But you have nothing that proves --

24 MR. COMLEY: We don't have the total cost of the

1 developer. This was donated to the Company.

2 JUDGE BUSHMANN: Okay. Anything further from the
3 parties on this?

4 (No response.)

5 JUDGE BUSHMANN: Seems to me I'm glad that some of
6 these are taken care of. I'm not sure what are or are not
7 but, in general, I disagree that it's irrelevant. Based
8 on the Commission's recent evidentiary motion of the
9 issue, it sounds like the availability fees are a live
10 issue, at least for the time being. So, the information,
11 I think, is relevant as far as that goes.

12 As far as the other objection regarding
13 information that's in the possession of a non-party, this
14 is very similar to what Staff brought up a couple months
15 ago; and, at that point, my position was that I didn't
16 think it was appropriate to require Lake Region to get
17 information from an entity or person that's not a party to
18
19 the case. And I still hold that view.

20 I think if it's in the possession of a non-party,
21 there are other ways, other means of discovery to obtain
22 the information, and I think some of what Staff has done,
23 that could be done in this case. I think we have until
24 January 8th to issue discovery, and that's something that

1 could be done in this case.

2 With regard to the No. 1015, that's the settlement
3 agreement? I didn't see why that could not be provided.
4 In my review of the previous order indicated that, at the
5 last rate case, indicated that that was an exhibit --
6 highly confidential exhibit, but it was an exhibit in that
7 case, and I don't see why that couldn't be provided in
8 this case unless there's something I'm missing here.

9 MR. COMLEY: We were prepared -- I don't have a
10 copy of it and -- and -- if the Commission, OPC has a copy
11 of it?

12 MS. BAKER: We have a copy of what was put into
13 the previous case, but we have no -- no assurance that
14 that is a full document. So, what we were looking for was
15 a full document.

16 JUDGE BUSHMANN: Okay.

17 MR. COMLEY: Okay. We'll check on that.

18 JUDGE BUSHMANN: That seems to be something that
19 would be discoverable, and we can be protected if it's
20
21 confidential, including a highly confidential
22 classification. And my reading of the previous order was
23 that order did not disclose the terms of the agreement,
24 even though it does refer to it in a footnote.

1 MR. COMLEY: I think Lake Region is a party to
2 that and I think under the same obligations now as it was
3 then to make sure that that is not publicly disclosed; so,
4 again, if we can have that level of protection on the
5 agreement, we'll check and confirm that the agreement is
6 the entire agreement and we trust that OPC would retrieve
7 it on a highly confidential basis as it has in the past.

8 MS. BAKER: Certainly.

9 JUDGE BUSHMANN: Okay. Is there anything else
10 that we need to talk about regarding these discoveries or
11 data requests?

12 MS. BAKER: No.

13 JUDGE BUSHMANN: Okay. Anything else any parties
14 need to bring up while we're here on the record?

15 MR. COMLEY: I was trying to recall from my notes,
16 and, I'm sorry, they were a bit weak. Did you want us to
17 provide you a status report of some sort in writing about
18 how we're handling the development of the record on the
19 availability fee issue?

20 JUDGE BUSHMANN: Yeah, I think I would. I would
21 like to get a status report to see how things are going,
22
23 because you've got rebuttal coming up on January 10th and
24 I think it would be important for the parties to

1 understand what's going to be taken official notice from
2 the previous case while you're preparing the rebuttal
3 testimony.

4 MR. COMLEY: I think I can speak freely on this,
5 but the parties have been cooperative in preparing a
6 stipulation.

7 JUDGE BUSHMANN: Okay.

8 MR. COMLEY: We have used as a template the
9 findings of fact and some of the applications of the fact
10 that were related in the previous order, and that's given
11 us a good frame of reference. And Mrs. Baker has come up
12 with additional facts on a time line for the history of
13 the Company from, I think, some testimony that Mr. Merseal
14 (ph) had in the previous case. So, we are moving -- we're
15 advancing that.

16 JUDGE BUSHMANN: Okay. Well, that would be good.
17 That would be a good way to resolve that, I think.

18 MR. COMLEY: I have some data requests to you all.

19 MS. MOORE: When?

20 MR. COMLEY: When are those going to be due?

21 MS. MOORE: Next week.

22 MR. COMLEY: That will give us some time to look
23 at them.

24

1 JUDGE BUSHMANN: What's the anticipated time you
2 will be filing a stipulation? Are you looking at next
3 week sometime?

4 MS. MOORE: Possibly.

5 MS. BAKER: Probably. Probably. Probably near to
6 rebuttal time.

7 MR. COMLEY: We have a deadline for undisputed
8 facts that the Judge put into the order. Would you want
9 something on availability fees? Maybe the parties would
10 want something on availability fees in advance so the
11 rebuttal testimony would not be so large.

12 JUDGE BUSHMANN: That was my thought as far as the
13 timing goes. That would save a lot of effort on rebuttal
14 testimony if you're going to stipulate to it anyway. But
15 if it's not ready, it's not ready. So, I don't have
16 strong feelings about it. I was thinking of the feelings
17 of the parties.

18 So, I guess maybe by the end of the week, if you
19 could just file a joint status report just to to let me
20 know where you're coming from. If it's going to be a
21 little while before you can agree to the stipulation,
22 that's fine. I just want to know where we are.

23 Anything else we need to talk about?

24 (No response.)

1 JUDGE BUSHMANN: All right. I think we're
2
3 concluded.

4 MR. COMLEY: Thank you.

5 MS. BAKER: Thank you.

6 MS. MOORE: Thank you.

7 JUDGE BUSHMANN: Off the record.

8 (Whereupon, the record ended at 10:18 a.m.)

9 * * * * *

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1 C E R T I F I C A T E

2 STATE OF MISSOURI)

3) ss.

4 COUNTY OF COLE)

5 I, Pamela S. Gentry, Certified Court

6 Reporter with the firm of Midwest Litigation Services, do

7 hereby certify that I was personally present at the

8 proceedings had in the above-entitled cause at the time

9 and place set forth in the caption sheet thereof; that I

10 then and there took down in Stenotype the proceedings had;

11 and that the foregoing is a full, true and correct

12 transcript of such Stenotype notes so made at such time

13 and place.

14 Given at my office in the City of

15 Jefferson, County of Cole, State of Missouri.

16

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Pamela S. Gentry, CCR #426

22

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24

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