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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
11	
12	File No. WR-2013-0461
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18	(Starting time of conference: 10:00 a.m.)
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8	December 30, 2013	
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10	Volume 6	
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12		
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		
	REPORTED BY:	
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	Missouri CCR No. 426	
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1	(Starting time of conference: 10:00 a.m.)
2	PROCEEDINGS
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

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1 we're here today is because Office of Public Counsel has

- 3 requested this Discovery Conference to talk about a
- 4 dispute regarding some data requests sent to Lake Region
- 5 by the Missouri Company.
- 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.
- 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

	Page 3
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-assessees
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

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parties in Lake Region, they are the only shareholders of

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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.

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- 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

- 9 Commission again.
- But, I think, as I remember, 1007 --
- MS. BAKER: Yes.
- 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.
- 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.
- 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.

Page 42 And, then, 1010, which is asking for documentation 1 of the total number of lots that were -- that were 3 developed by Lake Region -- or, I'm sorry -- by Four Seasons Lake Sites and their subsequent assessees. MR. COMLEY: Which number is that now? 5 MS. BAKER: 1010. 6 MR. COMLEY: Oh, yes. MS. BAKER: Uh-huh. And, from that, is finding 8 9 out how many lots are sitting there waiting to get utility 10 service once they determine or once they decide to, 11 12 because the issue of availability fees is trying to pay for a plant that is put in by those who are not taking 13 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 that enterprise. 17 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.

Page 43 But, again, the development of the Four Seasons 1 Lake Sites Subdivision, again, the number of lots that Four Seasons Lake Sites developed would not be something that Lake Region has any connection with. Lake Region is not in the real estate development business. Again, I think that this issue is something the 6 Commission struggled with in the last rate case and came to the conclusion that, you know, there's other ways 8 9 besides going and asking Lake Region for this material for 10 the record to be developed assuming it's relevant to the first place. 11 12 13 We don't abandon our objections to that in any 14 We try to observe any -- observe any availability 15 fees from Lake Region and any other party. 16 JUDGE BUSHMANN: Okay. MS. BAKER: I mean, it really comes down to like 17 the answers that were given for 1013, 1016, and 1017 18 19 asking for reconciliations of the plant that's been put 20 in, the contributions in aid of construction that are put into the company's books. All of those, the company said, 21 2.2 Well, we don't have it. Look at our annual reports. 23 Well, I mean, these are what rates are supposed to

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be based on. It is the company's burden to prove these

Page 44 things. They can't just say, We don't have it, look at 1 our annual reports, and then later on go, Oh, my, the 3 annual reports are just estimates. You know, everything is estimated, so it can't be right. And that's -- that's what is happening in between the last case and this case. 5 It is the company's burden to prove what its rate base is, 6 what its contributions are, what has been donated to it, what availability fees have been paid to take care of some 8 of this state-of-the-art utility that's supposed to be 9 10 waiting for new people. So, if it's their burden to, I can't see how they 11 12 would then just say to us, We don't have it, and throw their hands up in the air. Man, man, I don't. I think 13 14 15 that the reconciliation you're talking about is something that's not required by the rules. The Company has 16 supplied all of it's books and records and that is what 17 18 it's basing its case on. 19 Now, the injection of availability fees is not something the Company has injected, and I submit Lake 20 21 Region's burden is to establish it rates based upon what 2.2 the Commission has required in terms of its account

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part of the rate case, rate case procedures. I look at

structure and the nature of the reconciliations that are a

23

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- 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 assesses, 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

Page 46 developer. This was donated to the Company. JUDGE BUSHMANN: Okay. Anything further from the 3 parties on this? (No response.) 5 JUDGE BUSHMANN: Seems to me I'm glad that some of these are taken care of. I'm not sure what are or are not 6 but, in general, I disagree that it's irrelevant. Based 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, I think, is relevant as far as that goes. 11 12 As far as the other objection regarding information that's in the possession of a non-party, this 13 is very similar to what Staff brought up a couple months 14 15 ago; and, at that point, my position was that I didn't 16 think it was appropriate to require Lake Region to get information from an entity or person that's not a party to 17 18 the case. And I still hold that view. 19 20 I think if it's in the possession of a non-party, 21 there are other ways, other means of discovery to obtain 2.2 the information, and I think some of what Staff has done, 23 that could be done in this case. I think we have until January 8th to issue discovery, and that's something that 24

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- 1 could be done in this case.
- 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?
- 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.
- 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.

Page 48 MR. COMLEY: I think Lake Region is a party to 1 that and I think under the same obligations now as it was then to make sure that that is not publicly disclosed; so, again, if we can have that level of protection on the 5 agreement, we'll check and confirm that the agreement is the entire agreement and we trust that OPC would retrieve 6 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 data requests? 11 12 MS. BAKER: No. 13 Okay. Anything else any parties JUDGE BUSHMANN: 14 need to bring up while we're here on the record? 15 MR. COMLEY: I was trying to recall from my notes, and, I'm sorry, they were a bit weak. Did you want us to 16 provide you a status report of some sort in writing about 17 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, 2.2 23 because you've got rebuttal coming up on January 10th and 24 I think it would be important for the parties to

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- 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.
- 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.
- MS. MOORE: When?
- 20 MR. COMLEY: When are those going to be due?
- MS. MOORE: Next week.
- MR. COMLEY: That will give us some time to look
- 23 at them.

Page 50 JUDGE BUSHMANN: What's the anticipated time you 1 will be filing a stipulation? Are you looking at next 3 week sometime? MS. MOORE: Possibly. 5 MS. BAKER: Probably. Probably near to 6 rebuttal time. MR. COMLEY: We have a deadline for undisputed facts that the Judge put into the order. Would you want 8 9 something on availability fees? Maybe the parties would 10 want something on availability fees in advance so the rebuttal testimony would not be so large. 11 12 JUDGE BUSHMANN: That was my thought as far as the timing goes. That would save a lot of effort on rebuttal 13 14 testimony if you're going to stipulate to it anyway. But if it's not ready, it's not ready. So, I don't have 15 strong feelings about it. I was thinking of the feelings 16 of the parties. 17 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, 2.2 that's fine. I just want to know where we are. 23 Anything else we need to talk about? 24 (No response.)

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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.)
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1	CERTIFICATE
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	
17	
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21	Pamela S. Gentry, CCR #426
22	
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24	

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