

**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            )  
Rate Increase in Water & Sewer Service.                    )        **File No. SR-2010-0110**

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

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**POST-HEARING BRIEF - PART 2 OF THE  
OFFICE OF THE PUBLIC COUNSEL**

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**POST-HEARING BRIEF – PART 2 OF THE OFFICE OF THE PUBLIC COUNSEL**

COMES NOW the Office of the Public Counsel (Public Counsel) and states for its Post-Hearing Brief – Part 2 as follows:

**A. Does the Missouri Public Service Commission (Commission) have jurisdiction over utility availability fees?**

The Commission does have jurisdiction over utility availability fees. The jurisdiction of the Commission is set out in RSMo §386.250. Where a statute is reasonably open to construction, the Public Service Commission has the power to determine administratively its own jurisdiction. The definition of service in RSMo §386.020.37 can reasonably be seen to include availability charges. The definition of service includes accommodations afforded customers or patrons and includes providing a product or a commodity. The evidence shows that Lake Region Water & Sewer Company (Lake Region) provides a costly commodity, water availability, through the utility's plant and infrastructure for which the lot owners are required to pay. Standby and availability charges are fees which are exacted for the benefit which accrues to property by the virtue of having water available to it even though the water might not actually be used at the present time. The evidence also shows that the lot owners gain an increase in their

property values because there is an availability of water and sewer that is there and ready for them to take when they choose.

The evidence also shows that the Commission has and does exert jurisdiction over availability fees. Ozark Shores, an affiliate company of Lake Region, charges availability fees which are applied as an offset to expenses in determining Commission approved rates. (Tr. P. 61, L. 20-24; P. 115, L. 9-11) Peaceful Valley has availability fees in its Commission approved tariffs. (Tr. P. 61, L. 12-14; P. 62, L. 2-3) Until recently, I.H. Utilities also had availability fees in its Commission approved tariffs. (Tr. P. 62, L. 3-6)

As a matter of fact, Lake Region itself had availability fees accounted for in its Commission approved rates and annual reports (Tr. P. 349, L. 13-20) until the fees were diverted to another entity. (Tr. P. 484, L. 20-25; P. 485, L. 1-25; P. 486, L. 1-10) The documentation provided to lot owners specifically states that the “amounts of said availability charges, times and methods of payments thereof by said owners and other matters shall be as provided in schedules of rates and rules, regulations and conditions of service for water services file and published by said public utility or utilities with said Missouri PSC or any successor regulatory body of the state of Missouri in accordance with law and passed to file or formally approved by said PSC...” (Tr. P. 238, L. 14-21) This reflects an understanding on the part of Lake Region and its owners that the Commission would have jurisdiction over the availability fees.

The evidence shows a nexus between the utility service and the availability fees. The availability fees are used to repay the utility's cost of plant and infrastructure which by design requirements must be made available. Without a utility present, there would be no availability charge. It makes no difference that the availability charge contract is with the owners of the utility; the availability charge is a charge for service provided by the utility. The utility owners

should not be allowed to contract themselves and the utility out of Public Service Commission regulation. Contracts cannot limit regulation by the Public Service Commission. Therefore, the Commission should find that it does have jurisdiction over utility availability fees.

**B. Should charges for availability fees collected from owners of undeveloped lots in Lake Region's service territory and billed and retained by an affiliate company be classified as Lake Region revenue or applied against rate base?**

The availability fees collected from owners of undeveloped lots should be applied against rate base or classified as Lake Region revenue. Utility rates which do not take into account that a portion of the utility plant and infrastructure is being paid for through an availability charge are not just and reasonable. All through this case, Lake Region refused to present concrete numbers regarding the number of lots or the amount of availability fees that were collected. The only concrete evidence that was presented was from the Property Owners' Association on the number of undeveloped lots. The evidence shows that given the number of undeveloped lots (Ex. LPOA-4 & Ex. LPOA-5) and the annual availability fee for water and sewer of \$300 (Tr. P. 235, L. 1-2) as much as \$3,197,100 could have been collected in availability fees between 2003 and 2010. However, the evidence shows that the total amount of availability fees that have been collected is actually much higher. While the evidence at the hearing indicated that the availability fees have been collected since 1995 (Tr. P. 347, L. 22-25; P. 348, L. 6-8), in Staff's *Response to Commission Request for Annual Report Analysis* filed on May 28, 2010, availability charges were actually listed for Lake Region and its predecessor as far back as 1973 and approximate \$5,585,227 in total. No concrete evidence to the contrary was presented.

Since the reason for the availability fees was to recoup the original \$5,300,000 (Tr. P. 335, L. 2-9; P. 348, L. 2-5) cost of the plant, the evidence shows that at least \$3,200,000, and more likely the entire amount plus a significant overage, of the \$5,300,000 plant was recouped through the availability fees. It is not just and reasonable to expect current customers to pay for these costs again. Therefore in the absence of concrete evidence to the contrary, the Commission should determine that the entire \$5,300,000 cost of the plant, or a similar amount the Commission deems just and reasonable, should be applied as an offset to rate base when determining the rates for Lake Region. The owners of the utility should not be allowed to siphon money meant for the utility away from the utility and then expect money to be collected a second time through rates and through their customers.

However, another acceptable option is available to the Commission if rate base treatment is not preferred. The Commission has the option of classifying the availability fees as revenue for Lake Region. The evidence shows that given the number of undeveloped lots in 2010 of 1285 (Ex. LPOA-4 & Ex. LPOA-5) and the annual availability fee for water and sewer of \$300 (Tr. P. 235, L. 1-2), the annual revenue generated by the availability fees would be approximately \$385,500. Though it differs from Staff's position, Public Counsel argues that if rate base treatment is not ordered, it is just and reasonable for the entire amount of the availability fees assessed and collected to be remitted to Lake Region to meet the needs of its authorized operation and maintenance. To the extent those needs are satisfied, it is just and reasonable that the excess be used to reduce the Lake Region's investment costs. It is not just and reasonable for the current customers to pay for costs that are already being paid for through the availability charge.

**C. If the Commission finds charges for availability fees of undeveloped lots are not to be classified as Lake Region revenue, or applied against rate base, then what costs should be identified and excluded from Lake Region's cost of service?**

As stated above, the evidence is clear that the availability fees should be applied against rate base or classified as Lake Region revenue. However, if the Commission determines that the availability fees should not be applied against rate base or classified as Lake Region revenue, the evidence shows that the Commission at the very least should exclude any costs related to the availability fees from Lake Region's cost of service. As provided in the testimony of Staff witness Featherstone (Tr. P. 450-454), these costs related to availability fees include a portion of management costs and payroll costs. It is not just and reasonable for customers to pay any costs related to the availability fees when they are getting no benefit from their collection.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Christina L. Baker**

By:\_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 16<sup>th</sup> day of July 2010:

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