

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

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

THE OFFICE OF THE PUBLIC COUNSEL'S MOTION FOR REHEARING

COMES NOW the Office of the Public Counsel and for its Motion for Rehearing states that rehearing is warranted and the Report and Order should be reheard because the decision is unlawful, unjust, and unreasonable and is arbitrary, capricious, unsupported by substantial and competent evidence, and is against the weight of the evidence considering the whole record, is unauthorized by law, and constitutes an abuse of discretion, all as more specifically and particularly described in this motion and as follows:

Application for Rehearing

A. **Introduction**

The Office of the Public Counsel (Public Counsel), pursuant to Section 386.500¹ and 4 CSR 240-2.160, specifically sets forth the reasons warranting a rehearing and moves the Missouri Public Service Commission (Commission) for rehearing of its Report and Order of August 18, 2010, effective August 28, 2010, which states "Lake Region has, by a preponderance of the evidence, met its burden of proving, that the baseline rate increase for its operations totaling \$143,730 (Shawnee Bend Water -\$12,637; Shawnee Bend Sewer - \$102,350; Horseshoe

¹ All statutory citations are to the Revised Statutes of Missouri 2000, unless otherwise noted.

Bend Sewer \$28,743) approved in this order is just and reasonable. Lake Region has also, by a preponderance of the evidence, met its burden of proving that \$33,232 is the just and reasonable amount to be recovered in rates for executive management compensation and that \$42,997 is the just and reasonable amount to be recovered in rates for rate case expense, as amortized and allocated as described.”²

B. Executive Management Compensation is Unlawful, Unjust and Unreasonable

The Missouri Public Service Commission Report and Order is unlawful, unjust and unreasonable because the Commission’s decision regarding executive management compensation is unsupported by substantial and competent evidence, and is against the weight of the evidence considering the whole record, is unauthorized by law, and constitutes an abuse of discretion.

The evidence shows that Mr. Stump, Mr. Robert Schwermann and Mr. Brian Schwermann are not actually providing executive services to Lake Region and that Staff just took Lake Region’s word that executive management tasks were really being performed. The evidence also shows that there is no necessity for an "Executive Group" and the customers are getting very little benefit from the executive management group that could not be provided by the Board of Directors.

It is also an abuse of discretion for the Commission to refuse to make a reduction in executive management compensation and payroll by treating RPS Properties and Sally Stump d/b/a Lake Utility Availability 1, a fictitious name, as a fourth entity being managed by the Executive Group. RPS Properties and Sally Stump d/b/a Lake Utility Availability 1 is the recipient of the availability fees paid by undeveloped lot owners. Therefore, it is just and reasonable to make a reduction in executive management compensation and payroll for any

² Report and Order, pg. 120

expenses necessary for the collection of availability fees on behalf of this non-utility entity. Lake Region provided what the Commission determined to be an accurate accounting of these expenses totaling approximately \$2,000 annually. However, the Commission found this amount to be *de minimis*. In reality, \$2,000 annually constitutes more than 6% of the amount to be recovered in rates for executive management compensation. That approximately 6% of what customers are paying as executive management of the utility is actually for the benefit of a non-utility entity is unreasonable and certainly not *de minimis*.

Therefore, the inclusion of \$33,232 for executive management compensation in the Report and Order is unlawful, unjust and unreasonable.

C. Rate Case Expense is Unlawful, Unjust and Unreasonable

The Missouri Public Service Commission Report and Order is unlawful, unjust and unreasonable because the Commission's decision regarding rate case expense is unsupported by substantial and competent evidence, and is against the weight of the evidence considering the whole record, is unauthorized by law, and constitutes an abuse of discretion.

It is not just and reasonable to expect customers to pay \$42,997 of Lake Region's rate case costs due to the utility's self-serving arguments against Commission jurisdiction and its selfish refusal to provide information to the parties regarding availability fees. Rather than take the opportunity to file a small company rate case which would have significantly reduced the rate case expense, Lake Region voluntarily took the gamble that their arguments and lack of information solely to protect a third-party, non-regulated entity would add to the complexity of this case. Lake Region should bear the burden of that choice rather than the customers and any rate case expense due to jurisdictional arguments or unresponsiveness to discovery should not be included in rates.

Therefore, the inclusion of \$42,997 of rate case expense in the Report and Order is unlawful, unjust and unreasonable.

D. Failure to Impute Revenue from Availability Fees is Unlawful, Unjust and Unreasonable

The Missouri Public Service Commission Report and Order is unlawful, unjust and unreasonable because the Commission's decision not to impute revenue from availability fees is unjust and unreasonable, unsupported by substantial and competent evidence, is against the weight of the evidence considering the whole record, is unauthorized by law, and constitutes an abuse of discretion.

The Report and Order specifically states: "Because the utility had, at different intervals, direct use of or access to this revenue stream, and because the fees can be defined as a commodity falling under the definition of utility service, the Commission concludes that it should assert jurisdiction over availability fees."³ As the Commission states, even though Lake Region allows a third party to collect and retain the availability fees, this has not always been the case. The utility has in the past had "direct use of or access to this revenue stream." Therefore, it is just and reasonable in this case 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 customers to bear the burden of paying for lost revenue to the utility that is being collected through the availability charge by a third party.

Therefore the Report and Order is unlawful, unjust and unreasonable due to the failure to impute revenue from availability fees.

³ Report & Order, pg. 103

E. The Introduction of a Live Issue After the Issuance of the Report and Order Violates Public Counsel's Due Process Rights and therefore is Unlawful, Unjust and Unreasonable.

The Missouri Public Service Commission Report and Order is unlawful, unjust and unreasonable because the significant change to a stipulated issue after the Report and Order was issued is a violation of Public Counsel's due process rights.

One of the live issues in this case was a determination of how much wastewater flow to apply to the Four Seasons Racquet and Country Club Condominium Owners Association, Inc. (Racquet Club) and the Country Club Hotel (Hotel) as this would affect the amount of revenue received by Lake Region and thus the rates of other customers. On February 22, 2010, Lake Region, the Staff of the Missouri Public Service Commission (Staff), and the Racquet Club filed a Partial Nonunanimous Stipulation Respecting Adjustments To Sewer Charges Applicable To Intervenor Four Seasons Racquet And Country Club Condominium Owners Association, Inc. (Stipulation).

The Stipulation stated that Lake Region agreed to install, at its own cost and expense, flow meters at points on the Racquet Club's collection system in order for Lake Region to separately measure the: 1) total water flow from the Hotel system; and 2) total flow from the Racquet Club system that enters Lake Region's wastewater treatment plant. The Stipulation provided that the flow meters were to be installed by May 31, 2010. The Stipulation also stated:

10. Treatment of Adjusted Revenue. Staff agrees that for purposes relevant in this case the rate revenue derived from Lake Region's charges for service to the Club and the Hotel shall reflect an amount based upon metered water usage rather than the flow meter. Once the flow meters are operating to the satisfaction of Lake Region, the Racquet Club and Hotel, the flow meter reading used to determine the monthly billings of the Racquet Club and Hotel will be used for the rates revenues in future rate cases.

Even though Public Counsel had concerns regarding the treatment of the adjusted revenue, Public Counsel saw a benefit to both the customers and the utility in determining the exact wastewater flow coming from the Racquet Club and the Hotel within the context of the pending rate case. Therefore, Public Counsel filed no objection and the Stipulation was approved by the Commission as a Unanimous Stipulation on April 14, 2010.

Additionally, a request for an extension until August 31, 2010 was made on May 27, 2010. While Public Counsel continued to have concerns, the benefit of determining the exact wastewater flow coming from the Racquet Club and the Hotel within the context of the pending rate case remained so Public Counsel filed no objection. The Commission granted this request on June 1, 2010.

However, on August 24, 2010, (five days after the Report and Order in this rate case) a Joint Application for Extension was filed requesting an extension of the August 31, 2010 deadline stating that Lake Region and the Racquet Club will report to the Commission when the flow meter installations are completed, or report to the Commission as to the progress of the flow meter installations by June 1, 2011, whichever first occurs. The August 24, 2010, Joint Application noted that the Commission had already entered a Report and Order in this matter, and stated that it is likely that the individuals involved in this Stipulation will request this item be placed on a separate docket until completed. The result of this request is that there will be no determination of the exact wastewater flow coming from the Racquet Club and the Hotel within the context of this rate case as relied upon previously by Public Counsel.

During the timeframe between February 22, 2010 when the Stipulation was filed and August 24, 2010, Public Counsel was led to believe that a resolution to this issue had been achieved. However, once the Report and Order was issued, Lake Region and the Racquet Club filed a request to significantly change that resolution. The result of this significant change is that

the issue of how much wastewater flow to apply to the Racquet Club and the Hotel, and how this would affect the amount of revenue received by Lake Region and thus the rates of other customers, became live once more but only after the Report and Order had been issued when Public Counsel no longer has an opportunity to bring its position on this issue before the Commission.

It is a violation of Public Counsel's due process rights to introduce a live issue in a case after the Report and Order has been issued thereby cutting off any chance of Public Counsel bringing its position on that issue before the Commission. Therefore, the Report and Order violates Public Counsel's due process rights and is therefore unlawful, unjust and unreasonable.

F. Conclusion

Public Counsel's Application for Rehearing should be granted due to the fact that the Report and Order is unlawful, unjust, and unreasonable and is arbitrary, capricious, unsupported by substantial and competent evidence, and is against the weight of the evidence considering the whole record, is unauthorized by law, and constitutes an abuse of discretion.

WHEREFORE, Public Counsel respectfully requests that the Commission grant rehearing of its August 18, 2010 Report and Order.

Respectfully submitted,

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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 27th day of August 2010:

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