

**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>Case No. WR-2013-0461, et. al</u>
Rate Increase in Water and Sewer Service.)	

STAFF'S BRIEF

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its post-hearing *Brief*, states:

Introduction

This case is a general rate case, initiated by Lake Region Water and Sewer Company ("Lake Region" or "the Company") on July 16, 2013, by the filing of water and sewer service tariffs seeking an additional \$218,762 in annual revenues. Lake Region is a Missouri corporation in good standing, its principal place of business is located at 62 Bittersweet Road, Lake Ozark, Missouri 65049. Lake Region possesses a certificate of convenience and necessity issued by the Commission on December 27, 1973, in Case No. 17,954, to provide water and sewer service in Missouri. Lake Region is a water corporation pursuant to Section 386.020(52), RSMo., a sewer corporation pursuant to Section 386.020(49), RSMo., and consequently a public utility within the meaning of 386.020(42), RSMo., and therefore subject to the jurisdiction of the Commission pursuant to Section 386.250, (3) and (4), RSMo.¹

In addition to Lake Region, the Commission's Staff ("Staff") is a party to this case pursuant to Section 386.071 and Commission Rule 4 CSR 240-2.010(10). The Office of

¹ *Joint Stipulation of Additional Material Facts*, ¶ 1; all statutory references, unless otherwise specified, are to the *Revised Statutes of Missouri* ("RSMo."), revision of 2000, as cumulatively supplemented.

the Public Counsel (“OPC”) is also a party to this case pursuant to Section 386.710(2) and by Commission Rule 4 CSR 240-2.010(10).

Pursuant to due notice, the Commission convened an evidentiary hearing on February 18, 2014. Eight witnesses testified and the Commission received 28 exhibits.

Lake Region’s Operations

Lake Region provides water service to approximately 658 customers and sewer service to approximately 635 customers in its Shawnee Bend service area; and sewer service to approximately 245 customers in its Horseshoe Bend service area. Lake Region’s water system is comprised of: (1) two deep wells, each with a pumping capacity of 360,000 gallons per day; (2) a 200,000 gallon elevated water storage tank; and (3) approximately 96,847 feet of water mains. The sewer system is comprised of: (1) seven sewage treatment plants: (a) Lodge, with a 326,500 gallon daily capacity, (b) Racquet Club, with a 292,500 gallon daily capacity, (c) Charleston Condominiums, with a 24,000 gallon daily capacity, (d) Shawnee Bend, with a 100,000 gallon daily capacity, (e) Grandview, with a 50,000 gallon daily capacity, (f) Maywood, with a 12,800 gallon daily capacity, and (g) Blackhawk, with a 1,387 gallon daily capacity; (2) multiple lift stations; and, (3) approximately 8,924 feet of collecting sewers.²

On July 16, 2013, Lake Region filed revised tariff sheets designed to change its gross annual revenue and commencing the rate cases WR-2013-0461 and SR-2013-0459. Thereafter, the Commission issued an Order Suspending Tariffs and Delegating Authority suspending Lake Region’s revised tariff sheets for 120 days plus six months to an effective date or operation of law date of June 13, 2014.

² *Joint Stipulation of Additional Material Facts*, ¶¶. 4-6.

Staff conducted its investigation and a hearing was held during which the parties presented evidence regarding availability fees, capital structure, return on equity, and legal expense.

Argument

The parties have presented four issues for the Commission's determination. The remaining issues are 1) availability fees, 2) capital structure, 3) return on equity, and 4) legal expense. On Staff's statement of issues, the consulting fee and rental equipment issues were listed, but were not contested on the day of the hearing. It is Staff's understanding that, by not contesting these issues in the hearing, the Company accepted Staff's positions on these matters as stated in Staff's Position Statements.

Issue 1: Availability Fees

Should availability fees collected from owners of undeveloped lots in Lake Region's service territory be classified as Lake Region revenue or applied against rate base?

Facts:

1. Availability fees are recurring charges that owners of most of the subdivision lots in the company's service area are obligated to pay, if those owners are not water and/or sewer utility customers.³
2. Water and/or sewer facilities are adjacent to the lots of persons obligated to pay availability fees and service is readily available to them.⁴
3. The subdivision covenants and restrictions applicable to most lot owners in the company's service area create the obligation to pay the availability fees.⁵

³ *Merciel Surrebuttal*, p. 2, lines 19-22.

⁴ *Id.*

4. The subdivision covenants and restrictions state that the availability fees were to be paid to the owner of the water or sewer system.⁶

5. The availability fee revenue was initially in the possession and control of Lake Region.⁷

6. Lake Region, or its predecessor in interest, assigned the revenue to Roy and Cindy Slates in approximately March 1999.⁸ Lake Region and Roy and Cindy Slates did not seek or obtain authority from the Commission to transfer the availability fees, a utility asset, away from Lake Region. It is not clear what, if any, consideration was received for this transfer.

7. On July 27, 1999, Lake Region filed its Annual Report with the Commission for the year ending December 31, 1998. Availability fees are listed as “other income” and total \$52,648. This is consistent with timing of the assignment of the fees to the Slates. This was the last year availability fees were reported to the Commission.⁹

8. On April 12, 2000, Roy and Cindy Slates assigned the availability fees to Lake Region.¹⁰

9. On April 12, 2000, Lake Region assigned the availability fees to Waldo I. Morris, President of Lake Region.¹¹ Lake Region and Waldo I. Morris did not seek or obtain authority from the Commission to transfer the availability fees, a utility

⁵ *Merciel Surrebuttal*, p. 3, lines 11-12; Schedule JAM-2.

⁶ *Merciel Surrebuttal*, p. 4, lines 16-18; Schedule JAM-2.

⁷ *Merciel Surrebuttal*, p. 4, lines 9-13; Schedule JAM-2.

⁸ *Merciel Surrebuttal*, p. 4, lines 13-15.

⁹ *Joint Stipulation of Undisputed Facts*, p. 19-20, ¶ 47.

¹⁰ *Joint Stipulation of Undisputed Facts*, p. 20, ¶ 48.

¹¹ *Joint Stipulation of Undisputed Facts*, p. 20, ¶ 49.

asset, away from Lake Region. It is not clear what, if any, consideration was received for this transfer.

10. On October 13, 2004, Waldo I. Morris, Robert P. Schwermann and Sally J. Stump executed a “Contract Regarding Availability Fees” (“Fee Contract”).¹²

11. Part of the Fee Contract included consummating and closing a Stock Purchase Agreement in which Robert P. Schwermann and Sally J. Stump purchased all of the stock in Lake Region for three million dollars.¹³

12. The Fee Contract was accompanied by a separate “Assignment of Availability Fees” agreement specifying that for the amount of \$1.00, and “other good and valuable consideration,” Mr. Morris assigned the availability fees to Robert P. Schwermann and Sally J. Stump.¹⁴

13. Since the sale of Lake Region’s stock and the assignment of availability fees to Robert P. Schwermann and Sally J. Stump, and a settlement agreement executed in Civil Case No. CV103-760CC, Sally J. Stump and RPS Properties, L.P. have owned the right to collect the availability fees.¹⁵

14. Lake Region is presently owned by RPS Properties, L.P., and Vernon Stump.¹⁶

15. RPS Properties, L.P., and Sally Stump, d/b/a Lake Utility Availability 1, bill for and collect availability fees from land owners of undeveloped lots within the service

¹² *Joint Stipulation of Undisputed Facts*, p. 20, ¶ 50.

¹³ *Joint Stipulation of Undisputed Facts*, p. 20, ¶ 51.

¹⁴ *Joint Stipulation of Undisputed Facts*, p. 20, ¶ 52.

¹⁵ *Joint Stipulation of Undisputed Facts*, p. 23, ¶ 64.

¹⁶ *Cost of Service Report*, p.5, line 14.

area of the Lake Region. Lake Utility Availability 1 is the entity presently collecting the availability fees.¹⁷

16. Lake Utility Availability 1 is a fictitious name registered with the Missouri Secretary of State.¹⁸ Lake Utility Availability 1 is an unregulated affiliate of Lake Region.¹⁹

17. Lake Utility Availability 1 is not providing anything in consideration of the money that is being paid to it by the lot owners.²⁰

18. Costs incurred to repair, maintain, and construct the water distribution and waste water collection systems, including those related to unimproved lots, were included in Staff's revenue requirement.²¹

19. Lot owners paying the availability fees are not paying these fees for construction and maintenance of roads or common use areas within the subdivisions.²²

20. Availability fees are paid to ensure the availability of an adequately maintained water and sewer system.²³

21. In five years, RPS Properties collected over ** _____

_____. **24

¹⁷ *Bolin Surrebuttal*, p. 2, lines 15-16; *Merciel Surrebuttal*, p. 4, lines 8-9.

¹⁸ *Joint Stipulation of Undisputed Facts*, p. 23, ¶ 65.

¹⁹ *Merciel Surrebuttal*, p. 4 lines 8-9; *Bolin Surrebuttal*, p. 10 lines 1-17. The affiliate transaction rule definitions encompassed by 4 CSR 240-40.015 (Gas) and 4 CSR 240-20.015 (Electric) are consistent with a general understanding of an affiliate and are useful in understanding the business relationships of Lake Region. For a detailed description of the overlapping ownership of Lake Region, Ozark Shores Water Company, North Suburban Public Utilities, and Lake Utility Availability 1, see *Cost of Service Report*, p. 5, lines 14-24.

²⁰ *Bolin Surrebuttal*, p. 2, lines 16-17.

²¹ *Bolin Surrebuttal*, p. 5, lines 5-7.

²² *Bolin Surrebuttal*, p. 5, lines 18-20.

²³ *Bolin Surrebuttal*, p. 5, lines 20-21.

²⁴ *Bolin Surrebuttal*, p. 8, line 6; *Bolin Surrebuttal*, Attachment KKB1, pp. 3-4.

22. During the test year, July 1, 2012 – June 30, 2013, RPS Properties collected ** _____ ** in availability fees.²⁵

23. Availability fees have been collected in the Company's Shawnee Bend service area since at least 1993.²⁶

24. The information concerning the billing and collection of availability fees is stored on Lake Region's computer.²⁷

25. Camden County Water District No. 4 bills the unimproved lot owners and collects the availability fees for Lake Utility Availability 1.²⁸

26. The Commission asserts jurisdiction over availability fee revenue with other regulated utilities.²⁹

27. Ozark Shores Water Company is a utility that has availability fee revenue included in its rate calculations.³⁰ The availability fee revenue has been included in the rates of Ozark Shores Water Company and its predecessor-in-interest since 1973.³¹

28. Peaceful Valley Service Company, a water and sewer utility, presently has availability fees included in its water tariff.³² Peaceful Valley Service Company has had availability fees in its approved water tariff since 1981.³³

²⁵ *Bolin Surrebuttal*, p. 8, lines 12-14.

²⁶ *Bolin Surrebuttal*, p. 8, lines 16-18.

²⁷ *Bolin Surrebuttal*, p. 10, lines 15-17.

²⁸ *Bolin Surrebuttal*, p. 6, lines 13-14.

²⁹ *Merciel Surrebuttal*, p. 5, lines 8-9.

³⁰ *Merciel Surrebuttal*, p. 5, lines 9-12. Ozark Shores Water Company, a regulated utility and successor owner of some water system assets of Lake Region, has common ownership with Lake Region and is managed by John Summers – the manager of Lake Region.

³¹ *Merciel Surrebuttal*, p. 5, lines 12-14. Ozark Shores Water Company was originally named Four Seasons Lakesites Water & Sewer Co. when its certificate of convenience and necessity was issued in Case No. 17,954.

³² *Merciel Surrebuttal*, p. 6, lines 1-7; Schedule JAM-3.

29. I.H. Utilities, Inc., a water service utility, had availability fees in its tariff as early as 1981.³⁴

30. In a recent rate case, I.H. Utilities, Inc., voluntarily deleted the availability fee from its tariff and ceased charging availability fees.³⁵

31. The Commission has treated availability fee utility as utility revenue without any rulemaking.³⁶

Analysis:

At various times during this case, Lake Region has raised a variety of objections to the discovery and admission of any evidence on availability fees. The objections are relevance, jurisdiction, and absence of a rulemaking. These objections are tied to and interwoven with the treatment of availability fees and necessarily must be addressed before the substance of the issue, namely, Staff's position that availability fees must be imputed to Lake Region's revenue in the calculation of rates.

1. Relevance and Jurisdiction:

It is startling that Lake Region would take the position that availability fees are irrelevant to this case and outside the Commission's jurisdiction. The record shows that Lake Region owned this revenue stream up until 1999 and again between 2000 and 2004. The record does not show that authorization was obtained from this Commission to transfer this valuable asset away from utility in either 1999 or 2004. "Section 393.190, governs the transfer of franchise or property of water and sewer

³³ *Merciel Surrebuttall*, p. 6, lines 13-14.

³⁴ *Merciel Surrebuttall*, p. 6, lines 15-20; Schedule JAM-4.

³⁵ *Merciel Surrebuttall*, p. 7, line 2.

³⁶ *Merciel Surrebuttall*, p. 8, lines 18-20.

corporations. Under this section a regulated utility proposing a sale of its assets must secure an order authorizing the sale from the Commission.”³⁷ Where, as here, the transfer is unauthorized, it is void as a matter of law.³⁸ The fact is, the availability fees *belong to Lake Region now and always have.*

In a general rate case, the Commission must evaluate all relevant factors in setting just and reasonable rates.³⁹ The Commission has no choice but to consider this significant revenue stream that, inexplicably, the Company does not now receive. Thus, evidence on the availability fees is necessarily relevant. As an asset of the regulated utility, the availability fees are certainly within the Commission’s jurisdiction.⁴⁰

In Lake Region’s previous rate case, the Commission reasoned that it should have jurisdiction over availability fees and like charges, stating:

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.**⁴¹ (emphasis added).

Staff recognizes that the Commission is not bound by its previous decisions,⁴² however, Staff believes the Commission’s analysis on this point is reasonable.

³⁷ *Environmental Utilities, LLC v. Public Service Com’n*, 219 S.W.3d 256, 264 (Mo. App., W.D. 2007).

³⁸ Section 393.190.1.

³⁹ *State ex rel. Util. Consumers' Council of Missouri, Inc. v. Pub. Serv. Comm’n*, 585 S.W.2d 41, 48 (Mo. banc 1979) (“*UCCM*”).

⁴⁰ Section 393.140(1).

⁴¹ *In the Matter of Lake Region Water and Sewer Co.*, 19 Mo.P.S.C.3d 515, 602.

⁴² “...the PSC is not bound by *stare decisis* based on prior administrative decisions, so long as its current decision is not otherwise unreasonable or unlawful.” See, e.g., *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm’n*, 120 S.W.3d 732, 736 (Mo. banc 2003) (“an administrative agency is not bound by *stare decisis*”); *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm’n*, 186 S.W.3d 376, 390 (Mo. App. W.D. 2005). *State ex rel. Aquila, Inc. v. Pub. Serv. Comm’n of State*, 326 S.W.3d 20, 32 (Mo. Ct. App. 2010).

2. Absence of Rulemaking:

Lake Region has contended that a rule promulgated or adopted on the treatment of availability fees is a prerequisite to Commission consideration of the issue. Staff disagrees with this contention. While Lake Region is technically correct in its assertion that the Commission ordered a workshop docket for the purpose of developing a rulemaking to address availability fees and that the workshop docket closed without producing a rule, the details Lake Region leaves out are vital to understanding why Staff and the Company find themselves addressing the availability fees issue in a rate case once again. These details are also the very reason the Commission should reject any argument that the absence of an applicable rule is a valid reason to bypass the Commission's authority to hear and determine the question of availability fees treatment.

As was decided in Lake Region's last rate case, the Commission opened Case Nos. SW-2011-0042 and WW-2011-0043 in order to determine how to treat revenue derived through the use of availability fees.⁴³ In response to Staff's *Request for Extension of Time*⁴⁴ on December 22, 2010, the Commission issued an *Order Granting Extension of Time*, which directed Staff to file a proposed schedule for workshops by

⁴³ "During the recent ratemaking proceeding for Lake Region Water and Sewer Company, the Commission announced its intention to change, on a prospective basis, its practices and policies with how it treats revenue derived through the use of availability fees and other similar fees for capital recovery of infrastructure investment in sewer and water companies." ***In the Matter of a Working Docket to Investigate Appropriate Methods for Ratemaking Treatment of Fees or Other Mechanisms used for Capital Recovery of Sewer and Water Infrastructure Investment***, Case Nos. SW-2011-0042 and WW-2011-0043 (***Order Directing Notice of Working Case and Directing Filing***, iss'd Aug. 23, 2010) (***"Availability Fees Working Dockets"***).

⁴⁴ Staff requested one previous extension on September 23, 2010.

July 11, 2011.⁴⁵ On June 16, 2011, the Commission initiated the consolidation of these dockets into an existing docket, WW-2009-0386,⁴⁶ which had been opened for the purpose of investigating solutions to problems facing Missouri's small water and sewer public utilities.

More than a year later, on November 1, 2012, Staff filed a *Motion to Close Case* in WW-2009-0386, to which none of the docket participants objected.⁴⁷ In that *Motion* and in its subsequent *Summary of Working Docket in Support of Case Closure*, Staff explained that, while meetings conducted over the course of that docket resulted in identification of several problem areas and several proposed solutions, the participants⁴⁸ in this docket were unable to reach a consensus on the majority of the issues identified.⁴⁹ Because of this and because the docket had become inactive, Staff requested that the docket be closed, saying:

While many . . . problems are common within the industry, each individual water and sewer company presents its own unique situation and solutions are easier to reach by focusing on the individual company. Therefore, Staff states that, at this time, those problems are better addressed in the context of a company's rate case or other company-specific filing with the

⁴⁵ "The January 7, 2011, deadline for the Staff of the Missouri Public Service Commission to file a proposed schedule for workshops, along with any other proposals it has regarding the procedure to follow in these workshop dockets, is extended until July 11, 2011." ***Availability Fees Working Dockets, Order Granting Extension of Time***, iss'd Dec. 29, 2010).

⁴⁶ ***Availability Fees Working Dockets, Order Consolidating Investigations***, iss'd June 16, 2011. Case No. WW-2009-0386 was styled ***In the Matter of a Working Case to Investigate Solutions to Problems Facing Small Water and Sewer Public Utilities***. That case was closed on January 23, 2013.

⁴⁷ Lake Region participated in the working docket. ***In the Matter of a Working Case to Investigate Solutions to Problems Facing Small Water and Sewer Public Utilities***, Case No. WW-2009-0386 (***Staff Summary of Working Docket in Support of Case Closure***, filed Jan. 2, 2013) (***"Solutions to Problems Docket"***).

⁴⁸ Participants included the Missouri Department of Natural Resources, the Missouri Attorney General's Office, the Office of the Public Counsel, Staff, and various representatives of Missouri water and sewer utilities. *Id.*

⁴⁹ *Id.*, p. 2, ¶ 5.

Commission, as opposed to maintaining an open workshop that is not active or productive to address those problems.⁵⁰

On January 23, 2013, the Commission issued an *Order Granting Motion to Close File*, citing Staff's explanation of the working docket activities and Staff's assertion that the unresolved issues in the docket were better addressed in the context of a company's rate case or other company-specific filing.⁵¹ The Commission granted Staff's request to close the docket, saying, "[h]aving reviewed Staff's verified report, the Commission finds Staff's request to close this file reasonable and will grant it."⁵²

As is evident from reviewing the entirety of this record, the closure of the working docket was not actually a failure to produce a necessary rule but rather a determination that, based on the inability of parties with competing interests to reach a consensus, a rulemaking was not the most effective avenue for addressing the issues raised in the docket. The failed effort to establish a rule shows that this rate case is exactly the forum for the Commission to answer the question of availability fees treatment in rates for this Company, its ratepayers and its shareholders.

The truth is, very few utilities charge availability fees and the facts are significantly different from case-to-case. A rule of general applicability is inappropriate; instead, Due Process requires contested case adjudication.⁵³ In the present case, the availability fees have been unlawfully transferred from the utility to its shareholders, a unique fact pattern.

⁵⁰ *Solutions to Problems Docket, Staff's Motion to Close Case*, filed No. 1, 2012, para. 8.

⁵¹ *Solutions to Problems Docket, Order Granting Motion to Close File*, iss'd Jan. 23, 2013, at pp. 1-2.

⁵² *Id.*, at p. 5.

⁵³ Section 536.010(4): "Contested case" means a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing.

Availability Fees Analysis:

Presently, Lake Region is asking the Commission to grant an increase in rates. When evaluating a general rate case, the Commission must evaluate all relevant factors in setting just and reasonable rates.⁵⁴ As discussed above, availability fee revenue is necessarily a relevant factor in the determination of Lake Region's rates because it is an asset of the Company. When setting rates, the Commission is also entrusted with the role of balancing the needs of the Company and its ratepayers and is given discretion in the way that it achieves that balance.⁵⁵ The unauthorized transfer of the availability fee revenue away from Lake Region to its shareholders dramatically shifts that balance to the detriment of the ratepayers and the utility itself. The only interest served by not considering the availability fees is that of the two shareholders [Vernon Stump and Robert P. Schwermann], who doubtless do not want their dealings scrutinized too closely.

Treating the availability fee as Company revenue is consistent with the Commission's treatment of availability fees with respect to other regulated utilities. In the case of one utility, Peaceful Valley Service Company, the availability fees are included in its water tariff. With respect to another utility, Ozark Shores Water Company, while the availability fees are not tarified, they are treated as an offset to revenue requirement.⁵⁶ Lake Region is the only utility with availability fees whose ratepayers receive no benefit from them.

⁵⁴ *UCCM, supra.*

⁵⁵ *State ex rel. Union Elec. Co. v. Pub. Serv. Comm'n*, 765 S.W.2d 618, 622 (Mo. App., W.D. 1988) "Ratemaking is a balancing process. Although there are general guidelines and restrictions placed upon a regulatory body's discretion concerning rates, that discretion is very broad within those perimeters."

⁵⁶ Ozark Shores is owned by the same shareholders that own Lake Region and is managed by John Summers, manager of Lake Region.

Under the covenants that created availability fees in portions of Lake Region's service area, that revenue was to be paid to the owner of the water and sewer system. In fact, the availability fee revenue was for many years paid to Lake Region and its predecessors in interest. This money could be used to support the improvement, extension and maintenance of the water and sewer infrastructure; however, the owners of Lake Region assigned the availability fee revenue to themselves and other entities in approximately March 1999.⁵⁷ This decision to transfer away a valuable utility asset was unlawful, because it was unauthorized by this Commission, and was detrimental to the ratepayers and to the utility itself – especially since the apparent consideration was one dollar.⁵⁸ Not only was this transfer unlawful and detrimental, the loss of that revenue stream poses a threat to the utility's viability.⁵⁹

Lake Region must make any repairs necessary to the water and sewer infrastructure.⁶⁰ The cost of maintaining and repairing infrastructure in a recreational development near a large recreational lake can pose additional burdens on the utility if people buy subdivision lots for access to amenities but do not construct homes on those lots.⁶¹ In that instance, there can be a need to supplement revenue for the purpose of maintaining a water distribution system or sewer collection system that is larger (more pipe footage) than what would be ordinarily needed for the customers if lots with houses

⁵⁷ *Merciel Surrebuttal*, p. 8, lines 7-9.

⁵⁸ *Merciel Surrebuttal*, p. 8, lines 7-9, p. 9, lines 18-20.

⁵⁹ *Merciel Surrebuttal*, p. 4, lines 13-15.

⁶⁰ *Bolin Surrebuttal*, p. 3, lines 21-22.

⁶¹ *Merciel Surrebuttal*, p. 9, lines 10-12.

were not intermingled with lots without houses. Availability fee revenue that belongs to a utility would meet that need, thereby enhancing the utility's financial viability.⁶²

In fact, with a new water and sewer system, availability fees can be relied on to support the operation of the system.⁶³ In the first few years of a utility's operation, only 20 to 30 percent of the revenue might be from typical commodity and customer charges of water and sewer services; the remainder would be from availability fees.⁶⁴ Even though the utility may only have a few customers connected, it must still operate and maintain the entire system. In that instance, the availability fees would be necessary for the utility to use for operations and maintenance.

The transfer of the availability fee revenue away from the utility was evidently done without Commission approval. The transfer of a utility asset, without having first secured a Commission order of approval, is void. Section 393.190.1 states in relevant part:

No ... water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, **without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void** (emphasis added).

⁶² *Merciel Surrebuttall*, p. 9 lines 12-16.

⁶³ Tr. 287, lines 21-24.

⁶⁴ Tr. 288, lines 2-7. Staff Expert Merciel was describing his understanding of how the availability fees would be used based on an engineering report at the time the system was built; see *Joint Stipulation of Undisputed Facts*, p. 17 ¶ 37.

Even though availability fees have not been listed in the tariff for Lake Region or its predecessors in interest, the Commission has included them as a utility revenue stream for other utilities. Lake Region has shown that availability fees revenues are something that can be bought and sold as it sold these revenues to a related party in 1998.⁶⁵ If this availability fee revenue was assigned away without express prior Commission approval, the assignment would be void by operation of law.

As a practical matter, revenues derived from availability fees are utility-related and are generally intended for utility use. Here, Lake Region is the entity supporting the utility plant facilities and infrastructure that exists in order to provide water and sewer service. Staff contends that lot owners are paying availability fees in order to support the utility system, which was built for the purpose of providing service to their lots. As a regulated utility, Lake Region must provide service to any property owner requesting service within its service area.⁶⁶ The entity presently collecting the availability fees, Lake Utility Availability 1, is not providing anything to anyone in consideration for the money that is being paid to them by the lot owners and, because it is not a utility, cannot do so.⁶⁷ If the availability fees are not going to Lake Region, as originally intended, there is no logical reason for the availability fees to exist.

For the reasons above, the issue of availability fees must be considered by the Commission in its consideration of all relevant factors. This revenue stream is Lake Region's property because the unauthorized assignments are void as a matter of law. The availability fees revenue should be treated as an offset to revenue

⁶⁵ *2010 Report & Order*, at p. 55, ¶ 165-168.

⁶⁶ *Joint Stipulation of Undisputed Facts*, p. 22 ¶ 58.

⁶⁷ *Cost of Service Report*, p. 15 lines 29-30, p. 16, lines 1-2.

requirement, thereby reducing the rates paid by the ratepayers. Specifically, revenue requirement should be offset by an annual amount of availability fee revenue of \$93,136 for Shawnee Bend Water and \$139,704 for Shawnee Bend Sewer.

Alternative Position:

In the event that the Commission determines that the availability fees revenue should not be included in the calculation of rates, then the Commission should remove costs currently allocated to Lake Region that are associated with Lake Utility Availability 1 from Lake Region's cost of service. Specifically, the costs associated with the billing and collection of availability fees should be excluded from Lake Region's cost of service.

The record shows that Cynthia Goldsby is currently a billing clerk employed by Camden County Public Water Supply District Number 4.⁶⁸ As a part of Ms. Goldsby's job responsibilities, she provides billing and collection services for Lake Region.⁶⁹ She also handles billing and collection of the availability fees.⁷⁰ It was stated in Lake Region's Audited Financial Statements for 2012 that availability fees were billed and collected by Lake Region, but not recorded on the financial statements as either income or expense.⁷¹ Staff believes that the billing and collection service is a function provided and attributable to Lake Region.⁷² As this billing for Lake Utility Availability 1 is performed by Ms. Goldsby, and as she is not paid by RPS Properties, her time spent on billing and collecting the availability fees should absolutely not be included in the cost of

⁶⁸ *Joint Stipulation of Undisputed Facts*, p. 24, ¶ 68.

⁶⁹ *Joint Stipulation of Undisputed Facts*, p. 24 ¶ 69.

⁷⁰ *Joint Stipulation of Undisputed Facts*, p. 24 ¶ 71.

⁷¹ *Bolin Surrebuttal*, p. 6, lines 18-20.

⁷² *Bolin Surrebuttal*, p. 6, lines 20-22.

service that Lake Region's ratepayers ultimately pay. In the last rate case, the Commission concluded that \$2,000 annually was a reasonable cost for providing the billing and collection service for availability fees.⁷³ Staff believes this amount continues to be reasonable and makes the recommendation that, if the Commission decides not to impute availability fee revenue to Lake Region, then the \$2,000 should be excluded from Lake Region's cost of service.

Issue 2: Capital Structure

Should the capital structure for Lake Region be based on its actual capital structure or a hypothetical capital structure?

Facts:

1. RPS Properties and Sally Stump have a loan that initially totaled \$2,850,000 ("the Shareholder Loan").⁷⁴
2. The Shareholder Loan was issued to fund the acquisition of Lake Region.⁷⁵
3. Lake Region itself has a loan totaling \$1,396,731.04 ("the Lake Region Loan").⁷⁶
4. Lake Region is owned equally by Vernon Stump and RPS Properties.⁷⁷
5. Vernon Stump acquired his Lake Region shares from his wife, Sally Stump, on December 31, 2012.⁷⁸

⁷³ *Bolin Surrebuttal*, p. 6, lines 7-10.

⁷⁴ *Cost of Service Report*, p. 4, line 28; Tr. p. 194, lines 13-21 (Staff had initially used the original amount of the acquisition loan in its capital structure to arrive at a total Lake Region debt of approximately \$4.3 million. After receiving updated loan documentation from RPS Properties, Staff revised its position and testified that the total debt attributable to Lake Region is approximately \$2.7 million).

⁷⁵ *Cost of Service Report*, p. 5, lines 25-26.

⁷⁶ *Cost of Service Report*, p. 4, lines 28-29.

⁷⁷ *Cost of Service Report*, p. 5, line 14.

6. Alterra Bank initially required a negative pledge agreement on the Shareholder Loan, which stated that the assets of Lake Region shall not be pledged as collateral on any other indebtedness.⁷⁹

7. Alterra Bank later released the negative pledge agreement on the Shareholder Loan and it was no longer in force as of January 1, 2014.⁸⁰

8. In Lake Region's previous rate case, Staff's recommended capital structure for the company included the entire amount of the Shareholder Loan.⁸¹

9. In Case No. SR-2010-0110, Mr. Summers stated in his rebuttal testimony: "I believe the approach proposed by Staff most accurately reflects the costs of capital employed in Company's operation."⁸²

10. In the last rate case, in response to Staff Data Request No. 0052, to provide copies of all loan documents that were "incurred by/for Lake Region," Lake Region provided copies of the Shareholder Loan incurred to acquire Lake Region.⁸³

11. Lake Region represented to Staff that the Company could have issued the Shareholder Loan at the Lake Region level.⁸⁴

⁷⁸ *Cost of Service Report*, p. 5 lines 14-16.

⁷⁹ *Cost of Service Report*, p. 5 lines 29-31.

⁸⁰ *Summers Rebuttal*, p. 14 lines 14-17.

⁸¹ *Atkinson Surrebuttal*, p. 2, lines 25-26.

⁸² *Atkinson Surrebuttal*, p. 2, lines 9-17; *Joint Stipulation of Undisputed Facts*, p. 2 (asking that the exhibits from the Lake Region 2010 rate case be admitted – *Summers Rebuttal*, p. 8, line 20, through p. 9, line 2).

⁸³ *Atkinson Surrebuttal*, p. 3, lines 16-19.

⁸⁴ *Atkinson Surrebuttal*, p. 4, lines 1-2; Tr. 191, lines 7-11.

12. In the last rate case, Lake Region was being charged a management fee by its owners, which included the debt service charges associated with the Shareholder Loan.⁸⁵

13. Lake Region filed a finance case, Case No. WF-2013-0118, to move a portion of the Shareholder Loan to the Lake Region level.⁸⁶

14. The proceeds from the Lake Region Loan were used to pay down a portion of the Shareholder Loan.⁸⁷

15. Alterra Bank holds the Lake Region Loan.⁸⁸

16. Alterra Bank also holds the Shareholder Loan.⁸⁹

17. Alterra Bank charges the same interest rate on the Lake Region Loan as it does on the Shareholder Loan.⁹⁰

18. The assets relied on for the performance of the Shareholder Loan are now, and have always been, Lake Region's assets.⁹¹

19. In the event of a default, the Alterra Bank would ultimately take possession of Lake Region.⁹²

Analysis:

A hypothetical capital structure should be used for Lake Region. In situations where a small water and sewer utility has debt capital in excess of 75%, as with

⁸⁵ *Atkinson Surrebuttal*, p. 4, line 20-23.

⁸⁶ *Atkinson Surrebuttal*, p. 5, line 5-6.

⁸⁷ Tr. 193, lines 18-25, to 194, line 1.

⁸⁸ *Atkinson Surrebuttal*, p. 5, lines 7-8.

⁸⁹ *Atkinson Surrebuttal*, p. 5, lines 8-10.

⁹⁰ *Atkinson Surrebuttal*, p. 5, lines 11-12.

⁹¹ *Atkinson Surrebuttal*, p. 5, lines 17-18; Tr. 194, lines 2-9.

⁹² *Atkinson Surrebuttal*, p. 5, lines 19-22; Tr. 195, lines 1-19.

Lake Region, the Staff's Financial Analysis Department believes it is appropriate to use a hypothetical capital structure that limits debt to 75% of total capital.⁹³ Staff adopted this methodology in September 2010 (updated August 2011) as a part of its Small Utility Return on Equity ("ROE")/ Rate of Return ("ROR") Methodology.⁹⁴ Because estimating a fair and reasonable cost of capital becomes more uncertain at extreme levels of leverage, Staff recommended a hypothetical capital structure of 75% debt and 25% equity, which still gives some consideration to the leverage used to finance Lake Region.⁹⁵

As explained below, Lake Region is financed with 100% debt after giving consideration to the outstanding acquisition loan, that is, the Shareholder Loan. Although Staff is recommending a hypothetical capital structure for Lake Region, in following its Small Utility Methodology, Staff first calculated the actual capital structure.⁹⁶ In reaching this calculation of actual capital structure, Staff subtracted the Shareholder Loan and the Lake Region Loan from the Company's rate base.⁹⁷

The Shareholder Loan is appropriately included in this calculation. When setting utility rates, the Commission is required to consider all relevant factors including a "reasonable average return upon capital actually expended."⁹⁸ The Missouri Courts have made clear that the decision to use a hypothetical capital structure is one within

⁹³ *Cost of Service Report*, Appendix 2, Schedule SA-1, p. 4; Tr. p. 195, lines 20-25, - p. 196, lines 1-2.

⁹⁴ *Cost of Service Report*, Appendix 2, Schedule SA-1.

⁹⁵ *Staff's Corrected Statement of Position; Cost of Service Report*, p. 6, lines 14-18.

⁹⁶ *Cost of Service Report*, pp. 4-5, lines 22-29, 1-3.

⁹⁷ *Cost of Service Report*, p. 4, lines 26-29.

⁹⁸ § 393.270(4); ***State ex rel. Missouri Office of Pub. Counsel v. Pub. Serv. Comm'n***, 293 S.W.3d 63, 81 (Mo. App., S.D. 2009).

the Commission's discretion.⁹⁹ The authority of a public utility commission to assume a hypothetical debt for a company is derived from its jurisdiction to ensure that rates charged by the company are just and reasonable.¹⁰⁰ Referring to the Section 393.150 RSMo., the Court of Appeals has explained: "[t]he statute neither prescribes nor limits the methodology that the Commission may use in determining rates. The complexities inherent in a rate of return determination necessarily require that the Commission be granted considerable discretion."¹⁰¹ To include the Shareholder Loan in the calculation of Lake Region's capital structure would more accurately reflect the costs of capital employed in the company's operation,¹⁰² and is an appropriate exercise of that discretion.

The factual circumstances surrounding Lake Region show that the Shareholder Loan is effectively a component of the company's capital structure. The ownership, loan history, practical effect of default, and past treatment of the loan by the Company combine to indicate that Lake Region's assets are relied on for performance of the Shareholder Loan.

The Shareholder Loan was issued to RPS Properties and Sally Stump to fund the acquisition of Lake Region. Upon purchase, Lake Region was owned by RPS Properties and Sally Stump; Mrs. Stump has since transferred her shares in Lake Region to her husband Vernon Stump. Although it has been released as of January 1, 2014, Alterra Bank had initially required a negative pledge agreement on the

⁹⁹ *Pub. Counsel*, *supra*, 293 S.W.3d at 84; *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n of Missouri*, 706 S.W.2d 870, 878 (Mo. App., W.D. 1985).

¹⁰⁰ *Associated Natural Gas*, *supra*, 706 S.W.2d at 878; §§ 393.140 and 393.150.

¹⁰¹ *Associated Natural Gas*, *supra*, 706 S.W.2d at 880 (in this case, the company was disputing the Commission's decision to apply an actual capital structure, rather than a hypothetical capital structure).

¹⁰² Tr. p. 193, lines 11-17; *Atkinson Surrebuttal*, p. 3, lines 9-13.

Shareholder Loan, which stated that assets of Lake Region shall not be pledged as collateral on any other indebtedness. This negative pledge agreement was intended to preserve Alterra Bank's interest in the value of Lake Region's assets.¹⁰³ The release of the negative pledge agreement does not diminish Alterra Bank's interest in the value of the company's assets because the bank issued a loan directly to Lake Region¹⁰⁴ that was used to pay down a portion of the Shareholder Loan.¹⁰⁵ In the event of a default of the Shareholder Loan or the Lake Region Loan, the result is the same – Alterra Bank would take control of the utility's assets.

The company's past treatment and representations to the Commission concerning the Shareholder Loan are further indications that the loan is logically part of Lake Region's capital structure. During the last rate case, Lake Region represented to Staff that the Company could have issued the Shareholder Loan at the Lake Region level. Further, in response to a Data Request from Staff to provide copies of all loan documents that were "incurred by/for Lake Region," Lake Region provided copies of the Shareholder Loan. At the time of the last rate case, Lake Region was being charged a management fee by its owners that included the debt service charges associated with the Shareholder Loan. Effectively, through that fee, Lake Region was charged for the interest and principal associated with the Shareholder Loan.¹⁰⁶

Taken together, these past representations and treatment of the Shareholder Loan show that the Shareholder Loan was a part of the Lake Region

¹⁰³ *Atkinson Surrebuttal*, p.6, lines 9-11.

¹⁰⁴ *Atkinson Surrebuttal*, p. 5, lines 5-6;

¹⁰⁵ Tr. 193-194.

¹⁰⁶ *Atkinson Surrebuttal*, pp. 4-5.

capital structure. Additionally, in the last rate case, Mr. John Summers explicitly stated in his rebuttal testimony: “I believe the approach proposed by Staff [i.e., including the Shareholder Loan in Lake Region’s capital structure] most accurately reflects the costs of capital employed in [sic] Company’s operation.”¹⁰⁷ Staff’s position, with which Mr. Summers unambiguously agreed, included the entire amount of the Shareholder Loan in the capital structure for Lake Region. In the *Report and Order* issued in the last rate case, the Commission found: “Staff’s proposed capital structure most accurately reflects the costs of capital employed in Lake Region’s operation.”¹⁰⁸

Based on the total circumstances of this case, the Commission should include the Shareholder Loan in Lake Region’s capital structure for rate-setting purposes. Because Lake Region is financed with 100% debt after giving consideration to the outstanding Shareholder Loan, a hypothetical capital structure should be used in the calculation of rates for Lake Region.

If the capital structure for Lake Region should be based on its actual capital structure, what is Lake Region’s actual capital structure?

Analysis:

Lake Region is financed with 100% debt.¹⁰⁹ Staff determined this by subtracting the long-term debt amount, which includes the Shareholder Loan and the Lake Region Loan, from the total capital amount, that is, the rate base.

¹⁰⁷ *Atkinson Surrebuttal*, p. 2, line 9-17; *Joint Stipulation of Undisputed Facts*, p. 2 (asking the exhibits from the Lake Region 2010 rate case be admitted – *Summers Rebuttal*, p. 8, line 20, through p. 9, line 2).

¹⁰⁸ *Report and Order*, p. 35, ¶ 91.

¹⁰⁹ See discussion *supra*, pp. 12-15.

If the capital structure for Lake Region should be based on a hypothetical capital structure, what is a balanced and reasonable capital structure for Lake Region?

Staff recommends a hypothetical capital structure of 75% debt and 25% equity for Lake Region.¹¹⁰ Because estimating a fair and reasonable cost of capital becomes more uncertain at extreme levels of leverage, Staff determined a hypothetical capital structure, which still gives some consideration to the leverage used to finance Lake Region. In cases in which a company uses extreme amounts of leverage, as is the case with Lake Region, Staff does not want to ignore the extremely leveraged state by allowing an equity ratio that is not consistent with how the company is truly capitalized.¹¹¹ Doing so would encourage companies to take on too much financial risk to attempt to achieve higher returns – putting the utility, and in turn the customers to whom it provides service, at a greater risk.¹¹²

Issue 3: Return on Equity

What is the appropriate return on equity for Lake Region?

Analysis:

The appropriate return on equity for Lake Region is 13.89% if applied to Staff's hypothetical common equity ratio of 25%. Alternatively, if the Commission accepts the capital structure proposed by Lake Region, Staff recommends a lower return on equity of 11.93%.¹¹³

¹¹⁰ See discussion *supra*, pp. 12-15.

¹¹¹ *Atkinson Surrebuttal*, p. 7, lines 4-7.

¹¹² *Atkinson Surrebuttal*, p. 7, lines 7-8.

¹¹³ *Cost of Service Report*, p. 4, lines 13-17 (Staff recommends an overall Rate of Return of 7.22 %)

Staff recommends a lower return on equity if the Commission accepts Lake Region's suggested capital structure of 60% debt and 40% equity. To arrive at the lower number, Staff would use the same small water and sewer methodology in calculating the return on equity, but the Financial Risk Profile ("FRP") would be different. At Staff's recommended 75% debt capital structure, the FRP of Lake Region would be solidly within "Highly Leveraged."¹¹⁴ At a 60% debt capital structure, as suggested by the company, the FRP would be on the threshold between "Aggressive" and "Highly Leveraged."¹¹⁵ That FRP applied to Standard & Poor's "Criteria Methodology: Business Risk/Financial Risk Matrix Expanded," would support a credit rating that is approximately two notches higher than what Staff had used for its more leveraged capital structure recommendation.¹¹⁶ Less debt in the capital structure means less financial risk for the utility investors – thus a higher return on equity is not necessary to allow the company to attract capital and investors. If the Commission accepts Lake Region's suggested capital structure, a lower return on equity of 11.93% would strike a reasonable balance between the interests of ratepayers and the utility's shareholders.

Issue 4: Legal Fees

Should the legal fees incurred during the test year and the true-up timeframe¹¹⁷ for *Shawnee Bend Development Company, LLC v. Lake Region Water & Sewer*, be included in the calculation of rates for Lake Region?

¹¹⁴ *Atkinson Surrebuttal*, p. 7, lines 10-13.

¹¹⁵ *Atkinson Surrebuttal*, p. 7, lines 15-19.

¹¹⁶ *Cost of Service Report*, Appendix 2, Schedule SA-3; *Atkinson Surrebuttal*, p. 9, lines 18-21.

¹¹⁷ As legal fees is the only unresolved true-up issue, the Parties have agreed to include the true-up legal fee costs argument in the normal hearing briefs.

Facts:

1. Shawnee Bend Development Company (“SB Development”) sued Lake Region in 2009, claiming breach of a 1998 contract.¹¹⁸
2. SB Development sought damages for alleged nonpayment of sums due for road crossings, a sewer trunk extension line, and a well that SB Development had constructed for the Villages, a real estate development at the Lake of the Ozarks.¹¹⁹
3. The matter was tried and the Camden County Circuit Court agreed with Lake Region’s interpretation of the 1998 contract.¹²⁰
4. SB Development appealed the case to the Southern District Court of Appeals.¹²¹
5. The Court of Appeals entered a judgment in favor of SB Development.¹²²
6. During the True-up period, Lake Region incurred an amount of \$520.10 in legal fees in pursuit of an application for transfer of the **Shawnee Bend Development Company, LLC v. Lake Region Water & Sewer** case to the Supreme Court.¹²³

Analysis:

In any rate case, the Commission must consider all expenses incurred by the Company in providing utility service and must determine whether including those expenses in rates is just and reasonable.¹²⁴ “It must never be forgotten that, while the

¹¹⁸ *Summers Rebuttal*, p. 15.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Summers Rebuttal*, p. 15.

¹²² Tr. p. 344, lines 16-18.

¹²³ *Unanimous Partial Stipulation and Agreement as to True-up Issues*, ¶ 3(b), filed Mar. 17, 2014.

¹²⁴ §§ 393.150 and 393.230; **State ex rel. Union Electric Co. v. Public Service Commission**, 765 S.W.2d 618, 622 (Mo. App., W.D. 1988).

state may regulate with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies, and is not clothed with the general power of management incident to ownership.”¹²⁵ In considering utility expenditures, the Commission excludes those it finds to have been imprudently incurred.¹²⁶ However, imprudent expenses may be excluded only if the imprudence harmed the ratepayers.¹²⁷

Lake Region incurred the legal expenses at issue defending a position that would have allowed the company to avoid increased costs.¹²⁸ Had Lake Region prevailed, it would have had to pay less money to SB Development related to the 1998 contract involving road crossings, a sewer trunk extension line, and a well that SB Development had constructed for the Villages. The decision to pursue this appeal was an attempt to avoid increased costs and thus could be considered good business practice. Furthermore, Lake Region’s interpretation of the contract prevailed at the Circuit Court level before being reversed by the Appellate court. It appears that the Company pursued a reasonable course of action in an attempt to avoid increased costs. The fact that the Company ultimately lost the case does not make the decision to proceed imprudent. Staff agrees with Lake Region that the \$15,365 in legal fees¹²⁹ incurred by

¹²⁵ ***State of Missouri ex rel. Southwestern Bell Tel. Co. v. Pub. Serv. Comm’n of Missouri***, 262 U.S. 276, 289, 43 S.Ct. 544, 547, 67 L.Ed. 981, ____ (1923).

¹²⁶ This duty stems from the Commission’s statutory mandate to determine whether rates charged are just and reasonable, §§ 393.150 and 393.130; *and see Office of the Pub. Counsel v. Mo. Public Service Com’n*, 409 S.W.3d 371, 376-381 (Mo. banc 2013), ***State ex rel. Ass. Nat. Gas Co. v. Pub. Serv. Comm’n of State of Mo.***, 954 S.W.2d 520, 528-532 (Mo. App., W.D. 1997).

¹²⁷ In discussing this standard as applied to a gas company’s gas purchasing practices, the Missouri Court of Appeals stated, “It would be beyond this statutory authority for the PSC to make a decision on the recoverability of costs, based upon a prudence analysis of gas purchasing practices, without reference to any detrimental impact of those practices on ANG’s charges to its customers, such as evidence that the costs which ANG is seeking to pass on to its customers are unjustifiably higher than if different purchasing practices had been employed.” ***Ass. Nat. Gas***, *supra*, 954 S.W.2d at 530.

¹²⁸ *Summers Rebuttal*, p. 18.

¹²⁹ *Staff’s Position Statement; Staff Accounting Schedules*.

the Company during the test year in defending this appeal were reasonable and should be included in the calculation of rates for Lake Region.¹³⁰

Further, the additional \$520.10 in legal fees incurred during the true-up period, in pursuit of an application for transfer of the ***Shawnee Bend Development Company, LLC v. Lake Region Water & Sewer*** case to the Supreme Court, was incurred in the same effort to avoid increased costs. Again, the fact that the Company ultimately did not prevail does not in itself make the decision imprudent. Had the Company prevailed, the ratepayers would have benefitted. Therefore, Staff believes that \$520.10 in legal fees incurred during the true-up period in pursuit of an application for transfer of the ***Shawnee Bend Development Company, LLC v. Lake Region Water & Sewer*** case to the Supreme Court should be included in the calculation of rates.¹³¹

If so, what is the appropriate mechanism for recovery of these costs?

Since these expenses are not a normal recurring cost that would otherwise be included in rates indefinitely, Staff has determined that a five-year amortization with a tracker to prevent over-recovery is the appropriate mechanism to recover these expenses.¹³²

Conclusion

WHEREFORE, based on the foregoing, Staff requests the Commission resolve each issue in this case as recommended by Staff.

¹³⁰ *Foster Surrebuttal*, p. 27.

¹³¹ *Unanimous Partial Stipulation and Agreement as to True-up Issues*.

¹³² *Foster Surrebuttal*, p. 27.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has served, by hand-delivery, electronic transmission, or First Class United States Mail, postage prepaid, upon all parties of record as shown on the Service List maintained by the Data Center of the Missouri Public Service Commission, this **24th day of March, 2014**.

/s/ Kevin A. Thompson