

**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                 ) **File No. WR-2013-0461**  
Rate Increase in Water and Sewer Service                     )

**STAFF'S STATEMENT DESCRIBING DISCOVERY CONCERNS**

**COMES NOW** the Staff ("Staff") of the Missouri Public Service Commission ("Commission"), by and through counsel, and respectfully states as follows:

1. On July 16, 2013, Lake Region Water & Sewer Company ("Lake Region") filed its formal request to increase rates for its utility service.

2. On August 29, 2013, the Commission issued its *Order Regarding Discovery* ("Order"), which set a Discovery Conference for October 9, 2013.

3. Paragraph 7 of the Order provided as follows:

Discovery conferences shall be held at the Commission's office in the Governor Office Building, Room 305, 200 Madison Street, Jefferson City, Missouri, beginning at 2:00 p.m. The Governor Office Building meets accessibility standards required by the Americans with Disabilities Act. Any person or entity requiring additional accommodations to participate in this hearing shall call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 before the hearing.

4. Paragraph 8 of the Order further provided:

Not less than two business days before each discovery conference, any party that has a discovery disagreement or concern involving another party shall file a brief statement describing that disagreement or concern and identifying any other parties involved. Such statement does not need to be a formal motion to compel. Any party may attend a discovery conference, but only those parties involved in an identified discovery disagreement or concern must attend. If the parties do not identify any discovery disagreements or concerns before the scheduled conference, the presiding officer may cancel the conference.

5. Staff is submitting this Statement pursuant to paragraph 8 of the Order quoted above, and will attempt to keep this Statement as brief as possible per

paragraph 8. Staff's discovery concerns involve Lake Region's responses to data requests ("DRs") submitted to Lake Region by Staff.

6. Attached hereto is a DR Log covering Staff Data Requests to Lake Region numbered 0023, 0024, 0025, 0027, 0028.1, 0063, 0064, and 0065.

7. The disputed Staff Data Requests concern information about certain entities that are affiliated with Lake Region through shared employees, management, and physical access. Staff seeks this information to determine what rates are just and reasonable for Lake Region. Specifically, Staff has a duty to ascertain whether Lake Region's customers are being allocated the appropriate share of costs and benefits that result from the affiliated entities sharing resources and to ensure that no improper cross subsidization is occurring. To the extent that Lake Region resists this discovery, Staff's legitimate investigation of this issue is impeded.

**DRs 0023, 0024, 0025, 0027**

8. In these DRs, sent to Lake Region on August 19, 2013, Staff requested information relating to the management and operation of water and sewer services of Lake Region and Ozark Shores Water Company ("Ozark Shores") by the Camden County Public Water & Sewer District Number Four ("Water District").

9. Lake Region objects to DRs 0023, 0024, 0025, and 0027 on the grounds that these DRs seek information from non-parties and are outside the scope of discovery. Further, Lake Region contends that these requests seek information that is irrelevant and not calculated to lead to the discovery of relevant evidence. Lake Region also states that it does not have possession, custody, or control over the requested information.

10. Staff disagrees with Lake Region's objection that the DRs seek information from nonparties. Staff asserts that these entities are affiliates of Lake Region and accessible to Lake Region for purposes of discovery. Pursuant to a recent decision of the Missouri Supreme Court, Staff asserts that "where the affiliate is not one 'substantially kept separate' from the utility, the PSC is authorized to 'inquire' into certain aspects of the affiliate's operations as they relate to the capitalization, debts, expenses, etc. of the utility."<sup>1</sup> These entities interact in such a manner with Lake Region that it is Staff's duty to examine those interactions in its effort to determine what rates are just and reasonable for Lake Region. Among other relationships, the Water District provides management and operations functions for both Lake Region and Ozark Shores, and they share a common building. Staff requested this information in order to verify that Lake Region is only being charged by the Water District for services actually performed for Lake Region and not for Ozark Shores or the Water District itself. The information sought is therefore certainly relevant and material.

11. Staff believes that all requested information is either within Lake Region's control or readily accessible to it. Lake Region and the affiliated entities have shared costs, employees, and management. The president for Lake Region and Ozark Shores is Vernon Stump, and the secretary for both entities is Brian Schwermann. Additionally, the ability of the shared management to access the information Staff has requested was recently demonstrated by John Summers, the shared General Manager of Lake Region, Ozark Shores, and the District.

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<sup>1</sup> *St. ex rel. Atmos Energy Corp. et al. v. Public Service Commission*, 103 S.W.3d 753, 764 (Mo. banc 2003).

12. The information Staff has requested is necessary for Staff's review of Lake Region's operations. Staff has an obligation to present to the Commission all relevant factors for setting just and reasonable rates, to examine whether Lake Region's rates are not in excess of what is permitted by law, and to determine whether Lake Region's rates are discriminatory or preferential. Further, the Commission is expressly required to examine the dealings of regulated entities with their unregulated affiliates.<sup>2</sup>

**DRs 0064 and 0065**

13. In these DRs, Staff requested information relating to loans taken out by RPS Properties, LP and Sally Stump with Alterra Bank. Staff understands that one of these loans was used to acquire Lake Region. Staff requires these documents to verify that nothing has changed about the terms of this loan to include Lake Region assets as collateral. Further, Staff needs this information to help determine the appropriate capital structure in this case.

14. Lake Region objects to DRs 0064 and 0065 on the grounds that these DRs seek information from non-parties and are outside the scope of discovery. Further, Lake Region contends that these requests seek information that is irrelevant and not calculated to lead to the discovery of relevant evidence. Lake Region also states that it does not have possession, custody, or control over the requested information.

15. Staff disagrees with Lake Region's objection that the DRs seek information from nonparties. Staff asserts that these entities are affiliates of Lake Region and accessible to Lake Region for purposes of discovery. Pursuant to a recent decision of the Missouri Supreme Court, Staff asserts that "where the affiliate is not one 'substantially kept separate' from the utility, the PSC is authorized to 'inquire' into certain

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<sup>2</sup> Section 393.140(12), RSMo.

aspects of the affiliate's operations as they relate to the capitalization, debts, expenses, etc. of the utility."<sup>3</sup> RPS Properties and Vernon Stump<sup>4</sup> interact in such a manner with Lake Region that it is Staff's duty to examine those interactions in its effort to determine what rates are just and reasonable for Lake Region.

16. Staff believes that all requested information is either within Lake Region's control or readily accessible to it. Lake Region is owned by RPS Properties, LP and Vernon Stump. Additionally, the ability of the shared management to access the information Staff has requested was demonstrated in Lake Region's most recent finance case, when Lake Region responded with the document requested.

17. The information Staff has requested is information necessary for Staff's review of Lake Region's operations. The information is both relevant and material. Staff has an obligation to present to the Commission all relevant factors for setting just and reasonable rates, to examine whether Lake Region's rates are not in excess of what is permitted by law, and to determine whether Lake Region's rates are discriminatory or preferential. Further, the Commission is expressly required to examine the dealings of regulated entities with their unregulated affiliates.<sup>5</sup>

#### **DRs 0028.1 and 0063**

18. In these DRs, Staff characterized Ozark Shores and North Suburban Public Utility Company ("North Suburban") as affiliates of Lake Region and requested to know if these affiliates have any outstanding debt.

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<sup>3</sup> *St. ex rel. Atmos Energy Corp. et al. v. Public Service Commission*, 103 S.W.3d 753, 764 (Mo. banc 2003).

<sup>4</sup> Vernon Stump acquired his shares from Sally Stump on December 31, 2012.

<sup>5</sup> Section 393.140(12), RSMo.

19. Lake Region objects to DRs 0028.1 and 0063 on the grounds that Lake Region does not have any affiliates as defined by the Commission. Staff recognizes that the Commission has no Affiliate Transactions rule for water or sewer and therefore no definition of affiliate for water or sewer utilities in its rules.

20. Staff asserts it is clear that the Water District, Ozark Shores, RPS Properties, LP and North Suburban are affiliates of Lake Region in that they interact in such a manner with Lake Region that it is Staff's duty to examine those interactions in its effort to determine what rates are just and reasonable for Lake Region. Importantly, the ownership of each of these entities is shared and among the same people. Additionally, these entities have shared costs, employees, and management.

21. Staff asserts that these entities are not substantially kept separate from the utility and, pursuant to a recent decision of the Missouri Supreme Court, the Commission is authorized to inquire into certain aspects of the affiliates' operations as they relate to the utility.<sup>6</sup> The information requested in DRs 0028.1 and 0063 is needed to verify that debt is not being taken out at the Lake Region level and then used as equity in the affiliated companies. This information is both relevant and material.

**WHEREFORE**, Staff submits this Statement Describing Discovery Concerns, with attachment, in advance of the discovery conference set for October 9, 2013, and respectfully requests that said discovery conference be held as scheduled.

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<sup>6</sup> *St. ex rel. Atmos Energy Corp. et al. v. Public Service Commission*, 103 S.W.3d 753, 764 (Mo. banc 2003).

Respectfully submitted,

**/s/ Tim Opitz**

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### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed with first-class postage, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 7<sup>th</sup> day of October, 2013.

**/s/ Tim Opitz**

**DR 0023**

**Description**

a. Please provide for the last three years (2010-2012) and 2013 to date the monthly billing invoices sent to Lake Region and Ozark Shores for the management and operation of these two entities broken out between water and sewer services, as applicable. b. Please provide copies of invoices for any other entity that Public Water Supply District Number Four of Camden County provides management and operations functions for water and sewer operations. c. Please provide the time sheets and any other supporting documentation used to assign costs that are ultimately charged to the Lake Region, Ozark Shores and any other entity to which Public Water Supply District Number Four of Camden County provides management and operational services. Requested by Keith Foster (Keith.Foster@psc.mo.gov)

**Response**

This request seeks information about a nonparty(ies) to this matter and therefore falls outside the scope of permitted discovery. Furthermore it is irrelevant and not calculated to lead to the discovery of relevant evidence. Lake Region does not have possession, custody or control over data, records or information requested in this data request. The request seeks records and information purportedly in the possession or control of Public Water Supply District Number Four and about the operations and management of Public Water Supply District Number Four. Public Water Supply District Number Four is not a party to this matter. It also seeks data concerning Ozark Shores Water Company which is not a party to this matter

**DR 0024**

**Description**

Please identify all the services, functions, and responsibilities Public Water Supply District Number Four of Camden County provides to (a) Lake Region, (b) Ozark Shores, (c) Public Water Supply District Number Four of Camden County, and (d) any other entities to which Public Water Supply District Number Four of Camden County provides management and operational services. Requested by Keith Foster (Keith.Foster@psc.mo.gov)

**Response**

This request seeks information about a nonparty(ies) to this matter and therefore falls outside the scope of permitted discovery. Furthermore it is irrelevant and not calculated to lead to the discovery of relevant evidence. Lake Region does not have possession, custody or control over data, records or information requested in this data request. The request seeks records and information purportedly in the possession or control of Public Water Supply District Number Four and about the operations and management of Public Water Supply District Number Four.



Public Water Supply District Number Four is not a party to this matter. It also seeks data or information concerning services supplied to Ozark Shores Water Company which is not a party to this matter.

#### **DR 0025**

**Description**

Please provide the current management and operating contract/agreement for Ozark Shores. Please provide any other management and operating contract/agreement where Public Water Supply District Number Four of Camden County provides management and operating services to water and sewer entities, as applicable. Requested by Keith Foster (Keith.Foster@psc.mo.gov)

**Response**

This request seeks information about a nonparty(ies) to this matter and therefore falls outside the scope of permitted discovery. Furthermore it is irrelevant and not calculated to lead to the discovery of relevant evidence. Lake Region does not have possession, custody or control over data, records or information requested in this data request. The request seeks records and information purportedly in the possession or control of Ozark Shores Water Company which is not a party to this matter.

#### **DR 0027**

**Description**

Please provide the general ledger for Ozark Shores for plant in service, accumulated depreciation reserve, revenues and expenses for Ozark Shores for 2011 and 2012. Requested by Keith Foster (Keith.Foster@psc.mo.gov)

**Response**

This request seeks information about a nonparty(ies) to this matter and therefore falls outside the scope of permitted discovery. Furthermore it is irrelevant and not calculated to lead to the discovery of relevant evidence. Lake Region does not have possession, custody or control over data, records or information requested in this data request. The request seeks records and information purportedly in the possession or control of Ozark Shores Water Company which is not a party to this matter. Without waiver of this objection, the information sought or portions thereof may be found in the filed 2011 and 2012 Annual Report(s) for Ozark Shores Water Company.

#### **DR 0028.1**

**Description**

It is our understanding that Ozark Shores Water Company and North Suburban Public Utility Company are affiliates of Lake Region Water & Sewer Company. Please provide the information that was requested in Data Request No. 0028. This Data Request was submitted by Shana Atkinson at

shana.atkinson@psc.mo.gov.

**Response**

The Company does not have any affiliates as defined by the Commission. The definition of Affiliate Transactions in 4 CSR 240-20.015 (1)(A) is applicable only to electric corporations. The definition of Affiliate Transactions in 4 CSR 240-40.015 (1)(A) is applicable only to gas corporations. There is no such definition in 4 CSR 240-50 for Water Utilities or 4 CSR 240-60 for Sewer Utilities.

**DR 0063**

**Description**

Do any of the Company's affiliates have outstanding debt? If so, please provide the same information as requested in Data Request No. 0021. Requested by Shana Atkinson, shana.atkinson@psc.mo.gov.

**Response**

The Company does not have any affiliates as defined by the Commission. The definition of Affiliate Transactions in 4 CSR 240-20.015 (1)(A) is applicable only to electric corporations. The definition of Affiliate Transactions in 4 CSR 240-40.015 (1)(A) is applicable only to gas corporations. There is no such definition in 4 CSR 240-50 for Water Utilities or 4 CSR 240-60 for Sewer Utilities.

**DR 0064**

**Description**

Please provide the 12 month ended weighted average interest rate as of June 30, 2013, and the amount outstanding as of June 30, 2013, for the following outstanding loans: Lake Region Water & Sewer Co. and Alterra Bank loan, Loan No. 7017889 – maturity date 8/10/2014; RPS Properties, L.P. , Sally Stump and Alterra Bank loan, Loan No. 7016782 – maturity date 8/10/2014; Lake Region Water & Sewer Co. and Central Bank of Lake of the Ozarks, Loan No. 0178392-3592 – maturity date 5/9/2013; Lake Region Water & Sewer Co. and Central Bank of Lake of the Ozarks, Loan No. 017839-4027 – maturity date 9/17/2012. If the amount outstanding is \$0 as of June 30, 2013, please specify so. Requested by Shana Atkinson, shana.atkinson@psc.mo.gov.

**Response**

Without waiver of the objection the Company provides the following information: The Company has not done any calculations regarding weighted average interest as the interest charged has been the minimum allowed during the period for all loans made to the Company. Loan No. 701789 had an outstanding balance of \$1,396,731.04 as of June 30, 2013. Please use this response as a correction to

DR 0021. Loan No. 0178392-3592 and Loan No. 017839-4027 had both matured and had zero balances at June 30, 2013.

**Objections**

This request seeks information about a nonparty(ies) to this matter and therefore falls outside the scope of permitted discovery. Furthermore it is irrelevant and not calculated to lead to the discovery of relevant evidence. Lake Region does not have possession, custody or control over certain data, records or information requested in this data request. The request seeks records and information purportedly in the possession or control of Alterra Bank, RPS Properties, LP and Sally Stump. Alterra Bank, RPS Properties, LP and Sally Stump are not parties to this matter.

**DR 0065**

**Description**

Please provide the current loan documents for the RPS Properties, L.P. , Sally Stump and Alterra Bank loan, Loan No. 7016782 – maturity date 8/10/2014. Please specify any changes that have been made to these loan documents since the loan date of 8/10/2011. Requested by Shana Atkinson (shana.atkinson@psc.mo.gov)

**Objections**

This request seeks information about a nonparty(ies) to this matter and therefore falls outside the scope of permitted discovery. Furthermore it is irrelevant and not calculated to lead to the discovery of relevant evidence. Lake Region does not have possession, custody or control over data, records or information requested in this data request. The request seeks records and information purportedly in the possession or control of Alterra Bank, RPS Properties, LP and Sally Stump. Alterra Bank, RPS Properties, LP and Sally Stump are not parties to this matter.