

**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)	

**PUBLIC COUNSEL'S MOTION TO COMPEL DISCOVERY
AND REQUEST FOR EXPEDITED TREATMENT**

COMES NOW the Office of the Public Counsel and for its Motion to Compel Discovery and Request for Expedited Treatment states as follows:

The Office of the Public Counsel (Public Counsel) certifies that it has complied with all requirements of 4 CSR 2.090(2). Public Counsel has faced continuing and significant problems with Lake Region Water & Sewer Company (Lake Region) failing to respond to proper data requests made to Lake Region regarding availability fees. Public Counsel now invokes Missouri Public Service Commission (Commission) authority to enforce discovery under Commission rules and seeks the Commission's intervention in these unresolved discovery matters so that Public Counsel can receive full and complete answers to its data requests which Public Counsel has a clear and unambiguous right to receive from Lake Region.

Public Counsel asks the Commission to: (1) consider and issue appropriate orders in favor of Public Counsel and against Lake Region on Public Counsel's request to compel Lake Region to fully and completely respond to the data requests sent to Lake Region on November 7, 2013, which have not been fully and completely answered even though the requested information is available to and under the control of Lake Region; and (2) expedite consideration as soon as possible since the surrebuttal is to be filed on January 31, 2014 and the evidentiary hearing is scheduled to begin on February 18, 2014.

(1) Background

On November 7, 2013, Public Counsel sent data request numbers 1000 to 1017 to Lake Region. (Appendix A) The data requests sought discovery of information relating to availability fees as well as related information regarding plant-in-service installed within the Lake Region jurisdiction and contribution-in-aid-of-construction (CIAC) booked in the financial records of Lake Region.

On November 15, 2013, Lake Region sent objections to Public Counsel's data requests. (Appendix B) Many of Lake Region's objections claimed that the data requests sought information purportedly in the possession or control of other entities such as the shareholders of Lake Region or Camden County Public Water Supply District Number Four (Camden County PWSD4) but not in the possession or control of Lake Region. Subsequently, Lake Region answered Public Counsel data request number 1009 and provided the following response to Public Counsel data request number 1013:

The Company does not have such reconciliation. All company records have been made available and remain available to OPC. Beginning balances, ending balances, additions and retirements by year by plant account are included in the Annual Reports on file with the Commission.

Lake Region provided responses to Public Counsel data request numbers 1016 and 1017 which stated "Please see response to 1013." No other responses to Public Counsel's data request numbers 1000 to 1017 were received.

On December 19, 2013, Public Counsel requested an additional Discovery Conference be scheduled to discuss the dispute regarding Lake Region's objection and partial response to Public Counsel data request numbers 1000 to 1008 and numbers 1010 to 1017.

On December 30, 2013, a Discovery Conference was held to address Public Counsel's concerns. Throughout the Discovery Conference, Lake Region continued to claim that that the

data requests sought information purportedly in the possession or control of other entities such as the shareholders of Lake Region or Camden County PWSD4 but not in the possession or control of Lake Region. Based specifically on this claim, Lake Region did not provide the availability fee information Public Counsel sought in its discovery requests.

On December 30, 2013, Public Counsel sent data request numbers 1018 to 1019 to Lake Region. (Appendix C) The data requests sought discovery of information relating to availability fees.

On January 3, 2014, Lake Region sent objections to Public Counsel's data requests. (Appendix D) Again, many of Lake Region's objections claimed that the data requests sought information purportedly in the possession or control of other entities but not in the possession or control of Lake Region. And again, Lake Region did not provide the availability fee information Public Counsel sought in its discovery requests. Public Counsel intended to bring this issue up at the next discovery conference scheduled for January 15, 2014.

On January 8, 2014, Public Counsel was made aware (Appendix E) of a Sunshine Law request sent by the Staff of the Missouri Public Service Commission (Staff) to Camden County PWSD4 which asked for:

“ . . . all reports, notes, memoranda, receipts, correspondence, or other documentation and records in your possession relating to availability fees or charges for the areas known as Shawnee Bend and Horseshoe Bend at or near Lake Ozark, Missouri, including, but not limited to, documents and records regarding the maintenance, collection, billing, administration, disbursement, profits, and dividends relating to availability fees by Camden County Public Water Supply District Number Four. Such documents and records should include information related to, but not limited to: number of accounts billed annually, total number of lots represented by the accounts billed annually, the current amount charged to each lot, total amounts collected annually, and total amounts dispersed annually and to whom.”

The emailed answer to Staff's Sunshine Law request states:

In response to your Sunshine Law Request received January 6, 2014 please find attached the District's audited financial statements. The District bills 32 customers \$86.40 annually for availability fees. The amounts collected are included in the attached financial statements. The District does not maintain reports in the format requested. If you would like to provide a flash drive the District will supply a copy of its billing system for your use in creating the reports you requested.

The District maintains its billing records on a computer owned by Lake Region Water & Sewer Company but has no authority to release any data maintained on the computer other than data belonging to the District and reflected on the Districts books of record.

John R. Summers
General Manager
Camden County PWSD4
Ozark Shores Water Company
Lake Region Water & Sewer Company
573-365-6792 Phone
573-365-6793 Fax

This answer from John Summers on behalf of Camden County PWSD4 seems to state that the information regarding availability fees is on a computer owned by Lake Region, therefore he (John Summers - General Manager of both Camden County PWSD4 and Lake Region per his signature block) has no authority to release information from a computer Camden County PWSD4 does not own. In essence Mr. Summers is saying that Camden County PWSD4 cannot provide the availability fee information requested by Staff because the computer containing that information is in the possession or control of another entity, Lake Region, not in the possession or control of Camden County PWSD4. That response completely contradicts Lake Region's statements regarding Public Counsel's data requests.

Lake Region is attempting to hide the availability fee information through Mr. Summers. Mr. Summers apparently has different colored hats he very carefully puts on depending on if he is speaking for Lake Region, Camden County PWSD4, Ozark Shores Water Company, or who knows what other affiliated entities. If Mr. Summers wears his blue Lake Region hat, he can

magically see everything on the computer pertaining to Lake Region but not the availability fee information because that is information under the control of Camden County PWSD4. If he wears his red Camden County PWSD4 hat, he magically can't even see the computer because it is under the control of Lake Region. This continually circular argument is ludicrous. But, Lake Region has a self-serving reason to try to hide information regarding availability fees from Staff, Public Counsel and ultimately the Commission. Lake Region knows perfectly well that the Commission has found a nexus between the availability fees, rate base and utility rates. If Lake Region is successful in hiding this information, it is more likely to be able to charge higher rates and provide a higher rate of return for its shareholders.

But the truth is that Mr. Summers himself has stated that the availability fee information sought by both Staff and Public Counsel is located on a computer that is owned by Lake Region. If the computer is owned by Lake Region, its contents, including the availability fee information, is available to and under the control of Lake Region and Lake Region is required to provide that information to Public Counsel per its data requests.

(2) Request for Motion to Compel

Section 386.450, RSMo 2000, requires the Commission, upon a showing of good cause by the Public Counsel, to order a public utility to produce papers or records of the utility for examination by the Public Counsel. The Commission has stated that the statute does not require Public Counsel to show that the requested documents are relevant to any particular issue in a contested case.¹ The Commission has also stated that the statute allows the Commission to require the production of the requested documents even if there were no contested case in existence.²

¹ *Order Regarding Public Counsel's Motion to Compel Discovery*, Case No. ER-2007-0002, March 15, 2007.

² *Id.*

This right is not conditioned on considerations of relevance under MO Rule Civ. Pro. 56.01(b)(1) and PSC Rule 4 CSR 240-2.090(1). The Commission has recognized that information sought by the Public Counsel, if not relevant, may well lead to other information which is relevant.³ Therefore, the Commission has determined that Public Counsel and the Staff can request records they want in their investigation without any showing that it is otherwise discoverable or is relevant to a specific case even if it is no more admissible in a hearing in their hands than in those of any other party.⁴

Public Counsel's right to pose data requests seeking information from any utility and the right to inspect and obtain copies of any utility's records or documents in its possession is coequal to that of the Staff of the Missouri Public Service Commission and is broader than the discovery authority permitted other litigants under Commission Rules.⁵

Missouri Regulation 4 CSR 240-2.090 (1) states that sanctions may be imposed for the abuse of the discovery process or failure to comply with commission orders regarding discovery. Public Counsel has filed written responses to Lake Region's failure to respond and objections and made a good faith effort to resolve the discovery dispute in an informal Discovery Conference. Due to the fact that surrebuttal testimony is to be filed by January 31, 2014, and the evidentiary hearing is scheduled to begin February 18, 2014, time is of the essence to obtain the information sought in these data requests and Public Counsel seeks expedited treatment.

Therefore, Public Counsel requests that the Commission act on its motion in an expedited manner so that Public Counsel may receive Lake Region's responses to the November 7, 2013, data requests by no later than 5:00 pm on Friday, January 17, 2014.

³ *Staff of the Missouri Public Service Commission, v. Union Electric Company, doing business as AmerenUE, Case No. EC-2002-1*, 2002 Mo. PSC LEXIS 31

⁴ *Id.*

⁵ RSMo. Section 386.450 and *In the Matter of Missouri-American Water Company's Tariff* (Case No. WR-2000-281, et al.)(2-2-2000).

(3) Grounds for expedited treatment

Public Counsel requests expedited treatment in this motion to the fact that surrebuttal testimony is to be filed by January 31, 2014, and the evidentiary hearing is scheduled to begin February 18, 2014. This motion was filed promptly after the information regarding Staff's Sunshine Law request was received and within the timeframe set by the Commission for filing Motions to Compel in this case. Thorough discovery is necessary to Public Counsel in its efforts to present its position to the Commission. Without these documents Public Counsel will be unable to clarify its concern that the actual amount of contributed plant associated with availability fees has not been properly identified so rate base and ultimately rates can be set accordingly.

Therefore, Public Counsel requests that the Commission act on its motion in an expedited manner so that Public Counsel may receive Lake Region's responses to the November 7, 2013, data requests by no later than 5:00 pm on Friday, January 17, 2014.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission issue an Order to Compel Responses to Public Counsel's November 7, 2013, data requests, in full and completely, no later than 5:00 pm on Friday, January 17, 2014, and for such other and additional relief that is necessary and proper.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Christina L. Baker

By: _____

Christina L. Baker (#58303)

Deputy Public Counsel

P O Box 2230

Jefferson City, MO 65102

(573) 751-5565

(573) 751-5562 FAX

christina.baker@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 9th day of January 2014:

General Counsel Office
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Amy Moore
General Counsel Office
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Amy.Moore@psc.mo.gov

Lake Region Water and Sewer Co.
Mark Comley
P.O. Box 537
601 Monroe Street, Suite 301
Jefferson City, MO 65102-0537
comley@ncrpc.com

/s/ Christina L. Baker
