

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of Lake Region Water and Sewer )  
Company's Application to Implement a General ) **Case No. SR-2013-0459**  
Increase in Water and Sewer Service )

In the Matter of Lake Region Water and Sewer )  
Company's Application to Implement a General ) **Case No. WR-2013-0461**  
Increase in Water and Sewer Service )

**JOINT STIPULATION OF UNDISPUTED FACTS**

Lake Region Water and Sewer Company (Lake Region), the Staff of the Missouri Public Service Commission (Staff), and the Office of the Public Counsel (collectively known as "the Parties") stipulate, for use in this consolidated case and for no other purpose, that the numbered statements set forth below are true and undisputed. It is further stipulated that all statements of fact or applications of law to fact set forth in footnotes are also true and undisputed. With the exception of objections based upon relevancy, materiality or the lack of jurisdiction of the Missouri Public Service Commission (the Commission), all of which objections are reserved by the Parties, the statements of fact set forth herein are otherwise unobjectionable.

The Parties further agree that nothing in this Joint Stipulation shall be interpreted or construed to be a waiver of Lake Region's arguments against and objections to the admissibility of evidence pertaining to the origination, collection or enforcement of fees charged to owners of vacant or undeveloped lots for availability of installed water and sewer connections in real property developments located within Lake Region's certificated service territory.

Transcript and exhibit references are to the transcript of record and exhibits admitted by the Commission in *In the Matter of Lake Region Water & Sewer*

*Company's Application to Implement a General Rate Increase in Water and Sewer Service*, Case Nos. SR-2010-0110 and WR-2010-0111 (*Lake Region 2010 Rate Case*).

For purposes of this Joint Stipulation, the Parties request the Commission to take official notice of: 1) all of its orders in the *Lake Region 2010 Rate Case*; 2) the exhibits admitted in the *Lake Region 2010 Rate Case* which are referred to in the body of any statement or in the footnotes of any statement; 3) the transcript of hearing of the *Lake Region 2010 Rate Case* at the pages noted in the body of a statement or in the footnotes of any statement; **and** 4) the following exhibits or other filings made of record in the *Lake Region 2010 Rate Case*<sup>1</sup>:

*Other Exhibits*

Exhibit No. 43 - Staff's Response to Commission's April 8, 2010 Order Regarding Availability Charges Previously Filed In EFIS

Exhibit No. 44 - Staff's Response to Commission's April 8, 2010 Order Regarding Availability Charges to Staff's Accounting Schedule Volume No. 1

Exhibit No. 45 - Staff's Response to Commission's April 8, 2010 Order Regarding Availability Charges, Staff Accounting Schedules, Volume No. 2

Exhibit No. 46 - Staff's Response to Commission's April 8, 2010 Order Regarding Availability Charges, Staff Accounting Schedules, Volume No. 3

Exhibit No. 47 - Staff's June 7, 2010 Response to Commission's May 27, 2010 Order Regarding Availability Charges

Exhibit No. 48 - Staff's June 23rd, 2010 Refiling of Staff's June 21st, 2010 Response to the Missouri Public Service Commission's June 16th, 2010 Order Regarding Clarification to Plant Additions

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<sup>1</sup> This request that the Commission take official notice of the items listed does not preclude any party from requesting at a later date that the Commission take official notice of any other item from the *Lake Region 2010 Rate Case*.

### *Other Filings or Submissions*

PSC EFIS Item No. 151 Lake Region Water & Sewer Company's Reply to Staff's Response to Request from Agenda on April 7, 2010

PSC EFIS Item No. 173 Lake Region Water & Sewer Company's Response to May 19, 2010 Order of the Commission

### **Lake Region's Ownership and Certificate History**

1. On August 10, 1971, Four Seasons Lakesites Water & Sewer Company ("Lakesites W&S") was incorporated to provide water and sewer service for the Four Seasons Lakesites, Inc. development.<sup>2</sup>

2. On February 27, 1973, Four Seasons Lakesites Water & Sewer Company was issued a Permit of Approval from the Division of Health to supply water to the public.<sup>3</sup>

3. The Commission granted Lakesites W&S its certificate of convenience and necessity ("CCN") to provide water service effective December 27, 1973 in Case No. 17,954. The Commission amended the company's certificate in Case No. 18,002 effective May 16, 1974, to expand its water service to areas immediately adjacent to the previously authorized certificated area.<sup>4</sup>

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<sup>2</sup> Certificate of Incorporation, dated August 10, 1971

<sup>3</sup> Lake Region Exhibit 13, Engineering Report in Case No. 17,954.

<sup>4</sup> *In the Matter of the Application of Four Seasons Lakesites Water and Sewer Company for a Certificate of Public Convenience and Necessity to Construct, Operate and Maintain an Intrastate Water System*, Case No. 17,954, Report and Order, Issued December 17, 1973, Effective December 27, 1973; Staff Exh. 7, Cost of Service Report, pp. 1-7; Staff Exh. 13, Featherstone Direct, p. 8; Lake Region Exh. 15, Report and Order in Case No. 17,954.

4. Ultimately, Lakesites W&S, or its successors-in-interest,<sup>5</sup> received Commission approval for providing sewer service and to expand its certificated water and sewer service areas as follows:

- a. December 16, 1975: Effective date of Commission Order granting an expansion to Lakesites W&S's CCN. Case No. 18,416.<sup>6</sup>
- b. March 14, 1980: Additional authority granted to Lakesites W&S in an unreported order. Case No. WA-79-266.<sup>7</sup>
- c. February 16, 1990: Additional authority granted to Lakesites W&S to provide sewer service in an unreported order. Case No. SA-89-135.<sup>8</sup>
- d. July 11, 1997: Effective date for Commission order approving a Unanimous Stipulation to grant Lakesites W&S Company a CCN to extend its sewer operation to areas in Shawnee Bend and Horseshoe Bend and adjust water tariffs (depreciation schedules). The Company already had a CCN to provide sewer service in part of Horseshoe Bend. Case No. WA-95-164.<sup>9</sup>

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<sup>5</sup> Lakesites W&S's successors-in-interest are Four Seasons Water and Sewer Company and Lake Region Water and Sewer Company.

<sup>6</sup> *In the Matter of the Application of Four Seasons Lakesites Water and Sewer Company for an Amendment to Their Certificate of Public Convenience and Necessity to Construct, Operate and Maintain an Intrastate Water System*, Case No. 18,416, Report and Order, Issued December 4, 1975, Effective December 16, 1975.

<sup>7</sup> Formal case caption not listed in Mo.P.S.C. Reports, Volume 23, p. xv.

<sup>8</sup> *In the Matter of the Application of Four Seasons Lakesites Water and Sewer Company for a Certificate of Public Convenience and Necessity to Own, Operate and Maintain Sewer System*, Case No. SA-89-135, Report and Order Adopted, February 16, 1990; Staff Exh. 13, Featherstone Direct, p. 8.

<sup>9</sup> Transcript, pp. 486-487; *In the Matter of the Application of Four Seasons Lakesites Water and Sewer Company for a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage and Maintain Water and Sewer Utility Properties for the Public, Located in an Unincorporated Area in Camden County and Miller County, Missouri Generally Comprising the Eastern Half of the Area Known as "Shawnee Bend,"* Case No. WA-95-164, Order Approving Unanimous Stipulation and Agreement, Granting Certificate of Convenience and Necessity, Approving Tariffs, and Denying Application to Intervene, Issued July 1, 1997, Effective July 11, 1997.

- e. October 9, 1998: Effective date for Commission order extending Four Seasons Water & Sewer Company's ("Four Seasons W&S") CCN for its sewer operations. Case No. SA-98-248.<sup>10</sup>
- f. September 1, 2000: Effective date for Commission order granting Lake Region an extension of its CCN to provide water and sewer service in the Shawnee Bend area. Case No. SA-2000-295.<sup>11</sup>
- g. November 5, 2006: Effective date of Commission order approving expansion of Lake Region's CCN. WA-2005-0463 and WA-2005-0464.<sup>12</sup>

5. In March of 2004, the Commission denied Lake Region's requests for CCNs in Case Number SA-2004-0182.<sup>13</sup>

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<sup>10</sup> *In the Matter of the Application of Four Seasons Water and Sewer Company for a Certificate of Convenience and necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage and Maintain Sewer Utility Properties for the Public, Located in an Unincorporated Area In Camden County, Missouri by Expansion of its Existing Certificated Area in a Westward Direction Along the Shore of the Lake of the Ozarks*, Case No. SA-98-248, Order Granting Certificate of Convenience and Necessity, Issued September 29, 1998, Effective October 9, 1998.

<sup>11</sup> *In the Matter of the Application of Lake Region Water and Sewer Company for a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage and Maintain a Centralized Sewage Collection and Treatment System in an Area in an Unincorporated Area of Camden County, Missouri , as an Expansion of its Existing Certificated Area*, Order Granting Certificate of Public Convenience and Necessity, Issued August 22, 2000, Effective September 1, 2000; Staff Exh. 7, Cost of Service Report, pp. 1-7; Staff Exh. 13, Featherstone Direct, p. 8.

<sup>12</sup> *In the Matter of the Application of Lake Region Water and Sewer Company for a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage and Maintain a Water and Sewer System for the Public Located in an Unincorporated Area in Camden County, Missouri, Order Approving Application for Certificate of Convenience and Necessity*, Issued October 26, 2006, Effective November 5, 2006.

<sup>13</sup> *In the Matter of the Applications of Lake Region Water and Sewer Company for Certificates of Convenience and Necessity*, Order Denying Motion to Reconsider Order Dismissing Applications, Issued March 18, 2004, Effective March 28, 2004. This order covered application filed in Case Nos. SA-2004-0182, SA-2004-0183, WA-2004-0184, WA- 2004-0201 and SA-2004-0202.

6. In addition to the many certificate cases, Lakesites W&S, or its successors-in-interest, appeared before the Commission seeking rate increases in the following cases:

- a. April 16, 1975: Effective date for Commission order denying Lakesites W&S's tariff for an imposition of rates for unmetered service. Case No. 18,081.<sup>14</sup>
- b. December 5, 1991: Effective date for Commission order granting Lakesites W&S a rate increase request pursuant to a unanimous agreement. Case No. WR-92-59.<sup>15</sup>
- c. August 2, 1998: Effective date for Commission order granting Four Seasons W&S an increase in rates for its sewer service after the filing of a unanimous disposition agreement. This increase in rates involved the completed expansion at the Racquet Club wastewater treatment plant; Case No. SR-98-564.<sup>16</sup>

7. With regard to ownership of the company:

- a. December 29, 1992: The Commission approved Lakesites W&S application to sell its water system on Horseshoe Bend to the Ozark Shores Water Company ("Ozark Shores"), but Lakesites W&S

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<sup>14</sup> *In the Matter of Four Seasons Lakesites Water and Sewer Company of St. Louis, Missouri, for Authority to file a Water Rate for General Service Unmetered in its Certificated Area in the State of Missouri*, Report and Order, Issued March 17, 1975, Effective April 16, 1975.

<sup>15</sup> *In the Matter of Four Seasons Lakesites Water and Sewer Company's Tariff to Increase Rates Pursuant to Their Informal Rate Procedure*, Case No. WR-92-59, Report and Order, Issued November 27, 1991, Effective December 5, 1991.

<sup>16</sup> *In the Matter of Four Seasons Water and Sewer Company's Tariff for Rate Increase Pursuant to Small Company Rate Increase*, Order Approving Tariff, Issue July 30, 1998, Effective August 2, 1998.

continued to provide sewer service to the Horseshoe Bend area.<sup>17</sup>

Unreported Case No. WM-93-24.<sup>18</sup>

b. October 9, 1998: Lakesites W&S changed its name to Four Seasons Water and Sewer Company (“Four Seasons W&S”) in Case No. SA-98-248.<sup>19</sup>

c. May 16, 1999: The Commission recognized Four Seasons W&S’s change of name to Lake Region Water & Sewer Company (Lake Region) in Case No. WO- 99-469.<sup>20</sup>

8. On December 2, 1969, Harold Koplar, the original developer of Four Seasons Lakesites, Inc., executed the original Declaration of Restrictive Covenants for the development that would eventually encompass Lake Region’s service area.<sup>21</sup>

9. On March 10, 1971, Harold Koplar, the original developer of Four Seasons Lakesites, Inc., executed the [First] Amended Declaration of Restrictive Covenants (“1<sup>st</sup> Covenants”) for the development that would eventually encompass Lake Region’s

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<sup>17</sup> Transcript, pp. 484-486; Staff Exh. 7, Cost of Service Report, pp. 1-7. Ozark Shores was granted a subsequent increase in rates in Case No. WR-99-183.

<sup>18</sup> *Four Seasons Lakesites Application to Sell Water Assets to Ozark Shores Company*, Case No WM-93-24. The order approving the sale was issued on December 29, 1992.

<sup>19</sup> Staff Exh. 7, Cost of Service Report, pp. 1-7; Staff Exh. 13, Featherstone Direct, p. 8. Note: Staff reports the name change occurring in this case; however, the docket entries do not reflect a name change application.

<sup>20</sup> *In the Matter of Four Seasons Water and Sewer Company for Name Change to Lake Region Water and Sewer Company*, Case No. WO-99-0469, Order Recognizing Change of Corporate Name and Filing of Adoption Notice, Effective May 16, 1999.

<sup>21</sup> Transcript pp. 640-641; Staff Exh. 12, Fourth Amended and Restated Declaration of Restrictive Covenants, from Grantor Four Seasons Lakesites, Inc., dated October 1, 2009; Staff Exh. 15, Merciel Rebuttal, Attachment 5, Fourth Amended and Restated Declaration of Restrictive Covenants. Transcript citations related to the restrictive covenants are found at pp. 219-227, 241, 275-277, 335-336, 380-396, 400- 403, 461-462, 504-519, 532-532, 590-592, 637-643, 705-706.

service area.<sup>22</sup>

10. Article VI of the 1<sup>st</sup> Covenants establishes Lakesites POA, and all property owners in the development automatically become a member in the Association when they purchase property.<sup>23</sup>

11. Article VII of the 1<sup>st</sup> Covenants prohibits the use of outside toilets and requires that sanitary waste disposal conform with the recommendations of the developer or its successors, the state and county health boards.<sup>24</sup>

12. Articles VII and VIII of the 1<sup>st</sup> Covenants pertain to the central sewage disposal system and water works.<sup>25</sup> These sections:

- a.) establish a “minimum monthly availability charge for water, water service and the accommodations afforded the owners of said lots by said water works systems” that would commence when water service was available and continue regardless whether the property owner takes water service from the central system to be constructed within the development;
- b.) allow for the construction of individual wells until such time as the central water system is constructed, after which the property owner must connect to the central system;

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<sup>22</sup> Four Seasons Lakes Sites POA, Inc. Exh. 1, First Amended Declaration of Restricted Covenants; Staff Exh. 12, Fourth Amended and Restated Declaration of Restrictive Covenants, from Grantor Four Seasons Lakesites, Inc., dated October 1, 2009; Staff Exh. 15, Merciel Rebuttal, Attachment 5, Fourth Amended and Restated Declaration of Restrictive Covenants.

<sup>23</sup> Four Seasons Lakes Sites POA, Inc. Exh. 1, First Amended Declaration of Restricted Covenants.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*



- c.) establish “a minimum monthly availability charge for sewage disposal and treatment and the accommodations afforded the owners of said lots by said sewage disposal system” that would commence upon the availability for use of a sewage collection main that leads to an operating sewage treatment facility and continue regardless whether the property owner connects to the central sewage to be constructed within the development;
- d.) allow for the construction of individual sewer systems, i.e. septic tanks and tile fields, until completion of the central sewer system, after which the property owner must connect to the central system;
- e.) provide that no charge will be made to the lot owners for the right to connect to the water and/or sewer systems; and,
- f.) provide that the owner or owners of the water works system and sewage disposal system will be a privately owned utility authorized by a CCN issued by the MoPSC and all availability charges, and times and methods of payment, shall be provided in schedules or rates and rules to be approved by the MoPSC.

13. Article VIII of the 1<sup>st</sup> Covenants further provides that the availability fees are to be paid to the owner or owners of the sewage disposal system and water works system and that any “unpaid [availability] charges shall become a lien on the lot or lots to which they are applicable as the date the same became due.”<sup>26</sup>

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<sup>26</sup>  
*Id.*

14. In addition to agreeing to the restrictive covenants upon the purchase of an undeveloped lot, the owner of each lot executed a separate water and sewer agreement, the provisions of which mirrored those in the 1st Covenants.<sup>27</sup>

15. On January 14, 1986, the Second Amended and Restated Declaration of Restrictive Covenants was executed by the developer<sup>28</sup> of Four Seasons Lakesites, Inc..<sup>29</sup>

16. On July 2, 1996, Peter N. Brown, successive developer for Four Seasons Lakesites, Inc., executed the Third Amended and Restated Declaration of Restrictive Covenants (3<sup>rd</sup> Covenants).<sup>30</sup>

17. Article VII of the 3<sup>rd</sup> Covenants pertain to Four Seasons Lakesites Property Owners Association (Lakesites POA).<sup>31</sup> All property owners in the development automatically become a member in the Lakesites POA when they purchase property.<sup>32</sup>

18. Article VIII of the 3<sup>rd</sup> Covenants prohibits the use of outside toilets and requires that sanitary waste disposal conform with the recommendations of the developer or its successors, the state and county health boards and the Missouri

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<sup>27</sup> Lake Region Exhibit 13, Engineering Report in Case No. 17,954.

<sup>28</sup> It is assumed by the parties but not yet confirmed that Harold Koplar, the original developer of Four Seasons Lakesites, executed the Second Amended and Restated Declaration of Restrictive Covenants.

<sup>29</sup> Staff Exh. 12, Fourth Amended and Restated Declaration of Restrictive Covenants, from Grantor Four Seasons Lakesites, Inc., dated October 1, 2009; Staff Exh. 15, Merciel Rebuttal, Attachment 5, Fourth Amended and Restated Declaration of Restrictive Covenants.

<sup>30</sup> Transcript, pp. 618-619, 639-642, 709, 714; Staff Exh. 15, Merciel Rebuttal, Attachments 3 and 4. The 3<sup>rd</sup> Covenants were attested to by Susan Koplar Brown, Secretary of Four Seasons Lakesites, Inc. Mr. Brown is the son-in-law of the original developer, Harold Koplar.

<sup>31</sup> Four Seasons Lakes Sites POA, Inc. Exh. 1, First Amended Declaration of Restricted Covenants.

<sup>32</sup> *Id.*

Department of Natural Resources (DNR).<sup>33</sup>

19. Article IX(A) of the 3<sup>rd</sup> Covenants duplicates the provisions from prior declarations relating to the water system, but the water system only.<sup>34</sup> This duplication includes the provisions concerning availability fees.<sup>35</sup> This article includes the provision that owners of the water works system will be a privately owned utility authorized by a CCN issued by the MoPSC and all availability charges, and times and methods of payment thereof, shall be provided in schedules or rates and rules to be approved by the MoPSC, or if not so provided, as determined by the Owner of the water works system.<sup>36</sup>

20. Article IX(C) of the 3<sup>rd</sup> Covenants provides for a plan for sewage treatment by individual treatment facilities, which must meet the specifications of Lakesites POA's DNR-approved plan or by "other methods of sewage treatment by the Development." It also provides that Lakesites POA will periodically maintain each individual treatment facility and each lot owner is required to pay a monthly maintenance fee to the POA for administering the plan. The 3<sup>rd</sup> Covenants do not mention or require any availability fees for sewer service to be paid to the developer or to Four Seasons Lakesites Water & Sewer Company.<sup>37</sup>

21. The "Development," for purposes of Article IX(C) of the 3<sup>rd</sup> Covenants, refers to the Horseshoe Bend lots.<sup>38</sup>

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<sup>33</sup> Staff Exh. 15, Merciel Rebuttal, Attachment 3, Third Amended and Restated Declaration of Restrictive Covenants.

<sup>34</sup> Staff Exh. 15, Merciel Rebuttal, Attachments 3 and 4.

<sup>35</sup> *Id.*

<sup>36</sup> Staff Exh. 15, Merciel Rebuttal, Attachment 3, Third Amended and Restated Declaration of Restrictive Covenants.

<sup>37</sup> Staff Exh. 15, Merciel Rebuttal, Attachments 3 and 4.

<sup>38</sup> *Id.* See in particular the definitions section and the Amendment to the 3<sup>rd</sup> Covenants dated July 23, 2009.

22. Article IX(E) of the 3<sup>rd</sup> Covenants provides that, barring certain exceptions, “all homes and other structures requiring sewage or waste water disposal facilities, shall conform to the plan for sewage treatment; no such home or structure may be occupied unless so connected to the sewage treatment facility and no septic tank, cesspool or other means of disposal of sewage on an individual lot may be used in the subdivisions.”

23. There are multiple amendments to the 3<sup>rd</sup> Covenants.<sup>39</sup>

24. The amendment to the 3<sup>rd</sup> Covenants executed on July 23, 2009 contains specific provisions regarding the water and sewer systems.<sup>40</sup>

25. Article IX in July 23, 2009 amendment removes and replaces the entire Article IX from the 3<sup>rd</sup> Covenants, and provides, *inter alia*:<sup>41</sup>

- a.) Shawnee Bend Lot Owners must “pay the owner of the central water system, or its assigns or designees, a monthly availability charge of Ten Dollars (\$10.00), unless the Owner of the Lot is contractually obligated to Developer, or Developer’s assign to pay a different amount;”
- b.) The water availability fee for Shawnee Bend Lot Owners<sup>42</sup> commences upon the availability of water in a water system

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<sup>39</sup> Staff Exh. 15, Merciel Rebuttal, Attachments 3 and 4. See in particular the definitions section and the Amendment to the 3<sup>rd</sup> Covenants dated July 23, 2009.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Similar water provisions apply to Horseshoe Bend Lot Owners; however, Horseshoe Bend water service is provided by a different corporate entity (Ozark Shores) and water service to Horseshoe Bend is not at issue in this case.

distribution main provided for the Lot and terminates when the Owner of the Lot connects his Lot to the water distribution main.

- c.) Unpaid water availability fees become a lien on the Lot the date they become due.
- d.) Shawnee Bend Lot Owners must “pay the owner of the central sewer system, or its assigns or designees, a monthly availability charge of Fifteen Dollars (\$15.00), unless the Owner of the Lot is contractually obligated to Developer, or Developer’s assign to pay a different amount.”
- e.) Horseshoe Bend Lot Owners must pay the owner of the water works system a minimum monthly availability charge (amount not specified).
- f.) The Owner of the Horseshoe Bend water works system will be a privately owned public utility authorized by a certificate of public convenience and necessity issued by the MoPSC to operate the water works system.
- g.) The availability fees charged for the Horseshoe Bend Water System shall be provided in the Schedules of Rate and Rules. Regulations and conditions for water services shall be approved by the MoPSC (or any successor) and if not so provided will be determined by the owner of the water works.
- h.) Unpaid sewer fees for maintenance, owed to Lakesites POA, become a lien on the Lot and may be enforced by the Association.

- i.) The water and sewer amendment shall survive the execution and recording of the Fourth Amended and Restated Declaration and shall remain in full force and effect and be incorporated into the Fourth Amended and Restated Declaration.

26. All references to regulation by the Commission in the 3<sup>rd</sup> Covenants apply to the Horseshoe Bend Water System, which is not at issue in this case since this system was sold and became Ozark Shores Water Company in 1992.

27. On October 1, 2009, the Fourth Amended and Restated Declaration of Restrictive Covenants (“4<sup>th</sup> Covenants”) was executed by Peter Brown, Vice-President of Four Seasons Lakesites, Inc.<sup>43</sup>

28. Article 9 of the 4<sup>th</sup> Covenants states that all provisions relating to the water and sewer systems and treatment are set forth in the Amendment to the 3<sup>rd</sup> Covenants dated July 22, 2009 (executed July 23, 2009).<sup>44</sup>

29. Recital E in the 4<sup>th</sup> Covenants indicates the Declarant Developer may amend the Declaration at any time until all the lots in development have been sold.<sup>45</sup>

30. All of the lots developed by Four Seasons Lakesites, Inc. on Shawnee Bend have been sold.<sup>46</sup>

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<sup>43</sup> Staff Exh. 12, Fourth Amended and Restated Declaration of Restrictive Covenants, from Grantor Four Seasons Lakesites, Inc., dated October 1, 2009. The 2009 Annual Registration Report from Four Seasons Lakesites, Inc., dated June 11, 2009, lists Peter Brown as being the president. His wife, Susan, is Vice-President.

<sup>44</sup> Staff Exh. 12, Fourth Amended and Restated Declaration of Restrictive Covenants, from Grantor Four Seasons Lakesites, Inc., dated October 1, 2009; Staff Exh. 15, Merciel Rebuttal, Attachment 5, Fourth Amended and Restated Declaration of Restrictive Covenants.

<sup>45</sup> *Id.*

<sup>46</sup> Peter N. Brown, by an affidavit dated April 29, 2010, states that all of the lots developed by Four Seasons Lakesites, Inc. on Shawnee Bend have been sold. Staff Exh. 27, Affidavit of Peter N. Brown, dated April 29, 2010.

31. Section 19.3 of the 4<sup>th</sup> Covenants allows the property owners to seek amendment of the Declaration subject to certain conditions.<sup>47</sup> Those conditions include:<sup>48</sup>

- a.) The Declaration is binding until January 15, 2015, after which it is automatically renewed unless the owners of 90% of the lots vote to terminate the Declaration.
- b.) The Declaration may be amended at any time by the Developer at the request or with the consent of the Board until such time as all lots are sold, at which such time the Declaration may be amended by the affirmative vote of two-thirds of the owners of all of the lots entitled to vote.
- c.) In the case of amendment by two-thirds of the property owners the amendment shall be executed by the requisite lot owners or the Lakesites POA.

32. The 4<sup>th</sup> Covenants constitute an agreement between Peter N. Brown, successive developer for Four Seasons Lakesites, Inc., and the property owner. It also creates obligations between the property owner and Lakesites POA.

33. The 3<sup>rd</sup> and 4<sup>th</sup> Covenants do not represent that the Commission would determine or tariff rates for availability fees.

34. With respect to the water systems, the 3<sup>rd</sup> and 4<sup>th</sup> Covenants provide that if the Commission does not provide or approve regulations and conditions for services,

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<sup>47</sup> Staff Exh. 12, Fourth Amended and Restated Declaration of Restrictive Covenants, from Grantor Four Seasons Lakesites, Inc., dated October 1, 2009. The covenants have been amended or supplemented a minimum of 47 times. Also, additional covenants and restrictions apply to specific subdivisions of the development. *Id.*

<sup>48</sup> *Id.*

they will be determined by the owner of the system.

35. The specimen land sales contract utilized by Four Seasons Lakesites, Inc. also contains provisions regarding the charging of availability fees. Paragraph 9 (B) and (C) provide:

- a.) all lots in the development will be served by a central water system;
- b.) the buyer agrees to pay availability fees until the central water system is completed to the point that a main water line runs in front of the buyer's property;
- c.) the availability fee for water is \$10.00 per month;
- d.) the availability fee for water shall be paid to the seller or the seller's assignee, Lake Region Water & Sewer Co.;
- e.) the buyer agrees to pay all cost for connecting buyer's home to the central water system;
- f.) all lots in the development will be served by a central sewer system;
- g.) the buyer agrees to pay a monthly availability fee to the seller or seller's assignee until such time as the buyer constructs a home on the property; and,
- h.) once the buyer constructs a home, the buyer shall pay the sewer system operator a one-time connection fee and monthly fee for sewer service.<sup>49</sup>

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<sup>49</sup> Staff Exh. 53, Four Seasons Lakesites, Inc. Sales Contract.



## Purpose of Availability Fees

36. In Commission Case Number 17,954, the original certification case, the Commission received into evidence an engineering report and the testimony of James W. French, registered professional engineer.<sup>50</sup>

37. The engineering report and testimony demonstrate that the economic feasibility of constructing the water and sewer system for what would ultimately become the service area for Lake Region was dependent upon the use of availability fees charged to the purchasers of the undeveloped lots.<sup>51</sup>

38. A copy of a separate availability fee agreement is attached to the engineering report.<sup>52</sup> The availability fee agreement contains provisions mirroring the terms for water and sewer service outlined in the 1<sup>st</sup> Covenants.<sup>53</sup>

39. The Commission's Report and Order in Case No. 17,954, effective December 27, 1973, ("1973 Order") granting Four Seasons Lake Sites Water and Sewer Company (Lake Region's predecessor in interest) its CCN for water service, acknowledges the use of availability fees and distinguishes the agreement for those charges from the rates and charges proposed for rendering metered and unmetered water service.<sup>54</sup>

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<sup>50</sup> Lake Region Exh. 13, Engineering Report in Case No. 17,954; Lake Region Exh. 14, Transcript of Hearing in Case No. 17,954; Lake Region Exh. 15, Report and Order in Case No. 17,954.

<sup>51</sup> Lake Region Exh. 13, Engineering Report in Case No. 17,954; Lake Region Exh. 14, Transcript of Hearing in Case No. 17,954; Lake Region Exh. 15, Report and Order in Case No. 17,954; *In the Matter of the Application of Four Seasons Lakesites Water and Sewer Company for a Certificate of Public Convenience and Necessity to Construct, Operate and Maintain an Intrastate Water System*, Case No. 17,954, Report and Order, Issued December 17, 1973, Effective December 27, 1973.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

40. The 1973 Order requires Lake Region's predecessor in interest to file tariffs including the rates for metered and unmetered water service. The Commission's order does not require the tariffing of availability fees.<sup>55</sup>

41. The collection of availability fees, by the terms and timing of the original agreements, began prior to construction or completion of the water and sewer systems and were collected to make construction of the systems feasible.<sup>56</sup>

42. The purpose for establishing the availability fees was to recover the investment in the water and sewer systems, not to maintain or repair the existing operations of the systems once they were constructed.<sup>57</sup>

43. People who purchase lots who are subject to paying the availability fees receive a benefit from paying the availability fees. That primary benefit is access to required utility service, in this instance potable water and sewage treatment, without having to sustain additional costs of installing a well or a septic system. A secondary benefit for paying the fees is the avoidance of having a lien placed on the property by operation of the terms of the land sales contract or the restrictive covenants. Having the infrastructure in place also facilitates the sale of lots by complying with deed restrictions.<sup>58</sup>

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*Id.*

<sup>56</sup> Four Seasons Lakes Sites POA, Inc. Exh. 1, First Amended Declaration of Restricted Covenants; Lake Region Exh. 13, Engineering Report in Case No. 17954; Lake Region Exh. 14, Transcript of Hearing in Case No. 17954; Lake Region Exh. 15, Report and Order in Case No. 17954.

<sup>57</sup> Transcript, pp. 281-282, 335, 343-346, 364-365, 562, 565, 692-702 (see in particular pp. 700-702). Four Seasons Lakes Sites POA, Inc. Exh. 1, First Amended Declaration of Restricted Covenants; Staff Exh. 27, Affidavit of Peter N. Brown, dated April 29, 2010; Lake Region Exh. 13, Engineering Report in Case No. 17954; Lake Region Exh. 14, Transcript of Hearing in Case No. 17954; Lake Region Exh. 15, Report and Order in Case No. 17954.

<sup>58</sup> "Standby and availability charges are fees which are exacted for the benefit which accrues to property by the virtue of having water available to it even though the water might not actually be used at the present time." Transcript, p. 20. The deed restrictions require accessing the utility infrastructure and

## Assignment or Transfer of Ownership of the Availability Fees

44. On August 17, 1998, Four Seasons Lakesites, Inc. assigned the availability fees to Roy and Cindy Slates.<sup>59</sup>

45. The 1998 and 1999 Annual Reports to the Commission for Four Seasons Water & Sewer Co. confirm that the company's stock was also transferred to the Slates.<sup>60</sup>

46. Following the August 17, 1998 assignment, neither Four Seasons Group, Inc. nor Four Seasons Lakesites, Inc. were involved with the billing or collection of availability fees assessed to the properties in Lake Region's service areas.<sup>61</sup>

47. On July 27, 1999, Lake Region filed its Annual Report with the Commission for the year ending December 31, 1998.<sup>62</sup> Availability fees are listed as "other income" and total \$52,648.<sup>63</sup> This is consistent with timing of the assignment of the fees to the Slates. The 1998 Annual Report was the last year availability fees were

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compliance with paying the availability fee allows for sale of the lots. Transcript pp. 249-250. Alleviates the need for the property owner to drill a well or install a septic system. Transcript, pp. 357-358. The chief benefit of having the infrastructure in place is the availability of potable water distribution and permanent sewer treatment – lot owners gain this benefit from paying availability fees. Transcript 458-459, 741-742 There is an economic benefit to pay the fees to avoid a lien on the property. Transcript, p. 499.

<sup>59</sup> Transcript pp. 242-247, 259-262, 277, 287, 342-346, 351-352, 355, 357, 423-424, 457-458, 518, 544, 635-636; Staff Exh. 10, Contract Regarding Availability Fees; Assignment of Availability Fees and Closing Statement; OPC Exh. 2, Robertson Direct, pp. 3-5 (Lake Region's response to Staff Data Request No. 44.1).

<sup>60</sup> *Id.*; Lake Region Exh. 7, Annual Report of Lake Region Water and Sewer Company for the year ended December 31, 1998; Lake Region Exh. 8, Annual Report of Lake Region Water and Sewer Company for the year ended December 31, 1999; Staff Exh. 27, Affidavit of Peter N. Brown, dated April 29, 2010.

<sup>61</sup> Staff Exh. 27, Affidavit of Peter N. Brown, dated April 29, 2010. On October 9, 1998, Lakesites W&S changed its name to Four Seasons Water and Sewer Company ("Four Seasons W&S"), and On May 16, 1999, Four Seasons W&S changed its name to Lake Region. Staff Exh. 7, Cost of Service Report, pp. 1-7; Staff Exh. 13, Featherstone Direct, p. 8.; *In the Matter of Four Seasons Water and Sewer Company for Name Change to Lake Region Water and Sewer Company*, Case No. WO-99-0469, Order Recognizing Change of Corporate Name and Filing of Adoption Notice, Effective May 16, 1999.

<sup>62</sup> Lake Region Exh. 7, Annual Report of Lake Region Water and Sewer Company for the year ended December 31, 1998

<sup>63</sup> *Id.*

reported to the Commission.<sup>64</sup>

48. On April 12, 2000, Roy and Cindy Slates assigned the availability fees to Lake Region Water & Sewer Company.<sup>65</sup>

49. On April 12, 2000, Lake Region Water & Sewer Company assigned the availability fees to Waldo I. Morris.<sup>66</sup>

50. On October 13, 2004, Waldo I. Morris (President of Lake Region Water & Sewer Co.) and Robert P. Schwermann and Sally J. Stump executed a "Contract Regarding Availability Fees" ("Fee Contract").<sup>67</sup>

51. Part of the Fee Contract included consummating and closing a Stock Purchase Agreement (dated September 10, 2004) in which Robert P. Schwermann and Sally J. Stump purchased all of the stock in Lake Region for three million dollars.<sup>68</sup>

52. 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.<sup>69</sup>

53. Robert P. Schwermann and Sally J. Stump hold the availability fees as tenants in common.<sup>70</sup>

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<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Staff Exh. 10, Contract Regarding Availability Fees; Assignment of Availability Fees and Closing Statement. Transcript, p. 612, 643-644.

<sup>69</sup> *Id.*; Transcript, pp. 245, 259-261, 612-613.

<sup>70</sup> Staff Exh. 10, Contract Regarding Availability Fees; Assignment of Availability Fees and Closing Statement.

54. On October 8, 2003, a lawsuit was initiated by Four Seasons Lakesites, Inc., contesting the ownership of the property rights for the availability fees; Civil Case No. CV103-760CC. The defendants in that lawsuit included Lake Region and Roy and Cindy Slates, and Waldo Morris, the former owners of Lake Region. On April 15, 2005, a confidential settlement was reached regarding who owned the property rights to the fees. This settlement included the assignment of availability fees from Waldo Morris to Robert P. Schwermann and Sally Stump. Sally J. Stump and RPS Properties, L.P. received the right to collect the availability fees as a result of that settlement; however, terms were put in place as to which party received what portion of the availability fees.<sup>71</sup>

55. Four Seasons Lakesites, Inc. holds a security interest in RPS Properties, L.P.'s and Sally Stump's availability fees as defined in the Collateral Assignment and Security Agreement dated April 15, 2005 and the Availability Fee Assessment rights as defined in the Collateral Assignment and Security Agreement dated April 15, 2005. This security interest includes all accounts, accounts receivable, payment intangibles, contract rights, chattel paper, instruments and documents and notes; all proceeds relating thereto; and all of the foregoing, which are related to or arising from such Availability Fees and the Availability Fee Assessment Rights.<sup>72</sup>

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<sup>71</sup> Civil Case No. CV103-760CC. The lawsuit also involved a "Demand for Delivery of Possession" wherein the ownership of a certain tract of property was in dispute. Staff Exh. 21, Affidavit of Brian Schwermann, executed May 13, 2010; (HC – Paragraphs 12, 13, 15 made public by Commission order). Staff Exh. 23, Confidential Settlement Agreement in Circuit Court Case CV-103-760CC executed between Four Seasons Lakesites, Inc., Lake Region Water and Sewer Company, Sally J. Stump and RPS Properties, L.P. on April 15, 2005. (HC – no terms of the agreement are disclosed). See also Staff Exh. 27, Affidavit of Peter N. Brown, dated April 29, 2010; Transcript, pp. 245, 247, 250, 697, 707-708.

<sup>72</sup> Lake Region Exh. 10, UCC Financing Statement: Four Seasons Lakesites, Inc.'s Security Interest in Availability Fees owned by Sally Stump and RPS Properties, L.P. Beginning with Lake Region's 2005

## **Collection and Amount of Availability Fees**

56. According to the terms of the sales contract and the restrictive covenants for Four Seasons Lakesites, Inc. availability fees are levied on the owners of undeveloped lots. Once lots are developed, the owner of the property must connect to the water and sewage systems and availability fees are no longer charged once the connection is made and water and sewer service are being provided.<sup>73</sup>

57. Availability fees are not paid by Lake Region's water and sewer service customers.<sup>74</sup>

58. Lake Region must provide service to any property owner requesting service within Lake Region's service area, even if the property owner does not pay or is in arrears on paying the availability fees.<sup>75</sup>

59. The number of annual bills for availability fees will vary while lots are sold and developed and will continue to vary annually until all lots are sold and developed.<sup>76</sup>

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Annual Report, filed on August 1, 2006, a new entry appears in Annual Reports in the category of "Payments for Services Rendered by Other than Employees." The new entry is entitled Lake Utility Availability, Management. Lake Region Water and Sewer Company, Water and Sewer Annual Report, Small Company, to the Missouri Public Service Commission for the year ending December 31, 2005. This line item books costs associated with debt service cost for the amount of money the shareholders borrowed to purchase Lake Region. *Id.* See also Staff's Response to Commission Request for Annual Report Analysis, filed on May 28, 2010, and Lake Region's Response to June 1, 2010 Order of the Commission, filed June 8, 2010.

<sup>73</sup> The undeveloped lots contain no structures, no service lines to connect a structure to a main and there is no actual exchange of water or sewage discharge between a structure and a water or sewer main. Transcript, pp. 534-535.

<sup>74</sup> Transcript pp. 557-558.

<sup>75</sup> Transcript, pp. 489-490, 614.

<sup>76</sup> See the annual reports for Lake Region and its Predecessor Company that report varying amount of fees collected. See Lakesites POA Exhs. 3 and 5. See also "Staff's Response to Commission Request for Annual Report Analysis," filed on May 28, 2010.

60. The actual amount of availability fees collected will vary based upon the property owners fulfilling their obligation to pay.<sup>77</sup>

61. The actual amount of availability fees collected annually will vary based upon when the property owners pay the fees.

62. Depending on how quickly property owners develop their lots, some may pay availability fees for a very small number of months and some may pay the fees for years.

63. The availability fee income that was reported to the Commission appears on line F-42 of the Annual Reports for “Other Income and Deductions.”<sup>78</sup>

64. Since the sale of Lake Region’s stock and the assignment of availability fees to Robert P. Schwermann and Sally J. Stump, and the settlement agreement executed in Civil Case No. CV103-760CC, Sally J. Stump and RPS Properties, L.P. have the right to collect the availability fees.<sup>79</sup>

65. RPS Properties, L.P. and Sally Stump d/b/a Lake Utility Availability 1 bills for and collects “availability fees” from land owners of undeveloped lots within the service area of the Lake Region. Lake Utility Availability 1 is a fictitious name registered with the Missouri Secretary of State.<sup>80</sup>

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<sup>77</sup> See the annual reports for Lake Region and its Predecessor Company that report varying amount of fees collected. See also “Staff’s Response to Commission Request for Annual Report Analysis,” filed on May 28, 2010.

<sup>78</sup> See the annual reports for Lake Region and its predecessor companies.

<sup>79</sup> Staff Exh. 10, Contract Regarding Availability Fees; Assignment of Availability Fees and Closing Statement; Staff Exh. 27, Affidavit of Peter N. Brown, dated April 29, 2010.

<sup>80</sup> Transcript, pp. 261-266, 279-280, 323-327, 609, 650; Staff Exhibit 11, Registration of Fictitious Name – Lake Utility Availability, Filed with the Secretary of State on December 1, 2004, expired December 1, 2009; See also Registration of Fictitious Name – Lake Utility Availability 1, Filed with the Secretary of State on August 24, 2005, expires August 24, 2010; Staff Exh. 7, Cost of Service Report, pp. 1-7.

66. Management fees for RPS Properties, L.P. and Vernon Stump are paid into the same account in which the availability fees are deposited. That account is titled Lake Utility Availability Fees and is owned by RPS Properties and Sally Stump.<sup>81</sup>

67. Billing statements for the availability fees bear the caption "Lake Utility Availability" and display the same address and phone number as a copy of a customer bill for water and sewer service from Lake Region.<sup>82</sup>

68. Cynthia Goldsby is currently a billing clerk employed by Camden County Public Water Supply District Number 4.<sup>83</sup>

69. Ms. Goldsby's hourly wage is paid by Camden County PWSD4 and is \$14.44.<sup>84</sup>

70. As part of Ms. Goldsby's job responsibilities, she provides billing and collection services for Lake Region.

71. Also as part of Ms. Goldsby's job responsibilities, she handles billing and collection of the availability fees, but in a 2010 sworn affidavit she stated she did not have information sufficient to state with certainty that the billing and collection of availability fees was on behalf of RPS Properties or some other entity or entities.<sup>85</sup>

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<sup>81</sup> Transcript, p. 358, 417-418. There has been no objections from the original registrant of the fictitious name Lake Utility Availability made to the current registrant of the fictitious name Lake Utility Availability 1 to the use of the abbreviated name. Transcript, p. 650.

<sup>82</sup> Staff Exh. 15, Merciel Rebuttal, Attachment No. 6.

<sup>83</sup> Staff Exh. 26, Affidavit of Cynthia Goldsby, executed May 24, 2010.

<sup>84</sup> Ms. Goldsby's hourly wage has increased since the hearing in the *Lake Region 2010 Rate Case*. Her former hourly wage rate was \$12.90. See, Staff Exh. 26, Affidavit of Cynthia Goldsby, executed May 24, 2010.

<sup>85</sup> Transcript pp. 257-258, 282-287, 307-314; Staff Exh. 25, Affidavit of Cynthia Goldsby, executed May 13, 2010.



72. RPS Properties, L.P. makes no payments for Ms. Goldsby's services.<sup>86</sup>  
RPS Properties, L.P. makes no payments to the Camden County PWSD4 for Ms. Goldsby's services.<sup>87</sup>

73. Ms. Goldsby currently sends bills for annual availability fees to 1,322 individuals or entities owning Shawnee Bend properties.<sup>88</sup>

74. The annual availability fees for both water and sewer for each entity billed is \$300.<sup>89</sup>

75. RPS Properties, L.P. and Sally Stump began collecting availability fees in 2005, but they retain only a portion of the availability fees pursuant to the April 15, 2005 settlement agreement in Civil Case No. CV103-760CC.<sup>90</sup>

### **Historical Treatment of Availability Fees**

76. The Commission has had a number of cases come before it in the past that have dealt with issues concerning availability fees. Those issues involved determinations regarding whether the fees constitute regulated utility services and how to treat the revenue derived from fees.

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<sup>86</sup> Staff Exh. 22, Affidavit of Brian Schwermann, executed May 23, 2010. (HC – Paragraphs 4 & 5 made public by the Report and Order in Case Nos. SR-2010-0110 and WR-2010-0111).

<sup>87</sup> *Id.*

<sup>88</sup> The number of bills sent has decreased since the hearing in the *Lake Region 2010 Rate Case*. Formerly 1345 individuals or entities were billed for availability fees. Staff Exh. 25, Affidavit of Cynthia Goldsby, executed May 13, 2010; Staff Exh. 21, Affidavit of Brian Schwermann, executed May 13, 2010. (HC – Paragraph 8 made public by the Report and Order in Case Nos. SR-2010-0110 and WR-2010-0111).

<sup>89</sup> Staff Exh. 25, Affidavit of Cynthia Goldsby, executed May 13, 2010; Staff Exh. 21, Affidavit of Brian Schwermann, executed May 13, 2010 (HC – Paragraph 9 made public by the Report and Order in Case Nos. SR-2010-0110 and WR-2010-0111); Staff Exh. 20, Affidavit of Sally Stump, executed June 1, 2010.

<sup>90</sup> Staff Exhibit 23, Confidential Settlement Agreement in the Circuit Court Case Between Four Seasons Lakesite and Lake Region Water & Sewer Company's Sally Stump and RPS Properties. (HC– no confidential material disclosed).

77. In Case No. WR-92-59, where Lakesites Water & Sewer Company (Lake Region's predecessor) sought an increase in rates, the availability fees were removed from the general revenue stream and the rate base was reduced a certain amount as an offset for the reduction in general revenue related to the availability fees. This case was settled with a unanimous agreement from the parties that the Commission approved.<sup>91</sup>

78. In Case No. WR-99-193, where Ozark Shores sought an increase in rates, the parties agreed to add availability fees into the general revenue stream of the company and add additional rate base to the company as an offset. The availability fees are included in utility rates and are not tarified. This case was settled with a unanimous agreement from the parties that the Commission approved.<sup>92</sup>

79. Peaceful Valley Service Company, a wholly owned subsidiary of Peaceful Valley Property Owners Association, collects availability charges as general revenue to reserve access to its water service and the fees are tarified. Peaceful Valley's tariff provision applies to availability charges that are generated through a contract between the property owner and the company, or from a contract between a property owner and a developer that was assigned to the utility company. The treatment of the availability fees stemmed from a unanimous agreement from the parties that the Commission approved.<sup>93</sup>

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<sup>91</sup> Case No. WR-92-59, *In the Matter of Four Seasons Lakesites Water and Sewer Company's Tariff to Increase Rates Pursuant to Their Informal Rate Procedure*, Report and Order, issued November 27, 1991, Order Approving Tariff, Issued May 15, 1992; Transcript, pp. 559-561.

<sup>92</sup> Case No. WR-99-183, *In the Matter of Ozark Shores Water Company, Inc. for a Small Company Rate Increase*, Order Approving Tariff, issued December 10, 1998, Effective December 11, 1998 ; Transcript, pp. 359-360, 491-492, 559-561.

<sup>93</sup> Transcript pp. 491-497, 502-507, 529-532, 538; Tariff JW-2002-0105, P.S.C. Mo. No. 2, 1<sup>st</sup> Revised Sheet# 6; Staff Exh. 15, Merciel Rebuttal, Attachment 2.

80. I.H. Utilities formerly collected availability fees as general revenue and these charges were tarified in rates. The fees originated in a contract between the developer and the property owner that was later assigned to the company. I.H. Utilities no longer collects the fees and they are no longer tarified in rates.<sup>94</sup>

81. The Commission's Staff has been aware of the availability fees being charged to the property owners in the Shawnee Bend area since Commission Case No. WA-95-164, the certificate case for Lake Region's predecessor.<sup>95</sup>

Respectfully submitted,

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<sup>94</sup> Transcript pp. 532-533.

<sup>95</sup> Transcript, pp. 525-526.