

**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)	

**THE OFFICE OF THE PUBLIC COUNSEL'S REPLY TO LAKE REGION'S
LIMITED APPLICATION FOR REHEARING**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Reply to Lake Region's Limited Application for Rehearing states as follows:

1. On May 29, 2014, Lake Region Water & Sewer Company (Lake Region) filed a Limited Application for Rehearing with the Missouri Public Service Commission (Commission). In its Application, Lake Region limited its request for rehearing strictly to the Commission's conclusion that it has statutory authority, hence jurisdiction, to consider availability fees, which are fees charged by a non-utility entity for non-utility services, in determining whether Lake Region's proposed rate increase is just and reasonable.
2. On May 30, 2014, the Commission issued an Order requiring the Staff of the Missouri Public Service Commission (Staff) and Public Counsel to file a response to Lake Region's Limited Application for Rehearing no later than June 5, 2014.
3. Lake Region's claim seems to be that the Commission has no jurisdiction to consider availability fees in determining whether Lake Region's proposed rate increase is just and reasonable because the availability fees are charged for non-utility services by a non-utility entity. Lake Region's claim is erroneous because: (1) availability fees are being charged for a utility service as defined by Section 386.020, RSMo; and (2) availability fees affect Lake Region's rate case no matter who collects them.

4. Lake Region's claim that availability fees are fees charged for a non-utility service is erroneous. The definition of "service" in Section 386.020, RSMo, includes providing an accommodation as well as providing a product or a commodity. Availability fees are fees collected for providing undeveloped lots the accommodation of having state-of-the-art utility services available to that lot as soon as development occurs. Without a utility present, there would be no availability charge. As a result, the definition of "service" within the statute can reasonably be seen to include availability charges.

5. Where a statute is reasonably open to construction, the Commission has the power to determine administratively its own jurisdiction. Based on this statutory authority, the Commission has and does exert jurisdiction over availability fees. Ozark Shores, an affiliate company of Lake Region, charges availability fees which are added into the general revenue stream for use in determining Commission approved rates.¹ Peaceful Valley also has availability fees in its Commission approved tariffs and collects the availability charges as general revenue to reserve access to its water service.² Until recently, I.H. Utilities also had availability fees in its Commission approved tariffs and collected the availability fees as general revenue.³ Additionally, in Lake Region's last rate cases, the Commission determined that it should assert jurisdiction over the availability fees associated with Lake Region:

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.**⁴ [emphasis added]

¹ Joint Stipulation of Undisputed Facts.

² *Id.*

³ *Id.*

⁴ Report and Order, *Lake Region Water & Sewer Company*, Case Nos. SR-2010-0110 and WR-2010-0111, pg. 103.

Therefore the Commission has the statutory authority to exert jurisdiction over availability charges.

6. Additionally, Lake Region's claim that the Commission has no jurisdiction to consider availability fees in deciding Lake Region's proposed rate increase because the availability fees are charged by a non-utility entity is erroneous. The fact that availability fees are being charged, no matter who charges them, still affects Lake Region and the rates Lake Region's customers are being asked to bear.

7. There is no question the Commission has jurisdiction over Lake Region. The jurisdiction of the Commission is set out in Section 386.250, RSMo. The Commission's jurisdiction over Lake Region's rate increase request is established under Section 393.150, RSMo. Sections 393.130 and 393.140, RSMo, require that the Commission ensure that all utilities provide safe and adequate service and that all rates for utility service are just and reasonable. Section 393.150.2, RSMo, makes it clear that the burden of proof to show that a proposed utility rate increase is just and reasonable rests on the utility seeking that increase. A large portion of Lake Region's rates is tied to the recovery of investment costs in the utility plant. As a result, Lake Region bears the burden to prove that the investment it proposes to put in to rates has not already been recovered through other means.

8. There is a nexus between Lake Region and the availability fees. Lake Region provides a costly commodity, water and sewer availability, through the utility's plant and infrastructure. The parties agree that the purpose for establishing the availability fees applicable to Lake Region's service area was to recover the investment in the water and sewer systems.⁵ Availability fees were designed and collected to repay the utility's cost of plant and infrastructure

⁵ Joint Stipulation of Undisputed Facts.

which by design requirements must be made available.⁶ Availability fees are also used to ensure that the utility is able to provide a state-of-the-art utility system at the time of connection whenever that may be.

9. The Commission has jurisdiction to ensure that the costs it includes in rates are not being recovered elsewhere such as through availability fees. If utility infrastructure is being paid for through the collection of an availability fees, it is not just and reasonable for rates to be set which pay for that same infrastructure a second time. Therefore, availability fees are reasonably within the Commission's jurisdiction in this case.

10. For the above stated reasons, Lake Region's Limited Application for Rehearing should be denied.

WHEREFORE, Public Counsel respectfully submits its response.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Christina L. Baker

By:_____

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⁶ *Id.*

CERTIFICATE OF SERVICE

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