

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

SHAWNEE BEND DEVELOPMENT CO., LLC)	
Missouri Charter Number LC0014864)	
Petitioner/Developer,)	
v.)	Case No. WC-2009-0116
)	
LAKE REGION WATER & SEWER CO. f/k/a)	
FOUR SEASONS WATER & SEWER COMPANY)	
Missouri Charter Number 00149504)	
)	
Serve registered agent:)	
D & A Agency Services, Inc.)	
3145 Broadway)	
Kansas City, MO 64111)	
Respondent/Company.)	

PETITIONER'S MOTION AND REQUEST FOR ORDER
THAT PETITION FOR ARBITRATION IS PROPERLY BEFORE THE
COMMISSION AND THAT ARBITRATION MAY PROCEED

COMES NOW Petitioner, Shawnee Bend Development Company, L.L.C., by and through the undersigned counsel, and requests that a determination be made and order entered by the Commission that the Petition for Arbitration is not premature as alleged in the Response of Lake Region Water and Sewer Company, that there are no other remedies to exhaust, and that the matter is properly before the Commission and therefore that arbitration should proceed.

In support of its request, Petitioner states as follows:

1. On September 30, 2008, Petitioner filed its notice and petition for arbitration and statement of claim.
2. On or about November 6, 2008, Respondent, Lake Region Water and Supply filed its Response, which alleged as an affirmative defense #2 that Petitioner has "failed to exhaust other remedies contractually required prior to filing for arbitration in the Commission."
Respondent's Response at Paragraph 31 answered that "the parties have not engaged in any mediation as provided for in this section."

The section to which Respondent referred and quoted from was Article IV, Paragraph F. of the Agreement: “In the event of a dispute between the parties with respect to this Agreement, which the parties have negotiated in good faith to an impasse, the parties agree to submit the dispute to the Water and Sewer Department of the PSC *for informal and non-binding mediation*. If no resolution is produced by such informal mediation, the parties agree to submit such controversy to the PSC with the commissioners to act as arbitrators under the provision of section 386.230 RSMo...” (emphasis added).

3. On November 12, 2008, noting Respondent’s affirmative defense that the matter is not properly before the Commission, the Secretary of the Commission entered an order canceling the initial arbitration meeting and directing that replies be filed by November 21, 2008.
4. On November 21, 2008, Petitioner filed its Reply with Motion to Make More Definite and Certain and Motion for Production of Contract Document with Suggestions in Support.
5. Respondent has not filed any response to the Motion to Make More Definite and Certain. Respondent has not filed any response to the Petitioner’s Motion for Production of Contract Document, nor has it provided a copy of the Agreement which it considers to be a complete and accurate copy.
6. Also on November 21, 2008, the Staff of the Missouri Public Service Commission filed its Reply which reviewed the Respondent’s affirmative defense that informal mediation had not taken place, and stated the Staff position clearly at Paragraph 6:
“Therefore, an “informal” mediation with the Commission or its Staff does not exist by rule, and the remedy within the Agreement for mediation is not available as a remedy to exhaust prior to arbitration.” AND
at Paragraph 9 the Staff also urged the Commission to proceed to arbitrate the matter and stated:

“Therefore, Staff suggests that the Commission proceed to arbitrate the dispute as no other available remedy remains to exhaust.”

7. Over three months have passed, and Respondent has filed no supplemental response or other legal authority contrary to the Staff’s position or Petitioner’s position that there is no other informal mediation or available remedy to exhaust.
8. As noted in Petitioner’s Reply at Paragraph 2, it had already made good faith attempts in 2006 and 2007 to present the dispute informally to the PSC Staff, and the PSC Staff had responded that if the Respondent did not pay, “a formal complaint would be appropriate.”
9. There is no other available remedy that Petitioner is required to exhaust prior to arbitration.

WHEREFORE, PETITIONER prays the Commission enter its order that the Notice and Petition for Arbitration and Statement of Claim is properly before the Commission, that the arbitration may proceed and that Respondent’s request for dismissal of the petition is denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon counsel of record on this 10th day of March, 2009 by depositing same in the U.S. Mail, postage prepaid, to:

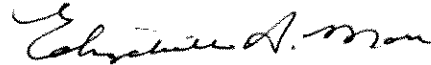
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Attorney for Respondent

And to

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Attorney for PSC Staff


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