

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

Shawnee Bend Development Co., LLC,	)	
Complainant,	)	
vs.	)	
	)	Case No. WC-2009-0116
Lake Region Water & Sewer Co.,	)	
Respondent.	)	

**STAFF’S REPLY TO LAKE REGION WATER AND  
SEWER COMPANY’S RESPONSE**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and for its *Reply to Lake Region Water and Sewer Company’s Response* (LRWS or Company) states the following:

1. On September 30, 2008, Shawnee Bend Development Co., LLC (Developer) filed its *Notice of Arbitration (Petition for Arbitration) and Statement of Claim Pursuant to RSMo §386.230 and Contract* (Petition) with the Missouri Public Service Commission (Commission).

2. On November 6, 2008, the *Response of Lake Region Water & Sewer Co. to Petition for Arbitration* (Response) was filed.

3. Contained within this Response was the affirmative defense, among others, that “Shawnee Bend has failed to exhaust other remedies contractually required prior to filing for arbitration in the Commission.” The Company’s Response references the specific section underlying this affirmative defense as Article IV, Paragraph F of the April 10, 1998 agreement, attached as Petition Exhibit 3 (Agreement),. See Response at page 2, paragraph 6.

4. Article IV, Paragraph F of the Agreement states in part:

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....

5. The arbitration provision within the Agreement generally comports with § 386.230, where the Commission must act as arbitrators upon written submission of a controversy between a public utility or person to the Commission.

6. However, the Agreement's mediation provision does not align itself with Commission Rule 4 CSR 240-2.125(2)(B). Rule 2.125(2)(B) establishes that:

As the commission deems appropriate, or upon the filing of a request for mediation by any party, mediation services may be provided by a presiding officer or by a neutral third party for the purpose of identifying the issues and attempting a resolution.

Subsection (C) of Rule 2.125 requires such a request be filed as a Commission case. 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.

7. Staff was not a signatory to this 1998 Agreement between the Company and the Developer. It is improper for parties to attempt to unilaterally bind a department of a state agency beyond that which statute or rule designate as that agency's duty.

8. However, Staff strives to assist utilities and customers in resolving informal disputes through its technical expertise and regulatory experience.

9. As a practical matter, Staff will be involved in the arbitration already filed and will assist the parties and the regulatory law judge in attempting to resolve this dispute as needed. Therefore, Staff suggests that the Commission proceed to arbitrate the dispute as no other available remedy remains to exhaust. But if it is determined that Staff should be part of a mediation with the parties prior to this arbitration continuing, then this case be held in abeyance until such mediation is concluded.

**WHEREFORE**, the Staff respectfully submits its *Reply to Lake Region Water and Sewer Company's Response* for the Commission's information and consideration in this case.

Respectfully submitted,

/s/ **Shelley Syler Brueggemann**

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record and/or parties of record this 21<sup>st</sup> day of November 2008.

/s/ **Shelley Syler Brueggemann**