

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

GOLDEN POND HOMEOWNERS	)	
ASSOCIATION,	)	
	)	
Complainant,	)	
	)	
vs.	)	Case No. SC-2010-0204
	)	
AQUA MISSOURI, INC.,	)	
	)	
Respondent.	)	

**ANSWER**

**COMES NOW** Respondent, Aqua Missouri, Inc., by and through counsel, and for its Answer states as follows:

Aqua Missouri, Inc. (hereinafter "Aqua Missouri") denies Complainant's initial paragraph and further states that Complainant is not a legal entity.

1. Aqua Missouri, Inc. (hereinafter "Aqua Missouri") denies Paragraph 1 of the Complaint and further states that its office is at 5402 U.S. 50 Business, Jefferson City, Missouri 65109, and admits it is regulated by the Public Service Commission.

2.A. Aqua Missouri denies each and every allegation set forth in paragraph 2.A and further states that Aqua Missouri, Inc. is in fact the legal owner of the Golden Pond Subdivision sewer system. *See* Exhibits 1 and 2 to this Answer.

2. B. Aqua Missouri denies each and every allegation set forth in paragraph 2.B. and further states the point of responsibility is defined in Aqua Missouri's Tariff. *See* Aqua Missouri, Inc.'s Missouri P.S.C. Tariff No. 2, 1<sup>st</sup> (Revised) SHEET No. SRR 6.

2.C. Aqua Missouri denies each and every allegation set forth in paragraph 2.C.

2.C.1. Aqua Missouri denies each and every allegation set forth in paragraph 2.C.1.

2.C.2. Aqua Missouri denies each and every allegation set forth in paragraph 2.C.2.

2.C.3. Aqua Missouri denies each and every allegation set forth in paragraph 2.C.3.

2.D. Aqua Missouri is without sufficient knowledge to admit or deny the allegations contained in paragraph 2.D., and to the extent a response is required, denies the allegations of paragraph 2.D.

2.E. Aqua Missouri is without sufficient knowledge to admit or deny the allegations contained in paragraph 2.E., and to the extent a response is required, denies the allegations of paragraph 2.E.

2.F. Aqua Missouri asserts that Paragraph 2.F. is a legal conclusion to which no answer is required; however, to the extent an answer is required, Aqua Missouri denies each and every allegation contained therein.

2.G. Aqua Missouri admits that some systems within the Jefferson City District have to be upgraded and have lift stations. Aqua Missouri admits that Golden Pond's system is a gravity flow system with no lift stations and no special treatment requirements. Aqua Missouri denies each and every other allegation set forth in paragraph 2.G. and further asserts that the Golden Pond Subdivision is within the "Jefferson City District" as part of the Missouri Certificated Service Area, Sewer Division for Aqua Missouri. *See* Aqua Missouri, Inc.'s Missouri P.S.C. Tariff No. 2, (Original) SHEET Nos. SL1 – SM4.

2.H. Aqua Missouri is without sufficient knowledge to admit or deny the allegations contained in paragraph 2.H., and to the extent a response is required, denies the allegations of paragraph 2.H. Aqua Missouri further asserts that the Golden Pond Subdivision is within the "Jefferson City District" as part of the Missouri Certificated Service Area, Sewer Division for

Aqua Missouri. *See* Aqua Missouri, Inc.'s Missouri P.S.C. Tariff No. 2, (Original) SHEET Nos. SL1 – SM4.

2.I. Aqua Missouri admits that the sewer system for Golden Pond does not have any wastewater treatment equipment, chlorination equipment or pumps, but denies each and every other allegation set forth in paragraph 2.I. Aqua Missouri further asserts that the Golden Pond Subdivision is within the “Jefferson City District” as part of the Missouri Certificated Service Area, Sewer Division for Aqua Missouri. *See* Aqua Missouri, Inc.'s Missouri P.S.C. Tariff No. 2, (Original) SHEET Nos. SL1 – SM4.

2.J. Aqua Missouri is without sufficient knowledge to admit or deny the allegations contained in paragraph 2.J., and to the extent a response is required, denies the allegations of paragraph 2.J.

2.K. Aqua Missouri is without sufficient knowledge to admit or deny the allegations contained in paragraph 2.K., and to the extent a response is required, denies the allegations of paragraph 2.K.

2.L. Aqua Missouri denies each and every allegation set forth in paragraph 2.L.

2.M. Aqua Missouri denies each and every allegation set forth in paragraph 2.M.

2.N. Aqua Missouri denies each and every allegation set forth in paragraph 2.N.

3.A. Aqua Missouri admits paragraph 3.A.

**WHEREFORE**, this Commission should dismiss the Complaint, assess costs, including attorney's fees against Complainant, and enter such other relief as this Commission deems appropriate.

### **AFFIRMATIVE DEFENSES**

A. Complainant's Complaint against Respondent fails to state a claim upon which relief may be granted.

B. Treating the Complainant's Complaint against Respondent as a motion for rehearing of prior Commission orders, it is out of time. Section 386.500; 4 CSR 240.160.

C. Complainant is not authorized to file a complaint under 4 CSR 240-2.070.

D. The Commission lacks jurisdiction to "clarify the ownership of the sewer system" or to otherwise decide property disputes as requested in Paragraph 1 of Complainant's requested relief. See Section 386.250, RSMo.

E. Complainant's request for customer specific information from Aqua Missouri requests information which is highly confidential and which is not generally available.

F. Complainant's request that the Commission "withdraw its support for the outrageous rates being charged by Aqua Missouri" in Paragraph 5 of the Complaint's requested relief does not comply with the complaint procedures of Section 386.390, RSMo.

G. Complainant's request that the Commission "withdraw its support for the outrageous rates being charged by Aqua Missouri" in Paragraph 5 of the Complaint's requested relief is specifically prohibited by Section 386.390, RSMo.

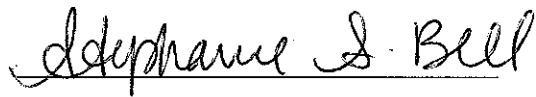
H. Each paragraph of Plaintiff's requested relief is a collateral attack on the Commission's Orders approving Aqua Missouri's Tariff. In such collateral actions, final orders and decisions of the Commission are conclusive. Section 386.550, RSMo.

**WHEREFORE**, this Commission should dismiss the Complaint, assess costs, including attorney's fees against Complainant, and enter such other relief as this Commission deems appropriate.

Respectfully submitted,

BLITZ, BARDGETT & DEUTSCH, L.C.

By:



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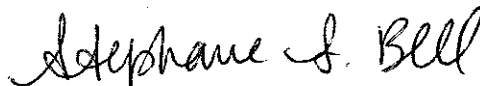
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Answer was sent via U.S. Mail, postage prepaid, this 14<sup>th</sup> day of May, 2010, to:

Lewis Mills  
Office of Public Counsel  
P.O. Box 2230  
Jefferson City, MO 65102-2230

Kevin Thompson, General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102-0360

Kerry Bush, Attorney at Law  
1201 West Broadway  
Columbia, MO 65203

  
\_\_\_\_\_  
Stephanie S. Bell

(SSB0287.WPD;1)

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## GENERAL WARRANTY DEED

This Indenture, Made on the 14<sup>th</sup> day of Feb, A.D. 1997  
 by and between Archie F. McDaniel and Carolyn S. McDaniel,  
husband and wife  
 of the County of Callaway in the State of Missouri, part 1a of the First Part, and  
Capital Utilities, Inc., a Missouri corporation

Grantee's mailing address P.O. Box 7017, Jefferson City, Mo 65102  
 of the County of \_\_\_\_\_ in the State of Missouri, part Y of the Second Part:

WITNESSETH, That the said part 1a of the First Part in consideration of the sum of  
Ten Dollars and other valuable consideration ~~XXXXXX~~  
 to them paid by the said part Y of the Second part, the receipt of which is hereby acknowledged,  
 do \_\_\_\_\_ by these presents, GRANT, BARGAIN AND SELL, CONVEY AND CONFIRM unto the said  
 part Y of the Second Part, its ~~XXXX~~ <sup>SUCCESSORS</sup> and assigns, the following described lots, tracts or parcels of  
 land being, being and situate in the County of Callaway State of Missouri to wit:

Part of the Northwest Quarter of the Northwest Quarter of  
 Section 24, Township 45 North, Range 11 West, in the County of  
 Callaway, Missouri, more particularly described as follows:  
 From the northwest corner of said Section 24; thence S02  
 degrees 08'23"W, along the westerly line of said Section 24, 70.81  
 feet to the point of beginning for this description; thence  
 continuing S02 degrees 08'23"W, along the westerly line of said  
 Section 24, 603.01 feet; thence S76 degrees 24'39"E, 162.08 feet;  
 thence N14 degrees 06'39"E, 598.40 feet; thence N14 degrees  
 51'32"W, 118.94 feet; thence S77 degrees 41'37"W, 256.31 feet to  
 the point of beginning.

TO HAVE AND TO HOLD the premises aforesaid, with all and singular the rights, privileges, appurtenances  
 and immunities thereon belonging or in anywise appertaining, unto the said part Y  
 of the Second Part and unto its ~~XXXX~~ <sup>SUCCESSORS</sup> and assigns FOREVER, the said Parties of the  
First Part hereby representing that they are lawfully  
 seized of an indefeasible estate in fee in the premises herein conveyed; that they  
 have good right to convey the same; that the said premises are free and clear of any incumbrances done or  
 suffered by them or those under whom they claim and that they will  
 warrant and defend the title to said premises unto the said part Y of the Second Part, and unto its  
~~XXXX~~ <sup>SUCCESSORS</sup> and assigns FOREVER, against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, the said part 1a of the First Part has set their hands  
 and seal B the day and year first above written.

Archie F. McDaniel  
 Archie F. McDaniel

Carolyn S. McDaniel  
 Carolyn S. McDaniel

(Names Must Be Typed or Printed Under All Signatures)

EXHIBIT

1

## SANITARY SEWER EASEMENT

THIS INDENTURE, Made on the day 1st of December 1998, by and between Ronald K. and Cynthia J. Replogle of the County of Callaway, in the State of Missouri, Parties of the First Part, and Capital Utilities, Inc., a Missouri Corporation, of 312 Lafayette Street, Jefferson City, Missouri, 65101, Party of the Second Part.

WITNESSETH, That the said Parties of the First Part in consideration of the sum of One Dollar and other valuable considerations to them paid by the said Party of the Second Part, the receipt of which is hereby acknowledged, do by these presents Deed, Convey and Transfer unto the said Party of the Second Part, an easement for it, its agents, employees and contractors, to excavate within, install, construct, maintain, repair, and service a sanitary sewer and manholes for the routing and conveyance of sanitary sewage in, under and through the following described land in the County of Callaway, State of Missouri, to-wit:

A 15 foot wide strip of land across Lot 27, of (Golden Ponds) Subdivision as per plat of record in Plat Book 3, page 22, Callaway County Recorder's Office and said lot being situated in the Northwest Quarter of the Northwest Quarter of Section 24, Township 45 North, Range 11 West and the aforesaid 15 foot wide strip lies 7.5 feet each side of and adjacent to the following described centerline:

From the southeasterly corner of said Lot 27, thence N2°18'37"E, along the east line thereof, 241.46 feet to the POINT OF BEGINNING for this centerline description; thence S85°16'28"W, 25.01 feet; thence N77°31'27"W, 126.46 feet to a point on the westerly line of said Lot 27 and the POINT OF TERMINATION.

TO HAVE AND HOLD with all rights, immunities, privileges and appurtenances necessary to the Party of the Second Part in exercising its right of easement herein obtained, so that neither the Parties of the First Part nor their heirs, grantees, assigns, or successors, nor any person or persons for them or in their name or behalf, shall hereafter make any use of the above-described premises in a manner that is inconsistent with, or in any way interferes with the use by Second Party of, the easement herein decded, conveyed and transferred to the Party of the Second Part.

IN WITNESSETH WHEREOF, the said Parties of the First Part have hereunto set their hands and seals the day and year first above written.

Ronald K. Replogle  
Ronald K. Replogle

Cynthia J. Replogle  
Cynthia J. Replogle

STATE OF MISSOURI )  
COLE )SS  
COUNTY OF CALLAWAY )

On this 1st day of December 1998, before me personally appeared the above named Parties of the First Part, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Jefferson City, Mo. the day and year first above written.

Jeanette M. Muller  
Jeanette M. Muller  
Notary Public

My commission expires: June 16, 2000

STATE OF MISSOURI )  
COLE )SS  
COUNTY OF CALLAWAY )

JEANETTE M. MULLER  
NOTARY PUBLIC, STATE OF MISSOURI  
COUNTY OF COLE  
MY COMMISSION EXPIRES JUNE 16, 2000

I, the undersigned Recorder of Deeds for said County and State, do hereby certify that the foregoing instrument of writing was filed for record in my office on the 8th day of December 1998, at 1 o'clock and 27 minutes P.M., and is truly recorded in 397 Book 386, page.

Witness my hand and official seal on the day and year aforesaid.

Kenneth Dillon

Recorder

By:

Judy Wilburn  
Judy Wilburn





STATE OF MISSOURI }  
County of Cole }

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared \_\_\_\_\_

and \_\_\_\_\_  
his wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged  
that they executed the same as their free act and deed.  
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal  
at my office in \_\_\_\_\_  
the day and year first above written.

(NOTARY SEAL)

Notary Public

My commission expires \_\_\_\_\_ 19\_\_\_\_

STATE OF MISSOURI }

County of \_\_\_\_\_ }

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared \_\_\_\_\_

Archie F. McDaniel and Carolyn S. McDaniel,  
husband and wife

to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged  
that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal  
at my office in \_\_\_\_\_  
the day and year first above written.

(NOTARY SEAL)

Notary Public

My commission expires \_\_\_\_\_ 2000

(Names must be typed or printed under all signatures)

FOR THE RECORDER

STATE OF MISSOURI }  
COUNTY OF CALLOWAY }  
I, RECORDER OF SAID COUNTY AND STATE, DO HEREBY  
CERTIFY THAT THIS INSTRUMENT WAS FILED AT \_\_\_\_\_  
O'CLOCK \_\_\_\_\_ PM \_\_\_\_\_ 19\_\_\_\_  
\*IT IS RECORDED IN BOOK 332 ON PAGE 287  
WITNESSED BY MY HAND AND SEAL OF OFFICE  
Kenneth Dillon