

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

Shawnee Bend Development Company, L.L.C.,)	
)	
Petitioner,)	
)	
v.)	Case No. WC-2009-0116
)	
)	
Lake Region Water & Sewer Company,)	
f/k/a Four Seasons Water & Sewer Company,)	
)	
Respondent.)	

**RESPONSE OF LAKE REGION WATER & SEWER CO.
TO PETITION FOR ARBITRATION**

Comes now Lake Region Water & Sewer Co. (LRWS), by and through its attorneys and submits this response and answer paragraph by paragraph to Shawnee Bend Development Co., LLC's (Shawnee Bend) Notice and Petition for Arbitration:

1. LRWS is without information sufficient to form a belief as to the truth of paragraph 1 and therefore denies the same.

2. Admits that attached as Exhibit 2 are filings made by or on behalf of LRWS with the Missouri Secretary of State's office but otherwise denies that Exhibit 2 constitutes the full extent to LRWS's corporate records. Except as denied, LRWS admits paragraph 2.

3. Admits that LRWS is certificated by the Missouri Public Service Commission (Commission) and subject to its jurisdiction, and serves a portion of the area known as Shawnee Bend at the Lake of the Ozarks. LRWS denies each and every other allegation of paragraph 3.

4. Admits that on or about April 10, 1998 LRWS and Shawnee Bend entered an agreement (the Agreement) but denies that Exhibit 3 attached to the Notice/Petition is a full, complete and accurate copy thereof.

5. Admitted.

6. Admits that Article IV, Paragraph F. of the Agreement provides:

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. Each party shall bear its own attorney fees and costs associated with such dispute.

LRWS further answers by way of affirmative defense that the parties have not engaged in any mediation as provided for in this section. LRWS denies each and every other allegation of Paragraph 6.

7. LRWS admits that Shawnee Bend constructed a water well, water mains and lines, sewers and other appurtenances in portions of a subdivision named or popularly known as the “Villages at Shawnee Bend” but otherwise LRWS denies each and every allegation of Paragraph 7.

8. LRWS admits that Shawnee Bend constructed a water well, water mains and lines, sewers and other appurtenances in portions of a subdivision named or popularly known as the “Villages at Shawnee Bend” and LRWS exercises control over, and provides service to customers with those facilities. LRWS denies each and every other allegation of Paragraph 8.

9. LRWS admits that Shawnee Bend constructed a water well, water mains and lines, sewers and other appurtenances in portions of a subdivision named or popularly known as the “Villages at Shawnee Bend” and LRWS exercises control over, and provides service to customers with those facilities. LRWS denies each and every other allegation of Paragraph 9.

10. LRWS admits that Shawnee Bend constructed a water well, water mains and lines, sewers and other appurtenances in portions of a subdivision named or popularly known as

the “Villages at Shawnee Bend” and LRWS exercises control over, and provides service to customers with those facilities. Otherwise, LRWS denies each and every allegation of Paragraph 10, further answering that Exhibit 5 attached to the Petition speaks for itself.

11. Admitted, further answering that Shawnee Bend has not provided an itemized statement of all costs associated with the construction of the “New Source Water Well”; has not provided copies of all invoices for all materials used in construction of the “Sewer Extension (including the Trunk Line)” or lien waivers applicable thereto; has not provided detailed information showing Shawnee Bend’s direct costs in making the road crossings, or other cost and expenditure detail pertaining to these and other improvements (the cost detail) all as required by the Agreement; submission of such cost detail to LRWS being a condition precedent to payments of any kind under the Agreement.

12. To the extent paragraph 12 differs from the terms of the Agreement it purports to recite, LRWS denies the same. LRWS denies each and every other allegation of paragraph 12.

13. Denied.

14. Denied.

15. LRWS is without information sufficient to form a belief as to the truth of paragraph 15 and therefore denies the same.

16. LRWS is without information sufficient to form a belief as to the truth of paragraph 16 and therefore denies the same.

17. Denied.

18. Denied.

19. LRWS admits it received Exhibit 7 but denies each and every allegation of paragraph 19.

20. LRWS admits that Shawnee Bend has been in contact with LRWS about the Agreement and its obligations, but otherwise, LRWS denies each and every allegation of paragraph 20.

21. LRWS admits that Exhibit 8 is a true and accurate reproduction of the original, but otherwise denies each and every allegation of paragraph 21.

22. LRWS admits that Exhibit 9 is a true and accurate reproduction of the original, but otherwise denies each and every allegation of paragraph 22.

23. Denied.

24. LRWS is without information sufficient to form a belief as to the truth of paragraph 24 and therefore denies the same, further answering that parties have not engaged in any mediation as provided for in Article IV, Paragraph F of the Agreement. Further answering that to the extent they are genuine, Exhibits 10 and 11 speak for themselves.

25. LRWS admits that a dispute exists as to whether and how much LRWS owes Shawnee Bend under the Agreement but denies each and every allegation of paragraph 25.

26. Denied, further answering that Shawnee Bend has not provided the cost detail as required by the Agreement; submission of such cost detail to LRWS being a condition precedent to payments of any kind under the Agreement.

27. Denied.

28. LRWS admits that Shawnee Bend has not provided the cost detail as required by the Agreement; submission of such cost detail to LRWS being a condition precedent to payments of any kind under the Agreement. LRWS is unaware of where the cost detail has been stored by Shawnee Bend or whether it has been provided to and retained by the Commission staff. For

lack of information sufficient to form a belief as to the truth of paragraph 24, LRWS denies each and every allegation thereof.

29. Admitted.

30. LRWS admits that a dispute exists as to whether and how much LRWS owes Shawnee Bend under the Agreement but denies each and every allegation of paragraph 30.

31. LRWS admits that Article IV, Paragraph F. of the Agreement provides:

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. Each party shall bear its own attorney fees and costs associated with such dispute.

LRWS further answers that the parties have not engaged in any mediation as provided for in this section. Paragraph 31 appears to contain assertions to which no response is required. To the extent the Commission deems an answer or response is due for Paragraph 31, LRWS denies each and every allegation of Paragraph 31.

32. Paragraph 32 is a legal conclusion or argument to which no answer is required. If the Commission should require a response or answer to this paragraph, LRWS denies the same.

33. Paragraph 33 is a legal conclusion or argument to which no answer is required. If the Commission should require a response or answer to this paragraph, LRWS denies the same.

34. Paragraph 34 is a legal conclusion or argument to which no answer is required. If the Commission should require a response or answer to this paragraph, LRWS denies the same.

35. Paragraph 35 is a legal conclusion or argument to which no answer is required. If the Commission should require a response or answer to this paragraph, LRWS denies the same.

36. Paragraph 36 sets out theories of recovery, legal conclusions and argument to which no answer is required. If the Commission should require a response or answer to this paragraph, LRWS denies the same.

37. Paragraph 37 sets out theories of recovery, legal conclusions and argument to which no answer is required. If the Commission should require a response or answer to this paragraph, LRWS denies the same.

38. Paragraph 38 sets out theories of recovery, legal conclusions and argument to which no answer is required. If the Commission should require a response or answer to this paragraph, LRWS denies the same.

39. There is no paragraph 39 in the Petition.

40. LRWS denies that Shawnee Bend is entitled to the relief set forth in paragraph 40 and denies any remaining allegations in that paragraph.

41. Paragraph 41 sets out theories of recovery, legal conclusions and argument to which no answer is required. If the Commission should require a response or answer to this paragraph, LRWS denies the same.

42. Paragraph 42 sets out theories of recovery, legal conclusions and argument to which no answer is required. If the Commission should require a response or answer to this paragraph, LRWS denies the same.

43. No answer or response is required for both paragraphs marked as 43.

44. No answer or response is required for both paragraphs marked as 44.

45. No answer or response is required for paragraph 45.

46. LRWS denies each and every other allegation contained in Shawnee Bend's Petition not specifically admitted in the foregoing.

AFFIRMATIVE DEFENSES

Without waiver of the general denials set out in LRWS's answer:

1. Shawnee Bend's Notice/Petition for Arbitration fails to state a claim upon which relief may be granted.
2. Shawnee Bend has failed to exhaust other remedies contractually required prior to filing for arbitration in the Commission.
3. Shawnee Bend's claims or the majority thereof are barred by the statute of limitations.
4. Shawnee Bend has failed to fulfill all conditions and obligations of the Agreement in that Shawnee Bend has not provided an itemized statement of all costs associated with the construction of the "New Source Water Well"; has not provided copies of all invoices for all materials used in construction of the "Sewer Extension (including the Trunk Line)" or lien waivers applicable thereto; has not provided detailed information showing Shawnee Bend's direct costs in making the road crossings, or other cost and expenditure detail pertaining to these and other improvements all as required by the Agreement; submission of such cost detail to LRWS being a condition precedent to payments of any kind under the Agreement.

CONCLUSION

WHEREFORE, having fully answered Shawnee Bend's Notice/Petition for Arbitration, and setting forth its Affirmative Defenses, LRWS respectfully requests the Commission to dismiss the same and enter such other relief the Commission deems just under the circumstances.

Respectfully submitted,

/s/ Mark W. Comley

Mark W. Comley Mo. Bar #28847
Newman, Comley & Ruth P.C.
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, MO 65102-0537
(573) 634-2266 (voice)
(573) 636-3306 (facsimile)
comleym@ncrpc.com

Attorneys for Lake Region Water & Sewer
Co.

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 6th day of November, 2008, to General Counsel's Office at gencounsel@psc.mo.gov; Office of Public Counsel at opcservice@ded.mo.gov; Elizabeth A. Marr at Elizabeth.marr.law@gmail.com; and Gregory D. Williams at gregwms@charterinternet.com

/s/ Mark W. Comley