

In the Missouri Public Service Commission

In the matter of

Janice Shands

Complainant)

V WC 2015-0030

MAWC

Respondent

In the matter of

Janice Shands

Complainant)

V EC 2015-0043

Ameren

Respondent

Janice Shands et al

complainant

v GS-2015-045

LaClede Gas

Respondent

Complainants' Objection to MAWC filing and supplemental Memo of law

Comes now the undersigned and submits the MAWC claims are contrary to law and

submits the following as a supplemental Memo of law that it is proper that PSC find that there is no jurisdiction for the complaint here.

This is especially so where

1. As MAWC seeks to ignore there is a substantial difference between general supervisory jurisdiction and complaint jurisdiction. Complaint jurisdiction as admitted is more narrow.

There is no formal complaint jurisdiction as MAWC seeks to contend over an “alleged violation of any tariff, statute, rule, order, or decision within the commission jurisdiction.” (4 CSR 240-2.070)

While this may be the overall prefatory language for both informal and formal complaints (where the CSR for informal complaints has the word " tariff") the regulation for formal complaints does not.

The actual rule for formal complaints does not refer at all to tariffs. It states at (4 CSR 240-2.070(4)):

4) Formal Complaints. A formal complaint may be made by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge established or fixed by or for any person, corporation, or public utility, in violation or claimed to be in violation of any provision of law or of any rule or order or decision of the commission.

Under general principles of statutory construction, this language and omission cannot be ignored and instead would and should be viewed as significant.

General supervisory authority to set schedules and rates cannot override a specific statute and regulation on the scope of complaint jurisdiction.

This is even more so where it is basic statutory construction that when there is specific statute or regulation it will controls and the words used in it must be given meaning. No matter what other powers it might give elsewhere for general supervision for PSC to fine, sanction and review on its own the actions of MAWC, the limitation on complaints that they not be on common law and be on some decision of action of PSC must be followed

2. Even more so, as confirmed in STATE EX REL. UTIL. CONSUMERS COUNCIL, ETC. v. P.S.C. No. 60848. 85 S.W.2d 41 (1979) citing Bd. of Public Works of Rolla v. Sho-Me Power Corp., 362 Mo. 730, 244 S.W.2d 55 (banc 1952). 0848. 85 S.W.2d 41 (1979) the rule is PSC has no authority to declare or enforce principles of law or equity,

3 This is even more so where while MAWC seeks to try to try to contend a tariff to seek to exempt MAWC to make it free from standard legal concepts such as the need for the party to have legal capacity. Such is not the law.

MAWC of course subject to other basic laws on capacity to contract. Same as it would have no legal authority to contract with someone who is a minor (where such a claimed contract would be voidable) and would have no authority to contract with someone who is found to be incapacitated for whom there is a guardian appointed,

Ch 448 and the Declaration (which is far mor than a contract and instead more akin to

charter setting up a special real estate ownership) make it clear the the extent of the condo assn to contract is for common expenses within in its parameters.

the condo assn for any contract that was for water that went to the shopping center, that was for outside the parameter of the condo assn site.

While MAWC cites to State ex Mo Gas Enery v PSC 210 S.W.3d 330 (Mo App WD 2006) for its contention utilities are above the law, MAWC forgets the utilities lost that case and the actual holding confirmed a tariff would not insulate a utility from rules of PSC , and thus other review.

4. Here there is no tariff even identified by MAWC that allows it do what it did, let alone any caselaw that would require a court to defer to PSC on matters of law or equity.

This is even more so while MAWC cites to the 1937 May dept store case for a contention the PSC is to be exempt from contracts, as above even citing May Dep't Stores Co. v. Union Electric Light & Power Co., 341 Mo. 299, 107 S.W.2d 41, 48 (1937) STATE EX REL. UTIL. CONSUMERS COUNCIL, ETC. v. P.S.C. No. 60848. 85 S.W.2d 41 (1979) Confirmed there is not deference to PSC on matters or law or equity on the basis that PSC has not authority to declare or enforce matters of law or equity. Its authority is instead limited to what is in the statute to set rates and if there is a complaint on a schedule/tariff within its complaint jurisdiction with no roving commission to address other legal issues just because the subject is a utility.

Respectfully submitted

By /s/ Susan H Mello

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Certificate of service

The undersigned sent e copies to psc and counsel of record on 10/7/14

/s/ Susan H Mello