

In the Missouri Public Service Commission

In the matter of

Janice Shands

Complainant )

V WC 2015-0030

MAWC

Respondent

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In the matter of

Janice Shands

Complainant )

V EC 2015-0043

Ameren

Respondent

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Janice Shands et al

complainant

v GS-2015-045

LaClede Gas

Respondent

**Complainant's <sup>1</sup> amendment of the complaint and Opposition to MAWC motion and**

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<sup>1</sup>To the extent it appears as if the complaint is based on view that is about billing and a violation of tariff, same is withdrawn and incorrect, It is based upon an issue of opening an

**confirming clarification and to the extent there can be a stay requests same**

Comes now the undersigned for Janice Shands and where there are common issues and

1 Amends the complaint to the extent needed amends the complaint to confirm there is no issue of billing or rebilling, the issue is one of common law and the extent to which under same the condo assn could be liable for expenses that exceeding the physical parameters of the condo site

for same to be

I am a resident condo unit owner at the Lewis and Clark Tower, 9953 Lewis and Clark Blvd., Moline Acres, MO. The building was originally an apartment and combined strip mall type shopping center with joint utility meters that were billed to the complex developer. In 1980, when the Tower was renovated and designated a separate condominium building, it was essentially subdivided with a Declaration recording the condo. The utility knew of same where the account was changed to the name of a condo assn.

Under the declaration, the assn and unit owners can be charged only for common expenses for the actual Tower building.

' The next door shopping center that is not a part of the condo, yet It continued to get its utility service from the condo building's access line and meter. The utilities did not disclose and seem to have concealed that fact from the unit owners.

. I am unaware of, have not seen nor been advised of any contracts or other documentation regarding such arrangement between condo owners and the shopping center owners. I have checked with long time owners and they were not advised of such things and did not consent to it. . There was no authority to legally use the credit or account of the assn without the permission of the unit owners,

At this time, the strip mall consists of ten (10) businesses: a tax office/party & entertainment provider, a grocery store, a cell phone/jewelry store, a clothing boutique, 2 barber shops, 2 fast food restaurants, a dog groomer and optometrist's office. The Lewis and Clark Tower Condominiums are listed at 9953 Lewis and Clark while the shopping center is located at 9955 Lewis and Clark.

Currently there is no viable Board or condo Association and no legal custodian of records. The previous condo Board is effectively defunct. Under current conditions, our Declaration allows unit owners to have standing and enforce the rights of all unit owners as outlined in our Declaration and Bylaws which were recorded. limits the expenses that can be incurred to expenses for the property at 9953 .

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account for LCTCA that they did not have the legal ability to open. It does not have any authority to have had an account for LCTCA for any product for outside the premises.

It was only recently, in June 2014 when the strip mall started to dig up the line to install its own meter and access was it confirmed the condo account was used for others .

My attorney wrote on July 21 and again on July 29, 2014, even sending letters or faxes disputing the bills but did not receive acknowledgement nor response to the request.

It should now be easy enough to determine actual usage and provide at least an estimated bill. It would seem they would have data on the approximate use of each of the types of businesses

While there are likely violations of allowing accounts to cross property lines where service charges should be exclusive to the premises reflected on the billing, and not having a complaint procedure, the reason I am filing is not to have those investigated. It is instead to meet any claimed pre-filing condition where in the filed court case the utilities have contended have to file with PSC. We are asking the PSC find that it is proper the court hear the case, since no administrative expertise is needed, and no record needed, and as such the basis for primary jurisdiction does not exist

2. Submits the September 29 MAWC Motion is incorrect.

A The September 19 "joinder" stated only:

.. Where the Shands PSC complaints were submitted solely to meet a MAWC, contention that needed to first file a PSC complaint Enters her appearance for Lewis and Clark Tower Condominium Association for the purposes of meeting any claimed condition precedent to the claims in the above referenced lawsuit. and on the same day in the Opposition to the Motion to Dismiss filed on three claims

B This was further made it clear what was joined in was the prayer for relief to find conditions were met :

- Comes Janice Shands and LCTCA (as per the Entry) and joins in and/or supports the Shands complaint and the Shands prayer for relief that PSC find that conditions precedent have been met and that it is proper especially where there are common issues of law and fact with the circuit claims including against the shopping center and MSD that it is proper PSC defer to the courts and decline any jurisdiction especially where no administrative record or expertise is needed on

the issues especially of the ultra vires actions under which LCTCA and its unit owners came to viewed as responsible for the costs of utilities for the shopping center and /or portions of same.

3. LCTCA **Grants and Confirms** Jan Shands ( who already had same per Ch 448 and the Declaration ) has full permission and consent of LCTCA for her to be provided information on the account.

4. **SUBMITS** the relief sought here , It is not for the PSC to investigate. Instead it is only to find any claimed condition was met and for PSC to find it is proper the circuit court be the one to hear this action.

It is submitted by both Ms. Shands and LCTCA there is no exclusive jurisdiction, the enabling statute does not provide same and the Eastern District caselaw does not require same.

This is especially so where as in the accompanying Memo which is incorporated, the claims here are based on common law and not any tariff, or PSC rule or provision of law of the commission and there is no admin expertise or record needed . This is even more so where the claim against MAWC and Ameren is a form of a tort , where all unit owners are parties and where complete relief can be obtained back to 1995 against both the utilities and the shopping center owners and officers /property managers , with the main legal issue being that it was known by MAWC and the other utilities there was no legal authority for LCTCA and its officers or property manager to have entered into any agreement for any account for expenses for another property . It does not raise any PSC duty and under common law properly

seeks full and adequate relief from 1995 to 2014 . <sup>2</sup>

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<sup>2</sup>It is also submitted that the general jurisdiction of 386.250 would not and should not be used to limit the right to equitable relief here, especially where the more specific statute on complaints by law would control which as in RS MO 386 as in the Memo limits the jurisdiction over complaints to those based on a rule, tariff or provision of law which as same would be a written provision, not common law.

386.250. The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter:

(1) To the manufacture, sale or distribution of gas, natural and artificial, and electricity for light,

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heat and power, within the state, and to persons or corporations owning, leasing, operating or controlling the same; and to gas and electric plants, and to persons or corporations owning, leasing, operating or controlling the same;

(2) To all telecommunications facilities, telecommunications services and to all telecommunications companies so far as such telecommunications facilities are operated or utilized by a telecommunications company to offer or provide telecommunications service between one point and another within this state or so far as such telecommunications services are offered or provided by a telecommunications company between one point and another within this state, except that nothing contained in this section shall be construed as conferring jurisdiction upon the commission over the rates charged by a telephone cooperative for providing telecommunications service within an exchange or within a local calling scope as determined by the commission, except for exchange access service;

(3) To all water corporations, and to the land, property, dams, water supplies, or power stations thereof and the operation of same within this state, except that nothing contained in this section shall be construed as conferring jurisdiction upon the commission over the service or rates of any municipally owned water plant or system in any city of this state except where such service or rates are for water to be furnished or used beyond the corporate limits of such municipality;

(4) To all sewer systems and their operations within this state and to persons or corporations owning, leasing, operating or controlling the same;

(5) To all public utility corporations and persons whatsoever subject to the provisions of this chapter as herein defined, except that the public service commission may, upon application of any interested person, decline jurisdiction and supervision over the sale and distribution of electricity and the owning, operating, and controlling of related plant if such sale and distribution is by a person authorized to provide such services in an adjoining state with fewer than twenty residential customers in Missouri, all of whom are located within two miles of the borders of the state of Missouri and if such customers are unable to receive utility services from an investor-owner utility or rural electric cooperative due to a natural barrier. If the public service commission shall decline such jurisdiction and supervision, the Missouri customers of such out-of-state utility shall receive services under the same terms and conditions as the utility provides service to its customers in the nearest adjoining state;

(6) To the adoption of rules as are supported by evidence as to reasonableness and which prescribe the conditions of rendering public utility service, disconnecting or refusing to reconnect public utility service and billing for public utility service. All such proposed rules shall be filed with the secretary of state and published in the Missouri Register as provided in chapter 536, and a hearing shall be held at which affected parties may present evidence as to the reasonableness of any proposed rule; and

(7) To such other and further extent, and to all such other and additional matters and things, and in such further respects as may herein appear, either expressly or impliedly.

Wherefore for these reasons as well submits the proper relief as sought is to find the court is the proper forum for same, where all members are included as parties, and where the court can in fact enter a TRO or stay, during the complaint and where as today Judge Jamieson urged the three utilities there represented by Ms. Giboney, and MAWC and LaClede Gas represented by Kurt Hentz along with Mr. Zucker.to work with the receiver and not shut off same to residents he described as in a dire situation, especially Ms. Shands., Mr. Goldman and Mr. Bennett and others who have paid their monthly assessments for the utilities in full for their share and being put at risk through no fault of their own.

II. The Undersigned to the extent needed while the PSC action is pending moves for stay to bar any disconnect and to require the gas company to reconnect.<sup>3</sup>

Wherefore for these reason move for the above.

By /s/ Susan H. Mello #31158

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Does not have any requirement for the jurisdiction.

<sup>3</sup>The undersigned for LCTCA gives full consent to release any information on the account to Janice Shands .

SusanMello@Gmail.com

Attorney for Complainants

Certificate of service

A copy was sent by email to P.C. Office of General Counsel at staff [counsel@psc.mo.gov](mailto:counsel@psc.mo.gov), to Dustin Allen ( Public Counsel) at [opscervice@ded.mo.gov](mailto:opscervice@ded.mo.gov), and counsel for the utilities on September 30 2014

/s/ Susan H Mello