

State of Missouri
21st Judicial Circuit

State of Missouri
vs. Bennett et al
No. 21 sl cc 2207
Lewis and Clark 195 llc
et al
Defendants

Plaintiffs' Motion to set aside and amend orders dismissing LaClede Gas and MAWC and confirming request for findings of fact and conclusions of law ¹

Comes now Plaintiffs and move to amend and set aside the Orders dismissing LaClede Gas and MAWC for the reason that

1 There were no findings of fact or conclusions of law .²

The court just signed the prepared order which mixed the issue of primary jurisdiction with failure to state a claim where the standards and burdens are different.

2 The court's order failed to consider the legal issues raised by the Plaintiff including the extent to which there can be a removal from the court of common law claims by implication, or the actual language of the complaint jurisdiction statute which (as in the caselaw) does not extend to common law claims.

3 The court was subject to what amounts to a fraud on the court, where counsel for La Clede Gas/MAWC in association with Ameren counsel sought to actively mislead the court about claimed regulations on billing, they knew they did not apply. They knew all along those claims rules were for residential accounts, this is a commercial account, (where they knew there was no regulation of PSC or administrative personnel needed). This is especially so where as undisputed by said counsel, even when sent an email on same, the regulation for Commercial accounts states only:

4 CSR 240-10.040 Service and Billing

Practices for Commercial and Industrial
Customers of Electric, Gas, Water and
Steam Heat Utilities

PURPOSE: This rule establishes service and billing and payment standards to be observed by electric, gas, water and steam heat utilities, and their commercial and industrial customers in resolving questions regarding these matters so that reasonable and uniform standards exist for service and billing and payment practices for all electric, gas, water and steam heat utilities.

(1) Whenever a utility is unable to gain access to a customer's premises for the purpose of reading and testing meters or servicing or maintaining the utility's equipment or for other appropriate purposes, following calls made at the customer's premises during the usual course of business, the customer, on request from the utility, in which a particular time is specified, shall give access to his/her premises to representatives of the utility for those purposes at the time specified, which time shall be within the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, otherwise the utility may estimate for billing purposes the meter reading subject to correction when the utility may read the meter.

(2) Except for the provisions of this rule, all bills rendered to customers for metered service furnished will show the reading of the meter at the beginning and end of the period for which the bill is rendered and shall give the dates of readings, the number of units of service supplied and the basis of charge or reference. Where, by reason of the use of postal or other card form of billing or for other good reasons, this information cannot reasonably be placed on the bills, any utility may present for filing with the commission, in conjunction with its rules, a proposed form of billing. The commission may authorize or require modification of any such proposed form of billing.

(3) No utility shall discontinue the service of any customer for violation of any rule of that

utility except on written notice of intention to discontinue service. This notice shall state the reason for which service will be discontinued, specify a date after which the discontinuance may be effected and shall be mailed to or served upon the customer not less than forty-eight (48) hours prior to that date. This may be waived where a bypass is discovered on a customer's service meter, or in the event of discovery of dangerous lea

kage or

short

circuit on a customer's premises, or in the case of a customer utilizing the service in a manner as to make it dangerous for occupants of the premises, thus making the immediate discontinuance of service to the premises imperative or in the case of an order from a governmental agency directing the discontinuance of service. In the event of discontinuance of service for any of these reasons, the customer shall be notified of the discontinuance immediately with a statement concerning the reason for discontinuance.

(4) Each utility may require from any customer at any time a cash deposit or, at its option, a personal guarantee of a responsible person provided that the amount of any such deposit or guarantee so required shall not exceed an estimated bill covering one (1) billing period plus thirty (30) days. A cash deposit shall bear interest at a rate specified in the utility's tariffs, approved by the commission, which shall be credited annually upon the account of the customer or paid upon the return of the deposit, whichever occurs first, and provided the cash deposit remains for a period of at least six (6) months. The rate of interest of the cash deposit shall be only three percent (3%) per annum if the utility keeps the cash deposit in a separate and distinct trust fund and deposited as such in some bank or trust company and not used by the utility in the conduct of its business. These provisions shall not apply

to any deposits or guarantees made by the customer for the purpose of securing an extension of or additions to a utility's distributing system in accordance with the utility's rules covering these extensions as filed with this commission. Interest shall not accrue on any cash deposit after the date the utility has made a bona fide effort to return that deposit to the depositor. The utility, in its records, shall keep evidence of its effort to return the deposit. Each utility shall file with the commission, by April 12, 1993, a tariff setting forth the interest rate payable on cash deposits, unless the utility already has a rate of interest set forth in its tariff.

(5) A statement of the practice of any utility covering deposits or guarantees of surety, together with interest rate payable upon cash deposits, must be filed with the commission as a portion of the utility's schedule of rates under the provisions of the commission's rules covering the filing and publication of rate schedules. A statement of the practice governing service main or line extensions by any utility must likewise be filed with the commission as a portion of the schedule of rates on file. Each utility shall adjust customer's bills for incorrect meter readings or improper meter registration in a reasonable and equitable manner consistent with the rules which it has on file with the commission. Any specific rule adopted by a utility covering these adjustments shall be filed with the commission in conformance with the commission's rules covering the filing and publication of rate schedules.

(6) Customer, as used in this rule, means a commercial or industrial customer of an electric, gas, water or steam heat utility.

AUTHORITY: sections 386.250, RSMo Supp. 1991 and 393.140 and 393.290, RSMo 1986.* Original rule filed March 5, 1953, effective March 15, 1953. Amended: Filed Sept. 22, 1959, effective Oct. 1, 1959. Amended: Filed May 2, 1968, effective May 16, 1968. Amended: Filed June 10, 1992,

effective Feb. 26, 1993.

*Original authority: 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991; 393.140, RSMo 1939, amended 1949, 1967; and 393.290, RSMo

Even where asked counsel could not show how the amendment here was “based” on the regulation on the one on the format of a bill , where the format was not in issue, the issue is one of real estate law, ultra vires actions for which it was known there was no legal capacity for a condo assn to be billed for water to another property for it to be resold or redistributed

This is even more so where as also undisputed , where the caselaw in Mo is that to be a generally applied guideline has to be promulgated as a regulation that means must also have a hearing and be sent to the legislature, the applicable rules would have to be in the regulation.³

5 The order is also contrary to law where the court failed to rule on the Motion to strike, such that it appears the court may have considered items outside the pleadings without compliance with summary judgment rules, and

And is not equitable it remain in effect.

6 This court also has continuing jurisdiction per rule 74 where there are multiple claims, it cannot terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims.

Wherefore Plaintiffs move for same including for revision of the order and such other relief as proper.

Respectfully submitted

By /s/ Susan H Mello

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Certificate of service

The undersigned has served a copy by e service on those who have filed an entry of appearance on this 1 day of December 2014

/s/ Susan H Mello

1.It is the recollection of the undersigned had earlier requested findings of fact and conclusions of law and requests same herein on the statute relied on, the basis of the claim, the factors applied for primary jurisdiction, and which regulation , rule of PSC the claim is found to be based on, and the extent to which common law claims can be taken from a court unless expressly found by the legislature.

2. This is further the case where the motion session went beyond the pleadings, and where the orders signed included the one against Ameren even where the undersigned did call in on a pass for settlement, where while the undersigned did drop off a hard copy of the proposed order, on 11/20 pm did not include any ruling on the issues therein.

3. DEPT. OF SOCIAL SERVICES, DIV. MED. SERV. v. Little Hills Healthcare, LLC, 236 S.W.3d 637 (Mo. 2007)

Cited by 7 opinions

Board Educ. St. Louis v. Missouri Bd. Educ., 271 S.W.3d 1 (Mo. 2008)

Supreme Court of Missouri | Dec. 16, 2008 | Cited 8 times

State Ex Rel. Bps Telephone Co. v. Missouri Public Service Comm., 285 S.W.3d 395 (Mo. Ct. App. 2009)

Missouri Court of Appeals | May 26, 2009 | Cited 6 times

In Re Estate of Jones, 280 S.W.3d 647 (Mo. Ct. App. 2009)

Missouri Court of Appeals | Jan. 13, 2009 | Cited 2 times

DIRECTOR, DEPT. OF PUBLIC SAFETY v. Bishop, 297 S.W.3d 96 (Mo. Ct. App. 2009)

Missouri Court of Appeals | Sept. 29, 2009 | Cited 1 time

Young v. CHILDREN'S DIV., 284 S.W.3d 553 (Mo. 2009)

Supreme Court of Missouri | May 5, 2009 | Cited 1 time

Holdredge v. Missouri Dental Bd., 261 S.W.3d 690 (Mo. Ct. App. 2008)

Missouri Court of Appeals | Aug. 12, 2008 | Cited 1 time

Ladd v. MISSOURI BD. OF PROB. AND PAROLE, 299 S.W.3d 33 (Mo. Ct. App. 2009)

Missouri Court of Appeals | Nov. 24, 2009 | Cited 0 times