

## **In the Missouri Public Service Commission**

**In the matter of**

**Janice Shands**

**Complainant ) WC 2015-0030**

**V**

**MAWC**

**Respondent**

Complainant's Reply to MAWC Response

Comes now Complainant and for her reply to the Response of MAWC and submits that

1 It should be deemed an admission by MAWC PSC should decline jurisdiction. This is especially so where MAWC failed to address the enabling statute, fails to point to any “provision of law”, and while MAWC spent pages of string cites on definition of primary jurisdiction, ignores such cases are for a court not PSC, and not where PSC decided to decline or defer to the court.

Here it should be undisputed, there is no claim of any need for admin expertise or an admin record, no contention of any uniformity (where hopefully MAWC does not make a habit of such wrongful and albeit fraudulent billing of one entity), and as with other tort actions such as Pretsky v SWBell, \_\_\_ SW2d ( Mo App 1965) type outrageous conduct for utility improper billing and collection.should be permitted to go ahead .

This is even more so where MAWC does not stand ready to address the issue with PSC. It does not claim to have provided the dispute procedure, it does not offer any proof . It just oddly offer general denials and odd contentions.

Here there was no effort made to even attempt to meet the CSR . While instead of actually addressing the complaint , on page 3 , in what it oddly called affirmative defenses it only oddly claimed it was denying all facts and generally asserted the actions were in accordance with the tariffs , applicable statutes and regulations.

It is submitted neither is sufficient and both should in effect be stricken as insufficient as a matter of law . As the courts have held a denial is not a defense and does not even meet the definition of affirmative defense which calling for admitting the facts and providing some other fact that is a defense .

It is submitted where an affirmative defense seeks its own kind of affirmative relief even the PSC's CSR would equires some specific reference of the tariff and laws (” Each pleading shall include a clear and concise statement of the relief requested, aspecific reference to the statutory provision or other authority under which relief is requested, and a concise statement of thefacts entitling the party to relief .”) MAWC offered none .<sup>1</sup> It not only made misleading and false statements about the tariffs, but about the relief and allegations in the lawsuit ( which were recited verbatim in the undersigned's Motion ( and which while seeking an accounting from the shopping center owners, do not seek an accounting from MAWC and instead seek damages, as well as equitable and declaratory orders from MAWC . MAWC even made a false claim that

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<sup>1</sup> Even more so , as MAWC well knows the current water tariff as available at PSC on line makes it clear that water accounts should not cross property lines, there is no right to resell or resupply water ( as would be arrangement here where MAWC seeks to contend the assn could be billed for the water and resell or supply it to the shopping center and that there should be a condo agreement

the arrearage is \$14,000; there, of course, no genuine arrearage . Not only was it disputed but MAWC would owe complaintants and assn likely at least \$180,000 plus the interest and late fees it fraudulently collected under false pretenses from January 1980 to June 2014 by a shopping center )<sup>2</sup>

3. This is even more so where not only does the enabling statute limit PSR complaints to violations of “provisions of law” which would be other than common law but as even recited in CSR, as in State ex rel. Kansas City Transit, Inc. v. Public Service Commission , 406 S.W.2d 5(Mo. banc 1966):

... Commission is an administrative body of powers limited to those expressly granted by statute or necessary or proper to effectuate statutory purpose. Commission’s authority to regulate does not include right to dictate manner in which company conducts its business

4 Here (as MAWC failed to address) and especially so now where the staff has concurred proper jurisdiction for the issues on MSD (which used the MAWC bill) is the circuit court, it is submitted there is even more of a basis to avoid the absurd result that while it could be liable with MSD or to on the counts relating to the MSD fraudulent bills PSC would not decline or deter to the circuit courts on the common law, real estate and tort issues on MSD’s own actions in obtaining funds under false pretenses and then falsely engaging in what would be outrageous conduct ala Pretsky v. Southwestern Bell Telephone Company.396 S.W.2d 566 (1965). This is especially so where MAWC has offered no genuine basis tho PSC finding under the facts here ....the administrative remedy is otherwise inadequate; ..the only issue presented for adjudication is a constitutional issue or other question of law; or require the person to exhaust any

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<sup>2</sup> Even for the 40l mos ( even without interest) where it has about 10 stores , even at base rate of \$500/mo for the shopping center, would be over \$200,000 meaning the condo assn over paid by \$186.000.

administrative remedy would result in undue prejudice because the person may suffer irreparable harm if unable to secure immediate judicial consideration of the claim.

Wherefore for these reasons as well Complainant moves PSC defer and decline jurisdiction finding on the tort , common law and real estate issues, they are especially ones for the courts, where complete relief can be granted and for such other and further relief as proper.

Respectfully submitted

By

/s/ Susan H. Mello #31158

7751 Carondelet #403

Clayton, MO 63105

(314) 721-7521

(314) 863-7779 fax

[SusanMello@Gmail.com](mailto:SusanMello@Gmail.com)

Attorney for Complainant

#### 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 [timothy.luft@amwater.com](mailto:timothy.luft@amwater.com) by email on September 52014

\_/s/ Susan H Mello