

In the Missouri Public Service Commission

In the matter of

Janice Shands

Complainant) WC 2015-0030

V

Missouri American Water Co

Respondent

Complainant's Motion for consolidation and/or motion for the PSC to decline jurisdiction and defer to the Circuit Court in St Louis County where an action is pending

Comes now Complainant and where filed with PSC because MAWC insisted it was required and as with the MSD filing (where it moved to dismiss) and moves PSC enter what it needs to permit the pending lawsuit against MAWC proceed, with PSC declining jurisdiction or otherwise deferring to the courts.

Complainant submits this is especially so where

1 The undersigned has filed with the court to add MSD (and MAWC for its role where MSD also billed the assn and thus the complainants for the shopping center in reliance on the MAWC billings) such that if the MAWC PSC complaint goes forward there will be the absurd and possibly inconsistent result.

2 The undersigned has never agreed a PSC complaint needed to be filed and did so only where MAWC counsel kept insisting it was required to try to stream line the issues.

3 There is no need for an admin expertise or record and adequate relief cannot even be granted where the complainants (as a court can give them) need relief going back more than 5 years.

4. A court instead can grant complete relief especially on the allegations in State ex rel

Bennett v Lewis and Clark 195 et al 14 sl cc 2207 ¹

¹This is especially so in Count 1 :

..

2 At all times pertinent Plaintiffs Barney Bennett, Janice Shands and George Goldman are and have been owners of owner occupied condominium units at the Lewis and Clark Tower Condominium with the Lewis and Clark Tower Condominium at all times being a Ch 448 organized condominium created under the Missouri Condominium Act with the Declaration and bylaws for same as dated July 29, 1980....

10 At all times pertinent, Plaintiffs are informed and believe while there is an entity known as 12 Lewis and Clark Tower Condominium Assn is and has been the duly created owners association charged with the governance of the Lewis and Clark Tower Condominium, and has been named to meet any requirement that said association be named , bhas no elected board members, where all elected Board members..

14. Plaintiffs Bennett, Shands and Goldman have standing where they are and will be personally impacted, where they reside in the building and own an undivided common interest in all assets and rights of the condominium, including the water rights, where their property as an owner could be impacted as a lien, where they rely on the water for their own use and where as a until owner they are the real party in interest with any bills to the association in turn expected to be paid by the unit owners.

15. Plaintiffs bring this action in their own individual capacities as residents and as unit owners including per the Declaration and Ch 448 to enforce the rights therein which make it clear the association cannot incur expenses or debts for properties outside the property line, that property of the association cannot be sold or conveyed without the consent of the unit owners ...

B. Plaintiffs are informed and believe that the terms of the 1980 Declaration were not met in that there was no special meeting as required, there are no records showing the consent of the note holders was obtained and as more fully set out below same as not in good faith ..

24. Plaintiffs are informed and believes that since it was built in the 1960s MAWC provided water to the premises at 9953 Lewis and Clark and 9955 Lewis Clark through one meter and water line for what was then an apartment building and shopping center.

25. Plaintiffs are further informed and believe that while it has been on notice since 1980 when the premises at 9953 Lewis and Clark were under different ownership and had been subdivided with the apartment building turned into a condominium and the water service was put in the name of the condominium association for the unit owners in turn to pay the water bills.

26 At all times pertinent, MAWC knew or should have known such an arrangement was not reasonable was and in violation of the basic duties of MAWC which is not to permit water to be resold, water is not to cross property lines and would need to have the consent of the unot owners and where it was on notice the same lines and services when serving the the apt building and shopping center was on one line and one meter..

27 At all times pertinent MAWC further knew or should have known that as in the recorded Declaration and Ch 448 **there was no legal authority for the association to incur debts for the unit owners for services beyond the property lines of 9953 Lewis and Clark**, and no authority to sell, convey or otherwise transfer property rights of the condominium unit owners or otherwise

use their credit for others.

28. Despite the duties owed MAWC nevertheless proceeded to bill the condominium association and the unit owners for the water to shopping center.

29 MAWC continued to bill the condominium association for the water to the shopping center even where it knew or should have known that there was no independent property manager, , when knew of should have known the unit owners did not know they were being billed for the shopping center and concealed and failed to disclose that the association was being billed for the water to the shopping center.

30. MAWC further continued to bill the condominium association for the water for the shopping center, and threaten shut off even when residents went to MAWC about the high water bills, and instead of telling them the association was being billed for the water for the shopping center, withheld that fact and told the condominium association to look for leaks such as toilets that might be running .

31. The actions of MAWC constitute a form of constructive fraud and wrongful billing

especially where it was of record as of 2011 Collier, Leigh , Foster and Lewis and Clark 195 LLC had divested themselves of all but one unit ownership of units at the condominium at 9953 Lewis and Clark.

32 There is a ripe controversy on the extent to which MAWC could ever have lawfully have set up such an account in 1980 wherein the assn was billed for the shopping center where same exceeds the limits of authority in the Declaration which limits the debts and expenses to those for 9953 Lewis and Clark and where the actions of MAWC show bad faith and a reflect a reckless and negligence breach of the duties owed to the unit owners at 9953 Lewis and Clark..

33 Defendant MAWC should be further found and declared to be reckless, negligent where they then engaged in a form of fraudulent concealment and to intimidate the unit owners in paying a bill MAWC knew was not owed from the unit owners sent false demands and threats of shut off to the condominium association for not paying the bill that would be in large part for the shopping center, and wrongfully obtained funds that were not owed going back to 1980..

34 At all times pertinent since 1980 **the water line access, rights to water and credit standing and right to set up an account and meter access was an asset of the Lewis and Clark Tower owned by all unit owners to which only the unit owners had a lawful right of possession and to use of same which was to be used only for unit owners on the premises..**

35. Since 1992 the actions of MAWC in effect further and created the means for defendants Lewis and Clark 195 LLC , Collier. Leigh , Foster and A.M.C.I. Inc , to wrongfully convert and wrongfully take property including water from the water line for 9953 Lewis and Clark **without proper consent or payment to the unit owners and fraudulently conceal same from the unit owners wherein MAWC knew or should have known of the true fact** and unit owners and by its actions took steps to further the joint action or civil conspiracy should be deemed to have participated in same. .

36 It was only in or about June 2014 Collier. A.M.C.I, Leigh, Lewis and Clark 195 LLC sought to obtain a permit and beginning construction on their own water line access and meter even then MAWC has failed and refused to voluntarily make a correction to the bills.

37. It is proper and necessary that this court enter declaratory and other orders relating to the rights of the parties where there is a ripe disputed controversy concerning a the extent to which under the Declaration there ever was any authority for the condo assn to have been billed for water that is for other than the premises at 9953 Lewis and Clark; b the extent to which the bills were reasonable and **thus would be lawfully owed by the unit**

5. The undersigned would move if possible for a finding a PSC complaint is not required on the allegations. The undersigned submits that while a court under MAPA, retains the authority to enter a DJ on the extent to which there is a requirement for a prior PSC complaint, per RS Mo 536.050: ..especially where ..the administrative remedy is otherwise inadequate; ..the only issue presented for adjudication is a constitutional issue or other question of law; or Requiring the person to exhaust any administrative remedy would result in undue prejudice because the person may suffer irreparable harm if unable to secure immediate judicial consideration of the claim.

6 The undersigned further submits there is no requirement in the PSC enabling statutes.

owners where under the Declaration their duty is only to pay for expenses for 9953 Lewis and Clark;

c the extent to which MAWC acted lawfully and validly in allowing the condo assn account to be used for water for 9955 Lewis and Clark'

d. the extent to which MAWC was placed on record notice by the Declaration and the fact they knew from the words "condo assn" being in the name of the account that the property had been subdivided and the limits of authority were as in the Declaration'

e **The extent to which MAWC had a duty to have advised the unit owners** that there was no meter for 9955 shopping center and the assn was being billed for the 9955 water

f. The extent to which MAWC's actions were not reasonable and wrongful obtained funds under false pretenses under Mo common law especially where ignored the dispute and threatened shut off the water, whenby the Declaration and the factobtained funded under false pretenses under Mo common law especially where ignored the dispute and threatened shut off the water, when it knew of should have known payment **was not due for the water to 9955 from the unit owners.**

38. This action is ripe for resolution where with the new water line being installed, the parties can be put in the position they should have been in where the data and information can be obtained on the water use for the shopping center to go back and adjust or rebill the association and unit owners only for the water they used and separately bill the shopping center for its own water, which would likely exceed the claimed arrearage with late fees of est \$14000.

39. **Plaintiffs have been and are being damaged as a direct and foreseeable results of the foregoing, including have had their investment and quiet enjoyment of their residence, threatened, have suffered garden variety distress and have been should be put in the position of a threat of water disconnection and condemnation .The infrastructure of the condo assn of which they own an undivided interest has also been impacted and** its useful life likely shortened by the increased volume and use for the shopping center., and by not having funds for other repairs in having to make payment of the extra high water bills with the charges for 9955 a priority..

Rather RS Mo 386.390 which states only :

Complaint, who may make--procedure to hear--service of process, how had--time and place of hearing, how fixed.

386.390. 1. Complaint **may** be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, **setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person 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;** provided, that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, sewer, or telephone corporation, unless the same be signed by the public counsel or the mayor or the president or chairman of the board of aldermen or a majority of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of such gas, electricity, water, sewer or telephone service.

...(emphasis added

As in the highlighted section :

A . does not require or mandate any filing,(as with other agencies such as the MHRC which requires a discrimination charge and right to sue letter before filing in court) , it uses the term “may” (not shall) with “may” generally deemed to be permissive

B . does not extend to all complaints of any kind; only those claimed to be violation of .. rule, regulation or charge heretofore established or fixed by or for any corporation, person 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”.. It does not include common law or torts, just “provision of law.

As in Turner v Clayton, ___ SW3d ___, (Mo 2010), on statutory construction:

....The seminal rule of statutory construction is to ascertain the intent of the legislature from the language used and to consider the words used in their plain and ordinary meaning. State ex rel. Unnerstall v. Berkemeyer, 298 S.W.3d 513, 519 (Mo. banc 2009)..This Court enforces statutes as they are written, not as they might have been written. City of Wellston v. SBC Commc'ns, Inc. , 203 S.W.3d 189, 192 (Mo. banc 2006). It is presumed that the General Assembly legislates with knowledge of existing laws.State ex rel. Broadway-Washington Assocs., Ltd. v. Manners , 186 S.W.3d 272, 275 (Mo.banc 2006).

It is submitted the term “provision of law” is for parts of a written statute or contract, not for common law or equity or tort. If it was intended to cover all instances, it would have said , all instances , arising out of common law, tort or statute; it would not have used the phrase “

provision of law”.²

As detailed in the excerpts, Count against MAWC is not based on any PSC rule, tariff, regulation or statute or other written provision; it is based on common law, equity and torts .

It is also submitted while Mo Rs Stat 393.140 provides for added authority, it is not general overall authority. Instead it is limited to specifics (again showing there was no intention of the Mo legislature to remove the courts from any and all matters relating to a utility as MAWC seeks to claim): stating:

393.140. The commission shall:

(1) Have general supervision of all gas corporations, electrical corporations, water corporations and sewer corporations having authority under any special or general law or under any charter or franchise to lay down, erect or maintain wires, pipes, conduits, ducts or other fixtures in, over or under the streets, highways and public places of any municipality, for the purpose of furnishing or distributing water or gas or of furnishing or transmitting electricity for light, heat or power, or

² This is also reflected in other Mo statutes, for instance in RSMo 307.178 on seat belt violations it says:

5. Except as otherwise provided for in section 307.179, each person who violates the provisions of subsection 2 of this section is guilty of an infraction for which a fine not to exceed ten dollars may be imposed. All other provisions of law and court rules to the contrary notwithstanding, no court costs shall be imposed on any person due to a violation of this section. In no case shall points be assessed against any person, pursuant to section 302.302, for a violation of this section.

Making it clear provisions of law do not include court rules., and is instead for statutes.

maintaining underground conduits or ducts for electrical conductors, or for the purpose of collecting, carrying, treating, or disposing of sewage, and all gas plants, electric plants, water systems and sewer systems owned, leased or operated by any gas corporation, electrical corporation, water corporation, or sewer corporation.

(2) Investigate and ascertain, from time to time, the quality of gas or water supplied and sewer service furnished by persons and corporations, examine or investigate the methods employed by such persons and corporations in manufacturing, distributing and supplying gas or electricity for light, heat or power and in transmitting the same, and in supplying and distributing water for any purpose whatsoever, and in furnishing a sewer system, and have power to order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such gas, electricity, water, or sewer system, and those employed in the manufacture and distribution thereof, and have power to order reasonable improvements and extensions of the works, wires, poles, pipes, lines, conduits, ducts and other reasonable devices, apparatus and property of gas corporations, electrical corporations, water corporations, and sewer corporations.

(3) Have power, by order, to fix from time to time standards for the measurement of the purity or illuminating power of gas to be manufactured, distributed or sold by persons or corporations for lighting, heating or power purposes, to prescribe from time to time the efficiency of the electric supply system, of the current supplied and of the lamps furnished by the persons or corporations generating and selling electric current, and to fix from time to time standards for the

measurement of the purity or pressure of water to be distributed or sold by persons or corporations for any purpose whatsoever, and to fix from time to time the standards for designing, constructing, operating and maintaining sewer systems of sewer corporations, including sewers, sewage pumping stations, sewage treatment works, primary treatment facilities, sludge digestion and disposal facilities, secondary treatment facilities, disinfection facilities, and any and all facilities related thereto; provided, however, that such standards shall be supplemental to and in no way set standards lesser than the minimum standards adopted by the state water pollution board, and by order to require gas so manufactured, distributed or sold to equal the standards so fixed by it, and to prescribe from time to time the reasonable minimum and maximum pressure at which gas shall be delivered by said persons or corporations. For the purpose of determining whether the gas manufactured, distributed or sold by such persons or corporations for lighting, heating or power purposes conforms to the standards of illuminating power, purity and pressure, and for the purpose of determining whether the efficiency of the electric supply system, of the current supplied and of the lamps furnished, and for the purpose of determining whether the water furnished or sold conforms to the standard of purity and pressure, and for the purpose of determining whether the sewer system conforms to the standards for designing, constructing, operating and maintaining sewer systems, and conforms to the orders issued by the commission, the commission shall have power, of its own motion, to examine and investigate the plants and methods employed in manufacturing, delivering and supplying gas, electricity or water, and the collecting, carrying, treating and disposing of sewage, and shall have access, through its members or persons employed and authorized by it, to make such examinations and investigations to all parts of the manufacturing plants owned, used or operated

for the manufacture, transmission or distribution of gas or electricity by any such person or corporation, and to all parts of the systems owned, used or operated for the supplying and distribution of water and the collecting, carrying, treating and disposing of sewage by any such person or corporation. Any employee or agent of the commission who divulges any fact or information which may come to his knowledge during the course of any such inspection or examination, except insofar as he may be directed by the commission, or by a court or judge thereof, or authorized by law, shall be guilty of a misdemeanor.

(4) Have power, in its discretion, to prescribe uniform methods of keeping accounts, records and books, to be observed by gas corporations, electrical corporations, water corporations and sewer corporations engaged in the manufacture, sale or distribution of gas and electricity for light, heat or power, or in the distribution and sale of water for any purpose whatsoever, or in the collection, carriage, treatment and disposal of sewage for municipal, domestic or other necessary beneficial purpose. It may also, in its discretion, prescribe, by order, forms of accounts, records and memoranda to be kept by such persons and corporations. Notice of alterations by the commission in the required method or form of keeping a system of accounts shall be given to such persons or corporations by the commission at least six months before the same shall take effect. Any other and additional forms of accounts, records and memoranda kept by such corporation shall be subject to examination by the commission.

(5) Examine all persons and corporations under its supervision and keep informed as to the

methods, practices, regulations and property employed by them in the transaction of their business. Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished, notwithstanding that a higher rate or charge has heretofore been authorized by statute, and the just and reasonable acts and regulations to be done and observed; and whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaints, that the property, equipment or appliances of any such person or corporation are unsafe, insufficient or inadequate, the commission shall determine and prescribe the safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters.

(6) Require every person and corporation under its supervision and it shall be the duty of every person and corporation to file with the commission an annual report, verified by the oath of the president, treasurer, general manager or receiver, if any, thereof. The verification shall be made by said official holding office at the time of the filing of said report, and if not made upon the knowledge of the person verifying the same, shall set forth the sources of his information and the grounds of his belief as to any matters not stated to be verified upon his knowledge. The report

shall show in detail the amount of its authorized capital stock and the amount thereof issued and outstanding; the amount of its authorized bonded indebtedness and the amount of its bonds and other forms of evidence of indebtedness issued and outstanding; its receipts and expenditures during the preceding year; the amount paid as dividends upon its stock and as interest upon its bonds; the names of its officers and the aggregate amount paid as salaries to them and the amount paid as wages to its employees; the location of its plant or plants and system, with a full description of its property and franchises, stating in detail how each franchise stated to be owned was acquired; and such other facts pertaining to the operation and maintenance of the plant and system, and the affairs of such person or corporation as may be required by the commission. Such reports shall be in the form, cover the period and be filed at the time prescribed by the commission. The commission may, from time to time, make changes and additions in such forms. When any such report is defective or believed to be erroneous, the commission shall notify the person or corporation making such report to amend the same within a time prescribed by the commission. Any such person or corporation which shall neglect to make any such report or which shall fail to correct any such report within the time prescribed by the commission shall be liable to a penalty of one hundred dollars and an additional penalty of one hundred dollars for each day after the prescribed time for which it shall neglect to file or correct the same, to be sued for in the name of the state of Missouri. The amount recovered in any such action shall be paid to the public school fund of the state. The commission may extend the time prescribed for cause shown.

(7) Have power, either through its members or inspectors or employees duly authorized by it, to enter in or upon and to inspect the property, buildings, plants, factories, powerhouses, ducts, conduits and offices of any such corporations or persons.

(8) Have power to examine the accounts, books, contracts, records, documents and papers of any such corporation or person, and have power, after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited.

(9) Have power to compel, by subpoena duces tecum, the production of any accounts, books, contracts, records, documents, memoranda and papers. In lieu of requiring production of originals by subpoena duces tecum the commission or any commissioner may require sworn copies of any such books, records, contracts, documents and papers, or parts thereof, to be filed with it. The commission may require of all such corporations or persons specific answers to questions upon which the commission may need information, and may also require such corporations or persons to file periodic reports in the form, covering the period and filed at the time prescribed by the commission. If such corporation or person shall fail to make specific answer to any question or shall fail to make a periodic report when required by the commission as herein provided within the time and in the form prescribed by the commission for the making and filing of any such report or answer, such corporation or person shall forfeit to the state the sum of one hundred dollars for each and every day it shall continue to be in default with respect to such report or answer. Such forfeiture shall be recovered in an action brought by the

commission in the name of the state of Missouri. The amount recovered in any such action shall be paid to the public school fund of the state.

(10) Have power in all parts of the state, either as a commission or through its members, to subpoena witnesses, take testimony and administer oaths to witnesses in any proceeding or examination instituted before it, or conducted by it, in reference to any matter under sections 393.110 to 393.285.

(11) Have power to require every gas corporation, electrical corporation, water corporation, and sewer corporation to file with the commission and to print and keep open to public inspection schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used, and all general privileges and facilities granted or allowed by such gas corporation, electrical corporation, water corporation, or sewer corporation; but this subdivision shall not apply to state, municipal or federal contracts. Unless the commission otherwise orders, no change shall be made in any rate or charge, or in any form of contract or agreement, or any rule or regulation relating to any rate, charge or service, or in any general privilege or facility, which shall have been filed and published by a gas corporation, electrical corporation, water corporation, or sewer corporation in compliance with an order or decision of the commission, except after thirty days' notice to the commission and publication for thirty days as required by order of the commission, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect. The commission for good cause shown may allow changes without requiring the thirty days' notice

under such conditions as it may prescribe. No corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time; nor shall any corporation refund or remit in any manner or by any device any portion of the rates or charges so specified, nor to extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are regularly and uniformly extended to all persons and corporations under like circumstances. The commission shall have power to prescribe the form of every such schedule, and from time to time prescribe by order such changes in the form thereof as may be deemed wise. The commission shall also have power to establish such rules and regulations, to carry into effect the provisions of this subdivision, as it may deem necessary, and to modify and amend such rules or regulations from time to time.

(12) In case any electrical corporation, gas corporation, water corporation or sewer corporation engaged in carrying on any other business than owning, operating or managing a gas plant, electric plant, water system or sewer system which other business is not otherwise subject to the jurisdiction of the commission, and is so conducted that its operations are to be substantially kept separate and apart from the owning, operating, managing or controlling of such gas plant, electric plant, water system or sewer system, said corporation in respect to such other business shall not be subject to any of the provisions of this chapter and shall not be required to procure the consent or authorization of the commission to any act in such other business or to make any report in respect thereof. But this subdivision shall not restrict or limit the powers of the commission in respect to the owning, operating, managing or controlling by such corporation of such gas plant,

electric plant, water system or sewer system, and said powers shall include also the right to inquire as to, and prescribe the apportionment of, capitalization, earnings, debts and expenses fairly and justly to be awarded to or borne by the ownership, operation, management or control of such gas plant, electric plant, water system or sewer system as distinguished from such other business. In any such case if the owning, operating, managing or controlling of such gas plant, electric plant, water system or sewer system by any such corporation is wholly subsidiary and incidental to the other business carried on by it and is inconsiderable in amount and not general in its character, the commission may by general rules exempt such corporation from making full reports and from the keeping of accounts as to such subsidiary and incidental business.

End of quote .

None apply here.

- This is not about whether there is authority to lay down, erect or maintain wires, pipes, conduits, ducts or other fixtures in, over or under the streets, highways and public places of any municipality, for the purpose of furnishing or distributing water or gas or of furnishing or transmitting electricity for light, heat or power, or maintaining underground conduits or ducts for electrical conductors, or for the purpose of collecting, carrying, treating, or disposing of sewage, and all gas plants, electric plants, water systems and sewer systems owned, leased or operated by any gas corporation, electrical corporation, water corporation, or sewer corporation.

-This is not about **the quality of gas or water supplied and sewer service or the need to order** such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such gas, electricity, water, or sewer system,

-This is not about the standards for the measurement of .. the purity or pressure of water to be distributed or sold by persons or corporations for any purpose whatsoever,

-This is not about what kind of bookkeeping or account records were kept

- This is not about whether a rate or tariff was fair.

- This is not about whether they filed an annual report and who verified it

-This is not about a refusal to permit an inspection of its property, buildings, plants, factories, powerhouses, ducts, conduits and offices of any such corporations or persons.

This is not about , after hearing, to which particular outlays and receipts shall be entered, charged or credited.

- This is not about the refusal to honor a subpoena,

- This is not about the right in cases rightfully before it per 393.110 to 393.285 to require testimony or to make sure they print and keep open to public inspection schedules showing all rates and charges or ion seeing if not regulated that the business is kept separate.

In short is not about anything in the list of powers at RS Mo 393.140.

Even more while other sections give PSC rights of enforcement over the provisions in RS Mo 393.110 to 393.285, there is nothing in those sections that would apply, let alone require a PSC complaint. Instead even the titles of those sections further limit the PSC's authority:393.110.

Application of sections 393.110 to 393.285--public service

commission not to have jurisdiction over certain electrical

corporations.

393.120. Definition of terms.

393.130. Safe and adequate service--charges--certain home rule cities,
interest accrual, when.

393.135. Charges based on nonoperational property of electrical corporation
prohibited.

393.136. Retroactive operation prohibited.

393.140. General powers of commission in respect to gas, water, electricity
and sewer services.

393.145. Certain utility may be placed under control of receiver--commission
determination, procedure--appointment of receiver, bond.

393.146. Acquisition of small water or sewer corporation by capable public
utility, when--definitions--alternatives to be discussed, factors
to consider--price for acquisition, how determined--plan for
improvements required--rate case procedure to be used--rulemaking
authority.

- 393.147. Loan programs, certain sewer and water corporations--authorized when,
 how.
- 393.150. Commission may fix rates after hearing--stay increase--burden of
 proof.
- 393.152. Delinquency in payment, deposit or guarantee to continue service
 prohibited, when--inapplicability.
- 393.155. Electric corporation's rates, increase in, phase-in of, when,
 how--powers of commission.
- 393.160. Inspection of gas, water and electric meters.
- 393.170. Approval of incorporation and franchises--certificate.
- 393.171. Incorporation and franchises, permission and approval after
 instruction and acquisition of plant permitted, when--expiration
 date.
- 393.175. Designation as sole regional or watershed supplier,
 application--preferences--pricing of services.
- 393.180. Right to issue stocks, bonds, notes subject to regulation.

- 393.190. Transfer of franchise or property to be approved, procedure--impact of transfer on local tax revenues, information on to be furnished, to whom, procedure.
- 393.200. Approval of issues of stocks, bonds and other forms of indebtedness.
- 393.210. Certificate of commission to be recorded--stock dividend prohibited.
- 393.220. Account for disposition of proceeds--issue void, when, exception--penalties--state not liable.
- 393.230. Power of commission to ascertain valuation of property of gas, electrical, water and sewer corporations.
- 393.240. Power of commission to require depreciation account of gas, electrical, water and sewer corporations.
- 393.250. Reorganizations of gas, electrical, water and sewer corporations.
- 393.260. Complaints as to quality and price of gas, water, electricity and sewer service--investigation by commission--form of complaints.
- 393.270. Notice and hearing--order fixing price of gas, water, electricity or sewer service, or requiring improvement.

393.275. Commission to notify cities and counties of tariff increases, when,
contents of notice--reduction of license tax, when--exception,
procedure--to maintain.

393.280. Defense in case of excessive charges for gas, water, electricity or
sewer service.

As such Complainant as in the Motion filed in MSD complaint , moves for PSC to in effect find
no complaint is needed and/or otherwise defer to the Circuit Court so the legal issues presented
in the circuit court action can proceed.

Wherefore complainant moves for same and such other relief as proper.

/s/ Susan H. Mello #31158

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Attorney for Plaintiffs

Certificate of Service

The undersigned certifies by email/fax sent a copy to counsel for MAWC, Public counsel and
staff counsel on September 3,2014 at staff counsel@psc.mo.gov, to Dustin Allen (Public
Counsel) at opscervice@ded.mo.gov, along with the MSD motion that is incorporated _/s/ Susan
H Mello