

In the Missouri Public Service Commission

In the matter of

Janice Shands

Complainant ) SC 2015-0044

V

MSD

Respondent

Complainant's Response to MSD Motion to Dismiss and in the alternative 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 for her Response and in the alternative move for consolidation and for PSC to decline jurisdiction and defer to the Circuit Court in St Louis County where an action (State ex rel Bennett et al v Lewis and Clark 195 LLC 14sl cc2207) is pending on same issues (where have already named MAWC, raised issues of the utility billings and have served Motions and are filing a Motion to amend to add MSD) and as follows :

1. Complainant concurs in the Motion to the extent it suggests there is no need for PSC filing to proceed directly to Circuit court <sup>2</sup>

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<sup>2</sup>To the extent the dismissal would be other than the equivalent of a kind of dismissal without prejudice and the undersigned does note:

1

The Motion of MSD seems to be out of compliance with the rules.

It was not served on counsel for the complainants despite a reminder of the Entry of counsel.

2. The Motion states only MSD is not subject to " 386.020 RSMo and, as a result, is not subject to the jurisdiction of this Commission pursuant to Section 393.140 RSMo".

There is no caselaw.

3 The Motion seems to be inconsistent with the intent and actual language of the statute . This is especially so where RS Mo 386.020 (49) defines "Sewer corporation" as including

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.. **every corporation**, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling **or managing any sewer system**, plant or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain, except that the term shall not include sewer systems with fewer than twenty-five outlets,  
(emphasis added) .

MSD would be deemed to operate same for gain where it sends out bills and seeks to meet its costs and expenditures.

As in HURRICANE DECK HOLDING COMPANY, , v. PUBLIC SERVICE COMMISSION OF the STATE of Missouri,\_-SW3d\_\_ (WD 69643. June 23, 2009): <http://caselaw.findlaw.com/mo-court-of-appeals/1170972.html#sthash.T9FTaorM.dpufHurricane> where Deck argued , the requirement that a public utility operate “for gain” “must mean that the collections received or intended by the operation of the systems are in excess of the expenditures necessary to operation of those systems.”

where the WD court instead found:

.. the statutory definition of water corporation and sewer corporation do not include a requirement that the owner of the corporation actually receive payment for such services. Rather, the definition depends upon an intent to supply water or sewer service for gain or compensation. Sending a bill to customers for the provision of water and sewer service meets the definition of operating a system for gain, regardless of whether any customer actually pays the bill.... “For gain” is not specifically defined in the Public Service Commission Act. However, we do not write on a blank slate: ...in Osage Water the Southern District held that a not-for-profit corporation could fall within the definition of “water corporation” where it was “in the business of operating, managing and providing water service to the public for compensation.” 950 S.W.2d at 574 (emphasis added)...We recognize that Osage Water offered no specific explanation for equating the terms “for gain” and “for compensation.” We nevertheless follow its gloss on the statutory term. First, the dictionary definition of “gain” supports Osage Water's reading:...“gain,” the noun, is defined to include, inter alia, “the act of gaining something,” while “gain,” the verb, means “to get or attain to possession, control, use, or benefit of (as an advantage) by industry, initiative, merit, or craft: ?obtain, procure, secure §ã sum of money>.” Webster's Third New Int'l Dictionary 928 (unabridged ed.1993); ?see also Smith v. Breuer, 354 Mo. 578, 190 S.W.2d 248, 249 (1945) (recognizing similar definition). These definitions comprehend the operation of a water or sewer system for the purpose of receiving compensation.

The same case indicates while in 1997 not-for-profit membership organizations could be organized to operate water and sewer systems free of PSC authority. See generally §§393.825-.861 (sewer companies), 393.900-.954 (water companies). ( where .., those statutes specify that, without member approval, such entities must annually refund to their membership all revenues received during a fiscal year in excess of their expenses, debt service costs, and funding of certain reserve accounts and an education fund. §§393.849.936., there was no contention MSD met those terms and the undersigned who is also a MSD customer does not recall any such refunds of accounting) such that it was even found the legislature's creation of these exemptions suggests that, such entities would be subject to Commission regulation but for the exemptions; ?it also suggests that entities not falling within these exemptions may otherwise be subject to PSC jurisdiction. Cf. Smith v. Mo. Local Gov't Employees Ret. Sys., 235 S.W.3d 578, 582 (Mo.App. W.D.2007) (relying on narrow statutory exception to refute claim that legislature intended broader exemption). ..

that was not mentioned in the Motion, and instead the sole claim was some municipal exemption. End

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It is submitted as well that as also in the Deck case:

.. “[t]he purpose of [the public utility] regulatory laws is to allow a utility to recover a just and reasonable return while at the same time protecting the consumer from the natural monopoly power that the public utility might otherwise enjoy as the provider of a public necessity.” State ex rel. Sprint Mo., Inc. v. Pub. Serv. Comm’n, 165 S.W.3d 160, 161 (Mo. banc 2005); ?see also Stopaquila.Org v. Aquila, Inc., 180 S.W.3d 24, 34-35 (Mo.App. W.D.2005). Given this overriding statutory purpose, it would be anomalous to hold that, before the Commission could even assert jurisdiction over an entity charging consumers for what otherwise constitute utility services, the Commission would have to determine whether the amounts being charged exceeded the putative utility's costs. ..

This is even more so where the statute itself on sewer system expressly includes municipal purposes

(50) "Sewer system" includes all pipes, pumps, canals, lagoons, plants, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate the collection, carriage, treatment and disposal of sewage for **municipal, domestic or other beneficial or necessary purpose**; .

This seems even more so where Ch 393 makes it clear Definition of terms.

393.120. The provisions of section 386.020 defining words, phrases and terms, shall apply to and determine the meaning of all such words, phrases or terms as used in sections 393.110 to 393.290.

393.140 does not have any such express municipal exemption, Rather it provides:  
General powers of commission in respect to gas, water, electricity and sewer services.

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 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

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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

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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

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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

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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. emphasis added

(RSMo 1939 § 5646, A. 1949 H.B. 2165, A.L. 1967 p. 578)

This is even more so where while MSD's lawyers claim a blanket exclusion, even the EFIS drop down menu on complaints , includes MSD <https://www.efis.psc.mo.gov/mpsc/>.

This is also appears confirmed in the CSR where

4 CSR 240-60.010 General Provision

PURPOSE: This rule sets forth the general provisions of and defines the terms used in Chapter 60, Standards of Service by Sewer Utilities.

(1) The chapter applies to all sewer service by sewer corporations, as defined in section 386.020, RSMo (1986) ,,,he rules apply to any sewer corporation which is now or may become engaged in the business of furnishing sewer service to any customer within the state of Missouri.;

(I) Sewer systemóIncludes all pipes, pumps, canals, lagoons, plants, structures and appliances and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate the collection, carriage, treat-

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ment and disposal of sewage for municipal, domestic or other beneficial or necessary purpose;

(J) Sewer utility Includes every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment or disposal of sewage anywhere within the state for gain; provided, that the provisions of this order shall not apply to sewer systems with fewer than twenty-five (25) outlets.

This is even more so where RS Mo 393 makes it clear a sewer company is tied into a water company and can even terminate its services if the water company does, and the same CSR mandates each utility must have a file and take steps to address disputes. Here the complaint is directed both to the use of wrongful billings from MAWC and the failure to address the complaints sent to MSD .

**2. It is proper the complaint be consolidated with that against MAWC where there are common issues of law and fact.**

Here , it is proper the complaint be consolidated with the one involving MAWC where there are common issues of law and fact ( including where the sewer bill is based on the water bill, which included amounts for the shopping center wrongly billed to the Condo assn and the condo unit owners without their consent when instead it should have been billed to the shopping center and procedures for a condominium followed, especially where the lines crossed property lines).

3 It is further proper PSC enter an order finding the public interest will be best served by declining jurisdiction and defer to the Circuit Court of St Louis County where in State ex rel Bennett v Lewis and Clark 195 , 22SL cc 2207 where an action is already pending against MAWC, the owners of the shopping center and the officers of the condo assn for damages and other equitable and declaratory relief on the the water bill, where the Court can provide complete relief back to 1980 and where the issue the need for the condo unit owners under the 1980 ACT and Declaration to have known of and approved any use of the condo assn credit, billing address and water and sewer lines for the shopping center . This is even more so where based on the MSD's judicial estoppel type assertion that PSC has no jurisdiction Plaintiffs have moved to add them to the circuit court suit.

This is especially so where the issue is not one that needs PSC administrative expertise, the issue of the legal authority for the condo officers to allow the condo assn to subsidize and take on the billing for the shopping center, especially where there was a conflict ( where as undisputed the property manager and the main Board officers were involved with the management and/or ownership of the shopping center seeking to use same to favor their self interest in breach of fiduciary and other duties owed the other unit owners, is a legal and equitable issue of real estate law on which the Court would be deemed to have its own expertise.

This is even more so where to not defer to the court would present a risk of inconsistent decisions and deny needed timely and speedy relief.

for the Court it the finders the law the act center do need for condo unit owner consent and sent



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owner consent TIVE expertise To not defer to the court same where the issue is not one that that wefer re is on real estate legal issue of the consent of the unit owners per the if ther e0980if PSC does not defer t involved to go back and compensate and enter declaratoty g i nes a dn thus the same issues of .

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1. The Motion of MSD seems to be out of compliance with the rules.

It was not served on counsel for the complainants despite a reminder of the Entry of counsel.

This is especially so where its basis is only a contention that MSD is not subject to " 386.020 RSMo and, as a result, is not subject to the jurisdiction of this Commission pursuant to Section 393.140 RSMo".

There is no caselaw.

Such claim also seem to be inconsistent with the intent and actual language of the statute . This is especially so where RS Mo 386.020 (49) defines "Sewer corporation" as including .. **every corporation**, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling **or managing any sewer system**, plant or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain, except that the term shall not include sewer systems with fewer than twenty-five outlets, (emphasis added) .

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(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 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

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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

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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,

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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. emphasis added

(RSMo 1939 § 5646, A. 1949 H.B. 2165, A.L. 1967 p. 578)

This is even more so where while MSD's lawyers claim a blanket exclusion, even the EFIS drop down menu on complaints, includes MSD <https://www.efis.psc.mo.gov/mpsc/>.

This is also appears confirmed in the CSR where  
4 CSR 240-60.010 General Provision

PURPOSE: This rule sets forth the general

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provisions of and defines the terms used in Chapter 60, Standards of Service by Sewer Utilities.

(1) The chapter applies to all sewer service by sewer corporations, as defined in section 386.020, RSMo (1986) „,he rules apply to any sewer corporation which is now or may become engaged in the business of furnishing sewer service to any customer within the state of Missouri.;

(I) Sewer systemóIncludes all pipes, pumps, canals, lagoons, plants, structures and appliances and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate the collection, carriage, treatment and disposal of sewage for municipal, domestic or other beneficial or necessary purpose;

(J) Sewer utility Includes every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment or disposal of sewage anywhere within the state for gain; provided, that the provisions of this order shall not apply to sewer systems with fewer than twenty-five (25) outlets.

This is even more so where RS Mo 393 makes it clear a sewer company is tied into a water company and can even terminate its services if the water company does, and the same CSR mandates each utility must have a file and take steps to address disputes. Here the complaint is directed both to the use of wrongful billings from MAWC and the failure to address the complaints sent to MSD . y os it Complainant does otherwise submit that IN the event the PSC believes

2. To the extent the PSC does not dismiss same Complaint, Complainant submits and moves same be consolidated with the complaint against MAWC and PSC find it is proper to defer to the Circuit court where there is already an action pending in the St Louis County Circuit court that raises the same issues, of the assn being billed for the shopping center utilities and the extent to which it is outside any legal authority where the Condo Declaration makes it clear the authority for credit is only for the premises of the condo building.

It is submitted this is especially so where there are common issues of law and fact the Court can provide complete relief back to 1980 and enter orders against not just utilities but the shopping center and its owners as well as to enter orders that would be preventative in nature.

It is submitted this is especially so where the legal issues presented are not ones that need PSC administrative expertise, the issue of the legal authority for the condo officers to allow the condo assn to subsidize and take on the billing for the shopping center,, is a legal and equitable issue of real estate law on which the Court would be deemed to have its own expertise.

This is even more so where PSC to not defer to the court would present a risk of inconsistent decisions and deny needed timely and speedy relief.

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

By

/s/ Susan H. Mello #31158



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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 Byron Francis at his email on September 2 2014

\_/s/ Susan H Mello