

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

OCT 16 2001

Missouri Public
Service Commission

STERLING MOODY, STERLING'S MARKET
PLACE AND STERLING'S PLACE, I,

Complainants,

v.

AMERENUE, UNION ELECTRIC CO. d/b/a
AMERENUE, and MIKE FOY, LEROY ETTLING,
and SHERRY MOSCHNER, as employees of
AmerenUE,

Respondents.

Case No. EC-2002-112

RESPONDENTS' MOTION TO STRIKE PRAYER FOR DAMAGES AND FINES

Come now respondents, and for their Motion to Strike Prayer for Damages and Fines state as follows:

1. In their Complaint, complainants seek various forms of relief, including an award of "consequential and punitive damages" from respondents and the entry of a fine against respondents in the amount of \$2,000 per day "for each violation...that Complainants suffered wrongful termination of electric service."

It is beyond debate that the Missouri Public Service Commission (the "Commission") is an agency of limited jurisdiction and can only exercise such powers as are conferred upon it by statute. See, e.g., Inter-City Beverage Co., Inc. v. Kansas City Power & Light, 889 S.W.2d 875, 877 (Mo.App. W.D. 1994). It is equally well settled that the Commission does not have statutory authority to award compensatory or punitive damages or to even "promulgate an order requiring a pecuniary reparation or refund." DeMaranville v. Fee Fee Trunk Sewer, Inc., 573 S.W.2d 674, 676 (Mo.App. 1978). See also Wilshire Construction Co. v. Union Electric Co., 463 S.W.2d 903, 905 (Mo. 1971);

Gaines v. Gibbs, 709 S.W.2d 541, 543 (Mo.App. S.D. 1986); Katz Drug Company v. Kansas City Power & Light Company, 303 S.W.2d 672, 679 (Mo.App. 1957).

2. Similarly, the Commission lacks jurisdiction to enter a fine for violation of its rules and regulations. While a public utility such as respondent AmerenUE is subject to fines under certain circumstances, none of which exist herein, the entry of such fines, and the amount thereof, is a matter for the Circuit Court. R.S.Mo. Section 386.600.

3. Moreover, any action seeking the entry of a fine or penalty against a public utility must be brought in the Circuit Court by the General Counsel of the Commission, not by an individual complainant. R.S.Mo. Section 386.600.

4. It is clear therefore that complaints' prayer for an award of consequential and punitive damages, as well as their request for an entry of a fine by the Commission against respondents is beyond the jurisdiction of the Commission and those requests should be stricken from the Complaint.

WHEREFORE, respondents respectfully request the Commission strike the request for relief set forth in the Complaint by which complainants seek to recover consequential and punitive damages and seek the entry of fines against respondents.

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Certificate of Service

The undersigned hereby certifies that a copy of Respondents' Motion to Strike Prayer for Damages and Fines was mailed first class, postage prepaid this 15th day of October 2001 to Office of Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102, Office of General Counsel, Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102 and Freeman Bosley, Jr., 1601 Olive Street, First Floor, St. Louis, Missouri 63103-2344, attorney for complainants.

Michael A. Vitale