

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of a Motion for an Emergency)
Order Establishing a Temporary Moratorium)
on Utility Discontinuances to Protect Public)
Health and Safety by Mitigating the Spread)
of the COVID -19 Pandemic.) File No. AO-2021-0164

**UTILITIES’ RESPONSE TO CONSUMERS COUNCIL’S APPLICATION FOR
REHEARING AND/OR RECONSIDERATION**

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”), Evergy Missouri Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (collectively, “Evergy”), Spire Missouri, Inc., Missouri-American Water Company (“MAWC”), and Liberty Utilities¹ (“Liberty”) (collectively, the “Utilities”) under 20 CSR 4240-2.080(13), and for their response to the Consumers Council of Missouri’s (“CCM”) Application for Rehearing and/or Reconsideration (“Rehearing Request”) of the Commission’s December 16, 2020 *Order Denying Motion*, state as follows:

1. On December 7, 2020, CCM filed its unverified *Motion for an Emergency Order and Request for Expedited Treatment* ("Motion"). The Motion sought a one-size-fits all moratorium on residential disconnections through March 31, 2021.
2. Responses were timely filed by each of the Utilities and by other parties. The Commission denied CCM’s Motion on December 16, 2020.
3. CCM filed its Rehearing Request on December 26, 2020.
4. CCM’s Rehearing Request presents absolutely nothing new for the Commission’s consideration. Instead, CCM re-argues points that were already expressly rejected by the Commission’s December 16 *Order Denying Motion*.

¹ The Empire District Electric Company, The Empire District Gas Company, Liberty Utilities (Missouri Water) LLC, and Liberty Utilities (Midstates Natural Gas) Corp.

5. For its first re-argument, CCM claims that § 536.025, RSMo. (Cum. Supp. 2019) simply does not apply to the Commission if the Commission rests its action on § 386.310, RSMo.² CCM cites no authority, nor does it provide any legal analysis, to back-up its claim that the specific emergency rulemaking statute, first adopted in 1975³ and which requires a specific determination about “immediate danger to the public health, safety, or welfare,” among other requirements, before emergency orders can be issued, can be disregarded because of the existence of a general statute adopted as part of the original Public Service Commission Law in 1913.⁴ The Commission has already rejected CCM’s argument. Just as it did when it first adopted an emergency Cold Weather Rule,⁵ if the Commission believed an order such as that sought by CCM were warranted, it would have to adopt it pursuant all statutes that apply to it, including § 536.025. As noted, the Commission fully recognized this when it rejected CCM’s Motion: “in order to take the action requested by Consumers Council, the Commission would need to promulgate an emergency rule under Section 536.025, RSMo.” *Order Denying Motion*, p. 6. That determination was made with full knowledge of the fact that CCM claimed that § 386.310 provided independent authority to order the relief CCM wants, apart from §536.025. CCM does not like the answer the Commission gave it, but it has provided nothing new that would cause that answer to change.

6. Perhaps recognizing that its § 386.310 argument has already been made and rejected, CCM now argues that the Commission *should* follow §386.025 and adopt an emergency rule. However, just as it did when it rejected CCM’s request that it act under § 386.310 alone, the Commission has already fully considered and determined that CCM has failed to justify such an

² All statutory references are to the Revised Statutes of Missouri (2016), unless otherwise noted.

³ L. 1975 S.B. 58.

⁴ L. 1913, p. 645.

⁵ Affirmed on appeal by *State ex rel. Missouri Gas Energy v. Pub. Serv. Comm’n*, 210 S.W.3d 330 (Mo. App. W.D. 2007).

emergency rule: “the Consumers Council has not provided sufficient evidence that the proposed moratorium is necessary to protect the public health from an immediate danger . . .” *Order Denying Motion*, p. 7. Because an emergency rule can only be adopted if there is a finding that “an immediate danger to the public health, safety, or welfare requires emergency action . . .,”⁶ and given the Commission’s finding in its *Order Denying Motion* that no such danger has been proven, an emergency rule cannot be justified under the requirements of § 536.025.

7. Not only has CCM raised nothing new that would warrant a change in the Commission’s decision as a matter of law, CCM has also failed to raise anything new that warrants a change in the Commission’s decision to deny CCM’s Motion as a matter of fact or policy. It remains the case that utilities were able to take advantage of the time afforded them during their voluntary moratoriums in the spring of 2020 to revise payment plans, collection processes, customer financial assistance programs, and operations to better serve their customers given the challenges the Pandemic is causing. *Order Denying Motion*, p. 3. It also remains true that granting CCM’s desired relief “could harm customers by making them ineligible to receive financial assistance from LIHEAP,” and it remains true that customers often “do not engage with the utilities to seek help with payment plans and financial assistance until prompted to do so by disconnection notices.” *Id.* The other reasons the Commission denied CCM’s Motion, as reflected in its *Order Denying Motion*, also continue to exist.

8. The Utilities share many of the concerns that prompted CCM’s Motion, as evidenced by the many steps – including many steps made solely at the expense of their shareholders – that they

⁶ Emergency rules can also be justified if necessary, to preserve a compelling governmental interest, if other requirements of the statute are met, but no such claim is made here.

have taken to mitigate the difficult impacts of the Pandemic. Those steps are working. In short, there is no need, and no justification, for the blanket, one-size-fits-all relief CCM seeks.⁷

WHEREFORE, the Utilities respectfully request that the Commission deny CCM's Application for Rehearing and/or Reconsideration.

/s/ Goldie T. Bockstruck

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⁷ CCM's Request for Rehearing simply fails to provide a "sufficient reason" to grant rehearing (*see* § 386.510), nor has CCM pointed to any mistake by the Commission or new circumstances that should prompt the Commission to reconsider its prior order.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing response has been served on counsel for the parties of record by electronic mail on this 4th day of January 2021.

/s/ James B. Lowery _____

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