In the Missouri Public Service Commission

In the matter of

Janice Shands

Complainant) EC 2015-0043

v

Ameren

Respondent

Complainant's[1] Response to Ameren Motion to Dismiss and petition per Ch 536

Comes now Complainant and while she concurs the circuit court should hear the case (and has moved to add Ameren to same and moves this court decline or defer any claimed jurisdiction, find there is no need for agency record or expertise) and objects to the contention that Ms, Shands is not a proper complainant, and petitions on same per Ch 536 .041

It is submitted the Motion shows a basic failure to understand real estate law and the law on condominiums where a condo assn is a mere pass through, with no assets and where the real party in interest are the unit owners who per the Declaration have a duty to pay a share of the utility expenses .

It is submitted that in the event PSC were to find the rule applies that it should amend and rescind or modify or find it is not applicable to the LCTCA (or for that matter any condo assn) for the reasons below.

It is respectfully submitted

1. Rev Mo stat Mo 536.041. provides;

Any person may file a written petition with an agency requesting the adoption, amendment or repeal of any rule. Any agency receiving such a petition or other request in writing to adopt, amend or repeal any rule shall forthwith furnish a copy thereof to the joint committee on administrative rules and to the commissioner of administration. Within sixty days after the receipt of the petition, the agency shall submit a written response to the petitioner and copies of the response, in electronic format, to the joint committee on administrative rules and to the

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[1] The undersigned also amends the other motions to change "unpromulgated rule" to "inapplicable and not properly promulgated rule"

commissioner of administration, containing its determination whether such rule should be adopted, continued without change, amended, or rescinded, together with a concise summary of the state agency's specific facts and findings with respect to the criteria set forth in subsection 4 of section 536.175. If the agency determines the rule merits adoption, amendment, or rescission, it shall initiate proceedings in accordance with the applicable requirements of this chapter. The joint committee may refer comments or recommendations concerning such rule to the general assembly for further action. Upon timely application, the joint committee on administrative rules may grant, upon good cause shown, an extension of time to answer a petition. A written petition submitted in accordance with this section shall constitute notice for purposes of subsection 9 of section 536.021. .

2 The claimed basis for the Motion which the undersigned understand is derived from the CSR at 4 CSR 240-13 where it does not define the customer as on the one named on the account, but instead defines same as

(G) Customer means a person or legal enti-

ty responsible for payment for service.

3. Here, as in Ch 448 and the Declaration, the unit owners are the ones who per same are legally obligated to pay a pre set share of the common utilities .

4 In addition per the recorded Declaration the unit owners have the right to assert rights of the assn .

5 This is even more so where while Ameren tried to deny the shopping center did get its utilities, there are unexplained utility bills even the court ordered receiver cannot understand , the bill went from est $200 to about $8000 since June , where there are only about third of the est 90 units are occupied with the ac being a cold water system, not blow air and with no dawn to dusk lights and with only one elevator , and that elevator down for about a month.

6.. This is even more so where the rule is only for residential property. As in the recorded declaration about a 1/3 is not.

7 To the extent the claimed definition in the rule seeks to limit the intent or language of the enabling act, it cannot.

This is especially so where

A The enabling statute at RS Mo386.390.by its own terms makes it clears “direct damage |is not needed.

B The Mo courts have confirmed the intent of the statute includes to protects consumers .

It is not limited to those whose name is on the account.

..t "[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).

8 Such a definition is at also invalid under RS Mo 536.014:

536.014. No department, agency, commission or board rule shall be valid in the event that:

(1) There is an absence of statutory authority for the rule or any portion thereof; or

(2) The rule is in conflict with state law; or

(3) The rule is so arbitrary and capricious as to create such substantial inequity as to be unreasonably burdensome on persons affected.

(L. 1997 H.B. 850) .

9 Said definition and rule here is not even applicable and should not be applied to this complaint . The CSR rule is strictly for residential customers. As in the complaint, the issues include a failure to have a dispute procedure and in billing for a next door shopping center with a grocery store, restaurants .

The full Declaration is also full available on line at casenet in State ex rel Bennett v Lewis and Clark 195 LLC et al, 14 SL ccd 2207)[2]

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[2]While the CSR defines residential as for domestic use,It is the understanding of the undersigned per http://dor.mo.gov/rulings/LR5279.htm

as in a letter ruling (5279)

(a) "Domestic use" means that portion of metered water service, electricity, electrical current, natural, artificial or propane gas, wood, coal or home heating oil, and in any city not within a county, metered or unmetered water service, which an individual occupant of a residential premises uses for

6 There is a genuine question whether the rules were adopted per Ch 536. The available notice by the Commissioners of the proposed rule making from December 2013 directs the Secretary of State to include what it calls the final order of rule making and includes the definition.

It does not seem to meet what is in
http://psc.mo.gov/CMSInternetData/NaturalGas/Integrated%20Resource%20Planning/Imhoff_Rule_Pres.pdf

Where it indicates the final order is to include the comments and recite the compliance with the proposed rule making .

This one says only to file the rule.
https://www.efis.psc.mo.gov/mpsc/commoncomponents/viewdocument.asp?DocId=935806448.

While the docket sheets shows various pages of items
https://www.efis.psc.mo.gov/mpsc/DocketSheet.html

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nonbusiness, noncommercial or nonindustrial purposes. Utility service through a single or master meter for residential apartments or condominiums, including service for common areas and facilities and vacant units, shall be deemed to be for domestic use. Each seller shall establish and maintain a system whereby individual purchases are determined as exempt or nonexempt . . . .

12 CSR 10-108.300(1) provides:

sales of electricity, water and gas to commercial or industrial consumers are subject to tax. Sales of these services to domestic consumers are exempt from state sales tax but may be subject to certain local sales taxes if reimposed by a city or county.

12 CSR 10-108.300(2)(B) defines domestic use to include "sales through a single master meter for residential nursing homes, apartments or condominiums, including service for common areas and facilities and vacant units, but not including administrative and maintenance areas."

As such where it would be known even the adminstrative office and maintenance is not residential, the CSRat least on the commerical and admin portions of the building where MSD and MAWC are to have broken the bill down into exempt and non exempt.

If reading it correctly it appears there were staff changes after public meetings and the first any proposed rule was sent to the chair of the committee.. It also seems to seek to exceed the requirement that the legislature have a chance to hold hearings by sending at least in part it during such time as the legislature was not in session.

Wherefore for these reasons Complainant opposes the Ameren Motion and petitions for the rule to be found not applicable , rescinded or modified with such other relief as proper

./s/ Susan H. Mello #31158

7751 Carondelet #403

Clayton, MO 63105

(314) 721-7521

(314) 863-7779 fax

SusanMello@Gmail.com

Attorney for Complainant

Certificate of service

A copy was sent to staff counsel, PSC and counsel for Ameren on 9-15-14

Susan H Mello