In the Missouri Public Service Commission

In the matter of

Janice Shands

Complainant) SC 2015-0044

v

MSD

Respondent

Complainant's[1] [2]amended petition per Ch 536

Comes now Complainant and while she concurs the circuit court should hear the case

objects to the claim or contention that Ms., Shands is not a proper complainant, and petitions on same per Ch 536 to amend, rescind modify or find a claim that ms Shand is not a proper claimaint under the 2 CSR 4 CSR 240-13.015.

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It is submitted

1. To apply a claim that Petitioner is not customer would be contrary to law and fact is wrong . As is basic as a condo unit owners (especially where a condo assn is a mere pass through and owns nothing) she is one who owns an undivided interest in anyhing of the condo assn, owes a duty under the declaration to pay debts for utilities in a certain proportion that runs with the land, and has a dertivative right to enforce rights of assn.

2. Per . 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

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

[2](And who inadverently filed in this case on MSD a response on the MAWC case (which had requested be consolidated and do not recall any response on same)

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 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administration, containing its determination whether such rule should be adopted, continued without change, amended, or rescinded, together with a concise summary of the state agency's specific facts and findings with respect to the criteria set forth in subsection 4 of section 536.175.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. .

3 To apply said CSR to try to bar Ms. Shands seeks to limit the intent or language of the enabling act, where:

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

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).

4 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) .

5 Said definition and rule should not be applied to this complaint . The CSR rule is strictly for residential customers. As in the complaint, the sewer bill and water bill on which it is based includes non residential use. As undisputed, the bill in issue is for a next door shopping center with a grocery store, restaurants . It is also for commercial use in the condo itself as in the recorded Declaration (the staff was offered, is of recorded with the item in full available on line at casenet in State ex rel Bennett v Lewis and Clark 195 LLC et al, 14 SL ccd 2207) and on whcih official notice (akin to judicial notice is requested) the top floor, bottom floor and at least 2 to 3 other floors are designated a commercial only where no residences are allowed. Those areas include a church; store; commercial offices. There is even a public toilet on those floors.[3]

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[3]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)

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(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 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."

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

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 evade the intention of 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 petitions at least for purposes of this claim the rule to be found not applicable , rescinded or modified with such other relief as proper./s/ Susan H. Mello #31158

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As such where it would be known even the adminstrative office and maintenance is not residential, the CSR on residential accounts cannot be used to limit the complaint and would have to proceed at 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.

Certificate of service

A copy was sent to staff counsel, PSC and counsel for MSD

on 9-10-14 Susan H mello