

In the Missouri Public Service Commission

In the matter of
Janice Shands
Complainant)

V WC 2015-0030
MAWC
Respondent

In the matter of
Janice Shands
Complainant)

V EC 2015-0043
Ameren
Respondent

In the matter of
Janice Shands
Complainant

V GC 2015-0045
LaClede Gas
Respondent

Dismissal of Ameren and request for phone appearance et al on pre trial conference

Comes now Janice Shands and

1 dismisses the complaint against Ameren as per an agreement with Ameren to accept a payment plan (where it contended as a commercial account it did not have to accept a payment plan from Sprint to be able to continue to provide cell service to the North St Louis County area)

2 on the pre trial conference requests to appear by phone and the times adjusted to begin at 930 as an accommodation and including where the undersigned , especially in snowy or icy weather has limited driving and walking where has a

broken toe that impedes wearing regular secure foot wear.

The undersigned submits the issues as in the September amendment, October filing and memos are solely whether there can be any complaint jurisdiction for there to be primary jurisdiction over the counts in the lawsuit against LG and MAWC which are based in common law and equity (namely that there was no legal authority and actual was in effect ultra vires for the condo assn and it turns its unit owners who own the property as tenants in common and are in turn to pay common expenses, to be billed for utilities for neighboring property, to wit the shopping center that was separated from the Tower in 1980 when the Tower became a condominium).

The undersigned understands while it has been claimed per a regulation that only those whose name is on the bill can bring a complaint, such a contention is disputed as applicable here where

A. The regulation is only for residential accounts. This is a commercial account which has no such limit.

B Under such cases as Little Hills, to be applied generally it has to be promulgated as a regulation that applies

C . Even if the regulation applied it has an exception for those who pay such as a unit owner and under the real estate law and Declaration a unit owner is allowed to stand in the shoes of the account holder and enforces the rights and limits of the

Declaration especially as here to enforce the terms therein

D Any rule that would not permit those who would be pay would be arbitrary and has been challenged per ch 536

The main issue here , though makes such contentions moot. The only relief sought as in the September amendment and the October and other memo is to find based on the caselaw and statute which limits complaints to those based on a rule, regulation or decision of PSC, to find there is no complaint jurisdiction, no supplanting of the court's right to hear common law and equity claims, and no need for any administrative expertise as required for primary jurisdiction.

This is especially so where the Sept 30 2014 amendment stated:

I am a resident condo unit owner at the Lewis and Clark Tower, 9953 Lewis and Clark Blvd., Moline Acres, MO. The building was originally an apartment and combined strip mall type shopping center with joint utility meters that were billed to the complex developer. In 1980, when the Tower was renovated and designated a separate condominium building, it was essentially subdivided with a Declaration recording the condo .The utllity knew of same where the account was changed to the name of a condo assn.

Under the declaration , the assn and unit owners can be charged only for common expenses for the actual Tower building.' The next door shopping center that is not a part of the condo, yet It continued to get its utility service from the condo building's access line and meter. The utilities did not disclose and seem to have concealed that fact from the unit owners.

I am unaware of, have not seen nor been advised of any contracts or other documentation regarding such arrangement between condo owners and the shopping center owners. I have checked

with long time owners and they were not advised of such things and did not consent to it. . There was no authority to legally use the credit or account of the assn without the permission of the unit owners,

At this time, the strip mall consists of ten (10) businesses: a tax office/party & entertainment provider, a grocery store, a cell phone/jewelry store, a clothing boutique, 2 barber shops, 2 fast food restaurants, a dog groomer and optometrist's office. The Lewis and Clark Tower Condominiums are listed at 9953 Lewis and Clark while the shopping center is located at 9955 Lewis and Clark.

Currently there is no viable Board or condo Association and no legal custodian of records. The previous condo Board is effectively defunct. Under current conditions, our Declaration allows unit owners to have standing and enforce the rights of all unit owners as outlined in our Declaration and Bylaws which were recorded. limits the expenses that can be incurred to expenses for the property at 9953 . It was only recently, in June 2014 when the strip mall started to dig up the line to install its own meter and access was it confirmed the condo account was used for others .

My attorney wrote on July 21 and again on July 29, 2014, even sending letters or faxes disputing the bills but did not receive acknowledgment nor response to the request. It should now be easy enough to determine actual usage and provide at least an estimated bill. It would seem they would have data on the approximate use of each of the types of businesses

While there are likely violations of allowing accounts to cross property lines where service charges should be exclusive to the premises reflected on the billing, and not having a complaint procedure, **the reason I am filing is not to have those investigated. It is instead to meet any claimed pre-filing (sic) condition where in the filed court case the utilities have contended have to file with PSC. We are asking the PSC find that it is proper the court hear the case, since no admin expertise is needed, and no record needed , and as such the basis for primary jurisdiction does not exist**

And as in the October memo ;

Comes now complaintants and on the amended complaint where as noted all that is sought is a confirmation that PSC does not have and/or is declining jurisdiction and deferring to the courts,

In addition to the caselaw already cited ,

Complainants submit that PSC is not to be a mini Administrative Hearing Commission, that the reason the statute is written the way it is, is because it is

intended to be a legislative body, where its powers to review complaints are those directed at the rates, whether procedure was followed, whether they meet the statute.

It is not intended to review issues of common law or equity. It is not just that the expertise and record is not needed, it is the powers to subplant or replace a court are not intended on such issues for PSC, whose expertise is in legislative type hearings where the complaint procedure is only ancillary and in furtherance of the legislative/ rate making duties.,

It is submitted same was confirmed in *May v Union Electric*, 107 SW2d __ (Mo App 194__) but in *Board of Public Works of Rolla v Sho-Me Power*, 244 SW2d 65 (Mo en banc 1951), *Katz Drug v Kansas City Power*, 303 SW2d 672 (Mo App WD 1967) , *Wilshire Construction v Union Electric*, 463 SW 2d 903 (Mo 1971), *State ex rel Fee Fee Trunk Sewer v Litz et al* 596 SW2d 466 (No WD 1980), and *Gaines v Gibbs*, 709 SW 541 (Mo App 1986).

The issue is a legal one.

The exhibits would be the regulations, statute and the amended petition with the declaration .

By /s/ Susan H. Mello #31158

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Certificate of service

A copy was sent by email to P.C. Office of General Counsel at staff.counsel@psc.mo.gov, to Dustin Allen (Public Counsel) at opscervice@ded.mo.gov, and counsel for the utilities on 12/2/14 /s/ Susan H Mello