

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

City of O’Fallon, Missouri, and)	
City of Ballwin, Missouri,)	
Complainants,)	
)	
vs.)	File No: EC-2014-0316
)	
Union Electric Company, d/b/a)	
Ameren Missouri,)	
Respondent.)	

**AMEREN MISSOURI’S REPLY TO THE CITIES’ MEMORANDUM IN OPPOSITION
TO AMEREN MISSOURI’S MOTION TO DISMISS**

COMES NOW Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), and makes this reply to the City of O’Fallon and the City of Ballwin (“Cities”) Memorandum of Law in Opposition to Ameren Missouri’s Motion to Dismiss:

1. On April 28, 2014, counsel for the Cities initiated this proceeding against Company (the “Complaint”).
2. On May 29, 2014, the Company filed a Motion to Dismiss the Complaint and filed an Answer to the Complaint.
3. On June 9, 2014, the Cities filed a Memorandum of Law in Opposition to Ameren Missouri’s Motion to Dismiss (the “Memorandum”).
4. The Cities make four basic arguments in the Memorandum, all of which the Company disputes.
5. In response to the Company’s argument that the claim should be dismissed for failure to allege a violation of a statute, rule, order or Commission tariff, the Cities now claim that since the Complaint referenced §393.190 RSMo¹, they have asserted that the Company has subjected a person, corporation or locality to undue or unreasonable prejudice or disadvantage, in violation of subsection 3 of §393.190. (Memorandum, p. 3). The only factual allegation in the Complaint that might be read as alleging that the Company subjected the Cities to some

¹ All statutory references are to the Revised Statutes of Missouri (2000) unless otherwise noted.

disadvantage, however, is the allegation in paragraph 14 that the Cities (contemplating terminating the Company's street lighting service) have asked the Company to vary from the requirements of its street lighting tariff relating to Company-owned lights² by selling its lighting to the Cities instead of removing it but, "Ameren has refused to discuss the sale of its lights to either city and has declined to say why it refuses to discuss such a sale." Since there is a specific tariff that relates to the specific acts complained of, and since the Cities have as much as admitted that the Company is not violating that tariff, they cannot credibly claim that their displeasure with the Company's decisions constitutes a valid complaint pursuant to the general non-discrimination statute, §393.190. If that is the Cities' argument, then it would amount to an unlawful collateral attack on the Commission's order approving the tariff and on the tariff itself.

6. The Cities also argue that the Complaint should not be dismissed because the Commission has general statutory authority over the Company pursuant to §393.140(5) and §393.150 to review the Company's acts. (Memorandum, p. 3). The facts that the Commission may of its own volition, under §393.145(5), "[e]xamine all persons and corporations under its supervisions and keep informed as to the methods, practices, regulations, and property employed by them in the transaction of their business[.]" or that it may under the file and suspend statute, §393.150, concern itself with a utility's "rate, charge, form of contract or agreement, rule, regulation or practice[.]" does not change the fact that a *complaint* brought by a third party that fails to allege a violation of a law, rule, order or decision of the Commission does not invoke the Commission's jurisdiction and should be dismissed.³

7. The Cities concede that the Commission would not have jurisdiction over a condemnation. (Memorandum, p. 6). Instead, they suggest that because the property the Cities want the Commission to order the Company to sell against its will is chattel, not real property, such a sale would not amount to the Commission ordering the Company's property condemned. (Id.). Since condemnation can involve property other than real property, as the statute governing condemnation proceedings, §523.010, demonstrates, "[i]n case land, *or other property*, is sought to be appropriated...", Cities have not avoided the charge that the Complaint must be dismissed because they are asking the Commission to order the Company's property – its street lights and poles—condemned. The Cities also claim they are only, "seeking to have Ameren negotiate in

² 5(M) Street and Outdoor Area Lighting Company-owned, Sheet 58.5.

³ *Tari Christ* at 22-23 (citing *State ex rel. Ozark Border Elec. Coop. v. Pub. Serv. Com'n*, 924 S.W.2d 597, 599-600 (Mo. App. W.D. 1996); *MCI Telecom. V. SWBT*, 1997 Mo. PSC LEXIS 126 (Mo. PSC 1997))

good faith[.]” (Memorandum, p. 6). While the Commission has significant regulatory oversight over Ameren Missouri’s regulated operations, such authority does not extend to ordering a utility to negotiate anything with another party. Further, the Cities’ assertion, that they are only seeking to have Ameren negotiate, is contrary to their prayer for relief in Count I of the Complaint, which plainly requests that the Commission “order Ameren to...offer to sell said street lights to the two cities[.]”

8. Finally, the Cities argue that the Complaint is not a collateral attack on the Company’s company-owned street lighting tariff, but rather, they are “seeking review of the practices employed by Ameren, which are harmful to the public welfare” which request “involves the Commission’s ongoing power to review existing tariffs, policies and procedures and if necessary, revisit issues concerning the public interest.” (Memorandum, p. 7). Again, this ignores the fact that while the Commission’s power to initiate an investigation into a utility’s affairs may be quite broad, complaints brought by third parties must allege a violation of a statute, rule, order or Commission decision. Notably, the case cited by the Cities, ***State ex rel. Chicago, R. I. & P. R. Co. v. Public Service Commission***, 441 S.W.2d 742, 747-748 (Mo. App. W.D. 1969), involved a proceeding *instituted by the Commission on its own motion*. Further, in that case the Commission’s authority to order a railroad to change a crossing, despite a prior order regarding the same crossing that did not require the change, was upheld as a proper exercise of the Commission’s police powers in a matter of public safety. The case in no way stands for the proposition that a complaint that fails to allege a violation of a statute, rule order or decision, but that asks the Commission to exercise an “ongoing power to review existing tariffs, policies and procedures” withstands a motion to dismiss for lack of jurisdiction.

WHEREFORE, Ameren Missouri prays that the Commission enter its order dismissing the Complaint.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Ameren Missouri's Reply to the Cities' Memorandum in Opposition to Ameren Missouri's Motion to Dismiss was served on the following parties via electronic mail on this 19th day of June, 2014.

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