

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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

**APPLICATION FOR REHEARING
OF THE CITIES OF O’FALLON AND BALLWIN**

Come now the City of O’Fallon and the City of Ballwin (“Cities”) pursuant to Section 386.500 RSMo. and 4 CSR 240-2.160, and for their Application for Rehearing state to the Commission:

1. The Commission issued its Order Granting Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted (“Order”) herein on July 30, 2014, with an effective date of August 29, 2014. Cities hereby timely file their Application for Rehearing prior to that effective date.

2. The Order rests upon a glaring misstatement of the Commission’s complaint jurisdiction that would not withstand judicial review. The Commission should not subject the Cities, and others, to the needless costs of an appeal. Rather it should rehear, reconsider and rescind the Order, and thereupon undertake a full examination of the Cities’ Complaint. The Order is incomplete, false, unreasonable, and unlawful.

3. Contrary to the Order, the Commission’s jurisdiction is not limited to the two types of complaints referenced therein (i.e. reasonableness of rates and violation of laws). Specific to this matter, the Commission also has express statutory jurisdiction and authority under Section

393.140(5) “upon complaint” to determine that the “acts or regulations” of an electric utility such as Ameren are “unjust, unreasonable, unjustly discriminatory or unduly preferential” and thereupon “prescribe the just and reasonable acts and regulations to be done and observed.”

4. Contrary to the Order, the Complaint invokes the Commission’s jurisdiction under Section 393.140(5).

5. The Commission does not only approve price lists for electric service. It approves lengthy tariffs with detailed rules and regulations. The content of such tariffs is not exempt from subsequent scrutiny, but rather can be the subject of a complaint under Section 393.140. See, e.g., *Fields v. Missouri Power and Light Co.*, 374 SW2d 17, 31 (Mo 1963)(discussing PSC authority to order utility to change tariffed rules).

6. The Commission has routinely exercised its jurisdiction to address complaints about unreasonable tariff provisions and utility practices. A quick search reveals many examples dating back many years, such as *In the Matter of the Investigation of St. Louis Water Company’s Rule 24 Regarding Meter Installation*, 22 Mo PSC NS 152 (1978); *Daniel Crousby & David Harris C&H Package Liquors v. Union Electric Company*, 25 Mo PSC NS 42 (1982); *Page v. Kansas City Power & Light Co.*, 27 Mo PSC NS 363 (1985); *Tel-Central of Jefferson City, Missouri, Inc. v. United Telephone Company of Missouri*, 29 Mo PSC NS 584 (1989); *The Staff of the Missouri Public Service Commission v. Southern Union Company*, 2011 WL 5831348 (Mo. PSC).

7. The Commission has in the past granted precisely the relief sought in the Complaint, ordering telephone utilities to transfer equipment attached to their system to customers who had paid for that equipment for many years. *Re: Detariffing of Embedded Customers Premises Equipment owned by Independent Telephone Companies*, 90 P.U.R. 4th 428, 1987 WL 258075 (Mo. PSC).

8. In considering a motion to dismiss, the Commission must take the allegations as true. See, e.g., *City of Houston Lake v. Missouri-American Water Co*, WC-2014-0260 (Order Denying

Motion to Dismiss Complaint Issued May 28, 2014). But even beyond that basic standard, Ameren's current tariff provisions regarding street lights are patently unreasonable. Once a city becomes a user of street lights owned by Ameren, it must continually pay for the lights no matter how many times over its payments exceed the cost of the lights. Further, it may become subject to a termination fee of \$100.00 per light no matter how many years go by unless it chooses to go totally dark. Further, a city never has the option of acquiring the lights at fair market value, so as to only pay for electricity thereafter.

9. Contrary to the Order, the Cities did provide an example of discriminatory conduct, in a supplemental filing that pointed to the Commission's July 18, 2014 approval of Ameren's proposal to transfer equipment to a customer rather than require the customer to continue to make uneconomic monthly payments for that equipment. (Case No. EO-2014-0296). Cities presume Ameren has engaged in such voluntary transfers before, as the Commission did not appear to regard the proposal as unique, but discovery and/or staff investigation will shed more light on this point. Without Commission oversight, Ameren will be able to continue to arbitrarily pick and choose which customers to treat with such favor, and which ones to force to continue to make uneconomic payments for equipment. Based on its preferential treatment of other customers, Ameren's streetlight tariff provisions are without question discriminatory and unjust as alleged in the Complaint.

10. Commission review of matters such as those presented in the Complaint is essential. "Public utilities occupy a unique position in our society. They furnish indispensable services while enjoying a privileged legal status. As consumers, our dependency upon their services is almost total. As such it is essential that such companies conduct themselves in a manner that does not take advantage of our dependency on them nor of the privileged status granted to them by the state legislature." *National Food Stores v. Union Electric Co.*, 494 SW2d 379, 383 (Mo App 1973).

11. Cities' Complaint states a claim upon which relief can be granted pursuant to Section 393.140(5), as explained in their prior pleadings which are incorporated herein by this reference. But even if the Commission perceives some deficiency in those pleadings, despite the liberal standards which apply, it should identify such deficiency and grant the Cities leave to amend. The Commission should not abdicate its authority by dismissing this matter. See Section 536.063 RSMo, *State ex rel Chicago, Burlington & Quincy Railroad v. PSC*, 334 SW2d 54, 58 (Mo 1960), Rule 55.33.

12. Cities' Complaint should not be swallowed up by a rate case, but rather deserves the specific scrutiny that Section 393.140(5) authorizes. The two Cities have over 110,000 residents and pay over \$1.5 million per year to Ameren for street lights. This is not a trivial matter.

WHEREFORE, the Commission should recognize that the Order is unlawful, unjust and unreasonable and accordingly reconsider, rehearing and rescind the Order pursuant to Section 386.500 RSMo. and 4 CSR 240-2.160.

Respectfully submitted,

CURTIS, HEINZ,
GARRETT & O'KEEFE, P.C.

/s/ Leland B. Curtis

Leland B. Curtis, #20550

Carl J. Lumley, #32869

Robert E. Jones, #35111

Edward J. Sluys, #60471

Curtis, Heinz, Garrett & O'Keefe, P.C.

130 S. Bemiston, Suite 200

St. Louis, Missouri 63105

(314) 725-8788

(314) 725-8789 (FAX)

Email: lcurtis@lawfirmemail.com

clumley@lawfirmemail.com

rejones@lawfirmemail.com

esluys@lawfirmemail.com

Attorneys for the City of O'Fallon and City of Ballwin,

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was emailed to the parties listed below on this 28th day of August, 2014.

/s/ Leland B. Curtis

Office of Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcsevice@ded.mo.gov

General Counsel
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounselsevice@psc.mo.gov

Kevin Thompson
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O.Box 360
Jefferson City, MO 65102
Kevin.thompson@psc.mo.gov

Edward F. Downey
221 Bolivar Street, Suite 101
Jefferson City, MO 65101
efdowney@bryancave.com

Diana M. Vuylsteke
211 N. Broadway, Suite 3600
St. Louis, MO 63102
dmvuylsteke@bryancave.com

Russ Mitten
Union Electric Company
312 E.Capitol Ave
P.O. Box 456
Jefferson City, MO 65102
rmitten@brydonlaw.com

James B. Lowery
Union Electric Company
111 South Ninth Street, Suite 200
P.O.Box 918
Columbia, MO 65205-0918
lowery@smithlewis.com

