

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

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| In the Matter of |) | |
| Janice Shands, |) | |
| Complainant, |) | |
| v. |) | <u>File No. SC-2015-0044</u> |
| |) | |
| Metropolitan St. Louis Sewer District, |) | |
| |) | |
| Respondent. |) | |

STAFF'S MOTION TO DISMISS COMPLAINT

COMES NOW Staff of the Missouri Public Service Commission and moves the Commission to dismiss the complaint filed by Janice Shands. In its Motion to Dismiss, Staff avers that the Commission does not have jurisdiction to grant the relief sought by the Complainant as the Respondent is a municipally owned and operated sewer system. In support of this Motion Staff states as follows:

1. On August 14, 2014 the Complainant filed a complaint with the Commission against the Metropolitan St. Louis Sewer District alleging that her home owners association had failed to remit payment for sewer services owed to Respondent and that Respondent had posted service disconnect notices to the residents of the condominium complex.

2. At no time during any of the alleged conduct complained about against Respondent did the Complainant have an account for sewer services with Respondent.

3. At all times the account was in the name of the home owners association, LEWIS AND CLARK 195 LLC, and the address for utility service is within the municipal boundaries of the City of St. Louis and St. Louis County which comprises the corporate limits of Respondent.

4. Complainant has filed a civil action in St. Louis County asserting the same claims and issues as set forth in the complaint with the Commission seeking damages against the home owners association for conversion and misappropriation of funds.¹

5. Respondent is a metropolitan sewer district established under the provisions of Section 30 of Article VI of the Constitution of Missouri. The District was founded in February 9, 1954, when voters approved the Plan of the District to provide a metropolitan-wide system of wastewater treatment and sewerage facilities for the collection, treatment and disposal of sewage.² Pursuant to Section 30 of Article VI of the Constitution of Missouri, the District is considered a political subdivision of the state akin to municipalities. Section 249.645.1 RSMo. 2000 authorizes the District to “establish, make and collect charges for sewage services, including tap-on fees.”

6. It is well established that the Commission has no jurisdiction over municipally owned utilities that are operating within their corporate limits in the state.³ The Respondent, as a separate political subdivision with the same rights and powers granted to municipalities, should be treated the same.

7. Complainant’s proper remedy for damages is in civil court as her claim properly falls against the home owners association, and not the Respondent.

8. The Commission’s rules provide that “The commission, on its own motion or on the motion of a party, may after notice dismiss a complaint for failure to state a claim on which relief may be granted.” 4 CSR 240-2.070(6). When evaluating such a

¹ *St. Ex Rel. Bennett v. Lewis & Clark 195 LLC*, 14SL-CC02207, filed June 30, 2014.

² Saint Louis Metropolitan Sewer District, Our Organization, (September 3, 2014, 3:33 pm), <http://www.stlmsd.com/our-organization>.

³ *In City of Columbia v. State Public Service Commission*, 43 S.W. 2d 813 (1931); “The Commission does not regulate rates of municipally-owned utilities and rural cooperative associations. Public agencies have no motive for seeking profits and political pressures arguably exert downward pressure on rates” *Love 1979 Partners v. Public Serv. Comm’n of Mo*, 715 S.W.2d 482,489 (Mo Banc 1986).

motion “the petition is reviewed in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.”⁴

9. Given that the Commission has no jurisdiction over a municipally owned utility this complaint must be dismissed for failure to state a claim upon which relief may be granted.

WHEREFORE, for the foregoing reasons, Staff respectfully requests that the Commission deny Complainant’s request for relief and dismiss the Complaint.

Respectfully submitted,

/s/ Cydney D. Mayfield

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 5th day of **September, 2014**.

/s/ Cydney D. Mayfield

⁴ *Richardson v. Richardson*, 218 S.W. 3d. 426,428 (Mo. 2007).