

**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 SUGGESTIONS IN OPPOSITION
TO THE CITIES’ APPLICATION FOR REHEARING**

COMES NOW Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), and in opposition to the City of O’Fallon and the City of Ballwin (“Cities”) Application for Rehearing states as follows:

1. On April 28, 2014, the Cities filed a complaint, praying for the Commission: (1) to find that Ameren Missouri was acting unreasonably, uneconomically and against public policy by choosing not to sell Company-owned street lights to the Cities; (2) to order Ameren Missouri to sell its street lights to the Cities; (3) to order Ameren Missouri to revise its tariff to include an option to purchase in favor of municipalities; and (4) to serve as an arbitrator if Ameren Missouri consented. (Complaint, prayers for relief).
2. On May 29, 2014, Ameren Missouri filed a motion to dismiss for failure to state a claim.
3. On July 30, 2014, the Commission granted Ameren Missouri’s Motion to Dismiss for Failure to State a Claim.
4. On August 28, 2014, the Cities filed an Application for Rehearing.
5. The Commission should deny the Cities’ Application for Rehearing because the Cities have not shown that the Commission’s dismissal of the Cities’ complaint was unlawful, unjust or unreasonable, as required under § 386.500.1 RSMo.¹ It is lawful for the Commission to dismiss a complaint if the Commission finds that the complainant has failed to state a claim on which relief may be granted. 4 CSR 240-2.070(7). First, the complaint failed to allege a violation of a statute, rule, order or tariff, as required by §386.390.1. Second, even if the complaint were sufficient, the Commission does not have the authority to grant the relief requested.

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

6. The Cities' real complaint is that they think Ameren Missouri's street lighting tariff related to Company-owned lighting is unreasonable², not that Ameren Missouri has violated any statute, rule, order or tariff. Because the Cities know this gives them insufficient grounds to bring a complaint³, they are trying desperately to bootstrap to any authority found in the Public Service Commission Laws to address the reasonableness of a utility's tariffs. Although the Cities cite to the *Commission's* general statutory authority under §393.140(5) to determine if an electric utility's acts or regulations are unjust, unreasonable, etc., that does not save their complaint from dismissal, because it does not change the fact that as to a complaint brought by a *third* party, if the complaint fails to allege a *violation* of a law, rule, order or decision of the Commission, it has not invoked the Commission's jurisdiction and must be dismissed.⁴ In other words, a third-party complaint under §386.390.1 does not invoke the Commission's jurisdiction just because the Commission has general statutory authority under §393.140 over the issue complained of.

7. Similarly, the Cities argue that because the *Commission* can and sometimes does subject tariffs to subsequent scrutiny, the *Cities* should be permitted to bring a complaint about the reasonableness of Ameren Missouri's municipal street lighting tariffs. A simple reading of §393.150.1, shows that the Commission's power, "*upon its own initiative*" to concern itself with a utility's "rate, charge, form of contract or agreement, rule, regulation or practice[.]" does not extend to a third party, nor does this statute give a third party the right to compel the Commission to exercise that authority.

8. None of the cases cited by the Cities at paragraph 6 of their Application for Rehearing aid the Cities' argument that because the Commission *can* subject a tariff to subsequent scrutiny, it *must*, if a third party complainant invokes the Commission's authority. Not one of the cases cited involved the Commission hearing a third-party complaint alleging that a tariff was unlawful or unreasonable.

9. Finally, the Cities seize upon the Commission's discussion, in its Order Granting Motion to Dismiss, regarding what specific Ameren Missouri conduct, related to other sales of street lights, the Cities would have to have alleged in order to have made a cognizable complaint that the Company violated §393.130. At paragraph 8 of the Application for Rehearing, the Cities argue that the Complaint should not be dismissed because they *did* provide an example of Ameren Missouri agreeing to sell equipment to a customer.⁵

² See paragraph 8, Application for Rehearing, where the Cities claim, "Ameren's current tariff provisions regarding street lights are patently unreasonable."

³ They are also barred, by §386.550, from collaterally attacking the tariff.

⁴ *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))

⁵ An allegation that was made, as it happens, in a "Motion for Leave to File Supplemental Suggestions in Opposition to Union Electric Company's Motion to Dismiss." It does not appear that the Commission granted the motion.

10. The example the Cities provided does not aid the Cities. In its Order Dismissing the Complaint, the Commission explained that for the Cities to have alleged a violation of §393.130, the Cities would had to have alleged that the Company has not charged a reasonable and uniform price or rate to all persons for the same service rendered under the same or substantially similar circumstances or conditions. In other words, for the Cities' complaint about Ameren Missouri's refusal to sell them its street lights for a certain price to hold water, the Cities would have to have alleged that Ameren Missouri has actually negotiated and sold its street lights to other similarly-tariffed municipalities, but refuses to sell on the same terms to the Cities. Of course, Cities did not plead any such facts. The Cities couldn't even plead that Ameren Missouri had offered to sell to the Cities at *any* price, let alone a discriminatory price. As the Commission acknowledges, it does not have the authority to order Ameren Missouri to sell. Therefore, the Cities' allegations related to Ameren Missouri's refusal to sell its street lights to them did not constitute a complaint that Ameren Missouri violated §393.130. Because the Cities failed to state a claim for which relief could be granted, the Commission properly dismissed their complaint.

WHEREFORE, Ameren Missouri prays that the Commission deny the Cities' Application for Rehearing.

/s/ Sarah E. Giboney

Sarah E. Giboney, #50299
Smith Lewis, LLP
111 South Ninth Street, Suite 200
P.O. Box 918
Columbia, MO 65205-0918
(573) 443-3141
(573) 442-6686 (Facsimile)
giboney@smithlewis.com

/s/ Wendy K. Tatro

Wendy K. Tatro, # 60261
Director and Assistant General Counsel
Ameren Services Company
P.O. Box 66149
St. Louis, MO 63166-6149
(314) 554-3484 (phone)
(314) 554-4014 (fax)
AmerenMOService@ameren.com

Attorneys for Ameren Missouri

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Ameren Missouri's Suggestions in Opposition to the Cities' Application for Rehearing was served on the following parties via electronic mail on this 8th day of September, 2014.

Nathan Williams, Deputy Staff Counsel
Alexander Antal, Assistant Staff Counsel
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
nathan.williams@psc.mo.gov
alexander.antal@psc.mo.gov

Dustin Allison
Office Of Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

Leland B. Curtis
Robert E. Jones
Edward J. Sluys
Curtis, Heintz, Garrett & O'Keefe, P.C.
130 S. Bemiston Ave., Suite 200
Clayton, MO 63105
lcurtis@lawfirmemail.com
rejones@lawfirmemail.com
esluys@lawfirmemail.com

Attorneys for Complainants City of O'Fallon
and City of Ballwin

/s/ Sarah E. Giboney
Sarah E. Giboney