

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

The City of Houston Lake, Missouri  
Complainant

vs.

Missouri-American Water Company, et al.,  
Respondent

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Case No. WC-2014-0260

**COMPLAINANT'S RESPONSE TO THE PUBLIC SERVICE COMMISSION'S  
MOTION FOR DETERMINATION ON THE PLEADINGS DISMISSING THE  
PUBLIC SERVICE COMMISSION**

COMES NOW The City of Houston Lake, by and through its undersigned counsel, and for its Response to the Public Service Commission's Motion for Determination on the Pleadings Dismissing the Public Service Commission, states as follows:

The Staff of the Missouri Public Service Commission (hereinafter "Staff") argues that the Public Service Commission (hereinafter "PSC") lacks the statutory authority to hear a case against itself, and therefore the PSC must be dismissed as a party to this complaint case. Section 393.275.1, RSMo, provides:

The commission shall notify the governing body of each city or county imposing a business license tax pursuant to section 66.300, 92.045, 94.110, 94.270 or 94.360, or a similar tax adopted pursuant to charter provisions in any constitutional charter city with a population of at least three hundred fifty thousand inhabitants which is located in more than one county, on gross receipts of any gas corporation, electric corporation, water corporation or sewer corporation of any tariff increases authorized for such firm doing business in that city or county if the approved increase exceeds seven percent. The commission shall include with such notice to any city or county the percentage increase approved for the utility, together with an estimate of the annual increase in gross receipts resulting from

the tariff increase on customers residing in that city or county. The provisions of this subsection shall not apply to rate adjustments in the purchase price of natural gas which are approved by the commission.

In the case of *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariff to Increase Its Annual Revenues for Electric Service*, Case Number ER-2011-0028, before the Public Service Commission of the State of Missouri, the same PSC Staff recommended in its Staff's Recommendation Regarding Compliance with Section 393.275.1. RSMo. and Motion for Leave to Late File the Same "that the Commission direct [the utility provider] to provide a list of cities and counties in which it does business so that the Commission's Data Center may provide to the governing body of each a notice that the Commission has granted [the utility provider] an increase...in electric service revenues on an annual basis."

The PSC Staff was recommending that the PSC direct the PSC to provide notice to utility customers pursuant to the mandate already provided in Section 393.275.1, RSMo. referenced above. The Staff now argues that the PSC can do no such thing. Not only was the PSC Staff recommending that the PSC direct the PSC to do something, but it was interpreting Section 393.275.1. RSMo. as it pertained to a specific set of facts in the above-referenced case. The PSC has been given the statutory authority to interpret statutes pursuant to the administration of their charge; the PSC's interpretation is afforded great weight by Missouri courts. *Evans v. Empire Dist. Elec. Co.*, 346 S.W.3d 313, 318 (Mo. App. W.D. 2011) (See *State ex rel. Sprint Missouri, Inc. v. Pub. Serv. Comm'n of Missouri*, 165 S.W.3d 160, 164 (Mo. banc 2005) (citing *Foremost-McKesson, Inc. v.*

*Davis*, 488 S.W.2d 193, 197 (Mo. banc 1972))). Complainant now asks the PSC to interpret the same statute to the set of facts found in Complainant's Complaint.

Furthermore, although the PSC itself is directly involved in this case while it may have been the PSC that failed to perform its required task of notifying Complainant City of tariff increases, the case also involves a water utility company, which even the PSC admits is within the jurisdiction of the PSC, and the PSC has original jurisdiction over such matters. Section 396.250.3 RSMo. provides that "[t]he jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter: [t]o all water corporations...and the operation of same within this state."

This case, while it involves the PSC, also involves Missouri-American Water Company (hereinafter "MAWC"). MAWC is a water utility company that does in fact fall within the PSC's jurisdiction.

"Under the doctrine of primary jurisdiction, a court will not decide a controversy involving a question within the jurisdiction of an administrative tribunal until after the tribunal has rendered its decision." *Evans v. Empire Dist. Elec. Co.*, 346 S.W.3d 313, 316 (Mo. App. W.D. 2011) (citing *Killian v. J & J Installers, Inc.*, 802 S.W.2d 158, 160 (Mo. banc 1991)). The doctrine of exhaustion of remedies is a jurisdictional requirement that all remedies be exhausted at the administrative level before applying to the courts for relief. *Id.* (citing *Pettigrew v. Hayes*, 196 S.W.3d 53, 56 (Mo. App. W.D.2005) (citing *Green v. City of St. Louis*, 870 S.W.2d 794, 796 (Mo. banc 1994))). "If all administrative remedies have not been exhausted, the circuit court lacks subject matter jurisdiction to

judicially review the administrative decision.” *Id.* (quoting *Oanh Thile Huynh v. King*, 269 S.W.3d 540, 543–44 (Mo. App. W.D. 2008)). Generally, a litigant must exhaust his available administrative remedies before a court will assume jurisdiction (now authority over an action). *Id.* at 317 (citing *Premium Standard Farms, Inc. v. Lincoln Tp. of Putnam Cnty.*, 946 S.W.2d 234, 237 (Mo. banc 1997)). Matters within the jurisdiction of the [PSC] must first be determined by it in every instance before the courts have jurisdiction to make judgments in the controversy. *Id.* at 318.

Even if the PSC lacks the statutory authority to hear a case against itself, the PSC is involved in this case that must be determined by the PSC before Complainant seeks a remedy in the courts. PSC is a necessary party to this case, as the PSC may be the party at fault. However, as MAWC may also be at fault and as MAWC is a water utility company, Complainant must first exhaust its administrative remedies by first bringing this action before the PSC.

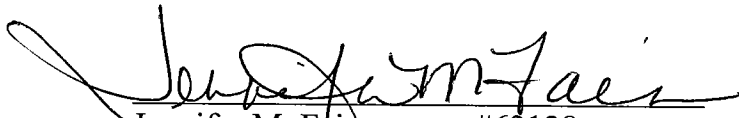
In Complainant’s Complaint, Complainant asks the PSC “for such other and further relief as the Commission deems just and proper.” What is first required in this matter is that a decision must be made as to who is at fault regarding why Complainant City never received notices of MAWC’s tariff increases. As the PSC has primary jurisdiction over matters involving water utility companies operating in this state, and even if the PSC cannot make an award of everything Complainant is asking for in its Complaint, Complainant must first exhaust its administrative remedies before the PSC before asking a court for a remedy. Complainant asks the PSC to make a decision as to who is at fault regarding why Complainant City never received notices of MAWC’s tariff

increases, and to require both the PSC and MAWC to perform their obligations under Section 393.275, RSMo. and 4CSR 240-10.060.

**WHEREFORE**, Complainant prays that the Commission does not dismiss the Commission as a party to this case.

Dated this 9<sup>th</sup> day of May, 2014.

WITT, HICKLIN & SNIDER, P.C.



Jennifer M. Fain #62128  
2300 Higgins Road, P.O. Box 1517  
Platte City, Missouri 64079  
Telephone (816) 431-2750 & 858-2750  
Fax (816) 858-3009  
jfain@wittlaw.com  
Attorney for Complainant City of Houston  
Lake, Missouri

I hereby certify that on this 9<sup>th</sup> day of May, 2014, the foregoing was filed with the Secretary of the Missouri Public Service Commission and a true and complete copy sent via U.S. Mail, postage prepaid, by fax and email to: Fax(816) 634-7431, dcarter@brydonlaw.com, Diana C. Carter, 312 East Capitol Avenue, P.O. Box 456, Jefferson City, Missouri 65102-0456, Attorney for Missouri-American Water Company; and Fax(573) 526-1500, The Missouri Public Service Commission, 200 Madison Street, PO Box 360, Jefferson City, MO 65102-0360.

