

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Anita Wessling,)	
)	
Complainant,)	
v.)	File No. EC-2018-0089
)	
Union Electric Company d/b/a Ameren Missouri,)	
)	
Respondent.)	

ORDER DENYING MOTION TO DISMISS AND DIRECTING FILING

Issue Date: March 21, 2018

Effective Date: March 21, 2018

Anita Wessling filed the complaint.¹ Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”) filed a motion to dismiss.² The Commission’s staff (“Staff”) filed a report joining in the motion to dismiss.³ Ameren Missouri filed a response to Staff’s report.⁴ Ms. Wessling filed a response to the motion and a reply to Staff’s report.⁵

The motion to dismiss cites the Commission’s rule providing that the Commission may “dismiss a complaint for failure to state a claim on which relief may be granted [.]”⁶ The

¹ Electronic Filing Information Service (“EFIS”) No. 1 (September 28, 2017) *Complaint*. EFIS references refer to this file except as otherwise stated.

² Electronic Filing Information System (“EFIS”) No. 17 (January 23, 2018) *Answer, Affirmative Defenses and Motion to Dismiss* page 7 through 8.

³ EFIS No. 20 (February 13, 2018) *Staff Report* page 7.

⁴ EFIS No. 22 (February 28, 2018) *Ameren Missouri’s Response to Staff Report*.

⁵ EFIS No. 24 (March 19, 2018) *Anita Wessling’s Response to Staff Report and Ameren’s Response to Staff Report*.

⁶ 4 CSR 240-2.070(7). That provision is the basis most often cited for in support of a motion to to dismiss, even when its application is tenuous, probably because it is the only grounds for dismissal mentioned in the regulation on complaints.

Commission's authority to grant relief comes from the statutes.⁷ If no statute authorizes relief on the facts alleged, the Commission can only exercise its inherent power to dismiss.⁸

The complaint is subject to Section 393.390,⁹ which provides:

Complaint may be made by . . .any . . . person, . . . in writing, setting forth any act or thing done or omitted to be done by [Ameren Missouri] claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission [. ¹⁰]

The complaint cites Ameren Missouri's tariff, requiring continuous service by reasonable efforts,¹¹ and the Commission's regulation requiring reasonable vegetation management.¹²

The complaint alleges that Ameren Missouri has unreasonably failed to fix the problems that cause the service interruptions. If those allegations are true, Ameren has committed violations, which is the only claim that the complaint needs to state.

Ameren Missouri focuses on the portion of the complaint in which Ms. Wessling seeks money damages for the service interruptions. It is true that the Commission has no authority to award money damages.¹³ But the absence of direct damage to Ms. Wessling is expressly not grounds for dismissal under Section 393.390.¹⁴ Also, the prayer for damages does not negate the violation alleged in the complaint, which is all that Section 393.390 requires Ms. Wessling to plead.

⁷ ***State ex rel. Util. Consumers' Council of Missouri, Inc. v. Pub. Serv. Comm'n***, 585 S.W.2d 41, 49 (Mo. 1979)

⁸ ***Moore v. Missouri Highway & Transp. Comm'n***, 169 S.W.3d 595, 599 (Mo. App. S.D., 2005).

⁹ All sections are in RSMo 2016.

¹⁰ Section 386.390.1, RSMo 2016.

¹¹ Ameren Missouri's tariff, Mo. PSC No. 6, original sheet 105 paragraph J.

¹² 4 CSR 240-23.030.

¹³ ***State ex rel. Laundry, Inc. v. Pub. Serv. Comm'n***, 34 S.W.2d 37, 46 (Mo. Div. 1, 1931).

¹⁴ Section 386.390.3, RSMo 2016.

Ameren Missouri cites ***City of O'Fallon v. Union Elec. Co.***¹⁵ In that case, the complaint did not allege that Ameren Missouri violated any statute or any Commission rule or order.¹⁶ The complaint sought an order under Section 393.190, which governs the sale of Ameren Missouri's assets, either compelling Ameren Missouri to sell its street lights, or amending its tariffs to provide for such a sale.¹⁷ The Commission dismissed the complaint because the Commission has no authority to compel a sale of street lights. The Court of Appeals affirmed the Commission's reasoning under Section 393.190 but did not discuss the elements of a claim under Section 393.390.

Moreover, unlike the compulsory sale of street lights in ***City of O'Fallon v. Union Elec. Co.***, the statutes provide a variety of remedies for the power outages alleged in Ms. Wessling's complaint. For example:

[W]henver the commission shall be of the opinion, after a hearing had upon its own motion or upon complaints, that the property, equipment or appliances of any such person or corporation are unsafe, insufficient or inadequate, the commission shall determine and prescribe the safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public and in compliance with the provisions of law [. ¹⁸]

And, though Ameren Missouri alleges that it has implemented upgrades in maintenance, Ms. Wessling alleges yet another outage as of March 2, 2018.¹⁹

¹⁵ 462 S.W.3d 438, 445 (Mo. App., W.D. 2015).

¹⁶ ***City of O'Fallon v. Union Elec. Co.***, 462 S.W.3d 438, 441 (Mo. App., W.D. 2015).

¹⁷ File No. EC-2014-0316, EFIS No. 1 (April 28, 2014) *Complaint. City of O'Fallon, Missouri and City of Ballwin, Missouri, Complainants v. Union Electric Company d/b/a Ameren Missouri, Respondent.*

¹⁸ Section 393.140(5).

¹⁹ EFIS No. 23 (March 19, 2018) *Notice Regarding Power Outage.*

The Commission will deny the motion to dismiss. In the alternative to dismissal, Ameren Missouri asks the Commission to set this case for hearing, as does Ms. Wessling, so the Commission will order the filing of a proposed procedural schedule. The Commission continues to encourage the parties to informally resolve this case.

THE COMMISSION ORDERS THAT:

1. The motion to dismiss is denied.
2. Staff shall coordinate and file, no later than April 6, 2018, a proposed procedural schedule. The proposed procedural schedule:
 - a. Shall include dates for a response from Ameren Missouri and a supplemental report from Staff addressing the *Notice Regarding Power Outage* an evidentiary hearing; and
 - b. May include dates for conferences, stipulations of fact, dispositive motions, and other procedures that the parties believe will be helpful in disposing of the complaint.
3. This order shall be effective when issued.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Daniel Jordan, Senior Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 21st day of March, 2018.

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 21st day of March 2018.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

March 21, 2018

File/Case No. EC-2018-0089

**Missouri Public Service
Commission**

Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel

Hampton Williams
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opc@psc.mo.gov

Anita Wessling

Anita Wessling
6 White Oaks Lane
St. Charles, MO 63301
anitawessling@gmail.com

**Missouri Public Service
Commission**

Marcella Forck
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
marcella.forck@psc.mo.gov

Union Electric Company

Sarah E Giboney
111 South Ninth Street, Suite 200
P.O. Box 918
Columbia, MO 65205-0918
giboney@smithlewis.com

Union Electric Company

Paula Johnson
1901 Chouteau Ave
St Louis, MO 63103
AmerenMOService@ameren.com

Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.