

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

David L. Biersmith, Sr.,)	
)	
Complainant,)	
)	
vs.)	<u>File No. EC-2014-0307</u>
)	
City of Independence Utilities,)	
)	
Respondent.)	

ORDER TO SHOW CAUSE

Issue Date: April 28, 2014

Effective Date: April 28, 2014

On April 25, 2014, David L. Biersmith, Sr. filed a formal complaint with the Missouri Public Service Commission ("Commission") against City of Independence Utilities ("City"). The complaint alleges that the City failed to properly discontinue service at Mr. Biersmith's request and seeks a bill credit for services rendered after the alleged date of Mr. Biersmith's notice of discontinuance.

Any relief ordered upon a complaint must stand on a violation of laws committed to the Commission's enforcement.¹ The Commission has no statutory authority to regulate electric utilities that are owned and operated by a municipality serving customers within its corporate boundaries.² The complaint does not cite any rule or order or decision of the Commission, or any provision of law that the Commission can enforce against the City, so it

¹ "Complaint may be made by . . . any . . . person . . . , by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility . . . in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission." Section 386.390.1, RSMo 2000.

² *City of Columbia v. State Pub. Serv. Comm'n*, 329 Mo. 38, 46, 43 S.W.2d 813, 816 (1931); *Stopaquila.Org v. Aquila, Inc.*, 180 S.W.3d 24, 31 (Mo. Ct. App. 2005); See also, Section 386.800, RSMo 2000.

does not state a claim for relief from the Commission. Therefore, even assuming that everything in the complaint is true, the complaint claims no relief that the Commission can grant. If a complaint does not state a claim on which the Commission can grant relief, the Commission's regulations provide that "[t]he commission, on its own motion . . . may after notice dismiss a complaint for failure to state a claim on which relief may be granted".³ When an agency lacks jurisdiction, it can only exercise its inherent power to dismiss matters outside its authority.⁴ Before the Commission dismisses the complaint, it will consider a response to this order showing cause why the Commission should not dismiss the complaint.

THE COMMISSION ORDERS THAT:

1. No later than May 8, 2014, David L. Biersmith, Sr. shall file a response to this order showing why the Commission should not dismiss the complaint for failure to state a claim on which relief can be granted.
2. This order is effective immediately upon issuance.

BY THE COMMISSION



A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Michael Bushmann, Senior Regulatory
Law Judge, by delegation of authority
Pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 28th day of April, 2014.

³ 4 CSR 240-2.070(7).

⁴ *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000) (citations omitted).