

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 30th day of March, 2022.

Delmar Gardens Enterprises, Inc.,)
)
Complainant,)
)
v.)
)
Union Electric Company d/b/a)
Ameren Missouri,)
)
Respondent)

File No. EC-2022-0163

ORDER DENYING MOTION TO DISMISS

Issue Date: March 30, 2022

Effective Date: March 30, 2022

On December 20, 2021, Delmar Gardens Enterprises, Inc. (Delmar Gardens) filed a complaint against Union Electric Company d/b/a Ameren Missouri. On February 7, 2022, Ameren Missouri filed its answer and a motion to dismiss. On March 11, 2022, the Staff of the Commission (Staff) submitted suggestions in support of the motion to dismiss. On March 14, 2022, Delmar Gardens filed its response to the motion to dismiss. On March 24, 2022, Ameren Missouri replied to Delmar Gardens' response.

Delmar Gardens alleges Ameren Missouri violated Commission Rule 20 CSR 4240-20.094 by issuing an incentive to an individual not authorized to act on behalf of Delmar Gardens. Delmar Gardens also complains of preferential treatment given by Ameren Missouri to Washington University in a similar opt-out request.

In ruling on a motion to dismiss, the Commission merely considers the adequacy of the complaint.¹ The Commission assumes that all averments in the complaint are true and must liberally grant to the complainant all reasonable inferences from those averments. The Commission does not weigh any facts alleged in the complaint to determine whether they are credible or persuasive.² Further, “[c]omplaints or other pleas before the Commission are not tested by the rules applicable to pleadings in general, if a complaint or petition ‘fairly presents for determination some matter that falls within the jurisdiction of the Commission, it is sufficient.’”³

Section 386.390(1), RSMo (Supp. 2021), gives the authority to hear complaints about:

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 subject to the commission’s authority, of any rule promulgated by the commission, of any utility tariff, or of any order or decision of the commission; ...

Section 393.140(11), RSMo, (2016) prohibits utilities from offering refunds or any privilege to a person or corporation, “except such as are regularly and uniformly extended to all persons and corporations under like circumstances.” The Commission has been given the statutory authority over regulated entities in the first instance, so this matter is properly before the Commission because it is within the Commission’s primary jurisdiction in that the Commission has the statutory right to proceed with the resolution of the complaint.⁴

¹ *State ex rel. Laclede Gas Company v., Public Service Com’n of Missouri*, 392 S.W. 3d 24, 38 (Mo. App. W.D. 2012).

² *Foremost Ins. Co. v. Public Service Com’n of Missouri*, 985 S.W. 2d 793, 796 (Mo. App. W.D. 1998).

³ *State ex rel. Chicago B. & Q. R. Co. v. Public Service Commission*, 334 S.W.2d 54, 58 (Mo. 1960), quoting, *State ex rel. Kansas City Terminal Ry. Co. v. Public Service Commission*, 308 Mo. 359, 372, 272 S.W. 957, 960 (Mo. 1925).

⁴ *Evans v. Empire Dist. Elec. Co.*, 346 S.W.3d 313, 317 (Mo. App. W.D. 2011)

Delmar Gardens alleges that Ameren Missouri violated 20 CSR 4240-20.094 by issuing an incentive to Delmar Gardens without the proper authority of Delmar Gardens. Delmar Gardens has alleged preferential treatment was given to other parties, and that such treatment is not being extended to Delmar Gardens. In reviewing a motion to dismiss the Commission may not look into the facts, and must determine if the complaint presents some matter for decision which falls within the Commission's primary jurisdiction to resolve in the first instance. Delmar Gardens has alleged potential violations of Commission Rule 20 CSR 4240-20.094. Enforcement of Commission Rules as well as the statutory requirement of non-preferential treatment clearly falls within the authority of the Commission. For that reason, the Commission will deny the motion to dismiss, and allow the complaint to proceed.

THE COMMISSION ORDERS THAT:

1. Ameren Missouri's motion to dismiss is denied.
2. 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

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeier CC., concur.

Hatcher, Regulatory Law Judge


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 30th day of March, 2022.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

March 30, 2022

File/Case No. EC-2022-0163

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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.