

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 14<sup>th</sup> day of  
May, 2014.

|                                 |   |  |
|---------------------------------|---|--|
| David L. Biersmith, Sr.,        | ) |  |
|                                 | ) |  |
| Complainant,                    | ) |  |
|                                 | ) |  |
| vs.                             | ) |  |
|                                 | ) |  |
| City of Independence Utilities, | ) |  |
|                                 | ) |  |
| Respondent.                     | ) |  |

**File No. EC-2014-0307**

**ORDER DISMISSING COMPLAINT**

Issue Date: May 14, 2014

Effective Date: May 24, 2014

On April 25, 2014, David L. Biersmith, Sr. filed a formal complaint with the Missouri Public Service Commission ("Commission") against the 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. On April 28, 2014, the Commission issued an *Order to Show Cause*, which set a deadline for Mr. Biersmith to show cause why the complaint should not be dismissed for failure to state a claim on which relief may be granted. Mr. Biersmith did not respond by the required deadline.

Any relief ordered upon a complaint must stand on a violation of laws committed to the Commission's enforcement.<sup>1</sup> The Commission has no statutory authority to regulate

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<sup>1</sup> "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.

electric utilities that are owned and operated by a municipality serving customers within its corporate boundaries.<sup>2</sup> 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 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".<sup>3</sup> When an agency lacks jurisdiction, it can only exercise its inherent power to dismiss matters outside its authority.<sup>4</sup> For that reason, the complaint must be dismissed.

**THE COMMISSION ORDERS THAT:**

1. David L. Biersmith, Sr.'s complaint against the City of Independence Utilities is dismissed.
2. This order shall become effective on May 24, 2014.
3. This file may be closed on May 25, 2014.



**BY THE COMMISSION**

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

R. Kenney, Chm., Stoll, W. Kenney,  
Hall, and Rupp, CC., concur.

Bushmann, Regulatory Law Judge

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<sup>2</sup> *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.

<sup>3</sup> 4 CSR 240-2.070(7).

<sup>4</sup> *Overeater v. Fulbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000) (citations omitted).