

**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
July, 2014.

City of O'Fallon, Missouri, and
City of Ballwin, Missouri,

Complainants,

v.

Union Electric Company
d/b/a Ameren Missouri

Respondent.

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File No. EC-2014-0316

**ORDER GRANTING MOTION TO DISMISS FOR FAILURE
TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

Issue Date: July 30, 2014

Effective Date: August 29, 2014

Syllabus: This order dismisses the above-styled complaint.

Procedural History

On April 28, 2014, the City of O'Fallon, Missouri and the City of Ballwin, Missouri ("the Cities") filed the above-styled complaint. The Cities allege they are street lighting customers of Union Electric Company, d/b/a Ameren Missouri ("Ameren Missouri").

The Cities wish to buy the street lights that Ameren Missouri owns and uses to supply street lighting inside the Cities. Such a sale would allow the Cities to take service

under a different tariff. That, in turn, would lower the Cities' electric rates. But Ameren Missouri does not want to sell those lights.

Ameren Missouri filed an answer and a motion to dismiss. Ameren Missouri states that the Commission does not have authority to force it to sell property it does not wish to sell. The Staff of the Commission ("Staff") concurs in Ameren Missouri's position.

Decision

The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto.¹ The Commission may only hear two types of complaints: 1) complaints alleging a utility violation of a statute, rule, order, or decision of the Commission; 2) complaints as to the reasonableness of any utility rate or charge.²

The Cities admit that this complaint is not one concerning the reasonableness of a utility rate or charge.³ Thus, to survive a motion to dismiss, the Cities must allege a utility violation of a statute, rule, order, or decision of the Commission.

The Cities claim that the Commission has jurisdiction over the complaint under Sections 386.390 RSMo, 393.130 RSMo, and Commission Rule 4 CSR 240-2.070. Section 386.390 simply gives the Commission jurisdiction over the two types of complaints discussed earlier. Section 393.130 prevents Ameren Missouri from granting an undue or unreasonable preference, prejudice or disadvantage to any customer. But the Supreme Court of Missouri states that:

¹ See, e.g., *State ex. rel. City of St. Louis v. Missouri Public Service Comm'n*, 73 S.W.2d 393, 399 (Mo. banc 1934); *State ex. rel. Kansas City Transit, Inc. v. Public Service Comm'n*, 406 S.W.2d 5, 8 (Mo. 1966).

² Section 386.390.1 RSMo.

³ See Complainants' Memorandum of Law in Opposition to Ameren Missouri's Motion to Dismiss, p. 4 (filed June 9, 2014)

. . . statutes forbidding unjust discriminations of whatever character are merely declaratory of the common law rule, which is founded on public policy and requires one engaged in a public calling to charge a reasonable and uniform price or rate to all persons for the same service rendered under the same or substantially similar circumstances or conditions.⁴

The Cities do not claim that Ameren Missouri has sold or negotiated to sell its street lights to other municipalities. Instead, they merely want the Commission to order Ameren Missouri to sell or at least negotiate in good faith with the Cities. Section 393.130 RSMo does not allow the Commission to order Ameren Missouri to sell property it does not wish to sell.

Finally, Commission Rule 4 CSR 240-2.070 allows anyone who feels aggrieved by an alleged violation of any tariff, statute, rule order or decision with the Commission's jurisdiction to file a complaint. Again, the Cities have failed to allege any such violation.

The Commission notes that Ameren Missouri has a pending rate case before the Commission.⁵ The Cities may apply to intervene in that case if they wish to further pursue their attempts to obtain lower electric rates.

The Commission will dismiss the complaint.

THE COMMISSION ORDERS THAT:

1. The complaint is dismissed.

⁴ *State ex. rel. Laundry v. Public Service Commission*, 327 Mo. 93, 110; 34 S.W.2d 37, 45 (Mo. 1931).

⁵ Commission File No. ER-2014-0258.

2. This order shall become effective on August 29, 2014.
3. This file shall be closed on August 30, 2014.

BY THE COMMISSION



Morris L. Woodruff

Morris L. Woodruff
Secretary

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

Pridgin, Deputy Chief Regulatory Law Judge