

**IN THE CIRCUIT COURT COLE COUNTY, MISSOURI
DIVISION II**

JAMES BABB, FRANCES BABB,)
and MOSEIA,)
)
PETITIONERS,)
)
V.)
)
MISSOURI PUBLIC SERVICE)
COMMISSION,)
)
CITY OF CLARKSON VALLEY,)
MISSOURI,)
)
RESPONDENTS)

Case No. 12AC-CC00225

FINAL JUDGMENT AND ORDER

Having read the motions and briefs submitted by the parties, and being fully advised in these premises, the Court enters this Judgment and Order as follows:

1. On April 14, 2012, the Petitioners filed a three-Count Petition under §§ 527.010, 536.050 and 536.150, RSMo.
2. On June 29, 2012, the Court entered summary judgment in favor of Petitioners on Counts 1 and 3 in the Petition. This Court construes the June 29, 2012 partial summary judgment as an interlocutory judgment.
3. On November 26, 2012, Petitioners were granted leave and filed their First Amended Petition, adding Count 4 which alleged claims against certain Clarkson Valley officials. In the First Amended Petition, the Petitioners expressly referenced both the prior Petition and the June 29, 2012 partial summary judgment. As a result, the Court finds that Petitioners did not abandon their prior pleadings and the June 29, 2012 partial summary judgment continued in effect as an interlocutory judgment.

4. On January 29, 2013, in accordance with Rule 67.02, Petitioners voluntarily dismissed without prejudice Counts 2 and 4, leaving only Counts 1 and 3 in this case. Counts 1 and 3 do not allege any claims against the Clarkson Valley officials.

5. On January 30, 2013, the Court granted the Public Service Commission's motion to dismiss Counts 1, 2, 3 and 4 for failure to state a claim. The January 30, 2013 Judgment is an interlocutory judgment.

6. Because the Petitioners had already voluntarily dismissed Counts 2 and 4, that portion of the January 30, 2013 Judgment and Order relating to Counts 2 and 4 is vacated on the Court's own motion as being moot.

7. Because the June 29, 2012 partial summary judgment has already addressed all issues and all remaining parties concerning Counts 1 and 3, that portion of the January 30, 2013 Judgment and Order relating to Counts 1 and 3 is vacated on the Court's own motion.

8. Because the Court has already entered partial summary judgment on Counts 1 and 3 for the reasons stated therein, the Court hereby finds there is no compelling reason to delay the entry of Final Judgment. Accordingly, the Court hereby orders that the June 29, 2012 Judgment and Order be denominated a Final Judgment for all purposes.

9. All other pending motions are denied.

So Ordered,



Judge Daniel R. Green

Date: 4/15/13

STATE OF MISSOURI } SS
COUNTY OF COLE

Clerk of the Circuit Court of Cole County, Missouri, hereby certify that the above and foregoing is a full true and correct copy of

Final Judgment
as fully as the same remains of record in my said office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my said office this 11 day of April 2013