

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

Craig Mershon,)	
Complainant,)	
)	
vs.)	Case No: EC-2013-0521
)	
Union Electric Company, d/b/a)	
Ameren Missouri,)	
Respondent.)	

ANSWER

COMES NOW, Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), and for its Answer to the Complaint filed in this proceeding states as follows:

1. On June 13, 2013, Mr. Craig Mershon, with a service address of 11931 El Sabado Drive, St. Louis, MO 63138 (“Complainant”), initiated this proceeding against the Company by filing a letter with the Commission.
2. In its Order Regarding Re-Filing and Supplementing Complaint dated June 14, 2013 (the “Order”), the Commission took official notice of the filings in Complainant’s earlier complaint, File No. EC-2012-0365, to accommodate Complainant’s request to re-file said earlier complaint, and the Commission also granted Complainant until June 24, 2013, to supplement his earlier complaint.
3. Complainant did not file a supplement to his earlier complaint by the June 24, 2013 deadline.
4. The Company’s answer will restate its answer and motion to dismiss the complaint filed in EC-2012-0365 (herein, the “Original Complaint”).
5. Because Complainant made additional allegations in his June 13, 2013 letter (the “New Complaint”), the Company will also answer the New Complaint.

ANSWER TO ORIGINAL COMPLAINT

6. Any allegation of the Original Complaint not specifically admitted herein by the Company should be considered denied.

7. On May 7, 2012, Complainant initiated his Original Complaint, EC-2012-0365, against the Company.

8. Ameren Missouri admits the allegations of paragraph 1 of the Original Complaint.

9. In subparagraph 1 of paragraph 2 of the Original Complaint, Complainant alleges that the Company's disconnection notices are threatening and that it, "feels like the Co. is harassing him by sending them" and that Complainant, "[w]ould prefer past due notices." The Company denies that its disconnection notices are threatening. In further answer the Company states that though Complainant feels harassed, the Company is required to send the bills and notices it has sent to Complainant. The Company's bills and notices comply with 4 CSR 240-13.020, in particular subsections (7) and (9), and with 4 CSR 240-13.050, in particular subsections (3) through (7). For the Commission's benefit, the following are attached:

a. A copy of Complainant's bill for service from September 21, 2011 through October 20, 2011 is attached hereto as **Exhibit A**.

b. A copy of the Bill Supplement included with Complainant's said October, 2011 bill is attached hereto as **Exhibit B**. The Company has provided Complainant with similar monthly Bill Supplements since 1999, when he advised the Company that he was legally blind and required large print.

c. A sample written disconnect notice, which is identical in format to the yellow disconnect notice sent to Complainant on November 22, 2011, is attached hereto as **Exhibit C**.

d. A sample Final Notice, which is identical in format to the pink final disconnect notice sent to Complainant on November 28, 2011, is attached hereto as **Exhibit D**.

10. In subparagraph 2 of paragraph 2 of the Original Complaint, Complainant alleges that "[s]everal years ago [a] neighbor was stealing electric utility service from him \$200-\$300 worth and Co. told him [it was] his responsibility." The Company is without information sufficient to form a belief about the allegation that a neighbor was stealing utility service from Complainant. The Company admits that Complainant filed an informal complaint with the Commission in 2009, C2010001611, which included a statement that someone else had been using Complainant's service but that had been disconnected. In further answer the Company states as follows. The information that the Company received regarding informal complaint C2010001611 is attached hereto as **Exhibit E**. The day after the informal complaint was filed, a

Company customer service representative spoke to Complainant about his account and about his report that a neighbor was taking electric utility service from Complainant's residence via an extension cord. The representative advised Complainant to contact local authorities if he was unable to resolve the situation with the neighbor. A copy of the representative's email to Commission Consumer Services Staff regarding her contacts with Complainant is attached hereto as **Exhibit F**. To the Company's knowledge, Complainant did not file a formal complaint regarding this issue after the informal complaint was closed.

11. In subparagraph 3 of paragraph 2 of the Original Complaint, Complainant alleges that the Company does not have a "formal due process system" set up to address customers' concerns. In answer thereto, the Company states that it is unaware what Complainant believes would constitute a formal due process system. The Company states that it has adopted and implements customer service procedures that comply with 4 CSR 240-13.040, 4 CSR 240-13.045 and 4 CSR 240-13.070 regarding customer inquiries, disputes and complaints. However, the Company acknowledges that the Company cannot always offer the resolution preferred by the customer.

12. In subparagraph 4 of paragraph 2 of the Original Complaint, Complainant alleges, "[p]oor customer service—extremely poor." The Company denies the allegation of subparagraph 4.

13. In subparagraph 5 of paragraph 2 of the Original Complaint, Complainant alleges, "[c]o. is monopoly." The Company denies the allegation of subparagraph 5 as stated, but admits that the Company is a natural monopoly regulated by the Commission in lieu of competition.

MOTION TO DISMISS ORIGINAL COMPLAINT

14. The Original Complaint fails to allege a violation by the Company of any particular statute, rule, order or decision within the Commission's jurisdiction, which alleged violations, per 4 CSR 240-2.070(1), (2) and (4) and 4 CSR 240-13.070(2), are the bases upon which a person may file a formal or informal complaint with the Commission. As such, the Original Complaint fails to state a claim for which relief can be granted. In addition, Complainant failed to supplement the Original Complaint with additional facts, law or requests for relief, even though the Commission's Order specifically permitted him to do so. As such, the Original Complaint should be dismissed by the Commission for failure to state a claim on which relief may be granted, as authorized under 4 CSR 240-2.070(7).

15. Further, as to Complainant's specific requests for relief, they cannot be granted. Complainant makes three requests related to the Company's business practices: "Better way of notifying people about past due accts w/o threatening them[;]...Begin giving phone #'s of people [] besides [customer service]—like Administration[; and] Work on customer service—very poor—extremely poor." While the Commission has the authority to regulate the Company, the Commission has long acknowledged that it does not have the authority to *manage* the Company. "The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. Those powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs its legal duty, complies with lawful regulation, and does no harm to public welfare." *State ex rel. Harline v. Public Serv. Com'n*, 343 S.W.2d 177, 182 (Mo. App. 1960). Complainant has not plainly alleged, and the Company denies any implied allegation, that the Company's billing or customer service practices violate any statute, rule, order or tariff. In fact, the Company has adopted and implemented billing practices and customer service procedures that comply with the Commission's Rules. As such, the Company has the right to manage its affairs and to determine how it will conduct its business, and the Commission does not have a general power of management that it could exercise by ordering the Company to give out particular administrative employees' phone numbers or to re-word notices to which certain customers take offense.

16. Complainant also wants "that amount credited back" referring, Company infers, to the two hundred to three hundred dollars he alleges was paid by him for electric utility service allegedly stolen by a neighbor through use of an extension cord, because Complainant further alleges he, "[d]idn't know was [it] being done[.]" In other words, Complainant wants the Company to credit money paid for electric utility service the Company provided to his service address that was stolen by a neighbor. This is relief the Commission cannot grant. The Commission is a regulatory body of limited jurisdiction having only such powers as are conferred by statute, is not a court, and has no power to award damages or pecuniary relief. *American Petroleum Exchange v. Public Service Commission*, 172 S.W.2d 952, 955 (Mo. 1943); *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466 (Mo. App. W.D. 1980). Further, compelling the Company to forfeit and pay over amounts paid to the Company for

services that were rendered to Complainant at his service address and charged pursuant the Company's tariffs is confiscatory and would deprive the Company of its property in violation of its due process rights. *Straube v. City of Bowling Green*, 277 S.W.2d 666, 671 (Mo. 1950).

17. Because the Company has the right to manage its own affairs and conduct its business operations as it chooses so long as it complies with applicable statutes, rules, tariffs and orders, and because the Commission cannot enter a monetary judgment against the Company or compel it to forfeit amounts paid to it for services it rendered and charged for pursuant to its tariff, the Company believes it is proper for the Commission to dismiss the Original Complaint for lack of jurisdiction and for failure to state a claim for which relief can be granted by the Commission. The Commission may do so on its own motion, or on the motion of any party, after notice. 4 CSR 240-2.070(7).

WHEREFORE, Ameren Missouri respectfully requests that the Commission issue an order dismissing the Original Complaint, or in the alternative, denying Complainant's requests for relief or, in the alternative, setting the matter for hearing.

ANSWER TO NEW COMPLAINT

18. Any allegation of the New Complaint not specifically admitted herein by the Company should be considered denied.

19. In response to the third paragraph of the New Complaint, the Company admits: that as of May 23, 2013, Complainant had an outstanding balance for electric utility service of \$***.**. The Company denies the remainder of the allegations of the third paragraph. In further answer, the Company offers the following chronology that details how Complainant's balance for electric utility services reached \$***.**, in order to specifically rebut Complainant's allegations that he has kept his agreement with the Company but has been overcharged, such that he now owes \$***.** "even after [he has] been paying every month":

a. The Company sent Complainant a bill on November 21, 2012, which included a prior unpaid balance of \$***.**, a late payment charge of \$*., and \$**.** for electric utility service from October 21, 2102 to November 20, 2012, for a total of \$***.**, due December 5, 2012.

b. On December 5, 2012, an energy assistance agency called and pledged to pay \$***.** in winter ECIP funding and \$***.** in LIHEAP funding towards the past-due

portion of Complainant's balance (\$***.**). A budget billing plan was established for Complainant's account, in the original monthly amount of \$**.**.

c. On December 21, 2012, the Company received payment on the \$***.** LIHEAP pledge.

d. The Company sent Complainant a bill on December 21, 2012, which included a prior unpaid balance of \$***.** (\$***.** less the \$***.** LIHEAP payment), a late payment charge of \$**., and charges for electric utility service from November 20, 2012 to December 20, 2012 netted to the \$**.** budget bill amount, for a total of \$***.**, due January 8, 2013. The bill also included a notice that the \$***.** LIHEAP grant had been received, but that the \$***.** winter ECIP grant was still pending.

e. On account of the LIHEAP payment and winter ECIP pledge made towards Complainant's account, on January 11, 2013, the Company sent Complainant a letter advising that a Cold Weather Rule payment agreement had been established allowing Complainant to pay the preexisting arrears of \$***.** (\$***.** less the pending \$***.** winter ECIP pledge), in twelve monthly installments (eleven installments of \$**.** and a final installment of \$**.**), beginning with the next billing cycle. The letter advised Complainant that he must pay his current amount due for utility service during each month of the payment agreement, that a failure to pay any amount less than the full amount due before the due date would result in a default of the payment agreement, and that upon default, the entire balance of the agreement would be billed to his account.

f. On January 22, 2013, the Company received a \$**.** payment towards the bill that was due January 8, 2013.

g. The Company sent Complainant a bill on January 24, 2013, which included a prior unpaid balance of \$***.** (\$***.**, less the \$**.** payment, and less the \$***.** to be paid under the Cold Weather Rule payment agreement), charges for electric utility service from December 20, 2012 to January 23, 2013 netted to the \$**.** budget bill amount, and a payment agreement amount of \$**.**, for a total of \$***.**, due February 6, 2013. A notice on the bill advised that failure to pay the bill in full could result in removal from budget billing. Another notice on the bill advised that the \$***.** winter ECIP grant was still pending.

h. The Company received the \$***.** pledged amount on January 30, 2013, and it was applied toward the \$***.** due on February 6, 2013. Complainant failed to pay the remaining \$**.** due (\$***.** less \$***.**) by the date his February bill issued, and as a result he defaulted on his payment agreement.

i. The Company sent Complainant a bill on February 22, 2013, which included a prior unpaid balance of \$***.** (the remaining \$**.** plus the \$***.** balance of the defaulted payment agreement), a \$**.** late payment charge, and charges for electric utility service from January 23, 2013 to February 21, 2013 netted to the \$**.** budget bill amount, for a total of \$***.**, due March 7, 2013. The bill included a notice that the payment agreement had defaulted. It also included a notice that the \$***.** energy grant had been received.

j. On March 7, 2013 the Company received a \$**.** payment toward the \$***.** that was due that day.

k. The Company sent Complainant a bill on March 25, 2013, which included a prior unpaid balance of \$***.** (\$***.** less the \$**.** payment), a \$**.** late payment charge, and charges for electric utility service from February 21, 2013 to March 24, 2013 netted to the \$**.** budget bill amount, for a total of \$***.**, due April 8, 2013. The bill included a notice that failure to pay the balance in full would result in removal from budget billing.

l. On April 8, 2013, the Company received a \$**.** payment toward the \$***.** that was due that day.

m. Per the Company's tariffs, in April, the fourth month of Complainant's budget billing arrangement, the Company adjusted the budget billing amount upward to \$**.**, based on Complainant's actual electric utility usage.

n. The Company sent Complainant a bill on April 24, 2013, which included a prior unpaid balance of \$***.** (\$***.** less the \$**.** payment), a \$**.** late payment charge, and charges for electric utility service from March 24, 2013 to April 23, 2013 netted to the \$**.** budget bill amount, for a total of \$***.**, due May 7, 2013. The bill included a notice that failure to pay the balance in full would result in removal from budget billing.

o. On May 20, 2013, the Company received a \$**.** payment toward the \$***.** that had been due on May 7, 2013.

p. Each of the December, January, February, March and April bills sent to Complainant also included a bill supplement that advised Complainant of the exact amount (the “budget bill balance behind”) by which the actual cost of his electric utility service during the budget billing plan had exceeded the budget bill amounts billed to Complainant.

q. In May 2013, because Complainant had carried forward (not paid) the prior balance on his last three months’ electric utility bills, his account was removed from budget billing. The Company sent Complainant a bill on May 23, 2013, which included a prior unpaid balance of \$***.** (\$***.** less the \$**.** payment), a \$**.** late payment charge, \$**.** for electric utility service from April 23, 2013 to May 22 2013, and a budget adjustment charge (reflecting the amount by which the actual cost of his electric utility service exceeded the budget bill amounts billed) of \$***.**, for a total of \$***.**, due June 6, 2013. On June 14, 2013, the Company received a \$**.** payment.

20. Ameren Missouri denies the allegations of the fourth paragraph of the New Complaint.

21. Ameren Missouri denies the allegation of the fifth paragraph of the New Complaint to the effect that the Company treats its customers cruelly. Ameren Missouri is without information sufficient to form a belief about the remainder of the allegations of the fifth paragraph and therefore denies the same.

22. While the New Complaint presents a number of general complaints about the Company, Complainant does not make any specific request for relief. As such, the New Complaint should be dismissed by the Commission for failure to state a claim on which relief may be granted, as authorized under 4 CSR 240-2.070(7).

23. The following attorneys should be served with all pleadings in this case:

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WHEREFORE, Ameren Missouri respectfully requests that the Commission issue an order dismissing Complaint's New Complaint, or in the alternative, setting the matter for hearing.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer was served on the following parties via electronic mail (e-mail) or via certified and regular mail on this 15th day of July, 2013.

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