

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

Anita Wessling,)	
Complainant,)	
)	
vs.)	Case No: EC-2018-0089
)	
Union Electric Company, d/b/a)	
Ameren Missouri,)	
Respondent.)	

ANSWER, AFFIRMATIVE DEFENSES AND MOTION TO DISMISS

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

Procedural Background

1. On September 28, 2017, Anita Wessling (“Complainant”) filed a formal complaint against the Company.
2. On September 28, 2017, the Commission issued its Notice of Contested Case and Order (“Order”), ordering respondent, Ameren Missouri, to file an answer no later than October 30, 2017. In its Order, the Commission also offered the parties mediation to resolve the Complaint as an alternative to the formal, evidentiary hearing procedure.
 1. On October 13, 2017, the Company filed its Request for Mediation and For Motion to Stay, to which Complainant agreed, and Staff did not object.
 2. On October 24 2017, the Commission issued its Order Granting Request for Mediation and Suspending Schedule, granting the relief requested by Ameren Missouri, including suspending the procedural schedule pending mediation.
 3. On December 13, 2017, Complainant and the Company mediated the Complaint.
 4. On December 21, 2017, the mediator appointed by the Commission filed his Notice Regarding Mediation, reporting that at mediation on December 13, 2017, the parties were unable to reach a mutual resolution of the issues contained in the Complaint, such that the matter must proceed to an evidentiary hearing.

5. On January 9, 2018, by its Order Setting Initial Procedural Schedule, the Commission ordered the Company to file its answer to the Complaint no later than January 23, 2018.

Answer

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

7. The Company admits the allegations of paragraph 1 of the Complaint.

8. The Company admits the allegations of paragraph 2, and by further answer states that the Company currently provides residential electric (1M) service (“service”) to Complainant at **_____** (herein, “**_____**”).

9. The Company admits the allegations of paragraph 3, and by further answer the Company states that the location of the Company’s principal offices and its mailing address for purposes of this proceeding are: 1901 Chouteau Ave., MC-1310, P.O. Box 66149, St. Louis, Missouri 63166-6149.

10. The Company admits the allegations of paragraph 4.

11. In answer to paragraph 5, the Company admits that Complainant seeks relief in the amount of \$**____**, but, denies that Complainant is entitled to said relief.

12. In answer to paragraph 6, and as set forth more fully below, the Company states that Complainant is not entitled to the relief requested.

13. The remainder of the Complaint is a typewritten attachment to the Complaint, entitled “Anita Wessling vs. AmerenUE Supplement to Complaint dated 9-21-17”, consisting of one numbered paragraph, which for purposes of clarity the Company will refer to as “Supplement Paragraph 7,” and five unnumbered paragraphs, which for purposes of clarity the Company will refer to as though sequentially numbered 8 through 13.

14. In answer to Supplement Paragraph 7, the Company denies that it has violated any rules, but, admit that the text following the words, “Rules violated:” include reasonably accurate excerpts from the Company’s Commission-approved tariffs, namely, its Tariff Sheet No. 105, J. Continuity of Service, and excerpts from 4 CSR 240-23.030 Electrical Corporation Vegetation

Management Standards and Reporting Requirements, subsection (3) Maintenance Cycle, subsections (A) and (B) thereof.

15. The Company denies the allegations of paragraph 8.

16. In answer to paragraph 9, the Company admits that an outage on its Droste Substation 544, Circuit 56 (“circuit 56” or “the circuit”), providing service to **_____** occurred on June 15, 2017. The Company denies the allegation that at the time of the outage “[t]he sky was clear with no signs of rain.” The Company is without information sufficient to admit or deny the remaining allegations of paragraph 8 and therefore denies the same. In further answer, the Company states as follows: At 4:58 a.m. the Company received an automatic report of the outage, which occurred on a rear lot line on private property in a residential subdivision near **_____**. At the time of the outage, it was raining. At 4:59 a.m., Complainant also called the Company to report the outage. At 5:15 a.m., the Company placed an automated call to Complainant because her AMR reported her power as off, and she was given the opportunity to confirm. At the early hour when the outage occurred, no troublemen were on duty, so in response to the outage the Company issued a call-out, for a troubleman to report for duty and investigate the outage. A troubleman accepted the call-out, reported for duty, investigated the outage and found a limb on the line. The troubleman removed the limb, replaced a fuse and service was restored. At 7:15 a.m., the Company placed an automated call to Ms. Wessling to give her the opportunity to confirm that her power was restored.

17. In further answer to paragraph 9, the Company states that on June 28, 2017 and July 18, 2017, Complainant made claims against the Company for \$**____** in damages related to the June 15, 2017 outage. On August 3, 2017, the Company’s third-party claims administrator, Corporate Claims Management, Inc. (“CCMI”), advised Complainant in writing that her claim had been denied.

18. In answer to paragraph 10, the Company admits that Complainant filed an informal complaint, C201800356, on August 25, 2017. The Company denies the remaining allegations of paragraph 10, as stated. In further answer, the Company admits that its St. Charles District Vegetation Management Supervisor, John Ebeling, visited **_____** on August 31, 2017, conducted a vegetation management patrol of a portion of circuit 56 along

Complainant's and neighboring properties, reported to Complainant that he had found a broken limb hanging above the transformer on the primary that provides service to **_____, showed her the limb, and advised that it would need to be removed. The Company also admits that Mr. Ebeling advised Complainant that he believed the power may need to be cut in order to remove the limb, and that no notice was given. After his visit to **_____, Mr. Ebeling contacted a troubleman about removing the limb. The troubleman was able to remove the limb safely without having to cut the power, thereby avoiding an outage. For that reason, no notice of a pending planned outage was provided to Complainant.

19. In answer to paragraph 11, the Company admits that an outage occurred on the evening of September 9, 2017. In further answer, the Company states as follows. The outage was first reported at 7:22 p.m. on September 9, 2017. A troubleman responded to the outage and discovered an overhead malfunction (blown fuse/switch) and began work to correct the problem. At 8:10 p.m., the Company placed an automated call to Complainant because her AMR reported her power as off, and she was given an opportunity to confirm. At 9:57 p.m., Complainant also called to report the outage. The troubleman required assistance in replacing the switch and another troubleman was called out. About six hours later, around 1 a.m. on September 10, 2017, the power was restored. At 7:01 a.m. the Company placed an automated outbound call to Complainant and advised that power had been restored and the cause of the outage as wire damage. At 7:16 a.m. the Company placed an automated outbound call to Complainant advising that power had been restored and she was given the opportunity to confirm. The Company is without information to admit or deny the remaining allegations of paragraph 11 and therefore denies the same.

20. The Company denies the allegations of paragraph 12.

21. In further answer, the Company states as follows: On October 17, 2017, Complainant filed a note in this Complaint entitled, "Update for Case No. EC-2018-0089." She reported that "another power outage was experienced October 17, 2017 at 8:10 a.m. At that time, no adverse weather conditions were experienced in the area." In answer thereto, the Company states that on October 17, 2017 at 8:18 a.m., Complainant called the Company to report that her power was off and that she had heard a loud pop. She also reported experiencing

frequent outages. At 8:30 a.m. the Company placed an automated call to Complainant, because her AMR reported her power as off, and she was given an opportunity to confirm. A troubleman was sent to investigate the outage and found that a squirrel on the circuit had caused the fuse to blow. The troubleman replaced the fuse. At 10:01 a.m. the Company placed an automated outbound call to Complainant advising that power had been restored and she was given the opportunity to confirm.

Affirmative Defenses

22. The Company is not liable for service interruptions resulting from conditions beyond its reasonable control. Union Electric Company Electric Service Tariff Sheet No. 105, J. Continuity of Service. The Commission itself has recognized that reliability can be affected by conditions beyond an electrical corporation's reasonable control, specifically including tree density, geography, and observed weather. 4 CSR 240-23.010(11). As more fully set forth in paragraph 24, below, the tree density and geography of the circuit serving **_____** make that circuit particularly prone to outages due to tree damage, and outages of potentially longer duration than other circuits. During Major Event Days, tree damage is more likely to occur, which increases the likelihood of outages on circuits in heavily treed areas, either at the time of the storm or subsequently. Two of the three extended outages that Complainant experienced in 2017 occurred during Major Event Days.

23. The Company has made all reasonable efforts to provide service to **_____** on an adequate and continuous basis, as required of it per Union Electric Company Electric Service Tariff Sheet No. 105, J. Continuity of Service. In particular, the Company has timely performed the system inspections, as specified in the Electrical Corporation System Inspection Cycles set forth in 4 CSR 240-23.020, for circuit 56, which serves **_____** and which is classified as urban. For example, the most recent 4-year cycle visual inspection of the underground equipment on the circuit 56 feeder serving **_____** was completed in November of 2017. The 12-year cycle detailed inspection of circuit 56 is scheduled for the third quarter of 2018. The Company has also performed the visual inspections and routine vegetation management on circuit 56 required by 4 CSR 240-23.030(3) and (9)(A)5, with the last mid-cycle patrol of circuit 56 completed on November 1, 2014, and the last maintenance trimming of

circuit 56 completed on July 1, 2016. As detailed in paragraph 18 above, the Company also conducted an additional vegetation management patrol of the circuit serving Complainant at the end of August, 2017, due to her informal complaint reporting frequent outages.

24. In further answer, the Company states that since the filing of the Complaint, the Company closely investigated the performance of the circuit serving **_____. Two Company engineers met with Complainant at **_____** to personally observe the service line and determine whether any modifications or improvements were indicated. As to the outages, the frequency of outages at **_____** in recent months is similar to the frequency of outages experienced by customers in the Company's St. Charles District (within which **_____** is located) and by Ameren Missouri customers as a whole. The Company acknowledges that the average *duration* of the outages experienced at **_____** is, however, longer than the average duration of outages experienced by other customers in the St. Charles District, and by Ameren Missouri customers as a whole. The Company concludes that the frequency and duration of outages at **_____** are attributable in large measure to circuit 56's location, terrain and vegetation, and **_____** position at the end of a feeder off of the circuit. In short, for a considerable distance the circuit is a "back lot" or "rear lot" line that runs through private property (residential backyards) and along a creek and steep ravine, areas heavy with mature trees and vegetation. Despite the Company's timely completion of the maintenance trimming and mid-cycle vegetation patrols required by the Commission, the physical features of circuit 56 simply makes the line particularly prone to outages due to limb contact during stormy, windy, icy or hot conditions, due to lightning, and due to animal contact, and because access is challenging, to prolonged outages in the case of fallen limbs, broken trees, blown fuses and actual pole or conductor damage. These challenges of circuit 56 notwithstanding, in view of Complainant's outage history and Complainant's and the Company's desire to improve the reliability of Complainant's service, the Company has committed to taking the following measures to attempt to improve the reliability of its Droste Substation 544 circuit 56: the mid-cycle vegetation management patrol scheduled for the 3rd quarter of 2018 was accelerated and completed in mid-January 2018, and the Company installed S&C Trip Savers

reclosing devices to help reduce the number of extended outages caused by momentary tree contacts.

25. Complainant does not want to be held responsible for a portion of the service provided by the Company to her residence at **_____, because she alleges an outage prevented her from doing things she had intended to do to reduce the amount of service taken at her residence while she was away traveling, such as switching off lights before she left, and adjusting her thermostat. However, an outage would not have prevented Complainant from turning light switches to an off position, unplugging electronics, or taking other measures such as having another person, in her absence, switch the lights off and adjust her thermostat for her after service was restored. Complainant had other options to accomplish the energy savings measures she intended to implement before she left. Regardless, service *was* provided to **_____** while Complainant was away traveling, and there is no applicable outage-based exception (or other exception) to the tariff under which she is responsible to pay for that service. “In accepting service provided by Company, a customer agrees to comply with all applicable rules and regulations contained herein and any subsequent revisions or additions to such rules which are approved by the Commission.” Union Electric Company Electric Service Tariff Sheet No. 96, General Rules and Regulations, I. General Provisions, A. Authorization and Compliance. As a customer of the Company, Complainant was obliged under the Company’s tariffs for electric utility service to, “[b]e responsible for payment of *all electric service used on customer's premises* and for all requirements of the provisions of the Service Classification under which the electric service is provided, *until such time as customer notifies Company to terminate service.*” Union Electric Company Electric Service Tariff Sheet No. 103, General Rules and Regulations, I. General Provisions, G. Customer Obligations, 7. Since Complainant did not notify the Company to terminate service, she is responsible for the serviceshe received.

Motion to Dismiss

26. At paragraphs 6 and 12 of the Complaint, Complainant seeks, “relief in the amount of \$**____** for actual and other damages related to my comfort, safety, and security.” The Company infers that Complainant is requesting that the Commission order the Company to pay Complainant \$**____** in damages. The Commission is a regulatory body of limited

jurisdiction having only such powers as are conferred by statute, and cannot require a refund, order damages or grant equitable relief. *State ex. rel. GS Technologies Operating Co., Inc. v. Public Service Comm’n*, 116 S.W.3d 680, 695 (Mo. App. 2003); *American Petroleum Exchange v. Public Service Comm’n*, 172 S.W.2d 952, 956 (Mo. 1943).

27. At paragraph 9 of the Complaint, Complainant alleges that due to an outage at a time when Complainant left home for travel, she was unable to save electric costs by, “reducing thermostats and turning lights off ” before she departed, “resulting in an electric bill approximately \$**__** higher than it should have been.” The Company infers from the statement that Complainant wants the Commission to order the Company to credit Complainant for \$**__** worth of the electric service actually provided by the Company to **____** during Complainant’s travels, essentially not charging Complainant. As noted above, the Commission cannot grant equitable relief. *State ex. rel. GS Technologies Operating Co., Inc. v. Public Service Comm’n*, 116 S.W.3d 680, 695 (Mo. App. 2003); *American Petroleum Exchange v. Public Service Comm’n*, 172 S.W.2d 952, 956 (Mo. 1943). Further, the Company has a legal duty to charge Complainant for the service she received at her residence during a given time period, whether she would have preferred to use less service during that period, or not. Subsections 393.130.2 and .3 RSMo expressly prohibit electric utilities from directly or indirectly charging, demanding, collecting or receiving less compensation for electric service than the utility charges any other person for a like service under the same or substantially similar circumstances or conditions, and prohibit the utility from granting any undue or unreasonable preference or advantage to any person. Because the Company charges other residential customers for electric utility service, it must also charge Complainant for the electric service provided to her.

28. When the Commission cannot grant the relief a complainant requests, it is proper for the Commission to grant a motion to dismiss. *City of O’Fallon v. Union Electric Co.*, 2015 Mo. App. Lexis 454, *11, *16 (April 28, 2015) (“the Commission's powers are limited to those conferred by statute either expressly or by clear implication as necessary to carry out the powers specifically granted” and where the complainant could provide, “no statutory authority for the Commission to grant the requested relief[,]” the complaint was properly dismissed).

WHEREFORE, Ameren Missouri respectfully requests that the Commission issue an order dismissing the 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, Affirmative Defenses and Motion to Dismiss was served on the following parties via electronic mail (e-mail) on this 23rd day of January, 2018.

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Anita Wessling

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/s/ Sarah E. Giboney
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