

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

Stella Lucy,)	
)	
Complainant,)	
)	
vs.)	Case No: EC-2018-0376
)	
Union Electric Company, d/b/a)	
Ameren Missouri,)	
Respondent.)	

**ANSWER, AFFIRMATIVE DEFENSES AND MOTION TO DISMISS CLAIM
FOR DAMAGES**

COMES NOW, Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), and for its Answer, Affirmative Defenses and Motion to Dismiss Claim for Damages states as follows.

ANSWER

1. On June 15, 2018 Complainant initiated this proceeding against the Company, pertaining to residential electric (1M) service (“service”) provided to Complainant at *** [REDACTED] [REDACTED] *** (the “Premises”).
2. Any allegation not specifically admitted herein by the Company should be considered denied.
3. The Company admits the allegations of paragraph 1 of the Complaint.
4. The Company admits the allegations of paragraph 2 of the Complaint.
5. The Company admits the allegations of paragraph 3 and in further answer states that its mailing address for purposes of this proceeding are: 1901 Chouteau Ave., MC-1310, P.O. Box 66149, St. Louis, Missouri 63166-6149.
6. The Company admits the allegations of paragraph 4.
7. The Company admits that Complainant asserts that the amount in dispute is \$*** [REDACTED] ***, but denies that Complainant is entitled to an award of damages for the amount in dispute.

8. In lieu of completing the remainder of Commission's complaint form, Complainant attached three typewritten pages including factual allegations. In making its answer to the allegations in the three pages, the Company will excerpt the first few words of each paragraph or block of allegations, for reference.

9. "On Oct. 4 2017." The Company denies the allegations of this paragraph as stated. In further answer the Company states as follows.

a. In the immediate vicinity of the Premises, Hendricks Road runs in a north-south direction.

b. Prior to October 4, 2017, the Company provided service to all its customers along Hendricks Road, including Complainant, via a single-phase feeder along the road.

c. In March of 2017, Complainant's next-door neighbor on Hendricks Road immediately to the south of the Premises (the "neighbor") requested, and the Company agreed to construct and provide, 3-phase service to the neighbor's machine shop on his property.

d. To provide 3-phase service to the neighbor, the Company has reframed certain structures along Hendricks Road to the south of the neighbor's premises and constructed a new dead-end structure along Hendricks Road just south of the neighbor's driveway, to carry the original single phase as well as two additional phases. The two additional phases are not physically connected to and do not cross the original single phase. At the dead-end structure the 3-phase transitions from overhead underground, and runs westward along the south side of the neighbor's driveway and terminates at the neighbor's machine shop, while from the dead-end structure the original single phase continues above ground northward along Hendricks Road.

e. The Company has not in any way modified the original single-phase feeder as it continues north along Hendricks Road from the new dead-end structure. From the new dead-end structure the single phase spans to a pole at the end of Complainant's driveway (pole #1) and terminates on the pole to allow for installation of a normally open switch. The existing single phase then continues northward along Hendricks Road from pole #1 past the Premises exactly as it did prior to when the Company brought 3-phase service to the neighbor to the south.

f. Complainant's service is provided via a single-phase tap that begins at a hot line clamp on the feeder near pole #1, spans overhead westward to a pole on Complainant's Premises at a midpoint along Complainant's driveway (pole #2), then spans overhead to a transformer on another pole on Complainant's Premises near Complainant's house (pole #3). From the transformer to the customer's meter base, Complainant's service is supplied through underground cable owned by the Company. From Complainant's side of the meter, the service is supplied through Complainant-owned wires running to a breaker panel in Complainant's garage.

g. On October 4, 2017, the Company was in the process of making the improvements necessary to bring 3-phase service northward along Hendricks Road to the neighbor. So that the load at the substation would be balanced once all three phases to the neighbor were energized, the Company needed to first relocate Complainant's tap from the south side of pole #1 to the north side of pole #1. A Company representative met with Complainant at the Premises and advised her that her service would be temporarily disconnected while the work was performed. The Company completed the work in approximately ten minutes, after which it put the hot line clamp back on the single-phase feeder, re-energizing Complainant's tap. The Company made no changes to the wiring or equipment serving Complainant.

h. The Company crew was leaving the work site when Complainant approached and flagged them down. Said told them she smelled smoke and had no power. The crew followed Complainant into her garage and inspected the breaker panel located there, to see if they could assist Complainant in determining what had happened.

i. The crew observed that Complainant had a backup generator that provided backup electrical service to her Premises via a transfer panel added to the electrical panel in her garage. When the crew inspected the panel, the crew observed that the transfer panel switch was charred. The crew concluded that the transfer switch had failed to transfer the load at the Premises back to Company service when the electric service was restored. The crew called Complainant's Generac serviceman, who told them what to do to bypass the switch. The crew bypassed the switch and restored Complainant's service from the tap.

j. After service was restored, the crew used a voltmeter to check the voltage at Complainant's transformer. The voltage was normal—120 volts each phase to ground and 240 volts phase to phase.

k. In the Complaint, Complainant suggests that there was a surge in voltage at the Premises and that the surge occurred because one of the other phases in the new 3-phase service “got over into [Complainant's] lines” or “was hooked up wrong.” Complainant further alleges that the surge damaged electrical wires, the breaker panel, lighting and appliances at the Premises sometime between October 4, 2017 and October 19, 2017. As noted above, however, the 3-phase service that ends at Complainant's neighbor's premises is physically separate from Complainant's single-phase service and the two additional phases of the 3-phase service do not cross the single-phase that serves Complainant. In other words, it is not physically possible for the additional phases to “get over into” the feeder, or the tap that serves Complainant. In addition, several other customers along Hendricks Road receive single-phase service via the same single-phase feeder as Complainant. Had the 3-phase “been hooked up wrong” in a way that affected the single-phase feeder, other customers on the single-phase feeder would also have experienced problems. However, no other customers along the feeder have reported any such problems. Finally, although work on the 3-phase line was performed on October 4, 2017, the Company did not energize the 3-phase lines until October 9th, 2017.

l. Complainant admits that on October 4, 2017, after the Company disconnected her service, she heard her generator come on, then heard it go back off, and that after the generator went off her power did not come back on. These facts, together with the charred transfer switch that had to be bypassed in order to restore Company service to Complainant's Premises, the successful restoration of service after bypassing the switch, the normal voltage readings after bypass and restoration of service, the absence of any reports of problems from other customers receiving service via the same single-phase feeder, and the fact that the additional phases of the 3-phase line were not energized until October 9th, all lead the Company to conclude that a malfunction in Complainant's generator or transfer switch, rather than crossed wires or Company-supplied overvoltage, is the cause of the damages Complainant reports to have sustained.

10. “Oct 11.” The Company is without information sufficient to admit or deny the allegations regarding Complainant’s furnace and therefore denies the same.

11. “Oct 19.” The Company is without information sufficient to admit or deny the allegations regarding the lights, wires and breaker panel in Complainant’s shop and therefore denies the same.

12. “Oct 23.” The Company denies the allegations as stated. In further answer, the Company states that on October 23, 2017, a Company troubleman was dispatched to Complainant’s Premises to follow-up on a report that Complainant’s generator was not transferring. The troubleman checked the voltage at Complainant’s transformer, and it was normal. The troubleman also confirmed that the connection at the transformer was good. The troubleman left a doorhanger indicating the result of his inspection. The Company specifically denies that any Company employee theorized to Complainant that, “it sounds like one line of the 3 phase line got over into [Complainant’s] lines.” The Company also specifically denies that the troubleman “went back to the pole at the road and worked on it for a couple of hours.” In further answer the Company states that troubleman arrived at the Premises at 1:59 p.m. and completed the inspection at 2:24 p.m.

13. “12/3/2017.” The allegation states, “These are the bills we paid to get things back to order before the wires was hooked up wrong. More bills to come.” However, Complainant did not attach copies of any bills or summarize any bills. To the extent an answer to the allegations regarding bills and wires being hooked up wrong is required, the Company denies the allegations.

14. “idem 8.” The Company admits that Complainant filed a claim for damages with Corporate Claims Management, Inc. (“CCMI”), the third-party claims administrator for the Company, through one of its account managers Margaret Stringer; that the claim was denied; that Complainant left a message for Ms. Stringer with another CCMI employee Meagan; and CCMI sent a second denial letter to Complainant. The Company denies that Complainant and Ms. Stringer first spoke on October 4, 2017 and in further answer states that Complainant’s first contact with CCMI was on October 5, 2017. The Company also admits that Complainant filed her informal complaint with the Commission on March 14, 2018 and that Mr. Cedric Cunigan of the Commission Staff investigated the informal complaint. The Company is without information

sufficient to admit or deny the remainder of the allegations of this paragraph and therefore denies the same.

15. “idem 6.” The Company admits that Complainant has a 400 amp meter base and that the Company supplies service to Complainant through a 320 amp meter, which is standard for a customer requesting 400 amp service. The Company is without information sufficient to admit or deny whether 200 amps go to the generator running Complainant’s south panel and 200 go to a north panel for Complainant’s shop and other building because the Company cannot verify how Complainant’s lines are fed to Complainant’s buildings, and therefore denies the same. The Company denies the allegation that a Company subcontractor connected 3-phase service to any electric facilities belonging to Complainant. The Company is without information sufficient to admit or deny the remaining allegations concerning damages, repairs or the total cost of repairs and therefore denies the same.

AFFIRMATIVE DEFENSES

16. In further answer, the Company states that its tariffs filed with and approved by the Commission have the force and effect of law. Tariff Sheet 133, I. General Rules and Regulations Section C. Application for Service, provides in part, “All electric service will be provided subject to the provisions of the Company’s tariffs applicable to the service requested and these rules and regulations[.]” Likewise, Tariff Sheet 126, I. General Rules and Regulations Section A. Authorization and Compliance states, in part, “[i]n accepting service provided by Company, a customer agrees to comply with all applicable rules and regulations contained [in the Electric Service Tariff].” In particular, Tariff Sheet 138, I. General Rules and Regulations, Section J. Continuity of Service states, in part, “The Company will not be responsible or liable for damages to customer’s apparatus resulting from failure or imperfection of service beyond the reasonable control of the Company. In cases where such failure or imperfection of service might damage customer’s apparatus, customer should install suitable protective equipment.” Although the Company denies that there has been any failure or imperfection in the service it has provided to Complainant, to the extent any such failure or imperfection may have occurred, it is Complainant’s duty to install suitable protective equipment to protect Complainant’s apparatus from damage. The facts suggest, however, that any variation in voltage at the Premises that may have resulted in damage to Complainant-owned wires, breaker panel, lighting or appliances was caused by a malfunction of Complainant’s generator or generator transfer switch, which

Complainant-owned equipment was and is out of the Company's control. "The utilities will not be held responsible for variations in service voltage at a customer's premises caused by... causes beyond the utility's control." 4 CSR 240-10.030(23)(D).

MOTION TO DISMISS CLAIM FOR DAMAGES

17. Although it is not perfectly plain in the Complaint, since Complainant alleges in paragraph 5 that the amount in dispute is \$***[REDACTED]***, and alleges in the attached "idem 6" that the Company is responsible for damages that resulted in repairs totaling \$***[REDACTED]***, the Company infers that Complainant requests as relief an order from the Commission that the Company pay Complainant \$***[REDACTED]*** in damages. The Commission lacks the authority to grant Complainant that relief. This is because 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). Because the Commission cannot grant the relief requested, it is appropriate for the commission to dismiss, specifically, the claim for damages.

WHEREFORE, Ameren Missouri respectfully requests that the Commission:

- a) enter an order dismissing Complainant's claim against the Company for damages in the amount of \$***[REDACTED]***, and
- b) setting the matter of whether the Company has violated a statute, tariff, Commission regulation or Commission order, 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 Claim for Damages was served on the following parties via electronic mail (e-mail) or U.S. Mail on this 16th day of July, 2018.

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