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August 17, 2001

FILED

AUG 21 2001

The Honorable Dale Hardy Roberts
Secretary and Chief Regulatory Law Judge
Missouri Public Service Commission
Post Office Box 360
Jefferson City, MO 65102-0360

Missouri Public
Service Commission

EC-2002-112

Re: Sterling Moody, Sterling's Market Place and Sterling's Market Place I v.
AmerenUE, Union Electric Co. d/b/a AmerenUE and Mike Foy, Leroy
Ettling, and Sherry Moshner, as employees

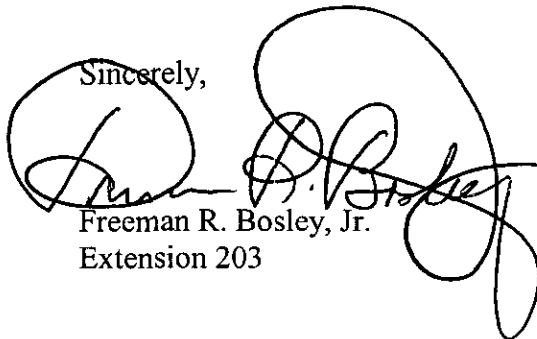
Dear Judge Roberts:

Enclosed for filing, please find the original and fourteen (14) copies of our
complaint in the above-styled cause.

Please feel free to contact me if there are any questions regarding this filing.

Thank you for your assistance.

Sincerely,



Freeman R. Bosley, Jr.
Extension 203

FRB/krt
Enclosures

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

AUG 21 2001

Missouri Public
Service Commission

STERLING MOODY, STERLING'S MARKET PLACE,)
And STERLING'S PLACE, I)

Complainants,)

v.)

AMERENUE, UNION ELECTRIC CO. d/b/a)
AMERENUE; and MIKE FOY, LEROY ETTLING,)
And SHERRY MOSHNER, as employees of)
AMEREN UE,)

Respondents.)

Case No. EC-2002-112

COMPLAINT

COME NOW Sterling Moody of 11363 Tobagon, Florissant, Missouri 63143 Sterling's Market Place AND Sterling's Market Place I, 8350 N. Broadway, St. Louis, Missouri 63147 ("Complainants"), by and through counsel, Freeman R. Bosley, Jr., and for their Complaint, pursuant to § 386.390 RSMo. 2000 and 4 CSR 240-2.070(3), respectfully state that:

1. Respondent Union Electric Co. d/b/a AmerenUE ("AmerenUE" or "Company") is a corporation duly organized and existing under the laws of the State of Missouri, with its principal offices located at 1901 Chouteau Avenue, St. Louis, Missouri 63103, and is a public utility as defined in Section 386.020 RSMo. 2000. Respondent AmerenUE is engaged in providing electric and gas service in portions of Missouri as a regulated public utility under the jurisdiction of the Missouri Public Service Commission (the "Commission"). Respondent Ameren Corporation is the parent corporation of Respondent AmerenUE.

2. Respondents Mike Foy, Leroy Ettling, and Sherry Moshner, at all relevant times hereto, are and have been employees of Respondent AmerenUE and were acting within the cope of their employment on Respondent AmerenUE's behalf.

3. Complainant Sterling's Market Place is a African-American-owned grocery store and one of several businesses located in a strip mall on 8350 N. Broadway, St. Louis, Missouri 63147 (the "Premises"). In addition to Sterling's Market Place, there are several other tenants located at the Premises.

4. In July 1998, Respondent AmerenUE, the authorized and Commission-regulated monopoly provider of retail electric service for the area, agreed to provide Complainants Sterling Moody and Sterling's Market Place with electricity for a monthly charge to three electric meters located on and serving the Premises. Complainant Sterling's Market Place began to receive two bills monthly for the three meters, account number 57300-01916 for electric service to the common area served by meter number 70593313, and account number 52300-02426 for electric service to the grocery store, which was purportedly served by meter number 01859502 and meter number 50688215.

5. From July 1998 to April 17, 2000, Complainants Sterling Moody and Sterling's Market Place made payments to Respondent Ameren UE for electric service provided to the above-mentioned three meters.

6. In August of 2000, however, the landlord of the Premises, P&B Real Estate, discovered incorrect meter readings and improper billings which had the result of billing the grocery store for electric usage not attributable to the grocery store and it immediately contacted Responent Ettling to dispute the bills. The landlord of the Premises met with

Respondent Ettling and the landlord showed Respondent Ettling a map with designs to separate the Mall from the grocery store for metering purposes and provide a fourth meter for the common areas. On several occasions, Respondent Ettling acknowledged that there was a problem with the metering.

7. In February 2001, in response to Complainant Moody's concern about his bill and metering problems, Respondent AmerenUE sent an inspection crew to Complainant Sterling's Market Place to investigate how the store was wired and found that Complainant Sterling's Market Place was being billed for service that was being provided to several other stores on the Premises. Respondent AmerenUE did nothing further to rectify the problem however.

8. Due to improper billing and metering of the Premises and the inability of the grocery store to continue to pay for the other tenant's electric usage, an arrearage developed on the three accounts. Due to the outstanding balance, on or about April 19, 2000, Respondent Ettling, Senior Credit Manager for Respondent AmerenUE, began to telephone Complainant Sterling's Market Place weekly and request a payment on the three aforementioned accounts. On those occasions, Respondent Ettling spoke with either Ms. Jo Ann Ghirardi, Mr. Lou Biernbaum, lessees on the Premises, or Complainant Moody and asked that they send in a payment.

9. Respondent AmerenUE continued to issue bills to Complainants with certain due dates, however, Respondent AmerenUE made no attempt to cause resolution of the meter usage/reading complaints of Complainants. Consequently, Complainants continued to experience financial difficulty in making full payment for the bills received for electric service not directly attributable to the grocery store.

10. Respondents Ettling and AmerenUE never stated that partial payments from Complainant Moody would not be accepted nor did they threaten service disconnection of the grocery store if payment on all three accounts was not received in full.

11. In February 2001, Mr. Lou Biernbaum began delivering payments for service to Respondent AmerenUE's office address. On each visit, Mr. Biernbaum met with Respondent Ettling and Mr. Biernbaum and Respondent Ettling conversed about the electric bills for Complainant Sterling's Market Place. Mr. Biernbaum indicated to Respondent Ettling that the amounts owed were burdensome in that the bills were too high, they included usage of other tenants, not accurate readings and that Complainant Moody was experiencing financial difficulty in satisfying the amounts due on monthly bills. In response to Mr. Biernbaum's statements, Respondent Ettling received the payment, issued a receipt for same and commented concerning Complainant Moody's payment arrearage.

12. On numerous occasions, either Ms. Ghirardi, Mr. Biernbaum or Complainant Moody personally delivered payments generally in the amount of \$1,000 or more at the main office of Respondent AmerenUE. On each such occasion, Respondent Ettling was present to receive the payments.

13. This practice constituted a constructive payment arrangement and continued on a regular basis until Friday, April 13, 2001, when Respondent AmerenUE disconnected the electric service at Complainant Sterling's Market Place without giving prior notice.

14. In addition, Respondent AmerenUE failed to issue a second request for payment and notice of intent to terminate service as set out in the Commission's regulations concerning same.

15. After the service had been disconnected on April 13, 2001, a representative from Respondent AmerenUE delivered a letter to Complainant Sterling's Market Place which notified the occupants of the Premises that electrical service would be terminated within 48 hours. The notice did not state the amount owed and the amount necessary to avoid disconnection of the electrical service.

16. That same day, Complainant Moody contacted Respondent Ettling about the electric service being disconnected and Respondent Ettling admitted that the disconnection was unauthorized and the electric service was restored the same day.

17. On April 17, 2001, a representative from Respondent AmerenUE again came to Complainant Sterling's Market Place and informed Complainant Moody that he was there to disconnect the service. Complainant Moody immediately contacted Respondent Ettling in an effort to prevent the disconnection.

18. Respondent Ettling told Complainant Moody that upper AmerenUE management had taken the file from him and that Complainant Moody should contact Respondent Foy, Senior Credit Manager at AmerenUE.

19. On April 17, 2001, Complainant Moody immediately began to contact Respondent Foy. At or about 1:30 p.m., Complainant Moody made contact with Respondent Foy and told him of the imminent disconnection and asked Respondent Foy what could he do to prevent the electricity from being disconnected. Respondent Foy told Complainant Moody that there was nothing he could do.

20. Complainant Moody asked the representative of Respondent AmerenUE who was sent to shut the electricity off for extra time to vacate the customers and employees off the

Premises at which time the representative of Respondent AmerenUE waited 15 minutes before terminating the electrical service to the Premises.

21. Subsequently, business owners operating in the neighborhood of the Premises, community leaders, and public officials such as Congressman William L. Clay and State Representative Louis Ford contacted Respondent Foy on a daily basis in an attempt to get the service restored to no avail. Respondent Foy told them that Respondent AmerenUE required a total payment of \$265,000 to restore service. On April 17, 2001, AmerenUE, for the first time, verbally informed Complainant that AmerenUE believed that Complainant owed \$265,000 and demanded payment.

22. On May 10, 2001, 23 days after Complainant's electrical service was disconnected and the grocery store was forced to attempt to operate without electric service, Congressman William L. Clay communicated to Complainant Moody that Respondent Foy responded to his inquiries and Respondent Foy indicated that Respondents were attempting to work out details to restore the service.

23. On Friday, May 11, 2001, Respondent Foy instructed Complainant Moody to bring \$45,000 for a *deposit* and that the electrical service would be restored in the name of a guarantor. Respondent Foy told Complainant Moody and others that anyone wanting to have electric service for the grocery store placed in their name would have to pay the \$45,000 deposit.

24. On May 14, 2001, Complainant Sterling's Market Place and the landlord (P&B Real Estate) delivered two cashier's checks and a corporate check from Gateway Bank totaling \$45,000 to Respondent Ettling for a deposit as requested with the understanding that

Respondent AmerenUE would restore electrical service by 3:00 p.m. on May 15, 2001.

Respondent Ettling took possession of the payments and gave Complainant Moody a receipt for same.

25. After receiving payment, however, Respondent AmerenUE refused to restore service citing that it was their policy to assure that the cashier's check had cleared the bank for payment.

26. On or about May 15, 2001, Mr. Brian McNamara, President of Gateway Bank, contacted Ms. Sherry Moshner, Senior Vice President of Respondent AmerenUE, to request a meeting to discuss what steps were necessary to get the electric service restored and to guarantee the checks.

27. A meeting was held at Respondent AmerenUE's offices involving Respondents Leroy Ettling, and Mike Foy, Sherry Moshner, Senior Vice President, Complainant Moody, Brian McNamara, President of Gateway Bank and Mark Kasen. Complainant Moody and his representatives pointed out that payments made to Respondent AmerenUE had been misapplied and that there were misbillings and disputed charges for usage other than the grocery store which had been applied to the electric bills of Complainant Sterling's Market Place but actually used by other lessees of the Premises.

28. Ms. Moshner then adjusted the total amount claimed by Respondent AmerenUE and set the disputed indebtedness at \$89,000 instead of the \$265,000 originally demanded. Of the \$45,000 originally demanded by AmerenUE for the deposit, Respondent AmerenUE applied \$9,000.00 toward the deposit. The remaining \$36,000 was applied toward the \$89,000 and

Complainant Sterling Market's Place was required to pay \$2,000 per month toward the \$89,000 along with payment for that month's current bill.

29. Complainants Moody and Sterling's Market Place clearly have been damaged by Respondents' actions. After suffering through the 30-day period of attempting to conduct business without electrical service, public embarrassment and humiliation, emotional distress, strain of duress and frustration, and after having experienced unrecoverable financial losses and credible business reputation, Complainants consequently agreed to the terms demanded by Respondent AmerenUE, believing they had no other option.

30. Since the electric service has been terminated, representatives and lobbyists of AmerenUE have openly and publicly discussed, even joked about how much money Complainants Mooney and Sterling's Market Place owe Respondent AmerenUE, all to the continuing detriment of and damage to Complainants.

Based on the facts enumerated above and incorporated by reference, Respondent AmerenUE, its agents and other employees, Respondents Foy, Ettling and Moshner have violated the following tariffs, regulations and statutes:

Violation of Tariffs

Complainants reallege and incorporate by reference the allegations in paragraph 1 through 30 above.

1. In violation of PSC Mo. Ill. C.C.I.A.C.C. Schedule No. 5 General Rules and Regulations, Article V Billing Practices, Respondents failed to determine from all related and available information during which the error condition existed and make billing adjustments for the estimated period involved.

Article No. V Sec G(2)(c) provides:

"Bills rendered which are based on incorrect registration due to improper meter connections..., or similar reasons shall be subject to adjustment for the current and 60 days prior billing periods as can be substantiated by company records.

2. After being made aware of the incorrect meter readings on several occasions, Respondents failed to make the necessary adjustments in violation of Schedule No. 5 Article IV Section G(2)(c).

3. Respondent AmerenUE's Tariff Schedule No. 5 Article VI Section B regarding deposit practices provides:

"Company may at any time, as a condition to furnishing or continuing service, require any customer or applicant for non-residential service to make a cash deposit or, at company's option, furnish a personal guarantee of a responsible party with established credit satisfactory to company."

Article 6 Section C(1) Section C further provides that when a deposit is required as a condition for continued service, the deposit shall not exceed two times the highest bona fide undisputed bill of that residential or non-residential customer during the preceding twelve months.

In violation of this Section, Respondent AmerenUE demanded a \$45,000 deposit from Complainant Moody which is almost 5 times the highest bill received by Complainant Sterling's Market Place. Respondent AmerenUE also violated this Section by failing to determine what the highest bona fide and undisputed bill actually was.

4. Schedule No. 5 Article VII Section A provides:

"In addition to any other right reserved by company in its schedules and regulations, company reserves and shall have the right, after written notice to disconnect service supplied by it to an

electric customer for payment of an undisputed delinquent account."

Respondent AmerenUE violated this Section when it willfully and knowingly disconnected the electrical service of Complainant Sterling's Market Place while the amount owed on the account was disputed and incorrect.

Schedule No. 5 Article VII Section D provides:

"Notice of intention to disconnect services for a nonresidential customer under this rule shall state the reason for which service shall be disconnected and shall specify a date after which such disconnection may be affected and such notice shall be mailed to or served upon customer not less than 48 hours prior to such date."

In violation of the Tariff, AmerenUE attempted to serve notice on Complainant Sterling's Market Place on April 13, 2001 after the service had been disconnected. After the service was restored on April 13, Respondent AmerenUE further violated this Section of the Tariff by disconnecting the service at Complainant Sterling's Market Place on April 17 without giving notice as required.

Violation of State Regulations

Complainants reallege and incorporate by reference the allegations in paragraph 1 through 30 above.

1. 4 CSR 240-10.040(3) provides that no utility shall discontinue the service of any customer for violation of any rule of that utility except on written notice of intention to discontinue service. This notice shall state the reason for which service will be discontinued, specify a date after which the discontinuance may be affected and shall be mailed or served upon the customer not less than 48 hours prior to that date.

In Violation of this Section, Respondent AmerenUE disconnected the electric service on April 13, 2001, without giving proper notice and again on April 17, 2001 without giving proper notice.

2. 4 CSR 240-10.040(4) provides:

"Each utility may require from any customer at any time a cash deposit or its option a personal guarantee of a responsible person provided that the amount of any such deposit or guarantee so required shall not exceed an estimated bill covering one billing period plus thirty days."

3. In violation of this Section, Respondent AmerenUE demanded a deposit of \$45,000 from Complainants Moody and Sterling's Market Place, and their guarantors.

- 4 CSR 240-10.040(5) provides:

"Each utility shall adjust customer's bill for incorrect meter readings or improper meter registration in a reasonable and equitable manner consistent with the result which is has on file with the Commission."

In violation of this Section, Respondent AmerenUE did not adjust the improper meter readings or improper meter registrations in a fair or equitable manner even though Complainants Moody and Sterling's Market Place and others acting in their behalf requested Respondent AmerenUE to do so on numerous occasions.

STATUTORY VIOLATIONS

Complainants reallege and incorporate by reference the allegations in paragraph 1 through 30 above.

1. § 393.130(1) RSMo. 2000 provides:

"Every electrical corporation...shall furnish and provide such service...as shall be safe and adequate and in all respects just and reasonable. All charges made or demanded by any...electrical

corporation...or any service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of the Commission."

In violation of this statute, Respondents' service was not acceptable. In violation of this statute, Respondents failed to provide just and reasonable service.

2. Section 393.130(3) RSMo. 2000 provides:

"No electric corporation...shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Respondents violated this Section by subjecting Complainant to unreasonable prejudice and disadvantage by disconnecting Complainants' electric service, demanding a \$45,000 deposit and acting unreasonable in response to Complainants' efforts to have their service restored. Respondent further violated this Section by subjecting Complainants to unreasonable prejudice and disadvantage by setting higher and different requirements for Complainants because of Complainants' race and the geographical location of Complainants' business.

WRONGFUL TERMINATION OF ELECTRIC SERVICE

Complainants reallege and incorporate by reference the allegations in paragraph 1 through 30 above.

Respondent AmerenUE, for all intents and purposes has been and is engaged in the discharge of a public enterprise or service. Respondent furnishes electricity in accordance with the application rules and regulations of the Public Service Commission.

Complainants have been purchasing electricity from Respondent AmerenUE since November 1998. Respondent accepted and continues to accept partial payments from Complainants. Such partial payments are necessitated by the incorrect meter readings and improper meter registrations, which combined and consequently, resulted in Complainants receiving bills for larger than equitable amounts due to Respondent AmerenUE that were both burdensome and which warranted further investigation and resolution.


Respondent was aware of the inaccuracies in the bills and continued to make demand for payment from Complainants. Respondent twice wrongfully terminated and willfully and wrongfully refused or neglected to supply electrical service to Complainants although Complainants had performed all conditions precedent entitling him to receive electrical service from Respondent AmerenUE pursuant to applicable law. As a result of Respondents' actions, Complainants have and continue to suffer both financial damage and damage to Complainants' good reputation in the community.

WHEREFORE, Complainants ask this Commission to issue its Order finding that Respondents violated Respondent AmerenUE's Commission-approved tariffs, including but not necessarily limited to Schedule No. 5 Article V Section G(2)(c), Schedule No. 5 Article VI Section 6(c)(1), Schedule No. 5 Article VII Section B, and Schedule No. 5 Article VII Section D; that Respondents violated applicable Commission rules, including but not necessarily limited to 4 CSR 240.10.040(3), 4 CSR 240.10.040(4) and 4CSR 240.040(5); that Respondents violated § 393.130(1) and 393.130(2) RSMO 2000; that Respondents wrongfully terminated Complainants' electrical service,

and that pursuant to § 386.570 RSMo. 2000, Respondents be ordered to pay \$2,000 for each violation for each day that Complainants suffered wrongful termination of electrical service, order Respondents to pay Complainants consequential and punitive damages, order Respondent AmerenUE to immediately correct Complainants' past billing problems through immediate bill credits, order Respondent AmerenUE to immediately correct the metering problems on the Premises, order Respondent Ameren UE refund Complainants' \$45,000.00 deposit, order Respondents to properly bill Complainants on all future bills, and to otherwise grant Complainants whatever other relief the Commission deems just and proper.

Respectfully submitted,

CALDWELL & SINGLETON, LLC


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*Attorneys for Complainants
Sterling Moody, Sterling's Market Place
And Sterling's Market Place, I*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copy of the foregoing Complaint was sent to the General Counsel's Office, the Office of the Public Counsel, and to the last known address of counsel for Respondents, by depositing same in the United States Mail, first class postage pre-paid, or by hand-delivery, this 17th day of August, 2001.