

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

Claude Scott,)	
Complainant,)	
)	
vs.)	Case No: EC-2020-0005
)	
Union Electric Company, d/b/a)	
Ameren Missouri,)	
Respondent.)	

**AMEREN MISSOURI’S MOTION FOR EXTENSIONS OF TIME
AND
MOTION TO DISMISS**

COMES NOW Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), and states as follows.

**MOTION FOR EXTENSIONS OF TIME TO ANSWER THE COMPLAINT, AND TO
INVESTIGATE AND FILE A REPORT ON THE COMPLAINT, UNTIL AFTER A
RULING ON THE MOTION TO DISMISS THE COMPLAINT**

On July 15, 2019, the Commission issued its *Notice of Small Formal Complaint and Order Directing Staff to Investigate and file a Report* (the “*Notice*”). Citing 4 CSR 240-2.070(15), the *Notice* also ordered the Company to file a response to the Complaint (herein, the “*Current Complaint*”) filed by Claude Scott (“Complainant” or “Mr. Scott”) on July 15, 2019. The Commission ordered the response to be filed no later than August 14, 2019, and ordered Staff to investigate and file its report no later than September 13, 2019.

The Rule cited in the *Notice* allows the utility thirty days to, “satisfy the complaint or file an answer,” but in the absence of such timely filing, the Commission may issue an order granting default and deeming the allegations of the complaint to have been admitted by the responding utility. Notwithstanding these deadlines, pursuant to 4 CSR 240-2.015(1), the Commission may waive a Rule, for good cause. Similarly, per 4 CSR 240-2.050(3)(A) the Commission may enlarge the time within which an act is required to be done.

As more fully set forth below, the Company believes that the Commission is without statutory authority to hear (rehear) the allegations set forth in the *Current Complaint*, and that

Complainant is statutorily barred from even bringing the *Current Complaint*. The Company wishes to present these absolute defenses to the *Current Complaint* by motion, prior to filing its answer. The Company believes that extending the deadlines within which the Company must file an answer and Staff must investigate and file a report, until after the Commission has ruled on the Company's motion, will help to avoid unnecessary waste of Commission, Staff and Company resources. This approach is similar to the alternative available under Missouri Rule of Civil Procedure 55.27(a) of pleading certain defenses by motion rather than responsive pleading. In such event, under Missouri Rule of Civil Procedure 55.25(c), if the trial court denies the motion or postpones its disposition, the time otherwise fixed for filing an answer is extended—either ten days after the trial court notice of the court's action on the motion, or until a different time fixed by the court.

The Company has consulted with Staff and Staff has no objection to the foregoing request for the extensions of time on behalf of both the Company and Staff.

WHEREFORE, the Company requests that the Commission:

- extend the time within which the Company must file its answer until thirty days after it acts on the Company's motion to dismiss (if it denies the motion or postpones its disposition), and likewise extend the time within which Staff shall investigate and file a report, until sixty days after notice of the Commission's action on the Company's motion to dismiss;
- or in the alternative, set this motion for extension of time for hearing.

**MOTION TO DISMISS COMPLAINT PURSUANT TO
§ 386.500(2), §385.550 AND 4 CSR 240-2.116(4)**

Mr. Scott filed the *Current Complaint* on July 15, 2019, alleging: that the Company, through the use of budget billing that he had requested be stopped, has overbilled him for electric service provided to him at ***[REDACTED]***; that the Company has failed to prove the amount due; and that the Company failed to provide meter readings to prove the amount due. In identifying the steps that he has taken to bring the matter to the Company's attention, Complainant admitted that he has, "filed a complaint without satisfaction." *Id.* ¶ 8.

The complaint the result of which was unsatisfactory to Mr. Scott was undoubtedly his recent complaint EC-2018-0371 (the "*Prior Complaint*"), which he filed on June 11, 2018. In

the *Prior Complaint*, Complainant made identical allegations that for electric service provided to him at ***[REDACTED]***, the Company overbilled him through budget billing after he had allegedly cancelled budget billing. *See, e.g.*, ¶¶ 5, 6 and 7, *Prior Complaint*. In the *Prior Complaint*, Complainant alleged that the amount in dispute was ***\$[REDACTED]***, but identical to the *Current Complaint*, also took issue with a bill for ***\$[REDACTED]***. *See, Prior Complaint*, ¶¶ 5, 6, and attached bill statement dated 03/15/18. Just as with the *Current Complaint*, Mr. Scott also alleged in the *Prior Complaint* that the Company failed to provide evidence of the amounts billed to him, and he demanded “any and all meter readings for the before-mentioned account[.]” EC-2018-0371, EFIS Item No. 25, *Supplemental Complaint and Plaintiff’s Motion for Discovery*. Similarly, the budget billing with which Complainant expresses dissatisfaction in the *Current Complaint* occurred during and was addressed in the adjudication of the *Prior Complaint*. This is patently obvious from Complainant’s account records, which show that he has not even been on budget billing since November of 2018. *See, Affidavit of Aubrey M. Krcmar*, attached hereto as **Exhibit A** and incorporated herein by this reference, and Exhibit 1 (account activity statement) thereto.

Mr. Scott participated in an evidentiary hearing on the *Prior Complaint* on January 18, 2019, during which he offered testimonial and documentary evidence to support his claim. *See, generally*, EC-2018-0371, EFIS Item No. 27, *Transcript – Volume 3*, pp. 53-112. At the hearing, the Company also presented testimonial and documentary evidence regarding the amounts billed to Complainant, and he was given the opportunity to cross-examine the Company’s witness.

After the hearing, the Commission issued its *Report and Order* on May 15, 2019, effective June 14, 2019. EC-2018-0371, EFIS Item No. 58. Among other evidence, the Commission considered amounts billed to Complainant through December 11, 2018. *Report and Order*, p. 20. In the *Report and Order*, the Commission noted that, “Mr. Scott filed a small formal complaint against Ameren Missouri because he believes that Ameren Missouri’s budget billing was causing him to pay more than he would otherwise have to pay for electrical service.” *Report and Order*, p. 23. The Commission found, however, that Mr. Scott’s calculations in support of his allegations of overbilling were incorrect, and that Mr. Scott had, “cherry picked his bills in an effort to show that he has paid more than the amount of electric service use.” *Id.*, pp. 25-26. The Commission also found that, “a sequential analysis of Mr. Scott’s bills shows

that Ameren Missouri correctly billed Mr. Scott, applied budget billing and payment agreements according to tariff and rule, and timely and correctly credited Mr. Scott's payments." *Id.*, pp. 26-27. As to Complainant's demand for meter readings, the Commission also noted that the bills issued to him included meter readings, decided that the bills and account statements provided by the Company to Complainant were all the discovery he was entitled to within the scope of his complaint, and denied his request to compel discovery that sought additional meter readings. *Id.*, p. 28. After applying the facts to its conclusions of law, the Commission concluded that Mr. Scott failed to meet his burden to show that the Company violated any law, rule or order within the Commission's authority, and denied his *Prior Complaint*. *Id.*, p. 28. In short, all of Mr. Scott's complaints relating to bills issued to him for service to his ***[REDACTED]*** address through December of 2018 were resolved in the *Prior Complaint* on the merits. Because the Company had suspended from any collection activity the ***\$[REDACTED]*** of charges originally in dispute in the *Prior Complaint* (pending resolution of the complaint), and as the Commission found that Ameren Missouri had committed no violations, at the end of the *Report and Order*, the Commission ordered that "Ameren Missouri may proceed, consistent with the law and the Commission's rules, with the Claude Scott account as it sees appropriate." *Id.* Finally, at p. 28 of the *Report and Order*, the parties were specifically advised that, "[a]ny application for rehearing must be filed before the effective date of this order." *Id.*; § 386.500.2. RSMo (2016).

Pursuant to the authority granted to it in the *Report and Order*, and after the effective date thereof, on June 18, 2019 the Company cancelled the suspension of the ***\$[REDACTED]*** from collection activity. See, Exhibit 2 (suspended charge detail) to **Exhibit A, Affidavit of Aubrey M. Krcmar**. Thus, the opportunity to include the ***\$[REDACTED]*** in collection activity (to issue a disconnection notice including the amount, if not paid) is the only "current" fact related to the *Prior Complaint* that has arisen since the *Prior Complaint* was adjudicated, but as noted above, it was both anticipated and authorized by the Commission in the *Report and Order*.

Comparing the allegations of the *Current Complaint* with the *Prior Complaint*, and reviewing the *Report and Order*, it is apparent that the *Current Complaint* is essentially either a request for rehearing of the Commission's *Report and Order* in EC-2018-0371, or is a second bite at the same allegations made in the *Prior Complaint*. As to rehearing, no party filed an application for rehearing before the effective date of the *Report and Order*. As a result, the Commission is now without statutory authority to consider any such application for rehearing.

See, e.g., *Young v. Union Elec. Co.*, EC-2006-0283, 2006 WL 3057662, *Order Denying Application for Rehearing* (complainant's application for rehearing, filed eighteen days after the effective date of the Commission's Report and Order, was untimely, such that the Commission determined it was deprived of the statutory authority necessary to consider it). The passing of the effective date of the *Report and Order* without any timely application for rehearing also renders the *Report and Order* in the *Prior Complaint* final and unreviewable. *Harter v. Missouri Pub. Serv. Comm'n*, 361 S.W.3d 52, 56 (Mo. App. W.D. 2011)(if a motion for rehearing is not filed before the effective date of the order, the order and decision of the Commission becomes final and conclusive and is not reviewable). The finality of the *Report and Order* is important, because it means Complainant is barred from taking a second bite at the *Prior Complaint* by filing the *Current Complaint*. Per § 386.550 RSMo (2016), "[i]n all collateral actions or proceedings the orders and decisions of the commission which have become final *shall be conclusive*" (emphasis added), such that complaints filed with the Commission that constitute collateral attacks on final Commission orders are barred. *State ex rel. MoGas Pipeline LLC v. Public Service Com'n*, 395 S.W. 562, 565-566 (Mo. App. W.D. 2013)(Commission's dismissal of a complaint attacking the validity of certain tariffs was affirmed because the complaint constituted an impermissible collateral attack on a prior, final Commission order addressing the same tariffs).

Per 4 CSR 240-2.116(4), the Commission may dismiss a complaint for good cause, after ten days' notice to all involved parties. Good cause exists to dismiss the Current Complaint because it is either an untimely request for rehearing of, or a statutorily barred collateral attack on, the Commission's *Report and Order* in the *Prior Complaint*, which became final on June 14, 2019.

WHEREFORE, Ameren Missouri respectfully requests that the Commission:

- dismiss this Complaint, with prejudice;
- or in the alternative, set this motion to dismiss for hearing.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing motions were served on the following parties via e-mail this 19th day of July, 2019.

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