

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE
STATE OF MISSOURI

FILED⁴

AUG 16 2004

Ronald MacKenzie,

Complainant

vs.

Sprint Missouri, Inc. d/b/a Sprint-ILEC (Telephone)

Missouri Public
Service Commission

Case No. IC-2004-0608

**COMPLAINANT'S ANSWER TO SPRINT AFFIRMATIVE DEFENSES,
AND MOTION TO DISMISS**

Comes now Ronald MacKenzie ("Complainant"), respectfully states the following answers and clarifications to the Missouri Public Service Commission ("Commission") to Sprint Missouri, Inc. ("Sprint") affirmative defenses and motion to dismiss:

1. The Complainant does not deny a formal complaint was filed with the Commission on June 21, 2004. The Complainant denies much of the information provided by Sprint in sections 2 and 3. The Complainant hereby submits the actual course of events: on March 26, 2004, the complainant contacted the Commission after meeting a Sprint engineer at the property in question on February 20, 2004 (not on April 6, 2004). The engineer felt that the landowner would have to pay the cost but was not sure and no detailed cost was provided. The complainant contacted the Commission and followed protocol by filing an informal complaint. The Complainant was contacted by a Sprint representative from the local executive office who stated Sprint would research to see if they collected tariff for the maintenance requested. However, focus then shifted to the height of the line and National Electrical Safety Code (NESC). No information concerning the collection of tariffs for line maintenance was provided to the Commission or the Complainant. The Complainant was put in contact with Mick Johnson of the Commission who in turn put the Complainant in touch with the appropriate supervisory engineer. The supervisory engineer informed the complainant that it would cost approximately \$800 to raise the line, however, no formal itemized break down of the cost was provided to the Complainant or the Commission. The Complainant later spoke in length with the District Service Manager, who said Sprint would not raise the line. The District Service Manager consulted the State Executive who did not want to set a precedent by raising the segment of line on our property. After these consultations the Complainant decided to file a formal complaint to the commission. Sprint said it would provide the Complainant with a report of findings, however, Sprint informed Commission staff no report would be generated until a formal complaint is filed.

To date, even after filing a formal complaint, the Complainant has received no formal report from Sprint concerning the matter.

2. The Complainant hereby states the appropriate section of code per the *National Electrical Safety Code (NESC)*, Part 2; Safety rules for Overhead Lines, table 232-1, page 78, states "3. Driveways, parking lots, and alleys." The Complainant previously cited "4. Other land traversed by vehicles, such as cultivated, grazing, forest, orchards, etc." Even though the nature of the surface underneath the line was incorrectly stated, the required height remains 15.5 feet. Sprint states in paragraph 10 "the Complainant is creating by his own violation the need to raise line height." It appears, Sprint, is not claiming responsibility of the line, and possibly implying the Complainant is responsible for the line. Clearly, the Complainant does not own the line, thus is not responsible in anyway for the maintenance of the line, which includes meeting all applicable NESC.

SPRINT'S MOTION TO DISMISS

3. The Commission should rule against Sprint's motion to dismiss based on reasonableness and the following items:

1. Sprint states the action request by the Complainant is outside the statute of limitations. To the best of the Complainant's knowledge, the statute of limitations pertains to civil matters and this formal complaint brought before the Commission is not a civil matter.
2. To the best of the Complainant's knowledge, the NESC does not state there are limitations to how long a party is responsible for line installed.
3. The Complainant is aware of the General Exchange Tariff, P.S.C. MO. No.22 Section 8. The Complainant is troubled by the citing of this tariff since it makes specific reference to "...special type of construction is desired by a customer, such as when underground service connections are desired in places where aerial drop wires are regularly used to reach customers premises..." The request by the complainant is not special. The Complainant is not asking Sprint to change the current type of wiring used to service customers in the area. Rather the Complainant is asking the owner of the line to bear the responsibility of meeting current NESC.

Landowners for the good of the community, grant easements. Even though the Complainant was not the original grantor, the principal is upheld for the good of the community. It is not fair for a company, who operates in the local market as a natural monopoly, to punish a landowner who asks that a reasonable task be completed by the user of the easement, especially since the landowner continues to grant access to his/her property. When developers wish to substantially change the landscape and force substantial change to a utility, it seems

reasonable the developer should bear the cost. The Complainant is not a developer but rather one individual wishing to build a single home for his family on the property in question.

Based on the information provided in this response, the Complainant sincerely asks the Commission to rule against Sprint's motion to dismiss. The Complainant also asks the Commission to rule that the line must be raised by Sprint, at no cost to the Complainant, to the prescribed height of 15.5 feet as stated in the NESC. A speedy ruling is warranted as the information provided seeks to protect the landowner from unfair monopolistic practices by Sprint.

Respectfully submitted on August 11, 2004,



Ronald MacKenzie

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