

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

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|-------------------------------|---|-----------------------|
| Craig Mershon, |) | |
| Complainant, |) | |
| |) | |
| vs. |) | Case No: EC-2013-0521 |
| |) | |
| Union Electric Company, d/b/a |) | |
| Ameren Missouri, |) | |
| Respondent. |) | |

**AMEREN MISSOURI'S MOTION FOR RECONSIDERATION
OR FOR AMENDED ORDER**

COMES NOW Union Electric Company d/b/a Ameren Missouri (the "Company") and for its Motion for Reconsideration or for Amended Order states as follows.

1. Mr. Mershon has asked the Commission, in an ex parte communication, for relief from a disconnection notice that he received, claiming that "all amounts" are in dispute. Order to Cease Disconnection, issued and effective March 14, 2014 (the "Order").

2. In the Order, the Commission ordered the Company to "cease any disconnection of Mr. Mershon's service pending the Commission's decision on the merits of Mr. Mershon's complaint. Ameren may also file a motion for a hearing to show that the disconnection is based on an undisputed amount." The Order is unlawful and unreasonable for the reasons explained herein, and should be withdrawn.

3. Mr. Mershon's Complaint, as supplemented by a later pleading styled "Petition" (collectively the "Complaint") alleges that he has been overbilled \$***.¹ A review of the pleadings shows that he never filed a later pleading amending his Complaint to dispute any additional charges. In fact, as early as October, 2013, Judge Jordan confirmed that he would not be permitted to do so, "[s]o as far as that goes, I was not anticipating any further complaints. And if there were, I think I'd be inclined to assign a separate complaint number to it because we have to solidify the issues. Otherwise we can never try the case."²

¹ Complaint, unnumbered 3rd paragraph. Because his balance was \$***.** as of the date the Complaint was filed, that is the exact amount the Company has suspended.

² Tr. p. 35, l. 13-17.

4. The Order is unreasonable because the Commission has already taken evidence on this issue. Evidence and testimony taken under oath during the evidentiary hearing on Mr. Mershon's Complaint on February 27, 2014 prove that \$***.**, the *only* amount in dispute, has been and continues to be suspended from collection.³ The Company also offered testimony and evidence that prove that amounts for which Mr. Mershon has recently received disconnect notices are not in dispute, but rather are amounts billed for service rendered months after the filing of the Complaint, that have become delinquent.⁴ 4 CSR 240-13.050(1)(A) permits the Company to discontinue service for these amounts. The testimony also proves that Mr. Mershon has not properly placed any additional amounts in dispute (in this or any other complaint) because: he has never advised the Company, as required by 4 CSR 240-13.045(1), that he disputes any amount charged to him after June 13, 2013⁵; and he has never, as required by 4 CSR 240-13.045(3)(5) and (6) worked with the Company to mutually determine what part of his charges are and are not in dispute.⁶

5. The Order is unreasonable because it undermines the complaint process set forth in the Commission's own rules. Customers are required by the rules to contact the utility at least twenty-four hours prior to the date service may be disconnected for nonpayment, in order to timely lodge any disputes, to work with the utility to determine the amount in dispute, to attempt to resolve the dispute, and to pay any amount *not* in dispute—and a customer's failure to do so "shall constitute a waiver of the customer's right to continuance of service."⁷ Mr. Mershon did none of these things. In contrast, he was rewarded for making an untimely, direct, ex parte contact with the Secretary of the Commission, without even having attempted the process required under the Commission's rules.

6. The Order is also unreasonable because it is based, in part, on the Commission's "aware[ness] of Mr. Mershon's special circumstances, which [the Commission concludes] make electrical service a greater necessity for him than for most customers." Treating Mr. Mershon differently with respect to a pending disconnection because of his "special circumstances" is at odds with the policy continually urged on the Company by Commission Consumer Services Staff, to treat all residential customers fairly and consistently. Treating him differently is also at

³ Tr. p. 161, l. 8-11; Tr. p. 161, l. 25-p. 162, l.2.

⁴ Tr. p. 161, ll. 12-24.

⁵ Tr. p. 162, l. 18-21.

⁶ Tr. p. 162, l. 22 through p. 163, l.16.

⁷ 4 CSR 240-13.045 (1)(3)(5)(6) and (7).

odds with §393.130.3 RSMo, which provides in part, “[n]o...electrical corporation...shall make or grant any undue or unreasonable preference or advantage to any person...[.]”

7. Finally, the Order is also unlawful because it improperly places on the *Company* the burden to prove that the amounts for which it sent disconnection notices are not in dispute. In essence, Mr. Mershon is arguing that the amount for which he received a disconnection notice is in dispute, and that the Company is violating a Commission rule that prohibits the Company from disconnecting him for an amount in dispute. Because Mr. Mershon is alleging a violation by the Company, *he* has the burden of proving that violation by a preponderance of the evidence.⁸

8. Given Mr. Mershon’s documented past conduct of repeatedly filing unfounded informal complaints on the eve of disconnections,⁹ the Company believes it is justified in concluding that Mr. Mershon is gaming the Commission to avoid a disconnection as long as possible, by dragging out this Complaint and most recently by calling the Commission to allege he is facing disconnection for an amount in dispute. If the Commission still believes that a hearing on the allegation regarding the recent disconnection notice is proper, then to put an end to the game, if it is one, or to provide relief to Mr. Mershon if he can prove his claim, the Company believes such hearing should take place as promptly as possible.

Wherefore, Ameren Missouri respectfully requests that the Commission withdraw its Order to Cease Disconnection, issued and effective March 14, 2014, such that the Company may proceed with disconnection for any amounts not in dispute, pursuant to 4 CSR 240-13.050(1)(A); or in the alternative, the Company requests that the Commission amend said Order to provide that *Mr. Mershon*, may, within a reasonable time not to exceed one week from the effective date of the order, file a motion to request that the Commission set his recent allegation for hearing within a reasonable time, not to exceed two weeks from the effective date of the order, to provide him an opportunity to prove that the pending disconnection is based on an amount in dispute as

⁸ *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm’n of State of Mo.*, 116 S.W.3d 680, 693 (Mo. Ct. App. 2003)(burden of proof rests with the complainant, and this is because “the burden of proof properly rests with the party asserting the affirmative of an issue”). *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996). *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992)

⁹ See Staff Ex. A HC, p. 3 and 4, detailing twelve such informal complaints filed between 2002 and 2011.

alleged, and to provide that if Mr. Mershon does not make a timely request for such hearing or if he makes a timely request but does not appear and present evidence at any such scheduled hearing, that the Company may proceed with disconnection pursuant to 4 CSR 240-13.050(1)(A).

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion for Reconsideration or for Amended Order was served on the following parties via electronic mail (e-mail) or regular mail on this 18th day of March, 2014.

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