

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

Tawanda Murphy,	)	
	)	
Complainant,	)	
	)	
vs.	)	Case No. EC-2010-0364
	)	
Union Electric Company, d/b/a	)	
AmerenUE,	)	
Respondent.	)	

**MOTION FOR DETERMINATION  
ON THE PLEADINGS**

COMES NOW Union Electric Company d/b/a AmerenUE (“AmerenUE” or “Company”), and moves the Commission to make a determination on the pleadings in this Case, and as part of such determination to make findings of fact related to the sufficiency, safety and adequacy of AmerenUE’s service to Complainant.

1. If a complainant, “alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions[,]” then the complainant has the burden of proving the allegations of his or her complaint. *Howard v. Union Electric Company d/b/a AmerenUE*, 2008 WL 5274284 (Mo. P.S.C. 2008) (citing *State ex rel. GS Technologies Operating Co., Inc. v. PSC*, 116 S.W.3d 680 (Mo. App. 2003)). As such, Complainant bears the burden of proving the allegations of her complaint. The standard for meeting this burden of proof is the preponderance of the evidence standard. *Howard* at p. 6, (citing *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 109 -111 (Mo. banc 1996)).

2. Under most circumstances, a complainant is afforded the opportunity to present evidence at a hearing before the Commission. However, Commission rule 4 CSR 240-2.117(2) authorizes the Commission to dispose of any case on the pleadings when not contrary to the law or the public interest.

3. Complainant instituted this Case by filing a Petition – Res Ipsa Loquitor (referred to herein as the Complaint). As a point of clarification, AmerenUE notes that while AmerenUE,

Staff and the Commission have referred to Ms. Murphy as Complainant, it is in fact counsel for her insurance company, as subrogee, that is pursuing this Complaint.

4. AmerenUE filed an Answer and Motion to Dismiss, in part on the basis that Complainant failed to state a claim for which relief could be granted because Complainant failed to allege any act or omission by AmerenUE in violation of any statute, rule, order or decision within the Commission's jurisdiction, but in the alternative asked that the Commission grant Complainant leave to amend the Complaint to do so. Staff concurred in this analysis. Complainant did not elect to amend the Complaint, but did file a Response to Respondent's Motion to Dismiss (referred to herein as the Response), which the Commission read to include a clarification that Complainant was "seeking any administrative remedy available to her under her current theories so that she may proceed to circuit court on any grounds not exhausted by this administrative body." Order dated July 26, 2010. On that basis, the Commission ordered Staff to investigate and to report whether AmerenUE violated any statute, regulation or tariff provision under the Commission's jurisdiction. *Id.*

5. Staff's investigation has now concluded and it has filed its Staff Recommendation with the Commission. Although Staff considered all documents and reports provided by Complainant in response to Staff's request for information that might substantiate Complainant's assertions, Staff concluded that, "the apparent cause for the fire was an energized neutral that, based upon information made available currently to Staff, was most likely damaged by *a tree limb that fell onto a secondary wire, and which would not have been trimmed by Company as it lies on private property, is customer owned, and is therefore beyond the reasonable control of the Company.*" *Id.* (emphasis added).

6. As noted, Staff provided Complainant an opportunity to present evidence that would substantiate the factual assertions in Complainant's Petition. Upon consideration of all such evidence, Staff was unable to substantiate those assertions.

7. It is abundantly clear from Complainant's Complaint and Complainant's Response that Complainant's sole objective is to obtain monetary relief, which the Commission cannot grant. *American Petroleum Exchange v. Public Service Commission*, 172 S.W.2d 952, 955 (Mo. 1943); *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466 (Mo. App. W.D. 1980). However, the doctrine of primary jurisdiction requires that, "[m]atters within the jurisdiction of the [Commission] must first be determined by it in every instance *before* the

courts have jurisdiction to make judgments in the controversy.” *DeMaranville v. Fee Fee Trunk Sewer*, 573 S.W.2d 674, 676 (Mo. App. E.D. 1978). It is the *Commission’s* role to determine technical, intricate questions of fact, in part to ensure uniformity important to the regulatory scheme. *Killian v. J & J Installers, Inc.*, 802 S.W.2d 158 (Mo. banc 1991). For these reasons, AmerenUE believes it is necessary for the *Commission* to make findings of fact as to Complainant’s allegations, rather than just dismiss the Complaint as Staff has recommended. If the Commission simply dismisses the Complaint, AmerenUE anticipates that Complainant will proceed to file a negligence petition in circuit court. Then, AmerenUE will be forced to file a motion to dismiss in *that* action on the basis that the Commission has not yet determined matters within its jurisdiction.

8. Because Complainant presumably complied with Staff’s request for all information that would substantiate Complainant’s allegations, and because the only relief Complainant is really interested in is monetary damages for the alleged negligence, AmerenUE believes a determination by the Commission upon the pleadings would not be contrary to the public interest.

WHEREFORE, AmerenUE respectfully requests that the Commission:

A. Determine on the pleadings that: Complainant has failed to prove by a preponderance of the evidence her allegation that “a fire caused by resistive heating in multiple paths resulting from an energized neutral conductor, under the exclusive control of AmerenUE delivered a high level of current to Complainant’s premises” and failed to prove by a preponderance of the evidence her allegation that the fire at Complainant’s premises was directly caused by AmerenUE’s negligence; and that, rather, the apparent cause for the fire was an energized neutral that, based upon information provided by AmerenUE and Complainant to Staff and Staff’s investigation, was most likely damaged by a tree limb that fell onto a secondary wire, and which would not have been trimmed by Company as it lies on private property, is customer owned, and is therefore beyond the reasonable control of the Company; or in the alternative,

B. Set the matter for hearing in order to afford Complainant and AmerenUE the opportunity to present additional evidence.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing  
Reply was served on the following parties via electronic mail (e-mail) on  
this 31st day of August, 2010.

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