BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Surayya H. Ibrahim, Complainant,	)	
vs.	)	Case No: EC-2018-0097
Union Electric Company, d/b/a Ameren Missouri, Respondent.	)	

ANSWER

COMES NOW, Union Electric Company, d/b/a Ameren Missouri ("Ameren Missouri" or "Company"), and for its Answer states as follows.

1. On October 11, 2017, Complainant initiated this proceeding against Company.

2. Any allegation not specifically admitted herein by the Company should be considered denied.

3. The Company admits the allegations of paragraph 1 of the Complaint and in further answer states that the Company currently provides residential electric (1M) service ("service") to Complainant at 5414 Janet (herein, "Janet"), St. Louis, Missouri.

4. The Company admits the allegations of paragraph 2, but in further answer states that the Complaint appears to involve an outstanding balance that originated with an account in Complainant's name for service to a different premises.

5. The Company denies the allegations of paragraph 3. In further answer the Company states that the location of the Company's principal offices and its mailing address for purposes of this proceeding are: 1901 Chouteau Ave., MC-1310, P.O. Box 66149, St. Louis, Missouri 63166-6149.

6. The Company admits the allegations of paragraph 4.

7. The Company denies the allegation of paragraph 5, as stated. In further answer, the Company states as follows. Complainant appears to dispute a balance that accrued in a prior account for service in Complainant's sole name, was transferred to another account for service in Complainant's sole name, was then transferred to an account for service in the names of Jerone

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C. Boggs ("Boggs") and Complainant, and was most recently transferred to Complainant's Janet account. As detailed below, the original outstanding balance was ***[redacted]*** and the balance transferred from the account in the names of Boggs and Complainant to Complainant's Janet account was **[redacted]**.

8. In answer to paragraph 6, the Company attaches hereto as Exhibit A a "Person Search Plus Results – Contact & Locate" report generated for the Company by its contractor LexisNexis/Accurint for Collections, which assists the Company in conducting due diligence research on existing customers. Exhibit A shows results of the contractor's search of publically available records using Complainant's Social Security number as the search term, reporting the addresses associated with her Social Security number ("SS trace") during certain time periods.

9. In answer to the first sentence of paragraph 7, the Company admits that it has not previously provided Complainant with a copy of Exhibit A, nor with Company records regarding energy assistance payments made towards her various accounts for service. In further answer, the Company notes such documentation would not state, "why, when, how [she] is solely responsible." In answer to the second sentence, the Company denies that Complainant has requested from the Company a copy of "the audit with [her] SSN# attached" and denies that she requested from the Company its "info for which [she] supposedly applied for assistance through." Nonetheless, the Company refers Complainant to Exhibit A and to the Company energy assistance records related to her various accounts for service that are at issue in this Complaint, attached hereto and incorporated herein by this reference as Exhibit B. The remainder of paragraph 7 does not allege facts in support of an allegation that the Company violated a statute, rule, or Commission-approved tariff and therefore the Company makes no answer thereto, but in the event an answer is required, the Company denies the same.

10. Paragraph 8 of the Complaint merely states "See attached" and therefore the Company makes no answer thereto.

11. Complainant attached a typewritten page to her Complaint consisting of six unnumbered paragraphs. The Company will refer to these paragraphs as if numbered sequentially with the previous paragraphs, as paragraph 9, 10, etc.

12. In answer to the first sentence of paragraph 9, the Company denies that Complainant is entitled to the relief requested and denies that there is a "lack of evidence" of her responsibility for past account balances for accounts for service in her name. In answer to the

second sentence, the Company admits that at the time the Complaint was filed, Complainant's service was scheduled to be disconnected for nonpayment if her delinquent account balance for Janet was not paid on or before September 20, 2017.

13. The Company denies the allegations of paragraph 10 as stated. In further answer, the Company states that there are various Company records, which have been previously explained to Complainant, that support the Company's conclusion that she is responsible for the *** [redacted] *** account balance transferred to her Janet account.

14. In answer to paragraph 11, the Company denies Complainant's allegation that "there has been no attempt to collect from me until now." In further answer, the Company states that it attempted to collect beginning in 2006, by promptly billing Complainant for the service provided to her, and when Complainant did not pay, by transferring her outstanding account balance in 2007, again in 2008, and most recently in 2017. Each time, she has simply failed to pay. The Company admits Complainant's allegation that the situation has existed since 2007, which is a period of ten years, and in further answer states that this is because Complainant has failed to pay the transferred balance during that time. Complainant's statements that she cannot agree to be responsible, and that someone may have used her social security number without her consent, do not allege facts in support of an allegation that the Company violated a statute, rule, or Commission-approved tariff and therefore the Company makes no answer thereto, but in the event an answer is required, the Company denies the statements. The Company denies the allegation that she has asked the Company for "actual physical evidence" tying her Social Security number to the involved service addresses and evidence that she applied for energy assistance. The Company is without information sufficient to form a belief about whether Complainant asked the Commission for these things and therefore denies the same. The Company denies that Complainant has been ignored by Company representatives but admits that the Company has explained to Complainant that she has benefited from the service provided and is therefore responsible to pay for the service.

15. Paragraph 12 of the Complaint makes allegations directed at the Commission, not the Company, and therefore the Company makes no answer to paragraph 12.

16. Paragraph 13 of the Complaint also appears to make allegations directed at the Commission, not the Company, and therefore the Company makes no answer to paragraph 12. In the event the statement was directed toward the Company and an answer is required, the

Company reiterates that it has explained to Complainant why the account was transferred, and the use of a social security number is a typical means of discerning the identity of a utility customer.

17. The Company denies the allegation in Paragraph 14 of the Complaint that "the issue has just now come to the surface ten years later." In answer to the allegation that it was a representative of the Commission who notified Complainant that Boggs disputed his responsibility for the transferred balance, the Company is without information to form a belief about what a third party may have told Complainant and therefore denies the same. The Company admits that Boggs has denied responsibility for the transferred balance on the basis that he did not reside at the premises where the outstanding balance originally accrued. The remainder of paragraph 13, as far the Company understands it, does not appear to allege facts in support of an allegation that the Company violated a statute, rule, or Commission-approved tariff but rather appears to be a request for an explanation of the legal bases on which the Company is holding Complainant responsible for the transferred balance, and therefore no answer is required, but to the extent an answer is required, the Company denies the remainder of paragraph 14.

18. In further answer to the Complaint, and as an aid to the Commission, the Company has prepared a brief chronology of prior accounts for service in Complainant's name, events and records related to those accounts that evidence Complainant's responsibility for the charges for service, the outstanding account balances that accrued, and the Company's attempts to collect the balances by transferring the balances to subsequent accounts. The chronology is attached hereto as Exhibit C and incorporated herein by this reference.

19. In its defense the Company states as follows. The Company did not violate any statute, rule or Commission-approved tariff when it transferred an outstanding account balance for service under an account in Complainant's name to subsequent accounts for service in her name. She is a customer responsible for payment for service and the Company may seek payment by transferring her outstanding account balances to subsequent accounts in her name. A customer is, "a person or legal entity responsible for payment for service[.]" 4 CSR 240-13.010(G). Even a person who has not applied for service or had an account established in her name, which Complainant did, can be held responsible for the service, if the person resided at a premises when the Company provided service there and therefore received the benefit of the service. *See* e.g., *Staff v. Missouri Public Service Co*, EC-83-234, Mo. PSC LEXIS 20 (August

6, 1985)(citing Laclede Gas Co. v. Hampton Speedway Co., 520 S.W.2d 625 (Mo. App. 1975)) and *Marlyn Young v. Laclede Gas Co.*, GC-2007-0211, Mo. PSC LEXIS 268 (March 23, 2008). As Ex. B and Ex. C demonstrate, Complainant resided at each of the premises during the period the Company provided service to them, and therefore received the benefit of service and is a customer who can be held responsible for payment.

20. Complainant can be held responsible under the Company's tariffs and the Commission's Rules, as well. The Company's tariffs filed with and approved by the Commission have the force and effect of law. *Midland Realty Co. v. Kansas City Power & Light Co.*, 300 U.S.109, 114 (1937), *aff'g* 93 S.W.2d 954 (Mo. 1936); *PUC v. Office of Pub. Counsel (In re Emerald Pointe Util. Co.),* 438 S.W.3d 482, 491, (Mo. App. W.D. 2014) (citing *State ex rel Union Elec. Co. v. Pub. Serv. Comm'n of State of Mo.*, 399 S.W.3d 467, 477 (Mo. App. 2013)). Union Electric Company Tariff Sheet 96, I. General Rules and Regulations Section A. Authorization and Compliance states, in part:

> "[i]n accepting service provided by Company, a customer agrees to comply with all applicable rules and regulations contained [in the Electric Service Tariff;]"

One of the things a customer specifically agrees to do is:

> be responsible for payment of all electric service used on customer's premises…[.]

Union Electric Company Tariff Sheet 103, I. General Rules and Regulations Section G. Customer Obligations, subsection 7.

In order to seek payment from the customer, a Company tariff expressly permits the transfer of unpaid balances:

> In the event of disconnection or termination of service at a separate customer metering point, premise or location, Company may transfer any unpaid balance to any other service account of the customer having a comparable class of service.

Union Electric Company Electric Service Tariff No. 131.1, General Rules and Regulations, V. Billing Practices, F. Transfer of Balances.

In addition, a Commission Rule expressly permits such transfers, and disconnections for failure to pay the transferred amounts:

> [A] utility may transfer and bill any unpaid balance to any other residential service account of the customer and may discontinue service after twenty-one (21) days after the rendition of the combined bill, for nonpayment, in accordance with this rule [.]

4 CSR 240-13.050(2)(B).

21. Complainant implies that she should not be held responsible for the transferred balance because it has been in existence for ten years and she alleges she has just been made aware of it. The Company has promptly, and consistent with its collection policies, sought payment from Complainant for the service provided to her in her name, while at the same time continuing to provide service to her. The Company's efforts are detailed in Exhibit C.

22. In any event, the Company tariff and Commission rule addressing transferred balances do not limit the period within which the Company may transfer an outstanding account balance to another residential service account in the customer's name, and the rule expressly permits disconnection for nonpayment of a transferred balance without imposing any time limitation. In a prior complaint regarding a residential customer, the Commission acknowledged that the passage of a particular amount time does not extinguish a debt owned by a utility customer. In that case, the Commission determined that neither §516.120(1) RSMo, the five-year statute of limitations on the enforcement of contract liabilities by a collection action in circuit court, nor §516.110(1) RSMo, the ten-year statute of limitations for actions upon a writing for the payment of money or other property, extinguish a debt owed by a utility customer to a utility. At most, the two statutes of limitations establish an affirmative defense to "curtail a collection procedure available…in circuit court." *Beverly A. Johnson v. MGE*, GC-2008-0295, 2008 Mo. PSC Lexis 1361 (Nov. 17, 2008). While the Company acknowledges that the Commission is not bound by stare decisis to follow its decision in *Johnson*, the decision is consistent with Missouri caselaw finding that these statutes of limitations bar the remedy of instituting a civil suit to enforce an obligation to pay, but it do not extinguish the obligation. *Baron v. Kurn***,** 164 S.W.2d 310, 317 (Mo, 1942) (considering §1014 RSMo 1939, the predecessor to §516.120). Section 516.120 does not destroy a party's underlying right to receive payment. *State ex rel. Jones v. Nolte*, 165 S.W.2d 632, 638 (Mo. banc 1942). In contrast, consider §516.120 RSMo to §516.350 RSMo, regarding execution on judgments, which is not an ordinary statute of limitations in that it not only bars the remedy but "wipes out or cancels the

debt" by creating a presumption of payment of judgments ten years after original rendition of the judgment (unless the judgment is revived). *Lanning v. Lanning*, 574 S.W.2d 460, 462 (K.C. Ct. App. 1978). Nor can the Commission grant a residential utility customer affirmative relief based on a statute of limitations—such as an order that the Company cannot require Complainant to pay her outstanding balance. "A statute of limitation may be used as a defense but not as the basis for affirmative relief; or, as it has been stated, as a shield but not as a sword." *Stock v. Schloman*, 18 S.W.2d 428, 432 (Mo. 1929).

23. Nor could the Commission declare the Company barred from attempting to collect the transferred balance by application of the doctrine of laches. "The doctrine of laches is the equitable counterpart of the statute of limitation defense." *Empiregas, Inc. of Palmyra v. Zinn*, 833 S.W.2d 449, 451 (Mo. Ct. App. 1992)(internal citation omitted). It can only be applied to defeat equitable actions, not actions at law. *Erwin v. City of Palmyra*, 119 S.W.3d 582, 586 (Mo. Ct. App. 2003)(internal citation omitted). Further, the equitable doctrine can only be invoked by a defendant in a case where the plaintiff is seeking the enforcement of an equitable right. *Littlefield v. Edmonds*, 172 S.W.3d 903, 908 (Mo. Ct. App. 2005). This complaint is, of course, not an equitable action but a statutory action pursuant to §386.390 RSMo, and Complainant has brought the action, not the Company. Most importantly, however, the Commission cannot apply the doctrine of laches because the Commission is not a court and cannot do equity. The Commission is a regulatory body of limited jurisdiction having only such powers as are conferred by statute, and cannot grant equitable relief. *State ex. rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 695 (Mo. App. 2003); *American Petroleum Exchange v. Public Service Comm'n*, 172 S.W.2d 952, 956 (Mo. 1943).

24. In paragraph 7, Complainant also states, apparently as grounds for relief, that the Company has not proved to her satisfaction that she is "solely responsible" In its defense the Company states that there is no statute, rule or Commission-approved tariff that says only a customer who is "solely" responsible can be held responsible for the entire outstanding balance. To the contrary, as noted above, in receiving service a customer is "responsible for payment of *all* electric service used on customer's premises and for all requirements of the provisions of the Service Classification under which the electric service is provided, until such time as customer notifies Company to terminate service." Union Electric Company Tariff Sheet 103, I. General

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Rules and Regulations Section G. Customer Obligations, subsection 7. In fact, the Company determined that as between Boggs and Complainant, *Complainant* is responsible for the transferred balance, while Boggs is not. This is because the outstanding balance originally accrued for nonpayment for service to Capitol, an account established in Complainant's name. A Social Security trace also ties Complainant to the Capitol premises when service was provided there, but a Social Security trace for Boggs does *not* place him at the Capitol premises during the period.

SMITH LEWIS, LLP

/s/ Sarah E. Giboney
Sarah E. Giboney, #50299
111 South Ninth Street, Suite 200
P.O. Box 918
Columbia, MO 65205-0918
(573) 443-3141
(573) 442-6686 (Facsimile)
giboney@smithlewis.com

/s/ Paula N. Johnson
Paula N. Johnson, #68963
Senior Corporate Counsel
1901 Chouteau Avenue, MC 1310
P.O. Box 66149
St. Louis, MO 63166-6149 (314) 554-3533
(phone) (314) 554-4014 (facsimile)
amerenmoservice@ameren.com

Attorneys for Union Electric Company d/b/a
Ameren Missouri

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Entry of Appearance was served on the following parties via electronic mail (e-mail) on this 13th day of November, 2017.

Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounselservice@psc.mo.gov

Office Of Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

Surayya H. Ibrahim
5414 Janet
St. Louis, MO 63136
Ronerone2007@gmail.com

/s/ Paula N. Johnson
Paula N. Johnson

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