

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

Jimmie E. Small,)	
Complainant,)	
)	
vs.)	Case No: EC-2015-0058
)	
Union Electric Company, d/b/a)	
Ameren Missouri,)	
The Company.)	

**Ameren Missouri's Response Complainant's
Motion for Summary Determination**

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company"), and for its response to Complainant's Motion for Summary Determination ("Motion") states as follows¹:

1. Paragraph 1 does not state a material fact but appears to summarize 4 CSR 240-2.117(E).
2. Paragraph 2 does not state a material fact, but appears to argue for the application of an equitable principle involving evidentiary admissions. The Company denies that such principle is applicable.
3. Paragraph 3 does not state a material fact, but appears to argue that the Commission should take judicial notice of two prior complaints filed by Complainant that were dismissed by the Commission.
4. The Company denies the allegation in paragraph 4 that on September 03, 2014 it asked the Commission to relitigate anything. The Company denies the allegation that it "turned over" Complainant's utility account debt to a collection agency although it admits that it assigned the right to collect the debt to a collection agency.

¹ The Company notes that Complainant's Motion fails to comply with the requirements of 4 CSR 240-2.117(1)(B). In particular, the Motion fails to set forth with particularity each material fact as to which Complainant claims there is no genuine issue. Instead, it mixes alleged facts, conclusions drawn from facts not explicitly set forth, and legal arguments. The Company has made an effort to respond in a way that clarifies what it interprets Complainant's allegations of facts and legal arguments to be.

5. The Company denies that it “keeps changing its factual position as to exactly what facts existed” when Complainant requested reconnection. The remainder of paragraph 5 does not state a material fact but appears to be an argument that the Commission should apply a different legal standard for granting summary determination than that set forth in 4 CSR 240-2.117(1)(E). The Company disagrees that any other legal standard applies.

6. The Company admits that in the last sentence of the fourth paragraph of its Answer and Motion to Dismiss, the Company denied Complainant’s allegation that the Company engaged in a policy, practice, or custom that violates Missouri or federal law.

7. Paragraph 7 does not state a material fact but appears to be an argument that the Commission should apply a different legal standard for granting summary determination than that set forth in 4 CSR 240-2.117(1)(E). The Company disagrees that any other legal standard applies.

8. The Company admits that Staff’s Recommendation to Dismiss Complaint With Prejudice, dated October 8, 2014, contained information described in 4 CSR 240.2-135(1)(B)(1). The Company admits it did not challenge the Commission’s Order of October 15, 2014.

9. The Company admits that Exhibit A to its Answer and Motion to Dismiss, filed October 2, 2014, is a letter in which an Ameren Missouri representative told Complainant that Complainant owed Ameren Missouri an amount past due for unpaid service charges. The remainder of paragraph 9 appears to be a mixture of allegations of fact and argument to the effect that some action by Staff constitutes a Company violation of Complainant’s due process and equal protection rights. The Company denies the facts as stated, denies that they are material to the issue of whether the Company improperly refused to reconnect Complainant’s utility service, denies that 4 CSR 240-2.135(1)(B)1 grants Complainant due process and equal protection rights and denies that any action by Staff or the Company has violated any such rights.

10. Paragraph 10 does not state a material fact. The Company denies that any fact “developed” or arising after the Complaint was filed is material to whether the Company improperly refused to reconnect Complainant’s electric utility service.

11. Paragraph 11 does not state a material fact, but appears to argue for the application of an equitable principle. The Company disagrees that such equitable principle applies.

12. Paragraph 12 does not state a material fact, but appears to state a standard of judicial review. The Company disagrees that such standard of review is applicable to the relief Complainant requests.

13. Paragraph 13 does not state a material fact, but appears to state a standard of judicial review. The Company disagrees that such standard of review is applicable to the relief Complainant requests.

14. Paragraph 14 does not state a material fact.

15. The Company denies that the Company and Complainant agreed to the Commission's findings and conclusions of October 15, 2014. The Company admits in paragraph 8, above, that it does not challenge the Commission's Order of October 15, 2014.

16. The Company admits that it never moved the Commission to change the status of this Complaint, as permitted under 4 CSR 240-2.070(15)(B).

17. The Company admits that it never moved the Commission to change the status of this Complaint, as permitted under 4 CSR 240-2.070(15)(B). The remainder of paragraph 17 does not state a material fact, but appears to be an argument that the Commission should apply a different legal standard for granting summary determination than that set forth in 4 CSR 240-2.117(1)(E), namely, that since neither the Company nor Staff moved to change the status of Complainant's Complaint, he is entitled to summary determination in his favor. The Company disagrees that any other legal standard applies.

18. Paragraph 18 does not state a material fact, but appears to be an argument that the Staff's alleged violation of Complainant's privacy should prevent Staff (or perhaps the Company) from alleging that there are genuine issues of fact for the Commission's determination. Complainant has cited no legal principle in support of this position and the Company is not aware of any.

19. The Company admits that there is a dispute between Complainant and the Company over the money Complainant owes the Company and that the dispute continues. The remainder of paragraph 19 appears to be an argument that the Commission should consider the number of hours Staff has spent on prior complaints involving Complainant in determining whether summary disposition should be granted. The Company disagrees that any legal standard other than that set forth in 4 CSR 240-1.117(1)(E) applies in determining whether summary disposition should be granted.

20. Paragraph 20 does not state a material fact. The Company agrees with Complainant that under 4 CSR 240-2.115(1)(B), the Commission may resolve a contested case on the basis of a stipulation or agreement. However, this regulation is irrelevant in that none of the parties have filed a stipulation and agreement. *See* 4 CSR 240-2.115(1)(A).

21. The Company admits that its representative Cathy Hart sent Complainant a letter dated September 8, 2014. The Company denies that the letter was dated September 3, and denies that it said reconnection would not occur until the \$846 past account issues were resolved. The Company states that relative to the amount in dispute, the letter stated, “You have a past due bill with Ameren Missouri for \$846.15. We require 80% of that amount to reconnect you so you will need to pay \$676.92.” The Company admits that the dispute is continuing. The Company denies that a statement made by its attorney in a pre-hearing conference constitutes an admission by the Company. *See*, 4 CSR 240-2.090(7). The remainder of Paragraph 21 does not state a material fact but appears to be an argument that the Commission should grant summary disposition because of the amount of hours Staff has devoted to a prior complaint involving Complainant and because of a statement made by the Company’s attorney during a pre-hearing conference, rather than based on the standard set forth in 4 CSR 240-2.117(1)(E). The Company disagrees that any other legal standard applies.

22. The Company admits that it has not mailed Complainant another bill for the \$846.15 he owes the Company. The Company admits that it did not enter into a cold weather agreement on August 29, 2014, when Complainant applied for service. The Company denies that its representative engaged in an argument about Complainant’s dispute with the LaCosts. The Company is without sufficient information to admit or deny whether “the female who escorted Small to Ameren [Missouri’s] door” had time to discuss cold weather agreements. The remainder of paragraph 22 appears to be a legal argument that the Company should be estopped from claiming that Complainant has a delinquent account balance because the Company has not rebilled Complainant and because it did not offer him a cold weather rule payment agreement in August. Complainant has cited no legal principle in support of this position and the Company is not aware of any.

23. The Company admits that Exhibit A to its Answer and Motion to Dismiss, the letter from Cathy Hart dated September 8, 2014, does not mention the Cold Weather Rule. The Company denies that its representatives argued with Complainant. The Company rejects the

remainder as unsupported legal argument that is also irrelevant to the issue of whether the Company's refusal to reconnect Complainant's electric service was improper.

24. The Company admits that it does not challenge the Commission's findings or conclusions of October 15, 2014. The remainder of paragraph 24 appears to be an argument that the Commission should grant Complainant's Motion because of the Company's failure make such a challenge. The Company disagrees that the Company's failure is material to the issue of whether it improperly refused to reconnect Complainant's utility service, and disagrees that any legal standard other than that set forth in 4 CSR 240-1.117(1)(E) applies in determining whether summary disposition should be granted.

25. Paragraph 25 does not state a material fact.

26. Paragraph 26 does not state a material fact, but appears to state a principle of law concerning evidentiary records on appeal. The Company notes that there is no evidentiary record in this case because there has not been any evidentiary hearing.

27. Paragraph 27 does not state a material fact, but appears to state a principle of law concerning evidentiary records on appeal.

28. The Company denies that it discriminated against Complainant. The remainder of paragraph 28 appears to suggest that because the Company has not "submitted substantial evidence" before October 15, 2014, it cannot do so now. The Company notes that there has not has not been any evidentiary hearing in this Complaint.

29. Paragraph 29 does not state a material fact, but appears to set forth a rule regarding pleading affirmative defenses that is wholly irrelevant to this matter.

30. Paragraph 30 does not state a material fact.

31. The Company admits that it is not a party to any dispute between Complainant and the LaCosts, and that there is a dispute between Complainant and the Company over money Complainant owes the Company. The Company denies the implication that it refused Complainant service because it did not want to get involved in the LaCost dispute.

32. The Company denies that it has treated Complainant differently than other applicants for electric service. The Company denies that Complainant does not owe the Company a debt, and asserts that Complainant does owe the Company \$846.15. The remainder of paragraph 32 appears to be an argument that is completely irrelevant to the issue of whether the Company improperly refused to reconnect Complainant's electric utility service.

The Company incorporates herein its Suggestions in Opposition to Complainant's Motion for Summary Judgment, filed herewith.

WHEREFORE, Ameren Missouri requests that the Commission deny Complainant's Motion for Summary Disposition.

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/ Matthew R. Tomc

Matthew R. Tomc, #66571
Corporate Counsel
Ameren Missouri
P.O. Box 66149
St. Louis, MO 63166-6149
(314) 554-4673 (phone)
(314) 554-4014 (fax)
AmerenMOService@ameren.com

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Ameren Missouri's Response to Complainant's Motion for Summary Determination was served on the following parties via electronic mail (e-mail) or via certified and regular mail on this 22nd day of December, 2014.

Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov
Nathan.williams@psc.mo.gov
Alexander.Antal@psc.mo.gov

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

Jimmie E. Small
606 W. Highway 2
Milton, Iowa 52570

/s/ Sarah E. Giboney
Sarah E. Giboney