

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

Anthony R. Granillo	)	
Complainant,	)	
	)	
vs.	)	Case No: EC-2018-0113
	)	
Union Electric Company, d/b/a	)	
Ameren Missouri,	)	
Respondent.	)	

**ANSWER, AFFIRMATIVE DEFENSES AND MOTION TO DISMISS**

COMES NOW, Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), and for its Answer, Affirmative Defenses and Motion to Dismiss states as follows.

1. On October 31, 2017, Complainant initiated this proceeding against Company. Unless otherwise noted, all date references hereinafter are to 2017.
2. Any allegation not specifically admitted herein by the Company should be considered denied.
3. In answer to paragraph 1 of the Complaint the Company states that it is without information sufficient to form a belief about where Complainant resides and therefore denies the same.
4. In answer to paragraph 2, the Company admits that the Company currently provides residential electric (1M) service (“service”) in Complainant’s name at 7404 Carleton Avenue St. Louis, MO 63130 (herein, “Carleton”), and in addition provides service in the name of Complainant’s wife, Carol Granillo, at 7005 Tulane, Unit 2FE, St. Louis, MO 63130 (“Tulane”).
5. The Company admits the allegations of paragraph 3 and in further answer 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 allegation of paragraph 4.
7. The Company admits the allegations of paragraph 5.

8. In response to paragraph 6, and as set forth more fully below, the Company states that Complainant is not entitled to the relief requested. 4 CSR 240-13.020(7), cited by Complainant, permits but does not require a utility to implement a preferred payment date plan, and the Company has not implemented such a plan.

9. Paragraph 7 of the Complaint consists of 10 separate unnumbered subparagraphs. For clarity, the Company will refer to them as though sequentially numbered 7a through 7j.

10. In response subparagraph 7a, the Company denies that the relief Complainant has requested is appropriate and denies that it has violated any statute, tariff, or Commission regulation or order, including but not limited to Commission Rule 4 CSR 240-13.020(7).

11. In response to paragraph 7b, the Company admits that a portion of Commission Rule (not tariff) 4 CSR 240-13.020(7) reads as stated by Complainant.

12. In response to subparagraph 7c, the Company admits that its disconnection notices sent to Complainant and attached to his Complaint state, "It is now too late to mail a payment." In further answer, the Company states that Complainant's conclusory statement, "Even though ample time is available from receipt of disconnect notice to receive remittance via US Mail by due date" 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.

13. The Company denies the allegations of subparagraph 7d as stated, but admits that Complainant spoke with Company supervisors named Jasmine and Brad on August 18, 2017.

14. The Company denies the allegations of subparagraph 7e as stated, but admits that Complainant spoke with a Company representative named Chaka on October 18, 2017.

15. The Company denies the allegations of subparagraph 7f.

16. The Company denies the allegations of subparagraph 7g.

17. The Company denies the allegations of subparagraph 7h as stated. In further answer, the Company admits that it does not offer its customers a preferred payment date. In further answer the Company states that it issues disconnection notices to a customer only when the customer has not paid the amount due for service in full by the due date stated on the account statements ("bills") issued for the customer's account, which due date is 21 days after the date of the bill. For example, on July 19, the Company issued a bill to Complainant for service to Carleton from June 18 to July 18, in the amount of \*\*\*[REDACTED]\*\*\*, with a due date of August

10. See the Account Activity Statement for Carleton attached to the Complaint (“Activity Statement”). Complainant did not pay the amount by its due date and it became delinquent. Five days later on August 15 the Company issued a disconnection notice to Complainant advising that if the \*\*\*[REDACTED]\*\*\* due was not paid on or before August 25, his service would be disconnected for nonpayment. To the extent that Complainant receives “routine” disconnection notices advising that his service may be disconnected for nonpayment, this is because Complainant routinely does not timely pay his bills.

18. The Company denies the allegations of subparagraph 7i. In further answer, the Company states that Complainant may have assumed that all of the Company’s contact notes reflect direct telephone contact between a customer and a Company representative. In fact, the notes document other account-related communications, as well, including but not limited to: a customer’s calls to the Company’s automated voice response unit (“VRU”) for account status information, the issuance of correspondence to a customer, the receipt of correspondence from a customer, outgoing automated calls to customers advising of pending disconnections or planned outages, and notes from regulatory affairs personnel advising other Company representatives of the status of formal or informal complaints filed by a customer with the Commission. On October 18 when Complainant spoke to Company representative Chaka, he insisted that she read back to him contact notes that reflected his demand for a preferred payment date. She read him a contact note dated September 22 that referenced the preferred payment date issue. The note, however, was an informational note entered by a regulatory affairs representative noting the substance of Complainant’s informal complaint. It was not a note documenting telephone contact between Complainant and the Company.

19. In further answer to Complainant’s allegation in subparagraph 7i that the Company “issued a fake bill for an amount less than due”, the Company states that Complainant has confused a bill and a payment on his wife’s *Tulane* account with bills for, and a payment due on, his *Carleton* account, as follows.

- a. On September 18, the Company issued a bill to Complainant for his *Carleton* account in the amount of \*\*\*[REDACTED]\*\*\*. The bill included a past due balance of \*\*\*[REDACTED]\*\*\*, late pay charges of \*\*\*[REDACTED]\*\*\*, and \*\*\*[REDACTED]\*\*\* for service to Carleton from August 16 to September 17, due October 10.

- b. On September 20, 2017, the Company received a payment of \*\*\*[REDACTED]\*\*\* for the Carleton account, which reduced the outstanding balance for Carleton due on October 10 to \*\*\*[REDACTED]\*\*\*.
- c. On September 26 the Company issued a bill to Complainant's wife for \*\*\*[REDACTED]\*\*\*, for service to *Tulane* from August 24 to September 25, due October 18.
- d. Complainant did not pay the remainder of the bill for *Carleton* by its October 10 due date, so on October 13 the Company issued a disconnection notice to Complainant, advising that if the \*\*\*[REDACTED]\*\*\* delinquent balance was not paid in full on or before October 25, service to Carleton would be disconnected for nonpayment.
- e. On October 17, the Company issued a bill to Complainant for his Carleton account in the amount of \*\*\*[REDACTED]\*\*\*. The bill included the \*\*\*[REDACTED]\*\*\* prior delinquent balance, late pay charges of \*\*\*[REDACTED]\*\*\*, and \*\*\*[REDACTED]\*\*\* for service to Carleton from September 17 through October 16, due November 8.
- f. On October 18, Complainant called the Company. The following occurred during the course of the conversation. When asked, he advised that he was calling about the *Carleton* address. He stated that he was disgusted because he had received a disconnect notice for \*\*\*[REDACTED]\*\*\* but had already that month received and paid a bill for \*\*\*[REDACTED]\*\*\*. He accused the Company of sending the \*\*\*[REDACTED]\*\*\* bill in retaliation for the informal complaint he had filed with the Commission. He alleged that the Company, "manipulated the billing" and "charged [him] less than [he] actually owed." The representative asked the date of the bill for \*\*\*[REDACTED]\*\*\* bill, but Complainant did not remember. The representative reviewed the Carleton account and noted that no payment of \*\*\*[REDACTED]\*\*\* had been received. Complainant stated he couldn't "keep track of it all" but asserted: he had been billed \*\*\*[REDACTED]\*\*\*, that bill showed no delinquent balance, he paid the bill in full, he knew he should have been billed more than \*\*\*[REDACTED]\*\*\*, and as a result the Company sent him a delinquency notice. The representative again reviewed

Complainant's account, detailed out loud to Complainant the preceding two months' bills and payments, and reiterated that Complainant had not been billed \*\*\*[REDACTED]\*\*\* for Carleton. Complainant asserted that the Company intentionally underbilled him so that it could send him a disconnect notice, "on an amount [he] never had an opportunity to pay."

- g. On October 19, the Company (via its vendor, Fifth Third Bank) received a check written on Complainant's and his wife's bank account in the amount of \*\*\*[REDACTED]\*\*\*, along with a payment stub for Complainant's wife's *Tulane* account indicating an amount due of \*\*\*[REDACTED]\*\*\*. That same day, the payment was posted to the *Tulane* account.
- h. On October 19, Complainant also made a payment over the telephone (via the Company's vendor, Western Union Speedpay) on his *Carleton* account in the amount of \*\*\*[REDACTED]\*\*\*.
- i. On October 25, the Company issued a bill to Complainant's wife for her *Tulane* account, in the amount of \*\*\*[REDACTED]\*\*\*, for service to Tulane from September 25 to October 24, due November 17.
- j. On November 1, Complainant called the Company. The following occurred during the course of the conversation. Complainant stated he was calling about *Carleton*. He asked for his balance. The representative advised the balance was \*\*\*[REDACTED]\*\*\* due November 8 (*see* subparagraphs e and h, October 17 bill of \*\*\*[REDACTED]\*\*\* due November 8 less October 18 payment of \*\*\*[REDACTED]\*\*\*). Complainant asserted the Company received \*\*\*[REDACTED]\*\*\* from him via a check that posted to his bank account on the 21<sup>st</sup> of October. The representative asked, "is there a different account it could possibly be on because as of right now I don't see that there has been a payment on the 21st[]?" The representative paused, but Complainant did not answer the question. The representative advised that the Company's records did not show receipt of a payment of \*\*\*[REDACTED]\*\*\*. Complainant stated he had a copy of the check. The representative advised him to fax the copy to Company's Solutions Center.

- k. On November 2, a Company Solutions Center representative called Complainant. The following occurred during the course of the conversation. The representative confirmed receipt of the copy of the check, confirmed that Complainant received service at *Carleton*, and asked if maybe Complainant's wife had service under another account. Complainant said, "No. That's the only thing we've got." The representative repeated, "you don't have any other accounts, though?" Complainant responded, "we have only one primary residence." The representative asked, "Mrs. Granillo doesn't have service elsewhere?" Complainant responded, "Nope. Nope." The representative advised that he found where Complainant's \*\*\*[REDACTED]\*\*\* payment had been applied, and that he would transfer the payment to Complainant's Carleton account within five minutes or so after the call. Complainant called back about ten to fifteen minutes later and confirmed with a different Company representative that \*\*\*[REDACTED]\*\*\* had been applied to his Carleton account.
- l. Complainant called the Company a second time on November 2. Despite having denied only 30 minutes earlier that he or his wife had any other accounts with the Company, he stated he was calling on behalf of his wife about her account for an apartment that they rented. He informed the representative that the apartment was on *Tulane*, and stated, "we didn't get a bill last month." He did not know the account number or exact street address so he provided his wife's Social Security number so that the representative could access the Tulane account. He asked about the balance and the representative advised him it was \*\*\*[REDACTED]\*\*\*. They discussed that this included \*\*\*[REDACTED]\*\*\* for service, and \*\*\*[REDACTED]\*\*\* for an amount that had been paid to the account previously but that had been transferred to another account. Complainant said, "I see...how do you, how do you deal with that for disconnect?" The representative advised him that the Tulane account was not in threat of disconnection because the \*\*\*[REDACTED]\*\*\* was not yet due.

- m. Complainant called the Company a third time on November 2, to inquire what billing address was associated with the Tulane account. He claimed that the prior month, the Tulane bill came to his home address. The representative confirmed that the billing and service address for Tulane were the same, and no address was associated with the Tulane account other than 7005 Tulane Unit FE. The representative asked him if he wanted to change the mailing address, and he declined.

20. In response to paragraph 7j, the Company admits that its Customer Care representatives do not process customer payments over the telephone, and that if a customer wishes to be transferred to Western Union Speedpay (to make a telephone payment) directly after speaking with a Company representative, the call leaves the Company's phone system, such that there is not an opportunity at the end of the customer's call with Speedpay to take a Company satisfaction survey. The Company denies the remainder of the allegations of paragraph 7j. In further answer the Company states that although its Customer Care agents do not process customer payments over the telephone, the Company offers customers a number of convenient ways to pay their bills, including: mailing a payment, paying online by electronic check, paying online by credit or debit card, paying by telephone by credit or debit card via Western Union Speedpay, or paying in person at one of the Company's many authorized Company pay stations.

21. Paragraph 8 of the Complaint consists of 19 unnumbered paragraphs. For clarity, the Company will refer to them in this Answer as though sequentially numbered 8a through 8s.

22. The Company admits the allegations of paragraph 8a.

23. The Company denies the allegation of paragraph 8b that its billing practices do not comply with 4 CSR 240-13.020(7). The remainder of the allegations of paragraph 8b relate to Complainant's contact with Commission Staff and do not allege facts to prove that the Company violated a statute, rule or Commission-approved tariff and therefore no answer is required. To the extent an answer is required, however, the Company states that it is without information sufficient to form a belief about the allegations that Complainant was in contact with Commission Staff on October 2 and Staff, "defended Respondent's billing practices", although it admits that the September 25 informal complaint closure letter on Commission letterhead attached to the Complaint does conclude, "it appears Ameren Missouri has acted in accordance

with both the rules and regulations of the Commission and Ameren Missouri's filed and approved tariff.”

24. In response to paragraph 8c, the Company admits that it provided account information including payment history about Complainant's Carleton account to Commission Staff and that Complainant has made monthly payments from September 28, 2015 to present. In further answer the Company states that, as evidenced by the Account Activity Statement for Carleton attached to the Complaint, Complainant's payments are frequently delinquent, resulting in the assessment of late pay fees and the issuance of disconnection notices.

25. In response to paragraph 8d, the Company admits that Complainant called the Company on August 18 and during the conversation advised the representative that his “payment *is on its way to you*[.]” The Company denies that Complainant told the representative that it would arrive by US Mail before August 25. In further answer the Company states that actually, Complainant told the representative, “it may or may not get to you by the 25<sup>th</sup> of August which is the threatened disconnect date and if I'm disconnected because of that, I'm...I'm pi\*\*ed.” But yet, when a supervisor called Complainant back later that day, he told the supervisor the Company would be paid on August 24<sup>th</sup> and he had a “check ready, and I'm *planning on* putting it in the mail on Monday, the 21<sup>st</sup>...[.]” The remainder of the allegations of paragraph 8d address the speed of U.S. mail delivery and do not allege facts to prove that the Company violated a statute, rule or Commission-approved tariff and therefore no answer is required, but to the extent an answer is required the Company denies the same.

26. In response to the allegations of paragraph 8e, the Company admits that a Company representative told Complainant, “if a payment is not showing on your account, it is not considered that the payment is received until it is posted to your account.” The Company denies the remaining allegations of paragraph 8e. In further answer, the Company states that to account for possible overlap between receipt of a payment and the issuance of a disconnection notice, each disconnection notice clearly states, “IF PAYMENT OF THIS AMOUNT HAS BEEN MADE, PLEASE DISREGARD THIS NOTICE. THANK YOU.” In addition, as noted above, most mailed payments are posted the date they are received and 98% of mailed payments are posted within two days of receipt. In addition, as soon as payment of a delinquent amount is posted, if disconnection has previously occurred, an order to reconnect service is automatically issued. In further answer, since Complainant's account remained delinquent 5 days after the



October 13 disconnection notice was issued, in an effort to avoid a possible disconnection the representative advised Complainant of three ways to pay where his payment would be processed the same day, namely, paying at an authorized Company pay agent, paying online or paying over the telephone.

27. In answer to paragraph 8f, the Company admits that during the October 18 call, Complainant referenced 4 CSR 240-2.020 and advised the Company representative of his interpretation of the Rule.

28. The Company denies the allegations of paragraph 8g.

29. In answer to paragraph 8h, the Company admits that Complainant requested a “preferred payment date” of the last day of the month. In further answer thereto, the Company states that 4 CSR 240-13.020(7), cited by Complainant, does not require a utility to offer a preferred payment date plan and the Company does not offer one. The Company previously offered a *deferred* pay date program to qualified senior citizens receiving residential service. That program did not, as Complainant desires, permit a customer to select a preferred due date for the customer’s monthly bill. Rather, the program extended the due date on a bill up to 21 days from the printed bill date. In further answer, the Company notes that as of late July 2016, payment on *all* residential bills, not just those of qualifying senior citizens, is due 21 days from the date of the bill. Union Electric Company Electric Service Tariff Sheet No. 54.1, Service Classification No. 1(M) Residential Service Rate, Payments.

30. The Company admits the allegations of paragraph 8i.

31. The Company admits the allegations of paragraph 8j.

32. In answer to paragraph 8k, the Company admits that another supervisor called Complainant on August 18, 2017, in response to his request that his call be escalated. The Company denies the remainder of the allegations of paragraph 8k as stated.

33. In answer to paragraph 8l, the Company admits that it issued a disconnect notice to Complainant on September 14 and that Complainant filed an informal Complaint with the Commission on September 18. The Company is without information sufficient to admit or deny the allegations that Complainant received the notice on September 15 and that Complainant mailed a check on September 18 and therefore denies the same.

34. In answer to paragraph 8m, the Company denies Complainant’s blanket statement, “Complainant made no contact with Respondent,” since, as the Complaint itself

alleges, Complainant has contacted the Company several times. In further answer the Company admits that on October 18 a Company representative read a contact note dated September 22 (not 27<sup>th</sup>) to Complainant, but denies that the contact note in any way suggested that Complainant contacted the Company on that date. In further answer, see paragraph 17 of this Answer.

35. The Company is without information sufficient to admit or deny the allegations of paragraph 8n regarding when Complainant received a bill and mailed a payment and therefore denies the same. In further answer, the Company states that it issued two billing statements in October relevant to this Complaint. As detailed above in paragraphs 19.c. and 19.e. of this Answer, on September 26 it issued a bill to Complainant's wife in the amount of \*\*\*[REDACTED]\*\*\* for service to Tulane, and on October 17 it issued a bill to Complainant in the amount of \*\*\*[REDACTED]\*\*\* for service to Carleton. In addition, on October 19, 2017 it received a payment of \*\*\*[REDACTED]\*\*\* along with a payment stub for Tulane.

36. In answer to paragraph 8o, the Company denies retaliating against Complainant for his informal complaint filing, or for any other reason, but admits that Complainant called the Company on October 18 and made that allegation. In further answer, *see* paragraphs 19.a. through 19.k. of this Answer.

37. In answer to paragraph 8p, the Company denies the allegations as stated. In further answer, see paragraphs 18.a. through 18.k. of this Answer. In further answer, the Company notes that the representative promised to document Complainant's request in the contact notes, but did not (and could not) promise to return the payment stub to Complainant as requested. A copy of the payment stub enclosed with Complainant's \*\*\*[REDACTED]\*\*\* payment, provided by the Company's vendor Fifth Third Bank, is attached hereto as **Exhibit A**.

38. The Company denies the allegations of paragraph 8q as stated. In further answer, the Company states that the representative read Complainant a contact note entered on September 22, as detailed in paragraph 17, above. In further answer, Complainant's speculations contained in paragraph 8q do not allege facts to prove that the Company violated a statute, rule or Commission-approved tariff and therefore no answer is required. To the extent an answer is required, however, the Company states that it is without information sufficient to form a belief about the allegations and therefore denies the same.

39. The Company denies the allegations of paragraph 8r as stated. The Company admits that during an August 18 call between Complainant and the Company, Complainant demanded several times that the representative document the conversation.

40. In answer to paragraph 8s, the Company denies that during the October 18 call Complainant attempted to make a payment. The Company admits that Complainant and the representative discussed that its call center representatives are not permitted to take payments, and that the representative explained to Complainant the various ways he could make a payment. The Company admits that Complainant made allegations about why the Company's representatives are not authorized to accept payments, but denies the allegations. The Company admits that Complainant demanded that his allegations be documented.

#### Affirmative Defenses

41. Preferred Payment Date/Disconnection Notices. Complainant is dissatisfied with the fact that the Company does not have a preferred payment date plan that would allow him to select the last day of the calendar month following the month in which his bill is issued as the date his payment is due. Complainant asserts that if he were offered this preferred payment date, it would "eliminate threats of disconnection of service." Complainant cites to 4 CSR 240-13.020(7) in support of this particular complaint. That Rule permits, but does not require, a utility to implement a preferred payment date plan. All the Rule mandates in terms of payment due dates is that a monthly-billed customer, "*shall* have at least twenty-one days...from the rendition of the bill to pay the utility charges[.]" The Company is in compliance with this Rule because the due date stated on its bills to monthly-billed residential service customers is the date 21 days after the date the bill is issued. This is also in accord with the Company's residential service rate tariff, issued March 8 and approved April 8 of this year by the Commission. *See*, Union Electric Company Electric Service Tariff Sheet No. 54.1, Service Classification No. 1(M) Residential Service Rate, Payments. If Complainant simply paid his bill by its due date, that would also, "eliminate threats of disconnection of service" that, as Complainant has asserted in his calls to the Company, disgust and upset him.

42. Although it distresses Complainant to receive disconnection notices, it is not a violation of any statute, Commission-approved Company tariff, or Commission Rule or order for the Company to send them. Rather, the Company is permitted to disconnect the service of a residential customer for nonpayment of an undisputed delinquent account balance, per 4 CSR

240-13.050(1)(A), *on condition* that that the Company has first sent the customer a written notice of discontinuance by first class mail at least 10 days prior to the proposed discontinuance or delivered written notice in hand 4 days prior (and provided an additional notice at least 24 hours preceding discontinuance), per 4 CSR 240-13.050(1)(5). As the Commission has previously noted, “[i]mmminent disconnection is inherently unnerving, and the Commission sympathizes with all who face that possibility, but a disconnection notice is an unfortunate necessity to bring an account’s status to a customer’s attention.” *Mershon v. Union Electric*, EC-2013-0521, Issued 4/23/14, effective 5/23/14, *Report & Order*, p. 22.

43. Disconnection Notice Content. Complainant is also dissatisfied with the fact that the Company’s mailed disconnection notices advise customers not to mail the payment required to avoid disconnection, but instead to pay via faster methods. The Company states that prior to January of 2017, the Company issued two written disconnection notices: a “yellow” disconnection notice issued 10 days in advance of a proposed disconnection, and a “pink” final disconnection notice issued 4 days in advance of a proposed disconnection. Currently, the Company issues only one written disconnection notice, a “pink” notice, issued 10 days in advance of a proposed disconnection. The “it is now too late to mail a payment” language appears to be a vestige of the prior “pink” disconnection notice. Given that the current “pink” disconnection notices are issued 10, rather than 4, days in advance of a proposed disconnection, the Company recognizes that some customers may feel the wording advising against mailing a payment is unnecessarily strong. In any event, the wording Complainant disdains does not violate any applicable statute, Commission-approved tariff, rule or order. The rule governing the content of disconnection notices, 4 CSR 240-13.050(4), outlines the specific information a disconnection notice, “shall contain.” The Company’s disconnection notices contain all such information. That Rule does *not* prohibit the inclusion of any other particular information.

44. Receipt of Payment. Complainant points out, correctly, that the Commission’s Billing and Payment Standards Rule provides, “[t]he date of payment for remittance by mail is the date on which the utility receives the remittance.” 4 CSR 240-13.020(7). The plain language of the Rule does not mandate that a utility *post* a payment the date it is received, though that appears to be Complainant’s interpretation. Accordingly, Company representatives have noted to Complainant that his mailed payment may not be posted to his account the day it is received, and that only after the posting of the payment to his account can a representative accessing his

account information confirm that it has been received. Complainant's interpretation of the cited Rule is not reasonable since the Company's vendor cannot magically know that a payment is one of thousands that has arrived in a given delivery and instantaneously upon receipt apply that payment to the proper account. As a practical matter, some amount of lag will occur because in contrast to an electronic payment, a payment by mail involves paper documents that must be mechanically processed—envelopes opened, and checks and payment stubs scanned for account and payment information, payments batched and the batches sent to the Company—before an enclosed payment can be posted to the customer's account. The Company's vendor receives multiple truckloads of mailed payments throughout a given day. Depending on which daily delivery a payment arrives in, the lag may be short and a payment may post the same day it is received. Due to timing of receipt or volume, neither of which are within the Company's or vendor's control, other payments may post the next day. In fact, the Company's vendor posts most mailed payments within one day if not the same day they are received, and posts 98% within two days. Unfortunately, some payments arrive without the information necessary to process them electronically, such as pay stubs or correct account numbers, and the research necessary to post the payment to the correct account increases the lag time for those payments. For example, in November of 2016, Complainant mailed a paper check in payment, but posting of the payment to his account was delayed because the payment was submitted without an account number or with an incorrect account number.

45. In its defense, the Company states that the existence of lag between receipt and posting of payments, in and of itself, does not violate the cited Rule. What the Rule specifically prohibits is, “bas[ing]... a discontinuance of service, on a payment that was made to a payment agent *on or before the due date or delinquent date.*” *Id.* First of all, the Company has *never* disconnected Complainant's service at all, let alone disconnected it for a prohibited reason. The two sentences of the Rule, the first noting that the payment date for a payment by mail is the date the remittance is received, and the second prohibiting basing a discontinuance on any payment received on a due/delinquent date, read together, essentially tell a utility that a customer's payment is timely if it is received on or before a due or delinquent date, so the utility must not jump the gun and cut on that date while there is still time for the payment to be received. The practical effect is that any lag between receipt on or before a due date or delinquent date and the utility's posting of the payment is something the utility must account for in its practices. The

Company will not cut on or before the due/delinquent date stated in its customer's bill because the Company proceeds with disconnections for nonpayment only after an even *later* date, stated in its *disconnection notice*, which notice is not even issued until *after* a bill's due/delinquent date has already passed. *See, e.g.*, paragraph 17, above. The Company has not violated the cited Rule because it has not disconnected Complainant's service after having received his payment on or before his's bill due/delinquent date.

46. Telephone Payments. Complainant is also dissatisfied with the fact that the Company's call center representatives do not take payments over the phone. Complainant would like them to do so, so that if he receives a disconnection notice, he can call the Company to make a payment via a representative, and following this contact with a representative, can immediately proceed to participate in a customer satisfaction survey to express his displeasure at having received the notice. Notwithstanding Complainant's dissatisfaction with his payment options, the Company's call center personnel provide all the services required by the Commission's Inquiries Rule, 4 CSR 240-13.040(2), including: being available during normal business hours to respond to customer inquiries, service requests, safety concerns and complaints; being available to enter into written agreements; and being available receive and respond to contacts regarding discontinuance of service and emergency conditions. *Id.* The Commission's Inquiries Rule does not require Company personnel to accept payments over the phone and therefore the fact that the Company's representatives do not do so does not constitute a violation of a statute, Company tariff, or Commission rule or order.

#### Motion to Dismiss

47. For relief, Complainant asks that the Commission order the Company, "to exercise the option to establish a "preferred payment date" for Complainant's utility account" and cites to 4 CSR 240-13.020(7). *See* Complaint, ¶6. As the reference to the Company's "option" suggests, the cited Rule does not *require* the Company to adopt a preferred payment date plan. While the Commission has the authority to regulate the Company, the Commission has long acknowledged that it does not have the authority to *manage* the Company. "The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. Those powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs its legal

duty, complies with lawful regulation, and does no harm to public welfare.” *State ex rel. Harline v. Public Serv. Com’n*, 343 S.W.2d 177, 182 (Mo. App. 1960). The Commission does not have a general power of management by which it could order the Company to adopt such a plan. Because the Commission cannot order the relief Complainant has requested, it would be appropriate for the Commission to dismiss the Complaint for failure to state a claim for which relief can be granted. The Commission may do so on its own motion, or on the motion of any party, after notice. 4 CSR 240-2.070(7). When the Commission cannot grant the relief a complainant requests, it is proper for the Commission to grant a motion to dismiss. *City of O’Fallon v. Union Electric Co.*, 2015 Mo. App. Lexis 454, \*11, \*16 (April 28, 2015)(“the Commission’s powers are limited to those conferred by statute either expressly or by clear implication as necessary to carry out the powers specifically granted” and where the complainant could provide, “no statutory authority for the Commission to grant the requested relief[.]” the complaint was properly dismissed).

48. The following attorneys should be served with all pleadings in this case:

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WHEREFORE, Ameren Missouri respectfully requests, in the alternative, that the Commission: dismiss the Complaint for failure to state a claim for which relief can be granted, deny the requested relief, or set the matter for hearing.

SMITH LEWIS, LLP

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer, Affirmative Defenses and Motion to Dismiss was served on all of the following parties via electronic mail (e-mail), and also served on Complainant via U.S. Mail, on this 1<sup>st</sup> day of December, 2017.

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**EXHIBIT A**  
**IS CONFIDENTIAL**  
**IN ITS ENTIRETY**