

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>3</sup>

JUN 12 2015

Missouri Public  
Service Commission

JIMMIE E. SMALL,

Complainant,

v.

Union Electric Company, d/b/a

Ameren Missouri,

Respondent.

Case NO: EC-2015-0058

**COMPLAINANT'S POST-HEARING RULE 84.(g) REPLY BRIEF**

COMES NOW, the Complainant, Out - of- State Party, aged, disabled, and respectfully files his Post-Hearing Reply Brief .

**JURISDICTION**

Throughout Cause No. EC-2011-0247; No: EC-2012-0050; and Cause NO: 2015-0058, Commission Staff have acted in concert with Respondent Union Electric by and through wrongful state action.

City of Kirksville, Code of Ordinance NO: 11274, covenant/section 12, creates Respondent Utilities duties and obligation to maintain a Customer Service Office within the Kirksville, Mo ( Green Hills Service Area) ( Adair County, Mo.).

Respondent Utility knowingly and intentionally substituted 1-877-206-1234, Customer Contact Center, Saint Louis, Missouri as early as January 31, 2007, knowingly and intentionally breaching Respondents duty and obligation under (a) Code of Ordinance NO; 11274, ratified by Utility Vice President, previously submitted; (b) Breaching Respondents Franchise agreement over a 20 year term, by NOT maintaining a CUSTOMER SERVICE OFFICE within the Kirksville, Mo, Green Hills service area. See Sworn Testimony given by Utility MANAGEMENT Cathy Hart, April 20, 2015 hearing.

Accordingly, the alleged debt due and collection action by MPSC, Consumer Collection Management, was by design calculated to circumvent well established due process in clear violation of MEMPHIS LIGHT & GAS, DIV. v. CRAFT. 436 U.S. 1, 21-22. (1978).

### VENUE ISSUES

Substantial evidence under Murphy v. Carron \_\_\_\_\_ S.W. 2d \_\_\_\_\_ exist, in Cause EC-2015-0058.

VENUE of any DISPUTE by a customer or applicant was to be resolved/settled through well established CUSTOMER SERVICE OFFICE, Green Hills District, Cottonwood street Kirksville, Mo the exact same Utility facility where Computer Generated data by LuAnn to Sweet, Annette Crain took place on August 05, 2010.

Substantial evidence maintained by Respondent Utility record also shows that [“ CUSTOMER MAY WANT TO FOLLOW UP WITH THEM AS WELL [ PH. 1-314 432 2430].

Consumer Collection Management office is located in Saint Louis, Missouri, far from Adair County, Green Hills service area VENUE, as contemplated by (a) Respondent's FRANCHISE agreement, ratified by Utility Vice President, (b) VENUE matters resolved by and through Code Of Ordinance NO; 11274/ Bill No. 96-132] agreed to by Utility Vice President, for a term of 20 years.

Respondent's Post-Hearing, Brief page 24 states in part, [ While Missouri law bears some similarities to Tennessee law analyzed in MEMPHIS LIGHT, there are also many important difference.

CP Small agrees, one important difference in NO. EC-2015-0058 plus Two (2) other contested case disputes, is that Party/applicant Small is an OUT-OF-STATE Applicant from 606 West Hwy # 2, Milton, Iowa, 52570.

On January 31, 2007 Respondent AMEREN UE served a DISCONNECT NOTICE, upon CP Small by U.S. Mail delivery to P.O. Box 133 Quincy Ill, with a 23 LAKEROAD service street location, Kirksville, Mo. 63501.

Significantly, the January 31, 2007, DISCONNECT NOTICE [attached herein] directed this DISPUTED Bill [ Customer ] to a 1-877-206-1234 Call Center, SAINT LOUIS, Missouri well after Respondent Utility Vice president contractually agreed to maintain a CUSTOMER SERVICE OFFICE within Adair County, Missouri [ Green Hills District].

As of January 31, 2007 service date, Union Electric Officials, management knew that SAINT LOUIS Missouri was an improper VENUE to resolve or settle OUT-OF-STATE DISPUTES with Respondent Utility.



Once again the MPSC ALJ Bushmann and Hon. D. Jordan denied Small's Motion to AMEND his complaint under Mo. Rules, 55.33(b) Amendments to conform to the evidence, thus imposing an impermissible burden on the undersigned Out-Of- State party Small and the end result being that Respondent Utility benefitted by the state action decision denying Small his liberty interest in Missouri Due Process laws, and more Specifically, the United States Constitution, Const. Amend. 14. See Hernandez v. Texas, 347 U.S. 475. Race discrimination case, based on Hispanic visual observation.

Although the parties have not addressed this question in their briefs, " they may not by stipulation invoke the judicial power of the United States in litigation which does not present an actual [ 436 U.S. 1, 8] ' case or controversy.' Richardson v. Ramirez , 418 U.S. 24.(1974) . . . . Sosna v. Iowa, 419 U.S. 393, 3 (1975).98

The State of Missouri, acting through the Missouri Public Service Commission, specifically its state Action decision to deny Small leave to Amend his complaint, No: EC-2015-0058, was by design calculate for Small to waive factual and legal points come time to appeal.

The appellate court will refrain from addressing issues, points, legal claims NOT timely presented to the MPSC to begin [finality] jurisdiction, specifically the finality judgment/Order rule.

Respondent's NP brief consist 28 pages, 173 footnotes, specifically denies its September 08, 2014 adverse utility decision involved Mo. State Action.

Small respectfully disagrees. He files his Reply Brief pointing out factual and legal matters, as follows;

State Action, for purposes of the equal protection clause, may emanate from rulings of administrative and regulatory agencies, as well as from legislative or

judicial action. Moose Lodge No. 107 v. Irvis, (1972) 407 U.S. 163, 31 L. Ed 2d 627, 92 S. Ct. 1965.

After careful reading of UE. Post-Hearing Brief, it does not appear that Ameren Missouri's September 08, 2014 denial of services and accommodations, addressed Small's Constitutional rights [ Commerce Clause doctrine] under Article 1, section 8, cl 3, thus imposing an impermissible burden upon Iowa Resident/Complainant Small. See State ex rel BLOMQUIST v. SCHNEIDER, 244 S.W. 3d 139 ( Mo. Banc 2008). See also Bendix, 486 U.S. at 894, 108 281, 57 L Ed 523 (1913).S. Ct. 2218; Hoke v. United States, 227 U.S. 308, 320, 33 S. Ct. Discussing Interstate Commerce issues.

No place within Respondent's 28 page Post-Hearing Brief content did Respondent Utility, suggest a factual or legal basis for the Utility Management decision of September 08, 2014, denying Complainant connection to electrical service, summarily denying Out-Of-State APPLICANT equal protection rights under (a) City of Kirksville, Mo. and Union Electric's Franchise agreement, specifically the contract right of access to Respondent's CUSTOMER SERVICE OFFICE facility, Kirksville, Mo [ Green Hills area district] ; (b) denial of equal protection right as to City of Kirksville, Mo. and Union Electric sworn acceptance to Code of Ordinance signed, ratified by Union Electric Vice president.

In his Brief in reply, Small amends his Complaint under Missouri liberal pleading standards, to conform to the evidence, that City of Kirksville, Mo. acting in concert, with U.E. elected to conspire with each other to deny the Out-Of-State disabled, aged, male veteran equal access opportunity to participate in (a) City of Kirksville, Mo, ratified Code of Ordinance adopted procedures, granted other similarly situated Applicants [ On August 29, 2014] for electrical power services, and accommodations, (b) denied equal access opportunity as an Out-Of-State



Applicant to participate in City of Kirksville, Mo. Code of Ordinance,[ No. 11274/ accepted by U.E. on 01/21/1997] specifically the covenant agreeing for a term of 20 years to maintain a Customer Service Office, within Kirksville, Mo. service area. (c) Complainant also amends his August 29, 2014 Complaint to charge Retaliation by City of Kirksville, Mo. acting in concert with Utility Company, after Small filed a prior formal complaint (i) against Union Electric Company Filed with the Missouri Commission On Human Rights on January 30, 2013 asserting retaliation based on Out-Of-State nexus factors ( ii) amended to include that CP Small filed prior Complaints against Union Electric, its agents and assigns, back in 2010 time period No. EC-2011-0247; No; EC-2012-0050; and EC-2015-0058. (iii) MPSC has repeatedly denied Small's motion for leave to Amend his complaints to conform to the evidence, and to the benefit of Union Electric Company, a privately owned entity acting in concert with MPSC Staff who violated Small's rights of privacy in No; EC-2015-0058.

Retaliation against an Out-Of-State person/Applicant was by design calculated to dissuade and discourage Small from pursuing his disputes, claims, concerns, grievances, which defeats the State of Missouri, purpose of having the MPSC in the first place.

Additionally, MPSC ALJ Jordan's adverse decision to deny Small's Motion to amend his complaint under R. 55.33(b) had the legal effects to deny Small his first Amendment Free Speech right to complain of governmental state sponsored action and to assist Respondent in circumventing Code of Ordinance laws, City of Kirksville, Mo.

## HEARING ROOM FACILITY 04/20/2015

The hearing room facility [04/20/2015] situated at Kirksville, Mo was inadequate to accommodate an open public hearing.

The seating accommodations was supplemented by obtaining a chair from the hallway entrance so security guard would have a seat.

No other seating space was available for CP Small's witnesses or to accommodate the general public interested in Kirksville Code of Ordinance issues, Matters and concerns. Thus a New Trial should be granted, if need.

While the April 20, 2015 Hearing proceeding No. EC-2015-0058 was held inside Kirksville, Mo. City Hall, and while that same City Hall is a public access facility, at no time on April 20, 2015 was their suitable seating accommodations available for public participants.

Lack of Hearing room space would not accommodate open meetings laws, as mandated by Missouri Open Administrative Meetings involving governmental functions.

MPSC acted in concert with Kirksville, City government when arrangement for the confined Hearing Room accommodations were made, and NO NOTICE was provided to the parties in advance of the inadequate Hearing Room Space, which came to benefit Respondents Witness Cathy Hart, but lacked suitable Hearing Space accommodations for this Out-Of-State party, thus further imposing an impermissible burden upon the undersigned, in violation of the United States Constitution Commerce Clause, Art 1, sect. 8, cl 3.

Respondent's DISPUTE treatment of this Out-Of-State customer was documented. Make use of the 1-877-206-1234 Customer Contact Center during regular business hours , NO other Dispute accommodations are available.



See attached January 31, 2007 Constitutionally defective DISCONNECT NOTICE under CRAFT. 436 U.S. 1, 21-22.

No Place within the alleged expert testimony of Cathy Hart [ 04/20/2015 Transcript] was factual or legal evidence presented justifying Respondent Utility and City of Kirksville, Mo. breach of duty to implement and enforce its Ratified Franchise agreement and Code of Ordinance accepted and sworn to by Vice President of Union Electric Company, thus making a mockery of Mo. State law and federal constitutional Commerce Clause laws. See attached substantial evidence of AMEREN UE January 31, 2007 DISCONNECT NOTICE, informing Small that SAINT LOUIS, Utility Office was the VENUE for resolving SMALL's DISPUTED BILL back as early as January 31, 2007, via Telephone Customer Contact Center during business hours or else. NOTHING.

Utility Co.'s January 31, 2007 DISCONNECT NOTICE, failed on its face, to provide customer Small NOTICE and opportunity to present his DISPUTE, about his bill to a designated employee of Union Electric.

The 01/31/2007 DISCONNECT NOTICE served on the Out-Of-State customer failed to NOTIFY Small on January 31, 2007 that if a DISPUTED Bill, account No 34433-07009, was being pursued then customer Small could use the services and accommodations contracted for through the City of Kirksville, Mo Code of Ordinance covenants, as contemplated by the Utility Company to accommodate Missouri Resident Customers, similarly situated to Customer Small on January 31, 2007 now continuing in May 2015 unresolved.

This [Franchise/ Code ] EVIDENCE is unassailable and not disputed by AMEREN expert MANAGEMENT, Cathy Hart or other qualified utility employee.



Prosecution of Union Electric Company under the U.S. Commerce Clause, does not require exhaustion of remedies, and is not State Action required.

To eliminate any confusion we note that appellant need not demonstrate the denial of any "property" interest. Although the due process clause extends only to deprivations of "life, liberty or property", a violation of the clause's equal protection component is necessarily a deprivation of "liberty", therefore, decisions under the due process clause's equal protection component, like substantive due process decisions, make no reference to the "life, liberty, or property" requirement. See, e.g., Frontiero v. Richardson, 411 U.S. 677, 93 S. Ct. 1764, 36 L. Ed. 2d 583 (1973); Weinberger v. Wiesenfeld, 420 U.S. 636, 95 S. Ct. 1225, 43 L. Ed. 2d 514 (1975).

Respondent's Post-Hearing Brief, 28 pages in length, reference 173 footnotes.

What Respondent did not Brief is any factual or legal basis for the Utilities Adverse decision to deny Applicants and Utility customers free access to the Contractually agree Customer Service Office, within the Kirksville, Mo Green Hills Area office and clearly breached its duty to maintain NOTICE to the Public In general that NO Union Electric Company[ facility] situated within Missouri Geographical Bounds was available for customer access for resolving D-I-S-P-U-T-E-S, and without Retaliatory treatment against persons registering Grievances, disputes and complaints over Kirksville Mini-Charges attached to Respondent's monthly account statements.

At Paragraph 19, Ameren Missouri's Response to Complainant's Motion for Summary Determination, Utility Company admits [ "**The Company admits that there is a dispute between Complainant and the Company over the money Complainant owes the Company and the dispute continues**"]

However, based on the sworn Testimony of EXPERT witness, Cathy Hart, MANAGEMENT, Ms Hart, could not produce an accurate account record 34433-07009; No. 34433-070018 which substantiated the date on which the DISPUTE over 2002 through 04/23/2008 money/Kirksville Mini-Charge resulted in the 04/23/2008 alleged Final Bill in the Amount of \$846.15.

This undisputed, and admitted Transcript evidence sworn to on 04/20/2015, by Expert Cathy Hart, clearly shows that Respondent failed to maintain accurate account records and continuing with a DISPUTE over and including DISPUTES over Missouri TAXING authority, thus State Action is clearly involved.

The City of Kirksville, Mo is acting under Color of state law, as it governs to collect money from the Green Hills, Utility Service Area, and where NO NOTICE OF RIGHT TO APPEAL was ever served on Applicants for service and accommodations, or any other state sponsored authority in a timely manner. MEMPHIS LIGHT, GAS & WATER DIV. v. CRAFT, 436 U.S. 1 (1978).

The Actions to collect Mini-Charges, benefiting Kirksville, through, Union Electric monthly billing, involves money property, thus Out-Of-State applicants, [ CP Small] and Missouri electrical customers of U.E. enjoy a “ legitimate claim of entitlement” protected by the Due Process Clause. Board of Regents v. Roth, 408 U.S. 564, 577 (1972); Perry v. Sindermann, m408 U.S. 593, 602 (1972).

The January 31, 2007 AMOUNT DUE /DISCONNECT NOTICE, fails to state with specificity or particularity, exactly how much of \$267.64 would be paid to Kirksville, Mo. Jurisdiction for Kirksville, Mini-Charges.

Importantly, the January 31st, 2007 DISCONNECT NOTICE fails to provide any due process or equal protection NOTICE as to why the undersigned OUT-OF-STATE party in DISPUTE, must travel to SAINT LOUIS, MO. [VENUE LOCATION] when the Vice PRESIDENT OF AMEREN UE contractually agreed



to maintain a CUSTOMER SERVICE OFFICE within Adair County VENUE, established by Franchise Contract for all customers and Applicants, even the OUT-OF-STATE applicants as of August 29, 2014, time period and continuing.

If the Public utility discontinues service for nonpayment of a disputed amount it does so at its peril and if the public utility was wrong, ( e.g., customer overcharges), it is liable for damages. Sims v. Alabama Water Co., 205 Ala. 378, 87 So. 688, 690, 28 A.L. R. 461 (1920).”; Trigg v. Middle Tennessee Electrical Membership Corp., 533 S.W. 2d 730, 733 ( Tenn. App. 1975) , cert. denied ( Tenn Sup. Ct Mar. 15, 1976).

“ A public utility should not be able to coerce a customer to pay a disputed claim “ ibid. 10 [ 436 U.S. 1, 11]. See also Fuentes v. Shevin, 407 U.S. 67, 86 (1972).

At no time did Respondent on April 20, 2015 testify to the Factual or legal reasons that Applicant Small should retreat to some Respondent facility outside the Green Hills, area facility, Kirksville, Mo. to resolve, settle, his ongoing electrical account DISPUTE with Respondent management, other than the asserted 1-800 Call Center Number, CUSTOMER SERVICE BULLETIN, rejected by the U.S. Supreme Court Holding in Memphis Light, Gas. V. CRAFT, 436 U.S. 1 (1978).

### **INCOMPLETE AGENCY RECORDS**

On January 31, 2007 Ameren Missouri, P.O. Box 667000 SAINT LOUIS, MO. caused to be served its DISCONNECT NOTICE asserting an amount due by February 15, 2007 in the amount of \$ 267.64.

The January 31<sup>st</sup>, 2007 DISCONNECT NOTICE fails to be reflected on account No. 34433-07009 or Account No. 34433-07018 , submitted to Gay Fred by Breeze M. Benton, sent Friday August 13, 2010 time period.

This documented evidence demonstrated the incompleteness of Utility Record involving attempts to collect money through incomplete agency records, and in violation of MEMPHIS LIGHT & Gas Div. v. CRAFT 436 U.S. 1.

The Sworn testimony of expert witness Cathy Hart, [ 04/20/2015] did not include the DISCONNECT NOTICE dated January 31, 2007. [ Factual, relevant DISCONNECT NOTICE] at issue, Cause No. EC0215-0058 and continuing.

This U.E. Utility documented evidence on form 546, was not provided to the Missouri Public Commission, and appears to demonstrate that 14 notices were served on Account 7009; Two (2) NOTICES provided on Account 7018, One (1) denial of service NOTICE dated September 08, 2014, Plus one (1) disconnect NOTICE dated January 31, 2007.

A computer generated Mo. Customer Contact Center-Miscellaneous for account 34433-07018 dated August 05, 2010, shows the following evidence; From LuAnn, Customer Service Ameren UE Jefferson City; [“ ACCT WAS ASSIGNED TO COLLECTION AGENCY - CONSUMER COLLECTION MANAGEMENT IN 2008. CUSTOMER MAY WANT TO FOLLOW UP WITH THEM AS WELL. [ PH. 1 314 432 2430] SEE ATTACHED STATEMENTS OF HIS ACCOUNTS.

NO RECORD OF ANY PAYMENT AGREEMENT OR PAYMENTS MADE DIRECT TO AMEREN ON THIS OUTSTANDING BALANCE OF \$846.15

MISC WFM – ( ANNETTE SWEET) THIS CUSTOMER THINKS HE PROPERLY PAID A PAYMENT AGREEMENT BACK IN 2007 OR 2008 - NOW EVIDENTLY DENIED SERVICE. COULD YOU PLEASE EMAIL ME A



STATEMENT THAT WOULD SHOW WHAT THE AGREEMENT WAS AND WHAT PAYMENTS HE MADE THAT WERE APPLIED TOWARDS IT IN 2007 OR 2008 AND WHAT STILL OWED/ THANKS, ANNETTE SWEET EXT. 52740 (Green Hills District).

LuAnn Customer Service Ameren UE records appear inconsistent and incomplete with Breeze M. Benton's August 13, 2010 Complaint PSC LOG # C201101337, A/C 34433-07018.

Breeze M. Benton's Data Response to Gay Fred PSC does not accurately correspond with Cathy Hart Data Response to Gay Fred an issue of account records, raised during the April 20, 2015 hearing.

Neither Cathy Hart, Breeze M. Benton, Annette Sweet, LuAnn Customer service, provided WRITTEN NOTICE under CRAFT standards, that from 2002 through 2015 and continuing, CP Small could appear at the Kirksville Mo. Ameren Mo. facility, specifically the Customer Service Office, and present timely DISPUTES from 2002 time period through 2015 and continuing.

At no time from 2002 through 2015 and continuing did the Customer Service Office, Kirksville, Mo. Annette Sweet, Cathy Hart, expert witness or any other Utility representative inform CP Small that Respondent's Customer Service Office ratified by Kirksville Code of Ordinance and intertwined Franchise agreement, applied to Missouri resident applicants for electrical connection . . . . but did not apply to Out-Of-State person/Party Jim Small, 606 West Hwy # 2, Milton, Iowa.

Accordingly, DISPUTE Case No. EC-2015-0058 Small's complaint should be AMENDED to conform to the evidence of record pursuant to Missouri R. Civ. Proc. Rule 55.33 (b) Amendments to Conform to the Evidence .

In the event the PSC granted leave to amend Complaint, after the April 20, 2015 Hearing, a fourth (4<sup>th</sup>) MPSC complaint may become unnecessary.

Based on incompleteness and inconsistent Utility Account numbers, the Complainant suggest that he has met his burden to establish by a preponderance, that from 2002 time period through 2015 and continuing, Respondent UE d/b/a Ameren Missouri has permitted its account records to be maintained in violation of well established Rules, regulations foreclosing accuracy factors, and precluding MPSC from reliance on the same , free from speculation and conjecture.

Respondent's, Customer Service Office facilities have imposed an impermissible burden on Interstate Commerce generally and imposed upon CP Small specifically, in violation of Small's protected liberty interest in the U.S. Constitution, Art 1, section 8, cl 3. IT is also observed that MPSC State Action resulted in the State's decision to deny Small's Motion to Amend his Complaint to conform to relevant evidence. This was prejudicial error and adverse to the liberty interest of the Out-Of-State Applicant Small.

That for purposes of his Brief in Reply, incomplete records in No. EC-2015-0058 has the same meaning as the United States Supreme Court held in Citizens To Preserve Overton Park v. Volpe 401 U.S. 402 .

Account records/Data request response from Cathy Hart to Gay Fred show that on 07/10/06, we received two payments totaling \$77.95. The excess amount of \$ 25.00 went toward the additional payment agreement installments.

However, the same account record from Customer Service LuAnn Jefferson City TO: Sweet, Annette Crain states ( NO RECORD OF ANY PAYMENT AGREEMENT OR PAYMENTS MADE DIRECT TO AMEREN ON THIS OUTSTANDING BALANCE OF \$ 846.15.)



Genuine Issues of material fact may not be created by Utility inconsistent account or incomplete agency records, because to do so, the reviewing courts are placed into position to use speculation and conjecture as to the accuracy as to one account record vs. a materially different version of the exact same Utility account record.

The March 28, 2011 Dispute Account record, sent by Cathy Hart to Gay Fred does not accurately correspond with Breeze M Benton's August 13, 2010 version of the same Utility Account No: 34433-07018.

This evidence demonstrates that Union Electric Account record No. EC-2015-0058 are shown by evidence as not being maintained in the normal course of business, as required by the Missouri Public Service Commission Rules, regulations, Tariffs; City of Kirksville Code of Ordinance concerning timely, valid disputes; Plus agreed to Franchise agreements, involving a disabled Out-Of-State Customer Small and August 29, 2014 Applicant for electrical service.

MPSC acts denying CP Small's repeated request to Amend his complaints to conform to the Evidence, additionally involved state action to the benefit of Union Electric Company, while ignoring the Customer Service office duty agreed to by City of Kirksville, Mo. its agents and assigns The record also shows substantial evidence from 2002 forward and continuing in 2015 that the acts, and conduct of respondent U.E. are wrongful policies, practices and customs of wrongdoing over a 36 year period since the MEMPHIS LIGHT, WATER & GAS DIV. V. CRAFT holding. 436 U.S. 1.

## CONCLUSION

The uncontroverted , evidence assimilated by Respondent Union Electric Company its agents and assigns [ Case No. EC 2011-0247 Transcript; No. EC-2012-0050 and No. EC-2015-0058] demonstrates that Respondent Utility had no serious intention of performing its Franchise Agreement with the City of Kirksville, Mo. over a 20 year term, in clear violation of its duty to provide adequate and timely NOTICE to Customer desiring to file and resolve DISPUTES, including Kirksville Mini-Charges within the Green Hills Service Area, Adair County, Missouri.

CP Small an Out-Of-State Applicant on August 29, 2014 was treated materially differently on September 08, 2014 and continuing on INCOMPLETE AGENCY RECORDS,[ Utility] then covered-up by Commission Investigative Staff Counsel over a period of years to Small's detriment, imposing an impermissible burden on this Out-Of-State disabled party and selectively excluded from the equal protection of City of Kirksville, code of Ordinance No. 11274.

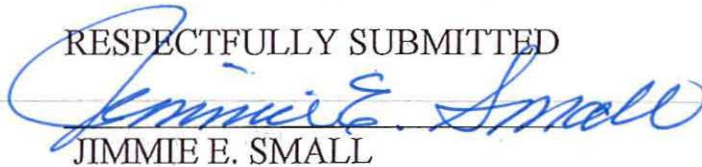
Respondent Utility acting in concert with City of Kirksville, Mo. specifically ratifying Code of Ordinance No. 11274, and related Franchise agreement gave Union electric exclusive jurisdiction over the Green Hills Servicing territory creating a governmental duty to that very same community.

Thereafter, Commission Staff, [ State Actors] engaged in a governmental cover-up of Respondent Utility and City's breach of duty to perform contracts. Contracts design to protect the public generally. The Commission's Office of Public Counsel ignore the importance associated with Small's Out-Of-State Complaint[s] over a period of years and continuing as a wrongful governmental



policy, practice and custom, to the benefit of (a) Respondent Union Electric (b) City of Kirksville, Mo. (c) The Missouri Public Service Commission officials.

RESPECTFULLY SUBMITTED



JIMMIE E. SMALL

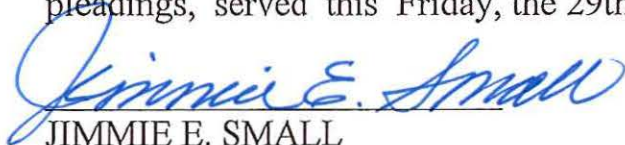
Pro se

606 West Hwy # 2,

Milton, Iowa , 52570

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Post-Hearing Brief in Reply was served upon counsel of record , To the Data Center, MPSC, Sarah E. Giboney, at their business address as disclosed on the pleadings, served this Friday, the 29th, day of May 2015.



JIMMIE E. SMALL

AN ORDINANCE RENEWING AN EXISTING FRANCHISE AND GRANTING FOR A PERIOD OF TWENTY (20) YEARS TO UNION ELECTRIC COMPANY, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE, RIGHT, PERMISSION AND AUTHORITY TO CONSTRUCT, RECONSTRUCT, EXCAVATE FOR, PLACE, MAINTAIN, OPERATE, AND USE ITS POLES, TOWERS, WIRES, CONDUITS, CONDUCTORS, MANHOLES, UNDERGROUND VAULTS, AND OTHER EQUIPMENT, AND APPLIANCES IN CONNECTION THEREWITH, IN, ALONG, ACROSS, OVER AND UNDER THE STREETS, ROADS, ALLEYS, SIDEWALKS, SQUARES, BRIDGES, AND OTHER PUBLIC PLACES IN THE CITY OF KIRKSVILLE AND AREAS DEDICATED TO THE CITY FOR PUBLIC UTILITY USE, FOR THE PURPOSE OF TRANSMITTING, FURNISHING AND DISTRIBUTING ELECTRICITY FOR LIGHT, HEAT, POWER AND OTHER PURPOSES WITHIN AND THROUGH SAID CITY, PRESCRIBING THE TERMS AND CONDITIONS OF SUCH GRANT, IMPOSING CERTAIN OBLIGATIONS UPON THE GRANTEE, ITS SUCCESSORS AND ASSIGNS, SUCCESSIVELY, IN CONNECTION THEREWITH.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, MISSOURI, AS FOLLOWS:

SECTION 1. The franchise, right, permission and authority is hereby granted to, and renewed and vested in Union Electric Company, a Missouri Corporation, its successors and assigns, hereinafter call "Company", to construct, reconstruct, excavate for, place, maintain, operate, and use all necessary or appropriate poles, towers, wires, conduits, conductors, manholes, underground vaults, and other equipment, with all necessary or appropriate appurtenances and appliances in connection therewith, in, along, across, over and under the streets, roads, alleys, sidewalks, squares, bridges, and other public places within the corporate limits of the City of Kirksville, hereinafter called "City", as now fixed and as hereafter extended, and areas dedicated to the City for public utility use, for the purpose of furnishing and distributing electricity for light, heat, power, and other purposes within said City and in territory adjacent to said City, and for the purpose of transmitting electricity through said City; all such equipment, appliances and apparatus to be installed and maintained with due regard to the rightful use by other persons, with vehicles or otherwise, of the streets, roads, alleys, sidewalks, squares, bridges, and other public places, and areas dedicated to the city for public utility use, and Company's exercise of the rights, permission and authority hereby granted shall at all times be subject to proper regulation by the City in the exercise of its police powers.

SECTION 2. All facilities of Company in said City shall be installed and maintained in accordance with applicable state statutes and the Missouri Public Service Commission rules and regulations. Where state statutes and Missouri Public Service Commission rules and regulations are silent, the provisions of valid local ordinances and contracts between Company and City shall prevail. This provision shall not be construed in any manner to



impair or be interpreted as a waiver of any right or authority which the Company may have to challenge the validity of any ordinance enacted by the City. Company shall provide to the City, upon request, a copy of the complete filings of any rate and/or tariff change(s) submitted by the Company to the Missouri Public Service Commission.

SECTION 3. In order for the Company to render efficient and continuous electrical service it will be necessary for Company to trim the trunks and branches of trees along or over the streets, sidewalks, alleys, avenues, squares, bridges and other public places in said City, and areas dedicated to the City for public utility use, wherever the same are likely to come in contact with its equipment; therefore, Company is hereby granted the right to trim such trees, including the trunk branches, and all parts thereof, so as to enable it to erect and maintain its equipment in a regular and consistent form and manner and to enable it to provide the most efficient and continuous service that the circumstances will permit; provided, however, that Company shall exercise proper care and discretion in cutting and trimming said trees and all parts thereof.

SECTION 4. The rights, privileges and authority hereby granted shall inure to and be vested in Company, its successors and assigns, successively, subject to all the terms, provisions and conditions herein contained, and each of the obligations hereby imposed upon Company shall devolve and be binding upon its successors and assigns, successively, in the same manner.

SECTION 5. This ordinance shall confer no right privilege or authority on Company, its successors, licensees, transferees or assigns unless Company shall within sixty (60) days after due notice to the Company of the enactment of this Ordinance, file with the City Clerk an acceptance of the terms and provisions hereof; provided, however, that if such acceptance be not so filed within said period of sixty (60) days, all rights, privileges, and authority herein granted shall become null and void.

SECTION 6. This ordinance and Franchise, upon its enactment and its acceptance by Company, as hereinbefore provided, shall continue and remain in full force and effect for a period of twenty (20) years from the filing of the Company's acceptance.

SECTION 7. Both City and Company acknowledge that this Ordinance generally governs the relationship between City and Company with respect to Company's use of publicly owned right-of-way. However, City acknowledges that Company is vested in rights, permissions, and authority independent of this Ordinance. Neither acceptance of this Ordinance, nor compliance with its provisions shall impair in any way or waive any right, permission or authority which Company may have independent of this Ordinance. In addition, neither use by Company of public property or places as authorized by this Ordinance nor service rendered by Company in said City



shall be treated as use solely of the rights, permission and authority provided for by this Ordinance and in no way shall indicate non-use of any right, permission or authority vested in the Company independent of this Ordinance.

SECTION 8. All ordinances or agreements and parts of ordinances or agreements in conflict with this Ordinance, or any of its provisions, to the extent of such conflict, are hereby repealed.

SECTION 9. This ordinance authorizes use of publicly owned right-of-way only for the purpose of transmitting, furnishing and distributing electricity. To that end, the Company or its contractors can construct, reconstruct, excavate for, place, maintain, operate and use communication equipment, devices, and components, only which aid the Company in transmitting, furnishing and distributing electricity along their associated wires, cables (including fiber optics), conduits, structures and supporting facilities in, along, across, over, and under the public right-of-way, and only after they have informed the City of their plans to install and use such communications equipment for their own internal uses. The Company shall also inform the City when any other entity requests to use its facilities in the public right-of-way of the City, and shall not allow or permit such use unless the other entity provides the Company with evidence of a valid franchise agreement with the City.

SECTION 10. This ordinance shall not relieve Company of the obligation to comply with any ordinance now existing in the City or enacted in the future requiring Company to obtain written permits or other approval from the City prior to commencement of construction of facilities with the streets thereof, except Company shall not be required to obtain permits or other approval from the City for the maintenance and repair of its facilities.

SECTION 11. If any provision of this ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this Ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION 12. The Company currently maintains an administrative and customer service office in the City in addition to its construction, maintenance, and service related departments. The Company agrees to notify the City of any plans to close said administrative office in the City at least six months, if practical, in advance of any planned closure. However, in the event that valid business decisions are made in a time frame that would not allow a six month advance notification, Company agrees to notify City of said closure immediately following notification of the affected Company employees, if applicable. In the event of said closure, Company agrees to assign and maintain an administrative representative to the City whose office is located



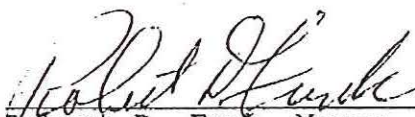
within the current geographical boundaries of Company's Green Hills or Little Dixie districts. However, both City and Company agree that due to impending deregulation and other changes that may occur, or be required, within the utility industry, that Company, due to unknown changes, requirements, or future valid business decisions, may be unable to locate a representative within the stated geographical boundaries. In the unlikely event that Company determines that it is unable to maintain an administrative representative's office within the stated geographical boundaries, Company agrees to meet with City to explore and implement reasonable proposals to ensure that sufficient communications and representation are maintained between the Company and City.

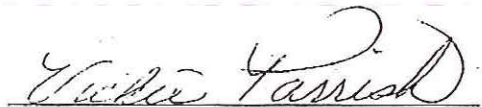
SECTION 13. Company agrees to provide to the City's Office of Risk Management, within thirty days of the filing of Company's acceptance, a letter signed by an officer of the Company evidencing Company's insurance coverage.

SECTION 14. This bill shall take effect and the rights, privileges and authority hereby granted and renewed shall vest in Company upon filing of an acceptance with the City Clerk according to the terms prescribed herein. The Ordinance shall be subject to approval or disapproval of the voters of this City only upon the terms and conditions as provided in Mo. Rev. Stat. §88.251 (1987). If the City Clerk does not receive within thirty days after the passing of this Ordinance a petition sufficient in form and signed by the requisite number of voters, it shall be a valid and binding franchise of the City upon the filing of an acceptance by the Company according to the terms prescribed herein and shall remain in full force and effect and cannot be repealed or amended, without the mutual consent of the City and the Company.

Passed by the City Council and signed by the Mayor this 16th day of December, 1996.

[SEAL]

  
Robert D. Funk, Mayor

  
Vickie Parrish, City Clerk

STATE OF MISSOURI                    )  
  )     SS  
COUNTY OF ADAIR                    )

I, Vickie Parrish, City Clerk within and for the  
City of Kirksville in the State and County aforesaid, do  
hereby certify that:

(1) the foregoing constitutes a full, true and correct copy  
of Ordinance No. 11274 of said City as:

(a) introduced before the City Council on the  
16th day of December, 1996; and

(b) completed in the form as finally passed and which  
remained on file with the undersigned City Clerk  
for public inspection at least thirty (30) days  
before the final passage thereof; and

(c) passed by the City Council and approved by the  
Mayor on the 16th day of December,  
1996, as fully as the same appears of record in  
my office;

(2) I did not receive, within thirty (30) days after the  
final passage and approval of the Ordinance, a petition  
sufficient in form and signed by the requisite number  
of voters as set forth in §88.251 RSMo. (1987).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed  
the corporate seal of the City of Kirksville, Missouri, at my  
office in said City, this 16th, day of December, 1996.

[SEAL]

Vickie Parrish  
City Clerk



ACCEPTANCE BY UNION ELECTRIC COMPANY  
OF ORDINANCE NO. 11274 OF THE  
CITY OF KIRKSVILLE, MISSOURI

TO THE MAYOR, CITY COUNCIL AND CITY CLERK OF THE CITY OF  
KIRKSVILLE, MISSOURI:

UNION ELECTRIC COMPANY, for itself, its successors and  
assigns, hereby accepts all of the terms and provisions of  
Ordinance No. 11274 of the City of Kirksville, Missouri,  
entitled:

AN ORDINANCE RENEWING AN EXISTING FRANCHISE AND  
GRANTING FOR A PERIOD OF TWENTY (20) YEARS TO UNION  
ELECTRIC COMPANY, A CORPORATION, ITS SUCCESSORS AND  
ASSIGNS, THE FRANCHISE, RIGHT, PERMISSION AND AUTHORITY  
TO CONSTRUCT, RECONSTRUCT, EXCAVATE FOR, PLACE,  
MAINTAIN, OPERATE, AND USE ITS POLES, TOWERS, WIRES,  
CONDUITS, CONDUCTORS, MANHOLES, UNDERGROUND VAULTS, AND  
OTHER EQUIPMENT, AND APPLIANCES IN CONNECTION  
THEREWITH, IN, ALONG, ACROSS, OVER AND UNDER THE  
STREETS, ROADS, ALLEYS, SIDEWALKS, SQUARES, BRIDGES,  
AND OTHER PUBLIC PLACES IN THE CITY OF KIRKSVILLE AND  
AREAS DEDICATED TO THE CITY FOR PUBLIC UTILITY USE, FOR  
THE PURPOSE OF TRANSMITTING, FURNISHING AND  
DISTRIBUTING ELECTRICITY FOR LIGHT, HEAT, POWER AND  
OTHER PURPOSES WITHIN AND THROUGH SAID CITY,  
PRESCRIBING THE TERMS AND CONDITIONS OF SUCH GRANT,  
IMPOSING CERTAIN OBLIGATIONS UPON THE GRANTEE, ITS  
SUCCESSORS AND ASSIGNS, SUCCESSIVELY, IN CONNECTION  
THEREWITH.

which ordinance was duly passed by the City Council and signed by  
the Mayor on the 16th day of December, 1996, and otherwise met  
the requirements of Mo. Rev. Stat. § 88.251.

Dated at St. Louis, Missouri, as of the 21st day of

January, 1997.

UNION ELECTRIC COMPANY

By

W. J. Davis  
Vice President

ATTEST:

James H. Hargrave  
Secretary

Filed in the office of the City Clerk of the City of  
Kirksville, Missouri, this 24th day of January, 1997.

Nicholas L. Farish  
City Clerk

STATE OF MISSOURI

COUNTY OF ADAIR

)  
) SS

I, Nicholas L. Farish, City Clerk within and for  
the City of Kirksville, in the County and State aforesaid, do  
hereby certify that the foregoing constitutes a full, true and  
correct copy of the acceptance by Union Electric Company of the  
terms and provisions of Ordinance No. 11274 of the City of  
Kirksville, as filed with me on the 24th day of  
January, 1997, and as the same appears of the  
record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand at my office  
in the City of Kirksville, this 24th day of

January, 1997.

[SEAL]

Nicholas L. Farish  
City Clerk  
Kirksville, Missouri