

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

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

**RESPONSE TO ORDER**

COMES NOW Union Electric Company d/b/a AmerenUE (“AmerenUE” or “Company”), and makes this Response to Order pursuant to the Commission’s September 1, 2010 Order Directing Responses.

1. AmerenUE regrets any confusion its Motion for Determination on the Pleadings filed on August 31, 2010 (the Motion) may have caused. AmerenUE felt it was necessary to file the Motion upon observing that a proposed Order Dismissing Complaint Without Prejudice had been placed on the Commission’s September 1, 2010 Agenda. In addition to desiring the relief requested in the Motion (determination on the pleadings), AmerenUE felt it was necessary to reiterate to the Commission the position AmerenUE had already taken in its Reply to Complainant’s Response to Company’s Answer and Motion to Dismiss, filed August 5, 2010, namely, stressing the necessity that the Commission exercise its primary jurisdiction to determine facts in this controversy before Complainant attempts to file a petition in circuit court seeking a monetary judgment related to this controversy.

2. The Commission has specifically noted that Complainant has clarified, but not amended, her Complaint. Order Resetting Deadline for Staff’s Investigation dated July 26, 2010 (the Order).

3. In Complainant’s Petition – Negligence Res Ipsa Loquitor filed June 14, 2010 (the Claim), Complainant made a claim for judgment against AmerenUE in the amount of \$45,824.78. Based on AmerenUE’s understanding that Complainant has *not* abandoned

Complainant's claim for monetary damages, AmerenUE is *not* abandoning its Motion to Dismiss with respect to such claim for monetary damages.

4. While it is not AmerenUE's responsibility to suggest to an insurance company and its experienced counsel how they ought to pursue a claim against AmerenUE before the Commission so that they may then pursue a claim against AmerenUE in Circuit Court, in AmerenUE's Answer and Motion to Dismiss filed July 15, 2010 (the Answer), AmerenUE *did* suggest that the Commission might have jurisdiction to grant some form of relief and went so far as to request (in the alternative) that the Commission grant Complainant leave to amend the Complaint to allege some specific violation and to ask for proper relief. Complainant then filed a Response to Respondent's Motion to Dismiss on July 26, 2010 (Complainant's Response). It is AmerenUE's understanding that the Commission has interpreted the Complaint, together with Complainant's Response, to constitute a claim by Respondent for "any administrative remedy available under [Complainant's] current theories[.]" Order, ¶2. To the extent AmerenUE's Answer or its Reply to Complainant's Response to Company's Answer and Motion to Dismiss, filed August 5, 2010, might be read as a motion to dismiss a claim for an administrative remedy available to Complainant under Complainant's current theories, AmerenUE hereby abandons such motion.

5. As to what administrative remedy might be available, since the Commission has jurisdiction to determine the sufficiency, safety and adequacy of utility service and has the administrative knowledge and expertise to determine technical, intricate questions of fact, AmerenUE believes that the Commission may make findings of fact relevant to this controversy (Complainant's claim of negligence). Since the Commission *must* determine matters within its jurisdiction before a court can make a judgment in a controversy, AmerenUE believes this is also the *only* way Complainant can properly pursue Complainant's stated goal of "proceed[ing] to pursue [Complainant's] remedy available for monetary damages in the appropriate Circuit Court[.]" Complainant's Response. This is not to suggest that Complainant will prevail in this Complaint or in a civil negligence suit. The Commission's findings may fail to support, or may even negate, Complainant's claim of negligence. However, if the Commission makes no findings of fact on matters within its jurisdiction and simply dismisses the Complaint, and if Complainant proceeds to file a negligence petition in circuit court, it is AmerenUE's position that such petition should be dismissed for lack of subject matter jurisdiction.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Response to Order was served on the following parties via electronic mail (e-mail) on this 3rd day of September, 2010.

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/s/ Sarah E. Giboney

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