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September 24, 2002

FILED³

SEP 27 2002

**Missouri Public
Service Commission**

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, MO 65101

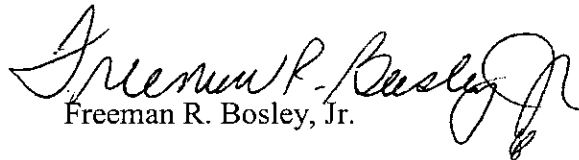
Re: MPSC Case No. EC-2002-112; Sterling Moody, et al., v. Ameren UE, et al.

Dear Judge Roberts:

Enclosed you will find an original and nine (9) copies of Complainants' Reply to Respondents' Initial Brief:

Please file the original and return a file-stamped copy to me in the enclosed self-addressed stamped envelope.

Sincerely,


Freeman R. Bosley, Jr.

FRB/krt
Enclosures

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Sterling Moody, Sterling's Market Place,
And Sterling's Place, I

Complainants,

v.

AmerenUE, Union Electric Co. d/b/a
AmerenUE; and Mike Foy, Leroy Ettling,
And Sherry Moshner, as employees of
AmerenUE,

Respondents.

Case No.: EC 2002-112

FILED³

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**Missouri Public
Service Commission**

COMPLAINANTS' REPLY TO RESPONDENT'S INITIAL BRIEF

Come now Complainants Sterling T. Moody and Sterling's Market Place and for their Reply to Respondent's Initial Brief, state as follows:

FACTS

Respondents spent the first eighteen pages of their brief attacking the credibility of Complainant Sterling Moody(Moody). Whether or not Moody is a credible witness is a decision for the Commissioners as the triers of fact. Notwithstanding the testimony of Moody, Complainants have produced ample evidence to prove that Respondents have violated numerous tariffs, state regulations and Missouri statutes.

The facts are undisputed that Respondent did not give notice of the April10, 2001 disconnection of Complainant's electricity. Respondent has failed to produce evidence, even though it produced the testimony of some ten witnesses, that it gave proper notice of the disconnection of April 17, 2001. No witness of Respondent could testify that anyone mailed or delivered a notice of the April 17 disconnection, as required by Missouri law.

Respondents and Complainants did have a meeting on May18, 2001. This meeting was not requested by Brian McNamara to work out a settlement agreement, as is suggested by Respondent's

brief. Mr. McNamara requested the meeting to find out why Respondents were holding cashiers checks that Complainant had given to Respondent, rather than cashing them and holding the cash as a deposit.

ARGUMENT

A. Burden of Proof

Complainants agree with the Respondents' position that Complainants have the burden of proof of the claims made in their Complainant.

B. AmerenUE's Responsibility Regarding Internal Wiring

There definitely was a dispute between Complainants and Respondents over the amount of the bill. This dispute is evidenced by the fact that AmerenUE, while initially demanding \$260,000 in arrearages, agreed to accept \$89,000 in settlement of the disputed amount. If there were not a dispute, there would be no reason for AmerenUE to give up their right to collect the \$171,000 in revenues that it waived in the settlement. The Respondent's position that it voluntarily gave up \$171,000 of stockholders' money, in the absence of any dispute, is illogical.

The dispute is also evidenced by the so-called settlement agreement, dated May 18, 2001, that was prepared by AmerenUE and was referenced as "**Dispute** with respect to Meter Numbers 01859500, 50688215 and 70593313" (emphasis added).

The issue is not AmerenUE's responsibility to check the store's internal wiring, but was there, in fact a bona fide dispute between the parties as to the proper amount of the electric bill. There clearly was a dispute and the parties' settlement agreement is irrefutable evidence of that dispute.

C. Disconnection After Accepting Partial Payments

Complainants have demonstrated through depositions and testimony that Sterling's Market Place representatives and AmerenUE representatives entered into and carried out, for more than a year, a constructive payment arrangement. The fact that Respondent disconnected the electricity

while the arrangement was in existence justifies Complainants claim of a wrongful disconnection of electrical service. The law in Missouri is well settled. We would again refer the Commission to the case of Haynam v. Laclede Electric Co-Operative, 827 S.W.2d 200 (Mo.banc. 1992).

While AmerenUE may have had the right to disconnect an account for delinquent payment, it did not have the right to agree to a payment arrangement, allow a complainant to make partial payments for over a year and then disconnect the service at the whim of AmerenUE employees. This is exactly the type of conduct that the Defendant in the Haynam case engaged in and that constituted a wrongful disconnection of electrical service under Missouri law.

D. AmerenUE Inadvertently Disconnected Service On April 10, 2001 Without Proper Notice

Complainants agree that the Respondents disconnected electrical service on April 10, 2001 without proper notice. However, Complainants do not agree that the disconnection was inadvertent. The disconnection was intentional and the fact that an employee or employees did not follow the law, does not excuse Respondent from liability for the wrongful termination.

E. 1. AmerenUE Provided Proper Notice for the April 17, 2001 Disconnection

AmerenUE did not provide proper notice of the electrical disconnection of April 17, 2001. The evidence indicates that employee Judy Rowe (Rowe) took a notice to Sterling's Market Place on April 10, 2001. The disconnection had already occurred. The evidence is disputed as to whether or not Rowe left the notice with Moody. This issue is irrelevant. The law requires that the notice shall specify a date after which the disconnection may be effected, and that the utility mail or serve the notice of disconnection at least forty-eight hours prior to that date. This notice specified the date of April 11, 2001. The notice was obviously not proper notice for a disconnection on April 10. the notice also was not proper notice for the disconnection of April 17. To be effective for an April 17 disconnection, the notice would have had to have specified a disconnection date of April 17 and would have to have been delivered by April 15, 2001.

Additionally, there is no evidence that AmerenUE mailed or delivered any notice to Complainant of April 17 disconnection between the dates of April 10 and April 17. There was testimony that employees thought a second notice had been delivered or that a copy of the first notice was made and delivered to Complainant, but Respondent offered no evidence showing that any employee had done this.

In view of the fact that Respondent had violated the notice provisions twice in a seven day period, Respondents Union Electric and AmerenUE should be fined accordingly under the Missouri statutes. It also demonstrates the willful, reckless or negligent manner in which Respondent and its employees treated the Complainant.

While the instant case involves a non-residential customer, there is a very real possibility that AmerenUE may have disconnected, and is still disconnecting, electric service to residential customers by using the same or a similar, improper and illegal method of notice. The remedy for these customers may be the bringing of a class action lawsuit against Respondent AmerenUE. Therefore, Complainants request that the Commission seek the maximum fine and penalty against Respondent for each employee involved in violating the PSC rule and tariff in question for each of the 32 days that Respondent AmerenUE was in violation. Furthermore, Complainants ask that the Commission charge the Staff with investigating the type of final notices used by Respondent AmerenUE to determine if it has been a practice of Respondent to terminate the service of non-residential and residential customers without giving proper notice.

2. AmerenUE's Applying the \$45,000 Deposit to the Electric Bill

The law is clear in Missouri on the issue of utility deposits. The utility may require a deposit or a successor on the account – there is no provision for both. Respondent first required a twenty-five thousand dollar deposit. When Moody informed Respondent that he had the twenty-five thousand dollars, they informed him that he needed to make a forty-five thousand dollar deposit.

Moody made the forty-five thousand dollar deposit, in the form of cashier's checks. Respondent held the cashier's checks and then required Moody to get a successor on the account –which he did. Respondent then applied a portion of the deposit to the back bill- a practice that is not allowed by Missouri law.

It is clear that Respondent was using, for lack of a better term, a "bait and switch" tactic on Complainant Moody. As soon as Moody would meet one of Respondent's demands, they would change their demands and move the goal post. There was no evidence to support the deposit amount of \$45,000. Moody agreed to make the forty-five thousand dollar deposit and to place a successor on the account because he was not in a bargaining position. AmerenUE, being a monopoly like all utility companies, coerced Moody into depositing more money and forced him to place a successor on the account. It was only as a result of duress that Complainant signed the May 18, 2001 agreement.

3. Sterling's Market Place Waived and Compromised its Complaints by Entering Into the May Agreement

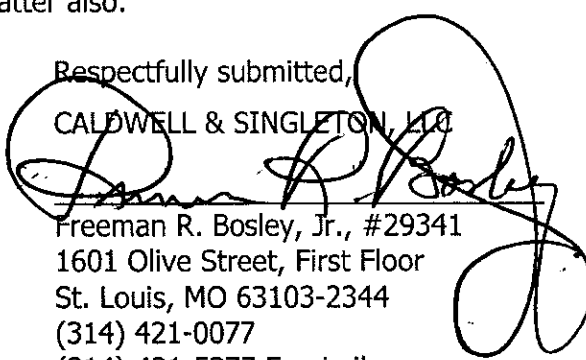
Nowhere in the May 18, 2001 letter agreement do Sterling Moody or Sterling's Market Place waive or compromise any complaints made in the complaint to the Public Service Commission. Also, the first paragraph of the so-called agreement states "This letter agreement (this "Agreement") sets forth the terms of the agreements reached between AmerenUE ("UE"), Sterling's Market Place I, Inc. ("Sterling") and P&B Real Estate, LLC ("P&B") in connection with any and all disputes among such parties regarding amounts past due and owing to UE for utilities provided by UE to Sterling and P&B, as evidenced by the readings shown on the electricity meters identified in the caption above." The parties agreed to "withdraw any complaints currently pending before the Missouri Public Service Commission." The letter agreement was signed on May 18, 2001 and is silent as to UE's failure to provide proper notice as well as improper deposits. The complaint in this case was filed in August, 2001. Clearly, Complainants have not waived any of the claims raised in the complaint.

F. Missouri Public Service Commissions' Jurisdiction to Award Consequential and Punitive Damages

Complainants agree that the Public Service Commission does not have jurisdiction to award actual or punitive damages. The Circuit Courts of the state do have such jurisdiction. However, as all counsel in this case are aware, Complainants must exhaust their administrative remedies before seeking damages in the Circuit Court. Complainants plan to do so at the conclusion of this case. The parties should also be aware that in light of Respondents' actions in the instant case, there may be a class action lawsuit concerning residential and non-residential customers to follow.

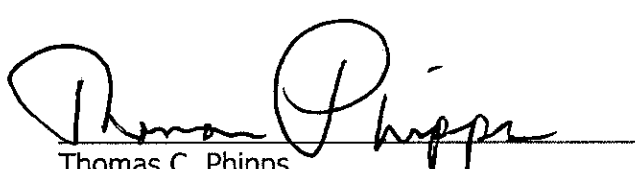
As to Respondent's argument that the Public Service Commission lacks jurisdiction to fine Respondent for its numerous violations of the law in this case, again, Complainants must exhaust their administrative remedies before filing an action in the Circuit Court. Complainants intend to pursue judicial review on this matter also.

Respectfully submitted,
CALDWELL & SINGLETON, LLC



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served via first class, U.S. mail on this 24th day of September, 2002 to all parties of record listed below.

CASE NO. EC-2002-112

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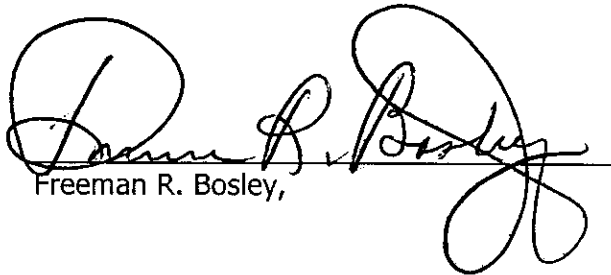
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