

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

Delmar Gardens Enterprises, Inc.,)	
Complainant,)	
v.)	File No. EC-2022-0163
)	
Union Electric Company d/b/a Ameren Missouri,)	
Respondent)	

**AMEREN MISSOURI'S REPLY TO DELMAR'S RESPONSE TO
MOTION TO DISMISS**

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "the Company"), and for its Response to Delmar Garden Enterprises, Inc.'s Response to the Company's Motion to Dismiss states as follows:

1. On January 6, 2022, Delmar Gardens Enterprises, Inc. ("Complainant") filed a complaint against the Company alleging the Company violated prior decisions made by the Commission and the Company has given inconsistent ruling between similarly situated entities. (Complaint at para. 7, p. 2). Complainant requested the Commission review its request to Opt-Out of making Energy Efficiency Investment Charge ("EEIC") payments into the Ameren Missouri Biz Savers program effective as of January 1, 2022. (*Id.*, para. 6).

2. The Missouri Public Service Commission ("Commission") issued an Order Giving Notice of Complaint and Directing Response ("Order"). In its Order, the Commission directed the Company to file its response no later than February 7, 2022. Ameren Missouri filed its Answer, Affirmative Defenses, and Motion to Dismiss on February 7, 2022.

3. The Commission issued an Order Setting time for Responses to Motion to Dismiss on March 1, 2022. The Complainant filed a timely Response on Mach 14, 2022. The Staff of the

Missouri Public Service Commission ("Staff") also timely filed its Suggestions in Support of Ameren Missouri's Motion to Dismiss ("Suggestions").

4. Staff recommends the Commission grant Ameren's Motion for Summary Determination since the complaint does not state facts directly or by inference which, if true, qualify Delmar for an opt out. (Staff's Suggestions at para. 14, p. 7). Accordingly, there is no dispute between Staff and the Company. This Reply addresses the Complainant's Response.

5. In its Response, Complainant alleges that Ameren Missouri violated 20 CSR 4240-20.094 because Ameren Missouri issued an incentive check to an individual without authority. (Complaint Reply at p, 2). Ameren Missouri respectfully disagrees. Ameren Missouri Attachment 3 to its Answer and Affirmative Defense shows the remittance of the incentive check to Delmar Gardens Enterprise as the account owner. If the Complainant believed that Ms. Bauer was improperly acting as Complainant's agent, then it was Complainant's responsibility to notify Ameren Missouri that the individual was not authorized to manage the account upon receipt of the incentive check. Instead, the Complainant cashed the incentive check. Complainant's affirmative act suggests that the property agent was authorized to sign the incentive form for a project initiated in July of 2020. (*See* Ameren Missouri Attachment 3). Consequently, under the Commission's rules, the Complainant was not eligible to opt out for January 2022 since an incentive was paid on February 3, 2021. (*Id.*)

6. The Complainant alleges that as a result the Company's "mistaken issuance" of the incentive check to Complainant, the same "administrative error" and repayment for the incentive should be given to Complainant. (Complainant's Reply at para. 12, p. 3). The same "administrative error" did not occur in the Complainant's case. The Complainant did not inform the Company of its intent to opt out prior to the beginning of the project. Additionally, the incentive check was issued to the Complainant and the Complainant cashed the incentive check made out to the Complainant

and not the property agent. Only after the Complainant requested to opt out, did they offer to "payback" the incentive check. In this case the Complainant did not alert the Company in the beginning of 2021 to let the Company know of its intent to opt out.

7. Complainant failed to overcome its burden that it meets the requirements to opt out of energy efficiency programs. The Commission's rules do not allow a customer to "payback" an incentive paid in 2021 in exchange for opting out the energy efficiency programs in 2022. The Complainant's Response does not present any facts to support its allegation it is being treated any differently than similarly situated customers. The Complainant incorrectly assumes that if the incentive is paid back to the Company, the requirements of the Commission's rules are met. This is not the case. If the Complainant's request is granted, the Complainant will be allowed to circumvent CSR 20 4240-20.094(7)(L).

8. The Complainant continues acknowledge it received an incentive in 2021. Consequently, the Commission cannot grant the relief requested by the Complainant, even assuming the opt-out process for another customer is relevant in this case. Therefore, the Company respectfully requests the complaint does not state claims upon relief can be granted and dismiss the complaint.

WHEREFORE, for the foregoing reasons, the Company respectfully requests that the Commission enter an order dismissing Complainant's request to opt-out of energy efficiency programs in 2022.

Respectfully submitted,

/s/ Jennifer Moore

Jennifer Moore [IL DRC 623713]
Corporate Counsel
P.O. Box 66149, MC 1310
St. Louis, MO 63166-6149
(314) 554-2041 (phone)
(314) 554-4014 (fax)

AmerenMOService@ameren.com

Wendy Tatro, Bar No. 60261

Director and Assistant General Counsel

P.O. Box 66149, MC 1310

St. Louis, MO 63166-6149

(314) 554-2041 (phone)

(314) 554-4014 (fax)

AmerenMOService@ameren.com

**ATTORNEYS FOR UNION ELECTRIC
COMPANY D/B/A AMEREN MISSOURI**

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to the parties of record on this 24th day of March, 2022:

/s/ Jennifer Moore _____
Jennifer S. Moore