

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

Jimmie E. Small,)	
Complainant,)	
)	
vs.)	Case No: EC-2012-0050
)	
Union Electric Company, d/b/a)	
Ameren Missouri,)	
Respondent.)	

**AMEREN MISSOURI'S RESPONSE TO COMPLAINANT'S MOTION FOR
SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT OF RESPONSE**

COMES NOW, Union Electric Company, d/b/a Ameren Missouri ("Ameren Missouri" or "Company"), and for its Response to Complainant's Motion for Summary Judgment (the "Motion") and for its Memorandum in Support of Response thereof states as follows:

Ameren Missouri's Response to Claimant's Statement of Uncontroverted Material Facts

Although not denominated as such, paragraphs 1 through 11 of the Motion appear to set forth Complainant's statement of uncontroverted material facts. As required by Rule 74.04(c)(2), Ameren Missouri sets forth the statement in its original paragraph number(s) and responds as follows:

1. At all times relevant Respondent claims that client/customer Small owed Ameren Missouri Company the amount of \$***.** when account ***** was filed with Consumer Collection Management, Inc., P.O. BOX 1839, Maryland Heights, Mo. 63043.

Response: Admits in part and denies in part. On or around July 27, 2007, Ameren Missouri assigned collection of the \$*.** outstanding balance on account ***** to Consumer Collection Management, Inc. See Ameren Missouri's Response to Interrogatory No. 5, Complainant's First Set of Interrogatories, attached hereto as Exhibit 1.**

2. On March 28, 2011 Customer Service specialist Kathy Hart responded to CP Small's 03/04/2012 data request.

Response: Admits in part and denies in part. On March 28, 2011, Ameren Missouri representative Cathy Hart responded by letter to an in-person request for information made by Complainant on March 4, 2011, but not to a 03/04/2012 data request.

3. At page two (2) of the Hart response Respondent states as factual, [“ On 01/13/2008, a Bill was mailed in the amount of ***.**, this included current charges of \$***.**, a prior balance of \$***.** and late pay charges totaling \$*.**.

Response: Admits in part and denies in part. The January date referred to in the letter was 01/31/08, not 01/13/08.

4. Respondent state also [On 04/23/08, a final bill was mailed in the amount of \$***.**.

Response: Admits.

5. On April 04, 2012, Consumer Collection Management presented the complaining party Small 606 West Hwy # 2, Milton Iowa with a C-A-N-C-E-L-E-D Notice which has been previously filed with the MPSC data center 2012.

Response: Admits in part, denies in part. Ameren Missouri admits Consumer Collection Management sent a letter dated April 4, 2012 to Complainant. Ameren Missouri denies the letter constitutes a “C-A-N-C-E-L-E-D Notice,” a description not found in the letter that has been applied by Complainant and that has no independent significance.

6. Respondent agent Consumer Collection Management, Inc., 04/04/2012 NOTICE OF CANCELLATION state [“ This letter is to advise you that the above account has been canceled from our office as of 1/2/2008.

Response: Admits in part, denies in part. Ameren Missouri admits the letter states, “This letter is to advise you that the above account has been cancelled from our office as of 1/2/2008.” Ameren Missouri denies the letter constitutes a “Notice of Cancellation,” a description not found in the letter that has been applied by Complainant and that has no independent significance.

7. However, according to Ameren Missouri November 28, 2012 response, Customer/Client Small still owes the Utility Company money on an account admitted non-existent as of 01/08/2008.

Response: Admits in part, denies in part. Ameren Missouri denies that account *** was non-existent as of 01/08/2008. Ameren Missouri admits that on 12/20/2007, the remaining outstanding balance under said account, \$***.**, was transferred to a new account in Complainant's name, *****. See Ameren Missouri Account Activity Statements, Ameren Missouri's Responses to Complainant's Second Discovery Request, Nos. 6 and 10, attached hereto as Exhibits 2 and 3.**

8. In fact, Respondent Counsel Kathy Hart, on March 28, 2011 represented some three years after 01/08/2008 that on 04/23/08, a final bill was mailed in the amount of \$***.**.

Response: Admits.

9. The April 04, 2012 Notice of Cancellation from Consumer Collection Management goes back to the date of 01/08/2008. This evidence establish that the March 28, 2011 Hart statement on account, plus Respondent's November 28, 30212 response to Commission is inconsistent with fact and pre-textual. This evidence also establishes that Ameren Missouri falsified documentation of Mr. Small's Electric service account records.

Response: Denies. The letter from Consumer Collection Management relates solely to that company's collection efforts. Said letter is not determinative of whether there is an outstanding balance on any Ameren Missouri electric service account, and is not proof that Ameren Missouri has falsified any electric service account documentation. Ameren Missouri Account Activity Statements, referenced in Response to No. 7, above, as well as other discovery provided to Complainant, demonstrate that Ameren Missouri has not falsified documentation of Complainant's electric service accounts.

10. On May 09, 2012 AMEREN MISSOURI'S OBJECTIONS AND RESPONSES TO COMPLAINANT'S UNNUMBERED "REQUEST TO ADMIT" denied that Utility Company had violated any Missouri statutes, rules and tariff's during 2006-2008 when it disconnected electric service at Mr. Small's property in Kirksville, Missouri.

Response: Admits (admits that Ameren Missouri denies violating any statutes, rules, or tariffs).

11. Service at 23 Lakeroad Ct, Bill date 01/02/2008, Shows a TRANSFERRED AMOUNT, of \$***.** due on 01/02/2008 while Consumer Collection Management, Inc.

Statement of Facts relevant to Contested/Disputed Bill, as of April 04, 2012 indicated facts that \$*.** was actually due on account and Ameren Missouri knew that as of 01/08/2008 that \$ *.** was actually due on account but represented to the Missouri Public Service Commission that Account Money was still due in accord with the Mary Duncan Staff bobbled report, NO. EC-2011-0247.

Response: Admits in part, denies in part. As shown in Ameren Missouri Account Activity Statements, referenced in Response to No. 7 above, Ameren Missouri transferred the outstanding balance of \$*.** on account *****-***** to account *****-***** on December 20, 2007. As a result, as of January 8, 2008, \$*.** was due on account *****-*****—the only account referenced in the April 4, 2012 letter to Complainant from Consumer Collection Management, but as of January 8, 2008, said outstanding balance had been transferred to and constituted a portion of the then outstanding balance on account *****-*****.**

Memorandum in Support of Ameren Missouri's Response to
Complainant's Motion for Summary Judgment

1. In the Commission's Order Denying Motion for Reconsideration, Granting Motion to Amend Complaint, and Amending Procedural Schedule issued and effective October 29, 2012, the Commission determined that the amended issues for the evidentiary hearing in this Complaint were: (1) Did Ameren Missouri violate Commission Rule 4 CSR 240-13.055, the Cold Weather Rule, during 2006-2008 when it disconnected electric service at Mr. Small's property in Kirksville, Missouri, and (2) Did Ameren Missouri falsify documentation of Mr. Small's electric service account records?

2. On December 13, 2012, Complainant filed "Complainant's Motion for Summary Judgment on Alleged Debt/Money Due [Issue] On Account, Residential Service Situated at Lot # 23, 23067 Potter Trail, Kirksville, Missouri" (the "Motion").

3. In his prayer for relief in the Motion, Complainant asserts that "no genuine issue of material fact exist[s] in context to Money/Bill issue" and asks the Commission to enter judgment in his favor, presumably on the second issue for hearing, whether Ameren Missouri falsified documentation of Mr. Small's electric service account records.

4. Summary judgment is appropriate *if* the moving party has demonstrated, based on facts as to which there is no genuine dispute, a right to judgment as a matter of law. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993). There is such a genuine issue, precluding summary judgment, where the record shows two plausible, but contradictory, accounts of the essential facts and the genuine issue is real, not frivolous. [*Id.* at 382.](#)

5. In this most recent Motion at paragraphs 9 and 11, Complainant appears to argue that a letter provided to him by Consumer Collection Management, Inc. stating that an account had been cancelled at Consumer Collection Management's office, provides proof that as of January 8, 2008, \$*.** was owed by him on any Ameren Missouri account. Complainant concludes that therefore, Ameren Missouri falsified his account records when it billed him around and after that date. However, Ameren Missouri has repeatedly denied that it falsified documentation and has repeatedly alleged facts and provided separate documentation that demonstrate that Complainant had an outstanding balance on account ***** as of January 8, 2008, that was not \$*.** and that its account records and the bills it sent to Complainant are accurate. *See*, for example, paragraph 9, subparagraphs a-f, and paragraph 10 of Ameren's Missouri's Answer, filed September 13, 2011; and Ameren Missouri's Response to Amended Allegations, paragraph 8, subparagraphs a-e, filed November 28, 2012, and the Account Activity Statements referenced in Response to No. 7, above.

6. The pleadings in this complaint demonstrate that there are two plausible, but contradictory, accounts of the essential facts relevant to whether Ameren Missouri falsified documentation of account service records. Because genuine issues of material fact still remain on this issue, summary judgment is still inappropriate.

Wherefore, Ameren Missouri prays that Complainant's Motion for Summary Judgment be denied.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Response to Complainant's Motion for Summary Judgment and Suggestions in Support of Response was served on the following parties via electronic mail (e-mail) or via certified and regular mail on this 11th day of January, 2013.

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