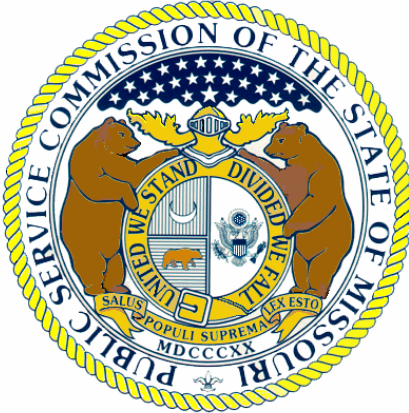


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



Peter B. Howard,

Complainant,

v.

Union Electric Company,
d/b/a AmerenUE,

Respondent.

Case No. EC-2008-0329

REPORT AND ORDER

Issue Date: December 11, 2008

Effective Date: December 21, 2008

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

| | | |
|-------------------------|---|-------------------------------------|
| Peter B. Howard, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | <u>Case No. EC-2008-0329</u> |
| |) | |
| Union Electric Company, |) | |
| d/b/a AmerenUE, |) | |
| |) | |
| Respondent. |) | |

Appearances

Peter B. Howard, 4453 Athlone, St. Louis, Missouri 63115, *pro se*.

Wendy K. Tatro, Associate General Counsel, Ameren Services Company, 1901 Chouteau Avenue, Post Office Box 66149, St. Louis, Missouri 63166-6149, for Union Electric Company, d/b/a AmerenUE.

Kevin A. Thompson, General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Nancy Dippell, Deputy Chief.

REPORT AND ORDER

Syllabus: This Report and Order finds that the Complainant has failed to prove his complaint. Therefore, the relief requested shall be denied.

Procedural History

On April 9, 2008, Peter B. Howard filed a complaint against Union Electric Company, d/b/a AmerenUE. An evidentiary hearing was held on August 7, 2008, at which Mr. Howard appeared by telephone. An opportunity for closing arguments at the hearing was given in lieu of the filing of briefs.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

1. Complainant, Peter B. Howard, is an individual owning property, including a single-family residence at 4111 Maffitt, St. Louis, Missouri.¹
2. Respondent, Union Electric Company, d/b/a AmerenUE, is a public utility providing electric service to the house located at 4111 Maffitt.
3. Mr. Howard testified on his own behalf. His testimony was generally credible; however, he has no knowledge of electricity usage other than his personal experience and receiving bills from the company.
4. Ms. Cathy Hart testified on behalf of AmerenUE. She is a Customer Service Supervisor and works in the customer contact center for AmerenUE in the Jefferson City office. She has held that position since 2001 and has worked for AmerenUE in various positions for 24 years. Her testimony was generally credible and she is very familiar with AmerenUE's billing system.² She was not, however, familiar with the amount of kilowatt hours (kwh) that a typical home would used to run certain appliances or for heating.³
5. No one has lived at 4111 Maffitt for at least ten years.⁴
6. During the last ten years, Mr. Howard has kept dogs on the property in a fenced back yard and occasionally in the basement during inclement weather.⁵

¹ Transcript p. 22.

² Tr. pp. 41-42.

³ Tr. p. 85.

⁴ Tr. pp. 22 and 32.

⁵ Tr. pp. 22, 26 and 32.

7. Mr. Howard has been responsible for the electricity bills at 4111 Maffitt since September or October of 1998 after his uncle passed away.⁶

8. The account for electric service at 4111 Maffitt was officially transferred into Mr. Howard's name in June of 2005.⁷

9. The house is equipped with a gas furnace though the gas is not turned on at the property. Mr. Howard does not use an electric heater or any other source of heat at the home.⁸

10. An electric refrigerator is running and consuming electricity at the residence and once a day Mr. Howard feeds the dogs and turns on most of the lights. In addition, one 100-watt light bulb in the bathroom remains on at the residence 24 hours a day, every day.⁹

11. There was no evidence presented of electricity being stolen at the residence.¹⁰

12. There are no broken doors or windows at the house.¹¹

13. In the wintertime, Mr. Howard lets the water drip to keep pipes from freezing.¹² There was no evidence of the type of water heater, if any, at the house.

14. One 100-watt light bulb would not consume enough electricity in one month to equal the amount of usage at 4111 Maffitt.¹³

⁶ Tr. pp. 26 and 32.

⁷ Tr. pp. 26.

⁸ Tr. pp. 24, 34, 37, and 92.

⁹ Tr. pp. 34 -35.

¹⁰ Tr. pp. 35-36.

¹¹ Tr. p. 38.

¹² Tr. p. 37.

¹³ Tr. pp 53, 110, and 111.

15. Mr. Howard testified that the average bill at 4111 Maffitt for the last six to ten years has been \$26 to \$28 per month.¹⁴ He testified that the average for the summer months is about \$20 to \$29 per month.¹⁵ Although this was Mr. Howard's recollection, there was no other evidence presented to support this testimony. The Commission finds this portion of Mr. Howard's testimony not credible.

16. Mr. Howard did not dispute the billing in 2005.¹⁶

17. The automated meter reading (AMR) device at 4111 Maffitt stopped transmitting sometime between July 23, 2006, and August 23, 2006.¹⁷

18. The last accurate meter reading from the original AMR device at 4111 Maffitt was on July 23, 2006.¹⁸

19. On August 23, 2006, a technician attempted to read the meter but the gate to the yard was locked and a dog was in the back yard.¹⁹

20. AmerenUE then mailed letters to attempt to schedule a meter reading or change of meter. The letters were dated October 12, 2006, January 12, 2007, July 16, 2007, October 12, 2007, November 19, 2007, and December 14, 2007.²⁰

¹⁴ Tr. pp. 24, 29.

¹⁵ Tr. p. 25.

¹⁶ Tr. pp. 54-55.

¹⁷ Tr. p. 42.

¹⁸ Tr. p. 42.

¹⁹ Tr. p. 42.

²⁰ Tr. pp. 21 and 43-45; Exhibits 1 and 2.

21. AmerenUE employees made attempts to change the meter on October 23, 2006, July 5, 2007, September 13, 2007, October 11, 2007, and December 5, 2007, but were unable to access the meter due to a locked gate and the dog in the yard.²¹

22. On January 28, 2008, AmerenUE mailed a letter informing Mr. Howard that the service would be disconnected because its employees could not gain access to the meter.²²

23. On January 29, 2008, AmerenUE sent an estimated bill for \$12.35 reflecting a reading of 78849 as of January 28, 2008.²³

24. AmerenUE also mailed a letter dated February 6, 2008, which incorrectly indicated that the meter had stopped working on January 25, 2007, rather than 2006. Ms. Hart explained credibly that the February 6th letter was a form letter that was generated to only recoup charges for a 12-month period. Thus, the letter contains an incorrect date with regard to the time the AMR device stopped working.²⁴

25. AmerenUE received no response from Mr. Howard until January 29, 2008, when Mr. Howard contacted AmerenUE to schedule the meter change for February 1, 2008.²⁵

26. The original meter did not malfunction. Only the AMR device malfunctioned.²⁶

²¹ Tr. p. 46.

²² Tr. p. 47.

²³ Tr. p. 47.

²⁴ Tr. pp. 48-49.

²⁵ Tr. pp. 46-48.

²⁶ Tr. pp. 48 and 117.

27. Consistent with AmerenUE's policy, the entire meter, not just the AMR device, was changed on February 1, 2008.²⁷

28. The actual meter reading at the time the meter was changed was 97252.²⁸ This was a difference of 18,403 kilowatt hours (kwhs) from what was billed.²⁹

29. AmerenUE billed Mr. Howard \$1,070 on February 11, 2008, to account for the difference in usage at 4111 Maffitt. The bill reflected total charges of \$1,238.08 for service from January 28, 2007 to January 28, 2008, and a credit of \$162.78 for payments made during that period.³⁰

30. The amount billed reflected the actual tariffed price for the additional usage.³¹

31. Because Mr. Howard filed an informal complaint at the Public Service Commission, AmerenUE scrutinized Mr. Howard's billing to determine if any additional adjustments could be made.³² After comparing the usage from the last twelve months of actual usage (July 21, 2005 to June 20, 2006) to the 12-month corrected billing, AmerenUE determined that there was a substantial increase in usage equal to \$534.³³ In order to try to satisfy Mr. Howard's complaint, AmerenUE adjusted the corrected bill by \$534 to account for the disparity, leaving a total balance due of \$528.12.³⁴

²⁷ Tr. pp. 47 and 48.

²⁸ Tr. p. 47.

²⁹ Tr. p. 47 and 59.

³⁰ Tr. pp. 21-22, and 47-48.

³¹ Tr. p. 59.

³² Tr. pp. 55-56.

³³ Tr. pp. 49 and 56.

³⁴ Tr. pp. 56 and 60.

32. Actual usage in kilowatt hours recorded prior to the AMR device malfunction

is as follows:³⁵

| Period Ending | Usage (KWH) |
|--------------------------|---|
| 01/22/2004 | 1,582 |
| 02/22/2004 | 3,320 |
| 03/22/2004 | 2,816 |
| 04/21/2004 | 1,093 |
| 05/20/2004 | 369 |
| 06/21/2004 | 266 |
| 07/21/2004 | 313 |
| 08/19/2004 | 225 |
| 09/20/2004 | 292 |
| 10/19/2004 | 364 |
| 11/18/2004 | 593 |
| 12/20/2004 | 2,181 |
| 01/23/2005 | 3,205 |
| 02/21/2005 | 2,781 |
| 03/22/2005 | 2,475 |
| 04/21/2005 | 973 |
| 05/22/2005 | 452 |
| 06/10/2005 | 158 – final reading from prior account holder |
| 06/21/2005 | 66 – account activated in Mr. Howard's name 6/14/05 |
| 07/21/2005 | 265 |
| 08/21/2005 | 264 |
| 09/20/2005 | 271 |
| 10/19/2005 | 273 |
| 11/20/2005 | 369 |
| 12/20/2005 | 2,335 |
| 01/23/2006 | 2,252 |
| 02/21/2006 | 2,139 |
| 03/22/2006 | 1,675 |
| 04/20/2006 | 994 |
| 05/21/2006 | 545 |
| 06/20/2006 | 359 |
| 07/23/2006 | 191 |

³⁵ Exhibits 3, 4, and 6.

33. Actual usage in kilowatt hours recorded by the new meter is as follows:³⁶

| Period Ending | Usage (KWH) |
|------------------|----------------|
| 02/24/2008 | 1,899 |
| 03/24/2008 | 1,772 |
| 04/22/2008 | 1,315 |
| 05/21/2008 | 382 |
| 06/23/2008 | 362 |
| 07/24/2008 | 369 |

34. Since March of 1999 the electricity usage data from 4111 Maffitt consistently shows a pattern of increased usage during the colder months.³⁷

35. Although there is an increased usage during the colder months of the year, from December 1999 through February of 2003 the usage during those colder months averages less than 900 kwh per month.³⁸

36. From December 2003 through March 2006, the usage increases in the colder months of the year and consistently averages greater than 2100 kwh per month in the colder months.³⁹

37. From February to April 2008, subsequent to the installation of the new meter and during the colder months of the year, the average electricity usage was 1662 kwh.⁴⁰

38. There was no evidence that the new meter was malfunctioning.⁴¹

39. The kilowatt hours used are not rolled over to the next month's billing statement if the bill goes unpaid; however, the amount due would roll over any unpaid

³⁶ Exhibits 3, 4, and 6.

³⁷ Exhibits 3, 4, and 6.

³⁸ Exhibit 4.

³⁹ Exhibit 4.

⁴⁰ Exhibit 4 and 6.

⁴¹ Tr. p. 53.

amounts from previous month's so that the total amount due would reflect those past charges.⁴²

40. The monthly amount billed for usage is calculated using the usage in kwhs multiplied by the tariffed rate.⁴³ Other amounts may make up the total bill amount, including past due amounts, late fees, etc.

41. A rate increase became effective in June 2007.⁴⁴

42. The data showing the kilowatt usage over time was more credible evidence than either of the witnesses' testimony.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

A. Jurisdiction, Authority Pursuant to the Complaint Statute, and Burden of Proof

1. Commission Jurisdiction

Mr. Howard is a "person" as defined in Section 386.020(39) and Commission Rule 4 CSR 240-2.010(12). Mr. Howard, by the act of filing his complaint with the Commission pursuant to Section 386.390 and Commission Rule 4 CSR 240-2-070, and by the act of entering his appearance before the Commission, submitted to the personal jurisdiction of the Commission.

AmerenUE is an "electrical corporation" and a "public utility," as defined in Sections 386.020(15) and (42), and is subject to the jurisdiction, supervision, and control of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes.

⁴² Tr. p. 73.

⁴³ Tr. p. 124.

⁴⁴ Tr. p. 125.

2. Commission Authority Pursuant to the Complaint Statute

Section 386.390.1 authorizes the Commission to hear and determine complaints:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission; provided, that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, sewer, or telephone corporation, unless the same be signed by the public counsel or the mayor or the president or chairman of the board of aldermen or a majority of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of such gas, electricity, water, sewer or telephone service.

The Commission has already concluded AmerenUE is a public utility and subject to the jurisdiction, supervision, and control of the Commission, and pursuant to Section 386.390, the Commission has the authority to hear complaints against AmerenUE.

3. Burden of Proof – Preponderance of the Evidence Standard

In cases where a “complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions, . . . the burden of proof at hearing rests with the complainant.”⁴⁵ As the complaining party, Mr. Howard bears the burden of proving the allegations in his complaint.

⁴⁵ *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm’n*, 116 S.W.3d 680, 693 (Mo. App. 2003).

In order to carry his burden of proof, Mr. Howard must meet the preponderance of the evidence standard.⁴⁶ And in order to meet this standard, Mr. Howard must convince the Commission it is “more likely than not” that AmerenUE acted unlawfully when billing him for electric service.⁴⁷

The burden of proof has two parts: the burden of production and the burden of persuasion. The burden of production requires the Mr. Howard to introduce enough evidence on the material issue or issues to have that issue or those issues decided by the Commission, rather than the Commission deciding against Mr. Howard in a peremptory ruling such as a summary determination or a determination on the pleadings.⁴⁸ The burden of persuasion requires Mr. Howard to convince the Commission to favor his position,⁴⁹ and this burden always remains with Mr. Howard.⁵⁰

Nor can it be said that the burden of production would ever shift to AmerenUE. In fact, AmerenUE is not required to produce any evidence. It is not that the two parts of the burden of proof ever shift from Mr. Howard, but if Mr. Howard offers sufficient evidence to prove AmerenUE more likely than not unlawfully denied him gas service, and AmerenUE

⁴⁶ *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 109-111 (Mo. banc 1996), citing to *Addington v. Texas*, 441 U.S. 418, 423, 99 S. Ct. 1804, 1808, 60 L.Ed.2d 323, 329 (1979).

⁴⁷ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 109-111 (Mo. banc 1996); *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

⁴⁸ *Byous v. Missouri Local Government Employees Retirement System Bd. of Trustees*, 157 S.W.3d 740, 745 (Mo. App. 2005); *Kinzenbaw v. Dir. of Revenue*, 62 S.W.3d 49, 53 (Mo. banc 2001); *State v. Ramires*, 152 S.W.3d 385, 395 (Mo. App. 2004).

⁴⁹ *Id.*

⁵⁰ *Middlemas v. Director of Revenue, State of Missouri*, 159 S.W.3d 515, 517 (Mo. App. 2005); *R.T. French Co. v. Springfield Mayor's Com'n on Human Rights and Community Relations*, 650 S.W.2d 717, 722 (Mo. App. 1983).

fails to produce sufficient evidence to rebut Mr. Howard's evidence, then Mr. Howard will have met his burden of proof.

The Commission can only base its decision on the record evidence, and it must have competent and substantial evidence of a party meeting its burden of proof. If there is no evidence to weigh against one party's position, that party may carry its burdens of production and persuasion. A party without evidence, or with insufficient evidence, may fail, not because the burden of proof has shifted, but because not enough evidence exists to tip the scales weighing the evidence to "less likely than not."

4. Final Conclusions Regarding Jurisdiction, Authority and Burden of Proof

Substantial and competent evidence in the record as a whole supports the conclusions that: (1) Mr. Howard has submitted to the personal jurisdiction of the Commission; (2) AmerenUE, by virtue of being a public utility, is subject to the jurisdiction, control, and regulation of the Commission; (3) the Commission has subject matter jurisdiction to hear Mr. Howard's complaint pursuant to Section 386.390; (4) Mr. Howard bears the burden of proving the allegations of his complaint, and (5) the standard for meeting the burden of proof is the preponderance of the evidence standard.

B. Conclusions of Law Regarding Billing for Electric Service Usage at 4111 Maffitt

1. It is uncontroverted that Mr. Howard was the account holder during the billing period in dispute.

2. It is also uncontroverted that Mr. Howard uses some electricity at 4111 Maffitt.

3. “A tariff is a document which lists a public utility services and the rates for those services.”⁵¹ The Commission has the power to approve electric company tariffs, and once the Commission approves a tariff, it becomes Missouri law.⁵² AmerenUE’s tariffs have “the same force and effect as a statute directly prescribed from the legislature.”⁵³

Pursuant to Section 386.270, RSMo, all Commission orders are prima facie lawful and reasonable.⁵⁴ Section 386.270 provides:

All rates, tolls, charges, schedules and joint rates fixed by the commission shall be in force and shall be prima facie lawful, and all regulations, practices and services prescribed by the commission shall be in force and shall be prima facie lawful and reasonable until found otherwise in a suit brought for that purpose pursuant to the provisions of this chapter.

Consequently, once a tariff is approved and has become effective, it is valid until found otherwise invalid in a lawsuit litigating that issue; either by an appeal of the Commission’s decision in a court of competent jurisdiction pursuant to Section 386.510, or in a complaint

⁵¹ *State ex rel. Missouri Gas Energy v. Public Service Com’n*, 210 S.W.3d 330, 337 (Mo. App. 2006); *Bauer v. SW. Bell Tele. Co.*, 958 S.W.2d 568, 570 (Mo. App. 1997).

⁵² Sections 393.130, 393.140(11), and 393.150; *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm’n*, 156 S.W.3d 513, 521 (Mo. App. 2005); *A.C. Jacobs and Co., Inc. v. Union Elec. Co.*, 17 S.W.3d 579, 583 (Mo. App. 2000); *Southwestern Bell Yellow Pages, Inc. v. Wilkins*, 920 S.W.2d 544, 548 (Mo. App. 1996). *State ex rel. St. Louis County Gas Co. v. Pub. Serv. Comm’n*, 286 S.W. 84, 86, (Mo. 1926); *Wheelock v. Walsh Fire Clay Products Co.*, 60 F.2d 415 (8th Circuit 1932); *Updike Grain Co. v. Chicago & N.W. Ry. Co.*, 35 F.2d 486 (8th Circuit 1929); *Chicago, R. I. & P. R. Co. v. Furniture Forwarders of St. . . .*, 267 F.Supp. 175 (D.C. Mo. 1967).

⁵³ *Id.*; *Laclede Gas Co.*, 156 S.W.3d at 521; *Allstates Transworld Vanlines, Inc. v. Southwestern Bell Tel. Co.*, 937 S.W.2d 314, 317 (Mo. App. 1996); *Wolff Shoe Co. v. Dir. of Revenue*, 762 S.W.2d 29, 31 (Mo. banc 1988). *State ex rel. Maryland Heights Fire Prot. Dist. v. Campbell*, 736 S.W.2d 383, 387 (Mo. banc 1987).

⁵⁴ Section 386.270, RSMo 2000; *Missouri Gas Energy*, 210 S.W.3d at 337; Section 386.270. RSMo 2000.

action before the Commission pursuant to Section 386.390.⁵⁵ In both of these litigation choices, the burden of proof lies with the petitioner challenging the lawfulness of the order approving the tariff.⁵⁶ AmerenUE had tariffs setting rates for residential service approved by the Commission and in effect during all relevant periods of this complaint.⁵⁷

There is no evidence in the record to suggest that AmerenUE charged any rate for usage other than the properly approved tariff rate. The controversy lies in how much electricity was used at 4111 Maffitt. The Commission concludes that AmerenUE charged the correct and lawful rate for usage at 4111 Maffitt.

Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this

⁵⁵ Sections 386.510 and 386.390, RSMo 2000; *State ex rel. Public Counsel v. Public Service Com'n*, 210 S.W.3d 344, 360 (Mo. App. 2006); *A.C. Jacobs and Co., Inc. v. Union Elec. Co.*, 17 S.W.3d 579, 583 (Mo. App. 2000); *State ex rel. GTE North, Inc. v. Public Service Commission*, 835 S.W.2d 356, 367 (Mo. App. 1992); *State ex rel. Union Elec. Co. v. Public Service Com'n of State of Mo.*, 765 S.W.2d 618, 621 (Mo. App. 1988); Transcript p. 261, lines 16-25, p. 262, lines 1-25, p. 263, lines 1-25, p. 264, lines 1-2 (Testimony of Staff Witness, Michael Straub). See also *In the Matter of the Filing of Proposed Tariffs by The Empire District Electric Company to Comply with the Commission's Report and Order in Case No. ER-2001-299 and to Correct a Recently Discovered Error in the Calculation of the Revenue Requirement*, Case No. ET-2002-210, Tariff No. 200200321, *Order Rejecting Tariff*, issued November 19, 2001, effective date November 24, 2001.

⁵⁶ "In cases where a complainant [brought pursuant to Section 386.390, RSMo 2000] alleges that a regulated utility is violating a law, its own tariff, or is otherwise engaged in unjust or unreasonable actions, the complainant has the burden of proof." *David A. Turner and Michele R. Turner, Complainants, v. Warren County Water and Sewer Company, Respondent*, 9 Mo. P.S.C. 3d 548 (Mo. PSC 2001), *citing to Margolis v. Union Electric Company*, 30 Mo. P.S.C. (N.S.) 517, 523 (1991); *Michaelson v. Wolf*, 261 S.W.2d 918, 924 (Mo. 1953); *Farnham v. Boone*, 431 S.W.2d 154 (Mo. 1968). In cases where a petitioner challenges the lawfulness of a Commission order pursuant to Section 386.510 the party seeking to set aside an order of the Commission shall have the burden of proof "to show by clear and satisfactory evidence that the determination, requirement, direction or order of the commission complained of is unreasonable or unlawful as the case may be." Section 386.430, RSMo 2000; *Union Elec. Co.*, 765 S.W.2d at 621.

⁵⁷ P.S.C. MO. NO. 5.

decision. After applying the facts, as it has found them, to its conclusions of law, the Commission has reached the following decision.

Mr. Howard has failed to sustain his burden of proving, by a preponderance of the evidence, that AmerenUE unlawfully charged him for electric service 4111 Maffitt. The relief Mr. Howard requested, i.e., the elimination of his account balance of \$528.12, is denied.

Although there was much testimony about the monthly billed amounts being much greater than the bills in controversy, there was no evidence other than Mr. Howard's testimony to support this. In addition, the amount due on the bills is not the important factor so long as AmerenUE is charging the tariffed rate for the time of the usage. It is the usage amount which is the ultimate issue in this case.

Mr. Howard is adamant that there is no heat in this house and no person living there. This statement cannot, however, be reconciled with the usage data presented. Something at 4111 Maffitt is consuming electricity and doing so in a consistent manner, using more electricity in the colder months of the year. This pattern is not unusual for a home with an electric heat source. Mr. Howard alleged that the bills were falsified to pay for unexpected costs experienced by AmerenUE like the Taum Sauk dam break, but there was no evidence presented to back this claim and no reason to believe that such a conspiracy is at work.

Mr. Howard's testimony is the only evidence that usage is not what AmerenUE's bills show. But that testimony is rebutted by the clear pattern of electric usage increasing in the winter months, which is consistent with some type of heating source (such as an electric heater or hot water heater). The pattern of usage is the most compelling and

credible evidence. The Commission concludes that Mr. Howard did not meet his burden of proof and that the balance due shall not be discharged.

The Commission emphasizes that its decision in this matter is specific to the facts of this case. Evidentiary rulings, findings of fact and conclusions of law are all determined on a case-by-case basis. Consequently, the Commission makes it abundantly clear that, consistent with its statutory authority, this decision does not serve as binding precedent for any future determinations by the Commission.

THE COMMISSION ORDERS THAT:

1. The request for relief of Peter B. Howard is denied.
2. This Report and Order shall become effective on December 21, 2008.
3. This case shall close on December 22, 2008.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton,
and Gunn, CC., concur and certify
compliance with the provisions
of Section 536.080, RSMo 2000.
Jarrett, C., absent.

Dated at Jefferson City, Missouri,
on this 11th day of December, 2008.