

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

Janice Shands)	
)	
Complainant,)	
)	
vs.)	Case No: EC-2015-0043
)	
Union Electric Company, d/b/a)	
Ameren Missouri,)	
Respondent.)	

ANSWER AND MOTION TO DISMISS

COMES NOW, Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), and for its Answer to and Motion to Dismiss the Complaint filed in this proceeding states as follows:

Answer

1. On August 14, 2014, Ms. Janice Shands (Complainant), initiated this proceeding against Company.

2. Any allegation not specifically admitted herein by the Company should be considered denied.

3. Ameren Missouri admits the allegations of paragraph 1 of the Complaint.

4. Paragraph 2 of the Complaint consists of a reference to a one-page attachment, which consists of ten unnumbered typewritten paragraphs. In this Answer, the Company will refer to the paragraphs in the attachments as 2.1, 2.2, 2.3, et cetera.

5. The Company is without knowledge or information sufficient to form a belief about the allegations of paragraph 2.1 and therefore denies the same. In further answer the Company states that Complainant does not have an electric utility account with the Company in her name at 9953 Lewis & Clark, Unit 801, Moline Acres, Missouri, or at any other address that the Company is aware of.

6. The Company denies the allegations of paragraph 2.2 of the Complaint that: the shopping center adjacent to Lewis & Clark Tower does not have its own utility lines, takes utilities from another party and does not have its own billings. The Company is without

knowledge or information sufficient to form a belief about the remainder of the allegations of paragraph 2.2 and therefore denies the same. In further answer, the Company states that all of the businesses in the shopping center adjacent to Lewis & Clark Tower do have separately metered electric utility service accounts with the Company. Because 4 CSR 240-2.135 generally prohibits the disclosure of highly confidential information (information relating directly to specific customers), the Company will not set forth customer-specific information about the shopping center businesses' accounts in this Answer. Information about those accounts will be provided separately to Commission Staff, however.

7. The Company denies the allegations of paragraph 2.3 of the Complaint that it was only in June 2014 that the shopping center installed their own line and made payments on it. The Company is without information sufficient to form a belief about the remainder of the allegations of paragraph 2.3 and therefore denies the same.

8. In answer to paragraph 2.4, the Company admits that there is a strip mall shopping center adjacent to Lewis & Clark Tower. The Company denies that the address of the entire strip mall is 9955 Lewis and Clark. The Company is without information sufficient to form a belief at about the remainder of the factual allegations of paragraph 2.4 and therefore denies the same. In further answer, the Company denies that Complainant is entitled, on her own behalf, or on behalf of residents or owners of Lewis & Clark Tower condominiums, or on behalf of the Lewis & Clark Tower Condominium Association, to ask for the relief requested in paragraph 2.4.

9. The Company is without information sufficient to form a belief about the allegations in paragraph 2.5 of the Complaint and therefore denies the same. In further answer, the Company states that according to the Missouri Secretary of State, Lewis & Clark Tower Condominium Association is a non-profit corporation in good standing. Attached hereto as Exhibit A hereto is a certified certificate of good standing for said association issued by the Missouri Secretary of State on September 15, 2014.

10. In answer to paragraph 2.6, the Company denies the allegations of paragraph 2.6 as stated. In further answer, the Company states that a customer's billing rate is included on each bill. Currently, on a residential bill, the residential billing rate, 1M, appears in the upper lefthand corner under the column, "Rate."

11. In answer to paragraph 2.7, the Company admits that it received inquiries from Complainant and her counsel, but denies the remainder of the allegations of paragraph 2.7 as stated. In further answer, the Company states that it did not receive sufficient information from Complainant or her counsel sufficient for the Company to be able to look into the alleged concerns.

12. To the extent paragraph 2.8 alleges facts that form the basis of the Complaint, the Company denies those alleged facts. To the extent paragraph 2.8 requests relief, the Company denies that Complainant or any other party is entitled to the relief requested.

13. To the extent paragraph 2.9 alleges facts that form the basis of the Complaint, the Company denies those alleged facts. To the extent paragraph 2.9 requests relief, the Company denies that Complainant or any other party is entitled to the relief requested.

14. To the extent paragraph 2.10 alleges facts that form the basis of the Complaint, the Company denies those alleged facts. To the extent paragraph 2.10 requests relief, the Company denies that Complainant or any other party entitled to the relief requested.

15. In answer to paragraph 3, the Company denies that Complainant or any other party is entitled to the relief requested.

Motion to Dismiss

16. The Complaint should be dismissed because Complainant is not a customer of the Company and has otherwise failed to establish her personal interest in the complaint, as required by 4 CSR 240-2.065(4)(D).

17. The Complaint should be dismissed because to the extent Complainant purports to represent the interests of the Lewis & Clark Tower Condominium Association (*see*, e.g., Complaint paragraph 2.4 referring to the association and stating, “[w]e are asking for a review...[.]” and Complaint request for relief, “credit to be issued for payments billed to *our Association*...[.]”), this directly conflicts with Complainant’s allegation in Complaint paragraph 2.5 that, “there is no viable Board or condo Association...[.]” If instead, Complainant’s allegation that there is no viable condo association is taken as an allegation that the association is other than an incorporated association or other entity created by statute, then the Complaint should be dismissed for Complainant’s failure, as required by 4 CSR 240-2.070(4)(H), to set forth a list of all of the association’s members.

18. Per the Missouri Secretary of State, Lewis & Clark Tower Condominium Association is a domestic non-profit corporation in good standing. Per §355.316.1 and .2 RSMo (2000), each such corporation is required to have a board of directors, and except as specifically provided in Chapter 355 RSMo, all powers of such corporations, “*shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board.*” (emphasis added). Powers of such corporations include the power, “to sue and be sued, [and] complain[.]” §355.131(1) RSMo. (emphasis added). Because by law only the board of directors of Lewis & Clark Tower Condominium Association can bring suit on the association’s behalf, the Commission should dismiss this Complaint, brought by a party other than said board.

19. To the extent the Complainant otherwise purports to bring her Complaint on behalf of herself and other individuals (*see, e.g.,* caption of Entry of Appearance filed in this matter on August 19, 2014 by Complainant’s counsel, “On behalf of herself and others at Lewis and Clark Tower”), this Complaint should be dismissed because as the Commission has often recognized, it has no jurisdiction to entertain a class action.

20. Finally, the Complaint should be dismissed because the Commission cannot grant the relief requested. In her prayer for relief, Complainant requests, “[c]redit to be issued for payments billed to our Association instead of shopping center owner Lewis & Clark 195, LLC.” The Commission has no authority to require reparation or refund, cannot declare or enforce any principle of law or equity, and cannot award damages or other pecuniary relief. *American Petroleum Exchange v. Public Service Commission*, 172 S.W.2d 952, 955 (Mo. 1943); *State ex. rel. GS Technologies Operating Co., Inc. v. Public Service Comm’n*, 116 S.W.3d 680, 695 (Mo. App. 2003).

21. The following attorneys should be served with all pleadings in this case:

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WHEREFORE, Ameren Missouri respectfully requests that the Complaint be dismissed, or in the alternative, that the matter be set for hearing.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer and Motion to Dismiss was served on the following parties via electronic mail (e-mail) or via certified and regular mail on this 15th day of September, 2014.

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