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ATTORNEY AT LAW

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FILED³

JUL 26 2010

July 22, 2010

Missouri Public Service Commission
Attn: Secretary of the Commission
200 Madison Street
Jefferson City, MO 65101

Missouri Public
Service Commission

RE: Tawanda Murphy sv. Union Electric Company d/b/a AmerenUE
Case #: EC-2010-0364

Dear Secretary of Commission:

Please find enclosed for filing Complainant Tawanda Murphy's Response To
Respondent's Motion To Dismiss. Thank you.

Sincerely,



MARK G. McMAHON

/kmd

CC: All Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Tawanda Murphy

Complainant,

vs.

Union Electric Company, d/b/a
AmerenUE,

Respondent.

Case No. EC-2010-0364

FILED³

JUL 26 2010

Missouri Public
Service Commission

COMPLAINANT TAWANDA MURPHY'S RESPONSE TO
RESPONDENT'S MOTION TO DISMISS

In response to Response To Respondent's Motion To Dismiss in this matter, Complainant offers in support of her position the Motion to Dismiss and Memorandum in Support Thereof, submitted by Union Electric Company d/b/a Ameren UE in the case of Kenny Brown v. Union Electric Company d/b/a Ameren UE, heard in the Circuit Court of St. Louis County, cause number 09SL-AC07430. Complainant attaches these two documents hereto. In that case Complainant's attorney herein, Mark McMahon, represented Cameron Mutual Insurance Company as subrogee of Kenny Brown in connection with damages allegedly caused by the negligence of Ameren UE to the home of Kenny Brown which was insured by Cameron Mutual Insurance Company. In that case, suit was brought in the Circuit Court of St. Louis County in which the sole relief sought was monetary damages in the amount of \$3,719.37.

In that case, Defendant Union Electric Company filed said Motion to Dismiss For Lack Of Subject Matter Jurisdiction, asserting that the Missouri Public Service Commission had primary jurisdiction over the claim. The Court in that case sustained Defendant's Motion and found that the Missouri Public Service Commission had primary jurisdiction over that matter. A copy of the text of the order from Missouri case.net is also attached hereto. Complainant herein incorporates by reference into this Response the following:

1. Defendant Union Electric Company d/b/a Ameren UE's Motion to Dismiss or Stay for Lack of Subject Matter Jurisdiction filed in the case of Kenny Brown vs. Union Electric Company d/b/a Ameren UE in the Circuit Court of St. Louis County, cause number 09SL-AC07430;
2. Defendant Union Electric Company d/b/a Ameren UE's Memorandum In Support Order of Motion to Dismiss or Stay for Lack of Subject Matter Jurisdiction, filed also in the case of Kenny Brown vs. Union Electric d/b/a Ameren UE in the Circuit Court of St. Louis County, cause number 09SL-AC07430;

3. A printout of the docket entry in the case of Kenny Brown vs. Union Electric Company d/b/a Ameren UE from Missouri case.net showing the Court's order granting Defendant Union Electric Company's Motion to Dismiss due to its finding that the Missouri Public Service Commission had primary subject matter jurisdiction.


Complainant further adopts all of the arguments contained in said Motion to Dismiss and Memorandum In Support of Motion to Dismiss, filed by Union Electric Company d/b/a Ameren UE in the matter of Kenny Brown vs. Union Electric Company d/b/a Ameren UE in the Circuit Court of St. Louis County, cause number 09SL-AC07430.

WHEREFORE, Complainant prays for an order from the Commission either:

A. Overruling Respondent Union Electric Company's Motion to Dismiss and specifically finding that it does have primary jurisdiction to hear the complaint herein and to award monetary damages; or

B. Specifically finding that the Missouri Public Service Commission does not have jurisdiction over the subject matter of the complaint filed herein and that Complainant's sole recourse to obtain monetary damages is through the Courts and that Complainant has no administrative remedy to her, so that she can proceed to pursue her remedy available for monetary damages in the appropriate Circuit Court in the State of Missouri.

RESPECTFULLY SUBMITTED,



MARK G. MCMAHON #30020
Attorney for Complainant
7912 Bonhomme, Suite 101
Clayton, MO 63105
(314) 863-5200
(314) 863-1723 fax

Certificate of Service

This certifies that a true copy of the foregoing was mailed this 21st day of July, 2010 to
Sarah Giboney, Smith Lewis, LLP, 111 South Ninth Street, Ste. 200, Columbia, MO 65205;

Wendy Tatro, Associate General Counsel for Respondent, 1901 Chouteau Avenue, MC-1310, St. Louis, MO 63166,

Eric Dearmont, Staff of the Missouri Public Service Commission, 200 Madison, Ste 800, Jefferson City, MO 65102 and

Lewis Mills, Office of the Public Counsel, 200 Madison, Ste. 650, Jefferson City, MO 65102.



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

Tawanda Murphy,)	
)	
Complainant,)	
)	
vs.)	Case No. EC-2010-0364
)	
Union Electric Company, d/b/a)	
AmerenUE,)	
Respondent.)	

ANSWER AND MOTION TO DISMISS

COMES NOW Union Electric Company d/b/a AmerenUE ("AmerenUE" or "Company"), and in response to Complainant's Complaint states as follows:

1. On June 14, 2010, counsel for American Family Insurance Group, as subrogee of Tawanda Murphy ("Complainant"), filed a "Petition—Negligence Res Ipsa Loquitor" on Ms. Murphy's behalf with the Commission, which the Commission registered as a complaint against Company (the "Complaint").

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

3. In paragraph 1 of the Complaint, Complainant alleges that the Commission has jurisdiction over the subject matter of the Complaint pursuant to Section 386.250 RSMo. Company denies the allegation as stated, but admits that the Commission has jurisdiction over consumer complaints that allege a violation of some statute, rule, order or decision within the Commission's jurisdiction.

4. The Company is without sufficient information to form a belief as to the allegations of paragraph 2 of the Complaint and therefore denies the same.

5. The Company admits the allegations of paragraph 3 of the Complaint.

6. As to paragraph 4 of the Complaint, the Company admits that on or about March 10th, 2009, it supplied electricity to 5643 Beldon Dr., Jennings, Missouri through certain equipment owned and provided by the Company, but is without sufficient information to form a belief as to the remaining allegations of paragraph 4 as stated and therefore denies the same.

7. The Company denies the allegations of paragraph 5 of the Complaint as stated, but admits that it is bound by its tariff and by certain laws, Commission Rules, and Commission Orders to perform certain maintenance, inspections and repairs of its equipment.

8. The Company is without sufficient information to form a belief about the allegations of paragraph 6 of the Complaint and therefore denies the same.

9. The Company denies the allegations of paragraph 7 of the Complaint.

10. The Company denies the allegations of paragraph 8 of the Complaint.

11. The Company denies the allegations of paragraph 9 of the Complaint.

12. The Company is without sufficient information to form a belief as to the allegations of paragraph 10 of the Complaint and therefore denies the same.

13. In further answer, the Company states that the Commission is a regulatory body of limited jurisdiction having only such powers as are conferred by statute, is not a court, and has no power to determine damages, award damages or pecuniary relief, or declare or enforce any principle of law or equity. *American Petroleum Exchange v. Public Service Commission*, 172 S.W.2d 952, 955 (Mo. 1943); *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466 (Mo. App. W.D. 1980). In Complainant's prayer for relief, she asks the Commission for, "judgment against the Respondent [Company] in the amount of \$45,824.78, and any further relief this Commission deems just and proper." Because the Commission has no jurisdiction to hear Complainant's common law claim of negligence and cannot enter a monetary judgment against the Company, the Company believes it is proper for the Commission to dismiss the Complaint for lack of jurisdiction and for failure to state a claim for which relief can be granted by the Commission. The Commission may do so on its own motion, or on the motion of any party, after notice. 4 CSR 240-2.070(6).

14. In further answer, the Company states that the Complaint fails to allege any act or thing done or omitted to be done and claimed to be in violation of any statute, rule, order or decision within the Commission's jurisdiction, which alleged violations, per 4 CSR 240-2.070(1) and (3) and 4 CSR 240-13.070(2), are the bases upon which a person may file a formal or informal complaint with the Commission.

15. In further answer, the Company acknowledges, however, that the Commission *does* has exclusive jurisdiction to fix just and reasonable rates for a utility's services (§393.270 RSMo) and has jurisdiction, upon its own motion or upon complaint, by orders, rules, regulations

or otherwise, to require a utility to take action to ensure the safety of the public (§386.310 RSMo). Because the alleged incident identified in the Complaint might potentially give rise to a claim of a violation of some statute, rule, order or decision within the Commission's jurisdiction¹ (as yet unidentified), for which the Commission might have jurisdiction to grant some form of relief (also as yet unidentified), Company believes it would be appropriate for the Commission, in the alternative, to grant Complainant leave to amend the Complaint to make such a claim.

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

Sarah E. Giboney, #50299
Smith Lewis, LLP
111 South Ninth Street, Suite 200
P.O. Box 918
Columbia, MO 65205-0918
(573) 443-3141
(573) 442-6686 (Facsimile)
Giboney@smithlewis.com

Wendy K. Tatro, # 60261
Associate General Counsel
Union Electric Company, d/b/a
AmerenUE
1901 Chouteau Avenue, MC-1310
P.O. Box 66149, MC-1310
St. Louis, Missouri 63166-6149
(314) 554-3484 (Telephone)
(314) 554-4014 (Facsimile)
AmerenUEService@ameren.com

WHEREFORE, Company respectfully requests that the Commission issue an order:

- A. Dismissing the Complaint for lack of jurisdiction and for failure to state a claim upon which relief can be granted; or in the alternative,
- B. finding that Complainant has failed to state a claim upon which relief can be granted but granting Complainant leave to amend her Complaint to allege a violation of statute, rule, order or decision within the Commission's jurisdiction and asking for relief that can be granted by the Commission.

Respectfully submitted,

SMITH LEWIS, LLP

/s/ Sarah E. Giboney
Sarah E. Giboney, #50299
111 South Ninth Street, Suite 200
P.O. Box 918
Columbia, MO 65205-0918
(573) 443-3141
(573) 442-6686 (Facsimile)

¹ Company notes this would include its tariffs approved by the Commission, which have the force and effect of law, the provisions of which the Commission may enforce.

giboney@smithlewis.com
Attorney for AmerenUE

UNION ELECTRIC COMPANY,
d/b/a AmerenUE

By: /s/ Wendy K. Tatro
Wendy K. Tatro, # 60261
Associate General Counsel
Ameren Services Company
P.O. Box 66149
St. Louis, MO 63166-6149
(314) 554-3484 (phone)
(314) 554-4014 (fax)
AmerenUEService@ameren.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion was served on the following parties via electronic mail (e-mail) or via regular mail on this 15th day of July, 2010.

Eric Dearmont
Staff of the Missouri Public Service
Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
eric.dearmont@psc.mo.gov

Lewis Mills
Office Of Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

Mark G. McMahon
Law Offices of Mark G. McMahon
7912 Bonhomme, Suite 101
St. Louis, Missouri 63105
Attorney for American Family Insurance
Group, subrogee of Complainant Tawanda
Murphy

/s/ Sarah E. Giboney
Sarah E. Giboney

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

KENNY BROWN,)	
)	
Plaintiff,)	
)	Cause No. 09SL-AC07430
v.)	
)	Division 36T
UNION ELECTRIC COMPANY)	
d/b/a AMERENUE,)	
)	
Defendant.)	

**DEFENDANT UNION ELECTRIC COMPANY d/b/a
AMERENUE'S MOTION TO DISMISS
OR STAY FOR LACK OF SUBJECT MATTER JURISDICTION**

Comes now defendant, Union Electric Company d/b/a AmerenUE ("AmerenUE"), and, pursuant to Rule 55.27(a)(1) of the Missouri Rules of Civil Procedure, requests the Court dismiss or stay plaintiff's Petition for lack of subject matter jurisdiction.

In support thereof, AmerenUE states:

1. Plaintiff's Petition – property damage claims he sustained damages as the result of a "power surge."
2. The Petition should be dismissed or stayed because the Missouri Public Service Commission has primary jurisdiction over the claims asserted therein. As a result, this Court lacks subject matter jurisdiction to hear plaintiff's claims.
3. AmerenUE incorporates by reference its Memorandum in Support of Motion to Dismiss or Stay for Lack of Subject Matter Jurisdiction.

WHEREFORE, defendant, Union Electric Company d/b/a AmerenUE, requests this Court enter its Order dismissing or staying plaintiff's Petition – Property Damages, awarding

AmerenUE its costs incurred herein and granting such other and further relief as the Court deems just and proper.

HERZOG CREBS LLP

By: Michael A. Vitale
Michael A. Vitale #30008
100 North Broadway, 14th Floor
St. Louis, Missouri 63102
(314) 231-6700 (Telephone)
(314) 231-4656 (Facsimile)

Attorneys for Defendant Union
Electric Company d/b/a AmerenUE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Defendant Union Electric Company d/b/a AmerenUE's Motion to Dismiss or Stay for Lack of Subject Matter Jurisdiction was mailed, first class postage prepaid this 14th day of May, 2009 to Mark G. McMahon, Law Offices of Mark G. McMahon, 7912 Bonhomme, Suite 101, Clayton, MO 63105.

Michael A. Vitale

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

KENNY BROWN,)	
)	
Plaintiff,)	
)	Cause No. 09SL-AC07430
v.)	
)	Division 36T
UNION ELECTRIC COMPANY)	
d/b/a AMERENUE,)	
)	
Defendant.)	

**DEFENDANT UNION ELECTRIC COMPANY d/b/a AMERENUE'S
MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
OR STAY FOR LACK OF SUBJECT MATTER JURISDICTION**

Comes now defendant, Union Electric Company d/b/a AmerenUE ("AmerenUE"), and for its Memorandum in Support of Motion to Dismiss or Stay for Lack of Subject Matter Jurisdiction, states as follows:

Introduction

Plaintiff has filed a Petition – Property Damages alleging he sustained damages as a result of a "power surge."

Lack of Subject Matter Jurisdiction

Plaintiff's allegations clearly involve a subject matter which is governed by the regulations included in AmerenUE's Schedule of Rates for Electricity ("Tariff"), which Tariff has been published and approved by the Missouri Public Service Commission. "A tariff that has been approved by the Public Service Commission becomes Missouri law and has the same force and effect as a statute enacted by the legislature." Bauer v. Southwestern Bell Telephone Company, 958 S.W.2d 568, 570 (Mo.App. 1997). Specifically, plaintiff's allegations concerning the provision of AmerenUE's electric service are governed by Tariff Sheet No. 138, Continuity

of Service (a copy of which is attached hereto as Exhibit 1 and incorporated by reference), and are also governed by 4 CSR 240-10.030.

Section 386.250 RSMo. provides that the "jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter: (1) to the manufacture, sale or distribution of . . . electricity for light, heat and power, within the state, . . . and to corporations owning, leasing, operating or controlling [electric plants]." More specifically, Section 393.140(11) states that the Public Service Commission shall:

Have power to require every . . . electrical corporation . . . to file with the commission and to print and keep open to public inspection schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges, or service to be used . . . The commission shall also have power to establish such rules and regulations, . . . , as it may deem necessary, . . .

Section 386.390.1 further states:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, . . . , 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; . . .

In the instant case, plaintiffs' claim necessarily invokes regulations promulgated by the Public Service Commission and incorporated into AmerenUE's Tariff. Read together, these statutory provisions clearly establish that the Public Service Commission has primary jurisdiction over plaintiffs' claims.

Missouri courts have consistently held that the Public Service Commission has primary jurisdiction over complaints alleging wrongdoing by public utilities. In such cases, a Circuit

Court may not invade the Public Service Commission's jurisdiction until the Public Service Commission has first decided the matter. See, e.g., A.C. Jacobs & Co., Inc. v. Union Electric Company, 17 S.W.3d 579 (Mo.App.W.D. 2000); DeMaranville v. Fee Fee Trunk Sewer, Inc., 573 S.W. 2d 674, 676 (Mo. App. E.D. 1978); Inter-City Beverage Co., Inc. v. Kansas City Power & Light Co., 889 S.W. 2d 875, 877 (Mo. App. W.D. 1994); MCI v. City of St. Louis, 941 S.W. 2d 634, 644 (Mo. App. E.D. 1997).

In DeMaranville, the court held that "[m]atters within the jurisdiction of the Public Service Commission must first be determined by it in every instance before the courts have jurisdiction to make judgments in the controversy." 573 S.W. 2d at 676. In Inter-City Beverage, customers brought a class action suit against an electric utility, alleging wrongful conduct by the utility. The utility moved to dismiss the action for lack of subject matter jurisdiction. The trial court granted the motion to dismiss, and the plaintiffs appealed. In affirming the decision of the trial court, the court held that the Public Service Commission had primary jurisdiction over the matter and, therefore, the plaintiffs' class action suit had been properly dismissed. 889 S.W.2d at 877. In Jacobs, the court recognized that it had jurisdiction only after the PSC had made a determination as to the merits of the plaintiff's claims. 17 S.W.3d at 583.

"Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Mo.R.Civ.P. 55.27(g)(3). "As the term 'appears' suggests, the quantum of proof [to sustain a motion to dismiss for lack of subject matter jurisdiction] is not high. It must appear by a mere preponderance of the evidence that the court is without jurisdiction." State ex rel. Jones Construction Company v. Sanders, 875 S.W.2d 154 (Mo.App.E.D. 1994).

In October 2000, Judge Michael Calvin of the St. Louis City Circuit Court, in a similar case, Zoltek Corporation v. AmerenUE, Cause No. 982-01526, Division 1, found in favor of AmerenUE on the same grounds asserted herein. In Zoltek, the plaintiff alleged principally that AmerenUE had negligently allowed service interruptions to occur, causing damage to plaintiff's property. AmerenUE filed a motion to dismiss asserting that the petition invoked the jurisdiction of the Public Service Commission and, therefore, the Circuit Court did not have jurisdiction to hear the claim. The Court ruled in AmerenUE's favor and held that the Public Service Commission has primary jurisdiction over questions regarding the sufficiency of its equipment and the safety and adequacy of the electric service it provides. A copy of the Court's Order is attached hereto as Exhibit 2 and incorporated by reference.

AmerenUE also filed a motion to dismiss or stay in Jarman v. Union Electric Company d/b/a AmerenUE, Cause No. 00SC-002530 HSC, a St. Louis County Circuit Court small claims action. Similar to plaintiff's claim here, the plaintiff in Jarman sought to recover for property damage allegedly caused by a power surge. See Exhibit 3 attached hereto and incorporated by referenced. AmerenUE filed its motion on the basis of the Court's lack of jurisdiction and the Court stayed the case and referred plaintiff to the Public Service Commission. See Exhibits 4 and 5 attached hereto and incorporated herein by reference.

On March 13, 2002, Benhr, Inc. ("Benhr") filed a Petition for Damages in the Associate Circuit Division of the St. Charles County Circuit Court which made claims against AmerenUE similar to the claims made herein. Benhr alleged that AmerenUE had "failed its duty to use the highest degree of care to keep, repair, operate, and maintain all wires, transformers, appliances, devices, conduits, and insulation within its reasonable control, such that the same would not fail in operation or cause electrical service interruption or electrical surge and such failure of

[Ameren] caused injury to [Benhr],....” Petition, ¶ 5. See Exhibit 6 attached hereto and incorporated herein by reference. In response, AmerenUE filed a motion to dismiss or to stay due to the St. Charles County Circuit Court’s lack of subject matter jurisdiction.

On June 18, 2002, Judge Steven Ehlmann of the St. Charles County Circuit Court granted AmerenUE’s motion and stayed Benhr’s petition “pending determination by the Public Service Commission of questions pertaining to [AmerenUE’s] rendering of electrical service to [Benhr].” A copy of Judge Ehlmann’s Order is attached hereto as Exhibit 7 and incorporated by reference.

Subsequent to the entry of Judge Ehlmann’s order, Benhr’s Petition was dismissed without prejudice. Benhr then refiled its Petition in St. Louis City Circuit Court, in response to which AmerenUE again filed its motion to dismiss or stay based on the PSC’s primary jurisdiction. On October 22, 2004, this Honorable Court sustained that motion and ordered Benhr’s claims stayed. A copy of the Court’s Order is attached hereto as Exhibit 8 and incorporated by reference.

In 2004, the St. Louis City Circuit Court sustained a motion to dismiss filed by AmerenUE in Lantos v. AmerenUE, Cause No. 042-08060. In Lantos, plaintiffs also alleged they had suffered damages due to AmerenUE’s purported negligence in maintaining its equipment. See Exhibit 9 attached hereto and incorporated herein by reference. On November 29, 2004, the Court, upon AmerenUE’s motion, stayed the plaintiffs’ action “pending determination by the Missouri Public Service Commission of plaintiffs’ claims.” See Exhibit 10 attached hereto and incorporated herein by reference.

On November 30, 2004, plaintiff JoAnn Bogle filed a small claims action in St. Charles County Circuit Court against AmerenUE, alleging property damage due to the failure of an AmerenUE electrical line. See Exhibit 11 attached hereto and incorporated herein by reference.

On January 12, 2005, in response to a motion filed by AmerenUE, the Court stayed the plaintiff's action "to allow plaintiff to file claim with Missouri Public Service Commission." See Exhibit 12 attached hereto and incorporated herein by reference.

On November 22, 2005, plaintiff Guy Porter filed a small claims action in St. Louis County Court against AmerenUE, alleging property damage due to the location of an underground electrical cable. See Exhibit 13 attached hereto and incorporated herein by reference. On January 12, 2006, in response to a motion filed by AmerenUE, the Court dismissed plaintiff's claim "for want of jurisdiction." See Exhibit 14 attached hereto and incorporated herein by reference.

On July 25, 2006, plaintiff Patricia Thomas filed a small claims action seeking damages relating to the power outage which occurred in the St. Louis area in July of this year. On August 29, 2006, in response to AmerenUE's motion, the Court dismissed plaintiff's claims "due to the court's lack of jurisdiction." See Exhibits 15 and 16 attached hereto and incorporated herein by reference.

On August 23, 2006, plaintiffs Mark Ferguson, Maria Ferguson, et al. filed a claim in St. Charles County Circuit Court against AmerenUE, alleging unlawful merchandising practices, fraud, negligent infliction of emotional distress and intentional infliction of emotional distress in connection with AmerenUE's failure to turn on electrical service at their residence. On October 10, 2006, in response to AmerenUE's motion, the Court stayed plaintiffs' claims "pending determination of plaintiffs' claims by the Missouri Public Service Commission." See Exhibit 17 attached hereto and incorporated herein by reference.

Most recently, in December 2008, plaintiff Thomas Martin filed suit in Division 45 of the St. Louis County Circuit Court, Cause No. 08SL-SC01868, contending he sustained property

damage as the result of a "power surge". On January 7, 2009, the Court sustained AmerenUE's motion and dismissed Martin's petition. See Exhibit 18 attached hereto and incorporated herein by reference.

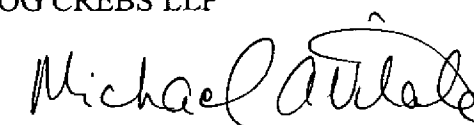
As the Court noted in its Order in Zoltek (Exhibit 2), primary jurisdiction applies where a "question requires administrative knowledge and expertise, a determination of technical fact questions, and a need for uniformity in the regulatory scheme." All three components of this general rule are present here.

Conclusion

Based upon the foregoing authorities, it is clear that the allegations made against AmerenUE in plaintiff's Petition – Property Damage fall within the primary jurisdiction of the Public Service Commission. Because this Court lacks subject matter jurisdiction with respect to those claims, the Petition should be dismissed or stayed.

HERZOG CREBS LLP

By:



Michael A. Vitale #30008
100 North Broadway, 14th Floor
St. Louis, Missouri 63102
(314) 231-6700 (Telephone)
(314) 231-4656 (Facsimile)

Attorneys for Defendant Union
Electric Company d/b/a AmerenUE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Defendant Union Electric Company d/b/a AmerenUE's Motion to Dismiss or Stay for Lack of Subject Matter Jurisdiction was mailed, first class postage prepaid this 14th day of May, 2009 to Mark G. McMahon, Law Offices of Mark G. McMahon, 7912 Bonhomme, Suite 101, Clayton, MO 63105.



APPLYING TO MISSOURI SERVICE AREAGENERAL RULES AND REGULATIONSI. GENERAL PROVISIONS

Company currently, or in the future, shall be grounds for the disconnection of electric service.

I. Objectionable Customer Load Characteristics

All equipment installed by customer shall have operating characteristics which enable Company to maintain a satisfactory standard of service to both the customer being served and all other customers in the immediate area. In cases of high motor starting current, customer loads resulting in harmonic distortions or significant loads with wide and/or frequent fluctuations, etc. customer shall install, on its side of Company's meter, all corrective equipment necessary to enable Company to maintain the integrity of its electric distribution system. For all customers not voluntarily complying with this requirement, Company, where practical, may install corrective equipment on its side of the meter and charge customer a lump sum amount for the current cost of such equipment and the cost of any subsequent additions to or replacement of such equipment, whenever said future installations occur. Failure of customer to install such corrective equipment or to pay for that installed by Company currently, or in the future, shall be grounds for the disconnection of electric service.

*J. Continuity of Service

Company will make all reasonable efforts to provide the service requested on an adequate and continuous basis, but will not be liable for service interruptions, deficiencies or imperfections which result from conditions which are beyond the reasonable control of the Company. The Company cannot guarantee the service as to continuity, freedom from voltage and frequency variations, reversal of phase rotation or singlephasing. The Company will not be responsible or liable for damages to customer's apparatus resulting from failure or imperfection of service beyond the reasonable control of the Company. In cases where such failure or imperfection of service might damage customer's apparatus, customer should install suitable protective equipment.

*Indicates Reissue.

Issued pursuant to the Order of the Mo. P.S.C. in Case No. ED-93-122.

P.S.C. No. DATE OF ISSUE March 7, 1994DATE EFFECTIVE April 6, 1994

RL C.C. DATE OF ISSUE _____

DATE EFFECTIVE _____

U. ST. C. C. DATE OF ISSUE _____

DATE EFFECTIVE _____

EXHIBIT 1

ISSUED BY Charles A. Huxler

President & CEO

St. Louis, Missouri

NAME OF OFFICER

TITLE

ADDRESS

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(St. Louis City)

ZOLTEK CORPORATION,)	
)	
Plaintiff,)	
)	Cause No. 982-01526
vs.)	
)	Division No. 1
AMEREN UE,)	
)	
Defendant.)	

ORDER

The motions of the Public Service Commission (PSC) and defendant Ameren UE to dismiss Plaintiff's First Amended Petition for lack of subject matter jurisdiction were called, heard, and submitted on September 13, 2000. The Court has considered the pleadings, motions, and arguments of the parties and now rules as follows.

Plaintiff brought the present action against Defendant, Ameren UE, a supplier of electricity in the St. Louis area, for negligence. Plaintiff seeks compensatory and punitive damages arising from Defendant's interruption of electricity service without notice to Plaintiff, resulting in lost production time and damaged equipment. Plaintiff further alleges that Defendant had the duty to install a reliable supply of electricity, and that its failure to install such a supply, or warn its customers of the lack of a reliable supply, was negligent. Plaintiff has also alleged breach of contract, in that Defendant failed to

construct a new transmission line and to install a large new substation, and therefore breached its contract to supply Plaintiff with adequate electricity for its needs. Count IV seeks to compel Defendant to install a dedicated electrical feeder line to Plaintiff's facility.

Defendant and intervenor PSC contend that primary jurisdiction over this matter is with the PSC under the doctrine of primary jurisdiction. Specifically, they maintain that Plaintiff's claim necessarily involves technical questions regarding the adequacy and safety of the electric service provided by Defendant, which involve regulated technical issues within the jurisdiction and expertise of the PSC.

Plaintiff counters that PSC's jurisdiction is limited and does not extend to actions for monetary or punitive damages, and that PSC cannot exercise judicial functions or adjudicate the rights of parties. Plaintiff maintains that a utility, as a matter of law, has the duty, in tort and in contract, to protect its customers from damage. See, e.g., National Food Stores, Inc. v. Union Elec. Co., 494 S.W.2d 379 (Mo.App. 1973); Haynam v. Laclede Elec. Co-op, Inc., 827 S.W.2d 200 (Mo. 1992); A.C. Jacobs & Co., Inc. v. Union Elec. Co., 17 S.W.3d 579 (Mo.App. 2000). Accordingly, it concludes that its contract and tort claims are outside the jurisdiction of the PSC.

Defendant is a corporation subject to the jurisdiction of the PSC pursuant to § 386.250(1) RSMo, regardless of a contract between the utility and the customer. See, May Dep't Stores Co. v. Union Elec., 107 S.W.2d 41, 48 (Mo. 1937); § 393.765 RSMo.

Primary jurisdiction is "a doctrine specifically applicable to claims properly cognizable in court that contain some issue within the special competence of an administrative agency." Reiter v. Cooper, 507 U.S. 258, 268; 113 S.Ct. 1213, 1220; 122 L.Ed.2d 604, 617 (1993). Where applicable, the doctrine requires the court to refer the matter to the agency and to stay further proceedings, "to give the parties reasonable opportunity to seek an administrative ruling." Id.; see also, Killian v. J & J Installers, Inc., 802 S.W.2d 158, 160 (Mo.banc 1991). Referral to the administrative agency does not divest the court of jurisdiction but rather gives it discretion to retain jurisdiction or to dismiss the case without prejudice. Reiter, supra.

The doctrine of primary jurisdiction applies where the question requires administrative knowledge and expertise, a determination of technical fact questions, and a need for uniformity in the regulatory scheme. Killian, 802 S.W.2d at 160. However, the jurisdiction of the PSC is limited, and the Commission lacks jurisdiction to determine compensatory or punitive damages, which remain within the exclusive jurisdiction of the court. Overman v. Southwestern Bell Tel. Co., 706 S.W.2d 244, 251 (Mo.App. 1986). Nevertheless, the PSC may make initial determinations as to the regulated operations of the utility. MCI v. City of St. Louis, 941 S.W.2d 634, 644-45 (Mo.App. E.D. 1997); State ex rel. Cirese v. Ridge, 138 S.W.2d 1012 (Mo. 1940).

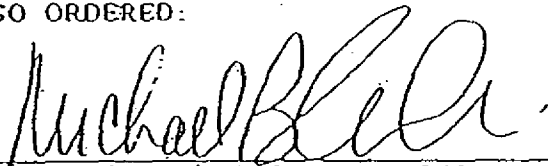
Plaintiff contends that its claims do not involve regulated rates but rather matters of contract and breach of duty outside

the scope of the PSC's jurisdiction. The bringing of such claims does not necessarily divest the PSC of jurisdiction to make determinations regarding questions of Defendant's services, which go the issue of breach of duty. See, Overman, supra. Although the PSC lacks jurisdiction to make determinations of damages, technical questions regarding the sufficiency of Defendant's operations for their purposes are within the scope of the PSC's expertise. The Court concludes that the PSC has primary jurisdiction over questions regarding the sufficiency of the equipment and the safety and adequacy of the electric service provided to Plaintiff, as provided for in Chapter 193 RSMo.

ORDER

WHEREFORE, IT IS ORDERED that Plaintiff's action is hereby stayed pending determination by the PSC of questions pertaining to Defendant's rendering of electrical service to Plaintiff, and the safety and adequacy of such services.

SO ORDERED:


Michael B. Calvin, Presiding Judge

Dated: October 23, 2000

cc: Gerald M. Dunne, Attorney for Plaintiff
Dorothy White-Coleman, Attorney for Defendant
Michael A. Vitale, Attorney for Defendant
Lera L. Shemwell, Attorney for PSC

CIRCUIT COURT
of St. Louis County, Missouri
SMALL CLAIMS COURT

(Please Print Clearly)

Darla Sarman
Plaintiff(s)
5539 Helen AVE.
Address
St. Louis, MO. 63136
City/State/Zip Code
314- 385-7953
Telephone Number



00SC-002530 H
Case Number
\$661.00
Amount Claimed
JANUARY 24, 2001 @ 1:30PM
Court Date Time
DIVISION 45
Division Day

VS.

UNION ELECTRIC COMPANY DBA AMERENUE

Defendant(s)

Address

City/State/Zip Code

Telephone Number

SERVE REG AGENT-JAMES COOK

Other Information
1901 CHOUTEAU AVE

ST LOUIS MO 63103

PETITION

The Plaintiff(s) states he/she has a claim against the defendant(s) in the amount of \$ 661 plus court costs.

The claim arose on or about 10-02-00, 2000 as a result of the following events:

On 10-02-00 I Darla Sarman telephone Amerenue
in reference to my electric lights blinking
and in some areas at my home the current was
stronger then in other parts my light bulbs
were blowing out extremely fast the television
blew out also the radio stereo, answering machine
telephone, box fan, and transistor then the furnace.
In turn Amerenue corrected the problem right away but
refused to reimburse me for the damages from the req

The Plaintiff(s) states that the allegations in this petition are true and correct to the best of his/her knowledge, that he/she is not an assignee of this claim, and that he/she has not filed more than eight other claims in Missouri small claims courts during the current calendar year. Plaintiff(s) understands that should he/she be successful in this action and obtain a judgment, and if defendant(s) does not appeal by Trial De Novo and this judgment becomes final, the plaintiff(s) is barred from commencing another action involving the same parties and issues. Plaintiff(s) understands that he/she is hereby waiving his/her right to jury trial on these issues in the Small Claims Court.

Dated 1/02/2001

EXHIBIT 3

Darla Sarman
Signature of Plaintiff or Agent

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

DARLA JARMAN,)
)
Plaintiff,)
) Cause No. 00SC-002530 H SC
v.)
) Division 45
UNION-ELECTRIC COMPANY,)
d/b/a Ameren UE)
)
Defendant.)

DEFENDANT UNION ELECTRIC COMPANY'S MOTION TO DISMISS
PLAINTIFF'S PETITION

Comes now defendant, Union Electric Company d/b/a AmerenUE ("AmerenUE"),
and for its Motion to Dismiss states as follows:

1. Plaintiff Darla Jarman has filed a Small Claims Petition against defendant
AmerenUE.

2. The Petition appears to relate to Jarman's claim that AmerenUE was
somehow at fault for allowing power surges to go through plaintiff's home damaging
light bulbs and various appliances.

3. Jarman's Petition should be dismissed because the Missouri Public
Service Commission has primary jurisdiction over the claims asserted therein. As a
result, this Court lacks subject matter jurisdiction to hear those claims.

AmerenUE incorporates by reference its Memorandum in Support of Motion to
Dismiss Plaintiff's Petition, filed simultaneously herewith.

WHEREFORE, defendant, AmerenUE, requests this Court enter its Order
dismissing Plaintiff's Petition, awarding defendant its costs incurred herein and granting

such other and further relief as the Court deems just and proper.

Respectfully submitted,

HERZOG, CREBS & MCGHEE, LLP

By: 

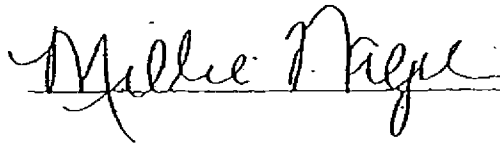
David R. Evelev, #51312
One City Centre - 24th Floor
515 North Sixth Street
St. Louis, Missouri 63101
Phone: 314-231-6700
Fax: 314-231-4656

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed, first class, postage pre-paid, on this 8th day of January, 2001 to:

Darla Jarman
5539 Helen Ave.
St. Louis, Missouri 63136



RECUIT COURT

St. Louis County, Missouri



For file stamp only.

ARLA JARMAN

Plaintiff

1-24-01

Date

00SC-002530

Cause No.

JAN 24 2001

VIEW ELECTRIC CO.

Defendant(s)

45

Division

Circuit Court

CIVIL MEMO

☐ Comes now _____
and enters his/her appearance on behalf of Plaintiff/Defendant.

☐ Cause continued to _____ at _____ a.m./p.m.

for ☐ Plaintiff ☐ Defendant ☐ Consent

for ☐ Trial ☐ Length of trial _____ hours/days ☐ Call Docket

Party setting cause for trial responsible for notifying opposing party (ies).

☐ Defendant appears in person and voluntarily enters his/her appearance.

☐ Cause dismissed with/without prejudice at Plaintiff's costs.

☐ Plaintiff/Defendant requests a Change of Judge.

☐ Plaintiff/Defendant requests a Change of Venue.

☐ Plaintiff/Defendant requests a Jury Trial.

☐ Cause called. Parties fail to appear. Cause dismissed with/without prejudice for failure to prosecute.

☐ Other: CAUSE IS STAYED PENDING PUBLIC SERVICE
COMMISSION'S RESOLUTION, IF ANY. MOTION
TO DISMISS IS TAKEN WITH THE CASE. DEFENDANT'S
COUNSEL TO PROVIDE P.S.C. FORMS OR INFORMATION TO
PLAINTIFF.

Attorney _____ Bar No. _____

Address _____

Phone No. _____ Fax No. _____

Attorney _____ Bar No. _____

Address _____

ORDERED

By Division

Phone No.

EXHIBIT 5

Fax No.

IN THE CIRCUIT COURT OF ST. CHARLES COUNTY, MISSOURI

ASSOCIATE CIRCUIT DIVISION

BENHR, INC.,

Plaintiff,

vs.

UNION ELECTRIC COMPANY d/b/a,

AMERENUE,

Defendant,

SERVE REGISTERED AGENT:

James J. Cook

1901 Chouteau Avenue

St. Louis, Missouri 63103

CASE NO.

PETITION FOR DAMAGES

FILED

MAR 13 2002

CIVIL DIVISION
CIRCUIT COURT, ASSOC. DIV.
CHARLES COUNTY, MO

PETITION FOR DAMAGES

Comes now Plaintiff and in support of its Petition for
Damages, States as follows:

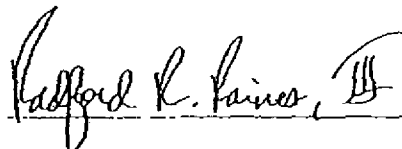
1. Plaintiff is a corporation in good standing created pursuant to the laws of the state of Missouri.
2. Defendant is a domestic for profit corporation in good standing created pursuant to the laws of the state of Missouri.

3. Plaintiff is the owner of the premises located at 326 South 21st Street, St. Louis, Missouri 63103.
4. Defendant, for a fee, provided electrical power service to Plaintiff's premises located at 326 South 21st Street, St. Louis, Missouri 63103, at all times relevant herein.
5. On or about February 27, 2000, Defendant, while providing electrical power service to Plaintiff's premises, failed its duty to use the highest degree of care to keep, repair, operate, and maintain all wires, transformers, appliances, devices, conduits and insulation within its reasonable control, such that the same would not fail in operation or cause electrical service interruption or electrical surge and such failure of Defendant caused injury to Plaintiff, as more fully described hereinafter.
6. On or about February 27, 2000, Defendant had exclusive possession, management and control of the wires, transformers, appliances, devices, conduits and insulation and thereby had superior means of acquiring knowledge as to the cause or reason of electrical power service interruption and/or electrical power surge.
7. As a direct and proximate result of Defendant's failure to use the highest degree of care in providing electrical power service, Plaintiff was caused to suffer

damage to its electrical elevator components, including, but not limited to, generator and fuses, all to Plaintiff's damage in the sum of \$7384.51.

8. The acts and omissions of Defendant resulted in reasonably foreseeable damage to Plaintiff.

WHEREFORE, Plaintiff BENHR, Inc., prays for judgment to be entered in its favor and against defendant Union Electric Company, in a reasonable sum to be determined by the trier of fact, not exceeding \$25,000.00, legal rate of pre-judgment interest from February 27, 2000, for its costs expended herein, and for such further relief deemed proper.



LAW OFFICE OF RADFORD R. RAINES
RADFORD R. RAINES, III (301)
105 CHURCH STREET
GAITHERSBURG, MD 20878
TELEPHONE: (301) 240-6258
FACSIMILE: (301) 375-8362

Re: The

NINTH
ASSOCIATE
CIRCUIT COURT

County of St. Charles, Missouri

No. 037512063

Re: Division

Michael J. Dea, Attorney at Law, 6-18-02

Order

Defendant's Motion to Dismiss
has been granted by the Court. The
Court has stayed the proceedings until further
order by the Public Safety Commission of the
State of Missouri. Defendant's
motion for a stay of proceedings is granted.

RECEIVED BY COURT OF THE PARTIALS IN THE JULY 26, 2002 AT 9:00AM

Order

Attorney

CC: RAYMOND HARTS
MICHAEL VITALI

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

BENHR, INC.,)
)
Plaintiff,)
)
vs.)
)
UNION ELECTRIC CO., d/b/a)
AMEREN UE,)
)
Defendant.)

Cause No: 042-00470

Division No. 2

FILED

OCT 27 2004

MARIANO V. FAVAZZA
CLERK, CIRCUIT COURT
BY _____ DEPUTY

ORDER

The Court has before it Defendant's Motion to Dismiss or Stay for Lack of Subject Matter Jurisdiction. This Court now rules as follows:

Plaintiff Benhr, Inc. ("Plaintiff") has filed a Petition seeking actual and punitive damages from Defendant Union Electric Co., d/b/a Ameren UE, ("Defendant"). Plaintiff's Petition alleges that on February 27, 2000, Defendant "failed its duty to use the highest degree of care to keep, repair, operate, and maintain all wires, transformers, appliances, devices, conduits, and insulation within its reasonable control, such that the same would not fail in operation or cause electrical service interruption or electrical surge and such failure of Defendant caused injury to Plaintiff."

Defendant argues in its Motion to Dismiss or Stay for Lack of Subject Matter Jurisdiction that Plaintiff's allegations involve subject matters that are governed by the rates and regulations included in Defendant's schedule of rates for electricity

("Tariff"), which have been published and approved by the Missouri Public Service Commission ("PSC"). A tariff that has been approved by the [PSC] becomes Missouri law and has the same force and effect as a statute enacted by the legislature." Bauer v. Southwestern Bell Telephone Co., 958 S.W.2d 568, 570 (Mo.App. E.D. 1997).

Defendant notes that Plaintiff's allegations concerning the provision of Defendant's electric service with respect to power service interruptions are governed by Tariff Sheet No. 138, Continuity of Service, and are also governed by 4 CSR 240-10.030.

Section 386.250, RSMo, provides:

jurisdiction, supervision, powers and duties of the [PSC] herein created and established shall extend under this chapter: (1) To the manufacture, sale or distribution of gas, natural and artificial, and electricity for light, heat and power, within the state, and to persons or corporations owning, leasing, operating or controlling the same; and to gas and electric plants, and to persons or corporations owning, leasing, operating or controlling the same.

Section 393.140(11), RSMo, states that the PSC shall:

Have power to require every . . . electrical corporation . . . to file with the [PSC] and to print and keep open to public inspection schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used . . . The [PSC] shall also have power to establish such rules and regulations, to carry into effect the provisions of this subdivision, as it may deem necessary, and to modify and amend such rules or regulations from time to time.

Section 386.390.1, RSMo, also provides:

Complaint may be made by the [PSC] 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 [PSC].

Defendant argues that read together these statutory provisions establish that the PSC has primary jurisdiction over Plaintiff's claim, as Plaintiff's claim necessarily invokes regulations promulgated by the PSC.

In response, Plaintiff contends that the PSC's jurisdiction is limited and that its claim sounds in tort, or alternatively in contract, for electrical service failure, interruption, and/or power surge.

Defendant is a corporation subject to the jurisdiction of the PSC pursuant to Section 386.250(1), RSMo. Primary jurisdiction is "a doctrine specifically applicable to claims properly cognizable in court that contain some issue within the special competence of an administrative agency." Reiter v. Cooper, 507 U.S. 258, 268; 113 S.Ct. 1213, 1220; 122 L.Ed.2d 604, 617 (1993). The doctrine, where applicable, requires the court to refer the matter to the agency and to stay further proceedings to give the parties a reasonable opportunity to seek an administrative ruling. Killian v. J&J Installers, Inc., 802 S.W.2d 158, 160 (Mo. banc 1991); DeMaranville v. Fee Fee Trunk Sewer, Inc., 573 S.W.2d 674, 676 (Mo.App. St.L. 1978).

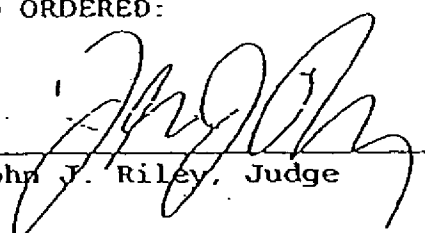
The doctrine of primary jurisdiction applies where the question requires administrative knowledge and expertise, a determination of technical fact questions, and a need for uniformity in the regulatory scheme. Killian, 802 S.W.2d at 160. The jurisdiction of the PSC is limited, however. The PSC lacks jurisdiction to determine compensatory or punitive damages, which remain within the exclusive jurisdiction of the court. See A.C. Jacobs & Co., Inc. v. Union Electric Co., 17 S.W.3d 579, 581 (Mo.App. W.D. 2000); Overman v. Southwestern Bell Telephone Co., 706 S.W.2d 244, 251 (Mo.App. W.D. 1986). Despite this limited jurisdiction, the PSC may make initial determinations as to regulated operations of the utility. MCI Metro Access Transmission Services v. City of St. Louis, 941 S.W.2d 634, 644-45 (Mo.App. E.D. 1997).

Plaintiff argues that its claim does not involve regulated rates, but matters involving tort law, or alternatively contract law, outside the scope of the PSC's jurisdiction. The bringing of such a tort or contract claim, however, does not necessarily divest the PSC of jurisdiction to make determinations regarding questions of Defendant's services. Although the PSC lacks jurisdiction to determine Plaintiff's compensatory or punitive damages, technical questions regarding the sufficiency of Defendant's electrical service are within the scope of the PSC's expertise. Therefore, the Court finds that the PSC has primary jurisdiction in this case.

ORDER

THEREFORE, it is Ordered that Plaintiff's action is hereby stayed pending determination by the PSC of questions pertaining to Defendant's rendering of electrical service to Plaintiff and the safety and adequacy of such services.

SO ORDERED:



John J. Riley, Judge

Dated: October 22, 2004

cc: Gerald M. Dunne, Attorney for Plaintiff Benhr, Inc.
Michael A. Vitale, Attorney for Defendant Union Electric Co.

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

FILED
NOV 2 1984
2004 NOV -2 PM 2:56

ALEXANDER LANTOS and
MARY LANTOS,

Plaintiffs,

v.

AMERENUE COMPANY, a corporation

Defendants.

)
)
)
)
)
)
)
)
)
)

WRITS DEPT

Cause No. 042-08060 _____ CLERK

Division 1

DEFENDANT UNION ELECTRIC COMPANY d/b/a
AMERENUE'S MOTION TO DISMISS
OR STAY FOR LACK OF SUBJECT MATTER JURISDICTION

Comes now defendant, Union Electric Company d/b/a AmerenUE ("AmerenUE"), and, pursuant to Rule 55.27(a)(1) of the Missouri Rules of Civil Procedure, requests the Court dismiss or stay plaintiff's Petition for lack of subject matter jurisdiction.

In support thereof, AmerenUE states:

1. Plaintiffs Alexander and Mary Lantos' Petition for Property Damage claims they sustained property damage to their home as the result of an electrical fire they allege was caused by the negligence of AmerenUE.

2. The Petition for Property Damage should be dismissed or stayed because the Missouri Public Service Commission has primary jurisdiction over the claims asserted therein. As a result, this Court lacks subject matter jurisdiction to hear plaintiffs' claims.


3. AmerenUE incorporates by reference its Memorandum in Support of Motion to Dismiss or Stay for Lack of Subject Matter Jurisdiction.

WHEREFORE, defendant, Union Electric Company d/b/a AmerenUE, requests this Court enter its Order dismissing or staying plaintiffs' Petition for Property Damage, awarding

AmerenUE its costs incurred herein and granting such other and further relief as the Court deems just and proper.

HERZOG CREBS LLP

By:


Michael A. Vitale #30008
515 North Sixth Street, 24th Floor
St. Louis, Missouri 63101
(314) 231-6700 (Telephone)
(314) 231-4656 (Facsimile)

Attorneys for Defendant Union
Electric Company d/b/a AmerenUE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Defendant Union Electric Company d/b/a AmerenUE's Motion to Dismiss or Stay for Lack of Subject Matter Jurisdiction was mailed first class mail, postage prepaid on this 2nd day of November, 2004 to Carl D. Kraft, Kraft & Keir, 12901 North Forty Drive, St. Louis, MO 63141, Attorney for Plaintiffs.



MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(CITY OF ST. LOUIS)

Lantor

VS

Ameren UE

CASE NO. 042-08060

DIVISION 2

November 29 2004

ORDER/JUDGMENT/MEMORANDUM

Defendant Union Electric Company d/b/a
Ameren UE's Motion to Dismiss or Stay
for Lack of Subject Matter Jurisdiction
sustained ^{pending} Plaintiff's Petition for
Property Damage stayed pending
determination by the Missouri Public
Service Commission of Plaintiff's
claims.

SO ORDERED
BY:  JUDGE

Michael Attala
Attorney for Ameren UE
314-231-6700

Craft 29265
Attorney for Plaintiff



IN THE CIRCUIT COURT OF ST CHARLES COUNTY, MISSOURI

FILE

NOV 30 2004

Judge or Division: 8	Case Number: 04CU31404	(Date File Stamp)
Plaintiff(s): 1. JoAnn Bogle	COIT + DCTC Jan 12 2005 9AM	Defendant's Address (No. 1): 1901 CHOUTEAU St. Louis, MO 63103
2.	Plaintiff's Address (No. 1): 2203 Argonne City, State, Zip: St. Louis, MO 63367	City, State, Zip: St. Louis, MO 63103
Defendant(s): 1. AmerenUE	Telephone Number: 636-625-2369	Telephone Number: 314-521-3222
2.	Plaintiff's Address (No. 2): City, State, Zip:	Defendant's Address (No. 2): City, State, Zip:
	Telephone Number: Telephone Number:	Telephone Number: Telephone Number:

Petition Small Claims Court

The plaintiff states he/she has a claim against the defendant in the amount of \$ 480.39. The claim arose on or about January 28, 2003 (date) as a result of the following events:

AmerenUE, owner by Union Electric damaged my property. One of UE's 40 year old line broke and fell on Currier River. The Cooper line carrying 34,500 volts to surge through the line. As a result my property was damaged. Costing 4 work site expenses of \$480.39 to me. On Jan. 28, 2003 there was a blizzard, no ice, no snow, no freezing rain - a bit of sleet. Damage occurred due to Ameren's neglect of their 40 year old lines as enclosed correspondence between Currier River, AmerenUE discloses.

The plaintiff states that the information contained in this petition is true and correct to the best of his/her knowledge, that he/she is not an assignee of this claim and that he/she has not filed more than eight (8) other claims in the Missouri small claims courts during the current calendar year.

The plaintiff understands that, should he/she be successful in this action and obtain judgment, and if the defendant does not appeal within ten days, this judgment becomes final. The plaintiff cannot commence another action involving the same parties and issues. The plaintiff understands that he/she is waiving the right to jury trial on these issues in the small claims court.

11/30/04
Date
Filing Fee \$0.00
Cost \$0.00

JoAnn Bogle
Signature of Plaintiff

Keep a copy of this petition and bring it to court.

EXHIBIT 11

IN THE
ASSOCIATE
CIRCUIT COURT

County of St. Charles, Missouri

Division

FILED
JAN 12 2005

CLERK OF
ST. CHARLES COUNTY

In Order

WMS

John

Attorney

In the
CIRCUIT COURT
Of St. Louis County, Missouri
SMALL CLAIMS COURT

(Please Print Clearly)



For File Stamp Only

GUY PORTER
Plaintiff(s)
14601 ROGUE RIVER DR
Address
CHESTERFIELD MO 63017
City/State/Zip
514-565-4910
Telephone Number

0532-2307-10
Case Number
3,000.00
Amount Claimed
1-10-05
Court Date
4/5
Division
1:30
Time
14:15
Day

VS

AMEREN UE. KENNETH SCHMIDT, RELAY
Defendant(s)
500 EAST WILKINSON BL
Address
UNION, MO 63084
City/State/Zip
Telephone Number

Other Information

PETITION

The Plaintiff(s) states he/she has a claim against the Defendant(s) in the amount of \$ 3000.00 plus court costs.

The claim arose on or about 9/21, 2005 as a result of the following events:

TRESPASS

OR NEGLIGENCE

Ameren UE buried an electrical cable well outside the easement and well inside my property line. It was not marked by Dig Rite (SMPT) because they didn't think to look inside the property line for a cable and likely because they did locate a power line that was properly inside the easement. When construction began on my walkout basement, the power line was severed and work had to be stopped for close to ten days because UE took that long to determine what it was going to do about it. During this time, the basement was open to the elements and a big rain storm flooded the basement resulting in further damage. I have itemized bills of over \$4,000.00 due solely to UE's negligence or trespass or both and their refusal to cap the line or decide to abandon in a timely manner.

The Plaintiff(s) states that the allegations in this petition are true and correct to the best of his/her knowledge, that he/she is not an assignee of this claim, and that he/she has not filed more than twelve other claims in Missouri small claims courts during the current calendar year. Plaintiff(s) understands that should he/she be successful in this action and obtain a judgment, and if defendant(s) does not appeal by Trial de Novo and this judgment becomes final, the plaintiff(s) is barred from commencing another action involving the same parties and issues. Plaintiff(s) understands that he/she is hereby waiving his/her right to jury trial on these issues in the Small Claims Court.

Dated NOV 22, 2005

Signature of Plaintiff or Agent

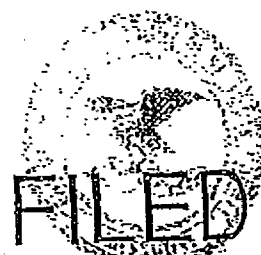
COPIES: 1001 WHITE FILE YELLOW-Defendant PINK-Defendant GOLDENROD-Plaintiff

EXHIBIT 13

In the
CIRCUIT COURT
of St. Louis County, Missouri



File Stamp Only



JAN 12 2006

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

Kuy Porter
Plaintiff(s)

01-10-06
Date

vs.
Amereen L.B.
Defendant(s)

058L-2207-B
Case Number
45
Division

SMALL CLAIM JUDGMENT

Cause called:

Plaintiff(s) appear(s) in person, and

Plaintiff Corporation appears by

Plaintiff(s) fails to appear

Defendant(s) appear(s) in person, and

Defendant Corporation appears by

Defendant(s) remain(s) in DEFAULT although called thrice.

Evidence adduced. Cause heard and submitted. Court enters Judgment as follows:

Judgment in favor of the plaintiff(s) on plaintiff's petition in the sum of \$

Judgment in favor of the defendant(s) on plaintiff's petition.

and in favor of plaintiff(s) on defendant's counter-claim.

and in favor of the defendant(s) on defendant's counter-claim in the sum of \$

X Cause dismissed for failure to prosecute for want of jurisdiction

Costs assessed against ☐ Defendant(s) ☒ Plaintiff(s) in the amount of \$ 23.00

NO JUDGMENT OF A SMALL CLAIMS COURT SHALL BE A LIEN ON REAL ESTATE. §482.365.1 RSMo.

SO ORDERED:

Judge: [Signature]

Date: 1-12-06



SEE NOTICE TO PARTIES ON REVERSE SIDE OF JUDGMENT MEMO

This document was received
by certified mail on Tuesday
August 1, 2006 at Ameren
500 East Independence Drive
For File Stamp Only

Union MO 63084



CIRCUIT COURT
of St. Louis County, Missouri
SMALL CLAIMS COURT

(Please Print Clearly)

Patricia A. Thomas

Plaintiff(s)

9648 Olive Blvd. - Suite 378

Address

St. Louis, MO 63132

City/State/Zip

(314) 504-8205

Telephone Number

06sc-1338 R

Case Number

250th

Amount Claimed

8/29/06 1:38PM

Court Date

36

Division

Time

TUE

Day

VS

Ameren UE

Defendant(s)

P.O. Box 66149

Address

St. Louis, MO 63166

City/State/Zip

(314) 342-1000

Telephone Number

Kenneth L. Schmidt, Registered Agent

Other Information

500 East Independence Drive

Union, MO 63084

PETITION

The Plaintiff(s) states he/she has a claim against the Defendant(s) in the amount of \$250.00 plus court costs.

The claim arose on or about July 23, 2006 as a result of the following events:

Despite its obligation to establish a reasonable emergency mitigation plan, Ameren UE has failed to do so and thus, I have not been able to occupy my home for 6 days. I have incurred unbearable expenses paying someone to house my 2 kids, spent monies on candles, ice, prepared food, and meals out. Ameren UE has an ethical as well as a fiduciary responsibility to create emergency plans that are actionable in the sense that, within 72 hours, it should have been able to restore power to its customers. As of today, Ameren UE still cannot give me an ETA as to when I can once again have power to 5044 Lotus, St. Louis, MO, 63113.

The Plaintiff(s) states that the allegations in this petition are true and correct to the best of his/her knowledge, that he/she is not an assignee of this claim, and that he/she has not filed more than twelve other claims in Missouri small claims courts during the current calendar year. Plaintiff(s) understands that should he/she be successful in this action and obtain a judgment, and if defendant(s) does not appeal by Trial de Novo and this judgment becomes final, the plaintiff(s) is barred from commencing another action involving the same parties and issues. Plaintiff(s) understands that he/she is hereby waiving his/her right to jury trial on these issues in the Small Claims Court.

Dated 07-25-2006

EXHIBIT 15

Patricia A. Thomas

Signature of Plaintiff or Agent

In the
CIRCUIT COURT
of St. Louis County, Missouri



FILED

AUG 29 2006

JOAN M. GIERER
CLERK OF COURT
CIRCUIT COURT ST. LOUIS COUNTY

Plaintiff(s) _____

Date _____

vs. _____

Case Number _____

Defendant(s) _____

Division _____

SO ORDERED

W. C. Thomas

(Date)

Attorney _____ Bar No. _____

Address _____

Phone No. _____ Fax No. _____

Address _____

Address _____

Phone No. _____

EXHIBIT 16

Mark Ferguson, et al.

IN THE
CIRCUIT COURT

County of St. Charles, Missouri

VS.

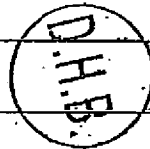
No. 0611-CV0586 Div. 5

Union Electric

10-10, 2006

ORDER STAYING Proceedings

Comes now the Court, after reviewing the pleadings and hearing the arguments of counsel, now grants defendant's motion to stay proceedings. This cause of action (Counts I, II, III, and IV) are ordered stayed pending determination of plaintiff's claims by the Missouri Public Service Commission.



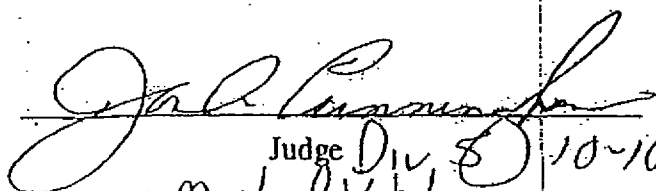
FILED

OCT 10 2006

Judy Zett
Circuit Clerk
ST. CHARLES COUNTY

So Ordered

Attorney


Judge Div 5

cc: Michael Vitale

Kevin Kasper

10-10-06

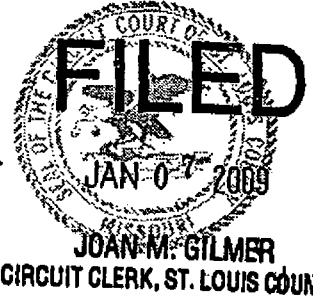
Attorney

EXHIBIT 17

In the
CIRCUIT COURT
of St. Louis County, Missouri



For File Stamp Only



Thomas Martin
Plaintiff(s)

1-7-09
Date

vs.

Ameren UE
Defendant(s)

08SL-5601868
Case Number

45
Division

Judgment
Case called, Ameren UE's
Motion to Dismiss for Lack
of Subject Matter Jurisdiction
granted.

SO ORDERED

[Signature]
Judge 22126

ENTERED: 1-7-2009
(Date)

Michael G. Vitale
Attorney for Defendant Bar No. 30008

Address _____

Phone No. _____ Fax No. _____

Attorney _____ Bar No. _____

Address _____

Phone No. _____



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21st Judicial Circuit (St. Louis County)

Case Header	Parties & Attorneys	Docket Entries	Charges, Judgments & Sentences	Service Information	Filings Due	Scheduled Hearings & Trials	Civil Judgments	Garnishments/Execution
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09SL-AC07430 - KENNY BROWN V UNION ELECTRIC COMPANY

This information is provided as a service and is not considered an official court record.

Displaying 13 thru 18 of 18 records for all dockets returned for case 09SL-AC07430.

1 2 3

05/15/2009

Docket Entry: Memorandum Filed**Text:** DEFENDANT UNION ELECTRIC COMPANY DBA AMERENUE'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OR STAY FOR LACK OF SUBJECT MATTER JURISDICTION FILED.**Filing Party:** VITALE, MICHAEL ANGELO**Docket Entry:** Motion Filed**Text:** DEFENDANT UNION ELECTRIC COMPANY DBA AMERENUE'S MOTION TO DISMISS OR STAY FOR LACK OF SUBJECT MATTER JURISDICTION FILED.**Filing Party:** VITALE, MICHAEL ANGELO

06/03/2009

Docket Entry: Judge Assigned**Text:** Cause reassigned for hearing and determination effective June 1, 2009.

06/16/2009

Docket Entry: Order**Text:** COMES PLAINTIFF BY ATTORNEY MARK MCMAHON AND COMES DEFENDANT BY ATTORNEY MICHAEL VITALE. DEFENDANTS MOTION TO DISMISS OR STAY CAUSE IS TAKEN UP AND ARGUMENT PRESENTED. THE MATTER IS TAKEN UNDER ADVISEMENT. AFTER DELIBERATION, DEFENDANT'S MOTION IS SUSTAINED. THE CAUSE IS STAYED UNTIL DECEMBER 11, 2009 AT 9 A.M. TO ALLOW PLAINTIFF TO FILE CLAIM WITH MISSOURI PUBLIC SERVICE COMMISSION HAS PRIMARY JURISDICTION OVER THIS MATTER. SO ORDERED JUDGE MICHAEL WILSON.**Docket Entry:** Hearing Continued/Rescheduled**Associated Docket Entries:** 05/15/2009 - Hearing Continued/Rescheduled**Associated Docket Entries:** 05/15/2009 - Testimony Motion Hearing Sched**Associated Events:** 06/16/2009, 09:30:00 - Testimony Motion Hrng Sched

06/19/2009

Docket Entry: Dismissal Hearing Scheduled**Associated Events:** 12/11/2009, 09:00:00 - Dismissal Hearing

Displaying 13 thru 18 of 18 records for all dockets returned for case 09SL-AC07430.

1 2 3