

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

Anita Wessling,)	
)	
Complainant,)	
)	
v.)	File No. EC-2018-0089
)	
Union Electric Company, d/b/a)	
Ameren Missouri,)	
)	
Respondent.)	

NOTICE OF RECOMMENDED REPORT AND ORDER

Issue Date: August 13, 2018

The regulatory law judge is issuing the recommended report and order attached. The recommended report and order is subject to comments from any affected party filed within ten days of the date on which the recommended report and order issues.¹

BY THE COMMISSION



Morris L. Woodruff

Morris L. Woodruff
Secretary

John T. Clark, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 13th day of August, 2018.

¹ 4 CSR 240-2.070(15)(H).

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Union Electric Company, d/b/a)	
Ameren Missouri,)	
)	
Respondent.)	

RECOMMENDED REPORT AND ORDER

I. Procedural History

On September 28, 2017, Anita Wessling (“Complainant”) filed a formal complaint against Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”). Ameren Missouri responded with its *Answer, Affirmative Defenses and Motion to Dismiss*, on January 23, 2018. The Staff of the Missouri Public Service Commission (Staff) was directed to investigate and Staff filed a report on February 13, 2018, noting it found Ameren Missouri had not violated any tariff, rule, or statute, and was not negligent in its responses to Complainant’s outages. Staff’s report recommended the Commission dismiss the complaint for failure to state a claim. Ameren Missouri filed a response supporting Staff’s report, and Complainant responded to both the *Staff Report* and *Ameren Missouri’s Response to Staff Report* on March 19, 2018, stating with particularity the violations that she believes justified the Commission hearing her complaint. The Commission subsequently denied Ameren Missouri’s motion to dismiss.

Complainant requested that her complaint be designated as a small formal complaint on April 12, 2018. That request was granted and under the small formal

complaint procedures the Commission dispensed with the need for pre-filed testimony in this case.²

An evidentiary hearing was held on June 19, 2018, at the St. Charles County Administration Building in St. Charles Missouri. Complainant failed to appear at the hearing. During the evidentiary hearing the Commission admitted the testimony of three witnesses and received 21 exhibits into evidence. Robert J. Schnell, Supervising Engineer; and Aubrey Krcmar, Regulatory Liaison, Ameren's Regulatory Affairs Department, testified for Ameren Missouri; and Cedric Cunigan, Engineering Specialist, testified for the Commission's Staff. Upon completion of the hearing the case was deemed submitted for the Commission's decision.³

Background

After numerous outages, Complainant filed a formal complaint against Ameren Missouri alleging the company violated its tariff regarding continuity of service by failing to make all reasonable efforts to provide service on an adequate and continuous basis. She also alleges that the company violated Commission Rule 4 CSR 240-23.030(3)(A) regarding vegetation management by failing to perform vegetation management as necessary. She states that Ameren Missouri failed to investigate the outages and vegetation issues and take corrective measures to ensure reliable service. Complainant alleges that she was unable to turn her thermostat down on June 15, before a vacation resulting in her bill being \$100 higher than usual. Complainant asserts the amount at issue is \$300 for damages relating to her comfort, safety, and security.

² 4 CSR 240-2.070(15)(F)2.

³ Commission Rule 4 CSR 240-2.150(1).

II. Findings of Fact

1. Union Electric Company d/b/a Ameren Missouri is a utility regulated by this Commission.
2. Complainant is a customer of Ameren Missouri for electric service.⁴
3. On June 12, 2015, Complainant's power was out for 12 hours and two minutes as a result of a broken tree that took down a pole and wires during a thunderstorm; 77 customers were affected.⁵
4. On January 4, 2016, Complainant's power was out for 48 minutes as a result of an animal on the line tripping a fuse; 99 customers were affected.⁶
5. On April 26, 2016, Complainant's power was out for five hours and 18 minutes as a result of a broken tree that took down a pole and wires during a major storm; 299 customers were affected.⁷
6. On June 14, 2016, Complainant's power was out momentarily for unknown reasons during rainy weather; 2,405 customers were affected.⁸
7. On July 27, 2015, Complainant's power was out for three hours and 14 minutes due to an overhead malfunction; 252 customers were affected.⁹
8. On May 3, 2017, Complainant's power was out momentarily for unknown reasons during rainy weather; 2,408 customers were affected.¹⁰

⁴ Ameren Missouri Ex. 19C.

⁵ Ameren Missouri Ex. 6C.

⁶ Ameren Missouri Ex. 6C.

⁷ Ameren Missouri Ex. 6C.

⁸ Ameren Missouri Ex. 6C.

⁹ Ameren Missouri Ex. 6C.

¹⁰ Ameren Missouri Ex. 6C.

9. On May 11, 2017, Complainant's power was out momentarily for unknown reasons during a thunderstorm; 2,409 customers were affected.¹¹

10. On May 19, 2017, Complainant's power was out for four hours 24 minutes due to an overhead malfunction during a major storm; 100 customers were affected.¹²

11. On June 15, 2017, Complainant's power was out for two hours 11 minutes as a result of a broken tree during rainy weather; 76 customers were affected.¹³

12. On July 23, 2017, Complainant's power was out for seven hours 59 minutes due to an overhead malfunction from a pole fire causing a switch to burn during a major storm; 5,539 customers were affected.¹⁴

13. On September 9, 2017, Complainant's power was out for six hours eight minutes due to an overhead malfunction during calm weather; 101 customers were affected.¹⁵

14. On October 17, 2017, Complainant's power was out for one hour 27 minutes due to a squirrel; one customer was affected.¹⁶

15. Complainant is served by the Droste subsection circuit 544-056.¹⁷

16. Complainant's circuit has more than 35 customers and is therefore classified as urban.¹⁸

17. Complainant's circuit was not in the top five percent of worst performing circuits for the Gateway Division in 2017.¹⁹

¹¹ Ameren Missouri Ex. 6C.

¹² Ameren Missouri Ex. 6C.

¹³ Ameren Missouri Ex. 6C.

¹⁴ Ameren Missouri Ex. 6C.

¹⁵ Ameren Missouri Ex. 6C.

¹⁶ Ameren Missouri Ex. 6C.

¹⁷ Transcript, page 57.

18. Complainant experienced more outages than other Ameren Missouri customers in her area.²⁰

19. One of the reason Complainant experiences more outages than other Ameren Missouri customers in her area is that her property is at the end of an eight mile circuit,²¹ and any outage further up the circuit will affect her property.²²

20. Complainant's property is served by a line that goes through her back yard, over creeks, and is more susceptible to damage than lines on a roadway.²³

21. Service trucks cannot drive up to Complainant's power lines and must park on the road. Workers have to walk into Complainant's back yard and climb the pole to service overhead power lines.²⁴

22. Ameren Missouri conducted overhead equipment inspections in 2010, 2014, and 2018.²⁵

23. Ameren Missouri conducted underground equipment inspections in 2013 and 2017.²⁶

24. Ameren Missouri trimmed vegetation in July of 2016.²⁷

25. Ameren Missouri has conducted vegetation management inspections and maintenance as required.²⁸

¹⁸ Transcript, page. 50.

¹⁹ Transcript, page 86.

²⁰ Transcript, page 64.

²¹ Transcript, page 102.

²² Transcript, page 91.

²³ Transcript, page 64.

²⁴ Transcript, pages 78 and 80.

²⁵ Ameren Missouri Ex. 2.

²⁶ Ameren Missouri Ex. 2.

²⁷ Ameren Missouri Ex. 2.

²⁸ Transcript, page 61.

26. Ameren Missouri typically has a troubleman on duty from 7:00 a.m. until 11:00 p.m. Monday through Friday, and 7:00 a.m. to 3:00 p.m. weekends to respond to outages.²⁹

27. On September 1, 2017, Ameren Missouri made a vegetation patrol of Complainant's back yard and discovered a limb on a pole that serves Complainant's property. The limb was removed the following day.³⁰

28. Ameren Missouri responded to an outage on September 9, 2017, a fuse switched was replaced; the repair took approximately six hours.³¹

29. Ameren Missouri completed installing animal guards in the first quarter of 2018.³²

30. During the period of June 13, 2016, and July 13, 2016, Complainant used 3,569 kilowatts of electricity resulting in a bill of \$482.88.³³

31. During the period of June 12, 2017, and July 12, 2017, Complainant used 2,575 kilowatts of electricity resulting in a bill of \$373.82.

III. Conclusions of Law

Ameren Missouri is a public utility as defined by Section 386.020(43), RSMo. Furthermore, Ameren Missouri is an electrical corporation as defined by Section 386.020(15), RSMo. Therefore, Ameren Missouri is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

²⁹ Transcript, page 103.

³⁰ Transcript, pages 72-75, also Ameren Missouri, Ex. 4.

³¹ Transcript, pages 76-79.

³² Transcript, page 87.

³³ Transcript, page 112.

Section 386.390 states that a person may file a complaint against a utility, regulated by this Commission, setting forth violation(s) of any law, rule or order of the Commission. Therefore, the Commission has jurisdiction over this complaint.

Ameren Missouri's applicable tariff rules state:

MO P.S.C. No. 6, Original Sheet 103, General Rules and Regulations,
I. General Provisions, G. Customer Obligations:

(7.) Be responsible for payment of all electric service used on customer's premises and for all requirements of the provisions of the Service Classification under which the electric service is provided, until such time as customer notifies Company to terminate service.

MO P.S.C. No. 6, Original Sheet 105, General Rules and Regulations,
I. General Provisions, 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 single phasing. 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.

Applicable Commission rules state:

Commission Rule 4 CSR 240-23.030, Electrical Corporation Vegetation Management Standards and Reporting Requirements

(3) Maintenance Cycle.

(A) An electrical corporation shall perform a visual inspection at least once every two (2) years of all urban energized distribution conductors and at least once every three (3) years of all rural energized distribution conductors, to determine whether vegetation management is needed. Where needed, the electrical corporation shall perform vegetation management in a timely manner. Vegetation management performed along a circuit in compliance with this rule shall meet this two (2)- or three (3)-year visual inspection requirement, accordingly.

(B) In addition to the maintenance required in subsection (3)(A) above, if an electrical corporation becomes aware either through notification or during the inspections required under subsection (3)(A) above or at any other time, of any vegetation close enough to pose a threat to its energized conductor,

which is likely to affect reliability or safety prior to the next required vegetation management, the electrical corporation shall ensure that necessary vegetation management is promptly performed as required under section (4) of this rule.

The burden of showing that a regulated utility has violated a law, rule or order of the Commission is with the Complainant.³⁴

IV. Decision

After applying the facts to its conclusions of law, the Commission has reached the following decision. Complainant failed to appear at the hearing and therefore offered no evidence onto the hearing record to support her allegations. Ameren Missouri offered sufficient evidence onto the record to substantiate that Complainant experienced power outages more frequently than many other Ameren Missouri customers.

Ameren Missouri also presented credible evidence regarding its efforts to provide service on an adequate and continuous basis. Ameren Missouri explained the reasons why Complainant experienced more outages than other customers on the same circuit, and why those causes were reasonably beyond its control. Ameren Missouri's response times to outages were prompt and its explanations with regard to outage causation were reasonable. Ameren Missouri also provided documentation and testimony substantiating its compliance with Commission rules regarding vegetation management and equipment inspection. Ameren Missouri's tariff states the "[c]ompany 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

³⁴ 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." *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003).

the reasonable control of the Company.”³⁵ This section of Ameren Missouri’s tariff is also cited by Complainant in her complaint. Evidence demonstrates that Ameren Missouri made all reasonable efforts to supply adequate continuous service and that the outages were beyond the reasonable control of the company.

Finally, Complainant alleges an amount at issue of \$300. Complainant claims that this is the amount of damages that she incurred as a result of the outages. Complainant failed to substantiate these damages, and Ameren Missouri offered credible evidence to the contrary. Even if Complainant had substantiated actual damages, the Commission has no authority to enter a monetary judgment.³⁶

Complainant has the burden to show that the Ameren Missouri has violated a law, rule, or order of the Commission. Because she has not done so, her complaint fails and the Commission must rule in favor of the company.

THE COMMISSION ORDERS THAT:

1. Anita Wessling’s complaint is denied.
2. This order shall become effective on _____, 2018.

³⁵ MO P.S.C. No. 6, Original Sheet 105, General Rules and Regulations, I. General Provisions, J. Continuity of Service.

³⁶ See *State ex rel. GS Techs. Operating Co. v. PSC of Mo.*, 116 S.W.3d 680, 696 (Mo. App. 2003).

3. This case shall be closed on _____, 2018.

BY THE COMMISSION

Morris L. Woodruff
Secretary

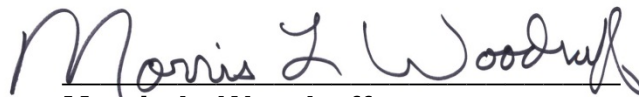
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 13th day of August 2018.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

August 13, 2018

File/Case No. EC-2018-0089

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Commission**

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.