

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

Stella Lucy,

Complainant,

vs.

The Union Electric Company dba  
Ameren Missouri,

Respondent

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**Case No. EC-2018-0376**

**STAFF'S REPLY BRIEF**

**COMES NOW** the Staff of the Missouri Public Service Commission and for its *Reply Brief*, states herein as follows:

***May the Commission Award Money Damages to Ms. Lucy?***

Staff and Ameren concur that the law is settled that the Commission is without authority to award money damages to Ms. Lucy.<sup>1</sup> Under the cases beginning with ***State ex rel. Laundry, Inc. v. Pub. Serv. Comm'n***, 327 Mo. 93, 34 S.W.2d 37 (1931), Ms. Lucy needs to go to Circuit Court to seek damages from Ameren.

***Was Ameren Responsible for the Property Damage Suffered By Mrs. Lucy?***

Staff was unable to determine the cause of the incident and resulting property loss. Perhaps Ameren caused it, perhaps not. Has Ms. Lucy shown negligence on Ameren's part? This issue is outside the Commission's jurisdiction and the Commission need not, and should not, determine it.

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<sup>1</sup> *Ameren's Brief*, pp. 3-4.

### ***Did Ameren Violate Any Statute, Rule, Order, or Tariff?***

Ameren concurs that an additional question is whether the facts show that Ameren violated any statute, Commission rule, Commission order, or its Commission-approved tariff?<sup>2</sup> Staff suggests that the facts adduced support a finding<sup>3</sup> that Ameren did violate § 393.130.1, RSMo.;<sup>4</sup> Rule 4 CSR 240-10.030(23(D));<sup>5</sup> and Tariff Mo. P.S.C. No. 6, Original Sheet 107.<sup>6</sup> The single issue presented for resolution by the Commission is Ms. Lucy's claim for money damages of \$5,151.25 for property damage sustained on October 4, 2017, due to the Company's negligence. The Commission's *Report and Order* should so find. Mrs. Lucy should tender a certified copy of the Commission's *Report and Order* to the Circuit Court.

### ***Credibility:***

Staff again recommends that the Commission find Ms. Lucy's eyewitness testimony to be credible, particularly with respect to those parts of her testimony disputed by Ameren. Although Ameren could have presented the testimony of the personnel actually involved in the events of October 4, 2017, it chose not to do so. "Evaluation of expert testimony is left to the Commission which 'may adopt or reject any or all of any witnesses' [sic] testimony.' " ***State ex rel. Associated Natural Gas v. Pub. Serv. Comm'n***, 37 S.W.3d 287, 294 (*quoting State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n*, 706 S.W.2d 870, 880 (Mo.App.1985)).

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<sup>2</sup> *Ameren's Brief*, p. 17.

<sup>3</sup> See Staff's proposed finding of fact no. 8, where the current was measured at 270 volts.

<sup>4</sup> Requires the service provided to be "safe and adequate."

<sup>5</sup> Requires the service provided to be not greater than ten percent (10%) above or below the Company's standard service voltage.

<sup>6</sup> Requires the service provided to be standard single-phase secondary voltage of 120/240 volts.

“When the Commission decides, in a proper exercise of its discretion, whether to adopt or reject an expert's testimony, this court will not second-guess that decision.”

***State ex rel. GS Technologies Operating Co., Inc. v. Public Service Com'n of State of Mo.***, 116 S.W.3d 680, 690 (Mo. App., W.D. 2003).

***Conclusion:***

While the Commission lacks authority to grant Ms. Lucy's claim, dismissal is also improper. Rather, the Commission should hear and determine Ms. Lucy's claim insofar as its authority extends. “It has been held that matters within the jurisdiction of the Commission must first be determined by it, in every instance, before the courts will adjudge any phase of the controversy.” ***State ex rel. Cirese v. Ridge***, 345 Mo. 1096, 138 S.W.2d 1012, 1015[5] (banc 1940). Ms. Lucy must now go to her local circuit court and seek recovery against Ameren via a civil lawsuit.

Respectfully submitted,

**/s/ Kevin A. Thompson**

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing has been served, by hand delivery, electronic mail, or First Class United States Mail, postage prepaid, to all parties of record on the Service List maintained for this case by the Data Center of the Missouri Public Service Commission, on this **20<sup>th</sup> day of December, 2018.**

**/s/ Kevin A. Thompson**