

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
COLE COUNTY, MISSOURI
JEFFERSON CITY

KEELEEE SWOPSHIRE)
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COMPLAINANT,)
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)
) CASE NO: #EC-2022-0148
VS.)
)
) INFORMAL COMPLAINT FILED: 11-23-2021
UNION ELECTRIC COMPANY) FORMAL COMPLAINT FILED: 12-2-2021
D/B/A AMEREN MISSOURI.) **EVIDENTIARY HEARING: 6-29-22 9:00 am**
LEGAL DEPARTMENT)
1901 Chouteau Avenue) ATTORNEY REPRESENTED
PO BOX 66149, Mail Code 1310)
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)
AMEREN OF MISSOURI)
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)
)
RESPONDENTS.)

**Complainant’s Response to Ameren Missouri and Missouri Public Service Commission Staff Joint
Witness List and Position and Objections to Complainant’s Witnesses**

COMES NOW, Keelee T. Swopshire, Esq., Attorney of Record and Complainant in the above-captioned matter and files her response to Union Electric Company d/b/a Ameren Missouri and the Missouri Public Service Commission (“Respondents”) regarding its Joint Statements filed on June 8, 2022 and also Respondent’s separately filed Statements of Position on June 8, 2022 (“Ameren Missouri”) and Missouri Public Service Commission’s Staff statement of position filed on June 13, 2022 (“MOPSC”). Complainant also responds to Ameren Missouri’s objections to her Witness List it filed on June 14, 2022.

I. MISSOURI PUBLIC SERVICE COMMISSION’S STAFF POSITION STATEMENT

The Missouri Public Service Commission’s Staff office filed a Position Statement with its Office stating that, among other things, it objects to the accusation that it has engaged in ex parte communications with the Parties regarding substantive issues because it only communicated via email communications and that these communications were non-substantive. Mr. Cospers has communicated with Respondent and Complainant on numerous occasions regarding substantive issues, particularly regarding evidentiary matters. An example of one of these communications is filed for demonstrative purposes and is labeled Exhibit 1.

Mr. Cospers alleges in paragraph 3 of his Missouri Public Service Commission Position Statement that no “substantive issues” were ever addressed “between the parties” in these electronic communications. This is a verifiable falsehood. Mr. Cospers and the Missouri Public Service Commission are not parties to the current matter before the Missouri Public Service Commission. As stated numerous times by the Complainant, Mr. Cospers’s and the Missouri Public Service Commission Staff’s denial of ex parte communications is illogical and also explained in its own Regulations. This case is not a Rate Dispute Case that would allow the MOPSC to act on behalf of a Utility, as explained in the Missouri Public Service Commission’s Regulations and also with my filing in Response to the Commission’s Order on April 27, 2022. Therefore, the Missouri Public Service Commission’s Staff considering itself a “Party” is a blatant violation of its own regulations and also shows that the Commission engaged in a denial of Procedural and Substantive Due Process under the Missouri State Constitution Article 1 Sec. 10.

Mr. Cospers cited the MOPSC regulation Complainant cited in her filing, 20 CSR 4240.4.015(6), which states that “[a]ny communication outside of the case process between a member of the office of the commission and any party, or the agent or representative of a party, regarding any substantive issue in, or likely to be in, a case or noticed case. Ex parte communications shall not include a communication regarding general regulatory policy allowed under section RSMO 386.210.4, communications listed in 4 CSR 240-4.040, communications made thirty (30) days or more after the commission issues a final determination in a case, or communications that are de minimis or immaterial.” Because of the clear guidelines and definitions listed in the MOPSC regulations, the Missouri Public Service Commission Staff’s denial of Due Process is to be considered blatant and intentional.

The Missouri Public Service Commission Staff also filed in paragraphs 4 and 5 of its Position Statement that it did not have to file a notice of these communications nor does it think Cause should be shown regarding why sanctions should not be applied. The MOPSC Staff has made itself a party in this matter under a false belief and reading of the regulations.

In paragraphs 1 and 2 of the Missouri Public Service Commission’s Staff statement of Position, the Staff has made conclusions of fact and law for the Commission as a “party” but are employed by the Missouri Public Service Commission itself. They have assigned themselves as a “party” when they are actually a Third-Party mediator that performs a state duty prior to the actual formal complaint and administrative hearing process between an individual and a Utility Company, not a case between a governmental body, locality, municipality, utility company, co-op, or other multi-designated entity. Because of this blatant fact, the Missouri Public Service Commission’s Staff has demonstrated it has engaged in a denial of Substantive and Procedural

Due Process under the Missouri State Constitution list of Individual Rights, specifically Article 1, Section 10.

II. AMEREN MISSOURI'S POSITION STATEMENT

Ameren Missouri failed to respond to the list of issues Complainant filed with the Missouri Public Service Commission, specifically the main issue that sets the foundation for Complainant's suspicion of fraud on Ameren Missouri's behalf, the suspicion being that it changed the Ameren meter to active after it had already labeled the Ameren meter in question as Inactive. Ameren Missouri failed to see, recognize, or address the issue it had been presented and that was named in the Informal and Formal complaints filed in November and December 2021. Ameren Missouri is encouraged to read the Informal and Formal Complaints that Complainant filed in November and December 2021 and address those issues specifically.

III. RESPONDENT'S JOINT STATEMENT OF WITNESSES, LIST OF ISSUES, and ORDER OF CROSS EXAMINATION

As stated in section I of this Response, Ameren Missouri and MOPSC Staff filed a JOINT STATEMENT regarding the Witness Lists, Issues, and Cross-Examination because they are together as one a "Party" based on a reading of their filings and observation of their actions in concert.

1. The Joint Parties in Interest, Ameren Missouri and MOPSC Staff, first states that one of its issues is that Complainant filed her list of issues separately. Complainant considers filing a Joint Statement with the MOPSC Staff as an Ex Parte communication and has noticed that on numerous occasions.
2. The Joint Parties also state in their list of issues none of the specific issues raised in my filing on June 4, 2022, and specifically the issue raised in the initial complaints and the June 4, 2022 filing that Ameren Missouri mislabeled the meter status.

3. Ameren Missouri and MOPSC Staff also state in concert that the Order of Cross Examination should always end with Complainant examining the Witnesses last. It lists that Staff should cross examine Complainant and Ameren Missouri's witnesses first and then Complainant or Ameren, depending on who has called a witness. This is unreasonable because Staff (MOPSC) is not a party and it appears that it would be cross-examining its own witnesses, specifically, those presented by Staff and Ameren Missouri. Because MOPSC Staff has filed a Position Statement that supports Ameren Missouri's defenses, its cross examination of Ameren Missouri's witnesses appears to be a theatrical maneuver rather than an actual cross-examination as a party at odds with Ameren. The same can be said regarding Ameren Missouri's cross-examination of MOPSC Staff's witnesses.

IV. AMEREN MISSOURI'S OBJECTIONS TO COMPLAINANT'S WITNESS LIST

Ameren Missouri has objected to Complainant's request that she call Ameren Missouri's employees Aubrey Krcmar and Mark Braun. Ameren Missouri's counsel filed a statement with the Missouri Public Service Commission on June 14, 2022 stating in paragraph 4 that these individuals are Ameren Missouri employees and are therefore unavailable for Direct Examination by Complainant. Under the general rules of trial practice and evidence, any person can be called as a direct witness if they are relevant to a Party's case. In this case, these individuals are relevant to Complainant's case and can be called as direct witnesses. Ameren Missouri is confused about the scope of a Cross-Examination. A Cross-Examination is limited to the issues raised on direct examination. If Ameren Missouri chooses to ignore the issues Complainant raised in her List of Issues, then the scope of Cross-Examination is therefore limited on Cross. That is why Complainant requested Aubrey Krcmar and Mark Braun as Direct Witnesses and under law, they must be produced and available for testimony as a Direct Witness for Complainant at the hearing set for June 29, 2022. A Deposition is unnecessary because these witnesses have already produced statements through their counsel in the Discovery process and will be questioned based on their responses because they have alleged that they are knowledgeable about the Ameren account and the Ameren meter.

WHEREFORE, Complainant prays the Missouri Public Service Commission issue an order directing and/or clarifying its Position as a Party in Interest to the current matter, direct Ameren Missouri to make its witnesses available for Direct Examination for Complainant, direct Ameren Missouri to address the issue of the mislabeling of the Ameren Meter in question prior to the hearing, and also issue an order to show cause why sanctions should not be issued for the Ex Parte communications on substantive issues that Mr. Cosper and the Missouri Public Service Commission Staff have engaged in.

Respectfully Submitted on June 21, 2022.

KEELEE SWOPSHIRE, ESQ.

/s/ Keelee Swopshire
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CERTIFICATE OF SERVICE

I, Keelee Swopshire, certify that I have delivered by electronic mail this Complainant's Response to Respondent's Statements filed on June 8th and June 14th to Respondent Union Electric Company D/B/A Ameren Missouri and its attorneys Eric Banks and Jerome Grubbs and also to the Missouri Public Service Commission Staff on this 21st day of June 2022.

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