

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

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

STAFF CONCURRENCE WITH
RELIEF REQUESTED IN COMPANY ANSWER
AND
MOTION TO EXTEND DATE
UPON WHICH TO FILE STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and in concurrence with the relief requested in the *Answer and Motion to Dismiss (Answer)* filed by Union Electric Company d/b/a AmerenUE (AmerenUE or the Company) on July 15, 2010, states as follows:

1. On June 14, 2010 Tawanda Murphy, by and through counsel, filed a formal complaint, styled as a *Petition-Negligence Res Ipsa Loquitor*, with the Missouri Public Service Commission (the Commission). In her complaint against AmerenUE Ms. Murphy requests that the Commission award her damages and any other relief deemed appropriate.

2. On June 15, 2010, the Commission issued an Order directing AmerenUE to file an answer or a request for mediation by July 15, 2010. In addition, the Commission ordered Staff to complete an investigation into Ms. Murphy's complaint and to file a report regarding such investigation by July 22, 2010.

3. On July 15, 2010, AmerenUE filed its *Answer*, generally denying Ms. Murphy's allegations, asserting that the Commission has no jurisdiction to award her damages, and claiming that Ms. Murphy has failed in her complaint to state a claim upon which relief may be granted. As a result, the Company requests that the Commission issue an Order that either dismisses Ms. Murphy's complaint or, in the alternative, grants her leave to amend the petition to include a violation over which this Commission may exercise jurisdiction.

4. Staff concurs in the Company's legal analysis of the jurisdictional matters presented in this case to date. It is clear that the Commission has no authority to award Ms. Murphy damages¹. *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980).

5. In addition, because this claim is apparently predicated upon the legal theory of *res ipsa loquitor*, Staff has little direction regarding violations upon which to focus its investigation. Staff is currently investigating the safety-related aspects of the allegations contained in Ms. Murphy's complaint but reports that due to the technical complexity of the issues involved in this case that such investigation will be not be complete by July 22, 2010. For this reason Staff cannot comply with the Commission's mandate to file a report on that date.

6. In the event that the Commission decides to proceed on the basis of the allegations contained in the currently-filed petition, Staff would propose to file its report of investigation on August 23, 2010. In the event that the Commission grants the complainant leave to file an amended complaint, Staff would request thirty days from the filing of the answer to that amended complaint.

¹ If Ms. Murphy is concerned only with monetary damages, she may arguably initiate the action absent a prior decision from the Commission. "If the Commission had no jurisdiction to make a determination of interests of persons making claim to ...then it necessarily follows that plaintiffs would have no remedy to pursue before the Commission; ergo the doctrine of exhaustion of remedies would not be applicable." *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980).

WHEREFORE, Staff requests that the Commission issue an Order granting Ms. Howard leave to amend her complaint to allege a specific violation over which this Commission may exercise jurisdiction. In addition, in the event that the Commission does not dismiss this matter as urged by the Company, Staff requests the Commission's Order postpone, as described above, the requirement for Staff to file its report of investigation.

Respectfully submitted,

/s/ Eric Dearmont

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 19th day of July, 2010.

/s/ Eric Dearmont