

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

STERLING MOODY, STERLING'S MARKET
PLACE AND STERLING'S PLACE, I,

Complainants,

v.

AMERENUE, UNION ELECTRIC CO. d/b/a
AMERENUE, and MIKE FOY, LEROY ETTLING,
and SHERRY MOSCHNER, as employees of
AmerenUE,

Respondents.

Case No. EC-2002-112

RESPONDENTS' STATEMENT OF POSITIONS

Come now respondents, by and through their attorneys, and for their Statement of Positions on the issues identified in Respondents' List of Issues state as follows.

1. Does complainant Sterling Moody have standing individually to bring the claims alleged in the Complaint?

RESPONDENTS' POSITION: No, there is no claim that Sterling Moody individually was a customer of respondent AmerenUE as it relates to the issues raised by the Complaint. To the contrary, AmerenUE's customer at 8350 North Broadway was Sterling's Marketplace I, Inc.

2. Can the Public Service Commission award consequential and punitive damages against respondents, as requested in complainants' Complaint?

RESPONDENTS' POSITION: No, the Public Service Commission does not have jurisdiction to award consequential or punitive damages.

3. Do complainants have standing in this proceeding to seek the entry of fines or penalties against respondents? If so, does the Public Service Commission

have jurisdiction in this proceeding to assess any fines or penalties against respondents?

RESPONDENTS' POSITION: No, fines and penalties pursuant to R.S.Mo. Chapter 386 may only be awarded as part of an action brought in the Circuit Court by the General Counsel of the Public Service Commission.

4. Did the actions of respondents as alleged by complainants violate AmerenUE's tariff or the regulations of the Public Service Commission?
 - a. If so, do those violations warrant the imposition of a fine or penalty?
 - b. If so, were the individual actions of respondents Sherry Moschner, Mike Foy and Leroy Ettling done in the scope of their official duties as employees of respondent AmerenUE?

RESPONDENTS' POSITION: Respondent AmerenUE did not give the notice required by its tariff and the regulations of the Public Service Commission in connection with its disconnection of service to complainant Sterling's Marketplace I, Inc.'s premises on April 10, 2001. In all other respects, the actions of respondents did not violate either AmerenUE's tariff or the regulations of the Public Service Commission. Moreover, the individual actions of respondents Sherry Moschner, Mike Foy and Leroy Ettling were done in the scope of their official duties as employees of respondent AmerenUE, as complainants have stated in their Complaint. Respondent AmerenUE's inadvertent disconnection of service to Sterling's Marketplace I, Inc. for a short period of time on April 10, 2001 does not warrant the imposition of a fine or penalty against any respondent.

5. Did a "constructive payment arrangement" exist between AmerenUE and Sterling's Marketplace I, Inc. with respect to the latter's payment of bills for electric service. If so, did that "arrangement" preclude respondent AmerenUE's disconnection of service for unpaid delinquent bills?

RESPONDENTS' POSITION: No, there was no "constructive payment arrangement" agreed to by respondent AmerenUE. Rather, respondent AmerenUE merely sought to obtain payment of its overdue bills for service from Sterling's Marketplace I, Inc. To the extent an "arrangement" may have existed, Sterling's Marketplace I, Inc. failed to comply with its terms by making partial payments with bad checks and by failing to deliver even promised partial payments. Moreover, respondent AmerenUE's acceptance of partial payments of its bills to Sterling's Marketplace I, Inc. from time to time did not preclude or waive its right to seek full payment of the amount due for electric service or to initiate a disconnection of service.

6. Did respondent AmerenUE, pursuant to the terms of its tariff and the regulations of the Public Service Commission, have any responsibility with respect to the wiring of complainants' premises?

RESPONDENTS' POSITION: No, respondent AmerenUE has no responsibility pursuant to the terms of its tariff or the regulations of the Public Service Commission with respect to the wiring of a customer's premises.

7. Did AmerenUE provide proper notice of disconnection of service to Sterling's Marketplace I, Inc. for the disconnection of service which occurred on April 10, 2001 pursuant to AmerenUE's tariff and the regulations of the Public Service Commission?

RESPONDENTS' POSITION: As noted, respondent AmerenUE inadvertently disconnected service for a short period of time without giving notice to Sterling's Marketplace I, Inc. on April 10, 2001.

8. Did AmerenUE provide proper notice of disconnection of service to Sterling's Marketplace I, Inc. for the disconnection of service which occurred on April 17, 2001 pursuant to AmerenUE's tariff and the regulations of the Public Service Commission?

RESPONDENTS' POSITION: Yes, respondent AmerenUE gave notice of its intent to disconnect service by hand delivery on April 10, 2001 and service was properly disconnected on April 17, 2001.

9. Did the May 18, 2001 agreement between AmerenUE, Sterling's Marketplace I, Inc. and P.& B. Real Estate, L.L.C. constitute a compromise and settlement of all claims then existing among and between the parties?

RESPONDENTS' POSITION: Yes, the questions and concerns of Sterling's Marketplace I, Inc. with respect to the wiring of its premises and the alleged over billing by respondent AmerenUE were known at the time the May 2001 agreement was entered into and were discussed during the negotiations of that agreement. The execution of that agreement by Sterling's Marketplace I, Inc. constituted a compromise and settlement of all claims Sterling's Marketplace I, Inc. may have had against respondent AmerenUE and its employees.

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Certificate of Service

The undersigned hereby certifies that a copy of Respondents' Statement of Positions was sent via facsimile and mailed first class, postage prepaid this 1st day of July 2002 to Office of Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102, Office of General Counsel, Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102 and Freeman Bosley, Jr., 1601 Olive Street, First Floor, St. Louis, Missouri 63103-2344, attorney for complainants.

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