

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

Tucker Shell, LLC,)	
)	
Complainant,)	
)	
vs.)	Case No. EC-2011-0233
)	
Union Electric Company, d/b/a)	
Ameren Missouri,)	
Respondent.)	

ANSWER AND MOTION TO DISMISS

COMES NOW Union Electric Company d/b/a Ameren Missouri, formerly AmerenUE (“Ameren Missouri” or “Company”), and in response to Complainant’s Complaint states as follows:

1. On January 10, 2010, Tucker Shell, LLC, by and through its attorneys (“Complainant”), filed a complaint against Company (the “Complaint”).
2. Any allegation not specifically admitted herein by the Company should be considered to be denied.
3. The Company admits the allegations of paragraph 1 of the Complaint.
4. The Company is without sufficient information to form a belief as to the allegations of paragraph 2 of the Complaint and therefore denies the same.
5. The Company admits the allegations of paragraph 3 of the Complaint.
6. The Company denies the allegations of paragraph 4 of the Complaint as stated, but admits that it is bound by its tariffs and by certain laws, Commission Rules, and Commission Orders to perform certain maintenance, inspections and repairs of its equipment.
7. The Company denies the allegations of paragraph 5 and subparagraphs 5.a., 5.b. and 5.c. of the Complaint.
8. The Company denies the allegations of paragraph 6 of the Complaint as stated, but admits that on September 28, 2008, an underground primary line in the vicinity of 721 N. Tucker, St. Louis, Missouri, failed causing a secondary line to catch fire. In further answer, the

Company states that the fire was the result of a failure or imperfection of service beyond the reasonable control of the Company.

9. The Company is without sufficient information to form a belief as to the allegations of paragraph 7 of the Complaint and therefore denies the same.

10. The Company is without sufficient information to form a belief as to the allegations of paragraph 8 of the Complaint and therefore denies the same.

11. The Company is without sufficient information to form a belief as to the allegations of paragraph 9 of the Complaint and therefore denies the same.

12. The Company is without sufficient information to form a belief as to the allegations of paragraph 10 of the Complaint and therefore denies the same.

13. In further answer, the Company states that its tariffs filed with and approved by the Commission have the force and effect of law. As such, the Company offers the provisions of its Electric Service Tariff Sheets 126 and 138 as an affirmative defense. Tariff Sheet 138, I. General Rules and Regulations, Section J. Continuity of Service states, in part, "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." As to the customer, Tariff Sheet 126, I. General Rules and Regulations Section A. Authorization and Compliance states, in part, "[i]n accepting service provided by Company, a customer agrees to comply with all applicable rules and regulations contained [in the Electric Service Tariff]."

14. In further answer and relevant to Complainant's claim of negligence, the Company admits that §§386.390.1 and 393.140(2)(3) and (5), RSMo, confer primary jurisdiction on the Commission to determine the sufficiency of and the safety and adequacy of a utility's service. In addition, the Commission has promulgated numerous regulations setting specific standards for utility service, and through a utility's tariffs, which must be approved by the Commission, the Commission exercises another type of jurisdiction over a utility's standards for service. The Company denies, however, that the Commission has statutory authority to make a finding of negligence as a matter of law.

15. In further answer, the Company states that the Complaint fails to allege a violation by the Company of any particular statute, rule, order or decision within the Commission's jurisdiction, which alleged violations, per 4 CSR 240-2.070(1) and (3) and 4 CSR

240-13.070(2), are the bases upon which a person may file a formal or informal complaint with the Commission.

16. The following attorneys should be served with all pleadings in this case:

Sarah E. Giboney, #50299
Smith Lewis, LLP
111 South Ninth Street, Suite 200
P.O. Box 918
Columbia, MO 65205-0918
(573) 443-3141
(573) 442-6686 (Facsimile)
Giboney@smithlewis.com

Wendy K. Tatro, # 60261
Associate General Counsel
Union Electric Company, d/b/a Ameren
Missouri
1901 Chouteau Avenue, MC-1310
P.O. Box 66149, MC-1310
St. Louis, Missouri 63166-6149
(314) 554-3484 (Telephone)
(314) 554-4014 (Facsimile)
AmerenMissouriService@ameren.com

WHEREFORE, Company respectfully requests that the Commission issue an order:

- A. Dismissing the Complaint for failure to state a claim upon which relief can be granted; or in the alternative,
- B. finding that Complainant has failed to state a claim upon which relief can be granted but granting Complainant leave to amend the Complaint to allege a violation of a particular statute, rule, order or decision within the Commission's jurisdiction and to ask for relief that can be granted by the Commission, such as findings of fact within the Commission's primary jurisdiction regarding the alleged events and the safety, adequacy and sufficiency of Company's utility service or Company's compliance or non-compliance with related Commission standards for utility service.

Respectfully submitted,

SMITH LEWIS, LLP

/s/ Sarah E. Giboney
Sarah E. Giboney, #50299
111 South Ninth Street, Suite 200
P.O. Box 918
Columbia, MO 65205-0918
(573) 443-3141
(573) 442-6686 (Facsimile)
giboney@smithlewis.com
Attorney for Ameren Missouri

UNION ELECTRIC COMPANY,
d/b/a Ameren Missouri

By: /s/ Wendy K. Tatro
Wendy K. Tatro, # 60261
Associate General Counsel
Ameren Services Company
P.O. Box 66149
St. Louis, MO 63166-6149
(314) 554-3484 (phone)
(314) 554-4014 (fax)
AmerenMissouriService@ameren.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion was served on the following parties via electronic mail (e-mail) or via regular mail on this ____ day of February, 2011.

Jennifer Hernandez
Annette Slack
Staff of the Missouri Public Service
Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
jennifer.hernandez@psc.mo.gov
annette.slack@psc.mo.gov

Lewis Mills
Office Of Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

Beth C. Boggs
Kari A. Rothermich
Boggs, Avellino, Lach & Boggs, L.L.C.
7912 Bonhomme, Suite 400
St. Louis, MO 63105
bbiggs@balblawyers.com
krothermich@balblawyers.com

/s/ Sarah E. Giboney_____
Sarah E. Giboney