

## EXHIBIT B

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

Claude Scott,	)	
Complainant,	)	
	)	
vs.	)	Case No: EC-2020-0005
	)	
Union Electric Company, d/b/a	)	
Ameren Missouri,	)	
Respondent.	)	

### AMEREN MISSOURI'S SUGGESTIONS IN SUPPORT OF ITS MOTION FOR SUMMARY DETERMINATION

COMES NOW Union Electric Company, d/b/a Ameren Missouri ("Ameren Missouri" or "Company"), and pursuant to 20 CSR 4240-2.117(1)(B), in support of its Motion for Summary Determination (the "*Motion*") to which these suggestions are attached, states as follows.

#### Standard for Summary Determination

20 CSR 4240-2.117(1)(E) provides, "the Commission may grant [a] motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that the granting of summary determination is in the public interest."

When filing a motion for summary determination, the movant bears the burden of demonstrating legal entitlement to relief, even if the movant does not have the burden of proof on the underlying complaint. "Legal entitlement to relief appears when the facts determinative of a claim or defense ("material facts") are established without genuine dispute. If the movant establishes each material fact, and no genuine dispute appears as to any material fact, the movant must win." *Eddie Shepherd, Complainant v. KCP&L GMO*, EC-2011-0373, *Order Regarding Motion for Summary Determination* (December 23, 2011) 2011 WL 6960557 (Mo. PSC) (citing the Missouri Supreme Court's discussion of its summary judgment Rule 74.04 in *ITT Comm. Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 380-82 (Mo. banc 1993), because the Commission found Rule 74.04 sufficiently similar to the summary determination rule to

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make cases interpreting Rule 74.04 helpful to interpreting the summary determination rule). The material facts depend on the theory at issue, which party has the burden of proof, and whether the movant is a claimant party or defending party. A defending movant prevails on summary determination by establishing facts: (1) negating at least one element necessary to the claim; or (2) showing that, after discovery, the claimant will be unable to support any one element of the complaint; or (3) constituting the elements of an affirmative defense.” *Id.*

### Argument

The Company is the movant, is defending the Complaint, and has raised the affirmative defense that the Complaint is barred by § 386.550 RSMo (2016)<sup>1</sup>. That statute provides: “[i]n all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive.” Therefore, in order to prevail, the Company must establish that there is no genuine dispute regarding the material facts that show that the Complaint is a collateral action challenging an order and decision of the Commission that has become final and conclusive.

Whether a decision is final, and whether an action constitutes a collateral attack on that decision, depends on the existence of an exclusive remedy, and as to Commission decisions, the exclusive remedy is an application for rehearing, and notice of appeal. §§ 386.500.2 and 386.510. RSMo; *See, R & S Home Builders, Inc., & Carol & Arvell Allman, Complainants*, No. EC-2014-0343, 2015 WL 1394444, at \*7 (Mar. 19, 2015) (citing *State v. Kosovitz*, 342 S.W.2d 828, 830, (Mo. 1961)). A collateral action is an action that challenges an order by means other than the exclusive remedy. *R & S Home Builders* at \*7.

The Company’s statement of material facts as to which there are no genuine disputes<sup>2</sup> shows that the allegations of the Complaint, in all material respects, are identical to the allegations of the complaint previously filed by Mr. Scott in File No. EC-2018-0371 (the “Prior Proceeding”).<sup>3</sup> The statement of facts also shows that after an evidentiary hearing in the Prior Proceeding, the Commission issued its *Report and Order*, finding against Mr. Scott on every single one of these allegations, finding that he failed to meet his burden of proof, finding that it

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<sup>1</sup> All statutory references hereinafter are RSMo. (2016), unless otherwise noted.

<sup>2</sup> Including facts from the Commission’s official records, as to which there can be no genuine dispute. *Env’tl. Utilities, LLC v. Pub. Serv. Comm’n*, 219 S.W.3d 256, 265-55 (Mo. App. W.D. 2007).

<sup>3</sup> *Motion*, ¶¶ 6-9, 11-13, and 14-15.

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must rule in favor of the Company, and ordering that the *Report and Order* would become effective on June 14, 2019.<sup>4</sup>

Mr. Scott's exclusive remedy for challenging the Commission's decisions in the *Report and Order* in the Prior Proceeding, then, was to file a request for rehearing before the *Report and Order* became effective on June 14, 2019, and if the application was denied, or if the application was granted, then within thirty days after the rendition of the decision on rehearing, to file a timely notice of appeal. §§ 386.500.2 and 386.510. RSMo. The passing of the effective date of a *Report and Order* without any timely application for rehearing renders a *Report and Order* final and unreviewable. § 386.500 RSMo; *Harter v. Missouri Pub. Serv. Comm'n*, 361 S.W.3d 52, 56 (Mo. App. W.D. 2001). In this case, the Commission's decisions in the *Report and Order* in the Prior Proceeding became final and unreviewable on June 14, 2019, because no party filed a timely request for rehearing prior to that date.

Mr. Scott's Complaint is a collateral action, because by reasserting in this new Complaint all the same allegations in the Prior Proceeding that have already been decided against him, Mr. Scott's Complaint is an attempt to challenge the Commission's final *Report and Order* by a means other than filing a timely request for rehearing. Therefore, the Complaint is barred as a final attack on a final Commission order or decision. § 386.550 RSMo. A complaint that constitutes a collateral action, for purposes of § 386.550 RSMo must be dismissed, because it constitutes a claim for which relief cannot be granted. *State ex rel. MoGas Pipeline LLC v. Public Service Com'n*, 395 S.W.3d 2013) (Commission's dismissal of a complaint attacking the validity of certain tariffs was affirmed because the complaint constituted an impermissible collateral attack on a prior, final Commission order addressing the same tariffs); *see also R & S. Homebuilders* at \*7.

To the extent Mr. Scott's Complaint alleges a Company violation in issuing the July 9, 2019 disconnection notice to him, and to the extent he seeks relief from such disconnection, it should be denied as a matter of law. As part of the *Report and Order*, the Commission specifically authorized the Company, consistent with the law and the Commission's rules, to proceed with Mr. Scott's account as the Company saw appropriate.<sup>5</sup> The issuance of the disconnection notice on July 9, 2019 did not violate 20 CSR 4240-13.050(6), which prohibits

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<sup>4</sup> *Motion*, ¶¶ 19-22, 24, 26-28.

<sup>5</sup> *Id.* ¶ 28.

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issuance of disconnection notices for any portion of a bill that is the subject of a pending complaint before the Commission, because as discussed above, the *Report and Order* concerning the complaint filed in the Prior Proceeding had become final and unreviewable more than three weeks prior. The Commission's rules permit a utility to disconnect a customer's service for nonpayment of an delinquent charge<sup>6</sup> provided certain notice is given,<sup>7</sup> and the Company provided the required notice.<sup>8</sup> As such, Mr. Scott will be unable to prove that the Company violated these Commission rules, or the *Report and Order*, when it did just what the order contemplated and issued a disconnection notice to him in connection with his delinquent account balance.

For the foregoing reasons, the Company has requested that the Commission grant summary determination in the Company's favor and enter an order (1) finding that the Company did not violate any statute, rule, Commission order or Commission-approved tariff when the Company issued its July 9, 2019 disconnection notice to Mr. Scott, (2) denying his request for relief from disconnection, (3) finding that the remainder of the *Complaint* is barred as a collateral attack on the Commission's final *Report and Order* in File No. EC-2018-0371, and (4) dismissing the remainder of the *Complaint* for failure to state a claim for which relief can be granted.

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)

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<sup>6</sup> 20 CSR 4240-13.050(1)(A). Specifically, the rule permits disconnection of an *undisputed* delinquent charge. To register a dispute about a charge, a customer must follow the procedure set forth in 20 CSR 4240-13.045, which requires a customer to advise the utility by written notice, in person or telephone, at least twenty-four hours prior to a pending disconnection, that the customer is disputing the charge. Attachment AMK-3 to *Krcmar Aff.*, the contacts for Mr. Scott's Current Account, reflects the absence of any notice from Mr. Scott to the Company at any time between January 15, 2019 through his last contact with the Company on July 12, 2019, that Mr. Scott disputed any portion of his account balance. Nor, after June 14, 2019, could he have argued that any still delinquent amount that had been in dispute in the Prior Proceeding was the subject of a pending dispute since, as discussed above, the Prior Proceeding had become final and unreviewable.

<sup>7</sup> 20 CSR 4240-13.050(4) and (5).

<sup>8</sup> *Motion*, ¶ 33.

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[giboney@smithlewis.com](mailto:giboney@smithlewis.com)

/s/ Jermaine Grubbs

Jermaine Grubbs, #68970

Corporate Counsel

1901 Chouteau Avenue, MC 1310

P.O. Box 66149

St. Louis, MO 63166-6149 (314) 554-3533

(phone) (314) 554-4014 (facsimile)

[amerenmoservice@ameren.com](mailto:amerenmoservice@ameren.com)

Attorneys for Union Electric Company d/b/a  
Ameren Missouri