

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

Kelvin Dudley,)	
)	
Complainant,)	
)	Case No.: EC-2024-0191
vs.)	
)	
Union Electric Company, d/b/a)	
Ameren Missouri,)	
)	
Respondent.)	

**MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM
ON WHICH RELIEF CAN BE GRANTED**

COMES NOW, Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), by and through counsel of record, and pursuant to 20 CSR 4240-2.070(7), hereby moves to dismiss the Complaint in this matter for failure to state a claim on which relief can be granted. In support of this Motion, Respondent submits the following suggestions in support.

PROCEDURAL BACKGROUND

On December 8, 2023, Complainant Kelvin Dudley filed a Complaint against the Company (the “Complaint”), contesting the charges for residential electric (1M) service (“service”) at [REDACTED] (the “Premises”), which were assessed to his account.

On December 11, 2023, the Commission issued an Order that the Company file an answer to the Complaint no later than January 10, 2024, and that Staff file its report no later than January 25, 2024. Respondent filed its *Answer and Affirmative Defenses* on January 10, 2024. Staff filed its *Staff Report* and recommendations on January 25, 2024.

ARGUMENT

The Complaint in this matter must be dismissed, because Complainant has failed to state a claim on which relief can be granted. Commission Rule 20 CSR 4240-2.070(7) provides that “The Commission, on its own motion or on the motion of a party, may after notice dismiss a complaint for failure to state a claim on which relief may be granted. . . .” Moreover, the Missouri Courts have established the standard used by the Commission for consideration of a motion to dismiss.

A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff’s petition. It assumes that all of plaintiff’s averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case. *Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 306 (Mo. 1993) *citing Sullivan v. Carlisle*, 851 S.W.2d 510, 512 (Mo. banc 1993).

In that case, the Court stated the Commission must assume all the complainant’s assertions are true and must grant to the complainant all reasonable inferences supporting the complaint.

Id.

The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto. See, e.g., *State ex. rel. City of St. Louis v. Missouri Public Service Comm’n*, 73 S.W.2d 393, 399 (Mo. banc 1934); *State ex. rel. Kansas City Transit, Inc. v. Public Service Comm’n*, 406 S.W.2d 5, 8 (Mo. 1966); *State ex rel GS Technologies Operating Co. v. PSC of Mo.*, 116 S.W.3d 680, 696 (Mo. App. 2003). Section 386.040, RSMo, which created and established the Commission, provides the Commission “shall be vested with and possessed of the powers and duties in this chapter specified, and also all powers necessary or proper to enable it to carry out fully and effectually all the purposes of this chapter.”

Section 396.390.1 provides that the Commission shall hear complaints regarding “a violation, of any provision of law, or of any rule or order or decision of the commission.” In this case, the Complainant has not established that Ameren Missouri violated any "rule or order or decision of the Commission." Rather, the Complainant is merely alleging a violation of inapplicable law without any supporting facts. Specifically, Complainant alleges that Respondent violated several federal Acts and Codes including the Uniform Commercial Code Article 3-311, 602, 603, Title 18 Section 1001 of the Uniform Value of Coins Act, and Check 21. Complainant further alleges the Company is interfering with commerce and is in violation of the 73rd Congress, SESS. I. CHS. 46-48. June 5, 1933 by not accepting his “negotiable instrument” as payment on his account.

Complainant alleges *no facts whatsoever* demonstrating a violation of the law, and therefore, is not entitled to relief by the Commission. Complainant alleges that he “tried to settled [sic] this matter by discharging this debt with a negotiable instrument.” RSMo Section 393.130 provides that all charges made or demanded by any electrical corporation shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Notably, Complainant makes **no claim** that the charges assessed to his account by Ameren were improper in any way. Rather, Complainant attached to his Complaint what appears to be a check made payable to “Ameren Missouri” in the amount of [REDACTED], drawn on an account with the “St. Louis Federal Reserve Bank.” As set forth in the Company’s Answer and Affirmative Defenses, as well as in the Staff Report, the St. Louis Federal Reserve Bank does not service individuals. Therefore, the “negotiable instrument” submitted by Complainant could not possibly have been used to satisfy the outstanding charges that he owes to Ameren. Indeed, the Staff Report states as follows:

After reviewing Complainant's 'negotiable instrument,' Staff confirmed that it appears to be drawn on an account with the St. Louis Federal Reserve Bank. As correctly pointed out by Respondent, the St. Louis Federal Reserve Bank does not service individuals. The Office of Inspector General for the United States Treasury has issued fraud alerts in the past regarding the use of the United States Treasury or Federal Reserve locations for individual banking services.

. . .

Since the St. Louis Federal Reserve Bank does not service individuals, it is not clear how this 'negotiable instrument' would provide access to the funds needed by Complainant to pay his bill.

Notwithstanding Complainant's failure to allege any facts to state any claim upon which relief can be granted, Complainant also failed to cite even a single statute, rule, regulation, or tariff that the Commission could enforce. Simply put, Complainant has stated no claim, in fact or in law, that could be granted by the Commission. Accordingly, the Complaint must be dismissed on that basis.

WHEREFORE, Ameren Missouri respectfully requests that the Commission enter an order dismissing the Complaint in this matter for failure to state a claim on which relief can be granted.

/s/ *Carla Fields Johnson*

Carla Fields Johnson, #47149
Fields & Brown, LLC
300 East 39th Street, Suite 1P
Kansas City, Missouri 64111
(816) 474-1700 (phone)
(816) 421-6239 (facsimile)
cfields@fieldsandbrown.com

Wendy K. Tatro, #60261
Director and Assistant General Counsel
Jennifer L. Hernandez, #59814
Corporate Counsel
Ameren Missouri
1901 Chouteau Avenue, MC 1310
P.O. Box 66149

St. Louis, MO 63103
(314) 554-3533 (phone)
(314) 554-4014 (facsimile)
amerenmoservice@ameren.com

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

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing was served on the parties on the certified service list via electronic mail (e-mail) on this 26th day of January, 2024.

/s/ *Carla Fields Johnson*