

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

Jimmie E. Small,)	
Complainant,)	
)	
vs.)	Case No: EC-2015-0058
)	
Union Electric Company, d/b/a)	
Ameren Missouri,)	
Respondent.)	

ANSWER AND MOTION TO DISMISS

COMES NOW, Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), and for its Answer and Motion to Dismiss filed in this proceeding states as follows:

Answer

1. On August 29, 2014, Mr. Jimmie E. Small (Complainant), with a mailing address of 606 W. Highway 2, Milton, Iowa, 52570 (“Complainant”), initiated this proceeding against Company (the “Complaint”).

2. Any allegation not specifically admitted herein by the Company should be considered denied.

3. In lieu of completing the Commission’s Complaint form, Complainant has filed a one-page handwritten document. The portion of the document below the text, “To: Missouri Public Service Commission, Jefferson City, Missouri” appears to contain the substance of the Complaint. For its answer, Ameren Missouri will set forth that portion of the Complaint verbatim, followed by the Company’s answer thereto.

4. Complainant alleges, “Complaint/Appeal Disagreement Based on Retaliation owing to prior filed complaints against Ameren Missouri before the Mo. Public Service Commission and continuing as a wrongful policy, practice and custom in violation of Missouri state and Federal statute and Constitutional due process and equal protection standards. See U.S. Const. Amend. 14 Hernandez v. Texas 347 U. S. 475.” In answer thereto, Ameren Missouri

denies that it is retaliating against Complainant for anything and denies that it has engaged in any policy, practice or custom that violates Missouri or Federal law.

5. Complainant alleges, "Date of last adverse Am. Mo. Act was recorded on 10:30 a.m. August 29, 2014 and continuing unresolved! Cp Small is a disabled Iowa resident veteran entering into Missouri on August 29, 2014, requesting reconnection service at Lot #23, 2306 Potter Tr., Kville, MO." In answer thereto, the Company admits that on said date, Complainant visited the Company's Kirksville District Office and requested electric utility service to Lot #23. The Company is without information sufficient to form a belief about the remainder of said allegations and therefore denies the same.

6. In further answer, the Company states that during Complainant's visit to the Kirksville office, a Company representative advised Complainant he should call the Company's 800 number to request that service be restored. Complainant refused to do so. The Company representative advised that she would have a Company representative call Complainant about his request.

7. In further answer, the Company states that on August 29, 2014, a Company construction supervisor called Complainant and attempted to discuss with Complainant what Complainant needed to do before electric service could be established, but had to terminate the call when Complainant made remarks that the supervisor considered inflammatory. Among other information, the construction supervisor advised Complainant that the City of Kirksville would need to inspect the wiring at the address before the Company could proceed to establish service.

8. In further answer, the Company states that on the morning of September 2, 2014, a Company representative called Complainant and left a voicemail message asking him to return the call, to discuss what would be required before the Company could set the electric meter at Lot #23 and establish electric utility service. Complainant did not return the call.

9. In further answer, the Company states that on September 8, 2014, a Company representative mailed Complainant a letter by overnight carrier, addressed to the Milton Iowa address and to the Lot #23 address. The letter explained again the requirements that would need to be met before service at Lot #23 could be established. A copy of the letter is attached hereto as Exhibit A. Among other issues, the letter advised that Complainant would not need to have the City of Kirksville do an inspection, after all, since the residence was not in Kirksville city

limits. The letter also advised that Complainant would need to pay 80% of his past due bill in order to have service established. The Company has not received a response to the letter.

10. In further answer, the Company's states that, per its Electric Service Tariffs, General Rules and Regulations, I. General Provisions, C. Application for Service, Sheet 101, "the Company shall not be required to commence supplying service to a customer...if at the time of application such customer...is indebted to the Company for the same class of service previously supplied at such premises or any other premises until payment of, or satisfactory payment arrangements for, such indebtedness shall have been made." This tariff is consistent with 4 CSR 240-13.055, which provides that a utility may refuse to commence service to an applicant for failure to pay a delinquent utility charge for services provided by that utility.

Motion to Dismiss

11. The Complaint should be dismissed because Complainant has failed to allege a violation of any particular tariff, statute, rule, order or decision within the Commission's jurisdiction, which alleged violations, per 4 CSR 240-2.070(1) and (2) are the bases upon which a formal or informal complaint may be filed with the Commission. In addition, the Complaint fails to set forth any requested relief, as required per 4 CSR 240.2-070(4)(E).

12. To the extent Complaint is asking the Commission to find that the Company has violated Complainant's due process and equal protection rights guaranteed by the Fourteenth Amendment, his Complaint should be dismissed for lack of jurisdiction and failure to state a claim. When a Constitutional issue is raised, the Commission has acknowledged that at most, it may hear evidence and develop a factual record with respect to such a claim, for a court to decide later, but it has no jurisdiction over Constitutional claims. *See, e.g., Staff of the P.S.C. v. Suburban Water and Sewer Co., Inc.*, 2008 Mo. PSC Lexis 694 (July 1, 2008)(where respondent attacked PSC statutes on Constitutional grounds, he presented the Commission with an issue it lacked the authority to decide, since as an administrative agency it lacked the jurisdiction to determine the Constitutionality of a statutory enactments). *See also, Fayne v. Dept. of Social Services*, 802 S.W.2d 565 (Mo. App. W.D. 1991)(administrative agency lacked the authority to decide whether plaintiff's due process and equal protection rights had been violated). In this case, it makes no sense for the Commission to even go that far, since a claim against the Company for violation of due process or equal protection rights is no claim at all. "Private

action, no matter how egregious, cannot violate federal equal protection or due process guarantees." *Medical Institute of Minnesota v. National Ass'n of Trade and Tech. Schools*, 817 F.2d 1310, 1312 (8th Cir. 1987). The Company is a private corporation, not a state actor. "[T]he Fourteenth Amendment [is] not aimed at private action; rather, [it is] aimed to protect such deprivations which occur "under the color of state law" or "state action." *France v. Hunter*, 368 S.W.3d 279, 287 (Mo. Ct. App. 2012) (action against private actor, a doctor, was dismissed, because it was not enough to show that as a private actor he deprived someone of constitutional rights).

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

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WHEREFORE, Ameren Missouri respectfully requests that the Complaint be dismissed, or in the alternative, that the matter be set for hearing.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer and Motion to Dismiss was served on the following parties via electronic mail (e-mail) or via certified and regular mail on this 2 day of October, 2014.

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