

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

Brett Felber,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>File No. EC-2024-0217</u></b>
	)	
Union Electric Company d/b/a Ameren Missouri,	)	
	)	
Respondent.	)	

**MOTION TO DISMISS AMENDED COMPLAINT**

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri"), by and through the undersigned counsel, and for its *Motion to Dismiss Amended Complaint* respectfully states to the Missouri Public Service Commission ("Commission") as follows:

1. On March 9, 2024,<sup>1</sup> Complainant filed an *Amended Complaint*.
2. After the Complainant voluntarily dismissed this matter on March 19 and then filed to reopen the matter on March 25, the Commission allowed responses to reopening the Complaint. Ameren Missouri filed a response on April 4 requesting the Commission reestablish the time for filing a response to the *Amended Complaint* if the case was reopened. The Commission issued its *Order Granting Motion For Extension Of Time To File An Answer* on April 8, allowing Ameren Missouri until April 22, to file a response.
3. The allegations contained in the *Amended Complaint* are based on issues litigated in the Complainant's prior complaint matter, File No. EC-2023-0395, and should be dismissed.
4. Generally, *res judicata* is the principle that a cause of action may not be relitigated once it has been judged on the merits.

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<sup>1</sup> All dates herein refer to calendar year 2024, unless otherwise stated.

5. In *Chesterfield Village, Inc. v. City of Chesterfield*, 64 S.W.3d 315 (Mo. 2002), the

Court discussed the doctrine of *res judicata*:

. . . The common-law doctrine of *res judicata* precludes relitigation of a claim formerly made. *King General Contractors, Inc. v. Reorganized Church of Jesus Christ of Latter Day Saints*, 821 S.W.2d 495 (Mo. banc 1991), and *Norval v. Whitesell*, 605 S.W.2d 789, 790 (Mo. banc 1980).

The key question is what is the “thing”—the claim or cause of action—that has previously been litigated? A claim is “[t]he aggregate of operative facts giving rise to a right enforceable by a court.” The definition of a cause of action is nearly the same: “a group of operative facts giving rise to one or more bases for suing.” Whether referring to the traditional phrase “cause of action” or the modern terms “claim” and “claim for relief” used in pleading rules such as Rule 55.05, the definition centers on “facts” that form or could form the basis of the previous adjudication.

. . . The doctrine precludes not only those issues on which the court in the former case was required to pronounce judgment, “but to every point properly belonging to the subject matter of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.” *King General Contractors, Inc.*, 821 S.W.2d at 501.

*Id.* at 318; Footnotes omitted.

6. "Claim preclusion 'prevents reassertion of the same claim even though additional or different evidence or legal theories might be advanced to support it.'" *Id.* at 320; internal citations omitted.

7. The Commission issued its *Report and Order* in EC-2023-0395 on November 29, 2023. The Report and Order made findings of fact and conclusions of law regarding the claims asserted in the *Amended Complaint*. The Complainant did not properly appeal the *Report and Order* and it became final.

8. The Complainant's attempt to relitigate issues from EC-2023-0395 in this matter is improper and barred by *res judicata*. Therefore, the Commission should dismiss the *Amended Complaint*.

WHEREFORE, Ameren Missouri requests the Commission dismiss the *Amended Complaint*.

Respectfully submitted,

**/s/Jennifer L. Hernandez**

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**ATTORNEY FOR UNION ELECTRIC  
COMPANY d/b/a AMEREN MISSOURI**

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been emailed to the parties of record on this 22<sup>nd</sup> day of April 2024.

**/s/Jennifer L. Hernandez**

Jennifer L. Hernandez