

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

Missouri Coalition for Fair Competition)	
)	
and)	
)	File No. EC-2023-0037
Corey Malone,)	
)	
Complainants,)	
v.)	
)	
Union Electric Company d/b/a Ameren Missouri,)	
)	
Respondent.)	

**MOTION TO STRIKE THE DIRECT TESTIMONY OF COREY MALONE, MICHAEL
KEEVEN AND DAVE SIR IN ITS ENTIRETY OR AN ALTERNATIVE MOTION TO
STRIKE PORTIONS OF THE TESTIMONY OF COREY MALONE, MICHAEL
KEEVEN AND DAVE SIR, AND MOTION FOR EXPEDITED TREATMENT**

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Company” or “Ameren Missouri”) and hereby moves for an order from the Commission striking in its entirety, the testimony of Corey Malone, Michael Keeven and Dave Sir or alternatively, moves for an order striking portions of the testimony of Corey Malone, Michael Keeven and Dave Sir and an order for Complainants to refile the testimony of all three witnesses in accordance with Commission Rule 20 CSR 4240-2.130(6), and further the Company moves for expedited treatment of its motion. In support thereof, the Company states as follows:

MOTION TO STRIKE

Motion to Strike Testimony in its Entirety

1. Commission Rule 20 CSR 4240-2.130(6) outlines the format for prepared testimony. The portions of the rule pertinent to the Company’s motion outline the following formatting requirements.

(6)(B) It shall be double-spaced and have pages numbered consecutively at the bottom right-hand corner or bottom center beginning with the first page as page 1.

(6)(E) Schedules shall bear the word “schedule,” and the number of the schedule shall be typed in the lower right-hand margin of the first page of the schedule.

(6)(F) All prepared testimony and other exhibits and schedules shall contain the following information in the following format on the upper right-hand corner of a cover sheet:

Exhibit No.: (To be marked by the hearing reporter)
Issue: (If known at the time of filing)
Witness: (Full name of witness)
Type of Exhibit: (Specify whether direct, rebuttal, or other type of exhibit)
Sponsoring Party:
Case No.:
Date Testimony Prepared:

(6)(G) It shall be filed on line-numbered pages. (This requirement is also specifically ordered in the Commission’s *Order Setting Procedural Schedule* dated February 16, 2024).

2. Additionally, none of the exhibits filed with Corey Malone’s testimony comply with 20 CSR 4240-2.130(6)(E) and should be stricken.

3. The testimony submitted for witnesses Corey Malone, Michael Keeven and Dave Sir does not comply with the above sections of 20 CSR 4240-2.130(6) or 20 CSR 4240-2.130(8) and therefore should be stricken in its entirety or in the alternative Complainants should be ordered to refile the testimony in compliance with rule 20 CSR 4240-2.130(6).

Motion to Strike Certain Portions of Testimony

4. If the Commission does not strike in its entirety, the testimony of Corey Malone, Michael Keeven, and Dave Sir, certain portions of their direct testimony should be stricken because the testimony does not meet the requirements of 20 CSR 4240-2.130 and Section 536.070 RSMo. The testimony contains impermissible hearsay, is irrelevant and does not present the best evidence in this proceeding and therefore should be stricken.

Witnesses Corey Malone's Direct Testimony

5. On page 2 of Mr. Malone's testimony, paragraph 7 references 1999 Commission decision in *MCFFC v. Ameren UE*, 8 Mo. PSC 3r 234 (1999). This matter has no relevance to the instant case and witness Malone is attempting to provide a legal conclusion for which he is not qualified to provide. This paragraph should be stricken.

6. On page 2 of Malone's testimony, paragraph 8 Mr. Malone testifies that he was first told that the Company was engaging in the conduct alleged in paragraphs 7, 8, 9, 10 and 11 of the Complaint in 2019. This testimony is impermissible hearsay in that Mr. Malone offered the alleged statement of an alleged unidentified person as evidence. However, the alleged unidentified person is not a party to this proceeding and the Company does not have the opportunity to cross examine this individual. This paragraph should be stricken.

7. On page 3 of Malone's testimony, paragraphs 9 and 10, Mr. Malone testifies that an unidentified staff member contacted an Ameren employee Tina Shannon. This statement lacks foundation and does not present any relevant facts. Moreover, the statement constitutes impermissible hearsay. In paragraph 10, Mr. Malone states that Ms. Shannon suggested that MCFFC members could apply to participate in the program through the Ameren website. Mr. Malone, however, does not establish who made this contact or provide any other context regarding the communication. This testimony also is impermissible hearsay in that Mr. Malone offered the alleged statement as evidence. These paragraphs should be stricken.

8. On page 3 of Malone's testimony, paragraph 11, Mr. Malone testifies that MCFFC member called Ameren employee Tina Shannon who "promised to look into the situation and respond." This testimony is impermissible hearsay upon hearsay in that Mr. Malone offered the alleged out of court statements of two individuals as evidence. This paragraph should be stricken.

9. On page 3 of Malone's testimony, paragraph 12, Mr. Malone testifies that he received an email from an individual who allegedly identified herself as Nicole Sage, the "Ameren Missouri Community Savers Program Manager." The statement is impermissible hearsay in that Mr. Malone offers the out of court statement as evidence. Additionally, Exhibit 1 is impermissible hearsay in that Mr. Malone offers the Exhibit as evidence. Moreover, the submission lacks proper foundation and is not relevant. This paragraph and Exhibit 1 should be stricken.

10. On page 3 of Malone's testimony, paragraph 13, Mr. Malone testifies that he received another email from Nicole Sage. The statement is impermissible hearsay in that Mr. Malone offers the out of court statement as evidence. Additionally, Exhibit 2 is impermissible hearsay in that Mr. Malone offers the Exhibit as evidence. Additionally, the submission lacks proper foundation and is not relevant. This paragraph and Exhibit 3 should be stricken.

11. On page 3 of Malone's testimony, paragraph 14, Mr. Malone testifies that MCFFC member called Ameren employee Tina Shannon who "advised that the references to Anton's Air Conditioning and Heating had been removed from the website and that Ameren would like to meet with MCFFC members and discuss developing a program together." This testimony is impermissible hearsay upon hearsay in that Mr. Malone offered the alleged statements of two individuals as evidence. This paragraph should be stricken.

12. On page 3 of Malone's testimony, paragraph 15, Mr. Malone testifies that he received an email with an attached estimate for HVAC services captioned "Ameren Missouri Pay As You Save Plan." The testimony and Exhibit 4 are impermissible hearsay in that Mr. Malone offers the statement and Exhibit 4 as evidence and also attempts to do so without a proper foundation. Moreover, Exhibit 4 does not include the referenced email, contains confidential information in violation of 20 CSR 4240-2.135(2)(A)(1), and is not properly formatted pursuant

to 20 CSR 4240-2.130(6)(E). This paragraph and Exhibit 4 should be stricken. In the alternative, the Commission should direct the Petitioners to refile the exhibit under a confidential designation.

13. On page 4 of Malone's testimony, paragraph 16, Mr. Malone again testifies regarding the content of Exhibit 4. Exhibit 4 is impermissible hearsay in that Mr. Malone offers the Exhibit in which he has no direct knowledge of its contents as evidence. Additionally, the submission lacks proper foundation and is not relevant. The Exhibit does not include the referenced email, contains confidential information in violation of 20 CSR 4240-2.135(2)(A)(1) and is not properly formatted pursuant to 20 CSR 4240-2.130(6)(E). Accordingly, paragraph 16 and Exhibit 4 should be stricken.

14. On page 5 of Malone's testimony, paragraph 20, Mr. Malone testifies regarding a conversation with Johnnie LaCaze regarding a meeting and further follow up telephone calls and a link sent to him. This testimony is impermissible hearsay upon hearsay in that Mr. Malone offered the alleged statements of two individuals as evidence. This paragraph should be stricken.

Witnesses Michael Keeven's Direct Testimony

15. On page 2 of Keeven's testimony, paragraph 7 references 1999 Commission decision in *MCFFC v. Ameren UE*, 8 Mo. PSC 3r 234 (1999). This matter has no relevance to the instant case and witness Keeven is attempting to provide a legal conclusion for which he is not qualified to provide. This paragraph should be stricken.

16. On page 3 of Keeven's testimony, in paragraph 9, Mr. Keeven testifies that he had a customer ask about Ameren Missouri's Pay As You Save program. Specifically, Mr. Keeven testified that "I later had a customer ask about it, but when he found out that I was not a participant that ended the matter and I provided services and equipment to him." This testimony is impermissible hearsay in that Mr. Keeven offered the alleged statement of an unidentified person

as evidence. However, the customer is not a party to this proceeding and the Company does not have the opportunity to cross examine this customer. According to Mr. Keeven, Allen Eaker sent an estimate for HVAC services that Mr. Keeven submitted as Exhibit 4. He testified that “Mr. Eaker was unhappy because he lost the sales as he was not invited to participate in the program.” This testimony is also impermissible hearsay in that Mr. Keeven offered the alleged statement of Mr. Eaker as evidence. However, Mr. Eaker is not a party to these proceedings and the Company does not have the opportunity to cross examine Mr. Eaker. Additionally, there is no Exhibit 4 submitted with Mr. Keeven’s testimony. There is an Exhibit 4 submitted with witness Corey Malone’s testimony and Exhibit 4 is impermissible hearsay in that Mr. Malone offers the Exhibit as evidence. Moreover, the submission lacks proper foundation and is not relevant and the Exhibit does not include the referenced email, contains confidential information in violation of 20 CSR 4240-2.135(2)(A)(1) and is not properly formatted pursuant to 20 CSR 4240-2.130(6)(E). This paragraph and Exhibit 4 should be stricken. For the above reasons, all testimony in paragraph 9 should be stricken.

17. For the foregoing reasons, the Commission should strike paragraphs 7 and 9 of witness Keeven’s direct testimony. The testimony in paragraph 7 is irrelevant and the testimony in paragraph 9 contains impermissible hearsay.

Witnesses Dave Sir’s Direct Testimony

18. On page 2 of Sir’s testimony, paragraph 7 references 1999 Commission decision in *MCFFC v. Ameren UE*, 8 Mo. PSC 3r 234 (1999). This matter has no relevance to the instant case and witness Sir is attempting to provide a legal conclusion for which he is not qualified to provide. This paragraph should be stricken.

19. On page 3 of Sir's testimony, in paragraph 14, Mr. Sir testifies that a contact at the Company told him that he (the Company contact) did not administer the Pay As You Save program and the Company contact thought the program was administered unfairly. Specifically, Mr. Sir testified that "my primary contact with Ameren Missouri's various rebate programs, through their third party administrators, told me when I inquired about participation in the Pay As You Sav program, that he did not administer it and that he thought the program was administered unfairly." This testimony is impermissible hearsay in that Mr. Sir offered the alleged statement of an alleged unidentified Company employee as evidence. Because Mr. Sir did not provide the name of the alleged Company contact, the Company is unable to confirm the truth of the statement.

20. For the foregoing reasons, the Commission should strike paragraphs 7 and 14 of witness Sir's direct testimony. The testimony in paragraph 7 is irrelevant and the testimony in paragraph 14 contains impermissible hearsay.

Summary

21. The testimony submitted for witnesses Corey Malone, Michael Keeven and Dave Sir does not comply with of 20 CSR 4240-2.130(6) and therefore the Company respectfully requests that the testimony should be stricken in its entirety or in the alternative Complainants should be ordered to refile the testimony in compliance with rule 20 CSR 4240-2.130(6). If the Commission does not strike in its entirety, the testimony of Corey Malone, Michael Keeven, and Dave Sir, certain portions of their direct testimony should be stricken because the testimony does not meet the requirements of 20 CSR 4240-2.130 and Section 536.070 RSMo. The testimony contains impermissible hearsay, is irrelevant, and does not present the best evidence in this proceeding and therefore should be stricken.

MOTION FOR EXPEDITED TREATMENT

22. The Commission should act on the motions made herein by May 30, 2024, insofar as the rebuttal testimony in this case is due May 31, and depending on the Commission’s rulings, the Company may need to modify its rebuttal testimony within a very short timeframe (just one business day thereafter).

23. The harm that will be avoided includes the impact on the Company’s ability to complete rebuttal and surrebuttal testimony and compile an issues list, witness schedule, and position statements for the case, to complete discovery, and to properly prepare for hearing.

24. These motions are being filed as soon as possible after reviewing all the direct testimony, which was as soon as this pleading could reasonably have been prepared.

WHEREFORE, the Company prays that the Commission make and enter its order granting the Company’s motion to strike the above-cited direct testimony in its entirety or in the alternative portions of the direct testimony of Corey Malone, Michael Keeven and Dave Sir, and for such other and further relief as is just and proper under the circumstances.

Dated: May 20, 2024

Respectfully submitted,

/s/ Carla Fields Johnson

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CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been e-mailed to the attorneys of record for all parties to this case as specified on the certified service list for this case in EFIS, on this 20th day of May, 2024.

/s/ Carla Fields Johnson
Carla Fields Johnson