

Exhibit No:
Issue: Violation of Fair Competition Law
Witness: Corey Malone
Type of Exhibit: Direct Testimony
Sponsoring Party: MCFFC and Malone
Case No: EC-2023-0037
Date Testimony Prepared: May 26, 2024

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO: EC-2023-0037

DIRECT TESTIMONY

OF

COREY MALONE

ON BEHALF OF THE

MISSOURI COALITION FOR FAIR COMPETITION

AND COREY MALONE.

Jefferson City, Missouri

July 2024

1 **DIRECT TESTIMONY**

2 **OF**

3 **COREY MALONE**

4 **Case No: EC-2023-0037**

5 Q: Please tell the Commission your name.

6 A: Corey Malone.

7 Q: And what is your occupation?

8 A: I am the owner and operator of Air Comfort Service, Inc., a Missouri corporation in
9 good standing. The company sells and services heating, ventilation, and air conditioning
10 equipment in the St. Louis metropolitan area.

11 Q: How did you become the owner/operator?

12 A: The company was founded in 1969 by my father-in-law, Gary "Doc" Jones. Upon his
13 retirement I became the president of the company.

14 Q: Could you tell the Commissioners about the company?

15 A: The company has two locations and currently employs seventy individuals, all of
16 whom are citizens and residents of the St. Louis metropolitan area. The company owns
17 fifty vehicles for use in its operations. The company pays property taxes on its buildings
18 and vehicles, pays and collects sales taxes as required by law, and pays employee and
19 income taxes to the state and federal governments.

20 Q: What is your involvement with the Missouri Coalition for Fair Competition
21 (MCFFC)?

22 A: I have been the president of the MCFFC for 15 years.

1 Q: What is the MCFFC?

2 A: It is a political action committee that represents the concerns of its members who are
3 individuals and businesses in the heating, ventilation, and air conditioning (HVAC)
4 industry.

5 Q: Are you familiar with the “Fair Competition Law,” at §§ 386.754-.764 RSMo?

6 A: Yes. The MCFFC was instrumental in the passage of the “Fair Competition Law” in
7 1998, and its 2003 amendments, codified at §§ 386.754-.764 RSMo. The Fair
8 Competition Law states that a utility may not engage in HVAC services, using subsidized
9 dollars to compete with small businesses.

10 Q: Have you previously been involved in actions like this before?

11 A: Yes. This is not the first conflict between the parties. In 1999 the MCFFC filed a
12 complaint against respondent, then known as Ameren UE, for violating what was then
13 known as the HVAC Act, after it engaged in advertising for an appliance repair plan.
14 Pursuant to the parties’ agreement, the PSC determined that respondent had violated the
15 law and that it would stop and not repeat the offending conduct. MCFFC v Ameren US,
16 8 Mo. P.S.C.3d 234 (1999) (available at:
17 <https://psc.mo.gov/CMSInternetData/ON/Reports/PSC%20Reports%20Vol%2008%20M>
18 [PSC%203d%20Dec%201,%201998%20-%20Jan%2031,%202000.pdf](https://psc.mo.gov/CMSInternetData/ON/Reports/PSC%20Reports%20Vol%2008%20M)). And there have
19 been other actions over the years against other utilities.

20 Q: When did you learn of the facts that led to the present complaint.

21 A: I was first told that Ameren, Missouri, was engaging in the conduct alleged in ¶¶ 7, 8,
22 9, 10 and 11 of the Complaint of this case in 2019.

1 Q: What action did you take?

2 A: At my request, on November 21, 2019, MCFFC staff called Ameren employee Tina
3 Shannon.

4 Q: What was the MCFFC told?

5 A: On November 27, 2019, Ms. Shannon suggested that MCFFC members could apply to
6 participate in the program at [https://www.ameren.com/company/business-](https://www.ameren.com/company/business-partners/suppliers)
7 [partners/suppliers](https://www.ameren.com/company/business-partners/suppliers).

8 Q: Did that solve the problem?

9 A: No.

10 Q: What did you do?

11 A: On December 2, 2019, MCFFC staff again called Ameren employee Tina Shannon.
12 Ms. Shannon promised to look into the situation and respond.

13 Q: Did that produce a response?

14 A: On December 11, 2019, I received the following e-mail, from an individual who
15 identified herself as Nicole Sage, “the Ameren Missouri Community Savers Program
16 Manager.” She promised that she had my information and would include his company in
17 the contractor procurement process in the future.

18 Q: Is Exhibit 1 a copy of that e-mail?

19 A: Yes.

20 Q: Did you have additional correspondence with Ms. Sage?

21 A: Yes. On December 12, 2019, I requested additional information regarding the
22 program. Ms. Sage replied that all public information was on their web site.

1 Q: Is exhibit 2 a copy of her reply?

2 A: Yes.

3 Q: Did you visit the website?

4 A: Yes.

5 Q: What did you see?

6 A: Notably, that web site identified a single contractor: Anton's Air Conditioning and
7 Heating.

8 Q: Is Exhibit 3 a printed copy of what you saw?

9 A: Yes.

10 Q: What other contact did you have with Ameren related to this issue?

11 A: On March 3, 2020, MCFFC staff again called Ms. Shannon of Ameren. She advised
12 that the references to Anton's Air Conditioning and Heating had been removed from the
13 web site, and that Ameren would like to meet with MCFFC members and discuss
14 developing a program together.

15 Q: Did that conclude the matter?

16 A: No. In 2022, I received an e-mail from a member of the MCFFC, Allen Eaker, who
17 owns and operates a company that competes with mine, Lakebrink Heating and Air
18 Conditioning, which has as an attachment an estimate for HVAC services captioned,
19 "Ameren Missouri Pay As You Save Plan."

20 Q: Is Exhibit 4 that estimate?

21 A: Yes.

22 Q: What is notable about the estimate?

1 A: The estimate, which is on Ameren Missouri letterhead, states that the quote is
2 provided by Anton's Air Conditioning and Heating, another small business in the St.
3 Louis metropolitan area that provides HVAC services. At the time Anton's was owned
4 and operated by Craig Denton, with whom I am personally acquainted.

5 Q: What did you do in response?

6 A: I investigated the circumstances by visiting Ameren Missouri's website where I found
7 a page that posed the question, "How can I identify the Ameren Missouri energy
8 advisor?" The answer was, "Your home energy advisor will be wearing an Ameren
9 Missouri shirt and an Ameren Missouri picture ID badge. They will be driving an
10 Anton's branded truck. Anton's Air Conditioning and Heating is a program approved
11 contractor."

12 Q: Is Exhibit 5 a copy of what you found?

13 A: Yes.

14 Q: Is Anton's still a local business?

15 A: During the pendency of this proceeding, I discovered that Anton's Air Conditioning
16 and Heating became the property of Anton's Acquisition Company, LLC, a Delaware
17 Corporation whose principal office is in Dallas, Texas.

18 Q: Is Exhibit 6 a copy of the Fictitious Name Registration Statement?

19 Q: Was your company ever invited to participate in the program?

20 A: No.

21 Q. Since filing the complaint in this case, have you heard from Ameren about the
22 program?

1 A: Yes. I received information that Ameren Missouri was hosting an open invitation
2 meeting regarding the Pay As You Save program on September 21, 2023.

3 Q: Did you attend?

4 A: Yes.

5 Q: What did you learn?

6 A: During the meeting, at Ameren's St. Louis headquarters, conducted by a third party,
7 EEtility, its Chief Executive Officer, Tammy Agard, told me and the other attendees that
8 if we referred a customer to their program preferred providers would perform the work.

9 Q: Were you told that the meeting was being recorded?

10 A: Yes.

11 Q: Did you ask for a copy of the recording?

12 A: Yes. During the meeting, EEtility's Chief Building Science Officer, Johnnie LaCaze,
13 told me that he would provide me with a copy of the recording of the meeting. During
14 follow-up phone calls, LaCaze variously told me that the recording could not be released
15 because it violated Ameren Missouri's security policies, but eventually agreed to send me
16 a link to the recording. The link was restricted so that I could not save it and expired
17 after 30 days. The recording on the link did not include Agard's statement about
18 preferred providers.

19 Q: Was the meeting productive?

20 A: Subsequent to the meeting the Pay as You Save web site added four contractors to its
21 list of contractors: Energy Stars, Superior Heating and Cooling, HB Mechanical

1 Contractor LLC, and Vitt Heating and Air. I do not know how these “approved”
2 contractors were selected.

3 Q: Did you save that?

4 A: Exhibit 7 is photograph of the list as of December 29, 2023.

5 Q: Did you undertake any further investigation of the facts of this case?

6 A: During the pendency of this proceeding, I visited the Anton’s Heating and Air
7 Conditioning website on November 27, 2023, and found photographs of Anton’s Heating
8 and Air Conditioning’s building, vehicles and staff including at least three individuals
9 wearing what are clearly Ameren Missouri shirts.

10 Q: Are those photographs marked Exhibits 8A and 8B?

11 A: Yes.

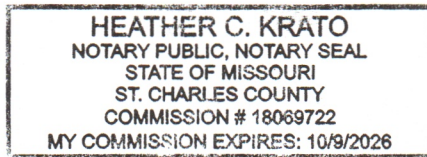
12 Q: Does this conclude your direct testimony?

13 A: Yes.

On this 26 day of May, 2024, before me, the undersigned notary, personally appeared Corey Malone, proved to me through identification documents, which were Drivers License, and signed this document in my presence and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.

Heather C. Krato
Notary Public

(seal)



Malone Affidavit Exhibit 1

Good Afternoon Corey,

Nicole Sage, the Ameren Missouri CommunitySavers Program Manger here. I work with Resource Innovations, the company contracted to perform the implementation of the CommunitySavers Program. I received your information as a contractor that is interest in performing work for the program. I wanted to let you know I have your information and will be sure to include Air Comfort Service in the contractor procurement process should we go out to bid in 2020 or thereafter.

Kind Regards,

NICOLE SAGE

Senior Program Manager

618.225.1049 cell

www.resource-innovations.com



Malone Affidavit Exhibit 2

Corey,

Thank you for the response. Below is a link the program website, which it the publicly available information we have available at this time.

<https://www.amerenmissourisavings.com/communitysavers>

Again, we have your information and should we go out to bid in 2020 or thereafter we'll be sure to give you a call directly.

Thank you so very much for your interest!

NICOLE SAGE
618.225.1049 cell

Malone Affidavit Exhibit 3

7/7/22, 9:35 PM

Heating and Cooling

Frequently Asked Questions

What types of HVAC technologies qualify for rebates?

How much are the rebates?

Do I need to be an Ameren Missouri customer to receive the rebate?

Do I need to use a participating contractor?

Yes. All services performed must be done by a participating contractor to qualify for a rebate.

I need help finding a participating contractor. Can you help?

My preferred contractor isn't a participating contractor. What should I do?

Do I have to submit the rebate application, or will my contractor handle the paper

How long after my contractor submits my application will I receive my rebate?

What are the eligibility criteria for this program?

Do I need to replace my furnace or motor to receive a rebate?

I rent my home and want to take advantage of these great rebates. Am I eligible?

I am a landlord and want to take advantage of these great rebates for one of my tenants. Am I eligible?

<https://www.amerenmissourisavings.com/hvac>

15/17

Malone Affidavit Exhibit 4

(attached)

Ameren Missouri Pay As You Save[®] Program

Easy Plan

Overview

This page of your report shows current conditions observed during your home energy assessment visit on February 16, 2022 by Matthew Ransom.

David Kuelker
4033 HIGHWAY A
Union, MO 63084
dkuelker@att.net
359621901
Built in 1960
960 Sq Ft
One Story
With Crawl
2 Occupants



1. Annual Energy Cost

Ameren (Electric)	\$ 1,675.93
All Electric (Fuel)	N/A
	<hr/>
	\$ 1,675.93

5. Duct Leakage

1% Leakage; Rigid Duct; 50% Access to Ducts.

2. Air Leakage

The current ventilation rate for your home is 1652 cfm50 (cubic feet per minute) which is equivalent to a 0.63 square foot hole. The minimum rate for your home is 1000 CFM.

6. Heating and Cooling

Electric Furnace, 2 Ton 10 SEER

3. Attic Insulation

The current R value of your home's attic insulation is R-17. It has been proven by the Department of Energy that R-38 is the most cost effective R value for your area's climate.

7. Lighting

You currently have 1 incandescent light bulbs, 6 CFL bulbs and 7 LED bulbs.

4. Health, Safety & Comfort

No comfort Issues, All Health and Safety Tests Passed, HVAC is Operational

8. Refrigeration

Fridge 1; Top freezer; 18 Cu. Ft.; \$52/yr
Freezer 1; Chest freezer; 8 Cu. Ft.; \$24/yr

Easy Plan was created on February 24, 2022 and is valid 90 days from your home energy assessment visit.



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AmerenMissouriSavings.com/PAYS



AMEREN MISSOURI

Upgrades

Below is a summary table of the most cost effective energy upgrades identified for your home. Each upgrade shows the energy savings estimation that each should yield.

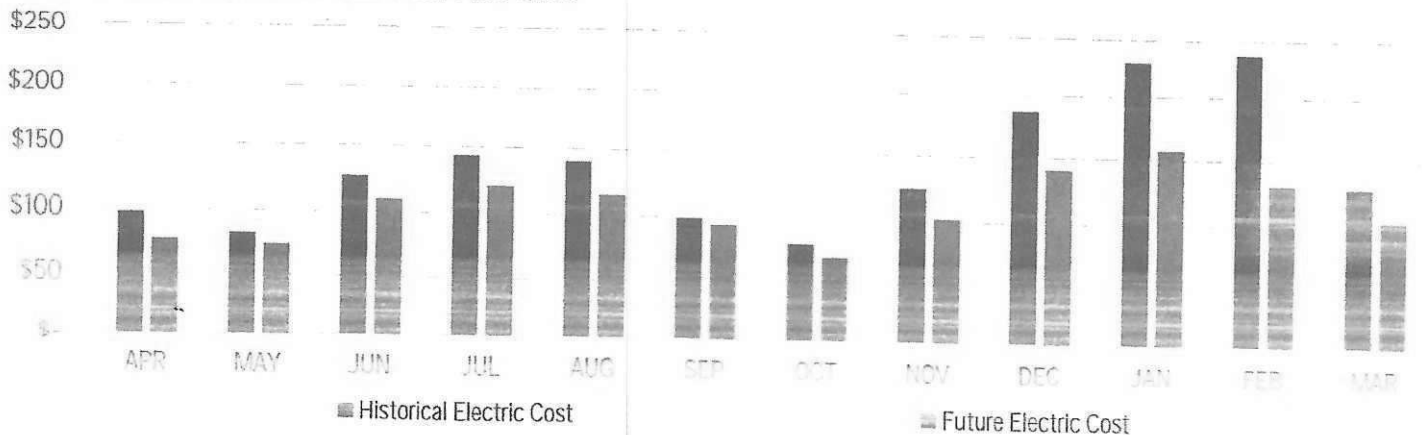
Notes: Recommend air sealing. Duct sealing is not needed at this time. Recommend attic insulation to R-38. Recommend upgrading HVAC to heat pump with smart thermostat.

Estimated Annual Energy Savings and (Initial) Cost

	Electric Savings	Fuel Savings	Payback (Years)	Upgrade Cost
Reduce ventilation rate by 20% leakage or better	\$ 18.09		16.1	*\$2,086.76
Increase 960 Sq Ft Attic Insulation to R- 38	\$ 59.42		17.9	*\$7,179.04
Includes 1 direct install LEDs and 0 retrofit LEDs	\$ 2.78			
SH: 1, Aer: 1, Smrt Strp: 1	\$ 19.32			
HVAC 1: ASHP 2 Tons, 16 SEER, 8.8 HSPF & Smart T	\$ 401.84			
*Includes contractor management, QC/QA, measurement & verification, certification, & recorded efficiency notice.				
Total Estimated Annual Electric Savings:	\$ 501.45			\$ 9,265.80

Your Goodman HVAC Quote is provided by Anton's Air Conditioning and Heating and includes a 3 year preventive maintenance agreement.

Current and Estimated Future Electric Cost



When you make energy efficient upgrades to your home you help the environment too! Here is a look at the environmental impact that can occur by having this work completed

CO ₂ Emissions (lbs)	CO ₂ Emissions (lbs)
5,871	8,387



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Schedule CM 1

Testimonial Exhibits

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PAYS Charge

This page explains what is included in the costs that go into your PAYS Charge, an estimate of future electric costs if you chose to move forward with the identified upgrades, and how much you save.

Payback Summary

Upgrade Cost	\$	9,265.80	-
Ameren Missouri Rebates	\$	(850.00)	
Copay Requirement	\$	(4,377.29)	-
Balance	\$	4,038.51	
Interest Rate		3.0%	
Total Interest Paid	\$	775.45	
Total Amount Paid Including Interest	\$	4,813.96	
Term Of Payback (Months)		144	
Estimated Bill Savings per Month	\$	41.79	
Monthly Pay As You Save Charge	\$	33.43	
Estimated Net Average Bill Savings	\$	(8.36)	
% Savings Not Used		20.00%	

Ameren Missouri Rebates

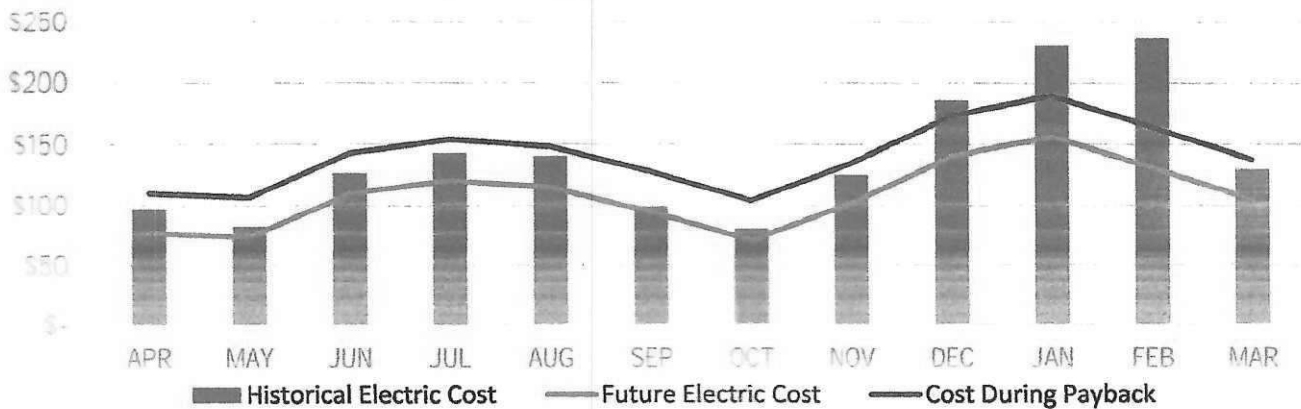
Lighting	\$	-
Heating and Cooling	\$	750.00
Smart Thermostat	\$	100.00

Estimated Energy Savings Analysis*

10 Year Energy Savings	\$	5,621.30
10 Year Cash Flow	\$	(3,569.94)

$8.36 \times 144 = 1203.84$

Estimated Electrical Costs Summary After Upgrades



We rely heavily on our heating and cooling systems, which is why our energy bills tend to be higher during the winter and summer months. For this reason, participants typically experience the majority of estimated annual energy savings during the heating and cooling seasons.

Energy Savings and Rebate Disclaimer

"While the Ameren Missouri PAYS program relies on industry best-practices and energy modeling software to estimate energy savings as accurately as possible, it is important to understand that the Easy Plan report is intended to inform participants of the ESTIMATED energy cost savings they should expect to realize—assuming all recommended work is done. The estimated savings reflected in the Easy Plan therefore are in no way a guarantee of the actual savings. Only one rebate is allowed for each qualifying upgrade. Funds for rebates are limited and available on a first-come, first-served basis. Incentive amounts are valid through December 31, 2022, but can change at any time without notice."

The estimated annual energy savings numbers reflected in the Easy Plan are based on the last 12 months energy costs for premise during which time the premise was occupied for 12 consecutive months, as well as the weather and behavior patterns for those 12 months. The Estimated Energy Savings Analysis uses an estimated average annual rate increase of 2.2% and a 10 year payback Term to provide an example of potential energy savings over the life of the Upgrade. Since future weather and behavior patterns and rate changes cannot be accurately predicted, there will be a variable difference between estimated and actual savings.



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Recycle symbol and text: Recycle 1/2021

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Testimonial Exhibits

Scope of Work

The Scope of Work outlined below provides details of the work that Program Partners will be authorized to perform in your home associated with installing the identified upgrades. Please review these details carefully. It is important to ask for clarification if you are not certain what each task means.

If, as the work is performed, the Program Partner determines that a change to the Scope of Work is needed, a change order form must be provided and signed by you and the program operator before additional work is authorized.

Air Sealing

Work Order Tasks: retrofit blower door test method, seal electrical and plumbing penetrations in attic, seal plumbing under 3 sink/s, seal behind washer and dryer, blower door direct air seal.

Duct Sealing

None

Attic Insulation

Work Order Tasks: increase 960 sq. ft. of attic insulation from R-17 to R-38, install R-sticks, install baffles.

HVAC

2 Tons 16 SEER, 8.8 HSPF

NA
NA

Smart Thermostat

Install 1 Smart Thermostat(s)

Health & Safety/Other

Installed 1 smart strip(s), 1 low flow shower head, 1 bath aerator.

New LED Lighting

- Standard NA
- Vanity Globe NA
- Recessed Can NA
- Exterior Flood NA
- Candelabra NA

The upgrades itemized on this page of my Easy Plan are the upgrades I will be authorizing to be installed at my residence if I choose to have work done through the American Missouri Pay As You Save® Program. Should I choose to execute the Easy Plan, any changes to this Scope of Work that result in higher costs must be authorized by myself and the Program Operator in writing as stated on the Change Order form.



Next Steps

Ameren Missouri Pay As You Save® Program will reduce your electric bill with efficiency upgrades that are affordable.

Energy efficiency is the most cost effective energy resource we can invest in. The Ameren Missouri Pay As You Save Program eliminates up front costs for energy efficient upgrades and reduces your Ameren Missouri bills so you are saving on your bills every year.

When you save, Ameren Missouri saves!

Here's how the Ameren Missouri Pay As You Save Program works:

- Once you sign the Ameren Missouri PAYS Participant Agreement, the energy-saving upgrades recommended on your Easy Plan will be installed in your home.
- Once the work has been completed by the Program Partner, has been remotely inspected by the Program for Quality Assurance purposes and verified by the Program to pass this inspection ("Close-out").
- The PAYS Charge is added to the Customer's monthly bill as "Pay As You Save®". This Charge is significantly less than the estimated bill savings and will appear on the bill no sooner than 45 days after Close Out.
- As a result, your electric bill goes down. You have no loan, no lien, and no debt associated with this agreement; just lower utility bills.
- As long as you maintain the upgrades per this agreement, when you leave this home, the next homeowner continues to enjoy the savings and pay the Program Service Charge until cost recovery is complete.
- After the number of payments have been paid ("Term"), the Charge will no longer appear on the monthly electric bill at this premise, unless otherwise extended per this Agreement.

NEXT STEPS

1. EEtility, the Program Operator of the Ameren Missouri Pay As You Save Program, will answer any question(s) you may have about this Easy Plan or your responsibilities if you accept this offer to invest in upgrades to your home.
2. To move forward with the upgrades discussed in this Easy Plan, simply contact EEtility's member services to let them know you accept the Ameren Pay As You Save Easy Plan offer. EEtility will send you your Ameren Missouri Pay As You Save Program Participant Agreement. Contact the Program at the phone number or email listed below, and we will work with you.
3. With a signed Ameren Missouri Pay As You Save Program Participant Agreement in hand, a certified Ameren Missouri Pay As You Save Program Provider will work with you to schedule the upgrade at a time of convenience.

To contact the Ameren Missouri Pay As You Save Program call 314.899.5084 or 800.563.2105. You may also email us at info@easysave.com

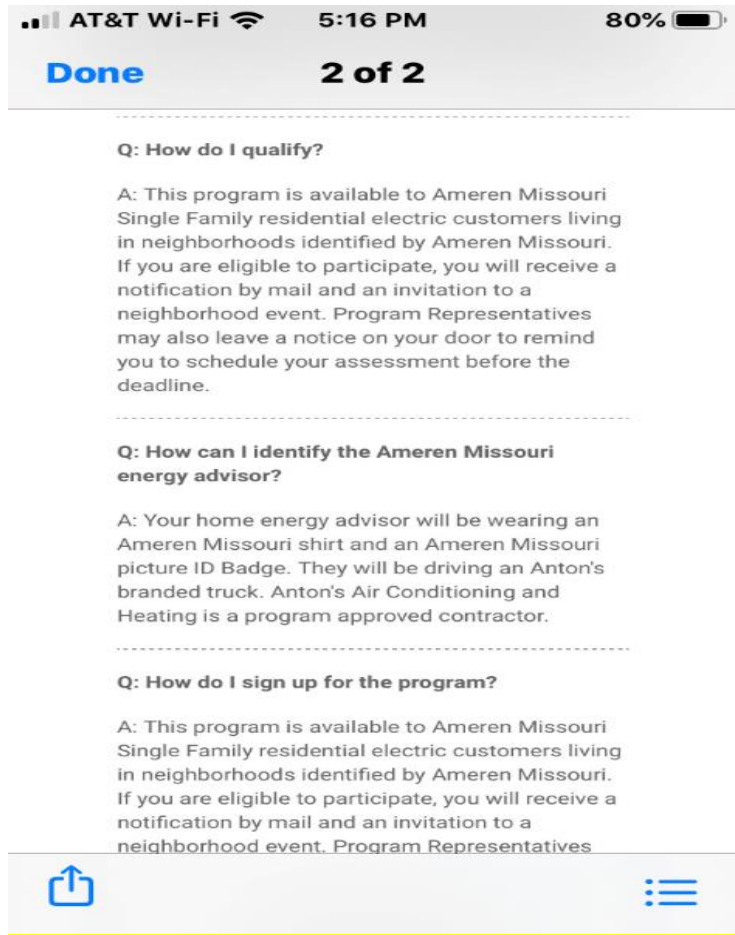
For more information please visit us on line at AmerenMissouriSavings.com/PAYS



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Ameren Missouri Savings Program PAYS

Malone Affidavit Exhibit 5



Malone Affidavit Exhibit 7

Microsoft Teams classic | Lawyer Directory | PAYS® Program | Affordable Er | Program

https://enroll.esmart-go.com/Forms/Enroll/Ameren?_ga=2.231916950.820945444.1702672241-1727997363.1702672241&_gac=1.12405446.1

News Tribune | Columbia Daily Trib... | Casenet | AHC | Statutes | Weebly | Earthquakes | Weather | Netflix

Wood
 Kerosene

Is your home currently under renovation with missing ceilings/flooring/walls/windows? *

Yes No

Preferred Home Energy Contractor

From the approved list below, select your Home Energy Contractor for weatherization measures such as attic insulation, Weather stripping and sealing gaps

Anton's Air Conditioning and Heating

[Click here for information on approved Home Energy Contractors](#)

Preferred HVAC Provider

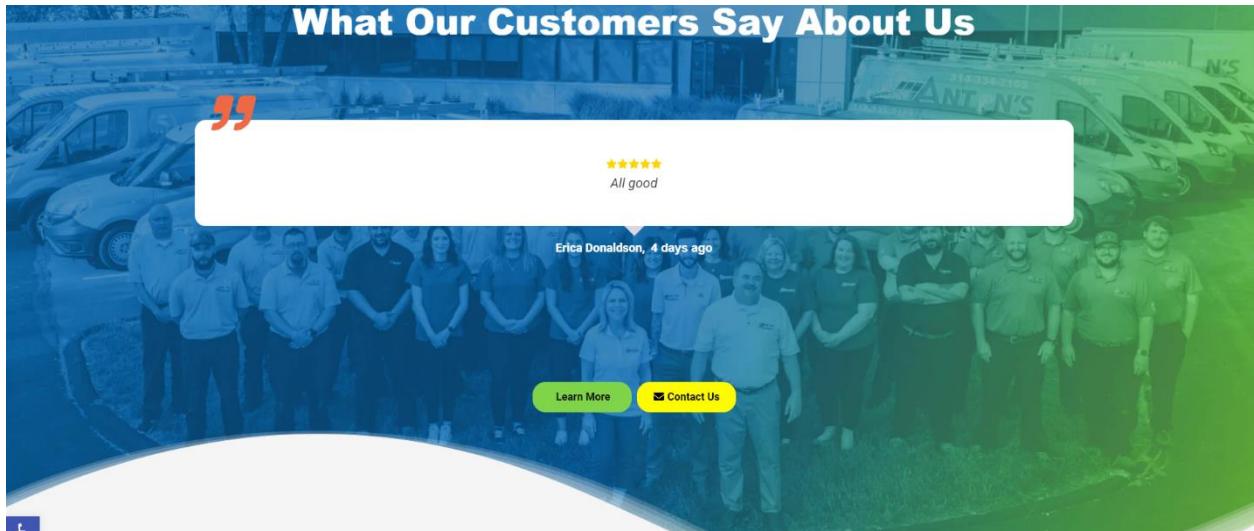
From the approved list below, select your HVAC Contractor. (Select Inside the box to view complete list)
The program auto defaults contractor selection to the lowest price / same warranty option, but if you prefer to select a specific contractor from this list, regardless of price, please advise us when scheduling.

Prefer Lowest Prices
Anton's Air Conditioning and Heating
Energy Stars
Superior Heating and Cooling
HB Mechanical Contractor LLC
Vitt Heating and Air

Ameren and PAYS partners to establish a baseline from which to evaluate my home's potential for energy savings through the Ameren PAYS program.

Yes No

Open Availability



Malone Affidavit Exhibit 8B

