

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

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

**POST-HEARING BRIEF OF MCFFC & COREY MALONE**

Complainants, the Missouri Coalition or Fair Competition and Corey Malone, by and through counsel, offer the following post-hearing brief:

**Procedural Summary**

Complainants filed this case on August 3, 2022. Docket 1. Ameren filed responsive pleadings on September 6, 2022. Docket 5. On October 21, 2022, the Commission ordered its staff to investigate and file a report. Docket 6. That report was filed on April 12, 2023. Docket 14. An evidentiary hearing was held on July 18, 2024; the transcript of that hearing is at Docket 57.

## **Evidence Supporting the Complaint**

Complainants take issue with Ameren's administration of two Commission approved programs: Pay as You Save and CommunitySaver Single Family. The programs are not the issue. The issue is Ameren's operation of them in violation of what is commonly called the Fair Competition Law or HVAC Law, §§ 386.754-.764 RSMo., and 20 CSR 4240-20.017. In its opening statement Ameren stated that it did not believe the PAYS program was at issue anymore. Docket 57 pp. 16-17. But the modifications to the program were not made until after the filing of the Complaint. Id at 34.

Specifically, complainants observed that Ameren was allowing its contractors to use its name to engage in HVAC services without a disclosure, in plain view and bold type, a disclaimer that states the series are not regulated by the Commission, as required by § 386.756.3 RSMo. and 22 CSR 4340-20.017(4). Docket 58, Exhibit CM1 pp. 5-9. Ameren's witness, Shelly Harmon, testified that the document is consistent with material provided to customers under the PAYS program. Docket 67 p. 11 ll. 3-9.

Particularly egregiously, Ameren told its customers that its representatives would be wearing Ameren Missouri shirts and would have Ameren Missouri ID badges. Docket 58, Exhibit CM1 p. 10. During the pendency of these proceedings, Ameren's contractor even posted photographs of its employees wearing Ameren shirts. Id. p. 14. Confronted with this evidence, Ameren's position at the hearing was, "It appears there was some confusion and miscommunication over the co-branding rules. We are now working to address the issue and ensure compliance." Docket 67 p. 15 ll. 1-8. Although it defends the conduct as necessary to protect consumers because, "we're giving away free stuff."

Docket 57 p. 60 ll. 1-3. But it's really produce trust in the legitimacy of the program by using Ameren's name. Id. at ll. 4-6. Such conduct is prohibited by § 386.756.2 RSMo. and 22 CSR 4340-20.017(3).

Mr. Malone succinctly described the issue when questioned by Judge Seyer:

[T]he homeowners or the renters, or whatever the case may be, don't pay for the program. It's basically a way to go in and update their homes to make them more energy efficient to lower their utility bills. But if the homeowner doesn't pay for it, then that means all of the ratepayers pay for it, which includes all of us.

Docket 57 p. 35 ll. 10-15.

Similarly, Exhibit 9 (Docket 66) contains the consumer advertising that Ameren used for the PAYS program. The Ameren name is prominently displayed, as are photographs of individuals wearing Ameren shirts (pp. 30, 43, 53-56). It is preposterous to suggest that this years-long advertising campaign was not Ameren engaging in or assisting an affiliate or utility contractor in engaging in HVAC services in a manner which subsidized the activities, as prohibited by § 386.756.4 RSMo. and 22 CSR 4340-20.017(5).

The breadth of Staff's inquiry into the relationship between Ameren and the "implementors" of the programs at issue is not clear. Mr. Kiesling testified that he did not make inquiry (Ex. 57 p. 43), that the implementors were not contractors or affiliates (Id.), that he did not know if they had a contractual relationship with Ameren (Id. p. 44), and although a contract was "potentially" involved, he never saw it. Id. p. 45. And when Complainants made inquiry in this case for an explanation of the financial relationship

between Ameren and its affiliates or contractors, Ameren refused to provide the documents. Exhibits 5 & 6 (Dockets 62& 63).

### **Argument**

The Public Service Commission is allowed by §§ 386.756.9 and 386.760 RSMo., (1) review, inspect and audit books, accounts and other records kept by Ameren Missouri or any affiliate for the sole purpose of ensuring compliance with sections 386.754 to 386.764 and make findings available to the commission, (2) investigate the operations of Ameren Missouri or any affiliate and their relationship to each other for the sole purpose of ensuring compliance with sections 386.754 to 386.764, and (3) take action necessary to ensure compliance with sections 386.754 to 386.764, including referral to the attorney general for prosecution of a civil offense with a penalty of up to \$12,500 for each violation.

Ameren has, under the guise of implementing the Commission's energy efficiency tariffs, again entered into the provision of heating, ventilation, and air conditioning services although prohibited by law. It has done so by entering into contracts that it does not want to share with the Commission's staff or the Complainants in this case. It has advertised the programs in its own name and referred customers to its captive providers. It has provided its select contractors with Ameren-branded shirts and ID badges so that customers are comfortable that they are engaging with the utility. It has done this at the expense of its rate payers and to the detriment of the HVAC industry.

Respectfully submitted,

/s/ David F. Barrett

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was served on counsel for all parties of record in this matter via EFIS on August 21, 2024.

/s/ David F Barrett

David F. Barrett