

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

Nancy Hurt,)	
)	
Complainant,)	
v.)	<u>File No. EC-2024-0108</u>
)	
Union Electric Company d/b/a Ameren Missouri,)	
)	
Respondent.)	

AMEREN MISSOURI'S POST-HEARING BRIEF

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company") and for its post-hearing brief respectfully states the following to the Missouri Public Service Commission ("Commission"):

Section 386.390.1, RSMo, provides that a person may file a complaint against a utility regulated by the Commission "...setting forth any act or thing done or omitted to be done by any...public utility...in violation...of any provision of law, or of any rule or order or decision of the commission..." The complainant has the burden of proving that the Company violated a statute, rule, order or Commission-approved tariff.¹ The Complainant filed the Complaint with the Commission on September 27, 2023, alleging violations of civil liberties granted by the Missouri Constitution and anti-trust regulations.² On October 17, 2023, the Complainant filed an Amended Complaint stating her concerns regarding the monthly charge and one-time charge Ameren Missouri bills customers who opt out of Smart meter installation at their service address.³

¹ *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm'n of State of Mo.*, 116 S.W.3d 680, 693 (Mo. App. 2003)

² *Formal Complaint*, p. 2.

³ *Amendment to Complaint*, p. 1.

Complainant also alleged Ameren Missouri shut off her electric service without written notice causing a loss of food and medicinal products.⁴

Section 393.140(11) states that the Commission has the authority to require every electrical corporation to file with the Commission "...schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used...." Section 393.140(11) further provides that no electrical corporation "...shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such service as specified in its schedule filed and in effect at the time...." A tariff approved by the Commission becomes law and has the same force and effect as a statute enacted by the General Assembly.⁵ Both the utility and the customer are presumed to know the contents and effect of approved tariffs.⁶

The Complainant has not asserted a violation of a Commission statute, rule, order or Commission-approved Company tariff. The Commission held an evidentiary hearing on August 20, 2024. The Complainant admitted at the evidentiary hearing through her testimony that Ameren Missouri has a Commission-approved tariff that allows disconnection of service when a customer denies access to the Company-owned meter for upgrades and refuses setting of a nonstandard meter; the Complainant also admitted that Ameren Missouri's tariff allows it to charge customers certain fees for use of nonstandard meters:

All of my time and energy was focused on what I thought was an error made by Ameren because my account was paid in full. I had no idea the PSC had approved a tariff granting Ameren Missouri a process through which a policy regulation

⁴ *Amendment to Complaint*, pp. 1-2.

⁵ *Bauer v. Sw. Bell Tele. Co.*, 958 S.W.2d 568, 570 (Mo. App. E.D. 1997).

⁶ *A.C. Jacobs & Co., Inc. v. Union Elec. Co.*, 17 S.W.3d 579, 585 (Mo. App. W.D. 2000) (citing *Bauer v. Sw. Bell Tele. Co.*, 958 S.W.2d 568, 570 (Mo. App. E.D. 1997))

would be enforceable legally to allow the electricity to be intentionally shut off at my property by giant utility corporation while paid in full.⁷

...

The ripple effect above was caused, in my opinion, by a policy position the Missouri Utility Commissioners made when granting approval...The PSC allowed a paid-in-full customer to have their electricity shut off.⁸

...

The tariff update also granted the essential service provider the ability to impose the opt-out choice customer to unjustly pay an additional one-time fee of \$100, as well as an unending perpetual additional \$40 monthly fee to keep their working meter intact.⁹

...

This petitioner-complainant respectfully requests that the PSC, OPC and anyone else involved, to place an injunction on the existing tariff....¹⁰

...

I would recommend the PSC to override the granted regulatory approval of this opt-out rule for penalizing the opt-out customer choice. It is unethical and unfair to burden a customer with unending monthly fees for no change of service.¹¹

...

I do request that the PSC and OPC to place legal authority limits on the essential services provider's ability to shut off the electricity on any and all tariff clauses or amendments or, I think they called it, adjustments or something to their general – to Ameren Missouri's general provisions evidence that they submitted to me, unless authorized – excuse me, for any paid-in-full opt-out customer, not authorized by the judicial system first.¹²

⁷ Tr. Vol. III, p. 36, ll. 11-19.

⁸ Tr. Vol. III, p. 37, ll. 16-25.

⁹ Tr. Vol. III, p. 40, ll. 20-25.

¹⁰ Tr. Vol. III, p. 63, ll. 8-11.

¹¹ Tr. Vol. III, p. 69, ll. 15-20.

¹² Tr. Vol. III, p. 76, ll. 6-16.

The Complainant's testimony also made it clear that she was not asserting any violation by Ameren Missouri of a Commission-approved tariff, but wanting to use the Complaint process to advocate for a change in the Commission-approved tariff that she believes violates the law:

JUDGE CLARK: Right, without going – so you believe that they've violated the tariff or that the tariff somehow violates the law?

MS. HURT: I think the tariff, itself, violates the law. That's my standing on that yes.¹³

The Complainant also testified:

I'm not looking to determine or for – for the Commission to determine a degree of fault or penalties to impose on Union Electric or DBA Ameren Missouri. I'm looking for the people who have become customers of Ameren Missouri who chose to opt out not be financially penalized.¹⁴

In addition to Section 393.140 that requires Ameren Missouri to charge the Complainant the fees set forth in the Commission-approved tariff, Section 393.130(3), RSMo, prohibits discrimination in the provision of service. Extending special consideration to the Complainant that Ameren Missouri does not extend to other customers would be discriminatory. Ameren Missouri cannot make or grant any undue or unreasonable preference to any customer. If Ameren Missouri did not charge the Complainant the opt-out charges provided in MO P.S.C Schedule 6, 6th Revised Sheet No. 63, or charged a different rate than that provided in the tariff, Ameren Missouri would not only be violating its Commission-approved tariff, but also Missouri statutory law.¹⁵ The Complainant has not offered any legal justification to show she is entitled to preferential treatment. The Commission cannot set the terms of the tariff aside as to certain individuals and

¹³ Tr. Vol. III, p. 55, l. 25 through p. 56, l. 5.

¹⁴ Tr. Vol. III, p. 81, l. 22 through p. 82, l. 3.

¹⁵ Staff also offered the same technical opinion in its testimony. See Tr. Vol. III, p. 222, ll. 10-16 and 18-21.

maintain them in force as to the public generally.¹⁶ Even if the Commission could waive tariff provisions for the Complainant, the Complainant's current meter will be obsolete and unsupportable at the end of 2025.¹⁷

MO P.S.C Schedule 6, 2nd Revised Sheet No. 142 provides that Ameren Missouri is allowed to disconnect service supplied to a customer when the customer refuses after reasonable notice to permit replacement of Company equipment. The Complainant refused to allow Ameren Missouri to replace her meter with a nonstandard meter as an opt-out customer.¹⁸ The Complainant refused to allow Ameren Missouri to replace her meter with an AMI Smart meter.¹⁹ From May 2023 through early July 2023, Ameren Missouri made numerous attempts to communicate with Complainant regarding the need to install either a non-standard meter or an AMI smart meter.²⁰ Only after these attempts failed, did Ameren Missouri begin the last resort of sending the required notice and phone calls for the discontinuance of service.²¹ The Staff report also found no violation of the notice requirements for discontinuance of service under 20 CSR 4240-13.050.²²

WHEREFORE, Ameren Missouri requests the Commission find that Ameren Missouri has not violated any Commission rules, statutes, orders or Commission-approved tariff in its provision of service to the Complainant. Further, Ameren Missouri requests the Commission direct the Complainant to file with the Commission whether she elects the remote meter reading opt-out and associated tariff charges or the installation of an AMI meter at her service address.

¹⁶ *State ex rel. St. Louis City Gas Co.*, 286 S.W. 84, 86 (Mo. 1926).

¹⁷ Tr. Vol. III, p. 199, ll. 18-21; p. 208, ll. 8-25.

¹⁸ Tr. Vol. III, p. 26 through p. 29, l. 9.

¹⁹ Tr. Vol. III, p. 57, ll. 1-4.

²⁰ Tr. Vol. III, p. 116, l. 12, through p. 120, l. 5.

²¹ *Id.* See also Exhibit 103C.

²² See generally Staff Exhibit 200C. See also Tr. Vol. III, p. 238, ll. 23-25; p. 239, ll. 1-5.

Respectfully submitted,

/s/ Jennifer L. Hernandez

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to the parties of record on this 20th day of September 2024.

/s/ Jennifer L. Hernandez