

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

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

REQUEST FOR REHEARING BY MCFFC & COREY MALONE

Complainants, the Missouri Coalition or Fair Competition and Corey Malone, by and through counsel, and in accordance with 20 CSR 4240-2.160, request rehearing (or reconsideration) of the Commission’s Report and Order of September 25, 2024.

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 Commission’s Report and Order was issued on September 25, 2024.

Reasons for Rehearing

Complainants take issue with Ameren's administration of two Commission approved programs: Pay as You Save and CommunitySaver Single Family. Findings of Fact 5, 6 and 7. 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.

Although it is true that Staff's investigation found no evidence that Ameren engaged in HVAC services, Finding of Fact 8, it is also true that staff's investigation was so perfunctory that it did not even inquire into the business relationship between Ameren and the companies it hired to implement the programs. The investigator testified that he did not make inquiry (Ex. 57 p. 43), and that although he believed that the "implementors" were contractors or affiliates (id.), he did not know if they had a contractual relationship with Ameren (id. p. 44). Although a contract was "potentially" involved, he never saw it. Id. p. 45. 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). Findings of Fact 19, 20 and 21 are likewise premised on this defect in Staff's investigation, compounded by Ameren's refusal to produce the relevant records in these proceedings.

Finding of Fact 9, that there was no evidence that Ameren used or permitted an affiliate or utility to contractor to use utility assets to engage in HVAC services, is palpably incorrect, as noted in Findings of Fact 12, 13, 14 and 15. In addition, 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).

The Commission's decision adopting Ameren's position that it is permitted by tariff to violate the provisions of the Fair Competition Law is shocking. Ameren is well familiar with the idea that statutes are to be read to give effect to both – in pari materia – and not in contradiction to one another. Collins & Hermann, Inc. v. TM2 Const. Co., 263 S.W.3d 793, 798 (Mo. App. E.D. 2008). In that case Ameren suggested that it was not responsible for its contractor's failure to pay project subcontractors. But by reading the mechanic's lien and public project bond laws together, the court's disagreed. In the same way, Ameren has offered no reason that its compliance with the tariffs identified in Finding of Fact 5 must cause a conflict with the Fair Competition Law. The law does not appreciate contrived conflicts. See, e.g., State ex rel. Office of Public Counsel v. Missouri Public Service Commission, 331 S.W.3d 677, 686 (Mo. App. W.D. 2011), where Ameren (represented by Mr. Lowery) prevailed over the preposterous proposition that a statute required promulgation of rules prior to its effective date. The MCFFC and Malone cannot imagine that the Commission wishes the legislature to believe that a statute by tariff when there is no reason that Ameren cannot comply with both.

Conclusion

For the foregoing reasons, MCFFC and Malone pray the Commission rehear and reconsider this matter, issue an appropriate amended order and decision reflecting the

facts and law of this cause, and grant such other and further relief as may be just and necessary in the premises.

Respectfully submitted,

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**ATTORNEY FOR THE MISSOURI
COALITION FOR FAIR COMPETITION
AND COREY MALONE**

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 October 24, 2024.

/s/ David F Barrett

David F. Barrett