

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

Tawanda Murphy,)	
)	
Complainant,)	
)	
vs.)	Case No. EC-2010-0364
)	
Union Electric Company, d/b/a)	
AmerenUE,)	
Respondent.)	

ANSWER AND MOTION TO DISMISS

COMES NOW Union Electric Company d/b/a AmerenUE (“AmerenUE” or “Company”), and in response to Complainant’s Complaint states as follows:

1. On June 14, 2010, counsel for American Family Insurance Group, as subrogee of Tawanda Murphy (“Complainant”), filed a “Petition—Negligence Res Ipsa Loquitor” on Ms. Murphy’s behalf with the Commission, which the Commission registered as a complaint against Company (the “Complaint”).

2. Any allegation not specifically admitted herein by the Company should be considered to be denied.

3. In paragraph 1 of the Complaint, Complainant alleges that the Commission has jurisdiction over the subject matter of the Complaint pursuant to Section 386.250 RSMo. Company denies the allegation as stated, but admits that the Commission has jurisdiction over consumer complaints that allege a violation of some statute, rule, order or decision within the Commission’s jurisdiction.

4. The Company is without sufficient information to form a belief as to the allegations of paragraph 2 of the Complaint and therefore denies the same.

5. The Company admits the allegations of paragraph 3 of the Complaint.

6. As to paragraph 4 of the Complaint, the Company admits that on or about March 10th, 2009, it supplied electricity to 5643 Beldon Dr., Jennings, Missouri through certain equipment owned and provided by the Company, but is without sufficient information to form a belief as to the remaining allegations of paragraph 4 as stated and therefore denies the same.

7. The Company denies the allegations of paragraph 5 of the Complaint as stated, but admits that it is bound by its tariff and by certain laws, Commission Rules, and Commission Orders to perform certain maintenance, inspections and repairs of its equipment.

8. The Company is without sufficient information to form a belief about the allegations of paragraph 6 of the Complaint and therefore denies the same.

9. The Company denies the allegations of paragraph 7 of the Complaint.

10. The Company denies the allegations of paragraph 8 of the Complaint.

11. The Company denies the allegations of paragraph 9 of the Complaint.

12. The Company is without sufficient information to form a belief as to the allegations of paragraph 10 of the Complaint and therefore denies the same.

13. In further answer, the Company states that the Commission is a regulatory body of limited jurisdiction having only such powers as are conferred by statute, is not a court, and has no power to determine damages, award damages or pecuniary relief, or declare or enforce any principle of law or equity. *American Petroleum Exchange v. Public Service Commission*, 172 S.W.2d 952, 955 (Mo. 1943); *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466 (Mo. App. W.D. 1980). In Complainant's prayer for relief, she asks the Commission for, "judgment against the Respondent [Company] in the amount of \$45,824.78, and any further relief this Commission deems just and proper." Because the Commission has no jurisdiction to hear Complainant's common law claim of negligence and cannot enter a monetary judgment against the Company, the Company believes it is proper for the Commission to dismiss the Complaint for lack of jurisdiction and for failure to state a claim for which relief can be granted by the Commission. The Commission may do so on its own motion, or on the motion of any party, after notice. 4 CSR 240-2.070(6).

14. In further answer, the Company states that the Complaint fails to allege any act or thing done or omitted to be done and claimed to be in violation of any statute, rule, order or decision within the Commission's jurisdiction, which alleged violations, per 4 CSR 240-2.070(1) and (3) and 4 CSR 240-13.070(2), are the bases upon which a person may file a formal or informal complaint with the Commission.

15. In further answer, the Company acknowledges, however, that the Commission *does* has exclusive jurisdiction to fix just and reasonable rates for a utility's services (§393.270 RSMo) and has jurisdiction, upon its own motion or upon complaint, by orders, rules, regulations

or otherwise, to require a utility to take action to ensure the safety of the public (§386.310 RSMo). Because the alleged incident identified in the Complaint might potentially give rise to a claim of a violation of some statute, rule, order or decision within the Commission's jurisdiction¹ (as yet unidentified), for which the Commission might have jurisdiction to grant some form of relief (also as yet unidentified), Company believes it would be appropriate for the Commission, in the alternative, to grant Complainant leave to amend the Complaint to make such a claim.

16. The following attorneys should be served with all pleadings in this case:

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WHEREFORE, Company respectfully requests that the Commission issue an order:

- A. Dismissing the Complaint for lack of jurisdiction and for failure to state a claim upon which relief can be granted; or in the alternative,
- B. finding that Complainant has failed to state a claim upon which relief can be granted but granting Complainant leave to amend her Complaint to allege a violation of statute, rule, order or decision within the Commission's jurisdiction and asking for relief that can be granted by the Commission.

Respectfully submitted,

SMITH LEWIS, LLP

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¹ Company notes this would include its tariffs approved by the Commission, which have the force and effect of law, the provisions of which the Commission may enforce.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion was served on the following parties via electronic mail (e-mail) or via regular mail on this 15th day of July, 2010.

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