

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

Tucker Shell, LLC,)	
)	
Complainant,)	
)	
vs.)	Case No. EC-2011-0233
)	
Union Electric Company, d/b/a)	
Ameren Missouri,)	
Respondent.)	

**ANSWER TO
COMPLAINANT'S FIRST AMENDED COMPLAINT**

COMES NOW Union Electric Company d/b/a Ameren Missouri, formerly AmerenUE ("Ameren Missouri" or "Company"), and in response to Complainant's First Amended Complaint states as follows:

1. On March 23, 2011, Tucker Shell, LLC, by and through its attorneys ("Complainant"), served via e-mail, a First Amended Complaint against Company (the "Amended Complaint").
2. Any allegation not specifically admitted herein by the Company should be considered to be denied.
3. The Company admits the allegations of paragraph 1 of the Amended Complaint.
4. The Company is without sufficient information to form a belief as to the allegations of paragraph 2 of the Amended Complaint and therefore denies the same.
5. The Company denies the allegations of paragraph 3 of the Amended Complaint as stated, but admits that it has underground electrical equipment in the area of 721 North Tucker, St. Louis, Missouri 63101.
6. The Company denies the allegations of paragraph 4 of the Amended Complaint as stated, but admits that it is bound by its tariffs and by certain laws, Commission Rules, and Commission Orders to perform certain maintenance, inspections and repairs of its electrical equipment and structures.
7. The Company denies the allegations of paragraph 5 as stated. The Company denies the allegation of subparagraph 5.a as stated, but admits that it is bound by 4 CSR 240-

23.020(3)(H). In further answer, the Company states that the effective date of said regulation was June 30, 2008, only three months prior to the alleged incident; the “inspection as required under this rule” referred to in said regulation is the inspection of transmission and distribution facilities as described in 4 CSR 240-23.020(3)(A) and the table referenced therein; said table identifies the maximum intervals in terms of years between inspections of various types of electrical facilities; and said table specifically notes that “the inspection requirements do not apply to direct-buried cable or cable installed in underground conduit.” The Company denies the allegations of subparagraph 5.b as stated, but admits that it is bound by 4 CSR 240-23.020(3)(H) and 4 CSR 240-18.010(1) and Part 3 of the National Electrical Safety Code. The Company denies the allegations of subparagraph 5.c.

8. The Company denies the allegations of paragraph 6 of the Amended Complaint as stated, but admits that on September 28, 2008, an underground primary line in the vicinity of 721 N. Tucker, St. Louis, Missouri, failed causing a secondary line to catch fire. In further answer, the Company states that the fire was the result of a failure or imperfection of service beyond the reasonable control of the Company.

9. The Company is without sufficient information to form a belief as to the allegations of paragraph 7 of the Amended Complaint and therefore denies the same.

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

11. The Company is without sufficient information to form a belief as to the allegations of paragraph 9 of the Amended Complaint and therefore denies the same.

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

13. In further answer, the Company states that its tariffs filed with and approved by the Commission have the force and effect of law. As such, the Company offers the provisions of its Electric Service Tariff Sheets 126 and 138 as an affirmative defense. Tariff Sheet 138, I. General Rules and Regulations, Section J. Continuity of Service states, in part, “The Company will not be responsible or liable for damages to customer’s apparatus resulting from failure or imperfection of service beyond the reasonable control of the Company.” As to the customer, Tariff Sheet 126, I. General Rules and Regulations Section A. Authorization and Compliance

states, in part, “[i]n accepting service provided by Company, a customer agrees to comply with all applicable rules and regulations contained [in the Electric Service Tariff].”

14. In further answer and relevant to Complainant’s claim of negligence, the Company admits that §§386.390.1 and 393.140(2)(3) and (5), RSMo, confer primary jurisdiction on the Commission to determine the sufficiency of and the safety and adequacy of a utility’s service. In addition, the Commission has promulgated numerous regulations setting specific standards for utility service, and through a utility’s tariffs, which must be approved by the Commission, the Commission exercises another type of jurisdiction over a utility’s standards for service. The Company denies, however, that the Commission has statutory authority to make a finding of negligence as a matter of law.

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

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WHEREFORE, the Company respectfully requests that the Commission enter an order dismissing the Amended Complaint to the extent of Claimant’s claim of negligence and Claimant’s request for Commission authorization to seek civil penalties in circuit court, for failure to state a claim upon which relief can be granted; and the Company respectfully requests that the Commission set the matter for hearing to determine the sufficiency of and the safety and adequacy of the Company’s service to Complainant.

Respectfully submitted,

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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 28th day of April, 2011.

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