BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Timothy Boyle,	)	
	)	Case No.EC-2026-0095
Complainant,	)	
v.	)	
	)	
Union Electric Company d/b/a Ameren, Missouri,	)	
	)	
Respondent.	)	

THE OFFICE OF THE PUBLIC COUNSEL'S REPLY BRIEF

COMES NOW, the Office of the Public Counsel ("OPC"), by and through counsel, and files its Reply Brief as follows:

This case centers around what it means for a utility's "service facilities and instrumentalities" to be "safe and adequate and *in all respects* just and reasonable" (emphasis added) under Section 393.130.1, RSMo. Missouri's public utility law specifically states that "Service":

[I]ncludes not only the use and accommodations afforded consumers or patrons, but also any product or commodity furnished by any corporation, person or public utility and the plant, equipment, apparatus, appliances, property and facilities employed by any corporation, person or public utility in performing any service or in furnishing any product or commodity and devoted to the public purposes of such corporation, person or public utility, and to the use and accommodation of consumers or patrons[.][1]

[1] Section 386.020(48), RSMo.

That provision of service, according to Missouri's Supreme Court, requires electric utilities "to use the highest degree of care to prevent injury which it could reasonably anticipate."[2]

In Ameren's initial brief, the Company hinges its case on its tariff that states "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."[3] Ameren and Staff[4] both allege that this tariff provision is a shield from liability in this case.[5] However, Section 393.130.1, RSMo actually requires the utility to "provide such service instrumentalities and facilities as shall be safe and adequate and *in all respects* just and reasonable."[6] (emphasis added) Combining the statutory requirements with the duty cited by the Missouri Supreme Court, Ameren is required, instead, to utilize the highest degree of care to prevent injury to its customers, and their property.[7]

The Company's duty of prevention is not limited by the Company's ability to anticipate the *exact* injury type or cause that occurred.[8] Rather, Ameren must utilize the highest degree of care to prevent damage caused by circumstances and situations it could "reasonably anticipate."[9] Ameren was well aware that hot legs can fail, and

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[2] *Lebow v. Mo. Public Serv. Co.*, 270 S.W.2d 713, 715 (Mo. Sept. 13, 1954).
[3] *Ameren Missouri's Post-Hearing Brief*, p. 4, Case No. EC-2026-0095, EFIS Item No. 36 (June 11, 2026) (citing UNION ELECTRIC COMPANY TARIFF, *General Rules and Regulations*, Continuity of Service 105 (Mo Pub. Service Comm'n, Feb. 28, 2022)).
[4] *Staff's Post-Hearing Brief*, p. 5, Case No. EC-2026-0095, EFIS Item No. 25 (June 10, 2026).
[5] Id. at 2.
[6] *Supra* footnote 1.
[7] *Summers v. Union Electric Co.*, 565 S.W.2d 677, 680 (Mo Ct. App., E.D. Mar. 21, 1978),
[8] *Lebow* at p. 715.
[9] Ibid.

Ameren alone had the ability to prevent that failure from happening since Ameren, and not the Complainant, has complete control over Company equipment.

During the hearing, two of Ameren's witnesses, Micheal Ponder and Christopher Kemp speculated that the damage was caused by squirrels, and, recounted stories of animals or pests damaging electrical equipment.[10] Company Witness Kemp, when discussing his process of repairing the broken hot leg that likely caused the power issues, said that Ameren was "actually now, and have been for some time, installing these black covers for squirrel mitigation. In the last few years we've implemented that all new construction be fitted with animal mitigation, bird and avian."[11] Thus, it is clear that the damages Timothy and Mimi Boyles' ("Complainants"') incurred in this case, even if in the exact way that Ameren alleges, is reasonably foreseeable. Company Witness Kemp even relates the broken hot leg would cause the voltage to Complainants' home to decrease from 240 volts to 120 volts and that the decrease in voltage "will cause problems."[12]However, Ameren could do more than strengthen its infrastructure to demonstrate the highest degree of care to prevent the injury at issue. In its brief[13] and during the hearing[14] the Company argued that the Complainants could have mitigated or avoided the damage they incurred by installing a "whole home surge protector." Ameren Witnesses stated that

[10] *Transcript-Volume 1 (Tr.)*, p. 111 lines 10 & 11, Case No. EC-2026-0095, EFIS Item No. 15 (May 20, 2026); Id. at p. 112 line 23 to p. 113 line 1; Id. at 174 lines 14 & 15; Id. at p. 196 line 10 through p. 197 line 2.
[11] Id. at p. 209 lines 6 through 10.
[12] Id. at p. 189 line 25 to p. 190 line 10.
[13] *Ameren Missouri's Post-Hearing Brief* at p. 10.
[14] *Tr*. at p. 197 line 9 through p. 199 line 2; Id. at p. 201 lines 9 through 13.

they do not provide customers with information regarding whole home surge protectors,[15] and that "I really don't want to go as far as to say that it's common that I come across it."[16] Ameren Witness Kemp even alleged that "I'm—technically I'm not allowed to—or not able to recommend what a customer should need or what they should do on their side."[17] The Company's knowledge of the benefits of whole home surge protectors was demonstrated as early as September 21, 2020, when it requested Commission approval of its Surge Protection Program.[18] Ameren knew about whole home surge protectors, expecting a sentence in its tariff advising customers to "install suitable protective equipment."[19] However, even after it requested Commission approval for its "Surge Protection Program," the Company did not opt to provide its customers with any educational information regarding these devices.

The cause of the damage to the infrastructure that *Ameren alone owned and controlled*[20] was reasonably foreseeable. The injury to Complainants' property that resulted from the damage to Ameren's infrastructure was reasonably foreseeable and within Ameren's control. Ameren even knew of the device that allegedly would have prevented or mitigated the injury. However, despite all of that knowledge and the "highest degree of care" that electric utilities have a duty to prevent, so long as it is

[15] Id. at p. 135 line 20 to p. 136 line 25.
[16] Id. at p. 233 lines 8 & 9.
[17] Id. at p. 233 lines16 & 17.
[18] *Application and Request for Waiver*, In the Matter of the Application of Union Electric Company d/b/a Amere Missouri for Approval of its Surge Protection Program, Case No. ET-2021-0082, EFIS Item No. 1 (Sept. 21, 2020).
[19] *Ameren Missouri's Post-Hearing Brief* at p. 4 (citing UNION ELECTRIC COMPANY TARIFF, *General Rules and Regulations*, Continuity of Service 105 (Mo Pub. Service Comm'n, Feb. 28, 2022)).
[20] *Staff's Post-Hearing Brief* at p. 3 & 4.

"reasonably anticipated," the Company took no steps to educate its customers about the damage that could result from electricity fluctuations, or about the protective devices that it now expects its customers to have installed.

The Commission should disregard the Company's attempts to require the Complainants to "identif[y] a statute, a Commission rule, a tariff provision, a Commission order or Commission decision violated by Ameren Missouri."[21] The Commission should also disregard Ameren's attempt to require Complainants to present expert testimony contradicting the testimony of the Company's own witness.[22] Despite the Company's attempt to imply otherwise, Section 386.390, RSMo, the statute that governs complaints before the Commission, does not require Complainants to identify the violation or provide expert testimony.[23] The Complainants should not be expected to have a lawyer's understanding of the law, and their allegations are sufficient to enable the Commission to determine whether Ameren committed any violations. Moreover, the Complainants' brief asserts that Ameren violated both case law and regulation [20] CSR [4]240-23.020.[24] Finally, this complaint puts before the Commission a legitimate question regarding whether Ameren fulfilled its duty to provide safe and adequate service, as required by Section 393.130 RSMo.

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[21] *Ameren Missouri's Post-Hearing Brief* at p. 2.
[22] Id. at p. 5.
[23] Section 386.390.1 specifically states "Complaint may be made by . . . any corporation or person. . . by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility in violation, or claimed to be in violation, of any provision of law subject to the commission's authority, of any rule promulgated by the commission, of any utility tariff, or of any order or decision of the commission"[.]
[24] Though the brief refers to the old regulation citation, 4 CSR 240-23.020.

The Commission should dismiss Ameren's insertion of a contributory negligence standard in this case. Ameren's argument would require the Commission to find that customers, like Complainants, are obligated to spend hundreds of dollars on a lesser-known piece of equipment to protect their personal property from a failure of Company infrastructure.

The OPC agrees with the argument in Staff's brief that "[m]ere negligence should not be the standard to apply in this case and [Complainants] should not be the ones with the burden of proving they did not cause the damage."[25] The OPC also agrees with Staff, and the Commission decision Staff cited to, that "Ameren has the burden [to prove] its affirmative defense[.]"[26] However, the OPC does not agree that the burden that the Company must prove is either "that something beyond their reasonable control occurred to cause the damage"[27] or "that the alleged imperfection of service was beyond its reasonable control."[28] Rather, the OPC believes that Ameren's duty is "to use the highest degree of care to prevent injury which it could reasonably anticipate" as the Missouri Supreme Court held in 1954.[29] To assert, as Ameren has, that its tariff permits it to be shielded from issues with its service "beyond its reasonable control" both abrogates its negligence liability involving personal injury or property damage in violation of *PSC v. Mo. Gas Energy*.[30]

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[25] *Staff's Post-Hearing Brief* at p. 4.
[26] *Order Denying Motion to Dismiss and Setting Evidentiary Hearing*, Deborah L. Loller, Complainant v. AmerenUE, Respondent, p. 5, Case No. EC-2004-0598, EFIS Item No. 8 (Aug. 5, 2004).
[27] *Staff's Post-Hearing Brief* at p. 4.
[28] Ibid.
[29] *Lebow v. Mo. Public Serv. Co.*, 270 S.W.2d 713, 715 (Mo. Sept. 13, 1954).
[30] 388 S.W.3d 221, 230 (Mo. Ct. App. Oct 23, 2012).

WHEREFORE, the OPC submits this Reply Brief for Commission consideration.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed, or hand-delivered to all counsel of record this 22nd day of June, 2026.

/s/ Anna Martin