4/29/2014

To Whom It May Concern:

Please find my responses to the questions below regarding the original complaint. Pages 1-2 lists the original complaints, followed by the company’s answers to my original complaints, followed by my response to those answers provided by Ameren, starting with page 2 – page 9.

**Paragraph 1** I am filing this complaint on the basis that Ameren Missouri has damaged our property while cutting down a tree in the middle of one of the worst droughts in years. I am asking them to remove the rest of the tree, to pay to have a tree company come to remove it, or to pay us to have a tree company come and remove it.

**Paragraph 2** They killed the tree by cutting the entire top half of it off in the middle of the drought and then they left the tree there to die. They left it there for us to remove the rest of the way, or for us to pay someone to have it removed. They tried to tell us that the tree was already dead before they cut it, but it wasn’t and I have pictures and videos as proof. It was the middle of the drought; all of the trees looked dead. They said they had an arbor expert look at it before they cut it down to verify that it was, in fact, dead. No report exists, and I was lied to about the so-called report.

**Paragraph 3** Trying to remove the tree on our own can cause even further damage to life or property, and since it is on their easement, according to the lady I spoke with on the phone, I would suggest they remove it; apparently, we don’t own the land there next to the road, according to her, but Ameren does.

**Paragraph 4** The tree is based at the end of our driveway at 1312 Wisteria Lane St. Clair Missouri 63077. If we cut the tree so it falls forward, it will hit our home. If we cut it so it will fall to the left, it will hit our driveway, and our neighbor’s front yard. If we cut it so it falls straight back, it will possibly take out the power lines and land in the middle of the street, and if we cut it to the right, it will also land in the street as well as our other driveway, possibly taking out the power lines in that direction, or hit our home.

**Paragraph 5** The lady I spoke with on the phone deliberately lied to me and told me that they had an official report by an arbor expert stating that the tree was already dead when they went to cut it down, and due to that report, it is our responsibility to remove it. I asked for the report, she said she’d send it, but it never was sent out. When I contacted the Missouri Public Service Commission for an informal complaint, they said that the report apparently never existed. I also asked for a property damage report, which, once again was told by her that it would be sent out, and once again was it never received, probably because it wasn’t sent out to begin with, which is another reason I contacted the Missouri Public Service Commission.

**Paragraph 6** As you can see from my pictures, the tree is very much alive. My daughter is very close to the same age in that picture, and I would be more than happy to bring her along to the court appearance so you could verify that the picture of the tree wasn’t from years and years earlier.

Remedy:

They cut the tree and damaged it during one of the worst droughts on record. They need to remove it, pay someone else remove it, or pay us for the responsibility of removing it before further property damage, or damage to life occurs. It is their negligence that killed the tree and we shouldn’t be responsible for cleaning up after them. It’s bad enough that they killed a beautiful tree, but to have to pay for it to be removed after they killed it to begin with is ridiculous. We are paying customers for Ameren, and I’m sure that doesn’t mean that much to them because they have millions of paying customers, but it should. I used to own my own business, and I would never damage my client’s property without fixing it for them. Just because they are a huge electric company, it shouldn’t mean that they are untouchable when they damage someone’s property. If they weren’t a huge electric company, but were instead a contractor and damaged the tree, they would be responsible for it, and Ameren needs to own up to their responsibility and take care of the mess they made. Property Damaged at

1312 Wisteria Lane

St. Clair Missouri 63077

I can be reached at the following number

636-221-0036

Sincerely,

Billie J Hensiek

**Ameren’s Answers to complaint followed by owner responses**

**Paragraph 5 of the Answer to complaint cites that** *“allegations of cutting down the tree during a drought was denied”*

In the response from paragraph 6, the company admitted to cutting the tree down during one of the worst droughts in history*.* This was the killing factor for the tree, and the cause of the property damage. Cutting the tree, as low as it was trimmed during one of the worst droughts in years sent the tree into shock, resulting in its demise.

1. **Paragraph 6 of the Answer to complaint filed states that** *an ‘implied’ official tree expert looked at the tree before cutting the branches to make sure it was dead;* yet, there is no report given, and when asked for the report, was told that it was being mailed on two separate occasions. Property owner was later told by the Public Service Commission who spoke with the Ameren representative that the document never existed, even after being told **BY** the Ameren representative that it did, as well as being told that a paper copy of that report was being sent to her, along with a property damage report; neither of which ever arrived. There were no certifications presented to the owner as to whether the ‘implied’ arborist was in a position to make the distinction as to whether the tree was dead or alive. The paragraph state’s *“That an arborist in the contractor’s crew examined the tree.”* Are all the contractors who work for and provide these kinds of services for Ameren arborists? Can they provide documentation that they are, in fact “tree experts? There was no consent given that the tree was to be cut and had customer been asked, the customer would have asked the contractor to wait until the drought was over due to the fact that cutting it at that time would shock the tree and cause it to die since it was already fighting a drought.
2. **Paragraph 7 of the Answer to complaint filed states that “***the company is without information sufficient to form a belief about whether complainant would risk injury to property or life by removing the tree personally,”* yet the complaint was filed with pictures of the current condition of the tree, showing the tree from all views; thereby showing what would happen and where the tree would land if it was cut down in any direction personally by the complainant. The complaint also gave examples of the types of damage that could be caused with such removal, such as damage to our home, damage to the neighbor’s home/property, blocking one of the main roads in the subdivision on an incline that could cause an accident due to it’s location, etc.
3. **Paragraph 8 of the Answer to complaint states that**the company agrees that the tree is on their easement, therefore removing the tree so it doesn’t cause damage to our property in the future is their responsibility. The damage to life and property that could result if we try to cut this tree down could be a significant to ourselves and others as shown by the photos, and described by the examples with the original complaint. The Company also admits that the tree is at the ‘end of the driveway’ next to the road.
4. **Paragraph 9 of the Answer to complaint states that** the company is without information sufficient to form an opinion about what the Commission said, and therefore denies any harm; yet the letter from the Commission was provided in the complaint that the company has received showing the company and their representatives exactly what was said.
5. **Paragraph 10 of the Answer to complaint states that “***the company is without sufficient information to form a belief about the allegations of the letter paragraph 6 and denies such allegations”,* yet paragraph 6 describes one of the photos filed with the complaint showing the tree in full glory, next to my daughter who was 16 ½ at that time. She just turned 18, and I can send a recent photo of her, notarized, proving that the tree was alive two years ago, right before they came in cutting and hacking away at It. Thereby proving that this is a recent photo of the tree before it was cut down.
6. **Regarding the pictures showing the tree with my daughter and her ex-boyfriend,** the company agrees that this is in fact the tree that was cut. As demonstrated by the photo, the tree is very much alive. It has greenery around the base, and bright spring like leaves on the top of the tree as you can tell by the branches.
7. **Regarding the handwritten pages, “Tree looks alive to me,”** *Company states that they don’t have enough sufficient information to make a belief about the allegations regarding this photo, and therefore denies them,* yet the photos of the tree are right there, alive. My daughter is in the photo, with her ex-boyfriend, whom we are both still in contact with, and both kids look the same age now as they did then when the photo of the ‘alive’ tree was taken ,the spring BEFORE the drought
8. **Regarding the handwritten letter, “This is the letter received,”** This letter was given as part of the complaint to prove that the property owner was lied to regarding the so-called official arbor report that was supposed to have been mailed out to her and that had been requested by her on two separate, previous occasions. Who’s to say that the company isn’t lying now about the arbor expert that looked at it and determined the tree was dead? The report was never created, it never existed, and Ameren’s representative admitted to the Commission that they lied about the report. According to the Commission, they were also supposed to send out a damage report, which they never did either. In the letter regarding the original complaint, the Commission stated that they contacted the Ameren representative and that the representative told them that no such report existed. Now they have a signed affidavit from a tree company stating that the company inspected the tree, yet when a copy of the report was requested, they refused to send it? Please see the letter that the public service commission sent to me regarding the conversation he had with the Ameren representative.

**Responses to Ameren’s answers regarding the chronology of the events:**

**15a** The Company inspected the tree, determined it was in decline or dying, and instructed his crew to cut back the branches. There is no mention here that the foreman consented with the owner first, or that they physically met and spoke regarding this matter.

**15b** Owner called to report that the tree had died as a result of the trimming, Ameren representative stated that it was in decline before the trimming, which was the reason it was cut to begin with; yet property owner wasn’t consulted before the tree was cut, and Ameren cut the top much lower than it should have needed to be cut in those conditions. Frankly, if the tree was fighting to live during a drought, it shouldn’t have been cut at all. An official ‘arborist’ would know that this could potentially kill or cause significant damage to the tree.

**15c & d, Companay states that** *“Shortly thereafter, the Company had the general foreman of the crew that trimmed the oak tree call and speak to Complainant. Complainant asked him*

*how he knew the tree was dying, and he explained he was a certified arborist,*

*had viewed the tree prior to trimming, and was certain it had been dying.*

*d. The Company representative spoke to Complainant following her*

*conversation with the foreman. The representative explained the Company’s*

*tree trimming policy, and offered to send a crew back to 1312 Wisteria to*

*stub down even more of the tree, which would make it safer for Complainant*

*to have the tree removed if Complainant was concerned about the condition*

*of the tree. The representative also explained that oak trees were under stress*

*due to a number of conditions including drought, oak wilt, oak decline and*

*hypoxilin canker, and were dying throughout the state.”* Owner never spoke to anyone who said they were a certified arborist regarding this matter. I never talked to a foreman about the tree. This information that the foreman was an arborist was relayed to me by Ameren’s representative via phone, not by the arborist in charge of cutting down the tree. The person the owner spoke with was also female, not male.

**Regarding response to Company Answer 16a,**

**16. In further answer the Company states as follows***. The Company’s trimming and*

*stubbing of the oak tree at 1312 Wisteria did not violate any tariff, statute, rule, Order or decision with the Commission’s jurisdiction. To the contrary, the Company fulfilled its statutory and regulatory duties with respect to vegetation management:*

*a. Section 393.140(2) RSMo provides that the Commission "shall ... have*

*power to order such reasonable improvements as* ***will best promote the public***

***interest, preserve the public health and protect those using ... gas, electricity,***

***water, or sewer system[s],"*** *and shall also "have power to order reasonable*

*improvements and extensions of the works, wires, poles, pipes, lines, 5*

*NPconduits, ducts and other reasonable devices, apparatus and property of gas*

*corporations, electrical corporations, water corporations, and sewer*

*corporations."*

How is leaving a large dead, rotting tree behind to fall and cause severe property damage safe, promoting the best public health, or protecting those using electricity? A tree, in which if it fell, could cause it to land on a car driving by, or to land in the street; a main street within the subdivision, which happens to be on an incline and provides access to the beach, taking out the power lines with it and causing someone’s death by electrocution. This tree could cause death or serious injury to an occupant of a vehicle who cannot see over the incline when they are coming up the hill until they are upon it if it fell? How is allowing the tree to stay there rotting and decaying away, knowing it can and will eventually fall, in one of four ways, all of which could cause danger to property, or life be safe? How is this serving the best interest and preserving the public health of its customs, leaving the tree in this condition?

**The company’s answer to my complaint cites that: *“****The Commission has promulgated safety standards at 4 CSR 240-18.010. In*

*particular, subsections (1) and (2) thereof require the Company to comply*

*with the* ***minimum safety standards*** *of the National Electric Safety Code (the*

*Code) relating to the operation of electrical corporations, including the safety*

*rules for overhead electric lines found in Part 2 of the Code.*  My husband happens to be a candidate for his “Master Electrician’s license.” He has taken all of the classes and has passed them, and is now in the process of submitting his application for licensure to the city of St. Louis. He is the project manager, and runs crews all over the country. He happens to be one of the Vice Presidents of the electrical division for his company, and therefore is in charge of all the foremen who put up the ‘high voltage’ cell phone towers in the area for AT&T, Verizon, T-Mobile, etc. He has extensive knowledge of the codes in the National Electric Safety code book, and he doesn’t believe the condition the tree was left in, dead and rotting, near the road, is safe at all, considering where the tree is located. You are welcome to contact him, Kevin Hensiek, at Skyview Construction and Crane, Washington, Missouri and inquire as to whether or not this is true.

**The company sites 16c*. Section 218 of Part 2 of the Code which provides****, “A. 1. Vegetation that may damage ungrounded supply conductors should be pruned or removed.*

*Vegetation management should be performed as experience has shown to be*

***necessary.****” (emphasis added). The Commission’s own vegetation*

*management standards also require the Company to ensure that vegetation*

*management—****the removal of vegetation to maintain safe conditions******around***

***energized conductors and to ensure reliable electric service—is conducted***

***along Company-owned energized distribution line conductors of 600 volts or***

***higher.*** *(EMPHESIS ADDED)* ***To maintain ‘safe’ condition,*** *4 CSR 240-23.030(1)(L) and (2). The Company is required to determine if vegetation management is needed and, where needed, to perform it in a timely manner. 4 CSR 240-23.030(3).* Once again, how is leaving a dead tree to rot, next to one of the main roads within the subdivision safe for anyone? It is not unreasonable to believe that as the tree decays, it will fall, thereby becoming a hazard to anyone who comes in contact with it once it hits the ground. (Please see photos of where the tree is located.) Any “arbor expert” should know and expect this as a matter of fact. It is not unreasonable to expect the tree to rot, and eventually fall, taking out the power lines with it and causing severe injury or death to anyone who comes into contact with it. Considering where the tree is located, and considering that there are only four ways the tree can fall once it decides to, and that three of the four ways will lead to the power lines becoming entangled with the tree as it falls, any arbor expert who “examined” the tree, prior to cutting it down, should also expect this to be fact based solely on the location of the tree. The company has cut down the top of the tree in the event of bad weather, so that the tree branches don’t hit the power lines in the future, but the company has left the tree dead, rotting, next to a main road with a 75% chance that when the tree does fall, and it cannot be disputed that it will eventually fall at some point in time in the future, that it will take out the power lines with it, causing damage to life, or property. Basically, they can cut the tree’s branches to prevent possible loss of power or other dangers if the branches were to become entangled in the wires, but they can leave the tree, knowing that when it falls, it will most definitely take with it the power lines, causing severe damage to life or property. The companies own standards speak to this rather clearly.

*The Company is also required to develop its own vegetation management*

*standards. 4 CSR 240-23.030(4)1 and 2. With respect to dead trees, the*

*Company’s standards regarding tree pruning and removal provide,*

*On routine trimming where dead trees are encountered that in falling will*

*hit a primary line, the trees should be cut down or the portion likely to hit*

*the line removed, whichever requires the least time. If possible, written*

*consent should be obtained and the brush and logs left for the customer’s*

*disposal. AmerenUE Vegetation Management Program and Practices, p.3.*

**The company further maintains that** *“None of these applicable standards require the Company to remove a tree, unless required to maintain a safe condition.*

***Regading answer to number 17****. The company states that, “Because removal of the tree was not required to maintain a safe condition, the applicable statutes, regulations and standards do not impose a legal duty on the Company to remove it, such that the decision of whether to remove the tree (with Complainant’s consent) ”* Not removing the tree, will cause conditions in the area to become unsafe. Eventually, it will fall, this is fact. No one has a crystal ball and can forecast when or where it will fall, also a matter of fact, but when it does fall, one of four scenarios will play out. 1. It will fall on the home/homeowners, or those otherwise dwelling in and around the property. 2. It will fall onto the road, taking out the power lines with it, 3. It will fall to the left, taking out the power lines with it and possibly landing in the road, or on the personal property of the neighbor, or 4. It will fall to the right, taking out the power lines with it and possibly taking out the road, also landing on the neighbor’s property. The pictures filed with the complaint demonstrate this without question.

The company should remove the tree because it **IS** leaving the property in an **UNSAFE** condition, and the applicable statues, regulations, and standards **do** impose a legal duty on the company to remove it. As previously stated, if the tree falls forward, it will fall on the house. If it falls backwards, it will fall onto one of the main roads of the subdivision; possibly taking out the electric lines and causing an accident by blocking the road as it does. It will also be a hazard on the road due to the road’s upward incline, in comparison to the tree’s location. Car occupants are not able to see the tree, if it falls from that direction, until they get up and over the hill, and at that time it will be too late for the car to stop if the tree is lying in the middle of the road, depending on the occupants speed. This road is one of only 2 roads leading to Lake 4, the beach, and is well traveled at all hours of the day and night. If it falls at night, it will be even more dangerous. If the tree falls to the left, it will take out the powers lines and land on the neighbor’s property, and quite possibly, the owner’s personal property as well, including their home, driveway, vehicles, or an individual, more than likely, taking the power lines with it. If it falls to the right, it will take out either our house, or once again, fall on the road, taking the power lines with it. All of these scenarios are safety hazards, and are shown by the pictures submitted with the formal complaint. Therefore, removal of the tree is warranted in order to ensure safe conditions with regards to the power lines. The commission can order the legal removal of the tree if that tree imposes severe risk to those in and around it. The commission does have the legal authority to do this.

*“The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. Those powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its own affairs and conduct its business as it may choose,* ***as long as it performs its legal duty, complies with lawful regulation , AND DOES NO HARM TO PUBLIC WELFARE.” (EMPHASISED)***

***In response to the company’s answer declaration****,”Nor can the Commission order the Company to pay for removal of the tree, or reimburse Complainant for the costs of tree removal. 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 award damages or pecuniary relief. 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).*

Even thought the Commission cannot order the Company to pay for removal of the tree, or to reimburse the Complainant for the costs of tree removal, in the case, <http://www.news-leader.com/article/20140206/NEWS11/302060136/Missouri-Public-Service-Commission-staff-Utility-violated-rules-before-blast,> this company violated the rules of public safety as well, which lead to death of one of the restaurant’s servers. *The PCS staff was able to file a complaint against the company, asking the commission to find that the utility company violated the agency's safety rules and to authorize the commission's general counsel to seek penalties in state court.*

If the tree is not cut down, and the safety matter is not resolved, then we, the owners of the property are asking the commission to authorize the commission’s general counsel to seek penalties in state court, or to make Ameren due it’s legal duties and remove the tree.

**Regarding the company’s answer response to the complaint:**

***Response to Commission’s Orders in Notice of Complaint Number 19***

*“At ordering paragraphs 2-4 of its Notice of Complaint, issued and effective March 28, 2014, the Commission ordered the Company to inform the Commission of certain facts. The Company responds as follows:*

1. *Whether an arborist has given Ameren Missouri an opinion as referenced in the complaint: The general foreman of the Company’s tree-trimming contractor, Shade Tree Service Co., is a certified arborist. As noted in subparagraph c of paragraph 15, above, he spoke to Complainant about the tree.*This is heresy. No such document exists that the arbor expert ever spoke to the owners of the property. Owners have ‘No recollection’ of foreman speaking with them regarding this matter, only of speaking with a female Ameren representative before the complaint was filed. Owner has not been provided with reports that were previously requested regarding the ‘implied’ health of the tree, and the arbor expert, nor the owner, have ever met to discuss the health of the tree; therefore, the owner has no knowledge as to who this arbor expert is, nor has seen any evidence that he is, in fact, an arbor expert, certified to make these kinds of recommendations/decisions regarding the health of said tree. The fact that the tree is now posing a severe health/property hazard to those in and around it should it fall, raises serious questions as to whether or not this so-called arbor expert is in fact an expert at all.

He (arbor expert) also spoke with a Company representative, after speaking with Complainant. He reported to both, orally, that he was certain the subject oak tree had been dying. He did not create or provide a written report to Complainant or to the Company**.** Once again, heresy, as owner has no recollection of speaking with the arbor expert at all, only of speaking with the representative of Ameren.

**In regards to the company’s 19b***.* ***Evidence of such advice:*** *As noted in subparagraph a. above, there is no contemporaneous written report evidencing such advice. As an aid to the Commission, the Company has obtained and has attached hereto as Exhibit* A the Affidavit of *Kirk George*. If such affidavit existed originally, why was the property owner not allowed a copy of it when it was asked for it previously on two separate occasions? Why was property owner told that a copy; a physical copy, of the report would be sent out to her along with a damage report, when no such report, or evidence of such reported or advice ever existed; wherefore, the company, Ameren admitted it never existed and this admittance can be found within the letter that was sent back to the property owner by the Commission in response to the original informal complaint that was originally filed against them?

1. **In response to this statement, 16d** *“On routine trimming where dead trees are encountered that in falling will hit a primary line, the trees should be cut down or the portion likely to hit the line removed, whichever requires the least time. If possible, written consent should be obtained and the brush and logs left for the customer’s disposal. AmerenUE Vegetation Management Program and Practices, p.3.”*
2. Written consent was not given to remove the tree. Had customer been asked, she would have elected to have them trim the tree later in the fall after the drought had passed, OR had them remove the tree completely if she was made aware that having them trim the tree at this time would have killed it, causing a possible hazard to those in and around it.
3. **Response to Commission’s Orders in Notice of Complaint 19**. “*At ordering paragraphs 2-4 of its Notice of Complaint, issued and effective March 28, 2014, the Commission ordered the Company to inform the Commission of certain facts. The Company responds as follows. a. Whether an arborist has given Ameren Missouri an opinion as referenced in the complaint: The general foreman of the Company’s tree-trimming contractor, Shade Tree Service Co., is a certified arborist. As noted in subparagraph c of paragraph 15, above, he spoke to* *Complainant about the tree. He also spoke with a Company representative, after speaking with Complainant. He reported to both, orally, that he was certain the subject oak tree had been dying. He did not create or provide a written report to Complainant or to the Company.”*
4. If he is in fact an arborist, and he did relay the health of the tree to one of the owners of the property, as well as Ameren that the tree was dead, why wasn’t a report to that fact ever written? Why did the company representative of Ameren mislead the owner that a report would be sent, if no such report ever existed to begin with, and why wasn’t a property damage report ever sent out by them? Owner was told a paper report was being mailed out to her on two separate occasions by a representative from the company. Owner also doesn’t believe she has ever spoken to an arborist from Shade Tree Service Co., only to a representative from Ameren.
5. Lastly, in the affidavit given by Kirk George, in no way does it imply that he ever spoke with the owner at all. According to the affidavit, he checked the tree, decided it was dying, and performed work on the tree all without the consent of the owner beforehand. Had the owner been informed beforehand, Mr. George would have been asked to wait until drought was over and the tree in question had adequate time to recoup from it’s devastating affects.

We are asking that by law, the Commission actively pursues Ameren to remove the tree, or that they retribution through the state court system BEFORE the tree causes significant damage to life or property. Please see all photos submitted electronically with the original formal complaint.

Sincerely,

Billie Hensiek