

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

Peter B. Howard,	)	
Complainant,	)	
	)	
vs.	)	Case No: EC-2013-0524
	)	
Union Electric Company, d/b/a	)	
Ameren Missouri,	)	
Respondent.	)	

**AMEREN MISSOURI'S POST-HEARING BRIEF**

COMES NOW Union Electric Company d/b/a Ameren Missouri (the "Company") and respectfully submits its post-hearing brief.

**I. Introduction**

Mr. Howard filed a complaint against the Company on June 17, 2013 (the "Complaint"). The issues raised by the Complaint, as crystalized by the parties at the hearing, are: a. whether the Company denied residential electric utility service to Mr. Howard's tenant, Benjamin Scott and thereby violated a statute, rule, order or Commission-approved tariff<sup>1</sup>; b. whether the Company violated a statute, rule, order or Commission-approved tariff when it charged Mr. Howard for residential electric utility service to 4453 Athlone, St. Louis, Missouri, for the period February 20, 2013 through May 24, 2013<sup>2</sup>; and c. whether the Company violated a statute, rule, order or Commission-approved tariff when it transferred a bill for \$\*\*\*.\*\* for service at 4111 Maffitt, St. Louis, Missouri to a residential electric utility account in Mr. Howard's name<sup>3</sup>.

Because Mr. Howard brought the Complaint, he has the burden of proving that the Company violated a statute, rule, order or Commission-approved tariff.<sup>4</sup> He must prove the

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<sup>1</sup> Complaint, ¶2; Tr. p. 82, l. 23 through p. 83, l. 1.

<sup>2</sup> Tr. p. 106, l. 13-17.

<sup>3</sup> Tr. p. 106, l. 19 through p. 107, l. 4.

<sup>4</sup> *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm'n of State of Mo.*, 116 S.W.3d 680, 693 (Mo. Ct. App. 2003).

violation by a preponderance of the evidence—that it is more likely than not.<sup>5</sup> Mr. Howard testified and offered certain documentary evidence at the hearing held on April 4, 2014.<sup>6</sup> Mr. Howard’s testimony and documentary evidence do not prove that it is more likely than not that the Company violated any statute, rule, order or Commission-approved tariff. Although the Company did not have the burden of proof, the Company presented the testimony of its expert witness, Cathy Hart, and documentary evidence at the evidentiary hearing<sup>7</sup> proving that it has complied with applicable rules and tariffs in its dealings with Mr. Howard.

## **II. Issues.**

### **a. Whether the Company denied service to Mr. Howard’s tenant, Benjamin Scott and thereby violated a statute, rule, order or Commission-approved tariff.**

In his Complaint, Mr. Howard alleged that, “I have attempted to rent said premises to a Ben Scott, who I believe cannot receive utility service there, because it has been wrongfully placed in my name[.]”<sup>8</sup> The Commission’s Rules provide that a utility cannot refuse service to an applicant for failure to pay the bill of another customer.<sup>9</sup> The Rules also provide that the utility shall commence residential service as close as possible to the date specified by the customer but not later than three business days after the date specified by the customer.<sup>10</sup> The Company has complied in all respects with these rules.

Residential electric utility service to 4453 Athlone, St. Louis, Missouri was disconnected on May 21, 2013, because from February 20, 2013 through May 21, 2013, service had been taken there without an active customer account, no one was paying for the service and no one had responded to the multiple “unknown user” letters sent by the Company to the premises.<sup>11</sup>

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<sup>5</sup> *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996). *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

<sup>6</sup> See testimony of Peter Howard, Tr., generally, and exhibits labeled Petitioner’s Exhibits 1, 2 and 3 attached thereto.

<sup>7</sup> Tr., p. 31-p. 68, and p. 77-99, and Ameren Missouri exhibits labeled Ameren Missouri 1HC, 2HC, 3HC, 4HC, 5HC, 6HC, and 7HC (each hereafter referred to as, “Co. Ex.”).

<sup>8</sup> Complaint, ¶2.

<sup>9</sup> 4 CSR 240-13.035(2)(B).

<sup>10</sup> 4 CSR 240-13.035(3).

<sup>11</sup> Tr. p. 78, l. 7-24; Co. Ex. 4HC, p. 2, see entry dated 2013-05-21;

Mr. Scott called the Company on May 22, 2013<sup>12</sup> and requested residential electric utility service in his name at the Athlone address.<sup>13</sup> Mr. Scott told the Company he was moving to the address on the first of June.<sup>14</sup> His landlord, Mr. Howard, later told the Company that Mr. Scott was scheduled to move in June 1 but would like to have the service turned on sooner.<sup>15</sup> Service was placed in an account in Mr. Scott's name on May 24, 2013<sup>16</sup>, and remained in his name through the date of the evidentiary hearing.<sup>17</sup> At the hearing, Mr. Howard admitted that Mr. Scott receives electric service from the Company at 4453 Athlone address.<sup>18</sup> Because the unrefuted evidence proves that the Company transferred residential electric utility service to 4453 Athlone to an account in Mr. Scott's name two days after Mr. Scott called to request service, Mr. Howard failed to prove that the Company violated any denial of service-related statute, rule, order or Commission-approved tariff.

**b. Whether the Company violated a statute, rule, order or Commission-approved tariff when it charged Mr. Howard for electric utility service to 4453 Athlone, St. Louis, Missouri, for the period February 20, 2013 through May 24, 2013.**

Mr. Howard is the co-owner and landlord of 4453 Athlone.<sup>19</sup> While the property was between tenants, Mr. Howard wanted the electricity to stay on at the Athlone address for security purposes.<sup>20</sup> Over the course of a May 22, 2013 recorded telephone conversation with Mr. Howard<sup>21</sup>, a company representative attempted to find out who was responsible for electric usage after February 20, 2013, when his prior tenant Alicia Bell, had moved out and had made a request to the Company that service there be taken out of her name<sup>22</sup>. Mr. Howard told the Company representative that no one had been living there after that time, he had used electricity at the premises, but he was certain his usage was "very minimum."<sup>23</sup> Although Mr. Howard did

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<sup>12</sup> Co. Ex. 7HC.

<sup>13</sup> Tr. p. 70, l. 5-18 (transcript of Co. Ex. 7HC, a recording of a customer service call); Co. Ex. 4HC, p. 1, third entry dated 2013-05-22.

<sup>14</sup> Tr. p. 70, l. 19-23.

<sup>15</sup> Tr. p. 72, l. 20-24.

<sup>16</sup> Co. Ex. 4HC, p. 1, *see* entry dated 2013-05-28.

<sup>17</sup> Tr. p. 83, l. 2-6.

<sup>18</sup> Tr. p. 43, l. 18-24.

<sup>19</sup> Tr. p. 72, l. 4-16; and *see* Complaint, ¶2, "I have attempted to rent the premises to a Ben Scott."

<sup>20</sup> Tr. p. 46, l. 12 through p. 47., l.9.

<sup>21</sup> Co. Ex. 7HC; Co. Ex. 4HC, *see* entry p.1, dated 2013-05-22.

<sup>22</sup> Tr. p. 72, l. 25; p. 73, l.6-22

<sup>23</sup> Tr. p. 73, l. 22 through p. 74, l. 5.

not believe there had been very much electric usage at the premises after Ms. Bell moved out, when he was told by a Company representative that the meter reading showed consistent usage, he admitted that he had been at the property cleaning it up and getting it rental ready, he left a light on so no one would break in, and later mentioned that maybe a radio was left on.<sup>24</sup>

After the representative explained that the usage had been approximately thirty kilowatts per day, Mr. Howard instructed her, “[j]ust send me the bill, whatever overage there is, just send it to me.”<sup>25</sup> The representative explained that she would need Mr. Howard’s social security number in order to get service turned on prior to the move-in date tenant had mentioned, and to set up an account in Mr. Howard’s name backdated to February, and after the new tenant moved in service would be transferred into the new tenant’s name.<sup>26</sup> After another round of discussion including an estimate of the charges to be billed to Mr. Howard during the February to May period when there was no tenant, Mr. Howard instructed the representative, “...send me the bill, send me the bill”<sup>27</sup> and gave the representative his social security number and address.<sup>28</sup> The Company then issued an order to connect service at 4453 Athlone, backdated to February 20, 2013<sup>29</sup> and set up an account in Mr. Howard’s name for that service<sup>30</sup>, and billed Mr. Howard for service at 4453 Athlone from February 20, 2013 through May 24, 2013.<sup>31</sup> The Company also assessed a \$\*\* deposit, but then removed it when the service was transferred to his new tenant’s name<sup>32</sup>.

Mr. Howard failed to prove that the Company’s act of sending him the bill for the residential electric utility service taken at 4453 Athlone from February 20, 2013 through May 24, 2013 violated any statute, rule, order or Commission-approved tariff. To the contrary, the evidence presented at the hearing demonstrated that it was proper for the Company to bill Mr. Howard for that service. Mr. Howard’s own testimony proved that he was the owner of the premises, the landlord of the premises, he used and got the benefit of electricity at the premises

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<sup>24</sup> Tr. p. 72. L. 25 through p. 74, l. 5.; p. 75, l. 17-19.

<sup>25</sup> Tr. p. 74., l. 10-11.

<sup>26</sup> Tr. p. 74, l. 10-24.

<sup>27</sup> Tr. p. 75, l. 20-22.

<sup>28</sup> Tr. p. 76, l. 2-4.

<sup>29</sup> Co. Ex. 4HC, *see* fourth entry dated 2013-05-22: “Date wanted: 2013-02-20”.

<sup>30</sup> Co. Ex. 1HC.

<sup>31</sup> Co. Ex. 3HC, pp. 1 and 3.

<sup>32</sup> Tr. p. 82, l. 1-10. 4 CSR 240-13.030(1)(B) permits a utility to require a deposit as a condition of new residential service if the customer has an outstanding unpaid bill accrued within the last five years that remains unpaid and not in dispute. The outstanding unpaid bill was the bill discussed in detail at subsection c., *supra*.

during that period,<sup>33</sup> and no one else had been at the premises during that period.<sup>34</sup> The Company rightfully held Mr. Howard responsible for the cost of that service even though he did not live there and did not request the service. The Commission has recognized that it is proper for a utility to look to a person who has received the benefit and use of service, even absent a request for the service, for payment for that service. *See, e.g., Staff v. Mo. Public Service Co.*, 27 Mo. P.S.C. 563 (August 6, 1985). It was also proper to bill Mr. Howard for that service because he agreed to take responsibility for the bill for that service.

**c. Whether the Company violated a statute, rule, order or Commission-approved tariff when it billed Mr. Howard \$\*\*\*.\*\* for service provided at 4111 Maffitt, St. Louis, Missouri.**

The bill the Company sent to Mr. Howard for residential electric utility service at 4453 Athlone from February 20, 2014 through May 24, 2014 also included a transferred balance of \$\*\*\*.\*\*.<sup>35</sup> This was the prior unpaid balance for residential electric utility service to 4111 Maffitt, St. Louis, Missouri under an account in Mr. Howard's name.<sup>36</sup> The Maffitt account had been terminated for nonpayment on April 12, 2011.<sup>37</sup> Mr. Howard alleges it was wrong for the Company to transfer this amount to his bill for service to 4453 Athlone for two reasons. First, he disputes the amount of electricity used at 4111 Maffitt as reported by the Company, and second, he disputes that he owes any more than \$\*\*\* for such service.

**1. Electric Usage at 4111 Maffitt.**

Mr. Howard testified that he believed the amounts he was billed for service at the 4111 Maffitt address that were transferred to the bill for service at 4453 Athlone did not reflect actual electric usage at 4111 Maffitt. He offered into evidence a Company account activity statement for service to the Maffitt address covering the period March 26, 2007 through April 12, 2013 and opined that they showed, "a violent fluctuation in billing per month."<sup>38</sup> In support of his contention he testified that he had a telephone conversation with someone, either from the Company or the Public Service Commission, but that the unidentified person couldn't explain

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<sup>33</sup> Although he disputed how much electricity he used and should have been billed for, he did not offer any evidence to prove that the Company incorrectly measured the amount of electricity he used, or what alternate amount of kilowatt hours of electricity he should have been billed for.

<sup>34</sup> Tr. p. 73, l. 21-22.

<sup>35</sup> Co. Ex. 3HC, *see* "Transferred Amount" line item.

<sup>36</sup> Co. Ex. 2HC, *see* entry dated 4/27/2011, "Bill Amount – Bill Final".

<sup>37</sup> Co. Ex. 5HC, *see* p. 2, entry dated 2011-4-12, "Cut Out for Nonpay Completed."

<sup>38</sup> Petitioner's Exhibit 1; Tr. p. 33, l. 21 through p. 34, l. 12.

the “drastic variance in billing cycles between one year and another in the same month.”<sup>39</sup> As to electric usage at the premises, he testified that no one lived at the Maffitt address except his two dogs, there were no major appliances there, and he only kept the electricity on so that he could walk through the house at night to feed the dogs.<sup>40</sup> He theorized that because his bills increased “inexplicably” he had to attribute his bills not to usage, but to the Company trying to pass off the costs of the “Taum Sauk Johnson State Park fiasco.”<sup>41</sup> This exact claim has already been heard and decided by the Commission in a prior complaint involving Mr. Howard and service to the 4111 Maffitt address and the Commission’s findings and decisions cannot be collaterally attacked in this proceeding.

The accuracy of reported electric usage at 4111 Maffitt was the subject of a prior complaint filed by Mr. Howard, EC-2008-0329 and of a Report and Order<sup>42</sup> issued in that Complaint (the “Prior Report and Order”). In the Prior Report and Order, the Commission found that Mr. Howard was the owner of 4111 Maffitt<sup>43</sup>; that no one had lived at the premises for ten years but Mr. Howard kept dogs there<sup>44</sup>; that he was the account holder at 4111 Maffitt during the period in dispute and that he used some electricity at the premises<sup>45</sup>; that Mr. Howard’s testimony, that before an automated meter reading (“AMR”) device failed and the device and meter were replaced his average monthly bills for usage \$\*\* to \$\*\* per month, was not credible<sup>46</sup>; that there was no evidence that the new meter was malfunctioning<sup>47</sup>; and that data presented by the Company showing kilowatt usage was more credible than any witness’s testimony<sup>48</sup>. The Commission noted that, “[t]he controversy lies in how much electricity was used at 4111 Maffitt.”<sup>49</sup> The Commission found that Mr. Howard’s testimony was the only evidence that his electric usage was not what his bills showed, but that testimony was rebutted by the pattern of usage increasing in winter months, consistent with use of some type of heat

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<sup>39</sup> Tr. p. 34, l. 20 through p. 35, l. 8

<sup>40</sup> Id.

<sup>41</sup> Tr. p. 27, l. 5 through p. 28, l. 17.

<sup>42</sup> Tr. p. 40, l. 3-19, at the request of Staff Counsel, the Commission took judicial notice of said Report and Order.

<sup>43</sup> Prior Report and Order, Findings of Fact, ¶1.

<sup>44</sup> Id., Findings of Fact, ¶¶5 and 6.

<sup>45</sup> Id., Conclusions of Law, ¶¶1 and 2.

<sup>46</sup> Id., Findings of Fact, ¶15.

<sup>47</sup> Id., Findings of Fact, ¶38.

<sup>48</sup> Id., Findings of Fact, ¶42.

<sup>49</sup> Id., p. 12.

source.<sup>50</sup> Because the Commission found the pattern of usage to be the most compelling and credible evidence, it found that Mr. Howard did not meet his burden of proof, and denied his request for relief.<sup>51</sup>

At the April 4, 2014 hearing on the present Complaint, Mr. Howard presented no evidence, other than the exact same evidence heard and rejected by the Commission in the Prior Report and Order, to show that the electricity usage reported by the Company for service at 4111 Maffitt was incorrect.

There was a bevy of evidence presented at the recent hearing, however, that proved that Mr. Howard was responsible for the prior account balance for service to 4111 Maffitt. He offered into evidence an account activity statement that showed the account for service to 4111 Maffitt remained in his name long after the resolution of his prior complaint<sup>52</sup>; he admitted that he was the only person who had access to 4111 Maffitt residence<sup>53</sup>; he admitted he kept the electricity on there so that he could walk through the house at night to feed his dogs<sup>54</sup>; he admitted that he owned 4111 Maffitt until sometime in 2011;<sup>55</sup> he admitted that he was the party that made the payments reflected in a disconnect notice for the account and in a payment receipt for the account, both of which he offered into evidence<sup>56</sup>; and although he had a question as to the date the account was terminated, he testified that he was sure that the account was terminated for nonpayment.<sup>57</sup> The Company's expert witness, Cathy Hart, testified that the Company keeps a record when a customer requests to have service terminated, and she confirmed that there was no entry in the Company's contacts that indicated that Mr. Howard had ever asked for service to 4111 Maffitt to be terminated.<sup>58</sup>

Because there was no credible evidence that the amount of usage reflected in the Company's meter readings and bills for 4111 Maffitt was incorrect, because he was responsible for the prior account balance for service to 4111 Maffitt, and because he never made a request that service to 4111 Maffitt be terminated, it was proper for the Company to bill him for usage

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<sup>50</sup> Id., Decision, p. 15.

<sup>51</sup> Id. Decision, p. 16; Ordering paragraph 1.

<sup>52</sup> Petitioner's Ex. 1.

<sup>53</sup> Tr. p. 41, l. 8-10.

<sup>54</sup> Id.

<sup>55</sup> Id. l. 11-14.

<sup>56</sup> Tr. p. 47, l. 25 through p. 50, l. 6; *see* Petitioner's Ex. 2.

<sup>57</sup> Tr. p. 85, l. 2 through p. 86, l. 11.

<sup>58</sup> Tr. p. 86, l. 12-22.

through the date the account was terminated for nonpayment. The Company did not violate any statute, rule, order or tariff when it billed Mr. Howard for service taken at 4111 Maffitt until the account was terminated for nonpayment. Per Union Electric's Electric Service Tariff Sheet No. 103, General Rules and Regulations, I. General Provisions, G. Customer Obligations, 7. A customer shall, "[b]e responsible for payment of all electric service used on customer's premises and for all requirements of the provisions of the Service Classification under which the electric service is provided, *until such time as customer notifies Company to terminate service.*" (emphasis added).

## **2. Amount Owed for Service to 4111 Maffitt.**

Regardless of the amount of electricity used at 4111 Maffitt, Mr. Howard argued that the Company should only charge him \$\*\*\* for that service. He testified that he had *negotiated* over the telephone with a collection agency, Aargon, which was acting as Ameren Missouri's agent, to pay \$\*\*\*.\*\* in satisfaction of the entire unpaid prior balance for the 4111 Maffitt account.<sup>59</sup> Mr. Howard admitted, however, that the collection agency advised him it needed to, "get back to our client, and then we'll get back with you" but that the agency never did get back with him.<sup>60</sup> In contradiction to his testimony that there had been an agreement to compromise the debt, Mr. Howard himself offered into evidence the "latest copy" of a communication he received from Aargon, dated November 21, 2013, which made no reference whatsoever to any agreement to compromise the debt to \$\*\*\* and which asserted that he owed \$\*\*\*.\*\* plus \$\*\*.\*\* in interest.<sup>61</sup> He also admitted that the telephone conversation he had with an Aargon representative occurred prior to the date he received the latest written communication from Aargon, and that the letter did not reflect any such agreement.<sup>62</sup>

Mr. Howard's testimony regarding an oral negotiation with a collection agency, which testimony is directly contradictory to written information Mr. Howard subsequently received from the collection agency and offered into evidence, does not prove that it is more likely than not that the Company was bound by a prior agreement between a collection agency and Mr. Howard to compromise his outstanding account balance for the 4111 Maffitt account to \$\*\*\*. The only competent evidence of the amount Mr. Howard owed for service to the 4111 Maffitt

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<sup>59</sup> Tr. p. 29, l. 2 through p. 30, l. 5.

<sup>60</sup> Id.

<sup>61</sup> Tr. p. 30, l. 6-15; Petitioner's Ex. 3.

<sup>62</sup> Tr. p. 30, l. 16 through p. 31, l. 17.



address through the date service to that address was terminated is the Company's account activity statement for that account. One form of that statement was offered into evidence by Mr. Howard<sup>63</sup>; one by the Company.<sup>64</sup> Both show that at the time service at 4111 Maffitt was terminated in 2011, Mr. Howard owed \$\*\*\*.\*\* for that service.

In May of 2014, after speaking with the tenant Mr. Scott, who claimed to want service beginning June 1, 2013<sup>65</sup>, then with Mr. Howard, who said service needed to be turned on sooner so that the new tenant could do a walk-through<sup>66</sup>, the Company agreed reconnect service promptly in an account in Mr. Howard's name, backdated to February 20, 2013, and then to transfer service to his tenant's name when the tenant moved in.<sup>67</sup> Because the \$\*\*\*.\*\* balance on Mr. Howard's account for residential electric service to 4111 Maffitt remained outstanding at the time he requested residential electric utility service at 4453 Athlone, the Company made arrangements for the payment of the Maffitt balance by transferring it to the Athlone account. The Company is expressly permitted to do this under its tariffs, which provide, "[t]he Company shall not be required to commence supplying service to a customer, or if commenced the Company may disconnect such service, if at the time of application such customer...is indebted to the Company for the same class of service previously supplied at such premises or any other premises until payment of, or satisfactory payment arrangements for, such indebtedness shall have been made."<sup>68</sup>

### **III. Conclusion**

Because the evidence presented at the hearing demonstrates that Company has complied with all applicable rules and tariffs in its dealings with Mr. Howard, the Commission should enter an order denying Mr. Howard's Complaint on the merits.

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<sup>63</sup> Petitioner's Exhibit 1.

<sup>64</sup> Co. Ex. 2HC.

<sup>65</sup> Tr. p. 70, l. 5-23.

<sup>66</sup> Tr. p. 74, l. 10-24

<sup>67</sup> Tr. p. 72, l. 21-24; Co. Ex. 4HC, *see* fourth entry dated 2013-05-22: "Date wanted: 2013-02-20".

<sup>68</sup> Union Electric Co., Electric Service Tariff Sheet No. 101, General Rules and Regulations, I. General Provisions, C. Application for Service.

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Post-Hearing Brief was served on the following parties via electronic mail (e-mail) or regular mail on this 20<sup>th</sup> day of June, 2014.

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