

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

Peter Howard,)	
)	
Complainant,)	
)	
v.)	<u>File No. EC-2013-0524</u>
)	
Union Electric Company, d/b/a Ameren)	
Missouri,)	
)	
Respondent.)	

STAFF’S POST-HEARING BRIEF

COMES NOW Staff of the Missouri Public Service Commission, by and through counsel,¹ and for its *Post-Hearing Brief* states:

INTRODUCTION

On June 17, 2013, Peter Howard filed this formal complaint with the Commission against Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”) alleging Ameren Missouri wrongfully charged him ** _____ ** for electricity. The amount Mr. Howard asserts has been wrongfully charged is the sum of bills from two addresses: 4111 Maffitt and 4453 Athlone.² In Staff’s view this complaint is best characterized as three separate issues, the first of which the Commission previously decided : 1) whether Mr. Howard’s overdue electric bill from 4111 Maffitt should be revisited by the

¹ Staff Counsel Division student intern Connor Curran contributed tremendously to the research, drafting, and analysis in this brief; however, having finished his first year of law school, he is not yet eligible for Rule 13 status and cannot sign as attorney of record. Therefore counsel recognizes his work in this footnote. Thank you, Connor.

² Unless otherwise specified, all addresses referenced in this brief refer to locations in St. Louis, Missouri.

Commission,³ 2) whether Ameren Missouri and Mr. Howard agreed to reduce the prior balance to ** _____ ** such that the Commission's decision in Case No. EC-2008-0329 should be revisited in the present complaint, and 3) whether Ameren Missouri has wrongfully attributed electricity usage incurred at 4453 Athlone to Mr. Howard's account and assessed a deposit.

The Commission ordered Staff to investigate this complaint and provide its recommendation. In its *Report and Recommendation* Staff recommended that:

[T]he Commission find Ameren Missouri has not violated any Missouri Statute, Commission rule or any provision of Ameren Missouri's Commission-approved tariff. Unless the Commission wants to reconsider its previous decision made in the 2008 case, Staff recommends the Commission dismiss the portion of the current complaint that involves the ** _____ ** of the prior balance because the Commission has already reviewed and decided this amount that is again part of this complaint.⁴

The Commission scheduled a prehearing conference, at which Mr. Howard did not appear. The Commission then ordered Mr. Howard to file a statement informing it of the reason why he was absent. Mr. Howard complied, and the Commission scheduled a second prehearing conference. At the second prehearing conference, Mr. Howard asserted that he was not happy with the outcome of the 2008 complaint involving 4111 Maffitt and that he was including that disputed bill amount in this complaint. Mr. Howard also argued that Ameren Missouri incorrectly charged his account for electricity used at 4453 Athlone. Ameren Missouri argued first that the Maffitt charges were previously decided and second that Mr. Howard agreed to accept the Athlone charges over the phone. Towards the end of the second prehearing

³ In 2008, the Commission decided that the bill for this address was valid. See File No. EC-2008-0329.

⁴ *Staff Report and Recommendation*, Case No. EC-2013-0524, filed Aug. 15, 2013, pp.2-3 par. 6.

conference, Ameren Missouri agreed to send Mr. Howard a recording of the call during which, according to Ameren Missouri, he authorized Ameren Missouri to switch the 4453 Athlone service into his name. After receiving the tape, Mr. Howard, in an email to the regulatory law judge in this case, stated that he believed the recording evidenced not only his lack of acceptance of the charges, but his express refusal of them. Mr. Howard timely requested an evidentiary hearing. During the evidentiary hearing the parties presented their evidence. Mr. Howard represented himself *pro se*. All other parties present at the hearing were represented by counsel.

PARTIES

The Complainant, Mr. Howard, is a Missouri resident and an electric customer of Ameren Missouri. The Respondent, Ameren Missouri, is a Missouri company which provides electric service in Missouri to customers in its service area. Staff is represented by Staff Counsel, per rule 4 CSR 240-2.040(1).

JURISDICTION

The Commission has jurisdiction to hear and determine the complaint against Ameren Missouri, pursuant to § 386.390.1, RSMo,⁵ which states as follows:

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, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission

⁵ All statutory references are to RSMo 2000, unless otherwise specified.

STATEMENT OF FACTS

Previous Complaint (Case No. EC-2008-0329)

Mr. Howard previously filed a complaint with the Commission (Case No. EC-2008-0329) that also involved Mr. Howard's receipt of electricity from Ameren Missouri at his residential address, 4111 Maffitt, from June 14, 2005 through March 22, 2011.⁶ In that complaint the automated meter reading ("AMR") device 4111 Maffitt had stopped transmitting information to Ameren Missouri and Ameren Missouri sent a field technician to read the meter manually; but the gate to the premises was locked and there was a dog in the backyard, so no reading was taken.⁷ After Ameren Missouri attempted to schedule a manual reading via numerous letters mailed in 2007 and 2008, but receiving no response, in January of 2008 Ameren Missouri mailed a letter informing Mr. Howard that service disconnection was the next step.⁸ Mr. Howard responded to the warning letter by scheduling a meter change.⁹ During the meter change, Ameren Missouri found that the problem was with the AMR device; the original meter was still working properly.¹⁰ This allowed Ameren Missouri to take an actual meter reading prior to the meter being replaced.¹¹ The manual reading indicated Mr. Howard had been charged ** _____ ≡** less than the price of the electricity consumed at 4111 Maffit during the time when

⁶ *Staff Report and Recommendation*, Case No. EC-2013-0524, Aug. 15, 2013, App. A, p. 3.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

the AMR device was not working.¹² Even though Ameren Missouri found that Mr. Howard had a substantial increase in his usage at 4111 Maffitt during the specified period, Ameren Missouri agreed to reduce his bill by ** _____ ** to ** _____ **, after Mr. Howard filed an informal complaint with the Commission.¹³ Mr. Howard filed the 2008 complaint even after Ameren Missouri agreed to the reduction because he believed that he was being billed for more electricity than he had used.

On December 11, 2008, the Commission decided Mr. Howard's 2008 complaint in favor of Ameren Missouri, finding that Mr. Howard owed ** _____ ** because he failed to show that the usage amount Ameren Missouri attributed to him was incorrect.¹⁴ Mr. Howard continued to receive, and be billed for, electric service at 4111 Maffitt until April 12, 2011, when Ameren Missouri disconnected service for non-payment of an outstanding bill of ** _____ **. ¹⁵ That amount is the sum of ** _____ ** owed for past service addressed in the Commission's 2008 decision and an additional ** _____ ** incurred for service received between the time of the 2008 decision and the time of service disconnection.

Present complaint (EC-2013-0524)

The remaining ** _____ ** of the presently disputed ** _____ ** Ameren Missouri billed to Mr. Howard for electric usage at 4453 Athlone. Mr. Howard's daughter paid for utilities at that address until she moved out on February 20, 2013.¹⁶ After Mr. Howard's daughter moved out, electricity was being used at 4453 Athlone, but

¹² *Id.*

¹³ File No. C200803118 (February 13, 2008).

¹⁴ *Report and Order*, Case No. EC-2008-0329, *Iss'd* Dec. 11, 2008, p. 16.

¹⁵ *Staff Report and Recommendation*, Case No. EC-2013-0524, Aug. 15, 2013, App. A, p. 4.

¹⁶ *Id.*

Ameren Missouri was not billing anyone for it. On May 22, 2013, Ben Scott, a prospective renter of 4453 Athlone, called Ameren Missouri seeking transfer of responsibility for the electric service at 4453 Athlone to him. An Ameren Missouri employee placed Ben Scott on hold, then called Mr. Howard, the owner of the property, to verify that Mr. Scott was going to move into the location. Ameren Missouri and Mr. Howard agree that a conversation took place, but disagree about whether Mr. Howard accepted responsibility for the electric charges during the period of February 20 and May 24, 2013—the “gap period.”¹⁷ After this phone call, Ameren Missouri created a new account in Mr. Howard’s name and billed Mr. Howard ** _____ ** for electricity, used at 4453 Athlone from the start of the gap period through April 29, 2013. In addition, Ameren Missouri added to Mr. Howard’s bill an outstanding balance of ** _____ **for service at 4111 Maffit, his previous account. Ameren Missouri added a ** _____ ** deposit charge to the new account because Mr. Howard still owed the ** _____ ** and was opening a new account.

On May 24, 2013, Ben Scott assumed responsibility for future electricity bills at 4453 Athlone. On May 28, 2013, Ameren Missouri sent Mr. Howard an updated bill that removed the ** _____ ** deposit formerly charged (since Ben Scott assumed responsibility so quickly) and simultaneously added ** _____ ** for electricity used from April 29, 2013 through the end of the gap period, ended by Ben Scott assuming responsibility. The updated final bill total was ** _____ **. ¹⁸

Mr. Howard originally disputed the ** _____ ** bill, but since that bill was altered to subtract the deposit and add the charges for the month of May 2013, he really

¹⁷ The time period between when Mr. Howard’s daughter moved from 4453 Athlone to when Ben Scott assumed responsibility for paying for electric service.

¹⁸ *Staff Report and Recommendation*, Case No. EC-2013-0524, Aug. 15, 2013, App. A, p. 5.

disputes the ** _____ ** bill. Mr. Howard disputes the updated bill because he claims he made a verbal agreement with Ameren Missouri's collection agency to settle the dispute for ** _____ **. ¹⁹ As support Mr. Howard provided a written statement from the collection agency, dated November 21, 2013, which shows an owed amount of ** _____ ** (this is the ** _____ ** bill plus interest). ²⁰ Mr. Howard has not provided in evidence written documentation of the ** _____ ** agreement. He asserts that he tried, but that he "just couldn't retrieve those documents." ²¹

ISSUES

- 1. Whether the Commission's decision in EC-2008-0329, concluding that Mr. Howard owes Ameren Missouri ** _____ ** for electricity charges incurred at 4111 Maffitt, should be revisited.**
- 2. Whether there was an agreement between Ameren Missouri and Mr. Howard to reduce the prior balance to ** _____ ** such that the Commission's decision in EC-2008-0329 should be revisited in the present complaint.**
- 3. Whether Ameren Missouri violated any Commission statute, rule, order, or Commission-approved Company tariff when it charged Mr. Howard for the electricity used at 4453 Athlone between February 20, 2013 and May 24, 2013 and a deposit.**

ANALYSIS

- 1. The Commission's decision in EC-2008-0329, concluding that Mr. Howard owes Ameren Missouri ** _____ ** for electricity charges incurred at 4111 Maffitt, should NOT be revisited.**

¹⁹ See Tr. Vol. 3 (Evidentiary Hearing), Case No. EC-2013-0524, p.29 I. 24. See also Tr. Vol. 3 (Evidentiary Hearing), EC-2013-0524, p.108 I. 8.

²⁰ See Tr. Vol. 3 (Evidentiary Hearing), Case No. EC-2013-0524, p.30 II. 6-9.

²¹ *Id.* at I. 17.

Although the Commission's "orders and directives . . . are always subject to change to meet the changing conditions, as the commission, in its discretion, may deem to be in the public interest,"²² ultimately "[i]n all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive."²³ "The Commission is authorized to grant rehearing if in its judgment sufficient reason therefore be made to appear."²⁴ Thus, a Commission order is conclusive, *unless* the Commission grants a rehearing.

On December 11, 2008, the Commission decided Mr. Howard's 2008 complaint in favor of Ameren Missouri.²⁵ By Commission rule, an order issued will become final unless an application for rehearing is filed within the allotted number of days.²⁶ Mr. Howard did not request a rehearing prior to the effective date of the Case No. EC-2008-0329 *Report and Order*.²⁷ Further, Mr. Howard has neither presented any new evidence regarding the 2008 *Report and Order*, nor stated specific grounds upon which the order is unlawful, unjust, or unreasonable.²⁸ Therefore, the Commission should NOT revisit its previous order in which it concluded, "Mr. Howard did not meet his burden of proof and that the balance due shall not be discharged."²⁹

²² *State ex rel. Chicago, Rock Island & Pacific Railroad Co.*, 312 S.W.2d 791, 796 (Mo. 1958).

²³ *State ex rel. Harline v. Public Service Commission of Missouri*, 343 S.W.2d 177, 184 (Mo. App. W.D. 1960). See also RSMo § 386.550.

²⁴ *State ex rel. AG Processing v. Thompson*, 100 S.W.3d 915, 921 (Mo. App. 2003). See also RSMo § 386.500.1.

²⁵ *Report and Order*, EC-2008-0329, Iss'd Dec. 11, 2008, p. 16.

²⁶ 4 CSR 240-2.070(14).

²⁷ See Tr. Vol. 2 (Pre-hearing Conference), EC-2013-0524, p. 13 l. 20 through p. 14 line 23.

²⁸ 4 CSR 240-2.070(15)(H).

²⁹ *Report and Order*, Case No. EC-2008-0329, Iss'd Dec. 11, 2008, p. 15 ("The relief Mr. Howard requested, i.e., the elimination of his account balance of ** _____ **, is

2. There is no new evidence that an agreement to reduce the prior balance to ** _____ ** exists between Ameren Missouri and Mr. Howard, therefore in the present complaint the Commission should NOT revisit its decision in EC-2008-0329.

In concluding in Case No. EC-2008-0329 that “Mr. Howard did not meet his burden of proof and that the balance due shall not be discharged”³⁰ the Commission reasoned that “Mr. Howard’s testimony is the only evidence that usage is not what [Ameren Missouri’s] bills show. But that testimony is rebutted by the clear pattern of electric usage”³¹

The fundamental circumstances from the 2008 complaint have not changed. Mr. Howard’s own testimony is still the only evidence in his favor. Even though Mr. Howard now claims that he had a written agreement with Ameren Missouri’s hired debt collection agency, Mr. Howard has not provided any written documentation of it.³² The only evidence that written documentation exists is Mr. Howard’s testimony that he tried looking for proof, but “just couldn’t retrieve those documents.”³³ Therefore, the Commission should NOT revisit its original decision, since the conditions under which the original decision was made have not changed in any way likely to alter the Commission’s original reasoning, nor has Mr. Howard stated specific grounds upon which the order is unlawful, unjust, or unreasonable the amount of the previous decision.

denied.”). Subsequently ** _____ ** worth of additional electricity was used at the Maffitt address, totaling ** _____ **.

³⁰ *Report and Order*, EC-2008-0329, Iss’d Dec. 11, 2008, p. 16.

³¹ *Id.* at p. 15.

³² See Tr. Vol. 3 (Evidentiary Hearing), EC-2013-0524, pp.29-33.

³³ See Tr. Vol. 3 (Evidentiary Hearing), EC-2013-0524, p.30 l. 17.

3. Ameren Missouri did not violate any Commission statute, rule, order, or Commission-approved Company tariff when they charged Mr. Howard for the electricity used at 4453 Athlone between February 20, 2013 and May 24, 2013 and a deposit.

The first question is whether Ameren Missouri was legally justified in charging Mr. Howard for the electricity used at 4453 Athlone during the gap period. The second question is whether Ameren Missouri was legally justified in assessing a deposit against Mr. Howard's new account because of his bill from 4111 Maffitt being overdue.

First, the recording of the phone call between Mr. Howard and Ameren Missouri shows that Mr. Howard accepted responsibility for the gap period charges.

During a phone call with Ameren Missouri, a representative asked Mr. Howard who had been using electricity at the address during the gap period, and Mr. Howard confirmed that he had used electricity.³⁴ Specifically, the representative asked, "So who's been there [during the gap period], have you been cleaning up the property because there's been consistent usage on the meter[?]" and Mr. Howard replied, "Yeah, there hasn't been that much usage, I mean I've been cleaning it up, getting it rental ready, yes"³⁵ Mr. Howard also admitted that he purposefully left a light on at night to discourage break-ins.³⁶ Most notably, Mr. Howard eventually agreed, "Okay, send me the bill then,"³⁷ and shortly thereafter provided his social security number so the representative could verify his identity and send the bill.³⁸ These facts show that Mr. Howard accepted responsibility for the electric service furnished to his 4453 Athlone property during the gap period.

³⁴ *Id.* at p. 72 l. 25 through p. 73 ll. 1-5.

³⁵ *Id.*

³⁶ *Id.* at p. 74 ll. 4-5.

³⁷ *Id.* at p. 75 l. 22.

³⁸ *Id.* at p. 76 l. 2.

Further, even if the Commission finds that the phone call recording does not show that Mr. Howard accepted responsibility for the gap period charges, he is still responsible for the charges because he owns the 4453 Athlone property and received the benefit and use of the service there during the gap period.³⁹

In *Laclede Gas Co. v. Hampton Speedway Co.*,⁴⁰ the Missouri Court of Appeals held that:

The general principle is that, even though there has been no specific request for goods or services, where goods and services are knowingly accepted by the party receiving the benefit, there is an obligation to pay the reasonable value of such services⁴¹

The court further explained:

[A] promise to pay such reasonable value is inferred by either the conduct of the parties or by law under circumstances which would justify the belief that the party furnishing such service expected payment.⁴²

In a more recent Commission decision, *Staff of Missouri Public Service Comm'n v. Missouri Public Service Co.*,⁴³ Staff brought a complaint against a public utility in Sedalia because it refused to furnish Ms. Young gas service at her new residence until she paid her incarcerated husband's overdue bill from their previous residence.⁴⁴ Ms. Young was living at the premises with her husband during the time at which his overdue bill accrued, but was not a customer of record with Missouri Public Service Co.⁴⁵ Missouri Public Service Co. argued that Ms. Young could be charged for her husband's bill due to the fact that she received the benefit and use of the service it had

³⁹ See Tr. Vol. 3 p. 101 l. 6.

⁴⁰ 520 S.W.2d 625 (Mo. App. E.D. 1975).

⁴¹ *Id.* at 630.

⁴² *Id.*

⁴³ 27 Mo. P.S.C.(N.S.) 563 (1985).

⁴⁴ *Id.* at 1.

⁴⁵ *Id.*

provided.⁴⁶ The Commission cited *Hampton*⁴⁷ to support its holding that “Ms. Young resided at the premises during the time the arrearage occurred. She received the benefit and use of gas service provided by the Company.”⁴⁸

Applying Missouri’s case law and Commission decisions to the facts of this case, clearly Mr. Howard received the benefit and use of Ameren Missouri’s electricity at 4453 Athlone during the gap period. It is undisputed that Mr. Howard owns the Athlone property. His name is on the deed.⁴⁹ During a telephone call with an Ameren Missouri customer service representative, Mr. Howard verbally admitted that he was also landlord of the property.⁵⁰ Although Mr. Howard was not residing at the premises during the time the arrearage occurred – in fact, it seems that *nobody* was residing at the premises – Mr. Howard still received the benefit and use of that electric service because of his relation to the property as the legal owner and active landlord. Even though Mr. Howard technically did not reside at 4453 Athlone during the gap period, he still admitted to using electricity there to service his business purpose of securing a renter for the property. The fact that a tenant agreed to rent the property bolsters the claim that Mr. Howard derived some benefit from using the electricity to clean the property. Mr. Howard also had an interest, as the legal owner and landlord of the property, to discourage break-ins. Mr. Howard admitted that he purposefully left a light on at night to discourage break-ins.⁵¹

⁴⁶ *Id.* at 2.

⁴⁷ See note 41, *supra*.

⁴⁸ *Id.* at 2.

⁴⁹ See Tr. Vol. 3 (Evidentiary Hearing), Case No. EC-2013-0524, p. 101 I. 6.

⁵⁰ *Id.* at p. 79 I. 19.

⁵¹ See Tr. Vol. 3 (Evidentiary Hearing), Case No. EC-2013-0524, p.74 II. 4-5.

Staff suggests, therefore, that these facts show Mr. Howard “received the benefit and use” of Ameren Missouri’s provided electricity. As such, Mr. Howard is responsible for paying for said service, either out of “knowing acceptance”⁵² on the part of Mr. Howard or “under circumstances which would justify the belief that the party furnishing such service expected payment.”⁵³

Second, Staff suggests that Ameren Missouri was legally justified in assessing a deposit against Mr. Howard. Rule 4 CSR 240-13.030(1)(A) provides:

A utility may require a deposit . . . as a condition of new residential service if . . . [t]he applicant has a past-due bill, which accrued within the last five (5) years and, at the time of the request for service, remains unpaid and not in dispute with a utility for the provision of the same type of service.

Essentially, a utility is legally justified in charging a deposit before furnishing service to a new address, so long as the applicant has a current overdue bill that is not disputed and accrued within the past five years.

On May 22, 2013, Ben Scott called Ameren Missouri requesting new residential electric service at 4453 Athlone causing Ameren Missouri to call Mr. Howard.⁵⁴ Mr. Howard’s first account with Ameren Missouri was overdue in the amount of ** _____ ⁵⁵ as of May 22, 2011;⁵⁶ the status of that account had not changed as of the date of the phone call between Mr. Howard and Ameren Missouri.⁵⁷ On May 23, 2013, Ameren Missouri assessed a ** _____ ** deposit against Mr. Howard’s

⁵² *Hampton*, 520 S.W.2d 625, 630 (Mo. App. E.D. 1975).

⁵³ *Id.*

⁵⁴ *Staff Report and Recommendation*, Case No. EC-2013-0524, Aug. 15, 2013, App. A, p. 4.

⁵⁵ *Id.*

⁵⁶ *Id.* at p. 3.

⁵⁷ *Answer of Union Electric Company d/b/a/ Ameren Missouri*, Case No. EC-2013-0524, July 15, 2013, para. 5(x).

account.⁵⁸ Since Mr. Howard's ** _____ ** bill contained charges from as recent as March 22, 2011, the five year accrual window referenced in Rule 4 CSR 240-13.030(1)(A) does not bar Ameren Missouri's legal justification to charge Mr. Howard a deposit. Mr. Howard also did not dispute the bill at the time of the call. Ameren Missouri, therefore, lawfully charged Mr. Howard a deposit as a condition of new residential service, due to the facts that Mr. Howard's bill was still past-due, not in dispute, and had accrued within five years prior to the time of the phone call.

Furthermore, even if Ameren Missouri charging the initial deposit were not lawful, on May 28, 2013 Ameren Missouri sent Mr. Howard an updated bill that removed the ** _____ ** deposit, due to the fact that Ben Scott assumed responsibility for the service so promptly.⁵⁹ Therefore, there is no current dispute over the ** _____ ** deposit. The billed amount in dispute is properly calculated, and Ameren Missouri did not violate any Commission statute, rule, order, or tariff when it charged Mr. Howard for the electricity used at 4453 Athlone between February 20, 2013 and May 24, 2013.

CONCLUSION

For the reasons stated above, Staff recommends that the Commission 1) decline to revisit its decision in Case No. EC-2008-0329, 2) find that there is no evidence of an agreement between Mr. Howard and Ameren Missouri to reduce his debt to ** _____ **, and 3) find that Ameren Missouri has not violated any Commission statute, rule, order or Commission-approved Company tariff by charging Mr. Howard for the electric charges from 4453 Athlone from February 20, 2013 through May 24, 2013.

⁵⁸ *Id.* at para. 5(vii).

⁵⁹ *Answer of Union Electric Company d/b/a/ Ameren Missouri*, Case No. EC-2013-0524, July 15, 2013, para. 5(ix).

WHEREFORE, Staff Counsel submits this *Post-Hearing Brief*, and prays the Commission issue an order in accordance with Staff's positions.

Respectfully submitted,

/s/ Tim Opitz

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed with first-class postage, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 20th day of June, 2014.

/s/ Tim Opitz