

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

Billie Hensiek,	)	
	)	
Complainant,	)	
	)	
vs.	)	Case No: EC-2014-0259
	)	
Union Electric Company, d/b/a	)	
Ameren Missouri,	)	
Respondent.	)	

**ANSWER TO COMPLAINT AND  
RESPONSE TO COMMISSION'S ORDER IN NOTICE OF COMPLAINT**

COMES NOW, Union Electric Company, d/b/a Ameren Missouri ("Ameren Missouri" or "Company"), and for its Answer to the Complaint and Response to Commission's Orders in Notice of Complaint filed in this proceeding states as follows:

**Answer to Complaint**

1. On March 27, 2014, Ms. Billie Hensiek (Complainant), with a residence of 369 Water Oak Ridge, St. Clair, Missouri 63077 and a service address of 1312 Wisteria Lane, St. Clair Missouri 63077 (the "subject property" or "1312 Wisteria"), initiated this proceeding against Company.
2. Any allegation not specifically admitted herein by the Company should be considered denied.
3. Ameren Missouri admits the allegations of paragraph 1 of the Complaint.
4. In lieu of completing the Commission's Complaint form beyond paragraph 1, and as the basis of her Complaint, Complainant attached a two-page typed letter and seven additional pages, including some photographs with handwritten notes. The paragraphs of the letter are unnumbered, but the Company will refer in this Answer to the first paragraph of the letter as Letter paragraph 1, the second as Letter paragraph 2, etc.
5. In Letter paragraph 1, the Complainant appears to be asking the Commission to order the Company to remove the rest of the tree, order the Company to pay to have a tree

company come and remove it, or to pay Complainant to have a tree company remove it. These alternate requests for relief should be denied. In addition, Complainant alleges the Company has damaged her property and cut down her tree during the middle of the worst drought in years. The Company denies these allegations.

6. In answer to Letter paragraph 2, the Company admits that it left (did not remove) the remainder of an oak tree at 1312 Wisteria that its contractor trimmed, and that the tree was trimmed during a period of drought and that an arborist in the contractor's crew examined the tree. The Company denies the remainder of the allegations of Letter paragraph 2.

7. In answer to Letter paragraph 3, the Company is without information sufficient to form a belief about whether Complainant personally removing the tree would cause damage to life or property, and therefore denies the same. The Company admits that the oak tree stands within the Company's electric easement across 1312 Wisteria, and that Complainant has suggested that the Company should remove the tree. The Company denies the remainder of the allegations of Letter paragraph 3.

8. In answer to Letter paragraph 4, the Company admits that the oak tree that the Company trimmed stands near the end of the driveway at 1312 Wisteria. The Company is without information sufficient to form a belief about the remainder of the allegations of Letter paragraph 4 and therefore denies the same.

9. In answer to Letter paragraph 5, the Company is without information sufficient to form a belief about the allegations concerning what the Commission said, and therefore denies the same. The Company admits that Complainant asked for a property damage claim and that the Company did not provide one to her. The Company denies the remainder of the allegations of Letter paragraph 5.

10. The Company is without information sufficient to form a belief about the allegations of Letter paragraph 6 and therefore denies the same.

11. In answer to Letter paragraph 7, the Company admits that it cut (trimmed) the oak tree, that it trimmed it during a drought, that Complainant is a paying customer of the Company, and that being a large electric utility company does not make the Company untouchable. The Company denies the remaining allegations of fact in Letter paragraph 7 and denies that Complainant is entitled to the relief requested in said paragraph.

12. In answer to the handwritten allegations that begin, “This is the tree”, on the unnumbered additional page bearing a photo of two persons standing next to a tree, the Company admits that the tree in the picture appears to be the same tree that the Company trimmed. The Company is without information sufficient to form a belief about the remainder of the allegations on this page and therefore denies the same.

13. In answer to the handwritten allegations that begin, “Tree looks alive to me”, on the unnumbered additional page bearing a different photo of two persons standing next to a tree, the Company is without information sufficient to form a belief about the allegations on this page and therefore denies the same.

14. In answer to the handwritten allegations that begin, “This is the letter received”, on what appears to be a copy of a closure letter from the Commission to Complainant dated January 17, 2014, the Company states that the document speaks for itself and denies the handwritten allegations as stated.

15. In further answer, the Company offers the following chronology of events related to vegetation management at the subject property:

- a. In July of 2011 a vegetation management contractor engaged by the Company, Shade Tree Service Co., inspected a mature oak tree within the Company’s electric easement across the front of 1312 Wisteria adjacent to the street. The contractor’s general foreman viewed and evaluated the tree immediately prior to the trimming, observed that the crown of the tree above the Company’s energized conductor was in decline, or dead, observed that there were very few green limbs below, determined that the tree was in decline and was dying, and instructed the crew to remove the four or five overhanging dead limbs from the crown that because they posed a threat to the safety and reliability of the Company’s energized conductor. The crew “stubbed” these dead, overhanging portions of the top of the tree, to prevent them from coming into contact with the Company’s energized conductor.
- b. On September 4, 2013, Complainant called in to report that the tree had died, and claimed that it died as a result of the trimming. A company representative advised her that the tree was in decline at the time it was trimmed in 2011, and trimming was not the cause of the tree’s death. The

representative also explained that the tree being in decline was the reason for the manner in which it was trimmed.

- c. 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.
- e. On January 2, 2014, after the representative was advised that Complainant had contacted the Commission regarding the condition of the oak tree, the representative again contacted Complainant and offered to send a crew to stub down more of the tree. Complainant did not accept or reject the offer but advised the representative that her tenant at the subject property was a landscaper and she was going to have him look at the tree.
- f. On January 13, 2014, the Company sent a crew to the subject property and stubbed the tree lower.

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,

conduits, ducts and other reasonable devices, apparatus and property of gas corporations, electrical corporations, water corporations, and sewer corporations."

- b. 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.
- c. Section 218 of Part 2 of the Code 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. 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).
- d. 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.
- e. None of these applicable standards require the Company to remove a tree, unless required to maintain a safe condition.

17. 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)

would be a business decision by the Company that is not within the Commission's jurisdiction. The Commission cannot order the Company to remove a tree that the Company does not have a legal duty to remove. "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." *State ex rel. Harline v. Public Serv. Com'n*, 343 S.W.2d 177, 182 (Mo. App. 1960).

18. 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).

#### **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.
- b. 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.

- c. The name of the contractor hired to trim the tree referenced in the complaint:  
Shade Tree Service Co.

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

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WHEREFORE, Ameren Missouri respectfully requests that the Commission issue an order denying Complaint's request for relief or, in the alternative, setting the matter for hearing.

/s/ Sarah E. Giboney  
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Attorneys for Ameren Missouri

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Answer to Complaint and Response to Commission's Order In Notice of Complaint was served on the following parties via electronic mail on this 28th day of April, 2014.

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/s/ Sarah E. Giboney  
Sarah E. Giboney



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Ameren Missouri,	)	
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**AFFIDAVIT OF KIRK GEORGE**

Affiant Kirk George, being of lawful age, being duly sworn, states as follows:

I am a certified arborist and am a general foreman with Shade Tree Service Company company contracted by Ameren Missouri to perform vegetation management.

In July of 2011 I viewed and evaluated a mature oak tree within Ameren Missouri's electric easement across 1312 Wisteria, St. Clair, Missouri, prior to my crew beginning work on the tree. I observed that the crown of the tree, above Ameren Missouri's energized conductor, was in decline, was dead. I observed that the lower canopy of the tree had very few green limbs. Based on these observations, I determined that the tree was in decline and was dying. I instructed the crew to remove four or five overhanging dead limbs that posed a threat to the safety and reliability of Ameren Missouri's energized conductor. The crew "stubbed" the dead portions of the top of the tree over the conductor, to prevent them from coming into contact with the energized conductor.

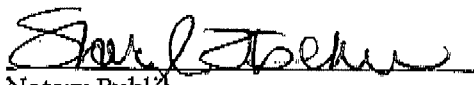
  
 Kirk George

Subscribed and sworn to before this 28 day of April, 2014.

Seal



SHERYL FISCHER  
 My Commission Expires  
 January 14, 2018  
 Franklin County  
 Commission #14535703

  
 Notary Public