BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Coalition for Fair Competition and Corey Malone,	))	
Complainants,	)	
v.	)	File No. EC-2023-0037
	)	
Union Electric Company d/b/a Ameren Missouri,	)	
Respondent.	)	

AMEREN'S MISSOURI'S RESPONSE IN OPPOSITION TO REQUEST FOR REHEARING BY MCFFC & COREY MALONE

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") and for its response to the above-referenced Request for Rehearing, states as follows:

1. Complainants have provided no sufficient reason whatsoever for the Commission to rehear this case. Indeed, Complainants' Request for Rehearing simply reargues points already made and briefed and reflects a further demonstration that Complainants either don't understand, or are choosing to ignore, the terms of the actual HVAC statute that governs this case.

2. Complainants attack the Commission's Findings of Fact Nos. 19-21, complaining that they are based on a defective Staff investigation. Complainants completely miss the point while ignoring their duty, as the parties who brought this complaint. Indeed, it was not Staff's duty to prove Complainants' case for them. To the contrary, it was Complainants' burden to adduce competent and substantial evidence of record that would prove a violation of the HVAC statute. That is, even if the exemption in Section 386.754.8 did not exist, it was Complainants' duty to establish such a violation by producing evidence of record to prove that Ameren Missouri itself, or its "utility contractor" or "affiliate", was engaged in "HVAC services", as those terms are defined in Section 386.762.

3. Findings of Fact Nos. 19-21 accurately reflect a complete lack of proof of the things

Complainants had to prove to sustain their complaint. This lack of proof is directly cited to by the Commission, that is, its citation to sworn testimony of record that Staff's investigation found no evidence that Ameren Missouri itself engaged in HVAC services,[1] found no evidence that either EEtility nor Resource Innovations engaged in HVAC services,[2] and affirmatively confirmed that in any event, there is no contract between Ameren Missouri and either of those entities, meaning even if they did engage in such activities they would not qualify as a "utility contractor" under the applicable statute.[3] So, where does that leave Complainants? With a complete failure to prove their case. Complainants can throw all the shade at Staff's investigation that they want but the responsibility to prove Complainants' case was theirs and theirs alone.

4. Complainants' attacks on Findings of Fact Nos. 12 – 15 similarly fall flat. Since Complainants adduced no evidence to prove that Resource Innovations or EEtility are either "affiliates" of, or "utility contractors" for Ameren Missouri, the wearing of a shirt with an Ameren logo on it by employees of actual HVAC contractors selected not by Ameren Missouri, but by EEtility and Resource Innovations, does not constitute the performance of HVAC services by Ameren Missouri. That Complainants may think it should, is irrelevant.

5. Finally, Complainants attack the Commission's *Report and Order* by claiming that the Commission somehow failed to apply the doctrine of *in pari materia*. The following explanation of the doctrine is typical of innumerable explanations of it in the decisions of the appellate courts of this state:

> Statutes relating to the same subject matter are considered in pari materia. The doctrine requires that statutes relating to the same subject matter be construed together even though they are found in different chapters or were enacted at different times. When one statute deals with a subject in general terms and another statute deals with the same subject in a more specific way, the two statutes should be harmonized if possible. If the statutes cannot be reconciled, the more specific

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[1] Tr. p. 41, ll. 10-15.
[2] Id., ll. 16-19.
[3] Tr. p. 41, l. 25 to p. 42, l. 3.

prevails over the more general.[4]

6. It is obvious that the doctrine simply does not apply here. Instead, the doctrine applies only if statute A and statute B were enacted at different times or are in different chapters, relate to the same subject matter, are apparently contradictory, and thus need to be harmonized. While what Complainants refer to as the "Fair Competition Law" is comprised of four statutory sections, they were all enacted by the same Act, at the same time, and they appear as consecutive sections in the same chapter, Chapter 386. More specifically, the substantive terms of the Fair Competition Law which Complainants claim have been violated are in the *same statute* as the exemption in subsection 8 they desperately seek to overcome.

As addressed in the Company's Reply Brief, the two key principles of statutory interpretation that govern here are (a) to give effect to the legislature's intention, and (b) *expressio unius est exclusio alterius,* that is, to recognize that the legislature's inclusion of a specific limitation on the exemption in subsection 7 of Section 386.754 coupled with the legislature not including a limit on the exemption in subsection 8, demonstrates that the subsection 8 exemption is not limited, despite Complainants' wishes to the contrary.

WHEREFORE, Ameren Missouri prays that the Commission issue its order denying Complainant's Request for Rehearing.

/s/ James B. Lowery
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[4] **KC Motorcycle Escorts, L.L.C. v. Easley**, 53 S.W.3d 184, 187 (Mo. App. W.D. 1001) (internal citations in quote omitted).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on all parties of record via electronic mail (e-mail) on this 4th day of November, 2024.

/s/James B. Lowery
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