

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

Craig Mershon,)	
Complainant,)	
)	
vs.)	Case No: EC-2012-0365
)	
Ameren Missouri,)	
Respondent.)	

ANSWER AND MOTION TO DISMISS

COMES NOW, Union Electric Company, d/b/a Ameren Missouri ("Ameren Missouri" or "Company"), and for its Answer and Motion to Dismiss the Complaint filed in this proceeding, states as follows:

ANSWER

1. Any allegation not specifically admitted herein by the Company should be considered denied.

2. On May 7, 2012, Mr. Craig Mershon ("Complainant"), with a service address of 11931 El Sabado Drive, St. Louis, Missouri 63138, initiated this proceeding against the Company.

3. Ameren Missouri admits the allegations of paragraph 1 of the Complaint.

4. In subparagraph 1 of paragraph 2 of the Complaint, Complainant alleges that the Company's disconnection notices are threatening and that it, "feels like the Co. is harassing him by sending them" and that Complainant, "[w]ould prefer past due notices." The Company denies that its disconnection notices are threatening. In further answer the Company states that though Complainant feels harassed, the Company is required to send the bills and notices it has sent to Complainant. The Company's bills and notices comply with 4 CSR 240-13.020, in particular subsections (7) and (9), and with 4 CSR 240-13.050, in particular subsections (3) through (7). For the Commission's benefit, the following are attached:

- a. A copy of Complainant's bill for service from September 21, 2011 through October 20, 2011 is attached hereto as **Exhibit A**.

- b. A copy of the Bill Supplement included with Complainant's said October, 2011 bill is attached hereto as **Exhibit B**. The Company has provided Complainant with similar monthly Bill Supplements since 1999, when he advised the Company that he was legally blind and required large print.
- c. A sample written disconnect notice, which is identical in format to the yellow disconnect notice sent to Complainant on November 22, 2011, is attached hereto as **Exhibit C**.
- d. A sample Final Notice, which is identical in format to the pink final disconnect notice sent to Complainant on November 28, 2011, is attached hereto as **Exhibit D**.

5. In subparagraph 2 of paragraph 2 of the Complaint, Complainant alleges that "[s]everal years ago [a] neighbor was stealing electric utility service from him \$200-\$300 worth and Co. told him [it was] his responsibility." The Company is without information sufficient to form a belief about the allegation that a neighbor was stealing utility service from Complainant. The Company admits that Complainant filed an informal complaint with the Commission in 2009, C2010001611, which included a statement that someone else had been using Complainant's service but that had been disconnected. In further answer the Company states as follows. The information that the Company received regarding informal complaint C2010001611 is attached hereto as **Exhibit E**. The day after the informal complaint was filed, a Company customer service representative spoke to Complainant about his account and about his report that a neighbor was taking electric utility service from Complainant's residence via an extension cord. The representative advised Complainant to contact local authorities if he was unable to resolve the situation with the neighbor. A copy of the representative's email to Commission Consumer Services Staff regarding her contacts with Complainant is attached hereto as **Exhibit F**. To the Company's knowledge, Complainant did not file a formal complaint regarding this issue after the informal complaint was closed.

6. In subparagraph 3 of paragraph 2 of the Complaint, Complainant alleges that the Company does not have a "formal due process system" set up to address customers' concerns. In answer thereto, the Company states that it is unaware what Complainant believes would constitute a formal due process system. The Company states that it has adopted and implements customer service procedures that comply with 4 CSR 240-13.040, 4 CSR 240-13.045 and 4 CSR

240-13.070 regarding customer inquiries, disputes and complaints. However, the Company acknowledges that the Company cannot always offer the resolution preferred by the customer.

7. In subparagraph 4 of paragraph 2 of the Complaint, Complainant alleges, “[p]oor customer service—extremely poor.” The Company denies the allegation of subparagraph 4.

8. In subparagraph 5 of paragraph 2 of the Complaint, Complainant alleges, “[c]o. is monopoly.” The Company denies the allegation of subparagraph 5 as stated, but admits that the Company is a natural monopoly regulated by the Commission in lieu of competition.

MOTION TO DISMISS

9. The Complaint fails to allege a violation by the Company of any particular statute, rule, order or decision within the Commission’s jurisdiction, which alleged violations, per 4 CSR 240-2.070(1) and (3) and 4 CSR 240-13.070(2), are the bases upon which a person may file a formal or informal complaint with the Commission. As such, the Complaint fails to state a claim for which relief can be granted, and should be dismissed by the Commission pursuant to its authority under 4 CSR 240-2.070(6).

10. Further, as to Complainant’s specific requests for relief, they cannot be granted. Complainant makes three requests related to the Company’s business practices: “Better way of notifying people about past due accts w/o threatening them[;]...Begin giving phone #'s of people [] besides [customer service]—like Administration[; and] Work on customer service—very poor—extremely poor.” While the Commission has the authority to regulate the Company, the Commission has long acknowledged that it does not have the authority to *manage* the Company. “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).

Complainant has not plainly alleged, and the Company denies any implied allegation, that the Company’s billing or customer service practices violate any statute, rule, order or tariff. In fact, the Company has adopted and implemented billing practices and customer service procedures that comply with the Commission’s Rules. As such, the Company has the right to manage its affairs and to determine how it will conduct its business, and the Commission does not have a

general power of management that it could exercise by ordering the Company to give out particular administrative employees' phone numbers or to re-word notices to which certain customers take offense.

11. Complainant also wants "that amount credited back" referring, Company infers, to the two hundred to three hundred dollars he alleges was paid by him for electric utility service allegedly stolen by a neighbor through use of an extension cord, because Complainant further alleges he, "[d]idn't know was [it] being done[.]" In other words, Complainant wants the Company to credit money paid for electric utility service the Company provided to his service address that was stolen by a neighbor. This is relief the Commission cannot grant. 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). Further, compelling the Company to forfeit and pay over amounts paid to the Company for services that were rendered to Complainant at his service address and charged pursuant the Company's tariffs is confiscatory and would deprive the Company of its property in violation of its due process rights. *Straube v. City of Bowling Green*, 277 S.W.2d 666, 671 (Mo. 1950).

12. Because the Company has the right to manage its own affairs and conduct its business operations as it chooses so long as it complies with applicable statutes, rules, tariffs and orders, and because the Commission cannot enter a monetary judgment against the Company or compel it to forfeit amounts paid to it for services it rendered and charged for pursuant to its tariff, the Company believes it is proper for the Commission to dismiss the Complaint for lack of jurisdiction and for failure to state a claim for which relief can be granted by the Commission. The Commission may do so on its own motion, or on the motion of any party, after notice. 4 CSR 240-2.070(6).

13. 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 dismissing this Complaint for failure to state a claim for which relief can be granted, or in the alternative, denying Complainant's requests for relief or, in the alternative, setting the matter for hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion was served on the following parties via electronic mail (e-mail) or via regular mail on this 8th day of June, 2012.

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/s/ Sarah E. Giboney
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Exhibits A-F
have been designated as
Highly Confidential
and have been removed from this document.