

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

CITY OF WINCHESTER, MISSOURI, et al., )

Plaintiffs, )

vs. )

UNION ELECTRIC COMPANY, )  
d/b/a AMEREN MISSOURI, )

Defendant. )

No. 11SL-CC04561

Division No. 14

**DEFENDANT’S THIRD AMENDED ANSWER TO PLAINTIFFS’  
PETITION FOR DECLARATORY JUDGMENT AND OTHER RELIEF**

Comes now Defendant, Union Electric Company d/b/a Ameren Missouri (“Ameren” or “Defendant”) and for its Third Amended Answer to Plaintiffs’ Petition for Declaratory Judgment and Other Relief, states as follows:

**PARTIES**

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of Plaintiffs’ Petition for Declaratory Judgment and Other Relief and, therefore, denies same.

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of Plaintiffs’ Petition for Declaratory Judgment and Other Relief and, therefore, denies same.

3. Defendant admits the allegations contained in paragraph 3 of Plaintiffs’ Petition for Declaratory Judgment and Other Relief.

4. Defendant admits the allegations contained in paragraph 4 of Plaintiffs’ Petition for Declaratory Judgment and Other Relief.

5. Defendant admits the allegations contained in paragraph 5 of Plaintiffs’ Petition for Declaratory Judgment and Other Relief.

6. In response to paragraph 6 of Plaintiffs' Petition for Declaratory Judgment and Other Relief, Defendant admits that it owns electric distribution poles and utilizes them to deliver electricity to customers in Missouri, including in Winchester and Creve Coeur; admits that it allows pole attachments by cable television companies and other parties; admits that it allows street lighting attachments by subdivisions, local government entities and other parties; and admits that it allows the use of its right-of-ways by certain third parties. Except as specifically so admitted, Defendant denies each and every allegation contained in paragraph 6 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

7. Defendant denies each and every allegation contained in paragraph 7 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

8. Defendant admits the allegations contained in paragraph 8 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

#### CLASS ACTION ALLEGATIONS

9. As the allegations contained in paragraph 9 of Plaintiffs' Petition for Declaratory Judgment and Other Relief are merely legal conclusions, Defendant declines to answer. To the extent that paragraph 9 contains substantive factual allegations, Defendant denies each and every allegation contained in said paragraph 9.

10. Defendant denies each and every allegation contained in paragraph 10 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

11. Defendant denies each and every allegation contained in paragraph 11 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

12. Defendant denies each and every allegation contained in paragraph 12 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

13. Defendant denies each and every allegation contained in paragraph 13 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

14. Defendant denies each and every allegation contained in paragraph 14 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

15. Defendant denies each and every allegation contained in paragraph 15 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

16. Defendant denies each and every allegation contained in paragraph 16 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

COUNT I

17. Defendant repeats, restates and incorporates herein by reference its answers to paragraphs 1-16 of Plaintiffs' Petition for Declaratory Judgment and Other Relief as though fully set forth herein.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of Plaintiffs' Petition for Declaratory Judgment and Other Relief and, therefore, denies same.

19. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of Plaintiffs' Petition for Declaratory Judgment and Other Relief and, therefore, denies same.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of Plaintiffs' Petition for Declaratory Judgment and Other Relief and, therefore, denies same.

21. In response to paragraph 21 of Plaintiffs' Petition for Declaratory Judgment and Other Relief, Defendant admits that it is engaged in the business of furnishing or supplying

electricity in certain Missouri municipalities, including plaintiffs', that it derives gross receipts from such business and that it has been engaged in such business and derived gross receipts therefrom at all times during the preceding five years. Except as specifically so admitted, Defendant denies each and every allegation contained in paragraph 21 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

22. Defendant denies each and every allegation contained in paragraph 22 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

23. As the allegations contained in paragraph 23 of Plaintiffs' Petition for Declaratory Judgment and Other Relief are merely legal conclusions, Defendant declines to answer. To the extent that paragraph 23 contains substantive factual allegations, Defendant denies each and every allegation contained in said paragraph 23.

24. In response to paragraph 24, Defendant admits that it has furnished and supplied electricity in plaintiffs' and other municipalities during the preceding five years. Except as specifically so admitted, Defendant denies each and every allegation contained in paragraph 24 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

25. In response to paragraph 25 of Plaintiffs' Petition for Declaratory Judgment and Other Relief, Defendant admits that it is engaged in business in plaintiffs' and other municipalities and derived gross receipts therefrom during the preceding five years. Except as specifically so admitted, Defendant denies each and every allegation contained in paragraph 25 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

26. Defendant denies each and every allegation contained in paragraph 26 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

27. Defendant denies each and every allegation contained in paragraph 27 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

28. Defendant denies each and every allegation contained in paragraph 28 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

29. Defendant denies each and every allegation contained in paragraph 29 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

30. Defendant denies each and every allegation contained in paragraph 30 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

31. Defendant denies each and every allegation contained in paragraph 31 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

32. Defendant denies each and every allegation contained in paragraph 32 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

33. Defendant denies each and every allegation contained in paragraph 33 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

34. Defendant denies each and every allegation contained in paragraph 34 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

35. Defendant denies each and every allegation contained in paragraph 35 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

COUNT II

36. Defendant repeats, restates and incorporates herein by reference its answers to paragraphs 1-35 of Plaintiffs' Petition for Declaratory Judgment and Other Relief as though fully set forth herein.

37. Defendant denies each and every allegation contained in paragraph 36 of Plaintiffs' Petition for Declaratory Judgment and Other Relief.

AFFIRMATIVE DEFENSES

A. In further answer to Plaintiffs' Petition for Declaratory Judgment and Other Relief and for its defenses and affirmative defenses thereto, Defendant states that Plaintiffs' Petition for Declaratory Judgment and Other Relief fails to state a claim against Defendant upon which relief can be granted.

B. In further answer to Plaintiffs' Petition for Declaratory Judgment and Other Relief and for its defenses and affirmative defenses thereto, Defendant states that Plaintiffs' Petition must fail because Plaintiffs have an adequate remedy at law.

C. In further answer to Plaintiffs' Petition for Declaratory Judgment and Other Relief, and for its defenses and affirmative defenses thereto, Defendant states that Plaintiffs have failed to exhaust their administrative and other legal remedies, thus barring Plaintiffs' Petition.

D. In further answer to Plaintiffs' Petition for Declaratory Judgment and Other Relief, and for its defenses and affirmative defenses there, Defendant states that Plaintiffs have accepted and acquiesced in the methodology employed by Defendant in filing its business license taxes and, as a result are estopped from asserting the cause of action set forth in their Petition.

E. In further answer to Plaintiffs' Petition for Declaratory Judgment and Other Relief and for its defenses and affirmative defenses thereto, Defendant states that Plaintiffs have accepted and acquiesced in the methodology employed by Defendant in filing its business license taxes and, as a result, have waived their right to assert the cause of action set forth in their Petition.

F. In further answer to Plaintiffs' Petition for Declaratory Judgment and Other Relief and for its defenses and affirmative defenses thereto, Defendant states that Plaintiffs'

interpretation and enforcement of the business license tax ordinances at issue in this case, and in particular the inclusion of interchange, wholesale, and transmission receipts in the population of receipts to be taxed under those ordinances, are federally preempted by the Federal Power Act, 16 USC §§791a-828c, and the jurisdiction of the Federal Energy Regulatory Commission, which has complete jurisdiction over the transmission of electric energy in interstate commerce, are further preempted by the regulation of the Missouri Public Service Commission and are further preempted by Section 2121(a) of the Tax Reform Act of 1976, 90 Stat. 194, codified as 15 U.S.C. §391.

G. In further answer to Plaintiffs' Petition for Declaratory Judgment and Other Relief and for its defenses and affirmative defenses thereto, Defendant states that wholesale, interchange, and transmission sales are made in interstate commerce and are made outside the boundaries of the municipalities and counties within the Class. As a result, Plaintiffs' interpretation and enforcement of the business license tax ordinances at issue in this case, and in particular the inclusion of interchange, wholesale, and transmission receipts in the population of receipts to be taxed under those ordinances, are in violation of the equal protection provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States and Article I, Section 2 of the Constitution of Missouri, in violation of the due process clause of the Fifth and Fourteenth Amendments to the Constitution of the United States and Article I, Section 10 of the Constitution of Missouri, impermissibly burden interstate commerce in violation of the Commerce Clause, Article I, Section 8 of the Constitution of the United States, and are in violation of Article X, Section 1 of the Constitution of Missouri as beyond the taxing power of the political subdivisions in the class.

H. In further answer to Plaintiffs' Petition for Declaratory Judgment and Other Relief and for its defenses and affirmative defenses thereto, Defendant states that Plaintiffs' interpretation and enforcement of the business license tax ordinances at issue in this case are in violation of Article X, Section 22 of the Constitution of Missouri, because they would impose a tax not authorized by law on November 4, 1980, would increase an existing tax above the current levy authorized by law on November 4, 1980, or would broaden the definition of the base of an existing tax, without the approval of the required majority of voters in the cities and counties within the Class.

I. In further answer to Plaintiffs' Petition for Declaratory Judgment and Other Relief and for its defenses and affirmative defenses thereto, Defendant states that, in the event that the Court declares that Plaintiffs are entitled to back taxes, that the period from which such back taxes should be calculated should be from November 15, 2008 pursuant to Sections 71.625.2 and 144.220.3 RSMo.

WHEREFORE, Defendant, Union Electric Company d/b/a Ameren Missouri, prays the Court to dismiss Plaintiffs' Petition for Declaratory Judgment and Other Relief with prejudice, and for its costs herein expended.



ARMSTRONG TEASDALE LLP

By: /s/ Byron E. Francis

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ATTORNEYS FOR DEFENDANT,  
UNION ELECTRIC COMPANY,  
d/b/a AMEREN MISSOURI

**CERTIFICATE OF SERVICE**

I hereby certify that on October 24, 2016, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system.

/s/ Byron E. Francis