

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

Jimmie E. Small)	
)	
Complainant,)	
)	
v.)	<u>File No. EC-2012-0050</u>
)	
Ameren Missouri, et. al.,)	
)	
Respondent.)	

STAFF'S RESPONSE TO COMPLAINANT'S AUGUST 31, 2011 COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the undersigned counsel of the Staff Counsel's Office, and files the *Staff's Response To Complainant's August 31, 2011 Complaint (Response)* with the Missouri Public Service Commission (Commission), respectfully stating the following:

1. On August 31, 2011¹, the Complainant filed a second Complaint in the above-stated cause. On the same day, the Commission directed the Staff to respond by September 16 to the Complainant's filing, providing what jurisdiction, if any, the Commission has over the Respondents named in the pleading and the relief requested.

Jurisdiction of Commission Over Respondents

2. The Complainant's filing names as Respondents Ameren Missouri, Lake Road Village Trailer Park (Lake Road), Evertt and Beverly Lacost (the Lacosts), the Missouri Department of Conservation, Missouri Conservation Commission, Adair County and Schuyler County. The Complainant alleges these persons and entities conspired to: disconnect electrical and water services to the Complainant's home and to evict him; report false credit information to

¹ All dates herein refer to calendar year 2011, unless otherwise specified.

credit agencies; to discourage the Complainant from testifying in certain state and federal actions; and deny the Complainant a fair hearing before this Commission by concealing and/or destroying information.

3. The Commission has jurisdiction over electrical corporations, water corporations and public utilities pursuant to Chapters 386 and 393, such as Sections 386.250(1) and (3), Sections 393.130.2 and .3, and Section 393.140. As such, the Commission has jurisdiction over Ameren Missouri, as an electrical corporation and public utility. The Commission may have jurisdiction over Lake Road and the Lacosts, if, they are operating as a water corporation and public utility.

4. Neither Lake Road nor the Lacosts possess a certificate of convenience and necessity to operate a water utility, and the Staff has no independent knowledge of the persons' or entity's operation as a utility, or who may be providing water service to the Complainant's home. While the Complainant has alleged the disconnection of water services from his home, the Complainant has alleged no other facts that support the finding of the operation of a water utility by Lake Road and the Lacosts that the Commission has jurisdiction over. Therefore, at this time, the Staff believes the Commission lacks jurisdiction over Lake Road and the Lacosts.

5. The Commission does not have jurisdiction in this matter over Adair County and Schuyler County, or any state agency or Commission, such as the Missouri Department of Conservation and Missouri Conservation Commission.

Jurisdiction of Commission Over Relief Requested

6. The Complainant asks for relief in the form of equitable damages, class action relief and an "immediate end-hault to the discrimination-retaliation and humiliation on behalf of

all Missouri residents seeking equal access-participation to water-electric services and accommodations...”

7. Since Ameren Missouri is the only entity that the Staff asserts the Commission has jurisdiction over in this matter, the inquiry as to the relief requested will only deal with Ameren Missouri.

8. The Commission does not have jurisdiction to grant equitable relief to a Complainant. *See American Petroleum Exchange v. Public Service Com'n*, 172 S.W.2d 952, 955 (Mo. 1943)(“The commission ‘has no power to declare or enforce any principle of law or equity’”).

9. The Commission has stated recently in *Eric E. Vickers, Personally and on Behalf of all Customers of Ameren Missouri Who Have Sought Relief under the Cold Weather Rule, Complainant, v. Union Electric d/b/a Ameren Missouri and Missouri Public Service Commission, Respondent*, 2011 WL 3660011 (Mo.P.S.C., 2011), that:

[t]here is no statutory authority for the Commission to entertain class action lawsuits...Moreover, when the Commission directed the Complainant to identify if he was an attorney, and if so to provide the Commission with his Missouri Bar number, Complainant refused stating: “Complainant is pursuing this matter pro se, and consequently the information sought as to his attorney status is irrelevant.” If the Complainant is acting *pro se* he cannot represent other individuals because that would constitute the unauthorized practice of law. The Commission must not sanction such unlawful action.

10. Commission Rule 4 CSR 240-2.040 (5) states “Practice by Nonattorneys. A natural person may represent himself or herself. Such practice is strictly limited to the appearance of a natural person on his or her own behalf and shall not be made for any other person or entity.” *See also* Sections 484.010 and 484.020, RSMo 2000. Therefore, the Commission does not have jurisdiction over a class action matter.

11. A utility is restricted from providing a special rate for service or subjecting any person to “undue or unreasonable prejudice or disadvantage in any respect whatsoever.” *See* Section 393.130.2 and .3. It is the Staff’s position that the Commission has the authority to hear a complaint on the grounds of discrimination in the provision of service, and to determine based on the evidence presented whether such actions violate any statute applicable to the provision of public utility service, rule or order of the Commission, as well as any provision of the utility’s tariff.

WHEREFORE, the Staff files its *Response* for the Commission’s information and consideration and recommends that the Commission find jurisdiction only over Ameren Missouri and the matter of discriminatory service.

Respectfully submitted,

/s/ Jennifer Hernandez
Jennifer Hernandez
Associate Staff Counsel
Missouri Bar No. 59814

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via first class U.S. postal mail, postage prepaid, on Jimmie E. Small, 606 West Hwy #2 Milton, IA 52570; Sarah Giboney and Wendy Tatro, attorneys for Ameren Missouri at giboney@smithlewis.com and AmerenMOService@ameren.com; and the Office of Public Counsel at opcservice@ded.mo.gov this 16th day of September, 2011.

/s/ Jennifer Hernandez