

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

Jimmie E. Small,	)	
Complainant,	)	
	)	
vs.	)	Case No: EC-2012-0050
	)	
Union Electric Company, d/b/a	)	
Ameren Missouri,	)	
Respondent.	)	

**AMEREN MISSOURI’S MOTION TO WAIVE DISCOVERY RULES AND TO COMPEL  
COMPLAINANT’S RESPONSE TO AMEREN MISSOURI’S REQUEST FOR PRODUCTION**

COMES NOW, Union Electric Company, d/b/a Ameren Missouri, pursuant to 4 CSR 240-2.015(1), and for its Motion to Waive Discovery Rules and to Compel Complainant’s Response to Ameren Missouri’s Request for Production states as follows:

1. In an Order issued and effective March 2, 2012, the Commission clarified that the only two issues for hearing in this Complaint are (1) whether Ameren Missouri acted in accordance with applicable Missouri statutes, rules and tariffs during 2006-2008 when it disconnected electric service at Complainant’s property in Kirksville, Missouri; and (2) whether Ameren Missouri falsified documentation of Complainant’s electric service account records.

2. On March 8, 2012, Ameren Missouri served Complainant with a first request for production of documents. The request specified that Complainant produce, “[a]ny and all documents Complainant has obtained from any Ameren Missouri representative at Ameren Missouri’s offices located in Kirksville, Missouri; excluding those documents Complainant has received from Ameren Missouri as Ameren Missouri’s responses to data requests, interrogatories, requests for admissions or requests for production of documents from Complainant.” A copy of said request for production is attached hereto as **Exhibit A.**

3. Ameren Missouri’s said request for production is relevant to Complainant’s allegation of falsified documentation and was based on statements Complainant made to Ameren Missouri employee

Cathy Hart to the effect that account documentation Complainant received from Ms. Hart differed from account documentation Complainant had received from Ameren Missouri's Kirksville office.

4. Complainant has not produced any documents in response to said request for production and has not made any objection to said request, and the thirty days allowed for timely responses or objections under Rule 58.01(1) has long passed.

5. Ameren Missouri's counsel, Sarah E. Giboney, has attempted to confer by telephone with Complainant concerning Complainant's failure to respond on three occasions: May 17<sup>th</sup>, May 21<sup>st</sup> and May 25<sup>th</sup>. On each occasion, a recording indicates that Complainant's voice mailbox is full, and provides the option of leaving a call-back number. On each occasion, Ms. Giboney has left a call-back number. On May 21<sup>st</sup>, Ms. Giboney also sent Complainant a letter via U.S. Mail and via Federal Express requesting that Complainant call regarding a pending discovery matter at his earliest convenience. A copy of said letter is attached hereto as **Exhibit B**.

6. On May 22<sup>nd</sup>, Complainant called Ms. Giboney's law firm and declined to speak directly with Ms. Giboney, but asked to leave a message to Ms. Giboney, with a secretary, to the effect that he received the May 21<sup>st</sup> letter, but he was swamped with other business and health concerns and would be back in touch soon.

7. Ms. Giboney, as counsel for Ameren Missouri, has attempted in good faith to comply with 4 CSR 240-2.090(8)(A), requiring counsel for the moving party on a discovery motion to attempt to confer by telephone (or in person) with opposing counsel (in this case, the pro se Complainant) prior to filing a discovery motion. To date, however, Complainant has not returned a call to Ms. Giboney.

8. The evidentiary hearing in this matter is set for June 13<sup>th</sup>. The account documentation that Complainant allegedly received from Ameren Missouri's Kirksville office is directly relevant to the issue of whether Ameren Missouri falsified account records. As such, Ameren Missouri is entitled, in advance of said hearing, to discover such documentation.

9. Counsel for Ameren Missouri is concerned that given the difficulty reaching Complainant by telephone, it will not be possible to arrange and hold the immediate telephone

conference normally required as a next step, pursuant to 4 CSR 240-2.090(8)(B), prior to filing any written discovery motion, within a timeframe that would allow Ameren Missouri an opportunity to obtain and evaluate the alleged account documentation in advance of the June 13<sup>th</sup> evidentiary hearing.

10. 4 CSR 240-2.015(1) permits the Commission to waive any rule under Chapter 4 CSR 240-2, for good cause.

11. In view of Ameren Missouri's good faith efforts to attempt to confer with Complainant regarding this discovery matter as required by 4 CSR 240-2.090(8)(A), and given that Complainant has not filed a timely objection to Ameren Missouri's request for production, and given the June 13<sup>th</sup> hearing date, Ameren Missouri believes that good cause exists for the Commission to waive 4 CSR 240-2.090(8)(B), and to immediately enter an order compelling Complainant to produce the documents Ameren Missouri has requested.

WHEREFORE, Ameren Missouri requests that the Commission enter an order compelling Complainant to produce by such date as the Commission finds reasonable under the circumstances, the documents identified in Ameren Missouri's First Set of Request for Production of Documents Directed to Complainant Jimmie E. Small.

SMITH LEWIS, LLP  
/s/Sarah E. Giboney  
Sarah E. Giboney, #50299  
111 South Ninth Street, Suite 200  
P.O. Box 918  
Columbia, MO 65205-0918  
(573) 443-3141  
(573) 442-6686 (Facsimile)  
giboney@smithlewis.com

**Attorney for Ameren Missouri**

/s/ Wendy K. Tatro  
Wendy K. Tatro, # 60261  
Associate General Counsel  
Ameren Services Company  
P.O. Box 66149  
St. Louis, MO 63166-6149  
(314) 554-3484 (phone)  
(314) 554-4014 (fax)  
[AmerenMOService@ameren.com](mailto:AmerenMOService@ameren.com)

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Waive Discovery Rules and to Compel Complainant's Response to Ameren Missouri's Request for Production was served on the following parties via electronic mail (e-mail) or via certified and regular mail on this 30<sup>th</sup> day of May, 2012.

Nathan Williams  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
Nathan.williams@psc.mo.gov

Lewis Mills  
Office Of Public Counsel  
200 Madison Street, Suite 650  
P.O. Box 2230  
Jefferson City, MO 65102  
opcservice@ded.mo.gov  
Lewis.mills@ded.mo.gov

Jimmie E. Small  
Complainant  
606 West Hwy #2  
Milton, Iowa 52570

/s/ Sarah E. Giboney  
Sarah E. Giboney

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

Jimmie E. Small,	)	
Complainant,	)	
	)	
vs.	)	Case No: EC-2012-0050
	)	
Union Electric Company, d/b/a	)	
Ameren Missouri,	)	
Respondent.	)	

**UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI'S  
FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS  
DIRECTED TO COMPLAINANT, JIMMIE E. SMALL**

COMES NOW, Union Electric Company d/b/a Ameren Missouri (Ameren Missouri) and requests that Complainant, Jimmie E. Small produce the following documents and things by delivering true and accurate copies of each of the following to the law offices of Smith Lewis, LLP, 111 S. Ninth Street, Suite 200, P.O. Box 918, Columbia, Missouri 65205-0918 within 30 days as provided for in Missouri Rule of Civil Procedure 58.01.

1. Any and all documents Complainant has obtained from any Ameren Missouri representative at Ameren Missouri's offices located in Kirksville, Missouri; excluding those documents Complainant has received from Ameren Missouri as Ameren Missouri's responses to data requests, interrogatories, requests for admissions or requests for production of documents from Complainant.

SMITH LEWIS, LLP  
  
Sarah E. Giboney, #50299  
111 South Ninth Street, Suite 200  
P.O. Box 918  
Columbia, MO 65205-0918  
(573) 443-3141  
(573) 442-6686 (Facsimile)  
giboney@smithlewis.com

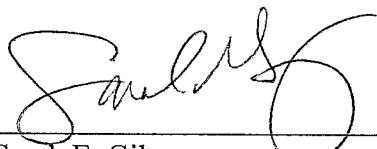
By: /s/ Wendy K. Tatro  
**Wendy K. Tatro**, # 60261  
Associate General Counsel  
Ameren Services Company  
P.O. Box 66149  
St. Louis, MO 63166-6149  
(314) 554-3484 (phone)  
(314) 554-4014 (fax)  
[AmerenMOService@ameren.com](mailto:AmerenMOService@ameren.com)

Attorneys for Respondent  
Union Electric Company  
d/b/a Ameren Missouri

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Request for Production of Documents was served on the following parties via certified and regular mail on this 8<sup>th</sup> day of March, 2012.

Jimmie E. Small  
Complainant  
3535 Locust St.  
General Delivery  
Quincy, Illinois 62301

  
\_\_\_\_\_  
Sarah E. Giboney

**SMITH LEWIS, LLP**

**ATTORNEYS AT LAW**

P.O. BOX 918  
COLUMBIA, MISSOURI 65205-0918

...  
CITY CENTRE  
111 SOUTH NINTH STREET, SUITE 200  
COLUMBIA, MISSOURI 65201-4891  
(573) 443-3141 • Fax (573) 442-6686

BRUCE H. BECKETT  
WILLIAM JAY POWELL  
JOHN L. ROARK  
COLLY J. DURLEY  
JAMES B. LOWERY  
MICHAEL R. TRIPP  
PHEBE LA MAR  
SARAH E. GIBONEY

RAYMOND C. LEWIS, JR. (1926-2004)

AMANDA ALLEN MILLER  
DANIEL G. BECKETT  
BETHANY R. FINDLEY

OF COUNSEL  
ROBERT C. SMITH

PARALEGAL  
CHERYL L. LOBB

May 21, 2012

Jimmie Small  
606 West Hwy #2  
Milton, Iowa 52570

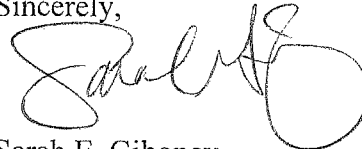
**Via U.S. Mail and Federal Express**  
**overnight delivery (641) 208-2317**

RE: Jimmie Small v. Union Electric Company, d/b/a Ameren Missouri  
Case No. EC-2012-0050

Dear Mr. Small:

I have tried to reach you twice via telephone to discuss a pending discovery matter. Would you please call me at your earliest convenience? Thank you.

Sincerely,



Sarah E. Giboney



Shipment Receipt  
Address Information

**Ship to:**

Jimmie Small  
606 West Highway #2

Milton, IA  
52570  
US  
641.208.2317

**Ship from:**

Sarah Giboney  
Smith Lewis, LLP  
111 South Ninth St.

Columbia, MO  
65201  
US  
5734433141

**Shipping Information**

Tracking number: 798421323978  
Ship date: 05/21/2012  
Estimated shipping charges: 23.78

**Package Information**

Service type: Priority Overnight  
Package type: FedEx Envelope  
Number of packages: 1  
Total weight: 1LBS  
Declared value: 0.00USD  
Special Services:  
Pickup/Drop-off: Drop off package at FedEx location

*— have to send by priority Federal Express  
(delivery by 4 p.m.). This is the only  
choice to this location.*

**Billing Information**

Bill transportation to: MyAccount-182  
Your reference: UE/Small  
P.O. no.:  
Invoice no.:  
Department no.:

Thank you for shipping online with FedEx ShipManager at [fedex.com](http://fedex.com).

**Please Note**

FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits; Consult the applicable FedEx Service Guide for details. The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable [FedEx Service Guide](#) or the FedEx Rate Sheets for details on how shipping charges are calculated.



## Sandy Kunze

**From:** TrackingUpdates@emails.fedex.com  
**Sent:** Tuesday, May 22, 2012 1:21 PM  
**To:** Sandy Kunze  
**Subject:** FedEx Shipment 798421323978 Delivered

[fedex.com](#) | [Ship](#) | [Track](#) | [Manage](#) | [Learn](#) | [Office/Print Services](#)



## Your shipment has been delivered.

Tracking # 798421323978

Monday 5/21/2012

Sarah Giboney  
Smith Lewis, LLP  
111 South Ninth St.  
Columbia  
MO  
US  
65201

Delivered

Tuesday 5/22/2012

Jimmie Small  
606 West Hlghway #2  
Milton  
IA  
US  
52570

### Shipment Facts

Our records indicate that the following shipment has been delivered:

Tracking number: 798421323978  
Reference: UE/Small  
Ship (P/U) date: May 21, 2012  
Delivery date: May 22, 2012 1:15 PM  
Sign for by: Signature not required  
Delivery location: Milton, IA  
Delivered to: Residence  
Service type: FedEx Priority Overnight  
Packaging type: FedEx Envelope  
Number of pieces: 1  
Weight: 0.50 lb.  
Special handling/Services: Deliver Weekday  
Residential Delivery



Help us serve  
better emails.

[Share your feedback](#) ▶




## This tracking update has been requested by:

**Company name:** Smith Lewis, LLP  
**Name:** Sarah Giboney  
**Email:** sgiboney@smithlewis.com

## Stay in the know.

Receive a text, a call or an email regarding a delivery that requires your signature.



 Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 1:20 PM CDT on 05/22/2012.

To learn more about FedEx Express, please visit our website at [fedex.com](http://fedex.com).

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above, or visit us at [fedex.com](http://fedex.com).

This tracking update has been sent to you by FedEx on the behalf of the Requestor noted above. FedEx does not validate the authenticity of the requestor and does not validate, guarantee or warrant the authenticity of the request, the requestor's message, or the accuracy of this tracking update. For tracking results and [fedex.com](http://fedex.com)'s terms of use, go to [fedex.com](http://fedex.com).

Thank you for your business.