

**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.)	

MOTION TO DISMISS

COMES NOW, Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), and for its Motion to Dismiss Complainant’s Complaint states as follows:

1. By Order dated October 29, 2012, the Commission set the evidentiary hearing in this Complaint for March 12, 2013.
2. March 7, 2013, Complainant Small filed a document titled “Complainant’s Supplemental Suggestions for His Motion for Judgment on the Pleadings”, which included, among other things, a request for an indefinite continuance of the evidentiary hearing scheduled on this Complaint scheduled for March 12, 2013.
3. March 7, 2013, the Commission denied Complainant’s request for a continuance.
4. March 12, 2013, the Commission convened an evidentiary hearing in this matter. The Office of Public Counsel, Commission Staff and the Company entered their respective appearances and were prepared to proceed with the hearing on the Complaint filed by Small against the Company. Complainant Small, however, failed to appear.
5. By Order dated May 7, 2013, and by a second Order dated May 23, 2013, the Commission set an evidentiary hearing in this matter for July 18, 2013.
6. July 18, 2013, the Commission again convened an evidentiary hearing in this matter. Commission Staff and the Company entered their respective appearances and were again prepared to proceed with the hearing. Again, Complainant Small failed to appear.
7. Commission regulation 4 CSR 240-2.110(2)(B) provides:

Failure to appear at a hearing without previously having secured a continuance shall constitute grounds for dismissal of the party or party's complaint . . . unless good cause for the failure to appear is shown.

8. Commission regulation 4 CSR 240-2.116(3) provides:

A party may be dismissed from a case for failure to comply with any order issued by the commission, including failure to appear at any scheduled proceeding such as a ... hearing . . .[.]

9. This Complaint was filed nearly two years ago, on August 15, 2011. Since then, the Company has expended considerable time and resources in answering the Complaint, answering amended versions of the Complaint, responding to and sometimes defending against Complainant's discovery, researching and responding to Complainant's various and numerous other pleadings, and preparing, three times, to proceed to defend itself in an evidentiary hearing. The docket for the Complaint, which includes well over 100 substantive pleadings, bears this out. No doubt, the Commission Staff have devoted equal time and resources in investigating the Complaint, assisting Complainant with regard to the complaint process, and responding to pleadings, etc. The Commission itself has granted Complainant extensions of time, opportunities to amend his pleadings, and generally has afforded Complainant ample time and opportunity to prepare and bring his Complaint to hearing.

10. Complainant has failed to avail himself of the opportunity to prosecute his Complaint, and he should not be afforded yet another opportunity in the future to do so.

11. Because Complainant Small has failed to appear at two evidentiary hearings scheduled in this matter without previously having secured a continuance, and has otherwise failed to avail himself of the opportunity to fully prosecute his Complaint after nearly two years since filing, the Commission should issue an order dismissing the Complaint with prejudice.

WHEREFORE, Ameren Missouri respectfully requests that the Commission issue an order dismissing Complainant's Complaint with prejudice.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Dismiss was served on the following parties via hand delivery, electronic mail (e-mail) or via certified and regular mail on this 18th day of July, 2013.

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