

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office  
in Jefferson City on the 10<sup>th</sup>  
day of August, 2011.

|  |   |  |
|--|---|--|
| 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.                                  | ) |  |

**File No. EC-2011-0326**

**ORDER DISMISSING COMPLAINT IN PART AND  
GRANTING LEAVE TO AMEND COMPLAINT**

Issue Date: August 10, 2011

Effective Date: August 10, 2011

**Background**

On April 4, 2011, Eric E. Vickers ("Complainant") filed a complaint against Union Electric d/b/a Ameren Missouri ("Ameren Missouri"). Also on April 4, 2011, the Commission ordered notice of this contested case and sent a copy of that order and a copy of the Commission's procedural rules to Complainant.

On May 4, 2011, Ameren Missouri filed its answer and a motion to dismiss. On May 13, 2011, the Commission's Staff filed a motion for an extension of time to file its investigation report and for an order compelling discovery. Staff provided documentation to support its position that it was unable to complete its investigation because Complainant had failed or refused to respond to Staff's data requests.

Ultimately, after granting Complainant three extensions of time and issuing a show cause order, and having obtained a limited response from the Complainant, the Commission directed Staff to complete its investigation.<sup>1</sup> Staff filed its investigation report on July 28, 2011.<sup>2</sup>

### **Complainant's Allegations**

Complainant filed a two count complaint. Count I alleges that Ameren Missouri violated Commission Rule 4 CSR 240-13.055(10) by failing to confirm, in writing, the terms of a cold weather rule agreement and wrongfully requiring him to pay a larger portion of his outstanding bill in order to maintain electric service. Count II alleges that the Public Service Commission failed to take actions to require Ameren Missouri to properly comply with the rule that Complainant alleges was violated. Complainant filed

---

<sup>1</sup> Because of the initial difficulties encountered with getting Complainant to respond to the Commission's orders, orders were sent to Complainant via United Parcel Service ("UPS") Next Day Air mail with proof of delivery. On June 5, 2011, Complainant confirmed that he was receiving e-mail notifications of the Commission's orders and that he had received copies of the Commission's April 4, 2011 order, which directed notice of the complaint and provided Complainant with a copy of the Commission's procedural rules. Complainant also acknowledged that he had received the Commission's April 25, 2011 notice instructing parties to file all pleadings in EFIS, the Commission's Electronic Information and Filing System, and to serve all parties of record. (To date, Complainant's certificates of service fail to list Ameren Missouri, and it is unknown whether Complainant is serving his pleadings upon Ameren Missouri.) Curiously, Complainant maintains that he did not receive the Commission's May 16, 2011 order, sent via certified mail, until June 7, 2011, despite his assertion that he electronically requested an extension of time with General Counsel and Counsel for Ameren Missouri on May 23, 2011 to respond to Ameren Missouri's motion to dismiss and Staff's discovery request. The May 16, 2011 order set the deadlines for those filings.

<sup>2</sup> The Commission will not repeat the entire procedural history of this matter in this order. For a complete review see: (1) EFIS Docket Entry No. 13, *Staff's Motion for Extension of Time to File Investigation Report and Motion for Order Compelling Discovery*, filed on May 12, 2011; (2) EFIS Docket Entry No. 14, *Order Granting Staff's Motion For An Extension Of Time To File Its Investigation Report, Directing Complainant To Respond and Setting Procedural and Discovery Conference*, issued on May 16, 2011; (3) EFIS Docket Entry No. 16, *Order To Show Cause Why Complaint Should Not Be Dismissed and Sanctions Imposed*, issued June 1, 2011 (issued after Complainant's failure to comply with the May 16<sup>th</sup> order and for failure to appear at the discovery conference); (4) EFIS Docket Entry No. 21, *Response to Order of Missouri Public Service Commission to Show Cause*, filed June 13, 2011; (5) EFIS Docket Entry No. 22, *Order Directing Compliance With Commission's Prior Orders And Directing Complainant To Further Respond To Show Cause Order*, issued June 14, 2011; (6) EFIS Docket Entry No. 25, *Complainant Response to Commission Order*, filed July 5, 2011; and, (7) EFIS Docket Entry No 27, *Order Granting Motion For An Extension Of Time and Directing Staff To Complete Its Investigation*, issued July 6, 2011.

this action, personally and as a class action lawsuit, claiming to represent “all customers of Ameren Missouri who have sought relief under the cold weather rule.”

Complaint requests numerous forms of relief. Complainant requests that:

(1) Ameren Missouri be required to provide the Commission with written proof of every cold weather agreement executed by Ameren Missouri for the past three years;

(2) Ameren Missouri be required to provide the Commission written proof of every Ameren Missouri cold weather agreement defaulted upon for the past three years;

(3) Ameren Missouri be required to provide the Commission the “names and total number of every customer Ameren claims defaulted” on an agreement under the cold weather rule;

(4) Ameren Missouri “be required to repay every customer that for the past three years Ameren imposed the 80% charge for defaulting on an agreement under a cold weather rule;”

(5) Ameren Missouri be enjoined from enforcing the 80% charge imposed upon Complainant for his alleged failure to comply with a cold weather rule agreement and be required to enter a proper cold weather rule agreement that is alleged to have been sought on March 15, 2011;

(6) The Public Service Commission be required to undergo an internal investigation to “determine the competence, independence, and objectivity of its staff in investigating and resolving complaints filed against Ameren Missouri;”

(7) Damages be awarded to Complainant and those similarly situated for harm cause by Ameren Missouri’s alleged “willful and deliberate violation of the law.”

Complainant cites no authority for: (1) prosecuting a class action suit before this administrative tribunal; (2) naming the Commission as a party to an action before the Commission; (3) obtaining injunctive relief from this administrative tribunal; or, (4) obtaining “damages” from this administrative tribunal.

### **Ameren's Answer**

Ameren Missouri responds that: (1) it entered into a valid cold weather rule agreement with Complainant on January 6, 2011; (2) Complainant defaulted on the initial payment required; (3) written confirmation of a cold weather rule agreement is provided upon the initial required payment; and (4) Complainant was required to pay the proper amount to retain service related to his default. Ameren Missouri also seeks dismissal of the complaint for failure to state a claim upon which relief can be granted and for the Complainant's failure to comply with provisions of the Commission's rules.

Ameren Missouri asserts that the Commission is a body of limited jurisdiction, cannot maintain a class action lawsuit, and that even if it could Complainant fails to demonstrate compliance with any of the requirements of Supreme Court Rule 52.08 to pursue a class action suit. Additionally, Ameren Missouri contends, the Commission would be prohibited from requiring it to repay customers for utility services already provided pursuant to its tariffs as that would be confiscatory and a violation of the company's due process rights. Ameren Missouri further claims that the individual relief sought by Complainant, i.e. equitable relief and damages, is beyond the power of this Commission.

### **Staff's Investigation**

The Commission's Staff filed a detailed investigation report with extensive documentation of its attempts to assist Mr. Vickers. Staff reports that: (1) Mr. Vickers has misinterpreted the cold weather rule; (2) Mr. Vickers verbally entered a cold weather agreement with Ameren Missouri in January 2011, and then defaulted on the agreement prior to the normal practice of confirming the agreement in writing upon

receipt of the first payment; and, (3) Ameren Missouri has not violated any Commission statute, rule or Commission-approved tariff. Staff recommends that the complaint be dismissed, or in the alternative, allow Mr. Vickers a hearing to try to present additional evidence that could support his claim.

### **Analysis and Decision**

The complaint is framed as an individual suit and as a class action lawsuit “on behalf of all customers of Ameren Missouri who have sought relief under the cold weather rule.” But the Commission is a regulatory body of limited jurisdiction and has only such powers as are expressly conferred upon it by statute, or those reasonably incidental to those statutory powers.<sup>3</sup> There is no statutory authority for the Commission to entertain class action lawsuits, and even assuming, *arguendo*, that the Commission could hear a class action, the Complainant does not comply with Supreme Court Rule 58.02 for proper class certification. 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.”<sup>4</sup> If the Complainant is acting *pro se* he cannot represent other individuals because that would constitute the unauthorized practice of law.<sup>5</sup> The Commission must not sanction such unlawful action.

---

<sup>3</sup> *State ex rel. Cass County v. Public Service Comm’n*, 259 S.W.3d 544, 547-548 (Mo. App. 2008).

<sup>4</sup> The Commission inquired into Mr. Vickers’ attorney status to properly evaluate his claim and there is a licensed attorney listed in the Missouri Bar’s “Official Directory of Missouri Lawyers” named “Eric Erfan Vickers; Bar Number 31784, Date admitted April 24, 1982, St, Louis, Missouri 63118-2628 – listed as active and in good standing.

<sup>5</sup> Sections 484.010 and 484.020, RSMo 2000. See also Commission Rule 4 CSR 240-2.040.

Secondly, Complainant names the Public Service Commission as a defendant. Complainant cites no authority for bringing an action against this executive branch agency as an entity in the manner in which he states in his complaint. No statute authorizes the Commission to hear a complaint against the Commission. Additionally, Complainant seeks the following relief against the Commission: “an internal investigation to determine the competence, independence, and objectivity of its staff in investigation and resolving complaints filed against Ameren Missouri.” With regard to the “Defendant Commission,” Complainant fails to meet the meager filing requirements for complaints before the Commission, namely to “set forth in writing any act or thing done or omitted to be done by any corporation, person, or public utility . . . in violation, or claimed to be in violation, of any provision of law, or any rule or order or decision of the commission” as required under Section 386.390.1, RSMo 2000. Complainant does not allege any violation, by the Commission or any employee of the Commission, of any provision of law, or any rule or order or decision of the commission. Not only is the Complainant prohibited from suing the Commission before the Commission, but his allegation fails to state a complaint upon which relief may be granted.

Finally, Complainant requests injunctive relief with regard to his payment to Ameren Missouri and money damages – relief this agency has no power to award. The Commission cannot enforce, construe nor annul contracts, nor can it enter a money judgment, do equity or grant equitable relief.<sup>6</sup> The Commission has no objection to hearing Complainant with regard to any properly pled complaint, and will allow

---

<sup>6</sup> *GS Technologies Operating Co., Inc. v. Public Service Commission*, 116 S.W.3d 680, 696 (Mo. App. 2003).

Complainant to amend his complaint to seek forms of available relief this Commission has the power to grant.

**THE COMMISSION ORDERS THAT:**

1. Eric E Vickers' ("Complainant") class action claim is dismissed with prejudice.
2. The Missouri Public Service Commission is dismissed as a party to this action.
3. Complainant is granted leave to amend his complaint. Any amended complaint shall be filed no later than August 22, 2011.
4. If Complainant files an amended complaint, Union Electric d/b/a Ameren Missouri shall file an answer to the amended complaint no later than September 19, 2011.
5. In addition to the e-mail notification provided with this order, the Commission's Data Center shall send a copy of this order to the Complainant by regular mail and by UPS "Next Day Air" and file the tracking information from the UPS delivery in this file.
6. This order shall become effective immediately upon issuance.

( S E A L )

**BY THE COMMISSION**



Steven C. Reed  
Secretary

Gunn, Chm., Davis, Jarrett, and  
Kenney, CC., concur.

Stearley, Senior Regulatory Law Judge