

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

Jimmie E. Small,	)	
Complainant,	)	
	)	
vs.	)	Case No: EC-2015-0058
	)	
Union Electric Company, d/b/a	)	
Ameren Missouri,	)	
Respondent.	)	

**AMEREN MISSOURI’S RESPONSE TO  
ORDER DIRECTING FILING**

COMES Now, Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”) and pursuant to the Commission’s Order Setting Time to File Response dated April 1, 2015 (the “Order”), states as follows:

1. On March 30, 2015, Complainant filed a motion entitled, “Complainant’s Mo. R. Civ. Proc. Rule 55.27(g)(3) Motion to Dismiss Ameren Missouri’s September 08, 2014 Alleged Electric Utility Bill Claim in the State Amount of \$846.15” (the “Motion”).

2. On April 1, 2015 the Commission entered its Order, stating in part, “Mr. Small seeks relief including reconsideration of an earlier dispositive motion, a continuance to address discovery, and leave to amend his complaint” and ordering that, “[a]ny response to the motion shall be filed no later than April 7, 2015.”

3. The Commission should deny Mr. Small’s request for reconsideration of his motion for summary determination. In its Order Denying Motion to Strike and Motion for Summary Determination, issued January 27, 2015, the Commission found, “a genuine issue remains as to an amount due from Mr. Small specifically.” Or, as expressed in the Commission’s Order Governing Hearing and Pre-Hearing Procedure, issued February 12, 2015, as to “whether a bill for service at Lot 23, 2306 Potter Trail, Lot 23, Kirksville, Missouri (“service address”) remains unpaid.” Complainant’s recent Motion demonstrates that this genuine dispute persists. In the Motion, Complainant references, “an alleged 2007 delinquent

electric Bill in the amount of \$846.15[.]” (Motion, ¶5; see also ¶27, where Complainant refers to unpaid account balance as “alleged debt.”).

4. With regard to a continuance for discovery purposes, Ameren Missouri has not served any discovery on Complainant, and Ameren Missouri does not need additional time to respond to the discovery served on it by Complainant. Although Complainant alleges that Ameren Missouri has “refuse[d] to cooperate with needed discover[y] pending a known hearing on the merits” (Motion, ¶6), Ameren Missouri has in fact timely objected and/or responded to all Complainant’s discovery, as evidenced by the Certificates of Service filed by the Company (EC-2015-0058, EFIS Items 46 and 47).

5. Although Complainant also alleges that Ameren Missouri has “refus[ed] to give available dates to take needed depositions” (Motion, ¶9), Complainant has not obtained (nor even, to Ameren Missouri’s knowledge, made a timely request for) a witness subpoena, as specifically required by the Commission’s Order Regarding Hearing and Pre-Hearing Procedure, issued February 10, 2015. Instead, Complainant called Ameren Missouri corporate counsel, Matthew Tomc, on March 26, 2015, and demanded that Mr. Tomc provide available dates for depositions but did not identify to Mr. Tomc who, exactly, he proposed to depose.

6. In addition, Complainant and outside counsel for Ameren Missouri, Sarah Giboney, held a one hour telephone conference on March 30, 2015, conferring, among other issues, on Complainant’s discovery and Ameren Missouri’s objections and responses thereto. No agreements were reached. Ameren Missouri respectfully suggests that what would be productive and advance this Complaint toward hearing is not a discovery-related continuance, but a pre-hearing teleconference with the parties and the assigned Regulatory Law Judge, to address and obtain rulings on the discovery disputes. 4 CSR 240-2.090(8)(B).

7. Ameren Missouri opposes Complainant’s request for leave to amend his Complaint. As best as Ameren Missouri can understand the Motion, Complainant wishes to amend his Complaint to include an allegation that Ameren Missouri’s counsel discriminated and retaliated against him in the conduct of discovery. (Motion, ¶¶11 and 12). This is nothing more than an allegation that Ameren Missouri violated the Commission’s rules regarding discovery. The allegation relates to an interlocutory procedural matter and it is not necessary (or appropriate) for Complainant to amend his Complaint to invoke the Commission’s authority—

the Commission has the authority to enforce its rules regarding discovery without any amendment to the Complaint. 4 CSR 240-2.085.

8. Finally, as best Ameren Missouri can understand, Complainant wishes to amend his Complaint to allege that Ameren Missouri violated a provision of the Federal Power Act and provisions of our United States and Missouri Constitutions. (Motion, ¶23). The Commission, “is a body of limited jurisdiction and has only such powers as are expressly conferred upon it by the statutes and powers reasonably incidental thereto.” *State ex rel. and to Use of Kansas City Power & Light Co. v. Buzard*, 168 S.W.2d 1044, 1046 (Mo. 1943). The Legislature has not conferred on the Commission authority to adjudicate a complainant’s claim that a public utility has violated a federal law or committed a constitutional violation. Further, the Commission is “not a court and has no power to declare or enforce any principle of law or equity.” *Lightfoot et al. v. City of Springfield*, 236 S.W. 2d 348, 352 (Mo 1951). Since the Commission cannot adjudicate such claims, it should not grant Complainant leave to amend his Complaint to include such claims.

WHEREFORE Ameren Missouri respectfully requests that the Commission deny Complainant’s request for reconsideration, deny Complainant’s motion for a continuance to address discovery, and deny Complainant’s motion to amend his Complaint.

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Response to Order Directing Filing was served on the following parties via electronic mail (e-mail) or via certified and regular mail on this 3<sup>rd</sup> day of April, 2015.

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