

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

JIMMIE E. SMALL,

MAR 08 2013

Complainant,

Missouri Public
Service Commission

v.

Case File No. EC-2012-0050

Case File No. EC-2011-0247

Union Electric Company, d/b/a,

Ameren Missouri, et al,

Respondents

COMPLAINANT'S RULE 1.717
IRREGULARITIES AND OBJECTIONS,
MOTION TO SUPPRESS & R. 55.27(b)
MOTION FOR JUDGMENT ON THE PLEADINGS

NOW COMES, J. Small, pro se Complainant in the above captioned matter, and pursuant to Rule 1.717(6) civil standards, Plus R. 55.27(b) states unto the Honorable MPSC the following particulars;

1. On January 16, 2013 the Commission entered its Order Denying Small's December 13, 2012 Motion for Summary Judgment. The Commission previously filed

and served Show Cause Orders against the undersigned pro se for allegedly not complying with commission rules.

2. Rule 2.03, Cannon 3, B Adjudicatory responsibility, Subpart, eight (8) states,

["A judge shall dispose of all judicial matters, efficiently and fairly."]

3. On Monday, the 17th day of December, 2012, this ADA pro se caused to be filed and served Complainant Small's Objections and Responses to Respondent's Request for Production and Response to Commission Order to Produce Discovery documents by December 29, 2012.

4. Commission officials, Staff, Commission Secretary acting in concert with Respondent Utility has knowingly permitted in excess of 60 days to lapse since December 17, 2012 without ruling on disabled pro se's motion, thus treating the Iowa Resident materially differently than other Missouri resident appearing before the MPSC. Furthermore, the Commission's reluctance to rule on the pro se's motion and request to take judicial NOTICE of choice of laws for example, results in an incomplete administrative agency record causing the exhaustion of state remedies to be futile. See appearance of impropriety

rules of civil procedure. State v. Lovelady, 691 2d 364, 365 [1] (Mo. App. 1985) State v. Garner, 760 S.W. 2d 893, 906 (Mo. App. 1988).

5. The combination of a judge's questions and statements may create an appearance of impropriety. See Williams v. Reed, 6 S.W. 3d 916, (Mo. Ct. App. 1999) at 922-23.
6. The prohibition on interfering with the judiciary's administrative authority applies to the executive branch as well as to the legislature. See Orersic v. Illinois State labor Relations Board, (1989), 127 Ill. 2d 453, 480-81, 130 Ill Dec. 455, 537 N.E. 2d 784.
7. Small further argues in support that Commission members are appointed by the Missouri executive branch of government and ALJ officials are duty bound by Cannon 3 standards. This Commission lost its last appeal when circumventing Cannon 3 standards.
8. Ignoring the pro se's December 17, 2012 Motion-Objections-Request for Judicial NOTICE, gives rise to the appearance of impropriety, in violation of Cannon 3, based on an incomplete record devoid of a reasonable or rational basis for circumventing Cannon 3 standards for

the known ADA, pro se Iowa male, resident August 06, 2010 forward and continuing unresolved.

9. Respondent Utility objection to Complainant's Request For Admissions[attached] should be suppressed placing Respondent Utility in default where NO Certificate Of Service under Rule 43.01(d) appears of record (a) within Data Center Records, (b) Certificate of Service fails to be attached & or served on all parties of records. (c)

Respondent Utility complied with Certificate of service rule on the 28 day of November 2012 when filing its void response to Small's amended complaint. (d) to avoid the appearance of Commission impropriety, [Cannon 3] the Commission should not be allowed to pick and choose when Cannon 3, and Rule 43.01(d) is complied with, favoring a 25-26 billion dollar goliath private utility entity. 42 U.S.C. sect 1985(3) conspiracy doctrine.

10. Rule 43.01(d) states [" Service may be shown by acknowledgement of receipt or by affidavit or by written Certificate Of Service of counsel making such service."] Ameren Missouri's attached Objections to Complainant's Request for Admissions, 5 pages in length, violates R. 43.01(d) by omitting to file (a) Certificate of Service within

five (5) days of service upon parties, Commission Data Center and Office of Public Counsel. Rule 43.01(d) is not a discretionary rule and failure to rule on Small's December 17, 2012 Request for Commission to take Judicial NOTICE of Choice of law rules for the OUT-Of-State party Small and failure to enforce Commission service of papers rules, support Small's argument of impropriety [Cannon 3] resulting in an adversarial and not fair and impartial proceeding going on three (3) years after the August 06, 2010 informal complaint filing and continuing in 2013 unresolved.

11. During the 02/11/2013 prehearing conference, ALJ M. Bushmann questioned Small as to his desire to take depositions. ALJ Bushmann's questions on 02/11/2013 in context to discovery violation disputes developed of record, some 268 administration days following Small's request of counsel Giboney. [" I will be looking forward to receipt of your available dates for purposes of evidence depositions (May-June) No. EC-2012-0050"] s/s JIMMIE E. SMALL, Filed stamped MPSC on May 18, 2012.
12. It is further noted that during the bobbled Void Commission order, dated, filed and served on January 31,

2013, ALJ Michael Bushmann admonished the ADA pro se for not making necessary or desire discovery sooner. That same ALJ Bushmann quashed Small's subpoena duces tecus, and ignored Small's December 17, 2012 Request for the Commission to take judicial NOTICE. This treatment has been the commission custom, policy and governmental practice toward CP Small's. See RS. Mo. Chapter 213. Non-Retaliation provision. Canon 3 standards involving appearance of impropriety in a contested case proceeding. State v. Garner, 760 S.W. 2d 893, 906 (Mo. App. 1988). Union Electric Company v. Public Service Commission of Missouri, 591 S.W. 2d 134.

[“ The cardinal test of the presence or absence of due process in an administrative proceeding * * * * ‘the presence or absence of rudiments of fair play long known to the law.’” It was held this required a fair and impartial hearing officer”] See page 26, of CP Small's December 17, 2012 Objections and request for Commission to take judicial NOTICE of Iowa Choice of law [content], ignored and circumvented by ALJ Michael Bushman and continuing in 2013 unresolved. See also People v. Joseph (1986), 113 Ill. 2d 36, 46, 99 Ill. Dec. 120, 495 N.E. 2d 501;

People ex rel Bier v. Scholz (1979), 77 Ill. 2d 12, 18-19, 31 Ill. Dec. 780, 394 N.E. 2d 1157.

FULL FAITH & CREDIT DOCTRINE
T-28, U.S.C. section 1738

13. In Addition to the laws raised in Small's December 17, 2012 filing requesting the Commission to take judicial NOTICE of laws for out-of-state parties, Small also argues that T-28, U.S.C. sect 1738 Full Faith & Credit applies to his December 17, 2012 filed Motions and Objection, in addition to Cannon 3 due process and equal protection doctrine which ALJ Michael Bushmann has yet to apply, implement or consider. This treatment prejudices the undersigned Iowa Resident's ability to exhaust available remedies going on three years after CP filed his August 06, 2010 informal complaint alleging discrimination under 4 CSR section 240-13.010.
14. In addition to Full Faith & Credit arguments stated in part 13, next above written, failure of Commission Staff Counsel, Acting Secretary Shelly Brueggemann, and ALJ Bushmann to rule on Small's 12/17/2012 Request to take Judicial NOTICE intentionally interferes with Small's duty and obligation to exhaust his administrative

remedies prior to filing suit in state or federal court as held in the case Public Utilities Commission v. United States, 355 U.S. 534, 78 S. Ct. 446, 2 L Ed 2d 470 ; Metcalf v. Swank, 444 F. 2d 1353, 1355-1356.

15. Here in this contested case proceeding Small challenges 4 CSR 240-13.010 as that specific discrimination law is applied against the Iowa resident.

CP Small does not Challenge 4 CSR section 240-13.010 on its face. Since CP ADA Iowa pro se filed his August 06, 2010 informal written complaint against the Respondent Utility, Commission officials have arranged an adversarial proceeding to convene permitting Staff, and Respondent Utility to pick and choose when to file Certificate of Service verification documents and pick and choose when to rule on Small's 12/17/2012 Request and objections. Small objects to said treatment as being in clear violation of Full Faith and Credit doctrine. A federal right raising a Federal Question [Subject Matter] which CP Small does not elect to waive. See T-28, U.S.C. section 1331. Choice of Substantive laws, Jackson v. MIDLAND FUNDING, LLC, 754 F. Supp. 2d 711

16. Small can legally assert Iowa State law claims as well as federal claims in MPSC cases owing to (a) Exhaustion of remedies doctrine, (b) State and federal courts have concurrent jurisdiction to hear FDCPA claims. 15 U.S.C. section 1692k(d).
17. That Respondent's participation in the 02/11/2013 perhearing conference plus its Response to Small's Amended complaint filed on 11/28/2012 should be suppressed for (a) Failure to file a timely answer; answer consisting mostly of blank amount due spaces (b) failure to abide the Commission Order deadline, of November 28, 2012. (c) Filing an answer to the amended complaint which requires the Commission [first], the Appellate court [second], to engage in conjecture and speculation as to the exact amount claimed due on account, [# 34433-07009] as per the Commission finding denying Small's Motion for Summary Judgment filed and served on January 16, 2013. A Commission Order omitting a state of Missouri Seal and Verification signed by Acting Secretary Shelly Brueggemann January 31, 2013.
18. The Commission decision making record dated January 31, 2013 was rendered so incomplete on

01/31/2013 that the administrative exhaustion record was devoid of any reasonable or rational basis for treating the Iowa pro se resident materially differently as he made good faith effort to exhaust his administrative remedies under state and federal laws. No. EC-2011-0247; No. EC-2012-0050 and continuing unresolved. See Citizens To preserve Overton Park v. Volpe 401 U.S. 402.; Public Utilities Commission v. United States, 335 U.S. 534, 539540, 78 S. Ct. 446, 2 L Ed 2d 470 (1958); Metcalf v. Swank, 444 F. 2d 1353, 1355, 1356.

SCHEDULED COMMISSION HEARINGS

19. 4 CSR 240-2.110 Hearings, Subpart (3) state,[" When pending actions involve related questions of law or fact, the commission may order a joint hearing of any or all the matters at issue, and may make other orders concerning cases before it to avoid unnecessary cost or delay."]
20. During the 02/11/2013 pre-hearing Conference Commission ALJ Bushmann focused on a single issue as to what persons CP Small desired to depose. Small filed his informal complaint on August 06, 2010. Small's requested available dated to depose material witnesses served upon Counsel Giboney, page (6) file stamped May 18, 2012. Thus Commission ALJ Bushmann had no

intention of applying 4 CSR 240-2.110, on 02/11/2013 prehearing Conference much less ruling on either factual matters or legal claims raised on December 17, 2012 by and through CP Small's Motion/Request for the Commission to take judicial NOTICE of laws out-side-the-State-Of-Missouri. Small objects on the basis of material prejudice of Small's ability to exhaust Administrative remedies in a timely manner under established rules of law 4 CSR 240-2.110. See also Exhaustion requirement, 2.110, so as to avoid unnecessary cost or delay, adversely affecting the ADA Iowa, Resident claimant. Public Utilities Commission v. United States, 355 U.S. 534, 539-540, 78 S. Ct. 446, 2 L Ed 2d 470 (1958) ; Metcalf v. Swank, 444 F 2d 1355, 1355-1356. It appears by Administrative record, docket entries, that the Commission has no intent in applying its discrimination laws in favor of Complainant any more than its intent to apply 4 CSR 240-2.110 applicable standards. Small's claims against the Utility will be on file three (3) years on August 6, 2013 which makes a mockery out of 2.110 cost and delay standards.

21. In Communication between Ameren Missouri employee Michael Horn and CCM employee Tracy Packingham, CC: Mueller, Mark F. on January 22, 2013 CCM attempted to secure an investigative/discovery affidavit from Respondent Ameren Missouri, [M. Horn] to confirm the alleged amount due Respondent on account # 34422-07009 LOT # 23,23067 Potter Trail, Kirksville, Missouri. See attached communication.

22. Following the January 22, 2013 contact by CCM with Ameren Missouri, Michael Horn, telephoned witness Tracy Packingham and made threats against CCM employees not to disclose any account information in direct violation of T- 15 U.S.C. section 1692e(5) and as related to Small's MPSC obligation to complete timely discovery or be dismiss for failure to prosecute. 4 CSR 240-2.110(2)(A).

23. During the 02/11/2013 pre-hearing conference, Small requested a 4 CSR 240-2.100 subpoena duces tecum so as to depose Respondent employee Horn, in context to his personal knowledge as to account matters # 34433-07009, and his knowledge of the CCM NOTICE AND ATTEMPT

TO COLLECT A DEBT DUE [dated] 04/04/2012. ALJ Bushmann fully understanding that a threat had been made by Mr. Michael Horn,[See Transcript] and his personal knowledge, the Commission arbitrarily and capriciously denied Small's request for subpoena and request to depose Respondent agent employee Michael Horn. Mentioned Commission acts and omission to protect CP has prejudiced Small's ability to exhaust administrative remedies denying him due process and equal protection as to Full Faith and Credit involving an Iowa claimant Resident , T- 28 U.S.C. sect 1738 Rycoline Prods, Inc., v. C.& W Unlimited, 109 F 3d 883, 887 (3d Cir. 1997); 15 U.S.C. sect. 1692k(d). See also Federal Question doctrine. 28 U.S.C. sect. 1331.

24. According to counsel Giboney's statements[Utility] to ALJ Bushman during the 02/11/2013 prehearing conference, Respondent Utility appeared to repudiate any debt on account # 3443-07009 was due much less whether Respondent was a "debt collector" on or about January 22, 2013 when Utility agent Michael Horn injected Utility threats against the interest of CP Small during a pending

formal proceeding before the Missouri Public Service Commission. See FDCPA [federal standard], 15 U.S.C. sect. 1692e(5). Threats are prohibited in a debt collection case circumstance. See also sworn Affidavit testimony of Mary Duncan [Filed TO: MPSC on 03/21/2011 No. EC-2011-0247] in context to alleged debt due Respondent, incorporated into No. EC-2012-0050 by Counsel Giboney and Tatro, via its RESPONSE TO AMENDED ALLEGATIONS, certified served, on the 28th day of November, 2012, [“the Company hereby incorporates by reference its Answer to Complainant’s original Complaint in this case .”] Small’s original written Complaint was filed on August 06, 2010, again on February 04, 2011.

R. Civ. Proc. Rule 55.12
ADOPTION OF STATEMENTS BY REFERENCE

R. 55.12 State in full, [“Statements in a pleading may be ADOPTED BY REFERENCE IN A DIFFERENT PART OF THE SAME PLEADING OR IN ANOTHER PLEADING OR IN ANY MOTION. AN EXHIBIT TO A PLEADING IS A PART THEREOF FOR ALL PURPOSES.”]

25. In addition to Respondent action falsifying account records and submitting falsified account records to MPSC

Staff and others, Counsel Giboney and Counsel Tatro incorporated by reference its previous Answer, Counsel Giboney made materially false statement to ALJ Bushmann on 02/11/2013 so as to avoid liability determination against her client Ameren Missouri. See Barnhill v. Iowa District Court, 765 N.W. 2d 267; See also State of Iowa v. Terrance Dwayne Walker, perjury case. The Barnhill court concluded that counsel Barnhill [a female attorney] told the trial court whatever was necessary to get past the moment. In No. EC-2011-0247; and No. EC-2012-0050 Counsel Tatro and Counsel Giboney made pleading statement so inconsistent with statements previously provided to MPSC investigator Gay Fred and Mary Duncan, counsel's motive for making inconsistent Pleading statements appears almost identical to counsel Barnhill's pleading statements.

ULTRA VIRAS TREATMENT BY MPSC

26. For purposes of these objection and motion for order, Ultra Vires acts or omission to act means judicial acts beyond proper power and authority authorized by state and federal constitutional laws Juarez v. State, 102 Texas Cr. R. 277 S.W. 1091. When MPSC ALJ Bushmann

decided to circumvent Cannon 3 duties and Circumvent 4 CSR 240-2.110 standards, by ignoring Small's December 17, 2012 Request to take Judicial NOTICE, the MPSC in effect engaged indifferent conduct to its own rules of law in context to cost of time and money savings, making a continued mockery of contested case proceeding before the Missouri Public Service Commission. 4 CSR 240.2-110.

A government entity is liable under sect 1983 only when an official policy or custom inflicts the injury of which the plaintiff complains. Monell v. Dep't of Soc. Serv. of New York, 436 U.S. 658, 694 (1978); Neighborhood Action Coalition Group, v. Canton Ohio, 882 F. 2d 1012 (6th Cir. 1989); Regents of the University of California v. Bakke, 438 U.S. 265, 284, 98 S. Ct. 2733, N 2745, 57 L. Ed 2d 750 (1978)(Powell J.); Reno v. Flores, 507 U.S. 292, 302; Anderson v. Creighton, 107 S. Ct. at 3039.

Doctrine of "unconstitutional conditions" prohibits government from forcing defendant to choose between two constitutionally protected rights. U.S. v. Dent 984 F. 2d 1453, rehearing denied, cert. den. 114 S. Ct. 169, 510 U.S. 858, 126 L Ed 129; Tucker v. U.S., 114 S. Ct. 209, 510 U.S. 875, 126 L. Ed 2d 165. MPSC attempted coercing

Small to choose between an adversarial proceeding, in absent of due process and equal protection right to timely discovery while MPSC permits utility to file inconsistent and materially false pleading, is the type of governmental conduct Dent was designed to correct.

MO. S. Ct. Rule 55.27(b) MOTION FOR JUDGMENT ON THE PLEADING AGAINST UTILITY

27. Pursuant to Mo. S. Ct. Rule 55.27(g)(2) failure to state a legal defense to a claim may be made in any pleading permitted or by motion for judgment on the pleadings, or at trial on the merits, or on appeal.
28. This ADA pro se does not elect to wait to an appeal to raise the Utilities defective pleadings [issues] filed in No. EC-2011-0247; No. EC-2012-0050.
29. The ADA unschooled pro se does not elect to wait until a MPSC adversarial trial proceeding [hearing on the merits] to raise material defects in the Utilities filed pleadings, No. EC-2011-0247 incorporated into the present contested case via the Utilities November 28, 2012 Answer/Response to Amended Allegations.
30. Pursuant to Mo. S. Ct. R. 55.27(g)(2) authority, the ADA pro se files his motion for judgment on the pleadings

against Ameren Missouri Utility, based on (a) insufficient factual defense matter, (b) failure to attach a required Certificate of service under R. 43.01(d) to its Response to Request to Admit; (c) Pleadings filed with Commission in bad faith (d) Pleadings alleged facts in defense of liability in Cause No. EC-2011-0247, which were at war with pleadings filed on March 07, 2011 (e) Pleading alleged facts in defense on November 28, 2012, Contested Case No. EC-2012-0050, materially indifferent with pleadings filed in defense on March 07, 2011 incorporated into Cause No. EC2012-0050.

31. A private individual who joins with state officials to violate a person's constitutional rights or who de facto performs governmental functions by controlling public officials or acting as their agent, acts under color of state law. Rouse v. Judges of Circuit Court (N.D. Ill.) 609 F. Supp. 243; Adickes v. S.H. Kress & Co. (1970) 398 U.S. 144, 26L. Ed 2d 142, 90 S. Ct. 1598.

When an appellate court views Ameren Missouri Two Pleadings filed on March 07, 2011, one six (6) Pages in Length, the other Eight (8) pages in length, when an appellate court views this portion of the Certified

Commission record,[No. EC-2011-0247], to Acting Secretary, Shelly Brueggemann certification of complete and true record, the conspiracy between the Private actor Ameren Missouri, and MPSC officials comes into compellingly clear view. Adickes v. S.H. Kress & Co. (1970), 398 U.S. 144, 26 L Ed 2d 142, 90 S. Ct. 1598.


32. Criminal destruction of the Mary Hoit Affidavit attached to Respondents April 29, 2011, Subpoena duces tecum [4 CSR 240-2.100] [discovery response] coupled with the false certified March 07, 2011 utility pleading, then certified as true by female acting secretary, [MPSC on 02/11/2013], would appear to indicate an adversarial proceeding favoring the 25-26 Billion dollar utility.

33. Sanctions are proper when moving party demonstrates that opponent has abused right of free access to courts by pleading untrue statements of fact which he knew, or should have known, or reasonably should have known, were untrue. In Re Estate of Werknick, 104 Ill. Dec. 486, 502 N.E. 2d 1146, 151 Ill. App. 3d 234; Hearity v. Iowa Dist Court. 440 N.W. 2d 860, 864 (Iowa 1989); Breitbach v. Christenson, 541 N.W. 2d 840, 846 (Iowa 1985); Barnhill v. Iowa District for Polk

County, 765 N.W. 2d 267; Harris v. Iowa District Court, 570 N.W. 2d 722, 726 (Ia. Ct. App. 1997) On March 07, 2011 Respondent filed its Answer to CP claims, certifying TWO (2) separate versions of its answer by certificate of service R. 43.01(d). Said Respondent answers were filed as public records with the MPSC Data Center. On 02/11/2013, Acting secretary [female] Shelly Bureggemann acting in concert with Counsel female[s] Wendy Tatro and Sarah Giboney, did falsely certify public records, when knowing full well or through the exercise of due diligent knew those same certifications and pleadings were materially false when filed and served. See Barnhill v. Iowa District Court for Polk County, 765 N.W. 2d 267.

CONCLUSION

Based on the attached exhibits in support the Commission should enter judgment on the pleadings favoring the ADA pro se complaining party, for good cause shown.

Respectfully submitted

 JIMMIE E. SMALL

606 West Hwy # 2,
Milton, Iowa, 52570

Rule 43.01(d) CERTIFICATE OF SERVICE

I certify that the above and foregoing Motion for Judgment on the Pleadings was served on all parties in this contested case, Data Center, Office of Public Counsel, and Counsel for Respondent Tatro. All done this Wednesday the 27th day of February, 2013.

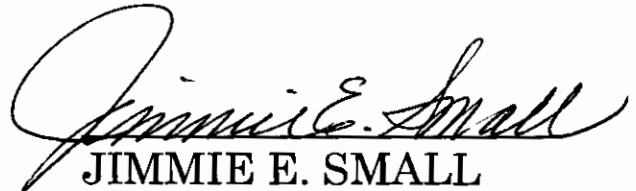
Jimmie E. Small
JIMMIE E. SMALL

Case No. EC-2011-0247; No. EC-2012-0050
AFFIDAVIT OF COMPLAINANT JIMMIE E. SMALL

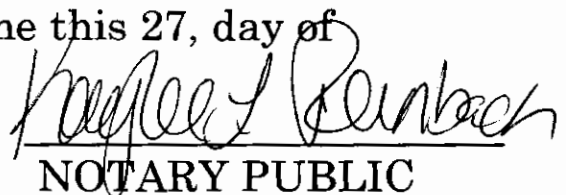
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Jimmie E. Small, of lawful age, on his oath, states that he has knowledge of the March 07, 2011 Pleadings filed by respondent Utility, later certified by Acting Secretary, Shelly Brueggemann, on 02/11/2013. That I further believe that the pleading content of Respondent Utility Answer[s] are materially false when certified, filed and retained by the MPSC data center. I also believe that the MPSC 02/11/2013 certification of a true copy of File NO.

EC-2011-0247 as incorporated into No. EC-2012-0050 by Respondent's Answer/Responds to the Amended Complaint is material, [11/28/2013] false and known false when filed in this quasi-judicial proceeding so as to harass, intimidate and take unfair advantage to an ADA pro se Iowa Complainant, much similar to the claims and defenses presented by Counsel in the Barnhill case. That MPSC decision/order sustaining the above Motion for Judgment on the Pleadings is justified under the law of the case. R. 55.27(g)(2) civil procedural standards; Cannon 3.


JIMMIE E. SMALL

Subscribed and sworn to before me this 27, day of
February, 2013.


NOTARY PUBLIC

