

FILED³

Missouri Public
Service Commission

Senior Regulatory Judge
Presiding

1

what relief the Commission should grant, if Small prevailed on the merits of his discrimination claims.

[Disability discrimination, age, Gender(sex) Discrimination, Harassment, Conspiracy to Discriminate, Geographical Location discrimination, View point discrimination, disparity discrimination in the manner Utility administers National Safety Policies and Practices, Race Discrimination, Utility Rate Discrimination, Discrimination against white customer based on extortion efforts, joined by Staff agent Mary Duncan Report, Selective exclusion discrimination by Staff's failure to conduct ordered investigation into cause.

RELIEF REQUESTED

The full Commission should exercise its power, and authority under Commission Rule 4 CSR 240-2.117(2) by entering summary disposition relief favoring the Complainant.

Grant relief before Small seeks federal district court protection, under 42 U.S.C. sect 1983; 1985(3). See Order 02/08/2012 page 4.

Ameren Missouri has and continues to have a statutory duty to maintain accurate records during the ongoing dispute incident. [alleged reconnection on December 19 - 20, 2007 and continuing unresolved.]

Early on Respondent Ameren Missouri Agent Cathy Hart and agent Breeze Benton failed to disclose any evidence constitution proof that between December 19-20, 2007 time period, Respondent Ameren agents treated LOT # 23, Location [property] with the very same *safety policies, practices* [equal protection] required for Reconnection of Services.

See General Rules and Regulations VII. Disconnection and reconnection of service. Sheet No. 67.8, Sheet 180.

Disconnection of Services, covenant 8, adverse affects of the safety of the customer or other persons or the integrity of the Company's delivery system. November 6, 1994, C.W. Muller, Vice President & CEO.

SUGGESTIONS IN SUPPORT OF RELIEF REQUESTED

In a former case Union Electric Company, doing business as *Ameren UE, Plaintiff v. Missouri Department of Conservation*, et al, 366 F. 3d 655, Ameren Utility defended its services position at Bagnell Dam Location.

Ameren Missouri lost its federal argument and failed to explain what policies or procedures Ameren Utility company might have engaged to prevent large amount of fish killed, at

the Osage Basin River basin facility. [Neglect of Utility Safety practices appears an issue of concern in No. 2012-0050]

The claim[s] filed against Ameren Missouri Utility involved large amount of Mo. Conservation fish owned & killed.

See Department of Economic Development, Division 204- Public Service Commission, Chapter 18 Safety Standards.

4 CSR 240-18.010(2) state in full [“ All electric utilities and telecommunications companies and rural electric cooperatives subject to regulation by this commission Pursuant to Chapters 386, 392-394, RSMo. Shall be required to adhere to the safety standards established by this rule. Authority: sections 386.310 and 394.160, RSMo. 2000 Original authority: 386.310 RSMo. 1939, amended 1979, 1989, 1996 and 394.160, RSMo. 1939 amended 1979.

As a quintessential *remedy requested* MPSC is requested to enter finding[s] of fact that no evidence or proof of record accompanied Respondent[s] numerous data response showing proof of compliance with the American National Standard, National Electrical Safety Code (NESC) on or about 2006 through December 19-20, 2007 time period, LOT # 23, LOCATION, 23067 Potter Trail, Lake road Village Park, Kirksville, Missouri, 63501.

4 CSR 240-18.010(2), (3) standing alone [No.2012-0050] would appears to treat Utility Customer Jim Small,

complainant, materially differently than other Ameren Missouri customers. Jennifer Hernandez, Gay Fred, Mary Duncan, Cathy Hart, Breeze Benton, all females. See also [Race case] *Hernandez v. Texas*, 347 U.S. 475.

“ The Commission may, on its own motion, or the motion of any other party, dispose of all or any part of a case on the pleading . . .” See Fed R. Civ. Proc. Rule 50; Mo. R. Civ. Proc. Rule 74.04(6).

Subpart (6) state, If the motion, the response, the reply and the sur-reply show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law, the court shall enter summary judgment forthwith. See grant of summary judgment by injunction, in *United States v. W.T. Grant Co.*, 345 US 629, 73 S.Ct. 894, 97 L Ed 1303(1953) and *Houghton, Muffin Co. v Stackpole Sons*, 113 F. 2d 627 (2d Cir. 1940).

If the Commission views the failure of Respondent Ameren Missouri to implement Chapter 18 National Public Safety Code the Commission, being fully apprised in matter[s] before it, should enter an Order/judgment of liability against

Respondent, as a matter of law. See Commission Rule 4 CSR 240-2.117(2).

JUDICIAL ESTOPPEL DOCTRINE

(1886) Estoppel that prevents a party from contradicting previous declarations made during the same or an earlier proceeding if the change in position would adversely affect the proceeding or constitute a fraud on the court. See also termed doctrine of preclusion of inconsistent positions; doctrine of the conclusiveness of the judgment.

According to the content of Ameren's Answer to Small's Complaint, Ameren denied ever violating any rule, policy, practice before assigning Small's electric service account to Consumer Collection Management agency [St. Louis, Mo.] 2007 time period. Ameren thereafter suppressed material evidence.

LEGAL ESTOPPEL

Estoppel recognized in law, (as distinguished from equitable estoppels or estoppels in pias.), such as an estoppels resulting from a recital of other statement in a deed or official record, and precluding any denial or assertion concerning a fact.

During the 3 hour mediation, Ameren Utility declined to address its failure to be bound by MPSC laws, reconnection safety policy & procedures in particular.

This omission places some one million two hundred thousand Missouri Customers at present & future risk of hazard by a Public Utility. 4 CSR 240-18.010(2).

PROMISSORY ESTOPPEL DOCTRINE

(1924) The principle that a promise made without consideration may nonetheless be enforced to prevent injustice if the promisor should have reasonably expected the promisee to rely on the promise and if the promisee did actually rely on the promise to his or her detriment. See also equitable estoppels. Black's Law dictionary, page 631, Ninth Edition.

Here Respondent Utility is faced with key elements over Safety standards violations.

National Safety Standards promised to every customer who request and receives electricity.

Here Ameren Utility's right hand knew of 4 CSR 240.18.010(2) between December 19-20, 2007, however,

Ameren's Left hand clearly failed to carry out that exact same safety policy, practice, procedure, and wrongly informed the Commission of material facts of the alleged reconnection incident 12/19-20/2007.

If National Public Safety under 4 CSR 240-18.010(2) is permitted by the Commission to be circumvented by UE.AM. MO. the State of Missouri could potentially be liable for failure to protect citizens which would render NESC an exercise in futility, Case No. EC2012 - 0050. Adair County first responders, [Sheriff's Department] may be sued as well.

Electrical Customer Safety [Nationwide] should take precedent over Respondents Utility interest in money collection efforts, through its assignment to Consumer Collection Management, knowing full well a dispute was pending front and center, early on. The M. Duncan Staff report placed Corporate money income ahead of National safety issues & concerns.

It is respectfully suggested that Respondent Utility did agree by License and Federal Contract ratification, to meet timely compliance with 4 CSR 240-18.010(2) and(3) reporting

requirements which the Utility breached to Small's detriment as a matter of law, and continuing in 2012.

The Mo. Commission's ruling on AT & T Motion for judgment on the pleadings, [Case No. TC- 200700085] would appear to be a state action process applied in other contested cases,[by Motion], involving parties outside Small's protected class membership.

Estoppel doctrine appears appropriate in Small v. UE.AM.MO. where the *Shall* language suggest a *command* not *discretionary* function. 4 CSR 240-18-010(2) (3).

While Respondent Utility attempts to mold its defense[s] on alleged MONEY due and payable by the ADA pro se, Small may not be compelled to waive subject matter jurisdiction over valid claims that during 2006 thru December 19-20, 2007 Respondent Utility did violate 4 CSR 240-18-010(2)(3) applicable standards to the detriment of the ADA pro se customer.

RELIEF REQUESTED

Assuming that the Mo. Commission desires to implement Chapter 18 of the National Safety Code[in Small's case] fairly

and uniformly, the [Commission] [No. EC-2012-0050] before proceeding any further, the Commission should order Respondent Union Electric, d/b/a Ameren Missouri, submit its response to a *show cause order*, why summary disposition should not be entered against respondent as a matter of law.

Case No. EC 2012-0050

The Commission's Administrative record is [materially incomplete] silent as to 4 CSR 240-18.010 (2) Safety Standards, required to be documented prior to the alleged December 19-20, 2007, reconnection of electrical services, [without notice or request to reconnect] in addition to identifying each Respondent agent who has knowledge of 4 CSR section 240-18.010 subpart 2. See *Citizens to Preserve Overton Park v. Volpe* 401 U.S. 402.

As a matter of relief requested, it would seem ill-advised for MPSC officials to knowingly permit the giant Utility to substitute \$ interest [debt] [Rate collection issues] while Utility concurrently circumvents National Safety Code Standards, in 2006 through December 19-20, 2007 and continuing in February 2012.[Corporate America greed]

In Case File No. EC -2012-0050 and 2011-047, Small asserts a liberty interest under the 14th Amendment to the U.S. Constitution as made applicable to 4 CSR sect 240-18.010 (2). Federal Waters Power Act. *Henry Ford & Son v. Little Falls Fibre Co.* 280 U.S. 369 74 L. Ed 4839

A Federal License granted to Union Electric Company, for use of Federal Water traversing through the Osage River Basin, appears breached where Respondent Utility Company did agree[promised] to meet compliance with state and federal laws, to and including the NESC National Electrical Safety Code.

Injunctive relief sought in the present case, is appropriate where Respondent utility admits in its filed papers that it serves some one million two hundred thousand Missouri customers, each and independently in need of equal protection under state and federal laws. 4 CSR sect 240-18.010 subpart (2).

COMMISSION POWER & AUTHORITY

In the Case of *Big River Telephone Company, LLC*,
Complainant, vs. Southwestern Bell Telephone Company, d/b/a

AT&T Missouri, Case No. TC-2007-0085, AT&T Motion to Dismiss, Foot Note 2, the following Commission authority, was evoked by AT&T Missouri;

[“ While such an order is required by the law of this case and no additional authority is needed, such an order would also be entirely consistent with Rule 2.117(2)(4 CSR 240-2.117(2)(stating that “the [C]ommission may, on its own motion or on the motion of any party, dispose of all or any part of a case on the pleadings”)

AT&T by Motion raised the time period of January 1 through March 11, 2006, [4 CSR 240-2.125(2)(A)]

In the present contested case it would appear that the public interest of some one Million Two Hundred Thousand utility customers [liberty interest in Safety and Protection], under 4 CSR 240-18.010(2) Safety Standards, have a greater safety interest than any legitimate state interest of protection Respondent Utility in its present efforts to extort some \$1.088.00, by use of state action aid of Mary Duncan Staff report.

The City of Kirksville, Mo. state it may collect some \$4.76 from each \$100. Utility Account Bills, collected.[Adair County TAX jurisdiction].

Small objects to extortion tax collection efforts, denying due process and equal protection 2006 and continuing in 2012.

The *State of Missouri* [Adair County] in this case has no legitimate state interest in circumventing Title 4 Department of Economic Development, Division 240 Public Service Commission, Rule of law, Chapter 18, 4 CSR 240-18.010, subpart (2), Contested Case No 2012-0050.[Usurious tax Collection Schemes by Utility & Government acting in concert.]

FEDERAL RIGHT CLAIMS

42 U.S.C. sect 2000d prohibit selective exclusion of persons desiring to participate in Federally Funded programs, projects.

The Bagnell Dam Federal [water use] Osage River basis is a federally funded project. The Federal Lease agreement granted Union Electric is accepted as a federally funded program subject to 42 U.S.C. sect 2000d.

42 U.S.C. sect 61.02 et seq prohibits discrimination based on age in federally funded programs, projects, etc.

Small will be 67 years old on April 22, 2012.

Small asserts that failure to grant equal protection to Public Safety Standards, under Chapter 18, 4 CSR sect 240-

18.010(2) from April 2006 through December 19-20, 2007 denied Small equal protection of laws, based on his age, and further based on his disability as a war veteran.

With Rule 2.117(2) (4 CSR 240-2.117(2)) in mind, the Commission on its own motion could dispose of all or any part of a case on the pleadings . . . See Contested MPSC Case No. TC-2007-0085. *Big River Telephone Co. v. Southwestern Bell Telephone Co.*

If AT&T Corp. entity be permitted judgment on the pleadings, in No. TC-2007-0085, the ADA pro se Small respectfully submits that the Commission should exercise its power and authority to issue Show Cause Orders against Respondent Utility, for failure to meet compliance with Chapter 18 Public Safety Standards, and failure to maintain and preserve accurate records so as to verify that Public Safety Standards were met.

Between April 2006 and December 19-20, 2007 time period and continuing [2012] approximate one million two hundred thousand Missouri service customers are presently exposed to Ameren Utility GROSS NEGLIGENT safety practices at reconnection incidents.

Section 10 of the Federal Power Act [16 U.S.C. 803] Plus the Electrical Consumers Protection Act of 1986, appear to prohibit Respondent Utility to circumvent Chapter 18 of the National Safety between April 2006 and December 19-20, 2007 *alleged reconnection transaction*, LOT # 23, LOCATION 23067 Potter Trail, Kirksville, Missouri.

The United States Supreme Court in the Case *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 153 L Ed 2d 106, 122 S. Ct. 2061(2002) held that Harassment policies and practices could last for several years before suit was initiated to halt said harassment.

Respondent Utility, Ameren Missouri, a 25-26 Billion dollar electrical utility could not care less what action the commission orders in this particular case so long as Ameren Missouri can at will circumvent Public Safety Standards, when it elects to do so.

In the mean time Ameren Missouri has made application for a \$476 Million dollar rate increase to be approved by the MPSC authority.

This Rate increase if approved would appear to increase the monthly electric bill of some one Million two Hundred

Thousand customers by some \$14.00 per month during a time Respondent remains silent on the record for its willful failure to meet Chapter 18 National Public Safety Standards. NESC Matt Blunt, Sect of State, (3/31/04) Code of State Regulations.

On January 31, 2012, during a scheduled Mediation session lasting nearly three hours, Respondent Utility defended its asserted debt collection against Small in the amount of \$1.088.00.

When mediation subject approached asserted liability of Respondent [specifically, safety issues], Main Circuit Breaker Safety[verification] issues on December 19-20, 2007, mediation proceedings were brought to end without resolve or admission of breach by Respondent, under section 4 CSR 240-18-010(2).

In its Order entered and served on the 5th day of October 2011, the Commission order stated in part,

["Staff states that a utility is restricted from subjecting a customer to undue or unreasonable prejudice or disadvantage. Thus, Staff believes the Commission has the authority to hear a complaint against Ameren Missouri on whether it has discriminated against Mr. Small. The Commission will address this in subsequent orders."]

ADA pro se respectfully suggest that any alleged reconnection by AM.MO. without written evidence to do so at LOT # 23, 23067 Potter Trail, Kirksville, Missouri, on or about December 19-20, 2007 in violation of 4 CSR sect 240-18.010(2), is presently subject to the duties and responsibilities of the Commission under summary disposition. Rule 2.117(2) (4 CSR 240-2117(2). *Big River Telephone Company, LLC v. Southwestern Bell Telephone Company, d/b/a AT&T Missouri*, Case No. TC-2007-0085.

Consequently, the Commission should at a minimum immediately issue a show cause order against Respondent Utility consistent with page 3 of the Commission order entered on October 05, 2011, effective October 15, 2011.

["The Commission will address this in subsequent orders"].

At page 4, October 05, 2011 Order, Gunn, Chm, Davis, Jarrett, and Kenney, Held, 2. ["The requests Jimmie E. Small made for legal, equitable and class action relief against Union Electric Company d/b/a Ameren Missouri are dismissed."]

ALTERNATIVE RELIEF REQUESTED

In the event the Mo. Commission finds that discrimination treatment policies and practices were pursued by Respondent

Utility, further finding lack of authority for appropriate relief, then ADA pro se respectfully request the Commission take all necessary action to transfer said findings of liability as to discrimination to the appropriate U.S. district Court so as to fulfill equitable and or legal relief under Federal Question doctrine. Title 28 U.S.C. sect. 1331.

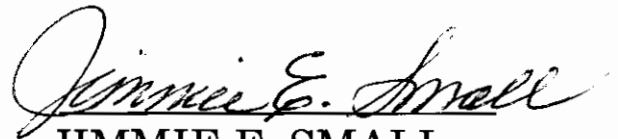
Whether or not Respondent Utility breached its contractual, statutory, and constitutional duty to protect the ADA pro se consumer, LOT # 23, 23067 Potter trail, Kirksville, Mo, under the American National Standard, National Electrical Safety Code presents a federal question matter the same or similar to the federal Question raised in regards to the binding lease agreement, not to discriminate against customers, or prospective customers. Section 386.310 RSMo. 1939, amended. 1979.

In addition to section (2) safety standards, Respondent Utility [AM.MO.] has not met reporting requirement for electrical utilities, 4 CSR 240-3.190(4), nor has Ameren Missouri proffered a single explanation on record [Case No. 2012-0050] for selectively excluding treatment of ADA pro se Iowa, Resident, Jim Small from equal protection treatment

freely provided to Missouri customers, outside ADA pro se Small's protected class membership.

42 U.S.C. sect 61.02 [Title VI authority] prohibition of discrimination applies here where Small is over 60 years old.

Respondent Utility breached its statutory duty under 42 U.S.C. sect 61.02 where Title VI covers federally funded projects, and programs, similar to the lease agreement entered into by Union Electric Company, to be performed in the state of Missouri fairly and equally under the law.



JIMMIE E. SMALL
General Delivery
Quincy, Illinois, 62301

SMALL v. UE.AM.MO.
Case No. 2012-0050

MOTION FOR DECLARATORY JUDGMENT

Rule 87.02 (c) Declaratory Judgment in Respect to Agency
Rules, state,

[" The power of the courts of this state to render declaratory judgments shall extend to declaratory judgments respecting the validity of agency rules, or of threatened applications thereof, and such suits may be maintained against agencies whether or not the plaintiff has first requested the agency to pass upon the question presented."]

The purpose of ADA pro se Motion for Declaratory Judgment relief is in part requested to answer the question as to whether or not Respondent Ameren Missouri officials, agents and employees, were duty bound to meet compliance with 4 CSR 240-18.010(2) on or about 19-20 December 2007 reconnection incident, LOT # 23, 23067 Potter Trail, Kirksville, Missouri. RSMo. Sect 527.090.

1. MPSC entry of declaratory Decree relief as to the applicability of 4 CSR 240-18.010(2) would aid the parties in controversy as to the equality of enforcement of American National Standard, National Electrical Safety Code requirement, between 04/2006, December 19-20,2007 and continuing, specifically in regards to an ADA Complainant.

2. Rule 87.08 Form and effect of Declaratory judgment State, [“ A declaratory judgment may be either affirmative or negative in form and effect; and shall have the force and effect of a final judgment or decree.”]
3. The Commission order 02/08/2012, ask the complainant what relief if any he request if he prevails on the merits.
4. 4 CSR 240-18.010(2) state in full;
(2) All electric utilities and telecommunications companies and rural electric cooperatives subject to regulation by this commission pursuant to Chapter 386, 392-394, RS Mo. shall be required to adhere to the safety standards established by this rule.
5. That a Commission Order entered in No. EC- 2012-0050, decreeing, in effect, that Electrical Safety procedures takes precedence over Money [revenue collection practices] between April 2006, December 19-20, 2007 and continuing [in 2012] could likely terminate ADA pro se’s electrical complaint issues situated at LOT # 23, 23067 Potter Trail, Kirksville, Mo.

A final Decree would also serve to protect the safety interest of some one million two hundred thousand Missouri customers.

Wherefore, the Complainant having timely responded to the Commission Order to file proposed relief, respectfully request the Mo Commission find facts favoring the complainant against the Respondent Utility, Ameren Missouri, entering a Decree that Safety under NESC statute shall be required, [is mandatory] not a discretionary function at LOT # 23, 23067 Potter Trail, on or about December 19-20, 2007 including other relevant time periods.

Enter a Decree enjoining Ameren Missouri from circumventing 4 CSR 240-18.010(2) for all Missouri Customers in the future, A consent Decree signed by Respondent CEO or Board Chairman.

Enter a Decree enjoining Ameren Missouri from debt collection referral practices, [Adair Co. Tax collection] prior to certifying Utility has met timely compliance with 4 CSR 240-18.010(2).

Further enter a Decree that 4 CSR 240-18.010(2) National Safety Standards has 0 tolerance for discrimination, against customers regardless of the class based complainant status, and including forum state resident status.

SUGGESTIONS IN SUPPORT

Under Fed Rule 50 the question is whether the evidence and all fair inferences that can be drawn therefrom could lead a reasonable jury to only one conclusion. *Novak v. Capital Management and development Corp.*, 570 F 3d 305, 311(D.C. Cir. 2009).

The standard for resolving an issue under Rule 50 Mirrors the standard for granting Summary Judgment. *Reeves v Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 150, 120 S. Ct. 2097. 147 L Ed 2d 105(2000): See also Fed R. Civ. P. 50 advisory Committee's note (1991) (phrase "judgment as a matter of law" was deliberately used to call attention to the relationship between Rule 50 and summary judgment Rule 56).

Rule 50(a) application appears appropriate here where Respondent Utility bears the burden National

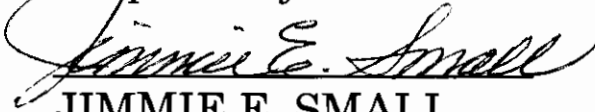
Safety Standards under 4 CSR 240-18.010(2) were met by Utility prior to illegal debt transfer to Collection Management and illegal reconnection without proof that Utility met all main circuit breaker safety requirements at LOT # 23, 23067 Potter Trail.

Staff investigators, Hernandez, Fred, Mary Duncan contributed to this element and lack of evidence in its repeated bobbled effort to investigate the cause of Small's claims against the Utility.

Accordingly there is no evidence of record to suggest Utility complied with 4 CSR 240-18.010(2) between 19-20 December 2007 and continuing in 2012.

Thus Complainant ADA Small, is entitled to judgment against Respondent Utility as a matter of law. *Lottie v. West American Ins. Co. of Ohio Cas. Group of Ins. Companies*, 408 F 3d 935, 938 (7th Cir. 2005)

Respectfully submitted

A handwritten signature in cursive script, reading "Jimmie E. Small".

JIMMIE E. SMALL

General Delivery

Quincy, Illinois, 62301

SMALL v. UE.AM.MO.
MPSC Case No. EC-2012-0050

State of Illinois)
)
County of Sangamon)

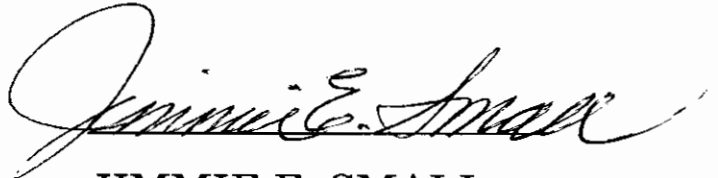
Rule 50-56 AFFIDAVIT

I, Jimmie E, Small, of lawful age [67 on 04/22/45] being first duly sworn, depose and state that he is competent to make this affidavit upon personal knowledge and belief.

1. Affiant has personal knowledge of 4 CSR 204-18.010(2) National Safety Standards prior to filing this dispositive motion for judgment on the pleadings.
2. Affiant has personal knowledge that on January 31, 2012, during a Mediation session between the parties, Respondent Agent were unable to produce proof that during December 19-20, 2007 time period, Respondent met timely compliance with 4 CSR 240-18.010(2) applicable safety standards, prior to billing Account customer Small, some 9,740 KWH between December 19, 2007 and the time of April 14, 2008.

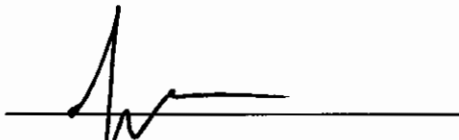
3. Affiant has personal knowledge that no natural person, Respondent agent, service personnel had access to LOT # 23, LOCATION, MAIN CIRCUIT BREAKER ASSEMBLY, as related to National Safety Standards, at, during or as a prerequisite to reconnection services on or about 19-20, December, 2007, leaving no evidence of compliance with 4 CSR 240-18.010(2) standards.
4. Affiant verily believes that his service and accommodations, lack of equal protection as to safety, and property rights, were accomplished by and through the Lake Road Village easement which permitted Respondent Ameren Missouri to place lines, poles and meters upon Lake road Village property, LOT # 23, 23067 Potter Trail, Kirksville, Mo. Also to collect City of Kirksville Tax at % 4.76 rate on Electric Bills.
5. Affiant has personal knowledge that Adair Co. officer Gary Hambech, personally appeared at LOT # 23 personally inspected Electric Meter No. 46779114 Red Tag Seal 5762394D-s reluctantly, and would not accept any complaint of trespass, or any other damage complaint against Respondent , Lake road Village or others.

6. Affiant has personal knowledge that at all times relevant, on or about 19-20, December 2007, the Mobile Home structure doors[LOT # 23] were securely locked and no Respondent Ameren agent were permitted entrance for any purpose, and continuing in 2012, unresolved. Nor was any other natural person permitted entrance[Main Electrical Circuit Breaker access] at that exact same time period.



JIMMIE E. SMALL

02/21/2012



NOTARY PUBLIC

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