

Jimmie E. Small,  
Complainant,  
v.  
Ameren Missouri, et. al.,  
Respondents.

**File No. EC-2012-0050**

Issue Date: March 14, 2012

Effective Date: March 14, 2012

On October 26, 2011, the Commission ordered the parties to state what remedy, if any, the Commission has authority to grant Mr. Small. On March 2, 2012, the

<sup>1</sup> Commission Case No. EC-2012-0050, Order Dismissing Claims and Parties, p. 1 (issued October 5, 2011).

Commission issued an Order Denying Motions and Setting Procedural Schedule, in which the Commission denied Ameren Missouri's motion to dismiss the complaint for failure to state a claim upon which relief can be granted and Mr. Small's request for summary disposition of the case under Commission Rule 4 CSR 240-2.117. The Commission also denied Mr. Small's request for injunctive relief, declaratory judgment, transfer to federal court, relief under federal claims, and allegations that Ameren Missouri violated safety standards and reporting requirements under Commission Rule 4 CSR 240-18.010. On March 13, 2012, Mr. Small filed an Application for Rehearing of the Commission Orders Entered on February 27, 2011 and March 2, 2012 and other Stated Times, which the Commission considers to be a motion for reconsideration of a procedural or interlocutory order under Commission rule 4 CSR 240-2.160(2). Although the motion was not timely filed, Mr. Small previously requested an extension of time in which to file the motion, which the Commission will grant.

Mr. Small disagrees with the Commission's order issued on March 2, 2012, but does not provide information that demonstrates the order was unlawful, unjust or unreasonable. The Commission will deny Mr. Small's motion for reconsideration of the order denying summary determination, injunctive relief, declaratory judgment, transfer to federal court, relief under federal claims, and allegations that Ameren Missouri violated safety standards and reporting requirements under Commission Rule 4 CSR 240-18.010.

Mr. Small also disagrees with the Commission's assessment in the March 2, 2012 order of the remaining relevant issues between the parties. The Commission will give Mr. Small an opportunity to file an amendment to his complaint stating in a clear

and concise manner any additional issues for determination which the Commission has the statutory authority to consider and which have not already been dismissed by the Commission. Claims or alleged violations of law outside the statutory authority of the Commission or that have previously been dismissed will not be considered. Any proposed amendment to the complaint must specifically state an alleged act by Ameren Missouri that violated a Missouri statute, rule, tariff, or order of the Commission.<sup>2</sup>

In his motion for reconsideration, Mr. Small made statements alleging that there have been improper ex parte communications between Ameren Missouri and the Commission's Chairman, Kevin Gunn, under Commission Rule 4 CSR 240-4.020. Mr. Small requests relief against Ameren Missouri in the form of a default judgment and sanctions. Mr. Small does not specify what communications were improperly made, but based on references in his motion, the Commission assumes that Mr. Small is complaining about unrelated notices of meetings and letters filed in this case and multiple other cases by Chairman Gunn and Ameren Missouri. Commission Rule 4 CSR 240-4.020(1)(G) defines an ex parte communication as "[a]ny communication outside of the contested case hearing process between...a commissioner...and any party...regarding any substantive issue". A "substantive issue" is further defined in subparagraph (O) of that rule as "[t]he merits, specific facts, evidence, claims, or positions which have been or are likely to be presented or taken in a contested case." The notices filed by Chairman Gunn and Ameren Missouri relate to communications in other matters concerning general ratemaking, tours, and meetings that have nothing to do with the issues in this case. For that reason they are not "substantive issues" for the

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<sup>2</sup> See, Section 386.390.1, RSMo 2000.

purposes of this case, and those communications do not meet the definition of an “ex parte communication” under the rule. Therefore, the Commission will deny Mr. Small’s request for a default judgment and sanctions.

Mr. Small also requests reconsideration of previous Commission orders issued in this case and the Order Dismissing Complaint Without Prejudice issued on July 27, 2011 in File No. EC-2011-0247. Mr. Small’s motion for reconsideration of those orders was not filed within ten days of the date the orders were issued as required by Commission Rule 4 CSR 240-2.160(2). The Commission will deny that request.

Finally, Mr. Small complains that the hearing scheduled for April 11, 2012, is to be held in Kirksville, Missouri instead of Jefferson City, Missouri. The hearing was set in the county where the utility service was rendered in accordance with Commission Rule 4 CSR 240-2.070(15)(E) and as a convenience to Mr. Small. Since Mr. Small prefers that the hearing be held in Jefferson City, the Commission will move the location of the hearing to Jefferson City, Missouri.

**THE COMMISSION ORDERS THAT:**

1. Jimmie E. Small’s motion for an extension of time to file his motion for reconsideration is granted.
2. Mr. Small’s motion for reconsideration of the order issued March 2, 2012 denying summary determination, injunctive relief, declaratory judgment, transfer to federal court, relief under federal claims, and allegations that Ameren Missouri violated safety standards and reporting requirements under Commission Rule 4 CSR 240-18.010 is denied.

3. No later than March 22, 2012, Mr. Small may amend his complaint as described in the body of this order, stating in a clear and concise manner any additional issues for determination which the Commission has the statutory authority to consider and which have not already been dismissed by the Commission.

4. Mr. Small's request for a default judgment and sanctions based on allegations of improper ex parte communications is denied.

5. Mr. Small's motion for reconsideration of previous Commission orders issued in this case and the Order Dismissing Complaint Without Prejudice issued on July 27, 2011 in File No. EC-2011-0247 is denied.

6. The location of the hearing scheduled to begin at 9:30 a.m. on April 11, 2012 in Kirksville, Missouri will be changed to Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, at the same time and date.

7. This order is effective immediately upon issuance.

**BY THE COMMISSION**



Steven C. Reed  
Secretary

( S E A L )

Michael Bushmann, Regulatory Law  
Judge, by delegation of authority  
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 14th day of March, 2012.