

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

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 GRANTING STAFF’S MOTION FOR AN EXTENSION OF TIME  
TO FILE ITS INVESTIGATION REPORT, DIRECTING COMPLAINANT  
TO RESPOND AND SETTING PROCEDURAL AND  
DISCOVERY CONFERENCE**

Issue Date: May 16, 2011

Effective Date: May 16, 2011

On April 4, 2011, Eric E. Vickers (“Complainant”) filed a complaint against Union Electric d/b/a Ameren Missouri (“Ameren Missouri”). On May 4, 2011, Ameren Missouri filed its answer and motion to dismiss. And, 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 provides documentation to support its position that it is unable to complete its investigation because Complainant has failed and refused to respond to Staff’s data requests.

When the Commission issued notice of this complaint on April 4, 2011, it mailed a copy of the rules and the notice to Complainant. Commission Rule 4 CSR 240-2.090(2) provides in pertinent part:

Parties may use data requests as a means for discovery. The party to whom data requests are presented **shall answer** the requests within twenty (20) days after receipt unless otherwise agreed by the parties to the data requests. If the recipient objects to data requests or is unable to answer within twenty (20) days, the recipient **shall serve** all of the objections or reasons for its inability to answer in writing upon the requesting party within ten (10) days after receipt of the data requests, unless otherwise ordered by the commission. If the recipient asserts an inability to answer the data requests within the twenty (20)-day time limit, the recipient **shall include** the date it will be able to answer the data requests simultaneously with its reasons for its inability to answer. **Upon agreement by the parties or for good cause shown, the time limits may be modified.** (Emphasis added.)

Staff's motion and supporting documentation shows that Complainant has not answered Staff's data requests, has not served objections, has not provided an alternative date for answering the data requests, has not obtained an agreement to modify the time limits and has not shown good cause for modifying the time limits. Consequently, it would appear that Complainant is in violation of the Commission's rule.

Commission Rule 4 CSR 240-2.090(2) further provides: "Sanctions for failure to answer data requests may include any of those provided for abuse of the discovery process in section (1) of this rule." Commission Rule 4 CSR 240-2.090(1) provides: "Sanctions for abuse of the discovery process or failure to comply with commission orders regarding discovery shall be the same as those provided for in the rules of civil procedure."

Discovery sanctions are delineated in Supreme Court Rule 61.01.<sup>1</sup>

#### **61.01. Failure to Make Discovery: Sanctions**

**(a) Failure to Act - Evasive or Incomplete Answers.** Any failure to act described in this Rule may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has filed timely objections to the discovery request or has applied for a protective order as provided by Rule 56.01(c).

---

<sup>1</sup> The PSC may impose sanctions pursuant to Rule 61.01. *State ex rel. Arkansas Power & Light Co. v. Missouri Public Service Comm'n.*, 736 S.W.2d 457, 460 (Mo. App. 1987). See also Section 536.073, RSMo 2000.

For the purpose of this Rule, an evasive or incomplete answer is to be treated as a failure to answer.

**(b) Failure to Answer Interrogatories.** If a party fails to answer interrogatories or file objections thereto within the time provided by law, or if objections are filed thereto which are thereafter overruled and the interrogatories are not timely answered, the court may, upon motion and reasonable notice to other parties, make such orders in regard to the failure as are just and among others the following:

**(1) An order striking pleadings or parts thereof, or dismissing the action or proceeding or any part thereof, or render a judgment by default against the disobedient party.**

(2) Upon the showing of reasonable excuse, the court may grant the party failing to answer the interrogatories additional time to file answers but such order shall provide that if the party fails to answer the interrogatories within the additional time allowed, the pleadings of such party shall be stricken or the action be dismissed or that a default judgment shall be rendered against the disobedient party.

**(c) Failure to Answer Request for Admissions.** If a party, after being served with a request to admit the genuineness of any relevant documents or the truth of any relevant and material matters of fact, fails to file answers or objections thereto, as required by Rule 59.01, the genuineness of any relevant documents or the truth of any relevant and material matters of fact contained in the request for admissions shall be taken as admitted. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 59.01, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the party requesting the admissions may apply to the court for an order requiring the other party to pay the **reasonable expenses** incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that: (1) the request was held objectionable pursuant to Rule 59.01, (2) the admission sought was of no substantial importance, (3) the party failing to admit had reasonable grounds to believe that such party might prevail on the matter, or (4) there was other good reason for the failure to admit.

**(d) Failure to Produce Documents, and Things or to Permit Inspection.** If a party fails to respond that inspection will be permitted as requested, fails to permit inspection, or fails to produce documents and tangible things as requested under Rule 58.01, or timely files objections thereto that are thereafter overruled and the documents and things are not timely produced or inspection thereafter is not timely permitted, the court may, upon motion

and reasonable notice to other parties, make such orders in regard to the failure as are just and among others the following:

(1) **An order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibit the disobedient party from introducing designated matters in evidence.**

(2) An order **striking pleadings or parts thereof or staying further proceedings** until the order is obeyed or dismissing the action or proceeding or any part thereof or, rendering a judgment by default against the disobedient party.

(3) An order treating as a **contempt of court** the failure to obey.

(4) An order requiring the party failing to obey the order or the attorney advising the party or both to pay the **reasonable expenses, including attorney's fees**, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

**(e) Failure to Appear for Physical Examination.** If a party fails to obey an order directing a physical or mental or blood examination under Rule 60.01, the court may, upon motion and reasonable notice to the other parties and all persons affected thereby, make such orders in regard to the failure as are just, and among others, it may take any action authorized under Rules 61.01(d)(1), (2), and (4). Where a party has failed to comply with an order requiring the production of another for examination, the court may enter such orders as are authorized by this Rule 61.01, unless the party failing to comply shows an inability to produce such person for examination.

**(f) Failure to Attend Own Deposition.** If a party or an officer, director or managing agent of a party or a person designated under Rules 57.03(b)(4) and 57.04(a), to testify on behalf of a party, fails to appear before the officer who is to take his deposition, after being served with notice, the court may, upon motion and reasonable notice to the other parties and all persons affected thereby, make such orders in regard to the failure as are just and among others, it may take any action authorized under paragraphs (1), (2), (3) and (4) of subdivision (d) of this Rule.

**(g) Failure to Answer Questions on Deposition.** If a witness fails or refuses to testify in response to questions propounded on deposition, the proponent of the question may move for an order **compelling an answer**. The proponent of the question may complete or adjourn the deposition examination before applying for an order. In ruling upon the motion, the court may make such protective order as it would have been empowered to make on a motion pursuant to Rule 56.01(c).

If the motion is granted, the court, after opportunity for hearing, shall require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the **reasonable expenses incurred in obtaining the order, including attorney's fees**, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court, after opportunity for hearing, shall require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the **reasonable expenses incurred in opposing the motion, including attorney's fees**, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

If the motion is granted and if the persons ordered to respond fail to comply with the court's order, the court, upon motion and reasonable notice to the other parties and all persons affected thereby, may make such orders in regard to the failure as are just, and among others, it may take any action authorized under Rule 61.01(d).

**(h) Objections to Approved Discovery.** If objections to Rule 56.01(b)(6) approved interrogatories or requests for production are overruled, the court may assess against such objecting party, attorney, or attorney's law firm, or all of them, the **attorney's fees** reasonably incurred in having such objection overruled. If such fees are not paid within sixty days, the court may enter such other appropriate orders against the disobedient party, **including an order striking pleadings, dismissing the action, or entering a judgment by default.**

The list of sanctions provided in Supreme Court Rule 61.06 includes:

- (1) Striking pleadings or parts thereof;
- (2) dismissing the action or proceeding or any part thereof;
- (3) rendering a judgment by default;
- (4) awarding attorney's fees and expenses when a parties' frivolous actions or pleadings necessitated a response; and,
- (5) finding a party in contempt.

Additionally, Commission Rule 4 CSR 240-2.116(3) and (4) provide:

(3) A party may be dismissed from a case for failure to comply with any order issued by the commission, including failure to appear at any scheduled proceeding such as a public hearing, prehearing conference, hearing, or mediation session.

(4) A case may be dismissed for good cause found by the commission after a minimum of ten (10) days notice to all parties involved.

Moreover, the Commission may seek monetary penalties pursuant to Section 386.570, RSMo, for violation of Commission Rules which provides:

1. **Any corporation, person or public utility which violates or fails to comply with** any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with **any order, decision, decree, rule, direction, demand or requirement**, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, **is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.**

2. **Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission**, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

3. In construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.<sup>2</sup>

While the Commission may not wish to impose harsh sanctions such as dismissing this complaint or seeking penalties against Complainant, these sanctions are available and demonstrate the seriousness involved when pursuing actions before this administrative tribunal. Instead of imposing sanctions at this time, the Commission will provide Complainant with another opportunity to comply with its rules.

---

<sup>2</sup> Section 386.600 provides that actions to recover a penalty or a forfeiture must be pursued in the circuit court by the general counsel to the commission.

Because the Complainant has not responded to Staff's data requests, the Commission will suspend Staff's requirement to file a report on its investigation. The Commission will direct Complainant to respond to Staff's data requests and to file a response to Ameren Missouri's answer and motion to dismiss. The Commission will further set a procedural and discovery conference to address any continuing issues with discovery and to determine the schedule under which this matter will proceed.

**THE COMMISSION ORDERS THAT:**

1. No later than May 27, 2011, Eric E. Vickers shall comply with the Commission's discovery rules and respond to Staff's data requests.

2. The Staff of the Missouri Public Service Commission's motion for an extension of time to file an investigation report is granted. The deadline for filing the investigation report is indefinitely suspended. Staff shall notify the Commission when Complainant has answered its data requests and the Commission will set a deadline for an investigation report at that time.

3. No later than May 27, 2011, Eric E. Vickers shall file a response to Ameren Missouri's answer and motion to dismiss.

4. The parties shall appear at a procedural and discovery conference to be held on Tuesday, May 31, 2011, beginning at 8:30 a.m. The conference will be held in Room 305 at the Commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, a building that meets the accessibility standards required by the Americans with Disabilities Act. Any person requiring additional accommodations to participate in this prehearing conference shall call the Public Service Commission's Hotline at 1-800-392-4211 or dial Relay Missouri at 711 prior to the conference. In lieu of

appearing in person, parties may appear at the conference by telephone by calling 573-522-5993 and entering password \*456 at the prompt.

5. The Commission's Data Center shall mail a copy of this order to the Complainant by certified mail.

6. This order shall become effective immediately upon issuance.

**BY THE COMMISSION**



Steven C. Reed  
Secretary

( S E A L )

Harold Stearley, Senior Regulatory Law Judge  
by delegation of authority pursuant to  
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 16th day of May, 2011.