

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public  
Service Commission held at its  
office in Jefferson City on the  
15<sup>th</sup> day of October, 2014

Jimmie E. Small,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
Union Electric Company	)	
d/b/a Ameren Missouri	)	
	)	
Respondent.	)	

File No. EC-2015-0058

**ORDERS FOR SMALL FORMAL COMPLAINT, DENYING MOTIONS TO  
DISMISS, AND SETTING TIME FOR FILING**

Issue Date: October 15, 2014

Effective Date: October 15, 2014

The Commission is denying the motion to dismiss of Union Electric Company d/b/a Ameren Missouri ("Ameren") and denying Staff's motion to dismiss with prejudice. The Commission is ordering Staff to file a redacted version of the recommendation. The Commission is also setting a date by which any party may file a motion for summary determination.

**A. Filings and Redaction**

The complaint charges Ameren with refusal to reconnect. Jimmie E. Small filed the complaint.<sup>1</sup> Ameren filed an answer and motion to dismiss.<sup>2</sup> Staff filed a recommendation

---

<sup>1</sup> Electronic Filing and Information System ("EFIS") No. 1, filed on August 29, 2014.

<sup>2</sup> EFIS No. 9, *Answer and Motion to Dismiss*, filed on October 2, 2014.

that included a motion to dismiss with prejudice.<sup>3</sup> The Commission has classified Staff's recommendation as highly confidential because it contains information relating directly to Mr. Small specifically.<sup>4</sup> Therefore, the Commission will order Staff to file a version of the recommendation, redacted as to highly confidential information and without attachments, for public viewing.

#### B. Small Formal Complaint and Staff's Motion

The answer alleges facts that describe an action within the Commission's small complaint procedure.<sup>5</sup> The small complaint procedure allows this action to proceed outside the small complaint procedure:

If any party believes that a complaint . . . should not be handled as a small formal complaint, that party may file a motion with the commission requesting that the status of the complaint be changed. In response to such motion, or acting on its own motion, the commission shall, at its discretion, decide how the complaint shall be handled.<sup>6</sup>

But the Commission has not ordered, and no party has sought, treatment of this action outside the small complaint procedure. Therefore, this action is within the small complaint procedure.

The small complaint procedure restricts the pleadings of Staff:

Staff shall not advocate a position beyond reporting the results of its investigation. If staff believes it should advocate a position, it may file a motion to change the status of the complaint[.<sup>7</sup>]

---

<sup>3</sup> EFIS No. 10, *Staff Recommendation to Dismiss Complaint with Prejudice*, filed on October 3, 2014.

<sup>4</sup> 4 CSR 240-2.135(1)(B)1.

<sup>5</sup> 4 CSR 240-2.070(15)(A). EFIS No. 9, *Answer and Motion to Dismiss*, filed on October 2, 2014, Exhibit A.

<sup>6</sup> 4 CSR 240-2.070(15)(B).

<sup>7</sup> 4 CSR 240-2.070(15)(A).

Despite that provision, and without filing a motion to change status, Staff recommends dismissal of the complaint with prejudice, which is advocating a position beyond reporting the results of its investigation.<sup>8</sup> Staff thus exceeds the pleading it is authorized to file. For this reason, Staff's motion to dismiss with prejudice is denied.

### C. Ameren's Motion and Summary Determination

Ameren's motion to dismiss argues that the complaint fails to state a claim. The claim that must appear in a complaint is the charge that Ameren violated some statute or a Commission regulation, tariff, or order.<sup>9</sup> If the complaint alleges no violation, then no relief is due, even if everything in the complaint is true. A complaint that describes no claim for relief is pointless to decide, so the Commission dismisses it.<sup>10</sup> But a complaint deficient in that regard is subject to cure by amendment or, if dismissed, subject to re-filing.

By contrast, the answer argues that no violation occurred because Ameren's refusal to reconnect is consistent with, not in violation of, the Commission's regulations. That argument goes to the merits of the complaint and, whichever way decided, is not subject to further pleading and re-filing. Ameren's theory also appears apt for resolution by documentary evidence, and without personal appearances, under motions for summary determination.

Summary determination is a means for disposing of an action on the merits without convening an evidentiary hearing. An evidentiary hearing's purpose is for the Commission

---

<sup>8</sup> EFIS No. 10, *Staff Recommendation to Dismiss Complaint with Prejudice*, filed on October 3, 2014, paragraph 2 and 6, page 1-2.

<sup>9</sup> Section 386.390.1, RSMo 2000.

<sup>10</sup> 4 CSR 240-2.070(7).

to decide the more credible version of the facts. If the facts determinative of a claim or defense (“material facts”) are established beyond a genuine dispute without an evidentiary hearing, there is no need for the hearing. That procedure is summary determination. In a motion for summary determination, the moving party establishes material facts by affidavit or evidence that would be admissible at a hearing. If no party raises a genuine dispute as to those facts, by counter-affidavit or other evidence that would be admissible at a hearing, then the law may entitle the moving party to a favorable ruling.<sup>11</sup>

Therefore, Ameren’s Motion to Dismiss is denied, but the Commission will set a date for any party to file a motion for summary determination. If this action does not reach resolution by summary determination, then the Commission will issue a procedural schedule.

**THE COMMISSION ORDERS THAT:**

1. Staff’s motion to dismiss with prejudice is denied.
2. Ameren Missouri’s *Motion to Dismiss* is denied.
3. The complaint shall proceed under the small formal complaint process.
4. Any motion for summary determination from any party shall be filed no later than October 30, 2014.

---

<sup>11</sup> 4 CSR 240-2.117(1); *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 380-82 (Mo. banc 1993). That case discusses Missouri Supreme Court Rule 74.04, to which the Commission’s regulation on summary determination is sufficiently similar to make cases interpreting the rule helpful. *Johnson v. Mo. Bd. of Nursing Adm’rs*, 130 S.W.3d 619, 626 (Mo. App., W.D. 2004).

5. This order is effective when issued.

**BY THE COMMISSION**



A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

R. Kenney, Chm., Stoll, W. Kenney,  
Hall, and Rupp, CC., concur.

Jordan, Senior Regulatory Law Judge