

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

**ORDER DENYING MOTION TO STRIKE  
AND MOTION FOR SUMMARY DETERMINATION**

Effective Date: January 27, 2015

An unpaid bill is relevant to the complaint, and the facts surrounding an amount due remain in dispute, so the Commission is denying the pending motions of Jimmie E. Small.<sup>1</sup>

Mr. Small filed the complaint,<sup>2</sup> a motion to strike,<sup>3</sup> and a motion for summary determination.<sup>4</sup> Union Electric Company d/b/a Ameren Missouri (“Ameren”) filed a response in opposition with supporting suggestions.<sup>5</sup> Mr. Small filed a motion for an

<sup>5</sup> EFIS No. 31, *Ameren Missouri's Response to Complainant's Motion for Summary Determination; Ameren Missouri's Suggestions in Opposition to Complainant's Motion for Summary Determination*, December 22, 2014.

extension of time to file a reply,<sup>6</sup> and the Commission granted that motion,<sup>7</sup> but Mr. Small did not file a reply.

The motion to strike and the motion for summary determination share a common theory. Mr. Small argues that an unpaid bill is no reason to deny him service unless Ameren is actively collecting on that bill. Ameren's response, Ameren's answer, and Staff's report<sup>8</sup> cite authority under which Ameren may deny service based on an amount due generally, and show that a genuine issue remains as to an amount due from Mr. Small specifically.

#### A. Strike

On the motion to strike, Mr. Small's burden is to show that a matter in Ameren's pleading is irrelevant.<sup>9</sup> The relevance of an allegation depends on the provisions of law under which a party seeks relief. Mr. Small's complaint<sup>10</sup> charges Union Electric Company d/b/a Ameren Missouri ("Ameren") with violating provisions on reconnection. Ameren's answer and Staff's recommendation cite provisions that allow Ameren to refuse service when Mr. Small owes an amount past due.

Ameren's answer<sup>11</sup> cites Ameren's tariff, which provides that Ameren:

. . . shall not be required to commence supplying service to a customer...if at the time of application such customer...is indebted to [Ameren] for the same class of service previously

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<sup>6</sup> EFIS No. 32, *Complainant's Motion for Extension of Time to Respond to Ameren Company's 12/22/2014 Response Filing*, December 31, 2014.

<sup>7</sup> EFIS No. 33, *Order Granting Extension of Time*, January 2, 2015.

<sup>8</sup> EFIS No. 11, *Staff Recommendation to Dismiss Complaint with Prejudice*, October 8, 2014.

<sup>9</sup> 4 CSR 240-2.070(7).

<sup>10</sup> EFIS No. 1, *Complaint/Appeal*, filed on August 29, 2014.

<sup>11</sup> EFIS No. 9, *Answer and Motion to Dismiss*, filed on October 2, 2014.

supplied at such premises or any other premises until payment of, or satisfactory payment arrangements for, such indebtedness shall have been made. [<sup>12</sup>]

Staff's recommendation<sup>13</sup> cites the Commission's regulation on denial of service:

(1) [Ameren] may refuse to commence service to an applicant for any of the following reasons:

(A) Failure to pay a delinquent utility charge for services provided by [Ameren].<sup>14</sup>

Those provisions make an amount due relevant to reconnection.

Therefore, the Commission will deny the motion to strike.

### B. Summary Determination

On the motion for summary determination, Mr. Small's burden is to establish facts beyond a genuine dispute that entitle him to a favorable decision. Mr. Small cites equitable estoppel and estoppel in pais. The motion to strike also cites collateral estoppel, issue preclusion, and res judicata.

Those theories appear to stand on statements of counsel in another action as to whether Ameren is trying to collect an amount due on Mr. Small's bill.

JUDGE BUSHMANN: Well, before we close, I just want to clear up one thing.

Ms. Giboney, am I correct there's been a lot of -- there's been a lot of paper exchanged about collection attempts. Is it correct that, at this point, Ameren is not trying to collect any money at all from Mr. Small, or is there?

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<sup>12</sup> Ameren's tariff, MO. P.S.C. No. 6, 1<sup>st</sup> Revised Sheet No. 101, Section I.C., *Application for Service*. Ameren's answer also cites the Commission's Cold Weather Rule 4 CSR 240-2.055(6) and (9), allowing refusal of service for delinquent amounts.

<sup>13</sup> EFIS No. 10, *Staff Recommendation to Dismiss Complaint with Prejudice*, filed on October 3, 2014.

<sup>14</sup> 4 CSR 240-13.035.

MS. GIBONEY: Ameren is not making any attempts to collect any money.

JUDGE BUSHMANN: All right.

MR. SMALL: Under what circumstances? Would Ameren Missouri –

JUDGE BUSHMANN: Mr. Small, you often talk about Ameren trying to collect money from you, but it seems at this point they're not trying to collect any money from you.

MS. GIBONEY: I'm not aware of any –

MR. SMALL: You're telling me you're claiming \$846 is due but you don't want to collect it, right?

MS. GIBONEY: Judge, I don't know. I can't tell you whether or not there's a collection agency currently involved, but I can tell you that Ameren's not making any efforts, that I'm aware of, to collect any funds.<sup>[15]</sup>

Those words are, at most, equivocal on whether Ameren was trying to collect an amount due from Mr. Small on the day that counsel spoke those words. They do not establish whether any amount is currently due or whether Ameren is trying to collect any such amount. And, as Ameren notes, Mr. Small's motion for summary determination cites a continuing dispute over his bill, and collection efforts,<sup>16</sup> which suggest that Ameren is trying to collect an amount due.

A genuine dispute remains as to the facts that Mr. Small alleges, so the Commission will deny the motion for summary determination, and will set an evidentiary hearing on the merits of the complaint by separate order.

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<sup>15</sup> File No. EC-2014-0050, EFIS No. 124, *Transcript Volume 1*, March 4, 2013, page 55 line 1-23.

<sup>16</sup> EFIS No. 25, 4 CSR 240-2.117 *Motion for Summary Determination*, November 11, 2014; page 2, paragraph 4.

**THE COMMISSION ORDERS THAT:**

1. *Complainant's Motion to Strike Respondent's Alleged Debt Due Dated September 8, 2014* is denied.
2. The *4 CSR 240-2.117 Motion for Summary Determination* is denied.
3. This order shall be effective when issued.



**BY THE COMMISSION**

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

Morris L. Woodruff  
Secretary

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

Dated at Jefferson City, Missouri,  
on this 27<sup>th</sup> day of January, 2015.