

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

**FILED<sup>3</sup>**

JIMMIE E. SMALL,  
Complainant,

MAR 13 2012

Missouri Public  
Service Commission

Vs.

Case No. EC-2012-0050

Hon. Senior Regulatory

Law Judge M.

AMEREN MISSOURI,  
Respondent

Bushmann Presiding

**COMPLAINANT'S APPLICATION FOR REHEARING OF  
THE COMMISSION ORDER[S] ENTERED ON FEBRUARY  
27, 2011/ MARCH 02, 2012/ AND OTHER STATED TIMES**

NOW COMES, the complainant ADA pro se in the above captioned matter and for his rehearing, state unto the Honorable Commission, the following particulars:

1. On March 02, 2012, the Commission Secretary caused to be filed its procedural schedule in Cause No. EC-2012-0050.
2. The 03/02/2012 procedural order directed that an evidence hearing be held at Adair County, Missouri, at Kirksville, on April 11, 2012.

3. That for the reasons, and belief set forth more particularly below, the pro se complainant respectfully request rehearing of the Commission decisions entered, in Case No. EC-2011-0247 as relevant and Case No. 2012-0050, under Plain error doctrine if need.

**JURISDICTION, POWER AND  
AUTHORITY OF THE COMMISSION**

4. The primary source of the Commission's authority is statutory. In regards to electric utilities, the Commission's powers are persuasive. Section 393.290(1) RSMo 2000 provides that; The Commission shall . . . examine or investigate the methods by such persons and corporations in manufacturing, distributing and supplying . . . electricity for light, heat or power . . . [and] have power to order such reasonable improvements as will best promote the public interest . . . and have power to order reasonable improvements and extensions of the works, wires, poles, pipes, lines, conduits, ducts and other reasonable devices, apparatus and property of . . . electric corporations.

This statutory authority has always been viewed to be extremely broad:

State regulation takes the place of and stands for competition; that such regulation, to command respect from patron or utility owner, must be in the name of the overload, the State, and to be effective must possess the power of intelligent visitation and the plenary supervision of every business feature to be finally ( however invisibly ) reflected in rates and quality of service. See *May Dep't Stores Co. V. Union Electric Light & Power Co.*, 341 Mo. 299, 316 (Mo. 1937).

5. The Commission should grant rehearing and reconsideration of its 03/03/2012 procedural order which selectively excludes the Public interest in safety on December 19-20, 2007 at the time Respondent Ameren Missouri under took to reactivate electrical power[ without prior notice to do so] at 23067 Potter Trail, LOT # 23, Kirksville, Missouri.
6. The Commission order [03/02/2012] additionally reflects error in holding that it is without authority to order Respondent Ameren Missouri to meet verified compliance with National main circuit breaker

standards, as made applicable to all electrical customers without regards to Race, Gender, [sex] prior filed complaints, Billing disputes, Real Property Location, or neglect of safety by Private utility based on other protected class membership factors. U.S.C.A. Const Amend 14. *Hernandez v. Texas*, 347 U.S. 475.

7. CP Small interprets the Commission Order 03/02/2012 to mean that Respondent Ameren Missouri in Case EC-2011-0247 closed and No. EC-2012-0050, on March 02, 2012, are state action excused from meeting compliance with applicable National Safety Standards in Small's case, impliedly because the MPSC lacks power and authority to order Respondent to meet National Safety Standards on December 19-20, 2007 prior to activating the electrical services and accommodations at 23067 Potter trail, LOT # 23.
8. Prior extra-record evidence show Chairman Gunn explained to Respondent's counsel in writing that Case No. EC-2012-0050 involved "very serious" matters, prior to the 03/02/2012 decision entered by Regulatory

Law Judge Bushmann, stating that Small was NOT an Aggrieved Party. Small disagrees.

CP Small counters that the MPSC continues its irresponsible, and indifferent regulatory conduct, with intent to provide the 25-26 Billion Dollar goliath Corporation an unfair advantage over the unschooled ADA, While, Male, pro se veteran, and Iowa legal resident. U.S.C. A. Const. Art 111 section 2.

9. On the 24 day of February 2012, the Commission Ordered, 1. ["The recommended Order Dismissing Complaint is withdrawn."] 2. [ " This order is effective immediately upon issuance"].
10. The Commission Order [content] should be reconsidered and rehearing granted because the data center who received Small's pleadings, motions, filings, etc., have intentionally waited until after the scheduled deadline for filing then recorded Small's pleadings only to harass Small and give an unfair advantage to Respondent Ameren Missouri. The Data center also has no filing of extra-record communication between Respondent Ameren Missouri and Chairman Gunn as

mandated by Missouri State statutory law, Missouri Constitution, due process clause, and the equal protection clause of the U.S. Constitution. U.S.C.A. Const Amend 14. See also 4 CSR 240-2.080(12).

On August 11, 2011 File No. EC-2012-0050 the Commission order stated [“ The Contents of the envelope appear to be ex parte communication regarding a pending case, as defined by Commission Rule 4 CSR 240-4.020. This notice is given pursuant to Commission Rule 4 CSR 240-4.020(3), (4). That rule also imposes a duty upon the person initiating an ex parte communication to give notice in the case file within three business days following such communication. Failure to abide by this, or any other Commission rule, can result in dismissal of the complaint. Case No. EC- 2011-0247 was dismissed owing to alleged violation of Commission rules. This part of the administrative record suggest that pro se Complainant has a duty and obligation to meet compliance with Ex parte Communication specifically

NOTICE standards within three days of communication acts.

The Commission should grant the unschooled pro se rehearing where evidence is presented that Respondent Ameren Missouri did violate that same ex parte communication on at least three separate occasions in violation of the three day rule without adverse consequences and on April 11, 2012 Small is coerced to attend an adversarial evidence hearing where he has less than zero chance of prevailing against the goliath 25-26 Billion dollar politically protected utility Corporation.

On rehearing, Small respectfully suggest it would better conserve infinite Commission resources to effectuate 4 CSR 240-4.020 Ex Parte rule fairly and impartially so as to protect the Public interest and pro se parties who seek basic and fundamental fairness against a Respondent Utility Corporation having political influence over Commission Chairman and others not available the general population having

interest in fair rate charges and fair application of rules and tariff contracts.

Repeated acts by Respondent Utility who engaged in ex parte communication without required NOTICE being on file within three days of the incident, is hardly an appropriate course, especially given the prior orders by the Commission dismissing Small's prior case and warning orders.

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 Commission may, on its own motion or on the motion of any other party, dispose of all or any part of a case on the pleadings. . . .") see footnote 2, Case No. TC-2007-0085, Big River Telephone Company, LLC, Complainant, vs. Southwestern Bell Telephone Company, d/b/a AT&T Missouri.

Before proceeding any further, the Commission should enter an order of default against Respondent Ameren Missouri, for its repeated acts violating ex



parte rules, subjecting CP Small to an April 11, 2012, adversarial proceeding without proper NOTICE permitting Small to object timely as to ex parte communication violations, and continuing unprotected under Missouri State jurisdiction.

In the proper circumstances a tribunal has discretion to impose sanctions, drastic sanctions such as an order of default are not warranted where there is no showing of contumacy or deliberate disregard for the tribunal's authority. *Spacewalker, Inc., v American Family Mutual Ins. Co.*, 954 S.W. 2d 420 (Mo. App. 1997). Imposing a sanction against Respondent Ameren Missouri at this point where repeated violations of ex parte communication and willful failure to provide requisite NOTICE to all parties within three days after ex parte communication is sufficient evidence of contumacy or deliberate disregard for the Commission's authority. See *Trotter v. Distler*, 260 S.W. 3d 913, (Mo. App. E.D. 2008)

11. The fact supporting summary disposition referenced at page 3 of the Commission Order 03/02/2012, are

undisputed facts in regards to safety Standards, 4 CSR 240-18.010.

Respondent Utility admitted to acts of reconnection on December 19-20, 2007, which mandated safety measures prior to electrical reconnection of services.

The Respondent failed to deny non-compliance with 4 CSR 240-18.010 leaving no genuine issue to be determined on April 11, 2012 or any other time period. Summary disposition requires Respondent Utility to file its response. Thus the Commission should correct its arbitrary and erroneous decision denying summary disposition.

Although the 03/02/2012 order found genuine issues to be resolved the Commission tactfully avoided the ex parte Communication factors which respondent can no longer in good faith deny. Thus no genuine issue of material fact remains to be decided in regards to Rule and Order violations, thus summary disposition is appropriate on rehearing. Mo. R. Civ. Proc. R. 74.05; 4 CSR 240-4.020

On the 16 day of September, Staff on behalf of Commission caused to be filed staff's response to complainant's August 31, 2011 complaint.

At page three (3) Paragraph 11 Staff found [“ A utility is restricted from providing a special rate for service or subjecting any person to “undue or unreasonable prejudice or disadvantage in any respect whatever.”] See Section 393.130.2 and 3.

Staff also wrote, [ It is the Staff's position that the Commission has the authority to hear a complaint on the grounds of discrimination in the provision of service, and to determine based on the evidence presented whether such actions violate any statute applicable to the provision of public utility service, rule or order of the Commission, as well as any provision of the utility's staff.

4 CSR 240-13.010, subpart (8) provides in full, [“ A utility shall not assess an additional charge upon a customer by reason of the customer's failure to pay any balance due and owing prior to the delinquent date

unless this additional charge has been approved by the commission as a part of the utility's rate tariffs.

In addition to the Respondent's breach of duty to refrain from ex parte Communication, Respondent has failed to request, obtain or maintain records required by 4 CSR 240-13.010, subpart (8).

No genuine issue exist for resolution on April 11, 2012 as to the fraudulent extortion and billing practices referred to Consumer Collection Management Inc. back in 2007 time period and continuing.

4 CSR 240-13.010 subpart (2) provides,  
[**" A utility shall not discriminate against a customer or applicant for service for exercising any right granted by this chapter."**]

Federal Debt Collection laws prohibit Respondent Utility's efforts to collect disputed bills, while Respondent concurrently engages ex parte Communication with the Commission, granting preferential treatment to the 25-26 Billion Dollar goliath size Ameren Corporation.

Repeated acts of ex parte communication between Respondent and Chairmen Gunn sends a clear signal

that the Commission has no interest in protecting the Public's interest in 4 CSR 240-13.010(2) standards.

4 CSR 240-2.080,(12) state in relevant part, [" The mere fact of filing shall not constitute a waiver of any noncompliance with these rules, and the commission may require amendment of a pleading or entertain appropriate motions in connection with the pleading."]

The Commission should grant rehearing as to whether or not Respondent's repeated incidents, acts of ex parte communication is a sufficient violation of applicable statute 4 CSR 240-4.020. Grant rehearing and entry of default for failure to comply with Commission mandatory NOTICE rules. Mo. R. Civ. Proc. R. 74.05 (c). & 4 CSR 240-2.080(12) Pleading standards. Depending on the subject matter of the ex parte communication complained of, 42 U.S.C. sect 1985(3) conspiracy action may be more appropriate at this stage of the proceeding where the Commission appears reluctant to have power, authority to enter findings of discrimination as to any basis, including 4 CSR 240-13.010, subpart (2). Non-discrimination standards appear broad enough to include acts of

repeated ex parte communication, making the scheduled April 11, 2012 evidence hearing an exercise in Quasi Judicial futility, favoring the giant 25-26 billion dollar Utility Corporation, Ameren Missouri.

Small was held to be an aggrieved party in contested case No. EC-2012-0050.

The irregular, indifferent and extra-record communication now imputed to Hon. Regulatory Law Judge Bushmann does not change the fact that Small is an aggrieved party.

12. When the March 02, 2012 Order became effective immediately upon filing and service the question posed on rehearing becomes one of superior power vs. subordinate power.

In other words does the extra-record communication entered by Respondent and sitting Commission members become imputed to Hon. Judge Bushmann . . . or does the extra-record date[s] entered prior to March 02, 2012 take precedence in No EC 2012-0050. 4  
CSR 240-4.020

13. At page 5 of the 03/02/2012 Order it states, in relevant part, [“ Based upon its review of the pleadings and previous Commission orders in this case, the Commission determines that the remaining issues for this hearing are the following.”]

1. Did Ameren Missouri act in accordance with applicable Missouri statutes, rules and tariffs during 2006-2008 when it disconnected electric service at Mr. Small’s property in Kirksville, Missouri ?
2. Did Ameren Missouri falsify documentation of Mr. Small’s electric service account records ?”]

The Commission will not permit evidence or argument at the hearing relating to any other claims or theories of recovery other than the two issues stated above.

14. Significantly, the Commission should grant rehearing as to the limited scope to only two issues stated on page 5 of the 03/02/2012 Order where the extra-record communication, by operation of law is imputed to the drafter of the 03/02/2012 order to begin with. The Commission is obliged by law to take judicial

notice of the content of its own records, extra-record communication.

Significantly, Respondent Ameren Missouri's 375 Million dollar Rate/Monthly Billing[ request] increase would appear to represent 375 million reason for Respondent to make private Corporation decisions to engage in ex parte Communication with Chairman of the Commission Gunn, in violation of Federal Conspiracy Laws, with intent to circumvent tariff and other rules, and to harm the pro se in clear violation of 4 CSR 240-13.010 subpart (2).

15. Reading the 03/02/2012 procedural Order straight forward, it could reasonably be interpreted to mean that the 03/02/2012 Order was by design calculated to circumvent equal protection of the ADA pro se under 4 CSR 240-4.020. Ex Parte and Extra Record Communication, selectively excludes equal protection as to Small's liberty interest in this complaint allegations and liberty interest in equal protection after the Commission knowingly accepted and filed Contested Case No. EC-2012-0050. See *Logan v.*



*Zimmerman Bruch Co.*, 455 U.S. 422, 71 L Ed 265, 102 S. Ct. 1148, (1982).

16. It is also noted that that on the 27 day of July 2011 the Commission entered its Order Dismissing Complaint without prejudice. Small additionally request rehearing of said Order based on prejudicial findings and Conclusions of law, showing bias or prejudice to Respondent Ameren Missouri in a previously Contested Case No. EC-2011-0247.
17. Rehearing as to the July 27, 2011 Order may be reconsidered outside the 10 day Rule based on plain error. See Mo. R. Civ. Proc. Rule 84.13 (c). Plain errors affecting substantial rights may be considered on appeal, in the discretion of the court, though not raised or preserved, when the court finds that manifest injustice or a miscarriage of justice has resulted there from.
18. Its difficult to consider the plain errors entered of record in Contested Case No. 2011-0247 on material matters without considering Respondent's repeated efforts to Harass CP Small by its repeated acts of Ex

## Parte Communication and Extra-Record

Communication made final in writing well in advance of the March 02, 2012 Order scheduling an evidence hearing on April 11, 2012 which Small claims to be nothing less than a adversarial proceeding , not authorized by state or federal law. See *National Railroad Passenger Corp., v. Morgan*, 536 U.S. 101, 153 L Ed 2d 106, 122 S. Ct. 2061 (2002).

On the 30 day of August 2011 the Commission Secretary Reed entered its Order, which found in relevant part, [“ The Commission will order Mr. Small to state why he has failed to comply with the August 22, 2011 order, and why he failed to give the required ex parte notice about his August 22, 2011 mailing to the Commission, which is imposed by Commission Rule 4 CSR 240-4.020. Failure to abide by this, or any other Commission rule, can result in dismissal of the complaint.

CP Small counters the August 30, 2011 Commission order as being subject to the Plain Error doctrine. Rule 84.13(c).

Additional basis for rehearing is predicated upon the fact that Respondent Ameren Missouri may circumvent Rule 4 CSR 240-4.020 with knowledge of Chairman Commissioner Gunn without the slightest adverse consequences.

In contrast when the Commission found on August 30, 2011 that the disabled pro se inadvertently filed papers with the Commission meaning the Commission Data Center he was admonished and warned of possible dismissal action.

In the Commission [plain error] Order entered on October 05, 2011, the Commission held, ["The Commission has no authority to require reparation or refund, cannot declare or enforce any principle of law or equity, and as a result, cannot determine damages. citing *Straube v. Boling Green Gas Co.* 227 S.W. 2d 666, 668-669 ( Mo. 1950)

The Order further stated, [ "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.”]

On rehearing, Small believes and argues that Boling Green Gas Co. is distinguishable from the facts presented in Cause No. EC-2012-0050.

In Boling Green no facts were raised or presented and no evidence proffered to establish that any party in Boling Green conspired with Commissioner Gunn to prevail by and through Ex Parte Communication in a Contested Case, or orchestrated Extra-Records Communication against the Public Interest.

In Boling Green no party was threatened with dismissal in regards to ex parte filing of records with the Commission.

In Contested Case No. EC-2012-0050, the Commission promised to address serious matters, by future order, then did not. [The Commission will address this in subsequent orders.]

Address this in future orders is ambiguous. Does the Commission mean it will address extra-Record

Communication and Ex Parte Communication imputed to Senior Regulatory Law Judges drafting such orders, or does it mean that the Commission will circumvent 4 CSR 240-4.020 leaving the disabled veteran to hang out to dry, while the 25-26 Billion dollar Electric Corporation conspires to take an unfair procedural advantage over the disabled pro se, in retaliation for Small's acts in defending his position to National Safety Standards, under 4 CSR 240-18.010 without regards to Real property location, prior complaint filing, Race, Age, gender, (sex), or simply to harass an unschooled pro se complainant.

19. Public Commission Record also indicate that on the 10<sup>th</sup> day of January Small filed his certificate of service Requesting an Order of Default against Respondent Ameren Missouri.

As Small understands, the 03/02/2012 Order denied Small's request for default Order.

It is when the Commission, "is of the opinion that a public utility .....is.....doing anything or about to do anything or permitting anything or about to permit anything to be done,

contrary to or in violation of law or any order or decision of the Commission,” that the Commission directs its general counsel to file suit in circuit court in the name of the Commission to have such violation prevented. Sect. 386.360.1 RSMo.

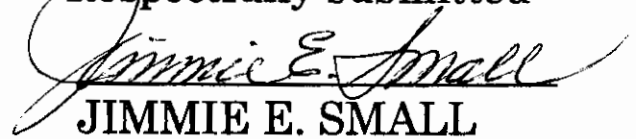
In the instant case rehearing should be granted and general counsel appointed to file suit so as to prevent Respondent Ameren Missouri [ a public utility] from its repeated acts, continuing, and future acts to engage in ex parte Communication, extra-record communication/contact with Chairman of the Commission Gunn and other unknown named conspirators. 42 U.S.C. Sect 1985 (3).

### CONCLUSION

Owing to undue political influence Respondent Utility [ Ameren] has demonstrated through ex parte Communication, and extra-record communication, [Cause No.EC-2012-0050] that an adversarial proceeding is scheduled for April 11, 2012, in clear violation of Missouri State, Iowa State and Federal laws. 4 CSR 240-13.010(2). That except for the prejudice occasioned Complainant Small, by Respondent’s extra-record decisions and Ex parte communication, [ No. EC-2012-0050

and continuing] CP Small would have likely prevailed on the merits of his claims and complaints.

Respectfully submitted



JIMMIE E. SMALL

General Delivery

Quincy, Illinois, 62301

### SUGGESTIONS IN SUPPORT FOR REHEARING

The requested rehearing in Cause No. EC-2012-0050 is appropriate where the March 02, 2012 final order as the hearing date [ April 11, 2012] and limiting the remedies, is based upon incomplete administrative records in No EC-2012-0050 at the time the Secretary certified said order effective immediately. [ March 02, 2012.

In the case *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, the United States Supreme Court held that agency action must be accompanied by a complete administrative record at the time the decision was made.

On March 02, 2012, Senior Regulatory Law Judge, Honorable M. Bushmann, Ordered a scheduled evidence

hearing for April 11. 2012, Adair County, Kirksville, Missouri, without factual or legal basis for substituting Adair County VENUE from COLE county Venue, the choice of venue location where the formal complaint was duly filed, and accepted for prosecution. See Mo. R. Civ. Proc. Rule 51.04; 51.045.

On March 02, 2012, when the Commission Order became effective the Administrative Agency Record, [No. EC-2012-0050] remained silent and incomplete as to any specific date extra –record communication and or Ex parte Communication took place,; silent as to the subject matter of said inappropriate communication, the date from which an appeal might be taken by the prejudice which resulted.

Certain state court complaints can be removed to federal court before an answer. For example, if diversity of citizenship or claims covered by federal law have been raised, a defendant may remove the action as a matter of right. 28 U.S.C. sect. 1441-1452.

However Small is in essence a plaintiff.

Respondent Ameren Missouri filed its answer and did not file a motion to change the venue.



The Commission order is also incomplete as to any factual or legal basis for its March 02, 2012 agency decision to transfer VENUE from Cole County where the complaint was accepted and Venue complete.

The March 02, 2012 Order switching Venue, visited Small Violated Small liberty interest in Mo. R. Civ. Proc. R. 51.045.

Small an Iowa resident has a protected liberty interest in his complaint stating clearly his Iowa Resident status, 606 West Hwy # 2, Milton, Iowa. Iowa Residents have equal protection right to appear before the Missouri Public Service Commission, free from reprisal, retaliation and harassment.

If a motion to transfer venue is not timely filed, the issue of improper venue is waived. Mo. R. Civ. Proc. Rule 51.045(a).

The Commission's administrative record on March 02, 2012 was rendered incomplete where no party filed a motion to transfer Venue from Cole County, Jeff City Mo. to Adair County, Kirksville, Mo.

The CP pro se Application for rehearing should be granted to allow CP pro se disabled party an opportunity to show that no party to this contested case filed a Rule 51.03 Motion for change of Venue within 10 day of the date Respondent Counsel

Giboney filed Respondents Answer to the complaint. Small, an Iowa resident asserts a protected liberty interest in Rule 51.03 10 day rule after respondent utility filed its answer denying Small's claims of discrimination.

Small's rehearing request should be granted so as to allow the Commission to supplement its incomplete agency record as to the factual and legal basis for transferring contested case VENUE from Cole County, to Adair County, well after 10 days following Respondents filed answer. Mo. R. Civ. Proc. Rule 51.03 (a).

Had Small not been an Iowa Resident filing a complaint with the State of Missouri, its unlikely than the March 02, 2012 Order would have been filed upon an incomplete agency record circumventing Missouri State law R. 51.03(a).

Out-of-State persons, venturing into Missouri, CP Small in particular had his complaint No. EC-2012-0050 processed materially differently and subjected to heightened pleading and heightened proof standards than complaining parties residing in Missouri as Missouri residents. U.S.C.A. Const Art III, sect 2. Iowa Residents venturing into Missouri perfecting his 2006 dispute and continuing in 2012 unresolved are

treated materially differently by Respondent. Consumer Collection Management accounts claiming alleged debts are processed differently for Iowa residents than disputes filed by Missouri residents appearing before the Missouri Public Service Commission.

4 CSR 240-13.050(4) Notice of Discontinuance shall contain the following information. (B) A statement of the reason for the proposed discontinuance of service and the cost for reconnection.

Commission rehearing should be granted as to Small's Motion for default order where the Respondent Utility has failed to produce data, records, meeting compliance with 4 CSR sect. 240-13.050(d)(B) specifically at what cost Ameren Missouri charged for reconnection on or about December 19-20, 2007 as mandated by Missouri law.

**2.03, Cannon 3. A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY**

2.03(7) State in part, [ ' A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the

presence of the parties concerning a pending or impending proceeding.

(ii) *the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.*

A judge must not independently investigate facts in a case and must consider only the evidence presented. 2.03 Cannon 3, subpart 7 Commentary.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias or prejudice on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial. See Commentary 2.03 Cannon 3, (B) (5) commentary, Mo. R. Civ. Proc. Page 6, Missouri Court Rules, Vol. 1, (2009).

### **INAPPROPRIATE HEIGHTENED PLEADINGS**

At various times, federal judges have developed common law heightened pleading requirements in certain areas, such as civil rights litigation. The Supreme Court has twice overturned these precedents. See *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512, 122 S. Ct 992, 152 L. Ed. 2d 1; *Leatherman*

*v. Tarrant county Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 113 S. Ct. 1160, 122 L Ed 2d 5176  
(rejecting heightened pleading in Section 1983 cases.)

### PREJUDICE

Courts have also found prejudice when the proposed amendment comes late in the proceedings and would impose significant costs or inconvenience on the opposing party. See *Anderson v. Suiters*, 449 F 3d 1228, 1238(10 Cir. 2009) *Miller v. Calhoun County*, 408 F 3d 803, 817( 6<sup>th</sup> Cir. 2005) See also *Sound of Music Co. v. Minnesota Min. & Mfg. Co.* 477 F 3d 910, 923, (7<sup>th</sup> Cir. 2007) (leave to amend may be denied if court properly can determine that the claim would not survive summary judgment.)

The commission should grant rehearing to permit a supplemental Staff report as to the prejudicial effect that ex parte Communication and restraining Small's pleading claims to two narrow issues, after inappropriately switching VENUE from Cole County to Adair County, Mo. Venue, on March 02, 2012.

## **PRO SE LITIGANTS STANDING TO OBJECT**

It is well established that federal courts are to construe pro se pleadings liberally. *Erickson v. Pardus*, 551 U.S. 89, 127 S. Ct. 2197, 2200, 167 L. Ed 2d 1081(2007) ( pro se complaint must be held to “less stringent standards); *Haines v Kerner* 404 U.S. 519, 520, 92 S. Ct. 594, 30 L Ed 2d 652, 16 Fed R. Serv. 2d 1 99172).

Here [No.2012-0050] the Commission by Order dismissed No. EC-2011-0247. The Commission then assigned the present contested case No.EC-2012-0050.

The undersigned ADA pro se complainant could not reasonably have anticipated in filing his Pro se Complaint of Discrimination that after Respondent filed its answer to the complaint, Respondent would engage in extra-record communication and Ex parte communication with Chairman Gunn as an inappropriate means to defeat the merits of Small’s complaint and to dissuade and discourage other customers similarly situated from filing discrimination complaints in the future against a 25-26 Billion dollar Electric Utility.

In *Alvarez v. Hill*, 518 F 3d 1152, 1158 ( 9th Cir. 2008) the court observed ( pro se litigant must be given “the benefit of any doubt” in determining what claims might be raised in the complaint ).

The Commission should grant rehearing as requested, because the March 02, 2012 Procedural schedule foreclosed Small from amending his complaint to include retaliation, & harassment after the discovery of Respondent’s extra-record communication, which would appear to reflect an adversarial proceeding under State of Missouri jurisdiction . 42 U.S.C. sect 1983; 1985 (3).

On rehearing the Complainant ADA pro se seeks a form of relief as may be deemed necessary, just and proper, and within the Commissions power sufficient to detour Respondent from engaging in similar [future] ex parte conduct making a mockery of the formal complaint process, State of Missouri jurisdiction. See also Code of Professional Conduct 2.03, Cannon 3 Commentary, Missouri Rules of Court, Vol.1, 2009 edition.

That for purposes of Rehearing consideration, sitting Commissioners,

[ MPSC]taking an Oath of office, appear bound by rules of professional conduct.

Small also asserts on rehearing that Respondent Ameren Missouri Utility knowingly breached its duty owed to ADA pro se when it assisted Commissioner Gunn in commissioning breach of Oath to that same office.

Small's present complaint claims should be and the same amended , with NOTICE to Respondent, that an amended complaint has been accepted, so as to permit Respondent due process opportunity to defend said amended complaint.

*Alvarez v. Hill*, 518 F 3d 1152, 1158, (9<sup>th</sup> Cir.2008)

That the March 02, 2012 procedural schedule, coercive in nature, foreclosing all but two (2) claims, selectively excluding ex parte communication, harassment, reprisal, intimidation violated civil liberties, and runs counter to basic and fundamental fairness in processing a complaint before the State of Missouri, Missouri Public Service Commission.

On the 7<sup>th</sup> day of November, 2011, No. EC-2012-0050, AMEREN MISSOURI filed its RESPONSE REGARDING AVAILABLE REMEDIES. At page one (1) paragraph 3, Respondent Utility takes the following position,



3   [“ Ameren Missouri is not certain the Commission has authority to grant Mr. Small any relief based on his complaint alleging discrimination. The Commission could, in theory, determine from evidence presented to it that Ameren Missouri somehow violated the statutory prohibitions found in sect. 393.130.2 and .3 RSMo against providing a special rate for service or subjecting any person to “ undue or unreasonable prejudice or disadvantage in any respect whatever.” Based on such a finding, if the Commission also believed the violation were of a continuing nature, it could direct its general counsel to pursue civil remedies in circuit court in the name of the Commission, as provided by sect 386.360 RSMO. However, it does not appear to Ameren Missouri that the Commission has authority to grant any relief to Mr. Small in the event he prevails. Further, Mr. Small is no longer a customer of Ameren Missouri so there are no grounds by which the Commission might reasonably conclude that Ameren Missouri is about to subject Mr. Small to undue or unreasonable prejudice or disadvantage. Footnote 2, Provides, [“It is when the Commission,” is of the opinion that a public utility ... is... doing anything or about to do anything or permitting anything or

about to permit anything to be done, contrary to or in violation of law or any order or decision of the commission,” that the Commission directs its general counsel to file suit in circuit court in the name of the Commission to have such violation prevented. Sect. 386.360.1 RSMo.

In countering paragraph 3, of the Utility’s position, Small notes that the Commission did accept Small’s complaint alleging discrimination.

Accordingly, whether Small is/was a present customer of Respondent Ameren Missouri appears misplaced.

Ameren Missouri seems to argue that because Small is [ according to Ameren] no longer a customer is permissible for Respondent Utility to engage extra-record Communication and Ex parte Communication with Commissioner Gunn, so as to defeat the merits of Small’s complaint.

Small is reminded that in *Logan v. Zimmerman Bruch Co.* 445 U.S. 422, 71 L Ed 265, 102 S. Ct. 1148 (1982) the U.S. Supreme Court held that Complainant’s have a protected liberty interest in discrimination complaints filed with a referral state entity. Small has previously exhausted administrative remedies against Ameren Missouri, with the

Missouri Human Rights Commission. Filing a complaint free of retaliation does not require pro se Small to be a present customer of the giant goliath Utility Corporation.

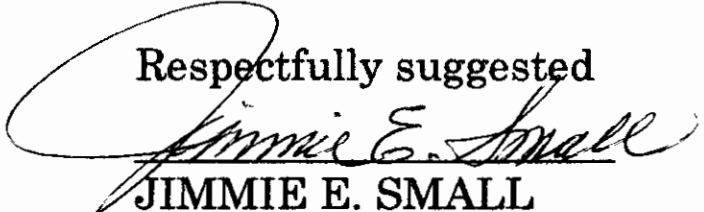
Counsel Sarah E. Giboney knew or should have known that when taking the position Paragraph 3, above stated, that Utility Counsel in St. Louis, Mo, was engaging or about to engage in extra-record communication and ex parte communication with Commission Chairman Gunn so as to gain preferential treatment for Ameren Missouri as related directly or indirectly to Respondent's 375 Million dollar rate/tariff monthly bill increase for some One Million Two Hundred Thousand Customers, within State of Missouri jurisdiction.

Accordingly, its Small's position on rehearing, that claims against illegal extra-records communication by Respondent to Chairman Gunn, is not dependent on whether or not Small is/was a present customer of Respondent electric utility, Case No. EC-2012-0050.

The Administrative recored complained of is so incomplete on March 02,2012, that discovery is critical to ascertain which Commissioners other than Chairman Gunn , participated,

acquiesced, approved violations of ex parte doctrine so as to defeat the merits of the ADA pro se claims. See section 386.360.1 RSMo.

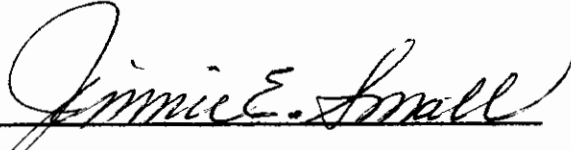
Respectfully suggested

  
JIMMIE E. SMALL

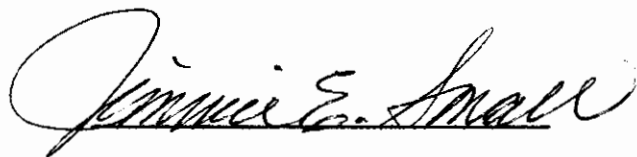
General Delivery  
Quincy, Illinois, 62301

### CERTIFICATE OF SERVICE

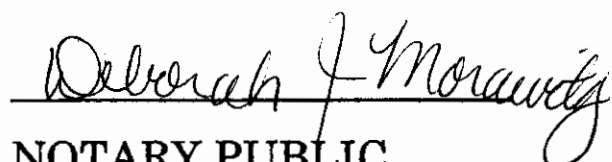
The undersigned hereby certifies that a true and correct copy of the foregoing Application for Rehearing was served on Respondent Counsel Giboney, Public Counsel Mills, Staff Counsel Hernandez, at the Data center, by U.S. Mail postage fully prepaid, on this 12 day of March 2012. Exceptions; NONE.

  
JIMMIE E. SMALL

State of Missouri       )  
                                  ) : ss  
County of Marion       )

  
JIMMIE E. SMALL

Subscribed and Sworn to before me this 12 day of March 2012

  
NOTARY PUBLIC

Seal

[  ]  
DEBORAH J. MORAWITZ  
Notary Public-Notary Seal  
STATE OF MISSOURI  
Ralls County  
Commission #11545844  
My Commission Expires Sept. 25, 2018

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

Jimmie E. Small,	)	
Complainant,	)	
	)	
vs.	)	Case No: EC-2012-0050
	)	
Union Electric Company, d/b/a	)	
Ameren Missouri,	)	
Respondent.	)	

**AMEREN MISSOURI'S RESPONSE REGARDING AVAILABLE REMEDIES**

COMES NOW, Union Electric Company, d/b/a Ameren Missouri ("Ameren Missouri" or "Company"), and for its Response to the Commission's Order issued and effective October 26, 2011, states as follows:

1. On October 5, 2011, the Commission issued an order in this Case dismissing all the parties save for Ameren Missouri, and dismissing all of Mr. Small's claims for legal, equitable and class action relief (the "Order").
2. The Order also noted Staff's conclusion that the Commission has authority to hear a complaint against Ameren Missouri on whether it has discriminated against Mr. Small. In the Order, the Commission ordered the parties to state what remedy, if any, the Commission has authority to grant Mr. Small in the event he prevails in his complaint.
3. Ameren Missouri is not certain that the Commission has authority to grant Mr. Small any relief based on his complaint alleging discrimination. The Commission could, in theory, determine from evidence presented to it that Ameren Missouri somehow violated the statutory prohibitions found in §393.130.2 and .3 RSMo against providing a special rate for service or subjecting any person to "undue or unreasonable prejudice or disadvantage in any respect whatsoever."<sup>1</sup> Based on such a finding, if the Commission also believed the violation were of a

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<sup>1</sup> Ameren Missouri continues to deny that it discriminated against Mr. Small in any way. Staff, after investigation, "found no indication on the part of Ameren Missouri of illegal disconnection, discrimination based upon age, gender, retaliation for prior complaints, disability, geographical location or race, or collusion with other parties to engage in these behaviors" and recommended "a finding by the Commission that the Company's decision to disconnect services to the Complainant's mobile home was motivated by nothing more than the Complainant's nonpayment on his account." Staff's Recommendation dated September 30, 2011.

continuing nature, it could direct its general counsel to pursue civil remedies in circuit court *in the name of the Commission*, as provided by §386.360 RSMo. However, it does not appear to Ameren Missouri that the Commission has authority to grant any relief *to Mr. Small* in the event he prevails. Further, Mr. Small is no longer a customer of Ameren Missouri so there are no grounds by which the Commission might reasonably conclude that Ameren Missouri is about to subject Mr. Small to undue or unreasonable prejudice or disadvantage.<sup>2</sup>

4. While it would also appear that, pursuant to §§386.570 and 386.600 RSMo, the Commission could file suit in circuit court to seek statutory penalties against Ameren Missouri, if it found that Ameren Missouri somehow violated the statutory prohibitions found in §393.130.2 and .3 RSMo, any monies recovered in such a suit are payable only to the public school fund of the state, and not Mr. Small. In addition, the alleged acts Mr. Small complains of occurred in 2007, and the applicable statute of limitations, § 516.390 RSMo, bars suits to recover such penalties if brought more than two years after the alleged offense.

WHEREFORE, Ameren Missouri respectfully requests that the Commission enter an order dismissing Mr. Small's complaint for failure to state a claim for which relief can be granted.

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<sup>2</sup> It is when the Commission, "is of the opinion that a public utility...is...doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of law or any order or decision of the commission," that the Commission directs its general counsel to file suit in circuit court in the name of the Commission to have such violation prevented. § 386.360.1 RSMo.

SMITH LEWIS, LLP

/s/ Sarah E. Giboney  
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(573) 443-3141  
(573) 442-6686 (Facsimile)  
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**Attorney for Ameren Missouri**

By: /s/ Wendy K. Tatro  
Wendy K. Tatro, # 60261  
Associate General Counsel  
Ameren Services Company  
P.O. Box 66149  
St. Louis, MO 63166-6149  
(314) 554-3484 (phone)  
(314) 554-4014 (fax)  
AmerenMOService@ameren.com

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Answer was served on the following parties via electronic mail (e-mail) or via certified and regular mail on this 7th day of November, 2011.

Jennifer Hernandez  
Asst. General Counsel, Atty for Staff of  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
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jennifer.hernandez@psc.mo.gov

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Jimmie E. Small  
Complainant  
via General Delivery  
Quincy, Illinois 62301

/s/ Sarah E. Giboney  
Sarah E. Giboney



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

<sup>2</sup> Commission Case No. EC-2012-0050, Order Dismissing Claims and Parties, p. 1 (issued October 5, 2011).

2. This order is effective immediately upon issuance.

**BY THE COMMISSION**



Steven C. Reed  
Secretary

(SEAL)

Ronald D. Pridgin, Senior Regulatory  
Law Judge, by delegation of authority  
pursuant to Section 386.240, RSMo 2000.

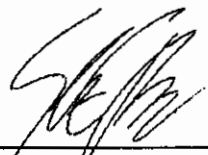
Dated at Jefferson City, Missouri,  
on this 8<sup>th</sup> day of February, 2012.

**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 8<sup>th</sup> day of February 2012.**



---

**Steven C. Reed**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**February 8, 2012**

**File/Case No. EO-2012-0050**

**Missouri Public Service  
Commission**  
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**Union Electric Company**  
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giboney@smithlewis.com

**Union Electric Company**  
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St. Louis, MO 63166-6149  
AmerenMOService@ameren.com

**Jimmie E. Small**  
Jimmie E Small  
General Delivery  
3535 Locust St.  
Quincy, IL 62301

**Enclosed find a certified copy of an ORDER in the above-numbered matter(s).**

**Sincerely,**



**Steven C. Reed  
Secretary**

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Individuals listed above with a valid e-mail address will receive electronic service. Individuals listed above without a valid e-mail address will receive paper service.