

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

File No. EC-2012-0050

Issue Date: March 2, 2012

Effective Date: March 2, 2012

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

On October 26, 2011, the Commission ordered the parties to state what remedy, if any, the Commission has authority to grant Mr. Small. The parties have filed their responses, in which Ameren Missouri included a motion to dismiss the complaint for failure to state a claim upon which relief can be granted, and Mr. Small requested summary disposition of the case under Commission Rule 4 CSR 240-2.117. Mr. Small also requested injunctive relief, declaratory judgment, and transfer to federal court, asserted federal claims, and alleged that Ameren Missouri violated safety standards and reporting requirements under Commission Rule 4 CSR 240-18.010.

Ameren Missouri Motion to Dismiss

The standard for review for consideration of a motion to dismiss has been clearly established by Missouri's courts as follows:

A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff's petition. It assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.²

Mr. Small is only required to set forth in his complaint before the Commission "any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission."³ Mr. Small alleges in his complaint filings that Ameren Missouri discriminated against him by

² *Bosch v. St. Louis Healthcare Network*, 41 S.W.3d 462, 463-464 (Mo. banc 2001).

³ Section 386.390.1, RSMo 2000.

improperly disconnecting his electric service and falsifying documentation of Mr. Small's electric service account records in violation of state law. Assuming that the facts alleged in Mr. Small's complaint are all true, and granting Mr. Small all of the reasonable inferences therefrom, the facts alleged meet the elements of a recognized cause of action, satisfying both the requirements of Section 386.090 and the standard for denying a motion to dismiss.

Small Motion for Summary Determination

In his response filed on February 24, 2012, Mr. Small requests summary disposition on the pleadings in his favor under Commission Rule 4 CSR 240-2.117(2). As the Staff of the Commission has previously filed a verified report in addition to the pleadings, the Commission will consider Mr. Small's request to be a motion for summary determination under Commission Rule 4 CSR 240-2.117(1). Commission Rule 4 CSR 240-2.117(1)(E) allows the Commission to grant motions for summary determination if the record shows that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the Commission determines that it is in the public interest.

In his motion, Mr. Small does not state which facts are no longer in dispute or provide any explanation of his request. However, taking the pleadings and the Staff's verified report into consideration as a whole, it is clear that genuine issues of material fact remain that are not resolved by allegations in the pleadings. Therefore, granting Mr. Small's motion is not appropriate, and Mr. Small is not entitled to relief as a matter of law.

In addition, Mr. Small has requested injunctive relief, declaratory judgment, and transfer to federal court, asserted federal claims, and alleged that Ameren Missouri violated safety standards and reporting requirements under Commission Rule 4 CSR 240-18.010. As the Commission stated in its order in this case issued October 5, 2011, the Commission has only the powers granted by Missouri statutes.⁴ Those powers do not include the authority to grant equitable relief⁵ or determine federal claims. Mr. Small's requests for injunctive relief, a declaratory judgment, transfer to federal court and various federal claims are all denied in accordance with the prior Commission order and Missouri law.

With regard to Mr. Small's alleged violations of safety standards and reporting requirements under Commission Rule 4 CSR 240-18.010, for Mr. Small to bring a complaint under that rule he must "aggrieved by an alleged violation"⁶. An aggrieved party is one who suffers from an infringement or denial of legal rights.⁷ The judgment in question must operate directly and prejudicially on the party's personal or property rights or interests and such effect must be immediate and not merely a possible remote consequence.⁸ The Commission rule on safety standards and reporting sets forth certain requirements imposed by the Commission on utilities, but Mr. Small has not alleged any facts that indicate his personal or property rights were affected by Ameren Missouri's compliance or non-compliance with that rule. Therefore, Mr. Small is not an

⁴ *State ex rel. City of St. Louis v. Missouri Public Service Commission*, 73 S.W. 2d 393, 399 (Mo. banc 1934).

⁵ *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Commission*, 116 S.W.3d 680, 695 (Mo. App. 2003).

⁶ Commission Rule 4 CSR 240-2.070(1).

⁷ *City of Brentwood v. Barron Holdings Intern., Ltd., L.L.C.*, 66 S.W.3d 139, 142 (Mo. App. 2001).

⁸ *HHC Medical Group, P.C. v. City of Creve Coeur Bd. Of Adjustment*, 99 S.W.3d 68, 73 (Mo. App. 2003).

aggrieved party with respect to Ameren Missouri's compliance with that rule and his request for relief under that rule is denied.

The Commission concludes that it should deny the motion to dismiss and the motion for summary determination. The Commission also finds that a hearing is now appropriate and will set a procedural schedule. 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.

THE COMMISSION ORDERS THAT:

1. Ameren Missouri's motion to dismiss is denied.
2. Jimmie E. Small's motion for summary determination is denied.
3. Jimmie E. Small's requests for injunctive relief, a declaratory judgment, transfer to federal court, recovery under federal claims, and relief under Commission Rule 4 CSR 240-18.010 are all denied.
4. An evidentiary hearing is scheduled for April 11, 2012, beginning at 9:30 a.m. The hearing will be held in the Division III Courtroom, located on the first floor of the Adair County Courthouse, 106 West Washington Street, Kirksville, Missouri.

5. The hearing will be held in a building that meets accessibility standards required by the Americans with Disabilities Act. Any person requiring additional accommodations to participate in the hearing shall call the Missouri Public Service Commission's Hotline at 800-392-4211 (voice) or Relay Missouri at 711 before the hearing.

6. The following procedural schedule is established:

Evidentiary Hearing	-	April 11, 2012 beginning at 9:30 a.m.
Transcript available	-	April 23, 2012
Simultaneous Post-Hearing Briefs	-	May 7, 2012 (at option of parties)

7. All requests for a subpoena for a witness or production of documents must be filed in writing with the Commission at least 20 days prior to the hearing. Subpoena requests may be granted only by Michael Bushmann, the Regulatory Law Judge currently assigned to this matter. No subpoena will be issued unless the requesting party can demonstrate to the Regulatory Law Judge that the witness or document requested is relevant to the two issues stated above and, in the case of a witness subpoena, that the proposed witness has refused to testify voluntarily.

8. The parties shall comply with the following additional procedural requirements:

A. All pleadings, briefs, and amendments shall be filed in accordance with Commission Rule 4 CSR 240-2.080. Briefs shall follow the same list of issues as stated in this order and must set forth and cite the proper portions of the record concerning the unresolved issues that the parties believe require decision by the Commission.

- B. All parties shall bring an adequate number of copies of exhibits that they intend to offer into evidence at the hearing. The party offering it must bring, in addition to the copy for the court reporter, copies for the Presiding Judge and all counsel.
- C. The parties shall pre-number their hearing exhibits sequentially with individual party designation as follows:
 - a.) Small Exhibit No. 1, Small Exhibit No. 2, Small Exhibit No. 3, etc.
 - b.) Ameren Missouri Exhibit No. 1, Ameren Missouri Exhibit No. 2, Ameren Exhibit No. 3, etc.
 - c.) OPC Exhibit No. 1, OPC Exhibit No. 2, OPC Exhibit No. 3, etc.
 - d.) Staff Exhibit No. 1, Staff Exhibit No. 2, Staff Exhibit No. 3, etc.
- D. Each party shall prepare a comprehensive exhibit list before the evidentiary hearing with the listed exhibits numbered sequentially as directed in paragraph C. Copies of the exhibit lists shall be provided to the Regulatory Law Judge and the Court Reporter at the beginning of the hearing.
- E. In the event that the parties reach a settlement of all of the issues, such settlement shall not be grounds for a continuance of the hearing unless the agreement is final, has been submitted to the Commission in writing, and there are no objections to the agreement.

9. This order is effective immediately upon issuance.

(S E A L)

BY THE COMMISSION



Steven C. Reed
Secretary

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

Dated at Jefferson City, Missouri,
on this 2nd day of March, 2012.