

**FILED**

NOV 14 2014

Complainant,

Vs.

Union Electric Company  
d/b/a Ameren Missouri,

**Respondent.**

File No. EC-2015-0058 Missouri Public Service Commission

Hon. ALJ Jordan presiding

**MOTION FOR SUMMARY DETERMINATION**

## INTRODUCTION

The parties in this contested case File No. EC-2015-0058 for purposes of Equitable Estoppel doctrine, are the same exact parties appearing under the jurisdiction of the Missouri Public Service Commission, former proceedings before the Commission, File No. EC-2011-0247; No. 2012-0050. In effort to avoid duplication of files, documents, evidence, discovery, the Commission should take judicial NOTICE OF (a) 350 Staff investigation hours spent on Respondent's alleged debt due back in 2007-2008 time period before Respondent Counsel

admitted that Ameren Missouri was not trying to collect money on any account from Complainant Small.

### SUMMARY DETERMINATION

1. If Complainant Small understands correctly, Summary Disposition is only appropriate where the pleadings, testimony, discovery, or affidavits, ( if any) on file, demonstrate the lack of a genuine issue of material fact for the Commission to decide.
2. Equitable Estoppel or estoppels in pias “ stands simply on a rule of law which forecloses one from denying his own expressed or implied admission which has in good faith and in pursuance of its purpose been accepted and acted upon by another.” Emery v. Brown Shoe Company, Mo. 287 S.W. 2d 761.
3. If the Commission beliefs the fact that Staff investigation involved some 350 staff hours trying to discover a dispute over an alleged debt, then the Commission might elect to take judicial notice of its File Case No. EC-2011-0247; No. EC-2012-0050.
4. Equitable Estoppel should be applied here in File No. EC-2015-0058 where the commission is requested by Respondent on September 03, 2014 EXHIBIT”A” to relitigate whether or not the staff action spending 350 investigative hours was well spent of alleged debt collection efforts well after Respondent turned the \$846. Alleged account debt over to Consumer Collection Agency, back in 2008.
5. The Commission is justified in granting Summary Determination for complainant in File No. EC2015-0058 where Respondent appears to keep changing its factual position as to exactly what facts existed when Small

orally and in writing requested reconnection of electric services, Lot #23, 23067 Potter Trail, Kirksville, Mo.

6. Respondent's Answer denies the Utility violated any rules, regulations, Tariffs or laws, adverse to Complainant, a non-resident venturing into Missouri jurisdiction seeking fair and impartial treatment, under 4 CSR 240-2.117.
7. Respondent should not be permitted to expend Commission Staff resources beyond 350 investigative hours permitting the utility agents and employees to engage in materially inconsistent statements.
8. For example of no genuine issues of fact, in context to Respondent's known violation of Confidentiality and Privacy protection matters, on October 15, 2014, the Commission found that Staff has published information relating directly to Mr. Small specifically. 4 CSR240-2.135(1)(B) (1). Neither Staff or Respondent bothered to file a motion to reflect an advocacy position.
9. Respondent's EFIS No. 9, Answer and Motion to Dismiss, filed on October 2, 2014, appears to have published through Staff action its EXHIBIT "A" claims that Mr. Small specifically owed Ameren Money, thus no genuine issue exist as to violations of Small' due process and equal protection right under 4 CSR 240-2.135(1)(B) 1.
10. The facts in further support of Summary Determination would appear to have developed after Small filed a valid Complaint with the Missouri Public Service Commission.
11. Equitable Estoppel should be applied to Respondent to the extent that retaliation may have motivated Respondent to violate privacy matters, under 4 CSR 240-2.135(1)(B) 1.

12. This court is to sustain the judgment unless there is no substantial evidence to support it, unless it against the weight of the evidence, unless it erroneously applies the law. Murphy v. Carron, 536 S.W. 2d 30 ( Mo. banc 1976).
13. This Court does not weigh the evidence , but determines whether sufficient evidence supports the verdict. Marshall v. Edlin, 690 S.W. 2d 477 ( Mo. App. 1985). We consider the evidence here in the light most favorable to the verdict, giving respondent the benefit of all reasonable inferences. Id.
14. Significantly, in showing a review court where substantial evidence exist to support the verdict of the Commission.
15. Party Respondent Utility and Complainant Small finally agreed to the findings and conclusions reached by the Hon. Commission in its Order filed and served on October 15, 2014.
16. Pursuant to 4 CSR 240-2.070(15)(A) neither Staff or Respondent Counsel bothered to file a *Motion to Change* the October 15, 2014 finding that Small's Complaint be and the same continue under Small Claims procedure.
17. Under the Missouri Administrative Procedures act failure to object or raise defenses, constitutes waiver. Accordingly, under 4 CSR 240-2.117 there does not appear in the record before the Commission, any genuine Issue of material fact under 4 CSR 240-2.070(15)(A) simply because no Motion to Change the Complain status by Staff or Ameren Missouri. Thus substantial evidence exist in support of the Commission Order and Small joins in the findings and conclusions in support of his Summary Determination effort.
18. Staff recommendations throughout, No. EC-2011-0247; No. EC-2012-0050 and culminating with the Commission ruling dated October 15, 2014, should not be permitted to violate Small's rights of privacy then suggest that

genuine issues exist for the commission to decide. See also due process and equal protection of Section 386.390.1 R.S. Mo. 2000.

19. At page 3, Part C, of the unopposed 10/15/2014 Order, the Commission found in part, ["Ameren's theory also appears apt for resolution by documentary evidence, and without personal appearance, under motions for summary determination. Small further suggest that prior Commission orders should be considered where Staff Attorney Jennifer Hernandez suggested that Staff investigators spent some 350 hours trying to settle what started out as a dispute over alleged money due Respondent Utility going back in time to 2007-2008 time period, and thus continuing on September 03, 2014.
20. 4 CSR 240-2.115 stipulations and agreements.  
2.115(1) (B) provides, ["The Commission may resolve all or any part of a contested case on the basis of a stipulation and agreement."]
21. Summary Determination is appropriate in this case, and Respondent Utility is no longer entitled to further hearing in a Small Claims proceeding where back in the 2013 Transcript of Evidence, S. Giboney admitted that after 350 hours of Staff investigative works, Ameren Missouri was not attempting to collect money from CP Small. However, on September 03, 2014 Utility agent Hart, caused to be filed Exhibit "A" stating that reconnection would not occur until the \$ 846. past account issues were resolved. Thus Equitable Estoppel should foreclosed further ruse of Respondents EXHIBIT "A" issues.
22. Significantly Ameren Missouri has never billed Complainant Small for any amount of the alleged \$846. after (a) Consumer Collection Management returned the account back to Mr. Horn's office in St Louis, Mo. back in 2008, (b) Ameren Missouri's September 03, 2014 assimilated Exhibit "A" is prohibited and foreclosed by latches as well as the applicable statute of

limitations. Thus the failure of the Kirksville, Mo. service Office, to complete a Cold Weather Agreement when Small made application to reconnect, makes Utility service under 4 CSR 240-13,055 Cold Weather Doctrine, an exercise in futility when the female who escorted Small to Amerens door, appeared to engage Applicant Small with argument over LaCost Trailer Park differences and did not have time to discuss Cold Weather agreements.

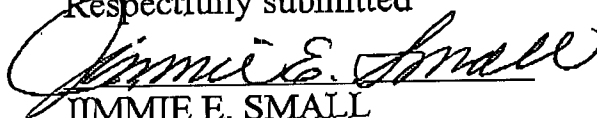
23. Utilities acts in engaging argument with CP Small when making application for reconnection late 2014, would appear to defeat the intent and purpose of the Cold Weather Rule affecting the aged, disabled applicant Small. These relevant factors are not mentioned to the Commission in Ameren's September 03, 2014 EXHIBIT "A" as attached to confidential, customer specific details.
24. CP Small further states that neither Staff investigators nor Ameren Missouri agents submitted relevant or admissible evidence to dispute the Commission's October 15, 2014 findings and Conclusions, thus the same Order favors the Complainant on his Motion for Summary Determination.
25. If Ameren Missouri agents desired to Plead avoidance to applicable statute of Limitations, Equitable Estoppel, Res Judicata. Issue preclusion, lack or satisfaction and accord, avoidance of laches rule, lack of disparity in treatment before the Missouri Public Commission, Ameren Missouri was free to do so.
26. The court [ in this small claims proceeding, Commission] must take the record as it comes to us. Board of Public Utilities v. Fenton, 669 S.W. 612 ( Mo. App. 1984).
27. We cannot consider evidence not presented to this court. Roush v Sandy 871 S.W. 2d 98 ( Mo. App. W.D. 1994)

28. If Staff and Ameren Missouri desired to offer evidence of justification for treating the nonresident, disabled, aged, Male Small materially differently Respondent Utility was free to plead its position, free to submit substantial evidence before the Commission before entry of the October 15, 2014 Order and after 10/15/2014, through timely objection which did not occur or record. Board of Public Utilities v. Fenton, 669 S.W. 2d 98 ( Mo. App. W.D. 1994)
29. The statute of frauds is an affirmative defense and must be pleaded by the party claiming its benefit. Brooks v. Cooksey, 427 S.W. 2d 498, 502 ( Mo. 1968).
30. If Respondent Utility desired to meet Compliance with 4 CSR 240-13.055 Cold Weather Rule when CP Small made Application to reconnect, Ameren Missouri had a full, fair and free, opportunity to do so.
31. Ameren Agents elected instead to engage CP in argument that the Utility did not want further involvement with the LaCost Landlord dispute . . . . . [ LOCATION] going back to the 2007-2008 illegal trespass factors where Utility alleged reconnection occurred without legal right or request facing what the record below shows as a full blown dispute over Money Ameren Claim Small owed.
32. That because no debt has been proved to exist by a preponderance of the evidence, alleged in Utilities EXHIBIT "A", and Utility failed to plead avoidance of 4 CSR 240-13.055 mandate, the record shows that CP Small was in fact treated differently than other applicants outside Small's protected class membership seeking reconnection of electrical power in No. EC-2015-0058.

**WHEREFORE**, the undersigned respectfully request that the Commission grant this Motion for Summary Determination and Directing Ameren Missouri reconnect electrical power to Lot # 23, 23067 Potter trail,

Kirksville, Missouri, and for other relief the Commission might elect in the given premises.

Respectfully submitted



JIMMIE E. SMALL

606 West Hwy # 2

Milton, Iowa, 52570

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Motion for Summary Determination have been mailed to Union Electric Company, Wendy Tatro, 1901 Chouteau Avenue, St Louis, Mo. 63166-6149 and to Office of the Public Counsel, Mr. Dustin Allison, 200 Madison Street, Suite 650, P.O. Box 2230, Jefferson City, Mo. 65102. The Original Motion was also filed with the Commission Data Center, 200 Madison Street, Jefferson City, Mo. 65102. All done this 14 day of November 2014.

  
JIMMIE E. SMALL

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

**Jimmie E. Small**  
**Complainant,**

**v.**

**Union Electric Company,**  
**d/b/a AMEREN MISSOURI,**  
**Respondent.**

**No. EC-2015-0058**



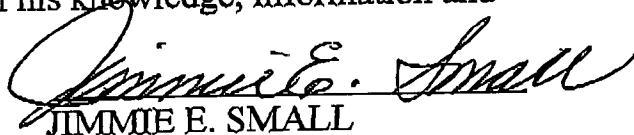
**FILE NO. EC-2015-0058**

**Rule 4 CSR 240-2.117 (1)(B)  
AFFIDAVIT**

STATE OF MISSOURI       )  
                                  ) ss:  
COUNTY OF COLE        )

I, Jimmie E. Small, being first duly sworn upon oath, states that he is the Complainant in contested case No. EC-2011-0247; No. EC-2012-0050 and No. EC-2015-0058 and Affiant has personal knowledge of the matters and things mentioned in his complaints, disputes, and disagreements with Ameren Missouri.

Affiant has personal knowledge that Matters shown in the Cathy Hart September 03, 2014 Utility filed EXHIBIT "A" is less than accurate, less than a complete statement of the facts which occurred at Cotton wood Street, Kirksville, Missouri, and the statement of facts submitted in the pro se Motion for Summary Determination are true and correct to the best of his knowledge, information and belief.

  
JIMMIE E. SMALL

Subscribed and sworn to before me this 14 day of November 2014.

  
NOTARY PUBLIC

My Commission Expires: 9/20/17 SEAL



TANYA PROCTER  
My Commission Expires  
September 20, 2017  
Miller County  
Commission #13870253