

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

File No. EC-2012-0050

ORDER REGARDING EVIDENTIARY MOTIONS AND CLARIFYING DATE FOR EVIDENTIARY HEARING

Issue Date: May 23, 2013

Effective Date: May 23, 2013

On March 11, 2013, Jimmie Small filed a *Notice of Appeal* with the Commission to the Western District Court of Appeals. On April 23, 2013, the court dismissed the appeal. Mr. Small filed a motion to reconsider the dismissal order, which was denied on May 20, 2013. The Commission will clarify issues relating to evidentiary motions and the date for the evidentiary hearing in this matter.

On December 10, 2012, Mr. Small filed *Complainant's Objections to the Commission Order Granting Respondent's Motion to Compel Production of Documents 11/29/12*, which included a "Request for MPSC Take Judicial Notice of Its Records Evidence and Specifically Take Judicial Notice of Filed Exhibits Served in 2012 by Consumer Collections Management Verifying 0.\$ Actually Due in Contradiction to the Mary Duncan Staff Report, No. EC-2011-0247 and Continuing as a Wrongful Policy and Practive [sic] Throughout Missouri By Utility Co.". However, beyond this vague

statement the request did not explain the specific facts or documents to which Mr. Small was referring.

On December 13, 2012, Mr. Small filed *Complainant's Motion for Summary Judgment on Alleged Debt/Money Due on Account*, which contained a request that the Commission take judicial notice of:

Consumer Collection Management, Inc., April 04, 2012 Account cancellation NOTICE stating that the 'Disputed Account' 3443307009 et seq, CBI#4527697, 'has been cancelled' as of 01/08/2008 and take judicial Notice that said evidence is relevant to whether Respondent, falsified account records, in an effort to extort money not due and owing at LOT #23, Lakeroad Village Park, 23067 Potter Trail, Kirksville, Missouri.

On December 21, 2012, Mr. Small filed *Complainant Small's Objections and Responses to Respondent's Request for Production and Response to Commission Order to Produce Discovery Documents by December 29, 2012*, which contained a request that the Commission take judicial notice of the following:

- (a) take judicial notice of the National Safety Standard doctrine which applied to this Iowa Resident on the Date of December 19-20, 2007 during the illegal reconnection LOT# 23, by Respondent utility.
- (b) Take judicial notice of a Schuyler County Seat Belt cause of action, State v. Jim Small, 2010. Hon. Steve Wilcox (Judge) ruled on transcript of proceeding that Defendant Small was a resident of Iowa for all purposes past and present. Take judicial Notice of Small's Iowa drivers license, and Milton Iowa resident status, 2004 forward.
- (c) Take judicial Notice that the Constitution of the United States as quoted above applies to Complainant Small an Iowa Resident, in context to timely discovery [sic] rules, regulations, tariffs, Cause No. EC-2011-0247; EC- 2012-0050;
- (d) Take judicial NOTICE that Complainant Small is also raising his Constitutional right to Choice -of-Law-of forum -State-of-Iowa.
- (e) Take judicial NOTICE that complainant after 01/18/2013 shall file a petition in an appropriate Federal Court alleging Diversity jurisdiction, seeking rights under various statutes, the MPSC ALJ has previously ignored by written and oral orders.
- (f) Take Judicial NOTICE that Diversity Jurisdiction in Iowa State after 01/18/2013, shall be predicated upon federal ADA statutes, 42 U.S.C.

sect 12101 et seq, which requires no exhaustion of Administrative remedies prior to filing a private cause of action against an ENTITY.

On March 7, 2013, Mr. Small filed *Complainant's Supplemental Suggestions in Support for his Motion for Judgment on the Pleadings*, which contained a request that the Commission:

... take judicial NOTICE by entry of Commission order of Small's December 17, 2012 written request for judicial NOTICE. Also, take judicial Notice of the Commission's own contested case file, specifically, (a) Small's Notice of request for available dates for evidence deposition filed on May 18, 2012; (b) Take judicial NOTICE of complainant's Data Request, filed stamped April 11, 2011, page seven (7) first paragraph, Lines 1-12 requesting alleged Phone Call contact communication, relied on defensively by utility employee Cathy Hart, specifically for (c) phone contact memos, recordings, date 05/15/2002 (d) Phone contact date, memo, recordings, identification proofs, specifically for 06/13/2006 (e) Phone contact, memos, recordings, computer data filings/entries, voice recordings communication, alleged to have occurred on 11/13/2007, (f) Phone contact, memos, recordings, computer data/filings/entries, voice recordings, messages alleged to have occurred on 12/19/2007.

Section 536.070(6), RSMo 2000, permits the Commission to take judicial notice of all matters of which the courts take such notice and to take official notice of technical or scientific facts within its competence. The Missouri Court of Appeals, Eastern District, has described judicial notice, as follows:

Judicial notice of a fact normally dispenses with the necessity of establishing that fact by evidence. Since the fact judicially noticed may be established without supporting evidence, that fact must have independent reliability and trustworthiness. In Missouri, judicial notice may be taken of a fact which is common knowledge of people of ordinary intelligence, and it may be taken of a fact, not commonly known, but which can be reliably determined by resort to a readily available, accurate and credible source. Within the latter group of facts are certain facts established within a court's own records. However, when judicial notice is based upon another court file, the other court file must be independently proved.¹ (internal citations omitted).

¹ *State v. Weber*, 814 S.W.2d 298, 303 (Mo. Ct. App. 1991)

Mr. Small's requests for judicial notice include both facts that may be in dispute and documents which may have been filed in this case. The facts which are the subject of Mr. Small's requests are not the type of facts commonly known or whose accuracy cannot be reasonably questioned. Therefore, they are not the proper subject for judicial notice, and those requests will be denied. Mr. Small is free to establish relevant facts through his testimony or by offering specific exhibits at the hearing. The Commission can take notice of its own records, but Mr. Small's requests for notice regarding Commission records are too vague concerning the exact document being referenced. Mr. Small should obtain copies of any documents he wishes to offer into evidence and present those documents at the evidentiary hearing. The presiding officer can then rule on the admissibility of those exhibits, subject to any objections from another party.

THE COMMISSION ORDERS THAT:

1. The requests to take judicial notice contained in Jimmie E. Small's pleadings described in the body of this order are denied.
2. An evidentiary hearing is scheduled for Thursday July 18, 2013, beginning at 9:30 a.m. The hearing will be held in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri.
3. 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.

4. The Commission's Data Center shall deliver a copy of this order to Mr. Small with delivery confirmation.

5. This order is effective immediately upon issuance.

BY THE COMMISSION

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

Morris L. Woodruff
Secretary

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

Dated at Jefferson City, Missouri,
on this 23th day of May, 2013.