

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS
Procedural and Discovery Conference
May 31, 2011
Jefferson City, Missouri
Volume 1

Eric E. Vickers, Personally And On Behalf)
Of All Customers Of Ameren Missouri Who)
Have Sought Relief Under The Cold Weather)
Rule,)
Complainants,)
Vs.) File No.
EC-2011-0326
Union Electric d/b/a Ameren Missouri and)
Missouri Public Service Commission,)
Respondents.)

HAROLD STEARLEY, Presiding
SENIOR REGULATORY LAW JUDGE

REPORTED BY:
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ALSO PRESENT: Cathy Hart, Gay Fred

1 PROCEEDINGS

2 JUDGE STEARLEY: All right. Good morning.

3 It's Tuesday, May 31st, 2011. Commission has set this time
4 for a procedural conference and/or discovery conference in
5 File Number EC-2011-0326, Eric E. Vickers, personally and on
6 behalf of all customers of Ameren Missouri who sought relief
7 under the cold weather rule versus Union Electric doing
8 business as Ameren Missouri and Missouri Public Service
9 Commission.

10 My name is Harold Stearley, and I'm presiding
11 officer over this matter, and we will begin by taking entries
12 of appearance starting with Ameren, Missouri.

13 MS. GIBONEG: Sarah Giboneg of Smith Lewis,
14 111 South Ninth Street, Columbia, Missouri 65201 for Ameren
15 Missouri.

16 MS. HART: Cathy Hart, 101 Madison, for Ameren
17 Missouri.

18 MR. THOMPSON: Kevin Thompson for the Staff of
19 the Missouri Public Service Commission, Post Office Box 360,
20 Jefferson City, Missouri 65102. I'm accompanied by Gay Fred,
21 who is the manager of the Commission's consumer services
22 department.

23 JUDGE STEARLEY: Thank you, Counsel. Let the
24 record reflect we do not have an appearance from the Office
25 of the Public Counsel nor do we have an appearance from

1 Mr. Vickers. We tried opening our phone bridge approximately
2 four minutes ago and Mr. Vickers did not call in.

3 Does anyone at the table have a phone number
4 for Mr. Vickers?

5 MS. FRED: Have a what?

6 JUDGE STEARLEY: Phone number.

7 MS. FRED: Yeah.

8 MS. GIBONEG: I've got one here. (314)
9 420-8700.

10 JUDGE STEARLEY: All right. We're going to
11 try to call him directly.

12 (Judge Stearley dialing Mr. Vickers and the
13 following is the message that was left:)

14 JUDGE STEARLEY: Mr. Vickers, this is Judge
15 Stearley at the Missouri Public Service Commission. We are
16 on the record with a procedural conference in the offices of
17 Jeff City, which you were provided notice of by May 16th,
18 2011 Order. You have not appeared in person. You did not
19 use our phone bridge for calling in.

20 I believe counsel for Ameren Missouri may have
21 indicated you had sent an e-mail regarding a continuance but
22 that has not been filed in the Commission's Electronic Filing
23 and Information System. At this point, I'm going to just
24 leave this message with you. I'm going to disconnect this
25 call. We will proceed with making a record at this

1 conference and further orders will be issued in the case. I
2 suggest you check the Commission's EFIS system for those
3 orders. Thank you very much.

4 (End of phone message, and the phone was
5 disconnected.)

6 JUDGE STEARLEY: All right. Has anyone,
7 before I continue, had any other contact with Mr. Vickers?

8 MS. HART: No.

9 MS. GIBONEG: There's been no contact with
10 Ameren.

11 MR. THOMPSON: Just that e-mail.

12 JUDGE STEARLEY: Okay. So he's not responded
13 still to the e-mail seeking discover?

14 MR. THOMPSON: No, and we sent him a certified
15 letter. He refused to --

16 MS. FRED: He has accepted the certified
17 letter.

18 MR. THOMPSON: He has accepted. Okay. I
19 apologize.

20 MS. FRED: Not until just recently though.

21 JUDGE STEARLEY: And what was that letter
22 advising Mr. Vickers?

23 MS. FRED: It was advising him to complete the
24 discovery, and attached to it was the discovery questions
25 that had been sent to him previously by e-mail.

1 JUDGE STEARLEY: Okay.

2 MS. FRED: So it was just another iteration of
3 request for discovery in a different contact format to ensure
4 that he tried to receive them and would respond.

5 JUDGE STEARLEY: Okay. And do you know what
6 date he accepted service of that?

7 MS. FRED: Yes. He accepted it finally on
8 May 16th, 2011.

9 JUDGE STEARLEY: Okay. So he accepted that on
10 May 16th. I had issued the Order on May 16th requiring him
11 to respond to your discovery request and to respond to Ameren
12 Missouri's Answer to the Complaint. And that was sent by
13 certified mail as well and we have not received a return
14 receipt from Mr. Vickers on that Order. That Order on the
15 16th was approximately 20 days, maybe 19 after your e-mail
16 initial discovery request, which I believe was on April 27th.

17 MS. FRED: Right, uh-huh.

18 JUDGE STEARLEY: So at this point in time,
19 Mr. Vickers clearly has had over a month to respond and has
20 acknowledged receipt of your second message regarding
21 discovery request.

22 And Ms. Giboneg, I believe perhaps you've also
23 heard something from Mr. Vickers?

24 MS. GIBONEG: We have not heard something, but
25 related to an unrelated delinquent account balance, Ameren

1 has sent him disconnect notices, which we can go into now or
2 later. But we've sent mail notices to him on May 16th and on
3 May 19th, and I don't believe our records indicated that we
4 had any contact back from him about those.

5 JUDGE STEARLEY: Okay. We'll pick up with
6 that here in just a moment. There's a couple other things I
7 wanted to run through.

8 I was hoping Mr. Vickers would be here today
9 to explain a little bit about his Complaint for a variety of
10 reasons. He does not identify himself as an attorney in this
11 filing, but it appears that he is an attorney. He did not
12 list a bar number on here and --

13 MR. THOMPSON: He has been an attorney, Judge.
14 I do not know if his license is currently active and in good
15 standing. I know he was disbarred at one time.

16 MS. GIBONEG: He was reinstated.

17 JUDGE STEARLEY: I did check the mobar's data
18 list or their list of attorneys and he has been reinstated.

19 MR. THOMPSON: Has he?

20 JUDGE STEARLEY: Yes.

21 MR. THOMPSON: Okay.

22 JUDGE STEARLEY: He names the Commission as a
23 defendant. And Mr. Thompson, I'm unaware of any statute that
24 would authorize the Commission being sued as a defendant, are
25 you? As an entity?

1 MR. THOMPSON: Well, if Mr. Vickers wanted to
2 maintain an action pursuant to 42 USC 1983, the general
3 purpose federal civil rights action, he can certainly sue the
4 Commission in federal district court if he claimed the
5 Commission had in some way violated his rights. But I don't
6 think he can come before the Commission and sue the
7 Commission in front of itself.

8 JUDGE STEARLEY: Yes, I don't believe that's
9 the proper forum also. He's also captioned this as though it
10 appears he's trying to do a class-action lawsuit, and to my
11 knowledge, there's no statute that would allow class-action
12 representation in this fashion, although Commission decisions
13 can effect classes of people depending on what the issues may
14 be.

15 MR. THOMPSON: Well, there's certainly no, you
16 know -- our practice rules don't envision any kind of a class
17 action. And if, in fact -- I mean, you know, there's a lot
18 of complicated things you have to do when you have a class
19 action, such as giving notice to every member of the class
20 just for starters.

21 MS. GIBONEG: Class certification.

22 MR. THOMPSON: Right. Exactly.

23 JUDGE STEARLEY: So I don't think there's been
24 any compliance with 5208 of the Missouri Supreme Court rules,
25 not saying that they actually apply to the Commission because

1 I don't think there's anything that makes them apply to the
2 Commission as well.

3 Additionally, there's no allegations of any
4 violations against the Commission or its Staff as would be
5 required by Complaint, and he's made request for relief
6 for -- injunctive relief as well as monetary damages, which I
7 believe to my knowledge this Commission cannot grant.

8 So my intent was to ask Mr. Vickers to explain
9 his Complaint, give him an opportunity to amend his Complaint
10 if he wished to do so. At this point, however, he's
11 non-compliant with Commission rules, with Commission's
12 Orders, and he's a no-show at this conference, all of which
13 are grounds for a dismissal.

14 MR. THOMPSON: I think Mr. Vickers is just
15 essentially tagging up and I think he intends to go into
16 Circuit Court in the City of St. Louis with this action.
17 That's my guess. And I think he's just touching base here
18 for exhaustion of administrative remedies.

19 JUDGE STEARLEY: Well, he can't exhaust them
20 if he doesn't appear.

21 MR. THOMPSON: There is that. I'm just
22 speculating, Judge.

23 JUDGE STEARLEY: Yes, I appreciate that
24 speculation, Mr. Thompson.

25 It would be my intent at the conclusion of

1 today's conference to issue a Show Cause Order for
2 Mr. Vickers. I would like to hear if there's anything from
3 counsel you would like to add to this record.

4 MS. GIBONEG: We certainly would be happy if
5 you issued the Show Cause Order. Would you like me to
6 discuss the other matters?

7 JUDGE STEARLEY: Yes, please.

8 MS. GIBONEG: We did want to make a record
9 that at this time, Mr. Vickers is -- has a delinquent account
10 balance of \$229.29. Those are what we would refer to as
11 current charges, essentially, although they're delinquent.
12 They've all been incurred since the date he filed this
13 Complaint in April.

14 He does have a considerable amount of
15 suspended charges, in other words charges that we're not
16 pursuing at this time because of the Complaint, and that's
17 \$1,381.91. He also has a current bill that's not delinquent
18 of \$166.93.

19 But at this time, disconnect notices pursuant
20 to the rules have been sent to Mr. Vickers for the \$229.29.
21 The first disconnect notice was mailed on May 16th and the
22 second was mailed on May 19th, and I believe his service is
23 scheduled for disconnection on --

24 MS. HART: June 1st.

25 MS. GIBONEG: -- June 1st, if that \$229.29 has

1 not been paid. So we wanted to make a record of that. There
2 has been some problems with complaints being filed past the
3 time where that can avoid a disconnect, so we wanted to make
4 a clear record of where his account stands at this time.

5 JUDGE STEARLEY: All right. Thank you
6 counselor. Anything else you'd like to add? I am going to
7 direct Staff to try to make contact with Mr. Vickers again by
8 phone and/or e-mail. You can apprise him if he's not
9 following EFIS or if he's not accepting mailed Orders to him,
10 that there will be a Show Cause Order issued either by
11 conclusion of today or tomorrow. I have another hearing
12 today, so I will be getting that out shortly.

13 If he intends to file pleadings in this
14 matter, I issued a notice early on in this case stating that
15 they needed to be filed in our Electronic Information and
16 Filing System and filed and served on all parties
17 appropriately, so you can remind him of that as well. The
18 Commission has no way of knowing what Mr. Vickers is thinking
19 if he's not making appropriate filings before the Commission.

20 MS. GIBONEG: Also, if -- if Staff could
21 mention in their contact with him that the filing of a
22 Complaint does not relieve him of his obligation to pay his
23 current charges, or if that's something you feel that might
24 be appropriate to put in a Show Cause Order, that might be
25 helpful.

1 MR. THOMPSON: Well, Judge, I think
2 Mr. Vickers, since we've already satisfied ourselves, he is a
3 licensed attorney at this time. He was provided a copy of
4 the Commission's practice rules, I think, with the Notice of
5 Complaint that went out. He got a copy of that. I think
6 that he needs to pay Ameren's costs. He didn't appear on the
7 prehearing conference on his own Complaint.

8 JUDGE STEARLEY: All right.

9 MR. THOMPSON: This is not a pro se
10 complainant.

11 JUDGE STEARLEY: That's true.

12 MR. THOMPSON: This is a knowledgeable person.

13 JUDGE STEARLEY: We have somebody a little bit
14 more sophisticated than our usual person who complains at
15 this point.

16 Is counsel suggesting that the Commission
17 authorize general counsel to seek some type of penalty
18 against Mr. Vickers?

19 MR. THOMPSON: I don't think it has to be done
20 in that fashion. I think it's similar to if Mr. Vickers had
21 noticed up a deposition and failed to appear.

22 JUDGE STEARLEY: And you think Commission has
23 authority to order that?

24 MR. THOMPSON: I do.

25 JUDGE STEARLEY: All right. Very well.

1 MS. HART: So does that mean we can unsuspend
2 the charges that are suspended or?

3 MS. GIBONEG: I think he's referring to the
4 costs of --

5 MR. THOMPSON: I'm suggesting that the
6 Commission can order in its Show Cause, they could ask
7 Mr. Vickers to explain why he shouldn't pay the costs
8 incurred by Ameren in having Ms. Giboneg here today and
9 yourself.

10 MS. GIBONEG: In this proceeding.

11 MS. HART: Okay.

12 JUDGE STEARLEY: Okay. And that will be
13 included in that Order.

14 MR. THOMPSON: Thank you, Judge.

15 MS. FRED: And Judge, in my e-mail or my
16 communications with Mr. Vickers, do you want me to mention
17 that the non-payment of this current account balance is not a
18 part of this current case and that he is expected to pay, and
19 if not, he is subject to disconnect?

20 JUDGE STEARLEY: I would think that
21 communication should come from Ameren as opposed to the
22 Commission Staff.

23 MS. HART: Okay.

24 JUDGE STEARLEY: And they're certainly free --

25 MS. FRED: I mean, it's by rule.

1 JUDGE STEARLEY: Okay. If you want to
2 acknowledge, then, if you want to apprise him of that rule,
3 then by all means, go ahead and do so in that communication.

4 MS. FRED: Okay.

5 JUDGE STEARLEY: And Ameren is certainly free
6 to advise him by e-mail or phone as well.

7 MS. GIBONEG: Okay. Thank you.

8 JUDGE STEARLEY: I did try to emphasize in
9 that May 16th Order that we do take these matters seriously
10 at the Commission.

11 MS. FRED: Okay.

12 JUDGE STEARLEY: Is there anything else at
13 this time?

14 MR. THOMPSON: No, Your Honor.

15 MS. GIBONEG: No, Your Honor.

16 JUDGE STEARLEY: All right. Well, I thank you
17 all very much for appearing this morning. And we will go off
18 the record.

19 (End of proceedings.)
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1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI)

) ss:

3 COUNTY OF GASCONADE)

4

5 I, JENNIFER L. LEIBACH, Registered Professional

6 Reporter, Certified Court Reporter, CCR #1108, and Certified

7 Realtime Reporter, the officer before whom the foregoing

8 matter was taken, do hereby certify that the witness/es whose

9 testimony appears in the foregoing matter was duly sworn;

10 that the testimony of said witness/es was taken by me to the

11 best of my ability and thereafter reduced to typewriting

12 under my direction; that I am neither counsel for, related

13 to, nor employed by any of the parties to the action in which

14 this matter was taken, and further that I am not a relative

15 or employee of any attorney or counsel employed by the

16 parties thereto, nor financially or otherwise interested in

17 the outcome of the action.

18

19 _____

20 Court Reporter

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