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STATE OF MISSOURI

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PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

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8

Prehearing Conference

February 11, 2013

9

Jefferson City, Missouri

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Volume 1

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18 (Starting time of hearing: 1:35 p.m.)

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6 TRANSCRIPT OF PROCEEDINGS

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Prehearing Conference

February 11, 2013

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Jefferson City, Missouri

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10 Volume 1

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12 JIMMIE E. SMALL,)

)

13 Complainant,)

)

14 vs.) EC-2012-0058

)

15 UNION ELECTRIC COMPANY d/b/a)

AMEREN MISSOURI,)

16

)

Respondent.)

17

18

19 MICHAEL BUSHMANN, Presiding

SENIOR REGULATORY LAW JUDGE

20

21

REPORTED BY:

22

Ms. Pamela S. Gentry, CCR

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MISSOURI:

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18 ALSO PRESENT:
19 Ms. Cathy Hart, Ameren Missouri (via telephone)
20
21
22
23
24
25

1 (Starting time of hearing: 1:35 p.m.)

2 P R O C E E D I N G S

3 JUDGE BUSHMANN: Today's February 11th, 2012. The
4 time is 1:35 p.m. The Commission has set this time for a
5 discovery conference in the case captioned as Jimmie E.
6 Small, Complainant, versus Ameren Missouri, et al.,
7 Respondent, File No. EC-2012-0050.

8 My name's Michael Bushmann. I'm the Regulatory
9 Law Judge that's been assigned to this matter. Let's
10 begin with counsel making their entries of appearance.

11 Mr. Small, I understand you are representing
12 yourself; is that correct?

13 MR. SMALL: That's correct, your Honor.

14 JUDGE BUSHMANN: And for Ameren Missouri?

15 MS. GIBONEY: For Ameren Missouri, Sarah Giboney
16 from Smith Lewis, 111 South Ninth Street, Columbia,
17 Missouri, 65101.

18 JUDGE BUSHMANN: For Commission Staff?

19 MS. HERNANDEZ: Jennifer Hernandez appearing on
20 behalf of the Staff of the Missouri Public Service
21 Commission. Our address is P.O. Box 360, Jefferson City,
22 Missouri, 65102.

23 MR. BORGMEYER: And, also, for the Missouri
24 Commission Staff, John Borgmeyer.

25 JUDGE BUSHMANN: There's been no one appearing for

1 Public Counsel.

2 Is there anyone else on the phone who has not
3 identified themselves?

4 MS. HART: I'm Cathy Hart, Customer Service
5 Provider for Ameren, 101 Madison, Jefferson City, 65109.

6 JUDGE BUSHMANN: Okay. Thank you.

7 My understanding from what I've been able to tell
8 from the present way the case is set is that there's some
9 disputes regarding discovery, and both parties had
10 indicated a desire to have a conference to try and resolve
11 any discovery disputes.

12 Ms. Giboney, I think you had mentioned that there
13 were some issues that Ameren was having; is that correct?

14 MS. GIBONEY: Well, I'm not sure specifically
15 which ones you're referring to. The most recent issue was
16 we had provided Mr. Small, at his request, an available
17 date for the deposition of Cathy Hart, but we got back a
18 response from him accepting the date for the deposition of
19 two other people that we hadn't provided dates for.

20 MR. BUSHMANN: So, is the issue, then, as far as
21 you know, the issue of depositions?

22 MS. GIBONEY: Well, that would be one issue.
23 There is still continuing discovery that we've objected
24 to. There haven't been any motions for hearing on those
25 objections, but I perceive that Mr. Small takes issue with

1 our objections, so I don't know whether those need to be
2 taken up today or not.

3 JUDGE BUSHMANN: Okay. Mr. Small, what's your
4 understanding of any outstanding disputes that there are
5 between you and Ameren regarding discovery?

6 MR. SMALL: This is -- this is the second case
7 that's been filed raising claims against Ameren Missouri,
8 and we had in this conference room on April the 19th,
9 2011, which I appeared and the Honorable Judge Jordan
10 appeared. Ms. Hernandez appeared. There was another
11 Staff counsel appeared. A Court Reporter appeared, and I
12 appeared pro se. Cathy Hart appeared by telephone, and I
13 think Counsel -- and I'm not sure of the location -- but I
14 think Counsel Ms. Wendy Tatro appeared.

15 Now, out of that proceeding, which was
16 transcribed, I understood it was a prehearing conference,
17 and I'm pro se and this is my maiden flight and I'll admit
18 that there's a lot I don't understand about prehearing
19 conferences and what the Commission intends to accomplish
20 in a prehearing conference, but we give it a pretty good
21 shot on April 11th -- April the 19th, 2011.

22 JUDGE BUSHMANN: Well, how does what happened then
23 relate to any dispute you might have right now?

24 MR. SMALL: Discovery difficulties right then with
25 the same parties. And I'll give you an example.

1 JUDGE BUSHMANN: Well, is there some sort of
2 discovery right now that you're trying to -- trying to do
3 that you're not having success at?

4 MR. SMALL: That's correct, your Honor.

5 JUDGE BUSHMANN: What exactly is it --

6 MR. SMALL: Now, I realized early on that
7 everybody was aware that I was pro se, and I don't think
8 too many people dispute the fact that pro ses are just not
9 people's favorite in court or whatever. If I can hire an
10 attorney early on that was knowledgeable in Missouri
11 Public Service Commission's rule -- rules and regulations,
12 tariff agreement, and how to go about presenting a claim
13 and proving and knows that complaint, I would have already
14 done it. And I've not been successful at getting an
15 attorney to represent me, but I haven't stopped trying.

16 Ameren Missouri has Staff counsel in St. Louis,
17 and they are good ones. Sarah Giboney, she has filed,
18 along with Wendy Tatro, numerous, numerous objections to
19 the Plaintiff's request for production of documents, data
20 requests. And, as we sit right here today in this brand
21 new case, I do not believe that the Commission has proper
22 subject matter jurisdiction over complete record at this
23 point in time if you put both of these cases together.

24 And I went back after these documents, responses
25 to subpoena duces tecums, for example, which was served on

1 Cathy Hart right down the street down here (indicating) on
2 April the 19th, 2011.

3 JUDGE BUSHMANN: Well, what information are you
4 trying to obtain that you're not having -- that you're not
5 able to --

6 MR. SMALL: Well --

7 MS. GIBONEY: Excuse me. This is Sarah Giboney.
8 Could I -- Mr. Small, would you repeat the date you just
9 mentioned?

10 MR. SMALL: I didn't understand her.

11 JUDGE BUSHMANN: Could you repeat the date that
12 you mentioned?

13 MS. GIBONEY: About the subpoena.

14 JUDGE BUSHMANN: Subpoena date.

15 MR. SMALL: I've got -- I've got a copy of it
16 right here before me (indicating), and I'm trying to get
17 some understanding as to when these subpoenas duces tecums
18 are issued. They're not issued, but just everybody --

19 JUDGE BUSHMANN: What was the date of that one?

20 MR. SMALL: Well, the date of it signed by
21 Secretary Reed is the 19th day of April, 2011, but there's
22 other documents that appear to be subpoena duces tecum
23 that appear to change that after I filed it. I just
24 simply don't understand that.

25 Now, we've got a rule that retains (sic) to these

1 subpoena duces tecums. We've had, your Honor, more than a
2 little bit of difficulty since this first subpoena was
3 issued, and the way I understand these Commission orders,
4 they've come down fairly harsh on Mr. Small's repeated
5 request for subpoena duces tecums.

6 Sarah Giboney and other counsel have filed motions
7 to quash subpoenas in which Mr. Small, pro se, was
8 attempting to gain additional discovery in these cases in
9 order to go forward, but he wasn't successful in doing
10 that.

11 JUDGE BUSHMANN: What is it right now that you're
12 trying to get that you haven't been able to?

13 MR. SMALL: Well, the point that I'm trying to
14 make is that, once these records are filed and file-
15 stamped and placed in the Data Center, they need to be
16 maintained there, right or wrong, for everyone to view.

17 JUDGE BUSHMANN: Well, right now, I just want to
18 talk about what information are you trying to discover
19 that you are not having success on? Because there was --

20 MR. SMALL: It would be discovery. It would be
21 discovery in the form of a deposition, because these
22 people appear -- No. 1, they don't want to cooperate with
23 discovery.

24 JUDGE BUSHMANN: Who are you trying to depose?

25 MR. SMALL: Well --

1 JUDGE BUSHMANN: Or who do you want to depose?

2 MR. SMALL: I think it's appropriate to depose
3 this Ms. Cathy Hart who appears to be an expert or
4 supervisor and has been on board since the beginning in
5 these proceedings. That's No. 1. Now, after this
6 subpoena (indicating) was duly served on Cathy Hart, it
7 was returned back to the Data Center. And if you go to
8 these regulations here (indicating), 4C Code of State
9 Regulations 240-2.100, it has to do with subpoenas.

10 Once it's properly served, I think it's
11 appropriate that the Respondent -- I don't care whether an
12 electric company or gas company -- they should respond to
13 it within a time period provided by these established
14 rules and regulations. And I think they did, but they
15 kind of bobbled at how they did it. When I talk about
16 bobbled how they did it because they come up and returned
17 it to the Commission, and I live in Milton, Iowa. That's
18 fine. But, eventually, I got -- received a copy of what
19 they returned to the Commission.

20 And now -- and now there are certain affidavits
21 that was attached to that response for a subpoena duces
22 tecum who's mysteriously been taken out of the Data Center
23 and it can't be found. So, we can go ahead and make all
24 this discovery you want, we can file it, but if these
25 records are not maintained, it's going to be a lot of

1 trouble for the Commission.

2 JUDGE BUSHMANN: Well, I'm not concerned about the
3 way the records are maintained right now. I want to put
4 that aside right now. I'm just trying to figure out what
5 parties or what witnesses do you want to depose.

6 MR. SMALL: Cathy Hart would be one, and the
7 reason is Cathy Hart, from the beginning, she was well
8 informed by the supervisor here, Gay Fred, that Mr. Small
9 is filing an informal complaint and he's asked for a
10 documentation to file a civil complaint. And as I
11 understand it, Cathy Hart became pervasively involved in
12 responding to Gay Fred's request. Give me some
13 information here. What's this about?

14 So, they did. So, Cathy Hart is one of them that
15 I want to depose, because she has made statements
16 supposedly under oath or an affirmation this is the
17 complete record, which is not the complete record.

18 JUDGE BUSHMANN: Are there any other persons you
19 want to depose?

20 MR. SMALL: Yes, your Honor. And Breeze Benton,
21 early on --

22 JUDGE BUSHMANN: Who is that?

23 MR. SMALL: And she was a worker subordinate, as I
24 understand it, to Cathy Hart, which I now understand Ms.
25 Breeze (sic) no longer works for the electric utility.

1 My point is quite simple. The reason I'd like to
2 depose Ms. Hart is because she made decisions concerning
3 this contested account, and so did Breeze Benton.

4 JUDGE BUSHMANN: Ms. Giboney, is there any
5 objection from Ameren about a deposition of Cathy Hart?

6 MS. GIBONEY: There's no objection in general,
7 Judge. We do have -- we would like to, if possible, I
8 guess, see if we could get an order regarding the issues
9 that could be, you know, inquired about in the deposition.
10 And the reason is one of the subpoenas that Mr. Small
11 mentioned that was quashed, the reason that the Judge gave
12 for quashing the subpoena for Cathy Hart was that Mr.
13 Small had indicated specifically that he wanted to depose
14 her about a matter that the Commission had already
15 dismissed from his complaint.

16 So, there is some concern that, while we
17 understand discovery's generally broad, and that's
18 acceptable, there is some concern that Mr. Small is going
19 to inquire into matters that the Commission has expressly
20 said are not matters for this case.

21 JUDGE BUSHMANN: Okay. And what about Breeze
22 Benton, Ms. Giboney?

23 MS. GIBONEY: Well, Breeze is no longer an
24 employee of Ameren Missouri. So, we would not, you know,
25 as a party, be able to bring her as an employee.

1 JUDGE BUSHMANN: Right. Were there any other
2 persons, Mr. Small, that you want to be deposing?

3 MR. SMALL: They are -- they are -- they are
4 unknown but identified.

5 JUDGE BUSHMANN: What do you mean by that?

6 MR. SMALL: There are persons in the Kirksville
7 service office of Union Electric doing business as Ameren
8 Missouri who actually come out and they actually receive
9 as a part of their position service orders, repair orders,
10 connect orders, disconnect orders, and I'm not suggesting
11 that that's Cathy Hart's job or Breeze Benton, but it's
12 somebody's job in Kirksville.

13 And, as you know, your Honor, you can't even get
14 access to this building down here (indicating), Union
15 Electric. Nobody else can, either. The door's closed.
16 It's a secured facility, and that's fine. It's a little
17 bit different now.

18 JUDGE BUSHMANN: So, you haven't identified them
19 yet; is that correct? You haven't identified the
20 individuals?

21 MR. SMALL: I think it's -- I think it's -- I
22 think it's Ms. Sweet or Ms. Sweat, is the manager for the
23 Kirksville cell, and she has given documentation here to
24 me years after these claims have been filed and the
25 objections made, billing disputes. Billing disputes. We

1 got a dispute here.

2 JUDGE BUSHMANN: What's her name?

3 MR. SMALL: Is it Ms. Sweet or Ms. Sweat, Sarah,
4 do you know?

5 MS. GIBONEY: I think we've figured out, Judge,
6 that he's talking about Ms. Sweet, and I don't remember
7 her first name.

8 Cathy, do you recall?

9 MS. HART: Annette.

10 MS. GIBONEY: Annette Sweet, yeah.

11 JUDGE BUSHMANN: Is she a UE Ameren employee?

12 MS. GIBONEY: Cathy, do you know if she's still an
13 Ameren employee?

14 MS. HART: Yes, she is.

15 JUDGE BUSHMANN: And does Ameren have any
16 objection to Mr. Small deposing Ms. Sweet?

17 MS. GIBONEY: Again, not generally, but we would
18 like to ask that she be put parameters on what she would
19 be deposed about, but no, not generally.

20 MR. SMALL: I think everyone agreed early on, your
21 Honor, that we have a service location. It's located in
22 Kirksville, Missouri, it's located at Lot 23, it's located
23 at 23067 Potterville, Kirksville. But we do not want to
24 identify anybody who actually went out and performed these
25 alleged services.

1 We just don't want to identify them. We'll give
2 you the service orders, and there's so much conflicting
3 evidence in here, documentation, that it would defy the
4 most skilled professional experienced Administrative Law
5 Judge to try to separate fact from fiction. Are we
6 talking about Account 0009 or 07018? There's a
7 difference. There is a difference.

8 JUDGE BUSHMANN: Besides these three people, were
9 there any others that you have identified that you want to
10 depose?

11 MR. SMALL: I think it's appropriate for the
12 Missouri Public Service Commission to understand, do these
13 people get any training in what they do?

14 JUDGE BUSHMANN: You're not answering my question,
15 though. I'm asking you if there are any other people
16 besides those three that you want to depose.

17 MR. SMALL: As soon as -- as soon as they're
18 identified -- and they have done an excellent job of
19 keeping their identity in Kirksville -- the people that
20 actually go out and allegedly do these services.

21 JUDGE BUSHMANN: Well, besides the ones that you
22 may identify later, are there any others that you know of
23 today that you would like to depose?

24 MR. SMALL: There -- there are -- there are a
25 number of first and second name individuals that work for

1 Ameren Missouri on certain of these (indicating), on
2 certain of these documents. But if I can make my case
3 deposing three people, then there is really no point in me
4 taking up the Commission's time deposing eight or nine
5 people. That's not what this case is about.

6 JUDGE BUSHMANN: Well, Ameren has said they have
7 no objection to you deposing Cathy Hart and Annette Sweet.
8 Now, they can't produce Breeze Benton because she no
9 longer works for them. So, it's not a person that they
10 can produce. She's not an employee any longer.

11 MR. SMALL: There's somewhere the subpoenas come
12 back in, your Honor, and if we could have done this a year
13 and a half ago and done it correctly and timely, then we
14 wouldn't be here discussing the same matters today.
15 That's my view of it.

16 Now, I spent quite a bit of time, like a week or
17 seven days, in St. Louis some time back, just recently. I
18 went to Consumer Collection Management and I said, Could
19 you give -- share any light on the documentation on the
20 details of this account? They're very professional. But
21 I don't want to take your deposition, we just get an
22 affidavit here that I can show to the appropriate people
23 that make these ultimate decisions, and they were willing
24 to go along with it until we got threatened, your Honor.

25 And, so, after this threat come down, I thought it

1 was inappropriate, because we've been trying to get
2 accuracy of these records since April the 19th of 2011,
3 and we haven't made much progress then. And just recently
4 after these threats were made, the Maryland Heights Police
5 Department went down and investigated these threats,
6 because I know looking at Honorable Judge Bushmann's eyes
7 he's not going to put up with these delays forever. He's
8 just not going to do it, and I don't blame him.

9 But does a pro se from Iowa have to be subjected
10 to threats from the individual that actually transfers
11 these account records to Consumer Collection Management
12 (indicating), and we've got the documentation and dates to
13 show that. Now, Sarah Giboney, she didn't know that,
14 maybe, until now.

15 So, after they went and investigated these
16 threats, said, Oh, we wasn't (sic) going to hurt anybody.
17 Well, there isn't any crime here. Oh, really? Why don't
18 you -- why don't you get Judge Bushmann on the telephone
19 and you tell him the same thing that you told the lady
20 down at Consumer Collection Management and you see if your
21 Honor thinks that he might possibly preceive (sic) that as
22 being a threat when all he wants to do is just discover
23 the facts. Well, you can't do that. Why not? Because
24 Ameren Missouri down there in St. Louis is not going to
25 let you.

1 And we didn't get no affidavit, your Honor, and I
2 turned around and scheduled depositions, attempted to
3 schedule depositions.

4 JUDGE BUSHMANN: Well, it sounds like you have
5 consent from Ameren to depose at least two of these three
6 people, and that sounds like that can be worked out. If
7 you can agree on a date, and Ameren's requesting that
8 there be some discussion about the limits of the subject
9 matter.

10 MR. SMALL: They have since been charged, Ameren
11 -- Ameren Missouri has since been charged with retaliation
12 and interference with these proceedings with the Missouri
13 Human Rights Commission.

14 JUDGE BUSHMANN: Okay. Well, that doesn't have
15 anything to do with what I'm doing here today.

16 MR. SMALL: I just -- I just thought your Honor
17 might like to know that we're going forward with
18 discovery, okay, and they have been charged before. Okay.

19 JUDGE BUSHMANN: I said that doesn't have anything
20 to do with what we're doing here today.

21 MR. SMALL: Yeah.

22 JUDGE BUSHMANN: Right now what we're trying to do
23 is resolve differences.

24 MR. SMALL: Uh-huh.

25 JUDGE BUSHMANN: And trying to come to an

1 agreement about things, not to argue about things that are
2 happening outside of this hearing.

3 MR. SMALL: Uh-huh. So, the individual that made
4 the threats -- Sarah Giboney, she knows exactly who that
5 is, she knows his position, and already tried to schedule
6 the deposition down in St. Louis, okay, and that didn't
7 work out because we're going to do that, your Honor,
8 today. We were going to do that today. Then I receive
9 word that my motions had been denied, my motion to change
10 a judge had been denied, which I don't have a copy of it
11 yet.

12 Uh, I'm going to file a motion to quash a bunch of
13 these incomplete records, including a bunch of orders that
14 appear on the face to be incomplete. I was going to go
15 ahead and file that tomorrow because I don't have it in,
16 completed yet today, along with the exhibits that I'm
17 talking about that goes back to discovery, requests for
18 production.

19 JUDGE BUSHMANN: Okay. So, you're talking now
20 about some discovery requests that you made of Ameren that
21 they objected to; is that correct?

22 MR. SMALL: Oh, absolutely, your Honor.

23 JUDGE BUSHMANN: Okay. I have not seen those, so
24 I'm not able to do any --

25 MR. SMALL: Yeah. Yeah. And I thought it was

1 just to be best to put this in a motion to where I could
2 attach and say this is the first exhibit that I'm talking
3 about.

4 JUDGE BUSHMANN: The proper procedure would be to
5 file a motion to compel them to comply with your
6 discovery.

7 MR. SMALL: Well, see, your Honor, I've already
8 done that, and that didn't work.

9 JUDGE BUSHMANN: Well, sir, if you have some
10 particular -- you mean these have already been ruled on in
11 the past or is this something new that you filed?

12 MR. SMALL: Well, there's orders -- there's orders
13 here (indicating), and I received several orders over the
14 last couple, two or three years, from the Commission.

15 JUDGE BUSHMANN: Well, is this something in
16 addition to what's already been decided on or is this
17 something that's already -- that happened some time ago
18 and has already been ruled on? Is this something new?

19 MR. SMALL: Well, here's, for example, just one of
20 them (indicating), and I've been --

21 JUDGE BUSHMANN: I just want to know if this is
22 something the Commission's already made a ruling on or is
23 this something new that's just come up recently?

24 MR. SMALL: This relates to, basically, incomplete
25 records that are being maintained by the Commission, and

1 they're saying, Well, we give you a notice here, and I'm
2 saying, Well, normally, the Commission puts a seal on
3 these orders and it puts a certification on it.

4 But they pick and choose when they do that, and
5 I'm not suggesting your Honor did that because you've got
6 other things to do. But some of these pages do that, and
7 I'm saying on repeated occasions I received these
8 (indicating) orders that are in improper form.

9 JUDGE BUSHMANN: Well, I don't want to talk about
10 the form of the orders. That's something really not
11 important to deal with here today.

12 Ms. Giboney, let me jump in here with you. Are
13 you familiar with this discovery request that Mr. Small's
14 talking about?

15 MS. GIBONEY: Judge, as far as I know, there are
16 no data requests or, under the Civil Rules, no requests
17 for production or requests to admit or interrogatories.
18 There are none of those that Ameren has not responded to
19 timely.

20 There were a number of those to which we made
21 objections. There was only one set to which Mr. Small
22 filed a motion to compel, and the Commission eventually --
23 let's see -- ordered. This is back in February of 2012,
24 that is a request to which we objected, did not appear
25 reasonably calculated to lead to admissible evidence. So,

1 our clear objections were sustained.

2 There were subsequent discovery to that, but
3 nothing that Mr. Small has ever filed a motion to compel
4 about, so nothing that's ever been ruled on by the
5 Commission. Does that help?

6 JUDGE BUSHMANN: Okay. Yeah, somewhat. So -- but
7 there is -- he has filed some discovery requests recently
8 that you filed objections to?

9 MS. GIBONEY: That's true.

10 JUDGE BUSHMANN: Okay.

11 MS. GIBONEY: And, generally speaking, if you look
12 at the individual discovery requests -- but, generally
13 speaking, we have, you know, admitted things we could
14 admit to and denied what we need to deny and then made
15 objections where we felt objections. So, the responses
16 are usually not just, you know, objections with no
17 response. There's a response where we can respond.

18 JUDGE BUSHMANN: Okay.

19 Well, Mr. Small, you're free to file a motion to
20 compel if these discovery requests that you have sent and
21 had objections sent to you, if you want to file a motion
22 to compel them to answer, you can do that. And, so,
23 you're free to do that right now, or whenever you would
24 like.

25 MR. SMALL: I've got one for example here

1 (indicating), your Honor.

2 JUDGE BUSHMANN: But I haven't seen them, so I
3 don't want to make a ruling on anything that I haven't had
4 a chance to review. So, I suggest that if you want to ask
5 for the Commission to compel answers that you do that in
6 writing.

7 MR. SMALL: Well, I don't have any problem doing
8 that, your Honor.

9 JUDGE BUSHMANN: Okay.

10 MS. HERNANDEZ: And, Judge, he would need to
11 include specific reference to which discovery it was; is
12 that correct?

13 JUDGE BUSHMANN: Well, yeah, he would have to
14 specify which requests were objected to so that I would
15 have some basis of reference.

16 MR. SMALL: I've got one here (indicating), just
17 four or five pages here, Ameren Missouri objections of
18 complaints and requests for admission. Looks in proper
19 form until you get right down to the signature page.
20 Sarah Giboney's signature appears on one page, and Wendy
21 Tatro appears on the other, and there isn't one shred of a
22 certificate of service on it. And they've done this with
23 numerous documents, and so hasn't the Commission -- and
24 they have cautioned me, You keep this up and we could
25 dismiss your complaint if you don't attach a certificate

1 of service to it.

2 So, I'm saying they have a time period to respond
3 to these requests to admit, they're different from
4 requests for production of documents. Some of them are
5 different from interrogatories to Ameren UE. Now, I don't
6 have any problem with those rules, just as long as if I
7 have to follow them I want Ameren Missouri's counsel to
8 follow them.

9 JUDGE BUSHMANN: Well, if there's some outstanding
10 discovery requests that they've objected to that you
11 disagree with, then I would suggest that you put your
12 complaints in writing and send them in as a motion to
13 compel.

14 MR. SMALL: I don't mind that -- I don't mind that
15 at all.

16 JUDGE BUSHMAN: Okay.

17 MR. SMALL: What I don't want to do is kick the
18 can down the road and file a motion to compel here and you
19 go back and says, Yeah, he's right, attach a certificate
20 of service, this is six or eight months later and go ahead
21 and file on Mr. Small and it will be all right, when I'm
22 faced with April the 12th formal hearing on this.

23 Your Honor, with all due respect, we ain't gonna
24 be here. We're going ba -- we're going to be in Appellate
25 Court, because we have spent hours and hours and hours of

1 time on on this and I think these rules mean what they say
2 and we have to go back to this 10-day rule (indicating).
3 And if they had 10 days to respond to this (indicating)
4 subpoena duces tecum, then I want them to go on record and
5 explain to the Administrative Law Judge Honorable Bushmann
6 where is it.

7 JUDGE BUSHMANN: Okay. Well --

8 MR. SMALL: Where is it?

9 JUDGE BUSHMANN: -- why don't you put your
10 arguments in a written form and I can review them at that
11 point.

12 MR. SMALL: Where is it? Sarah Giboney is not
13 paid to work in the Data Center, and neither are you, your
14 Honor. But once those records get down to the Data Center
15 and they get file stamps on them, I think it's appropriate
16 that's exactly where they be maintained and retained,
17 right or wrong.

18 MS. HERNANDEZ: Can I mention something about the
19 subpoena that Mr. Small keeps referencing?

20 JUDGE BUSHMANN: Go ahead.

21 MS. HERNANDEZ: I believe -- I don't have a copy
22 in front of me, but the return was to Ameren, was to
23 return those documents under that subpoena to this
24 building on whatever particular date was listed in that
25 subpoena, which they did. I was not there. I did -- I

1 believe Kevin Thompson who works in the Staff Counsel's
2 office was here to receive those documents, because Mr.
3 Small was not here to receive the documents. We retained
4 the documents for Mr. Small until he came to pick them up.

5 What he has is what we were given. We turned over
6 everything that was given to us by Ameren Missouri to Mr.
7 Small.

8 JUDGE BUSHMANN: Okay. Thanks for clearing that
9 up.

10 MS. HERNANDEZ: So, it never made it to -- I don't
11 believe it was supposed to make it to the Data Center. It
12 was to be delivered to Mr. Small. Since Mr. Small was not
13 here on that date, we retained the documents and gave them
14 to him when he did appear.

15 MR. SMALL: So, if I understand you correctly, Mr.
16 Hernandez (sic) never retained any file stamp at the Data
17 Center?

18 MS. HERNANDEZ: No, because you requested that
19 they return to this room whatever date was received on
20 that subpoena. Since you were not here to receive those
21 documents, we retained them, we held on to them until they
22 could be sent to you.

23 MR. SMALL: You didn't have to be privy to the
24 meeting between me and Lewis Mills, Public Counsel and
25 your boss, up in the cafeteria at some time later? When

1 we got into this discussion, pretty direct discussion over
2 am I entitled to have the documents and response to
3 Ameren's response to the subpoena duces tecum, and your
4 boss got a little upset but he went and got it. He went
5 and got it.

6 And this is a prehearing conference, so we're not
7 going to prove anything today, but if your Honor ever
8 asked me to produce it, I'm going to produce it, because
9 your boss left the cafeteria up there and went and got a
10 copy of it and gave it to me. You know what was in there?
11 It was a return of this subpoena duces tecum (indicating),
12 along with an attached affidavit of the woman who come in
13 from St. Louis and delivered it here to the Data Center.

14 And she didn't deliver it to your boss, she
15 delivered it down to the Data Center, and that's the
16 reason they put a file stamp on it. Now it's been
17 destroyed, apparently. So, we got bits and pieces of it
18 here, and I'm not going to prove it today because this is
19 a prehearing conference, it's not an evidentiary hearing.
20 But, eventually, this gentleman right here (indicating) is
21 going to want to know what else of the records have been
22 destroyed here?

23 Are we going to go in and file these affidavits
24 that your Honor here (indicating) has assisted me in
25 getting in the future? Pay for them?

1 JUDGE BUSHMANN: Okay. Mr. Small, let's go back
2 on the topic here which is trying to resolve discovery
3 disputes.

4 MR. SMALL: This (indicating) is discovery. This
5 (indicating) is discovery, your Honor.

6 JUDGE BUSHMANN: Well --

7 MR. SMALL: An affidavit filed in the Missouri
8 Public Service Commission, that's not discovery?

9 JUDGE BUSHMANN: Let talk about the substance of
10 what you're trying to get at. Okay? So, you have people
11 that you would like to depose. Ameren's agreed to produce
12 two of those; and, also, we have the outstanding discovery
13 requests that you're going to file a motion to compel
14 answers to those that you want.

15 Is there anything else that we need to take care
16 of today regarding discovery besides those things?

17 MR. SMALL: I'd like for the Data Center to get
18 this EQ -- EC-2011-00247 file together, get it together,
19 and then -- and then -- and then just certify it, because
20 this subpoena duces tecum (indicating) was properly
21 endorsed by the Commission Secretary and was properly
22 returned, and there's some issues that are going to be
23 raised about that.

24 MS. GIBONEY: Judge, if I could ask for
25 clarification.

1 Mr. Small, are you saying that you're going to
2 raise issues about discovery in the prior case, the 2011
3 case, in this case?

4 MR. SMALL: As I recall, Ms. Giboney, when -- when
5 -- when the latest Commission order came down and they
6 denied certain things and they granted Mr. Small an
7 opportunity to amend his complaint and they gave you 'til
8 November the 28th or 29th, 2012, to respond to it, which
9 you did.

10 Now, I understand that this EQ or EC-2011-0247
11 case has been closed, but you turn around and opened the
12 door and stuck your foot into it by incorporating matters
13 in this 0247 case in your answer. Now, we go back to the
14 subpoena duces tecum thing and it goes back to discovery,
15 and it goes back to admissible evidence as to what the
16 facts are in this disputed case when it was disputed, who
17 knew it was disputed. So --

18 JUDGE BUSHMANN: Mr. Small --

19 MR. SMALL: -- you went and filed an answer.

20 JUDGE BUSHMANN: -- you're losing me here. You're
21 losing me. You're getting a little bit far afield from
22 what the issues in the case are.

23 MR. SMALL: She filed an answer -- Sarah Giboney
24 did and Wendy Tatro, okay -- and entered an amended
25 answer, three or four pages long. There are repeated

1 entries that are just left blank when it comes right down
2 to how many, what account dollars are you talking about
3 here, just left blank. It's just absolutely left blank.

4 JUDGE BUSHMANN: You're talking about the prior
5 case that you had filed --

6 MR. SMALL: No. I'm talking about EC -- I'm
7 talking about EC-2012-00050 (sic) when --

8 JUDGE BUSHMANN: Ms. Giboney, was there references
9 in your answer to the prior case, do you remember?

10 MS. GIBONEY: I don't remember. I could pull it
11 up right now. I guess I understand that some of the facts
12 that he's arguing came up in both cases, but I don't -- I
13 don't understand his condition that somehow we've obtained
14 every issue or pleading or discovery matter from the prior
15 case into this one.

16 MR. SMALL: When you say it's incorporated hereby
17 by preference (sic), what do you expect the Honorable
18 Judge Bushmann to make of that? When you say it's
19 incorporated hereby by preference, what is he supposed to
20 make of that?

21 MS. GIBONEY: Judge, I'm happy to pull that up.

22 JUDGE BUSHMANN: Well, Ms. Giboney does raise a
23 point, and that is that we have two issues to determine at
24 the hearing on March 12th. The two issues were identified
25 in the order that was sent out back in October, I believe.

1 There are facts involved in those issues that might --
2 might have occurred in both cases.

3 So, for discovery requests that you're trying to
4 make, you can ask to discover facts that relate to those
5 two issues. So, I'm having trouble understanding how the
6 importance of documents that might have been filed in a
7 prior case that's no longer an open case has any relevance
8 to the facts of the issues that are going to be heard on
9 the 12th.

10 MR. SMALL: Well, if I was an Administrative Law
11 Judge and somebody filed a motion for summary disposition
12 and used inconsistent statement after inconsistent
13 statement after inconsistent statement, I want to prevail
14 on that. I would expect to get ruled against because you
15 can't use inconsistent statement after inconsistent
16 statement after inconsistent statement to present a
17 genuine issue. So says the United States Supreme Court,
18 and there are inconsistent statements after inconsistent
19 statements after inconsistent statements that are going to
20 be marked exhibits and presented for your Honor,
21 disposition on that going back to EC-2011-247 when Breeze
22 Benton signed I swear to these facts. These are the
23 records right here (indicating), and she signs it.

24 JUDGE BUSHMANN: And you're saying that was in the
25 prior case?

1 MS. GIBONEY: Judge --

2 MR. SMALL: And then her signature mysteriously
3 disappears. Well, it was a data request and she put a
4 date on it April 27th, April 27th, that's why.

5 JUDGE BUSHMANN: Do you have those documents?

6 MR. SMALL: Oh, absolutely, your Honor.

7 JUDGE BUSHMANN: So, there are no questions about
8 you having them? You have the documents?

9 MR. SMALL: Except they don't have their signature
10 on it. It says these data requests, you can sign them --
11 well, that would be sworn to -- that you shall sign it.
12 Okay.

13 JUDGE BUSHMANN: So, what is it you're trying to
14 get? What is it you're asking?

15 MR. SMALL: It was a data request -- it was a data
16 request concerning these account records, and they were
17 given, like, 20 days to respond to it under a data request
18 rule.

19 JUDGE BUSHMANN: Did you get a response?

20 MS. GIBONEY: Judge, may I ask what the date of
21 the data request was?

22 JUDGE BUSHMANN: What was the date of the data
23 request?

24 MR. SMALL: The response by Breeze Benton was
25 merged into -- was merged into --

1 MS. GIBONEY: I guess what I'm asking is what's
2 the date of the data request that Mr. Small is referring
3 to.

4 MR. SMALL: Well, the response here by Cathy Hart,
5 prepared by Cathy Hart titled Supervisor, Customer
6 Contract Center, PSC inquiry is dated April 26th, 2011.
7 Then you go on down a little further in this same packet
8 of information which was attached to -- amended to
9 Ameren's response to Mr. Small's April the 19th, 2011,
10 subpoena duces tecum.

11 MS. GIBONEY: Okay.

12 MR. SMALL: It was attached to it.

13 MS. GIBONEY: So, this was something -- okay.

14 So, I think, Judge -- correct me, Mr. Small, if
15 you think I'm wrong -- I think what he's referring to is,
16 I think, information that Cathy Hart provided to the
17 Consumer Services as part of their notification there was
18 an informal complaint. And, then, once this became a
19 formal complaint and Mr. Small asked for certain
20 information through data requests, we simply gave him a
21 copy of that communication.

22 I still don't understand what his point is about
23 the dates, but I think that's the kind of documents he's
24 talking about, that's how it first was created and that's
25 how we used it in response to a data request. But, again,

1 I don't understand what he's saying about the dates.

2 JUDGE BUSHMANN: And Ameren did refer that
3 information to response?

4 MS. GIBONEY: I don't know if he's talking about
5 actual data request. I'd like to know if he's saying he
6 made a data request and that's what we provided.

7 MR. SMALL: Ms. Giboney, the reason I was
8 referring to it as data request is because I'm reading
9 Ameren's Response to Data Request. That's why I'm calling
10 it a data request.

11 MS. GIBONEY: What's the date, Mr. Small?

12 MR. SMALL: And the date says prepared by Breeze
13 Benton, titled Customer Service Representative, dated
14 April 27th, 2011.

15 MS. GIBONEY: So, this is in the prior case, just
16 to clarify?

17 JUDGE BUSHMANN: Is this in the prior case?

18 MR. SMALL: Yes. Yes, it is. But it's going to
19 the November the 14th, 2007, time period.

20 JUDGE BUSHMANN: You have the document. What is
21 it you're now trying to get?

22 MR. SMALL: I'm trying to get clarification as to
23 why I have to sign my documents and I have to follow these
24 orders and they don't.

25 JUDGE BUSHMANN: Well, sir, I don't want to argue

1 about whether or not they've signed something. I'm trying
2 to figure out what information you're trying to get. What
3 facts or information are you trying to obtain relating to
4 that?

5 MR. SMALL: Well, I'd have to go back and read my
6 data request because my data request was different --
7 different date, and the data requests is different from a
8 subpoena duces tecum rule. You have a different time
9 period to respond to it. Under subpoena duces tecum,
10 you've got 10 days to respond, and under request for
11 documents, you've got, like, 20 or 30 days.

12 And my point is really simple. When -- when does
13 the limitations period begin to run on these responses
14 when, No. 1, we look them up, here they are, but nobody
15 signed it. It's not on a docket sheet. There isn't any
16 certificate of service filed by anybody.

17 MS. GIBONEY: Judge, it appears to me that he sent
18 a data request and it was received -- I don't know why --
19 it was received by the Commission April 5th; I don't think
20 we received it until April 8th. We responded to it, I
21 think we sent our response out on the 28th. It might have
22 been prepared by Ms. Benton on the 28th. That's 20 days.
23 I believe that's the time period for responding; but, in
24 either event, as Mr. Small's indicated, he received the
25 responses to the data request.

1 JUDGE BUSHMANN: Apparently so. All right.

2 Well, we seem to be getting bogged down here in
3 things that happened two years ago. What I'm trying to
4 figure out is what we need to do now to get to the hearing
5 on March 12th. It sounds like, Ms. Giboney, that you're
6 willing to provide the two persons for deposition, Cathy
7 Hart and Annette Sweet, and I will say that, Mr. Small,
8 that Ms. Giboney is wanting some assurance that we're
9 going to stay with the issues that are in the order, the
10 two issues that are -- we're going to be discussing at the
11 hearing.

12 MR. SMALL: Well, you've dropped off and bobtailed
13 off the discrimination aspects of it.

14 JUDGE BUSHMANN: No.

15 MR. SMALL: It was in an order.

16 JUDGE BUSHMANN: No. That is caught up in --
17 well, you had alleged that there was a violation of the
18 cold weather rule, and that was -- that was -- the
19 Commission rule that Ameren violated. That's what you've
20 been alleged last fall when I allowed you to amend your
21 complaint to include that specific reference to that
22 citation, because you said that they violated the cold
23 weather rule. So, that's --

24 MR. SMALL: I think that's what the evidence
25 shows.

1 JUDGE BUSHMANN: Okay.

2 MR. SMALL: I think that's what the evidence will
3 show.

4 JUDGE BUSHMANN: And the other issue is about
5 falsification of documents. So, I think Ameren is wanting
6 some assurance that that is the two issues that you're
7 depositing their witnesses on and not on some other issue
8 that's not related to those which are not relevant to the
9 issue we're going to be having a hearing on on the 12th.

10 MR. SMALL: If you lock individuals in on these
11 issues, I'm just saying --

12 MS. GIBONEY: Could you repeat that? I'm sorry.
13 I didn't understand.

14 MR. SMALL: If you lock -- if you lock a complaint
15 in on two issues; thereafter, you're just stuck with those
16 two issues and Union Electric or the utility can come back
17 and take retaliatory action against an individual
18 complainant. There isn't anything you can do about it.
19 There's nothing you can do about it. Those are locked
20 into the two issues.

21 JUDGE BUSHMANN: It's the issues you filed a
22 complaint about it. That's your complaint. That's what
23 you provided --

24 MR. SMALL: Exactly.

25 JUDGE BUSHMANN: Those are the ones we're going to

1 be limiting -- those are the ones we're limiting the
2 hearing to and discovery. You can discover things that
3 are reasonably calculated to lead to admissible evidence,
4 and admissible evidence in this case would be things that
5 are relevant to those two issues.

6 MR. SMALL: Mr. Horn going to be available for
7 deposition? The one that's made decisions here about
8 transferring accounts to Consumer Collection Management?
9 Yes, no?

10 JUDGE BUSHMANN: I'm sorry. Who is Mr. Horn?

11 MR. SMALL: He's indirectly the main supervisor,
12 the main honcho in St. Louis for Ameren Missouri who says
13 these accounts right here (indicating) are going to be
14 transferred from this office to Consumer Collection
15 Management, or some other collection agencies, and these
16 accounts right here (indicating) will not be.

17 JUDGE BUSHMANN: Is that an Ameren employee, Ms.
18 Giboney?

19 MS. GIBONEY: Judge, yes. Michael Horn is an
20 Ameren employee. I don't see how Mr. Horn's involvement
21 with collection agencies has anything to do with the two
22 issues that are before the Commission in this complaint.
23 And, so, we would object to him being deposed.

24 I believe Mr. Small wants to depose him about
25 recent -- I mean less than two-week-old communications, I

1 think. That has nothing to do with the facts that he
2 issues and relies on in his complaint.

3 JUDGE BUSHMANN: What's the purpose of your
4 deposition of Mr. Horn, and how is that relevant to the
5 issues in the case?

6 MR. SMALL: It's relevant because, if I was a
7 utility like Ameren Missouri is, your electricity was shut
8 off at your residence, your Honor, and you didn't want
9 electricity at that location because you never even lived
10 there, how could you prevent me from going on your
11 property, switching an account number from 7009 and making
12 7018 and then allegedly turn your electricity on and let
13 it run for four months, then document on paper to all I
14 shut it off. You never even requested it to be turned on.

15 If you don't pay this bill, your Honor, I'm going
16 to turn it over to a collection agency, I'll destroy bad
17 credit in you, and that's exactly what the evidence in
18 this record shows. And Ameren knew it then, and this is
19 not an isolated case.

20 JUDGE BUSHMANN: Well, how does Mr. Horn's
21 testimony --

22 MR. SMALL: How did Mr. Horn? Because he's the
23 one that's transferring these (indicating) alleged account
24 numbers to Consumer Collection Management and scaring
25 people into paying a bill. Like a financial extortion,

1 exploitation, when no money is due.

2 JUDGE BUSHMANN: That's not an issue in this case.

3 MR. SMALL: That's not an issue in this case?

4 JUDGE BUSHMANN: No. Your complaint alleged
5 improper disconnection because of the cold weather rule
6 during 2006 and 2008.

7 MR. SMALL: Now we've locked it in it's a
8 disconnect issue and not a reconnect issue.

9 JUDGE BUSHMANN: Because that's --

10 MR. SMALL: How's falsification of records come
11 in?

12 JUDGE BUSHMANN: Exactly. You alleged that.
13 That's something you alleged in your complaint that they
14 had falsified your records.

15 MR. SMALL: And I don't think the falsification of
16 records should be stopped -- be stopped right at the
17 disconnect issue.

18 JUDGE BUSHMANN: Well, what records are you
19 talking about then?

20 MR. SMALL: What?

21 JUDGE BUSHMANN: What records are you talking
22 about?

23 MR. SMALL: The reconnect. The alleged reconnect
24 where you go out and says, You phoned us. Really?

25 JUDGE BUSHMANN: Okay.

1 Ms. Giboney, do you have any response to that?

2 MS. GIBONEY: I guess I'm really at a loss for
3 what -- what he's trying to say falsification issue.

4 MR. SMALL: Sarah Giboney --

5 JUDGE BUSHMANN: How does Mr. Horn -- how does Mr.
6 Horn, anything that he might know, have anything to do
7 with what you're alleging? How would his testimony be
8 relevant?

9 MR. SMALL: He -- he -- Mr. Horn -- Mr. Horn
10 received information from the Green Hills office in
11 Kirksville, didn't he? Well, that information come from
12 someone that, after December the 19th or the 20th, 2007,
13 went to Mr. Small's property at his request through a
14 phone call? And we turned that electricity on at that
15 specific location. In between December the 19th, 2007,
16 until April 14th, 2008, he burned 9740 kilowatts. Oh,
17 really? And he lives in Milton, Iowa, paying the lion's
18 use for the electricity bill when there was an admitted
19 dispute over a bill, and Consumer Collection Management
20 has the account records that that bill is disputed.

21 What on earth would you want to go turn your
22 electricity on when you're disputing the bill? Nobody
23 lives there and hasn't lived there for years. Why would
24 you want to turn it on? There is no electricity there,
25 the water is shut off, there is no phone service, and who

1 else knows that? About everybody in Kirksville. Every --
2 anybody that wants to know in Kirksville who is living
3 there will tell you, and there's going to be numerous
4 witnesses like the landlord, Adair County Sheriff's
5 Department who photographed the electric meter.

6 JUDGE BUSHMANN: Okay. Mr. Horn is in St. Louis;
7 is that correct?

8 MR. SMALL: He's in St. Louis, and where does he
9 get these records? He gets these records out of
10 Kirksville, Missouri, and I've been there asking --

11 JUDGE BUSHMANN: Ms. Giboney, did you have
12 something you want to say?

13 MS. GIBONEY: I was going to let you know Mr.
14 Horn, I believe, is still the supervisor for Credit
15 Records. And he doesn't have any direct involvement with
16 the Kirksville office. I don't think he's had any direct
17 involvement with Mr. Small's accounts at all. He had a
18 recent communication about it from a collection agency,
19 but there's absolutely no indication that he knows
20 anything relevant to Mr. Small's issues that are in
21 dispute, and there's no indication that, you know -- that
22 he's been involved.

23 JUDGE BUSHMANN: Okay. Well, my -- it sounds to
24 me that, at least at this point, based on what I know at
25 this point, Mr. Horn's involvement in the case is too

1 remote to be considered relevant.

2 Now, Mr. Small, you can send in, if you want, to
3 Ameren some sort of request for admission or
4 interrogatories to try and kind of flesh that out and
5 establish that link there; and, if you do, I might change
6 my mind. At this point, it sounds like his testimony --

7 MR. SMALL: I've got his emails here, your Honor,
8 that I can submit today from Michael Horn, Consumer
9 Collection Management threatening -- threatening Consumer
10 Collection Management, You do not give him an affidavit.
11 We fired you. We fired Consumer Collection Management.

12 JUDGE BUSHMANN: Okay. That's not something to do
13 with the issues in your case.

14 MR. SMALL: Pardon me?

15 JUDGE BUSHMANN: That's not something to do with
16 the issues in your case, something between Ameren and some
17 collection agency. So, that seems to me too remote to be
18 relevant unless I see something more than that.

19 So, I would -- I would sustain their objection to
20 depose Mr. Horn. But we do have the other two people that
21 were based on, what I understand, involved Cathy Hart and
22 Annette Sweet, and you're willing -- you're certainly able
23 to take their testimony and Ameren is not going to oppose
24 that.

25 MR. SMALL: Mrs. Sweat that manages the office up

1 there in Kirksville, I'm not going to be allowed to depose
2 her?

3 JUDGE BUSHMANN: No. I just said you can.

4 MR. SMALL: I can. So, there is three of them,
5 and then through --

6 JUDGE BUSHMANN: You have the -- Breeze Benton is
7 no longer an employee, so they can't produce her.

8 MR. SMALL: But I can subpoena and I can go out
9 and have the Sheriff look and serve her.

10 JUDGE BUSHMANN: I would sign that subpoena.

11 MR. SMALL: Excuse me?

12 JUDGE BUSHMANN: I would sign that subpoena.

13 MR. SMALL: Yeah.

14 JUDGE BUSHMANN: If you want to try and find her
15 yourself.

16 MR. SMALL: If they want to understand, Ameren
17 Missouri and their counsel and their chief executive
18 officers and their admissions that this is not the end of
19 Mr. Small's claims, and Missouri Public Service Commission
20 and they could resolve a lot right here before the
21 Commission, then they won't be a defendant in State court
22 cases either in Iowa or Missouri, and they won't be
23 defendants in a Federal court case, because I've already
24 been told here, We're not going to -- We're not going to
25 address any Constitutional claims here, Mr. Small.

1 JUDGE BUSHMANN: You're exactly right, and you're
2 free to file whatever you want in State court or in
3 Federal court, but that doesn't have anything to do --

4 MR. SMALL: I think once that occurs --

5 JUDGE BUSHMANN: That doesn't have anything to do
6 with what happens in the Commission and doesn't have
7 anything to do with what we're here for today. I'm trying
8 now to resolve discovery disputes in this action and not
9 anything that might occur later in any jurisdiction.

10 So, it sounds like we have -- Ms. Giboney, are you
11 clear on what we're doing at this point --

12 MS. GIBONEY: Yes.

13 JUDGE BUSHMANN: -- as far as the depositions --

14 MS. GIBONEY: We need to find available dates for
15 Ms. Hart and Ms. Sweet and dates that will work for Mr.
16 Small.

17 JUDGE BUSHMANN: Correct.

18 MS. GIBONEY: His understanding was those
19 witnesses are not available on dates, but I think we can
20 find some available dates. We would probably still
21 request either that they be able to be deposed by
22 telephone, which I know is not his preference, but in the
23 absence of that, then at the Wainwright Building in St.
24 Louis.

25 MR. SMALL: Oh, I've already -- we've already

1 tried that. You go down there, You're not deposing
2 anybody in this building, no.

3 JUDGE BUSHMANN: Sir, you can make a reservation
4 at the Wainwright Building. The Commission, they have
5 offices there.

6 MR. SMALL: I found that out. I found that out.

7 JUDGE BUSHMANN: If you want to have a conference
8 room --

9 MR. SMALL: What's wrong with an available date
10 right here in Jefferson City? What's wrong with that?

11 MS. GIBONEY: Judge, to be honest, we're not
12 comfortable with that.

13 MR. SMALL: We're not comfortable with it.

14 JUDGE BUSHMANN: I can make arrangements for a
15 room to be available at the Wainwright Building, but you
16 need to make a request through the Commission.

17 MR. SMALL: We can't make it available here to
18 where we've got closer access to the records one block
19 down the street (indicating)? That's my objection there.
20 They have no records. You're not going to get into any
21 records down in St. Louis. They've got records, service
22 records, right here in Cathy Hart's office.

23 MS. GIBONEY: Judge, I don't believe we'll be
24 getting up in the middle of the deposition to go look up
25 records anyway.

1 JUDGE BUSHMANN: That's true.

2 MR. SMALL: But a subpoena duces tecum for records
3 that they can bring them along, then if they don't,
4 there's going to be another objection which they haven't
5 done. They haven't produced their records in the past, I
6 don't think they're going to produce them in the future,
7 and I don't think they're going to honor a subpoena duces
8 tecum in the future any more than they have in the past,
9 your Honor, and that's my objection.

10 MS. GIBONEY: Judge, we have responded to his
11 prior subpoena duces tecum. As Mrs. Hernandez pointed
12 out, we brought the basis to the Commission as a basis.
13 It's true, we might have objections depending on what the
14 subpoena duces tecum asks us to produce. But we have been
15 compliant, and I would just like to state that for the
16 record.

17 JUDGE BUSHMANN: It sounds like there's not a
18 necessity for a subpoena involving Cathy Hart and Annette
19 Sweet unless you're not able to resolve it among
20 yourselves, which I hope that you will be able to, and
21 have a mutually agreeable place that you can depose those
22 parties. If you want a subpoena for Breeze Benton, you
23 can ask that one be provided to you and I will sign that.

24 MR. SMALL: We can take care of that today, then I
25 would have it. I don't know about the dates. It looks to

1 me like we're approaching the middle of of February and
2 we're going to have less than 30 days to make arrangements
3 to depose three witnesses.

4 JUDGE BUSHMANN: Right. That would need to happen
5 fairly quickly.

6 MR. SMALL: Yeah.

7 MS. GIBONEY: Judge, could I ask about one more
8 discovery matter?

9 JUDGE BUSHMANN: Yes.

10 MS. GIBONEY: I believe in other cases there's
11 been discovery deadline dates after which all discovery is
12 expected to be completed. I think it might be helpful in
13 this case to have discovery deadlines.

14 JUDGE BUSHMANN: Do we not have one?

15 MS. GIBONEY: I don't believe so. We had one
16 previously. When the case was originally set to be heard
17 back in June, we had one.

18 JUDGE BUSHMANN: Okay. Well, that makes some
19 sense.

20 Mr. Small, do you have any objection to having a
21 discovery cutoff at some point prior to the hearing? For
22 instance, I'm just thinking March 1st. Does that sound
23 reasonable? That's almost two weeks before the hearing.
24 Gives parties a chance to prepare their cases.

25 MR. SMALL: I don't -- I don't think -- I don't

1 think two weeks -- I don't think two weeks is going to be
2 sufficient time to contact a reporter (sic) that doesn't
3 want to appear anyway.

4 JUDGE BUSHMANN: I'm not saying -- I'm saying that
5 would be the last date that you could make a new discovery
6 request.

7 MR. SMALL: What date?

8 JUDGE BUSHMANN: March 1st, just for --

9 MR. SMALL: I don't think the date of March 12th
10 is realistic at all, your Honor, with what I'm getting
11 prepared to file.

12 JUDGE BUSHMANN: I think we're going to have the
13 hearing on March 12th. I haven't seen any reason to delay
14 it at this point. The case has been going on for 18
15 months. It's time to have a hearing again and get
16 resolution.

17 MR. SMALL: Regardless of the state of the
18 discovery, and that's the objection.

19 JUDGE BUSHMANN: Well, we still have about a month
20 to take care of that. So, more than a month.

21 MR. SMALL: Uh-huh. Yeah.

22 JUDGE BUSHMANN: And March 1st sound okay for you,
23 Ms. Giboney?

24 MS. GIBONEY: Yes. That sounds fine. Thank you.

25 MR. SMALL: Do you have the order there where this

1 motion for a change of judge was denied?

2 JUDGE BUSHMANN: That was issued last week.

3 MR. SMALL: Excuse me?

4 JUDGE BUSHMANN: That was issued last week.

5 MR. SMALL: Yeah. I haven't received any copy of
6 it yet.

7 JUDGE BUSHMANN: It was probably mailed to your
8 Iowa address.

9 MR. SMALL: Uh-huh.

10 JUDGE BUSHMANN: Anything else that we need to
11 take up at this time? Ms. Giboney, anything further?

12 MS. GIBONEY: Nothing further, your Honor.

13 JUDGE BUSHMANN: Ms. Hernandez, do you have
14 anything you want to bring up?

15 MS. HERNANDEZ: No. Thank you.

16 JUDGE BUSHMANN: Mr. Borgmeyer?

17 MR. BORGMEYER: No.

18 JUDGE BUSHMANN: Mr. Small, anything further?

19 MR. SMALL: What about these incomplete issue
20 record? You say no, we're not -- we're not considering
21 that now?

22 JUDGE BUSHMANN: You haven't made -- you haven't
23 made any requests from me about something that you're not
24 able to obtain, so I don't understand what you'd be asking
25 for at this point.

1 MR. SMALL: Well, I'll follow up with this motion
2 to compel. I'll follow up with this motion to compel, and
3 I want to take a look at that change of judge order which
4 I understand was denied, and I want to take a look at
5 that. Okay? And I don't -- I don't think -- I don't
6 think that these orders that has been raised, made here in
7 the last year or so, are based on a complete
8 administrative record at the time these administrative
9 decisions were made.

10 JUDGE BUSHMANN: Well, now's not the time to go
11 back and dispute orders that were issued over a year ago.

12 MR. SMALL: Well actually -- actually, a motion to
13 quash these documents that are incomplete -- some of them
14 have got certificates of service on them, some of them not
15 -- I think that is appropriate to motion to quash them
16 because they happened over a repeated period of time and
17 looks to me like the rules and regulations here are not
18 being complied with, nor are they being enforced. I don't
19 think they've been interpreted, from what I hear from your
20 Honor, that it's, uh, complete records here, you need to
21 have a complete administrative record at the time you made
22 these decisions, so says United Streets Supreme Court.

23 MS. GIBONEY: Judge, can I ask a clarifying
24 question?

25 Mr. Small, when you say incomplete records, are

1 you just referring to your belief that certificates of
2 service haven't always been attached when they should be?
3 Is that what you mean by incomplete records?

4 MR. SMALL: Well --

5 MS. GIBONEY: That's all I'm asking.

6 MR. SMALL: You want to speak?

7 JUDGE BUSHMANN: She just wanted to know if you're
8 referring to certificates of service when you talk about
9 incomplete records.

10 MR. SMALL: Well, I think that would be one
11 element of it, if a document is recorded to be filed and
12 served on everyone and you're going to abide by Rule
13 43.01, Subpart D, then it's required to have a certificate
14 of service attached to it. Not file one for efis and then
15 bobtail it off and send a pro se complainant up in Iowa
16 something different.

17 And I think that's happened on repeated occasions,
18 and I'm going to object to that because the Commission's
19 admonished me for not having a certificate of service in
20 the past. They threatened to dismiss my complaint because
21 I didn't comply with an order in timely --

22 JUDGE BUSHMANN: Well, that occurred a long time
23 ago. If you have anything --

24 MR. SMALL: That long time ago.

25 JUDGE BUSHMANN: -- that you want to put in

1 writing and address to the Commission, you can do that.

2 MR. SMALL: Yeah. Well, I've got -- I've got a
3 16-page motion to quash there, and there's probably 15 of
4 these that are just hooked together (indicating), and it's
5 same parties, same dispute, same Missouri Public Service
6 Commission, and I think I can show you here in these
7 orders (indicating) orders to where there's just been as
8 much rule violation by the Commission as there has been by
9 the utility company based on what they served on me.

10 I'm talking taking --

11 JUDGE BUSHMANN: We're getting away from discovery
12 disputes again.

13 So, is there anything else you need to bring up
14 today about discovery that we haven't already talked
15 about?

16 MS. GIBONEY: Mr. Small -- I guess one thing,
17 Judge -- I would appreciate it if you would let me know a
18 contact number for you, cell phone number, so I can
19 communicate about available dates.

20 MR. SMALL: We haven't gotten along on that
21 telephone very well now. We tried out in St. Louis, and I
22 thought we had something settled with regard to available
23 dates to depose certain people there in St. Louis for
24 Consumer Collection Management.

25 MS. GIBONEY: Mr. Small, are you telling me --

1 JUDGE BUSHMANN: Do you have a telephone number
2 that you can be contacted --

3 MR. SMALL: It doesn't have to go on the
4 transcript, too?

5 JUDGE BUSHMANN: We can do it off the record.

6 MS. GIBONEY: We would appreciate it so we can
7 communicate. If we communicate in writing and you don't
8 receive your mail on a regular basis, we won't be able to
9 finally schedule these depositions.

10 JUDGE BUSHMANN: We can do that once we're off the
11 record.

12 Anything further, sir?

13 MR. SMALL: I don't think now, your Honor, other
14 than these Mr. Horn emails (indicating), faxes, that show
15 that he was pervasively involved in it and it involved
16 discovery. That wouldn't be relevant. Well, I don't know
17 whether -- I don't know when it would be relevant, and
18 we're talking about the exact same thing.

19 And I don't care where Mr. Horn is located, in St.
20 Louis or Kirksville or Jefferson City, he's pervasively
21 involved in attempting to collect money on an account
22 that's not due and they know that it's not due, Consumer
23 Collection Management says that it's not due in writing,
24 and the way I understand the Commission saying, Well, at
25 this point in time it's not relevant.

1 JUDGE BUSHMANN: Well, before we close, I just
2 want to clear up one thing.

3 Ms. Giboney, am I correct there's been a lot of --
4 there's been a lot of paper exchanged about collection
5 attempts. Is it correct that, at this point, Ameren is
6 not trying to collect any money at all from Mr. Small, or
7 is there?

8 MS. GIBONEY: Ameren is not making any attempts to
9 collect any money.

10 JUDGE BUSHMANN: All right.

11 MR. SMALL: Under what circumstances? Would
12 Ameren Missouri -

13 JUDGE BUSHMANN: Mr. Small, you often talk about
14 Ameren trying to collect money from you, but it seems at
15 this point they're not trying to collect any money from
16 you.

17 MS. GIBONEY: I'm not aware of any --

18 MR. SMALL: You're telling me you're claiming \$846
19 is due but you don't want to collect it, right?

20 MS. GIBONEY: Judge, I don't know. I can't tell
21 you whether or not there's a collection agency currently
22 involved, but I can tell you that Ameren's not making any
23 efforts, that I'm aware of, to collect any funds.

24 JUDGE BUSHMANN: To collect any funds.

25 MS. GIBONEY: And if I find out differently, I

1 will let you know.

2 JUDGE BUSHMANN: All right. I was trying to clear
3 that up because -- since there was a lot of discussion
4 about that. And that's not even an issue for this
5 hearing. All right.

6 So, there we are. And you're going to file your
7 motion, you're going to talk to Ms. Giboney about the
8 deposition schedule, and if you need to contact me about
9 something that comes up after this, you can do that by
10 telephone. I would suggest that if you have anything that
11 needs to be brought up between now and the hearing that
12 you contact me by phone first, we'll see if we can work
13 that out informally. If not, we can always go back and
14 have another discovery conference, although I would prefer
15 not doing that.

16 If there's nothing further, then we're off the
17 record.

18 (Whereupon, the record ended at 2:40 p.m.)

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1 C E R T I F I C A T E

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3 STATE OF MISSOURI)
) ss.

4 COUNTY OF COLE)

5 I, Pamela S. Gentry, Certified Court
6 Reporter with the firm of Midwest Litigation Services, do
7 hereby certify that I was personally present at the
8 proceedings had in the above-entitled cause at the time
9 and place set forth in the caption sheet thereof; that I
10 then and there took down in Stenotype the proceedings had;
11 and that the foregoing is a full, true and correct
12 transcript of such Stenotype notes so made at such time
13 and place.

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Pamela S. Gentry, CCR #426

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