

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

Craig Mershon,)	
)	
Complainant,)	
)	
vs.)	File No. EC-2013-0521
)	
Union Electric Company d/b/a Ameren Missouri)	
)	
Respondent.)	

**ORDER SUSTAINING OBJECTIONS TO
DOCUMENT PRODUCTION REQUESTS**

Issue Date: February 19, 2014

Effective Date: February 19, 2014

The Missouri Public Service Commission is sustaining the objections to the *First Set of Documents for a Motion to Produce and Documents from Union Electric Company or Ameren Missouri*¹ (“document production requests”) of Craig Mershon.

I. Background

Mr. Mershon initiated this action by filing a complaint² later supplemented,³ against Union Electric Company d/b/a Ameren Missouri (“Ameren”). The statutes provide that a complaint determines whether Ameren committed a “violation, of any provision of law, or of any rule or order or decision of the commission[.]”⁴ Mr. Mershon alleges that Ameren

¹ Electronic Filing and Information System (“EFIS”) No. 87 filed on February 13. All dates are in 2014 except as otherwise stated.

² EFIS No. 1 *Complaint* filed on June 13, 2013.

³ EFIS No. 27, *Petition* filed on September 24, 2013.

⁴ Section 386.480, RSMo 2000.

overbills, refuses payment from, disrespectfully treats, threatens with disconnection, and otherwise persecutes Mr. Mershon and certain groups of customers.

The Commission's regulations provide discovery before the Commission subject to the law governing discovery in civil actions in circuit court.⁵ That law addresses the scope of discovery,⁶ and provides for document production requests.⁷

On February 13, Mr. Mershon filed⁸ the document production requests, which are attached to this order. The document production requests are in three parts: an introductory explanation, Do[c]uments from the Public Service Commission ("document production requests to Staff"),⁹ and Documents from Union Electric Company [d/b/a] Ameren Missouri ("document production requests to Ameren").

Also on February 13, Staff sent its objections to the document production requests ("Staff's objections") to Mr. Mershon by email, later copied to the RLJ by email (Staff objection email). Staff objected to all 20 of the document production requests directed to Staff on several grounds and offered no compliance.

On February 14, 2014, Ameren filed a certificate of service for *Ameren Missouri's Objections and Responses to Complainant's First Set of Documents for a Motion to Produce*

⁵ 4 CSR 240-2.090(1).

⁶ Rule 56.01. All citations to rules refer to the 2013 Missouri Supreme Court rules.

⁷ Rule 58.01.

⁸ The date of service is unclear from the record.

⁹ Staff objects that it is unclear whether any document production requests apply to Staff, particularly those headed Do[c]uments from the Public Service Commission. At the conference, Mr. Mershon clarified that he was directing those document production requests to Staff. The context of other filings in this action supports that characterization.

(*Request for Production of Documents*)¹⁰ (“Ameren’s objections”). Ameren objected to all 26 of the document production requests directed to Ameren, offered compliance with all production requests directed to Ameren except nos. 9, 17, 18, and 21-26.

Also on February 14, 2014, Mr. Mershon attempted to contact Ameren, for a discussion of Ameren’s objections to Mr. Mershon’s document production requests. Mr. Mershon contacted the Regulatory Law Judge (“RLJ”) assigned to this action and informed him that the attempt was unsuccessful. The RLJ’s office also attempted to convene a telephone conference with all parties, but that effort was also unsuccessful.

Mr. Mershon thus met the Commission’s requirements for informal attempts at discovery dispute resolution.¹¹ Because the evidentiary hearing on the merits of Mr. Mershon’s complaint is scheduled for February 27, and desiring to resolve discovery issues expeditiously, the Commission waived any requirement of a written motion from Mr. Mershon. On February 19, the Commission convened a discovery conference to address Ameren’s objections and Staff’s objections (“the objections”).

II. Objections

The objections raise multiple theories, as to multiple document production requests, with multiple overlaps. In the interest of an expeditious ruling, the Commission discusses only the objections that are dispositive of all document production requests. The absence of discussion related to any other objection does not constitute an overruling of that objection.

¹⁰ EFIS No. 88, *Certificate of Service* filed on February 13.

¹¹ 4 CSR 240-2.090(8)(A) and (B).

A. Timing of Service was not Prejudicial

The objections argue that Mr. Mershon did not serve counsel with the document production requests, and filed his document production requests with the Commission six days after the deadline for service that the Commission ordered¹² on Mr. Mershon's suggestion,¹³ just one day before the deadline for serving objections.¹⁴ Mr. Mershon claims that he complied with the Commission's order regarding methods of filing.¹⁵ The Commission need not resolve that dispute because the timely objections of Ameren and Staff, and the rulings in this order, show that any untimely service resulted in no prejudice to Ameren and Staff. Therefore, the Commission will rule on objections that are related to the substance of the document production requests.

B. Requests are Overbroad

The objections argue that the document production requests are overbroad, that is, they seek things that document production requests cannot obtain under the rule governing the scope of document production requests:

a) Scope. Any party may serve on any other party a request to:

(1) Produce and permit the party making the request . . . to inspect and copy any designated documents . . . that constitute or contain matters within the scope of Rule 56.01(b) and that are in the possession, custody or control of the party upon whom the request is served [. ¹⁶]

¹² EFIS No. 84, *Order Amending Procedural Schedule* issued on January 30, page 2, ordered paragraph 2.

¹³ EFIS No. 78, *Motion of Objection for Notice of Hearing Order Resetting Procedural Schedule, and Order to File Response* filed on January 30, fourth page.

¹⁴ EFIS No. 84, *Order Amending Procedural Schedule* issued on January 30, page 2, ordered paragraph 2.

¹⁵ EFIS No. 60, *Post-Conference Order* issued on November 14, 2013, page 3.

¹⁶ Rule 58.01.

Two parts of that rule are applicable to the objections: the scope of discovery generally under Rule 56.01(b), and designated documents specifically.

Ameren cites the standard specifically for document production requests and notes that the document production requests to Ameren nos. 9, 17, 18, and 21-26 designate no document in Ameren's possession, custody or control. Instead, those document production requests seeks "A list" of "customer service representatives [,]"¹⁷ "reasons why [,]"¹⁸ and "steps the company plans to take in improving"¹⁹ the "Customer Service Department"²⁰ and various "relationship[s.]"²¹ On their face, document production requests to Ameren nos. 9, 17, 18, and 21-26 do not seek any designated documents that are in the possession, custody or control of Ameren. Document production requests to Ameren nos. 9, 17, 18, and 21-26 ask Ameren to compile a report, which compliance with a document production request does not require. Therefore, the Commission will sustain Ameren's objections.

Staff cites the general standard for discovery and argues that the document production requests are not relevant to, and not reasonably calculated to lead to the discovery of admissible evidence on, the complaint. Staff cites Rule 56.01(b):

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or

¹⁷ Document production requests to Ameren no. 9.

¹⁸ Document production requests to Ameren nos. 17 and 18.

¹⁹ Document production requests to Ameren no. 21.

²⁰ Document production requests to Ameren nos. 22-26

²¹ Document production requests to Ameren nos. 9, 17, 18, and 21-26

defense of the party seeking discovery or to the claim or defense of any other party[.] It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The party seeking discovery shall bear the burden of establishing relevance. [²²]

At the conference, Mr. Mershon stated that all document production requests are limited to his case only, but the plain language of the complaint, as supplemented, and the document production requests to Staff refute Mr. Mershon's argument.

Each document production request to Staff seeks "All documents pertaining to" various topics without limitation to Ameren, Mr. Mershon's account, any period of time, or the customer groups described in his complaint.²³ Such document production requests are beyond the scope of discovery:

[One party]'s need for such a vast amount of irrelevant information is super[s]eded by the need to not oppress and unduly burden [the other party] in sorting through and compiling information on every document, of any nature, relating to a third party faxing an advertisement on its behalf. *See Upjohn Co.*, 829 S.W.2d at 85 (stating "the need for discovery is to be balanced against the burden and intrusiveness involved in furnishing the information"); *see also Anheuser*, 692 S.W.2d at 328 (stating that it is the duty of trial judges to ensure that pre-trial discovery does not amount to a "war of paper"). [²⁴]

Further, the introductory explanation expands the scope of the document production requests and does not narrow them. The document production requests to Staff are overbroad. Therefore, the Commission will sustain Staff's objections.

²² Rule 56.01.

²³ Except document production requests to Staff nos. 4, 5, 6, 7, and 20, which are subject to the other defects described.

²⁴ *State ex rel. Coffman Grp., L.L.C. v. Sweeney*, 219 S.W.3d 763, 768 (Mo. App., S.D. 2005).

III. Ruling

Ameren has complied with two-thirds of the document production requests to Ameren. The document production requests to which Ameren and Staff objected are overbroad. Therefore, the Commission will sustain the objections and will convene the evidentiary hearing on the merits of the complaint as scheduled.

THE COMMISSION ORDERS THAT:

1. The objections to the *First Set of Documents for A Motion to Produce and Documents from Union Electric Company or Ameren Missouri* of Craig Mershon (“document production requests”) are sustained.
2. Staff’s objections to the document production requests are sustained.
3. This order is effective immediately upon issuance.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Daniel Jordan, Senior Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 19th day of February, 2014.