

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

City of Fulton, Hannibal Board of Public Works,	)	
Kirkwood Electric, City of Marceline, and City	)	
of New Madrid,	)	
	)	
Complainants,	)	
	)	File No. EC-2026-0156
v.	)	
	)	
Union Electric Company, d/b/a Ameren Missouri,	)	
	)	
Respondent.	)	

RESPONDENT AMEREN MISSOURI’S APPLICATION FOR LIMITED REHEARING

COMES NOW Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri”), pursuant to § 386.500, RSMo., and respectfully requests limited rehearing¹ of the Commission’s August 5, 2026 *Order Granting Summary Determination on the Pleadings* (“Order”).

Ameren Missouri does not challenge the Commission’s dismissal of the Complaint or its substantive conclusions, both of which are correct. Rather, Ameren Missouri seeks limited rehearing to clarify the procedural basis for the Commission’s summary disposition of the Complaint on the pleadings under either subsection (1) (Summary Determination) or (2) (Determination on the Pleadings) of 20 CSR 4240-2.117 or, alternatively, to reconsider the Order to the extent it denies as procedurally deficient Ameren Missouri’s request that summary determination be granted in its favor under subsection (1) of 20 CSR 4240-2.117.

¹ Section 386.500 permits rehearing as to a particular matter determined in an order without reopening the order in its entirety. *State ex rel. Capital City Water Co. v. Pub. Serv. Comm’n*, 850 S.W.2d 903, 912 (Mo. App. W.D. 1993) (recognizing that rehearing may be granted “on the order in its entirety or on any matter contained in the order” and that an order on rehearing does not affect portions of the original order not abrogated, changed, or modified).

I. The Commission should grant limited rehearing to clarify the procedural basis for its disposition on the pleadings.

The Commission correctly dismissed the Complaint after concluding that the two remaining issues in this case² presented a question of law that could be resolved without further factual development. After interpreting the tariff and its 1971 Order, the Commission resolved the remaining legal question whether the Complaint could be maintained. The Municipalities' Application for Rehearing³ nevertheless challenges the procedural basis for the Order, asserting that Ameren Missouri neither moved for nor argued for disposition on the pleadings.⁴ Ameren Missouri disagrees. Limited rehearing would permit the Commission to make explicit what the Order and the record already establish: disposition (determination) on the pleadings was properly before the Commission and was authorized by Rule 20 CSR 4240-2.117(2).

First, disposition on the pleadings was expressly placed before the Commission by the Municipalities' own motion. *They* moved for a determination on the pleadings under Rule 2.117(2), or alternatively for summary determination under Rule 2.117(1).⁵ Ameren Missouri opposed that motion and sought disposition in its own favor. Ameren Missouri's filing expressly recognized that Rule 2.117 permits disposition either by determination on the pleadings or by summary determination and explained that, because the material facts were undisputed and the remaining issues presented questions of law, the standards were "in substance, the same for

² Based on the Commission's *Order Limiting Complaint to Issues Within the Commission's Authority to Determine and Limiting Discovery*. [EFIS Item No. 22].

³ The Company only references Complainants' Application for Rehearing on this one point, as it is germane to the Company's limited rehearing request. The Company will otherwise respond to Complainants' Application for Rehearing in due course, under 20 CSR 4240-2.080(13).

⁴ The applicable rule calls for a determination (as opposed to a disposition) on the pleadings (subsection (2)) but substantively they are the same thing. Ameren Missouri suggests that the Commission clarify as much in a limited order on rehearing.

⁵ *Complainants' Motion for Determination on the Pleadings or, in the Alternative, Summary Determination, Statements of Undisputed Material Facts and Memorandum in Support* at 1, 17 [EFIS Item No. 14].

purposes of this case.”⁶ Ameren Missouri therefore did not ask the Commission to decide a different factual dispute or inject a new issue into the proceeding. It asked the Commission to resolve against the Municipalities the *same* issues the Municipalities had placed before the Commission for disposition.

Second, Rule 2.117(2) independently authorized the Commission to dispose of the issues on the pleadings. The rule provides that the Commission may, “on its own motion or on the motion of a party, dispose of all or any part of a case on the pleadings whenever such disposition is not otherwise contrary to law or to the public interest.” 20 CSR 4240-2.117(2). Thus, the Commission’s authority to dispose of the remaining issues on the pleadings did not depend upon Ameren Missouri filing a separately denominated motion for determination on the pleadings.

Missouri law governing judgment on the pleadings is consistent with that procedure. Judgment on the pleadings is appropriate when “the question before the court is strictly one of law.” *Eaton v. Mallinckrodt, Inc.*, 224 S.W.3d 596, 599 (Mo. banc 2007). That standard was satisfied here. The Commission concluded that the remaining dispute presented a “pure question of law,” *Order* at 13, and resolved the parties’ competing interpretations of the tariff and the 1971 Order and ruled that based on its interpretations of the same, the Complaint failed as a matter of law.

The bottom line is that the Commission did not grant Ameren Missouri’s request for summary determination under Rule 2.117(1), which it found procedurally deficient. But the Commission independently had authority to dispose of the case on the pleadings under Rule 2.117(2). Moreover, Ameren Missouri did not limit its request for summary disposition to subsection (1). Its filing was denominated a “Cross-Motion for Summary Disposition,” requested

⁶ *Respondent Ameren Missouri’s Opposition to Complainants’ Motion for Determination on the Pleadings or, in the Alternative, Summary Determination and Cross-Motion for Summary Disposition* at 3 [Item No. 23].

“summary disposition in favor of the Company,” and explained that the Complaint was subject to summary disposition under either subsection because, for purposes of this case, the applicable standards were the same. Limited rehearing would permit the Commission to make that procedural basis explicit without disturbing its substantive determinations or dismissal of the Complaint.

II. Alternatively, the Commission should grant limited rehearing and reconsider its denial of Ameren Missouri’s request for summary determination.

A. Ameren Missouri’s failure to attach a separate legal memorandum did not require denial of summary determination.

Commission Rule 20 CSR 4240-2.117 governs summary determination before the Commission and expressly provides for disposition “in the nature of summary judgment.” Consistent with that purpose, the Commission has recognized that summary determination under Rule 2.117 is analogous to summary judgment under Missouri Supreme Court Rule 74.04 and that Missouri cases interpreting Rule 74.04 are helpful in interpreting the Commission’s rule. *R & S Home Builders, Inc. v. KCP&L Greater Missouri Operations Co.*, File No. EC-2014-0343, 2015 WL 1394444, at *3 (Mo. P.S.C. Mar. 19, 2015). Indeed, the Commission has explained that “summary determination is similar to summary judgment under Missouri Supreme Court Rule 74.04, but is *less formal and technical*.” *Id.* (emphasis added). Accordingly, Missouri decisions addressing the consequences of noncompliance with Rule 74.04 demonstrate that Ameren Missouri’s failure to attach a separate legal memorandum did not, standing alone, require denial of summary determination in its favor. Consequently, even if the Commission concludes that it could not properly dismiss the Complaint through a determination on the pleadings, it nevertheless had authority to—and should have—granted summary determination in Ameren

Missouri's favor despite the procedural deficiency resulting from the absence of a separate legal memorandum.

This is because Missouri courts recognize that not every failure to comply with Rule 74.04 requires denial of summary judgment. *Rodgers v. Threlkeld*, 22 S.W.3d 706, 710–11 (Mo. App. W.D. 1999). In *Rodgers*, the Western District rejected an absolute or *per se* rule precluding summary judgment for noncompliance with Rule 74.04(c)(1). The court explained that the underlying purpose of the rule is to apprise the opposing party and the court of the specific basis for the movant's claim of entitlement to summary judgment. *Id.* at 711. Thus, when the issues are clear to the parties and to the court from the motion, failure to strictly comply with Rule 74.04 does not *per se* preclude summary judgment. *Id.*

The Western District reaffirmed that principle in *Premier Golf Missouri, LLC v. Staley Land Co.*, 282 S.W.3d 866, 872 (Mo. App. W.D. 2009). Relying on *Rodgers* and *Gillespie v. Estate of McPherson*, 159 S.W.3d 466, 470 (Mo. App. E.D. 2005), the court recognized that procedural noncompliance does not preclude summary judgment when the issues are clear, the material facts are undisputed, and the question presented is one of law. *Premier Golf*, 282 S.W.3d at 872.

Of particular significance here, *Gillespie* applies those principles to the *same procedural requirement* at issue in this case. Rule 74.04(c)(1) required the movant to file a separate legal memorandum explaining why summary judgment should be granted. *Gillespie*, 159 S.W.3d at 470. The movant instead filed its motion and supporting memorandum as a single document. *Id.* The Eastern District nevertheless concluded that the failure to file the memorandum separately

did not preclude summary judgment where the issues were clear to the litigants and the trial court. *Id.*⁷

The circumstances identified in *Rodgers*, *Premier Golf*, and *Gillespie* are precisely the circumstances present here. Ameren Missouri's failure to attach a separate legal memorandum did not prevent either the Municipalities or the Commission from identifying the factual and legal bases for its request for summary determination. The Commission's own Order establishes that the issues raised by that request were clear, the material facts were undisputed, and that disposition of the Complaint turned on the Commission's resolution of what the tariff and the 1971 order meant. Once the Commission decided the meaning of the tariff and 1971 order, the question was: could the Complaint be sustained as a matter of law? The Commission properly ruled it could not.

First, the legal basis for Ameren Missouri's cross-motion was clear. The Commission described the cross-motion as "merely the converse" of the Municipalities' motion for summary determination.⁸ *Order* at 4. It further found that Ameren Missouri admitted each of the Municipalities' undisputed facts, identified two additional undisputed facts, and "addresses each of the Municipalities' arguments." *Order* at 5. Although Ameren Missouri did not attach a separate legal memorandum, the legal arguments supporting summary determination in Ameren Missouri's favor were fully presented in its memorandum opposing the Municipalities' motion. The Commission thus recognized that Ameren Missouri was not presenting a different factual record or an unanticipated legal theory; it was asking the Commission to resolve against the

⁷ Although the movant in *Gillespie* later cured the deficiency, the court first concluded that the failure to file the memorandum separately did not preclude summary judgment. *Gillespie*, 159 S.W.3d at 470.

⁸ The Commission expressly recognized that Ameren Missouri's Cross-Motion was both a request for summary determination and a request for determination on the pleadings, noting that it was "in *part* a cross-motion for summary determination." *Order* at 4 (emphasis added).

Municipalities the same legal questions the Municipalities had presented for summary determination.⁹

Second, the material facts necessary to decide whether summary determination should be granted in Ameren Missouri's favor were undisputed. The Commission found that "[t]here are only a few relevant facts necessary for the Commission to decide the two issues in this case by summary determination, and those facts are undisputed." *Order* at 5. After identifying those facts, the Commission again found that they "are the facts necessary to determine the issues in this case." *Order* at 6. Thus, the procedural deficiency did not require the Commission to search the record to identify the material facts or determine whether those facts were disputed.

Third, the dispositive issue presented by the Company's request for summary determination was a question of law. After considering the parties' competing interpretations of the tariff and the 1971 Order, the Commission concluded that "there is no genuine dispute of material fact" and that the dispute presented a "pure question of law appropriate for summary disposition." *Order* at 13. These are precisely the circumstances the Western District identified in *Premier Golf*—the issues were clear, the material facts were undisputed, and the questions presented were questions of law. 282 S.W.3d at 872.

Accordingly, the absence of a separate memorandum did not frustrate the purpose identified in *Rodgers*. Requiring Ameren Missouri to repeat in a separate memorandum the legal arguments and authorities already before the Commission would have provided no additional notice to either the Commission or the Municipalities of the basis for the cross-motion.

⁹ The separate memorandum requirement ensures that the Commission need not itself identify the undisputed material facts, research the applicable law, or locate supporting authorities. That purpose was fully served here.

The text of Rule 2.117(1)(E) reinforces that conclusion. In determining whether summary determination is appropriate, the Commission considers the “pleadings, testimony, discovery, affidavits, and memoranda on file” and determines whether “*any party* is entitled to relief as a matter of law.” 20 CSR 4240-2.117(1)(E) (emphasis added). Ameren Missouri’s legal analysis was contained in a memorandum on file and was actually considered by the Commission. Requiring the same analysis to appear in a separately attached memorandum would elevate form over the function the requirement serves.

B. *Hanna* and the Commission decisions applying it do not require a different result.

The Commission relied on *Hanna v. Darr*, 154 S.W.3d 2, 5 (Mo. App. E.D. 2004), in concluding that Ameren Missouri’s cross-motion was legally deficient. *Order* at 8. But *Hanna* involved materially different deficiencies. The motion there failed to state the legal basis for summary judgment, identify the uncontroverted material facts in separately numbered paragraphs, or provide the required record references. *Hanna*, 154 S.W.3d at 5. The court held that those deficiencies impeded proper appellate review, and the motion failed to establish entitlement to judgment as a matter of law. *Id.* at 5–6.

In a recent case, the Western District distinguished the deficiencies in *Hanna* from alleged noncompliance with other procedural requirements of Rule 74.04. In *El-Halawany v. Children’s Mercy Hospital*, 717 S.W.3d 758, 766 (Mo. App. W.D. 2025), the court explained that *Hanna* involved failure to comply with the “substantive terms” of Rule 74.04(c)—specifically, the requirements governing the presentation of uncontroverted material facts and supporting record references. *Id.* The court rejected an argument for reversal based on alleged noncompliance with different *procedural* requirements—serving an electronic copy of the statement of uncontroverted material facts and identifying the means of electronic service—and

affirmed the summary judgment. *Id.* That distinction is important here. Ameren Missouri admitted each undisputed fact, supplied two additional undisputed facts, and addressed each of the Municipalities' arguments. The Commission found no genuine dispute of material fact. Unlike the motion at issue in *Hanna*, Ameren Missouri's request for summary determination was substantively sufficient; its only deficiency was the procedural failure to present its legal argument in a separate memorandum.

The Commission's prior decisions applying *Hanna* are distinguishable for the same reason. In *Staff of the Missouri Public Service Commission v. I-70 Mobile City, Inc.*, File No. WC-2022-0295, 2023 WL 8645376, at *4 (Mo. P.S.C. Dec. 7, 2023), the movant failed to comply with the requirements governing the presentation of the material facts and failed to present sufficient facts to establish entitlement to judgment as a matter of law. In *In re Lake Region Water & Sewer Co.*, File Nos. WR-2013-0461 *et al.*, 2013 WL 6971024, at *2 (Mo. P.S.C. Dec. 18, 2013), the movant sought relief having the effect of partial summary determination in a *rate case* but under Rule 2.117, summary determination is not available in a rate case at all. Neither decision involved a motion in which the movant had fully complied with the substantive provisions of Rule 2.117, where the material facts and legal arguments and authorities were properly before the Commission, and the only deficiency was the technical, procedural failure to attach a *separate* legal memorandum.

Hanna and the Commission decisions relying upon it therefore do not support treating Ameren Missouri's purely procedural failure to attach a separate legal memorandum as a bar to summary determination. The Commission's own findings establish that the material facts were undisputed, the legal issues and authorities were fully presented, and the disposition of the case rested on a pure question of law. Accordingly, if the Commission determines that the clarification

requested in Point I does not sufficiently address the Municipalities' procedural challenge, it should grant limited rehearing, reconsider its denial of Ameren Missouri's request for summary determination, and grant summary determination in Ameren Missouri's favor.

WHEREFORE, Ameren Missouri respectfully requests that the Commission grant this Application for Limited Rehearing and modify its August 5, 2026 Order to clarify that its disposition on the pleadings was authorized by Rule 20 CSR 4240-2.117(2), or, alternatively, reconsider its denial of Ameren Missouri's request for summary determination, modify the Order to grant summary determination in Ameren Missouri's favor, and grant such other and further relief as the Commission deems just and appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on the attorneys for Missouri Public Power, the Staff of the Commission, and the Office of the Public Counsel via electronic mail (e-mail) on this 3rd day of September, 2026.

/s/ James B. Lowery
Attorney for Respondent