

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 15th day of
March, 2007.

In the Matter of Union Electric Company d/b/a)	
AmerenUE's Tariffs Increasing Rates for Electric)	<u>Case No. ER-2007-0002</u>
Service Provided to Customers in the Company's)	Tariff No. YE-2007-0007
Missouri Service Area)	

**ORDER REGARDING PUBLIC COUNSEL'S MOTION TO COMPEL
DISCOVERY**

Issue Date: March 15, 2007

Effective Date: March 15, 2007

On March 9, 2007, the Office of the Public Counsel filed a motion asking the Commission to compel Union Electric Company d/b/a AmerenUE to comply with multiple data requests that Public Counsel served on AmerenUE over the last several months. Since the hearing of this matter began on March 12, Public Counsel asks the Commission to expedite its consideration of the motion to compel so as to require AmerenUE to fully and completely comply with Public Counsel's data requests by 5:00 p.m. on March 16. Subsequently, Public Counsel filed an amendment to its motion to compel on March 12.

At the hearing, on March 12, the presiding officer ordered AmerenUE to respond to Public Counsel's motion to compel by no later than 8:00 a.m. on March 13. AmerenUE filed a timely response. Public Counsel filed a second amendment to its motion to compel on March 14. In that amendment, Public Counsel indicated that AmerenUE has fully complied with several of the data requests that it had sought to enforce. As a result, Public Counsel withdrew its request to compel a response to those data requests.

Public Counsel contends that AmerenUE has failed to respond to two groups of data requests. Public Counsel indicates that the first group of data requests – DR Nos. 2005, 2118HC, 2119HC, 2142HC, 2170HC, 2171HC, 2181, 2184, and 2187 – relate to a purchased power contract between AmerenUE and an affiliated company, EEInc. Public Counsel asked AmerenUE for information about the process by which AmerenUE decided not to seek renewal of a cost-based electricity supply contract with EEInc. Public Counsel also sought information about the role of AmerenUE and Ameren, its corporate parent, in that process. AmerenUE made timely objections to those data requests in November, December, and January. At Public Counsel's request, an informal discovery conference to discuss these data requests was held on March 9.

AmerenUE objected to Public Counsel's data requests because they seek information that is not relevant to this proceeding in that the requested information relates to the operation of, and connections between, an unregulated holding company, Ameren, and its unregulated affiliate, EEInc. AmerenUE indicates that it has disclosed requested information regarding relations between itself as a regulated company and its unregulated affiliates. It objects only to the disclosure of information regarding relations between Ameren, the unregulated holding company, and EEInc.

Public Counsel contends that AmerenUE should be compelled to answer the submitted data requests because Public Counsel, along with the Commission's Staff, has broad authority to seek documentation from regulated companies apart from the general authority all parties have to obtain discovery in a contested case. Based on that authority, Public Counsel argues that it does not need to show that the information it seeks is relevant

to this proceeding, and, as a result, AmerenUE's objection to the data requests is insufficient.

In support of its argument, Public Counsel points to Section 386.450, RSMo 2000, which requires the Commission, upon a showing of good cause by the Public Counsel, to order a public utility to produce papers or records of the utility for examination by the Public Counsel. That statute does not require Public Counsel to show that the requested documents are relevant to any particular issue in a contested case. Indeed, the statute allows the Commission to require the production of the requested documents even if there were no contested case in existence. The fact that Public Counsel is requesting production of these documents in the context of a contested case should not in any way diminish Public Counsel's right to examine those documents.

Public Counsel's motion to compel responses to those data requests will be granted.

The second group of data requests that Public Counsel asks the Commission to enforce concern data requests for which it contends AmerenUE has failed to respond fully and completely.

Public Counsel asked the Commission to compel AmerenUE to respond to data request numbers 2239, 2246, and 2247. AmerenUE's response concedes that it had not yet responded to those data requests at the time Public Counsel filed its motion to compel, but indicates that it will be providing those answers shortly. It may be that this dispute is now resolved, but, if AmerenUE in fact has not yet answered these data requests, the Commission will order it to do so.

In its amendment to its motion to compel, Public Counsel asked the Commission to compel AmerenUE to more fully respond to data request numbers 2257 and 2258. With

regard to 2257, Public Counsel contends that AmerenUE's response referred to two responsive documents but provided only one document to Public Counsel. AmerenUE responded by stating that it has clarified its previous response by explaining that the additional document to which it referred in its original response was protected from disclosure by the attorney-client privilege. This agreement appears to have been a misunderstanding that has been resolved. It does not require any further action by the Commission.

Data request 2258 referenced an earlier data request that asked AmerenUE to provide details about training provided to Ameren management regarding compliance with Missouri's affiliate transaction rule. AmerenUE described only a single instance in 2003 when such training was provided. Data request 2258 asked AmerenUE to confirm that it was unable to specifically identify any other training activities. AmerenUE provided a rather evasive answer indicating that it "routinely provides training on the topic as requested by departments or groups within Ameren," but also indicates that it keeps no permanent record of any such training. In its response to Public Counsel's motion to compel, AmerenUE again asserts that it routinely provides such training, but again confirms that it has no record of having done so. AmerenUE's response does not say much for its training records, but it does confirm that it is unable to specifically identify any other training activities. In that it is responsive to Public Counsel's data request, there is no need to compel any further response.

That leaves one data request for which no account has been given. Public Counsel's motion asks the Commission to compel AmerenUE to respond to data request number 2210. AmerenUE does not mention that data request in its response. Neither

party gives any indication of the nature of data request number 2210. Perhaps AmerenUE has already responded to that data request, but on the chance that it has not yet responded, the Commission will compel such a response.

IT IS ORDERED THAT:

1. Union Electric Company d/b/a AmerenUE shall fully and completely respond to Public Counsel data request numbers DR Nos. 2005, 2118HC, 2119HC, 2142HC, 2170HC, 2171HC, 2181, and 2184 no later than 5:00 p.m. on March 16, 2007.
2. To the extent that it has not already done so, Union Electric Company d/b/a AmerenUE shall fully and completely respond to Public Counsel data request numbers 2239, 2246, and 2247 no later than 5:00 p.m. on March 16, 2007.
3. To the extent that it has not already done so, Union Electric Company d/b/a AmerenUE shall fully and completely respond to Public Counsel data request number 2210, no later than 5:00 p.m. on March 16, 2007.
4. This order shall become effective on March 15, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Gaw and Clayton, CC., concur
Murray, C., dissents, dissent attached
Appling, C., absent

Woodruff, Deputy Chief Regulatory Law Judge