

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

In the Matter of Union Electric Company)	
d/b/a Ameren Missouri's Permission and)	
Approval and a Certificate of Public)	
Convenience and Necessity Authorizing it to)	File No. EA-2014-0136
Construct, Install, Own, Operate, Maintain and)	
Otherwise Control and Manage Solar)	
Generation Facilities in O'Fallon, Missouri)	

**MOTION TO COMPEL AND
MOTION FOR EXPEDITED TREATMENT**

Under authority of, and in accordance with, 4 CSR 240-2.080 and 4 CSR 240-2.090, and for good cause shown, Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "the Company"), through its undersigned attorneys, hereby moves the Missouri Public Service Commission ("Commission") for an order compelling Earth Island Institute d/b/a Renew Missouri ("Renew Missouri") to fully and completely respond to Ameren Missouri data requests DR-004 through DR-006, which the Company served on Renew Missouri on March 17, 2014. In addition, because obtaining the information sought in the data requests at issue in this motion is crucial to Ameren Missouri being able to prepare for and participate in a hearing scheduled for Friday, April 4, 2014, the Company further moves for expedited consideration of its motion to compel.

In support of its motions, Ameren Missouri states:

1. The procedural schedule adopted by the Commission through its order dated February 26, 2014, was agreed to by all parties, including Renew Missouri. Paragraph 7 of that schedule states that to accommodate the schedule on an expedited basis "the Parties agree to shorten the response time pursuant to Rule 4 CSR 240-2.090 for all data requests to five (5) business days to respond and three (3) business days to object."

2. In accordance with the prescribed schedule and agreement, Ameren Missouri served Henry Robertson, counsel of record for Renew Missouri, with data requests DR-004 through DR-006 on March

17, 2014. Copies of those data requests are attached to these motions as Exhibit A, and are incorporated by reference.

3. Although objections to the data requests were due by March 20, 2014, and answers by March 24, 2014, Ameren Missouri received no response of any kind to the data requests at issue in this motion by the prescribed deadlines. Renew Missouri finally responded on March 27, 2014, and although the deadline for lodging objections has passed, Renew Missouri objected to each of the data requests at issue in this motion.¹ Copies of Renew Missouri's responses containing its objections are attached to these motions as Exhibit B, and are incorporated by reference.

4. Renew Missouri's failure to timely object to the data requests at issue here constitutes a waiver of any objections made on March 27, 2014. Consequently, those objections, which were filed seven calendar days and five business days beyond the deadline for objections specified in the procedural order, should be disregarded and Renew Missouri should be required to fully respond to each of the data requests at issue. As the Commission noted in a recent case that involved objections filed out of time, "as a general rule, a party that does not timely object to a discovery request has waived its objection." *Mark v. Southwestern Bell Telephone, L.P.*, Case No. TC-2006-0354, 2006 Mo. PSC LEXIS 1368 (October 12, 2006).

5. Putting aside the issue of waiver, Renew Missouri's objections to the data requests at issue are not valid and would not withstand scrutiny even if they had been timely filed. The grounds for Renew Missouri's objections to all three data requests are stated in the response to DR-004. In summary, those grounds are: (i) the Company failed to establish the relevance of the requested information, and (ii) the information requested involves communications with a person who is not a party to the current case. Neither of these stated grounds for Renew Missouri's objections is valid.

6. A cursory reading of each of the data requests at issue reveals that they were carefully and purposely written to seek information that is relevant – or is designed to lead to the discovery of such

¹ Although Renew Missouri's response to DR-005 includes an untimely objection, the response also states that Renew Missouri does not have any documents responsive to the request. Consequently, despite the untimely objection, Renew Missouri may not have any additional information to provide in response to DR-005.

information – to this case. Indeed, it is difficult to conceive how these data requests could have been worded to more narrowly focus the scope of the Company’s inquiries. For example, the requests in DR-004 are specifically limited to information regarding conversations or correspondence between Renew Missouri and Charles Skoda “regarding any issue in Case No. EA-2014-0136.” A similar limitation applies to DR-004. That request seeks copies of documents that relate to each communication identified in the response to DR-004, which, as noted in the preceding sentence, is limited to communications regarding issues in the current case. Finally, DR-006 seeks information regarding “any and all forms of support, including but not limited to financial support” that Renew Missouri is receiving from Mr. Skoda, Noranda Aluminum, Inc., the Missouri Industrial Energy Users Association, or other affiliated groups or organizations. But, again, the scope of the request is limited to support provided “in connection with Renew Missouri’s intervention and participation in Case No. EA-2014-0136.”

7. Renew Missouri’s alternate ground for its objections – that persons who are not parties to this case are incapable of providing information that satisfies the relevance standard applicable to discovery – is completely without merit. It is axiomatic that non-parties have and can provide information that is itself relevant or that will lead to the discovery of such information. In fact, one need look no farther than the roster of prospective witnesses in this case to see that Renew Missouri, itself, rejects the notion that non-parties cannot provide relevant information. Neither Martin Cohen, who prefled rebuttal testimony on Renew Missouri’s behalf, nor Martin Roth Cohen and Associates is a party to this case. Yet by sponsoring Mr. Cohen’s testimony, Renew Missouri has implicitly expressed its belief a non-party has information to offer the Commission that is relevant to the issues in this case.

8. As noted previously, the evidentiary hearing in this case is scheduled for Friday, April 4, 2014; consequently, the interval between the filing date of this motion and the date of that hearing is extremely brief. Moreover, because the discovery conference, which the Commission’s rules require as prerequisite to a motion to compel, was completed just a few hours before these motions are being filed, the need to expedite the consideration of Ameren Missouri’s motion was caused by neglect or by the Company’s failure to timely press its claim for the discovery responses to which it is entitled. Good cause

therefore exists for the Commission to expedite its consideration and decision of Ameren Missouri's motion to compel. Accordingly, the Company requests the Commission to (i) require Renew Missouri to respond to these motions no later than 5:00 p.m., CDT, on Tuesday, April 1, 2014, and (ii) render a decision on the motions no later than 12:00 p.m., CDT, on Wednesday, April 2, 2014. If the Commission grants Ameren Missouri's motion, the order should require Renew Missouri to fully respond to each of the data requests no later than 12:00 p.m., CDT, on Thursday, April 3, 2014, and should caution Renew Missouri that failure to provide the required responses could result in Renew Missouri being denied the right to present evidence at, and otherwise participate in, the April 4th evidentiary hearing.

WHEREFORE, for all the reasons stated above, Ameren Missouri asks the Commission to grant the Company's motion to compel and motion for expedited treatment, to issue an order requiring Renew Missouri to provide full and complete responses to data requests DR-004 through DR-006 in accordance with the schedule and subject to the conditions described in the preceding paragraph, and to further grant the Company such other relief as the Commission deems appropriate.

Respectfully submitted,

/s/ L. Russell Mitten

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**ATTORNEYS FOR
UNION ELECTRIC COMPANY, d/b/a
AMEREN MISSOURI**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail, on all parties of record on the 31st day of March, 2014.

 /s/L. Russell Mitten

AMEREN MISSOURI DR-004

Data Request
From Union Electric Company d/b/a Ameren Missouri
Case No. EA-2014-0136

Requested By: Russ Mitten

Date of Request: March 17, 2014

Has any representative of Earth Island Institute d/b/a Renew Missouri contacted, exchanged correspondence or documents with, or had any communication whatsoever with Charles Skoda regarding any issue in Case No. EA-2014-0136? If the answer to the preceding question is anything other than an unqualified "no," provide the following information regarding each such contact, exchange of correspondence or documents, or communication:

- (a) The date of the contact, exchange, or communication;
- (b) The nature of the contact, exchange, or communication;
- (c) The name of each person involved in or privy to the contact, exchange, or communication; and
- (d) The substance of the contact, exchange, or communication.

Response:

The person whose name appears below certifies, based on his or her knowledge, information, or belief, that the information and materials provided to Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") in response to the above Data Request are accurate and complete and contain no material misrepresentations or omissions. The respondent further agrees to immediately inform Ameren Missouri if, during the pendency of Case No. EA-2014-0136, any information is discovered that would materially affect the accuracy or completeness of the information and materials provided in this response.

As used in this Data Request, the term "document(s)" includes publications (in any format), workpapers, letters, memoranda, e-mail messages, notes, reports, analyses, test results, studies or data recordings, transcriptions, and printed, typed or written materials of every kind. The person or entity identified in the "Requested From" block above includes all employees, contractors, agents, and others who are employed by or acting on behalf of the person, entity, organization, group or governmental unit associated with that person or entity. When used with respect to a natural person, the word "identify" means you are required to state his or her full name, address, current employer, and job title.

If the information necessary to completely respond to this request is voluminous, the respondent should (1) identify the relevant documents, materials, and information and their respective location, and (2) contact the requestor and make arrangements to have the documents and materials available for inspection at a mutually agreeable location. Where identification of voluminous documents is required, briefly describe each document and provide the following information, as applicable: name or title, author, recipient, addresses, date written or published, and the name and address of the person(s) having possession of the document.

If any information requested by this Data Request is subject to a claim of privilege, you should include with your response a privilege log that (1) generally identifies the responsive information, including all persons and entities that have access to or copies of that information, and (2) states the basis for the claim of privilege.

Response Provided By: _____ Date: _____

Data Request
From Union Electric Company d/b/a Ameren Missouri
Case No. EA-2014-0136

Requested By: Russ Mitten

Date of Request: March 17, 2014

Provide copies of all documents that relate to each contact, exchange, or communication identified in your response to Ameren Missouri DR-004.

Response:

The person whose name appears below certifies, based on his or her knowledge, information, or belief, that the information and materials provided to Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") in response to the above Data Request are accurate and complete and contain no material misrepresentations or omissions. The respondent further agrees to immediately inform Ameren Missouri if, during the pendency of Case No. EA-2014-0136, any information is discovered that would materially affect the accuracy or completeness of the information and materials provided in this response.

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Response Provided By: _____ Date: _____

Data Request
From Union Electric Company d/b/a Ameren Missouri
Case No. EA-2014-0136

Requested By: Russ Mitten

Date of Request: March 17, 2014

Identify any and all forms of support, including but not limited to financial support, that Earth Island Institute d/b/a Renew Missouri is receiving from Charles Skoda, Noranda Aluminum, Inc., the Missouri Industrial Energy Users Association, or any other organization with which Mr. Skoda is affiliated in connection with Renew Missouri's intervention and participation in Case No. EA-2014-0136. If any of the support identified in your response to the preceding question is financial, identify the source and amount of all such support.

Response:

The person whose name appears below certifies, based on his or her knowledge, information, or belief, that the information and materials provided to Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") in response to the above Data Request are accurate and complete and contain no material misrepresentations or omissions. The respondent further agrees to immediately inform Ameren Missouri if, during the pendency of Case No. EA-2014-0136, any information is discovered that would materially affect the accuracy or completeness of the information and materials provided in this response.

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Response Provided By: _____ Date: _____

AMEREN MISSOURI DR-004

Data Request
From Union Electric Company d/b/a Ameren Missouri
Case No. EA-2014-0136

Requested By: Russ Mitten
Date of Request: March 17, 2014

Has any representative of Earth Island Institute d/b/a Renew Missouri contacted, exchanged correspondence or documents with, or had any communication whatsoever with Charles Skoda regarding any issue in Case No. EA-2014-0136? If the answer to the preceding question is anything other than an unqualified "no," provide the following information regarding each such contact, exchange of correspondence or documents, or communication:

- (a) The date of the contact, exchange, or communication;
- (b) The nature of the contact, exchange, or communication;
- (c) The name of each person involved in or privy to the contact, exchange, or communication;

and

- (d) The substance of the contact, exchange, or communication.

Response:

Renew Missouri objects to the above data request on the grounds that the requesting party has not met its burden of establishing the relevance of the requested information.

Missouri Supreme Court Rule 56.01(b) establishes the basic scope of discovery for Missouri courts, including proceedings before the Commission (see 4 CSR 240-2.090(1)). According to Rule 56.01(b)(1), "[p]arties may obtain discovery regarding any matter, not privileged, that is *relevant to the subject matter involved in the pending action.... The party seeking discovery has the burden of establishing relevance.*" (emphasis added).

The Company's above data request asks for information regarding contact or exchanges of correspondence or documents with an individual who is neither a party to this case nor an employee or representative of any party to this case. The Company has not demonstrated why such communications or exchanges with a non-party would be relevant to any issue involved in Case No. EA-2014-0136.

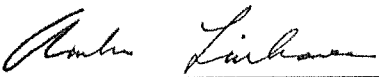
Accordingly, Renew Missouri objects to the above data requests on the grounds that the Company has not met its burden under Rule 56.01(b)(1) to establish relevance.

The person whose name appears below certifies, based on his or her knowledge, information, or belief, that the information and materials provided to Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") in response to the above Data Request are accurate and complete and contain no material misrepresentations or omissions. The respondent further agrees to immediately inform Ameren Missouri if, during the pendency of Case No. EA-2014-0136, any information is discovered that would materially affect the accuracy or completeness of the information and materials provided in this response.

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If the information necessary to completely respond to this request is voluminous, the respondent should (1) identify the relevant documents, materials, and information and their respective location, and (2) contact the requestor and make arrangements to have the documents and materials available for inspection at a mutually agreeable location. Where identification of voluminous documents is required, briefly describe each document and provide the following information, as applicable: name or title, author, recipient, addresses, date written or published, and the name and address of the person(s) having possession of the document.

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Response Provided By: 

Date: March 27, 2014

Data Request
From Union Electric Company d/b/a Ameren Missouri
Case No. EA-2014-0136

Requested By: Russ Mitten

Date of Request: March 17, 2014

Provide copies of all documents that relate to each contact, exchange, or communication identified in your response to Ameren Missouri DR-004.

Response:

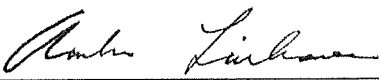
No such documents exist. However, if such documents did exist, Renew Missouri raises the same objection as it has raised in response to the Company's data request DR-004.

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From Union Electric Company d/b/a Ameren Missouri
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Requested By: Russ Mitten

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Response:

Renew Missouri raises the same objection as it has raised in response to the Company's DR-004. The Company has failed to meet its burden under Rule 56.01(b)(1) to establish the relevance of the information requested above.

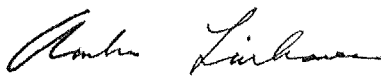
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Response Provided By:



Date: March 27, 2014