

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

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

**PUBLIC COUNSEL'S MOTION FOR EXPEDITED
DISCOVERY CONFERENCE**

COMES NOW the Office of the Public Counsel and for its Motion for Discovery Conference states as follows:

Public Counsel has had significant problems with Union Electric (UE) discovery responses throughout this case. Public Counsel is currently seeking resolution on just two of these issues pertaining to responses it has received by UE regarding its Data Requests: (1) Public Counsel challenges UE objections to nine DRs that were related to the Electric Energy Inc. (EEInc or EEI) issue, and (2) Public Counsel received on March 6, 2007 heavily redacted and incomplete responses to three DR's which were due on February 12, 2007.

Due to the importance of this discovery information and the short timeframe before the beginning of the hearing in this case, Public Counsel believes that it is necessary to file this motion requesting an expedited discovery conference be held via telephone on Friday morning, March 9, 2007.

(1) EEInc Related DR Objections

UE objected to Public Counsel DR Numbers 2005, 2118HC, 2119HC, 2142HC, 2170HC, 2171HC, 2181, 2184 and 2187 regarding EEInc even though it is one of the

most important issues in the case. A power contract between UE and EEInc ended at the end of 2005 and UE chose not to attempt to renew it. This is a revenue requirement issue based on the argument that UE acted imprudently by not seeking to renew/extend the contract with EEInc for low cost power.

All of the nine DRs objected to, except for DR 2142, seek information about the process (and the role of UE and its holding company, Ameren in that process) that occurred during the last few years where EEInc and some of its owners decided to use the power that was formerly sold under cost plus contracts to regulated utilities (like UE) for sales in the wholesale electric market that would benefit the shareholders of EEInc (like UE and its holding company). Public Counsel DR 2142 sought information that would show the extent to which Ameren and other owners of EEInc are involved in the operations, maintenance and planning of the Joppa plant.

UE objects to these DRs on the grounds that they seek information that is overly broad, unduly burdensome and not relevant or reasonably calculated to lead to the discovery of admissible evidence since they seek information relating to the business, affairs or operations of affiliates of AmerenUE rather than relating to AmerenUE.

Public Counsel's right to pose data requests seeking information from any utility and the right to inspect and obtain copies of any utility's records or documents in its possession is coequal to that of the Staff of the Missouri Public Service Commission (Staff) and is broader than the discovery authority permitted other litigants under Commission Rules.¹ This right is not conditioned on considerations of relevance under MO Rule Civ. Pro. 56.01(b)(1) and PSC Rule 4 CSR 240-2.090(1). Therefore, the

¹ RSMo. Section 386.450 and *In the Matter of Missouri-American Water Company's Tariff* (Case No. WR-2000-281, et al.)(2-2-2000).

Commission has determined that Public Counsel and the Staff can request records they want in their investigation without any showing that it is otherwise discoverable or is relevant to a specific case even if it is no more admissible in a hearing in their hands than in those of any other party.²

Since relevancy and admissibility is not the test as to whether Public Counsel may obtain discovery, UE may not refuse to provide discovery to Public Counsel based on the argument that the information is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Therefore, Public Counsel challenges UE's objections on DR Numbers 2005, 2118HC, 2119HC, 2142HC, 2170HC, 2171HC, 2181, 2184 and 2187.

(2) Redacted and Incomplete Response to Public Counsel DR Numbers 2220, 2248, and 2249.

On March 6, 2007, Public Counsel received heavily redacted and incomplete responses to DR Numbers 2220, 2248, and 2249 that were due on February 12, 2007. Approximately one dozen packets were received containing RMSC meetings that had occurred during the last three years. All of these packets contained redactions that completely blacked out words and numerals on many of the pages. In addition, it appears that UE has removed pages in their entirety without indicating that the pages were removed or withheld since there are a number of jumps from page 3 to 6, etc.

UE has improperly applied self-help to apply its objection by redacting the records that Public Counsel requested in its DRs. As discussed above, Public Counsel has coequal authority with the Staff for inspection and copying utility records that is broader

² *Id.*

than that available to other litigants under Commission Rules.³ This right is not conditioned on any claim or objection based on relevance under MO Rule Civ. Pro. 56.01(b)(1) and PSC Rule 4 CSR 240-2.090(1).

UE's redaction is without any authority under the Commission rules or practice. Documents and information cannot be withheld from Public Counsel as highly confidential or proprietary since Public Counsel is covered under the nondisclosure requirements of Section 386.480, RSMo. ("...The public counsel shall have full and complete access to public service commission files and records. Any officer or employee of the commission or the public counsel or any employee of the public counsel who, in violation of the provisions of this section, divulges any such information shall be guilty of a misdemeanor.)

Because UE did not object to those DRs within the ten-day period, it waived any objections and must respond, and respond fully and completely, and in a timely fashion. 4 CSR 240-2.090 provides (in relevant part) that, "If the recipient objects to data requests...the recipient shall serve all of the objections...in writing upon the requesting party within (10) days after receipt of the data request..." UE did not object to DR Numbers 2220, 2248, and 2249 and the cover letters for these responses did not include any assertion of privilege that would permit UE to withhold part of its response. Public Counsel asserts that because no objections were made within the ten-day period any objections were waived.

UE has no authority or right to decide what portions of documents Public Counsel should be able to inspect and copy through its DR responses without UE interposing a valid objection or the timely assertion of a valid privilege. Therefore, UE has no basis for

³ *Id.*

blacking out portions of the documents or withholding some of the pages of these documents. By this unauthorized conduct, UE has intentionally failed to answer as required by Commission rule and has intentionally provided incomplete answers.

WHEREFORE, the Office of the Public Counsel respectfully requests an expedited off-the-record discovery conference via telephone on Friday morning, March 9, 2007 so that the parties and the law judge can discuss the objections and redactions in an attempt to resolve disputes without the necessity of Public Counsel filing a motion to compel its right to these records and full and complete discovery.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all parties this 7th day of March 2007:

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