

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

In the Matter of Union Electric Company)	
d/b/a Ameren Missouri's Tariffs to)	<u>Case No. ER-2012-0166</u>
Increase Its Revenues for Electric Service)	

**PUBLIC COUNSEL’S REPLY TO THE RESPONSE OF UNION ELECTRIC
COMPANY D/B/A AMEREN MISSOURI IN OPPOSITION TO MOTION TO COMPEL**

COMES NOW the Office of the Public Counsel and for its Reply to the Response of Union Electric Company d/b/a Ameren Missouri in Opposition to Motion to Compel states as follows:

1. Public Counsel and Ameren Missouri have reached agreement on how to proceed to resolution of the discovery issues raised in Public Counsel’s May 7 motion to compel. Not all the steps to resolution have been completed, and so it is possible that these issues may once again come before the Commission, but at this time Public Counsel is no longer seeking an order from the Commission regarding the discovery issues raised in the May 7 motion.

2. Nonetheless, because this case is ongoing and there may be additional discovery disputes, because some of the arguments and assertions made in Ameren Missouri’s May 16 response to the motion to compel are so misleading, and because the Commission rarely gets to see much information about discovery disputes, Public Counsel must respond. Public Counsel will limit this reply to addressing Ameren Missouri’s false claims that Public Counsel failed to comply with 4 CSR 240-2.090(8).

3. Ameren Missouri asserts that Public Counsel did not make a good faith effort to confer¹ when Public Counsel: 1) left a message requesting a call back about these discovery issues; 2) waited several days for the call to be returned; 3) placed another call and left another message asking for a call back; and 4) waited a full week for a response to the second call. How many unreturned calls and how much waiting does it take to constitute a good faith effort? Ameren Missouri does not answer that question, just asserts that two calls and eleven days is not enough. Ameren Missouri's interpretation is obviously self-serving. Ameren Missouri is using four attorneys to work on this one discovery dispute (two in-house and two outside counsel), so it could easily have found somebody to return Public Counsel's phone calls. Instead of simply acknowledging its fault,² Ameren Missouri accuses Public Counsel of not making a good faith effort to confer with opposing counsel. Two voicemail messages and a reasonable waiting period is a good faith effort. Failure to return two phone calls within a reasonable period is not good faith, is not consistent with good business practices, and is not even consistent with common courtesy.

4. Ameren Missouri is even more deliberately obtuse with respect to the second part of 4 CSR 240-2.090(8).³ Even though Public Counsel noted the waiver in its motion to compel, Ameren Missouri purposefully ignores the fact that the Commission has explicitly waived the

¹ Required by 4 CSR 240-2.090(8)(A).

² In fact, much of this dispute should never have occurred. If Ameren Missouri had made a good faith effort to try to be responsive, it would have discovered that the information sought in DRs 1005 and 1006 was readily available, and had been provided in a previous case. But following its usual "object first, investigate later" approach, Ameren Missouri claimed that it would be overly burdensome to provide the information without even checking.

³ 4 CSR 240-2.090(8)(B), which requires a conference call with the presiding officer.

application of 4 CSR 240-2.090(8)(B) in this case.⁴ Only by purposefully ignoring this waiver can Ameren Missouri fault Public Counsel for failing to comply with a waived regulation. Similarly, Ameren Missouri faults Public Counsel for not taking advantage of the May 10 discovery conference. Ameren Missouri deliberately ignores the fact that Public Counsel was unavailable for that conference and requested leave to be excused. Even though there is no need at this time for the Commission to rule upon this particular dispute, the Commission should note the deliberate omissions and gross exaggerations in Ameren Missouri's Response.

WHEREFORE, Public Counsel respectfully provides notice that the discovery matters raised in its May 7 motion to compel do not require Commission action at this time, and respectfully provides this limited reply to the Response of Union Electric Company d/b/a Ameren Missouri in Opposition to Motion to Compel.

Respectfully submitted,

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⁴ Ordered Paragraph 3(E) of the Commission's March 28 Order Adopting Procedural Schedule, Establishing Test Year, And Delegating Authority states: "Commission Rule 4 CSR 240-2.090's requirement that a party must seek a telephone conference with the presiding officer before filing a discovery motion is waived."

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 24th day of May 2012.

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