

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

In the Matter of a Working Case to Draft     )  
A Rule to Revise Commission Rule            )     File No. EW-2014-0239  
4 CSR 240-3.105.                                 )

**Ameren Missouri Response to Staff Motion for  
Commission Order Directing Responses and Scheduling a Workshop**

COMES NOW Union Electric Company, d/b/a Ameren Missouri (Ameren Missouri or Company) and in response to the above-referenced Staff Motion, states as follows:

1.       On January 8, 2014 Dogwood Energy, LLC (Dogwood Energy), filed a rulemaking petition by which it asked the Commission to amend 4 CSR 240-3.105. Thereafter on February 14, 2014, and in compliance with the Commission's *Order Directing Staff to Investigate and File Recommendation*, the Staff filed a recommendation, as did Ameren Missouri, Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company and the Empire District Electric Company.

2.       On March 5, 2014, the Commission issued its *Order Denying Petition for Revision of Commission Rule 4 CSR 240-3.105*. In that same Order, the Commission indicated that it wanted the Staff to submit a revised rule for the Commission's consideration no later than August 29, 2014.

3.       Approximately six weeks later, on April 17, 2014, the Staff filed the instant Motion, requesting that the Commission establish a schedule for the filing of proposed language addressing six separate questions set forth in the Motion. The Motion also asks interested parties to address other issues beyond the six questions that are listed. The Staff asks that this filing take place by May 23, 2014. The Staff also requests that a workshop be scheduled for June 4, 2014.

In response to the Staff's filing, the Commission issued a *Notice* advising stakeholders of Staff's requested comment dates and the date the Staff desired to hold a workshop.

4. The Company understands that the timeframes suggested by the Staff are driven by the Commission's indication that it desired a recommendation about a revised rule by August 29, 2014, and that if the Staff were not under that deadline the Staff would be amenable to proceeding with the workshops on a different timeline. For the reasons discussed below, Ameren Missouri requests that the August 29, 2014 deadline under which the Staff is now operating be moved to December 19, 2014 so as to afford the Staff and interested stakeholders sufficient time and flexibility to engage in the workshop process in a more meaningful and hopefully productive way.

5. The reason workshops are occurring at all (or at least the reason they are occurring now) arises from the timing of Dogwood's rulemaking petition and its denial, neither of which were driven by any legal requirement or acute need to consider amending the rule at this time. Indeed, Dogwood chose the timing of the filing of its petition, which given its basis could have been filed much earlier. That it could have been filed much earlier is obvious, given that the justification for the petition is largely based upon 2005 and 2008 decisions of the appellate courts involving the KCP&L Greater Missouri Operations Company's Peculiar, Missouri combustion turbine plant.<sup>1</sup> Those cases are *StopAquila.Org. v. Aquila, Inc.*, 180 S.W.3d 24 (Mo. App. W.D. 2005) and *State ex rel. Cass County v. Pub. Serv. Comm'n*, 259 S.W.3d 544 (Mo. App. W.D. 2008). Consequently, Dogwood could have filed its petition any time during the last approximately six years.

6. As of the date of this filing, two months have passed since the Commission issued its Order establishing a workshop process. While it is completely understandable given

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<sup>1</sup> At the time the plant was owned by Aquila, Inc.

the Staff's workload, it took the Staff about six weeks after the Order was issued to suggest a process for meeting the Commission's current August 29 deadline. However, intervening events have created a substantial and likely insurmountable obstacle to Ameren Missouri's meaningful participation in the workshops on the timeline currently proposed by the Staff.

7. Almost simultaneously with the Staff's filing of its recommended timeline, the Commission adopted extremely aggressive procedural schedules in the two major Noranda complaint cases currently pending against Ameren Missouri.<sup>2</sup> In addition, the Company, as it announced late in 2013, is in the process of preparing to file a general rate increase case, which in fact it has committed to file on or before July 15, 2014. Those activities alone are creating an unprecedented demand on the Company's resources, and in particular on its regulatory and legal personnel whose substantial involvement is necessary if it is to meaningfully participate in workshops pertaining to possible revisions to 4 CSR 240-3.105.

8. Given the four rounds of testimony, two sets of major evidentiary hearings, substantial written discovery (with response times of just five business days), the likelihood of numerous depositions, hearing preparation and other deadlines to meet and tasks to complete over the next four to five months – just in the two Noranda complaint cases – it is obvious to the Company that it will not be able to meaningfully participate in the workshops on the timeline proposed by the Staff.<sup>3</sup>

9. The 2005 and 2008 appellate decisions cited above arguably raise issues that have for the most part not arisen and which have not been addressed by the courts or the Commission in the 100 years since Section 393.170 was enacted by the legislature. There is no compelling practical, legal or policy reason, or deadline that dictates that such issues need to be addressed in

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<sup>2</sup> File Nos. EC-2014-0223 and EC-2014-0224.

<sup>3</sup> Other day-to-day matters must also be handled and addressed, as well as, as noted, the preparation and filing of a major rate case.

just the next three months. The issues appear to be novel and complex, both from a legal and policy perspective. Staff has already identified six separate issues, and there are probably more.

10. Ameren Missouri desires to meaningfully participate in the workshops, and to do so with the benefit of having been able to conduct sound legal and policy research and analysis that will allow it to develop a well-thought-out position on the many issues that have been, and probably will be, raised. As the state's largest utility it seems appropriate that Ameren Missouri be able to do so.

11. However, as noted Ameren Missouri cannot practically do so on the timeline proposed. Consequently, the only participation Ameren Missouri could offer would be at a very high level without the benefit of the legal and policy research needed to develop thoughtful positions on the issues.

12. One of the reasons the Commission has encouraged workshops is so difficult issues can be fully vetted before a rulemaking petition is filed, with the hope that this will reduce complexity and disagreement in the formal rulemaking when it occurs. That goal will be made much more difficult if Ameren Missouri's participation is limited.

13. Since Section 393.170 has for the most part been successfully applied by the Commission for more than 100 years, and since developments in the case law that have prompted these issues arose several years ago, as noted there should be no undue urgency to conclude a workshop process just three months from now.

WHEREFORE, for the foregoing reasons the Company respectfully requests that the Staff be relieved of the August 29, 2014 deadline, and instead be given until December 19, 2014 to file a recommendation regarding whether an amended rule should be considered, and that the

Commission order the Staff to consult with interested stakeholders to develop a workshop process and schedule that will allow the Staff to meet the December 19 deadline.

Respectfully Submitted,

SMITH LEWIS, LLP

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

**CERTIFICATE OF SERVICE**

The undersigned certifies that true and correct copies of the foregoing have been e-mailed or mailed, via first-class United States Mail, postage pre-paid, to the Staff counsel and the Office of the Public Counsel, on this 5th day of May, 2014.

/s/ James B. Lowery