

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

In the Matter of Union Electric Company d/b/a)
Ameren Missouri’s 2nd Filing to Implement) File No. EO-2015-0055
Regulatory Changes in Furtherance of Energy)
Efficiency as Allowed by MEEIA.)

RESPONSE TO MOTION FOR PROTECTIVE ORDER

COMES NOW, Union Electric Company d/b/a Ameren Missouri (Ameren Missouri or Company), and for its Response to Renew Missouri’s Motion for Protective Order, states as follows:

1. On July 13, 2015, Renew Missouri filed a Motion for Protective Order requesting that the Commission issue a Protective Order that would shield its Director, Mr. PJ Wilson, from a properly served Notice of Deposition concerning controverted issues of fact in this case. The basis for the objection is that Renew Missouri argues the deposition would be intended to harass or annoy Mr. Wilson concerning his opposition to a Non-Unanimous Stipulation filed by the Company and other parties dated June 30, 2015. There is no basis for such accusation; Ameren Missouri’s inquiry is factual in nature and there is no intent to harass Mr. Wilson. As Director of Renew Missouri, Mr. Wilson is the best person to gain relevant discovery concerning the basis on which Renew Missouri supports (as a signatory) the Non-Unanimous Stipulation and Agreement filed in this case July 7, 2015 as amended on July 8, 2015 (Hereinafter “July 7 Stipulation”). Ameren Missouri has made clear that it seeks only a short phone deposition not longer than 45 minutes, and is flexible as to the time, place, and even the deponent (so long as the person is authorized to speak on behalf of Renew Missouri). The subject matter of the deposition is the factual basis and intent of Renew Missouri with respect to the July 7 Stipulation and change its position to reflect the terms of that agreement. Ameren Missouri has a legitimate right to inquire through discovery concerning the facts and opinions of Renew Missouri related

to its change in position. The subject matters to be covered in the deposition are clearly relevant to the issues at bar in this case.

2. Ameren Missouri's notice of deposition was properly served, it was timely, and is consistent with the dictates of the Commission rules of practice (4 CSR 240-2.090). The Commission's rules provide for discovery under the same means as applicable in a civil action in Missouri circuit court. Missouri Supreme Court Rule 57.03 governs civil procedure with respect to depositions taken during actions brought in circuit court. The rule provides in pertinent part: "A party desiring to take the deposition of any person upon oral examination shall give not less than seven days' notice in writing to every other party to the action and to a non-party deponent." Renew Missouri asserts that Mr. Wilson has not filed testimony in this case. However, Mr. Wilson's lack of testimony does not excuse Renew Missouri from complying with a lawful discovery request. That rule allows for a notice of deposition to be served on "any person." Mr. Wilson is a person, Renew Missouri is a party to this case and Mr. Wilson is its Executive Director. Accordingly, the Notice of Deposition served upon Renew Missouri was proper under applicable Commission and Missouri rules of procedure.

3. The July 7 Stipulation includes new terms unrelated to anything discussed in testimony or during the course of the case, including the creation of an expert panel paid for by Ameren Missouri, a new throughput disincentive mechanism and a new peak demand reduction incentive mechanism, among other changes. The change in position embodied in the July 7, 2015 Stipulation is not purely legal or policy oriented, but is clearly based upon specific factual considerations and conclusions. The Company did not receive an opportunity to review these terms until the pleading was served on July 7, 2015. The time for data requests has now passed due to the fact that the response would not be required until after the evidentiary hearing is

complete (data requests must be answered in 20 days). (4 CSR 240-2.090 (c)) Accordingly, the only means of obtaining discovery from the signatory parties is by way of deposition. The Company would have been able to serve the deposition notice sooner but did not receive the terms of the Stipulation signed by Renew Missouri until it was served on July 7, 2015. The notice of deposition was served on July 10th. The hearing is set to commence Monday, July 20, 2015. Accordingly, the limited time with which to take the deposition in advance in the hearing did not result from conditions created by Ameren Missouri but rather is a result of the date of filing of the July 7 Stipulation. Renew Missouri is represented by counsel and should have been aware that its change in position as effectuated by the signature of the July 7, 2015 Stipulation could lead to discovery requests being served on Renew Missouri, including a deposition request.

4. Renew Missouri states that “Mr. Wilson is the Director of Renew Missouri....Mr. Wilson has not been involved in negotiations or substantive communications of any kind with Ameren Missouri concerning its 2016-2018 energy efficiency plan under the Misosuri Energy Efficiency Act (“MEEIA”). First, to the extent that Renew Missouri is stating that Mr. Wilson is not familiar with provisions of the stipulation it entered into, that fact in and of itself is admissible evidence as to why the terms of the July 7, 2015 Stipulation are not reasonable. While counsel for Renew Missouri is entitled to represent its interests, it is the client – Renew Missouri here – whose interests are at issue and who purports to support the July 7, 2015 Stipulation. If its Executive Director has no familiarity or knowledge about why Renew Missouri is a party to a stipulation advocating certain positions before the Commission, Ameren Missouri (and the Commission) is entitled to know as much. Further, Mr. Wilson’s participation in settlement negotiations are not the subject of the deposition, rather the inquiry is limited to the

factual basis upon which Renew Missouri endorses the adoption of the stipulated terms it has assumed as its position in this case. If there is no factual basis, the deposition will be short, but such an admission is admissible evidence concerning controverted issues of fact. Further, it is noteworthy that the Office of Public Counsel has also opposed the deposition of Dr. Marke, a witness who filed testimony in support of the July 7 Stipulation. Missouri Supreme Court rule governing civil procedure provide for a broad scope of discovery. (*See* Rule 56.01) Discovery, including depositions, assist the parties with narrowing issues to be contested at hearing and discovery allows for more focused inquiry at hearing to assist the trier of fact. The Company should be afforded at least some opportunity for discovery from the parties that are asking to Commission to approve recommendations that are adverse to the Company's interest.

5. Ameren Missouri made good faith efforts to confer with counsel to reduce any burden on Mr. Wilson in complying with the request, including offering alternative times and a phone deposition. After speaking with counsel for Renew Missouri, the Company agreed in writing to limit the scope and time of the deposition, allow Renew Missouri to designate a spokesperson other than Mr. Wilson (so long as such person was authorized to speak on its behalf), and also allowed that the deposition could be telephonic. A copy of the correspondence is attached hereto as Exhibit A.

6. Ameren Missouri notes that to the extent Renew Missouri's motion is denied, Ameren Missouri will still honor the flexibility contained in its letter and cooperate in good faith to avoid any scheduling complications for Mr. Wilson.

WHEREFORE, Ameren Missouri requests that the Commission deny Renew Missouri's Motion for Protective Order and for such further and other relief as the Commission considers reasonable and just.

Respectfully submitted,

/s/ Matthew R. Tomc

Matthew R. Tomc, #66571

Corporate Counsel

1901 Chouteau Avenue, MC 1310

P.O. Box 66149

St. Louis, MO 63166-6149

(314) 554-4673 (phone)

(314) 554-4014 (facsimile)

amerenmoservice@ameren.com

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

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic transmission, facsimile or email to counsel for parties in this case on this 15th day of July, 2015.

/s/ Matthew R. Tomc