

Ameren Missouri, to which OPC has objected. Globally speaking, the data requests ask OPC to identify prior acts or deeds by which OPC communicated OPC's interpretation (if any) of the meaning of the low-income exemption in Ameren Missouri's Rider EEIC tariff, which is at issue in this Complaint. The data requests also ask OPC to identify means or processes (if any) that it believes are available to Ameren Missouri to comply with the plain meaning reading of the tariff advanced by OPC.

4. OPC has responded that every data request either "lacks foundation" or is not reasonably calculated to lead to the discovery of admissible evidence, or both. The objection that the data requests "lack foundation" is not a valid objection to discovery. As to whether the requests are reasonably calculated to lead to the discovery of admissible evidence, Ameren Missouri argues that the discovery sought is directly relevant to this proceeding and otherwise reasonably calculated to lead to the discovery of admissible evidence.¹ Ameren Missouri has argued that the Rider EEIC tariff is ambiguous, and that a plain meaning interpretation of the tariff would lead to an absurd or illogical result. OPC's responses will demonstrate a stark contrast between Ameren Missouri's and OPC's interpretations of the tariff, which would tend to prove that the words used in the tariff are subject to more than one reasonable interpretation, and therefore that the tariff is therefore ambiguous. If the tariff is ambiguous, then in order to resolve the ambiguity, the Commission may consider evidence of the intent of the parties (Ameren Missouri, Staff and OPC) who entered into a non-unanimous stipulation and agreement agreeing

¹ Mo. R. Civ. P. 56.01(b)(1), made applicable to Commission proceedings by 4 CSR 240-2.090(1).

to the terms of the tariff,² which stipulation was approved by the Commission,³ making any prior OPC interpretation of the tariff relevant.

5. Additionally, the information Ameren Missouri is seeking is relevant even if the Commission determines the tariff is *not* ambiguous, because the information may tend to prove that a plain reading of the tariff would lead to an absurd or illogical result—a showing a party is permitted to make with extrinsic evidence. OPC has argued that “all low-income customers identified by the [Rider EEIC] tariff should benefit from the exemption” and therefore the Commission should “require[e] Ameren Missouri to follow the unambiguous tariff.” Ameren Missouri’s data requests asking OPC to identify any means or process by which Ameren Missouri could “follow the unambiguous tariff,” i.e., exempt “all low-income customers” from the Rider EEIC tariff, are relevant to whether such a plain reading leads to an absurd or illogical result. If OPC can identify a means or process by which Ameren Missouri can identify low-income customers who have received LIHEAP funds towards a non-Ameren Missouri bill, then the plain reading OPC advocates may not be absurd or illogical; if OPC identifies means or processes but they would violate privacy and confidentiality laws meant to protect LIHEAP applicants or recipients (i.e. if the processes are illegal) or would violate contractual obligations of Ameren Missouri⁴ or of a community action agency⁵, that may tend to show that the plain meaning of the tariff is absurd or illogical; and if OPC cannot identify any such means or process, that too may tend to show that a plain reading is absurd or illogical. Further, if a plain

² EFIS Item No. 193, *Nonunanimous Stipulation and Agreement Regarding MEEIA Low Income Exemption and LED Streetlighting Issues entered into on March 19, 2015 by the Company, Staff and the Office of Public Counsel*, ER-2014-0258

³ EFIS Item No. 206, *Order Approving Non-Unanimous Stipulation And Agreement Regarding Meeia Low Income Exemption And Led Street Lighting Issues*, ER-2014-0258.

⁴ Ameren Missouri contracts with the Missouri Department of Social Services Family Support Division to act as a “home energy supplier” that will accept LIHEAP funds.

⁵ Community action agencies contract with the Missouri Department of Social Services Family Support Division to process LIHEAP applications and to administer LIHEAP funds.

meaning reading of the tariff would lead to an absurd or illogical result, then the Commission should construe the tariff in a manner to avoid that result, and may consider extrinsic evidence to guide it in its construction—including evidence of the intentions of the parties involved in developing the tariff through nonunanimous stipulation—once again making any prior acts or deeds that evidence OPC’s construction of the tariff relevant.

6. OPC has also objected that data request Ameren Missouri OPC-1, in which the Company requested that OPC identify communications OPC has made (if any) that disclosed OPC’s understanding that under Ameren Missouri’s Rider EEIC tariff, Ameren Missouri customers who received LIHEAP assistance on non-Ameren Missouri utility bills were “low-income” customers exempt from Rider EEIC, is unduly burdensome, and seeks information that is either equally available to Ameren Missouri or in Ameren Missouri’s possession. The request is not unduly burdensome—it requests communications occurring with a limited time period, during the ER-2014-0258 rate case, and the Company has now clarified, twice, that it is not asking for any communication that was part of a filing in EFIS. Ameren Missouri is not in possession of any such communications, or it would not have asked for them. As a result the request is not seeking information that is equally available to Ameren Missouri.

7. OPC has also objected that Ameren Missouri OPC-2, where Ameren Missouri requests that OPC identify the means or process by which Ameren Missouri could “follow the tariff”, calls for speculation. That is not a valid objection to discovery, and is particularly perplexing since the Company is asking OPC how, exactly, it expects to the Company to comply with the tariff (as interpreted by OPC).

8. OPC-3 asks simply whether (yes or no) OPC verified documentation Complainants provided to it, with the Department of Social Services Family Support Division.

And if not, why not. The request is relevant to OPC's interpretation of the tariff, and the process it may believe is required when documentation is provided (i.e., how the Company may comply with the tariff).

9. OPC-004 asks whether any OPC Staff and if so who, may be knowledgeable about contracts that directly apply to the Company's ability to obtain information pertinent to determining whether a customer qualifies for the Rider EEIC exemption. If there are no such persons, OPC could simply so state. If they exist, then the Company would be entitled to inquire into those persons' knowledge and opinions regarding the contracts' impact on compliance with the tariff at issue.

10. As with OPC-2, OPC objected to Ameren Missouri OPC-5 on the basis that it calls for speculation. In that data request, the Company first simply asked *if* OPC has analyzed costs the Company would incur in verifying whether its customers received LIHEAP funds towards a non-Ameren Missouri utility bill. That calls for a yes or no answer, not speculation. If the analysis was conducted, Ameren Missouri then asked OPC to disclose such costs, the analysis, and any communications by which OPC may have communicated such analysis. Again, the request simply does not call for speculation and the objection is not valid. The request is relevant, as well, because if such analysis was conducted, it tends to show OPC's interpretation of the tariff. If no such analysis was conducted, it may to show that OPC did not interpret the tariff in a manner contrary to Ameren Missouri's interpretation.

11. OPC also objected to Ameren Missouri OPC-6 on the grounds that it is unduly burdensome, called for speculation, and on relevance grounds. In that data request, the Company asked, essentially, did OPC believe, when Ameren Missouri estimated the costs of implementing the Rider EEIC exemption (in the course of ER-2014-0258) that such costs included the costs to

develop a self-reporting process for customers to advise the Company that they were exempt, and the costs for Ameren Missouri to validate the customers' information and funnel that information into its billing system. The request is not unduly burdensome since it is a yes or no question. If OPC answers yes, the Company simply asked OPC to state the basis for its belief. The request is relevant because it goes to OPC's interpretation of the tariff, and in construing the tariff (whether to avoid an absurd or illogical result, or because it is ambiguous) the Commission may consider the parties' interpretations. OPC also objected on the grounds that the request seeks privileged attorney work product, but did not explain how the privilege applies to bar Ameren Missouri's request. When work product is asserted, the burden is on the party asserting the privilege to show that it applies. Blanket assertions of work product are insufficient to invoke protection; a party opposing discovery must establish by competent evidence that the materials sought to be protected: (1) are documents or tangible things, (2) were prepared in anticipation of litigation or for trial, and (3) were prepared by or for a party or representative of that party. *State ex rel. Ford Motor Co. v. Westbrooke*, 151 S.W.3d 364, 367 (Mo. banc 2004).

12. Finally, OPC objected to Ameren Missouri OPC-7 on the relevance grounds and because the request calls for a legal conclusion. The request asked whether §208.120.1 RSMo would permit or prohibit OPC from disclosing to Ameren Missouri the identity of applicants for or recipients of LIHEAP or any other public benefit, or any related file or information, and if permitted, the conditions under which such disclosure would be permitted. Ameren Missouri admits that this data request asks OPC for its application of a particular law to the facts state in the data request. If Ameren Missouri had not asked whether a law permits or prohibits the particular act described, and instead had asked OPC to admit that Sec. 208.120.1 RSMo expressly prohibits OPC from disclosing information about LIHEAP (or other public benefit)

applicants or recipients, such discovery would be expressly permitted as a request for admissions under Rule 59, and not objectionable on the grounds that it calls for a legal conclusion. For that reason, Ameren Missouri believes OPC's objection on the basis that the request calls for a legal conclusion is not valid. The request is reasonably calculated to lead to the discovery of admissible evidence because the Company is attempting to determine if, barring OPC's identification of any other means or process for Ameren Missouri to identify low-income customers exempt from Rider EEIC, and given the fact that in this complaint OPC produced a document (not previously provided to Ameren Missouri) that it claims exempts Complainants from Rider EEIC, OPC believes that it may legally act as the clearinghouse through which Ameren Missouri learns which customers it must exempt, which goes to the issue of whether OPC's plain meaning reading of the tariff is absurd or illogical. However, Ameren Missouri is not asking the Commission to compel OPC to respond to OPC-7.

WHEREFORE, Ameren Missouri respectfully requests that the Commission compel the Office of Public Counsel to provide full and complete responses to data requests propounded on it by Ameren Missouri as Ameren Missouri OPC-1 through OPC-6, inclusive.

Respectfully submitted:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Compel Discovery was served on all the following parties via electronic mail, and additionally on Complainants via regular mail, this 30th day of October, 2015.

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