

CITY OF O'FALLON, MISSOURI, and
CITY OF BALLWIN, MISSOURI,

Complainants,

UNION ELECTRIC COMPANY d/b/a
AMEREN MISSOURI,

Respondent.

File No: EC-2014-0316

**Motion for Leave to File Supplemental Suggestions in Opposition to Union Electric
Company d/b/a Ameren Missouri's Motion to Dismiss**

COME NOW the City of O'Fallon, Missouri, and the City of Ballwin, Missouri (collectively "Cities"), and for their motion for leave to file supplemental suggestions in opposition to Union Electric Company d/b/a Ameren Missouri's ("Ameren") motion to dismiss, state as follows:

1. On April 28, 2014, the Cities filed their Complaint seeking the intervention of the Commission relative to Ameren's refusal to negotiate for the sale of street light fixtures at fair market value to the Cities.
2. On May 29, 2014, Ameren filed its motion to dismiss the above-captioned Complaint.
3. On June 9, 2014, the Cities filed their suggestions in opposition to Ameren's motion to dismiss.
4. On June 19, 2014, Ameren filed its reply to the Cities' opposition to Ameren's motion to dismiss, and Staff filed its response to the Complaint and the motion to dismiss on June 30, 2014.
5. Finally, on July 7, 2014, the Cities filed their response to the Staff's response to the Complaint and the motion to dismiss.

6. On July 18, 2014, after the briefing relative to the pending motion to dismiss had been completed, the Commission entered its Order approving Ameren's application to approve the sale of two transformers to Silgan Plastic Food Containers Corporation ("Silgan") in Case No. EO-2014-0296.

7. The Commission's Order in the Silgan matter is relevant to Ameren's pending motion to dismiss, because it approved Ameren's agreement to sell its equipment to Silgan for fair market value, which is the very thing the Cities are seeking from Ameren in the instant matter.

WHEREFORE, the Cities respectfully request that the Commission allow the Cities to file, and that the Commission considers, the supplemental suggestions in opposition to Ameren's motion to dismiss set forth below.

Supplemental Suggestions in Opposition to Ameren's Motion to Dismiss

COME NOW the City of O'Fallon, Missouri, and the City of Ballwin, Missouri (collectively "Cities"), and for their supplemental suggestions in opposition to Union Electric Company d/b/a Ameren Missouri's (Ameren") motion to dismiss, incorporate the above motion for leave to file the instant suggestions, and further state as follows:

1. On July 18, 2014, the Commission entered its Order in Case No. EO-2014-0296, granting Ameren's application for authority to sell two transformers to Silgan Plastic Food Containers Corporation ("Silgan"). A copy of the Order is attached hereto as Exhibit "A."

2. In paragraphs 7 and 8 of its application, Ameren stated:

One of the transformers used to serve Silgan failed recently. The terms of the Transformer Rental Agreement required Silgan to bear various costs of replacing that transformer. The transformer's failure and the resulting costs to Silgan caused both the Company and Silgan to reconsider and re-evaluate whether it was advantageous to continue the rental arrangement. **Both parties concluded that it is more cost-effective for Silgan to purchase the transformers and terminate**

the rental agreement, which would allow Silgan to avoid future monthly rental payments for the transformers, as required by that agreement.

The proposed transaction is in the best interests of both Ameren Missouri and Silgan. **As noted in the preceding paragraph, purchasing the transformers would allow Silgan to avoid future monthly lease payments and all other obligations imposed by the Transformer Rental Agreement.** For example, selling the transformer in place also will allow Silgan to avoid various costs it would incur if Ameren Missouri is required to remove or replace one or both of the transformers in the future, which are among the customer's responsibilities under the terms of the Transformer Rental Agreement. **Ameren Missouri, and ultimately its customers, would benefit because the proposed sale price of the transformers will enable the Company to fully recover the net book value of the transformers.** In addition, authorizing the sale of the transformers is consistent with Ameren Missouri's current policy and approved tariff, which makes the Company responsible for equipment and fixtures required to provide electric service on its side of the customer's meter but makes the customer responsible for equipment and fixtures beyond the customer's meter.

Ameren's application at ¶7&8 (emphasis added). A copy of the application is attached hereto as Exhibit "B."

3. The situation in the Silgan case is similar to the facts underlying the Complaint filed by the Cities, who are seeking to have Ameren sell them street light fixtures for fair market value. In its Silgan application, Ameren acknowledged the benefit to itself and its customers in allowing Ameren to realize book value for the transformers, while removing the burden of monthly rental payments from Silgan. Ameren has not advanced any valid reason for refusing to negotiate the sale of the light fixtures to the Cities, despite the fact that the sale of the light fixtures would result in the same economic benefits realized by the sale of the two transformers to Silgan.

4. It is reasonable to assume that Ameren's unwillingness to negotiate the sale of street light fixtures to the Cities, derives at least in part from a recognition in Ameren's answer to the Cities' Complaint that many of the light fixtures are more than ten years old. The value of the street light fixtures will be determined through discovery, but it is possible that many of the

older light fixtures, due to depreciation, have a negligible remaining book value, if they have any remaining value at all.

5. Ameren's actions in refusing to negotiate the sale of the devices to the Cities at fair market value, while doing so with Silgan demonstrates discriminatory conduct on the part of Ameren, which supports the Cities' entitlement to the relief sought in the above-captioned Complaint. Section 393.130.3 RSMo prohibits electrical corporations, such as Ameren, from "subject[ing] any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

6. Ameren's refusal to negotiate in good faith with the Cities, but willingness to negotiate and sell transformers to Silgan for book value demonstrates the need for Commission action to preclude arbitrary discriminatory treatment of customers.

WHEREFORE, the Cities respectfully request that the Commission take notice of its Order and Ameren's Application in Case No. EO-2014-0296 in connection with its consideration of the pending motion to dismiss. Further, Cities respectfully suggest that it may be beneficial to the instant proceeding for the Commission to order Staff to investigate and report on prior similar transactions between Ameren and its customers.

Respectfully submitted,

CURTIS, HEINZ,
GARRETT & O'KEEFE, P.C.

/s/ Leland B. Curtis

Leland B. Curtis, #20550

Carl J. Lumley, #32869

Robert E. Jones, #35111

Edward J. Sluys, #60471

130 S. Bemiston, Suite 200

St. Louis, Missouri 63105

(314) 725-8788

(314) 725-8789 (FAX)

Email: lcurtis@lawfirmemail.com

clumley@lawfirmemail.com

rejones@lawfirmemail.com

esluys@lawfirmemail.com

Attorneys for the City of O'Fallon and City of Ballwin,

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing documents was either faxed, emailed, or mailed to the persons listed on the attached list on the 28th day of July, 2014

Office of Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcsevice@ded.mo.gov

General Counsel
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounselsevice@psc.mo.gov

Kevin Thompson
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O.Box 360
Jefferson City, MO 65102
Kevin.thompson@psc.mo.gov

Edward F. Downey
221 Bolivar Street, Suite 101
Jefferson City, MO 65101
efdowney@bryancave.com

Diana M. Vuylsteke
211 N. Broadway, Suite 3600
St. Louis, MO 63102
dmvuylsteke@bryancave.com

Russ Mitten
Union Electric Company
312 E.Capitol Ave
P.O. Box 456
Jefferson City, MO 65102
rmitten@brydonlaw.com

James B. Lowery
Union Electric Company
111 South Ninth Street, Suite 200
P.O.Box 918
Columbia, MO 65205-0918
lowery@smithlewis.com

/s/ Leland B. Curtis