

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

In the matter of a Repository File for	)	
The Collection and Distribution of	)	
Documents Pertaining to the Ethics	)	<b><u>File No. AW-2009-0313</u></b>
Review at the Missouri Public Service	)	
Commission	)	

**NOTICE OF POTENTIAL CONFLICTS OF INTEREST**

March 25, 2009

To protect the integrity of the ethics rulemaking process, the Commission has asked Hinshaw & Culbertson LLP to report on potential conflicts of interest that may arise from (a) legal or other professional services that Hinshaw or its subcontractor Montgomery Hollie & Associates LLC provide to parties or counsel that appear before the Commission or (2) the financial interests of those persons whom Hinshaw or Montgomery Hollie intend to perform professional services for the Commission. This Notice constitutes Hinshaw's report after such investigation:

I.        **Client Relationships That May Create Conflicts of Interest.**

Hinshaw and Montgomery Hollie have been asked to assess potential conflicts of interest that may arise from legal or other professional services they provide to parties regulated by or that appear before the Commission. To facilitate this assessment, on February 17, 2009, the Commission provided lists of (a) attorneys active in the system and (b) included on service lists as certified. These two lists contained approximately 3194 and 5635 entries respectively.

Hinshaw and Montgomery Hollie have conducted the requested review and determined as follows:

- a. No Hinshaw or Montgomery Hollie attorney is included on either list provided by the Commission, nor is either firm aware of any of its attorneys who appears before the Commission.
- b. Hinshaw and Montgomery Hollie do not presently practice utility law.
- c. Hinshaw does some legal work for entities that have matters before the Commission or counsel listed as appearing before the Commission, or for law firms whose attorneys appear before the Commission. Such representations appear to be as follows:<sup>1</sup>
  1. An investigation related to potential PCB contamination for Ameren and two Illinois subsidiaries. This work is being performed by lawyers in Hinshaw's Chicago and Springfield, Illinois, offices, and relates to one or more sites in Illinois.
  2. Legal work for four national telephone companies and their corporate affiliates. Such legal work relates to litigation (personal injury, breach of contract, and workers compensation matters) and counseling on environmental matters.
  3. Legal work – tax and employment counseling – for three cable television companies or their affiliates.
  4. Legal ethics, risk management, and related work for several law firms whose attorneys appear before the Commission, and also the defense of at least one malpractice claim against such a firm.
  5. Legal work – defense of employment litigation – for approximately five Missouri cities. The cities are all located in St. Louis County, and on information and belief do not own or operate utilities that would be regulated by the Commission.
  6. Legal work for at least two manufacturing companies. The firm handles certain product liability matters for one manufacturing company, and environmental work for the other.

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<sup>1</sup> In most jurisdictions where Hinshaw operates, lawyers generally must maintain confidentiality regarding the identity of clients and nature and scope of legal work provided to clients, unless a client consents to disclosure. Hinshaw has obtained Ameren's consent to disclose the information contained in subparagraph 1 of this Section. Hinshaw understands that the Commission has very limited jurisdiction over the other types of entities listed in this Section, such that disclosure of client identities did not appear necessary. Should interested parties and the Commission indicate further disclosure is appropriate, Hinshaw will endeavor to obtain client consent to make appropriate disclosures.

7. Representation of a retail company on commercial litigation matter and a zoning matter.

None of this work relates to any proceedings before the Commission or any other public service or similar regulatory commission. Further, the only work provided by the two Hinshaw offices (St. Louis and Portland) expected to provide services to the Commission is risk management work for law firms listed as appearing before the counsel (paragraph 3) and employment litigation defense for Missouri cities (paragraph 4).

- d. Montgomery Hollie does no work for entities that have matters before the commission or counsel listed as appearing before the commission, or for law firms whose attorneys appear before the Commission.

## II. Financial Interests in Entities Regulated by the Commission.

Another concern the Commission raised was whether those persons whom Hinshaw or Montgomery Hollie intended to have perform professional services for the Commission also had financial interests that could be impacted by these services. That Hollie of Montgomery Hollie owns approximately 40 shares of AT&T, which have a present value of approximately \$1000. Other involved Hinshaw and Montgomery Hollie personnel apparently do not have direct financial interests that could be impacted by the services these firms will provide, and Mr. Hollie has no direct financial interests other than the AT&T shares referenced above.

Hinshaw and Montgomery Hollie personnel expected to be involved in this project own mutual funds that may or do own shares in regulated entities. However, such personnel are not aware of significant financial interests in regulated entities held through mutual funds.

### III. Safeguards to Protect Integrity of Work.

Hinshaw and Montgomery Hollie do not believe that any of the relationships or issues disclosed in this Notice give rise to a conflict under the Rules of Professional Conduct that govern Missouri lawyers. Specifically, none of the disclosed relationships should create a substantial risk that the work for the Commission would be materially limited by any interest of any Hinshaw or Montgomery Hollie lawyer or client. However, Hinshaw and Montgomery Hollie recognize significant value exists in protecting the integrity of the ethics rulemaking process. Therefore, presuming the Commission intends for Hinshaw and Montgomery Hollie to continue with this engagement, Hinshaw and Montgomery Hollie intend to undertake (and in fact have undertaken) the following safeguards:

- a. Hinshaw staff involved in the ethics rulemaking have not and will not communicate with any lawyer in an office involved in work for Ameren regarding the work Hinshaw is providing to the Commission;
- b. Hinshaw and Montgomery will file notice should any client or anyone acting on behalf of a client try to influence the ethics rulemaking process. To facilitate this process, Hinshaw staff are already keeping a log of all external calls they receive relating to the ethics rulemaking engagement; and
- c. Hinshaw and Montgomery Hollie will undertake representation of new entities within the primary jurisdiction of the Commission (*i.e.*, electric, natural gas, water, sewer, or manufactured homes) during the ethics rulemaking only with express consent of the Commission. To avoid inadvertently undertaking such representations, Hinshaw has and will continue to include in its conflict check database the full lists of entities provided by the Commission as parties adverse to

the Commission, such that any time the firm seeks to undertake representation of such an entity Mr. Downey should receive notice of that intention.

Complying with the first commitment set forth in this section will prevent Hinshaw from using a government lawyer Charles Schmadeke, because he is located in the Springfield office where services are being provided to Ameren.

Please be aware that only one Hinshaw lawyer expected to provide services to the Commission, Peter Jarvis in Oregon, ordinarily would have his compensation impacted by the overall revenues or profitability of the firm. The other Hinshaw lawyers and staff cannot have their compensation impacted by the firm's profitability or revenues, such as any revenues received from Ameren on the PCB contamination matter, unless present economic conditions cause some major change in firm policy. If such a change occurs, Hinshaw will provide notice to the Commission of this change. Further, revenues from the Ameren representation constituted less than one-half of one percent (0.5%) of Hinshaw's 2008 revenues, and the matter appears to be winding down in 2009.

Respectfully submitted,

HINSHAW & CULBERTSON, LLP

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