

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

In the Matter of the Application of)	
Union Electric Company d/b/a AmerenUE)	
for an Order Authorizing the Sale and)	Case No. EO-2010-0263
Transfer of Certain Assets of AmerenUE)	
to St. James Municipal Utilities)	
and Rolla Municipal Utilities.)	

RESPONSE TO “MOTION TO DENY EXPEDITED TREATMENT”

Comes now the City of Rolla, Missouri, by and through Rolla Municipal Utilities (RMU), by and through counsel, and for its response to the “Motion to Deny Expedited Treatment” (Motion) filed on July 11, 2010, respectfully states as follows to the Missouri Public Service Commission (Commission):

1. This “Motion” appears to be a response to the Motion for Expedited Treatment filed by RMU and the City of St. James (St. James) on July 1, 2010. For the reasons stated herein, the Commission should not grant the “Motion to Deny Expedited Treatment.”

GENERAL ARGUMENT

2. The Movant’s primary argument is that “there are several issues of fact . . . that have not been addressed” and, therefore, “these issues should be resolved before granting expedited treatment of this case.” Motion, para. 2.

3. The place to resolve issues of fact, to the extent they are relevant to the case before the Commission, is at an evidentiary hearing. A grant of a request for expedited treatment does not eliminate the need for an evidentiary hearing, but merely focuses the parties’ attention on moving toward such a hearing.

4. While RMU will respond to some extent to the more specific issues raised by the Motion in the following paragraphs, the bottom line is that the answers cannot be fully

litigated until a hearing is held by the Commission. RMU asks that the Commission grant its motion for expedited treatment and establish a date for such a hearing.

NOTICE

5. In paragraph 3 of the Motion, the Movant claims that because “neither RMU nor the Rolla Daily News has published the required legal notice of this case...” it is inappropriate for this case to continue “to the next stage.” There is no “requirement” in statute or the Commission’s rules or orders for any “legal notice” to be published in the Rolla Daily News.

6. Further, it is not Rolla or St. James that should be the target audience for any notice. Neither the Rolla nor the St. James municipal systems are regulated by the Commission and neither entity requires the Commission’s permission to purchase the subject assets. The only Commission approval required in this matter is for AmerenUE, as a regulated utility, to sell the subject assets.

CITY COUNCIL APPROVAL

7. In paragraph 4 of the Motion, the Movant makes a legal argument that RMU has not obtained Rolla City Council approval for the contracts related to the system upgrade, citing section 91.530 RSMo that “all contracts shall be submitted to the common council for approval.” Again, this is a matter that is beyond the question before the Commission – whether AmerenUE should be granted approval to sell the assets in question.

8. Moreover, Movant is raising a legal claim concerning the adequacy of the City Council’s actions or inactions with regard to section 91.530 RSMo. The Commission’s jurisdiction is not the same as that of a circuit court. The Commission is not a court and it has no power to declare or enforce any principle of law or equity. *American Petroleum Exchange*

v. Public Service Commission (Mo. 1943) 172 S.W.2d 952, transferred to 176 S.W.2d 533, 238 Mo. App. 92.

9. RMU provided a lengthy history and documentation of the involvement of the Rolla City Council in this project in paragraph 11 of its “Motion to Deny Application to Intervene of Donna D. Hawley” filed on May 5, 2010, which RMU hereby incorporates by reference. There is no question that the Rolla City Council is aware of this case, and has approved, the contract that is the subject of this case.

10. This being said, if the Commission does believe it should investigate this issue, the place for that investigation is at a hearing, not in regard to a motion for expedited treatment.

ENGINEERING STUDY

11. In paragraph 5 of the Motion, the Movant suggests that access to the “entire engineering study prepared by R.W. Beck” is needed for “Rolla area citizens to submit comments of substance.” Motion, para. 5. Movant then makes a variety of allegations related to the subject engineering study.


12. Regardless of whatever merit there may be, if any, to the various Open Records/Sunshine Law issues raised by the Motion, it is clear that under the Commission’s confidentiality rule, both the Commission Staff and the Office of the Public Counsel (Public Counsel) may have complete access to the subject document and may bring it to the Commission’s attention, to the extent it may be relevant to the issue to be decided by the Commission.

13. The Public Counsel is, of course, empowered by statute to “represent and protect the interests of the public in any proceeding before or appeal from the public service

commission.” Section 386.710(2), RSMo. Public Counsel’s ability to review and determine any impact this engineering study may have on this case, in addition to the participation of the elected representatives of the citizens of Rolla and St. James, through their city councils, protects the public interest and has been deemed sufficient for Commission proceedings in many contexts.

WHEREFORE, RMU prays that the Commission deny the “Motion to Deny Expedited Treatment.”

Respectfully submitted,



Gary W. Duffy MBE #24905
Dean L. Cooper MBE#36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
Direct phone: 334 298-3197
Email: duffy@brydonlaw.com
dcooper@brydonlaw.com

Attorneys for
The City of Rolla, Missouri

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on July 16, 2010, to the following:

Nathan Williams
Office of the General Counsel
Governor Office Building, 8th Floor
Jefferson City, Mo 65101
nathan.williams@psc.mo.gov

Lewis Mills
Office of the Public Counsel
Governor Office Building, 6th Floor
Jefferson City, MO 65101
lewis.mills@ded.mo.gov

Thomas M. Byrne
Ameren Services Company
St. Louis, MO
tbyrne@ameren.com

James B. Lowery
Smith Lewis LLP
Columbia, MO
lowery@smithlewis.com

Donna D. Hawley
2602 Brook Dr.
Rolla, MO 64501
hawleyd@fidnet.com

