

**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.)	

**ROLLA’S REPLY TO STAFF RESPONSE
AND MS. HAWLEY’S MOTION TO RESPOND**

Comes now the City of Rolla, Missouri (Rolla), by and through Rolla Municipal Utilities (RMU), and, in reply to the Response filed by the Staff of the Missouri Public Service Commission (Staff) and the Motion to Respond to Order Directing Filing filed by Intervener Donna D. Hawley (Ms. Hawley), respectfully states as follows:

BACKGROUND

1. The Commission’s Order Directing Filing required the parties to state their positions as to several matters no later than August 9, 2010. On August 9, 2010, the Staff filed a document entitled Staff’s Response and Rolla filed its Response to Order Directing Filing. On August 11, 2010, Ms. Hawley filed her Motion to Respond to Order Directing Filing.

2. Rolla will not attempt to respond to every item that has been alleged and suggested by the referenced pleadings. It will instead focus on a few key matters to which it will respond. Accordingly, Rolla’s failure to respond to any matter contained in the pleading should not be interpreted as acquiescence in that position.

REPLY TO STAFF'S RESPONSE

3. While Rolla does not agree with the Staff's interpretation of Commission Rule 4 CSR 240-2.135, it does agree with the Staff as to a couple of fundamental matters. Staff states on page 3 that Ms. Hawley's stated "litigation objectives do not appear to require access to the sort of structural information redacted from the Master Plan." Staff further explains that "Ms. Hawley appears to be in the wrong forum – the Commission will review the proposed transaction to determine whether it is prudent for AmerenUE to sell the assets, not whether it is prudent for the Cities to buy them." Staff's Resp., p. 3, FN 1. Ultimately, this issue has more to do with Ms. Hawley's desire to possess the R. W. Beck study than it has to do with the question to be decided by the Commission.

Closed Record

4. As has been stated previously, the material that is the subject of Rolla's Motion for Protective Order is a "closed record" pursuant to Chapter 610.021(19), RSMo and the statutorily required vote of the Rolla Board of Public Works. Staff's Response states in part that "Rolla has never produced any evidence that such a vote ever occurred." Staff Resp., p. 8. Staff further notes that Ms. Hawley has never challenged that designation in the courts. *Id.*

5. Staff is correct that Rolla has not produced such evidence in this case. However, that is only because it has never been asked to do so. To the extent a record of the vote would be helpful to the Commission's decision, attached hereto as **Appendix A** is a copy of the relevant RMU meeting minutes.

Protective Order

6. A second matter to which Rolla would like to respond is associated with the Staff's Response as to what protective order Rolla may be entitled to per Commission Rules

4 CSR 240-2.085 or 2.135. In reference to the fact that Rolla has provided Staff and the Office of the Public Counsel (Public Counsel) with access to a Highly Confidential version of the document, Staff makes a blanket statement that any such “protective order may not properly impose any restrictions or limitations on Ms. Hawley than apply to those parties to whom Rolla has already disclosed the un-redacted Master Plan.” Staff Resp., p. 8.

7. Rolla is unsure what support there is for this statement (none is referenced). However, if true, the Commission needs to immediately amend its own confidentiality rule (Commission Rule 4 CSR 240-2.135) because the existing rule treats all other parties differently from how it treats the Staff and Public Counsel. Commission Rule 4 CSR 240-2.135 (19) states:

The provisions of sections (3), (4), (6), (7), and (18) of this rule do not apply to officers or employees of the commission or to the public counsel or employees of the Office of the Public Counsel. The officers or employees of the commission and the public counsel and employees of the Office of the Public Counsel are subject to the nondisclosure provisions of section 386.480, RSMo. Neither the officers or employees of the commission, nor the public counsel and the employees of the Office of the Public Counsel shall use or disclose any information obtained in discovery for any purpose other than in the performance of their duties.

8. If the Commission can treat parties differently in its own confidentiality rule, it certainly can do so in a protective order.

Compliance with Commission Rule 4 CSR 240-2.135(11)

9. Lastly, Staff alleges that Rolla did not comply with the requirements of Commission Rule 4 CSR 240-2.135(11)(A) and that, therefore, “the HC designation of the Master Plan may be void.” Staff Resp., p. 9. Staff is in error as Commission Rule 4 CSR 240-2.135(11) is, by its own terms, inapplicable to the situation at hand.

10. Commission Rule 4 CSR 240-2.135(11) states as follows:

Not later than ten (10) days *after testimony is filed that contains information designated as proprietary or highly confidential*, any party that wishes to challenge the designation of the testimony may file an appropriate motion with the commission.

(emphasis added).

11. No testimony has been filed in this case. This rule is inapplicable and Staff's allegation is without basis.

REPLY TO MS. HAWLEY'S MOTION TO RESPOND

Applicability of Confidentiality Rule to Rolla

12. Ms. Hawley goes through a lengthy explanation as to why she believes Rolla may not designate a document as Highly Confidential in accordance with Commission Rule 4 CSR 240-2.135 because the rules do not apply to Rolla in that it is not a "public utility" regulated by the Commission. Hawley Motion, p. 6-14.

13. It is Rolla's understanding that the Commission's Chapter 2 rules (Practice and Procedure) are promulgated pursuant to Section 386.410.1, RSMo ("All hearings before the commission or a commissioner shall be governed by rules to be adopted and prescribed by the commission") and apply to any party in a Commission case. However, this dispute can be easily resolved if the Commission agrees with Ms. Hawley's interpretation. If Commission Rule 4 CSR 240-2.135 does not apply to Rolla because it is not a public utility, Commission Rule 4 CSR 240-2.090, pursuant to which Ms. Hawley requests the subject material, also does not apply. It appears Ms. Hawley argues that her request for the R.W. Beck Study is without basis in rule and thus should be ignored by the Commission.

Nonattorneys v. Attorneys

14. Ms. Hawley also argues that the “title alone” of Commission Rule 4 CSR 240-2.040(5) (“Practice by Nonattorneys”) “indicates that natural persons are to be allowed the right to practice before the PSC” “as an attorney.” Hawley Motion, p. 3-4.

15. Commission Rule 4 CSR 240-2.040(5) states as follows:

(5) Practice by Nonattorneys. A natural person may represent himself or herself. Such practice is strictly limited to the appearance of a natural person on his or her own behalf and shall not be made for any other person or entity.

16. The Commission’s rules (4 CSR 240-2.040(3)) describe the requirements for the appearance of “attorneys” as follows:

(3) Attorneys who wish to practice before the commission shall fully comply with its rules and also comply with one (1) of the following criteria:

(A) An attorney who is licensed to practice law in the state of Missouri, and in good standing, may practice before the commission;

(B) A nonresident attorney who is a member of the Missouri Bar in good standing, but who does not maintain an office for the practice of law within the state of Missouri, may appear as in the case of a resident attorney;

(C) Any attorney who is not a member of the Missouri Bar, but who is a member in good standing of the bar of any court of record may petition the commission for leave to be permitted to appear and participate in a particular case under all of the following conditions:

17. Ms. Hawley does not appear to have complied with any of these qualifications necessary to appear as an “attorney” before the Commission.

18. On the other hand, Ms. Hawley appears to fit the definition of “nonattorneys” very well. Provision of Highly Confidential material to “nonattorneys” is not provided for by Commission Rule 4 CSR 240-2.135.

DUE PROCESS ARGUMENTS

19. Commission Rule 4 CSR 240-2.135 does not permit Ms. Hawley, as a “nonattorney,” to have access to materials that have been identified as Highly Confidential.

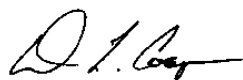
Both the Staff and Ms. Hawley have raised concerns that compliance with this interpretation of the Commission rule may create a due process issue.

20. Rolla does not believe that is the case as the information in question is not related to the issue to be decided by the Commission – whether the sale of the AmerenUE plant is not detrimental to the public interest. Further, as mentioned above, Staff has pointed out that Ms. Hawley’s “litigation objectives do not appear to require access to the sort of structural information redacted from the Master Plan.”

21. Due process rights are not violated by merely failing to provide a party access to every document it may request. There must be some prejudice to the party’s position. “*State v. Tisius*, 92 S.W.3d 751, 762 (Mo. banc 2002) (holding that the focus in reviewing a claim that a party was denied meaningful pre-trial discovery is whether the denial of discovery affected the result of the trial); *Curnutt v. Scott Melvin Transp., Inc.*, 903 S.W.2d 184, 193 (Mo. App. 1995). Without such a showing, any error in denying the discovery would be harmless error.” *Bost v. Clark*, 116 S.W.3d 667, 676-677 (Mo.App.W.D. 2003).

WHEREFORE, Rolla prays that the Commission conclude that the highly confidential material may not be provided to Ms. Hawley in accordance with Commission Rule 4 CSR 240-2.135.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on August 17, 2010, to the following:

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