

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

In the Matter of Union Electric)
Company d/b/a Ameren Missouri's)
Voluntary Green Program/Pure Power)
Program Tariff Filing.)

Case No. EO-2013-0307
Tariff No. JE-2013-0197

STAFF'S RESPONSE TO ORDER ESTABLISHING A RESPONSE DEADLINE

COMES NOW Staff of the Missouri Public Service Commission ("Staff"), by and through the undersigned counsel, and states as its Response as follows:

1. On February 20, 2013, the Earth Island Institute d/b/a Renew Missouri ("Renew Missouri") filed a motion for leave to intervene in this case. The ordered intervention deadline was January 2, 2013.

2. On February 21, 2013, the Commission issued an Order directing the parties to file responses to Renew Missouri's motion to intervene by February 25, 2013.

3. Rule 4 CSR 240-2.075 (3) states:

The commission may grant a motion to intervene or add new member(s) if—

(A) The proposed intervenor or new member(s) has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or

(B) Granting the proposed intervention would serve the public interest.

4. Further, since Renew Missouri filed its motion after the intervention deadline, the Commission must also find good cause to grant the motion. Rule 4 CSR 240-2.075 (10) states:

Motions to intervene or add new member(s) filed after the intervention date may be granted upon a showing of good cause. Any motion so filed must include a definitive statement whether or not the entity seeking intervention or to be added as a new member accepts the record

established in that case, including the requirements of any orders of the commission, as of the date the motion is filed.

5. Good cause “generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.”¹ Similarly, “good cause” has also been judicially defined as a “substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties.”²

6. Of course, not just *any* cause or excuse will do. To constitute good cause, the reason or legal excuse given “must be real not imaginary, substantial not trifling, and reasonable not whimsical.”³ And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.⁴

7. In regard to Rule 4 CSR 240-2.075 (3), Staff agrees that Renew Missouri has an interest which is different from that of the general public and which may be adversely affected by a final order, and generally, the proposed intervention would serve the public interest. However, Staff asserts that Renew Missouri has not shown “good cause” as required by Rule 4 CSR 240-2.075 (10).

8. Renew Missouri’s “wait and see” tactic does not constitute good cause. Renew Missouri could have easily filed to intervene in time to monitor the progress of this case, filed rebuttal testimony to rebut Ameren Missouri, and then filed surrebuttal testimony to address the issues it believes the parties failed to address. The

¹ *Black’s Law Dictionary* 692 (6th ed. 1990).

² *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective “ordinary person” standard. See, e.g., *Cent. Mo. Paving Co. v. Labor & Indus. Relations Comm’n*, 575 S.W.2d 889, 892 (Mo. App. W.D. 1978) (“[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.”)

³ *Belle State Bank v. Indus. Comm’n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

⁴ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975); *Havrisko v. U.S.*, 68 F.Supp. 771, 772 (E.D.N.Y. 1946); *The Kegums*, 73 F.Supp. 831, 832 (S.D.N.Y. 1947).

Commission should not condone such “wait and see” tactic and should deny Renew Missouri’s motion.

9. Further, Renew Missouri’s motion does not explicitly state whether it accepts the record currently before the Commission as required by Rule 4 CSR 240-2.075 (10).

10. Should the Commission allow Renew Missouri’s intervention, Staff recommends the Commission continue with the same procedural schedule as ordered on December 11, 2012, and as modified on January 22, 2013.

WHEREFORE, Staff files its Response for the Commission’s information and consideration and recommends the Commission deny Earth Island Institute d/b/a Renew Missouri’s motion for leave to intervene in this case.

Respectfully submitted,

/s/Jennifer Hernandez

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail to all counsel of record on this **25th day of February 2013**.

/s/Jennifer Hernandez