

**BEFORE THE PUBLIC SERVICE COMMISSION
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. |) | |

**MOTION TO REQUEST RECONSIDERATION OF
COMMISSION'S ORDER OF DISMISSAL**

1. Comes now Donna Hawley of 2602 Brook Dr., Rolla, Mo on Sept. 4, 2010, to request
a reconsideration of the Commission's Order of Dismissal dated Sept. 1, 2010.

2. I agree with the Motion filed in this Case yesterday, September 2, 2010, by the Office
of Public Counsel (OPC) in nearly all aspects **except for those issues stated here.** .

3. The Commission ruled on Sept. 1, 2010 that I had not shown "good cause" as that
term was not defined in Commission Rule 4 CSR 240-2.015(1) which the
Commission states is not defined in their own rules. Typically this would mean that

the Commission has wide discretion in applying that rule. However, the Commission's authority is derived from Chapter 386 and its rule making authority comes under Chapter 536 of the Missouri Revised Statutes. There are also many references to procedural guidelines under "under the rules governing civil practice in circuit courts in Missouri" and for good reason. All final rulings of the Commission are subject to appeal in Missouri Civil Courts up to and including the Missouri Supreme Court. In particular, Rules 74.05 (c) was amended to reflect a more liberal interpretation of the application of "good cause" which should be the standard the Commission should use when choosing the most drastic of all punitive actions – dismissing a party from a case. Good cause includes a mistake or conduct that is not intentionally or recklessly designed to impede the judicial process. Furthermore, the Supreme Court states, "An order setting aside an interlocutory order of default or a default judgment may be conditioned on such terms as are just..." I believe the Commission should have tailored their punishment to my unique circumstances as both a pro se Party and a disabled person instead of ordering dismissal which is the maximum penalty.

4. Due to the fact that I was approved as a pro se party and given Commission's discretion with pro se filings from other Parties as the OPC mentions in their Motion, and due to the fact that there is very little direction in the Commission's

Handbook for Pro Se Parties which seems to be directed at pro se complaints. It is an undeniable fact that RMU and St. James are able to spend unlimited amounts of public resources (including mine) to hire staff and MoPSC experienced legal representation to press their case where I cannot. The allowance of additional time for pro se Parties to prepare and file motions will only slightly redress the imbalance presented in this Case. RMU, St. James, and the other Parties in this Case are able to hire the large numbers of legal and technical staff required for even routine business before the Commission, the availability of law library resources, and other advantages. RMU and St. James to use my rate money and that of their other captive monopoly customers, to demand timing and compliance with their avalanche of complicated procedural demands while I can not is deserving of some consideration from the Commission. If these proceedings are to be viewed by others who are currently reading this record, or those who may read it in the future, as the due process it is alleged to be, there must be at least the appearance of fairness and balance.

5. My request for Special Counsel is also reasonable given the fact that RMU requested a Special Counsel to serve their needs in dealing with Highly Confidential documents and a Protective Order requirement. It appears that, under the guise of

dismissing me for missing a deadline, essential facts that will affect the public interest are being buried before they can be openly examined.

6. The issues in this Case will affect all Rolla and St. James citizens as well as many others who have invested in the revenue bonds that fund this project.

Unfortunately, due to a complete news blackout on this action beginning with the public notice that “got stuck in the spam filter” at the Rolla Daily News and was never made public, I am the only person to intervene and attempt to draw the Commissions attention to the fact that most - if not all - of the contracts involved in this project between RMU, St. James and AmerenUE, including their FERC filings, are not executed within the constraints of Missouri law and will not withstand a legal challenge. Additionally, RMU has pledged collateral such as the tapping stations and 138 kV lines to repayment of this debt that it does not have the right to pledge to bondholders. In the Alfermann CCA AmerenUE retains ownership of the tapping station and lines even while RMU has pledged them as collateral for the Missouri Association of Municipal Utilities (MAMU) lease purchase sold as revenue notes by MAMU in December 2008.

7. In the interest of fairness it is still my request that the Commission to appoint a Special Counsel to help with various technicalities of the rules and procedures in

this Case. Such assistance would help prevent misunderstandings such as my failure to respond to an Order Setting Procedural Schedule during a time when I experienced enormous stress that most people do not ever have to face. Providing a Special Counsel would be in reality a benefit which would satisfy the Commission's duty to accommodate a disabled person, but would also provide guidance to help a pro se Party maintain and develop pleadings, testimony and exhibits that are efficient, on-point and relevant to current Commission rulings and procedural standards.

8. Since the lack of timely response has been raised I have had no response from the Commission on my request for an ADA Accommodation in the filing on August 30th. From the very beginning of this Case, I have indicated that I am disabled so the Commission was fully aware of my status before they approved my Application as a pro se Party. When the constant barrage of Motions and Objections filed in this case [by the attorneys for] RMU and St. James began and as soon as I realized that my ADA limitations were significantly hindering my ability to fully prepare a substantial presentation, I made the request but have not had any acknowledgment. If the Commission staff who deals with ADA accommodations requires more specific statements from my neurologist, I would be more than willing to provide it in a Highly Confidential filing or communication. By publishing the details of my

disabilities, I find that the Commission has already chosen to ignore my right to privacy so I would be more comfortable and certainly within my right to only release specific medical information to PSC staff who will respect my privacy.

9. The correct response to an ADA accommodation request made to a governmental agency is to assess whether the accommodation requested was reasonable and whether it would preserve the disabled person's rights to due process. If the agency cannot afford the requested accommodation, another accommodation designed to preserve those rights should be offered. The incorrect response is to eject the disabled person - whether that is accomplished through an employment termination or, as in this instance, to arbitrarily dismiss the disabled person's case before the agency.
10. It is reasonable for the Commission to consider some alternative to complete dismissal to a late filing on August 25th, not to lack of interest or perseverance, but rather due to physical limitations within the framework of an expedited schedule with numerous RMU Motions and Objections that had to be answered least to preserve Due Process rights before the Commission. I filed a motion objecting to the Expedited Procedural Schedule as well as requested reconsideration (Appeal) of the Commission's Order setting the expedited schedule. Both were denied. I stated that

the Expedited Schedule was an “unrealistic timeframe for me to request and receive discovery from Rolla, and then to develop substantial exhibits and interrogatories based on that discovery” which has proven true. It takes a considerable amount of time to prepare data requests with additional time to receive clarifications. If I had not been dismissed from the Case, I would have filed a Motion to resolve some of the RMU answers to my data requests.

11. In reference to the complaint that I did not make a response to the Ameren filing on August 25th - I believe the Commission’s conclusions are wrong. In my email to Mr. Lowery on August 24th, the only objection I raised to his filing was that I asked for agreement to the definition of “public.” He refused this request for clarification so I expected that I would have to defend my interpretation during the Hearing. Contrary to Commission’s conclusions, I asked for an extension to file that List only until the Special Council request was decided. My request for Special Counsel was not framed as being due to lack of experience, but rather as an accommodation to help me finish the work on my position that I had already developed to the best of my abilities. For the Commission to rule that I was not working on my Case is unreasonable because there is no evidence to support such a conclusion. In fact, the Commission itself outlined in the Order on page 3 just how hard I have been working. They note that I have filed ten (10) pleadings in twenty-seven (27) days, as

I also prepared numerous data requests and emails designed to support my position. This is strong evidence that I have not abandoned my duties.

12. Since this may be my last communication on the record, I must point out that I requested that the Commission strike Mr. Duffy's unfounded and libelous comments concerning my character from the public record. I am still waiting for the Commission to respond to that request (May 17th Motion to Respond) as well a request for the Commission to make a ruling on the issue of lack of public notice. The fact that there is just one pro se challenge to this case is not an indication that everyone agrees with RMU and St. James or AmerenUE. It is mostly a function of the failure of the PSC and RMU and St. James to ensure that the Rolla public notice was printed in the local paper as required by law. Had there not been a complete news blackout on this hearing it is possible that a Rolla attorney might have been concerned enough to also file an Application to Intervene.

13. The fact that the Commission has not responded to my requests along with the OPC's comments regarding the Commission's record and subsequent rulings (which include the quick dismissal), certainly leads me to believe that Mr. Duffy's character assassination gained some traction and prejudiced this Commission panel. As a result my ability to have a fair and impartial hearing and obtain due process is now

highly questionable. There was a time when due process was an examination of the facts at issue. This allowed for an intense, competent examination, centered on the public's interest, which was of greater importance than the procedural details and obfuscations by bureaucrats. Up to this point the Commissions process has only served the latter not the former.

Respectfully submitted,

Donna D. Hawley
2602 Brook Dr.
Rolla, MO 65401
hawleyd@fidnet.com
573-458-2165

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on September 7, 2010, to the following:

Kevin Thompson
OFFICE OF THE GENERAL COUNSEL
Governor Office Building, 8th Floor
Jefferson City, Mo 65101 Jefferson City,
MO 65101

Kevin.thompson@psc.mo.gov

Lewis Mills
OFFICE OF THE PUBLIC COUNSEL
Governor Office Building, 6th Floor
lewis.mills@ded.mo.gov

Steven R. Sullivan
Thomas M. Byrne
AMEREN SERVICES COMPANY
St. Louis, MO
lowery@smithlewis.com
ssullivan@ameren.com

James B. Lowery
SMITH LEWIS LLP
Columbia, MO
tbyrne@ameren.com

Gary W. Duffy MBE #24905
BRYDON, SWEARENGEN &
ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
duffy@brydonlaw.com
Attorneys for
The City of Rolla, Missouri
The City of St. James, Missouri

Respectfully submitted,

Donna D. Hawley

