

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

In the Matter of Missouri-American Water                    )  
Company's Request for Authority to Implement            )        File No. WR-2017-0285  
General Rate Increase for Water and Sewer            )  
Service Provided in Missouri Service Areas.            )

**PUBLIC COUNSEL’S OPPOSITION TO THE APPLICATIONS FOR  
INTERVENTION OF AMEREN MISSOURI, KANSAS CITY POWER & LIGHT  
COMPANY, AND KCP&L GREATER MISSOURI OPERATIONS COMPANY**

COMES NOW the Office of the Public Counsel (“Public Counsel” or “OPC”) and for its Opposition to the Applications for Intervention of Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”), Kansas City Power & Light Company (“KCPL”), and KCP&L Greater Missouri Operations Company (“GMO”) states:

**COMMISSION’S STANDARD FOR INTERVENTION**

1. Section 386.420.1 RSMo (2016) provides authority for the Missouri Public Service Commission (“Commission”) to grant intervention in matters before it. The Supreme Court has “uniformly regarded the statute as requiring an interested person to make a showing of interest and become a party by intervention.” *State ex rel. Rouveyrol v. Donnelly*, 365 Mo. 686, 695 (Mo. 1956).
2. Applicable here, the kind of interest an applicant must show is contained in Commission Rule 4 CSR 240-2.075 prescribing the procedures by which an individual or entity may intervene in a case. This rule gives the Commission discretion to grant intervention where: (1) the proposed intervenor 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 (2) Granting the proposed intervention would serve the public interest. Commission Rule 4 CSR 240-2.075(3).

3. In determining whether to grant intervention “[i]t has been the Commission’s practice to liberally grant intervention to organizations that promote various public policy positions in order to consider a full range of views before reaching a decision.” (Order Regarding Applications to Intervene, *Iss ’d* Nov. 24, 2014, Case No. ER-2014-0370, Doc. No. 45).

4. Of course, there may be circumstances when the Commission should deny an applicant’s intervention request. For example, when an applicant does not show that it has an interest which may be adversely affected by the outcome of this proceeding or show that granting the proposed intervention would serve the public interest the Commission will deny intervention (*See* Order Denying Application to Intervene, *In the Matter of the Application of Aquila, Inc. for an Accounting Authority Order Concerning Fuel Purchases*, Case No. EU-2005-0041, Doc. No. 21). In that case, the Commission denied the request of an electric utility (AmerenUE) to intervene in a matter filed by different electric utility (Aquila, Inc.). The basis of the applicant’s intervention included assertions that it “will be directly impacted by any new accounting treatment of fuel costs that the Commission may permit Aquila to adopt” and that “if the Commission approves a particular accounting treatment for Aquila, then AmerenUE may request the same for its operations.” *Id.* The Commission noted in that case that granting Aquila relief “would not vest AmerenUE with authority, nor would denial preclude its subsequent application.” *Id.* Likewise, in this case, any determination of particular regulatory concepts, such as a future tests year or revenue stabilization mechanisms, would only bind the applicant utility. Therefore Ameren, KCPL and GMO have no interest that is different from that of the general public and which may be adversely affected by a final order arising from the case.

5. Furthermore, when examining intervention at the Commission, the Supreme Court has held that a singular customer “did not have any interest in the case aside or different from that of

the general public.” *Smith v. Public Service Comm.*, 336 S.W.2d 491, 494 (Mo. 1960). The Court explained its reasoning:

This question was before this court in *State ex rel. Consumers Public Service Co. v. Public Service Commission*, 352 Mo. 905, 180 S.W.(2d) 40, l.c. 45(4), where the court stated, in substance, that the law did not contemplate that every citizen may participate in a hearing before the Commission. Such a practice would prevent the efficient administration of justice.

*Id.* Just as the Commission’s enabling statutes did not contemplate every citizen participating in every hearing, the statutes likely did not contemplate every utility participating in other utilities’ rate cases. Ameren, KCPL, and GMO each being singular entities have not demonstrated an interest different than the general public. Granting intervention will require parties to expend time and resources responding to the intervening utility, as Public Counsel was forced to do when Ameren Missouri intervened in KCPL’s recent rate case (Case No. ER-2016-0285), and can potentially frustrate the efficient administration of a case. This potential is avoided if the instant applications of Ameren Missouri, KCPL, and GMO are denied.

6. Denying the requests of Ameren Missouri, KCPL, and GMO does not necessarily mean these entities cannot offer their respective opinions on the issues in this case. If the Commission desires, it can permit each applicant to file a brief as an amicus curiae. Commission Rule 4 CSR 240-2.075(11). However, permitting Ameren Missouri, KCPL, and GMO to file briefs in this case is also unwarranted. Those utilities can present their respective perspectives on any issues in their own rate cases. In this case, Missouri-American Water Company ("MAWC") must meet its own burden on each and every issue.

#### OPPOSITION TO AMEREN MISSOURI’S APPLICATION FOR INTERVENTION

7. In its application for intervention Ameren Missouri alleges its interest in this case (1) “arises from its status as a customer” and (2) “as a Commission-regulated investor-owned

electric utility with a specific interest in some of the key regulatory mechanisms at issue in this case, including Missouri-American Water Company's ("MAWC") requests to employ a forward test year, to utilize a Rate Stabilization Mechanism, and to obtain accounting authority with respect to certain investments." (Doc. No. 39, p. 2). Ameren Missouri further states "[t]he Commission's consideration of such issues could, as a practical matter, have an impact upon similar issues as they arise in Ameren Missouri cases or other proceedings at the Commission, which in turn could have an impact on Ameren Missouri's business, making Ameren Missouri's interests different than the interests of the general public." (*Id.*) Ameren Missouri then concludes "Ameren Missouri's intervention is in the public interest as it may aid the Commission in addressing the policy implications of such issues." (*Id.*)

8. First, Ameren Missouri's general interest as a customer in the rates and quality of service provided by MAWC (based on the limited information provided in Ameren Missouri's pleading) is already represented by Public Counsel. Ameren Missouri has not pleaded any facts demonstrating it has, or represents, any different interest in the rates or service of MAWC or any public policy position different than those endorsed by Public Counsel benefitting ratepayers: the Commission must establish just and reasonable rates necessary for MAWC to provide safe and adequate service.

Importantly, to the extent Ameren Missouri is dissatisfied with its water and sewer rates or takes issue with the quality of service provided by MAWC, Public Counsel exists to help. Ameren Missouri, like all customers of MAWC, can reach OPC by calling (573)-751- 4857 (toll-free 866-922-2959) or via email at mopco@ded.mo.gov.<sup>1</sup> Ameren Missouri can be assured

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<sup>1</sup> Ameren Missouri may also contact undersigned counsel at via email at timothy.opitz@ded.mo.gov or by phone at (573) 751-5324.

Public Counsel will scrutinize the rate request of MAWC with the same dedication and rigor as it does the cases filed by Ameren Missouri.

9. Second, Ameren Missouri's contention it should be granted intervention because it is a "Commission-regulated investor-owned electric utility with a specific interest in some of the key regulatory mechanisms at issue" does not support its intervention request but, rather, undermines its request. True, like MAWC, Ameren Missouri is regulated by the Commission. However, Ameren Missouri does not gain any special insight or policy perspective into the operations of a water and sewer company by virtue of being a regulated utility. Public Counsel concedes Ameren Missouri will support any position that, if granted in its own electric or gas rate cases, would benefit its shareholders. This is precisely the point: Ameren Missouri can advocate for its shareholders' interest in its own rate cases.

As a regulated utility, Ameren Missouri cannot be adversely affected by this water and sewer case because it involves the terms and conditions by which MAWC must render water and sewer service. Any decision rendered by the Commission in MAWC's instant case will apply *only* to MAWC's rates and service. Furthermore, as to any decision on a particular issue, the Commission is not "bound by stare decisis" so long as its current decision is not otherwise unreasonable or unlawful. *See State ex rel. Praxair, Inc. v. PSC*, 328 S.W.3d 329, 340 (Mo. App.W.D. 2010).

10. Ameren Missouri's application then simply asserts its intervention will further the public interest because it "may aid the Commission in addressing the policy implications of such issues" (referring to a future test year, a Rate Stabilization Mechanism, and extraordinary accounting authority) (Doc. No. 39, p. 2). Ameren Missouri's conclusory statement is inadequate. Based on its pleading, there is no way to discern *how* Ameren Missouri will aid the

Commission in addressing the issues. Ameren Missouri refuses to acknowledge its interest and feigns objectivity, “[a]t this early juncture of the case, Ameren Missouri has not determined its position on the issues in this case.” (*Id.*) If Ameren Missouri intends to support (or oppose) the future test year, rate stabilization mechanism, or extraordinary accounting authority requests of MAWC – issues raised by MAWC to benefit shareholders – it should so state. Moreover, Ameren Missouri must state *how* its positions on each will serve the *public interest*, not simply the fiscal interests of Ameren Missouri’s shareholders. Ameren Missouri has offered only vague conclusory statements, and so, it has failed to satisfy the intervention requirement to show that its intervention will promote the public interest.

11. For the foregoing reasons the Commission should deny Ameren Missouri’s application for intervention in MAWC’s water and sewer rate case.

**OPPOSITION TO KANSAS CITY POWER & LIGHT COMPANY AND KCP&L GREATER MISSOURI OPERATIONS COMPANY APPLICATIONS FOR INTERVENTION**

12. In the same vein as Ameren Missouri, KCPL and GMO imply their status as “electric utilities regulated by the Commission” endows them with an innate ability to aid the Commission in resolving issues raised in the MAWC water and sewer rate case. As with Ameren Missouri, KCPL and GMO identify particular issues (capital treatment for cloud computing investments, future test year, revenue stabilization mechanism, opposition to inclining block rates), claim they “do not currently know what position they will take in this case” then assert “their interests could be adversely affected by a final order issued in this case.” (Doc. No. 37, pp. 3-4).

13. Notably, KCPL and GMO (although they have evaluated the issues to such a degree that permits them to pick those they find interesting) do not explain *why* they are interested in those issues or *how* an order in MAWC’s water and sewer rate case could adversely affect their interests as electric utilities. Moreover, the very language stating that “their interests could be

adversely affected” used by KCPL and GMO indicates a level of evaluation that contradicts their claim to be undecided on the issues but still does not provide the Commission any useful information. Importantly, as discussed above, any decision rendered by the Commission in MAWC’s instant case will apply only to MAWC’s rates and service and cannot affect the rights of KCPL or GMO to raise issues in their own cases. The pleading of KCPL and GMO contains no basis explaining how their particular interests are different than those of the general public or how they may be adversely affected by an order in this case.

14. Without having offered any explanation how their interests are different than the general public or describing how those interests would be affected by a final order in this case, KCPL and GMO move on to claim their intervention “serves the public interest because it will afford KCP&L/GMO an opportunity to provide useful and relevant information that may aid the Commission in its deliberations.” (Doc. No. 37, pp 3-4). Here, too, KCPL and GMO fail to support their conclusion. KCPL and GMO offer no explanation of what enables them to provide “useful and relevant information” to the Commission in MAWC’s present water and sewer case. There is no explanation regarding the kind of information they might provide or how such information would be useful or relevant to the current case. Instead, KCPL and GMO offer only the conclusory statement that their intervention would serve the public interest. In choosing to do so, KCPL and GMO have failed to satisfy the requirement to demonstrate that their intervention will promote the public interest.

15. For the foregoing reasons the Commission should deny KCPL and GMO’s request to intervene in MAWC’s water and sewer rate case.

## CONCLUSION

16. Is the public interest served by permitting every regulated utility to intervene and participate as a party in every other regulated utility's cases simply because they are also regulated? Of course not. Doing so clouds the record and distracts parties from the issues in the case at hand. Importantly, as mentioned above, these regulated utilities can file their own cases if they wish; there is no need for the Commission to address their interests within MAWC's water and sewer case.

If a regulated utility wishes to participate in another utility's case it should plead either (1) 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 (2) that their intervention would serve the public interest. Commission Rule 4 CSR 240-2.075(3). Ameren Missouri, KCPL, and GMO have all failed to plead either.

17. Public Counsel recognizes that the Commission's practice is to liberally grant intervention to organizations that promote various public policy positions in order to consider a full range of views. However, any public policy positions offered by Ameren Missouri, KCPL, or GMO expressing their views of an issue as a regulated utility will be represented by MAWC – the utility bringing the case. To the extent the Commission believes Ameren Missouri, KCPL, or GMO will offer some different perspective than MAWC it should still deny their applications for intervention but invite them to file amicus briefs expressing their positions.

WHEREFORE, the Public Counsel submits its *Opposition to the Applications for Intervention of Ameren Missouri, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company* and respectfully requests that the Commission deny Ameren Missouri, KCPL, and GMO intervention.



Respectfully,

OFFICE OF THE PUBLIC COUNSEL

/s/ **Tim Opitz**  
Tim Opitz  
Deputy Public Counsel  
Missouri Bar No. 65082  
P. O. Box 2230  
Jefferson City MO 65102  
(573) 751-5324  
(573) 751-5562 FAX  
Timothy.opitz@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 4<sup>th</sup> day of August 2017:

*/s/ **Tim Opitz***

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