

**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)
Transfer of Certain Assets of AmerenUE)
to St. James Municipal Utilities)
and Rolla Municipal Utilities.)

Case No. EO-2010-0263

RESPONSE TO “MOTION TO REQUEST DOCUMENT”

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 Request Document” filed on July 2, 2010, respectfully states as follows:

1. Because it was filed with the Commission, it appears the intent is that the Commission order RMU to produce the “full engineering report” referenced by the Movant. The Movant does not have a right to the relief requested.
2. The Commission’s rules allow discovery by the same means as in civil actions. Mo.S.Ct. Rule 56.01(b)1 allows “parties” to use certain forms of discovery. In addition, section (2) of Commission rule 4 CSR 240-2.090 allows “parties” to use data requests to obtain documents and information.
3. The Movant is not a “party” to this proceeding because there has been no order granting her intervention. By definition, as a non-party, the Movant has no right to discovery in this proceeding and therefore no standing to request that the Commission order or otherwise involve itself in such discovery. Therefore, the motion should be denied.
4. In the alternative, if the Movant should become a party (which RMU opposes in

its Motion to Deny Intervention filed May 5, 2010), RMU's response is that the motion is premature and in violation of Commission rules and should be denied. It is a discovery motion that violates several portions of 4 CSR 240-2.090(8). Section (8) says: "The Commission will not entertain any discovery motions" unless certain underlying requirements have been met. In this proceeding, the Movant has made no discovery request directly to RMU. She chose instead to make her initial request through the motion filed with the Commission. Making a discovery request directly to RMU is an underlying requirement of 4 CSR 240-2.090(8), along with a "good faith" attempt to confer with the other party prior to filing any discovery motion with the Commission. Subsection (8)(A) requires that a certification of compliance with the rule be contained in any discovery motion filed with the Commission. There was no such attempt and there is no such certification, so the Motion violates the provisions of 4 CSR 240-2.090(8)(A) and should be denied on that basis.

5. The Movant's actions may be due to the fact that she unsuccessfully sought production of it and many others at a Rolla City Council meeting on May 19, 2008:

A motion was made by Hawley to have the RMU Board subpoenaed to produce papers relating to the bond that they are about to ask the Council to vote on, according to RSMo. 77.100. The Council specifically requests the R.W. Beck report, every single document involved with the request for bids, all responses for the request for bids, all applications for the bonds for the request for bids, and all of the lease/purchase contract papers for these \$18 million that RMU is asking the Council to spend. The motion died for lack of a second.

(See <http://www.rollacity.org/admin/agenda/minutes/20080519.pdf> and paragraph 11 of RMU's Motion to Deny Intervention, *supra*). She has also requested it in the past (outside the context of this proceeding, and prior to the City Council meeting) in two different Sunshine Law requests. One request was made on Oct. 22, 2007, that also sought other documents. While she was provided access to most of the documents requested, she was told that part of the Beck report was a closed record. She made another request by six separate letters

dated February 1, 2008. The Beck Report was requested in one of the six letters. RMU responded that the report holds a closed record status and is not available for public view. The Rolla Board of Public Works at its meeting on September 24, 2007, determined that "...portions of this document [the 2007 R.W. Beck report] and associated planning process should not be public information in order to protect public safety."

6. The thrust of 4 CSR 240-2.090(8) requires someone seeking to involve the Commission in discovery disputes to first make a request from the party, then contact the party directly and make a good faith attempt to resolve any issues before involving the Commission. The Movant has not even crossed the first threshold in this proceeding. Furthermore, 4 CSR 240-2.090(8)(B) requires a telephone conference with the presiding officer if there is an outstanding discovery dispute. Subsection (8)(B) specifically provides that "No written discovery motion shall be filed until this telephone conference has been held." There has been no such telephone conference. Therefore, the motion violates the express provisions of 4 CSR 240-2.090(8)(B) and should be denied on that basis.

7. The foregoing response should not be construed as a waiver by RMU of any defenses or objections RMU may have were it to directly receive any discovery request.

WHEREFORE, RMU prays that the Commission deny the "Motion to Request Document."

Respectfully submitted,

//s// Gary W. Duffy

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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 July 6, 2010, to the following:

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