

Med. Servs., 850 S.W.2d 71, 74 (Mo. *banc* 1993). A rule is defined by Section 536.010(6) as “each agency statement of general applicability that implements, interprets, or prescribes law or policy[.]”

5. Certain orders recommended by the Staff would constitute such a statement of general applicability and thus would be rules. However, the Staff recommendation makes no mention of nor does it acknowledge the requirement that the Commission follow the rulemaking requirements of Chapter 536 before such a rule can be issued.¹

6. At page 2 of the Staff report, the Staff first recommends the promulgation of a new rule requiring utilities to “specifically analyze the needs, costs and benefits associated with DER.” As the Staff appears to properly recognize, a rulemaking process would be needed to adopt any such rule.

7. Following the foregoing recommendation, however, is another Staff recommendation (summarized in the bullets on page 2 and discussed again on page 10) that the Commission order utilities (starting, apparently, now) to start maintaining certain information that Ameren Missouri at least does not maintain today. Staff’s request is not trivial. Indeed, maintaining such information (in fact, to maintain it would require creating it) would entail the commitment significant resources and costs. Staff later (on page 10) makes clear that it is the Staff’s intention that such information would then be used in a “comprehensive DER analysis” that the Staff also urges the Commission to order electric utilities to perform. These Staff recommendations – the maintenance of information and the comprehensive study – would

¹ It is possible that the Staff does not literally intend for the Commission to issue such orders without following the rulemaking requirements. A careful reading of the report appears to suggest otherwise, however, because in places the Staff report clearly recommends that the Commission engage in a rulemaking, but in others, simply recommends that utilities be directed or ordered by the Commission to take certain steps without any mention of the need for a rulemaking to do so.

clearly reflect implementation of a policy decision (that such information should be maintained and that such a study should be conducted), applicable to all electric utilities, but if the Staff report is literally applied, without engaging in a proper and required rulemaking process. Any such order would be void.

8. The next section of the Staff's report may also amount to urging the Commission to issue an unlawful order. The Staff lists three "initial steps" it believes should be taken and then asks the Commission to "issue a report . . . directing Staff or the utilities to proceed as outlined above." Perhaps what the Staff intends is for the Commission to issue a non-binding statement indicating its interest in the "initial steps" the Staff lists, but the Commission cannot lawfully "direct the utilities to proceed as outlined above."

9. On page 18 of the report, the Staff's report suggests that the Commission can simply "open a docket" and then "order utilities" to perform certain analyses. The Commission could promulgate a rule that requires such analyses (assuming that the same is otherwise within the Commission's jurisdiction), but the Commission cannot circumvent the rulemaking requirements simply by opening some kind of docket.²

10. Staff similarly appears to recommend an unlawful order on page 26 of its report, where it recommends the Commission order electric utilities to perform evaluations of differently-sized solar installations. Could the Commission require such an evaluation via a properly adopted rule? Probably so. However, no such rule exists today.

11. To be clear, the Company is not addressing the substance of any of the Staff's recommendations. The Company's position on these issues, or at least some of them, was made known during the workshops. The Company is willing to further discuss the Staff's

² Staff notes that these analyses could be required as part of the Special Contemporary Issues provisions of the existing IRP rules. Whether that would be true will depend on following the process outlined in the IRP rules.

recommendations in some forum. What the Company objects to, however, is the idea that workshops can be held, that the Staff can then recommend the issuance of certain orders, and that those orders could be effective without following the requirements of Chapter 536. Such a process would be unlawful, and to the extent the Staff's report suggests it, that suggestion is unlawful as well.

Respectfully submitted,

SMITH LEWIS, LLP

/s/ James B. Lowery

James B. Lowery, #40503
111 South Ninth Street, Suite 200
P.O. Box 918
Columbia, MO 65205-0918
(573) 443-3141
(573) 442-6686 (Facsimile)
lowery@smithlewis.com

Wendy K. Tatro, #60261
Director-Asst. General Counsel
Union Electric Company d/b/a Ameren Missouri
P.O. Box 66149
St. Louis, MO 63166-6149
Phone (314) 554-3484
Facsimile (314) 554-4014
amerenmissouriservice@ameren.com

**Attorneys for Union Electric Company
d/b/a Ameren Missouri**

Dated: April 16, 2018