

**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

**MOTION TO DENY APPLICATION
TO INTERVENE OF DONNA D. HAWLEY**

Come now The City of Rolla, Missouri, by and through Rolla Municipal Utilities (RMU), a municipal electric and water system owned and controlled by the City of Rolla, Missouri; and the City of St. James, Missouri, by and through St. James Municipal Utilities (SJM), a municipal electric, natural gas, water and sewer system owned and controlled by the City of St. James, Missouri, by and through counsel, and for their Motion to Deny the Application to Intervene of Donna D. Hawley filed on April 26, 2010, respectfully state as follows:

1. The City of Rolla, Missouri, and the City of St. James, Missouri, filed their joint application to intervene in this proceeding on April 8, 2010, indicating support of the application filed by Union Electric Company and their mutual desire the application be processed expeditiously by the Commission. The Commission has not yet ruled on that application to intervene. On the last day of the ordered intervention period, April 26, 2010, Donna D. Hawley, acting *pro se*, filed an application to intervene. No other entities have sought intervention.

2. This pleading will demonstrate that the Application to Intervene of Donna D. Hawley (hereafter "Applicant") should be denied for any of a number of reasons including (a) her lack of legal standing to intervene because she will not be objectively affected by the

outcome of this proceeding in any manner different from that of the other residents of Rolla served by RMU, (b) her prior public conduct of an “unprofessional and disruptive nature” as judged by her peers on the Rolla City Council, and the likelihood that same type of conduct will be repeated at the Commission if she is allowed to intervene since her conduct related to the same subject matter, (c) her prior action in connection with a business meeting in Rolla to discuss matters related to electric operations which resulted in a criminal charge being brought against her by the Phelps County Prosecuting Attorney, on which a jury trial is set in July 2010, (d) the likelihood, if she is allowed to intervene, she will actively seek to hinder and delay the proceedings by making unreasonable, abusive, and oppressive demands or claims, including urging the Commission to exceed its jurisdiction by undertaking a prudence review on the long-range planning of two municipal electric systems not subject to its jurisdiction, and (e) she apparently wants to drag the Commission into her attempt to re-argue faulty positions and fight policy battles she lost after being the sole opponent of this project on the Rolla City Council.

3. In ruling on this motion, the Commission should very carefully weigh the interests of two different municipal governments who have (a) invested five years and millions of dollars in the pursuit of long-run economic advantages for their citizens, and (b) passed bond issues or otherwise incurred financial obligations to obtain improved electrical system reliability for the benefit of their customers, against the flawed claims of one individual lacking pertinent credentials on the technical subject matter, and who for no apparent reason has chosen to make a personal crusade out of attacking this project. It is not in the public interest to make two municipalities spend public funds to defend themselves against her accusations

and proposals before the Commission when those have already been rejected in the appropriate forum by the appropriate governmental body.

I. Factual Background and Overview

4. This proceeding concerns whether Union Electric Company (hereafter “Ameren/UE”) should receive Commission permission to sell an electrical substation located in Phelps County and some associated 34.5 kV electric transmission lines to the Cities of Rolla and St. James in accordance with the contracts attached to the application filed by Ameren/UE on March 25, 2010. The standard of review the Commission is required to apply under section 393.190 RSMo in this proceeding was established by the Missouri Supreme Court in 1934 in a case involving the sale of securities of a utility. ***State ex rel. City of St. Louis v. Public Service Commission***, 73 S.W.2d 393 (Mo. 1934). The standard was expanded to apply to the sale of utility assets in ***State ex rel. Fee Fee Trunk Sewer Company v. Litz***, 596 S.W.2d 466 (Mo.App.E.D. 1980). Applying that standard, the Commission may not withhold its approval of the disposition of assets of a regulated utility unless it can be shown that the transfer is “detrimental to the public interest.” This is a lower hurdle than the standard of “in the public interest,” the latter meaning having a benefit to the public. Furthermore, the “public interest” to be examined by the Commission is generally commensurate with its subject matter jurisdiction; namely, the Commission examines the impact on the ratepayers of the regulated utility seeking to sell the assets. The Commission should not consider alleged effects far beyond its jurisdictional boundaries.

5. The electric distribution systems owned and operated by RMU and SJMU currently receive wholesale transmission service from Ameren/UE through the Phelps substation that taps two Ameren/UE 138 kV transmission lines. The transmission voltage is stepped down through transformers to 34.5 kV, and then three separate Ameren/UE 34.5 kV transmission

lines on wooden poles traversing several miles ultimately deliver power to Rolla. However, the two lines serving St. James tap off two of the lines serving Rolla, so faults that occur on the St. James portion, and breaker operations at the Phelps substation, cause outages in both the Rolla and St. James systems. Similarly, faults occurring on the lines serving Rolla can cause outages in St. James. See: Sec. 1.2, Exec. Summ. Master Plan posted on RMU website: <http://www.rollamunicipalutilities.org/images/rmu/PwrDeliveryMstrPlan.pdf>

Since Ameren/UE owns the substation and the 34.5 kV transmission lines, it is solely responsible for repairs. Ameren/UE does not have crews in the Rolla/St. James area, so outage times are lengthened by the transit time of Ameren/UE crews, typically from Union, Missouri, meaning those crews are roughly 60 miles away by road from the problem once they are notified. This sometimes makes outages in Rolla or St. James last hours rather than minutes if crews were closer, as they would be if Rolla and St. James own the lines under the plan for which Commission approval is sought in this proceeding. St. James often has to wait two or three hours only to find out that the problem is a simple switching or reclosure issue that is remedied in a few minutes. Also in the case of St. James, response time from Ameren/UE has generally been in the range of two to three hours if the outage is caused by a localized problem such as a downed tree or limbs, high winds, a lightning strike, or in one case a sign that blew apart. Response time can be longer when storm damage is widespread, and particularly if it is also experienced in the St. Louis area and Ameren/UE crews are needed there. SJMU recently created and filled a new position that will enable it to do the level of repair needed once SJMU becomes an owner of the substation and transmission lines. Outages of anything more than one or two hours at SJMU's larger industrial customers, the St. James Winery and the Wal-Mart Distribution Center, can have

a very detrimental and costly impact on their operations. In the case of Rolla, as another example, an outage on a single one of the 34.5 kV lines can result in 4,500 of Rolla's approximately 9,000 customers being out of service.

6. RMU and SJMU do not buy "electric power" from Ameren/UE. It merely transmits power RMU and SJMU have otherwise acquired. Ameren/UE charges transmission service rates (Wholesale Distribution Service or "WDS") to RMU and SJMU in accordance with schedules approved by the Federal Energy Regulatory Commission (FERC), so the revenues from this service are not Missouri jurisdictional as far as Commission ratemaking is concerned. RMU and SJMU are the only customers served through the Phelps substation and these 34.5 kV transmission lines. By definition then, there can be no measurable impact on the service to Ameren/UE's existing retail customers (over which the Commission has jurisdiction) from the sale of these facilities because no Ameren/UE retail customers are served by these facilities, or pay for them in Commission-established rates, in the first place. On that basis, it is difficult to imagine how the Commission could find a "public detriment" in their sale under the test established in ***Fee Fee Trunk Sewer Company***, supra.

7. The agreed purchase price for RMU to purchase these Ameren/UE assets is \$4,778,821.93. The purchase of the assets will eliminate the WDS charge RMU currently pays to Ameren/UE for use of these facilities. Currently, RMU pays \$288,816 per year. As documented in another agreement that last week received approval by FERC in Docket No. ER10-874-000, the WDS charge for RMU will increase to \$391,852.87 per year effective March 1, 2010. In contrast, the RMU WDS charge could increase an estimated \$85,000 to \$476,852 per year if Ameren/UE makes the needed "Load Level 1" reliability improvements at the Phelps Substation indicated by the Master Plan (section 1.7, para. 1) referenced in

paragraph 5 above. However, if RMU finances the purchase of the Ameren/UE assets over 20 years at 3.826% interest as planned in the approved lease-purchase, that yields an annual payment of \$346,237.64 per year. So more than \$130,000 per year can be saved by RMU customers in the long run if RMU and its customers own these assets as opposed to continuing to rent them from Ameren/UE. SJMU's WDS charges will similarly go from \$66,912 per year to \$83,806.08 per year, effective March 1, 2010. See FERC Docket No. ER10-874-000. SJMU also plans financing over a 20-year period that will produce an economic benefit in comparison to paying increased WDS charges to Ameren/UE if it makes the needed reliability improvements.

8. Delays in the processing of this application at the Commission, which are certainly a possibility if the Applicant is allowed to intervene and pursue her unsubstantiated and previously rejected claims, can have substantial financial impacts on the Cities of Rolla and St. James. As described above, RMU has agreed to pay Ameren/UE \$391,852.91 per year (\$32,654.41 per month) in WDS charges. These charges will be eliminated upon the successful closing on the purchase of the assets after Commission approval is received. Right now, every month the closing is delayed costs RMU and the RMU customers this \$32,654.41 in payments to Ameren/UE compared to \$28,853.14 that would be paid under the purchase situation ($\$346,237.64 / 12 = \$28,853$) if the application is approved. Therefore, a six-month delay could result in almost \$23,000 in additional costs to RMU, not including expenses related to the Applicant's anticipated actions as an intervener. To date, RMU has expended or has committed to \$4,473,876.96 in material and engineering costs for this project, not including construction to be completed in the next 18 months. In addition, RMU has entered into an agreement for Ameren/UE to construct two 138 kV tapping stations for

new RMU transmission lines in the estimated amount of \$2,052,000 as a part of a long-range plan for greater reliability for its power supply. SJMU received approval from the Phelps County Commission to utilize the county's \$1.62 million dollar allocation of ARRA Recovery Zone bonds. The Recovery Zone bond program offers a 45% reimbursement of interest paid for the life of the financing, potentially offering a savings of approximately \$350,000 (computed on a bond rate used in projections of 5.6%). In large part, because of the uncertainty presented by Applicant's intervention and the potential impact that filing has on receiving Commission approval, the City of St. James was forced to turn back the authorization for the Recovery Zone bonds. The additional delay created by the Applicant's intervention made it impossible, in the opinion of the bond manager, for St. James to meet the bond issuance deadline of July 1, 2010. As SJMU prepares to complete its financing package for its portion of the purchase, the unknowns of the bond market could turn what is today a favorable situation from an interest rate perspective into a comparatively unfavorable situation. Both municipalities therefore urge the timely processing of this case without the Applicant so that their customers will benefit both financially and from increased electrical system reliability.

9. At the heart of this transaction is the fact that RMU and SJMU want to own the Phelps substation and associated 34.5 kV lines and have been negotiating with Ameren/UE for five years to accomplish that. In simple terms, the people who have been *renting* these facilities for decades want to *own* the facilities so they can provide better reliability for their customers, have greater control over the situation, and be able to more effectively plan for the future through the construction of other new facilities on their own. RMU has sought and received objective planning and analysis from outside experts. R.W. Beck is a recognized

engineering company with decades of experience performing these types of analysis. RMU has been in business of supplying electricity and water to the Rolla community since 1945. RMU has on staff two engineers with over 30 years of experience. RMU's current general manager has a Bachelor of Science degree in Electrical and Electronics Engineering, is a Missouri Registered Professional Engineer, and has over 20 years of experience in electrical system design. He has been involved in the planning of the project since the late 1990's. SJMU also uses outside engineering and financial consulting firms. The contracts were therefore negotiated at arm's length between knowledgeable parties. Ameren/UE will receive cash as the seller and Rolla and St. James will receive title to facilities that they wish to purchase, operate, and restructure as a part of the municipally-owned systems they each have owned and successfully operated for decades. In short, there is a "willing seller" and a "willing buyer," and all are well-established and well-qualified entities in the electric power business.

10. In stark contrast, the Applicant, who apparently has no formal training or experience in electrical engineering, finance, or long-range planning for municipal electrical loads, has attempted in her pleading to cast doubts about the planning and financing undertaken by both cities. There are numerous mistakes in her allegations. She also repeatedly requests that the Commission "delay" for an indefinite period the progress that has been made in the sale negotiations, ostensibly to provide greater public notice and the opportunity for input, all of which would be to the substantial financial detriment of the cities and will largely duplicate previous public notice. As this pleading will demonstrate, there already has been substantial study, public input and decision-making on this entire process, including the passage of a municipal bond issue, which the Applicant, on a singular and

misguided mission, wants to disrupt. The essence of Applicant's murky and rambling statements appear to be that she wants the Commission to come in after-the-fact, conduct new long-range planning studies for the retail electric operations of Rolla and St. James, make new predictions about load growth and new assessments about reliability, and then possibly second-guess decisions already made. All of this is an attempt to reverse steps already taken by the cities.

11. Contrary to assertions in Applicant's pleading, and apparently her claimed basis for her requests that the Commission act to "delay" this process, the long-range system planning performed by RMU and SJMU have received all necessary governmental approvals and been subject to much public discussion. This project has been discussed internally at RMU since the late 1990's. RMU has been publicly discussing its desire to improve the capacity, reliability and safety of the power delivery system into the RMU service territory since 2002. Required upgrades to the Rolla electric system were an item of discussion in a joint meeting between Rolla City Council and Rolla Board of Public Works held in October 2004. Rolla City Council meetings are televised on a local-access cable television channel and covered by local news media and their minutes are posted on the City's web site. The subject has been discussed at several open meetings including those in July 2005, July 2007, and October 2007. On October 22, 2007, representatives of R.W. Beck presented the findings from a Power Delivery Master Plan ("Master Plan") commissioned by the Rolla Board of Public Works. The findings included a recommendation for purchase of certain facilities of Ameren/UE along with additional RMU system improvements to improve the capacity, reliability, and safety of the overall electric system. The project has been mentioned in four quarterly RMU newsletters dating back to December 2007. This newsletter is mailed to each

RMU water or electric customer. At the May 5, 2008, Rolla City Council meeting, City Counselor Beger told the Council that the Master Plan contains certain security considerations for the safety of the system, which if released to the public, could endanger the security of the system. The executive summary of the Master Plan, however, was made available to the City Council in 2008 and has been posted on the RMU Website since January 2009 for public review. (See the link mentioned in paragraph 5 above). At the May 19, 2008, City Council meeting, Rolla Board of Public Works President Dr. James Stoffer offered to make the entire planning document available to the Council in an executive session, given its closed record status. According to the minutes of the meeting, Applicant subsequently moved to request many documents but her motion died for lack of a second. See page 8 of the minutes at <http://www.rollacity.org/admin/agenda/minutes/20080519.pdf>

To date, no public comments of substance, except for comments from the Applicant, have been made to the study or the overall project as reflected on the RMU website. On June 16, 2008, the Rolla City Council authorized a Lease-Purchase agreement on a vote of 8 to 1 (Hawley dissenting) to provide financing for the Power Supply Infrastructure Project in an amount not to exceed \$17,868,000. The purchase of the Ameren/UE facilities is only one portion of the overall project planned by RMU. The Rolla Board of Public Works unanimously approved the execution of documents authorizing purchase of these facilities on January 21, 2010, pending Rolla City Council approving the same. The Rolla City Council approved the execution of the Asset Purchase Agreement on February 1, 2010. The Applicant, Ms. Hawley, was absent from that meeting.

12. St. James has also taken appropriate public actions through its utility board and City Council because they also are convinced of the long-run merit of the project. The voters

in St. James were given the opportunity in April 2010 to vote on a \$6,700,000 bond issue to support the purchase of the substation and transmission lines. The bond issue received press coverage and a public hearing. It passed by overwhelming approval, 328 to 68, with 83 percent in favor. See <http://www.phelpscounty.org/coclerk/April%202010%20Results.htm>

13. The planning conducted on this project over the past several years has not involved the Commission because cities are not required to submit plans to it for either financing or electric supply resources. Moreover, Applicant has cited no legal authority to support her encouragement of the Commission to embark on essentially a “prudence review” of the planning already done by the cities. There are only a few very limited areas in which the Commission has jurisdiction over municipal utilities, such as a change of supplier request. The General Assembly has made clear that jurisdiction is very limited:

... Except as provided in this section, nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting or management of any such municipally owned or operated electrical system, and nothing in this section, section 393.106, RSMo, and section 394.315, RSMo, shall affect the rights, privileges or duties of any municipality to form or operate municipally owned or operated electrical systems.” Section 91.025.2 RSMo.

Nowhere in Missouri law is the Commission given the authority to prescribe, inspect or judge the system planning or financing of municipally-owned electric operations.

II. Applicant’s Lack of Legal Standing To Intervene

14. 4 CSR 240-2.075(4) permits the Commission to allow a person to intervene on a showing 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 granting the proposed intervention would serve the public interest. Applicant has failed to make either required showing. Applicant alleges in the first unnumbered paragraph that she “has a direct

interest in this proceeding that is different from that of the Missouri public and could be adversely affected by the results of this proceeding.” Significantly, she does not describe exactly what this “direct interest” is. She does not even allege that she is a customer of RMU, although she alleges she is a “citizen” of Rolla.

15. Assuming she is a customer of RMU, and attempting to interpret her intent from the text of the Application, the “adverse affect” alleged is apparently the possibility the rates she pays for electricity may increase under her claim that Rolla is “overbuilding” its system. (App., 5th unnumbered para.). As the Commission is well aware, customers of utilities have no vested right in a certain level of utility rates. Furthermore, the Missouri General Assembly has given to municipalities (and not the Commission) the right and obligation to establish utility rates for municipally-owned systems. ***Shepherd v. City of Wentzville***, 645 S.W.2d 130 (Mo. App. 1982).

16. Nowhere in the Application does Applicant explain exactly how she would be affected *in a different manner* from any other citizen of Rolla or St. James (or the State of Missouri, for that matter) based on potential outcomes of this proceeding. In other words, while she may indeed have an extraordinary or perhaps even unhealthy level of personal “interest” in the operations of RMU, her personal feelings and beliefs are not the type of legal “interest” cognizable as justifying her intervention under any objective standard.

17. Applicant also claims (App., 1st unnumbered para.) “Rolla citizens’ interests will not be adequately protected by any other participant in this proceeding.” This implies if she is granted intervention, she will seek to represent the interests of “Rolla citizens.” As will be shown later herein, Applicant offered her services as a public representative to a segment of the citizens of Rolla (i.e., Ward 6) and they explicitly rejected her offer last month at the polls.

The citizens of Rolla will be represented in this proceeding since RMU, acting with the approval of the City Council in the major decisions underlying this proposed asset transfer, expects to be granted intervention. Indeed, as one of the proposed transferees of the facilities, and thus with a cognizable legal interest, RMU is an intervener of right as opposed to one by permission. RMU is quite capable of representing the interests of its customers and its system in this proceeding. Furthermore, Applicant is apparently unaware of the fact that the Office of the Public Counsel has the power to represent the public interest in proceedings of the Commission. See Section 386.710 RSMo. And she is apparently also unaware of the role the Staff of the Commission routinely plays in stating its view of the public interest in Commission cases. Therefore, her claim that “Rolla’s citizens’ interests will not be adequately protected by any other participants in this proceeding” is totally without merit.

18. Applicant’s alternative claim that her intervention will be “in the public interest” will be addressed in detail below.

**III. Applicant’s Prior Inappropriate Public Conduct
in Utility and Governmental Matters Is Likely
To Carry Forward to This Proceeding**

19. The Commission should be aware that Applicant has a history of conduct in public settings directly relevant to the subject matter of this case. Her allegation (App., 2nd unnumbered para.) that she is a “former City Council Representative” is true. Rolla has six wards with two representatives from each. Applicant was elected in 2008 to a two-year term from Ward 6. She ran for re-election in April 2010 and was defeated, receiving only 30% of the vote (26 vs. 61 for her opponent). See:

<http://www.phelpscounty.org/coclerk/April%202010%20Results.htm>

20. Her defeat in the municipal election came after she received publicity concerning her actions on the City Council, and in particular, with regard to matters involving

RMU. Her conduct was so outrageous and repugnant that fellow members of the City Council took the extraordinary step of seeking a public censure. On June 15, 2009, by a vote of 10-1, she was publicly censured for “disruptive and unprofessional behavior.” The motion, proposed by three Council representatives, outlined several examples of her public conduct. The relevance of the censure to this proceeding is demonstrated by the fact that several of the examples cited by her fellow members have a strong correlation with the content and theme of her Application here.

21. The entire motion for censure is available on the Rolla municipal website at <http://www.rollacity.org/admin/agenda/minutes/20090615-censure.pdf> and for the sake of brevity is incorporated here by reference. Portions are reproduced below. RMU believes the descriptions of her behavior by those who observed her public actions during her tenure on the City Council are a strong predictor of how Applicant is likely to act if allowed to intervene. These actions, in particular, are:

“Frequent innuendos and accusations leveled at the Mayor, City Administrator, City Counselor, City Council, and Rolla Municipal Utilities Board and Administration;

“Publicly calling City Officials liars, cheats, and idiots without formal documentation or proof;”

“Drawing frequent legal and financial judgments with no legal background, training or qualifications to wage same;”

“Making exaggerated financial conclusions on obligations, referencing depreciation as cash flow, and auditing/accounting matters with no formal training or experience;”

“And most recently an embarrassing tirade against the City Council, Staff and RMU for conclusions regarding the most recent State Audit that were simply unfounded in the State Audit itself.”

This was an assessment of her conduct not by RMU but rather her elected peers on the Rolla City Council.

22. As noted, the motion to censure passed by a vote of 10-1, with the Applicant

not voting. A copy of the full minutes of the City Council meeting where this censure occurred is available at <http://www.rollacity.org/admin/agenda/minutes/20090615.pdf> . For the sake of brevity the minutes are incorporated here by reference. What follows below is an excerpt from page 10 that describes the discussion immediately preceding the vote. The Commission should note Applicant actually “seconded” the motion to censure herself. There is also an explanation from the sole councilman who cast a negative vote that appears to indicate he was not exactly endorsing her conduct with his vote opposing the censure:

Excerpt from Rolla City Council Minutes, Meeting on June 15, 2009:

(C) Councilmen D. Morris, D. Barklage, and D. Brown: Motion to Consider Official Censure of Councilwoman Donna Hawley: Mayor Jenks turned the floor over to Councilman Don Morris who read the attached memorandum from Councilmen Don Morris, Don Barklage, and Don Brown regarding a motion to consider an official censure of Councilwoman Donna Hawley.

Councilwoman Hawley asked the Council what their intentions are with the censure. She said it has no teeth, it is spineless, and it is just a public acknowledgement of the fact that they dislike her. Councilwoman Hawley stated the Council dislikes her politics, the fact that she brings forth plenty of research and issues. She added that as far as she knows there is nothing wrong with criticizing City Hall and the actions of City Council people. Councilwoman Hawley pointed out that all of the items listed in the proposed censure are all essentially guaranteed by her right of freedom of speech. She told the Council she voted against the Code of Conduct because she said she knew from the beginning that it would be used as a retaliatory document and had a pretty good idea who it would be used against.

After much dialogue, a motion was made by Brown and seconded by Hawley to censure Councilwoman Donna Hawley for unprofessional conduct as a member of the Rolla City Council and urge her commitment to a spirit of cooperation and constructive debate and dialogue in the affairs of the City of Rolla. After further dialogue, a voice vote on the motion showed ten ayes, one nay. Councilman Williams indicated that he voted against the motion because he did not want to give Councilwoman Hawley the satisfaction of knowing that he had voted for it. Councilwoman Hawley did not vote. Motion carried.

23. That public censure by her fellow council members is not the only recent incident involving the Applicant’s inappropriate conduct in public. She is currently scheduled

to go to trial in July in Pulaski County (on a change of venue from Phelps County) on a charge brought by the Phelps County Prosecuting Attorney for a March 19, 2009, assault on an RMU employee who attempted to prevent her from entering a meeting on power supply matters to which she was not invited. The city employee was physically injured by her actions described in the Information. See the copy of the Information and the docket entry indicating the jury trial setting on this charge, all of which is marked as **Attachment A** hereto.

24. RMU suggests these documented instances of the public conduct of Applicant do not qualify her to be granted intervention in this proceeding on the basis that her intervention will serve the “public interest.” As a sitting member of the Rolla City Council, she had the opportunity to, and did, voice her objections and cast her vote against the improvement project that underlies this proceeding. But since she was the sole opponent of the project on the Council, there is no valid reason for the Commission to give her a new venue in which to republish her views.

IV. Applicant’s Failure to Comply With Commission Rules

25. Applicant has not complied with 4 CSR 240-2.075(2) which requires that an applicant “shall state the proposed intervener’s interest in the case and reasons for seeking intervention, and shall state whether the proposed intervener supports or opposes the relief sought or that the proposed intervener is unsure of the position it will take.” No such statement appears in the Application. While Applicant requests that the Commission “delay the approval of this sale” (2nd unnumbered para.) and “delay these proceedings” (3rd unnumbered para.), and the apparent implication of other allegations is Applicant wants to reopen, revisit, and intimately involve the Commission in long-range electric system planning decisions already made by the Cities of Rolla and St. James, no such statement of her position on the case, as required by 4 CSR 240-2.075, is contained in the application.

Neither is there a statement of what action the Applicant specifically wishes the Commission to take other than to “delay” the proceedings and require the City of Rolla to “openly publish” certain data, some of which is a closed record.

26. Applicant also has not complied with 4 CSR 240-2.060(1)(H) in that there is no “brief statement of the character of business” of the Applicant in her Application. Similarly, there is nothing in the Application that provides any information on her academic or occupational credentials to substantiate the claims she makes. Other than identifying herself as a “former City Council Representative” in Rolla, Applicant fails to indicate what formal education or experience qualifies her to make engineering judgments about long-range electric system planning. As demonstrated in paragraph 22 above, the Rolla City Council believed on a 10-1 vote that she had no such credentials.

27. The Application did not comply with 4 CSR 240-2.080(18) in that there is no certificate of service in the application and, in fact, no service on the counsel of record for Ameren/UE or RMU and SJMU occurred, in clear violation of 4 CSR 240-2.080(19).

V. Brief Refutation of Some of Applicant’s Claims

28. Neither RMU nor SJMU wish to prolong this by going into minute detail in an attempt to refute all the claims in the three-page single-spaced Application of Ms. Hawley. However, by briefly providing additional information for a few such claims, RMU and SJMU believe they can demonstrate the Applicant’s lack of understanding and credentials and refute her implied claim that she can adequately represent the public interest.

29. For example, on page 3 of the Application (middle unnumbered para.) she says “financial considerations have changed considerably if the Ameren/UE Facilities Charges are based in any part on peak demand.” She then discusses, based on her assumption the charges are related to demand (or load), how the facility charges could be reduced. What the

Applicant fails to consider is that (a) the upgrades needed at the Phelps Substation are, in the opinion of SJMU and RMU, required right now, and (b) replacement of equipment by the owner increases local facilities charges *regardless* of actual load requirements. So she has demonstrated she does not understand that FERC facilities charges are not based on load. The Executive Summary of the Master Plan in Article 1.7 discusses the need for an estimated \$600,000 in improvements during the first year of the study. This investment of capital by Ameren/UE would result in an estimated increase in facilities charges to RMU and SJMU by \$85,000 and \$14,000 per year, respectively. RMU and SJMU pay Ameren/UE 16.42% of installed cost annually in accordance with the FERC-approved WDS charges discussed previously.

30. As another example, in the same unnumbered paragraph, she quotes RMU revenue figures for fiscal years 2007 and 2009. While those specific numbers (\$29.9 million and \$26.5 million) are accurate, her attempt at drama by this particular claim fails to consider there is an offsetting expense for power not purchased or generated to supply these particular industrial customers to whom she refers. Furthermore, the perhaps temporary loss of these particular loads (since the buildings still exist) has no relevance to the long-term *reliability* issues that are the focus of the Master Plan. Section 1.5 of the Plan contains the conclusion that “the existing Ameren/UE lines are not adequate for a single contingency scenario” The presence or absence of the two customers on whom Applicant focuses has no bearing on this engineering-based conclusion in the Plan. While she focuses on a snap-shot view and selects data that favors her goals, as the Commission is well aware, long-term planning does not focus on the gain or loss of individual customers but instead looks at trends over 10 or 20 year periods, or even longer.

31. As a final example of her lack of knowledge or training in this subject, on page 2 of the Application (3rd full para.) she claims RMU's load "has dropped twenty-five percent" between the two data points she selected (August 2007 and August 2009). Again, she takes a correct fact but applies it out of context. In fact, RMU's actual peak in 2009 occurred in June at 57 MW. The summer of 2009 was unusually wet and cool, causing a rare June peak when they normally occur in August. So her choice of data of this situation to support her argument of Rolla "overbuilding its system" indicates she has no knowledge of how weather conditions affect load, and it reinforces the fact that she does not understand how reliability planning looks at much longer time horizons than just current conditions on the day she chose to file her pleading.

32. In summary, this motion has demonstrated that Applicant Hawley (a) does not meet the Commission's stated test for intervention because she does not have an interest different from that of the general public, (b) she has violated Commission rules with regard to her application to intervene, (c) her lack of pertinent education and experience, public statements and her past action and conduct clearly disqualify her from attempting to fill her self-appointed role of representing either the "public interest" or the "citizens of Rolla" in this proceeding, and directly conflict with the stated desires of the majority of those Ward 6 voters who rejected her candidacy; and (d) there is no valid reason for the Commission to give the Applicant a new forum to pursue her private agenda that has already been expressed in several public, televised forums over the course of the last several years, and overwhelmingly rejected by the Rolla City Council, just so she can embroil all the parties and the Commission in a re-examination of prior municipal actions over which the Commission has no jurisdiction.

WHEREFORE, RMU and SJMU pray that the Commission issue its order denying Donna D. Hawley permission to intervene in the above-entitled matter.

Respectfully submitted,

//s// Gary W. Duffy

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The City of Rolla, Missouri
The City of St. James, Missouri

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on May 5, 2010, to the following:

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//s// Gary W. Duffy

Gary W. Duffy

IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI
ASSOCIATE DIVISION

STATE OF MISSOURI,

Plaintiff,

VS

Donna Hawley

DOB: [REDACTED]

SSN: [REDACTED]

2602 Brook Drive

Rolla, MO 65401

Defendant.

Case No.

OCN:

PA File No. 161021890

FILED

OCT 06 2009

SUE BROWN
CIRCUIT CLERK
PHELPS COUNTY, MO.

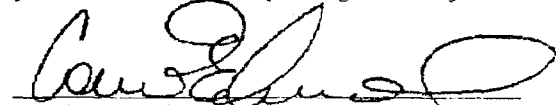
INFORMATION

The Prosecuting Attorney of the County of Phelps, State of Missouri, charges the defendant with the following crime(s):

COUNT 1 Assault 3rd Deg

Charge Code Number: 1305013.0

The defendant in violation of Section 565.070, RSMo, committed the class A misdemeanor of assault in the third degree, punishable upon conviction under Sections 558.011 and 560.016, RSMo, in that on or about March 19, 2009, in the County of Phelps, State of Missouri, the defendant recklessly caused physical injury to Dennis Roberts by using her body to smash into his body.



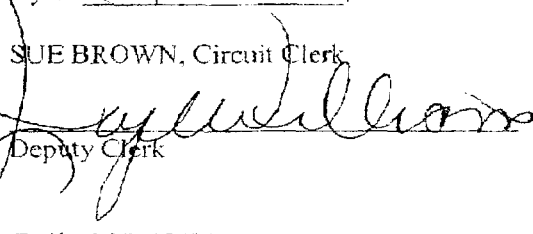
Corrine E. Edwards #61413

Assistant Prosecuting Attorney of the
County of Phelps

Corrine E. Edwards, Assistant Prosecuting Attorney of the County of Phelps, State of Missouri, being duly sworn, upon oath says that the facts stated in the above information are true and correct according to his/her best information, knowledge and belief.

Sworn to and subscribed before me on the 6th day of Oct, 2009.

SUE BROWN, Circuit Clerk


Deputy Clerk

Witnesses:

Hank Harper, Rolla Police Dept, 1007 North Elm Street, Rolla, MO 65401

Dennis L Roberts, 11720 State Route HH, Rolla, MO 65401; David Stogsdill, 102 W. 9th St, Rolla, MO 65401; Ken Nakanishi, Rolla Police Department; Dan Watkins, 15505 Hwy O, Rolla, MO 65401; John Frey, Rolla Police Department; Paulette Craft, 200 N Bourbeuse, St. James, MO 65559; Rodney Bourne, 102 W 9th St, Rolla, MO, 65401; Adam Meyer, Rolla Police Department; Christina Smith, Rolla Police Department; Casey Chapman, Rolla Police Department; Tommy Davis, Rolla Department; Henry Harper, Rolla Police Department; Chief Kearse, Rolla Police Department; Doug James, Rolla Police Department; John Kamler, Owensville, MO, Contact through PCPA's Office; Don Schuette, Jackson, MO, Contact through PCPA's Office; Jon Borgmann, Owensville, MO, Contact through PCPA's Office

Report: CZR0026

25TH JUDICIAL CIRCUIT
PULASKI
CIRCUIT COURT DOCKET SHEET

Date: 30-Apr-2010
Time: 3:58:23PM
Page: 1

10PU-CR00101 ST V DONNA DENISE HAWLEY Security Level: 1 Public

Case Type: AC Misdemeanor Case Filing Date: 04-Feb-2010
Status: Change of Venue Received
Disposition: Disposition Date:
OCN#: N5003265
Arresting Agency: MO0810100

Release/Status Reason
Change Date

Judge COLIN P LONG (48540)
Defendant DONNA DENISE HAWLEY (HAWDD7934)
Attorney for Defendant DAVID LYLE MILLS(36559)
Prosecuting Attorney COURTNEY MARIE GEORGE (56123)

	Charge #	Charge Date	Charge Code	Charge Description
Original Charge:	1	19-Mar-2009	1305000	Assault 3rd Degree - Pursuant To Subdivisions (3), (5) (Misdemeanor C RSMo : 565.070)
Original Charge:	2	19-Mar-2009	1305000	Assault 3rd Degree - Pursuant To Subdivisions (3), (5) (Misdemeanor C RSMo : 565.070)

Filing Date	Description
04-Feb-2010	Judge Assigned Change of Venue Received 09PH-CR01487
09-Feb-2010	Plea/Trial Setting Scheduled Scheduled For: 15-Mar-2010; 9:00 AM; COLIN P LONG; Setting: 0; Pulaski Notice of Court Hearing Sent
15-Mar-2010	Order for Fingerprinting Filed By: COLIN P LONG Hearing Held Scheduled For: 15-Mar-2010; 9:00 AM; COLIN P LONG; Setting: 0; Pulaski Pre-trial Conference Scheduled Scheduled For: 13-Jul-2010; 9:00 AM; COLIN P LONG; Setting: 0; Pulaski Jury Trial Scheduled Scheduled For: 21-Jul-2010; 9:00 AM; COLIN P LONG; Setting: 0; Pulaski
17-Mar-2010	Return Service - Other FINGERPRINTING