

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

In the Matter of an Investigation of	)	
Union Electric Company	)	
d/b/a AmerenUE	)	
	)	Case No. EO-2006-0430
	)	
	)	

**OFFICE OF THE PUBLIC COUNSEL’S OPPOSITION TO  
AMERENUE’S MOTION FOR RECONSIDERATION OR  
CLARIFICATION OF DISCOVERY DEADLINES**

The Office of the Public Counsel opposes AmerenUE’s Motion For Reconsideration Or Clarification Of Discovery Deadlines because the Commission’s Order regarding discovery is reasonable and consistent with the Commission rules. In addition, Public Counsel opposes the Motion as AmerenUE seeks to create two classes of litigants: Staff and all other “non- Staff” parties. That position is contrary to Public Counsel’s statutory status in Section 386.710, RSMo 2000, as the representative of the public with the absolute right to be a party to every case. Public Counsel and Staff have the same rights and obligations for purposes of case participation and the right to inspect and copy company records, including confidential records.

**Commission discovery order is lawful, consistent with rules, and reasonable**

The Commission has established this case as EO-20060-0430 regarding the investigation of Union Electric Company d/b/a/ AmerenUE. Therefore, there is no question that the Commission rules allow discovery by parties in this case. (4 CSR 240-2.090) Discovery and Prehearings. (1) Discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court. . . .”

4 CSR 240-2.090 (2) provides that data requests shall be answered within twenty days after receipt unless otherwise agreed by the parties to the data requests. If the recipient objects to data requests or is unable to answer within twenty days, the recipient shall serve all of the objections or reasons for its inability to answer in writing upon the requesting party within ten days after receipt of the data requests, **unless otherwise ordered by the commission.** If the recipient asserts an inability to answer the data requests within the twenty (20)-day time limit, the recipient shall include the date it will be able to answer the data requests simultaneously with its reasons for its inability to answer. **Upon agreement by the parties or for good cause shown, the time limits may be modified.** (emphasis added)

The Commission has broad authority to waive or modify its rules. 4 CSR 240-2.015 (1) “A rule in this chapter may be waived by the commission for good cause.”

It is not unusual for the Commission, either upon the request and agreement of the parties or on the motion of one party or on its own accord, to shorten the times to respond or object to data requests. Often the times are shortened to a 10 day response and a 5 day period for objection.

Rule 4 CSR 240-2.090 (1) provides discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court. Data requests are included in the arsenal of discovery before the Commission. Comparing data requests with written interrogatories, a similar form of discovery under the circuit court discovery rules, the court may allow a shorter or longer time for responses. (Mo. Rule Civ. Pro. 57.01. (c) Interrogatories to Parties, Response. Certainly the PSC would have a parallel authority to allow shorter or longer time for responses and objections since the PSC rule

adopts the discovery tools in the civil rules and adds data requests as a supplementary form.

### **Time**

The circuit court rules on time must be consulted.

**Mo Rule Civ. Pro. 44.01. Time, Computation of - (a) Computation.** In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday. **When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.** (emphasis added)

AmerenUE's request for clarification is not needed on the time issue as the above rule applies. Objections do not include those intervening days (hence, typically referred to as 5 business days).

Public Counsel objects to a business day application to a 10 day response to data requests since the exclusion of intervening Saturdays, Sundays, and holidays would automatically extend the time for response to 14 calendar days. This would not achieve the goal of accelerating response time as contemplated in the original order. It would erode any significant gain in response time. If for some good cause, a response cannot be made in the 10 calendar days allotted, the Commission rule provides a method to alert the parties and seek additional time. Rule 4 CSR 240-2.090 (2).

**Public Counsel has co-equal discovery authority and rights with the Staff**

Public Counsel opposes any attempt, directly or indirectly, to limit its discovery power by classifying OPC as a “non-Staff” litigant and therefore not entitled to the full discovery, access, inspection, and copying rights of utility records enjoyed by the Staff

Public Counsel's right to poses data requests seeking information from any utility and the right to inspect and obtain copies of any utility's records or documents in its possession is coequal to that of the Staff and is broader than the discover authority permitted other litigants under Commission Rules. Section 386.450; *In the Matter of Missouri-American Water Company's Tariff* (Case No. WR-2000-281, *et al.*) (2-2-2000) This includes DRS in absence of a pending proceeding and is not conditioned on considerations of relevance under Mo Rule Civ. Pro. 56.01 (b) (1) and PSC rule 4 CSR 240-2.090 (1)

Public Counsel can propound data requests to nonparties and its right to pose data requests is not conditioned on the existence of an open case. *In the Matter of Osage Water company's Request for a Rate Increase for Sewer Service Pursuant to the Public Service Commission's Small Company Rate Increase Procedure*, (Case No. SR-200-556) (February 15, 2001)

WHEREFORE, Public Counsel opposes AmerenUE's motion.

OFFICE OF THE PUBLIC COUNSEL

/s/ **Michael F. Dandino**

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was mailed, emailed and/or hand delivered this 18<sup>th</sup> day of May, 2006 to the attorneys of record.

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