

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

|  |   |                                     |
|--|---|-------------------------------------|
| In the Matter of the Application of    | ) |                                     |
| Union Electric Company for Authority   | ) |                                     |
| To Continue the Transfer of            | ) | <b><u>Case No. EO-2011-0128</u></b> |
| Functional Control of Its Transmission | ) |                                     |
| System to the Midwest Independent      | ) |                                     |
| Transmission System Operator, Inc.     | ) |                                     |

**MOTION TO COMPEL RESPONSES TO DATA REQUESTS  
AND REQUEST FOR WAIVER**

COMES NOW the Office of the Public Counsel and for its Motion to Compel Responses to Data Requests and Request for Waiver states as follows:

**Background:**

1. On November 1, 2010, Union Electric Company, d/b/a Ameren Missouri (UE), filed a pleading asking the Commission to extend its authority to continue the transfer of functional control of its electric transmission system to the Midwest Independent Transmission System Operator, Inc. (MISO) through December 31, 2013. Ameren Missouri amended its application on August 10, by seeking authority to participate in the MISO indefinitely rather than for the specific time requested in the initial application.<sup>1</sup>

2. Public Counsel has been actively involved in this case, as well as the previous cases in which UE sought Commission approval to participate in the MISO. Through the course of this case, Public Counsel has participated in many discussions among some or all of the

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<sup>1</sup> Although there are other differences between the initial application and the amended application, the change to an open-ended participation is the most significant.

parties about the issues raised and possible avenues to resolve them. Public Counsel has filed several pieces of testimony and submitted a number of data requests (DRs) to other parties.

3. Through the end of October 2011, Public Counsel has submitted 47 data requests to UE. UE has objected to the majority of the data requests (26 of 47). By this motion, Public Counsel seeks an order from the Commission concerning ten of these. The DRs that are the subject of this motion are attached hereto as Attachment 1. UE's objections, presented in two letters, are attached hereto as Attachment 2.

4. Pursuant to 4 CSR 240-2.090(8)(A), undersigned counsel has conferred with counsel for UE concerning all of the data requests that are the subject of this motion. With respect to data requests 2006-2032, counsel conferred with counsel for UE in person on September 27, 2011. At that time, Public Counsel provided UE with a proposed resolution of the disputed discovery, but has yet to receive any response from UE. The proposed resolution is attached hereto as Attachment 3. With respect to DRs 2037-2043, counsel referred by phone with counsel for UE on November 3, 2011.

5. Public Counsel requests a waiver of 4 CSR 240-2.090(8)(B) for good cause. The Commission has previously in this case waived the application of that rule (see *Staff Motion for Order Compelling Responses to Staff Data Request Nos. 57 and 58*, filed October 27, 2011). Given UE's lack of response to Public Counsel's September 27 attempt to resolve the discovery issues pending at that time, and the approaching evidentiary hearing, good cause exists to waive the requirement of a conference with the presiding officer.

**Validity of Relevance Objection:**

6. Before addressing the specific data requests and objections, Public Counsel will address generally the notion UE need not respond to some data requests because UE asserts that

they seek information that is not relevant to this particular proceeding. Without conceding that any of the data requests that are the subject of this motion seek information irrelevant to this proceeding, Public Counsel asserts that such an objection has no validity in response to data requests of Public Counsel.<sup>2</sup>

7. The Commission has repeatedly recognized that Public Counsel has broad investigatory powers, which do not depend upon the existence of a contested case. In Case No. WO-94-192, Raytown Water Company's objected to Public Counsel DRs for reasons very similar to those raised by AmerenUE here. In an order issued January 5, 1994, the Commission overruled the company's objections and ordered it to respond to the DRs. In Case No. WR-2000-281, the Commission cited the Raytown Water ruling and expanded upon it:

[T]he Staff of the Commission and the Public Counsel enjoy broader discovery powers than other litigants. Section 386.450, RSMo, authorizes the Commission and the Public Counsel to examine "books, accounts, papers or records" in the hands of "any corporation, person or public utility," "kept . . . in any office or place within or without this state[.]" The Commission has interpreted this statute to authorize Public Counsel to serve DRs on regulated entities, and the Commission to compel responses to those DRs, even in the absence of a pending proceeding.

...

Likewise, this authority is not conditioned on considerations of relevance under Rule 56.01(b)(1), Mo. R. Civ. Pro., made applicable to Commission proceedings by Section 536.073.2, RSMo, and Commission Rule 4 CSR 240-2.090(1).

8. In Case No. ER-2007-0002 (a general rate increase case filed by UE), the Commission resolved a situation very similar to the one presented by this motion. In an order issued March 15, 2007, the Commission granted Public Counsel's motion to compel responses to DRs over UE's objection that the information sought was not relevant to that proceeding. The Commission stated:

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<sup>2</sup> Arguably such an objection is equally inapplicable to data requests propounded by the Staff pursuant to delegation of authority from the Commission, but that discussion is beyond the scope of this pleading.

AmerenUE objected to Public Counsel's data requests because they seek information that is not relevant to this proceeding in that the requested information relates to the operation of, and connections between, an unregulated holding company, Ameren, and its unregulated affiliate, EEInc. AmerenUE indicates that it has disclosed requested information regarding relations between itself as a regulated company and its unregulated affiliates. It objects only to the disclosure of information regarding relations between Ameren, the unregulated holding company, and EEInc.

Public Counsel contends that AmerenUE should be compelled to answer the submitted data requests because Public Counsel, along with the Commission's Staff, has broad authority to seek documentation from regulated companies apart from the general authority all parties have to obtain discovery in a contested case. Based on that authority, Public Counsel argues that it does not need to show that the information it seeks is relevant to this proceeding, and, as a result, AmerenUE's objection to the data requests is insufficient.

In support of its argument, Public Counsel points to Section 386.450, RSMo 2000, which requires the Commission, upon a showing of good cause by the Public Counsel, to order a public utility to produce papers or records of the utility for examination by the Public Counsel. **That statute does not require Public Counsel to show that the requested documents are relevant to any particular issue in a contested case. Indeed, the statute allows the Commission to require the production of the requested documents even if there were no contested case in existence. The fact that Public Counsel is requesting production of these documents in the context of a contested case should not in any way diminish Public Counsel's right to examine those documents.**

Public Counsel's motion to compel responses to those data requests will be granted.<sup>3</sup>

Just as it did in Case No. ER-2007-0002, the Commission should find that objections to Public Counsel DRs on the basis of relevance are insufficient.<sup>4</sup>

9. In addition to the general principle that Public Counsel has broad discovery powers with respect to regulated utilities, there is another reason why the Commission should require UE to be especially cooperative with respect to discovery: because UE and Ameren **committed** to voluntary and cooperative discovery practices at the time the Commission

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<sup>3</sup> Case No. ER-2007-0002, *Order Regarding Public Counsel's Motion to Compel Discovery*, issued March 15, 2007; emphasis added.

<sup>4</sup> Of course, if the information provided in response to the DRs is, in fact, not relevant to issues in this proceeding, UE will have ample opportunity to object to its admission in the record.

authorized the creation of the Ameren holding company structure. Prior to 1997, Union Electric Company operated in Missouri as a stand-alone regulated utility company. In Case No. EM-96-149, UE sought Commission approval to, *inter alia*, reorganize as part of a holding company. Several of the parties to that case, including Public Counsel, had concerns that the reorganization into a holding company structure could hinder access to information. A Stipulation and Agreement that resolved many of the issues associated with the creation of the holding company was filed on July 12, 1996, with UE as a signatory. Paragraph 8.b. on page 23 of the Stipulation and Agreement provides: “Voluntary and Cooperative Discovery Practices. UE, Ameren and any affiliate or subsidiary thereof agree to continue voluntary and cooperative discovery practices.” Nothing since that case has relieved Ameren, UE, and their affiliates and subsidiaries of this obligation, and the mere passage of time has not diluted that obligation. The Commission should require UE to live up to its commitment and comply with discovery requests in a voluntary and cooperative manner.

**Discussion of Specific Data Requests at Issue:**

10. DRs 2006-2007:

2006. Please provide a copy of all strategic plans or business plans for Ameren that pertain to the planning, construction, operation, or maintenance of existing or possible future transmission facilities in Missouri.

2007. Please provide a copy of all strategic plans or business plans for Ameren Transmission Company (ATX) or its subsidiaries that pertain to the planning, construction, operation, or maintenance of existing or possible future transmission facilities in Missouri.

UE objection: The Company objects to this DR on the grounds that it is overbroad and unduly burdensome in that it is unlimited in time, and also on the grounds that it is overbroad to

the extent it seeks information relating to the business, affairs, or operations of affiliates of Ameren Missouri, other than information relating to transactions occurring between Ameren Missouri and its affiliates or goods or services exchanged between Ameren Missouri and its affiliates and, consequently, it is also irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Discussion: There are two objections: 1) overbroad because unlimited in time; and 2) overbroad<sup>5</sup> and irrelevant because it seeks information about UE's affiliates. The relevancy objection and the related objection to providing information about affiliates are addressed above at paragraphs 6-9, and will not be repeated here. In its proposed framework for resolving the dispute over these DRs (Attachment 3 hereto), Public Counsel limited the time period to three years. Although UE failed to respond to that proposed resolution, Public Counsel asserts that it cures the only valid objection. Accordingly, Public Counsel requests that the Commission order UE to provide responsive information that was created within the last three years.

11. DRs 2013 and 2015:

2103. Please provide a copy of all correspondence between UE or its agent (e.g. Ameren Services) and MISO regarding UE's obligation to build transmission facilities as directed by MISO in accordance with Article Three, Section I, Paragraph C of the MISO Transmission Owners Agreement (TOA).

2015. If UE's response to OPC DR No. 2014 is yes, please provide a copy of all such agreements with ATX or its subsidiaries wherein UE has approved or otherwise authorized ATX or its subsidiaries to construct transmission facilities in Missouri that MISO could direct be

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<sup>5</sup> Overbroad is somewhat vague in this context. It is clear when the objection is to an unlimited or excessively long time period, but is unclear here. As it is used here, it appears to be synonymous with irrelevant.

constructed in accordance with Article Three, Section I, Paragraph C of the MISO Transmission Owners Agreement (TOA).

UE objection: The Company objects to these DRs on the ground that they seek information not relevant to any issue in this case and are not reasonably calculated to lead to the discovery of admissible evidence, and because they are beyond the proper scope of discovery because they depend upon legal conclusions regarding the existence or non-existence of certain contractual rights and obligations under the MISO TOA, which legal conclusions depend upon the opinions and advice of counsel on legal matters that are protected from disclosure by the attorney-client and work product privileges.

Discussion: Again, there are two objections: 1) relevance; and 2) privilege, specifically attorney-client and work product. The relevancy objection and the related objection to providing information about affiliates are addressed above at paragraphs 6-9, and will not be repeated here. In its proposed framework for resolving the dispute over DRs 2013 and 2015 (Attachment 3 hereto), Public Counsel suggested that UE provide non-privileged responsive documents and a privilege log for privileged documents. Although UE failed to respond to the proposed resolution, Public Counsel asserts that it is a fair and reasonable resolution. A party ought not be able to vaguely assert privilege without submitting a privilege log, which gives the requesting party at least a minimal idea of the potentially responsive documents. Accordingly, Public Counsel requests that the Commission order UE to provide all non-privileged responsive information, and to provide a privilege log for the rest.

12. DR 2014:

2014. Has UE or its agent (e.g. Ameren Services) entered into any agreements with ATX or its subsidiaries wherein UE has approved or otherwise authorized ATX or its subsidiaries to

construct transmission facilities in Missouri that MISO could direct be constructed in accordance with Article Three, Section I, Paragraph C of the MISO Transmission Owners Agreement (TOA)?

UE objection: The Company objects to these DRs on the ground that they seek information not relevant to any issue in this case and are not reasonably calculated to lead to the discovery of admissible evidence, and because they are beyond the proper scope of discovery because they depend upon legal conclusions regarding the existence or non-existence of certain contractual rights and obligations under the MISO TOA, which legal conclusions depend upon the opinions and advice of counsel on legal matters that are protected from disclosure by the attorney-client and work product privileges.

Discussion: To resolve the dispute over DR 2014, Public Counsel requested that UE simply give a “yes or no” answer (see Attachment 3 hereto). The DR did not ask for any legal conclusions or any opinions of counsel. It simply asks whether there are any contracts between UE and/or its agents on one hand and ATX and/or its subsidiaries on the other. There is no valid claim of privilege, and the Commission should order UE to provide a “yes” or a “no” answer.

13. DR 2021-2022:

2021. Please provide a copy of all “business case” analysis performed by or for Ameren or Ameren Services in the last three years that pertains to the planning, construction, operation, or maintenance of existing or possible future transmission facilities in Missouri.

2022. Please provide a copy of all “business case” analysis performed by or for ATX or its subsidiaries in the last three years that pertains to the planning, construction, operation, or maintenance of existing or possible future transmission facilities in Missouri.

UE Objection: The Company objects to this DR on the grounds that it is overbroad to the extent it seeks information relating to the business, affairs, or operations of affiliates of Ameren Missouri, other than information relating to transactions occurring between Ameren Missouri and its affiliates or goods or services exchanged between Ameren Missouri and its affiliates and, consequently, it is also irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, a response will be provided.

Discussion: Despite its objections, UE agreed to provide responses to DRs 2021 and 2022, and subsequently did indeed provide responses. Because of the objection, however, Public Counsel is unable to determine whether UE provided all responsive documents or just some of them. To resolve the dispute over DR 2021 and 2022, Public Counsel requested that UE simply state whether there are additional responsive documents that UE did not provide (see Attachment 3 hereto). Although UE failed to respond to that proposed resolution, Public Counsel asserts that it is imminently reasonable. Accordingly, Public Counsel requests that the Commission order UE to state whether it has any information that would be responsive but that it did not provide. Additionally, because of the time that has elapsed since Public Counsel proposed its resolution of this dispute and because the hearing is approaching, Public Counsel also requests that UE be required to list any responsive documents not provided.

14. DR 2023:

2023. Please provide a copy of all correspondence between Ameren or its affiliates (e.g. Ameren Services) and MISO regarding the obligation to build transmission facilities as directed by MISO in accordance with Article Three, Section I, Paragraph C of the MISO Transmission Owners Agreement (TOA).

UE Objection: The Company objects to these DRs [*sic*] on the ground that it seeks information not relevant to any issue in this case and is not reasonably calculated to lead to the discovery of admissible evidence, and because it is beyond the proper scope of discovery because it depends upon legal conclusions regarding the existence or non-existence of certain contractual rights and obligations under the MISO TOA, which legal conclusions depend upon the opinions and advice of counsel on legal matters that are protected from disclosure by the attorney-client and work product privileges. Subject to the foregoing, a response will be provided respecting correspondence regarding the referenced article, section, and paragraph of the TOA, if any.

Discussion: Despite its objections, UE agreed to provide a response to DR 2023, and subsequently did indeed provide a response. Because of the objection, however, Public Counsel is unable to determine whether UE provided all responsive documents or just some of them. To resolve the dispute over DR 2023, Public Counsel requested that UE simply state whether there are additional responsive documents that UE did not provide (see Attachment 3 hereto). Although UE failed to respond to that proposed resolution, Public Counsel asserts that it is imminently reasonable. Accordingly, Public Counsel requests that the Commission order UE to state whether it has any information that would be responsive but that it did not provide. Additionally, because of the time that has elapsed since Public Counsel proposed its resolution of this dispute and because the hearing is approaching, Public Counsel also requests that UE be required to list any responsive documents not provided.

15. DR 2025:

2025. Please provide a copy of all documents created in the last three years by or for Ameren Services or other Ameren affiliates that represent the interests of UE at MISO which contain requests for input from UE on issues pertaining to UE's interests as a member of MISO.

UE Objection: The Company objects on the grounds that this DR is not relevant to any issue in this case, and is not reasonably calculated to lead to the discovery of admissible evidence. The phrase "requests for input" is also vague and thus the question may be overbroad or unduly burdensome. Subject to the foregoing objections, a response will be provided.

Discussion: There are two objections: 1) relevance; and 2) vagueness. The relevancy objection is addressed above at paragraphs 6-9, and will not be repeated here. In its proposed resolution (Attachment 3 hereto), Public Counsel agreed to rephrase the DR in order to cure what UE asserted to be vagueness. Although UE failed to respond to that proposed resolution, Public Counsel asserts that the rephrasing does cure any vagueness. Accordingly, Public Counsel requests that the Commission order UE to answer the rephrased data request.

16. DR 2029:

2029. In the June 16, 2011 pleading titled "Ameren Missouri Responses to Order Directing the Parties to Answer Certain Questions" UE's answer to question 7.(b) is "yes." Please fully explain why UE's response was "yes" to the Commission's question which asked "would Ameren Transmission Company (ATC) have any right to construct transmission projects in Missouri 'but for' Ameren Missouri's membership in MISO?" Your explanation should include identification of the specific source(s) of ATX's "right to construct transmission projects in Missouri" that UE appears to believe exist based on its "yes" response to question 7.(b).

UE Objection: The Company objects to these DRs on the ground that they seek information not relevant to any issue in this case, because they are not reasonably calculated to lead to the discovery of admissible evidence, and because they are beyond the proper scope of discovery because they seek opinions rather than facts known or documents that exist, including opinions of counsel on legal matters, and because they seek information protected from disclosure by the attorney-client and work product privileges.

Discussion: There are two objections: 1) relevance; and 2) privilege, specifically attorney-client and work product. The relevancy objection and the related objection to providing information about affiliates are addressed above at paragraphs 6-9, and will not be repeated here. In its proposed framework for resolving the dispute over DR 2029 (Attachment 3 hereto), Public Counsel suggested that UE provide non-privileged responsive documents and a privilege log for privileged documents. Although UE failed to respond to the proposed resolution, Public Counsel asserts that it is a fair and reasonable resolution. A party ought not be able to vaguely assert privilege without submitting a privilege log, which gives the requesting party at least a minimal idea of the potentially responsive documents. Specifically, Public Counsel seeks the documents that UE asserts are the source of ATX's alleged right to construct transmission projects in Missouri. Accordingly, Public Counsel requests that the Commission order UE to provide all non-privileged responsive information, and to provide a privilege log for the rest.

WHEREFORE, Public Counsel respectfully requests that the Commission issue an order compelling UE to provide responses as discussed herein to the specific data requests discussed herein.



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By:     /s/ Lewis R. Mills

**PUBLIC COUNSEL DATA REQUEST**

**NUMBER 2006**

UNION ELECTRIC COMPANY  
**CASE NO.:** E0-2011-0128

REQUESTED BY: Ryan Kind

REQUESTED FROM: Ajay Arora

DATE OF REQUEST: AUGUST 26, 2011

Information Requested: Please provide a copy of all strategic plans or business plans for Ameren that pertain to the planning, construction, operation, or maintenance of existing or possible future transmission facilities in Missouri.

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**PUBLIC COUNSEL DATA REQUEST**

**NUMBER 2007**

UNION ELECTRIC COMPANY  
**CASE NO.:** E0-2011-0128

REQUESTED BY: Ryan Kind  
REQUESTED FROM: Ajay Arora  
DATE OF REQUEST: AUGUST 26, 2011

Information Requested: Please provide a copy of all strategic plans or business plans for Ameren Transmission Company (ATX) or its subsidiaries that pertain to the planning, construction, operation, or maintenance of existing or possible future transmission facilities in Missouri.

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**PUBLIC COUNSEL DATA REQUEST**

**NUMBER 2013**

UNION ELECTRIC COMPANY  
**CASE NO.:** E0-2011-0128

REQUESTED BY: Ryan Kind

REQUESTED FROM: Ajay Arora

DATE OF REQUEST: AUGUST 26, 2011

Information Requested: Please provide a copy of all correspondence between UE or its agent (e.g. Ameren Services) and MISO regarding UE's obligation to build transmission facilities as directed by MISO in accordance with Article Three, Section I, Paragraph C of the MISO Transmission Owners Agreement (TOA).

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**PUBLIC COUNSEL DATA REQUEST**

**NUMBER 2015**

**UNION ELECTRIC COMPANY  
CASE NO.: E0-2011-0128**

REQUESTED BY: Ryan Kind

REQUESTED FROM: Ajay Arora

DATE OF REQUEST: AUGUST 26, 2011

Information Requested: If UE's response to OPC DR No. 2014 is yes, please provide a copy of all such agreements with ATX or its subsidiaries wherein UE has approved or otherwise authorized ATX or its subsidiaries to construct transmission facilities in Missouri that MISO could direct be constructed in accordance with Article Three, Section I, Paragraph C of the MISO Transmission Owners Agreement (TOA).

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**PUBLIC COUNSEL DATA REQUEST**

**NUMBER 2014**

UNION ELECTRIC COMPANY  
**CASE NO.:** E0-2011-0128

REQUESTED BY: Ryan Kind

REQUESTED FROM: Ajay Arora

DATE OF REQUEST: AUGUST 26, 2011

Information Requested: Has UE or its agent (e.g. Ameren Services) entered into any agreements with ATX or its subsidiaries wherein UE has approved or otherwise authorized ATX or its subsidiaries to construct transmission facilities in Missouri that MISO could direct be constructed in accordance with Article Three, Section I, Paragraph C of the MISO Transmission Owners Agreement (TOA)?

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SIGNED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

**PUBLIC COUNSEL DATA REQUEST**

**NUMBER 2021**

UNION ELECTRIC COMPANY  
**CASE NO.:** E0-2011-0128

REQUESTED BY: Ryan Kind  
REQUESTED FROM: Ajay Arora  
DATE OF REQUEST: AUGUST 30, 2011

Information Requested: Please provide a copy of all "business case" analysis performed by or for Ameren or Ameren Services in the last three years that pertains to the planning, construction, operation, or maintenance of existing or possible future transmission facilities in Missouri.

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**PUBLIC COUNSEL DATA REQUEST**

**NUMBER 2022**

UNION ELECTRIC COMPANY  
**CASE NO.:** E0-2011-0128

REQUESTED BY: Ryan Kind  
REQUESTED FROM: Ajay Arora  
DATE OF REQUEST: AUGUST 30, 2011

Information Requested: Please provide a copy of all "business case" analysis performed by or for ATX or its subsidiaries in the last three years that pertains to the planning, construction, operation, or maintenance of existing or possible future transmission facilities in Missouri.

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TITLE: \_\_\_\_\_

**PUBLIC COUNSEL DATA REQUEST**

**NUMBER 2023**

UNION ELECTRIC COMPANY  
**CASE NO.:** E0-2011-0128

REQUESTED BY: Ryan Kind

REQUESTED FROM: Ajay Arora

DATE OF REQUEST: AUGUST 30, 2011

Information Requested: Please provide a copy of all correspondence between Ameren or its affiliates (e.g. Ameren Services) and MISO regarding the obligation to build transmission facilities as directed by MISO in accordance with Article Three, Section I, Paragraph C of the MISO Transmission Owners Agreement (TOA).

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TITLE: \_\_\_\_\_

**PUBLIC COUNSEL DATA REQUEST**

**NUMBER 2025**

UNION ELECTRIC COMPANY  
**CASE NO.:** E0-2011-0128

REQUESTED BY: Ryan Kind  
REQUESTED FROM: Ajay Arora  
DATE OF REQUEST: AUGUST 30, 2011

Information Requested: Please provide a copy of all documents created in the last three years by or for Ameren Services or other Ameren affiliates that represent the interests of UE at MISO which contain requests for input from UE on issues pertaining to UE's interests as a member of MISO.

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**PUBLIC COUNSEL DATA REQUEST**

**NUMBER 2029**

**UNION ELECTRIC COMPANY  
CASE NO.: E0-2011-0128**

REQUESTED BY: Ryan Kind

REQUESTED FROM: Ajay Arora

DATE OF REQUEST: AUGUST 30, 2011

Information Requested: In the June 16, 2011 pleading titled "Ameren Missouri Responses to Order Directing the Parties to Answer Certain Questions" UE's answer to question 7.(b) is "yes." Please fully explain why UE's response was "yes" to the Commission's question which asked "would Ameren Transmission Company (ATC) have any right to construct transmission projects in Missouri 'but for' Ameren Missouri's membership in MISO?" Your explanation should include identification of the specific source(s) of ATX's "right to construct transmission projects in Missouri" that UE appears to believe exist based on its "yes" response to question 7.(b).

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DATE RECEIVED: \_\_\_\_\_ SIGNED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

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RAYMOND C. LEWIS, JR. (1926-2004)

September 2, 2011

Mr. Lewis Mills  
Public Counsel  
200 Madison Street  
Jefferson City, Missouri 65102

**Via E-mail**

Re: ER-2011-0028 – OPC’s First Set of Data Requests (DR)

Dear Lewis:

This letter contains Ameren Missouri’s objections to OPC DR Nos. 2001 through 2019.

2005: The Company objects to this DR on the grounds that it is overbroad and unduly burdensome in that it is unlimited in time. Subject to the foregoing objection, the Company will provide responsive documents relating to current strategic or business plans.

2006 - 2007: The Company objects to this DR on the grounds that it is overbroad and unduly burdensome in that it is unlimited in time, and also on the grounds that it is overbroad to the extent it seeks information relating to the business, affairs, or operations of affiliates of Ameren Missouri, other than information relating to transactions occurring between Ameren Missouri and its affiliates or goods or services exchanged between Ameren Missouri and its affiliates and, consequently, it is also irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

2008- 2010: The Company objects to these DRs on the ground that they seek information not relevant to any issue in this case, because they are not reasonably calculated to lead to the discovery of admissible evidence, and because they are beyond the proper scope of discovery because they seek opinions rather than facts known or documents that exist, including opinions of counsel on legal matters, and because they seek information protected from disclosure by the attorney-client and work product privileges.

2013 - 2015: The Company objects to these DRs on the ground that they seek information not relevant to any issue in this case and are not reasonably calculated to lead to the discovery of admissible evidence, and because they are beyond the proper scope of discovery because they

Mr. Lewis R. Mill  
September 2, 2011  
Page 2

depend upon legal conclusions regarding the existence or non-existence of certain contractual rights and obligations under the MISO TOA, which legal conclusions depend upon the opinions and advice of counsel on legal matters that are protected from disclosure by the attorney-client and work product privileges.

Sincerely,

/s/ **James B. Lowery**

James B. Lowery

Cc: Tom Byrne, Mary Hoyt, Cheryl Lobb

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RAYMOND C. LEWIS, JR. (1926-2004)

September 6, 2011

Mr. Lewis Mills  
Public Counsel  
200 Madison Street  
Jefferson City, Missouri 65102

**Via E-mail**

Re: EO-2011-0128 – OPC’s Second Set of Data Requests (DR)

Dear Lewis:

This letter contains Ameren Missouri’s objections to OPC DR Nos. 2020 through 2034.

2021: The Company objects to this DR on the grounds that it is overbroad to the extent it seeks information relating to the business, affairs, or operations of affiliates of Ameren Missouri, other than information relating to transactions occurring between Ameren Missouri and its affiliates or goods or services exchanged between Ameren Missouri and its affiliates and, consequently, it is also irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, a response will be provided.

2022: The Company objects to this DR on the grounds that it is overbroad to the extent it seeks information relating to the business, affairs, or operations of affiliates of Ameren Missouri, other than information relating to transactions occurring between Ameren Missouri and its affiliates or goods or services exchanged between Ameren Missouri and its affiliates and, consequently, it is also irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, a response will be provided.

2023: The Company objects to these DRs on the ground that it seeks information not relevant to any issue in this case and is not reasonably calculated to lead to the discovery of admissible evidence, and because it is beyond the proper scope of discovery because it depends upon legal conclusions regarding the existence or non-existence of certain contractual rights and obligations under the MISO TOA, which legal conclusions depend upon the opinions and advice of counsel on legal matters that are protected from disclosure by the attorney-client and work product privileges. Subject to the foregoing, a response will be provided respecting correspondence regarding the referenced article, section, and paragraph of the TOA, if any.

Mr. Lewis R. Mills  
September 6, 2011  
Page 2

2024: The Company objects to this DR because it is overbroad, unduly burdensome, and constitutes an impermissible fishing expedition, in particular given the potential number of personnel and communications that the DR calls for. The Company also objects on the grounds that this DR is not relevant to any issue in this case, and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, a response will be provided.

2025: The Company objects on the grounds that this DR is not relevant to any issue in this case, and is not reasonably calculated to lead to the discovery of admissible evidence. The phrase “requests for input” is also vague and thus the question may be overbroad or unduly burdensome. Subject to the foregoing objections, a response will be provided.

2027 – 2029, 2032: The Company objects to these DRs on the ground that they seek information not relevant to any issue in this case, because they are not reasonably calculated to lead to the discovery of admissible evidence, and because they are beyond the proper scope of discovery because they seek opinions rather than facts known or documents that exist, including opinions of counsel on legal matters, and because they seek information protected from disclosure by the attorney-client and work product privileges.

Sincerely,

**/s/ James B. Lowery**

James B. Lowery

Cc: Tom Byrne, Mary Hoyt, Cheryl Lobb

**Case No. EO-2011-0128 framework for resolution of certain objections to certain OPC DRs**

**2006 and 2007:**

OPC will narrow the scope of documents requested to documents created in the last three years. The requests are already limited to documents pertaining to transmission in MO. Ameren Missouri will provide responses to this limited scope.

**2008-2010:**

OPC will not pursue.

**2013-2015:**

2013 – Ameren Missouri will provide all non-privileged documents, and a privilege log for the rest.

2014 – Ameren Missouri will provide a simple yes or no answer.

2015 – Ameren Missouri will provide all non-privileged documents, and a privilege log for the rest.

**2021-2023:**

Ameren Missouri will clarify whether there is additional information not provided.

**2025:**

OPC will rephrase from:

“Please provide a copy of all documents created in the last three years by or for Ameren Services or other Ameren affiliates that represent the interests of UE at MISO which contain requests for input from UE on issues pertaining to UE’s interests as a member of MISO.”

to:

“Please provide a copy of all documents that: 1) pertain to UE’s interests as a member of MISO; 2) were created in the last three years by or for Ameren Services or other Ameren affiliates that represent the interests of UE at MISO; and 3) have been provided to UE.”

Ameren Missouri will provide responses to this clarified request.

**2027-2029 and 2032:**

UE will provide all non-privileged documents, and a privilege log for the rest.