

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 25th day of
February, 2009.

In the Matter of Public Counsel's Petition to)	
Open a Case to Investigate AmerenUE's)	<u>File No. EO-2009-0126</u>
Plan to Construct and Finance a Second Unit)	
At the Callaway Nuclear Plant Site)	

**ORDER DIRECTING AMERENUE TO PRODUCE DOCUMENTS
SOUGHT BY PUBLIC COUNSEL**

Issue Date: February 25, 2009

Effective Date: February 25, 2009

On January 27, 2009, the Office of the Public Counsel filed a motion asking the Commission to order Union Electric Company, d/b/a AmerenUE, to answer certain data requests generally relating to the utility's plans regarding the possible construction of a second nuclear unit at its Callaway nuclear plant. Public Counsel filed its motion in File No. EO-2009-0126, which concerns Public Counsel's petition seeking an order from the Commission to open a case to investigate AmerenUE's plan to construct and finance the Callaway 2 unit. The Commission has not yet acted on Public Counsel's petition to open an investigation, and therefore, File No. EO-2009-0126 is not a case. Nevertheless, Public Counsel's motion asserts a right to obtain the documents it seeks from AmerenUE even in the absence of a particular existing case.

Public Counsel's motion asks the Commission to compel AmerenUE to answer fourteen specified data requests, copies of which Public Counsel attached to its motion.¹

¹ The data requests for which Public Counsel seeks answers are DRs 7001-7005 and DRs 2002-2010.

Public Counsel submitted the data requests to AmerenUE on October 31 and November 3, 2008. AmerenUE responded to Public Counsel on November 10, 2008, by a letter from its counsel raising a general objection to the data requests because they are not connected to a pending action before the Commission in that the Commission had not acted to open the investigative case sought by Public Counsel.

Public Counsel did not attempt to force AmerenUE to answer the challenged data requests until it filed its motion to compel on January 27, 2009. In that motion, Public Counsel recognizes that the Commission has not opened the investigative case in which it submitted the data requests. However, Public Counsel contends it has an independent right to obtain documents from AmerenUE, and any other Missouri utility, apart from its right to discovery in an established case.

In support of its right to obtain documents, Public Counsel points to Section 386.450, RSMo 2000, which states:

At the request of the public counsel and upon good cause shown by him the commission shall require or on its own initiative the commission may require, by order served upon any corporation, person or public utility in the manner provided herein for the service of orders, **the production within this state at such time and place as it may designate, of any books, accounts, papers or records kept by said corporation, person or public utility in any office or place *within or without this state***, or, at its option, verified copies in lieu thereof, **so that an examination thereof may be made by the public counsel when the order is issued at his request or by the commission or under its direction.** (Emphasis added)

Although Section 386.450 is entitled “Inspection of out of state records”, the text of the section specifically allows for the production of documents kept “within or without this state.” Hence, the authority granted by the statute is not limited to the production of documents kept outside this state. Section 386.450 therefore requires the Commission to issue an

order directing a utility to produce the information sought by Public Counsel, if it finds that Public Counsel has shown good cause for the production of that information.

Nothing in Section 386.450 requires Public Counsel to make its request for the production of information in a case previously established by the Commission. On the contrary, the statute recognizes that Public Counsel may have an interest in the books, accounts, papers or records of Missouri's utilities that is independent of the interest of the Commission.

Section 386.450 requires the Commission to order a utility to produce information sought by Public Counsel if it finds that Public Counsel has shown good cause for the production of that information. Public Counsel seeks information from AmerenUE regarding its plans to possibly construct a second nuclear unit at Callaway. At this time, the Commission has not chosen to open its own formal investigation into those plans, but Public Counsel believes that such an investigation is appropriate.² Accordingly, the Commission finds that Public Counsel has made a sufficient showing of good cause to justify the production of the requested information under Section 386.450.

In addition to its general opposition to Public Counsel's authority to seek production of information outside an established case, AmerenUE objects to two specific data requests as seeking information protected from disclosure as privileged communications between the company and its legal counsel. The data requests in question are OPC 7004³ and OPC 7005.⁴ AmerenUE contends both data requests would require it to turn over to Public

² All five commissioners agree a case should be opened. Two commissioners support opening a case right now, while the other three prefer to wait until the legislature has had an opportunity to act.

³ Data Request No. 7004 states: Has AmerenUE reviewed the analysis attached to Public Counsel's motion to open a case? Does it disagree with that analysis? If so, with what specific aspects does it disagree?

⁴ Data Request No. 7005 states: Has AmerenUE undertaken any analysis that compares "Cash

Counsel analyses prepared for its consideration by its legal counsel, which it claims are protected from disclosure by the attorney-client privilege.

Because AmerenUE's claim of attorney-client privilege was secondary to its primary claim that Public Counsel should be precluded to obtaining any of the information it seeks outside an established case, the details of its claim of attorney-client privilege have not yet been fully explained. Rather than make a final ruling on those data requests with inadequate information, the Commission will deny Public Counsel's motion to compel as it relates to those two data requests. If Public Counsel wants to further pursue those data requests, it may file a separate motion to compel, thereby bringing that specific issue before the Commission.

THE COMMISSION ORDERS THAT:

1. Public Counsel's Second Motion to Compel is granted in part and Union Electric Company, d/b/a AmerenUE is directed to answer the following Data Requests submitted by the Office of the Public Counsel: 7001, 7002, 7003, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, and 2010. AmerenUE shall answer those Data Requests no later than March 4, 2009.

2. Union Electric Company, d/b/a AmerenUE is not compelled to answer Public Counsel data request numbers 7004 and 7005 at this time, but Public Counsel may file a separate motion to compel AmerenUE to answer those data requests if it wishes to do so.

Metrics" regulation (or a similar use of accelerated depreciation) with regulation that allows recovery of CWIP? If so, please provide that analysis.

3. This order shall become effective immediately upon issuance.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', with a stylized, cursive script.

Colleen M. Dale
Secretary

(S E A L)

Clayton, Chm., Davis, Jarrett, and Gunn, CC., concur;
Murray, C., dissents, with separate dissenting opinion attached.

Woodruff, Deputy Chief Regulatory Law Judge