

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

In the Matter of Union Electric Company d/b/a            )  
Ameren Missouri’s 3<sup>rd</sup> Filing to Implement                )  
Regulatory Changes in Furtherance of Energy            )  
Efficiency as Allowed by MEEIA                            )            File No. EO-2018-0211

**MOTION TO COMPEL**

**COMES NOW**, the Office of the Public Counsel (OPC), by and through counsel, and states as follows:

1. On July 9, 2018, the OPC submitted data requests (DR) 2001 through 2003, attached herein, to Ameren Missouri. According to the computation of time given by the Public Service Commission’s (Commission) Order Adopting Procedural Schedule, those DRs were to be answered by July 24, 2018.

2. The OPC’s data requests are seeking information about Ameren Missouri’s relationship with certain media outlets, including any financial arrangements.

3. Ameren Missouri objected to the OPC’s data requests on July 9, 2018, in writing on the grounds that the questions do not address costs charged to Ameren Missouri customers, do not involve costs incurred during the subject time period, and are otherwise unrelated to Ameren Missouri’s Missouri Energy Efficiency Investment Act (MEEIA) 2019-24 filing. Ameren Missouri’s objections are attached herein.

4. The OPC countered in writing that whether costs are charged to Ameren Missouri customers, whether costs incurred during the subject time period are addressed, and if the inquired expenditures relate to Ameren Missouri’s MEEIA filing can only be ascertained by a full and open inquiry. The OPC’s response to Ameren Missouri’s objections are attached herein.

5. The OPC's correspondence also directed Ameren Missouri to consider a Missouri Times, LLC piece on Ameren Missouri's MEEIA 2019-24 filing.<sup>1</sup> The article presents a noticeably positive narrative of Ameren Missouri's filing. Given Ameren Missouri's known endorsement of Missouri Times' programs, one can then question whether the positive nature of The Missouri Times' reporting on Ameren Missouri is due to any contractual relationship between the two.<sup>2</sup>

6. The OPC is concerned that The Missouri Times' piece is in actuality an advertisement paid for by Ameren Missouri, and questions whether any contributions paid to The Missouri Times are being recovered under Ameren Missouri's MEEIA 2019-24 surcharges. The OPC's concern is informed by Ameren Missouri's MEEIA 2019-24 filing including advertising programs.<sup>3</sup> Thus the OPC sent its DRs in order to explore its concerns.

7. Ameren Missouri did not respond to the OPC's response to Ameren Missouri's objection on July 9, 2018. Ameren Missouri then reiterated its objection and refusal to respond to the OPC's DRs on July 26, 2018.

8. Pursuant to Commission Rule 4 CSR 24-20.090(8), the OPC and Ameren Missouri later conferred by telephone through counsel on July 27, 2018. The OPC and Ameren Missouri were unable to resolve the dispute, and scheduled an appointment for a telephone conference with the presiding officer. A conference was then held with Hon. Ron Pridgin on July 31, 2018, in compliance with Commission Rules. The dispute remains unresolved.

9. Data requests submitted in a Commission case are used as a means for discovery.<sup>4</sup> The same sanctions provided for failure to comply with discovery process provided in the rules of

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<sup>1</sup> See Jason Taylor, *Efficiency Plan from Missouri's Largest Utility is Backed by Clean Energy Supporters*, THE MISSOURI TIMES, June 6, 2018, <https://www.missourinet.com/2018/06/06/plan-from-missouris-largest-utility-is-backed-by-clean-energy-supporters/>.

<sup>2</sup> See attached DR 2002.

<sup>3</sup> *Application to Approve DSIM and Demand-Side Management Portfolio and Plan, Request for Variances, and Motion to Adopt Procedural Schedule Appendix B*, Case No. EO-2018-0211 (June 4, 2018).

<sup>4</sup> 4 CSR 240-2.090(2).

civil procedure apply before the Commission.<sup>5</sup> Such sanctions include entertaining a motion to compel, staying proceedings until a request for documents is obeyed, or dismissing the proceeding.<sup>6</sup>

10. An objection to discovery based on relevance for other grounds of inadmissibility before the Commission is groundless “if the information sought *appears* reasonably calculated to lead to the discovery of admissible evidence.”<sup>7</sup> The OPC’s DRs are reasonably calculated to lead to admissible evidence as the OPC is directly inquiring into the promotion of Ameren Missouri’s energy efficiency programs.

11. OPC DR 2001 asks for any existing contracts Ameren Missouri has with certain enumerated news media companies and individuals from 2013 to present. Ameren Missouri objects to the relevance of this question and maintains that it beyond the scope of Ameren Missouri’s MEEIA 2019-24 filing. This question is relevant and may reasonably lead to the discovery of admissible evidence regarding Ameren Missouri’s advertising and educational expenditures which Ameren Missouri potentially included in those costs sought to be recovered within its MEEIA 2019-24 filing.

12. OPC DR 2002 follows up on DR 2001 if DR 2001 is answered in the negative, and alternatively requests for a narrative explanation of why Ameren Missouri is listed as a sponsor of the This Week in Missouri Politics program of The Missouri Times. Ameren Missouri objects to the relevance of this question and maintains that it beyond the scope of Ameren Missouri’s MEEIA 2019-24 filing. This question is relevant and may reasonably lead to the discovery of admissible evidence because it seeks to discovery information that substantiates any negative answers

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<sup>5</sup> 4 CSR 240-2.090(1).

<sup>6</sup> Mo. R. Civ. Pro. 61.01.

<sup>7</sup> Mo. R. Civ. Pro. 56.01. (emphasis added).

provided in OPC DR 2001. Ameren Missouri need only respond to OPC DR 2002 if in response to OPC DR 2001 Ameren Missouri answers that there are no available contracts with those aforementioned news media outlets and individuals. If Ameren Missouri so provides a negative answer then an explanation of Ameren Missouri's relationship with The Missouri Times will reveal whether any such arrangement is compliant with the MEEIA and associated regulations.

13. OPC DR 2003 requests for the records of any transactions made from 2013 to present with certain enumerated news media companies and individuals. Ameren Missouri objects to the relevance of this question and maintains that it beyond the scope of Ameren Missouri's MEEIA 2019-24 filing. This question is relevant and may reasonably lead to the discovery of admissible evidence regarding expenses that may later be contested as recoverable under Ameren Missouri's associated MEEIA customer surcharges, and it directly relates to any possible advertising or educational expenditures contemplated by OPC DR 2001.

**WHEREFORE**, the OPC requests that the Commission compel Ameren Missouri to provide the information the OPC is requesting in DRs 2001 through 2003, or in the alternative consider such other relief as the Commission may deem appropriate.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

/s/ Caleb Hall  
Caleb Hall, #68112  
Senior Counsel  
200 Madison Street, Suite 650  
Jefferson City, MO 65102  
P: (573) 751-4857  
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**Attorney for the Office of the Public  
Counsel**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 1st day of August, 2018, with notice of the same being sent to all counsel of record.

/s/ Caleb Hall

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

In the Matter of Union Electric Company     )  
d/b/a Ameren Missouri’s 3rd Filing to     )  
Implement Regulatory Changes in     )     File No. EO-2018-0211  
Furtherance of Energy Efficiency as     )  
Allowed by MEEIA     )

**PUBLIC COUNSEL DATA REQUEST 2001 – 2003 to AMEREN MISSOURI**

The Office of Public Counsel (Public Counsel) hereby provides the following Data Requests to Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”) pursuant to the Commission’s Rule 4 CSR 240-2.090. Public Counsel is requesting Ameren Missouri to respond to these requests within twenty (20) days of receipt. Please provide electronic responses to the following: [opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov).

**DEFINITIONS**

As used herein, the words “document” or “documents” include any original and all copies of any written, printed, typed, electronically stored, or graphic matter of any kind or nature, however produced or reproduced, now in your possession, custody or control, or in the possession, custody or control of your agents, representatives, employees of you or any and all persons acting in your behalf, including documents at any time in the possession, custody or control of such individuals or entities, or known by you to exist.

## DATA REQUESTS

2001. Please provide each and every contract currently in effect, or has previously been in effect, from calendar year 2013 to present, between Ameren Missouri and/or any other regulated or non-regulated affiliate with each of the following entities:

- The Missouri Times, LLC
- This Week in Missouri Politics
- Scott Faughn
- Arkansas Capital Times LLC
- SEMO Times LLC
- Clayton Times LLC
- Territorial Enterprise LLC

2002. Regarding OPC DR-2001, if the answer is no in its entirety please provide a narrative explanation why the Ameren Missouri brand is listed as a sponsor in the example below.



**This Week** @thisweekinmopol · May 1

Who won @thisweekinmopol?

@BarklageCompany - the Mark Richardsons  
@MarshaHaefner - @Rep\_TRichardson  
@scottfaughn - @HafnerMO  
@JohnMayfield20 - @clairecmc  
@bradbakker - @SenatorNasheed

Brought to you by @AmerenMissouri ←

Full episode at twmp.tv

#mogov #moleg

0:35 268 views

1 1

2003. Please provide each and every account number in which transactions have been recorded in the general ledger, from calendar year 2013 to date, in relation to each of the following:

- The Missouri Times, LLC
- This Week in Missouri Politics
- Scott Faughn
- Arkansas Capital Times LLC
- SEMO Times LLC
- Clayton Times LLC
- Territorial Enterprise LLC

*Issued by Geoff Marke 7/9/18*





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July 9, 2018

Mr. Caleb Hall  
Deputy Public Counsel  
Office of the Public Counsel  
PO Box 2230  
Jefferson City, MO 65102

RE: File No. EO-2018-0211  
Objection to DR No. 2001 - 2003

Dear Caleb:

This letter contains the Company's objection to data requests (DRs) received on July 9, 2018.

The Company objects to DR Nos. 2001 - 2003 because they request information that is not relevant to this proceeding. Specifically the questions:

- Do not address costs that were charged to Ameren Missouri's customers;
- Do not address costs incurred during the subject time period; and
- Are otherwise unrelated to the Company's MEEIA 2019-24 filing.

Such requests are beyond the proper scope of discovery because they do not provide any relevant facts, documents, or information.

Sincerely,

A handwritten signature in blue ink that reads "Paula N. Johnson".

Paula N. Johnson

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Hampton Williams  
Public Counsel

State of Missouri

Michael L. Parson  
Governor

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200 Madison, Suite 650  
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Relay Missouri  
1-800-735-2966 TDD  
1-866-922-2959 Voice

July 9, 2018

Paula Johnson  
Senior Corporate Counsel  
Ameren Missouri  
1901 Chocteau Ave, MC 1310  
St. Louis, MO 63103

CC: Geoff Marke

RE: EO-2018-0211 Objections to Data Requests

Paula,

On July 9, 2018, the Office of the Public Counsel's (OPC) Chief Economic Geoff Marke submitted Data Requests (DR) 2001 through 2003 regarding Ameren Missouri's contractual relationship, if any, with various media outlets including The Missouri Times, LLC.

Ameren Missouri promptly rejected these DRs for three primary reasons: 1) that the DRs do not address costs that are charged to Ameren Missouri's customers, 2) that the DRs do not address costs incurred during the subject time period, and 3) that the inquiries are otherwise unrelated to Ameren Missouri's Missouri Energy Efficiency Investment Act (MEEIA) III filing.

The OPC responds in kind as follows:

- 1) Whether or not the DRs address costs charged to Ameren Missouri customers can only be ascertained by a full and open inquiry. Any objections as to relevance of any obtained data are proper before the Commission.
- 2) Whether or not the DRs do not address costs incurred during the subject time period can only be ascertained by a full and open inquiry. Any objections as to relevance of any obtained data are proper before the Commission
- 3) Whether or not the DRs are relevant to Ameren Missouri's MEEIA 2019-24 filing can only be ascertained by a full and open inquiry. Any objections as to relevance of any obtained data are proper before the Commission

In support of the OPC's responses, the OPC directs your attention to the Missouri Times piece on Ameren Missouri's proposed MEEIA 2019-24 filing entitled "*Efficiency Plan from Missouri's Largest Utility is Backed by Clean Energy Supporters*" published on June 5, 2018: <https://www.missourinet.com/2018/06/06/plan-from-missouris-largest-utility-is-backed-by-clean-energy-supporters/>. The piece is notably favorable towards Ameren Missouri's proposed MEEIA cycle, and gives the impression of near universal support for the program from environmentally focused groups. Such a glowing news commentary becomes circumspect in light of realizations that Ameren Missouri has sponsored at least some of The Missouri Times' programs.

The OPC is concerned about whether or not this piece by The Missouri Times is in actuality an advertising piece for Ameren Missouri's MEEIA 2019-24 filing. As advertising costs have been debated as recoverable under MEEIA in Ameren Missouri's prior MEEIA filings, and because the MEEIA 2019-24 filing includes advertising programs, the OPC is inquiring as to confirm or deny its concern, and DRs 2001 through 2003 are relevant and proper.

The OPC again requests Ameren Missouri's compliance with DRs 2001 through 2003.

Sincerely,

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