

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

In the Matter of Union Electric Company d/b/a            )  
Ameren Missouri’s 2<sup>nd</sup> Filing to Implement            )  
Regulatory Changes in Furtherance of Energy        )  
Efficiency as Allowed by MEEIA.                        )  
**Case No. EO-2015-0055**

**PUBLIC COUNSEL’S MOTION FOR PROTECTIVE ORDER AND MOTION FOR  
EXPEDITED TREATMENT**

COMES NOW the Office of the Public Counsel (“OPC” or “Public Counsel”) and in response to the *Deposition Notice* served by Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”) on July 10, 2015, moves for a protective order and expedited treatment, as follows:

Background

1. On July 10, 2015, Ameren Missouri served its Deposition Notice requesting to take a *second* deposition of Dr. Geoff Marke on Friday July 17, 2015, at the offices of Brydon, Swearingen & England, P.C.
2. In this case, Ameren Missouri has previously conducted a thorough deposition of Dr. Marke on May 19, 2015.

Protective Order

3. The Missouri Rules of Civil Procedure provide that a party from whom discovery is sought may move for a protective order to protect the party from “annoyance, embarrassment, oppression, or undue burden or expense.” Mo. R. Civ. P. 56.01(c). A protective order, among other remedies, may state that the discovery not be had. Mo. R. Civ. P. 56.01(c)(1).

4. Here, a *second* deposition the last business day before the evidentiary hearing is unnecessary and would cause annoyance and undue burden for Public Counsel and any other party that may attend the deposition.

5. Deposing a witness *twice* in the same case is unreasonable and unnecessary. In fact, Ameren Missouri's request for a *second* deposition of the same witness necessarily calls into question the prudence of conducting any deposition in cases before the Commission. Ameren Missouri cannot show why the first deposition was necessary much less a second, this is an unnecessary and burdensome exercise undertaken only by Ameren Missouri.

6. In a different venue, Ameren Missouri's tactics may be necessary to find out the basis for the conclusions and recommendations of an expert witness prior to an evidentiary hearing. Here, however, the Commission's rules require that testimony must be pre-filed and accompanied by an affidavit. 4 CSR 240-2.130(8). The sworn testimony of Dr. Marke, and every other witness, is already available on the Commission's electronic filing system.

7. If the company wishes to inquire further about the basis for Dr. Marke's conclusions and recommendations, the Commission's rules provide for liberal discovery through data requests, a means much less onerous on other's time and resources than this late-noticed and unnecessary deposition. 4 CSR 240-2.090(2).

8. To the extent that the timing of data request responses may be problematic for the company, Ameren Missouri either should have sought a procedural schedule that shortened the data request response time, as is done in other cases, or should have sent data requests earlier.

That said, if in lieu of a deposition Ameren desires to propound data requests on OPC, OPC will respond to such requests expeditiously and before hearing.<sup>1</sup>

9. In addition to Dr. Marke, three Staff witnesses filed supplemental direct testimony. Ameren Missouri is conducting a deposition of Mr. Mark Oligschlaeger on Tuesday, July 14, 2015. Mr. Oligschlaeger has not previously been deposed in this case. The two other Staff witnesses who filed supplemental direct testimony had been deposed previously by the company, but the company does not now seek a second deposition. Only for Dr. Marke does the company seek a deposition. Because Ameren Missouri will not gain any information that is not already available to it, the disparate treatment for Dr. Marke is unnecessary and, Public Counsel believes, is intended to annoy, oppress, and create an undue burden for Public Counsel.

10. Ameren Missouri's practice of deposing witnesses, in this case *twice*, is unnecessary and imprudent. The company's pervasive use of this unnecessary practice to annoy, oppress, and burden other parties is an expensive and time-consuming practice with little value to the company and zero value for ratepayers.

#### Alternative Protective Order

11. Although Counsel for Ameren Missouri has communicated that it intends to limit the deposition to the supplemental direct testimony filed on July 9, 2015, the deposition notice includes no such limitation. While no additional deposition is acceptable to Public Counsel, as no deposition need be taken, only in the alternative, Public Counsel requests that the Commission issue a protective order limiting the deposition to matters in the supplemental direct testimony of Dr. Marke filed on July 9, 2015.

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<sup>1</sup> OPC believes Ameren Missouri has afforded such treatment to Staff in lieu of attempting to depose certain witnesses at the eleventh hour and sees no reason why no such arrangement cannot be reached here. See also paragraph nine (9).

12. Should the Commission decide to allow a deposition limited to the supplemental direct testimony of Dr. Marke, Public Counsel requests that the order prohibit the use of the first deposition during the second deposition. If this deposition were a continuation of the prior deposition, the transcript would not be available to Ameren Missouri's counsel, and so, should not be available for use for any purpose in this second deposition.

13. Public Counsel further requests that the Commission order the deposition, if any, to take place at the Office of Public Counsel's conference room rather than at the offices of Ameren Missouri's Counsel.

#### Expedited Treatment

14. Public Counsel requests the Commission issue this protective order by Thursday, July 16, 2015 at 3:00 pm so that the parties will have a determination prior to the deposition scheduled for Friday morning. Expedited treatment will have no negative effect on any party, and is necessary for an order prior to the date of the deposition. This motion was filed as soon as it could have been, the next business day, after the deposition notice was served.

WHEREFORE Public Counsel moves that the Commission issue a protective order stating that the deposition not be had, or in the alternative, a protective order limited as described above.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

By:     /s/ Tim Opitz    

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 13<sup>th</sup> day of July 2015:

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