

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

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

OPC's SUR-REPLY

COMES NOW the Office of the Public Counsel ("OPC") and replies to Ameren's Response as follows, responding using the same numerical paragraphs as Ameren:

1. OPC only has two points of contention with Ameren Missouri's reply on April 9, 2018: that a judgment on the pleadings is akin to summary judgment and that Bill Davis' testimony represents a dispute in facts.

2. Rule 55.27(b) turns a motion for judgment on the pleadings into a summary judgment motion only when "matters outside the pleadings are presented." OPC has not referenced a single fact that was not mentioned in the pleadings themselves. OPC's only reference to anything outside of the pleadings is to Geoff Marke's testimony. But, that reference was merely to aid the Commission on how to interpret a rule. No facts were referenced. OPC's argument is purely and entirely a legal argument based upon what Ameren Missouri plead in its Application. This is not a summary judgment motion and it is not to be treated as one. If it were, OPC would have filed a "summary determination" motion pursuant to 4 CSR 240-2.117(1).

3. Counsel for Ameren Missouri confuses what is fact and what is law. Bill Davis' testimony on whether pre-pay constitutes "deprivation of service" is a legal

conclusion. If Bill Davis had attempted to testify about a legal conclusion in a live hearing, that testimony would have been objected to. Bill Davis is not a lawyer or a judge. This Commission is more than capable of determining what “deprivation of service” means without the aid of a non-lawyer. And, this Commission does not need to develop facts to interpret law.

4. Ameren Missouri states that “the normal hearing process also would give the parties the opportunity to fully brief and argue legal issues related to that question...” Reply ¶6. Ameren Missouri has already been afforded the opportunity to brief this issue. There are no facts that need to be developed, as the Commission only needs to look to Ameren Missouri’s Application for the purposes of OPC’s Motion. This Commission should dismiss Ameren Missouri’s Application based upon the pleadings and save the Commission and the parties the time and expense of a full hearing.

WHEREFORE, OPC respectfully requests that this Commission deny Ameren the pilot program requested and dismiss Ameren’s Application accordingly.

Respectfully submitted,

/s/ Curtis Schube

Curtis Schube
Deputy Public Counsel
Missouri Bar. No. 63227

Office of Public Counsel
PO Box 2230
Jefferson City, MO 65102
573-751-5324-Phone
537-751-5562
Curtis.Schube@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 10th day of April, 2017.

/s/ Curtis Schube