



conduct discovery on the issue when on November 15, 2023, it submitted DR No. 185.0, a copy of which is attached hereto as Exhibit A.<sup>2</sup> In response, the Company produced dozens of responsive documents, as requested, and with respect to 12 other documents, produced a privilege log as required by Mo. R. Civ. P. 57.01(c)(3) since those documents reflected attorney-client communications and attorney work product.<sup>3</sup> Notably, the Staff could have propounded DR No. 185.0 at any time from the time the Company filed this case in mid-June, 2023 to mid-September, 2023 and could have provided the Commission with its perspective and information arising from Mr. Bailey's comment in its rebuttal testimony filed on October 11, 2023. Despite that opportunity, Staff failed to do so. No further public comments on these issues have been submitted.

3. On December 6, 2023, the Company served Staff with DR No. 189.0, a copy of which is attached hereto as Exhibit B. DR 189.0 in substance sought the same information from the Staff as the Staff had sought from the Company in subparts 4 and 5 of Staff DR No. 185.0. On December 8, 2023, Staff objected to DR No. 189.0 in total, based entirely on Staff's claim that DR No. 189.0 called for both tangible and intangible work product. A copy of the Staff's objection is attached hereto as Exhibit C.

4. On December 27, 2023, the Company wrote Staff Counsel, pointing out the insufficiency of Staff's blanket work product objection and Staff's duty to, at a minimum, produce a proper privilege log/proper information to allow Staff's privilege claim to be assessed. See Exhibit D attached hereto. On December 28, 2023, Staff Counsel responded, implicitly refusing to provide such information, despite Staff's duty to do so. See Exhibit E attached hereto.

---

<sup>2</sup> Staff also noticed (on November 1) but then withdrew (on November 10) a deposition of Mr. Bailey.

<sup>3</sup> Under 20 CSR 4240-2.090(1), discovery in Commission cases is to be obtained by the same means and under the same conditions as in civil actions in circuit court, i.e., according to the discovery provisions of the Missouri Rules of Civil Procedure. Under Mo. R. Civ. P. 57.01(c)(3), when privilege or work product is asserted as a reason for withholding information, "the objecting party shall state information that will permit others to assess the applicability of the privilege or work product doctrine."

5. This Motion presents two issues. First, must Staff produce sufficient information to allow its work product claim to be assessed? As discussed in Exhibit D and below, the answer to that question is unambiguously “yes.” Second, is Staff’s work product claim substantively sound? As to the second question, an answer cannot definitively be determined absent Staff complying with its duty under Mo. R. Civ. Pro. 57.01(c)(3) but an answer is suggested by Staff’s Motion for Local Public Hearing.

6. As noted, Staff’s Motion for Local Public Hearing rested on the contention that Mr. Bailey or perhaps other Pike County citizens had “questions and concerns” about solar generation construction in their county and/or the state in general and wanted to share them with the Commission. We know Staff had communications on the matter at least with Mr. Bailey. Staff Motion for Local Public Hearing, p. 1 (“Staff has verified that Pike County Commissioner Bailey, as Pike County Commissioner and also on the basis of his discussions with Pike County concerned citizens, does wish [for a local public hearing.”). And we know Staff made inquiries about county tax issues. *Id.* (“Based on Staff’s further inquiries and investigation....”).

7. It is apparently this “investigation” aspect of whatever communications Staff has had on the subject upon which Staff rests its work product objection. However, at least as to tangible work product (as distinguished from attorney mental impressions work product) the materials in question cannot constitute work product at all unless they were prepared *in anticipation of litigation*. Mo. R. Civ. Pro. 56.01(b)(5). Given that the purported basis for seeking a local public hearing was, in part, for *Mr. Bailey* (and perhaps other citizens) to share *their* questions or concerns on solar generation development *with the Commission*, there would be no basis for responsive documentation, at least on that topic, to have been prepared by Staff in

anticipation of litigation.<sup>4</sup>

8. The bottom line is that Staff has lodged a *per se* insufficient objection and despite indications that there may be responsive materials that simply do not qualify for any kind of work product protection, no one can assess whether that is the case until Staff discharges its clear duty, which it has failed and refused to do. *See, e.g., State ex rel. Ford Motor Co. v. Westbrooke*, 151 S.W.3d 364, 367 (Mo. banc 2005) (“Blanket assertions of work product are insufficient to invoke protection”; the objection party is under a duty – and has the burden – to establish the existence of the privilege by, at a minimum, providing a privilege log); *State ex rel. Kilroy Was Here, LLC v. Moriarty*, 633 S.W.3d 406, 414 (“To invoke the protection of the work product doctrine, the party opposing discovery must establish, through competent evidence, that the materials sought to be protected are ... [work product]”).

**Request for Expedited Treatment (20 CSR 4240-2.080(14))**

9. The Company should not have had to file this Motion for Staff to do its duty. And time should not be wasted in resolving the issue. While evidentiary hearings are about 5 weeks away, discovery cutoff deadlines will soon approach, and the Company has already been deprived of the information to which it is entitled – and certainly the ability to evaluate the objection -- by the Staff’s insufficient blanket objection. Moreover, a pattern is emerging that gives us reason to believe Staff may take steps to continue to resist providing a proper response to DR No. 189.0, as evidenced by its blanket objection without providing a proper privilege log and other obstructive discovery tactics employed by Staff the last time the Company sought a CCN for solar generation, in File No. EA-2022-0245. In that case, Staff Counsel blatantly disregarded the Company’s right

---

<sup>4</sup> Is it possible that Staff Counsel produced memoranda or other communications reflecting counsel’s mental impressions about how Mr. Bailey’s comment, a possible local public hearing, or tax issues may impact Staff’s litigation position in this case? Sure, that is possible but completely unknowable without a proper privilege log or its equivalent. But it is highly doubtful that all communications or evidence thereof relating to these topics consist solely of such mental impressions, assuming any of them do.

to depose Staff witnesses by directing a witness not to respond to questions even though the questions did not seek privileged information. This necessitated intervention by the Presiding Officer, who had to direct Staff Counsel to stop interfering with the Company's questions.

10. As the Missouri Supreme Court has made clear, “the discovery process was not designed to be a scorched earth battlefield upon which the rights of the litigants and the efficiency of the justice system should be sacrificed to mindless overzealous representation of... [parties].” *State ex rel. Ford Motor Co. v. Westbrooke*, 151 S.W.3d at 369, quoting *State ex rel. Madlock v. O'Malley*, 8. S.W.3d 890, 891 (Mo. banc 1999).

11. Given these considerations, the Company requests that the Commission, by January 4, 2024:

- a. Order the Staff to promptly (by January 7, 2024) provide a proper privilege log and/or other competent information that will permit others to assess the applicability of the work product doctrine upon which Staff has based its objection; and
- b. Order the Staff, by January 8, 2024, to assemble all documents that are responsive to DR No. 189.0 so that they will be available so that the Presiding Officer can promptly examine them *in camera* if the Company claims, based upon the information Staff provides, that the objection is not well-taken or otherwise if the information Staff provides is insufficient to assess the applicability of the work product doctrine.

12. Such orders will avoid prejudice to the Company as it prepares for and proceeds with further discovery in this case, and as it ultimately prepares for the evidentiary hearings. Such orders will in no way negatively affect the Company's customers or the general public. The Company filed this pleading as soon as it could have been – on the second business day after Staff

indicated it would “await your pleadings.”

**WHEREFORE**, the Company respectfully requests that the Commission make and enter the orders requested in paragraph 11 above, and for such other and further relief as the Commission deems proper under the circumstances.

Respectfully Submitted,

*/s/ James B. Lowery*

**James B. Lowery**, Mo. Bar #40503

JBL LAW, LLC

9020 S. Barry Rd.

Columbia, MO 65201

Telephone: 573-476-0050

E-Mail: [lowery@jblawllc.com](mailto:lowery@jblawllc.com)

**Wendy K. Tatro**, Mo Bar #60261

Director and Assistant General Counsel

Ameren Missouri

1901 Chouteau Avenue

St. Louis, MO 63103

Telephone: (314) 554-3484

Facsimile: (314) 554-4014

E-Mail: [AmerenMOService@ameren.com](mailto:AmerenMOService@ameren.com)

**ATTORNEYS FOR UNION ELECTRIC  
COMPANY d/b/a AMEREN MISSOURI**

**CERTIFICATE OF SERVICE**

The undersigned certifies that true and correct copies of the foregoing was served on the Staff of the Missouri Public Service Commission and the Office of the Public Counsel via electronic mail (e-mail) on this 2<sup>nd</sup> day of January, 2024.

*/s/ James B. Lowery*

## Jim Lowery

---

**From:** EFIS <efis@psc.mo.gov>  
**Sent:** Wednesday, November 15, 2023 11:11 AM  
**To:** Best, Geri A  
**Cc:** Pierce, Melissa; Graham, Paul; Coutts, Alexandra; Happy, Kim; Kempker, Christy; Tatro, Wendy; Jim Lowery; Plescia, Diana M; Opitz, Tim; Thompson, Ethan; Linhares, Andrew J; Greenwald, Alissa; Amenthor, Paul; Burton, Benjamin; Dhority, Jane; Won, Seoungjoun; Cassidy, John; Ferguson, Lisa; Lyons, Karen; Cox, Kim; Coffey, Amanda; Cunigan, Cedric; Del Pozo, Francisco; Hull, Jordan; Kiesling, Mark; Lange, Shawn; Luebbert, J; Niemeier, Brodrick; Poudel, Hari; Poudel, Krishna; Rush, Michael; Stahlman, Michael; Tevie, Justin; Lange, Sarah; Stever, Marina; Bax, Alan; Eubanks, Claire; Fortson, Brad; Keevil, Jeff; Mers, Nicole; Craig, Pamela; Vaught, Dianna  
**Subject:** Data Request 0185.0 for EA-2023-0286

Caution! This message was sent from outside your organization.

This is a notification that a Data Request or Data Request Response has been issued in the below-referenced matter. A Data Request is a request for discovery in matters being handled at the Missouri Public Service Commission. **Only the person whose name is listed below as the "Requested From" person is required to respond to the request.** All other recipients who are copied on this distribution may consider this communication as informational only.

*The information transmitted by this e-mail is intended only for the person or entity to which it is addressed. This e-mail may contain privileged and/or confidential information. If the reader of this message, an employee or agent responsible for delivering this message is not the intended recipient, be aware that any use, review, retransmission, distribution, reproductions or any action taken in reliance upon this message is strictly prohibited. If you received this in error, please contact the requesting party and delete the material from all computers.*

**Requested From Company** [Union Electric Company \(Electric\) \(Investor\)](#)

**Requested From Person** Geri A. Best

**Issue** General Information & Miscellaneous - Certificates of Convenience/Feasibility Analysis

**Brief Description** Chapter 100

**Description** Please provide responses for the following questions separately for the Split Rail (Warren County), Vandalia (Audrain County), and Bowling Green (Pike County) solar projects: 1. Please state whether a chapter 100 (PILOT) agreement has been reached with Warren, Audrain, and Pike Counties in Missouri, and provide a complete copy of the chapter 100 agreement, if applicable. 2. If no agreement has been reached with any or all of the counties listed in part (1), please explain in detail why an agreement has not been reached up to this point and provide the current status of discussions regarding chapter 100 financing with each of the counties. 3. Please provide the updated amounts, if any, that Ameren Missouri anticipates should be considered in the modeling for each of the counties where a chapter 100 financing agreement would apply. 4. Please provide all correspondence, meeting notes, and



any other documentation, that has occurred between Ameren Missouri and each of the counties concerning a chapter 100 financing agreement. 5. Please provide all Ameren Missouri internal correspondence, meeting notes, and any other documentation concerning a chapter 100 financing agreement for each of the 3 solar projects. 6. Please provide all supporting calculations (with references to the origin of amounts and with formulas intact) for the PILOT amounts Ameren Missouri included in the modeling provided as part of its direct testimony for each of the counties listed above. Data Request submitted by Jim Busch (Jim.Busch@psc.mo.gov)

**Due Date** 11/27/2023

**Requested By Company** [MO PSC Staff \(Other\)](#)

**Requested By Person** Paul Graham

To view the request, please click on the following link. If you are not already logged into EFIS, you will be prompted to login.

[Link to EFIS Data Request](#)

*This email was sent from a notification-only address that cannot accept incoming emails.  
Do **not** reply to this message*

---

[Website](#)

[Help](#)

[Contact Us](#)

Missouri Public Service Commission 200 Madison Street, PO Box 360 Jefferson City, MO 65102-0360

**From:** [EFIS](#)  
**To:** [Graham, Paul](#)  
**Cc:** [Jim Lowery](#); [Couts, Alexandra](#); [Happy, Kim](#); [Kempker, Christy](#); [Tatro, Wendy](#); [Plescia, Diana M](#); [Opitz, Tim](#); [Thompson, Ethan](#); [Linhares, Andrew J](#); [Greenwald, Alissa](#); [Amenthor, Paul](#); [Burton, Benjamin](#); [Dhority, Jane](#); [Won, Seoungjoun](#); [Cassidy, John](#); [Ferguson, Lisa](#); [Lyons, Karen](#); [Cox, Kim](#); [Coffer, Amanda](#); [Cunigan, Cedric](#); [Del Pozo, Francisco](#); [Hull, Jordan](#); [Kiesling, Mark](#); [Lange, Shawn](#); [Luebbert, J](#); [Niemeier, Brodrick](#); [Poudel, Hari](#); [Poudel, Krishna](#); [Rush, Michael](#); [Stahlman, Michael](#); [Tevie, Justin](#); [Lange, Sarah](#); [Stever, Marina](#); [Bax, Alan](#); [Eubanks, Claire](#); [Fortson, Brad](#); [Keevil, Jeff](#); [Mers, Nicole](#); [Graham, Paul](#); [Craig, Pamela](#); [Pierce, Melissa](#); [Vaught, Dianna](#)  
**Subject:** Data Request 0189.0 for EA-2023-0286  
**Date:** Wednesday, December 6, 2023 8:58:27 AM

Caution! This message was sent from outside your organization.

This is a notification that a Data Request or Data Request Response has been issued in the below-referenced matter. A Data Request is a request for discovery in matters being handled at the Missouri Public Service Commission. **Only the person whose name is listed below as the "Requested From" person is required to respond to the request.** All other recipients who are copied on this distribution may consider this communication as informational only.

*The information transmitted by this e-mail is intended only for the person or entity to which it is addressed. This e-mail may contain privileged and/or confidential information. If the reader of this message, an employee or agent responsible for delivering this message is not the intended recipient, be aware that any use, review, retransmission, distribution, reproductions or any action taken in reliance upon this message is strictly prohibited. If you received this in error, please contact the requesting party and delete the material from all computers.*

**Requested From Company** [MO PSC Staff \(Other\)](#)

**Requested From Person** Paul Graham

**Issue** Other - Other

**Brief Description** Communications

**Description**

1. Please provide all correspondence, meeting notes, notes of telephone conversations, and any other documentation, that has occurred between the Staff of the Commission and any official or representative of Pike County, Missouri, including but not limited to any Pike County Commissioner or the Pike County Clerk, in his/her official or individual capacities, concerning the Bowling Green Solar Project proposed in this docket, and including but not limited to correspondence, meeting notes, notes of telephone conversations, and any other documentation regarding property taxes or a chapter 100 financing agreement. 2. Please provide all Staff internal correspondence, meeting notes, notes of telephone conversations, and any other documentation concerning the Bowling Green Solar Project proposed in this docket, and including but not limited to correspondence, meeting notes, notes of telephone conversations, and any other documentation regarding property taxes or a chapter 100

financing agreement.

**Due Date** 12/14/2023

**Requested By  
Company** [Ameren Missouri \(Electric\) \(Investor\)](#)

**Requested By  
Person** James B. Lowery

To view the request, please click on the following link. If you are not already logged into EFIS, you will be prompted to login.

[Link to EFIS Data Request](#)

*This email was sent from a notification-only address that cannot accept incoming emails.  
Do **not** reply to this message*

---

[Website](#)

[Help](#)

[Contact Us](#)

Missouri Public Service Commission 200 Madison Street, PO Box 360 Jefferson City, MO 65102-0360

**Case No. EA-2023-0286**

**Objection to Data Request No. 0189.0**

Ameren Missouri has propounded the following data requests DR. 0189.0)

1. Please provide all correspondence, meeting notes, notes of telephone conversations, and any other documentation, that has occurred between the Staff of the Commission and any official or representative of Pike County, Missouri, including but not limited to any Pike County Commissioner or the Pike County Clerk, in his/her official or individual capacities, concerning the Bowling Green Solar Project proposed in this docket, and including but not limited to correspondence, meeting notes, notes of telephone conversations, and any other documentation regarding property taxes or a chapter 100 financing agreement.
2. Please provide all Staff internal correspondence, meeting notes, notes of telephone conversations, and any other documentation concerning the Bowling Green Solar Project proposed in this docket, and including but not limited to correspondence, meeting notes, notes of telephone conversations, and any other documentation regarding property taxes or a chapter 100 financing agreement.

Objection: On their face the DRs call for privileged items protected by the Missouri Supreme Court Rule 56.01(3) “*documentary work* product privilege” with no allegation, as required, that Ameren Missouri has any substantial need for the materials and cannot obtain the sought information from some source other than Staff without undue hardship. (Ameren Missouri is, of course, free to discover the sought information through deposition of the Pike County Commissioner(s)). Further, to the extent that the DRs focus on property taxes or a chapter 100 financing agreement, they are also protected from discovery by the “*mental work product* privilege” in that discovery will disclose Staff’s investigative processes, mental impressions, conclusions, opinions, strategy planning, and legal theories concerning those issues. See, generally, *State ex rel. State Bd. Of Pharmacy v. Otto*, 866 S.W.2d 480 (Mo. App. W.D. 1993). Specifically, a DR calling for the identity of persons interviewed violates the mental work product privilege per *State ex rel. State Bd. Of Pharmacy v. Otto*, citing and tacitly adopting the thinking in *Board of Education v. Admiral Heating*, 104 F.R.D. 23, 32 (N.D. Ill. 1984), and *Laxalt v. McClatchy*, 116 F.R.D. 438, 443 (D.Nev. 1987). See, generally, *State ex rel. Atchison, Topeka and Santa Fe Ry. Co. v. O’Malley*, 898 S.W. 550 (Mo. Banc 1995). Such is “absolutely immune from discovery.” Data Request Objection submitted by Paul Graham (paul.graham@psc.mo.gov).

**JAMES B. LOWERY**  
ATTORNEY AT LAW

**JBL LAW, LLC**  
3406 WHITNEY COURT  
COLUMBIA, MISSOURI 65203

(573) 476-0050

[lowery@jblawllc.com](mailto:lowery@jblawllc.com)

December 27, 2023

Mr. Paul Graham  
Senior Staff Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

Re: File No. EA-2023-0286

Dear Paul:

I am in receipt of Staff's objection to Company Data Request (DR) 189.0.

The Staff's blanket objection of the work product objection is insufficient to sustain Staff's work product objection (as to tangible or intangible work product). *See, e.g., State ex rel. Ford Motor Co. v. Westbrooke*, 151 S.W.3d 364, 367 (Mo. banc 2005) ("Blanket assertions of work product are insufficient to invoke protection"). Staff is under a duty – and has the burden – to establish the existence of the privilege by, at a minimum, providing a privilege log. *Id., State ex rel. Kilroy Was Here, LLC v. Moriarty*, 633 S.W.3d 406, 414 ("To invoke the protection of the work product doctrine, the party opposing discovery must establish, through competent evidence, that the materials sought to be protected are ... work product"). *See also* Mo. R. Civ. Pro. 57.01(3), which requires the objecting party to state information that will permit others to assess the applicability of the privilege or work product doctrine, which you have not done.

The Staff's objection is also, at least to certain categories of documents, not well taken on its face. For example, to the extent there exists documentation respecting communications from a Pike County official or representative to Staff independent of any materials prepared by or for Staff in anticipation of litigation, such communications are obviously not work product. And there has been no showing whatsoever that all otherwise responsive documentation, even among the Staff, was either created in anticipation of litigation or constitutes attorney work product (i.e., to use your label "mental work product"). Absent a proper privilege log, no party can assess your blanket assertion.

I intend to file a Motion to Compel in the next 2-4 business days, absent prompt receipt of a proper privilege log that will allow an assessment of your privilege claims.

Should you desire to discuss the matter, please let me know.

Sincerely,

*/s/ James B. Lowery*

James B. Lowery

Cc: Wendy Tatro

**From:** [Graham, Paul](#)  
**To:** [Jim Lowery](#)  
**Cc:** [Busch, Jim](#); [Thompson, Kevin](#); [Bolin, Kim](#); [Cox, Kim](#)  
**Subject:** RE: EA-2023-0286 - Staff's Objection to Ameren's DR 189  
**Date:** Thursday, December 28, 2023 10:16:11 AM

---

Caution! This message was sent from outside your organization.

Jim: I have reviewed your letter. We will await your pleadings.

*Paul T. Graham*

Senior Staff Counsel  
Office of Staff Counsel  
Missouri Public Service Commission  
200 Madison Street  
Jefferson City, MO 65101  
[Paul.Graham@psc.mo.gov](mailto:Paul.Graham@psc.mo.gov)  
Phone: 573.522.8459

---

**From:** Jim Lowery <[lowery@jblawllc.com](mailto:lowery@jblawllc.com)>  
**Sent:** Wednesday, December 27, 2023 11:11 AM  
**To:** Graham, Paul <[Paul.Graham@psc.mo.gov](mailto:Paul.Graham@psc.mo.gov)>; Tatro, Wendy <[wtatro@ameren.com](mailto:wtatro@ameren.com)>  
**Cc:** Cox, Kim <[Kim.Cox@psc.mo.gov](mailto:Kim.Cox@psc.mo.gov)>  
**Subject:** RE: EA-2023-0286 - Staff's Objection to Ameren's DR 189

Paul:

Please see the attached regarding your objection.

---

**From:** Graham, Paul <[Paul.Graham@psc.mo.gov](mailto:Paul.Graham@psc.mo.gov)>  
**Sent:** Friday, December 8, 2023 10:13 AM  
**To:** Tatro, Wendy <[wtatro@ameren.com](mailto:wtatro@ameren.com)>  
**Cc:** Jim Lowery <[lowery@jblawllc.com](mailto:lowery@jblawllc.com)>; Cox, Kim <[Kim.Cox@psc.mo.gov](mailto:Kim.Cox@psc.mo.gov)>  
**Subject:** EA-2023-0286 - Staff's Objection to Ameren's DR 189

—

*Paul T. Graham*

Senior Staff Counsel  
Office of Staff Counsel

Missouri Public Service Commission  
200 Madison Street  
Jefferson City, MO 65101  
[Paul.Graham@psc.mo.gov](mailto:Paul.Graham@psc.mo.gov)  
Phone: 573.522.8459