

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 14th day of January, 2015.

In the Matter of Union Electric Company d/b/a)
Ameren Missouri's Filing to Implement Regulatory) **File No. EO-2012-0142**
Changes in Furtherance of Energy Efficiency)
as Allowed by MEEIA)

ORDER DENYING AMEREN MISSOURI'S MOTION IN LIMINE

Issue Date: January 14, 2015

Effective Date: January 14, 2015

On December 30, 2014, Union Electric Company d/b/a Ameren Missouri filed a motion asking the Commission to exclude portions of the prefiled direct, rebuttal, and surrebuttal testimony offered by Public Counsel's witness Dr. Geoffrey Marke. In response to that motion, the Commission directed any party wishing to respond to do so by January 2, 2015. Public Counsel filed a response on that date.

Ameren Missouri's motion asks the Commission to exclude as hearsay the portions of Dr. Marke's testimony that reference studies and reports offered by other purported experts in the field. Some of those studies and reports are simply cited in footnotes to Dr. Marke's testimony; others are cited in what is described as a background reading list attached to that testimony as Attachment GM1; some are quoted by Dr. Marke within the text of his testimony.

Ameren Missouri's motion and Public Counsel's response agree that an expert witness may rely on hearsay sources in developing his or her expert opinion. They also agree that hearsay sources that inform an expert's opinion are not objectionable so long as

they are not offered as independent, substantive evidence of the truth of the matter asserted by those hearsay sources. They disagree about the purpose for which those quotations and citations are offered in this testimony.

Ameren Missouri argues that Public Counsel is clearly offering the studies and reports of other experts for the truth of the matters asserted in those sources and documents, and supports that assertion by pointing to statements Dr. Marke made in his deposition to show that he intended the cited documents to be offered as substantive evidence in this case. Public Counsel counters that the documents and sources cited in Dr. Marke's testimony will be offered to show the basis for Dr. Marke's expert opinion, not as substantive evidence themselves.

The Commission finds that Ameren Missouri's motion to strike portions of Dr. Marke's testimony must fail because it is premature. While Public Counsel has prefiled that testimony, it has not yet offered it into evidence. When it is offered into evidence, legal counsel for the Office of the Public Counsel will determine for what purpose it is offered, and the Commission will determine whether, and for what purpose, it is received into evidence. Any lay legal opinions Dr. Marke may have offered in his deposition will not determine that question. Ameren Missouri's motion to strike will be denied.

THE COMMISSION ORDERS THAT:

1. Union Electric Company, d/b/a Ameren Missouri's Motion in Limine or to Strike Testimony is denied.

2. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur.

Woodruff, Chief Regulatory Law Judge