

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

In the Matter of the Petition of Union            )  
Electric Company d/b/a Ameren Missouri        )  
for a Financing Order Authorizing the         )  
Issue of Securitized Utility Tariff Bonds     )  
for Energy Transition Costs related to        )  
Rush Island Energy Center                     )

Case No. EF-2024-0021

**PUBLIC COUNSEL’S MOTION TO OVERRULE STAFF’S OBJECTIONS AND TO  
DIRECT STAFF TO ANSWER PUBLIC COUNSEL’S DATA REQUESTS**

COMES NOW the Office of Public Counsel (“Public Counsel”) and for its motion to overrule Staff’s objections and to direct Staff to answer Public Counsel’s data requests states:

1. On March 15, 2024, Public Counsel issued twenty-one data requests to the Commission’s Staff (“Staff”) through the Commission’s EFIS system which assigned them nos. 44 to 64.
2. On March 20, 2024, Staff emailed its objections to those data requests in an attached letter signed by Whitney Scurlock. A copy of that letter is attached as Appendix A.
3. Before addressing the merits of the objections, Public Counsel points out that Staff are employees of the Commission to whom the Commission has assigned the role of acting as a party in cases before the Commission. See § 386.040 and 386.240, Rasmi, 20 CSR 4240-2.010(5), and 20 CSR 4240.
4. Public Counsel is charged with protecting the interests of the public in proceedings before, or appeal from, the Commission (§ 386.710(2), RSMo), and has virtually unfettered access to Commission files and records—“The public counsel shall have full and complete access to public service commission files and records” (§ 386.480, RSMo).
5. The legislature has stated, “It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public

unless otherwise provided by law.” § 610.011.1, RSMo. While Staff is not a governmental body, its objections are inconsistent with that government transparency policy as well as Public Counsel’s right to access Commission files and records. Regardless of the merits of Staff’s objections, Public Counsel is disappointed that Staff is fighting making transparent the process used for acquiring its financial advisor and bond counsel services for securitization proceedings before the Commission. Undersigned counsel certifies that, in chronological order, the following events happened after undersigned counsel received Staff’s objections and demonstrate Public Counsel’s compliance with the requirements of 20 CSR 4240-2.090(8) for filing this motion:

- Undersigned counsel telephoned Whitney Scurlock to discuss Staff’s objections, and when she did not answer undersigned counsel left a voice message that he wished to discuss Staff’s objections;
- Undersigned counsel sent Whitney Scurlock an email—the body of which follows:

I have received and reviewed the below referenced objections. When I called your office number my call went to your voicemail (cell) where I left you a message requesting you return my call to discuss Staff’s objections. As I said there this email is to ask you to return my call to discuss them. In anticipation that we will be unable to reach resolution, what are your availabilities for a telephone conference with Judge Clark regarding Staff’s objections?;
- Undersigned counsel called Staff counsel Nicole Mers who Whitney Scurlock had copied with her email delivering Staff’s objections. During that call Ms. Mers stated that discussions about the objections needed to be with Whitney Scurlock;
- Undersigned counsel received an email from Whitney Scurlock where she stated, “I received your email regarding the DR objections. ***If you wish to continue to pursue the requests, then, yes, a meeting with the RLJ would be the next step***” (Emphasis added.);

- Undersigned counsel reached out to presiding officer Clark seeking to “arrange with the commission for an immediate telephone conference with the presiding officer and opposing counsel” regarding Staff’s objections to Public Counsel’s data requests; and
- Presiding officer Clark held the conference by Webex at 9:00A.M. on March 21, 2024.

6. Staff raises three objections—“Staff objects to these requests as irrelevant, not reasonably calculated to lead to the discovery of admissible evidence and as violating attorney/client privilege.”<sup>1</sup>

7. While the Commission has general power to hire experts to assist it in discharging its duties, Missouri’s securitization statute, § 393.1700, RSMo, explicitly empowers the Commission to retain financial advisors, consultants, and counsel to assist it and its Staff for purposes of the securitization process. That statute also includes as financing costs to be recovered through securitization charges the following:

Any costs associated with performance of the commission's responsibilities under this section in connection with approving, approving subject to conditions, or rejecting a petition for a financing order, and in performing its duties in connection with the issuance advice letter process, including costs to retain counsel, one or more financial advisors, or other consultants as deemed appropriate by the commission and paid pursuant to this section.

§ 393.1700.1(8)(f), RSMo. In short, in this case Ameren Missouri’s retail customers are virtually certain to pay through Ameren Missouri rates or charges amounts for the financial advising, counsel, and consulting fees charged for services they provide to the Commission’s Staff.

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<sup>1</sup> By how it has framed its objections Public Counsel assumes Staff is claiming each of the three objections apply to each of Public Counsel’s twenty-one data requests. If not, then Staff has taken a “shotgun” approach that does not fairly apprise Public Counsel of what objections it is making to any particular data request and, thereby putting an undue burden on Public Counsel when responding to the objections.

8. Ultimately, it is the Commission who decides the amount of the financial charges, including the financial advising, counsel, and consulting costs.

9. By virtue of § 386.710, RSMo, [§ 386.510, RSMo](#) and [article V, § 18, of the Constitution of the State of Missouri](#), Public Counsel has the right to judicial review of every final decision of the Commission, including final decisions affecting and on the amounts of financial advising, counsel, and consulting costs.

10. The reasonableness of Staff's financial advisor and bond counsel fees is relevant to the amount included in securitization financing costs.

11. Factors bearing on the reasonableness of those costs include the quantity and quality of the services provided, the qualifications of the provider, the amounts charged for those services, and at what cost might other providers have provided similar services of comparable or better quality.

12. Public Counsel's data requests are tailored to inquiring for information relating to these factors; therefore, the information requested is not irrelevant and the requests are reasonably calculated to lead to the discovery of admissible evidence.

13. Responses to requests for information and to requests for proposals will disclose who would have provided financial advisor services and who would have provided bond counsel services to Staff for securitization proceedings, and on what terms they would have provided those services, all of which are relevant to the reasonableness of the services that Staff's financial advisor and bond counsel are providing, and will provide, in this case.

14. Similarly, billing information and services performed by the Staff's financial advisor and bond counsel in recent similar securitization cases are relevant to the reasonableness of the billings and services of Staff's financial advisor and bond counsel in this case. Based on

the publicly available executed contracts for Ducera's financial advisor services to Staff during Liberty's (Case Nos. EO-2022-0040 & EO-2022-0193), Evergy's (Case No. EF-2022-0155) and Ameren Missouri's (this case) securitization cases, the total guaranteed not-to-exceed price for Ducera's financial advisor services to Staff is substantially higher in this case than in the Liberty and Evergy cases.

15. To the extent Staff might elect to assert that it never issued requests for information or requests for proposals for financial advisor services, or received responses to them because it did not issue them, Public Counsel requests that the Commission direct Staff to provide both requests for information or for proposals for financial services to be provided to Staff regardless of who issued the requests for information or requests for proposals for financial advisor services.

16. Similarly, Public Counsel requests that the Commission direct Staff to provide both requests for information or for proposals for bond counsel services to be provided to Staff, and the responses to them, regardless of who issued the requests for information or requests for proposals for bond counsel services.

17. As undersigned counsel stated at the March 21, 2024, Webex conference, to the extent Staff has an attorney-client privilege, it can assert it by redacting the specific information it claims is privileged with attribution to that privilege, since that privilege must be affirmatively waived. Public Counsel asks that when Staff claims that privilege, or any other privilege, it provide a privilege log where it provides enough information to show why the privilege attaches.

18. Given that the evidentiary hearing in this case is scheduled to begin April 15, 2024, Public Counsel urges the Commission to rule on this motion expeditiously.

**Wherefore**, the Office of Public Counsel moves the Commission expeditiously to overrule Staff's objections; direct Staff to answer Public Counsel's data requests by their due date of March

25, 2024; treat Public Counsel's data requests pertaining to Staff's requests for information, requests for proposals, and responses to them, as instead asking for and responding to requests for information or proposals for Staff financial advisors or bond counsel regardless of who made the requests; and, if Staff claims privilege, require Staff to redact only privileged information and deliver to Public Counsel a privilege log wherein it identifies to each redaction, a sufficient description to show why the redacted information is privileged.

Respectfully,

/s/ Nathan Williams

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**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 22<sup>nd</sup> day of March 2024.

/s/ Nathan Williams