

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

In the Matter of the Petition of	)	
Union Electric Company d/b/a	)	<b><u>File No. EF-2024-0021</u></b>
Ameren Missouri for a Financing Order	)	
Authorizing the Issue of Securitized Utility	)	
Tariff Bonds for Energy Transition Costs	)	
Related to Rush Island Energy Center	)	

**STAFF RESPONSE TO OFFICE OF THE PUBLIC COUNSEL**

**COMES NOW** the Staff (Staff) of the Missouri Public Service Commission (PSC) and for its *Response to OPC* in this matter Staff hereby responds:

1. On March 15, 2024, the Office of the Public Counsel (OPC) filed 21 data requests with the Staff of the Missouri Public Service Commission requesting information all related to the outside counsel hired by Staff in relation to the unique financial requirements of the case pursuant to Sections 393.1700 through 393.1715, RSMo.

2. Staff sent OPC a letter objecting to all 21 of the data requests as irrelevant, not reasonably calculated to lead to the discovery of admissible evidence and violating attorney/client privilege. Staff also objected to 14 of the data requests, 51 through 64, due to the fact that the information sought was in regards to other cases, which did not involve Ameren Missouri. OPC filed a *Motion to Overrule Staff's Objections and to Direct Staff to Answer Public Counsel's Data Requests*. Staff was ordered to file a Response to OPC's *Motion* by March 28. Staff now responds and asks the Commission to deny OPC's *Motion*.

3. OPC seems to suggest in its *Motion* that Section 386.480, RSMo, should be interpreted to provide OPC with an open-door policy to Commission files and

records. By that assumption, it would seem that OPC should not even require data requests in order to receive information from Staff. But the fact is that Staff and the OPC have been exchanging discovery requests historically, which would lend itself to the belief that no prior Public Counsel or OPC employee, nor regulatory law judge, had that same interpretation of the statute.

4. OPC also references Section 610.011.1, RSMo. However, that Section is further narrowed by Section 610.021, RSMo, which in its subsection (1) states that legal work product shall be considered a closed record. Staff argues that the requests contained in Data Request 46, 47, 48, 49, 50, 53, 54, 55, 56, 57, 60, 61, 62, 63 and 64 ask for documents which would contain information defined as legal work product because the decision making process and invoices for services would contain information stemming from discussions between Staff, Staff Counsel, outside financial advisors, outside bond counsel, Commission Administration and General Counsel. These discussions therefore occurred between attorneys and their represented parties and constitutes legal work product. In addition, for these same reasons this information would be protected pursuant to attorney/client privilege. The Missouri Practice Series Chapter 15, Section 15:9 regarding Closed Record Exceptions states that a public governmental body is authorized to close records to the extent they relate to records which are protected from disclosure by law. It goes on to say that legal sources both distinct from the open records law and found in the open records law itself constitute those legal protections from disclosure.<sup>1</sup> As OPC states, the PSC is not a governmental body but seeing as OPC's *Motion* attempts to hold the PSC to the requirements of a

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<sup>1</sup> 20A MOPRAC Section 15:9, Missouri Practice Series, Administrative Practice and Procedure.

governmental body then Staff would argue that the legal work product and/or the attorney client privilege protections should bar disclosure of these materials.

5. Further, Staff continues to argue that all 21 requests made of Staff by OPC are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The nucleus of Case No. EF-2024-0021 regards a request by Ameren Missouri pursuant to 393.1700-393.1715, RSMo, to securitize certain amounts related to the retirement of its Rush Island generation plant. Staff is permitted by Section 393.1700.2(3)(c)(b) to retain counsel, financial advisors or other consultants and to pass those costs on to the petitioning corporation to be included in the final securitized amount. Staff is bound by the request for purchase procedures governed by the State of Missouri's Office of Administration and is not looking for gold-plated consultant services even if the state's procedures permitted such a contract. OPC is aware of all of this as it too is a state agency and has access to the Missouri Buys website featuring this information. Staff does not benefit by hiring expensive consultants as a utility company might from testimony in its favor. Staff does not have shareholders that will see increased dividends if it wins this proceeding nor will its credit rating improve. Staff's mission is to ensure that it has the knowledge necessary to investigate a petition and provide the Commission with the best information that it can using the resources available to it. In this type of case, that includes the ability to hire outside assistance regarding specialized financial processes which Staff does not normally specialize in. The information requested by OPC should not be an argued issue in this case and Staff sees no winning argument in this approach beyond somehow limiting Staff from accessing the assistance it is entitled by Section 393.1700.2(3)(c)(b).

6. Data requests 44, 45, 51, 52, 58 and 59 ask for the responses of any prospective vendors to the request for bids of the Staff in seeking bond counsel and a financial consultant. Staff argues that this information is irrelevant to the issues of the matter before the Commission but also would argue that by requesting this information OPC seeks to substitute its judgement for that of the Staff of the Commission. Further, should OPC argue against Staff's decision-making process in selecting its vendors, then it would be requesting the Commission to substitute its judgement for that of the Staff of the Commission. The selection of expert witnesses is an authority reserved by the parties to Commission cases and never before has the Commission found it proper to interfere with the right to a party's trial strategy. Staff asks the Commission to continue to find that it is not proper for an opposing party to attempt to interfere with the selection of witnesses or outside counsel.

7. Additionally, this request was made by OPC just one week, five business days, prior to the filing of surrebuttal testimony in this proceeding. OPC did not raise an issue questioning the costs of Staff's outside counsel or financial advisors in its rebuttal testimony and it did not file surrebuttal testimony addressing the request for bids either. To the extent to which OPC wanted to admit evidence regarding the selection process or costs of Staff's outside consultants it should have asked for this information well in advance of the filing date for rebuttal testimony or at least raised the issue in its rebuttal. Staff intends to object to any attempts to enter evidence related to OPC's data requests 44-64 as an improper violation of due process caused by the failure to raise the issue in the case at such a time to permit Staff's response to the issue.

8. Finally, Staff did not raise an objection of unduly burdensome in its letter to OPC. However, Staff did note that the information requested is not in its control as the contract and related documents are not retained by Staff but are handled by the Commission's administrative division in conjunction with the state Office of Administration. Staff cannot say how much complication might arise from trying to compile the responses to the 21 data requests, or how much burden that will place on Staff. Particularly considering that trial preparation is already underway.

9. Staff renews its original objections to OPC's data requests 44-64 to Staff, asks the Commission to deny OPC's *Motion* and relieve Staff of its obligation to respond to the requests.

**WHEREFORE**, Staff prays that the Commission will accept this *Staff Response*; deny the Office of the Public Counsel's *Motion to Overrule Staff's Objections and to Direct Staff to Answer Public Counsel's Data Requests*; relieve Staff of its obligation to respond to OPC data requests 44-64; and that it will grant such other and further relief as is just in the circumstances.

Respectfully submitted,

**/s/ Whitney Scurlock**

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 28<sup>th</sup> day of March, 2024, to all counsel of record.

**/s/ Whitney Scurlock**