

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

Brett Felber and Lisa Lambert,)	
)	
Complainants,)	
)	
v.)	File No. EC-2024-0372
)	
)	
Union Electric Company, d/b/a)	
Ameren Missouri,)	
)	
Respondent.)	

**Motion for Protective Order to Quash Subpoena for Production of Documents and
Deposition**

John Clark, Regulatory Law Judge for the Public Service Commission of the State of Missouri (Commission), hereby moves the Commission for a protective order and to quash the subpoena to produce documents and give a deposition in docket EC-2024-0372. Complainants Brett Felber and Lisa Lambert issued a witness subpoena to Judge Clark to compel the production of records and give a deposition. Judge Clark presided over a previous complaint filed by Complainant Mr. Felber in docket WC-2023-0395. Judge Clark is not a party to this docket. Judge Clark is filing this objection, motion for protective order, and motion to quash the subpoena for the production of documents and deposition pursuant to rule 20 CSR 4240-2.100(3) and Rules 58.02(e)2 and 57.09(3) of the Missouri Rules of Civil Procedure.

Applicable Law

The Commission’s practice and procedure rules provide that discovery in Commission proceedings shall be available in the same manner as discovery conducted under the Missouri Rules of Civil Procedure. 20 CSR 4240-2.090(1). “A party or attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a non-party subject to the subpoena.” Rule 57.09(c) Mo. R. Civ. Pro. For good cause, an order of protection may be issued “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Rule 56.01(c) Mo. R. Civ. Pro. Such relief can include that the discovery not be had, or that the discovery may be obtained by other

means. Rule 56.01(c)(1), (3) Mo. R. Civ. Pro. A non-party is entitled to request a protective order under Rule 58.02(e)(2).

Additionally, a subpoena can be quashed or modified if the subpoena is “unreasonable or oppressive.” Rule 57.09(b)(1) Mo. R. Civ. Pro. A subpoena may also be modified to require that the party or attorney requesting and issuing the subpoena to provide the cost of producing the requested material in advance. Rule 57.09(b)(2).

Argument

The subpoena for the production of documents and deposition should be quashed and a protective order should be granted because, to the extent that the subpoena requests the production of “altered, edited, counterfeit payment agreements sent from Ameren to you”, Judge Clark does not have any documents that are responsive to the request. Judge Clark cannot provide testimony about documents that he does not possess. A request for non-existent documents subjects Judge Clark to annoyance, oppression, and undue burden within the meaning of Rule 56.01(c). A request for non-existent documents is also unreasonable and oppressive within the meaning of Rule 57.09(b)(1). To the extent that the subpoena requests Judge Clark to appear and give a deposition, Judge Clark further objects on that grounds that the request is deficient because it does not state the location of the deposition or the day and time that Judge Clark is to appear as required by Rule 57.09(a)(4). A protective order should issue under Rules 57.02(c) and 58.02(e)(2) and the subpoena to produce documents and deposition should be quashed because of the Complainants’ failure to comply with the requirements of the Missouri Rules of Civil Procedure.

“A subpoena must designate documents ‘with sufficient description’ to reasonably exclude evidence that is not relevant to the pending case.” *State ex rel. Crowden v. Dandurand*, 970 S.W.2d 340, 343 (Mo.banc 1998). The subpoena for the production of documents and deposition should be quashed and a protective order should be granted because it is not relevant to the issues to be decided by the Commission in this docket. The transcript that Complainants ask Judge Clark to produce is related to allegations made by Complainant Mr. Felber in WC-2023-0395. On August 23, 2024, the Commission issued an order denying Complainants’ requests to amend their complaint in this docket are an attempt to relitigate issues that were previously decided by the Commission in docket WC-2023-0395. Complainant’s attempt to relitigate previously decided issues is foreclosed by Section 386.550, RSMo (2016). That statute

provides “In all collateral actions or proceedings the orders and decisions of the commission which have become final are conclusive.” No valid appeal of WC-2023-0395 was filed, and the order disposing that docket is final and conclusive.

The Complaints have not sufficiently described what documents or information that Judge Clark possesses that are relevant to the remaining issues in this docket. On the contrary, the only documents described in the subpoena either do not exist or are relevant only to issues already decided and excluded from consideration in this docket. Because Judge Clark does not have any documents related to the remaining issues before the Commission for decision in this docket and does not have any knowledge about the facts at issue in this docket, Judge Clark does not have information that is relevant to this case and he should not have to produce irrelevant documents or provide irrelevant deposition testimony. A protective order should be issued and the subpoena should be quashed under Rules 57.09(c) and 58.02(e)(2)

Finally, the subpoena for the production of documents and deposition should be quashed because it is unduly burdensome and oppressive under Rules 56.01(c) and 57.09(b)(1). The subpoena for the production of documents and deposition also presents an undue burden on the non-party Judge Clark in contravention of Rule 57.09(c). Complainant Mr. Felber is a party to EC-2023-0395. The transcript for WC-2023-0395 is publicly available through the Commission’s Electronic Filing and Information System (EFIS). Complainants have access to EFIS. The Commission would also issue a certified copy of the transcript to Complainants upon request. There is no need for Judge Clark to produce a transcript and appear for a deposition related to documents that can be easily obtained by other means. A protective order should be issued and the subpoena should be quashed under Rules 57.09(c) and 58.02(e)(2) to avoid expending unnecessary time and effort of a Commission employee.

Request for Relief

For the above reasons, Judge Clark requests that the Commission grant him a protective order relieving him of the duty to produce documents and to appear for deposition. Judge Clark further requests that the Commission quash the subpoena for the production of documents and deposition and he not be required to produce documents or appear for deposition.

Respectfully submitted,

/s/ Jennifer Heintz

Jennifer Heintz, #57128

Attorney for Regulatory Law Judge

John Clark of the Public Service Commission
of the State of Missouri

P.O. Box 360

Jefferson City, MO 65102-0360

jennifer.heintz@psc.mo.gov

CERTIFICATE OF SERVICE

Recipients listed below with a valid e-mail address will receive electronic service this 4th day of September. Recipients without a valid e-mail address will receive paper service.

MO PSC Staff
Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360 Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel (OPC)
Marc Poston 200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opc@opc.mo.gov

Brett Felber
316 Sonderen Street
O'Fallon, MO 63366
bfelber14@gmail.com

Lisa Lambert
2865 Dividend Park Dr
Florissant, MO 63031
bl5856@hotmail.com

Union Electric Company
Jennifer Hernandez
1901 Chouteau Avenue
Saint Louis, MO 63103
amerenmoservice@ameren.com

MO PSC Staff
Tracy Johnson
200 Madison Street
Jefferson City, MO 65101
tracy.johnson@psc.mo.gov

/s/ Jennifer Heintz

Jennifer Heintz