

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

In the Matter of the Application of Sullivan            )  
Development Properties, LLC for Change of            )  
Electric Supplier    )  
**File No. EO-2024-0251**

**STAFF’S RESPONSE TO JOINT MOTION TO DISMISS  
FOR LACK OF SUBJECT MATTER JURISDICTION AND  
SUMMARY DETERMINATION**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff), through counsel, and provides the Commission with the following response to the *Joint Motion to Dismiss for Lack of Subject Matter Jurisdiction and for Summary Determination* (Joint Motion) filed by Union Electric Company d/b/a Ameren Missouri (Ameren) and the City of Farmington (Farmington).

1. The Joint Motion was filed on August 20, 2024. The Commission ordered Applicant and Staff to respond by September 5, 2024. Rule 20 CSR 4240-2.117 (1)(C) states that “[n]ot more than thirty (30) days after a motion for summary determination is served, any party may file and serve on all parties a response in opposition to the motion for summary determination.” The Commission’s ordered effectively shortened that deadline.

2. The substantive crux of the Joint Motion is that the applicant’s subject property has not been annexed to the City of Farmington and that such annexation is a necessary condition precedent to the relief which the applicant seeks and to the Commission’s jurisdiction to grant such relief.

3. The Commission may gather the procedural facts of this case by taking administrative notice of its file. The Commission will conclude by taking administrative notice that the case is not set for a hearing. As the matter is not set for a hearing at a

date certain in the future and Applicant has not responded to the Joint Motion and need not do so before Staff's response is due, Staff has no basis for inferring or arguing that the applicant will be unable to make a "submissible case," i.e., one which confers jurisdiction on the Commission and (assuming the facts pleaded are true) and entitles the Applicant to relief, at a date certain in the future.

4. Staff would direct the Commission to Missouri Rule 74.04 (f) providing that a party may request a continuance or further discovery if it can demonstrate that facts essential to opposing the summary judgment cannot be presented at the moment. The party must file an affidavit explaining why the necessary facts are unavailable and what additional discovery or time is needed to gather them. See *Green v. Fotoohigham*, 606 S.W.3d 113 (Mo. banc 2020) and *Duncan v. Dempsey*, 547 S.W.3d 815 (Mo. App. E.D. 2018) for the general standards on summary judgment and the need for affidavits under Rule 74.04 (f) when further facts are necessary to oppose a motion for summary judgment.

5. Staff suggests that the Commission has jurisdiction to grant the motion for summary determination if the applicant's response to that motion does not demonstrate that by a date certain, the applicant will have competent and sufficient evidence to make a prima facie case at a hearing in this cause. Staff would, however, also suggest that the Commission consider the following: Granting the Joint Motion cannot be with prejudice because no such order could bar the applicant from remedying any deficiency in the case and refile it. With that as a practical consideration, Staff would, therefore, suggest that the Commission consider ordering the applicant to produce competent affidavits establishing that by a date certain in the future, the applicant will then and there have

evidence sufficient to make a submissible case, failing which the case will then be dismissed for failure to prosecute. Further, given the history of this case, Staff suggests that the Commission set a short deadline for such affidavits.

**WHEREFORE**, the Staff prays that the Commission will accept this pleading as complying with its orders.

Respectively Submitted,

/s/ Paul T. Graham

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 5th day of September, 2024.

/s/ Paul T. Graham