

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

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

**STAFF’S MOTION TO QUASH SUBPOENAS DUCES TECUM AND  
MOTION FOR EXPEDITED TREATMENT**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and for its Motion to Quash Subpoena Duces Tecum and Motion for Expedited Treatment, states as follows:

***Introduction***

1. These actions were commenced on June 21, 2024, when Brett Felber and Lisa Lambert filed a formal complaint against Union Electric Company, d/b/a Ameren Missouri (Ameren).

2. On August 7, 2024, Staff filed its Corrected Staff Report (originally filed on August 5, 2024) pursuant to the Commission’s Order issued on June 21, 2024.

3. The Joint Proposed Procedural Schedule for this case (filed on August 30, 2024) suggests an evidentiary hearing set between November 5<sup>th</sup> and November 8<sup>th</sup> of 2024.

***Subpoenas Duces Tecum and Notice of Deposition***

4. On August 28, 2024, a special process server, on behalf of Brett Felber, served a Subpoena Duces Tecum upon Ms. Sarah Fontaine, Senior Research and Data Analyst in the Customer Experience Division of the Commission,

requesting Ms. Fontaine contact Mr. Felber to obtain a time and place to appear and produce specific documents and recordings. At the time of this filing a specific time and place has not yet been inquired by Ms. Fontaine or identified by Mr. Felber. Mr. Felber did not select the box on the Commission form for “give depositions” and expenses related to the deposition were not provided to Ms. Fontaine. Mr. Felber did cause to be filed a brief document titled ‘Subpoena Memo’ in which he requested to depose four (4) specific, but unnamed parties.

5. The Subpoena referred to in Paragraph 4 above was issued on August 23, 2024, and signed by Commission Secretary and Chief Regulatory Law Judge Nancy Dippell, commanding Ms. Fontaine to contact Mr. Felber via phone to receive a designated time and place to bring “Ameren Missouri altered payment agreement list of violations, counterfeit and altered audio call of May 18, 2023”. A true and correct copy of the Subpoena Duces Tecum and Subpoena Memo is attached hereto as Exhibit A-B and incorporated herein by reference.

***The Commission Should Quash the Subpoena Duces Tecum  
and Notice of Deposition***

6. As Staff shall make clear in the following paragraphs of this Motion, the Commission should quash the aforescribed Subpoena Duces Tecum because it seeks irrelevant information, was improperly served, under improper and invalid notice, is unintelligible, overbroad, burdensome, harassing, issued for an improper purpose; and, in part, violates the attorney-client and work-product privileges.

***Subpoenas and Discovery Depositions in PSC Proceedings***

7. Discovery may be obtained in the same way under the same conditions as in civil actions in the circuit court. Commission Rule 20 CSR 4240-2.090(1).

8. The Commission may issue subpoenas or a subpoenas duces tecum requiring a person to testify at the taking of a deposition and/or appear for production of documents or records. Commission Rule 20 CSR 4240-2.100. The Rule provides in pertinent part:

(1) A request for a subpoena or a subpoena duces tecum requiring a person to appear and testify at the taking of a deposition or at a hearing, or for production of documents or records shall be filed on the form provided by the commission and shall be directed to the secretary of the commission. A request for a subpoena duces tecum shall specify the particular document or record to be produced, and **shall state the reasons why the production is believed to be material and relevant.** (emphasis added)

(4) Subpoenas or subpoenas duces tecum shall be signed and issued by the secretary of the commission, a commissioner or by a law judge pursuant to statutory delegation authority. The name and address of the witness shall be inserted in the original subpoena or subpoena duces tecum and a copy of the return shall be filed with the secretary of the commission...

9. Supreme Court Rule 58.01(b)(3), in turn, governs the service of subpoenas duces tecum and provides:

Copies of the requests shall be served on all parties not in default. The party issuing the requests shall also provide each responding party an electronic copy in a commonly used medium, such as a diskette, CD-ROM, or as an e-mail attachment, in a format that can be read by most commonly used word processing programs, such as Word for Windows or WordPerfect 5.x or higher. In addition to the information normally in a certificate of service, the certificate of service shall also state the:

(A) Name of each party who is to respond to the requests;

(B) Number of the set of requests; and

(C) Format of the electronic copy and the medium used to transmit the electronic copy to the responding party.

At the time of service, a certificate of service, but not the requests, shall be filed with the court as provided in Rule 58.01(d).

10. Supreme Court Rule 57.09(d), in turn, governs the service of subpoenas for depositions, ***State ex rel. Ellis v. Schroeder***, 663 S.W.2d 766, 769 (Mo. App., E.D. 1983), and provides:

Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering the fees and mileage the witness would have been entitled to receive for attending court pursuant to subpoena.

11. Depositions may be taken in actions pending before the Commission on the same basis, and used for the same purposes, as in civil actions in the circuit courts. Commission Rule 20 CSR 4240-2.090(1). Section 386.420.2, RSMo, provides in pertinent part:

The commission or any commissioner or any party may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the circuit courts of this state and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers, memoranda and accounts. Witnesses whose depositions are taken as provided in this section and the officer taking the same shall severally be entitled to the same fees as are paid for like services in the circuit courts of this state.

12. Supreme Court Rule 57.03(b)(1) provides for depositions upon oral examination and specifies the timing and contents of the notice thereof:

The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known. If the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs shall be stated.

If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

### ***Invalid Notice***

13. The Commission should quash the proposed production because Mr. Felber has not provided valid notice. Supreme Court Rule 57.03(b)(1), set out above, prescribes the notice requirements. The notice given by Mr. Felber consisted of the subpoenas and a brief memo, and was fatally defective in three respects:

A. Mr. Felber failed to serve on Ms. Fontaine and file with the Commission a written notice in pleading form containing each item of information specified in Supreme Court Rule 57.03(b)(1).

B. Mr. Felber failed to serve on Ms. Fontaine and file with the Commission a written notice in pleading form including a detailed list of the items to produce at the deposition, in violation of Supreme Court Rule 57.03(b)(1).

C. Mr. Felber failed to serve on each party and file with the Commission a written notice in pleading form including a certificate of service stating the list of parties upon whom the notice had been served and the date and manner by which service was accomplished. Commission Rule 20 CSR 4240-2.080(17) states, "Every pleading or brief shall include a certificate of service." Commission Rule 20 CSR 4240-2.080(15) requires service on all the parties of every document tendered for filing with the PSC.

### ***Invalid Service***

14. The Subpoena in question herein was not properly served and, consequently, is ineffective and unenforceable. Staff requests that the Commission recognize the fact and consequences of improper service by quashing the Subpoena and corresponding deposition. Service was ineffective in two respects, each of which is fatal to the effectiveness of the Subpoena:

A. The Subpoena was served by an individual who claimed to be Rufus Harmon, not a party to this case, and who did appear to be over the age of 18. However, Supreme Court Rule 57.09(d), "Service," specifies:

Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to that person the fees and mileage the witness would have been entitled to receive for attending court pursuant to subpoena.

Fees and mileage were not tendered with the service of the Subpoenas. Rule 57.09(d) specifically and expressly requires that fees and mileage be tendered with the subpoena.

B. The Subpoena herein at issue, as of the date of this filing, has not been returned with proper signatures of both the process server and a notary, as indicated on the Commission's Subpoena Form and required by Commission Rule 20 CSR 4240-2.080.

Where service is improper, the tribunal does not acquire jurisdiction over the individual in question. ***Shapiro v. Brown***, 979 S.W.2d 526, 528 (Mo. App., E.D. 1998).

15. Staff's employees herein have neither consented to appear nor waived service of process.

#### ***Improper Purpose***

16. The right of a party litigant to depose witnesses is absolute. ***State ex rel. Pein v. Clark***, 526 S.W.2d 383, 385-6 (Mo. App., K.C.D. 1975). "But the 'absolute right' to take depositions must be equitably measured with the adverse consequences and hardships upon the party sought to be deposed as the facts may show." *Id.*, at 386. In the present case, Mr. Felber is under an affirmative duty to avoid causing undue burden and hardship to the non-party deponents. Supreme Court Rule 57.09(c) provides,

“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.” Mr. Felber has not complied with that duty in this case and the subpoenas and related depositions should therefore be quashed.

A. A Staff employee has arguably been ordered to appear and produce documents and recordings in an unspecified place at an unspecified time. Additionally, Ms. Fontaine is a Staff member who is not assigned to this case or identified as a named witness in this case.

B. The Subpoena herein at issue identifies documents and recordings as “altered” and “counterfeit”. Ms. Fontaine does not have the ability to make a determination as to the state or legal status of documents provided to Staff by other parties. Ms. Fontaine is being asked to speculate in the alleged improper actions of another party. Alleged actions which are adamantly denied by Ameren. This subpoena seeks to use a Staff member against another party in an improper way.

### ***Improper Scope***

17. The Subpoena and Subpoena Duces Tecum herein at issue should be quashed because the scope thereof is improper in that it is overbroad and unduly burdensome. Specifically, some of the items whose production is commanded are privileged and some others of the items whose production is commanded have already been provided to Mr. Felber.

1. Ameren Missouri Altered Payment Agreement.
2. Ameren Missouri List of Violations.
3. Altered audio call of May 18, 2023.

A. With respect to any payment agreement, Staff only have those which have been provided by and to the other parties in this or prior cases involving Mr. Felber. A redundant production request is undeniably burdensome and supports Staff's contention that Mr. Felber's real purpose is harassment.

B. With respect to a possible list of violations, Staff documentation of this type has only been entered into the record in prior cases involving Mr. Felber and Ameren. Preliminary drafts, including direction and communications relating to any possible or potential violations, if any exist, are privileged work-product and thus undiscoverable.

C. With respect to call recordings, Staff only have those which have been provided by and to the other parties in this or prior cases. The result is an additional redundant production request.

18. The requests of the Subpoena at issue herein are generally similar, if not identical to items already in the record and were not initially created or maintained by Staff. If Staff do not find evidence of "altered" or "counterfeit" documents or recordings, which they do not; or if Staff did not create the original documents or recordings, which it did not, then Staff does not possess responsive documents or recordings. In the case of Ms. Fontaine, the items sought by Mr. Felber either do not exist or are not known to Staff.

### ***Improper Deponent***

19. In addition to the other objections raised herein, Staff objects to the proposed deposition of Sarah Fontaine. Ms. Fontaine is a Senior Analyst in the same Division as the staff assigned to this case, but is not assigned this case, not a supervisor to the Staff



who are assigned to this case, and is not identified as a witness in this case. She has filed no prepared testimony, or any documentation herein. The proposed deposition of Ms. Fontaine is not appropriate. Supreme Court Rule 56.01(b)(1) provides, “Parties may obtain discovery of any matter, not privileged, that is **relevant** to the subject matter involved in the pending action . . .” (emphasis added). The deposition of Ms. Fontaine is not relevant to this case and the subpoena directed to her and any associated deposition should be quashed.

20. Further, Section 386.550, RSMo prevents collateral attacks on prior orders and decisions of the Commission which have become final and shall be conclusive. This subpoena is an attempt to raise issues previously litigated in prior cases. This subpoena is a collateral attack on the prior Commission orders, specifically the order issued on August 23, 2024, in this case where the Commission identified Mr. Felber’s allegations of fraudulent actions by Ameren as collateral attacks.

#### ***Alternative Relief***

21. In the event that the Commission does not quash this subpoena and deposition, Staff urges the Commission to require that it be conducted within a defined time limit at the Commission’s offices in Jefferson City, during normal state business hours, and that the deponent be relieved from any requirement to produce documents already provided to Mr. Felber.

#### ***Expedited Treatment***

22. Staff further requests that the Commission take up and determine this motion on an expedited basis in order to provide a ruling for the guidance of the parties prior to

the proposed procedural deadline for discovery of October 1, 2024. Further, to put an end to the duplicative filings and responses necessitated by Mr. Felber's repetitive filings.

**WHEREFORE**, Staff prays that the Commission will take up this matter on an expedited basis and will quash the Subpoena, Subpoena Duces Tecum and associated proposed deposition described herein for the reasons set out above; and grant such other and further relief as may be just.

**Respectfully Submitted,**

**/s/ Tracy D. Johnson**

Tracy D. Johnson #65991  
Senior Staff Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Mo 65102-0360  
(573) 526-5343  
[tracy.johnson@psc.mo.gov](mailto:tracy.johnson@psc.mo.gov)

Attorney for the Staff of the  
Missouri Public Service Commission

**CERTIFICATE OF SERVICE**

The undersigned by their signature below certifies that the foregoing pleading was served upon all counsel of record on this September 6th, 2024, by electronic filing in EFIS, electronic mail, hand-delivery, or U.S. postage prepaid.

**/s/ Tracy D. Johnson**