

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

In the Matter of Union Electric Company)
d/b/a Ameren Missouri's Tariffs to)
Increase Its Revenues for Electric Service) Case No. ER-2012-0166

**MOTION TO COMPEL RESPONSES TO DATA REQUESTS AND REQUEST
TO BE EXCUSED FROM DISCOVERY CONFERENCE**

COMES NOW the Office of the Public Counsel and for its Motion to Compel Responses to Data Requests and Request to be Excused from Discovery Conference states as follows:

DRs 1005, 1006, 1008 and 1010:

1. On March 23, 2012, Public Counsel submitted a number of Data Requests (DRs) to Union Electric Company d/b/a Ameren Missouri. Several of those DRs, including all that are the subject of this motion, sought information concerning the capabilities of existing Ameren employees to do work to prosecute this rate case that Ameren Missouri has outsourced. The DRs submitted on March 23 that are the subject of this motion to compel are DRs 1005, 1006, 1008 and 1010; these DRs are attached hereto as part of Attachment 1.

2. On March 30, Ameren Missouri objected to DRs 1005 and 1006 in their entirety and offered to provide limited information in response to DRs 1008 and 1010. A copy of the objection letter is attached hereto as part of Attachment 2.

3. On April 26 and April 30, Public Counsel called the Ameren Missouri attorney who objected to DRs 1005, 1006, 1008, and 1010 and left voicemail messages asking for a call back to discuss these discovery issues. Ameren Missouri has not responded to those calls. 4

CSR 240-2.090(8)(A)¹ requires that counsel must make a good faith attempt to confer with opposing counsel before filing a motion to compel. Public Counsel submits that it has done so with respect to these DRs.

4. Ameren Missouri has estimated that it will spend approximately \$2 million on rate case expenses for this case, primarily for outside attorneys, consultants, and witnesses. In order to investigate whether it is prudent for Ameren Missouri to spend so much, Public Counsel needs to have detailed and specific information about the capabilities of personnel within the Ameren companies. If (as Public Counsel suspects) there are people at Ameren who are well qualified to do the same work that is being outsourced, then it may not be prudent for Ameren Missouri to spend its customers' money hiring outside experts and attorneys. Public Counsel cannot begin an analysis of how much could be done in-house without detailed information about the education, experience and capabilities of in-house personnel. All of the DRs are specifically and narrowly written to seek this information without imposing any more burden on Ameren Missouri than necessary. With respect to DR 1010 (about which Ameren Missouri raised privilege objections), Public Counsel is not seeking to have Ameren Missouri reveal privileged attorney-client communications. That DR asks generally for: 1) a detailed description of the services provided by certain consultants and attorneys; and 2) a description of why these service could not be performed in house. Neither of these requires Ameren Missouri to reveal information protected by the attorney-client privilege or the work product privilege. If Ameren Missouri believes that either of these privileges is implicated, then it should provide the information to the presiding officer (or a special master) for review.

¹ The Commission has waived the applicability of 4 CSR 240-2.090(8)(B) for this case.

DR 1013:

5. On April 17, Public Counsel submitted another set of DRs to Ameren Missouri. This set of DRs included 1013, which sought hard information from Ameren Missouri about actual effects of Missouri's much maligned (by Ameren Missouri) "regulatory framework" on Ameren Missouri's capital projects. A copy of DR 1013 is attached hereto as part of Attachment 1.

6. On April 19, Ameren Missouri objected to DR 1013, but nonetheless offered to provide "a response." A copy of the objection letter is attached hereto as part of Attachment 2.

7. Public Counsel called the Ameren Missouri attorney who objected to DR 1013 on April 20 and left a message. The Ameren Missouri attorney returned the call on April 23, and DR 1013 was discussed. Counsel for Ameren Missouri was unable to commit to do anything other than what was set forth in the objection letter, and was also unable to provide assurance that the response would be a full and complete response. Public Counsel indicated that this arrangement was unsatisfactory. Counsel for Ameren Missouri offered to check to see if Ameren Missouri might be willing to be more forthcoming, but Public Counsel has heard nothing further.

8. Ameren Missouri President and Chief Executive Officer Warner Baxter refers to Missouri's "regulatory framework" fifteen times in his direct testimony. He states at page 19 of that testimony that "there is only so much capital we can reasonably invest at a given time, especially in light of the existing regulatory framework in Missouri." In order to evaluate this testimony and to be able to effectively respond to it, Public Counsel must be able to conduct meaningful discovery into the ways in which Missouri's regulatory framework has had impacts on Ameren Missouri's capital projects. DR 1013 is as narrowly drawn as possible to elicit real

information about actual projects and actual dollar impacts, instead of Ameren Missouri's vague – and nearly constant – carping about the regulatory framework.

Request to be excused from discovery conference:

9. The Commission has scheduled the first discovery conference in this case for May 10, which would be an ideal time to address the discovery issues raised herein. Unfortunately, the undersigned will be out of town and unable to attend, and so requests to be excused.

WHEREFORE, Public Counsel respectfully requests that the Commission issue an order compelling Ameren Missouri to provide responses to the Data Requests as discussed herein.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Lewis R. Mills Jr.

By: _____

Lewis R. Mills, Jr. (#35275)
Public Counsel
P O Box 2230
Jefferson City, MO 65102
(573) 751-1304
(573) 751-5562 FAX
lewis.mills@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 7th day of May 2012.

/s/ Lewis R. Mills Jr.

By: _____

**OFFICE OF THE PUBLIC COUNSEL
DATA REQUEST**

**UNION ELECTRIC COMPANY
d/b/a AMEREN MISSOURI
CASE NO. WR-2012-0166**

Requested From: Thomas Byrne / Mary Hoyt

Requested By: Shawn Lafferty

Date Requested: March 23, 2012

Information Requested: Please provide a listing of current AmerenMO employees with university/college degrees. Include the employee's name, current job title, years employed with Company, degree held and major field of study (e.g., Bachelors of Accounting, Masters of Engineering, PHD Education, etc.), name of university/college from which degree was earned, and a listing of any advanced profession designations held (e.g., CPA, etc.).

Response Provided:

The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

Date Received: _____ Received By: _____

Prepared By: _____

**OFFICE OF THE PUBLIC COUNSEL
DATA REQUEST**

**UNION ELECTRIC COMPANY
d/b/a AMEREN MISSOURI
CASE NO. WR-2012-0166**

Requested From: Thomas Byrne / Mary Hoyt

Requested By: Shawn Lafferty

Date Requested: March 23, 2012

Information Requested: Please provide a listing of current Ameren Corp and affiliate employees (e.g., Ameren Services) with university/college degrees that allocate time/costs to AmerenMO. Include the employee's name, current job title, years employed with the Ameren Corp/affiliate, degree held and major field of study (e.g., Bachelors of Accounting, Masters of Engineering, PHD Education, etc.), name of university/college from which degree was earned, and a listing of any advanced profession designations held (e.g., CPA, etc.).

Response Provided:

The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

Date Received: _____ Received By: _____

Prepared By: _____

**OFFICE OF THE PUBLIC COUNSEL
DATA REQUEST**

**UNION ELECTRIC COMPANY
d/b/a AMEREN MISSOURI
CASE NO. WR-2012-0166**

Requested From: Thomas Byrne / Mary Hoyt

Requested By: Shawn Lafferty

Date Requested: March 23, 2012

Information Requested: Please provide the names of all licensed attorneys currently employed by AmerenMO, its parent company and affiliates. For each attorney that has participated in regulatory proceedings during their professional careers, please identify the proceeding (i.e., jurisdiction, case number and date) along with the activities they were personally responsible for performing.

Response Provided:

The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

Date Received: _____ Received By: _____

Prepared By: _____

**OFFICE OF THE PUBLIC COUNSEL
DATA REQUEST**

**UNION ELECTRIC COMPANY
d/b/a AMEREN MISSOURI
CASE NO. WR-2012-0166**

Requested From: Thomas Byrne / Mary Hoyt

Requested By: Shawn Lafferty

Date Requested: March 23, 2012

Information Requested: Please provide a detailed explanation of what services are to be provided by each of the following consultants/attorneys and also explain, in detail, why AmerenMO is unable to perform the services provided by each with in-house or affiliate personnel. Please provide the same information for any other consultants/attorneys that are used and for which the Company anticipates costs will be included in rate case expense for the instant case.

1. Smith Lewis, LLP- Jim Lowery & Staff
2. Brydon Swearngen & England P.C.
3. Robert B. Hevert – Concentric
4. Michael Adams – Concentric
5. John Reed - Concentric

Response Provided:

The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

Date Received: _____ Received By: _____

Prepared By: _____

**OFFICE OF THE PUBLIC COUNSEL
DATA REQUEST**

**UNION ELECTRIC COMPANY
d/b/a AMEREN MISSOURI
CASE NO. WR-2012-0166**

Requested From: Thomas Byrne / Mary Hoyt
Requested By: Shawn Lafferty
Date Requested: April 17, 2012

Information Requested:

Please provide a detailed list of each capital project that AmerenMO has delayed or eliminated over the past five years due to the consequences of Missouri's regulatory framework. Include a basic description of the estimated cost of the project and a description of the benefits that would have been provided. If a business case was completed for the project, please provide a copy of the business case.

Response Provided:

The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

Date Received: _____ Received By: _____
Prepared By: _____



March 30, 2012

Lewis Mills
Office of the Public Counsel
P.O. Box 7800
200 Madison Street, Suite 640
Jefferson City, MO 65102

RE: Case No. ER-2012-0166; Data Requests 1000-1012

Dear Lewis:

This letter is to provide Ameren Missouri's objections to data requests 1000 through 1012, served upon the Company on March 23, 2012.

Ameren Missouri objects to data requests 1005 and 1006 in their entirety because they are overly broad and burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Ameren Missouri objects to OPC DR No. 1008 on the grounds that it is overbroad and unduly burdensome to the extent it seeks information about employees who may be licensed attorneys but were not hired for or are not currently practicing as legal counsel for the Company. Subject to this objection, the Company will provide responsive information for current employees of the Legal Department.

Ameren Missouri hereby objects to OPC DR No. 1009 on the grounds that it is vague in its use of the term "career" and because it is unduly burdensome as it is unlimited in time. Subject to the foregoing objection, the Company will provide responsive information for employees that have provided cost of capital testimony before a regulatory body during the last 10 years of their time of employment at Ameren.

Ameren Missouri hereby objects to OPC DR No. 1010 if and to the extent it seeks information protected from disclosure by the attorney/client and work product privileges. Subject to the foregoing objection, a description of the services provided by the listed consultants/attorneys will be provided.

Sincerely,

A handwritten signature in blue ink, appearing to read "Wendy K. Tatro".

Wendy K. Tatro

cc: Tom Byrne, Jim Lowery, Mary Hoyt, Julie Donohue, Cheryl Lobb, Gary Weiss

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MICHAEL R. TRIPP
PHEBE LA MAR
SARAH E. GIBONEY

RAYMOND C. LEWIS, JR. (1926-2004)

April 19, 2012

Mr. Lewis Mills
Public Counsel
P.O. Box 7800
200 Madison St., Ste. 640
Jefferson City, MO 65102

Re: ER-2012-0166 – Data Request (DR) No. 1013

Dear Lewis:

The Company objects to this DR on the grounds that it is not relevant or reasonably calculated to lead to the discovery of admissible evidence, and because it is overbroad, oppressive, and unduly burdensome. Subject to the foregoing objections, the Company will provide a response.

Because of the scope and breadth of the DR and the large number of departments and personnel who must be contacted to provide a response, coupled with the large amount of information that may need to be reviewed in order to provide a response, the Company will require up to an additional two weeks (through May 21, 2012) to respond.

Sincerely,

/s/ **James B. Lowery**

James B. Lowery

Cc: Tom Byrne, Wendy Tatro, Gary Weiss, Mary Hoyt, Julie Donohue, Cheryl Lobb