BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

City of Fulton, Hannibal Board of Public Works, Kirkwood Electric, City of Marceline and City of New Madrid, Complainants,	)	
v.	)	Case No. EC-2026-0156
Union Electric Company d/b/a Ameren Missouri,	)	
Respondent.	)	

COMPLAINANTS' REPLY IN SUPPORT OF MOTION TO STAY DISCOVERY

Rather than addressing the merits of Complainants'[1] pending *Motion to Stay Discovery* ("Discovery Motion"), Union Electric Company d/b/a Ameren Missouri's ("Ameren's") opposition to the Discovery Motion reveals Ameren's desire to justify its Data Requests ("DRs") at issue by re-writing Complainants' pending *Motion for Determination on the Pleadings or, in the Alternative, Summary Determination, Statements of Undisputed Facts and Memorandum in Support* ("Determination Motion") into a filing that Ameren would prefer to oppose on April 13, 2026.

Ameren erroneously declares at pages 5, 11 and 12 that Complainants' Determination Motion seeks "summary determination on their entire Complaint" which Ameren alleges at pages 1, 3, 4, footnotes 3 and 5, is "based on a theory" for which "causation is a material element." Not so. The word "causation" never once appears in the Determination Motion which is grounded in thirty-two (32) undisputed material facts. Moreover, Complainants make plain at

[1] City of Fulton, Hannibal Board of Public Works, Kirkwood Electric, City of Marceline and City of New Madrid (collectively "Complainants").

pages 1-2 of the Determination Motion the seven (7) clearly-jurisdictional issues upon which it seeks the Commission's ruling grounded upon the 32 undisputed material facts. Expeditious resolution of those 7 issues will avoid delay, waste of time and resources, and inform and benefit the Commission, the parties and the Public Interest of the issues that remain for further discovery and/or proceedings before the Commission – or instead for discovery and/or proceedings before a civil court.[2]

Regarding the merits of Complainants' pending Discovery Motion, Ameren's opposition fails due to the following five (5) reasons:

(1). Ameren admits that its DRs at issue are not necessary or relevant to the actual pending Determination Motion:

At pages 1, 2, 8, 9, 10 and 14 of its Opposition, Ameren admits that the DRs at issue are "targeted discovery requests that go directly" to "causation." At page 4, citing to paragraphs in the Verified Complaint rather than any of the Statements of Undisputed Material Facts found in the pending Determination Motion, Ameren admits that "the purpose of the Company's data requests – to develop facts related to the Complainants' claims regarding causation" because it is an issue in "this case." As stated above, the word "causation" does not appear in any of the 32 undisputed material facts upon which the Determination Motion is grounded – and neither does the word "damages." Moreover, Ameren fails to cite to any legal authority that Complainants are required at this time to seek summary disposition on the issue of "causation," in addition to the

[2] The Commission, as a creature of statute, does not have authority to enter a money judgment or grant equitable relief and only the courts can require an accounting. *State ex rel. GS Techs. Operating Co. v. PSC of Mo*., 116 S.W.3d 680, 696 (Mo. App. W.D. 2003)(internal citations omitted). Complainants respectfully acknowledged these parameters of the Commission's jurisdiction at Paragraph 48 of its Complaint, explaining that it alleged causation and harm to satisfy, *inter alia*, the requirements of 20 CSR 4240-2.070(1) – a pleading necessity that Ameren acknowledges at page 3, footnote 3 and page 4.

issues which are grounded in the 32 undisputed material facts of the Determination Motion. The single case cited by Ameren at page 11 does not support Ameren's argument. In *Wilmes v. Consumer Oil Co.,* the issue was whether plaintiff could ever prove the causation element of its case when it had spoliated the evidence and the trial court had imposed an adverse inference as a sanction for that spoliation. 473 S.W.3d 705, 720, 722 (Mo. App. W.D. 2015). Here, "causation" is not at issue in the Determination Motion. "Causation" may become an issue later presented to the Commission, or instead to a civil court – but it is not an issue that Ameren may now push to the head of the line in an effort to delay ruling on the pending Determination Motion.

(2). Ameren admits that the Missouri Rules of Civil Procedure govern here, and Ameren fails to distinguish the case law cited by Complainants that prohibits Ameren's DRs at this time:

At page 2, Ameren admits that "discovery may be had on the same conditions as allowed under the Missouri Rules of Civil Procedure." Yet, Ameren fails to address, much less dispute, the law cited by Complainants at pages 2-3 of the Discovery Motion which requires Ameren to "show by affidavit why it is material and important for the discovery to be completed" before it responds to Complainants' Determination Motion. *Adams v. City of Manchester*, 242 S.W.3d 418, 427 (Mo. App. E.D. 2007); quoting *State ex rel. Conway v. Villa*, 847 S.W.2d 881, 886 (Mo. App. E.D. 2007). Ameren also fails to address this Commission's law that the "material" undisputed facts are those that "depend on the claim or defense *upon which the motion stands*…." *Emma J. McFarlin and Rebecca Shepherd, Complainants v. Kansas City Power & Light Company, Respondents*, No. EC-2013-0024, 2013 Mo. PSC LEXIS 417 at *3 (April 25, 2013)(Emphasis added). It cannot be credibly disputed that Complainants' Determination Motion stands on its 32 undisputed material facts – not on the inferences Ameren argues.

Ameren does address one case upon which Complainants' Discovery Motion is grounded, but Ameren mischaracterizes the holding of that case at pages 9-10. Ameren alleges that the

requirement of *Acoma Dev., LLC v. Com. Tower Place* that a party defending a summary judgment motion must show good cause for additional discovery applies *only* if the defending party wants to "*continue* the summary judgment motion to conduct discovery."[3] Not so. In *Acoma,* the responding party had filed its brief in opposition to the motion for summary judgment, controverted 4 of the material facts, and then requested additional discovery with its attorney's affidavit. 725 S.W.3d 610, 614-615 (Mo. App. W.D. 2025).

Like the facts of *Acoma*, in the *Chouteau* case cited by Ameren at page 10, the request for additional discovery came long after the summary judgment motions were fully briefed. The parties had filed and fully briefed cross motions for summary judgment, appealed the grant of one of those motions, won a reversal on appeal, obtained another summary judgement on remand, and appealed that fully-briefed motion for summary judgment. *Chouteau Auto Mart, Inc. v. First Bank*, 91 S.W.3d 655, 657 (Mo. App. W.D. 2002). The appellate court found that "to justify a continuance [to depose a witness] in this context, the [party seeking discovery's] affidavit had to do more than just assert that 'further discovery might provide the necessary evidence.'" *Chouteau,* 91 S.W.3d at 660.

(3). Ameren admits that it has already defended itself by disputing "causation" in its Answer and that it is under no current deadline to serve the "causation" DRs at issue at this time:

At page 5, footnote 6, Ameren emphasizes the fact that it has dutifully denied "causation" in the Answer it filed in this case. And, at page 2, Ameren admits that it is under no deadline to serve the DRs at issue at this time. Therefore, the Discovery Motion – which is a motion to *stay* discovery, not *foreclose* it as Ameren claims at page 9 – not only complies with governing law, it

[3] Ameren declares that it has not, "to-date," sought an extension of time on the April 13th deadline for its opposition to the Determination Motion – yet Ameren has also not foreclosed that possible delaying action on its part. *See,* page 2, footnote 2; page 10.

also permits resolution of specific issues without jeopardizing Ameren's defense regarding "causation."

(4). Ameren's attempt to defend the DRs at issue by re-writing the Statements of Undisputed Material Facts which ground the Determination Motion must fail now:

On April 13th, the governing law guarantees Ameren the opportunity to dispute the actual 32 undisputed material facts which ground the Determination Motion. Ameren will thus be afforded Due Process. However, Ameren's attempt to re-state and argue its "re-stated facts" within this discovery dispute wastes the time and resources of the Commission and the parties. *See*, pages 5, 6 and 7. Indeed, it is particularly unfair to all when "re-stated facts" are simply erroneous. (For example, the Determination Motion contains a total of 32 undisputed material facts; thus, there is no "SUMF ¶36" to quarrel about as declared by Ameren at page 5).

Ameren also fails to dispute the law governing the operation of laws that renders the Determination Motion's Statement of Undisputed Material Fact Nos. 25-32 "undisputed." At pages 6-7 and footnote 9, Ameren cites the *Zipper* case for the proposition that no fact can be rendered "undisputed" unless the defending party "fails to properly dispute then [sic] when responding to the summary judgment motion." That is not the holding of *Zipper*. The *Zipper* Court held that, under the application of Missouri Rule of Civil Procedure 74.04(c)(2), "only those facts in [the motion for summary judgment] that [the defending party] did not contradict will be deemed admitted." *Zipper v. Health Midwest*, 978 S.W.2d 398, 409 (Mo. App. W.D. 1998). None of the Complainant's Statement of Undisputed Material Fact Nos. 25-32 are grounded in the law of Rule 74.04 for operation of law of admission.

(5). Ameren's "Motion to Compel" is untimely because it fails to comply with governing law:

Ameren's motion at page 13-14 to now compel "full and responsive answers" to the DRs at issue fails to comply with the requirements of 20 CSR 4240-2.090(8)(A) and (B). Ameren and Complainants have never discussed the objections Complainants lodged to the DRs at issue, nor have these parties brought those objections to the Regulatory Law Judge. Indeed, Ameren's request would have Complainants' responses "compelled" without any ruling on Complainants' many objections. Ameren cites no authority for its request that Complainants' Due Process rights be so summarily "waived."

WHEREFORE, the Complainants City of Fulton, Hannibal Board of Public Works, Kirkwood Electric, City of Marceline and City of New Madrid respectfully request the Commission to issue its order staying Ameren's DRs at issue herein until such time after the resolution of the Determination Motion and upon good cause shown by Ameren's affidavit, and for such other relief and remedy the Commission deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Complainants' Reply in Support of Motion to Stay Discovery" has been served within the EFIS system on all parties on the official service list for this matter on this 2nd day of April 2026.

/s/ Peggy A. Whipple
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