

**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 Adjust)
Its Revenues for Electric Service)

Case No. ER-2022-0337

**PUBLIC COUNSEL’S REPLY TO AMEREN MISSOURI’S RESPONSE TO
PUBLIC COUNSEL’S MOTION TO MAKE INFORMATION PUBLIC**

COMES NOW the Office of Public Counsel and replies to Ameren Missouri’s February 21, 2023, response (titled as a reply) to Public Counsel’s motion for the Commission to make public information that Ameren Missouri has designated “confidential” as follows:

1. The Commission has a strong preference that its proceedings be public. In rule 20 CSR 4240-2.135(1) the Commission states, “All items filed in case proceedings before the commission shall be open to the public unless protected pursuant to this rule or otherwise protected by law.” By rule (20 CSR 4240-2.135(2)(A)) the Commission created categories of exceptions available by default:

1. Customer-specific information;
2. Employee-sensitive personnel information;
3. Marketing analysis or other market-specific information relating to services offered in competition with others;
4. Marketing analysis or other market-specific information relating to goods or services purchased or acquired for use by a company in providing services to customers;
5. Reports, work papers, or other documentation related to work produced by internal or external auditors, consultants, or attorneys, except that total amounts billed by each external auditor, consultant, or attorney for services related to general rate proceedings shall always be public;
6. Strategies employed, to be employed, or under consideration in contract negotiations;
7. Relating to the security of a company’s facilities; or
8. Concerning trade secrets, as defined in section 417.453, RSMo.

A party invoking one of these exceptions is to do the following:

(B) Any information designated as confidential shall be submitted with a cover sheet or pleading describing how such information qualifies as confidential under subsection (2)(A) of this rule, including the specific subsection relied upon and an explanation of its applicability. Only the specific information that qualifies as

confidential shall be designated as such. In addition, each document that contains confidential information shall bear the designation “Confidential” and the paragraph(s) of 4 CSR 240-2.135(2)(A) through which that information is protected.

2. It was not until Ameren Missouri referenced 20 CSR 4240-2.135(2)(A)(4) in paragraph six of its response that it identified any category by which it claims the information in the copy of Ameren Missouri’s Power Play Goals for Kids program contract attached to Public Counsel witness Dr. Marke’s prefiled direct testimony as Schedule gm-4 is confidential. Public Counsel disagrees that the contract includes “[m]arketing analysis or other market-specific information relating to goods or services purchased or acquired for use by a company in providing services to customers.”

3. Public Counsel’s motion is for the Commission to make public Schedule gm-4 to the extent that finds it appropriate to do so, and to make public the following information taken from that schedule which is designated confidential in Dr. Marke’s prefiled direct testimony starting on page nineteen following Table 3 which shows that through the Power Play Goals for Kids program Ameren Missouri has made \$146,200 in charitable contributions at a total cost to its retail customers of \$1,554,503 over the National Hockey League’s 2015-2016 to 2021-2022 seasons, and continued to do so through the 2022-2023 season at a cost to its customers of \$265,002. That specific testimony follows:

Q. Does Ameren Missouri receive any other benefits from the PPGK advertising campaign?

A. ** _____
• _____
• _____

Q. _____

A. _____ **

Q. What is your position on Ameren Missouri recovering costs for the Power Play Goals for Kids Campaign through its retail rates?

A. The partnership with the Blues and the long-standing PPGK campaign is arguably one of Ameren’s most popular advertisements. Ameren Missouri should continue it as a fair amount of Ameren Missouri’s service territory consists of Blues fans, but it is absolutely not a prudent use of ratepayer funds. The campaign is clearly in the self-serving category, cost excessive (\$265,002), a horribly inefficient way to help kids in need, and **_____** have no relevance to providing safe and adequate service at just and reasonable rates. The costs should be disallowed in its entirety.

4. Public Counsel’s motion is not about a discovery dispute, it is a request to make information Ameren Missouri has designated to be confidential accessible to everyone to see; therefore, Ameren Missouri’s argument in paragraph three of its response where it attempts to shift the burden to Public Counsel to show the information is not confidential is misdirected, and the discovery dispute rules 20 CSR 4240-2.135(5)(B) and 20 CSR 4240-2.090(8) to which it cites are irrelevant.

5. As to the matter of good faith with counsel for Ameren Missouri, until counsel for Public Counsel reviewed Schedule gm-4 shortly before prefiling Dr. Marke’s direct testimony and found a nondisclosure clause in the contract that is that schedule, Public Counsel planned to make public the content it now is asking the Commission to make public—the copy Public Counsel had then did not include the language “CONFIDENTIAL 20 CSR 4240-2.135(2)(A)1, 8” now at the top of the pages of Schedule gm-4. Upon finding that nondisclosure clause, counsel for Public Counsel contacted Ameren Missouri’s counsel Jim Lowery for whether Ameren Missouri viewed that information to be confidential. He related it did, and Public Counsel so treated it in Dr. Marke’s prefiled direct testimony in accordance with rule 20 CSR 4240-2.135(9). The following is part of that nondisclosure clause: **_____

_____ **

6. In reply to paragraph 2 of Ameren Missouri’s response where Ameren Missouri asserts that Public Counsel’s motion is vague, while it disagrees with Ameren Missouri, Public Counsel explicitly states that it is seeking for the Commission to make public the entirety of Schedule gm-4 and Dr. Marke’s prefiled direct testimony set out in paragraph three above and his prefiled direct testimony based on information in that schedule, except any parts of them the Commission determines should not be open to the public.

7. Ameren Missouri has provided no legitimate basis for why the information designated confidential on pages 19-20 of Dr. Marke’s prefiled direct testimony should not be open to the public, nor has it shown why Schedule gm-4c should not be open to the public in its entirety.

Wherefore, the Office of Public Counsel continues to pray the Commission make open to the public the testimony identified to be confidential on pages 19-20 of Dr. Marke’s direct testimony prefiled on January 10, 2023, and those parts of Schedule gm-4c that it finds should be open to the public.

Respectfully,

 /s/ Nathan Williams
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 8th day of March 2023.

/s/ Nathan Williams