

No Standing News

Since we have no standing, we stand with those left standing

Volume II

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Number 87

The RMU "Slime Brief"

"Like nasty little boys scribbling on toilet walls..."

Re the RMU-St. James ["Motion to Deny Application to Intervene of Donna D. Hawley"](#)

On the front page of the [Apr. 30, 2010](#), RDN, Alan Gerstenecker, Candace Connell, RMU, the City of Rolla and St. James and Phelps County Commissioners had a field day bashing former Rolla councilmember Donna Hawley for writing to the Missouri Public Service Commission expressing her opinion of RMU's \$17.8 million transmission/substation project. The First Amendment has never been real popular here. They howled and raged that all by herself Hawley had cost the city of Rolla and St. James thousands or maybe millions of dollars with her objections to the project. What bull.

All that piss and vinegar was to keep you from noticing two very embarrassing **screw-ups of theirs**. **First**, The PSC sent *the media and the County Commissioners* each a special copy of the public notice so *they could tell the public* we had 20 days after April 5th and could "intervene" (comment) in this process if we wanted to but the local media and County Commissioners who were supposed to let us know this didn't bother to tell us we had a right to speak up about this project. Why do you suppose they kept it quiet? Hawley came across the notice on the Internet by accident. Open the next link and take a look at whose responsibility it was to let the public know they had 20 days to comment. Gerstenecker's excuse for not printing the [required PSC public notice](#) was that "it got lost in his spam filter." Well now that's certainly a good excuse for a newspaper to trash the due process of the people in two communities isn't it?

Connell's excuse for not hand-carrying a copy of the notice to him to make sure it got printed was... ..well, gee she must have some excuse just like the excuses she and Elizabeth Bax had for bollixing up the public hearings for the EEZ districts and being so dim that they blighted two whole towns to give away EEZ taxes for the next two decades. Maybe she used her good excuse on the County Commissioners when she went boo-hooing to them in that big drama scene for the newspaper.

Second: the deadline for accessing the **County's Recovery Bonds** was **Friday, April 29** – just four days after the PSC comment period ended. Connell, Gerstenecker and the Phelps County Commissioners did not get the required 20-day public notice into the newspaper from April 5 to April 25 so even if Hawley had done nothing at all the result would have been exactly the same. ***It's obvious that Connell was not going to make that Friday bond deadline even if no Rolla or St. James citizens managed to find out about the PSC hearing in time to make a comment.*** Nevertheless, the RDN solicited its sister newspaper, the St. James Leader Journal, into continuing the attack on Hawley in its May 5, 2010 edition. They had screwed up which necessitated all the wailing and finger-pointing so you wouldn't notice whose mistake it really was.

Even though Connell and St. James now plan to utilize Build America Bonds with their new **Jan 1, 2011**, deadline, the headline still reads, "*St. James to lose \$350,000 with loss of Stimulus bonds,*" and goes on to misdirect the blame saying, "...because of a petition filed by former Rolla City Council Member Donna Hawley." The Leader Journal likes drama at the expense of facts as much as Connell does - especially when the fraudulent headline blames someone besides Candy, the home-town banker's wife.

The Leader Journal does not mention that maybe St. James does not need to buy into the Phelps substation at all or that this delay might give St. James citizens a chance to reconsider their other options...oh...that's right, they no longer have any other options since, like Rolla, they've stupidly become indentured servants of MoPEP. Had they looked around instead of listening to The Dan Watkins Connection on the St. James city council they might have become **Intercounty Electric** or **AmerenUE** retail customers so that their **PSC regulated** kWh rate will be **6.5¢** or **7¢** per kWh instead of the **MoPEP unregulated-sky's-the-limit RMU** rate

of **10.3¢ per kWh**¹ with a **\$10 per month Service Availability Fee**, a **5% city PILOT fee** and in future an unknown amount of **Carbon Tax Fee** which will be charged to the wholesale polluters but which Jim Stoffer and the RMU board think it will be “educational” for their local rate victims to pay a second time at the retail end.

The switch to Intercounty or AmerenUE is one that Hawley pointed out to the Rolla Council in April could save Rolla households and businesses up to **fifty percent** on their annual electric bills.

Third, big frogs in little Ozark ponds that leave everything till the last minute don't always get federal Stimulus deadlines changed just to bail their procrastinating asses out. This is merely round one in the PSC process, something Connell and the geniuses at RMU obviously didn't look into thoroughly. The RMU board and their overpaid managers have been diddling around on this project for well over three years. Where is the planning? Where is the project management, the timelines and scheduling? Is this all being done by the seat of Stoffer's pants? Why wasn't this critical PSC approval to buy the transmission line from AmerenUE obtained long before the bonds were obligated and millions of the bond money spent as they claim in their rebuttal to Hawley's Intervention? Hello? Is there anybody in control of this project?

Well, what do you expect from the amateur RMU board members who run a government monopoly; a monopoly that has been designed and operated for over 65 years to rake off inflated profits to provide City Hall with an annual illegal subsidy to cover up City Hall's mismanagement of public funds? What do you expect from a price-inflating monopoly that charges more for power than all the biggest cities in the state, an overcharging monopoly that would rather buy a broken-down old dairy building from John Beger for \$410,000 than rebate that excess “profit” to the customers they overcharged, an inefficient monopoly that waits until city streets are newly paved to dig them up to repair water and sewer lines and one that typically assigns five shovels to do three-shovel jobs?

No matter if there is a protest or not the PSC, (unlike EEZ hearings in Rolla, St. James and Phelps county) doesn't just rubber stamp the Rolla-St. James application to buy the UE system the minute the April 25th Intervention deadline passes. It may be some time before the PSC makes a decision and until they make a decision spending on this project should have waited but the RMU gang claim they have already spent millions of their **\$17.8 million** in borrowed revenue bond debt and they are already pouring concrete. The citizens of Rolla and St. James should be very, very nervous with this cart-before-the-horse project management by **Jim Stoffer, Rodney Bourne** and **Dennis Roberts** the RMU “bouncer.”

The Rolla/RMU-St. James “Slime Brief” – a must read

Click on this link to see the [“Motion to Deny Application to Intervene of Donna D. Hawley”](#) filed by attorney **Gary W. Duffy of Brydon, Swearingen & England P.C.** in Jefferson City, on behalf of his clients the **City of Rolla** and the **City of St. James**, which happens to be the slimiest brief we've ever read.

Duffy's malicious personal attacks on Mrs. Hawley must either be his usual style or it was specially ordered by his vindictive clients. Most attorney's, even the low-rent type, do not reflect this level of nastiness in a piece of professional writing filed with a public body just to earn a fee because there is always the risk that offensive language can cost you the case you are trying to win. Even when the client wants to go for the throat, a smart lawyer will tone it down - but not Mr. Duffy. It's as if they feel they have no valid defense and nothing to loose so they might as well get their pound of flesh. Like nasty little boys scribbling on toilet walls, they didn't think they would get caught red-handed by the folks back home authoring this piece of trash.

Mr. Duffy has gone so far as to say that Mrs. Hawley is guilty – not “allegedly” guilty - of the crime of attacking RMU bouncer Dennis Roberts at the infamous RMU-MoPEP meeting where she was denied entrance to the public meeting. As an attorney he knows very well she has been charged but not yet tried and has not been found guilty so he should have been careful to make the distinction instead of indulging in flat out libel.

¹ Regardless of Stoffer and Bourne's quibbling over their kWh rate, and trying to claim it is only 9¢ per kWh, **10.3¢ per kWh** is what the **Missouri State Auditor** says RMU's rate is in the auditor's official survey of 13 cities as published on page 5 of the April 2010, [Marceline Missouri state audit](#). The Marceline audit also said just as the [2009 Rolla state audit](#) said that all MoPEP contract cities *were “joint venture” businesses* and *jointly liable* for the *over \$2 Billion in coal-fired power plant investments* that MJMEUC/MoPEP has made behind the backs of the local citizens they are using as collateral. Rolla keeps denying it but who do you believe, Jim Stoffer or a entire department of CPA's?

There are many elected-to-office 'followers' in Rolla and St. James who imagine themselves to be important community leaders and who are still licking their wounds from encounters with Donna Hawley's painstaking research into difficult-to-understand financial and legal issues in the RMU-MoPEP controversy. Unfortunately she was the only person in both city governments who wasn't too lazy to read a lot of dull documents, contracts and reports – it's what all our elected officials are supposed to do but never stir themselves to do. She was also smart enough to understand what it all meant. That, of course, was her greatest crime, being a woman who was smart enough to understand it.

Our non-reading elected and appointed 'sheeple' who are 'followers' of MoPEP will howl with glee when they read the vile things Mr. Duffy and his clients have said about her in this legal filing before the Public Service Commission.

We hope there will be many more who will be shocked that the men who claim to be such important city leaders in Rolla and St. James would be so despicable as use such low tactics or approve Mr. Duffy doing so, so ill-mannered as to stoop to such low personal attacks on a woman just because she didn't agree with them and didn't go-along-to-get-along as most people do. Schoolyard bullies is what they are not respected leaders of this or any community.

We have already sent our rebuttal to the Public Service Commission to **RMU's "Slime Brief."**

Response to *The RMU "Slime Brief"*

To: Missouri Public Service Commission

From: **Robert W. Nash,**

Date: May 12, 2010

Re: (Case No. EO-2010-0263) Response to *Motion to Deny Application to Intervene...*

Please forgive the informality of this response to the scurrilous "[Motion to Deny Application to Intervene of Donna D. Hawley](#)" (Case No. EO-2010-0263) filed by *Mr. Duffy of Brydon, Swearingen & England P.C.* Unfortunately, being among those Rolla citizens who struggle to pay the RMU-MoPEP **10.3¢** per kWh² electric rates, I do not have RMU's privilege of being able to dip freely into *unregulated public utility profits* to hire law firms in order to file PSC documents in a more formal manner.

This communication also would have been more timely but it was not until the Rolla Daily News published articles beginning on April 30th blaming Mrs. Donna Hawley's filing for allegedly costing the Cities of Rolla and St. James millions (a gross exaggeration) that the general public was aware that the 20-day window for commenting on this project had come and gone without any notice in the media or from the Phelps County Commission. I believe that when the public notice has been withheld from the public by everyone who received it and the public cheated of their right to hear the issue and be heard, the notice should be reissued and the clock restarted. To do otherwise is to allow partisan interests to cheat due process and turn the 'Public' Service Commission into the 'Secret' Service Commission.

I. Response to RMU and Mr. Duffy's sleazy innuendoes

Knowing the RMU organization much to well for decades, and knowing them capable of gross arrogance and bald-faced illegalities, I am nevertheless stunned at the vile character assassination against Mrs. Hawley they, and their lawyer Mr. Duffy, have resorted to in order to defend this utility project - the purchase of AmerenUE's 34.5 kV transmission lines and electrical substation. To refer on page 12, paragraph 16, of Duffy's motion to Mrs. Hawley's "extraordinary or perhaps even *unhealthy* level of personal "interest" in the operations of RMU..." was not just rude, it was malicious. Mr. Duffy and his clients need their mouths washed out with soap. It is not Mr. Duffy's business to pass judgment on what "level of interest" is appropriate or "healthy" for any citizen to take in any public matter. I believed PSC matters were conducted with more professionalism...or at least with better manners. Obviously I was wrong.

Mrs. Donna Hawley and **Mrs. Tracey Watson** led the petition drive to get a state audit of the City of Rolla and RMU to expose ongoing illegal and corrupt practices by both. Mrs. Hawley was then elected to the Rolla city council where she had access to closed meetings where the council routinely gossiped and held illegal discussions.

² Rolla rate determined in a survey of 13 towns by Missouri State Auditor April 2010, in the Marceline audit.

After her election, RMU in particular, was not able to withhold from her (most of) the public information she requested as they had in the past. After the 2009 state audit *confirmed the allegations* about RMU's rate inflation, RMU's profit skimming, RMU's nepotism, RMU's misuse of public funds, their arrogant treatment of the public, the gross liability of the MoPEP contract, their Sunshine law violations and other violations of state law, their spite and malice reached monumental proportions – thus the censure motion. This is what is behind the malicious half-truths against Mrs. Hawley's character, education and mental acuity and why Mr. Duffey's petition reads more like an installment of the Drudge Report than a professional response to a public regulatory body.

RMU has a *well-documented history* of illegal and unsavory business practices going back several decades including rate skimming, nepotism and other law-breaking as well as "hidden taxation," specifically remarked by [Missouri State Auditor Margaret Kelly in the 1998](#) state petition audit of Rolla in which RMU and the city were found to have illegally passed deliberately inflated utility "profits" which were then passed under the table to city politicians for non-utility uses - the principal use being to cover up the city's fiscal deficits due to their mismanagement and to use in special projects for cronies.³

II. Two State Audit Reports highlight RMU's bad management

RMU's habitual mismanagement, malfeasance and "hidden taxation" was documented in a second citizen *petition audit* conducted by [State Auditor Susan Montee in 2009](#).⁴ When considering whether RMU needs and can handle this project and the debt repayment, it would be irresponsible for the PSC to fail to take into consideration RMU's record of bad performance and bad business decisions objectively documented by two expert state audit officials. Their scofflaw arrogance is demonstrated by the illegal behavior first pointed out in the 1998 audit *which continued unabated* into the 2009 state audit. Failure of the PSC to take those reports into consideration would be an incomplete assessment of the long-term feasibility of this project and potentially expose the *unprotected ratepayers* of Rolla to a blitz of *unlimited rate and fee increases* to pay off an \$17.8 million MAMU-RMU *Auction Rate Securities* melt-down.

One of the highlights of RMU's graft occurred in 1994-1995 when the RMU board secretly passed over [checks](#) to the city, which together with city public funds and money from UE totaling **\$2.250 million**, which was then handed to the Rolla Community Development Corporation (RCDC), a non profit *private* corporation, to buy the Switzer building, now known as the Briggs & Stratton property. RCDC, the private corporation, bought the building with the public money and on June 27, 1995, they [put the deed in RCDC's name](#) with the connivance and consent of the city council and the RMU board. At worst this was fraud and embezzlement of public funds; at least it was a clear violation of the Missouri Constitution Art. VI, Sec 23. This illegal purchase with public funds was voted on in secret by *members of the RMU board and the city council*. *One council member was also on the board of the RCDC and two RMU board members were on the board of the RCDC. None abstained from voting.* One of the guilty 1995 RMU board members voting for this expenditure of public funds, who was at the same time on the board of the **RCDC receiving their ill-gotten gains** was, **Wm. Jenks**, now the mayor of Rolla. Without a blush and with hypocrisy typical of RCDC/RMU/City interlocking board members, Jenks also presided over Mrs. Hawley's censure. The city also gave B&S more than \$250,000 in secret electric rebates during the decade that the RCDC owned and rented the building to Briggs & Stratton. When B&S left, RCDC sold the property for an undisclosed sum and kept all the money from the sale without returning one dime to the people of Rolla.

On page 18, paragraph 30, of the RMU petition Mr. Duffy calls Mrs. Hawley's information about the declining electric demand⁵ in Rolla (illustrated by the vast empty Briggs & Stratton building among other vacancies both commercial and residential) "her attempt at drama." He facetiously says that this "is only a "temporary loss of these particular loads (since the buildings still exist)" and he declares that it "has no relevance to the long-term reliability issues that are the focus of the Master Plan." With RMU's residential rate now at **10.3¢ per kWh** due to RMU's perpetual cost-plus MoPEP contract it is unlikely that the B&S building or any of the other recently vacated commercial buildings will soon find new tenants. It must be Mr. Duffy's expertise in economics that qualify him to make pronouncements on the future of the economy and the chance that the vast Briggs & Stratton building will quickly be filled (after sitting empty for 3 years) with another large factory that employs over 800 people. State statistics however, argue against his insensitive contention.

³ Unlike Mr. Duffy's libelous remarks, any statement I make about the corrupt Briggs & Stratton transaction and other similar acts by RMU and the city I can document with checks, deeds and contracts and have done so as far as possible within the links. Some of the deeds and proofs in the B&S case are not scanned in but I can and will provide copies upon request.

⁴ Rolla's 2009 state audit features: Nepotism pg. 30, Sunshine violations pg. 24, MoPEP joint venture liability on pg. 20, etc.

⁵ Declining electric demand of 3% from last year is admitted in management's statement on page 12 in the Davis, Lynn & Moots '09 city audit.

On page 5 of [Marceline Missouri's just completed state audit](#) the auditor did a rate comparison of 13 small towns. Marceline has a **15¢ per kWh** rate and the next eight cities including Rolla, (but excepting Centralia) with the highest utility rates are all *unregulated MoPEP contract cities*.⁶ This is not a coincidence. Perhaps Mr. Duffy with his contemptuous crack that "the buildings still exist" could explain to us how we are to attract industry to fill this cavernous building with another 800 jobs when our *unregulated* commercial and residential electric rates are nearly *double that of the regulated cities around us*? That is a relevant "long-term reliability issue" that he declares *isn't a focus* of the Master Plan...but, we have only his claim that it isn't a focus of the Plan. Does the secret part of the Master Plan – the part censored by RMU that no one in Rolla has ever been allowed to read - perhaps deal with more raises to our already out-of-control **10.3¢** per kWh RMU electric rate that will be necessary to pay for this extravagant project?

I laughed aloud to read on page 2 the whining about RMU having "invested five years and millions of dollars in the pursuit of long-run economic advantages for their citizens" etc. Would that be in reference to signing the MoPEP contract *that they admittedly didn't read* which shot our electric rates up to **10.3¢** in just two years or does it refer to RMU's chronic inability to plan routine infrastructure repair of utility lines buried under streets until just after they have been freshly asphalted? RMU is well-known for sending five shovels out to do a two-shovel job. It's probably true that it has taken them twice as long and they've wasted millions to do what a cost-efficient company could have accomplished in half the time at a fraction of the price but before I believed this claim I would look closely at the bills. RMU is a monopoly and their customers have a city ordinance gun to their heads that forces them to buy all the city's service products – they have no incentive to be efficient with time or money - their MoPEP diesel generator project is proof of that.

III. 'Ware the lurking terrorists – RMU's case for censorship

One of RMU's many arrogant violations of the Sunshine Law is RMU's censorship of all but the executive summary of the **R.W. Beck** engineering study for this project. It appears from Mr. Duffy's comments that this abbreviated summary was apparently all he gave the PSC for this application. On page 10 of his Motion to Deny, Mr. Duffy says that the "*executive summary* of the Master Plan" is on the RMU web site and, "To date, no public comments of substance, except for comments from the Applicant, have been made to the study or the overall project as reflected on the RMU website." How could anyone comment on a \$17.8 million project study with only one fragment, the "executive summary," for information? The RMU site *does not have a comment interface* and there is nothing on that site that invites anyone to comment or tells them the appropriate venue, form or time for their comments.

Since when did posting a heavily censored public document on a web site that previously had been "dead" for half a decade or longer (and prior to being lifeless contained little information of value) become an acceptable substitute for legal notices and public hearings? Few people knew RMU had a web page years ago when it contained stale information and fewer know they have finally revived it. If this is what Mr. Duffy and RMU are trying to pass off as "public access to information" and "public opportunity to comment" it doesn't pass any legal test. RMU's absurd excuse for their censorship of this public document - that *knowledge of the transfer of ownership* of a huge transmission line that sticks up visibly for miles on Interstate 44 must be kept secret from lurking terrorists - was swallowed without question by the militant super-patriots on the Rolla city council to the point where they turned their ignorance into a flag-waving act of patriotism by refusing to read the censored portion in...what would have been...an illegal closed session of the city council. I would have expected the PSC staff and Commissioners to be more sophisticated than the Rolla City Council members and demand to see the entire engineering study.

Mr. Duffy noted on page 10, para. 11, that on May 5, 2008, **John Beger**, the Rolla city counselor, endorsed RMU's censorship of the R.W. Beck study for fear of aiding and abetting terrorists. Beger also obligingly but belatedly declared the March '09 Rolla-MoPEP meeting on the MISO transmission charges to be a closed meeting *after* Mrs. Hawley was manhandled by RMU's 260 lb bouncer, Dennis Roberts and the city needed an excuse to have her charged. In fact, Mr. Beger has never seen a self-serving claim from the city or RMU of which he didn't wholeheartedly approve. On November '09 *after* his obliging opinion on the MISO meeting, it was announced that RMU would bail-out Mr. Beger's ownership of his aging office building for \$410,000 even though they admitted they will put only three or four people there and rent out the rest.

RMU's paranoia makes it logically impossible for any subsequent vote on the bonds by St. James citizens, comments by Rolla citizens or an opinion by the PSC to have validity because no one has access to facts and basis for calculations for the project which are presumably contained in the censored part of this public document paid for with public funds because they are not found in the "executive summary." R.W. Beck properly disclaims - as they

⁶ Centralia and Marceline are also unregulated and are not MJMEUC/MoPEP contract cities but have signed MJMEUC- UPPA contracts with MJMEUC to buy power. They are two of the seven cities named in the [Fitch Ratings](#) that form the collateral basis for the MJMEUC equity investments in power plants.

should - all their economic "assumptions" and projections used in the report. Before economic forecasting became the tool of expensive consultants, such projections were done in carnival tents by swarthy old ladies with crystal balls.

If one only knew what the basis of those assumptions for this project were one might be able to refute them and make any number of comments. For Mr. Duffy and RMU to crow that no one has commented on this fragment of the critical report that they have connived at keeping the public from seeing is both self-serving and hypocritical. Either RMU must drop their terrorism excuse and reveal the whole report, or delay their project until after 12/31/2012 until we can see all the "assumptions" and other secrets. December 2012 is when RSMo 610.021(13) sunsets at which time the Missouri General Assembly in their wisdom have determined all loitering terrorists will have packed up and departed our shores.

IV. Rural people are survivors, a few minutes wait for UE servicing is no big deal for us.

It is absurd to try to justify spending \$17.8 million merely to shorten by a few minutes the wait for servicing due to UE's drive from Union even during power outages. Thirty-minutes in the dark may make city people hysterical but rural people are not so delicate that we can't do without power for short - or even long periods of time. Intercounty Coop has much further to drive to service their customers and no one complains. Likewise, the other excuse RMU has given the council (is this in the secret part of the Plan?) for this project is the fantasy that a giant "Rolla-West Big Box" shopping mall needing vast amounts of power will materialize any day across the Interstate from Rolla as soon as MoDOT spends \$45 million on a special Interstate bypass through the heart of a Rolla subdivision and over a RR track with a matching "backdoor" overpass over the 4-lane I 44 to provide access to the "Rolla-West" land owned by local developers Woessner and Dietzmann. Given the state of the state's finances and MoDOT's budgetary shambles it is highly unlikely that Rolla's luxurious but insignificant bypass plans will ever materialize at the top of MoDOT's list. This "need" for vast amounts of power in the pastures across the Interstate highway far from the city limits is merely the desperate ploy of two local developers who can't get bank financing for their foolish project and so are trying to get access to CID/TIF and other public tax financing through the city to bail out their rash land speculation made before the national mortgage bubble imploded. The area is already served by Intercounty Coop at a much more reasonable electric rate and they have plenty of excess power capacity should the Big Box mirage ever materialize.

For Rolla to buy a transmission line and bulk substation with this kind of capacity because they are anticipating huge population boom even though national census records, DESE school data and all other objective data says our birth rate and population has been steadily declining, was declining before the recession, and is predicted to continue to decline, is like buying a John Deere harvester to pick snap beans in a backyard garden.

Perhaps it is the combination of RMU's ridiculous secrecy over the project Master Plan engineering study combined with being burned by four sudden electric rate hikes from **6.6¢** in **Oct. 2005** to **10.3¢** by **Aug. 2006** and RMU's decades of less than spotless management behavior and performance that make us suspicious of the "secret Master Plan." After their '05-'06 triple rate increases, RMU's rate-shocked customers then saw the addition of a \$10 per month electric service availability fee, and elimination of the seasonal rate structure topped off with the City adding a 5% PILOT tax on all gross utility revenues just in the next two years as RMU scrambled to keep up with MoPEP demands for money. All of these increases were a direct consequence of the city signing the original 2000 MoPEP contract, followed by the Revised and Amended 2005 MoPEP contract which subsequently stripped their reserves from \$15 million to \$3 million in less than two years. It is the RMU board's desperately fabricated fees like their latest "carbon tax fee" ⁷ that leads us to wonder if there is some other financial motive operating here that is hidden in the secret part of the censored Plan.

Is this sudden venture by a small rural Ozark town into high-transmission lines simply a function of Rolla's well-known capacity for self-delusion - that any moment Rolla will "turn the corner" and become Springfield Missouri? Is it the usual Chamber of Commerce "build it and they will come" folly,⁸ or does this sudden need for huge capacity have more to do with RMU's "joint venture partners" in MJMEUC wanting to use one of their

⁷ Another example of why RMU should not play with sharp instruments. In September '09, RMU announced they would [add a "cap & trade fee" to our utility bills](#) even though there is no "cap & trade" law yet and if there were such a law the cost would be recouped at the wholesale level and absorbed into the wholesale cost of the MW not billed to individuals at the retail level. "It's a way we feel we can educate our customers as to what charges could be possible as result of cap and trade," **RMU Acting Mgr. Rodney Bourne** said. The other 11 council members saw nothing wrong with passing a local rate increase *in anticipation* of national legislation that does not yet exist. Probably a first in the annals of both illegal double taxation and in making education a repulsively painful process.

⁸ In the May 1-2, '10 edition of the local paper one of the Rolla West 'visionaries' and a businessman spending \$3 million on a hair styling and dog clipping emporium each declared their personal motto to be "Build it and they will Come." People in this area often confuse movie slogans for actual thinking. It's believed to be due to a rare species of brain chigger indigenous to the Ozarks.

members to get into the transmission business with the small towns they have been signing up for MoPEP membership as Sho-Me dumps their small town customers? The Sho-Me towns on their 'dumpees' list are roughly in the [same quadrant of the state](#)⁹ as this transmission line. Add to that the recent breach of contract lawsuit against the MJMEUC board and **CEO Duncan Kincheloe** (# [10BT-CV00140](#) and [Case No. 1:10CV00023 SNLJ](#)) filed by the cities of [Kennett and Poplar Bluff](#) on 1/20/2010 in Butler Co. circuit court transferred on 2/4/10 to Federal Court board for *double-selling transmission capacity* wholly owned and financed by the plaintiffs, and one has to wonder what MJMEUC is up to now. This and other indicators point to MJMEUC's interest in moving into this lucrative revenue area. MJMEUC's RMU disciples would not hesitate to fall in with any such plan to aid them no matter the cost or risk to Rolla's citizens. We cannot know the answer to that question while the R.W. Beck Master Plan is hidden behind a patently phony terrorism excuse and neither can the PSC.

In addition to endorsing all of Mrs. Hawley's concerns, I add the following questions about the project that need to be investigated before the PSC makes this irrevocable decision:

V. How many 1st liens can one utility project have?

It baffles me how RMU can issue millions in revenue bonds, where the project revenue is pledged to repay the \$17.8 million debt when they have **already given a first lien**¹⁰ **on those same utility revenues in their 2005 contract with MJMEUC/MoPEP**. (see contract pdf page 12, sec. 8.10 and ft. note 5). Was it an accident that the bond underwriters, trustees and eventual purchasers of the revenue bonds for this new issue were not told that RMU's utility revenue assets, which were pledged to repay the \$17.8 million in revenue bonds for this project, were already pledged to MJMEUC/MoPEP? No. A mistake is not possible in this case because the bonds were "processed" by [MJMEUC's straw affiliate](#), the Missouri Association of Municipal Utilities (**MAMU**). It is not plausible that Duncan Kincheloe, the CEO of both MJMEUC and MAMU, who submitted the bid for this project's revenue bond issue did not know that MJMEUC/MoPEP already had a "superior" lien on RMU's utility revenues. Offering false collateral by deliberately concealing prior liens is fraud and investors and the SEC tend to take that very seriously.

Is there also a third "first" lien? In addition to the above double lien on RMU's electric revenues, MJMEUC has also used their MoPEP contracts, containing that blanket lien on RMU's revenues, as collateral for their now \$2.2+ Billion in coal-fired plant investments. The MJMEUC contracts buying stock in **Plum Point, Iatan 2, Prairie Pride, Nebraska City 2, Laddonia**, etc are all "take-or-pay" deals with "step-up" clauses of up to 200%. Several of the [Fitch Ratings reports](#) note that one of MJMEUC's rating "strengths" is based upon their "demonstrated commitment to raising rates necessary to support project construction." Such covenants to "take-or-pay" all costs of the plant in case of financial collapse and/or to "step-up" investment participation up to 200% to replace investors that drop out can only be met with the same electrical revenues that already carry two other "first liens". The co-investors and holders of each of the eight or more investment contracts probably think theirs are the "superior" lien positions.

State Auditor Montee determined in both the [2009 Rolla state audit](#) and the [2010 Marceline state audit](#) that the MJMEUC/MoPEP group may be, according to the GASB definition, a "Joint Venture." Despite the GASB

⁹ Ava, Cabool, Cuba, Houston, Lebanon, Mansfield, Mountain View, Newburg, Richland, Salem, Seymour, St. Robert, Steelville, Sullivan, Waynesville, Willow Springs, Winona.

¹⁰ **Page 12, Sec. 8.10:** "Nothing herein shall limit Pool Member's present or future right to issue bonds, notes or other evidences of indebtedness or incur lease obligations which are payable on a party with operating expenses or payable from revenues after payment of operating expenses; provided, however, Pool Member covenants and agrees that it shall not issue bonds, notes or other evidences of indebtedness or incur lease obligations which are payable from the revenues derived from its electric system superior to the payment of the operating expenses of its electric system."

The Catch 22 is that "the Pool Member's operating expenses" include ALL of MJMEUC's expenses as described in the contract's definitions on page 3 as, "Direct Costs: All costs MJMEUC incurs in connection with acquiring, providing, arranging or financing the provision of Services hereunder, including without limitation all payments MJMEUC is required to make (including reserves and debt service coverages MJMEUC is required to maintain pursuant to any bond indenture, financing lease or loan agreement) under contractual and/or financial commitments and obligations entered into by MJMEUC in order to procure, deliver, or finance resources intended to provide Services, without regard to whether any particular resource is available to or used by any particular Pool Member. Direct costs shall include..."(everything down to the last paper clip including their ongoing investment debt of over \$2.2 Billion and counting)

evidence, Montee's "joint venture-joint liability" explanation has been denied by RMU and MJMEUC¹¹ and, as Montee noted, the MJMEUC/MoPEP liability has never been calculated or explained in their annual audits.¹² It is possible that the RMU-City annual audits the bond trustees and other less suspect agents –i.e. those other than employed by MAMU – had available to use to approve the bond issue contained no information about the "superior lien" by MJMEUC/MoPEP.

RMU is still denying that as part of the MJMEUC/MoPEP consortium they are responsible for [12.3%](#) or [\\$104 Million](#) of the over \$2 Billion in equity debt acquired by MJMEUC/MoPEP in just the last five years in buying ownership in 5 coal-fired power plants in four states so RMU's privately paid auditor is very shy about making any mention of the MoPEP connection in their audits because his clients are in very deep denial and do not want Mrs. Hawley proven to be correct by their own auditor. Bad enough that the state auditor has agreed with her – twice.

VII. RMU's project financing is based upon MJMEUC-MAMU's hidden derivatives, Auction Rate Securities (ARS), rate swaps and some interesting accounts in the Cayman Islands

In addition to their other specious claims of need for enlarged capacity for Rolla and St. James, the PSC should have grave concerns as to whether the financing for this project will hold up given the likely outcome of the current civil case brought by the **Justice Department** against *Goldman Sacks* for their part in the derivative/auction rate securities/rate swapping scams. There is also possible criminal prosecution. It would be irresponsible for the PSC to approve this project based solely on the admittedly speculative assumptions of an engineering firm, while ignoring the more compelling case that the financing instruments for the project which involve derivatives, auction rate securities, floating interest rates and rate swapping scams are fatally flawed and those manipulating the bond money and debt instruments for their own purposes could cause the collapse of the project and default of the bonds.

The revenue bonds for this RMU utility project were bid with variable interest rates and [swaps of the derivatives](#) behind the innocuous sounding lease-purchase contracts. There were only [two bidders](#), **MJMEUC** and **Morgan-Keegan**, the latter a firm that was at that time being investigated by the federal government for bid [rigging!](#) In the MJMEUC-MAMU bid proposal for the project, the bond issue was to be handled by [Wachovia](#) – a failed bank. That was just before the Wachovia offices in St. Louis were [raided](#) by the Missouri Secretary of State and officials representing ten other states including Illinois, Massachusetts, New Jersey, and Pennsylvania.

Typically this is how the MJMEUC-MAMU "Payday Loan" financing system worked. The MAMU pooled revenue bonds for utility projects of their members were sold through MDFB with MAMU taking annual "administrative" fees over the life of the issue. The revenue bonds were set up as variable rate derivatives with interest swaps and traded on the auction rate securities market. The utility member-customer was then set up with a Lease-Purchase agreement with MAMU, which Mr. Duffy mentions on page 10 but he neglected to mention the extremely high-risk financing behind the bonds and the traps in the lease-purchase contracts. The naïve small towns that were gulled into these dangerous financing schemes had no idea what they were doing and were [too embarrassed](#) to ask questions of the 'suits' making the complex sales pitches.

This method has been used for some years by MJMEUC-MAMU and MDFB with the result that several small towns who were gulled into using them to finance diesel generators to provide MoPEP with a "generator farm" have paid millions for diesel generators and still have back-loaded more millions to pay for generators that retail for about \$600,000. The suckered towns know nothing about derivatives and have no idea why they keep owing more no matter how much they pay on their MAMU generator leases.

One of RMU's previous utility [revenue bond issues](#) in 2003, which Mrs. Hawley obtained and exposed to the Rolla City Council and the public watching on local TV, contained more than eleven hidden entities which would each leach fees from the revenue bonds as they passed through the derivative and ARS market. RMU's most recent 2008A revenue bonds a.k.a. lease-purchase contract arranged through "The MAMU Connection" for this project involves a **\$13,737,364** in [Guaranteed Investment Contracts](#) with the ***Bayerische Landesbank***. This

¹¹ When asked about their mounting liabilities from MJMEUC's over \$2 Billion in high-risk acquisitions, Duncan Kincheloe routinely but inanely replies, "**As long as you are a member of MoPEP it is not debt.**" We have yet to figure out what that means.

¹² Unlike Rolla's auditors the auditor's for the City of Owensville were the first to point out in 2007 that their MoPEP contract made them a Joint Venture partner with MJMEUC and other MoPEP members and the resulting share of the debt is many times their annual city budget. Ironically, the Owensville audit is done by the *Rolla firm* of **Verkamp & Malone**.

GIC¹³ has only a BBB rating by Standard and Poor's. A triple B rating is a "Lower Mid Grade" investment instrument only slightly above "Speculative, Non Investment Grade" or "Junk Bond" rating. Not a surprising rating for so-called Guaranteed Investment Contract's which aren't guaranteed at all and which contributed to the collapse of AIG and the whole mortgage/banking market. It explains why the **Bayerische Landesbank** operates out of a drop-box in the **Cayman Islands**.

RMU, MJMEUC and the MAMU officials were furious when Hawley exposed all MJMEUC-MAMU's sordid business partners and RMU's mulish intent to do business with them at the same time there were ongoing federal investigations of the bidders for bid rigging and Wachovia bank and others for ARS fraud. In a fit of childish pique the council ignored all her warnings that they were playing with piranhas and they closed the deal to cut off our noses to spite her.

The explosion of ARS lawsuits against those that have ripped off public entities and private investors with derivative-ARS scams has since reached astronomical proportions. The Jackson County Alabama bankruptcy is the poster child for this derivative con – the exact same system MAMU has used to finance the utility projects of RMU and many of its members for years. The Mo Secretary of State has had to set up a new department to handle just ARS fraud. If nothing else, the PSC should examine the bond documents on this project with the greatest care. *If RMU's financial judgment is so bad they do not have the prudence to avoid a well-publicized national financial scandal then there is no possibility they can successfully make this project cash-flow to repay a back-loaded \$17.8 million debt with a variable rate of interest which is "swapped" at auctions they do not understand, by parties they do not control.*

You should now be able to see why RMU and St. James are extremely spiteful and hostile to Mrs. Hawley and her attempts to protect her fellow rate payers of Rolla and St. James from financial predators; they resent being exposed as the willing marks in MJMEUC/MoPEP/MAMU con games because they were too lazy to read and question the complicated paperwork put before them. Their malicious behavior also comes from the fact that she, a mere woman, could understand such things as derivatives and ARS markets whereas they could not.

VI. Why no Public Notice or Public Hearing on this application and the Secret Terrorist Report?

This application to Transfer Certain Assets of AmerenUE to St. James Municipal Utilities and the Rolla Municipal Utilities (Case No. EO-2010-0263) had *no public notice or public hearing in either Rolla or St. James.* Why was that? With no one locally knowing they had a right and should have had the opportunity to comment on this messed up project it looks as if the requirement for public notice or public hearing on this application is pro forma. That must be why RMU was pouring foundations for the project before the PSC started this review. The message for the rest of us is that PSC requirements for public notice or hearings on this or any other project are just for show and it doesn't really matter if Mrs. Connell forgot to put the notice in the paper or Mr. Gerstenecker of the **Rolla Daily News** forgot to print it or, as he claims, it got lost in his spam filter. The noise they have made in the local paper by publicly bashing Mrs. Hawley for speaking up and delaying the project has obscured their failure to comply with the required public notices no matter how token such PSC notices may be.

VII. Doesn't Mr. Duffy mean the "alleged" assault?

As for Mr. Duffy's libelous account of Mrs. Hawley's still pending prosecution for,

"...a March 19, 2009, assault on an RMU employee who attempted to prevent her from entering a meeting on power supply matters to which she was not invited. The city employee was physically injured by her actions described in the information." -Pg. 16, para 23.

His failure to use the word "alleged" and "allegedly" in context of the charges which have not yet been tried is a crude and unprofessional attempt to prejudice your attitude and discredit what Mrs. Hawley says about this issue. It took considerable pressure for our foot-dragging prosecutor to file charges on such a laughably petty and obviously political matter. No one will be surprised to see her quietly drop the charges after the November election leaving the smear against Hawley intact.

¹³ While RMU's private auditor's, [page 22 of 2009 RMU Audit](#), were willing to go along with RMU's denials about being joint venture partners in MJMEUC/MoPEP's \$2Billion investment debt, nevertheless they were forced to disclose this much in the annual audit about The MAMU Connection: "**Guaranteed Investment Contract.** Rolla Municipal Utilities has funds in a Guaranteed Investment Contract with Bayerische Landesbank Securities, which is rated BBB by Standard and Poor's. These deposits are held in a trust account with United Missouri Bank for the 2008A Missouri Association of Municipal Utilities Lease Program."

The provable facts are these. Mrs. Hawley, a member of Rolla city government, attempted to enter a public building to attend a *MoPEP-RMU public meeting* regarding some extraordinary MoPEP-MISO charges to five cities, Rolla, Owensville, St. James, Farmington and Jackson. RMU has long regarded all their meetings as closed meetings and all RMU business as their private business as is evident from the results of the 2009 state audit, thus their mistake in thinking this meeting was one of their routinely illegal secret meetings about some embarrassing business blunders by MoPEP and RMU that they didn't want the public to know about.

Some citizens and elected officials from the five affected towns were already in the meeting room but when Mrs. Hawley attempted to enter she was blocked and belly-bumped (a repulsive assault indeed) back by RMU employee Dennis Roberts who later claimed *she hurt his wrist*. Mr. Roberts is over 6 ft. and weighs over 260 lbs, Mrs. Hawley is 5' 4", weighs considerably less and is physically handicapped. Roberts claim against her for Workman's Comp was denied by the Workman's Comp physician who said he had *no injury*. Two Owensville councilmen, the Owensville city manager and a reporter attending the public meeting saw the incident. Two of the Owensville officials told the Rolla police that they would testify that she was manhandled by Roberts and denied access to the public meeting. Their first-hand accounts of the incident were the subject of two front page news articles, "[Councilwoman escorted](#)," and "[Owensville critical](#)," and an editorial, "[Something to hide?](#)" by **Dave Marnar**, editor of the *Gasconade County Republican* and one of the persons present at the open RMU/MoPEP MISO meeting. None of the Owensville witnesses have been contacted by the Rolla police for official statements nor have they been deposed by the Phelps County Prosecutor. They wonder why but it's not hard to figure out.

VIII. Conclusion – The bitter irony

If the PSC's decision to permit this project is based solely; on engineering fortune telling as to Rolla's commercial and residential power load growth issued in a "secret" report, on whining that RMU and St. James have already invested millions in the project (before obtaining the necessary approvals - more proof of their poor planning), on sleazy innuendo and character assassination of one of the few people in Rolla with the guts to stand up to RMU and, on other technical issues such as "standing" because, unlike our city we do not have access to our own utility "profits" to hire technicians to address, then a decision in favor of RMU will be flawed, the project may collapse financially and the consequences to the Rolla and St. James ratepayers of a failed \$17.8 million revenue bond debt will be devastating.

If RMU has not allowed *even the PSC* see the entire engineering study how can the PSC possibly know what the real reason is for their claimed need for increase in capacity, whether there is justification for the project and whether it will cash-flow and pay off the debt? Only recently have we learned that St. James will be part of the project and no one knows what the terms of their participation are. This must be more of that secret Plan. If the PSC is wrong about the need for this capacity, wrong about the secret reasons for this project and wrong to assume that there is nothing to examine in the obviously over-pledged collateral, the discredited derivative revenue bonds financing the project and the liability buried behind the benign-seeming MAMU lease-purchase, the *two towns that will suffer for their mistake are towns the PSC does not regulate and cannot protect!*

Two state auditors have provided ample proof that the RMU board cannot prudently run even a small rural utility department where they have an absolute monopoly have never had to be competitive and have no oversight or regulation. Will the city council protect the rate payers of Rolla? Absolutely not! By ordinance the city takes 5% off the top of ALL gross revenues of the utility department including money donated for charity for the poor! The more RMU abuses the citizens of Rolla, i.e. raises utility rates to pay for their amateurish utility management and their indentured servitude to MoPEP, the richer the city's treasury becomes and the happier the city's politicians are. The Rolla and St. James governments are not protectors of their citizens - the PILOT fees make them predators of their citizens.

If this project is managed in as sloppy a fashion as the other contracts RMU has signed with MJMEUC and MAMU and if the RMU board continues their unquestioning adulation of all things "Mitch-Muck" then their ability to repay this - the biggest debt in Rolla's history - will come down to doing what they have been doing since 2006, dumping their mistakes in judgment on the already overcharged citizens and rate payers of Rolla who have NO PUBLIC SERVICE COMMISSION TO PROTECT THEM from being victimized by the RMU board and their secret Master Plan.

To have the PSC, the regulatory agency that *has never protected us* from rate exploitation in the past, abandon us to the extreme rate abuse that may arise from *this PSC decision* - that will be the most bitter irony of all.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certified that a true and correct copy of the foregoing document was sent by electronic mail on May 12, 2010, to the following:

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