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	)))	**File No. ER-2022-0337**

STAFF RESPONSE TO MOTION TO STRIKE PORTIONS OF SURREBUTTAL TESTIMONY OF CLAIRE M. EUBANKS AND KEITH MAJORS, AND ALTERNATIVE MOTION FOR LEAVE TO FILE SUR-SURREBUTTAL TESTIMONY, AND MOTION FOR EXPEDITED TREATMENT

COMES NOW Staff of the Missouri Public Service Commission, and for its Response to the Motion to Strike Portions of Surrebuttal Testimony of Claire M. Eubanks and Keith Majors, and Alternative Motion for Leave to File Sur-Surrebuttal Testimony, and Motion for Expedited Treatment ("Motion") filed herein by Union Electric Company d/b/a Ameren Missouri ("Company" or "Ameren Missouri") on March 20, 2023, respectfully states as follows:

1. On March 21, 2023, the Commission issued an *Order Shortening Time for Responses* ("Order") in this matter, which ordered in part that "Staff shall file a response to Ameren Missouri's motion to strike no later than 12:00 p.m., March 24, 2023." Ameren Missouri's Motion is so misleading and so replete with mischaracterizations of Staff's filed testimony, Staff could have spent several more days preparing this Response.[1] However, this Response will address the Motion as best it can.

2. It should be noted at the outset that the basis or grounds for Ameren Missouri's Motion is not entirely clear. Therefore, this Response will address (and refute) the point(s) Staff believes may be the grounds for the Motion.

[1] Ameren Missouri took seven days to prepare and file its Motion, compared to the less than three days afforded Staff to respond.

3. The topic of Rush Island prudence was not newly introduced into this case by Staff in its surrebuttal testimony. In fact, the *direct testimony* of at least *four Ameren Missouri witnesses* (Birk, Holmstead, Moor, and Michels) specifically, and in great detail, address this very issue. For example, the direct testimony of Ameren Missouri witness Mark Birk contains an entire section titled "The Prudence of the Company's Actions" which begins with the question

> Rush Island was the Company's newest coal-fired generating plant and according to the Company's 2020 IRP, it was not planned for retirement until 2039. If someone were to claim that the Company's actions were imprudent and have led to a premature retirement that is harmful to customers, would you agree?

For further example, the cover sheet of Company witness Karl R. Moor's direct testimony states "Issue(s): Rush Island Prudence," indicating that the only substantive issue addressed by his 88 pages (with attachments) of direct testimony is Rush Island Prudence. Likewise, the cover sheet of Company witness Jeffrey R. Holmstead's direct testimony states "Issue(s): Rush Island Prudence," indicating that the only substantive issue addressed by his 76 pages (with attachments) of direct testimony is Rush Island Prudence.

Company witnesses also address the matter of Rush Island prudence in rebuttal testimony (Meyer and Reed, which will be further addressed later herein) and in surrebuttal testimony (Holmstead and Moor). Any implication in Ameren Missouri's Motion that the topic of Rush Island prudence was somehow a surprise to the Company, i.e., newly introduced into this case by Staff in its surrebuttal testimony, is simply wrong.

4. The Company had ample opportunity to address Rush Island prudence – and did, in fact, address it – in the Company's pre-filed testimony.[2] In paragraph 6 of its Motion, Ameren Missouri makes the claim that "*The Company's rebuttal testimony in response to Staff's proposed Rush Island adjustment did not address the question of prudence* but instead, addressed why Staff's position that a mere reduction in generation as compared to Staff's claimed "normal" did not render Rush Island (or some part of it) not used and useful." (Emphasis added) However, the truth of the matter is that the rebuttal testimony of Company witness John Reed contains an entire section on "The Prudence Standard." Furthermore, in another section of his rebuttal testimony titled simply "Rush Island," Mr. Reed states his opinion that "There is no ratemaking basis for disallowing plant costs for a plant that fully satisfies the used and useful standard, is still fully available to meet system needs, *and has not been shown to have had any* ***imprudently*** *incurred costs*." (Emphasis added) How Ameren Missouri can claim in its Motion that its rebuttal testimony did not address the question of Rush Island prudence is insupportable.

In addition to addressing Rush Island prudence in its rebuttal testimony – contrary to the claims in its Motion – the Company also addressed Rush Island prudence in its surrebuttal testimony. The surrebuttal testimony of Company witness Karl Moor contains the following on page 7:

> Q. In addition to your views about the flawed approach Staff take [sic] in its approach to *prudence*, are there specific factual errors Staff makes?

[2] As stated above, the Company addressed Rush Island prudence in direct testimony.

> A. Yes. I have noted three major flaws in Staff's attempt to demonstrate *imprudence*. First, I disagree with the Staff that Ameren Missouri's awareness of the enforcement initiative meant that Ameren Missouri was *imprudent* for not seeking permits for its projects. . . . (Emphasis added)

And on the very next page of his surrebuttal testimony (page 8) Mr. Moor begins with the question "Q. Let's take these one by one. Is Staff correct that knowledge of the enforcement initiative meant that Ameren Missouri was imprudent for not seeking permits for its projects?"

The surrebuttal testimony of Company witness Jeffrey Holmstead also addresses his opinion on whether Ameren Missouri acted reasonably (i.e., prudently) in failing to obtain the necessary permits (see, for example, page 2).

The Company clearly had ample opportunity to address Rush Island prudence – *and did, in fact, address it* – in the Company's pre-filed testimony, *including in its surrebuttal testimony*. Company's Motion should be recognized for what it is – an eleventh hour attempt to "get the last word."

5. Staff did not change its position regarding Rush Island in surrebuttal testimony, and Staff's testimony is proper surrebuttal testimony. Company's Motion seeks to strike certain lines found on page 9 of Ms. Eubanks' surrebuttal testimony. However, when read completely and in context, this testimony of Ms. Eubanks is responding directly to rebuttal testimony of Company witness Mr. Reed and is unquestionably proper surrebuttal testimony:

> Q. Further on page 13, Mr. Reed dips into hyperbole. He states that the adoption of his so-called economic used and useful standard "could go so far as to inappropriately permit cost disallowances whenever load unexpectedly changed, or fuel prices unexpectedly changed, or even when environmental or tax policies unexpectedly changed,…" Is this what Staff's position is?

A. No. Staff is not contemplating any type of cost disallowance for these types of events. Generally speaking, those items are out of the control of the utility and thus would not be subject to any disallowance. However, if the utility made decisions after a facility was already included in rates that caused costs to be imprudent, then those decisions have to be reviewed to ensure that they were not detrimental to the ratepayers. The regulatory compact does not work if the game is "heads the utility wins, tails the ratepayers lose." Every and all decisions that the utility management makes must be subject to scrutiny by the regulator to ensure that all costs that the captive ratepayers must pay are just and reasonable. Under Mr. Reed's argument, the utility would always be shielded from its decisions. In Mr. Reed's own words, this is an asymmetrical, unpredictable, and unquantifiable risk on ratepayers and is inefficient and highly inequitable.

The foregoing contains no change in Staff's position or reasoning. In fact, later on that same page (and continuing on to page 10), Ms. Eubanks' surrebuttal testimony states the following:

Q. Please summarize Staff's position on Rush Island.

A. Ameren Missouri's decisions have left its customers in limbo – unable to retire Rush Island now because Ameren Missouri failed to prepare for its premature retirement – and unable to continue to rely on Rush Island as they have in the past except when the MISO system needs it most. Ameren Missouri is requesting the Commission set rates and allow recovery of and on the full remaining balance of Rush Island rate base – a plant whose dispatch is drastically altered - and has attempted to justify its positon by presenting arguments the Eastern District Court rejected and the Court of Appeals upheld. *Staff is reasonably recommending to the Commission that Ameren Missouri customers continue to pay a portion of the rate base of Rush Island and a reasonable rate of return – just not the full cost – until a further decision is made by the Commission in a future securitization case.* (Emphasis added)

The italicized portion of the above quotation, containing Staff's recommendation, is precisely the same as it has been throughout this case. In addition, it should be noted that in her *rebuttal* testimony, at page 4, Ms. Eubanks testified as follows:

Q. Based on the above discussion, do you agree with Ameren witness Birk that Ameren Missouri made prudent decisions related to the 2007 and 2010 outages?

A. No. . . .

For Ameren Missouri to claim in its Motion that Ms. Eubanks changed her position or added a justification for her position in her surrebuttal testimony is nonsensical. Ms. Eubanks' surrebuttal testimony is proper surrebuttal testimony and the Commission should not strike it.

Company's Motion also seeks to strike two portions of the surrebuttal testimony of Staff witness Keith Majors. As for the first portion of Mr. Majors' testimony which the Company seeks to strike, the testimony is directly addressing a section of Mr. Reed's rebuttal testimony titled "The Prudence Standard." The Motion also claims that this testimony of Mr. Reed is somehow limited to a different issue, and Mr. Majors' Rush Island testimony is therefore not responsive to this testimony of Mr. Reed. However, a review of the Reed testimony itself reveals that it contains no such limitation. In addition, Mr. Reed's rebuttal testimony contains a section on Rush Island, and in that section on page 24 he claims that "There is no ratemaking basis for disallowing plant costs for a plant that . . . has not been shown to have had any *imprudently* incurred costs." (Emphasis added) Mr. Reed therefore connects Rush Island and the prudence concept.

As for the second portion of Mr. Majors' testimony which the Company seeks to strike, the Motion gives no real reason to strike it, other than perhaps its worn out claim that Staff has somehow changed its position in surrebuttal – which claim has already been addressed and refuted. Mr. Majors' surrebuttal testimony is proper surrebuttal testimony and the Commission should not strike it.

6. In addition to seeking to strike the testimony referenced above, the Company's Motion also asks that the Commission "prohibit Staff from claiming via

cross-examination, redirect, or argument, that its Rush Island rate base adjustment is, in whole or in part, justified by any claimed imprudence on the Company's part." Just as the Company's request to strike testimony should be denied, this request of the Company should likewise be denied. As Mr. Majors stated in his surrebuttal testimony on page 12, while Staff witness Eubanks makes clear that she is not proposing her Rush Island adjustment on the grounds of prudence, this does *not* equate to an affirmative endorsement of the prudence of Ameren Missouri's decision making. Although Staff may not be proposing its Rush Island adjustment on the grounds of prudence, that does not mean that the adjustment would not be justified on that ground as well. Staff should not be prohibited from arguing about or addressing the issue of Rush Island prudence in the event that it comes up, particularly when the Company has addressed the issue in every round of its filed testimony and the issue has in essence already been decided by a federal court.

7. Finally, the Company's Motion seeks in the alternative to file sur-surrebuttal testimony in order to get one last bite at the apple. However, as discussed at some length above, the Company's claimed "surprise" at the issue does not fit with the facts. The Company addressed the issue in every round of testimony, including direct and surrebuttal. They have already had every opportunity to address Rush Island prudence which they are due, and should not get more.

WHEREFORE, Staff submits this Response to the Motion to Strike Portions of Surrebuttal Testimony of Claire M. Eubanks and Keith Majors, and Alternative Motion for Leave to File Sur-Surrebuttal Testimony, and Motion for Expedited Treatment filed herein by Ameren Missouri as directed by the Commission's *Order Shortening Time for*

Responses and prays that the Commission issue an order denying Ameren Missouri's motion in its entirety, and for such other and further orders as the Commission deems just and reasonable.

Respectfully submitted,

/s/ Jeffrey A. Keevil
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 24th day of March, 2023.

/s/ Jeffrey A. Keevil