

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

In the Matter of the Application of Union Electric)
Company d/b/a Ameren Missouri for Permission and)
Approval and a Certificate of Public Convenience and)
Necessity Authorizing it to Construct a Wind Generation)
Facility.)
EA-2018-0202

MOTION FOR PROTECTIVE ORDER

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Company" or "Ameren Missouri"), and pursuant to 4 CSR 240-2.135(4) requests issuance by the Missouri Public Service Commission ("Commission") of a protective order as outlined herein. In support of its request, Ameren Missouri states as follows:

1. Under 4 CSR 240-2.135(6), absent a specific order issued under 4 CSR 240-2.135(4), information defined as "Confidential" by 4 CSR 240-2.135(2)(A) is available to the attorneys of record for a party in the Commission case at issue *and* to employees of a party if those employees are working as subject-matter experts for the attorneys or intend to file testimony upon a filing by such an employee of the certification required by 4 CSR 240-2.135(7).

2. For reasons similar to those recognized by the Commission in other cases where commercially-sensitive information regarding wind generation was at issue,¹ there is certain information in the Company's direct case filing, and information that may, or likely will, be the subject of discovery requests that should not be available to employees of any non-state agency entities not covered by statutory confidentiality requirements who may become parties to this

¹ File No. EA-2016-0358 (Grain Belt Express); EO-2018-0092 (Empire Customer Savings Plan).

case.² Consequently, the Company seeks a protective order allowing it to designate such information as "Highly Confidential" under 4 CSR 240-2.135(4).

3. Information that should be designated as Highly Confidential includes the negotiated terms and conditions of the Build Transfer Agreement (and documents reflecting such terms and conditions) attached to the Direct Testimony of Company witness Ajay K. Arora (the "BTA Terms"); cost and pricing information and the BTA Terms reflected in Mr. Arora's Direct Testimony; the terms and conditions of supply and maintenance agreements (and documents reflecting such terms and conditions) with the wind turbine generator supplier and with other contractors who will construct the wind and transmission-related assets covered by the Build Transfer Agreement (the "Supplier Terms"); and responses (and documents reflecting responses) to the Company's wind generation Request for Proposal ("RFP"). To the extent such information is contained in the Company's direct case filing, it has been designated as Highly Confidential. If additional information falling within these categories is to be produced in discovery or in later-filed testimony, or other evidence to be presented in this case, it will likewise be designated as Highly Confidential.

4. Highly Confidential protection for these materials is needed for several reasons. First, the Company continues to engage in negotiations with other wind developers for additional wind generation resources needed for Renewable Energy Standard ("RES") compliance. The Company may, in the near-term or later, engage in such discussions for wind generation needed for other purposes. The Company and each developer as a routine course enter a non-disclosure agreement to ensure that proprietary and competitively sensitive information is not disclosed. It would be harmful to the Company and ultimately its customers if the pricing, terms, and

² Employees of the Commission, the Office of the Public Counsel, and the Division of Energy are all covered by statutes protecting the confidentiality of information submitted to the Commission by utilities.

conditions negotiated for the project that is the subject of this application were known to other potential counterparties. It could also potentially be harmful to other Missouri electric utilities and their customers for the same reasons.

5. The Company also continues to engage in negotiations with turbine suppliers and other contractors related to such potential wind generation projects. The Company and the suppliers may be subject to confidentiality obligations with respect to each other's information, particularly as to costs and pricing. It would be harmful to the Company and ultimately its customers if confidentiality concerns have a chilling effect on future negotiations with such parties.

6. The interests of the wind developers, turbine and other suppliers themselves could also be harmed due to the highly sensitive and competitive nature of their costs and pricing. This is why the Supplier Terms contain confidentiality provisions and the Company's RFP (as is typical of RFP's of this type) contains the Company's agreement to maintain the confidentiality of the RFP responses.

7. 4 CSR 240-2.135(4) is in keeping with Missouri Supreme Court Rule 56.01(c), which provides that protective orders may be issued "... to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including ... that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way ..."

8. Granting this protective order will prevent access to competitively sensitive information that could work to the disadvantage of counterparties to other wind generation negotiations. The information will still be disclosed to attorneys of record for all parties to the case, to any state agency parties and their employees covered by statutory confidentiality

requirements, and to designated outside experts of any non-state agency party. The information for which Highly Confidential treatment is sought cannot be found in any other public document.

9. Attached to this motion is the disclosure form utilized by the Commission in Ameren Missouri's pending IRP docket (File No. EO-2018-0038). For the reasons outlined by the Company in that docket (see Ameren Missouri's Response to Applications to Intervene and Request for Utilization of Certification Form),³ the Commission ordered use of this more specific form because of the changes made to 4 CSR 240-2.135. See *Order Granting Applications to Intervene and Directing Use of Compliance Form*.⁴ For those same reasons, similar issues could arise in this docket depending on what parties may seek and be granted intervention. Consequently, the Company requests that the Commission direct use of that same form (marked as Exhibit A hereto) in this docket for those persons who will be authorized to access "confidential" information. That form, however, needs to be modified for those persons who, under the terms of the protective order requested hereby, can access "highly confidential" information. Consequently, the Company requests that the Commission direct use of a modified form (marked as Exhibit B hereto) in this docket for those persons who will be authorized to access "highly confidential" information.

10. Under 4 CSR 240-2.135(10), "confidential" information is to be denoted as follows: ****confidential information****. Because Ameren Missouri is filing both "confidential" and "highly confidential" information, Ameren Missouri has utilized three asterisks to denote "highly confidential" information, as follows: *****highly confidential information*****.

³ File No. EO-2018-0038, EFIS Item No. 23.

⁴ File No. EO-2018-0038, EFIS Item No. 28 (Where the Commission issued the following order: "Any employee of a party or outside expert retained by a party required to submit a certification pursuant to Commission Rule 4 CSR 240-2.135(7) before accessing confidential information shall submit the Nondisclosure Agreement form attached to this order."). The Company also suggests the Commission take steps to adopt this more specific form for use in all cases.

WHEREFORE, Ameren Missouri respectfully prays that the Commission issue the protective order requested herein and direct use of the Non-Disclosure Agreement forms attached hereto.

Respectfully submitted,

/s/ Wendy K. Tatro

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**ATTORNEYS FOR UNION ELECTRIC
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CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing was served on the Staff of the Missouri Public Service Commission and the Office of the Public Counsel via electronic mail (e-mail) on this 21st day of May, 2018.

/s/ Wendy K. Tatro
Wendy K. Tatro