

**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-2021-0240**

STAFF STATEMENT OF DISCOVERY DISAGREEMENT OR CONCERN

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its Statement of Discovery Disagreement or Concern (“Statement”) states as follows:

1. On June 9, 2021, the Commission issued an Order Setting Procedural Schedule and Adopting Test Year (“Order”). The Order set a Discovery Conference for August 24, 2021.

2. The Order also provided in paragraph 2(o) that:

Not less than two business days before each discovery conference, any party that has a discovery disagreement or concern involving another party shall file a brief statement describing that disagreement or concern and identifying any other parties involved. Such statement does not need to be a formal motion to compel. Any party may attend a discovery conference, but only those parties involved in an identified discovery disagreement must attend. If the parties do not identify any discovery disagreements or concerns as described herein, the presiding officer may cancel the conference.

3. Staff files this Statement to provide the Commission with the current status of discovery and to identify certain discovery disagreements or concerns regarding Union Electric Company d/b/a Ameren Missouri’s (“Ameren Missouri”) responses (or lack thereof) to certain discovery requests submitted by Staff, as follows.

I. Status Report

4. To date, Staff has issued 766 Data Requests (DRs). Including follow-up DRs, Staff has issued approximately 843 DRs. Of those DRs, Ameren has filed 1,110 objections, responses, and supplemental responses. For those DRs to which Ameren has responded in a timely and complete fashion, and for those which Ameren has raised objections but nevertheless worked with Staff to provide sufficiently responsive information, Staff is appreciative.

5. However, Staff is concerned about the timeliness and responsiveness to several DRs that are crucial to preparation of its Cost of Service Direct Testimony currently due on Friday, September 3, 2021, and its Class Cost of Service Direct Testimony due on Friday, September 17, 2021. In the June 22, 2021, Discovery Conference, the Regulatory Law Judge stated that “I certainly want to avoid having surrebuttal testimony filed in this case or any other case that says, well we would like[] to have known this from Ameren but they would not tell us.”¹ Unless Ameren prepares complete and timely responses for the issues and specific DRs listed below, there is a very real possibility that Staff’s Direct Testimony—and even Staff’s Rebuttal Testimony—in this case will in fact state that Staff would like to have certain information from Ameren but Ameren will not tell Staff.

6. Staff and Ameren have been making progress on the following DRs, but Staff may raise concerns at the Discovery Conference to the extent any concerns remain on August 24:²

¹ Tr. Jun. 22, 2021 at 40:16-19.

² These DRs or responses are located at Attachment 1 to this filing.

- a. 102.7 - Staff and Ameren are working on supplemental information in response to this DR.
- b. 104.9 - Staff and Ameren are working on supplemental information in response to this DR.
- c. 591.2 - The response appears to be erroneous. Dollar amounts are not what are expected. Staff will work with Ameren.

II. Request for Clarification That Data Requests for Specific Information in a Rate Case Involving a \$3 billion annual revenue requirement are not unduly burdensome or oppressive

7. As stated above, Staff has issued approximately 843 DRs and follow up DRs. Ameren has raised a conclusory and blanket objection to 82 of those DRs as “burdensome.” Based on those objections, Ameren has either failed to respond, responded with incomplete information, or responded with merely summary information instead of the actual details that Staff needs to properly analyze Ameren’s request for an annual revenue requirement of more than \$3 billion.

8. As stated herein, Staff is seeking general clarification in this discovery conference that Staff’s targeted data requests, with a twenty-day response time (with additional time granted as necessary), are not unduly burdensome to a regulated electric utility with thousands of employees and billions in annual revenue that is seeking a rate increase of \$299 million per year from its ratepayers in a rate case that is time-limited by statute to a timeline of less than eleven months.

9. Additionally, as stated below, Staff is seeking specific clarification that Staff's requests for specific data, for example the cost-benefit analyses that Ameren has thus far failed and refused to provide with regards to the more than \$2 billion spent since 2019 on a Smart Energy Plan, are relevant and not unduly burdensome or oppressive.³

10. Commission rules allow discovery "under the same conditions as in civil actions in the circuit court."⁴ Missouri's civil rules provide that "[p]arties may obtain discovery regarding any matter ... provided the discovery is proportional to the needs of the case considering the totality of the circumstances, including but not limited to, the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expenses of the proposed discovery outweighs its likely benefit."⁵ Under these factors, none of Staff's requests are overly burdensome.

11. *First Factor: Importance of the issues at stake.* Ameren Missouri seeks to set new rates in this case. Those new rates take effect by operation of law if the Commission does not issue an order after hearing by April 30, 2022. New rates ordered by the Commission will be in effect, and Ameren Missouri must charge those rates and only those rates, until new rates are established in a subsequent rate case. Therefore, this rate case represents the parties' only chance for the foreseeable future to set just and reasonable rates based on competent and substantial evidence on the whole record

³ Staff has cooperated with Ameren where DRs seek voluminous information, especially where they would require consultation from third parties. For example, on DR 153.4, Ameren's response would have required Ameren to consult with EPRI for hundreds of documents. Staff cooperated with Ameren by identifying 13 sample documents to review, and the response and process for that DR is ongoing.

⁴ 20 CSR 4240-2.090(1).

⁵ Mo. R. Civ. P. 56.01(b)(1).5. This rule, which takes effect September 2, 2021, merely codifies a virtually identical proportionality rule passed and signed by the Governor in Senate Bill 224 in 2019.

before the Commission. Obtaining timely discovery is a necessary step in ensuring that the new rates will be just and reasonable and based on competent and substantial evidence.

12. *Second Factor: Amount in controversy.* In these cases, Ameren seeks an annual revenue requirement for its electrical operations of \$3.2 billion. That is an 11.97% annual increase of \$299 million. Compared to the Missouri Lawyers Weekly database of verdicts and settlements, only 18 cases in the last 15 years in any state or federal court have exceeded the \$299 million figure and only 3 have exceeded the \$3.2 billion figure.⁶ Simply put, Ameren is seeking rate increases from its ratepayers in this case in an amount that only a very few exceptional cases can match. Looking to the amount in controversy here, the bar must be set extremely high to disallow any discovery as “burdensome.”

13. *Third Factor: Parties’ relative access to relevant information.* Ameren Missouri is seeking a significant rate increase based on factors within its control. For example, several years ago Ameren announced a “Smart Energy Plan,” comprising of 2,929 individual projects going into service between January 2019 and February 2021. Under that plan, Ameren has spent \$2.2 billion, or an average of over \$700,000 per project. With regards to electric plant needed to serve customers and customer data, only Ameren has the information needed by Staff to design and recommend rates that are just and reasonable and not unduly preferential or discriminatory.

14. *Fourth Factor: Parties’ resources.* As of June 30, 2021, Ameren Missouri has 3,999 full time contract and management employees, and Ameren Services has 1,877 employees with approximately 48.45% of those employees’ time allocated to

⁶ Available at <https://verdicts.molawyersmedia.com/vands.cfm?action=search> (last visited August 18, 2021).

Ameren Missouri. According to Ameren's most recent SEC 10-Q statement of income filing with the SEC on August 6, 2021, Ameren Missouri earned \$1.43 billion in electric revenues in the six months ending June 30, 2021. Together with its gas division, in the in the six months ending June 30, 2021, it has earned \$155 million before taxes. In summary, Ameren has the resources to respond to discovery in a timely fashion; it simply has not sufficiently prioritized timely and complete responses to certain Staff's DRs during the pendency of this case.

15. *Fifth Factor: Importance of the discovery in resolving the issues.*

As discussed in more detail below, Staff's DRs are targeted at specific items that Staff has decided are important to setting just and reasonable rates going forward. This includes data regarding Ameren's Smart Energy Plan, which involves more than \$2 billion in capital expenditures since 2019, and specific data about electric that is necessary in designing rates to allocate costs among customer classes in a manner that is just and reasonable and not unduly preferential or discriminatory.

III. Specific Data Requests

A. Ameren must produce the cost-benefit analyses related to its \$2.2 Billion in capital expenditures for its Smart Energy Plan (DRs 611, 612, and 612.1, 102.5, 102.6, 664 and 665).

16. Ameren's Smart Energy Plan is a centerpiece of its rate case.⁷ Between January 2019 and February 2021, Ameren spent more than \$2.2 Billion on its Smart Energy Plan. A key issue in this case is whether and to what extent inclusion of those \$2.2 Billion in capital expenditures would result in just and reasonable rates.

17. Any cost-benefit analysis performed by Ameren to show that what benefits are provided to ratepayers in exchange for the \$2.2 Billion in expenditures is highly relevant to the question of establishing just and reasonable rates in this case. Ameren should have reasonably expected that any cost-benefit analysis would be highly relevant, and should have prepared in advance its cost-benefit analyses to share in response to any DR.

18. Instead, when Staff requested those cost-benefit analyses in DRs 611 and 612 on June 17, Ameren requested additional time to respond, citing the reason that "we just can't answer this level of detail about this many projects across this many areas of the company in the time that they would prefer that we answer them."⁸ Despite Ameren's representations about the "level of detail" needed to respond to DR 611 and 612, Ameren ultimately provided only three paragraphs of text purporting to explain Ameren's process for identifying and choosing projects.⁹

⁷ Counsel Filing Letter (EFIS No. 2, Mar. 31, 2021) ("The rate increase sought by this filing is drive by several factors. These include investments in the Ameren Missouri system as part of its Smart Energy Plan ("SEP")....").

⁸ Tr. Jul. 20, 2021 at 64:23-65:3.

⁹ Attachment 2 at 8.

19. DRs 611 and 612 ask for Ameren's cost benefit analyses.¹⁰ Ameren responded with three generic paragraphs about how Ameren's review process purportedly works. Ameren's response is patently insufficient and non-responsive.

20. Additionally, Ameren has never stated that no cost benefit analysis was performed, in response to DR 611.¹¹

21. When Staff followed up with Ameren on DRs 611 and 612, counsel for Ameren asked Staff to re-submit new DRs asking for the cost benefit analyses it already requested.¹² While Staff has issued a follow up in DR 612.1, there is no reason for Ameren to continue to refuse to provide a complete response to DRs 611 and 612.

22. In summary, Staff asked for cost-benefit analyses for Ameren's \$2.2 Billion in capital expenditures. Ameren must produce them. The analyses are highly relevant to assessing whether and to what extent the \$2.2 Billion in capital projects that comprise Ameren's Smart Energy Plan will result in just and reasonable rates.

23. Other examples of Smart Energy Plan DRs for which Staff is missing information include the following:

- a. 102.5 - Ameren response says "Due to the volume of jobs funded by these standing work orders, a breakout of assets, customers, rate schedule, voltage, and CIAC payments is not available."¹³ Ameren initially indicated details about the Smart Energy Plan would be provided in a high level of detail. This response provides almost no detail.

¹⁰ *Id.*

¹¹ Attachment 2 at 8.

¹² Attachment 2 at 6-7.

¹³ Attachment 2 at 1.

- b. 102.6 - Ameren response says “Due to the volume of jobs funded by these standing work orders, a breakout of assets, customers, rate schedule, voltage, and CIAC payments is not available.”¹⁴ Ameren initially indicated details about the Smart Energy Plan would be provided in a high level of detail. This response provides almost no detail.
- c. 664 - The response to this DR lacks sufficient detail.¹⁵ Ameren initially indicated details about the Smart Energy Plan would be provided in a high level of detail. This response does not provide the level of detail requested.
- d. 665 - Ameren response says Grid Resiliency means “almost any asset within the distribution and transmission systems has an impact on grid resiliency.”¹⁶ Ameren initially indicated details about the Smart Energy Plan would be provided in a high level of detail. This response provides almost no detail.

B. Staff is concerned about the efforts taken to find information responsive to the following DRs (489):

24. 489 - Staff asked the location of certain equipment.¹⁷ For example, one item is a \$4 million switch. Staff wants to know whether reasonable efforts were undertaken to find the location of a \$4 million piece of equipment to respond to the DR.

¹⁴ Attachment 2 at 2 (the confidential attachment to this DR is not attached to this filing).

¹⁵ Attachment 2 at 10.

¹⁶ Attachment 2 at 11.

¹⁷ Attachment 3.

C. Staff has received no response to the following DRs (716 and 718):

25. 716 - This DR was issued in an attempt to better understand where and how Ameren stores its system and customer data in order to avoid future discovery disputes.¹⁸ Standard disclosure of the location of documents, including electronically stored information, is standard discovery practice and makes discovery a more productive, efficient, and less contentious process.¹⁹ Regardless of the outcome of this DR, Staff wishes for an instruction to Ameren to better cooperate with Staff in locating responsive information needed for Staff's analysis in this case.

26. 718 - No response as of 8/19.²⁰

D. Responses to the following DRs are incomplete or unresponsive (104.6, 533, 592, 615, and 681):

27. 104.6 - Staff requested the number of conductors associated with each circuit, and, if known, the type of conductor in use on each circuit by the name under which it is recorded in the continuing property record.²¹ Determining the voltage at which distribution assets as recorded in the company's plant records is necessary to allocate those costs to customers who take service at different voltage levels. Ameren in DR 104.2 provided information about various circuits, including the voltage at which each operates, and the end-to-end length of each circuit. However, circuits have multiple bare wire conductors or one or more bundled cable conductors. The continuing property record identifies the assets owned by the company and the level of investment associated with each asset in each account. Identification of the number of conductors on a given circuit – especially if it is identified whether the conductor is a cable or a wire, and the

¹⁸ Attachment 4.

¹⁹ See, e.g., Fed. R. Civ. P. 26(a)(1)(B) and comments.

²⁰ Attachment 4.

²¹ Attachment 5 at 1.

retirement unit name of the conductor – allows for accurate assignment of the assets recorded in Accounts 365 and 367, as opposed to an allocation which is less accurate than assignment.

28. 533 - Staff requested identification of what voltage of distribution infrastructure would be typically installed by the company across a range of scenarios with identification of the assets by account and approximate cost associated with each.²² Ameren did make available personnel for a brief discussion on August 11. Staff has clarified that it will accept any guidance on the relative cost and involved assets of running a mile (or other applicable measure) of distribution circuit at each major voltage level, and any guidance on the relative cost and involved assets of connecting a customer at each major voltage level to the distribution system. This information may be used by Staff in lieu of the information requested in DRs 104 and 105 which Ameren has been unable to provide.

29. 592 – Staff requested peak demand as required under Paragraph 41.a. of a 2019 stipulation.²³ Ameren provide average demand by class. Average demand by class is not peak demand. Paragraph 41.a. of the 2019 Stipulation provides in relevant part, “Upon request by Staff, the Company [Ameren] shall make available determinants associated with the potential creation of a coincident peak demand charge for all classes.”²⁴ In addition, Staff requested the information “with and without applicable metering or voltage adjustments” consistent with paragraph 41 of the same stipulation. The response to DR 592 does not provide information by rate schedule with and without

²² Attachment 5 at 2.

²³ Attachment 5 at 2-6.

²⁴ Attachment 5 at 11-12 (Docket ER-2019-0335 EFIS No. 248) (only the relevant pages of the stipulation have been included in Attachment 5).

applicable metering or voltage adjustments. That stipulation provided in relevant part that, “Data shall be made available in the form of hourly usage per customer and aggregate hourly usage by rate schedule *with and without applicable metering or voltage adjustments.*”²⁵ (emphasis added).

30. 615 - Staff asked for ranges. Ameren’s response says only that there is no typical installation.²⁶

31. 681 - The information provided is not responsive. This DR requests the average number of customers, by month, taking service on all possible permutations of rate schedules and voltages billed and served....”²⁷ In the July 20 discovery conference, Ameren stated that

MR. LOWERY: Judge, I think we intend to answer this question and think we’ll have an answer soon, as in it could be today or tomorrow. But Mr. Hickman, if I’m misstating, please correct me.”

MR. HICKMAN: No. I believe that to be the case.

(Tr. Vol. 2 78:14-79:2).

Moreover, Ameren has objected to specific requests for this customer information.²⁸

WHEREFORE, Staff submits this Statement of Discovery Disagreement or Concern in advance of the Discovery Conference scheduled for August 24, 2021.

²⁵ Attachment 5 at 11-12.

²⁶ Attachment 5 at 18.

²⁷ Attachment 5 at 20-21.

²⁸ Attachment 5 at 19.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, to all counsels of record as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 20th day of August, 2021.

/s/ Curt Stokes

Curt Stokes