

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

In the Matter of the Requests for Customer)
Account Data Production.) File No. EO-2024-0002

**AMEREN MISSOURI'S REPLY TO STAFF'S OBJECTION TO
ITS APPLICATION TO INTERVENE**

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), and replies to Staff’s objection to the Company’s *Application to Intervene* as follows:

Procedural Background

1. On June 30, 2023, Evergy Metro, Inc. d/b/a Evergy Missouri Metro (“EMM”) and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (“EMW”) (collectively, “Evergy”) filed its *Motion to Establish Docket for Further Consideration of Data Production* (“*Evergy’s Motion*”).

2. On July 6, 2023, the Commission issued the *Order* directing “[a]ny person wishing to intervene in this matter [to] file an application to intervene no later than July 27, 2023.” *Order*, at ordering paragraph 7.

3. Ameren Missouri timely filed its *Application to Intervene* on July 7, 2023.

4. On July 12, 2023, Staff filed its *Objection* to the Company’s *Application to Intervene*.

Reply

5. Staff’s *Objection* should be overruled and/or denied.

6. As an initial point, at this early stage of the above-captioned matter, it is unclear what structure this EO case is going to take and all issues that will be discussed and/or decided upon. Therefore, Ameren Missouri’s interest was appropriately described more generally in its *Application to Intervene*.

7. Staff's distinction between parts A (as interventions of right) and B (as permissible interventions) of Rule 20 CSR 4240-2.075 is confusing and suggests that Staff may misread the *Matter of Missouri-Am. Water Co. v. Hall* decision cited. Staff's *Objection* states the following in paragraph 7:

Rule 20 CSR 4240-2.075(3)(A) describes intervention as a matter of right. In the absence of a statute or regulation specifically granting a party a right to intervene, "intervention of right exists when one seeking to intervene claims an interest relating to the transaction that is the subject of the action that is not adequately represented by existing parties and the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest." *Matter of Missouri-Am. Water Co. v. Hall*, 470 S.W.3d 761, 764–65 (MoApp WD 2015). The proposed intervenor bears the burden of establishing all of the elements required for intervention as a matter of right. *Id.*; *Prentzler v. Carnahan*, 366 S.W.3d 557, 561 (MoApp WD 2012).

8. Actually, the *Hall* decision quoted by Staff involved Missouri-American Water Company's argument "that, because 4 CSR 240–2.075(3)¹ provides that the Commission 'may' permit intervention under the circumstances set forth, all intervention in actions before the Commission is permissive in nature and, therefore, the Commission's denial of any motion to intervene is never appealable." *Matter of Missouri-Am. Water Co. v. Hall*, 470 S.W.3d 761, 764 (Mo.App. W.D. 2015). In *Hall*, the Western District Court of Appeals found: "We need not address this argument, however, because, even assuming *arguendo* the existence of intervention as a matter of right in actions before the Commission and an ability to appeal the denial of such intervention, Appellant's motion clearly failed to plead any claim to intervention as a matter of right and any relief granted on his motion would necessarily have to have been permissive in nature." Thus, the *Hall* decision quoted by Staff's *Objection* simply did not decide whether there were interventions

¹ Under the old numbering for what is now Rule 20 CSR 4240-2.075.

as matters of right under Rule 20 CSR 4240-2.075(3)(A), or a distinction between parts A and B of Rule 20 CSR 4240-2.075 as suggested by Staff.²

9. Putting aside any alleged distinction between interventions as of right under part A and permissive interventions under part B, the Company's *Application to Intervene* explained the Company's interest, which is different than the general public and which may be adversely affected by a final order arising from the case, as required under part A of Rule 20 CSR 4240-2.075(3), and granting the Company's intervention will serve the public interest as set out under part B of the Rule.

10. The Company's interest is different than the general public in that it is a regulated public utility who may be affected by results of this docket, especially considering the Commission's focus on consistency across the state. In the Commission's Report and Order, effective June 24, 2023, in Ameren Missouri's most recent electric general rate review, File No. ER-2022-0337, the Company is directed "to retain customer and rate schedule characteristics related to draws of reactive demand."³ The Company is also directed "to provide the information Staff requested that it can provide at reasonable expense."⁴ The Company is further directed therein to "also work with Staff to provide a better understanding of what information is available, so that Staff can better request information the Company can access."⁵

² Ameren Missouri would support Missouri-American Water Company's argument in Hall that Commission Rule 20 CSR 4240-2.075(3)A and B are permissible intervention provisions as the intro for subsection 3 states: "The commission *may* grant a motion to intervene... ." This permissibility starkly contrasts with Missouri Supreme Court 52.12(a), "Intervention of Right" provision. Mo. Sup. Ct. R. 52.12 states: "(a) Intervention of Right. Upon timely application anyone **shall be** permitted to intervene in an action: (1) when a statute of this state confers an unconditional right to intervene or (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

³ File No. ER-2022-0337, Report & Order, eff. June 24, 2023, at p. 48.

⁴ Id. at p 49.

⁵ Id.

11. Staff's *Objection* provides the long list of requested data from Evergy, including "10. EMM and EMW begin to retain and study data related to the reactive demand requirements of each rate code, and sample customers within each rate code."⁶ As Evergy's *Motion* to establish this docket explained, Evergy requested "...the opening of an EO docket so that Evergy can provide in detail the reasons why the requested data is not available and cost-prohibitive to produce."⁷

12. The Commission's *Order Directing Notice, Setting Deadline for Intervention Requests, and Setting Prehearing Conference* even noted both Ameren Missouri's and Empire District Electric Company d/b/a Liberty's interest and intended participation in this case, and ordered the Data Center to provide a copy of such *Order* to Ameren Missouri's and Liberty's legal departments and all parties participating in Ameren Missouri's and Liberty's most recent general rate cases.⁸

13. Granting Ameren Missouri's intervention will **at least** serve the public interest by promoting efficiency.

14. The Company does not understand, and therefore is not able to specifically reply to, Staff's statement that "...it is not interested in surrendering the procedural progress it has made to date with Evergy by including Ameren Missouri in this particular docket."⁹ But, to clarify, Ameren Missouri is not interested in impeding any progress in this docket.

15. Without citation to any legal authority or explanation, in paragraph 11 of its *Objection*, Staff states: "Finally, Ameren Missouri's alleged interest in this Evergy proceeding to address the Commission Report and Order issued on June 14, 2023, in Ameren Missouri's general

⁶ File No. EO-2024-0002, Staff's *Objection* to Ameren Missouri's Application to Intervene, at para. 3, p. 4, point 10.

⁷ File No. EO-2024-0002, *Motion to Establish Docket for Further Consideration of Data Production*, at para. 4.

⁸ File No. EO-2024-0002, *Order Directing Notice, Setting Deadline for Intervention Requests, and Setting Prehearing Conference*, issued &eff. July 6, 2023, at p. 1 & ordering paras. 3 – 6.

⁹ File No. EO-2024-0002, Staff's *Objection* to Ameren Missouri's Application to Intervene, at para. 10.

rate case, No. ER-2022-0337, may constitute a collateral attack on that Report and Order." Here again, the Company does not understand, and therefore is not able to reply to, Staff's vague potential allegation of collateral attack. Although Ameren Missouri has not determined its position on the issues in this case at this early juncture, and not all issues may even be known at this time, the Company's interest in this matter is promotion of efficiency and not to challenge the Commission's *Report and Order* from File No. ER-2022-0337.

WHEREFORE, Ameren Missouri respectfully requests that the Commission grant its *Application to Intervene*, overrule and/or deny Staff's *Objection*, and that it be made a party hereto with all rights to participate in this matter.

Respectfully submitted,

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**ATTORNEYS FOR UNION ELECTRIC
COMPANY d/b/a AMEREN MISSOURI**

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 2023, a copy of the foregoing filing was served, via e-mail, on counsel for the Missouri Public Service Commission Staff, the Office of the Public Counsel, all parties of record, as well as entities who have sought to intervene in File No. ER-2022-0337.

/s/ Jermaine Grubbs

Jermaine Grubbs