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**MISSOURI PUBLIC SERVICE COMMISSION**

**FILE NO. EA-2019-0021**

**SURREBUTTAL TESTIMONY**

**OF**

**TOM BYRNE**

**ON**

**BEHALF OF**

**UNION ELECTRIC COMPANY**

**d/b/a AMEREN MISSOURI**

**\*\*\*DENOTES HIGHLY CONFIDENTIAL INFORMATION\*\*\***

**St. Louis, Missouri  
January 2019**

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**SURREBUTTAL TESTIMONY**

**OF**

**TOM BYRNE**

**FILE NO. EA-2019-0021**

**I. INTRODUCTION**

**Q. Please state your name and business address.**

A. Tom Byrne, Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company"), One Ameren Plaza, 1901 Chouteau Avenue, St. Louis, Missouri 63103.

**Q. What is your position with Ameren Missouri?**

A. I am Senior Director of Regulatory Affairs.

**Q. Please describe your educational background and employment experience.**

A. In 1980, I graduated from the University of Missouri-Columbia with Bachelor of Journalism and Bachelor of Science-Business Administration degrees. In 1983, I graduated from the University of Missouri-Columbia law school. From 1983-1988, I was employed as an attorney for the Staff of the Missouri Public Service Commission ("Commission"). In that capacity, I handled rate cases and other regulatory proceedings involving all types of Missouri public utilities. In 1988, I was hired as a regulatory attorney for Mississippi River Transmission Corporation, an interstate gas pipeline company regulated by the Federal Energy Regulatory Commission ("FERC"). In that position, I handled regulatory proceedings at the FERC and participated in some cases at the Missouri

1 Commission. From 1995-2000, I was employed as a regulatory attorney for Laclede Gas  
2 Company (now known as Spire Missouri Inc.). In that position, I handled rate cases and  
3 other regulatory proceedings before the Commission. In 2000, I was hired as a regulatory  
4 attorney by Ameren Services Company and I originally handled regulatory matters  
5 involving local gas distribution companies owned by operating subsidiaries of Ameren  
6 Corporation (now Ameren Illinois Company and Ameren Missouri). In 2012, I was  
7 promoted to the position of Director and Assistant General Counsel, and I was assigned to  
8 handle both gas and electric cases in Missouri. In 2014, I was promoted to my current  
9 position, Senior Director of Regulatory Affairs.

## 10 II. PURPOSE OF TESTIMONY

11 **Q. What is the purpose of your surrebuttal testimony in this proceeding?**

12 A. My surrebuttal testimony addresses the policy implications of three issues  
13 raised in the rebuttal testimony of other parties. First, I will address the property tax issues  
14 raised in the testimony of Atchison County witnesses Lori Jones and Susette Taylor, as  
15 well as similar issues raised in the testimony of DeKalb County witnesses Melissa Meek  
16 and Tanya Zimmerman. Second, I will address the issues raised by Missouri Department  
17 of Conservation ("MDC") witnesses Dr. Janet Haslerig and Jennifer Campbell. Finally, I  
18 will respond to the Missouri Public Service Commission Staff's recommendation,  
19 explained on pp. 17-20 of the Staff Rebuttal Report, that would require Ameren Missouri  
20 to provide a cost-benefit analysis for this project prior to a Generator Interconnection  
21 Agreement being signed, if the Total Designated Network upgrade costs and costs allocated  
22 or assigned from other upgrades or projects, exceeds \*\*\*\_\_\_\_\_\*\*\*.

**III. COUNTY PROPERTY TAX ISSUES**

**Q. What position have Atchison and DeKalb County witnesses taken in this case?**

A. Atchison County witnesses Jones and Taylor, and DeKalb County witnesses Meek and Zimmerman all recommend that the relief requested by Ameren Missouri in this case be denied. Their recommendation is based on the fact that ownership of the project company (Brickyard Hills Development, LLC) by a Commission-regulated utility (here, Ameren Missouri) instead of an unregulated wind developer, (EDF RE US Development, LLC ("EDF")), will reduce the potential, incremental income taxes that Atchison County had expected to see in property taxes, assuming the project is built. They argue that Ameren Missouri and EDF should restructure their transaction so that EDF continues to own the project company, and Ameren Missouri purchases the power, preserving all property taxes arising from the project for Atchison County.

**Q. Is there any merit to the position that Atchison and DeKalb Counties have taken?**

A. In my opinion, no. The tax impact to Atchison County is simply due to the application of Missouri statutes, which require electric utility generating assets to be centrally assessed by the Missouri State Tax Commission, and for property tax revenues to be allocated to various taxing authorities based on circuit miles owned by the utility in each taxing district. This statutory taxing process applies to all of Ameren Missouri's generating facilities located in the state, including the Callaway nuclear plant, and all four of Ameren Missouri's coal-fired plants. It will also apply to Ameren Missouri's Terra-Gen wind generation facility located in Schuyler and Adair Counties, once that facility is in service.

1 Moreover, it applies to generating facilities owned by all other electric utilities regulated  
2 by the Commission that are located in Missouri. Atchison County is asking this  
3 Commission to make its decision in this case – i.e., whether it is necessary or convenient  
4 for the public service for Ameren Missouri to own the project company – based on the  
5 county's parochial interests. The decision in this case must instead be based upon the best  
6 interest of Ameren Missouri and its customers under the longstanding legal principles (and  
7 Commission practice) applicable to certificate of convenience and necessity ("CCN")  
8 cases. Under those standards, including the *Tartan* factors typically relied upon by the  
9 Commission, it is necessary or convenient for the public service for Ameren Missouri to  
10 own the project company, a conclusion with which the Missouri Public Service  
11 Commission Staff ("Staff") and the Missouri Division of Energy agree.<sup>1</sup>

12 **Q. Shouldn't the Commission do something in this case to help preserve**  
13 **the tax revenue associated with this project for Atchison County?**

14 A. No. In establishing the current property tax structure for electric generating  
15 assets owned by Commission-regulated utilities, the legislature made a conscious decision  
16 that such taxes should be allocated according to circuit miles. The policy reflected in  
17 current law ensures that all or nearly all of the property taxes paid for generation that serves  
18 a given Commission-regulated utility's customers is paid to the taxing jurisdictions where  
19 those customers reside. It would be inappropriate for the Commission to second-guess this  
20 policy decision of the General Assembly or somehow try to get around it in this case. Any  
21 change in that policy decision must be made by the General Assembly. It should also be  
22 remembered that property tax revenue for this facility is a zero-sum game. Preserving

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<sup>1</sup> See Rebuttal Testimony of Staff witness Jamie S. Myers, the Staff's Rebuttal Report, and the Rebuttal Testimony of Martin R. Hyman, filed in this case.

1 property tax revenue for Atchison County could only come at the cost of reducing property  
2 tax revenues for all of the other taxing districts where Ameren Missouri has poles and  
3 wires. The Commission should not be in the business of picking winners and losers among  
4 taxing districts. That is the job of the General Assembly.

5 In addition, if the Commission did decide to somehow favor Atchison County with  
6 additional property tax revenue, how could that be explained to the other counties where  
7 Ameren Missouri electric generating facilities are located? Callaway County would  
8 certainly like to keep all of the property tax associated with the Callaway Nuclear Plant, as  
9 would Franklin County for the Labadie Plant, St. Louis County for the Meramec Plant, St.  
10 Charles County for the Sioux Plant, Reynolds County for the Taum Sauk Plant, and Miller  
11 County for Osage Plant. But that is not the property tax allocation method that the  
12 legislature has adopted. If that allocation is to change, the legislature is the one that should  
13 change it.

14 **Q. Why shouldn't the Commission just deny the application Ameren**  
15 **Missouri has submitted and then the Company could buy the power from the wind**  
16 **facility?**

17 A. That is not the transaction the parties have negotiated and that is not the  
18 proposal before the Commission. If this proposal were rejected, Ameren Missouri may or  
19 may not be willing to negotiate a purchase power agreement with EDF. And if Ameren  
20 Missouri did not enter into such an agreement with EDF, the wind facility may not get built  
21 at all. More importantly, as discussed in the surrebuttal testimony of Ameren Missouri  
22 witness Ajay K. Arora, entering into purchase power agreements generally, or entering into  
23 a purchase power agreement for this project specifically, is not in customers' long-term

1 best interests. As discussed by Mr. Arora, there are other benefits to ownership. If Ameren  
2 Missouri owns the facilities, it has a direct ability to ensure that they are properly  
3 maintained and operated. It (and its customers) can benefit from operational improvements  
4 or savings it can achieve instead of those inuring to the benefit of the developer, and it can  
5 unilaterally make capital improvements to the wind turbines to increase capacity where it  
6 is economic to do so. It can also gain valuable operational experience with this increasingly  
7 important generation resource. And with ownership, Ameren Missouri (and its customers)  
8 will retain the "residual value" of the turbines after any contract for purchasing power  
9 would expire, either by continuing to operate the turbines if prudent, or by repowering them  
10 if the economics of doing so makes sense. For all these reasons, ownership of wind  
11 facilities, particularly in an environment where Production Tax Credits ("PTCs") are  
12 available, is preferable. Consequently the Commission should not reject the Company's  
13 application.

14 **Q. Do you have any other comments regarding the testimony of the county**  
15 **witnesses?**

16 A. Yes. It is unclear to me why DeKalb County is even involved in this case.  
17 The project is not located in DeKalb County, and DeKalb County will lose no property tax  
18 revenue if it is approved. In fact, as Ameren Missouri witness Joe LaMacchia testifies,  
19 because there are some pole-miles in DeKalb County, DeKalb County will see a small  
20 increase in its property tax revenues as a result of Ameren Missouri ownership of this wind  
21 facility. As the Commission is aware, Commission cases have no precedential value  
22 (unlike court cases), and each Commission case is judged on its own merit. The  
23 Commission certainly should not be making a CCN decision about this project in a



1 completely different county based on DeKalb County's speculation that Ameren Missouri  
2 might, someday, seek to own wind generation in DeKalb County. As Mr. Arora testifies,  
3 Ameren Missouri has not considered, and is not considering, any such generation in  
4 DeKalb County. And even if such a case arose, whether a CCN should be granted in that  
5 case would be a decision the Commission would need to make *in that case*. So for these  
6 reasons as well, the comments of DeKalb County should be disregarded.

#### 7 **IV. DEPARTMENT OF CONSERVATION ISSUES**

8 **Q. What is the Missouri Department of Conservation's position in this**  
9 **case?**

10 A. MDC does not appear to oppose Ameren Missouri's request for a CCN in  
11 this case, but asks that any CCN be subject to numerous conditions. The conditions MDC  
12 proposes are as follows:

13 1. Ameren Missouri should be required to provide reasonable advanced notice  
14 to MDC of all scheduled meetings and conference calls (related to the Project) with the  
15 U.S. Fish and Wildlife Service ("USFWS").

16 2. Ameren Missouri should be prohibited from clearing any known active or  
17 inactive eagle nest trees.

18 3. Ameren Missouri should be required to conduct post-construction  
19 monitoring of eagle fatality and disturbances in accordance with USFWS Guidance.  
20 Fatality monitoring efforts involve searching for eagle carcasses beneath turbines and other  
21 facilities to estimate the number of fatalities. Disturbance monitoring will determine post-  
22 construction territory or roost occupancy rates, nest success rates and productivity.

1           4.       A minimum one-mile set-back should be required from (or buffer should be  
2       required around) known active and alternative (present and future) eagle nests within the  
3       Project area where turbines cannot be constructed or operated.

4           5.       Ameren Missouri should be required to report to MDC all eagle carcasses  
5       observed within 48 hours via email identifying the date, turbine location (UTMs), species,  
6       and sex.

7           6.       Ameren Missouri should be required to report to MDC observed mortalities  
8       for; (a) all raptors and (b) bird species of conservation concern observed annually by  
9       December 31, identifying the date, turbine location (UTMs), species, and sex.

10          7.       Ameren Missouri should be required to provide MDC a copy of all  
11       documents and/or reports related to the Project that it provides to the USFWS at the same  
12       time as they are provided to the USFWS.

13          8.       Ameren Missouri should be required to provide the Commission annual  
14       reports which include the information in Paragraphs 3, 5, 6, and 7 above.

15          9.       Ameren Missouri should be required to obtain an Eagle Conservation Plan  
16       from the USFWS.

17          10.       Ameren Missouri should be required to conduct a traffic count survey at  
18       Brickyard Hill Conservation Area and Corning Conservation Area.

19          11.       Ameren Missouri should be required to conduct a viewshed study at  
20       Brickyard Hill Conservation Area and Corning Conservation Area.

21          12.       Ameren Missouri should be prohibited from constructing or operating a  
22       wind turbine within three miles of any conservation area.

23                (Haslerig rebuttal, p. 11; Campbell rebuttal, p. 11).

1           **Q.     Has Ameren Missouri agreed to any of the conditions recommended by**  
2 **MDC?**

3           A.     Yes. Ameren Missouri has agreed to conditions 1 and 7, as reflected in its  
4 application filed in this case. In addition, it appears that two of the other conditions are  
5 irrelevant/unnecessary for this project in whole or in part. Condition 2 is irrelevant because  
6 there are no known active or inactive eagle nest trees within the boundaries of the project.  
7 And condition 12 is irrelevant because none of the proposed wind turbines are within three  
8 miles of a conservation area.

9           **Q.     Why are you distinguishing conditions with which Ameren Missouri**  
10 **agrees from conditions that are "irrelevant"?**

11          A.     Ameren Missouri does not agree that the irrelevant conditions are necessary  
12 or appropriate, given the Commission's role in this case, as opposed to the role MDC would  
13 play under its statutory authority, or the role the USFWS plays under its authority. But for  
14 these conditions, that issue does not need to be debated in this case, since the project would  
15 not violate those conditions.

16          **Q.     Are the remaining conditions that address monitoring and reporting**  
17 **(conditions 3, 4, 5, 6 and 8) and the one that requires an Eagle Conservation Plan**  
18 **(condition 9) necessary to protect eagles and other bird species?**

19          A.     I don't know. I am not a bird scientist. I do know that what specific  
20 conditions are warranted can be the subject of much debate among experts. And in my  
21 opinion, this Commission should not be the referee of these debates. This Commission can  
22 legitimately expect Ameren Missouri to comply with all applicable laws and regulations,  
23 and obtain all permits necessary from appropriate regulatory agencies. That is no different

1 from the situation that exists with regard to existing infrastructure—the Company has to  
2 comply with state and federal air, water, waste, and land use requirements, and has to obtain  
3 a number of permits for any project. But the Commission is not the appropriate agency to  
4 make determinations about the optimal monitoring protocols for eagle and bird carcasses.

5 **Q. Is there a forum in which these issues will be appropriately addressed?**

6 A. Yes. These issues will be—and are being—addressed through the  
7 regulatory processes administered by the USFWS with the participation of the MDC. The  
8 Commission need not and should not insert itself into that process by requiring specific  
9 monitoring, mitigation, and reporting protocols as conditions of the CCN in this case.

10 **Q. Conditions 10 and 11 would require Ameren Missouri to conduct**  
11 **traffic count surveys and viewshed studies at two different state conservation areas.**  
12 **Is Ameren Missouri willing to agree to conduct such studies?**

13 A. No. Ameren Missouri does not believe such studies are necessary given the  
14 distance of this project from the conservation areas. If MDC wants such studies conducted,  
15 they of course could conduct such studies on its own, or they could adopt regulations to  
16 require such studies. They have not done either.

17 **Q. Are there any policy reasons why the Commission should not allow**  
18 **itself to become, effectively, a regulatory instrument for MDC when it comes to**  
19 **conservation issues with wind facilities?**

20 A. Yes. There currently exists approximately 1,000 MW of wind generation  
21 already constructed and in operation in Missouri. None of that wind generation is owned  
22 by a Commission-regulated utility and therefore none of that wind generation was required  
23 to receive a CCN from this Commission. As a consequence, with respect to all of that wind

1 generation, MDC has had no forum in which to argue for the imposition of conservation  
2 conditions beyond what the law would otherwise require.

3 It is my understanding that MDC has been actively examining conservation issues  
4 related to wind development for several years and wind farms have been developing in the  
5 state over the past several years as well. Yet MDC has not developed a process for  
6 permitting wind development, and in fact currently has no process for wind developers to  
7 take the steps that Ameren Missouri is taking through the USFWS process that fairly  
8 balance the lawful operation of wind farms (and the benefits renewable generation  
9 provides) with legitimate conservation concerns. Regulated utilities should not be  
10 penalized, or subject to higher standards in building wind generation facilities, simply  
11 because they are required to obtain a CCN. This is particularly true given that regulated  
12 utilities have a Renewable Energy Standard ("RES") mandate to meet while other electric  
13 providers do not. And the Commission should not allow itself to be transformed into an  
14 agency that must develop and enforce new conservation standards when MDC, the agency  
15 charged with that function, has failed to do so.

16 **Q. Do you agree that MDC should be involved in the USFWS process?**

17 A. Absolutely. MDC should be invited to attend USFWS meetings or  
18 conference calls when the environmental conditions of operation are developed in the  
19 USFWS process. Ameren Missouri has committed to providing MDC with notice of every  
20 meeting and conference call that takes place as part of the USFWS process, and providing  
21 MDC with copies of reports and other documents that it provides to USFWS. But we do  
22 not believe that more should be required.

**V. STAFF'S RECOMMENDED COST-BENEFIT ANALYSIS**

**Q. What is Staff's recommended cost-benefit analysis?**

A. In the Staff Rebuttal Report, Staff has recommended that, in the event that the Total Designated Network Upgrade costs for the project, to be paid to the Midcontinent Independent System Operator, Inc. ("MISO"), exceed \*\*\* \_\_\_\_\_ \*\*\*, Ameren Missouri should be required to provide an analysis comparing "the increased Total Designated Network upgrade costs including potential costs allocated or assigned from other upgrades or projects, with the benefits of continuing the project" prior to a Generator Interconnection Agreement being signed. Staff Rebuttal Report, pp. 19-20.

**Q. Is Ameren Missouri willing to agree to such a requirement?**

A. No. The Staff's proposal creates at least two significant problems. First, Ameren Missouri is required, by the terms of the Build Transfer Agreement ("BTA"), to have a final certificate of convenience and necessity from the Commission no later than June 1, 2019. But the Total Designated Network upgrade payment required by MISO for this project will not be known by that time. As the Commission is aware, projects seeking to interconnect to MISO transmission lines go through a three-step iterative process to determine the final amount of the required Total Designated Upgrade payment. This amount will not be known by June 1st, so Staff's requirement would make it impossible for Ameren Missouri to have a final certificate by that date. In theory at least, the certificate could be revoked if the MISO interconnection cost exceeded \*\*\* \_\_\_\_\_ \*\*\* and the cost-benefit analysis did not adequately support the payment. This inability to timely obtain a final certificate from the Commission would make it impossible for Ameren Missouri to comply with the terms of the BTA and would effectively kill the project because the

1 deadlines in the BTA exist so that the timeline to take advantage of the full PTC value by  
2 placing the facility in service by the end of 2020 can be met. Those PTCs are worth  
3 approximately \$160 million for this project.

4 Second, timing considerations related to the MISO payment make it impossible to  
5 perform the cost-benefit study the Staff envisions. When MISO provides its estimated  
6 required Total Designated Network Upgrade payment, under the BTA Ameren Missouri  
7 has just eight business days to make an irrevocable election to proceed (or not proceed)  
8 with the project. Thereafter, pursuant to MISO's rules, EDF has just seven more business  
9 days to make full payment to MISO. There is simply no time to conduct a cost-benefit  
10 study and submit it to the Commission for approval.

11 **Q. So will customers have no protection against Ameren Missouri making**  
12 **an imprudent decision to proceed with the project if the MISO interconnection costs**  
13 **exceed \*\*\* \_\_\_\_\_ \*\*\* and the benefits of the project do not outweigh its costs?**

14 A. No. Customers will be 100% protected if Ameren Missouri makes an  
15 imprudent decision to proceed with the project in the face of incremental MISO  
16 interconnection costs above \*\*\* \_\_\_\_\_ \*\*\*. In the rate case, where the Company seeks  
17 to recover the cost of the project, the Commission can disallow any costs of the project that  
18 are imprudent, including imprudently incurred additional MISO interconnection costs. As  
19 a consequence, there is no reason to impose this unworkable requirement as part of the  
20 CCN process.

21 **Q. Does this conclude your surrebuttal testimony?**

22 A. Yes, it does.

**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 )  
Convenience and Necessity Authorizing it to )  
Construct a Wind Generation Facility. )

File No. EA-2019-0021

**AFFIDAVIT OF TOM BYRNE**

**STATE OF MISSOURI** )  
 ) ss  
**CITY OF ST. LOUIS** )

Tom Byrne, being first duly sworn on his oath, states:

1. My name is Tom Byrne. I work in the City of St. Louis, Missouri, and I am employed by Union Electric Company d/b/a Ameren Missouri as Senior Director of Regulatory Affairs.

2. Attached hereto and made a part hereof for all purposes is my Surrebuttal Testimony on behalf of Union Electric Company d/b/a Ameren Missouri consisting of 13 pages and Schedule(s) N/A, all of which have been prepared in written form for introduction into evidence in the above-referenced docket.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct.

  
\_\_\_\_\_  
TOM BYRNE

Subscribed and sworn to before me this 14<sup>th</sup> day of January, 2019.

  
\_\_\_\_\_  
Notary Public

My commission expires:

March 7, 2021

