

**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 Decrease Its Revenues)
for Electric Service.) Case No. ER-2019-0335

**AMEREN MISSOURI’S RESPONSE IN OPPOSITION TO PUBLIC COUNSEL’S
MOTION TO AMEND PROCEDURAL SCHEDULE**

COMES NOW Union Electric Company d/b/a Ameren Missouri (the “Company” or “Ameren Missouri”) and for its opposition to the above-referenced motion by the Office of the Public Counsel (“OPC”),¹ states as follows:

1. OPC claims that changing the informal, off-the-record settlement conference originally scheduled for February 3-4 to February 7 will “interfere with OPC’s internal scheduling commitments and preparations for surrebuttal testimony.” OPC also speculates about whether there may be discussions beyond February 7, implies that this may undermine its time to “refine surrebuttal testimony,” and suggests that if it must focus on surrebuttal this may “undermine fruitful settlement.” None of these reasons come close to a sufficient justification to upend the remainder of the Procedural Schedule, as OPC is attempting to do.

2. First, OPC’s proposed change would make it practically impossible to properly and timely develop the required List of Issues, Order of Witnesses, and Order of Cross-Examination (collectively, “Issues List”), which would be due on the *same day* OPC wants to file surrebuttal testimony. It is entirely possible (and probably likely given past practice) that most surrebuttal testimony will not be filed until near (or after) the end of the business day and, moreover, the workpapers underlying that testimony are not due for two more days. While some effort on the Issues List could be started before surrebuttal testimony is received, experience has

¹ The Company will also address the Missouri Industrial Energy Consumers (“MIEC”) and Sierra Club’s (“SC”) filings in support of OPC’s motion.

shown that surrebuttal testimony filed by other parties often contains new evidence/justifications for a parties' positions. It is also not uncommon for those positions to shift. There is no practical way to develop and finalize the Issues List simultaneously with receiving surrebuttal testimony.

3. Second, until surrebuttal testimony and the underlying workpapers are received and studied, there is no way the parties can meet another procedural requirement, also due on the same day to which OPC wants to delay the filing of surrebuttal testimony: the requirement to provide a valuation of the parties' final positions.

4. Third, the deadline to request further discovery was intentionally set 5 days after the surrebuttal testimony deadline to allow parties the ability to determine, based on that surrebuttal testimony and the associated workpapers, whether further discovery was needed. That determination can't practically be made in 24 hours,² as OPC's suggested schedule change would require.

5. Fourth, the parties would now have a mere six days (four business days) to prepare and file Statements of Position, which the Commission has directed include citations to any applicable law, and allege facts (with citations to pre-filed testimony) in support of the positions taken. This cuts in half the time contemplated by the agreed-upon and adopted Procedural Schedule in place in this case.

6. Fifth, OPC's position severely undermines hearing preparation. The Company has already scheduled depositions to be taken after surrebuttal testimony (and workpapers) will be received. As non-utility parties are quite eager to point out in these cases, the utility bears the ultimate burden of proof respecting the establishment of just and reasonable rates. However, given the rate case process in Missouri, the utility is not able to close the pre-filed evidence

² It may not be capable of practical determination for 72 hours, after workpapers are received.

portion of the procedural schedule (as is typical for the party with the burden of proof) and must rely on post-surrebuttal discovery in order to protect its interests and prepare for hearing. And lest OPC suggests that the Company simply send data requests, it is well understood that while data requests have a role in discovery, they are no substitute for the ability to discuss a witness's positions and to follow-up in real time with questions about the answers the witness gives.³ Depositions also greatly improve the efficiency of the evidentiary hearing by allowing cross-examination to be focused instead of requiring that the cross-examining attorney spend inordinate amounts of time in effect conducting discovery in the hearing room. The undersigned counsel can certainly recall instances in past cases where this kind of in-the-hearing-room discovery took place, sometimes to the obvious frustration of the Commissioners and the presiding officer.

7. In addition to creating all kinds of problems and serious prejudice to other parties, including the Company, OPC's justifications are simply inadequate. Ameren Missouri has filed and completed six electric rate cases in the past roughly dozen years. In all but two of them, the parties were afforded 21 days after rebuttal testimony was filed to prepare and file surrebuttal testimony. In one of these cases, the interval was 22 days and in one other 24 days (when the interval fell across Labor Day Weekend). The Procedural Schedule in this case provides for 21 days, just as did two-thirds of those cases. While OPC may have to reorder when it conducts whatever work it believes it needs to do respecting surrebuttal testimony, the changes made to the Procedural Schedule have not diminished by even one day the time afforded the parties to prepare and file surrebuttal testimony; indeed, they have increased that time since only one day for the informal settlement conference is scheduled instead of two. OPC should be using

³ And by the time workpapers are received (on a Thursday) and reviewed, data requests could be developed (likely no sooner than the following Monday), and then answered, responses may not be received until the day the evidentiary hearings in the case start.

February 3, 4, 5, and 6 to do the work it needs to do, just as the rest of the parties likely will and can do. As for OPC's complaint about "internal scheduling commitments," the posture of this litigation is that we are just a few weeks before two weeks of evidentiary hearings. The reality for all parties is that schedules sometimes have to be adjusted to get the work done.

8. OPC also has other choices it can make. If OPC can't manage to complete whatever "refinement" it desires to its surrebuttal testimony and if a settlement is not achieved on February 7, OPC can choose not to devote time and resources to further discussions that may or may not take and can remain focused on its surrebuttal testimony until after it is filed on February 14. And since the change from February 3-4 to February 7 has allowed Staff to provide the parties with a true-up revenue requirement and workpapers in advance of settlement talks, the February 7 conference almost certainly has a greater potential to be productive than would have a February 3-4 conference without the benefit of that information.⁴ The Company of course would like to achieve a settlement in this case and the Commission has recognized that settlement should be encouraged if possible. However, rate cases are often not settled (only one of the Company's last seven electric rate cases was settled) and the parties must assume that evidentiary hearings will be necessary unless and until they are not. And in any event, there is nothing stopping OPC or other parties from continuing to discuss possible settlement after surrebuttal testimony is filed on February 14; rate cases have many times settled on the eve of (or even during) the evidentiary hearings.

9. In summary:

- OPC has more, not less time to work on its surrebuttal testimony;

⁴ While the Company has no complaint about the Staff needing additional time to provide its true-up revenue requirement and workpapers, a key driver of the change to February 7 was that need on the part of the Staff.

- OPC has as much time as it and the other parties have had in two-thirds of the Company's recent electric rate cases;
- The settlement conference that will take place has the potential to be significantly more productive than the original two-day conference because had the original schedule been maintained, the parties would not have the benefit of a Staff true-up revenue requirement and workpapers, which would have severely hindered the talks; and
- OPC's motion is incompatible with numerous other already-set Procedural Schedule requirements.

10. With respect to MIEC's and SC's filings in support of OPC's motion, every single one of the reasons OPC's motion should not be granted also applies to MIEC's and SC's support of OPC's motion. Regarding MIEC's "additional burden" comment regarding a deposition of MIEC's return on equity witness, as pointed out earlier, the changes to the procedural schedule have created *more*, not less days for the preparation of surrebuttal testimony. In addition, when this deposition was scheduled the Company offered dates either during the week of February 10 or early in the week of February 17. MIEC suggested February 13. Since OPC filed its support, the Company again offered to discuss dates during the week of February 17 and the week of February 24. MIEC declined. Regarding SC's reference to discovery issues, as the Presiding Officer knows from the Discovery Conference held yesterday, most issues are resolved. Moreover, SC's delay in raising concerns (concerns about which the Company was unaware until less than two days ago) was of its own making given that the objections at issue were made several weeks ago and given that the testimony SC claims caused it to want to raise the concerns it had failed to raise before was also filed more than two weeks ago. Neither MIEC's nor SC's

support for OPC's motion nor the reasons for that support provide any basis to grant OPC's motion.

WHEREFORE, the Company requests that the Commission make and enter its order denying OPC's Motion to Amend Procedural Schedule.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail on counsel for the parties of record in this case on the 6th day of February, 2020.

/s/ James B. Lowery
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