

**-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 Approval            )        File No. EA-2022-0245  
of a Subscription-Based Renewable Energy Program.    )

**MOTION FOR PROTECTIVE ORDER**

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Company" or "Ameren Missouri"), and pursuant to 20 CSR 4240-2.135(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 20 CSR 4240-2.135(6), absent a specific order issued under 20 CSR 4240-2.135(4), information defined as "Confidential" by 20 CSR 4240-2.135(2)(A) is available to the attorneys of record for a party in the Commission case at issue, persons designated by a party as an outside expert in that case, *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 20 CSR 4240-2.135(7).

2. For reasons similar to those recognized by the Commission in other cases where commercially-sensitive information regarding renewable generation was at issue,<sup>1</sup> 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

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<sup>1</sup> File No. EA-2016-0358 (Grain Belt Express); EO-2018-0092 (Empire Customer Savings Plan); and EA-2018-0202 and EA-2019-0021 (Ameren Missouri's Certificates of Convenience and Necessity ("CCN") applications for the High Prairie and Brickyard Hills wind facilities).

case.<sup>2</sup> Consequently, the Company seeks a protective order allowing it to designate such information as "Highly Confidential" under 20 CSR 4240-2.135(4).

3. Under 20 CSR 4240-2.135(4), a motion for greater protection, like this one, must explain the following:

- A. What information must be protected,
- B. The harm to the disclosing entity or the public that might result from disclosure of the information ("Potential harm"), and
- C. How the information may be disclosed while protecting the interests of the disclosing entity and the public.

4. What information must be protected: 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) (the "BTA Terms") attached to the Direct Testimony of Company witness Scott Wibbenmeyer; cost and pricing information and the BTA Terms reflected in Mr. Wibbenmeyer's Direct Testimony; the terms and conditions of agreements (and documents reflecting such terms and conditions) with entities who will construct the solar and transmission-related assets covered by the Build Transfer Agreement (the "Supplier Terms"); and responses (and documents reflecting responses) to the Company's solar 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 in accordance with 20 CSR 4240-2.135(4)(B). 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

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<sup>2</sup> 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.

Highly Confidential. The information for which Highly Confidential treatment is sought cannot be found in any other public document.

5. Potential harm: Highly Confidential protection for these materials is needed for several reasons. First, the Company continues to engage in negotiations with other solar developers for additional utility scale solar generation resources needed as described in the Company's recent Notice of Change in Preferred Plan in File No. EO-2022-0362. The Company may, in the near-term or later, engage in such discussions for solar 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 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.

6. The Company also continues to engage in negotiations with other contractors related to such potential solar 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.

7. The interests of the solar developers, solar panel suppliers 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) contain the Company's agreement to maintain the confidentiality of the RFP responses.

8. 20 CSR 4240-2.135(4) is in keeping with Missouri Supreme Court Rule 56.01(c)(7), 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...."

9. How the information may be disclosed while protecting the interests of the disclosing entity and the public: Granting this protective order will prevent access to competitively sensitive information that could work to the disadvantage of counterparties to other solar 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.

10. Based on the reasons given herein, the Commission previously issued a protective order on the terms requested in the Company's High Prairie Wind facility CCN case, File No. EA-2018-0202, and Brickyard Hills Wind facility CCN case, File No. EA-2019-0021.<sup>3</sup>

11. Attached to this motion is the disclosure form the Commission directed to be used in File Nos. EA-2018-0202 and EA-2019-0021. For the reasons outlined by the Company in File Nos. EA-2018-0202 and EA-2019-0021 (See Ameren Missouri's *Motion for Protective Order* in each case),<sup>4</sup> the Commission ordered use of this more specific form because of the changes made to 20 CSR 4240-2.135. See *Order Granting Applications to Intervene and Directing Use of Compliance Certification Form*.<sup>5</sup> For those same reasons, similar issues could arise in this docket

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<sup>3</sup> Ameren Missouri also has a pending Motion for Protective Order for the Huck Finn Solar facility CCN case, File No. EA-2022-0244.

<sup>4</sup> File No. EA-2018-0202, EFIS Item No. 7 and File No. EA-2019-0021, EFIS Item No. 4.

<sup>5</sup> 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 Non-Disclosure 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.

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.

12. Under 20 CSR 4240-2.135(10), "confidential" information is to be denoted as follows: **\*\*confidential information removed\*\***. 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\*\*\***.

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

Respectfully submitted,

*s/ James B. Lowery*

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*/s/ Wendy K. Tatro*

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

**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 14<sup>th</sup> day of July, 2022.

*/s/ James Lowery*

James Lowery

**NONDISCLOSURE AGREEMENT**

**For Case No.: EA-2022-0245**

(To Access Confidential Information)

I, \_\_\_\_\_, have reviewed the Commission's Rule at 20 CSR 4240-2.135 on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

I have requested review of the confidential information produced in Case No. EA-2022-0245 on behalf of \_\_\_\_\_.

I hereby certify that:

- (a) Only employees of a party that are acting as an expert for that party or that have been retained for this case as an outside expert for that party may receive confidential information;
- (b) An employee is a person in the service of his or her employer whose services are controllable by the employer.
- (c) I am employee of \_\_\_\_\_[state name of intervenor] acting as its expert and/or its employee who intends to file testimony in this docket, or I am an outside expert for \_\_\_\_\_[state name of intervenor] retained to provide expert consultation or testimony in this docket;  
and
- (d) I have read and agree to abide by the Commission's Rule at 20 CSR 4240-2.135.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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Signature & Title

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Employer

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Party

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Address

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Telephone

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E-Mail Address



**NONDISCLOSURE AGREEMENT**  
**For Case No.: EA-2022-0245**  
(To Access Highly Confidential Information)

I, \_\_\_\_\_, have reviewed the Commission's Rule at 20 CSR 4240-2.135 on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

I have requested review of the highly confidential information produced in Case No. EA-2022-0245 on behalf of \_\_\_\_\_.

I hereby certify that:

- (a) Only an outside expert retained by a party in this case may receive highly confidential information;
- (b) I am an employee of \_\_\_\_\_ acting as an outside expert for [state name of intervenor] \_\_\_\_\_ retained to provide expert consultation or testimony in this docket;  
and
- (c) I have read and agree to abide by the Commission's Rule at 20 CSR 4240-2.135 and all terms of the Protective Order issued by the Commission in this docket.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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Signature & Title

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Employer

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Party

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Address

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Telephone

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E-Mail Address