

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

|   |   |                       |
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| In the Matter of the Application of Union Electric      | ) |                       |
| Company d/b/a Ameren Missouri for Permission and        | ) |                       |
| Approval and a Certificate of Public Convenience and    | ) | File No. EA-2019-0021 |
| Necessity Authorizing it to Construct a Wind Generation | ) |                       |
| Facility.   | ) |                       |

**RENEW MISSOURI'S  
MOTION TO STRIKE**

COMES NOW, Renew Missouri Advocates d/b/a Renew Missouri (“Renew Missouri”),  
and for its *Motion to Strike* states:

**Background**

1. On February 5, 2019, the governments of Atchison County, Missouri and DeKalb County, Missouri (collectively referred to herein as “the Counties”) filed their own List of Issues, Order of Witnesses, Order of Cross-examination, and Order of Opening Statements.<sup>1</sup> This filing included additional questions the Counties purport are issues for Commission determination and the names of thirteen additional witnesses.

2. On February 8, 2019, Ameren Missouri filed its *Motion to Strike Proposed Issues and Witnesses*.<sup>2</sup> The Commission subsequently issued an *Order* establishing time for parties to respond.

3. Renew Missouri joins in Ameren Missouri’s objection to these additional witnesses testifying during the evidentiary hearing and moves the Commission to strike them from the list of witnesses.

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<sup>1</sup> Doc. No. 67.

<sup>2</sup> Doc. No. 71.

### **Motion to Strike**

4. The Commission has addressed that it will consider motions to strike testimony prior to a hearing. In rejecting a motion to strike in a recent rate case, this Commission cautioned against striking pre-filed testimony but explained it is appropriate in certain situations:

Generally, the proper time to object to the admissibility of evidence is after it has been offered. But in some circumstances prefiled testimony may be so inappropriate and prejudicial to make it unjust to require the other parties respond to that testimony. In such circumstances, the Commission might appropriately grant a motion to strike.<sup>3</sup>

Here, the offending testimony the Counties wish to proffer is not pre-filed but would be “live” testimony of thirteen additional witnesses. For the reasons explained below, the Counties’ attempt to inject new witnesses’ testimony is inappropriate and prejudicial and so should be stricken immediately by the Commission.

5. First, the Commission’s rules require that testimony must be pre-filed and accompanied by an affidavit.<sup>4</sup> Due to this rule, the sworn testimony of every other witness – including four witnesses for the Counties – is available on the Commission’s electronic filing system. This system permits parties to understand the conclusions and recommendations of expert witnesses as well as providing a case structure allowing for substantive criticism and responses. The Counties decision to ignore this rule is inappropriate and prejudices the other parties’ ability to prepare for and respond to the witnesses’ testimony.

6. Second, the procedural schedule in this case requires testimony to be pre-filed, stating: “[t]estimony shall be prefiled as defined in Commission Rule 4 CSR 240-2.130. All parties

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<sup>3</sup> *In the Matter of Union Electric Company d/b/a Ameren Missouri’s Tariff to Increase Its Revenues For Electric Service*, File No. ER-2014-0258, Order Denying Motion in Limine or to Strike Testimony, p. 2, *Iss’d* Jan. 14, 2015.

<sup>4</sup> 4 CSR 240-2.130(8).

must comply with this rule, including the requirement that testimony be filed on line-numbered pages.”<sup>5</sup> The Counties’ efforts to offer thirteen additional witnesses without pre-filing testimony and without any indication of the substance of their recommendation violates the Commission’s Order, is inappropriate, and prejudices the other parties to this case.

7. Third, to the extent these witnesses will provide lay testimony in their individual capacities for the Commission to consider, a public hearing was held on January 14<sup>th</sup> in Rock Port for that purpose. Several of the names listed already offered testimony at the public hearing.<sup>6</sup> If those witnesses have additional comments that they were unable offer at the local public hearing, they can submit comments in writing through the Commission’s webpage.<sup>7</sup> Permitting these additional witnesses to offer lay testimony at the evidentiary hearing is unduly burdensome on the parties and administratively inefficient.

8. The Counties offer no good cause basis (or any reason whatsoever) for their attempt to ignore the Commission’s rules, violate the Commission’s procedural schedule, and improperly supplement the record with lay testimony – most of which has already been recorded at the local public hearing.

WHEREFORE, Renew Missouri respectfully objects to these additional witnesses testifying during the evidentiary hearing and moves the Commission to strike them from the list of witnesses along with any further relief the Commission deems proper.

Respectfully Submitted,

**/s/ Tim Opitz**

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<sup>5</sup> Doc. No. 36, p. 2.

<sup>6</sup> Western District Commissioner Kyle White, Tr. Vol. 2, p. 35; Commissioner Curtis Livengood, Tr. Vol. 2, p. 40; Rex Wallace, Tr. Vol. 2, p. 37; Monica Bailey, Tr. Vol. 2, p. 11; Karma Coleman, Tr. Vol. 2, p. 29; Jeremy Burright, Tr. Vol. 2, p. 25; Ethan Sickles, Tr. Vol. 2, p. 21.

<sup>7</sup> [https://psc.mo.gov/General/Submit\\_Comments](https://psc.mo.gov/General/Submit_Comments)

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 11<sup>th</sup> day of February 2019:

**/s/ Tim Opitz**

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