

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

In the Matter of the Application of Co-Mo                    )  
Electric Cooperative for Approval of                         )       File No. EO-2022-0190  
Designated Service Boundaries Within                    )  
Portions of Cooper County, Missouri.                     )

**AMEREN MISSOURI'S RESPONSE TO CO-MO'S MOTION  
FOR EXPEDITED TREATMENT AND TO ESTABLISH A  
PROCEDURAL SCHEDULE AND MOTION FOR  
RECONSIDERATION**

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), and for its response to the above-referenced motion and for its Motion for Reconsideration of the Commission’s *Order Directing the Parties to File a Proposed Procedural Schedule* issued earlier today, states as follows:

1. This is a case of first impression under newly adopted statutory amendments to §386.800, RSMo. (Cum. Supp. 2022). The issues it raises, especially on the facts presented in this case, are important given that one of the central reasons the Commission exists in the first place is to prevent destructive competition and wasteful duplication of facilities. See, e.g., *State ex rel. City of Sikeston v. Pub. Serv. Comm'n*, 82 S.W.2d 105, 110 (Mo. 1935).

2. Earlier today, Ameren Missouri filed its Motion for Summary Determination which, if granted, will fully and finally dispose of this case. The Company has no interest in unduly delaying the resolution of this case, and indeed filed its Motion for Summary Determination just three business days after the Commission issued its Notice respecting the Company's Motion to Dismiss, which was filed a before it was due.<sup>1</sup>

3. Presumably, Co-Mo will respond to the Company's Motion for Summary Determination and, if necessary, the Company will reply to such response at which time the

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<sup>1</sup> The Commission’s *Order Directing Notice, Etc.* issued January 20, 2022 set a due date for the Company’s response of February 9, 2022. The Company’s filed its response February 8, 2022.

Commission should be in a position to rule on this case as matter of law.<sup>2</sup> The efficient resolution of this case and the important legal issues it raises support first resolving the Company's summary determination motion prior to deciding on any further procedural steps in this case.

4. Shortly after filing its Motion for Summary Determination, the undersigned counsel was served with the Commission's *Order Directing the Parties to File a Proposed Procedural Schedule* (the "*Order*").<sup>3</sup> As discussed below, the Company respectfully requests that the Commission reconsider the *Order*.

5. If the Commission were to deny the Company's Motion for Summary Determination, it would then be necessary for the parties to prepare and file testimony and it may be necessary for them to first conduct discovery necessary to support such testimony. This could mean that the 120-day processing period contemplated by §386.800 will need to be extended for good cause shown, but it is premature to determine whether that in fact would be necessary. Indeed, it will not be necessary if the Commission sustains the Company's summary determination motion. Regardless, the Commission is under no absolute compulsion to decide this case with 120 days, especially given that the statute (assuming *arguendo* that it applies) specifically contemplates that an extension of the timeline may be necessary.

6. It should be noted that Co-Mo elected not to support its Application with testimony that, if the statute were to apply, would support each of the seven factors provided for by §386.800.2, as amended in 2021. While Co-Mo's verified Application provided limited information on some of the factors, the information is either insufficient or lacking entirely with respect to the other factors specified in §386.800.2, except for factor (1). Co-Mo is required to

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<sup>2</sup> It is possible, depending on facts Co-Mo might allege or issues Co-Mo might raise in its response that the Company might need to conduct discovery respecting any such allegations or issues. However, the Company believes it is likely that discovery will not be required as it does not believe there will be any material facts in dispute and that this case can therefore be ruled upon as a matter of law.

<sup>3</sup> According to EFIS the Commission issued the *Order* sometime this morning, but the Data Center did not serve the undersigned counsel with the *Order* until approximately 1:02 p.m.

produce substantial and competent evidence respecting at least those factors. Moreover, as indicated by the material undisputed facts reflected in Ameren Missouri's Motion for Summary Determination and the supporting materials provided therewith (including Mr. Webb's Affidavit), some of Co-Mo's allegations are demonstrably incorrect. For example, given the substantial Company facilities located surrounding the subject property, granting Co-Mo's request in this case would clearly not "eliminate ... duplication of facilities." Co-Mo Application, ¶ 15)a). As the applicant, it is Co-Mo's burden to provide such evidence. Regardless, if the Commission grants the Company's summary determination motion, there will be no need for further evidence.

7. Co-Mo's Motion claims that the landowner has "expressed that time is of the essence," citing an "Affidavit and Verification at ¶ 3." An examination of the filings in this docket reflect no such expression, but rather, simply reflect the developer's request that Co-Mo provide service.<sup>4</sup> Even that information is hearsay.

8. The Company has acted expeditiously in response to Co-Mo's Application and will, if the Commission were to deny its summary determination motion, endeavor to cooperate in promptly establishing a reasonable procedural schedule for further processing of this case consistent with its Due Process rights and the necessity of protecting its interests consistent with any applicable statutory requirements. The Company respectfully submits, however, that it is premature at this point to prejudge what such a schedule should be or even whether good cause to extend the default 120-day case processing period would exist.<sup>5</sup> It is also simply not practical to put a schedule in place beyond the Commission's determination of the Company's summary

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<sup>4</sup> Paragraph 3 addresses the developer's letter expressing a preference for Co-Mo as the service provider. The verification included with Co-Mo's Application simply verifies its allegations. None of these materials establish that time is of the essence.

<sup>5</sup> Co-Mo's Motion is insufficient in any event to warrant expedited treatment. It specifies no harm to be avoided and no benefit that will accrue from expedited treatment, nor does it establish that there will be no negative effect on the general public if the Commission were to grant expedited treatment. It therefore fails to comply with the requirements of 20 CSR 4240-2.080(14).

determination motion. The Company does not know how Co-Mo will respond to that motion, and thus does not know if discovery will be needed to respond (or how long such discovery might take). If the summary determination motion were to be denied, the Company does not know the nature and extent of the evidence Co-Mo may choose to provide in support of its position. It is therefore not possible to determine whether discovery will be needed in response, or what reasonable time to prepare and file testimony responsive to Co-Mo's direct case would be needed. Nor do the parties know when a ruling on the summary determination motion will be issued.

9. Commission Rule 20 CSR 4240-2.160(2) authorizes a party to seek reconsideration of Commission orders. For the reasons outlined above, the Company requests the Commission reconsider and withdraw the *Order* pending determination of the Company's summary determination motion.

**WHEREFORE**, for the reasons outlined herein, the Company that the Commission deny Co-Mo's Motion to establish a procedural schedule *at this* time, and that the Commission reconsider and withdraw its *Order* until such time as it has decided the Company's summary determination motion.

Respectfully submitted,

/s/ James B. Lowery

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

Dated: February 14, 2022

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this 14th day of February 2022, served the foregoing either by electronic means, or by U. S. Mail, postage prepaid addressed to all parties of record.

*/s/James B. Lowery*  
James B. Lowery