

is extremely problematic for several reasons. The Company expressed concerns about that schedule to Co-Mo, but Co-Mo chose to file it and those concerns remain unaddressed.

3. The first problem with Applicant's proposed schedule is that assumes further testimony and evidence will in fact be necessary, and calls for it to be submitted over the next 30 days, with a hearing on March 31, even though resolution of the Company's summary determination motion in the Company's favor *would fully dispose of this case*.

4. Second, Co-Mo's proposal would afford the Staff and the Company only fifteen days after Applicant would file direct testimony to file rebuttal testimony.¹ As discussed in the Company's *Motion for Reconsideration* and below, the other parties to this case do not know what testimony Co-Mo will offer, nor is it possible at this stage to determine whether discovery regarding such testimony will be necessary, or the nature and extent of any such discovery. To allow a fair processing of this case, some reasonable amount of time to allow the other parties to assess Co-Mo's testimony and develop necessary data requests must be afforded. In addition, Co-Mo would need time to respond and the other parties time to review those responses, all of which would need to take place before the other parties could prepare their own responsive testimony. It is also entirely possible that Co-Mo's (and presumably the Staff's) response to the Company's summary determination motion could necessitate the need for discovery and then a reply by the Company.

5. Third, for the reasons give by Staff, it is simply not practical to establish a procedural schedule at this point.

6. Moreover, as discussed in the Company's *Motion for Reconsideration*, while it is true that the General Assembly indicated that proper applications under §386.800.3 should be ruled

¹ And at this point, we do not know if Co-Mo's direct testimony will properly support each of the seven factors in §386.800.3, or fully comply with the Commission's certificate of convenience and necessity rule.

upon within 120 days, the 120-day time period does not, nor should it, dispense with the parties Due Process rights nor interfere with the Commission's ability to evaluate whether in fact it has authority to process the case at all or, if it does, to receive and evaluate substantial and competent evidence necessary to reach a proper decision.

7. The statute – subsection 3 of §386.800 -- specifically authorizes the Commission to extend the 120-day time frame for good cause shown. “The Commission shall issue its decision by report and order no later than one hundred twenty days from the date of the application *unless otherwise ordered by the commission for good cause shown*”(emphasis added). While it is premature to know whether an extension will be necessary (it almost certainly will not be if the Company's summary determination motion is granted), if that determination needs to be made the Commission has full authority to extend the timeline and will have broad latitude in making any such good cause determination. *Wilson v. Morris*, 369 S.W.2d 402, 407 (Mo. 1963) (“‘Good cause’ depends upon the circumstances of the individual case, and a finding of its existence lies largely in the discretion of the officer or court to which the decision is committed”). The Commission has applied this standard on numerous occasions. *See, e.g., In the Matter of The Empire District Electric Co., Report and Order*, File No. AO-2018-0179, 2019 WL 4017427 (Mo.P.S.C.) (Aug. 15, 2019). Please note that Staff's reference to subsection 1 of §386.800 in its filing today is incorrect. By its express terms, subsection 1 only applies to municipal utilities. While subsection 3 made subsection 2 applicable to electrical corporations under certain circumstances, it did not make subsection 1 applicable to electrical corporations. Consequently, unlike a subsection 1 case, which sets a 120-day timeline without granting the Commission discretion to extend it, here subsection 3 controls the timeline, including the express authority given the Commission to extend it.

8. There are a variety of reasons why the Commission would have sufficient discretion to extend the 120-day timeframe if this docket is not disposed of via summary determination.

9. First, Co-Mo did not properly support its Application with substantial and competent evidence supporting each of the seven factors specified in §386.800.2 even though the statute requires the Commission consider all seven factors.² Second, as the Staff has pointed out (and Co-Mo has acknowledged by its filing of a *Motion for Protective Order* today), Co-Mo did not comply with the Commission's rules.

10. Aside from Co-Mo's failure to properly support its Application is the fact that this is a case of first impression for the Commission – and the parties – which raises important legal questions regarding its application and important factual and policy questions, if the statute were to apply, that deserve the time and attention needed to develop a fair and proper record for the Commission's ultimate consideration. Co-Mo could have laid all its evidentiary cards on the table and complied with the statute and the referenced rule on January 18, which would have allowed Staff and the Company to conduct discovery as needed, but it did not do so. Co-Mo should not be heard to complain if more than 120-days are needed to process this case.

11. In light of the foregoing considerations, the Company agrees with the Staff that the Commission should not establish a procedural schedule at this time and should exercise its authority to continue the timeline generally. However, given that the Company was ordered to file a proposed schedule, if the Commission were to decide that it should proceed to establish a schedule at this time, the Company respectfully requests that it find good cause for a modest extension of the 120-days and adopt the following schedule:

² The Company discusses the deficiencies in Co-Mo's Application in its February 14, 2022 Motion for Reconsideration.

Co-Mo Response to Motion for Summary Determination	February 21, 2022 ³
Propound Data Requests, if any, based on Co-Mo's Summary Determination Response	February 28, 2022 ⁴
Co-Mo Direct Testimony due	March 1, 2022 ⁵
Propound Data Requests, if any, based on Co-Mo's Direct Testimony	March 11, 2022
Staff Response to Motion for Summary Determination due	March 16, 2022 ⁶
Reply to Responses to Motion for Summary Determination (if necessary) due	March 25, 2022
Requested Ruling on Summary Determination Motion	April 13, 2022
Company and Staff Rebuttal Testimony due	April 22, 2022
Parties Submit List of Issues, List of Witnesses, and Order of Cross-Examination	April 29, 2022
Parties Submit Position Statements	May 6, 2022
Evidentiary Hearing	May 12, 2022 ⁷
Transcript Available	May 16, 2022 ⁸
Initial Briefs due	May 23, 2022
Reply Briefs due	May 27, 2022

³ Co-Mo indicated in its proposed schedule that it would respond on February 21. But the Commission's rule allows all parties to the case – including the Staff – 30-days to respond. The Company would not presume that it would be reasonable for Staff to be afforded just seven days to respond.

⁴ The time to object to data requests should be shortened to three business days and the time for response should be shortened to 10 calendar days.

⁵ This is the date Co-Mo proposed. The Company's proposed schedule assumes Co-Mo's direct testimony fully complies with the statute on which it relies, and the referenced Commission rule.

⁶ Given that the Commission's summary determination rule affords the Staff 30-days to respond, the Company does not believe it appropriate to presume Staff could respond in just seven days.

⁷ This date could be moved up if the Empire District Gas Company rate case were to settle.

⁸ The Company recommends the Commission expedite the transcript.

12. The Company also recommends that the procedural items specified in Appendix A be adopted.⁹

13. The above-suggested schedule will have this case in the Commission's hands for decision 127 days after the case was filed (or much sooner, if it is disposed of via summary determination), and just 87 days after Co-Mo will have presumably filed a properly supported Application. It represents a reasonable compromise as compared to a schedule that attempts to dispose of this case by May 18, and that gets the proverbial cart in front of the horse by requiring testimony and hearing that may be completely unnecessary given the Company's summary determination motion. All it asks of Co-Mo is to file a complete case by March 1 and respond to data requests in 10 days.

WHEREFORE, for the reasons outlined herein, the Company renews its request that the Commission reconsider and withdraw its order that a procedural schedule be filed or, alternatively, that it find good cause to modestly extend the 120-day timeline and adopt the recommended procedural schedule set forth herein (and the procedural items set forth on Appendix A),

Respectfully submitted,

/s/ James B. Lowery

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**ATTORNEYS FOR UNION ELECTRIC
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⁹ These procedural items are typical, with the items listed in Appendix A mirroring those adopted by the Commission in File No. ER-2021-0240 (with certain items that are not applicable here omitted).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 16th 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

APPENDIX A
Proposed Procedures

- (a) All parties must comply with the requirements of Commission Rule 20 CSR 4240-2.130 for prepared testimony, including the requirement that testimony be filed on line-numbered pages.
- (b) Although not all parties may agree upon how each issue should be described or on whether a listed issue is in fact a proper issue in this case, the parties shall agree upon and file a list of the issues to be heard, the witnesses to appear on each day of the hearing, the order in which they will be called, and the order of cross-examination for each witness. The list of issues should be detailed enough to inform the Commission of each issue that must be resolved. The Commission will view any issue not contained in this list of issues as uncontested and not requiring resolution by the Commission.
- (c) Each party shall file a simple and concise statement summarizing its position on each disputed issue, including citations to pre-filed testimony supporting its position.
- (d) All pleadings, briefs, and amendments shall be filed in accordance with Commission Rule 20 CSR 4240-2.080. Briefs shall follow the same list of issues as filed in the case and must set forth and cite the proper portions of the record concerning the remaining unresolved issues that are to be decided by the Commission.
- (e) If testimony or documents are prefiled and served upon the parties before a hearing, a party need only provide a copy of the testimony or document to the court reporter for marking as an exhibit. If not prefiled and served upon the parties, then a party who has a document marked for use at the hearing shall have sufficient copies of the document to provide a copy not only to the court reporter, but also to each of the Commissioners, the presiding officer, and counsel for each other party.
- (f) All parties shall provide copies of testimony (including schedules), exhibits, and pleadings to other counsel by electronic means and in electronic form, essentially concurrently with the filing of such testimony, exhibits, or pleadings where the information is available in electronic format (.PDF, .DOC, .WPD, .XLS, etc.). Parties are not required to put information that does not exist in electronic format into electronic format for purposes of exchanging.
- (g) Public documents filed in the Commission's Electronic Filing and Information System ("EFIS") shall be considered properly served by serving the same on counsel of record for all other parties via e-mail. The parties agree confidential documents may be obtained from EFIS and so agree not to serve those documents via email.
- (h) Any data requests issued to or by Staff shall be submitted and responded to in the Commission's Electronic Filing and Information System (EFIS) pursuant to 20 CSR 4240-2.090(2)(H). All data requests other than those issued to or by Staff, as well as all objections to data requests, or notifications of the need for additional time to

respond, shall be sent by e-mail to counsel for the other parties. Counsel for each party shall receive electronically, via either EFIS notification or e-mail from the party serving a data request, an electronic copy of the text of the “description” of that data request contemporaneously with service of the data request. Regarding data requests issued via EFIS, if the description contains confidential information, or is voluminous, a hyperlink to the EFIS record of that data request shall be considered a sufficient copy. If a party desires the response to a data request that has been served on another party, the party desiring a copy of the response must request a copy of the response from the party answering the data request, thereby providing the responding party the opportunity to object. Counsel may designate other personnel to be added to the service list for data requests, but shall assume responsibility for compliance with any restrictions on confidentiality. If any party responds to a data request in EFIS, the response is available in EFIS to all counsel on the certified service list. Data request responses, other than responses to data requests in EFIS, shall be served on counsel for the requesting party, unless waived by counsel, and on the requesting party’s employee or representative who submitted the data request, and shall be served electronically, if feasible and not voluminous as defined by Commission rule. In the case of Ameren Missouri data request responses, Ameren Missouri shall post its data request responses on its Caseworks Extranet site; however, in the case of responses to data requests Staff issues, Ameren Missouri shall also submit the responses to Staff data requests in EFIS, if feasible, or in electronic format on compact disc or by other means agreed to by Staff counsel, if infeasible.

- (i) The parties shall make an effort to not include confidential information in data requests. If confidential information must be included in a data request, the confidential information shall be appropriately designated as such pursuant to Commission Rule 20 CSR 4240-2.135.
- (j) Responses to data requests shall be due in ten (10) calendar days, with three (3) business days to object or notify the requesting party that more than ten (10) calendar days will be needed to provide the requested information. If a data request has been responded to, a party’s request for a copy of the response shall be timely responded to, considering that the underlying data request has already been responded to (except that, with the exception of responses to Staff, responses will not be needed for Ameren Missouri’s data request responses posted on Ameren Missouri’s Caseworks Extranet site).
- (k) Workpapers prepared in the course of developing a witness’ testimony (including schedules) and exhibits shall not be filed with the Commission, but shall be submitted to each party within two (2) business days following the filing of the particular testimony, unless a party has indicated that it does not want to receive some or all of the workpapers. Workpapers containing confidential information shall be appropriately marked. If there are no workpapers associated with testimony, the party’s attorney shall so notify the other parties within the time allowed for providing those workpapers.
- (l) Where workpapers or data request responses include models or spreadsheets or similar information originally in a commonly available format where inputs or parameters may

be changed to observe changes in inputs, if available in that original format, the party providing the workpaper or response shall provide this type of information in that original format with formulas intact. With the exception of workpapers provided to Staff, Ameren Missouri may provide workpapers by posting the same on its Caseworks Extranet site, with e-mail notification to counsel for the parties to be provided essentially concurrently with the posting of workpapers on the Extranet site. Ameren Missouri shall provide its workpapers to Staff in electronic format by e-mailing or by delivery of a compact disc or other electronic storage.

- (m) Commission Rule 20 CSR 4240-2.090's requirement that a party must seek a telephone conference with the presiding officer before filing a discovery motion is waived.