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 Permission and Approval and a Certificate of Public Convenience and Necessity Authorizing it to Construct a Wind Generation Facility.	)))))	File No. EA-2019-0021

AMEREN MISSOURI'S REPLY TO RESPONSE OF DEKALB COUNTY, MISSOURI TO AMEREN MISSOURI'S OPPOSITION TO APPLICATION TO INTERVENE OF DEKALB COUNTY, MISSOURI

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Company" or "Ameren Missouri"), and hereby submits this reply to the above-referenced response ("Response"):

1. This Commission has recognized that intervention is "a process whereby a stranger becomes a full participant in a legal action." *Order Denying Intervention*, Case No. EA-2000-37 (Oct. 21, 1999) (*citing Ballmer v. Ballmer*, 923 S.W.2d 365, 368 (Mo. App. W.D. 1996)). Even when an intervention request is timely filed, the proposed intervener bears the burden to establish that it meets this Commission's requirements for intervention, and to convince this Commission that it should exercise its discretion to allow it to intervene. *See, e.g., Augspurger v. MFA Oil Co.*, 940 S.W.2d 934, 937 (Mo. App. W.D. 1997) (discussing the corollary intervention rule contained in the Missouri Rules of Civil Procedure). Even a cursory review of DeKalb County's Response demonstrates that DeKalb County has failed to meet its burden to justify its intervention in this case.

2. While both its Application to Intervene and its Response is rather opaque regarding the nature of the interest it claims justifies its intervention in this case, one can glean from those filings and comments of counsel for DeKalb County at the Prehearing Conference, that the contention is that if the Commission allows an investor-owned utility to own a wind farm anywhere in the state of Missouri, the county where the wind farm will be located will be harmed because of

the policy choices made by the General Assembly regarding property taxes that must be paid by investor-owned utilities. This is because Missouri law provides that at least some parts[1] of a generating plant, when owned by an investor-owned utility, are to be centrally assessed by the State Tax Commission with the resulting property taxes to be allocated among the taxing jurisdictions in counties where that utility owns electric lines. It is true that those same facilities, if owned by a rural electric cooperative or merchant generator, would be locally assessed by the county in question and all the resulting property taxes would be paid to the taxing authorities in that county.

3. Of course, this line of thinking (or in this case, the objection by DeKalb County) would have applied equally to the construction and ownership by investor-owned utilities of every single power plant now owned by such utilities in the state of Missouri. Undoubtedly Callaway County would have liked for the property taxes for the Callaway Energy Center to have been locally assessed, as would Franklin County, Jefferson County, St. Louis County, St. Charles County, Reynolds County, and Camden County with respect to the Labadie, Rush Island, Meramec, Sioux, Taum Sauk, and Osage Energy Centers, respectively. But the policy decision on that topic has been made by the General Assembly and it is not the business of the Commission to make resource decisions about power plant construction and ownership based on parochial concerns of each of the 114 counties in the state.

4. And therein lies a substantial problem with DeKalb County's claimed interest: If DeKalb County has a sufficient interest to justify intervention in this case, then so too does every

[1] The land and land rights components and buildings at the facility, the investment in which is recorded to FERC Account Nos. 340 and 341, are locally assessed, regardless of what kind of utility owns them. Thus, the facility will generate incremental property taxes for Atchison County regardless of its ownership.

one of the other 112 counties (not counting Atchison County, where the facility will be located) in the state. By DeKalb County's theory, every single Commission approval of a CCN for an investor-owned utility to own a power plant "could have a permanent and direct adverse impact on County income . . .." Response, ¶ 2. That statement if patently false for at least two reasons.

5. First, a Commission decision in this is case not binding or precedential on what the Commission might decide about a CCN application for a *different* generating plant in a *different* county at a *different* time. *See, e.g., State ex rel. Praxair v. Pub. Serv. Comm'n,* 328 S.W.3d 329, 240 (Mo. App. W.D. 2010) (There is no *stare decisis* in administrative law). Second, it is obvious that even if there were some later practical influence of a decision in this case on a different CCN application for a different plant in a different place, that influence would at most be *indirect*. DeKalb County's argument is like saying that every person, firm, or entity who dislikes some aspect of a Commission decision in one case, that might in theory be decided the same way in a different case involving that person, firm, or entity, automatically has a sufficient interest to have intervened in the first case.

6. DeKalb County attempts to turn its clearly non-existent or at best indirect "interest" into a more direct one by mischaracterizing the Company's Application in this case. In ¶¶ 3 to 5 of its Response, DeKalb County cites to ¶ 24 of the Application and its discussion of Ameren Missouri's justification for a somewhat expedited *procedural schedule* in this case to justify DeKalb County's intervention request. For example, DeKalb County claims that "Ameren seeks to have the principles applied in the High Prairie case be applied [sic] to this matter . . .." Response, ¶ 3. The truth is that Ameren Missouri simply pointed out in its Application that a procedural schedule that gave other parties approximately 60 days to file rebuttal testimony (as compared to the approximately 90 days afforded in File No. EA-2018-0202) was reasonable given that there

are a great many similarities in terms of project structure, etc. (e.g., the same Request for Proposal and evaluation thereof was used) between the project at issue in this docket and the project at issue in File No. EA-2018-0202. The Commission should not be fooled by DeKalb County's attempt to take, out of context, Ameren Missouri's explanation for why it proposed the procedural schedule and to then misuse that explanation to support an "interest" in this case that simply does not exist.

7. Finally, DeKalb County does not (nor could it) dispute the fact that if the Commission approves the CCN application in this case *that decision* will not and cannot reduce by even one penny the tax revenues DeKalb County is receiving today. Indeed, because the Company has electric line facilities in DeKalb County, if the facility is centrally assessed DeKalb County will see some *increase* in its property tax revenues.

8. DeKalb County has failed to meet its burden to justify intervention under 4 CSR 240-2.075. Any relevance parties might argue the centrally assessed versus locally assessed issue has in this case can be represented by Atchison County, which is the only county where the facility is located and who is represented by the same counsel.

WHEREFORE, Ameren Missouri respectfully requests that the Commission deny DeKalb County's Application to Intervene.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Response has been e-mailed, this 13th day of November, 2018, to counsel for the parties of record and for proposed intervenors.

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