

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

In the Matter of the Tariff Filings of Union                     )  
Electric Company d/b/a Ameren Missouri, to                     )     File No. ER-2022-0337  
Increase Its Revenues for Retail Electric Service.            )

**AMEREN MISSOURI’S REPLY TO STAFF’S RESPONSE**

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Company” or “Ameren Missouri”) and pursuant to 20 CSR 4240-2.080(13), hereby submits this reply to Staff’s Response to the Company’s Motion to Strike and alternative Motion for Leave to File Sur-Surrebuttal Testimony, as follows:

1.       The first nearly four pages of Staff’s Response do little more than recount the obvious fact that Ameren Missouri filed extensive direct testimony respecting the prudence of its decision-making respecting Rush Island, as the Commission’s *Order Directing Ameren Missouri to Comply with Staff’s Recommendation*. That the Company filed this direct testimony is not and never has been in dispute. That it was filed tells the Commission nothing about the flip-flopping reflected in Staff’s surrebuttal testimony respecting the basis for its proposed Rush Island adjustment in this case.

2.       Starting with ¶ 5 of its Response, Staff largely quotes its own testimony (from Staff witness Eubanks) and denies that witness Eubank’s reference to Ameren Missouri’s “decisions” that “caused costs to be imprudent” is a change from witness Eubank’s direct claims in direct and rebuttal testimony that Staff based its adjustment only on reduced operations, that the Commission need not address prudence in this case at all, and that the appropriate place to address prudence would be in the future securitization case.<sup>1</sup>

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<sup>1</sup> Eubanks Rebuttal, pp. 19 – 20.

3. Regardless, with respect to witness Eubank's testimony the Company will accept what witness Eubanks testified to, live and under oath, in Eubank's deposition conducted on Friday, March 24, 2023. While the transcript of the deposition is not available, the undersigned counsel represents to the Commission that witness Eubank's was directly asked whether she stood by her direct testimony claim that Staff was not recommending a prudence disallowance respecting Rush Island -- she indicated that yes, she stood by that statement. She went on to explain that her surrebuttal was only intended to respond to Company rebuttal and clarified that she was not asking the Commission to make a prudence determination and was not resting her proposed disallowance on an allegation of imprudence, noting that she was not endorsing a conclusion that Ameren Missouri was prudent. Based on these under-oath statements, the Company no longer seeks an order striking the subject portions of witness Eubank's surrebuttal testimony.

4. Staff witness Majors' surrebuttal testimony, however, presents a different circumstance. Staff's Response (page 6) notes that Company witness Reed mentions a derivation of the word "prudent" one time in his discussion of Staff witness Eubank's proposed Rush Island adjustment,<sup>2</sup> then claims that this means that Staff witness Majors' surrebuttal testimony was simply responding to Mr. Reed. Majors' own testimony belies Staff's argument. While Eubanks was clear that she is not actually alleging that in fact Ameren Missouri acted imprudently and is not basing her adjustment on any claimed imprudence, Majors states that "[b]ut for Ameren Missouri's imprudent decision making, the SSR agreement would not exist and Rush Island would, all things being equal, be economically dispatched. . . ."<sup>3</sup> The entire basis of Staff's proposed adjustment is that the plant is no longer being economically dispatched,

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<sup>2</sup> The discussion, however, was about the policy problems inherent in the economically used and useful theory.

<sup>3</sup> Majors Surrebuttal, p. 14, ll. 1-3.

that it produces less energy as an SSR. What we have is the proposed adjustment's sponsor, witness Eubanks, swearing that her adjustment is not based on imprudence and telling the Commission it need not address prudence in this case, while witness Major's directly attributes the basis for Eubank's proposed adjustment (the plant's status as an SSR) to "Ameren Missouri's imprudent decision making."

5. If witness Eubanks is testifying truthfully, and the Company accepts that she is, then any question of prudence is irrelevant to her proposed adjustment and thus irrelevant to this case. But Staff is trying to have it both ways. It is attempting to avoid having to prove that imprudent decisions in fact were made and that they caused harm while obviously attempting to sow doubt in the Commission's mind. It is obvious that Staff seeks to sow that doubt because it recognizes the terrible policy Staff's adjustment would reflect, if it were adopted, given that utility investments made to provide service to customers should never be disallowed in the absence of proof that there were imprudent decisions and that those decisions harmed customers.

6. Finally, Staff's Response is thick with irony. Staff protests at the Company's request that Staff not be allowed to "claim via cross-examination, redirect, or argument, that its Rush Island rate base adjustment is, in whole or in part, justified by any claimed imprudence on the Company's part." The irony is that it was the Staff that insisted, in the investigatory docket, that the Company provide evidence of its prudence, which the Company readily agreed to do. And the Company did so. And then the Staff responds to the prudence evidence but said it wasn't basing its adjustment on prudence and the Commission need not take up the question. Except that witness Majors argues, as a matter of fact the Company's imprudent decisions does underlie Staff's adjustment.

7. At a bare minimum, if the Commission chooses not to strike witness Majors direct claim that imprudent decisions are the reason the plant dispatches less – which is in fact the entire basis of Eubank’s adjustment; if the Commission chooses not to prohibit the Staff from arguing imprudence as a justification for Eubank’s adjustment, then the Commission should allow the Company to defend itself against at least Majors’ direct claim that imprudent decision making does justify the adjustment by allowing the Company to file sur-surrebuttal testimony.

WHEREFORE, the Company renews its request that the identified portions of witness Majors’ surrebuttal testimony be stricken and that the Staff be prohibited from arguing prudence as the basis for Eubank’s proposed adjustment,<sup>4</sup> or in the alternative, that the Company be allowed to file sur-surrebuttal testimony in defense of Majors’ allegation.<sup>5</sup>

Respectfully submitted,

/s/ James B. Lowery

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Dated: March 27, 2023

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<sup>4</sup> That Staff not be allowed to claim via cross-examination, redirect, or argument, that its Rush Island rate base adjustment is, in whole or in part, justified by any claimed imprudence on the Company’s part.

<sup>5</sup> The Company withdraws its request that the identified portions of witness Eubank’s surrebuttal testimony be stricken.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on all parties of record via electronic mail (e-mail) on this 27th day of March, 2023.

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