

**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-2018-0202

**AMEREN MISSOURI’S RESPONSE
TO OPC MOTION TO MODIFY PROCEDURAL SCHEDULE
TO PERMIT SUPPLEMENTAL TESTIMONY**

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or the "Company"), and for its response to the above-referenced motion filed by the Office of the Public Counsel ("OPC") on August 20, 2018, states as follows:

1. OPC asks the Commission to enter an order providing that within seven days of such an order "Staff or Ameren Missouri may provide affidavit(s) that would constitute a factual basis as the foundation of their agreement." OPC Motion, ¶ 4.a. OPC goes on, however, to request that such an order provide that "[s]uch affidavit(s) could not be filed, could be directive by pointing to other pre-filed testimony, or could be supplemental in nature for any new positions, and in addition or in the alternative." *Id.* OPC also requests that such an order then permit OPC and other non-signatories to the August 17, 2018 Stipulation and Agreement filed by Respondents ("August 17 Stipulation") to file "supplemental testimony in opposition or in support of . . ." the stipulation. OPC Motion, ¶ 4.b.

2. While unclear on its face, OPC’s motion appears to contemplate an order that would not require either the Staff or Ameren Missouri to file anything, but which would apparently allow OPC and other non-signatories to file something ("supplemental testimony") in response to the August 17 Stipulation.

3. While it is true that there have been cases where a non-unanimous stipulation is filed and, thereafter, “affidavits” or supplemental testimony has been filed respecting such a stipulation, in most cases additional affidavits or testimony is not filed. For example, in the case cited by OPC, File No. EO-2015-0055 (involving Ameren Missouri’s MEEIA Cycle 2 Plan), Staff, OPC and certain other parties filed a non-unanimous stipulation less than two weeks before a week of evidentiary hearings were to begin in that case that essentially reflected an alternative MEEIA 2 plan that the signatories indicated they could support. That stipulation reflected an alternative plan that was *fundamentally different* than Ameren Missouri’s proposal, including proposing major changes to both the structure and magnitude of the earnings opportunity proposed by Ameren Missouri. As Staff put it, given the modifications to Ameren Missouri’s proposed MEEIA 2 plan the alternative plan proposed, “Staff’s original filed testimony is not entirely applicable to the present positions.”¹ In that case, the simple fact was that absent supplemental testimony, there would have been nothing in the record supporting the new, alternative plan, which necessitated Staff and the other signatories to somehow (via additional pre-filed testimony that could be admitted into evidence or via live testimony at the evidentiary hearing) to provide evidence to support the alternative plan.

4. That is, however, simply not the case with respect to the August 17 Stipulation. The substantive terms of the August 17 stipulation are found in ¶¶ 4 through 14. The existing pre-filed testimony in this case (which presumably will be admitted into evidence either via hearing or agreement if the case were later resolved via a unanimous stipulation) provides the necessary factual support for those terms. Specifically, with respect to each of ¶¶ 4 through 14:

- 4. Reflects the Company’s position as supported by its direct testimony;

¹ Staff’s Motion for Leave to File Testimony in Support of Non-Unanimous Stipulation and Agreement, File No. EO-2015-0055, p. 2.

- 5. Reflects the Company’s position as supported by its direct testimony;
- 6. Reflects an additional concession on the Company’s part and its agreement to follow through on compliance with the Commission’s rules; there is no need for “factual support.”
- 7. Reflects the means (inclusion in quarterly progress reports) by which the Company will comply with the Commission’s rules; there is no need for “factual support.”
- 8. Reflects a legal conclusion; that is, that the closing of the purchase of the wind facility must, as a matter of federal law, obtain Section 203 approval; there is no need for “factual support.”
- 9. Reflects a means to comply with Section 393.135, RSMo. and to ensure the project receives federal Production Tax Credits. The fact that the requirements of Section 393.125 must be met to include the wind facility in rates does not require “factual support.” With respect to the Production Tax Credits, the Company’s direct testimony addresses their availability and importance and addresses how the project will qualify for them in detail; there is no further need for “factual support.”
- 10. Reflects concessions on the Company’s part. There is no need for “factual support” for the Company’s straightforward commitment to keep the Missouri Department of Conservation (“MDC”) informed of all scheduled calls and meetings with the United States Fish and Wildlife Service or its commitment to copy MDC on documents and reports. The parties were provided (and utilized) the full opportunity to address wildlife conservation issues in their rebuttal testimony, including an extensive piece of testimony on those topics from OPC, three pieces of

testimony from MDC, and a piece of testimony from the Division of Energy. Any further testimony by any party on such issues in response to “supplemental testimony” regarding the August 17 Stipulation would be improper.

- 11. There is no need for “factual support” of the Company’s agreement to depreciate the wind farm using its already Commission-approved depreciation rates for wind generation, or to use different depreciation rates in the future if approved by the Commission.
- 12. Reflects a simple agreement on the Staff’s part that it will not make a ratemaking challenge to the Company’s decision to proceed under the BTA, reserving (as is typical) the ability to challenge other aspects of the project unrelated to the decision to proceed. It is not apparent what “factual support” is needed for parties to agree on how they will conduct themselves (agreements not binding on any other party) in a future rate proceeding where costs of the facility are at issue.
- 13. All the variances agreed upon are in substance variances the Company asked for and already supported in its application and direct testimony in this case. The Company’s direct case provides any needed “factual support.”
- 14. The agreed-upon RESRAM tariff sheets (as a comparison to the agreed-upon tariff sheets to the tariff sheets on file before the August 17 stipulation was filed shows) are in substance either the same as the RESRAM tariff sheets originally filed or reflect *concessions* on the Company’s part. Given that there is “factual support” in the Company’s direct case filing for the original tariff sheets without those concessions there is (by definition) ample “factual support” for a pared-back RESRAM request.

5. In summary, the August 17 Stipulation, having been objected to by OPC on August 20, is now the position of Staff and Ameren Missouri (and Renew Missouri Advocates, which has also now made itself a party to the August 17 Stipulation) on the pending application in this case. The Company's pre-filed testimony provides all necessary "factual support" for it. There is nothing new or different about it which any other party to the case would fairly need to "rebut" given that it either reflects the Company's original request or concessions by the Company as compared to its original request. If a party disagreed with the original request in some way, 4 CSR 240-2.130(7)(C) required that party to provide "all testimony which explains why a party rejects, disagrees or proposes an alternative" to the Company's direct case. Presumably the other parties have complied with that rule.

6. If there are concessions in the August 17 Stipulation with which a party agrees it can so state at any time; it need not file "testimony" to do so. If a party believes the August 17 Stipulation, even with the concessions, is not good enough to win its support of the Company's application, it can so signify by objecting, as OPC has done. Moreover, all parties will have a full and fair opportunity to cross-examine Company and Staff witnesses respecting the terms originally proposed and about the modified terms reflected in the August 17 Stipulation.

7. Finally, OPC's citation to 4 CSR 240-2.130(10) misstates the substance and effect of that rule. The rule reflects a prohibition on supplementing prefiled prepared direct, rebuttal, or surrebuttal testimony without leave. It then affirmatively indicates that the prohibition would not apply if supplementation is sought to "address matters not previously disclosed which arise at the hearing" or to file supplemental *direct* testimony to replace "projected financial information with actual results." The rule has nothing to do with filing supplemental testimony if doing so would provide needed "factual support" for a non-unanimous stipulation.

8. OPC has been given its full and fair opportunity to file pre-filed testimony respecting the Company's application. There is no need for the Company or the Staff to provide further "factual support" for a stipulation that reflects either the original proposal or a somewhat modified proposal that pares back some of the Company's original requests and otherwise reflects concessions by the Company. There is no need for supplemental testimony by anyone, unless OPC is seeking a second bite of the apple to somehow bolster or supplement the rebuttal testimony it had approximately three months to prepare. The simple fact is that OPC has been given a full and fair opportunity to provide evidence respecting the Company's application in this case. The current procedural schedule should not be changed.

WHEREFORE, Ameren Missouri requests the Commission deny OPC's motion.

Respectfully submitted,

/s/ James B. Lowery

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CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been e-mailed or mailed, via first-class United States Mail, postage pre-paid, to counsel of record this 23rd day of August, 2018.

/s/ James B. Lowery

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