

**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 Renewable)
Generation Facility.)
File No.: EA-2022-0244

**AMEREN MISSOURI’S RESPONSE TO STAFF’S SUGGESTIONS IN OPPOSITION
TO AMEREN MISSOURI’S MOTION FOR A RULE 20 CSR 4240-2.135(4)
PROTECTIVE ORDER**

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Company,” or “Ameren Missouri”), and for its Response to Staff’s above-referenced Suggestions in Opposition, states as follows:

1. Staff’s Suggestions in Opposition both misstate the relief sought by Ameren Missouri’s Motion for Protective Order (“Motion”) and the bases for seeking that relief. The Suggestions in Opposition also reflect what appears to be a fundamental misunderstanding of why additional protection under subsection (4) of 20 CSR 4240-2.135 is sometimes necessary even if the information at issue falls within one of the 8 types of confidential information listed in subsection (2)(A) of 20 CSR 4240-2.135.

2. As it did in its prior Certificate of Convenience and Necessity (“CCN”) cases where it sought a CCN for new renewable facilities being constructed pursuant to Build Transfer Agreements (“BTA”) with a developer, the Company seeks a protective order in this case to exclude certain parties from accessing certain information, which the Company has requested be designed as “highly confidential” to distinguish it from “confidential” information. As indicated in its Motion, the docket in this case includes certain information that simply should not be available to “employees of any non-state agency entities not covered by statutory confidentiality

obligations who may become parties to this case.” Who might those parties be? Examples include persons or entities that represent renewable energy developers or their interests, persons or entities that represent the suppliers or contractors who may provide goods or services on renewable energy construction projects, or persons or entities that might compete for other renewable projects that the Company may seek to acquire in the future to meet the energy or capacity needs of its customers. The protective order would not impact such intervenors’ ability to engage non-employee outside consultants to act as subject matter experts or witnesses (e.g., an industrial intervenor group of the type that commonly seeks to intervene in utility cases at the Commission).

3. Why should such employees not see such information at all? Because to use the same words the Commission recently used in granting a protective order that restricted the persons who could access certain information, “even the most conscientious employee. . . [cannot] ‘unsee’ highly confidential information . . .” once it is seen. *Order Granting Motion for Protective Order*, File No. EO-2022-0190 (Mar. 16, 2022).

4. Consider some examples. In past cases at the Commission involving renewables, there have been trade association intervenors that represent the interests of renewable developers. Similarly, unions representing the interests of contractor employees who work on renewable projects have also intervened in such cases. While Ameren Missouri is not aware of renewable developers or suppliers/contractors directly intervening in a CCN case such as this one, it is possible that such a person or entity might seek to intervene. The simple fact is that if the commercial and pricing information reflected in the BTA and its schedules were merely treated as “confidential,” employees with ongoing responsibilities for such persons or entities could access such information merely by submitting a non-disclosure form indicating they are either a

subject-matter expert or intend to file testimony. 20 CSR 4240-2.135(6). While the Company is not suggesting that such persons would intentionally use what they've seen for purposes other than this docket, they will still have seen it; they can't erase from their minds. It is precisely for that reason, despite the fact that 20 CSR 4240-2.135(13) purports to limit what they can do with the information, that the Commission granted protective orders limiting certain employee access in File No EO-2022-0190, as earlier referenced.

5. The solar facility at issue in the present case will not be the last renewable energy facility that the Company needs and for which it will need to negotiate with developers, suppliers, and/or contractors. The commercial and financial terms of the contracts for construction of such facilities, or the request for proposal results, contain highly sensitive information. It would be contrary to Ameren Missouri's interests and the interests of its customers for that information to have been seen by the employees described above because it has the potential of putting Ameren Missouri at a negotiating disadvantage, to the ultimate detriment of its customers.¹

6. For the foregoing reasons, it matters not that the "information which Ameren Missouri identifies as worthy of "highly confidential" protections already falls directly within the definitions of confidentiality" set forth in the rule. Staff Suggestions in Opposition, ¶ 7. Staff is right, but completely misses the point of the Motion. The Company needs – and the Commission should want – to make sure that certain people don't see the information at all. The Company needs *additional* protection for that "confidential" information and the vehicle for obtaining that additional protection is to reclass the specific information to be "highly confidential" so

¹ And other Missouri utilities may also need to negotiate for future renewable facilities with some of the same persons or firms. They too (and their customers) could be disadvantaged if the specified employees have seen such information.

everyone knows what information in this docket can be seen by employees and outside experts of parties alike, and what information in this docket *cannot* be seen by the employees falling with the scope of the protection the motion seeks.

7. Staff also seems to misapprehend the function of Exhibits A and B to the Motion. While the Commission's rule on confidentiality has long referenced a certification to be submitted by those seeking access to confidential information (other than attorneys of record, who need not submit a separate certification), the rule has never prescribed the form of certificate. The Company has previously suggested a form and the Commission has previously adopted it, including Exhibit A to the Motion. In cases where there are two classes of information, "confidential" and "highly confidential," as here, a second form is needed to cover the more limited set of persons who may access "highly confidential" information (i.e., Exhibit B). The key difference between Exhibit A and Exhibit B is that such persons agree to abide by the requested protective order in Exhibit B, meaning they are agreeing they cannot access highly confidential information if they are employed by a person or entity covered by the protective order.

8. Two other aspects of Staff's Suggestions in Opposition bear a brief response. First, Staff claims that the Company's Motion is a "subsection (4) motion," implying that it should have filed a "subsection (3) motion." Staff Suggestions in Opposition, ¶ 9. As the Company reads the subject rule, all motions for a protective order are "subsection (3) motions," but in order to properly support the motion, the movant is required to support it as prescribed in subsection (4). That is what the Company did. Second, Staff seems to suggest that Staff was apparently wrong (as was the Commission) in prior cases where the Commission has granted protective orders that are identical to the one sought in this case, noting that such motions were

“not opposed” in prior dockets. Staff Suggestions in Opposition, ¶ 10. Ameren Missouri would submit that the motions were not opposed because of the recognition in those cases of why the protections sought by the motions in those cases were needed. Regardless, the Commission got it right in those dockets when it granted the requested protective order. It should do so again here.

RESPECTFULLY SUBMITTED,

/s/ James B. Lowery

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

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 29th day of July, 2022, to Staff and the Office of the Public Counsel.

/s/James B. Lowery