

**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 ) **FILE NO.: EA-2022-0244**  
Of Public Convenience and Necessity )  
Authorizing it to Construct a Renewable )  
Generation )

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

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), through the undersigned counsel, and hereby respectfully makes the following response to Ameren Missouri’s<sup>1</sup> Rule 20 CSR 4240-2.135(4) Motion for Protective Order:

1. On July 7, 2022,<sup>2</sup> Ameren Missouri filed an application for a Certificate of Convenience and Necessity (“CCN”) as well as other orders. Ameren Missouri also filed a motion for a protective order under Commission Rule 20 CSR 4240-2.135(4). The Commission set July 21 as the deadline for any responses to the protective order motion.

2. Ameren Missouri’s motion for protective order claims, in effect, that certain information requires greater protection than that already provided by Rule 20 CSR 4240-2.135 (2) and (3). Specifically, Ameren Missouri states that the following information should be accorded special Rule 20 CSR 4240-2.135 (4) protections:

- The negotiated terms and condition of a Build Transfer Agreement
- The terms and conditions of agreement with entities who will construct the solar and transmission-related assets covered by the Build Transfer Agreement

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<sup>1</sup> Union Electric Company d/b/a Ameren Missouri will be referred to as “Ameren Missouri.”

<sup>2</sup> All date references will be to 2022 unless otherwise indicated.

3. Ameren Missouri claims that Rule 20 CSR 4240-2.135 (4) special protection is required because the negotiations are ongoing and because without special protections, confidentiality concerns will chill negotiations.

4. Ameren Missouri urges the Commission to direct the use of the forms marked as Exhibits A and B. attached to its motion.

5. Exhibits A and B are nondisclosure agreements. Basically, they require persons who receive confidential information to certify that they are acting as an expert and have read and agree to abide by Rule 20 CSR 4240-2.135. Exhibit B is tendered for use “to access highly confidential information.”

6. Rule 20 CSR 4240-2.135(2)(A)6 provides confidentiality protections for information denominated “[s]trategies employed, to be employed, or under consideration in contract negotiations.” Rule 20 CSR 4249-2.135(3) provides that a party may seek a protection order from the commission designating specific subsection 2 information as confidential. Ameren Missouri, however, asks for Rule CSR 4249-2.135 (4) greater protection and for approval of a nondisclosure agreement “to access highly confidential information.”

7. The information which Ameren Missouri identifies as worthy of “high confidential” protections already falls directly into the definitions of confidentiality set out in 20 CSR 4240-2.135(2)(A)6. The phrase “[s]trategies employed, to be employed, or under consideration in contract negotiations” has no practical meaning if it does not include price terms and condition under consideration in the negotiations. Furthermore, Ameren Missouri does not explain how the proposed certificates (Exhibits A and B) that are to be signed by experts viewing confidential information actually add any protections

not already provided by subsection 3 of the rule. The rule for confidential information states:

(7) Any employee of a party or outside expert retained by a party that wishes to review confidential information shall first certify in writing that such expert or employee of a party will comply with the requirements of this rule. (A) The certification shall include the signatory's full name, permanent address, title or position, date signed, the case number of the case for which the signatory will view the information, and the identity of the party for whom the signatory is acting. (B) The signed certificate shall be filed in the case. (C) The party seeking disclosure of the confidential information shall provide a copy of the certificate to the disclosing party before disclosure is made.

8. In summary, Ameren Missouri has not stated a need for the Rule 20 CSR 4240-2.135 (4) higher protections it has requested. First, subparts 2 and 3 of the rule already protect the information Ameren Missouri identifies as needing protection. Second, those subparts already provide for exactly the kind of protection requested, i.e., that the person looking at the information will certify that s/he will obey confidentiality rules.

9. The Commission could treat and sustain Ameren Missouri's request as a Rule CSR 4240-2.135 (3) motion. But the Commission should deny the request as a Rule CSR 4240-2.135 (4) motion and deny the request to approve Exhibit B's use of the designation "highly confidential information." The information and reasons advanced by Ameren do not qualify for the designation or for Rule CSR 4240-2.135 (4) protections, and the Commission should not allow that designation to be bandied around freely,

10. Ameren Missouri directs the Commission to Files EA-2018-0202 and EA-2019-0021 where the Commission granted the request for a "highly confidential" designation. The motions in those files were not opposed.

**WHEREFORE**, Staff suggests that the Commission could grant Ameren Missouri's request as one for a Rule 20 CSR 4240-2.135(3) protective order request; but should not grant a request for a Missouri's Rule 20 CSR 4240-2.135(4) "highly confidential" designation or approve of that designation in Ameren Missouri's Exhibit B.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

The undersigned certifies by his signature below that on July 21, 2022, he filed the above document entitled "Staff Recommendation" in the EFIS file of the Missouri Public Service Commission.

/s/ Paul T. Graham