

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

In the Matter of Union Electric Company)
d/b/a Ameren Missouri for a Variance) **File No. EE-2019-0076**
from 4 CSR 240-23.020(3)(C))

STAFF RESPONSE TO ORDER DIRECTING STAFF RECOMMENDATION

COMES NOW Staff of the Missouri Public Service Commission (“Staff”), by and through Staff Counsel’s Office, and files its Staff Memorandum Recommendation in response to the Missouri Public Service Commission’s (“Commission’s”) October 31, 2018, Order Directing Staff Recommendation. Attached as Appendix A is the Staff Memorandum Recommendation of Claire M. Eubanks. In support thereof, the Staff states as follows:

1. On September 20, 2018, Union Electric Company, d/b/a Ameren Missouri pursuant to 4 CSR 240-2.060(1) and (4), 4 CSR 240-4.017(1)(D), and 4 CSR 240-23.020(5) filed a Notice Of Case Filing And Request For Variances which Ameren Missouri asserted would relieve it from the 60-day notice requirement of 4 CSR 240-4.017(1)(D) and allow it until March 31, 2019 to complete the annual inspection process set out in 4 CSR 240-23.020.¹ Ameren Missouri explained that in 2018 its corrective action schedule was disrupted by certain factors in particular the deployment of Ameren Missouri resources to assist in the restoration of electric services to Puerto Rico in the wake of the destruction of Hurricane Maria. Ameren Missouri claimed in an Affidavit attached as Exhibit A to its Application that it had no

¹ After stating in the “**Comes Now**” and “**Wherefore**” paragraphs of its Application that a variance would allow Ameren Missouri until March 31, 2019, to complete the annual inspection process described in 4 CSR 240-23.020, Ameren Missouri states in Paragraphs 1 and 12 a variance for good cause shown would allow Ameren Missouri until March 31, 2019, to complete the corrective actions scheduled for 2018. Ameren Missouri also relates at Paragraph 12 that granting the variance will not cause a significant impact on its provision of safe and adequate service pursuant to Section 393.130.1 RSMO.

communications with the office of the Commission (as defined by 4 CSR 240-4.015(10)) regarding any substantive issue likely to be in this case during the preceding 150 days to the filing of its Application. Ameren Missouri therefore requested an extension of time to complete the corrective actions from completion in 2018 to completion by March 31, 2019. Thus, Ameren Missouri argued it had established good cause for a waiver from the 60-day requirement of 4 CSR 240-4.017(1).

2. Ameren Missouri did not follow the language of 4 CSR 240-23.020(3)(C) and wait until its July 1, 2019, annual report to the Commission to address the prior calendar year regarding, among other things, those instances in which equipment was scheduled to have corrective action performed but the equipment was not corrected during the reporting period, and providing an explanation, including a date certain by which the required corrective action would occur or had occurred. Rather Ameren Missouri made a filing on September 20, 2018,² prior to the annual filing, which is not addressed in Commission Rule 4 CSR 240-23.020(3)(C), provided an explanation why corrective action would not occur as scheduled in 2018, identified a date by which corrective action would occur, and requested a variance (for good cause shown asserted to be pursuant to 4 CSR 240-23.020(5)), which is not provided for in that subpart of the Commission Rule. There is no basis for the Commission to grant Ameren Missouri variances pursuant to its September 20, 2018, Notice Of Case Filing And Request For Variances or its October 10, 2018, Substitute Notice Of Case Filing And Request For Variances.

² Ameren Missouri also made an October 10, 2018, Substitute Notice Of Case Filing And Request For Variances filing.

3. On September 21, 2018, the Commission issued an *Order Directing Filing* in which it directed Staff to file no later than October 10, 2018, a recommendation regarding the requested variances or a status report stating when it expects to file a recommendation.

4. On October 10, 2018, Staff filed a Status Report stating it would file its recommendation no later than December 10, 2018. On October 31, 2018, the Commission issued an Order Directing Staff Recommendation in which it directed the Staff to file its recommendation regarding the requested variances no later than December 10, 2018.

5. On October 10, 2018, Ameren Missouri filed a Request To Substitute Notice Of Case Filing and Request For Variances (“Request To Substitute”). The October 10, 2018, Substitute Notice Of Case Filing And Request For Variances filing requested to substitute the basis for the request for the waiver of the 60-day notice requirement of 4 CSR 240-4.017(1)(D) from: (1) no communications with the office of the Commission (as defined by 4 CSR 240-4.015(10)) regarding any substantive issue likely to be in this case during the preceding 150 days, to (2) circumstances prevented filing the required notice and delaying the filing for sixty (60) days would cause harm.

The Request To Substitute states in part as follows:

2. . . . While it is true that Ameren Missouri had no prior conversations about the need for a waiver based on the reasons articulated in that pleading, the Company did have conversations generally with the Commission regarding its restoration work in Puerto Rico during that time period.

3. . . . Instead of relying on lack of communications as a ground for good cause, Ameren Missouri provides alternate justification for the variance request in the attached Substitute Notice and Request.

6. The paragraphs in the October 10, 2018, Substitute Notice Of Case Filing And Request For Variances addressing 4 CSR 240-23.020(3)(C) are identical to the paragraphs in the September 20, 2018, Notice Of Case Filing And Request For Variances addressing 4 CSR 240-23.020(3)(C) except for the three additional words “as noted above” in Paragraph 12 in the later document.

7. Paragraphs 2 and 10 and the attached affidavit of Patrick E. Smith, Sr. in the October 10, 2018, Substitute Notice Of Case Filing And Request For Variances addressing the waiver of the 60-day notice requirement of 4 CSR 240-4.017(1)(D) are different from Paragraphs 2 and 10 and the attached affidavit of Patrick E. Smith, Sr. in the September 20, 2018, Notice Of Case Filing And Request For Variances addressing the waiver of the 60-day notice requirement of 4 CSR 240-4.017(1)(D) because a different reason is offered for the requested variance. Ameren Missouri stated in Paragraph 10 that “[r]equiring the completion of the repairs before year-end would cause harm in the form of increased repair costs, which could be subject to recovery from customers in the context of a rate case, that are not commensurate with the risks involved in a short delay.”

8. The Staff analysis performed in the Staff Memorandum Recommendation of Claire M. Eubanks and hereinabove is as relevant for Ameren Missouri’s October 10, 2018, Substitute Notice Of Case Filing And Request For Variances as it is for Ameren Missouri’s September 20, 2018, Notice Of Case Filing And Request For Variances. The Commission should not grant the requested variances. However, if the Commission grants Ameren Missouri its requested variances pursuant to 4 CSR 240-23.020(5) and 4 CSR 240-4.017(1)(D), Staff recommends the Commission make clear that it is not

making any ratemaking determination outside the context of a rate case and that annual reporting under 4 CSR 240-23.020(3)(C) is still required.

WHEREFORE Staff files its Staff Memorandum Recommendation that Commission Rule 4 CSR 240-23.020(3)(C) does not contemplate a Commission variance pursuant either to 4 CSR 240-23.020(5) or 4 CSR 240-4.017(1)(D), and as a consequence none should issue from the Commission.

Respectfully submitted

/s/ Steven Dottheim

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record in File No. EE-2019-0076 this 10th day of December, 2018.

/s/ Steven Dottheim

MEMORANDUM

TO: Missouri Public Service Commission Case File
File No. EE-2019-0076, Union Electric Company d/b/a Ameren Missouri
Request for Variance from 4 CSR 240-23.020(3)(C)

FROM: Claire M. Eubanks, P.E., Utility Regulatory Engineer II, Engineering Analysis
/s/ Daniel I. Beck, P.E. / 12/10/2018 /s/ Steven Dottheim / 12/10/18
Engineering Analysis / Date Staff Counsel’s Office / Date

SUBJECT: Staff Report and Conclusion on Ameren Missouri’s Request for Variance
From 4 CSR 240-23.020(3)(C)

DATE: December 10, 2018

SUMMARY OF RECOMMENDATION

The Staff of the Missouri Public Service Commission (“Staff”) has reviewed the Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”) September 20, 2018, Notice of Case Filing and Request for Variances and October 10, 2018, Request To Substitute Notice Of Case Filing And Request For Variances from 4 CSR 240-23.020(3)(C).¹ Based on its review, Staff recommends the Commission deny the Ameren Missouri Request for Variance from 4 CSR 240-23.020(3)(C) because a variance is not required by the very language of the Commission Rule. Staff appreciates Ameren Missouri timely providing information regarding disruptions to its corrective action schedule; however, the rule contemplates schedule disruptions and allows electric utilities the flexibility to manage its corrective actions and inspections accordingly. However, if the Commission grants Ameren Missouri its requested variance pursuant to 4 CSR 240-23.020(5), Staff recommends the Commission make clear that it is not making any ratemaking determination outside the context of a rate case and that annual reporting under 4 CSR 240-23.020(3)(C) is still required.

OVERVIEW

On September 20, 2018, Ameren Missouri filed its Application and Request for Variance and on October 10, 2018 Ameren Missouri filed its Request to Substitute Notice of Case Filing

¹ Ameren Missouri also requests a variance from the 60-day notice requirement of 4 CSR 240-4.017. 4 CSR-4.017(1)(D) allows for the request of a waiver for good cause shown. Staff has no objection to granting a waiver from the 60-day notice requirements Rule 4 CSR 240-4.017(1). Staff recommends the Commission make clear that it is not making any ratemaking determination outside the context of a rate case.

And Request for Variances, requesting the Commission grant Ameren Missouri a variance from 4 CSR 240-23.020(3)(C) which will allow Ameren Missouri until March 31, 2019 to complete its corrective actions scheduled for 2018. Ameren Missouri's corrective action schedule was disrupted in 2018 by certain factors, including its deployment of resources in an effort to assist in the restoration of electric services to Puerto Rico, which electric services were seriously affected by Hurricane Maria. Ameren Missouri is requesting a variance from completing corrective actions to its own system from the 2018 timeframe now rather than waiting until its next report, due on July 1, 2019, to explain the delay.² Although Ameren Missouri's pleading indicates it is requesting a variance from completing annual inspections, based on the response to Staff Data Request 6, Ameren Missouri's intent is to complete all scheduled inspections in 2018. It is Ameren Missouri corrective actions which will be delayed until March 31, 2019.

DISCUSSION

The regulation Ameren Missouri is seeking a variance from, 4 CSR 240-23.020(3)(C), states, in relevant part:

Each electrical corporation subject to this rule shall file with the commission an annual report detailing its compliance with this rule during the prior calendar year. Where corrective action was scheduled during the reporting period, the report shall present the total number and percentage of equipment that was or was not corrected during the reporting period. For those instances in which equipment was scheduled to have corrective action but the equipment was not corrected during the reporting period, an explanation shall be provided, including a date certain by which required corrective action will occur. The report shall also present totals and the percentage of equipment in need of corrective action, but with a scheduled date beyond the reporting period, classified by the amount of time remaining before the scheduled action.

4 CSR 240-23.020(5), does state that variances from a provision of 4 CSR 240-23.020 may be granted for good cause shown, however due to the language in this rule, a variance for purposes of requesting more time to complete the scheduled corrective actions is unnecessary. The rule simply states that for instances in which corrective action was scheduled and not completed during the reporting period, an explanation shall be provided, including a date certain

² Based on the response to Staff Data Request 4.1, the majority of uncompleted corrective actions (both in count and estimated time to complete) are pole replacements.

by which required corrective action will occur. Staff recommends the Commission deny Ameren Missouri's request for variance from 4 CSR 240-23.020(3)(C) because a variance is unnecessary. However, if the Commission grants Ameren Missouri a variance, Staff recommends the Commission make clear that it is not making any ratemaking determination outside the context of a rate case and that annual reporting under 4 CSR 240-23.020(3)(C) is still required.

