

# 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 Convenience and ) **File No. EA-2019-0021**  
Necessity Authorizing it to Construct a Wind )  
Generation Facility )

## ORDER DENYING MOTIONS TO STRIKE

Issue Date: February 14, 2019

Effective Date: February 14, 2019

The procedural schedule for this case required the parties to file a list of issues by February 6, 2019. On that date, most of the parties jointly filed a list of issues comprised of two general issues asking whether the Commission should approve Ameren Missouri's application and if so, what conditions should be placed on the approval.<sup>1</sup> The previous day, February 5, Atchison County and DeKalb County filed a separate list of issues that added eight largely, if not entirely, legal issues they intend to ask the Commission to address.<sup>2</sup> In the same document, Atchison County listed 12 additional witnesses and DeKalb County listed one additional witness.<sup>3</sup>

On February 8, Ameren Missouri filed a motion asking the Commission to strike the additional issues and witnesses identified by Atchison and DeKalb Counties. Similarly, Renew Missouri filed its own motion to strike on February 11. Renew Missouri's motion objected to the list of additional witnesses, but did not challenge the additional issues. Atchison and DeKalb Counties responded in opposition to the Ameren Missouri and

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<sup>1</sup> The parties that agreed to this list of issues are Ameren Missouri, Staff, Public Counsel, Renew Missouri, MIEC, Division of Energy, Department of Conservation, NRDC, and Sierra Club.

<sup>2</sup> Tarkio R-1 School District joined in that list of issues on February 6.

<sup>3</sup> One of the additional witnesses identified by Atchison County is Karma Coleman, who prefiled testimony on behalf of Tarkio R-1 School District.

Renew Missouri motions on February 13. Staff also responded on February 13, but did not take a position on the motions other than to urge the Commission to promptly rule on the motions to allow the parties to better prepare for the hearing that is set to begin on February 19.

The Commission will first address that portion of Ameren Missouri's motion that challenges the additional issues identified by Atchison and DeKalb Counties. Ameren Missouri argues these additional "issues" are merely additional positions or arguments that Atchison and DeKalb Counties intend to make regarding the overriding issues identified as Issues 1 and 2. That is, they are arguments as to why the Commission should not approve the request for a CCN, or why additional conditions should be imposed upon any approval.

Ameren Missouri is correct in saying that these additional issues can be addressed within the context of the two broader issues identified by Ameren Missouri and the other parties. However, that does not mean Atchison and DeKalb Counties have acted improperly by choosing to separately list these issues as issues they believe the Commission must address. There is no requirement that all the parties agree upon all the issues presented for decision, although such agreement is desirable and is encouraged by the Commission. Ultimately, the Commission will, within the order that resolves this case, decide what issues need to be addressed. There is no need to strike any identified issues at this time.

The other part of Ameren Missouri's motion to strike and the entirety of Renew Missouri's motion to strike, challenge the list of additional witnesses identified by Atchison County and DeKalb County. As Ameren Missouri and Renew Missouri explain, the Order Adopting Procedural Schedule issued by the Commission on November 15, 2018

provides that “[t]estimony shall be prefiled as defined in Commission Rule 4 CSR 240-2.130.”<sup>4</sup> Atchison County has prefiled the testimony of Susette Taylor, County Clerk of Atchison County, and Lori Jones, Assessor of Atchison County. DeKalb County has prefiled the testimony of Melissa Meek, County Clerk of DeKalb County, and Tanya Zimmerman, Assessor of DeKalb County. Those witnesses will be subject to cross-examination at the evidentiary hearing.

By rule, that prefiled testimony must have included “all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party’s direct case.”<sup>5</sup> The rule further provides that parties will not be allowed to supplement their prefiled testimony, “unless ordered by the presiding officer or the commission.”<sup>6</sup> That section of the rule also requires that a party be allowed a “reasonable opportunity to address matters not previously disclosed which arise at the hearing.” In fact, the Commission does occasionally allow parties to present additional direct testimony at the hearing when it finds it appropriate to do so.

At this time, Missouri American and Renew Missouri are asking the Commission to strike what is merely a list of names of possible witnesses. Atchison and DeKalb Counties have not yet had an opportunity to present any argument to the presiding officer or the Commission about what supplemental testimony those witnesses might offer, or why their testimony should be allowed. Such argument can only be made at the hearing, after “matters not previously disclosed which arise at the hearing” become apparent. Ultimately, those additional witness may, or may not be allowed to testify, but at this time, the motions to strike are premature. On that basis they will be denied.

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<sup>4</sup> Ordered Paragraph 2.(A).

<sup>5</sup> Commission Rule 4 CSR 240-2.130(7)(C).

<sup>6</sup> Commission Rule 4 CSR 240-2.130(10).

**THE COMMISSION ORDERS THAT:**

1. Union Electric Company d/b/a Ameren Missouri's Motion to Strike Proposed Issues and Witnesses is denied.
2. Renew Missouri Advocates d/b/a Renew Missouri's Motion to Strike is denied.
3. This order shall be effective when issued.

**BY THE COMMISSION**



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Morris L. Woodruff, Chief Regulatory Law Judge,  
by delegation of authority pursuant to  
Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,  
on this 14<sup>th</sup> day of February, 2019.

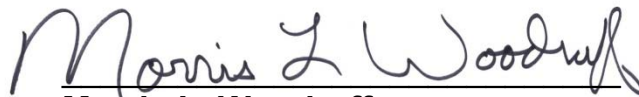
**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 14<sup>th</sup> day of February 2019.**



  
**Morris L. Woodruff**  
**Secretary**

# **MISSOURI PUBLIC SERVICE COMMISSION**

**February 14, 2019**

**File/Case No. EA-2019-0021**

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***Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).***

***Sincerely,***

A handwritten signature in dark ink, reading "Morris L. Woodruff". The signature is fluid and cursive, with the first name "Morris" being the most prominent.

**Morris L. Woodruff**  
**Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.