

**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 Certificates of                     )         File No. EA-2023-0286  
Convenience and Necessity for Solar Facilities.                     )

**AMEREN MISSOURI’S REQUEST FOR ORDER CLARIFYING ORDER  
RESPECTING LIMITED SUR-SURREBUTTAL TESTIMONY**

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Company" or "Ameren Missouri"), and hereby requests that the Commission issue a further order clarifying its November 1, 2023, *Order Denying Motion to Require Supplemental Direct Testimony and Amending Procedural Schedule* (the "Order") and, in support of its request, states as follows:

1. Ameren Missouri appreciates the initial amendment to the procedural schedule to allow an extension of the time to file surrebuttal testimony and the Commission’s later suspension of the procedural schedule in its entirety under the circumstances. The Company also appreciates the Commission’s recognition that given the Company’s burden in this case, it should not be ordered to file testimony on specific material requested by another party, here the Staff. With respect to that part of the Order setting a deadline for limited sur-surrebuttal testimony, the Company seeks clarification.<sup>1</sup>

2. The Order indicates that Staff’s Motion<sup>2</sup> is “denied, in part, and granted, in part.” The Order goes on to amend the procedural schedule “for the limited purpose of allowing Staff to respond to any surrebuttal testimony by Ameren Missouri witness(es) that addresses items listed in numbered paragraphs 1-5 of Staff’s motion.”

3. Staff’s motion sought an order requiring Ameren Missouri to file supplemental

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<sup>1</sup> While the procedural schedule has now been suspended and the sur-surrebuttal testimony deadline reflected in it is now moot, the Company believes it should seek clarification now since it would anticipate that a revised procedural schedule put into effect later could implicate a similar issue.

<sup>2</sup> Staff’s Motion to Require Supplemental Direct Testimony.

direct testimony on the numerous and detailed items listed across three pages in numbered paragraphs 1-5 of Staff's Motion. Staff's Motion further contemplated that if the Commission required such supplemental direct testimony, Staff should then be afforded the opportunity to file additional rebuttal testimony in response *to that supplemental direct testimony*. For example, if the Company filed supplemental direct testimony and answered Staff's question (List Item 1.c) of which of items i to vi was an "energy need," Staff would have the opportunity to file additional rebuttal testimony agreeing or disagreeing with the Company's answer to the question Staff had posed to it. This is made clear by the Staff's rebuttal testimony.

4. Staff witness James A. Busch, who presents Staff's overall position in this case, testifies that "Staff recommends that the Commission order Ameren Missouri to file supplemental direct testimony, to present evidence concerning the level of detailed analysis that Staff needs to reconsider its initial recommendation."<sup>3</sup> Mr. Busch then directs the Commission to the rebuttal testimony of Staff witness Sarah Lange "for the detailed list of what Ameren Missouri should provide."<sup>4</sup> Ms. Lange's rebuttal testimony then provides the list, that is, the identical list to that contained in Staff's Motion.<sup>5</sup> Finally, Mr. Busch makes clear that the purpose of the list was to then allow the Staff to file additional rebuttal testimony in response to supplemental direct testimony, if in fact it were filed: Q. Will an opportunity for rebuttal of this supplemental direct testimony be necessary? A. Yes. The information Staff is requesting as supplemental direct [i.e., the list Lange's rebuttal/Staff's motion] is necessary . . . and the request for supplemental direct testimony should include provision for an opportunity for rebuttal testimony on behalf of non-utility parties . . ."<sup>6</sup>

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<sup>3</sup> Busch Rebuttal, p. 3, ll. 2-4.

<sup>4</sup> *Id.*, p. 3, ll. 14-15.

<sup>5</sup> Sarah Lange Rebuttal, p. 17, l. 1 to p. 19, l. 17.

<sup>6</sup> Busch Rebuttal, p. 3, ll. 16 – 23.

5. Staff's request for "sur-replies" in its Motion was *not* a request to respond to Ameren Missouri surrebuttal about Staff's list. Instead, it was a premature or perhaps pre-emptory request to be allowed, based upon Staff's speculation that the Company would put on improper surrebuttal testimony under the guise of its "actual 'direct' case,"<sup>7</sup> to file sur-surrebuttal testimony in response to any such improper surrebuttal testimony, as evidenced by Staff's statement that if this improper surrebuttal were offered the "Commission should have the benefit of that response [to the supplemental direct testimony]."<sup>8</sup>

6. Consequently, the order granting Staff's Motion in part is unclear because it grants relief that Staff's Motion did not ask for (given that Staff's motion to require the long list of supplemental direct testimony has been denied). Therefore, the Commission should clarify that the intent of the Order (had the sur-surrebuttal testimony deadline remained) would have been to afford Staff a limited opportunity to submit sur-surrebuttal testimony *if, but only if*, the Company actually files surrebuttal testimony that goes beyond the surrebuttal testimony allowed by the Commission's rules.<sup>9</sup> And the Commission should clarify that it is in no position, in advance, determine if sur-surrebuttal testimony should be allowed until (a) the Company files surrebuttal testimony, (b) an allegation that some part of that surrebuttal testimony in fact does go beyond the proper bounds of surrebuttal testimony under the Commission's rules, and (c) the Commission agrees with such an allegation in whole or in part. Staff should not be allowed to simply file whatever sur-surrebuttal testimony it may want based on Staff's sole judgment that some aspect of the Company's surrebuttal testimony went beyond that allowed by the Commission's rules. Instead, Staff should be required to seek leave to file any such sur-surrebuttal testimony by

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<sup>7</sup> Staff Motion, p. 4.

<sup>8</sup> *Id.*

<sup>9</sup> The Commission's rules control the scope of proper surrebuttal testimony: "Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party's rebuttal testimony." 20 CSR 4240-2.130(7)(D).

justifying that it indeed is responding solely to surrebuttal testimony it claims to be out of bounds, with such leave to be granted only if the Commission agrees with Staff after the Company is afforded a fair chance to respond to any such Staff claims.

7. The Company does not intend to file testimony addressing Staff's three page list of items, nor does the Company intend to file surrebuttal testimony that goes beyond that allowed by the Commission's rules but certainly some topics in Staff's list were addressed and argued in Staff's rebuttal testimony and are fair game for response in the Company's surrebuttal testimony, regardless of which those topics intersect with Staff's list.

**WHEREFORE**, the Company respectfully requests that the Commission make and enter its order clarifying that if Staff contends any of the Company's surrebuttal testimony is in violation of the Commission's rules governing the same, Staff shall seek leave to file sur-surrebuttal testimony in response and that the Commission, after affording the Company a fair chance to respond, shall make a determination at that time respecting whether leave to file it will be granted in whole or in part.

Respectfully Submitted,

/s/ James B. Lowery

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**ATTORNEYS FOR UNION ELECTRIC  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that true and correct copies of the foregoing was served on the Staff of the Missouri Public Service Commission and the Office of the Public Counsel via electronic mail (e-mail) on this 9th day of November, 2023.

/s/ James B. Lowery