

**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<sup>1</sup> for Certificates of        )  
Convenience and Necessity for Solar Facilities            )        **File No. EA-2023-0286**

**STAFF’S RESPONSE IN OPPOSITION  
TO AMEREN MISSOURI’S REQUEST TO  
CLARIFY/STAFF’S REQUEST FOR EXPEDITED RULING**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff) and makes the following response to Ameren Missouri’s Request for Order Clarifying Order Respecting Limited Sur-Surrebuttal Testimony (“Request to Clarify”). **Staff opposes the request because it is not a request to “clarify.” It is a request to “vacate” that should be denied.** Staff requests an expedited ruling.

**Response to Request to Clarify**

On October 18, 2023,<sup>2</sup> Staff filed a Motion to Require Supplemental Direct Testimony (“Staff’s Motion”). On November 1, the Commission denied the motion in part and granted it in part. The Commission granted Staff’s request 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. . . .” On November 6, the Commission then suspended the Procedural Order because of the illness of a witness.<sup>3</sup>

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<sup>1</sup> Hereinafter, “Ameren Missouri.”

<sup>2</sup> All date references will be to 2023, unless otherwise indicated.

<sup>3</sup>The Commission did not “vacate” the procedural order. The Commission “suspended” only its deadlines. No other interpretation is possible given that nothing else was said and given that the only reason for the order was a witness’ illness.

On November 9, Ameren Missouri filed its Request to Clarify. Ameren Missouri “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.”<sup>4</sup>

Ameren Missouri’s entire Request to Clarify can be disposed of and denied very quickly, based upon one obvious point: When it filed its Motion to Require Supplemental Direct Testimony on October 18, Staff needed no order allowing it at a later time to file a motion seeking leave to file sur-surrebuttal testimony if Staff believed the Company’s surrebuttal was in violation of the Commission’s rules. No such order was needed then—nor is needed now. It cannot be presumed that the Commission intended to issue an order that was not needed. The order needed was one granting leave to file sur-surrebuttal and a procedural order that expressly opened up calendar space for sur-surrebuttal. The Commission expressly issued an order setting appropriate deadlines and, thus, ipso facto also sustained Staff’s request to file sur-surrebuttal. If we assume that the Commission did not issue an unneeded order and assume that an order was needed to file surrebuttal and provide for it in a procedural calendar, then it is pretty “clear” that an order so stating did what it stated.

Ameren Missouri appears to contend that creating the calendar space for sur-surrebuttal did not amount to actually granting the request to file sur-surrebuttal

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<sup>4</sup> Emphasis added.

without a further Staff request, a company reply, and a Commission order. Ameren Missouri seems to argue that the Commission's order merely left space for the testimony—seven days all told between Company surrebuttal for a Staff motion for leave, the Company's reply, a Commission order, and preparing and filing the only-then permitted sur-surrebuttal testimony. With all due respect, Ameren Missouri's argument is absurd. Ameren Missouri asks the Commission to conclude that when the Commission "granted" Staff's alternative request to amend the procedural schedule to provide for sur-surrebuttal, the Commission misspoke and actually "denied the motion without prejudice" to Staff's right to file its motion on November 9 (when Ameren Missouri's surrebuttal was due per the procedural order), which the Company could then respond to and which the Commission might grant, but which required that everything be all wrapped up within seven days on November 16 (per the procedural order). Ameren Missouri asks the Commission to "clarify" its November 1 order to state that this jammed up schedule was what the Commission really had in mind when it set out its new case calendar.

An overview: Ameren Missouri isn't serious. Ameren Missouri did not file its Request to Clarify because the Commission's order lacked clarity. Ameren Missouri wants the Commission to vacate its order. Staff will not conjecture on Ameren Missouri's intention. That is not the question. The question is what the Commission intended. It is to be presumed that the Commission knew its own mind when it granted Staff's motion and intended to issue a reasonable order. It did so. Furthermore, that same order, with no amendments or clarification needed quite clearly allows (because, again, no express permission is needed) Ameren Missouri to file a

motion to strike any Staff sur-surrebuttal if Ameren Missouri believes it violates the Commission's clear order or the Commission's rules. The issue here may be quite easily resolved by leaving orders just as they are (with new deadlines to be inserted later), with the obvious understanding that Ameren Missouri may certainly do what it needs no permission to do—file a motion to strike any Staff sur-surrebuttal that violates the Commission's order. Staff asks the Commission to deny Ameren Missouri's Request to Clarify.

#### Staff's Request for Expedited Rule

Ameren Missouri has circulated a proposed new procedural schedule among the parties. It presumes that there will be no sur-surrebuttal. That is, it tacitly presumes on the Commission and that the Commission will grant the Company's Request to Clarify, and "vacate" its current order that placed sur-surrebuttal in the procedural schedule and calendar. Ameren Missouri's Request to Clarify also expressly states that the Company does not intend to file testimony addressing the points identified in Staff's Motion for Supplemental Direct. The Commission's ruling on Ameren's Request to Clarify will directly affect the direction which discovery takes, for example, re-noticed deposition(s) of the Company to produce witnesses competent and authorized to speak for the Company concerning the points identified in Staff's Motion; and will directly impact the procedural calendar of any new procedural schedule. Accordingly, Staff asks the Commission to expedite its ruling on Ameren Missouri's Request to Clarify.

Respectfully submitted,

s/ Paul T. Graham #30416

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**CERTIFICATE OF SERVICE**

The undersigned by his signature below certifies that the foregoing pleading was served upon all counsel of record on this November 16, 2023, by electronic filing in EFIS, electronic mail, hand-delivery, or U.S. postage prepaid.

s/ Paul T. Graham