

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

In the Matter of the Petition of Union  
Electric Company d/b/a Ameren Missouri                    )  
for a Financing Order Authorizing the                    )       File No. EF-2024-0021  
Issuance of Securitized Utility Tariff Bonds            )  
for Energy Transition Costs related to Rush            )  
Island Energy Center.

**AMEREN MISSOURI’S RESPONSE TO PUBLIC COUNSEL’S MOTION FOR THE  
COMMISSION TO ORDER AMEREN MISSOURI AND AUTHORIZE PUBLIC  
COUNSEL TO PUBLICLY DISCLOSE INFORMATION**

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”) and, pursuant to 20 CSR 4240-2.080(13) and the Commission’s December 14, 2023, *Order Directing Response*, hereby responds to Public Counsel’s (“OPC”) above-referenced motion, as follows:

1.       OPC’s motion alleges that the Company did not comply with the designation requirements of 20 CSR 4240-2.135 (the “Confidentiality Rule”) and specifically, 20 CSR 4240-2.135(2)(B), with respect to information marked as confidential in the direct testimony and schedules of Company witness Steven Whitworth, filed on November 21, 2023. As relief, OPC requests Commission permission to in effect sanction the Company for its alleged non-compliance by allowing OPC to disregard the confidentiality of this information and publicly disclose the same. Alternatively, OPC seeks an order requiring the Company to fully comply with the Confidentiality Rule’s designation requirements within 10 days of a Commission order requiring that the Company do so.

2.       As discussed below, the Company generally agrees that its attempt to comply with the designation requirements of the Confidentiality Rule fell short of its compliance obligations, and that it is appropriate for the Commission to require that the Company fully comply within 10 days of a Commission order imposing such requirement. However, no statute or rule, including

the Confidentiality Rule, provides authority for a party – including OPC – to publicly disclose information for which a claim of confidentiality is made, nor is there any such statute or rule that would authorize the Commission to disregard the confidentiality claim of a party as a sanction for that party’s initial non-compliance with the Confidentiality Rule in full.

3. The confidential information in question appears on pages 11 and 18-19 of Mr. Whitworth’s direct testimony, and in Schedules SCW-D1 through SCW-D19 and SCW-D21 to his testimony. With two exceptions (Schedules SCW-D1 and SCW-D21), the information in question consists of reports, work papers, or other documentation relating to the work of external attorneys and thus is confidential (without obtaining a protective order) under the provisions of 20 CSR 4240-2.135(2)(A)5. Specifically, all such material and documents were prepared by the law firm of Hunton & Williams, which acted as attorneys for the Company and other utilities who engaged Hunton & Williams services via an industry association formed by such utilities known as the Utility Air Regulatory Group (“UARG”). Through UARG, Hunton & Williams provided advice and work product to the utilities, including Ameren Missouri, to aid such utilities in their compliance with applicable air statutes and regulations, including the federal Clean Air Act and regulations issued thereunder.

4. OPC also noted that certain information is redacted in Schedules SCW-D5, SCW-D6, SCW-D9, SCW-D10, SCW-D13, SCW-D14, SCW-D15, and SCW-D16 and that is true, and for good reason. The redacted information in those schedules is redacted pursuant to the attached Order of the federal district court in *United States of America v. Ameren Missouri*, Civil Action No. 4:11-cv-00077-RWS, US. Dist. Ct. for the E.D. of Missouri.<sup>1</sup> While the District Court had

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<sup>1</sup> The Company has annotated the attached order by highlighting the redactions ordered by the District Court (that match the redactions on the subject Schedules) and by labelling the Document reflected in the order with the corresponding Schedule number to Mr. Whitworth’s direct testimony.

determined that much of the information in those Schedules was no longer privileged (on the grounds that privilege had been waived given one of the defenses the Company had raised in the litigation), no such waiver was found by the District Court as to the redacted information, which has never been disclosed in any forum. And while the District Court required production of the unredacted portions of those Schedules because of the waiver of the privilege as to the unredacted portions, the unredacted portions of the documents at all times remained confidential, just as they are confidential under the Commission's Rule, as discussed above.

5. The Company apologizes for not properly designating this information (and for its mis-designation due to a misunderstanding between the undersigned counsel and Company administrative staff assisting with putting together the Company's direct case filing in this docket). The Company has reviewed its procedures to ensure that in the future it applies the proper designations on pages of testimony where confidential information appears and on confidential schedules, as required by 20 CSR 4240-2.135(2)(B).

6. In summary:

- a. The Company requests that the Commission deny OPC's request that it simply be allowed to make the confidential information public;
- b. Order the Company, within 10 days of the issuance of such an order, to designate the above-referenced pages and schedules in the Mr. Whitworth's direct testimony as "Confidential" and specify as part of those designations the application of 20 CSR 4240-2.135(2)(A)5, and to refile Mr. Whitworth's confidential version of testimony containing the proper designations; and
- c. Refile the public version of Mr. Whitworth's direct testimony and include therein Schedules SCW-D1 and SCW-D21 which, while marked confidential

at the time of their preparation, are not privileged and do not fall within any of the categories of 20 CSR 4240-2.135(2)(A) and thus should be public.

WHEREFORE, the Company hereby responds to OPC's motion and requests the relief set forth in paragraph 6 hereof.

Respectfully submitted,

/s/ James B. Lowery

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**Attorneys for Union Electric Company  
d/b/a Ameren Missouri**

**CERTIFICATE OF SERVICE**

The undersigned certifies that true and correct copies of the foregoing have been e-mailed to the attorneys of record for all parties to this case as specified on the certified service list for this case in EFIS, on this 21<sup>st</sup> day of December, 2023.

/s/ James B. Lowery  
James B. Lowery

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
AMEREN MISSOURI, )  
)  
Defendant. )

Case No. 4:11 CV 77 RWS

**ORDER**

In accordance with and for the reasons stated on the record during today’s hearing,  
**IT IS HEREBY ORDERED** that the United States’ Motion to Compel Production of  
Communications between Defendant Ameren and Third Party Utility Industry Associations  
#[369] is **GRANTED** in part and **DENIED** in part.

As stated on the record, Ameren shall produce each of the 53 documents that were  
submitted to the Court for *in camera* review. The contents of these documents shall be produced  
to the extent that they contain relevant information that is responsive to the United States’  
motion to compel. Information regarding UARG’s budget, for example, may be redacted  
because it is irrelevant. Likewise, information that does not respond to the United States’ request  
for communications relating to the operation, interpretation, implementation, or enforcement of  
EPA’s NSR and PSD regulations may be redacted.

I note that the United States has withdrawn its request for any Category 1 information,  
which the parties describe as information relating to UARG’s rulemaking and related litigation  
efforts. As I stated on the record, I have also found that the materials containing counsel’s  
mental impressions about UARG’s rulemaking and related litigation efforts constitutes protected

work product. As a result, Category 1 information and the related work product may be redacted from the documents. I have provided a document-by-document review of the Category 1-related information that Ameren may redact from each of the documents. Ameren shall have until **March 16, 2015** to produce the redacted documents to the United States in compliance with the terms of this Order.

1. Document No. ADPR 1000407535 (Log Entry #19)

Ameren shall produce this document, with some redactions:

- p. 27:
  - In the title field, redact the line starting with "Total Requested."
  - In the first column, redact the last portion of the first paragraph starting with the sentence "UARG will continue working with..." and ending at "...relief for PCPs."
  - In the second column, redact the first and second bullet points.
  - In the third column, redact the first paragraph.
  - In the fourth column, redact the very last sentence, which starts, "Participation in this ..."
- p. 28:
  - In the first column, redact the second sentence starting with "UARG is" under the bullet point "Rulemaking on 'flexible planning rule.'"
  - In the first column, redact the second sentence starting with "UARG is" under the bullet point "Rulemaking on PSD for PM2.5."
  - In the second column, redact bullet points 1, 2, and 4.
  - In the fourth column, redact the latter portion of the first paragraph, starting with "UARG members would..." and going through the end of the paragraph; and redact the beginning of the second paragraph/bullet point, starting with "The debottlenecking..." and ending with "beyond the debottlenecking context."
- p. 29
  - In the second column, redact bullet points 2, 3, and 4.
  - Redact all of column four.

2. Document No. ADPR 1000407692 (Log Entry #43) and Document No. P000207425 (Log Entry #103).

Ameren shall produce this document in its entirety.

3. Document No. ADPR 1000407174 (Log Entry #4)

Ameren shall produce this document, with some redactions:

- Pp. 2-3; 6; 9-10; 14-20; 26-27; and 35-40

4. Document No. ADPR 1000407176 (Log Entry #6)

Schedule SCW-D15

Ameren shall produce this document, with some redactions:

- Pp. 2-5

5. Document No. ADPR 1000407677 (Log Entry # 37); Document No. ADPR 1000407777 (Log Entry #54); and Document No. P000207573 (Log Entry #114). Sch. SCW-D14 D13

Ameren shall produce this document, with some redactions:

- p. 2
  - Redact the second bullet point and all three sub-bullet points
- pp. 3; 19-27; and 31
- p. 32
  - Redact the title

6. Document No. ADPR 1000407773 (Log Entry #52)

Ameren shall produce this document, with some redactions:

- Pp. 3-4; 6-7; 9-10; and 12-15
- p. 24
  - Redact the text of the first (starting with “Stewart station...”) and third (starting with “Judge Sargus”) sub-bullet points under the first bullet point
- p. 25
  - Redact the text of the sub-bullet point (starting with “Had already...”) under the first bullet point

7. Document No. P000207440 (Log Entry #104)

Ameren shall produce this document in its entirety.



8. Document No. P000207553 (Log Entry #111); Document No. AMPR 1000404255 (Log Entry #67); Document No. AMPR 1000404259 (Log Entry #70); Document No. AMPR 1000404260 (Log Entry #71); and Document No. ADPR 1000407683 (Log Entry #41).

Ameren shall produce this document, with some redactions:

- Produce the Agenda
- Redact the entire email from Makram Jaber sent on April 2, 2009
- Produce the email from Makram Jaber sent on February 23, 2009 but redact the bullet point starting with "Creative enforcement"....

9. Document No. AMPR 1000404249 (Log Entry #66)

Ameren shall produce this document, with some redactions:

- Redact the first bullet point under Section VII(A), starting with "How do GHGs..."
- Redact the last sub-bullet point under Section VII(A), starting with "Other..." under Section VII(A)
- Redact the last bullet point under Section VII(B), starting with "Beyond..."

10. Document No. AMPR 1000404257 (Log Entry #69)

Ameren shall produce this document, with some redactions:

- Redact the first bullet point under Section V(A), starting with "How do GHGs..."
- Redact the last sub-bullet point under Section V(A), starting with "Other..." under Section VII(A)

11. Document No. P000207531 (Log Entry #108)

Ameren shall produce this document, with some redactions:

- Pp. 10-11
  - redact the title and text of Section 2

12. Document No. ADPR 1000407443 (Log Entry #12) Sch SCW-D5

Ameren shall produce this document, with some redactions:

- p. 6
  - Redact the last sentence of the first full paragraph starting with "Because the D.C. Circuit..."
- p. 8
  - Redact the last sentence of the memo

13. Document No. AMPR 1000404164 (Log Entry #65) Sch SCW-D16

Ameren shall produce this document, with some redactions:

- Redact pp. 2-6

14. Document No. ADPR 1000407784 (Log Entry #57)

Ameren shall produce this document, with some redactions:

- Redact pp. 2-17; 31-41

15. Document No. ADPR 1000407294 (Log Entry #9)

Ameren shall produce this document, with some redactions:

- Redact pp. 23-28

16. Document No. P000207303 (Log Entry #95)

Ameren shall produce this document, with some redactions:

- Redact pp. 21-22

17. Document No. ADPR 1000407718 (Log Entry #50) Sch. SCW-D10

Ameren shall produce this document, with some redactions:

- Redact pp. 14

18. Document No. P000207401 (Log Entry #100)

Ameren shall produce this document, with some redactions:

- p. 2
  - Redact the last two lines of notes starting with “RMRR” and “expect”

19. Document No. ADPR 1000407310 (Log Entry #10) and Document No. AMPR 1000403601 (Log Entry #63)

Ameren shall produce this document in its entirety.

20. Document No. P000207490 (Log Entry #107)

Ameren shall produce this document, with some redactions:

- p. 2
  - Redact the first full sentence on this page
- p. 5, redact FN3
- p. 6, redact FN4
- p. 11-13 (through the end of Section VII of document)
- p. 13
  - Redact the Section IX text
- p. 14
  - Redact the text from the top of the page, starting with, “the mandate is...” through the end of the first full paragraph, ending, “...granted.”
- p. 15
  - Redact the last paragraph of Section IX and all of Section X.

21. Document No. ADPR 1000407820 (Log Entry #60) Sch SCW-D9

Ameren shall produce this document, with some redactions:

- Redact pp. 4; 11; 18; 30-37; 41-42
- p. 26
  - Redact the second bullet point and all sub-bullet points

22. Document No. ADPR 1000407595 (Log Entry #28)

Ameren shall produce this document, with some redactions:

- p. 1
  - In the first paragraph, redact the text starting with, "Also, as has been the case..." through the sentence ending with "...member presentations useful."

23. Document No. P000207485 (Log Entry #106)

Ameren shall produce this document in its entirety.

24. Document No. P000207460 (Log Entry #105)

Ameren shall produce this document in its entirety.

25. Document No. AMPR 1000403602 (Log Entry #64)

Ameren shall produce this document in its entirety.

26. Document No. ADPR 1000407698 (Log Entry #44) Sch SCW-D6

Ameren shall produce this document, with some redactions:

- p. 28
  - Redact the "Notes" under sections 14(a), (b), and (c)
- p. 32
  - Redact the "Note" under section 19
- p. 33
  - Redact the "Note" under section 21

27. Document No. ADPR 1000407638 (Log Entry #33)

Ameren shall produce this document in its entirety.

28. Document No. ADPR 1000407637 (Log Entry #32) and Document No. ADPR 1000407737 (Log Entry #51).

Ameren shall produce this document, with some redactions:

- p. 6
  - Redact the second bullet point
- p. 7
  - Redact the second bullet point
- p. 11
  - Redact the second and third bullet points
- p. 14
  - Redact the last (ninth) bullet point
- p. 16
  - Redact the entire page

29. Document No. ADPR 1000407672 (Log Entry #34) and Document No. P000207585 (Log Entry #115)

Ameren shall produce this document, with some redactions:

- p. 2
  - redact the text of first bullet point starting with, "and..."
- p. 3

- redact the text of Title starting with, “and...”
- p. 4
  - redact the text of Title starting with, “and...”
  - redact the third and fourth sub-bullet points
- pp. 5-7
  - Redact the entire pages

30. Document No. ADPR 1000407676 (Log Entry #36) and Document No. P000207560 (Log Entry #112)

Ameren shall produce these documents in their entirety.

31. Document No. ADPR 1000407679 (Log Entry #38) and Document No. P000207568 (Log Entry #113)

Ameren shall produce these documents in their entirety.

32. Document No. ADPR 1000407680 (Log Entry #39) and Document No. ADPR 1000407780 (Log Entry #56).

Ameren shall produce this document in its entirety.

33. Document No. ADPR 1000407796 (Log Entry #58)

Ameren shall produce this document in its entirety.

34. Document No. P000207354 (Log Entry #98)

Ameren shall produce this document in its entirety.

35. Document No. AMPR 1000404256 (Log Entry #68)

Ameren shall produce this document in its entirety.

36. Document No. AMPR 1000404845 (Log Entry #76)

Ameren shall produce this document in its entirety.

37. Document No. AMPR 1000404848 (Log Entry #77)

Ameren shall produce this document in its entirety.

38. Document No. AMPR 1000404850 (Log Entry #79)

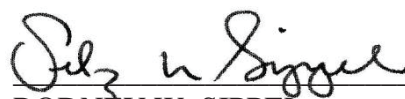
Ameren shall produce this document in its entirety.

39. Document No. ADPR 1000407687 (Log Entry #42)

Ameren shall produce this document in its entirety.

40. Document No. AMPR 1000404849 (Log Entry #78)

Ameren shall produce this document in its entirety.

  
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RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE

Dated this 3rd day of March, 2015.