

**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	)	<b><u>File No. EF-2024-0021</u></b>
Authorizing the Issue of Securitized Utility	)	
Tariff Bonds for Energy Transition Costs	)	
Related to Rush Island Energy Center	)	

**STAFF RESPONSE TO AMEREN MISSOURI’S MOTION TO STRIKE**

**COMES NOW** the Staff (Staff) of the Missouri Public Service Commission (PSC) and for its *Response to Ameren Missouri’s Motion to Strike* and for leave to file sur-surrebuttal testimony in this matter Staff hereby responds:

1. On March 27, 2024, filed a *Motion* seeking to strike portions of Staff witness Claire Eubanks’ and all of Staff witness Shawn Lange’s Surrebuttal testimony. Ameren Missouri alleges that the testimony does not meet the definition of surrebuttal testimony as contemplated by Commission rule 20 CSR 4240-2.130(7).

2. Ameren Missouri in its *Motion* testifies as to its position, which is inappropriate and should not be considered as part of the record of this case. Further, it seeks to summarize Staff’s testimony to support its position by mischaracterizing the positions that Staff’s witness took in rebuttal testimony. The position Eubanks actually took was that Ameren Missouri’s decision to **comply with the District Court’s modified Remedy Order** to retire the Rush Island plant no later than October 15, 2024, is reasonable and prudent.<sup>1</sup> After Ameren Missouri was ordered to install scrubbers on the Rush Island plant by the District Court, it filed announcing the retirement of Rush Island and proposed that retiring the plant early met the emissions limit required

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<sup>1</sup> Rebuttal Testimony of Claire M. Eubanks, PE, P. 3:8-10.

by the original ruling, and the District Court modified its Order to accommodate this alternative approach. Eubanks does not make any assertions in the cited text as to whether Ameren Missouri's choice to retire the plant vs. installing the scrubbers was prudent. Ameren Missouri goes on to misrepresent that, "Staff's rebuttal testimony lodges not a single criticism ... nor with the retirement of the plant – in any way." In fact just one page later in Eubanks' testimony it states, "The Commission must consider whether Ameren Missouri's early retirement decision is reasonable and prudent." Eubanks then goes on to make it clear that her testimony supports the fact that Ameren Missouri has been ordered by a District Court to retire the Rush Island plant early and complying with the Court's order is a prudent decision.

Other key phrases found in Eubanks' Rebuttal testimony include:

"Staff has three main concerns related to Ameren Missouri's decisions to retire Rush Island and the costs associated with that decision that Ameren Missouri may attempt to recover from ratepayers in later rate cases."<sup>2</sup>

"Previously you mentioned Staff's concerns with future harm related to Ameren Missouri's decision to retire Rush Island no later than October 15, 2024."<sup>3</sup>

"Ameren Missouri chose to appeal that decision and chose not to evaluate a comparison of the retirement of Rush Island to retrofitting Rush Island until the 2020 IRP."<sup>4</sup>

"Staff will propose an adjustment in a future rate proceeding to reflect any portion of the Rush Island Reliability Project it deems imprudent."<sup>5</sup>

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<sup>2</sup> Rebuttal Testimony of Claire M. Eubanks, PE, P. 5:4-6.

<sup>3</sup> Rebuttal Testimony of Claire M. Eubanks, PE, P. 20:20-21.

<sup>4</sup> Rebuttal Testimony of Claire M. Eubanks, PE, P. 24:18-20.

<sup>5</sup> Rebuttal Testimony of Claire M. Eubanks, PE, P. 25:14-15.

3. Ameren Missouri alleges that Staff witness Eubanks Surrebuttal Testimony responding to OPC witness Jordan Seaver is improper because Seaver responds to Ameren witness Matt Michels and Staff references Michels' Direct Testimony in its Surrebuttal. It also seeks to strike Staff witness Shawn Lange's testimony solely based on the fact that Lange responds to the Rebuttal testimony of OPC witness Jordan Seaver and also references Michels in his Surrebuttal Testimony. Yet, as Ameren Missouri itself points out in its *Motion*, the definition of Surrebuttal is, "material which is responsive to matters raised in another party's rebuttal testimony." Even if Staff had not raised issue with the choice to retire Rush Island early, which it did, both Staff witnesses Eubanks and Lange respond to the testimony of Office of the Public Counsel (OPC) witness Seaver and the commentary of Ameren Missouri witness Michels contained within that testimony. Further, Staff witness Eubanks cites to Michels' testimony twice in her Rebuttal Testimony at page 3 in footnote 1 and on page 23 at line 17.

4. Ameren Missouri also asks the Commission for permission to file sur-surrebuttal testimony based on the same allegation that Staff has introduced new information in surrebuttal from what was presented in rebuttal. Staff objects to this request due to the fact that as clarified above, Ameren Missouri has misrepresented the testimony of Staff witness Claire Eubanks and in fact Ameren Missouri had every opportunity to address the concerns Staff raised regarding the prudence of the early retirement of Rush Island in its surrebuttal testimony as filed on March 22. Permitting the admission of more testimony from Ameren Missouri violates the due process rights of the other parties to this case as only Ameren Missouri is presently

permitted to file sur-surrebuttal testimony despite the fact that every party had two bites at the apple. Ameren Missouri's *Motion* and accompanying request are simply an attempt by the Company to gain an unfair advantage to respond to the parties' surrebuttal testimony and should be denied.

5. For this myriad of reasons, Ameren Missouri's *Motion to Strike* should be denied and Staff's Surrebuttal Testimony should be found proper. Ameren Missouri's request to file sur-surrebuttal should also be denied as Staff's Surrebuttal Testimony was compliant with Commission rules and did not introduce new information as Ameren Missouri suggests. Due to the nature of Ameren Missouri being granted permission to file before any party was given an opportunity to respond, Staff reserves the right to file a separate response objecting to all or portions of Ameren Missouri's sur-surrebuttal testimony once it has been filed.

**WHEREFORE**, Staff prays that the Commission will accept this *Staff Response*; deny Ameren Missouri's *Motion to Strike*; deny Ameren Missouri's request to file sur-surrebuttal testimony; and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

**/s/ Whitney Scurlock**

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 29<sup>th</sup> day of March, 2024, to all counsel of record.

**/s/ Whitney Scurlock**