

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

In the Matter of Union Electric Company)	
d/b/a Ameren Missouri's 4 th Filing to)	
Implement Regulatory Changes in Furtherance)	<u>File No. EO-2023-0136</u>
of Energy Efficiency as Allowed by MEEIA)	

STAFF RESPONSE TO AMEREN MISSOURI'S MOTION TO STRIKE

COMES NOW the Staff ("Staff") of the Missouri Public Service Commission, and for its *Response to Ameren Missouri's Motion to Strike* in this matter, Staff respectfully states:

1. On May 16, 2024, Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company") filed a *Motion to Strike Portions of the Rebuttal Testimony of Staff Witnesses Brad Fortson and Mark Kiesling, and Motion for Expedited Treatment* ("Motion"). Ameren Missouri alleges that the rebuttal testimony of Messrs. Fortson and Kiesling does not meet the definition of rebuttal testimony as contemplated by Commission rule 20 CSR 4240-2.130(7)(B). Ameren Missouri argues that portions of Mr. Fortson's and Mr. Kiesling's testimony improperly supplements Staff's direct case in this matter.

I. Rebuttal Testimony of Staff Witness Brad Fortson

2. Ameren Missouri argues that Mr. Fortson's testimony is not responsive to Ameren Missouri's direct. Ameren Missouri's argument focuses on (1) a line that says "Staff's testimony builds off of its direct testimony in this case..." and (2) Mr. Fortson's summary of past Ameren Missouri MEEIA cycles and Staff's perspective on settlements. Ameren Missouri closes its argument by stating that past Ameren Missouri MEEIA cycles

and Staff's perspective on settlements "does not respond to Ameren Missouri's direct testimony or Amended Application."

3. Ameren Missouri addresses past MEEIA extensions and settlements within both its direct testimony, and its Amended Application. In the Direct Testimony of Ameren Missouri witness Antonio M. Lozano, starting on page 13, line 3 through page 20, line 19, Mr. Lozano provides a history of Ameren Missouri's Commission-approved MEEIA programs, and goes back as far as the fall of 2021 in explaining the planning process for the Amended Application, including settlements regarding extensions of Ameren Missouri's MEEIA 2019-21 (also known as Ameren's MEEIA Cycle 3).

4. In addition to the Direct Testimony of Mr. Lozano, Ameren Missouri's Amended Application includes a section titled "Continuity from the MEEIA 2019-21 PY24 extension into MEEIA 2025-27."¹ This includes discussion of a transition plan during MEEIA 2016-18 (also known as MEEIA Cycle 2).²

5. It is clear that Mr. Fortson's rebuttal testimony complies with the definition under Commission rule 20 CSR 4240-2.130(7)(B) because his rebuttal testimony "is responsive to the testimony and exhibits contained in any other party's direct case."

II. Rebuttal Testimony of Staff Witness Mark Kiesling

6. Ameren Missouri's Motion to strike the rebuttal testimony of Mr. Kiesling appears to be based on Mr. Kiesling's use of information he learned from a customer of Ameren Missouri, and that said information is hearsay and should thus be subject to strike.

¹ Amended Application, pg. 39-40. *See also* Direct Testimony of Antonio M. Lozano, Schedule AML-D1, pg. 39-40.

² *Id.*, pg. 40.

7. This customer's comments addressed Ameren Missouri's lack of analysis regarding the impacts of the Inflation Reduction Act within its Amended Application.

8. Section 490.065, RSMo governs the admission of expert testimony in contested cases before the Commission. *Alliance v. Pub. Serv. Comm'n*, 593 S.W.3d 632 (Mo. Ct. App. 2019) (citing *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n*, 186 S.W.3d 376, 382 & n.3 (Mo. App. W.D. 2006) (citing *State Bd. of Registration for Healing Arts v. McDonagh*, 123 S.W.3d 146, 154-55 (Mo. banc 2003))). Since Mr. Kiesling is an expert witness, "The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing and must be of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reasonably reliable." (emphasis added) § 490.065.1(3), RSMo.

9. The Commission frequently requests comments from the public, especially utility customers. These comments from customers are important in ensuring that the Commission can exercise its regulatory functions and enforcement. The Commission also frequently asks Staff about feedback it has received from the public during proceedings.

10. If the Commission were to strike Mr. Kiesling's testimony because these comments from an Ameren customer are "hearsay," it would effectively chill the use of comments from utility customers in any proceeding before the Commission. Further, if Ameren Missouri is concerned about having an opportunity to cross examine this customer, Staff has provided Ameren Missouri with the identity of the customer, and the material provided to Staff by the customer that Mr. Kiesling relied upon in drafting his

rebuttal testimony. Ameren Missouri has all the information it needs to contact the customer, and respond to Staff and this customer's concerns in its surrebuttal testimony.

WHEREFORE, Staff prays that the Commission will accept this *Staff Response*, deny Ameren Missouri's motion to strike portion of the rebuttal testimony of Messrs. Fortson and Kiesling, and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ Travis J. Pringle

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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 23rd day of May, 2024, to all parties and/or counsel of record.

/s/ Travis J. Pringle