

**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 Permission and)
Approval and Certificate of Public Convenience and) File No. EA-2024-0237
Necessity Authorizing it to Construct a Simple Cycle)
Natural Gas Generation Facility.)

**RENEW MISSOURI’S RESPONSE TO AMEREN MISSOURI’S
STATEMENT OF DISCOVERY DISAGREEMENT OR CONCERN**

COMES NOW Renew Missouri Advocates d/b/a Renew Missouri (“Renew Missouri”) and pursuant to the Missouri Public Service Commission’s (“Commission”) September 27, 2024 *Order Directing Filing*,¹ respectfully submits this Response to the *Statement of Discovery Disagreement or Concern*² (“Statement”) and the *Submission of Privilege Log and Response to “Amended Objection”*³ (“Response to Amended Objection”) filed by Union Electric Company d/b/a Ameren Missouri (“Ameren”) in the above-captioned proceeding. For its Response, Renew Missouri states as follows:

I. BACKGROUND

1. On September 17, 2024, Ameren served its First Set of Data Requests to Renew Missouri containing seven data requests.⁴ On September 19, 2024, Renew Missouri objected to Data Requests No. 1.1 through 1.4.⁵ In addition, Renew Missouri objected to Data Request 1.6,

¹ Missouri Public Service Commission (“PSC”) Docket No. EA-2024-0237, *Order Directing Filing* (Sept. 27, 2024).

² Missouri PSC Docket No. EA-2024-0237, *Statement of Discovery Disagreement or Concern* (Sept. 23, 2024).

³ Missouri PSC Docket No. EA-2024-0237, *Submission of Privilege Log and Response to “Amended Objection”* (Sept. 26, 2024).

⁴ See Ameren Statement at Exhibit 1 (note that Ameren’s Statement of Discovery Disagreement or Concern states that its First Data Request to Renew Missouri contained six data requests, and that Renew Missouri objected to Data Requests 1-5. This is a misstatement. Ameren’s First Set of Data Requests to Renew Missouri contained seven total requests. Renew Missouri objected to Data Requests 1-4, as well as Data Request 6).

⁵ See *id.*

but explained that notwithstanding its objection, it would provide a timely response.⁶ Ameren's Data Requests 1.1–1.4, as well as Renew Missouri's objections are as follows:⁷

Ameren DR 1.1:

Please identify all persons employed by or associated with Invenergy (including consultants or counsel retained by Invenergy) with whom Emily Piontek or any other persons employed by or associated with Renew Missouri (including consultants or counsel retained by Renew Missouri) has communicated regarding the Castle Bluff Project since June 7, 2024, through September 13, 2024. For each person, identify (a) name, (b) job title, (c) the dates of each communication, and (d) the substance of each of those communications. For purposes of this data request and all other data requests from Ameren Missouri to Renew Missouri, "Invenergy" is defined as the entity or entities developing the Grain Belt Express HVDC transmission line project or entities owning or controlling such entity or entities, and "Renew Missouri" is defined as Renew Missouri Advocates or Renew Missouri Action.

Renew Missouri Objection:

Renew Missouri objects to this request and each of its subparts on the grounds that it seeks information regarding communications that are protected by attorney-client privilege and the common interest doctrine or the work product doctrine, including the "mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation" as contemplated by Missouri Rule of Civil Procedure 56.01(b)(5). **

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Renew Missouri further objects to sections (a) and (b) of the request as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Ameren DR 1.2:

Please identify all persons employed by or associated with Invenergy (including consultants or counsel retained by Invenergy) who reviewed or assisted in, or had input into the drafting of, Emily Piontek's Rebuttal Testimony filed on September 13, 2024. For each person, identify (a) name, (b) job title, (c) portions of the testimony drafted or reviewed, and (d) any edits or changes suggested or made by said person.

⁶ *Id.*

⁷ *See id.*

Renew Missouri Objection:

Renew Missouri objects to this request and each of its subparts on the grounds that it seeks information that is protected by attorney-client privilege and the common interest doctrine or the work product doctrine. More specifically, the information sought in this request encompasses both tangible work product and the “mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation” contemplated by Missouri Rule of Civil Procedure 56.01(b)(5). As explained above, **

[REDACTED]

Renew Missouri further objects to sections (a) and (b) of this request as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Ms. Piontek’s Rebuttal Testimony is her own, and the sources relied upon are cited throughout.

Ameren DR 1.3:

Please provide true and correct copies of all documents (e-mails, memos, letters, chats, notes, files, other documentation) that document or reflect the communications identified in response to Data Requests Nos. 1 and 2.

Renew Missouri Objection:

As explained in its objections to Data Requests 1 and 2 above, Renew Missouri objects to this request on the grounds that it seeks information protected by attorney-client privilege and the common interest doctrine or the work product doctrine. **

[REDACTED]

Ameren DR 1.4:

Please provide all documents (e-mails, memos, letters, chats, notes, files, other documentation, workbooks in native format with all formulas intact) shared by any person employed by or associated with Invenergy (including consultants or counsel retained by Invenergy) and any person employed by or associated with Renew Missouri (including consultants or counsel retained by Renew Missouri) between June 7, 2024 through September 13, 2024 that relates or pertains to the developing the Grain Belt Express HVDC transmission line project or the Castle Bluff Project.

Renew Missouri Objection:

As explained in its objections to Data Requests 1 and 2 above, Renew Missouri objects to this request on the grounds that it seeks information protected by attorney-client privilege and the common interest doctrine or the work product doctrine. **

[REDACTED]

[REDACTED] ** Renew Missouri further objects to this request as irrelevant, overbroad, and unbounded in scope in that it requests “all documents” shared between Renew Missouri and Invenergy that relate or pertain to “the development” of the Grain Belt Express HVDC transmission line project.

2. On September 18, 2024, Ameren served its Second Set of Data Requests to Renew Missouri, containing one data request. On September 20, 2024, Renew Missouri objected to this data request.⁸ Ameren’s Data Request 2.1, as well as Renew Missouri’s objection is as follows:

Ameren DR 2.1:

If not provided in Ms. Piontek’s workpapers or in executable links embedded in Ms. Piontek’s rebuttal testimony, please provide all documents, files, workbooks, or communications (including e-mails, memos, letters, chats, notes, or other documentation) reviewed and relied upon by Ms. Piontek informing the opinions and inferences reflected in Ms. Piontek’s rebuttal testimony, including from Urlaub Strategies and its employees, consultants, representatives, or agents.

Renew Missouri Objection:

Renew Missouri objects to this request on the grounds that it seeks information that is protected by attorney-client privilege and the common interest doctrine or the work product doctrine. Specifically, the information sought in this request encompasses both tangible work product and the “mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation” contemplated by Missouri Rule of Civil Procedure 56.01(b)(5).

** [REDACTED] **

3. On Friday, September 20, 2024, Ameren contacted counsel for Renew Missouri and demanded that Renew Missouri produce a privilege log to support its objections to Ameren Data Requests 1.1-1.4 and 2.1.⁹ In addition, Ameren requested a written copy of the ** [REDACTED]

⁸ Ameren Statement at Exhibit 2.

⁹ Note that in Ameren’s Statement, it claims that it contacted Renew Missouri and requested the privilege log on September 9, 2024. This appears to be a typo, as Ameren had not even served its discovery requests until September 17, 2024. The correct date is September 20, 2024.

____** On Monday September 23, 2024, Renew Missouri agreed to produce the requested privilege log, but pursuant to **____** informed Ameren that it would not provide a copy of **____**.

4. On September 23, 2024, Ameren filed its Statement, which requested that the Commission overrule Renew Missouri’s objections to Data Requests 1.1 and 1.2 and order Renew Missouri to provide all communications and documents responsive to these requests.¹⁰ Ameren further requested that the Commission, at the very least, overrule Renew Missouri’s objections to Ameren Data Requests 1.1 and 1.2, and order Renew Missouri to provide a privilege log responsive to Data Requests 1.3 and 1.4.¹¹ While not titled as such, Ameren’s Statement is a motion to compel – that is, not just a privilege log, but the privileged documents and communications themselves.

5. On September 26, 2024, Renew Missouri provided Ameren with the requested privilege log. Also on September 26, 2024, Renew Missouri served its Amended Objections to Ameren’s First Set of Discovery Requests.¹² In its Amended Objections, Renew Missouri objected to Data Requests 1.1, 1.3, and 1.4, to the extent they seek communications solely amongst counsel, as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.¹³

6. On September 26, 2024, Ameren filed its *Submission of Privilege Log and Response to “Amended Objection”* which included the privilege log as an attachment and requested that the Commission reject Renew Missouri’s additional objections.¹⁴

¹⁰ Ameren Statement at 9, ¶ 25.

¹¹ *Id.*

¹² Ameren Response to Amended Objection at Exhibit 1.

¹³ *Id.*

¹⁴ *Id.* at 1-2.

II. THE COMMISSION SHOULD REJECT AMEREN'S ATTEMPT TO DISCOVER DOCUMENTS AND COMMUNICATIONS ABSOLUTELY PROTECTED BY PRIVILEGE.

7. The Rules of Practice and Procedure of the Missouri Public Service Commission (“Commission”) provide that discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court.¹⁵ In other words, the Missouri Rules of Civil Procedure govern discovery practices in Commission proceedings.¹⁶

8. The Missouri Rules of Civil Procedure generally provide that parties may obtain discovery regarding any matter, *not privileged*, that is relevant to the subject matter of the proceeding.¹⁷ Under Rule 56.01(b)(1), privileged matters are “absolutely non-discoverable.”¹⁸

9. It is well established that the attorney-client privilege prohibits “the discovery of confidential communications, oral or written, between an attorney and his client with reference to...litigation pending or contemplated.”¹⁹ Missouri courts construe the attorney-client privilege broadly.²⁰

10. The work product doctrine is codified in Missouri Rule of Civil Procedure 56.01(b). The work product privilege “precludes an opposing party from discovering materials created or commissioned by counsel in preparation for possible litigation,”²¹ and “protects the ‘thoughts’ and ‘mental processes’ of the attorney preparing a case.”²² The work product doctrine protects both tangible work product (trial preparation documents such as written statements, briefs, and

¹⁵ 20 CSR 4240-2.090(1).

¹⁶ See Missouri PSC Docket No. EA-2023-0286, *Order Regarding Motion to Compel*, p. 2 (Jan. 24, 2024).

¹⁷ Mo. Rule of Civ. Pro. 56.01(b)(1).

¹⁸ *Ratcliff v. Sprint Mo., Inc.*, 261 S.W.3d 534, 546 (Mo. App. W.D. 2008) (citing Mo. Rule of Civ. Pro. 56.01(b)(1); *May Dep't Stores Co. v. Ryan*, 699 S.W. 2d 134, 136, 137 (Mo. App. E.D. 1985)).

¹⁹ *Sprint* at 546 (citing *State ex rel. Terminal R.R. Ass'n of St. Louis v. Flynn*, 257 S.W.2d 69, 73 (Mo. banc 1953)).

²⁰ *State v. Longo*, 789 S.W.2d 812, 813 (Mo. App. E.D. 1990) (citing *State ex rel. Great American Insurance Co. v. Smith*, 574, S.W.2d 379, 382 (Mo. banc 1978)).

²¹ *State ex rel. Ford Motor Co. v. Westbrooke*, 151 S.W.3d 364, 367 (Mo. banc 2004).

²² *State ex rel. Polytech, Inc. v. Vorhees*, 895 S.W.2d 13 (Mo. 1991).

memoranda) and intangible work product (an attorney’s mental impressions, conclusions, opinions, and legal theories).²³ Missouri Rules extend work product protection not only to the party claiming protection, but also to its representatives.²⁴ These include attorneys, consultants, sureties, indemnitors, insurers, and agents.²⁵

11. A party seeking discovery may only obtain tangible work product upon a showing that the party has a substantial need of the of the materials in the preparation of the case and that the party is unable without undue hardship to obtain a substantial equivalent by other means.²⁶ By contrast, intangible work product is absolutely protected from discovery.²⁷

12. Finally, a client waives privilege when they voluntarily share communications with a third party, however, there is no waiver when the third party shares a common interest in the outcome of the litigation.²⁸ More specifically, the “common interest doctrine” extends the attorney-client and work product privileges to two separate clients, represented by separate attorneys, who share an identical legal interest, and who agree to exchange information regarding the matter.²⁹ The common interest may be either legal, factual, or strategic in character, but must be an identical legal interest.³⁰ This Commission has previously found that because both parties claiming common interest privilege were parties to the same proceeding, they shared a common legal interest.³¹

²³ *Westbrooke* at 367.

²⁴ Mo. Rule of Civ. Pro. 56.01(b)(5).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*; see also *Bd. Of Registration for Healing Arts v. Spinden*, 798 S.W.2d 472, 476 (Mo. App. W.D. 1990); see also *State ex rel. Kilroy Was Here, LLC v. Moriarty*, 633 S.W.3d 406, 414 (Mo. Ct. App. E.D. 2021).

²⁸ *Lipton Realty, Inc. v. St. Louis Housing Authority*, 705 S.W.2d 565, 570 (Mo. App. E.D. 1986).

²⁹ See Missouri PSC Docket No. EA-2016-0358, *Order Denying Motion to Compel Regarding Joint Prosecution and Defense Agreement*, p. 3 (Feb. 17, 2017) (citing *Ayers Oil Co. v. Am. Bus. Brokers, Inc.*, No. 2:09 CV 02 DDN, 2009 WL 4725297, at 1 (E.D. Mo. 2009) and *John Morrell & Co. v. Local Union 304A of United Food & Commercial Workers, AFL-CIO*, 913 F.2d 544, 556 (8th Cir. 1990)).

³⁰ *Id.* (citing *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910, 922 (8th Cir. 1997) and *Am. Bus. Brokers* at 2).

³¹ *Id.* at 5.

A. Renew Missouri Properly Asserted a Claim of Privilege; Ameren’s Motion to Compel is Premature.

13. In its Statement, Ameren argues that Renew Missouri’s claims of privilege are blanket objections that are improper on their face, and thus asks the Commission to order disclosure of the privileged information itself, or at least, the provision of a privilege log.³²

14. Missouri courts have explained that if a party objects to production based on privilege or the work product doctrine, the objection party shall provide information that will permit others to assess the applicability of these privileges.³³ The party opposing discovery must establish that privileges apply via competent evidence.³⁴ That competent evidence may include a privilege log or affidavits from counsel.³⁵

15. This general process is as follows: “[a] party may initially claim work product protection in response to a discovery request. The party seeking discovery, however, is entitled, at least, to a privilege log if requested.”³⁶ Once a party asserts a claim of privilege, the court must evaluate the evidence presented – *i.e.*, the privilege log, to rule on the asserted privilege claim.³⁷

16. As explained in ¶ 5 above, Renew Missouri provided Ameren with a privilege log to support its claims of privilege within four business days of Ameren’s request. Nowhere in its Statement does Ameren cite to *any* supportive authority indicating that a privilege log must be provided *simultaneously* with the objection in order to constitute a proper objection. Rather, Missouri courts have explicitly recognized otherwise.³⁸

³² Ameren Statement at ¶¶13-14, 17, 25.

³³ *State ex rel. Collom v. Fulton*, 528 S.W.3d 42, 47 (Mo. App. S.D. 2017).

³⁴ *Id.*

³⁵ *Westbrooke* at 367 (citing *Rabushka ex rel. United States*, 122 F.3d 599, 565 (8th Cir. 1997)).

³⁶ *Westbrooke* at Footnote 5 (emphasis added).

³⁷ *See Kilroy Was Here, LLC* at 415.

³⁸ *See supra*, Footnote 36.

17. As Renew Missouri has already provided a privilege log to substantiate its assertions of privilege, Ameren's request that the Commission compel Renew Missouri to provide a privilege log is moot. Further, Ameren's request that the Commission bypass an evaluation of the privilege claim whatsoever and simply compel Renew Missouri to provide all communications and documents Ameren seeks is procedurally improper and entirely unsupported by Commission or Missouri precedent.

18. Ameren's own approach to previous discovery disputes seems to indicate that it has a demonstrated understanding of these concepts. For example, in Commission Docket No. EA-2023-0286, Ameren propounded several data requests upon Staff of the Missouri Public Service Commission ("Staff") related to Staff's communications with a Missouri county commissioner.³⁹ Staff subsequently objected to Ameren's data requests, asserting work product privilege.⁴⁰ Staff did not immediately provide a privilege log, and further refused to provide a privilege log when requested by Ameren's counsel.⁴¹ Ameren then filed its Motion to Compel, seeking a Commission order requiring Staff to produce *a privilege log* – not the documents and communications themselves.⁴²

19. Ameren provides no justification as to why the Commission should abandon precedent and procedure to grant its request with no further consideration. Accordingly, the Commission should reject Ameren's baseless arguments that Renew Missouri's objections are facially improper and should similarly decline Ameren's attempt to circumvent actual Commission analysis of Renew Missouri's proper privilege claims.

³⁹ See Missouri PSC Docket No. EA-2023-0286, *Ameren Missouri's Motion to Compel and Motion for Expedited Treatment*, p. 1, ¶ 1 (Jan. 2, 2024).

⁴⁰ See *id.* at p. 2, ¶ 3.

⁴¹ *Id.* at Exhibit D, Exhibit E.

⁴² *Id.* at 5, ¶ 11(a).

B. The Communications and Documents Ameren Seeks Are Protected by Attorney-Client Privilege, the Work Product Doctrine, and the Common Interest Doctrine.

20. The discovery requests at issue seek all communications and documents shared between Renew Missouri and Grain Belt Express leading up to Renew Missouri's submission of the Rebuttal Testimony of Emily Piontek.⁴³ In addition, Ameren requests information regarding the review of and feedback on Ms. Piontek's testimony prior to its filing.⁴⁴ As discussed herein, the information sought by these data requests is protected by attorney-client privilege, the work product doctrine, and the common interest doctrine. Accordingly, the Commission should deny Ameren's motion to compel.

1. The privileged information Ameren seeks is protected by the common interest doctrine.

21. As explained above, there is no waiver of privilege when privileged information is shared with a third party that has a common legal interest and agrees to exchange information.⁴⁵ The Commission has previously recognized that parties asserting common interest privilege may share a common legal interest by being parties to the same proceeding.⁴⁶ Moreover, the Commission acknowledged that a written agreement is the most effective method of establishing the existence of a common interest agreement, although an oral agreement may also establish a common interest.⁴⁷

22. Renew Missouri and Grain Belt Express are both parties to the instant proceeding and share a common legal interest in ensuring that Ameren adequately evaluates cleaner

⁴³ See Ameren Statement at Exhibit 1, Exhibit 2.

⁴⁴ *Id.*

⁴⁵ See *supra*, Footnote 28.

⁴⁶ Missouri PSC Docket No. EA-2016-0358, Order Denying Motion to Compel Regarding Joint Prosecution and Defense Agreement at 4 (citing *Am. Bus. Brokers, Inc.* at 2).

⁴⁷ *Id.* (citing *In re Grand Jury Subpoenas*, 89-3, 89-4; *John Doe 89-129*, 902 F.2d 244, 249 (4th Cir. 1990); Jeffery McPherson & Brian E. Kaveney, *The Common Interest Rule: May Parties Whose Interests Are Aligned Protect Their Coordinated Legal Strategy from Adversaries?*, 66 J. Mo. B. 20 (2010)).

alternatives to the proposed Castle Bluff project. To further these goals, **

23. While Ameren appears to assert (albeit unclearly) that Renew Missouri and Grain Belt Express may not share a common legal interest due to Grain Belt Express’s financial interest in this proceeding,⁴⁸ this claim is both illogical and creates an improper implication regarding parties with financial interests.

24. First, to the extent Ameren implies that Renew Missouri and Grain Belt Express may share some financial interest, Renew Missouri is a 501(c)(3) non-profit entity engaged in renewable energy advocacy in the State of Missouri.⁴⁹ Renew Missouri owns no financial interest in the Grain Belt Express Project, and thus cannot and does not share a common financial interest with Grain Belt Express.

25. Second, just because a party has a financial interest in the outcome of a proceeding does not negate that the party may have a legal interest as well. For example, in Docket No. EA-2016-0358, Grain Belt Express sought a certificate of convenience and necessity to construct the portion of its project running through Missouri.⁵⁰ In that proceeding, the Missouri Landowner’s Alliance sought to compel the production of privileged documents and communications between Grain Belt Express and the Missouri Joint Municipal Electric Utility Commission (“MJMEUC”).⁵¹ Grain Belt Express and MJMEUC were parties to a Transmission Services Agreement; both parties

⁴⁸ Ameren Statement at 8-9, ¶ 24.

⁴⁹ See Missouri PSC Docket No. EA-2024-0237, *Application to Intervene of Renew Missouri Advocates and Response to Order Directing Filing of Available Dates for Prehearing Conference*, p. 1, ¶ 1 (Jun. 18, 2024).

⁵⁰ See generally, Missouri PSC Docket No. EA-2016-0358, *Application of Grain Belt Express Clean Line, LLC for a Certificate of Convenience and Necessity* (Jun. 30, 2016).

⁵¹ See Docket No. EA-2016-0358, *Order Denying Motion to Compel Regarding Joint Prosecution and Defense Agreement* at 1-2.

therefore had a financial interest in the outcome of the proceeding.⁵² However, the mere existence of a financial interest did not prevent the Commission from concluding that Grain Belt Express and MJMEUC, as parties to the same proceeding, shared a common legal interest that supported their common interest privilege claim.⁵³

26. Ameren correctly points out that the common interest doctrine applies to communications and documents protected by an underlying privilege, such as the attorney-client privilege or the work product privilege.⁵⁴ As discussed below, the documents and communications Ameren seeks are protected both by attorney-client privilege and the work product doctrine, and these protections were extended to communications between Renew Missouri and Grain Belt Express by the common interest doctrine.

2. Ameren’s Data Requests 1.1, 1.2, 1.3, 1.4, and 2.1 seek information absolutely protected by attorney-client privilege.

27. To demonstrate that attorney-client privilege exists, the objecting party must provide evidence of: “1) [i]nformation transmitted by voluntary act of disclosure; 2) between a client and his lawyer; 3) in confidence; and 4) by a means which, so far as a client is aware, discloses the information to no third parties other than those reasonably necessary for the transmission of the information or for the accomplishment of the purpose for which it is to be transmitted.”⁵⁵ Further, the objecting party must show 1) the existence of an attorney-client relationship at the time the communication was made or the advice was given; and 2) the attorney-client relationship existed with respect to the subject matter of the communication or advice.⁵⁶

⁵² *Id.* at 1.

⁵³ *Id.* at 4.

⁵⁴ See Ameren Statement at 7, ¶ 20 (citing *Spring Lake Pork, LLC v. Great Plains Management, LLC*, 2022 WL 2208947, *2 (E.D. Mo. 2022)).

⁵⁵ *State v. Hooper*, 552 S.W.3d 123, 130 (Mo. App. S.D. 2018).

⁵⁶ *State ex rel. Koster v. Cain*, 383 S.W.3d 105, 115 (Mo. App. W.D 2012).

28. As demonstrated by Renew Missouri's privilege log,⁵⁷ the entirety of the documents and communications that Ameren requests via Data Requests 1.1, 1.2, 1.3, 1.4, and 2.1 implicate communications shared solely amongst Renew Missouri, Grain Belt Express, their consultants, and their retained counsel relating to ongoing litigation in the instant proceeding.⁵⁸ These communications are precisely the type of information encompassed within the broad attorney-client privilege, and are therefore absolutely non-discoverable.⁵⁹

3. Ameren's Data Requests 1.1, 1.2, 1.3, 1.4, and 2.1 seek information protected by work product privilege.

29. Missouri courts have explained that in order to invoke work product protection, the party opposing discovery "must establish, via competent evidence, that the materials sought to be protected (1) are documents or tangible things, (2) were prepared in anticipation of litigation or for trial, and (3) were prepared by or for a party or a representative of that party."⁶⁰ As explained above, the work product privilege protects both tangible and intangible work product.⁶¹

30. Renew Missouri's privilege log demonstrates that the entirety of the communications and documents shared between Renew Missouri and Grain Belt Express related to the parties' thoughts and mental impressions of strategies and arguments to be put forward in the instant proceeding.⁶² Accordingly, Ameren's requests implicate the intangible work product – *i.e.*, opinions, legal theories, mental processes, of Renew Missouri and Grain Belt Express in preparing for litigation, that are absolutely protected from discovery.

⁵⁷ Ameren Response to Amended Objections at Exhibit A.

⁵⁸ *Id.*

⁵⁹ Mo. Rule of Civ. Pro. 56.01(b)(1).

⁶⁰ *Westbrooke* at 367 (citing *Raytheon Aircraft Co. v. United States Army Corps of Eng'rs*, 183 F. Supp. 2d 1280, 1287-88 (D. Kan. 2001)).

⁶¹ *See supra*, Footnote 23.

⁶² To this end, Ameren's Data Request 1.2, which specifically seeks any edits or changes to Ms. Piontek's testimony suggested by Grain Belt Express, highlights the utility's clear intent to access such intangible work product.

31. At the Commission’s September 26, 2024 discovery conference, Ameren argued that under Missouri law, the work product doctrine is waived with regard to materials that an expert witness reviewed in formulating their opinion.⁶³ Indeed, Missouri courts have explained that the Rules of Civil Procedure should be read to require the production of materials provided to the expert.⁶⁴ However, Ameren misses the key distinction between tangible and intangible work product advancing this argument.

32. “Materials” as used in the Missouri Rules refer to tangible work product (again, written statements, briefs, and memoranda, etc.).⁶⁵ Specifically, the Missouri Rule 56.01(b)(5) provides the following:⁶⁶

“**Materials.** A party may obtain *documents and tangible* things...prepared in anticipation of litigation or for trial...only upon a showing of that the party seeking discovery has substantial need...”

33. Rule 56.01(b)(5) unambiguously distinguishes these materials – or tangible work product – from intangible work product:⁶⁷

“**In ordering discovery of such materials** when the required showing has been made, **the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories** of an attorney or other representative of a party concerning the litigation.”

34. This distinction can be illustrated by a review of *Dandurand* – the case upon which Ameren relies – as distinguished from the instant proceeding. *Dandurand* dealt with a dispute surrounding an insurance company’s alleged bad faith failure to settle a resulting wrongful death

⁶³ At the discovery conference, Ameren relied heavily on *State ex rel. Tracy v. Dandurand*, 30 S.W.3d 831, 835 (Mo. 2000) to support this argument.

⁶⁴ *Dandurand* at 835.

⁶⁵ See Mo. Rule of Civ. Pro. 56.01(b)(5).

⁶⁶ *Id.* (emphasis added).

⁶⁷ *Id.* (emphasis added).

suit.⁶⁸ The insurance company subsequently retained an expert witness for the ensuing litigation.⁶⁹ In that case, the court explained that experts retained for litigation typically know nothing about the facts of the controversy until contacted by an attorney.⁷⁰ As such, experts are often provided with materials detailing the facts in the case, as was true in *Dandurand*.⁷¹ These factual materials from which the expert formed the basis of his opinion were the materials that the court ultimately found must be disclosed.

35. Ameren's argument conflates the two types of work product in applying *Dandurand* to the instant proceeding by implying that the communications it seeks should be treated similarly to the factual materials provided to the expert in *Dandurand*. This assertion is incorrect. While Missouri law may require the disclosure of *materials* an expert reviewed, the Missouri Rules make clear that the mental impressions, conclusions, opinions, and legal theories of a party or its representative are absolutely protected from disclosure.⁷² As Ameren's requests broadly implicate intangible work product, its argument cannot apply to the current dispute. Finally, as discussed below, Renew Missouri has already disclosed the *materials* that Ms. Piontek reviewed in formulating her Rebuttal Testimony.

ii. Even if Ameren's requests sought tangible work product, it has not and cannot show substantial need for the requested information.

36. Even if the Commission were to find that Ameren's requests sought tangible work product rather than intangible work product, Ameren has not and cannot demonstrate substantial need for this information. As discussed above, a party seeking discovery may only obtain tangible work product upon a showing that the party has a substantial need of the of the materials in the

⁶⁸ *Dandurand* at 832.

⁶⁹ *Id.* at 834.

⁷⁰ *Id.*

⁷¹ *Id.* at 833.

⁷² Mo. Rule of Civ. Pro. 56.01(b)(5).

preparation of the case and that the party is unable without undue hardship to obtain a substantial equivalent by other means.⁷³

37. Ameren asserts that disclosure of the requested information is necessary to understand the grounds and basis for Ms. Piontek's claims.⁷⁴ Specifically, Ameren claims that there is substantial reason to believe that Grain Belt Express contributed to Ms. Piontek's testimony, and that Ameren is entitled to this information to assess her opinions, their weight, and her credibility as a witness.⁷⁵ Moreover, Ameren argues that the Commission is entitled to know if Grain Belt Express contributed to Ms. Piontek's testimony, as it has a financial interest in selling transmission capacity to Ameren and is therefore not an unbiased source.⁷⁶

38. Ameren's assertion of need is entirely unfounded, as Ms. Piontek provides references throughout her Rebuttal Testimony to support every assertion she makes. More specifically, Ms. Piontek cites exclusively to publicly available information that Ameren can easily access, either by following the links provided or by accessing public documents through the Commission's e-filing system. As such, Ameren already has the information it needs to understand the basis of Ms. Piontek's positions and to assess the credibility of the sources directly.

39. While Ameren makes general claims surrounding the use of biased information,⁷⁷ Ameren does not cite to a single point of reference in Ms. Piontek's testimony that it believes is either unsupported by an easily accessible citation or that is supported by biased information. Rather, Ameren's arguments are merely an attempt to skirt privilege protections and access the contents of Renew Missouri and Grain Belt Express's communications.

⁷³ *Id.*

⁷⁴ Ameren Statement at 4, ¶ 10.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at ¶ 11.

C. Ameren is Attempting to Muddy the Waters with Baseless Implications of Bad Faith Collaboration.

40. Throughout its Statement, Ameren makes claims of bias,⁷⁸ financial assistance from Grain Belt Express to Renew Missouri,⁷⁹ and generally appears to imply some sort of nefarious collaboration to further Grain Belt Express's financial interests. These arguments are both unfounded and entirely irrelevant to the issue at hand.

41. Renew Missouri has a long history of advocating for the Grain Belt Express project, dating back nearly seven years. In fact, Renew Missouri has been a consistent intervenor in Grain Belt Express-related cases, always advocating in support of the project.⁸⁰ Renew Missouri has, for years, advocated that Ameren either model or utilize the Grain Belt Express project in IRP proceedings.⁸¹ That Renew Missouri is continuing to advocate in this consistent manner should not be a surprise to Ameren or the Commission, and simply reflects Renew Missouri's position on the use of cost-effective clean energy in the state.

42. Ameren provides no citation to law or Commission guidance (because it doesn't exist) that collaboration amongst intervenors before the Commission is somehow improper, even if one or more of those intervenors has some sort of financial interest in the proceeding. On the contrary, such collaboration is quite common (and in some states, like Kansas, even required).⁸²

⁷⁸ *Id.*

⁷⁹ *Id.* at 8, ¶ 23.

⁸⁰ *See, e.g.*, Missouri PSC Docket Nos. EA-2016-0358 and EA-2023-0017.

⁸¹ *See, e.g.*, Missouri PSC Docket No. EO-2024-0020, *Comments of Renew Missouri Advocates* (Feb. 27, 2024) (expressing support for the comments offered by Grain Belt Express); Missouri PSC Docket No. EO-2024-0042, *Motion to Expand Special Contemporary Issues Out of Time* (Nov. 6, 2023) (requesting that the Commission amend Ameren's list of Special Contemporary Issues to include the Grain Belt Express Project); Missouri PSC Docket No. EO-2021-0021, *Renew Missouri's Comments Regarding Ameren Missouri's 2020 Integrated Resource Plan* (Mar. 31, 2021) (advocating for Ameren's Plan Y, which included the Grain Belt Express Project, and explaining the benefits of geographically diverse resources).

⁸² *See* Kan. Admin. Regs. § 82-1-225 (explaining that the Commission may impose conditions upon intervention, which may include requiring two or more intervenors to combine their presentation of evidence and argument, cross examination, discovery, and other participation in the proceedings).

43. The Commission has previously declined such unfounded claims of bad faith regarding intervenors that assert privilege protections through the common interest doctrine. For example, in File No. EA-2016-0358, the Commission rejected the Missouri Landowners Alliance's assertion that there was bad faith involved when Grain Belt Express and the Missouri Joint Municipal Electric Utility Commission's claimed protected under the common interest privilege.⁸³ Rather, the Commission found that those parties were simply invoking a privilege that is provided by law.⁸⁴

44. While entirely irrelevant to the actual discovery dispute, Renew Missouri notes that Ameren's claim that Grain Belt Express is funding its consultants is completely unfounded. As explained in Renew Missouri's objections, the ** [REDACTED] ** extends existing privileges to the parties and their consultants. That these communications are protected is not at all pertinent to Ameren's argument.

III. COMMUNICATIONS SOLELY AMONGST COUNSEL ARE IRRELEVANT TO AMEREN'S CASE, AND GOOD CAUSE EXISTS TO ALLOW RENEW MISSOURI TO AMEND ITS OBJECTIONS.

45. In its Response to Amended Objections, Ameren argues that Renew Missouri waived any additional objections by not raising them in a timely manner. However, good cause exists to allow Renew Missouri to amend its objections.

46. The Commission has previously provided that, as a general rule, it agrees that a party that does not timely object to a discovery request waives its objection.⁸⁵ However, an exception to this rule exists if the party objecting demonstrates good cause.⁸⁶

⁸³ Missouri PSC Docket No. EA-2016-0358, Order Denying Motion to Compel Regarding Joint Prosecution and Defense Agreement at 3-4.

⁸⁴ *Id.*

⁸⁵ *See* Missouri PSC Docket No. EO-2023-0271, Order Granting Motion to Compel (Apr. 15, 2003).

⁸⁶ *Id.*

47. Under the Commission's general Rules of Practice and Procedure, parties must object to data requests within ten days of their receipt.⁸⁷ However, the Procedural Schedule in this proceeding shortened that timeframe to two business days.⁸⁸ This extremely expedited timeline is in service of Ameren's goal to secure a Commission decision by December 31, 2024, which will allow it to construct and place in service the Castle Bluff project according to its desired timeline.⁸⁹

48. As noted above, Ameren's requests and Renew Missouri's subsequent objections necessitated the preparation of a privilege log. It was not possible for Renew Missouri to review all of the requested documents within that two-day span. However, after preparing the privilege log, it became clear that some of the requested documents are not relevant to the subject matter of this proceeding.

49. Specifically, Ameren requests all communications between Renew and Grain Belt Express prior to the submission of Ms. Piontek's Rebuttal Testimony. These communications include exchanges solely between counsel, which did not contribute in any way to the development of Ms. Piontek's recommendations. Such exchanges do not form the basis for Ms. Piontek's testimony and will therefore not lead to admissible evidence in this case.

50. Ameren has not asserted that these communications are relevant to the instant proceeding and has not argued that the Commission's exception should not apply. Accordingly, Renew Missouri respectfully requests that the Commission allow it to amend its objections to Ameren's First Set of Data Requests.

⁸⁷ 20 CSR 4240-2.090(2)(D).

⁸⁸ Missouri PSC Docket No. EA-2024-0237, *Order Setting Procedural Schedule and Delegating Authority*, p. 5 (Jul. 24, 2024).

⁸⁹ See Missouri PSC Docket No. EA-2024-0237, Application, p. 2 (Jun. 7, 2024).

IV. AMEREN'S REQUEST THAT THE COMMISSION ORDER RENEW MISSOURI TO RESPOND TO DATA REQUEST 1.6 IS MOOT.

51. In its Statement, Ameren argues that an objection to the form of a question is not a proper basis to withhold a response and asks the Commission to require Renew Missouri to respond. As Renew Missouri specifically stated in its initial objections, it will provide a response to DR 1.6 subject to its objection.⁹⁰ In fact, Renew Missouri provided this response to Ameren on September 25, 2024, pursuant to the Procedural Schedule. Accordingly, Ameren's request is moot.

V. RENEW MISSOURI'S AVAILABILITY FOR SECOND DISCOVERY CONFERENCE

52. Pursuant to the Commission's instruction in its *Order Directing Filing*, Renew Missouri provides the following availability for a second discovery conference:

- Thursday, October 3rd from 9:00am-11:30am, and from 1:00pm-5:00pm.
- Friday, October 4th from 9:00am-10:00am, and from 12:00pm-5:00pm.

WHEREFORE, Renew Missouri respectfully requests that the Commission accept this Response, deny Ameren's motion to compel, and allow Renew Missouri to amend its objections to Ameren's First Set of Data Requests.

Respectfully submitted,

/s/ Alissa Greenwald

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⁹⁰ See Ameren Statement at Exhibit 1.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all counsel of record this
1st day of October 2024:

/s/ Alissa Greenwald