

Exhibit No.:
Issue(s): Arbitration
Witness: Niren Sainani
Type of Exhibit: Rebuttal Testimony
Sponsoring Party: Union Electric Company
File No.: ER-2024-0319
Date Testimony Prepared: January 17, 2025

MISSOURI PUBLIC SERVICE COMMISSION

FILE NO. ER-2024-0319

REBUTTAL TESTIMONY

OF

NIREN SAINANI

ON

BEHALF OF

UNION ELECTRIC COMPANY

D/B/A AMEREN MISSOURI

**St. Louis, Missouri
January 2025**

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REBUTTAL TESTIMONY

OF

NIREN SAINANI

FILE NO. ER-2024-0319

I. INTRODUCTION

1

Q. Please state your name and business address.

2

3 A. My name is Niren Sainani. My business address is One Ameren Plaza, 1901
4 Chouteau Ave., St. Louis, Missouri.

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Q. By whom are you employed and what is your position?

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6 A. I am employed by Ameren Services Company (“the Company”) as a Senior
7 Corporate Counsel.

6

7

**Q. Please describe your educational background and employment
9 experience.**

8

9

10 A. I hold a Master of Business Administration from St. Louis University and
11 a Juris Doctor from Washington University in St. Louis School of Law. I have been
12 employed by Ameren Missouri since September 2021. Prior to my employment at Ameren
13 Missouri, I was Counsel at Wells Fargo.

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Q. What are your responsibilities in your current position?

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15 A. I currently advise Ameren Missouri on issues related to data privacy and
16 security matters, which includes the collection of personal and other information on
17 Ameren websites.

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17

1 and Puerto Rico.”³ As the AAA puts it, “the best ‘judge’ of an arbitration often is a former
2 judge.”⁴

3 **Q. Is arbitration unfair?**

4 A. No, especially if the arbitration term is tailored to fit specific disputes that will
5 not disadvantage consumers if decided outside the courts.

6 **Q. Are there benefits to arbitration?**

7 A. Yes, there are several. The arbitration process is typically faster than litigation,
8 which saves money for all parties.⁵ The comparatively smaller and less formal process of
9 discovery also cuts down cost for everyone involved.⁶ Arbitration can be more convenient, with
10 the ability to mutually agree on an arbitration group and to avoid the hassle of scheduling around
11 a judge’s calendar.⁷ While the binding decisions that come out of arbitration usually cannot be
12 appealed like decisions from a court, the streamlined and often more amicable process of
13 arbitration offers distinct benefits for all parties.⁸

14 **Q. Do mandatory arbitration clauses always encompass all possible claims?**

15 A. No, they can be drafted narrowly to encompass only certain disputes.⁹

³ AAA, *supra* note 1.

⁴ *Id.*

⁵ See *Arbitration v. Litigation: The Differences*, THOMSONREUTERS (last visited Dec. 19, 2024) <https://legal.thomsonreuters.com/blog/arbitration-vs-litigation-the-differences/>

⁶ See *id.*

⁷ See *id.*

⁸ See *id.*

⁹ See, e.g., Alim Khamis & Georgia Fullerton, *Drafting the “Perfect” Arbitration Agreement*, EXPERT INSIGHTS, CHARLES RUSSELL SPEECHLYS (Mar. 14, 2024) <https://www.charlesrussellspeechlys.com/en/insights/expert-insights/dispute-resolution/2024/drafting-the-perfect-arbitration-agreement/> (Noting that “clarity and brevity are key,” that “the types of disputes that can be referred to arbitration should be clearly defined with a broad application,” and “the scope of disputes which are ripe for arbitration should be considered carefully...exact wording is crucial”).

1 **Q. Are the Terms narrowly tailored to encompass only Ameren Missouri's**
2 **intent to arbitrate in cases where users of its website misuse the website contents or**
3 **services?**

4 A. Yes, the Terms were carefully worded to achieve the narrow goal of
5 committing website users to proper use of Ameren Missouri's website and mobile
6 application. When defining their scope, the Terms specifically state that they “apply to
7 your use of the Ameren Companies’ website(s) or mobile application” and that they include
8 “any of the products or services thereon.” Dr. Marke seems to think such language commits
9 Ameren Missouri’s customers to arbitrate any dispute over any service Ameren Missouri
10 offers, including its utility services; this is not the case. The use of the words “products or
11 services thereon” refers only to users’ engagement with its website, its mobile application,
12 and any related contents, such as its Privacy Policy, which is mentioned as being
13 specifically within the Terms’ scope.

14 Additionally, contrary to Dr. Marke’s testimony, customers are under no duress or
15 coercion to use Ameren Missouri’s website or assent to its Terms.¹⁰ Ameren Missouri’s
16 website exists to provide its customers with a convenient, alternative method to access its
17 products and services. Its Terms are meant to ensure proper use of the website and Ameren
18 Missouri’s mobile application. Customers may choose to forgo use of the website and will
19 not lose access to any of Ameren Missouri’s utilities offerings by doing so.

¹⁰ Case No. ER-2024-0319, Direct Testimony of Geoff Marke, p. 12, ll. 10-13.

1 **Q. Do the Terms purport to bind to arbitration any disputes related to**
2 **provision of electric services?**

3 A. No, Ameren Missouri is not attempting to arbitrate disputes over rates or
4 utilities services because it knows only the Commission may approve rates and charges
5 made and “all forms of contract or agreement...relating to rates, charges or services used
6 or to be used.”¹¹ The Terms do not purport to bind persons seeking to dispute such claims.
7 As described above, the Terms define a scope that covers only use of the Ameren Missouri
8 website and mobile application.

9 In contrast, the provision of electric services to customers is governed by the
10 Commission-approved tariffs.¹² The tariffs clearly set forth how Ameren Missouri will
11 charge and bill for electric services, how rates will apply within Ameren Missouri’s various
12 service classifications, and how Ameren Missouri will monitor required average power
13 factor, and how Ameren Missouri will provide the service requested.

14 **Q. Does Missouri law prohibit utilities from including arbitration clauses in**
15 **customer terms?**

16 A. No. Missouri law regulates many aspects of how a public utility can operate,
17 including in its interactions with customers. However, Missouri does not prohibit public
18 utilities from including in the terms and conditions of service requirements to arbitrate
19 claims. Any efforts to legislate such a prohibition have failed.¹³

¹¹ MO. REV. STAT. §393.140 (2024).

¹² Electric Rates <https://www.ameren.com/missouri/residential/rates/electric-rates> and <https://www.ameren.com/missouri/rates>

¹³ See, e.g., Senate Bill No. 1441 (2024), proposing to declare “null and void” any such provisions in a public utility’s terms and conditions; last action, 3/7/24 Second Read and Referred S Commerce, Consumer Protection, Energy and the Environment Committee.

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III. DR. MARKE'S CASE CITATIONS

Q. Dr. Marke cites several cases in which arbitration was misused. Are these cases relevant to the Company's use of arbitration in the Terms?

A. The cases listed by Dr. Marke are examples of where arbitration is used broadly, certainly much broader than Ameren Missouri's Terms require. The Company uses arbitration in a limited manner, as explained above.

Q. Is *Piccolo v. Great Irish Pubs Florida*, No. 2024-CA-001515-O (Fla. Cir. Ct. 2024),¹⁴ hereinafter *Piccolo*, cited by Dr. Marke as illustrative, applicable to Ameren Missouri?

A. No, *Piccolo* is factually inapplicable to Ameren Missouri's arbitration clause. In *Piccolo*, the plaintiff claimed his wife died of food poisoning after ingesting a meal prepared by a restaurant that leased space on Disney property. Disney initially moved to compel arbitration. The arbitration clause in question was within the Subscriber Agreement for the Disney+ streaming service, an agreement that had nothing to do with eating at a restaurant on Disney-owned land. The clause was also worded extremely broadly, covering “all disputes between you [and Disney]” except those relating to intellectual property rights.

The court in *Piccolo* did not issue an opinion on the validity or scope of the arbitration provisions because Disney dismissed its motion to compel arbitration three months after its initial filing.¹⁵ Ameren Missouri’s intent, as manifested by the plain language of its Terms, is clearly different from Disney’s in this situation.

¹⁴ *Piccolo v. Great Irish Pubs Florida*, No. 2024-CA-001515-O, *Motion to Compel Arbitration and Stay Case* (May 31, 2024), (Fla. Cir. Ct. 2024).
¹⁵ *See Piccolo v. Great Irish Pubs Florida*, No. 2024-CA-001515-O, *Notice of Withdrawal of Motion to Compel Arbitration and Stay Case* (Aug. 20, 2024), (Fla. Cir. Ct. 2024).

1 While Dr. Marke may be concerned that Ameren Missouri intends to bind injured
2 customers to a similar fate, the Terms do not include such broad language like the provision
3 in *Piccolo*. To the contrary, the Terms only cover a narrow set of disputes.

4 **Q. Is *Peterson v. Devita*, No. 1-23-0356 (Ill. App. Ct. 2023),¹⁶ hereinafter**
5 ***Peterson*, cited by Dr. Marke as illustrative, applicable to Ameren Missouri?**

6 A. No, the facts in *Peterson* are completely different from Ameren Missouri's
7 situation. In *Peterson*, the plaintiff (harmed by falling from an Airbnb porch deck), was a
8 guest of his friend; the friend was the one who signed Airbnb's terms of service. Though
9 Airbnb tried to enforce the arbitration clause in its terms against the plaintiff, the court held
10 that the plaintiff and Airbnb were not in parity.¹⁷ That was the reason the plaintiff was
11 permitted to proceed with his case in court. The facts in *Peterson* are so unique, it is not
12 clear why Dr. Marke cited the case. While it is an example of a company trying to enforce
13 terms broadly (there, to apply to parties other than the direct customer), there is no
14 indication in the Terms that Ameren Missouri intends to do the same.

15 **Q. Is *Mey v. DIRECTV*, 971 F.3d 284 (4th Cir. 2020),¹⁸ hereinafter *Mey*,**
16 **cited by Mr. Marke as illustrative, applicable to Ameren Missouri?**

17 A. No, *Mey* is also factually inapplicable. The central conflict in *Mey* is
18 whether the plaintiff agreed to arbitration with an affiliate corporation of AT&T, which
19 was not an affiliate at the time she assented to DIRECTV's terms. The plaintiff opened a
20 new line of service at an AT&T retail store in 2012, when she signed an arbitration
21 agreement containing terms such as "you agree to arbitrate all disputes and claims between

¹⁶ See *Peterson v. Devita*, No. 1-23-0356, Opinion (Sept. 22, 2023) (Ill. App. Ct. 2023).

¹⁷ See *id.*

¹⁸ See *Mey v. DIRECTV*, 971 F.3d 284 (4th Cir. 2020).

1 us,” “this agreement...includes, but is not limited to: claims arising out of or relating to
2 any aspect of the relationship between us...and claims that may arise after the termination
3 of this agreement, and “References to ‘AT&T’...include our respective subsidiaries,
4 affiliates, agents, employees, predecessors in interest, successors, and assigns.” Later in
5 2015, AT&T acquired DIRECTV. In 2017, the plaintiff sued DIRECTV for violations of
6 the Telephone Consumer Protection Act of 1991.

7 The facts of *Mey* are materially different from Ameren Missouri’s situation. While
8 the court there held that the plain meaning of the broad terms in the AT&T agreement
9 covered the dispute between the plaintiff and DIRECTV, the issue is not relevant for
10 purposes of whether Ameren Missouri’s limited arbitration provision is somehow unfair.
11 Importantly, The Terms contain no language that binds customers to arbitration with all
12 Ameren Missouri affiliates. In fact, the entities to which the Terms apply are specifically
13 listed at the beginning. And, as stated above, the Terms do not bind any dispute to
14 arbitration; only those concerning proper use of Ameren Missouri’s website and mobile
15 application.

16 **Q. Does this conclude your rebuttal testimony?**

17 A. Yes, it does.

