

**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	)	File No. ET-2025-0184
for Approval of New or Modified Tariffs	)	
for Service to Large Load Customers.	)	

**AMEREN MISSOURI’S RESPONSE TO STAFF MOTION TO STRIKE AND LEAVE
TO REPLACE REBUTTAL TESTIMONY AND TO OFFICE OF THE PUBLIC
COUNSEL’S RESPONSE TO SAID MOTION**

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Company" or "Ameren Missouri"), and for its response to Staff’s *Motion to Strike and for Leave to Replace the Rebuttal Testimony of James A. Busch, and Motion for Expedited Treatment* (“Staff Motion”) and for its response to the Office of the Public Counsel’s (“OPC”) Response to the Staff Motion (“OPC Response”), states as follows:

Response to Staff Motion

1. On July 10, 2025, the Commission adopted a Procedural Schedule in this case setting a Rebuttal Testimony deadline of September 5, 2025.
2. On September 5, 2025, Staff filed the sworn, pre-filed Rebuttal Testimony of James R. Busch in this docket. At the time, Mr. Busch was employed by the Commission and was a member of its Staff. Specifically, Mr. Busch was one of five Division Directors, with responsibility for the Staff’s Industry Analysis Division, where he supervised numerous employees, including many of the employees who also pre-filed “testimony” in the form of the Staff’s Rebuttal Report, also filed by Staff in this docket on September 5, 2025.
3. On July 25, 2025, Staff filed the sworn, pre-filed Rebuttal Testimony of Mr. Busch in Evergy’s¹ similar, pending large load tariff case, File No. EO-2025-0154. The substance of Mr.

¹ References to “Evergy” are, collectively, to Evergy Missouri Metro and Evergy Missouri West.

Busch's pre-filed Rebuttal Testimony in both this case and in Evergy's case was the same. Mr. Busch was similarly acting as a Staff Division Director when Staff filed the Busch Evergy testimony.

4. On September 30, 2025, Mr. Busch testified under oath at the Evergy case's evidentiary hearings, also acting as a Staff Division Director at that time. Mr. Busch was cross-examined extensively regarding the Staff's large load customer tariff proposal which reflects the same approach as the proposed Staff tariff filed in this case.

5. There are several common points of contention or dispute in both this case and Evergy's case, including, whether and to what extent a large load tariff proposal should be competitive with large load tariff terms and conditions available in other states with whom Missouri is competing for economic development that large load customers could provide, whether it is therefore important to seek input from large load customers, from utilities, and other stakeholders in developing a large load tariff proposal, and whether attracting large load customers to Missouri is beneficial or, put another way, whether doing so is worth the risks that adding large load customers to a Missouri utility's system could pose.

6. Mr. Busch's pre-filed testimony, in both the Evergy and Ameren Missouri cases, touches on some of these issues and Mr. Busch was cross-examined about them during the Evergy evidentiary hearings. Both Evergy and Ameren Missouri, in Evergy's case, provided surrebuttal testimony rebutting Mr. Busch and other Staff witnesses on these issues. Ameren Missouri intends to do the same in its Surrebuttal Testimony due to be filed two days from now, on October 30, 2025. In summary, Mr. Busch has testified within the scope and course of his employment with the Staff to matters which Ameren Missouri contends undermine the Staff's tariff proposal and support adoption of Ameren Missouri's tariff proposal, the filing of which initiated this case.

7. Among other things, Mr. Busch has testified under oath that he was responsible for the Staff Rebuttal Report in the Evergy case,² that the Staff sought no input from any large data center customer on the Staff tariff proposal,³ that he didn't know whether Staff had modeled his tariff proposal on adopted or proposed large load tariffs in other states (the record in this case will show that it wasn't),⁴ and that when he testified via his sworn pre-filed testimony in both this docket and the Evergy docket that the economic advantages of Missouri electric utilities serving data centers was not worth the risk, *he was speaking for the Staff*.⁵ Mr. Busch's statements are not helpful to Staff's position in this case, else Ameren Missouri and Evergy in Evergy's case, and Ameren Missouri in this case, would not offer them. More specifically, the statements in question demonstrate a viewpoint of hostility or an overly risk-averse attitude (or both) on the part of Staff that at a bare minimum, suggests that the competitiveness of Staff's proposed tariff – certainly for prospective data center customers – was not a or not much of a consideration at all when Staff developed it. And the importance of large load tariffs competitiveness vis-à-vis other offerings in other states with Missouri is competing is a key issue in this case.

8. Mr. Busch's statements, all of which were sworn and made within the scope and course of his employment by a Staff Division Director were via the above-referenced cross-examination and Surrebuttal Testimony filed on the exact same issues in the Evergy case offered against the Staff, and they will be offered against the Staff in this case via the Company's and perhaps other parties' Surrebuttal Testimony and as appropriate, as part of cross-examination during the evidentiary hearing.

² Transcript, File No. EO-2024-0154, Vol. 2, p. 245, ll. 20-22.

³ Transcript, File No. EO-2024-0154, Vol. 2, p. 213, ll. 11-19.

⁴ Transcript, File No. EO-2024-0154, Vol. 2, p. 217, l. 1 to p. 218, l. 17. Notably, Staff Counsel objected to the question regarding whether Staff modeled its proposal on actions in other states, claiming the question was irrelevant. The Regulatory Law Judge properly overruled the objection.

⁵ Transcript, File No. EO-2024-0154, Vol. 2, p. 261, ll. 5-15.

9. As a matter of law, such offerings are proper because each such statement constitutes an admission of a party-opponent. *See, e.g., United States of America, Inc. v. Empire Bank of Springfield*, 726 S.W.2d 439, 444 (Mo. App. S.D. 1987) (there are three requirements to “admit an admission by a party-opponent: 1) a conscious or voluntary acknowledgment by a party-opponent of the existence of certain facts; 2) the matter acknowledged must be relevant to the cause of the party offering the admission, and 3) the matter acknowledged must be unfavorable to, or inconsistent with, the position now taken by the party opponent. The availability of the witness is not a factor when considering the admissibility of an admission by a party-opponent.”).⁶

10. Consequently, Staff cannot preclude use of otherwise admissible statements made by Mr. Busch via the act of “striking” his pre-filed Rebuttal Testimony. If by “strike,” Staff means the testimony will not be offered into evidence by Staff, the Company has no objection, albeit there is no need to “strike” it in that instance. As noted, it exists and if some of it is admissible under the rules of evidence (e.g., as outlined above), then another party can offer such parts.

11. But if by “strike,” Staff is attempting to bar admission of otherwise admissible evidence, the Company does object and indeed, as discussed above, any such attempt must be denied as a matter of law. While Staff is free not to offer Mr. Busch’s pre-filed testimony and tender him as a witness at the evidentiary hearing, the Staff cannot eliminate the evidentiary value of the sworn statements he made while employed by the Commission made within the scope and course of that employment, which appears to be what Staff desires to do. As noted, the Company can understand Staff’s motivation insofar as Mr. Busch’s statements are not helpful to Staff’s position in this case, else Ameren Missouri and Evergy in Evergy’s case and Ameren Missouri in this case would not offer them.

⁶ Admissions of a party-opponent are not hearsay. *Felton v. Hulser*, 957 S.W.2d 394, 398 (Mo. App. W.D. 1997) (“Obviously, there existed no valid hearsay objection to the reading of admissions of a party-opponent.”).

12. With respect to Staff's request for leave to file Supplemental Rebuttal Testimony from Mr. Luebbert, the Company does not object insofar as there is nothing of substance new in Mr. Luebbert's proposed testimony.⁷ Notable, however, is the absence from Mr. Luebbert's proposed testimony of several statements from Mr. Busch that, not coincidentally, are the very admissions of a party-opponent made by Mr. Busch that are, as just noted, not helpful to the Staff's position in this case.

Response to OPC Response to Staff Motion

13. OPC indicates that it seeks additional time (beyond the more than six weeks it has already had) to prepare and file its Surrebuttal Testimony arising from the Staff's Motion.

14. The Company of course does not know what OPC intends to say about Mr. Busch's pre-filed testimony, which apparently will not be offered irrespective of the Commission's action on Staff's request that it be "stricken." If OPC desires to respond to that testimony in its surrebuttal, it should not need additional time to do so since it has, as noted, had six-plus weeks to do so. If OPC desires to also respond to Mr. Luebbert's supplemental rebuttal, pending action on Staff's Motion seeking leave to file it, OPC has similarly had six-plus weeks to develop responses because, as noted, Mr. Luebbert's testimony omits several things Mr. Busch had said but adds nothing new of substance.

15. Despite OPC's request for additional time being unnecessary, the Company does not object to a one-day extension of the deadline for Surrebuttal Testimony, insofar as Staff's Motion arguably has injected some confusion into this case six days before Surrebuttal Testimony is due. The Company does object to an extension to Monday, November 3, 2025. Any extension

⁷ Presumably, Staff intends to offer Mr. Luebbert's testimony into evidence at the evidentiary hearing and tender him for cross-examination (as it would have done anyway, given that he is one of the Staff witnesses for the Staff's Rebuttal Report).

has consequences for the remainder of the Procedural Schedule, which all parties (OPC included) agreed to, and which was ordered months ago. A delay to Monday will mean that parties will have four less days than planned to evaluate Surrebuttal Testimony and make decisions about further discovery (which must be made by Friday, November 6, 2025), and less time to develop a list of issues (due November 5, 2025). The Company opposes simply extending all those deadlines as well because of the “domino effect” doing so would have on other schedule milestones and the ability to properly prepare for the important hearings to occur in this case. While even a one business day delay is not ideal, it is manageable; a four-calendar day delay is not.

[Rest of page intentionally left blank]

WHEREFORE, the Company has no objection to the filing of Mr. Luebbert's proposed Supplemental Rebuttal Testimony, the Company opposes any order that would restrict the admissibility of statements by Mr. Busch that are otherwise admissible, irrespective of the fact that the Staff does not intend to offer Mr. Busch's pre-filed Rebuttal Testimony into evidence, and the Company does not oppose a one-day extension of the deadline for the filing of surrebuttal testimony and, in view of the foregoing, prays that the Commission issue an order consistent with the Company's positions.

Respectfully submitted,

/s/ James B. Lowery

James B. Lowery, Mo. Bar #40503
JBL LAW, LLC
9020 S. Barry Rd.
Columbia, MO 65201
Telephone: 573-476-0050
E-Mail: lowery@jblawllc.com

/s/ Wendy K. Tatro

Wendy K. Tatro, Mo. Bar #60261
Director and Assistant General Counsel
Ameren Missouri
1901 Chouteau Avenue
St. Louis, MO 63103
Telephone: (314) 861-1705
Facsimile: (314) 554-4014
E-Mail: AmerenMOService@ameren.com

**ATTORNEYS FOR UNION ELECTRIC
COMPANY d/b/a AMEREN MISSOURI**

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing was served on counsel for all parties of record in this docket via electronic mail (e-mail) on this 28th day of October, 2025.

/s/ James Lowery

James Lowery