BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

City of Fulton, Hannibal Board of Public Works, Kirkwood Electric, City of Marceline and City of New Madrid, Complainants,	)	
v.	)	Case No. EC-2026-0156
Union Electric Company d/b/a Ameren Missouri,	)	
Respondent.	)	

COMPLAINANTS' REPLY IN SUPPORT OF MOTION FOR DETERMINATION ON THE PLEADINGS OR, IN THE ALTERNATIVE, SUMMARY DETERMINATION, AND RESPONSE TO RESPONDENTS' ADDITIONAL UNDISPUTED MATERIAL FACTS

Respondent Union Electric Company d/b/a Ameren Missouri ("Ameren") and the City of Fulton, Hannibal Board of Public Works, Kirkwood Electric, City of Marceline and City of New Madrid (collectively "Complainants") agree that summary disposition of this case is warranted because "there is no genuine issue as to any material fact" and that one of these parties "is entitled to relief as a matter of law."[1] 20 CSR 4240-2.117(E). Therefore, in support of their Motion, Complainants herein *first* clarify the universe of undisputed facts that are material to the Commission's determination of the two issues over which it has identified as within its jurisdiction; and *second*, reply to Ameren's arguments that the Commission has no authority to include conditions in its CCN orders that Ameren, or any other regulated utility, comply with any law other than the Commission's own rules; and *third,* reply to Ameren's argument that its Tariff

[1] Ameren's April 13, 2026 *Opposition to Complainants' Motion for Determination on the Pleadings or, in the Alternative, Summary Determination and Cross-Motion for Summary Disposition*, Pages 2, 3 ("Opposition").

obligation to possess all necessary permits from all jurisdictional authorities while it "supplies" service is a one-time thing that matters only when a new customer is signed up.

The Facts that are Undisputed and Material to the Commission's Determination of the Two Issues Identified in the April 7, 2026 Order:

The parties agree that the facts material to this Commission's determination of the two legal questions set forth in the April 7th Order are undisputed.[2] This agreement between the parties about the undisputed nature of the material facts is solid despite Ameren's inexplicable choice to address only Statement of Undisputed Material Facts ("SUMF") Nos. 1 – 6 and 28 – 32 in its Opposition.[3] To be clear – Ameren did *not* contradict SUMF Nos. 7 through 24 – it simply and unilaterally labelled them "not relevant" to the two issues this Commission will decide.[4]

However, SUMF Nos. 7 – 25 (in addition to SUMF Nos. 1 – 6 and 28 – 32) are relevant and material to the summary disposition of this case because SUMF Nos. 1 – 8 and 25 evidence Ameren's violation of its CCN and Tariff.[5] Moreover, Ameren agrees that the Commission's rule also requires "that a grant of summary determination be in the public interest,"[6] and SUMF Nos. 7, 9 – 25 evidence that the Public Interest will be served with an order of summary disposition in Complainant's favor.[7]

Significantly, the parties have actually agreed that SUMF Nos. 7 – 24 (repeated below for the convenience of all) are undisputed (1) by Ameren's admission in its Answer, as cited at the

[2] Ameren's Opposition, Pages 1, 3.
[3] *Id.* at Page 1, Footnote 1 and Ameren's Appendix 1, Pages 1-5.
[4] *Id.* Ameren clearly also does not contradict SUMF No. 25 given that it sets forth the same language of the Commission's 1971 CCN Order at Page 7 of its Opposition.
[5] Complainants' March 12, 2026 *Motion for Determination on the Pleadings or, in the Alternative, Summary Determination, Statements of Undisputed Material Facts and Memorandum in Support* ("Motion"), Pages 11-12.
[6] Ameren's Opposition, Page 3, Footnote 4.
[7] Complainants' Motion, Pages 12-15.

conclusion of each SUMF; (2) by admission of Ameren's counsel during the April 3rd discovery conference, "The complainants did list their facts 1 through 24, and we didn't dispute those in our answer" (Transcript, Page 48, Lines 6-7); and (3) by operation of law because SUMF that Ameren did not contradict in its opposition "will be deemed admitted." *Zipper v. Health Midwest*, 978 S.W.2d 398, 409 (Mo. App. W.D. 1998); (Transcript, Page 29, Lines 14-21, Ameren's counsel: "And what the rule says if you don't comply with that requirement, then you will be deemed to have admitted those facts. That only happens if your summary determination response is deficient in that way. So you're deemed to – deemed to admit of those facts, if you don't properly respond with evidence to dispute those facts. That's the concept of admission by a – admission of facts by operation of law."). These undisputed SUMF are thus set forth again here:

7. As found by the Commission at R&O EF-2024-0021, Pages 28-29, and on Page 19, "[o]n September 30, 2019, the District Court determined that Ameren Missouri's 2007 and 2010 Rush Island Projects had violated the Clean Air Act. The District Court explained that 'when Ameren [Missouri] decided to make major modifications to expand Rush Island's capacity, Ameren [Missouri] refused to play by the rules Congress set. It did not apply for the required PSD permit, and in so doing skirted PSD's requirement to install the best available technology to control the pollution Rush Island emits.' That decision directed Ameren Missouri to apply for a PSD permit within 90 days and propose FGD [Flue-Gas Desulfurization] and Best Available Control Technology in its PSD permit application. Ameren Missouri was ordered to operate its Rush Island units with an emissions limit of 0.05 lb. SO2/mm BTU on a thirty-day rolling average within four- and

one-half years of the District Court's order (no later than March 31, 2024)." (Answer Par. 16; Verified Complaint Par. 16).

8. As found by the Commission at R&O EF-202400021, Page 20, "[a] determination that Ameren Missouri violated the Clean Air Act by not obtaining required permits has already been made by the United States District Court for the Eastern District of Missouri." (Answer Par. 17; Verified Complaint Par. 17).
9. As found by the Commission at R&O EF-2024-0021, Page 20, "[o]n March 28, 2024, the District Court ordered Ameren Missouri to file a transcript of that day's proceedings with the Commission. On April 8, 2024, Ameren Missouri filed that District Court transcript. In that transcript the District Court expresses concern about Ameren Missouri's representations to the Commission. The District Court stated: 'I mean, it is what I said in my opinion; that a decision was not reasonable. And that's not mentioned anywhere to the PSC. In fact, Ameren continues to take the position that despite this Court's findings and its findings being affirmed in all respects by the U.S. Court of Appeals the decision was not reasonable, you went to the PSC and told them that it was." (Answer Par. 18; Verified Complaint Par. 18).
10. As found by the Commission at R&O EF-2024-0021, Page 20, and also Page 30, "Ameren Missouri filed a motion with the District Court in December 2021, to modify the District Court's order to allow Ameren Missouri to retire Rush Island rather than install pollution control technology." (Answer Par. 19; Verified Complaint Par. 19).
11. In a District Court filing dated February 22, 2022, Ameren and the Environmental Protection Agency stipulated that Ameren would "suspend for economic reasons

operation of all or a portion of the…[Rush Island] Generator commencing on 1st of September 2022." (Answer Par. 20; Verified Complaint Par. 20 and Exhibit C).

12. In a District Court filing dated August 1, 2023, Ameren moved the District Court to allow Ameren to shut down Rush Island's boilers on October 15, 2024. (Answer Par. 21; Verified Complaint Par. 21 and Exhibit D).
13. As found by the Commission at R&O EF-2024-0021, Page 20, and also Page 30, "[o]n September 30, 2023, the District Court issued its order, ordering Ameren Missouri to retire Rush Island no later than October 25, 2024, and terminating boiler operations no later than October 15, 2024." (Answer Par. 22; Verified Complaint Par. 22).
14. As found by the Commission at R&O EF-2024-0021, Page 26, "Ameren Missouri planned to keep Rush Island operating until 2039." (Answer Par. 23; Verified Complaint Par. 23).
15. As found by the Commission at R&O EF-2024-0021, Page 29, "Ameren Missouri's 2020 integrated resource plan maintained a 2039 retirement date for Rush Island. Ameren Missouri evaluated two plans based upon the 2020 integrated resource plan. One plan contemplated Rush Island's early retirement at the end of 2025, and the other involved the plant's continued operation through 2039, with FGD installed." (Answer Par. 24; Verified Complaint Par. 24).
16. As found by the Commission at R&O EF-2024-0021, Page 30, "[t]here may be future harm related to capacity shortfalls or remedies imposed by the District Court, but those amounts are not yet known." (Answer Par. 25; Verified Complaint Par. 25).
17. As found by the Commission at R&O EF-2024-0021, Page 33, "Any consequences for harms that may have been caused by Ameren Missouri's violations are unknown at this

time because future harm related to potential capacity shortfalls are not yet known and the District Court has not determined the remedy for Ameren Missouri's violation as of the issuance of this Financing Order." (Answer Par. 26; Verified Complaint Par. 26).

18. As found by the Commission at R&O EF-2024-0021, Page 33, "…Ameren Missouri will have to find solutions to a potential capacity shortage in the future…." (Answer Par. 27; Verified Complaint Par. 27).

19. As found by the Commission at R&O EF-2024-0021, Page 36, "…At this time, it is not possible to quantify the harm resulting from these decisions and the District Court has not determined what remedies will be imposed on Ameren Missouri. Even if Ameren Missouri's actions were deemed imprudent, the Commission would be unable to assess a disallowance without evidence of harm on which to base any disallowance. Any potential harm from those actions may be litigated before the Commission in future cases, but cannot be assessed now." (Answer Par. 28; Verified Complaint Par. 28).

20. There are two Local Balancing Authorities in MISO Zone 5 (AMMO = Ameren and CWLD = Columbia Water and Light Department). (Answer Par. 29; Verified Complaint Par. 29).

21. In the PRA for the 2024/2025 Planning Year, there was a MISO Zone 5 Local Clearing Requirement deficiency in the Fall Season of 872.4 MW. (Answer Par. 32; Verified Complaint Par. 32).

22. In the PRA for the 2024/2025 Planning Year, there was a MISO Zone 5 Local Clearing Requirement deficiency in the Spring Season of 196.4 MW. (Answer Par. 34; Verified Complaint Par. 34).

23. In the PRA for the 2024/2025 Planning Year, the Zone 5 clearing prices were $719.81/MW-Day for both the Fall and Spring Seasons. (Answer Par. 36; Verified Complaint Par. 36).

24. (In the PRA for the 2024/2025 Planning Year), the clearing price for all other MISO Zones was $15.00/MW-Day in the Fall Season and $34.10/MW-Day in the Spring Season. (Answer Par. 37; Verified Complaint Par. 37).

The Commission had authority to include compliance with state and federal law as a condition of its order granting Ameren's Rush Island CCN – just as the Commission still has that authority for every CCN granted to any other regulated utility:

Ameren argues at Pages 6-10 of its Opposition that the Commission's ordering language in its CCN Order could not be an actual "condition" requiring Ameren to comply with state or federal air or water quality laws. Ameren postulates that the CCN Order did nothing more than clarify that the Commission's authority is so limited it may not even find that Ameren violated the CCN Order after a state or federal court has already found that Ameren has violated the state or federal law included in the CCN Order. But the CCN Order itself rebuts Ameren's argument which must fail – or the Commission relinquishes its authority to expect compliance with any of its current or future CCN Orders.

There is no dispute that Ameren's CCN Order says, "Ordered: 2. That authority granted herein shall in no way be construed as authority for waiver of compliance by the Applicant [Ameren] with any air or water quality control standards now existing or proposed by any agency of the State of Illinois or Missouri or of the Government of the United States."[8]

[8] *In the Matter of the Application of Union Electric Company for permission and authority to construct, operate and maintain a multi-unit steam electric generating plan in Jefferson County, Missouri*, No. 17,139, 1971 Mo. PSC LEXIS 104 at *11 (May 21, 1971).

Significantly, the CCN Order itself explains that Commission's intent behind this ordering language and Ameren's then-agreement to comply with the condition of continued compliance with state and federal "air or water quality standards" *during the tenure of its operation of Rush Island*:

> The Applicant [Ameren] has taken all reasonable steps to insure that the operation of the proposed plant will not adversely affect the air or water quality standards at or near Rush Island. The Applicant proposes to use as fuel low sulphur coal secured from the nearby coal fields of Southern Illinois. The Applicant has specified that the sulphur content of the coal supplied shall not exceed one percent during the first five year period of operation of the proposed pant. Plans of the Applicant include the installation of a sulphur dioxide removal system at such time in the future as the deterioration in the quality of the coal available may necessitate. Plans for the proposed plant also include the use of mechanical devices to prevent the release of harmful solids as well as gases into the surrounding atmosphere. Applicant proposed to operate the Rush Island Plant within all known and proposed standards of the Federal Environmental Protection Agency, as well as the Missouri Air Conservation Commission. Applicant proposes to operate the plant's cooling system within the standards set by the Missouri Water Pollution Board and presently has pending before that Agency an application for an operating permit for the proposed plant.[9]

Indeed, Ameren admits at Page 8 of its Opposition that its CCN "does not exempt the Company from otherwise applicable environmental laws" which do apply "to the plant's ongoing operation over its life," and Ameren cites to Staff's Report as agreement on this point.

So, given the plain language of the CCN Order itself as to Ameren's initial construction and then ongoing operation of Rush Island, and Ameren's admission that state and federal environmental laws governed the operating life of its Rush Island plant, how is there now any disagreement between Ameren and Complainants? The "disagreement" addressed at Pages 8-12 of Ameren's Opposition is of its own making via a "straw man" argument and a "bait and switch" argument – neither of which negate Complainants' right to judgment as a matter of law grounded in undisputed material facts.

[9] 1971 Mo. PSC LEXIS 104 at *5-6.

Ameren's straw man argument is that Complainants seek this Commission's order "voiding" the CCN, which would produce "absurd" and "strict liability forfeiture" results. Not so. Complainants have never sought to "void" Ameren's CCN, and Paragraph 1 and the WHEREAS clause of the Verified Complaint, as well as Pages 1-2 of Complainants' Motion evidence that Complainants seek an Order finding that Ameren "violated" its CCN. Moreover, the Commission has already declared in its April 7, 2026 Order that it is very clear that Complainants seek an Order finding that Ameren "violated" – not "voided" – its CCN, and Ameren acknowledges that truth at Page 1 of its Opposition where it quotes the Commission's second legal question:

> 2. Did Ameren Missouri *violate* the Commission's May 21, 1971 Order by failing to comply with applicable air quality control standards of the State of Missouri and/or the Government of the United States? (Emphasis added).

Ameren's bait and switch argument is that the Commission cannot lawfully include in its CCN Orders the requirement that Ameren (or other regulated utilities) comply with any environmental law that the Commission does not have direct authority to enforce. Ameren thus attempts to switch the legal inquiry away from the Commission's undenied authority over Ameren (and all other regulated utilities), to instead become an inquiry about whether the Commission's statutorily-defined authority includes "enforcement" of Missouri and federal environmental laws. This frivolous argument wastes the time and resources of all involved here.

There is no doubt that Ameren is subject to the authority of this Commission, and Ameren has admitted that fact at Paragraph 4 of its Answer and in response to SUMF No. 2 at Page 1, Paragraph 2 of its Appendix to its Opposition. There is also no doubt that the Commission has lawfully required Ameren and other regulated utilities to comply with laws that are in addition to the Commission's own rules – because the Commission has that authority over said utilities.

Indeed, in February of this year, in EA-2025-0238, the Commission granted Ameren's request for a CCN for its Big Hollow Project. That CCN granted authority not only to "construct" but also to "operate, maintain and otherwise control and manage," and included multiple conditions regarding compliance with laws (beyond the Commission's rules) that continue over the life of the Big Hollow Project. Specifically, Ameren's Big Hollow CCN authority is conditioned upon the duty to "file quarterly progress reports on the construction of the Big Hollow Project. This report shall include, but not be limited to, (i) updates on permitting,…" Additionally, Ameren's "future triennial IRP filings" and "future CCN cases" must include a description of resources that are "restricted in some way (e.g. construction time, permitting requirements, etc.)." Undeniably, the "permitting" referenced in these Big Hollow CCN conditions is granted by state and/or federal authorities other than the Commission – *and Ameren agreed to comply with these state and/or federal laws over the life of the Big Hollow Project, just as Ameren agreed to do as a condition of its 1971 Rush Island CCN (as quoted at Page 8 herein).*

Ameren is not the only utility regulated by this Commission that recognizes the Commission's lawful authority to condition CCNs on compliance with state and/or federal laws. For example, in 2023 in EA-2023-0017, Grain Belt Express LLC was granted a CCN conditioned on Grain Belt securing "permits and other approvals from governmental bodies" prior to installation of facilities, providing the Commission with "documentation" of compliance with the National Electric Safety Code, the Overhead Power Line Safety Act "and any other applicable Missouri state law." Grain Belt's CCN was further conditioned on Grain Belt confirming that all of its contractors possessed "all licenses required by state, federal or local law," and that any herbicides used would all be "approved by the EPA and any applicable state

authorities." In 2022 in EA-2022-0043, the Commission granted Evergy a CCN for a solar facility in Kansas City, and that CCN was conditioned on Evergy obtaining "all permits, regulatory approvals, and reviews…including but not limited to those required for: wetland/surface water, floodplain disturbance/proximity to levee, stormwater, environmental, cultural, wildlife (e.g. migratory birds, threatened or endangered species, northern long-eared bats, etc.), State of Missouri (e.g. MODOT glare study), Federal (e.g. FAA), City of Kansas City, Missouri or Jackson County."

Consequently, there is no genuine legal dispute that the Commission's authority over its regulated utilities includes the authority to condition those utilities' CCNs with compliance with state and federal laws. Given that the facts here are not in dispute that Ameren violated the Clean Air Act and thus violated its CCN, Complainants are entitled to judgment in their favor.

Ameren's Tariff requires Ameren to possess all necessary permits of all jurisdictional governmental and regulatory authorities during the tenure of supplying service – not just at the one moment in time when a customer's service "commences" or is "initiated":

Safe and reliable service at a just and reasonable rate must exist for the duration of the service provided by Ameren or any utility – or the regulatory compact is meaningless. Yet, Ameren argues at Pages 4-6 of its Opposition that the requirements of its Tariff Sheet No. 102 apply only at the instant at which Ameren "commences" or "initiates" service to a new customer. Not so. Ameren's Tariff Sheet No. 102 (F) states:

> COMPANY OBLIGATIONS: In *supplying* service to customers, Company shall furnish such service within a reasonable length of time dependent upon the availability of materials, labor and system capacity, and after all necessary easements, permits and approvals are obtained from the customer and other governmental and regulatory authorities having jurisdiction. (Emphasis added).

Despite Ameren's arguments, the words "commence service" or "initiate service" do not appear anywhere in the above-quoted Tariff subsection. Instead, the obligation is ongoing: *in*

supplying service. Moreover, Ameren's argument that Tariff Sheet No. 101 Subsections C and D's specification for applications for service to new customers somehow limits the scope of Sheet No. 102 Subsection F's requirement that Ameren obtain and maintain all necessary permits for the duration of supplying service is contradicted by other sections of the Tariff. Tariff Sheet No. 96, which is the first sheet of Ameren's General Rules and Regulations, Section I. General Provisions, Subsection A. Authorization and Compliance, states "These rules and regulations on file with the Missouri Public Service Commission contain the provisions under which the Company *will supply* electric service to customers…." (Emphasis added). Again, the obligation is ongoing, rather than limited to one point in time. Additionally, Tariff Sheet No. 100's definition of "Tariffs" evidences that Ameren's obligation is ongoing, rather than limited to the one point in time when a new customer's service commences or is initiated:

> 32. Tariffs. Documents filed with the Commission specifying the lawful rates and other charges, riders and rules and regulations under which the Company *is required to provide* service to its customers. (Emphasis added).

In sum, for the duration of time that Ameren supplies service, it is required to have obtained and be in possession of the necessary permits of all jurisdictional governmental and regulatory authorities. The question is not whether Ameren "delayed" its provision of service, despite Ameren's and Staff's focus therein. Undistracted by this incorrect focus, the Commission has clearly articulated the question before it, as set forth in its April 7th Order and quoted at Page 1 of Ameren's Opposition:

> 1. Did Ameren Missouri violate its tariff by *supplying service to customers without having obtained all necessary permits* from the governmental and regulatory authorities having jurisdiction? (Emphasis added)

Despite the conveniently inconsistent arguments raised in its Opposition, Ameren is undoubtedly familiar with its Tariffs being conditioned on compliance with other governmental

and regulatory authorities. In the Rules and Regulations of its current Gas Tariff (Union Electric Company Missouri Service Area), Section III General Provisions, Subsection F Company Obligations, Sheet No. 44, Ameren's "obligations…to supply the service requested by customer are contingent upon the following conditions:…3. Governmental and regulatory authorization to supply the service requested." The Commission imposes similar conditions within the Tariffs of other gas utilities as well. For example, in the Rules and Regulations of the current Tariff for Summit Natural Gas of Missouri, Inc., Sheet No. 63 mandates that "The Company will comply with all applicable national, state and local codes and standards in providing gas services to a customer that uses another gaseous fuel."

Therefore, there is no genuine legal dispute that Ameren's Tariff requires it to possess all necessary permits of all jurisdictional governmental and regulatory authorities during the tenure of supplying service. Given that the undisputed facts that Ameren violated its Tariff by providing service from its Rush Island plant without the permits required by the Clean Air Act, Complainants are entitled to judgment in their favor.

Complainant's Reply to Ameren's Response to SUMF Nos. 29 and 30:

Given that Ameren has not sought to dismiss the Verified Complaint or any of the Complainants from this case, Ameren's response to SUMF Nos. 29 and 30 may be a distinction without a difference. Nevertheless, for clarity of the Record, Ameren has not at Appendix 1 to its Opposition sufficiently denied that Hannibal Board of Public Works and Kirkwood Electric are "persons" for purposes of compliance with 20 CSR 4240-2.070(1). "Person" is defined by 20 CSR 4240-2.010(11) as "…a natural person, corporation, municipality, political subdivision, state or federal agency, and a partnership." And, "corporation" is defined at Subsection (7) as "…a corporation, company, association, or joint stock company or association, or any other

entity created by statute which is allowed to conduct business in the state of Missouri." Complainants' arguments of fact and law found at Pages 15-17 of their Motion are hereby further incorporated by reference herein in support of Hannibal Board of Public Works and Kirkwood Electric's status as "persons."

Complainants' Reply to Ameren's Additional Undisputed Material Facts (Numbered 1 and 2 instead of 33 and 34):

1. Complainants admit that Tariff Sheet No. 102 attached as Exhibit A to the Verified Complaint (and also attached as Attachment 1 to Ameren's Opposition) is a true and correct copy. Complainants deny that Tariff Sheet No. 101 attached to Ameren's Opposition is relevant to this case given that, on its face, it shows that it was cancelled on July 27, 2014, and Complainants therefore deny same.
2. Complainants admit that Tariff Sheet Nos. 101 (the relevant non-cancelled Sheet) and 102 are part of Section I General Provisions of Ameren's Rules and Regulations.

Conclusion and Prayer for Relief:

Given that there are no undisputed material facts, and the Complainants are thus entitled to a Determination on the Pleadings or Summary Determination as a matter of law, and resolution of this case by a Determination on the Pleadings or Summary Determination is in the Public Interest, the Complainants request this Commission's order in their favor.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Complainants' Reply in Support of Motion for Determination on the Pleadings or, in the Alternative, Summary Determination, and Response to Respondent's Additional Undisputed Material Facts" has been served within the EFIS system on this 23rd day of April 2026.

/s/ Peggy A. Whipple
Peggy A. Whipple