

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 29th day of March, 2023.

In the Matter of Union Electric Company)
d/b/a Ameren Missouri's Tariffs to Adjust its)
Revenues for Electric Service)

File No. ER-2022-0337

ORDER DENYING MOTIONS TO STRIKE

Issue Date: March 29, 2023

Effective Date: March 29, 2023

On March 17, 2023, the Staff of the Commission (Staff) filed a motion to strike the surrebuttal testimony of John Riley, a witness for the Office of the Public Counsel (Public Counsel). On March 20, 2023, Ameren Missouri filed a motion to strike certain portions of the surrebuttal testimony of Claire Eubanks and Keith Majors, two witnesses for Staff. Ameren Missouri requested expedited treatment of its motion. The Commission issued an order shortening the time for responses as the evidentiary hearing in this rate case is to begin on April 3, 2023.

Staff's Motion

In support of its motion to strike Riley's surrebuttal testimony, Staff argued that the surrebuttal testimony did not comply with the requirements of Commission Rule 20 CSR 4240-2.130(7). Staff contends that Riley's surrebuttal testimony was not responsive to issues addressed in rebuttal testimony, but instead addressed issues appropriate for rebuttal testimony. Specifically, Riley's testimony about the income tax lag used in Staff's cash working capital calculation.

Public Counsel responded that it was not until after rebuttal testimony was filed that Riley recognized that neither Staff nor Ameren Missouri calculated the cash working capital lead/lag consistent with the Commission's order in File No. GR-2021-0108.

Ameren Missouri filed a reply to Public Counsel in support of Staff's motion. Ameren Missouri pointed out that the Spire Missouri decision that Public Counsel referenced concerning income tax lag factually differs from the tax lag issue in this rate case.

Ameren Missouri's Motion

In support of its motion to strike portions of Claire Eubanks and Keith Majors' surrebuttal testimony, Ameren Missouri argued that the surrebuttal testimony inappropriately implied that prudence was a factor for a proposed disallowance. Ameren Missouri asserted that prior direct and rebuttal testimony did not mention this implication, which Ameren Missouri believes contradicts Staff's prior testimony. Ameren Missouri argues that under the Commission's rules Staff had to state all its reasons in support of its adjustment in its rebuttal testimony. Raising it in surrebuttal testimony does not allow Ameren Missouri an opportunity to respond.

Staff responded that Ameren Missouri witness testimony specifically addressed prudence in both direct and rebuttal testimony. Staff points out that Eubank's surrebuttal testimony was responsive to specific Ameren Missouri witness rebuttal testimony. Further, Staff argues that Major's surrebuttal testimony was responsive to a section of Ameren Missouri witness John Reed's rebuttal testimony titled "The Prudence Standard." Staff noted that while Eubanks was not proposing an adjustment for prudence that does not mean Staff agrees with the prudence of Ameren Missouri's decisions.

Ameren Missouri filed a reply to Staff's response. Ameren Missouri presented additional circumstances not contained in testimony that it argued further supported striking the subject testimony.

Discussion

Commission Rule 20 CSR 4240-2.130(7), establishes the definitions for direct, rebuttal, and surrebuttal testimony.

(7) For the purpose of filing prepared testimony, direct, rebuttal, and surrebuttal testimony are defined as follows:

- (A) Direct testimony shall include all testimony and exhibits asserting and explaining that party's case-in-chief;
- (B) Where all parties file direct testimony, rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in any other party's direct case. A party need not file direct testimony to be able to file rebuttal testimony;
- (C) Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party's direct case; and
- (D) Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party's rebuttal testimony.

Public Counsel acknowledges that its surrebuttal testimony addresses a matter not addressed in rebuttal testimony. It is in substance rebuttal testimony that should have been filed earlier in the procedural schedule. However, the Commission finds that witness Riley did not withhold a position from other parties for a tactical advantage; rather he adjusted his testimony to address an issue he thought would be addressed by other parties. Riley's testimony is relevant and addresses an issue in this rate case. The Commission, in determining the price to be charged for electricity, may consider all facts which in its judgment have any bearing upon a proper determination of the question.¹

¹ Section 393.270.4, RSMo.

Staff has demonstrated that the surrebuttal testimony of Eubanks and Majors is responsive to rebuttal testimony and is therefore appropriate. If the Commission denies Ameren Missouri's motion to strike, Ameren Missouri alternatively requested that it be allowed to file responsive testimony.

Decision

The Commission may allow parties to present additional testimony live at the evidentiary hearing when appropriate. The Commission finds the circumstances created by Riley's surrebuttal testimony to be appropriate to allowing additional testimony live at the evidentiary hearing. The Commission also finds the circumstances created by the surrebuttal testimony Eubanks and Majors to be appropriate to allowing additional testimony live at the evidentiary hearing. The Commission will allow the parties to present additional testimony and cross-examine witnesses on the subjects of income tax lag for cash working capital and Rush Island prudence.

The Commission will deny the motions to strike.

THE COMMISSION ORDERS THAT:

1. *Staff's Motion to Strike OPC's Surrebuttal Testimony of John S. Riley* is denied.
2. *Ameren Missouri's Motion to Strike Portions of Surrebuttal Testimony of Claire M. Eubanks and Keith Majors, and Alternative Motion for Leave to File Sur-Surrebuttal Testimony, and Motion for Expedited Treatment* is denied.
3. Additional live testimony and cross-examination will be allowed during the evidentiary hearing on the subjects of income tax lag for cash working capital and Rush Island prudence.

4. This order shall be effective when issued.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeier CC., concur.

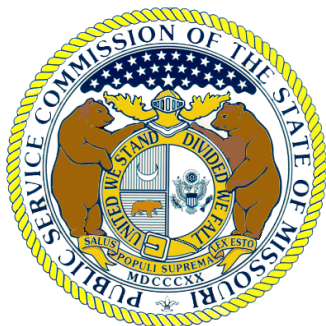
Clark, Senior Regulatory Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 29th day of March, 2023.



Nancy Dippell

Nancy Dippell
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

March 29, 2023

File/Case No. ER-2022-0337

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Nancy Dippell
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.