BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Commission's Proposed Rule 20 CSR 4240-10.175 Relating to Customer Information of Electrical Corporations, Gas Corporations, Heating Companies, Certain Water Corporations and Certain Sewer Corporations.	))))))	File No. OX-2025-0106

RESPONSIVE COMMENTS OF
AMEREN MISSOURI

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Company" or "Ameren Missouri"), and in response to comments filed by other stakeholders respecting proposed rule 20 CSR 4240-10.175, states as follows:

OPC'S AND SPIRE MISSOURI'S DECEMBER 1 COMMENTS

1. The Office of the Public Counsel ("OPC") proposes six discrete additions to the proposed rule while Spire Missouri ("Spire") proposes one. Given that there is a critical relationship between the OPC and Spire proposals, Ameren Missouri addresses them together.

2. The Company, with one exception that it identified based on Spire Missouri's December 1 comments, has no concern with the Commission's proposed rule. To a substantial degree, the Company does not have concerns with many of the proposals reflected in the December 1 comments of other stakeholders, including OPC. However, the December 1 comments as a whole highlight a critical, central concern -- the central concern -- which Spire raises and which Ameren Missouri expressed during the workshops that preceded this formal rulemaking. Specifically, any customer information rule must ensure that Ameren Missouri can continue to provide cost-effective, safe and adequate utility services to its more than 1.2 million electric and nearly 140,000 natural gas customers while safeguarding customer information it needs to provide those services.

3. Like Spire Missouri and other utilities, both in Missouri and nationwide, Ameren Missouri takes advantage of the tremendous efficiencies and economies of scale provided by its

utilization of a centralized service company (Ameren Services Company) to perform on its behalf a number of aspects of Ameren Missouri's provision of utility services to its customers. The Company also gains costs savings and efficiencies in many other areas from the use of third-party contractors and services for utility services, such as – and this is not an exhaustive list -- vegetation management, call center operation, bill printing and mailing, meter disconnections, line locating, infrastructure construction and installation, and information technology, including cloud based service providers like those we are hearing so much about recently as an explosion of data centers occurs across the country. Both its affiliated service company and these contractors simply could not do the work they do for Ameren Missouri, work that is in furtherance of Ameren Missouri's provision of utility services, if they did not have access to customer information. And it is simply not practical to obtain, from an ever-changing customer base, a specific customer consent for Ameren Missouri to share as needed, again in furtherance of its provision of utility services, customer information with these entities. Indeed, while some of these entities may remain the same over periods of time, they do change from time-to-time as Ameren Missouri continually seeks to engage the most qualified and cost-effective contractors it can. This is why Spire's suggested additions to the proposed rule are absolutely critical, especially in view of changes proposed by OPC and others.

4. The critical addition is not in any way to allow Ameren Missouri or any other utility to use or provide customer information in a manner such as it was used by Kansas City Power & Light Company and KCPL-Greater Missouri Operations with respect to Allconnect, referenced in OPC's Comments (File No. EC-2015-0319). As the Commission stated in its Report and Order[1] in that case, the problem the Commission found in the Allconnect situation was that the sharing of information in that case was not "designed to effectuate some aspect of the utility's obligation to

[1] Issued April 27, 2016, hereinafter the "Allconnect Report and Order."

provide safe and adequate service to its customers." Allconnect Report and Order, p. 19. In that case, the Commission concluded that the transfer of customer information "does not serve any utility-service related purpose." Id. This was because Allconnect used the customer information not in furtherance of the utilities' delivery of safe and adequate service but to offer customers non-utility household services, such as "communication bundles, video, internet, home phone, and home security through a variety of service providers." Id., Finding of Fact 7, p. 4. Simply stated, neither the Allconnect case nor any other prior circumstance warrants imposing an unconditional consent requirement that would severely handicap utilities from doing what they have done – without problems – for years: utilize affiliated service companies and contractors such as those referenced above in furtherance of their provision of utility services to their customers.

5. To be clear, the Company has no objection to many of OPC's suggestions (or those of other stakeholders) so long as the rule does not impose such a handicap. Below we address OPC's six suggestions one by one.

6. OPC Proposal No. 1. The Company has no objection to OPC's proposed definition of "Aggregated Customer Information."

7. OPC Proposal No. 2. The Company has no objection to including a definition of "consent," so long as (see above discussion) Spire's proposed and critical language respecting "utility related services" is adopted and if certain necessary changes to OPC's proposal are made. More specifically, with respect to defining "consent" the Company recommends that the Commission adopt the "consent" definition proposed by Renew Missouri. That definition recognizes the use of web-based consent, which is or soon will be the predominant means of obtaining and documenting consents in a variety of contexts (utility and non-utility alike), and while consent can be revoked, draws a clear and identifiable line – affirmative action by a customer to revoke consent – respecting the extent to which consent remains effective.

8. OPC Proposal No. 3. The Company has no objection to OPC's proposed clarification to subsection 2(B).

9. OPC Proposal No. 4. The Company does not object to the "customer ownership provision" but recommends it be qualified to recognize that while the customer owns the information, in order to obtain service the utility must possess it and be able share it in furtherance of providing utility services. Thus, the provision should read: "A utility customer's information remains the sole property of the customer at all **times, subject to its use and disclosure as otherwise provided for by this rule."**

10. OPC Proposal No. 5. With respect to OPC's fifth proposed addition, the Company does not object to providing notice without unreasonable delay or to providing a copy of notices it provides to its customers, in cases where a data breach triggering Section 407.1500 occurs. However, there is no need or justification for providing work-in-progress drafts of reports. Such drafts could be numerous and contain privileged information due to the potential exposure to civil liability a utility could face in such a situation. Providing the actual report, once finalized, is sufficient to apprise its recipients of what happened to gain learnings for future situations. The Commission's proposed language should therefore be modified as follows:

> The utility shall **notify, without unreasonable delay,** staff counsel's office and the Office of the Public Counsel if there is an incident that warrants reporting to the attorney general of a "breach of security" or "breach" as defined by subsection **1 of** section 407.1500, RSMo,[2] and the utility shall provide **a copy of the notice provided to customers and a copy of all reports detailing the investigation(s)** to the staff counsel's office and the Office of the Public Counsel. **Notices provided to customers shall be provided at the same time that they are sent to customers, and reports shall be provided immediately upon completion.**

[2] This reflects proper citation to the Missouri Revised Statutes as there is no "subsection 407.1500.1" insofar as the section is 407.500 and the subsection if 1. An alternative means of citing to the statute would be to state "as defined by 407.1500.1, RSMo."

11. OPC Proposal No. 6. With respect to OPC's sixth proposal, the Company has two significant concerns.

    a. *Subjecting the Policy to Commission Approval.* While the Company has no concern whatsoever with having a readily available a customer data privacy policy – indeed it has such a policy – it is inappropriate for the Commission to exercise what amounts to management of the utility in deciding the exact content of that policy. Such a policy is not a rate or a charge, nor is it a contract, agreement, rule, or regulation relating to rates, charges, or service, which are the items that belong in utility tariffs under Section 393.140(11). To the contrary, a data privacy policy is a public disclosure or explanation regarding what the holder of the data is doing with it and how it is protecting it, which can and certainly does vary depending on decisions management make regarding the hardware, software, processes, etc. that are used in data management. Utilities like Ameren Missouri employ and retain as needed information technology professionals, including cybersecurity professionals, that plan, design, operate, and maintain complex and sophisticated hardware and software systems that will influence the exact terms of a data privacy policy. Respectfully, the Commission is not in a position to determine exactly what those terms should be in light of those complex systems which will be unique as to each utility. This does not diminish the Commission's oversight of utilities. The Commission has broad powers to ensure that the utilities it regulates provide safe and adequate service. And the Commission, via its Staff, has broad powers to access needed information. If it were to have a concern about a data privacy policy, its Staff can certainly bring that to the utility's attention and there is no reason to believe that the utility would not work to address legitimate concerns. To the contrary, the utilities' interests and the Commission's interests here are fully aligned: utilities do

not want to suffer a data breach, with the tremendous legal and financial exposure such a breach could entail, and/or the significant costs it could create, irrespective of such exposure. And utilities have no interest in not following the Commission's rules, including the proposed rule, given the potential consequences of such a violation.

b. *Item 10.* If Item 10, seeking a list of "affiliated or non-affiliated third person[s]" only seeks categories of such persons, e.g., a utility's shared services company or utility contractor's or consultants who are providing services to the utility in furtherance of the utility related services the utility provides, then Item 10 would not be of concern. However, if the data privacy policy would be required to maintain and update a list of all persons, a list that will change on an ongoing basis, there would exist significant concerns. While data privacy policies are reviewed and updated periodically, as needed, they tend to be developed and remain static absent some statutory or technological development that would warrant a change. And in the utility's ongoing efforts to utilize the most qualified and cost-effective third-party providers (all to the benefit of customers) will make changes in those contractors on an ongoing basis, meaning the list of specific third parties will also change.

To address these possible concerns/clarify that they do not exist, the Company recommends two changes to OPC's sixth proposal:

(4) Customer Data Privacy Policy

(A) Each covered utility shall submit to the commission **its current customer data privacy policy, and revisions thereto.** The utility must also include the privacy policy on its website. The privacy policy shall clearly answer at least the following: * * * 10. What ~~affiliated or nonaffiliated third-party person or entities have contracted with the utility to receive customer information, the type of customer information being shared, if any, and what~~ safeguards the utility is utilizing to protect customer information from inadvertent disclosure while contracting with an affiliate or nonaffiliated third-

party **providing services to the utility in furtherance of the utility related services the utility provides.**

12. Aggregated customer information. OPC has modified proposed subsection (2)(B) to provide that the aggregated information shall be made available "upon request." This provision should be modified to provide that such information shall be provided only to the extent it exists. Utilities should not be forced into the business of developing aggregated information of a certain type or with a certain granularity simply because a third party desires it for whatever purpose that third party may want it. And just because the third party must pay reasonable charges for it does not mean that the utility's employees should be forced into diverting time and resources away from providing utility services in order for the third party to obtain information that it may desire, but which the utility itself need not develop in order to provide safe and adequate service. Yet this "upon request" concept would do just that. Therefore, the language should be modified to read: "shall be made available to affiliated or unaffiliated entities upon request **to the extent and in the form it exists** and under the same…."

OTHER STAKEHOLDER COMMENTS

13. Renew Missouri. The Company has no objection to the modifications to the "aggregated customer information" definition proposed by OPC but that has been modified by Renew Missouri or to Renew Missouri's modified "consent" definition, again so long as Spire's suggested and critical revision to the proposed rule is included, as discussed above. The Company's comments about OPC proposals that are in common with Renew Missouri's proposals (i.e., regarding providing information "upon request," the "sole property" language, and language regarding section 407.1500) are equally applicable to Renew Missouri's identical proposals. Moreover, the Company's comments about Item No. 10 in OPC's Proposal No. 6 is also equally applicable to Renew Missouri's Item 10 in its proposed data privacy policy provision. Renew Missouri has also added an item (Item 11) to that list and modified what becomes Item 16 on its

list. With respect to Item 11, there are two significant problems. First, specifying procedures and safeguards in a publicly available data privacy policy would be like giving the codes or keys to those who may want to "break into the safe," making it easier for them to do so. OPC Item 16 already adequately covers this topic in a way that balances providing useful information to customers against putting their data at risk. Renew Missouri Item 11 should not be adopted. Renew Missouri's modification to its Item 16 is also unnecessary. If the means by which some customers can share their data are different from others, then the item as proposed by OPC would already encompass providing those different means.

14. Sierra Club. Since Sierra Club is simply (with one exception) supporting OPC's proposals, all of the Company's comments about OPC's proposals apply equally to Sierra Club's proposals. The Company strongly objects to the one area in which Sierra Club departs from the OPC proposals, that is, the idea that utilities (and ultimately, all of their customers) should be forced to provide data without imposing the reasonable charges the utility incurs to produce the data on those who desire to obtain it. Such a provision would amount to imposing a cost on the utility and its customers in subsidy of those, such as Sierra Club or any other person or entity who desires access to the data, for whatever use Sierra Club or such person or entity desires to put the data to. This is inappropriate. It is appropriate and fair that if the utility possesses and provides data (i.e., aggregated customer information it actually has) to an affiliate that is not using the data in providing services to the utility in furtherance of the utility related services the utility provides, that other non-affiliates should also have access to the data. And it is appropriate that in such instances when the data is provided to the affiliate that the affiliate pay reasonable charges for it. It is equally appropriate that non-affiliates do so as well. Sierra Club's recommendation is particularly egregious when coupled with the suggestion that utilities should be forced to provide data (even if it hasn't developed it or hasn't developed it in the form desired) "upon request," which the Company addressed above.

OTHER COMMENTORS

15. For the reasons discussed above, the central recommendation of the St. Louis NAACP, that utilities must be forced to aggregate data and then provide it for free, should be rejected. To the extent Consumers Council of Missouri ("CCM") supports the OPC proposals, the Company's comments and recommendations respecting those proposals apply with equal force to CCM's comments. With respect to Mr. Steinmeier's comments, even OPC is not proposing an OPC draft of a rule put forth by OPC in a separate workshop that is not part of this formal rulemaking proceeding. That draft should not be adopted.

The Company appreciates the opportunity to provide these comments.

Respectfully submitted,

/s/ *James B. Lowery*
James B. Lowery, Mo. Bar #40503
JBL LAW, LLC
9020 S. Barry Road, Columbia, MO 65201
(T) 573-476-0050
lowery@jbllawllc.com

Attorney for Ameren Missouri

Dated: December 5, 2024

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to those who submitted prior comments in this docket on this 5th day of December, 2024.

/s/ *James B. Lowery*
James B. Lowery