

Exhibit No. 51

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Witness: Tom Byrne
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MISSOURI PUBLIC SERVICE COMMISSION

FILE NO. GR-2021-0241

DIRECT TESTIMONY

OF

TOM BYRNE

ON

BEHALF OF

UNION ELECTRIC COMPANY

D/B/A AMEREN MISSOURI

**St. Louis, Missouri
March 2021**

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DIRECT TESTIMONY

OF

TOM BYRNE

FILE NO. GR-2021-0241

I. INTRODUCTION

1

2 **Q. Please state your name and business address.**

3 A. Tom Byrne, Union Electric Company d/b/a Ameren Missouri ("Ameren
4 Missouri" or "Company"), One Ameren Plaza, 1901 Chouteau Avenue, St. Louis, Missouri
5 63103.

6 **Q. What is your position with Ameren Missouri?**

7 A. I am Senior Director of Regulatory Affairs.

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

10 A. In 1980, I graduated from the University of Missouri-Columbia with
11 Bachelor of Journalism and Bachelor of Science-Business Administration degrees. In
12 1983, I graduated from the University of Missouri-Columbia law school. From 1983-1988,
13 I was employed as an attorney for the Staff of the Missouri Public Service Commission
14 ("Commission"). In that capacity, I handled rate cases and other regulatory proceedings
15 involving all types of Missouri public utilities. In 1988, I was hired as a regulatory attorney
16 for Mississippi River Transmission Corporation, an interstate gas pipeline company
17 regulated by the Federal Energy Regulatory Commission ("FERC"). In that position, I
18 handled regulatory proceedings at the FERC and participated in some cases at the
19 Commission. From 1995-2000, I was employed as a regulatory attorney for Laclede Gas

1 Company, now known as Spire Missouri, Inc. ("Spire"). In that position, I handled rate
2 cases and other regulatory proceedings before the Commission. In 2000, I was hired as a
3 regulatory attorney by Ameren Services Company and I originally handled regulatory
4 matters involving local gas distribution companies owned by operating subsidiaries of
5 Ameren Corporation (now Ameren Illinois Company and Ameren Missouri). In 2012, I
6 was promoted to the position of Director and Assistant General Counsel, and I was assigned
7 to handle both gas and electric cases in Missouri. In 2014, I was promoted to my current
8 position, Senior Director of Regulatory Affairs.

9 II. PURPOSE OF TESTIMONY

10 **Q. What is the purpose of your direct testimony?**

11 A. The purpose of my direct testimony is to support Ameren Missouri's
12 calculation of rate case expense, which is included as part of the revenue requirement in
13 this case sponsored through the direct testimony of Ameren Missouri witness Mitchell
14 Lansford.

15 **Q. What annual amount of rate case expense has Mr. Lansford included**
16 **in his calculation of the Company's revenue requirement?**

17 A. Mr. Lansford has included \$0.213 million of rate case expenses, including
18 the cost of conducting a periodic depreciation study, in his calculation of the Company's
19 revenue requirement.

20 **Q. How was this amount determined?**

21 A. Mr. Lansford calculated the average expenses incurred in Ameren
22 Missouri's last two gas rate cases (excluding the cost of a depreciation study required by
23 Commission rules), as reflected below:

1 File No. GR-2010-0363 \$0.583 million

2 File No. GR-2019-0077 \$0.257 million

3 Average Rate Case Expense \$0.420 million

4 Then, he normalized this amount by dividing it by two, to reflect our expectation
5 that gas rate cases will be filed by the Company every two years, the approximate amount
6 of time since our last gas rate case was filed. This results in a revenue requirement for rate
7 case expense of \$0.210 million (not counting depreciation study costs). With regard to the
8 expense incurred for the depreciation study submitted in this case, Mr. Lansford divided
9 this cost over a period of five years to determine the normalized revenue requirement
10 impact since the Commission's rules require gas utilities to submit depreciation studies
11 every five years. Adding the normalized depreciation study costs of \$0.003 million to the
12 normalized rate case expense of \$.210 million results in a total revenue requirement impact
13 of \$0.213 million.

14 **Q. Is this a reasonable amount of rate case expense to include in the**
15 **Company's revenue requirement?**

16 A. In my opinion, it is. The average of the expense of the Company's last two
17 rate cases, which reflects the actual experience of the Company and does not account for
18 inflation, is reasonable in my view and in fact may be understated given that it comprises
19 two settled cases spanning over ten years.

Q. Has Ameren Missouri been diligent in controlling its rate case
expenses?

20 A. Yes, we have. We use in-house attorneys to litigate our cases, and our
21 primary outside attorney, James Lowery, is from central Missouri, where the hourly rates

1 for attorneys are typically lower than in larger cities. The other outside attorneys that will
2 assist with this case charge similar rates. We are also diligent in using internal witnesses to
3 support our case where possible and carefully consider cost when we hire outside
4 witnesses.

5 **Q. In two relatively recent Commission cases involving Evergy Metro, Inc.**
6 **("Evergy")¹ and Spire, the Commission ordered those utilities to share in the costs**
7 **incurred in litigating their rate cases, and those decisions were upheld by the Missouri**
8 **Courts of Appeal for the Western District and the Southern District. Does this suggest**
9 **that the Commission should require the sharing of rate case expenses in all cases?**

10 A. In my opinion, no. Although the court decisions indicate that it was lawful
11 for the Commission to require the utilities to share the cost of the rate cases based on the
12 specific circumstances in those two particular situations, I do not think that it is good
13 regulatory policy to require cost sharing in all cases. Utilities are required to file rate cases
14 to update their revenue requirements so that their rates reflect the legitimate increases in
15 the costs they must incur to provide safe and adequate service to customers (or in some
16 cases to reduce rates to reflect decreased costs). Rate cases are necessary to ensure the
17 financial integrity of utilities and to ensure they have the cash flow and access to capital
18 they need to invest in their systems and otherwise provide services, all of which ultimately
19 benefit customers. They are also necessary to ensure that customers are paying no more or
20 less than they should for utility service. Moreover, the frequency of rate cases can be
21 dictated by statute if a utility is to retain an electric fuel adjustment clause or a gas or water
22 infrastructure system replacement surcharge. In short, rate case expenses are a normal cost

¹ Formerly known as Kansas City Power & Light Company ("KCP&L").

1 of providing service to customers and prudently incurred rate case expenses should be
2 included in rates.

3 **Q. Does the fact that utility shareholders benefit from rate cases provide a**
4 **reason that shareholders should share rate case expenses?**

5 A. No. Both shareholders and customers benefit from the setting of just and
6 reasonable rates, including setting an appropriate return on equity ("ROE"), approval of
7 regulatory mechanisms that give utilities a fair opportunity to actually earn their authorized
8 return, and approval of the overall revenue requirement by the Commission. The idea that
9 some aspects of a rate case or some proposals are "solely for the benefit of shareholders"
10 is conceptually flawed. For example, if the utility advocates, as Ameren Missouri does
11 here, for the use of a 9.80% ROE in setting its revenue requirement, the fact that other
12 parties may advocate for something less does not make the efforts Ameren Missouri
13 undertook (and the related expense) solely for the benefit of shareholders. Aside from that
14 example, it is important to recognize that shareholders benefit in some way or another from
15 almost everything a utility does and that is exactly how public utility regulation is designed
16 to operate. To take another example, shareholders benefit from the installation of capital
17 items which are included in rate base because they earn a return on those assets, but
18 customers also benefit because those assets are used to provide them service. Shareholders
19 should earn a return because they provide the equity capital that a utility must have if it is
20 going to discharge its obligation to provide safe and adequate service at just and reasonable
21 rates. The fact that they benefit by earning a return does not mean that a portion of the cost
22 of every generating unit, substation, pole, and wire should be borne by shareholders.
23 Similarly, shareholders benefit from recovering operations and maintenance expenses that

1 enable the utility to operate its system, provide service to customers, and collect money
2 from customers. However, it would not be appropriate for utility shareholders to bear a
3 portion of prudent and necessary operations and maintenance costs which are also
4 benefitting customers, even if those costs have gone up and even if those increases mean
5 the Commission needs to raise rates in order for the rates to be just and reasonable. Prudent
6 rate case expenses are no different, and they ought to be fully reflected in the revenue
7 requirement upon which rates are based. Otherwise, a prudent and necessary expense of
8 operating a public utility is simply being ignored.

9 **Q. Do utility commissions in other states require utility shareholders to**
10 **bear a portion of their prudently-incurred rate case expenses?**

11 A. Not typically. In 2011, the Commission Staff submitted a questionnaire on
12 this topic to the other 49 states. The survey data, contained in a Staff Report issued in
13 August 2015, indicated that for most commissions that responded, either rate case expenses
14 were not an issue or all prudent expenditures were allowed, with no sharing or cap on the
15 expenses. None of the survey respondents indicated that they had a general policy
16 apportioning rate case expenses between shareholders and customers (File No. AW-2011-
17 0330, Staff Report, August 2013, page 8). Based on this survey, it appears that such a
18 policy would be outside the mainstream of utility regulation across the country.

19 **Q. Even if it was appropriate to apportion rate case expenses in the Spire**
20 **and Evergy cases as decided by the Western and Southern District Courts of Appeals,**
21 **does that mean it is appropriate to apportion such expenses in this case?**

22 A. No. If rate case expense apportionment is to be used, it should only be used
23 where the facts of the case suggest that it is warranted. In the Spire appeal, the Southern

1 District Court of Appeals listed numerous specific facts and circumstances set forth in the
2 Commission's findings in that case which the Commission concluded justified its decision
3 to apportion rate case expenses. Many if not all of those facts do not pertain to Ameren
4 Missouri's case, such as purposefully taking "aggressive" positions, filing a request that has
5 a "cushion" in it, asking for an authorized ROE far above ROEs awarded to comparable
6 utilities, and asking for a host of new largely shareholder-focused mechanisms not
7 demonstrated to be necessary to support just and reasonable rates

8 **Q. What about the idea that the utility is at some kind of significant (the**
9 **implication is "unfair") advantage over other parties?**

10 A. The relatively modest amount of Ameren Missouri's proposed rate case
11 expense is not enough to provide it with a significant financial advantage over other
12 participants. As noted, the Company is not taking aggressive, shareholder-only focused
13 positions, but rather, is seeking just and reasonable rates reflective of its cost of service.
14 The Staff is of course funded by utility assessments, the largest portion of which are paid
15 by the Company, and the question of what resources the Office of the Public Counsel
16 ("OPC") should or should not have is a matter of policy for the General Assembly; the
17 Company should not be denied recovery of legitimate rate case expenses based on that
18 policy decision. And the idea that entities like the Missouri Industrial Energy Consumers
19 ("MIEC") and the Midwest Energy Consumers Group ("MECG"), which are funded by
20 large national or multi-national corporations (often much larger corporations than Ameren
21 Missouri), are at a "significant disadvantage" is simply not true. The Commission should
22 keep in mind that the utility must deal with multiple adverse parties and address every issue

1 in a rate case, regardless of which party raised it and regardless of the merits of the issue
2 they raise.

3 **Q. Did the Missouri Supreme Court recently uphold a rate case sharing**
4 **decision involving Spire?**

5 A. Yes, it did, but that decision agreed with the Western District decision that
6 I discussed earlier and was based on the underlying evidentiary hearing before the
7 Commission in that particular rate case. I have already discussed both why the theory that
8 only shareholders benefit from some positions is not true, or certainly not true in all cases,
9 and have already discussed why Spire's aggressive and shareholder-focused positions in
10 that case – on that particular evidentiary record – are different than the circumstances of
11 this case. The Supreme Court did not indicate that rate case expense sharing should or must
12 occur, and my reading of the opinion is that the Supreme Court simply decided that case
13 based on the applicable standard of review applied to the record. In the words of the Court,
14 while the record supported that Spire was taking positions to subordinate ratepayer interests
15 to shareholder interests, we are not "seeking to subordinate ratepayers' interests to those of
16 the utility investors."² As such, regardless of the record in the Spire case, rate case expense
17 sharing is not justified in this case.

18 **Q. Does this conclude your direct testimony?**

19 A. Yes, it does.

² *Spire Missouri, Inc. v. Pub. Serv. Comm'n et al.*, Case No. SC97834, Slip. Op, p. 13 (Feb. 9, 2021).

