

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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

Case No. ER-2022-0337

**PUBLIC COUNSEL’S RESPONSE TO STAFF’S MOTION TO STRIKE
SURREBUTTAL TESTIMONY OF JOHN S. RILEY**

COMES NOW the Office of Public Counsel (“Public Counsel”), and responds to the Staff of the Missouri Public Service Commission’s motion to “strike” the prefiled surrebuttal testimony of Public Counsel witness John S. Riley as follows:

1. It was not until after parties filed rebuttal testimony in this case on February 15, 2023, that Public Counsel witness John S. Riley realized that neither the Commission’s Staff nor Ameren Missouri calculated the cash working capital lead/lag inconsistently with the Commission’s decision in Case No. GR-2021-0108 where it decided the contested issue of the appropriate expense lag for income taxes where the utility was not paying income taxes and decided that the lag should be 365 days. It resolved that issue in that way in its *Report and Order* issued October 27, 2021, (p. 29) as follows:

The Commission finds that federal and state income tax expense is included in rates but the Company is not likely to remit any federal or state income taxes because of its NOLC. Since the Company is not remitting any income taxes to the IRS on a quarterly basis, using a 38-day income tax expense lag in the CWC calculation is inappropriate. This lack of income tax payment should be reflected in the CWC expense lag. The fact that no income tax payments have been made in the test year or true-up period justifies the use of a 365-day expense lag. Therefore, the Commission finds that the appropriate expense lag days for income taxes within the CWC calculation is 365 days.

Additionally, the Commission finds that using a 365-day expense lag for federal and state income taxes in the calculation of CWC under the methodology used in rate cases before the Commission does not circumvent IRS normalization rules or create a violation because CWC does not include ADIT. Thus, the IRS rules on normalization are not relevant to this CWC issue.

2. It repeated that decision on page 31 of the *Amended Report and Order* it issued in that case on November 12, 2021, to clarify its original *Report and Order*.

3. Despite the Commission's decision in that case, Staff did not use a 365-day expense lag for federal and state income taxes in the calculation of CWC when it filed direct testimony in this case on January 10, 2023, or when it filed rebuttal testimony in this case on February 15, 2023, and Staff did not explain why it did not follow the direction the Commission gave on that issue in Case No. GR-2021-0108.

4. The Commission's role in ratemaking is to investigate the subject utility's costs and investment to provide safe and adequate service, and to set just and reasonable rates accordingly. It is not hamstrung by what issues any party chooses or omits bringing before it; however, it is limited by the evidence.

5. At a minimum the Commission should inquire of its Staff as to why it chose to use an income tax lag inconsistent with what it so recently ordered, and Public Counsel witness John S. Riley has brought the matter to the Commission's attention by including it in his surrebuttal testimony.

6. Public Counsel does not object to other parties exploring the issue through cross-examination or, if the Commission views it necessary, through additional testimony of their witnesses—prefiled or live.

WHEREFORE, the Office of Public Counsel responds to Staff's Motion to Strike Surrebuttal Testimony of John S. Riley as set forth above.

Respectfully,

/s/ Nathan Williams

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 23rd day of March 2023.

/s/ Nathan Williams