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Witness: Joseph J. LaMacchia
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MISSOURI PUBLIC SERVICE COMMISSION

FILE NO. EA-2019-0021

SURREBUTTAL TESTIMONY

OF

JOSEPH J. LAMACCHIA

ON

BEHALF OF

UNION ELECTRIC COMPANY

d/b/a AMEREN MISSOURI

**St. Louis, Missouri
January 2019**

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

2 A. Joseph J. LaMacchia, Ameren Services, One Ameren Plaza, 1901 Chouteau
3 Avenue, St. Louis, Missouri 63103.

4 **Q. What is your position with Ameren Services?**

5 A. I am a Lead Tax Specialist.

6 **Q. Please describe your educational background and employment**
7 **experience.**

8 A. I graduated in 1970 with a Bachelor of Science degree in Accounting from
9 Southern Illinois University. I was employed by Union Electric Company in 1970 and have
10 worked for varying lengths of time in the Budget & Cost, Internal Audit, Property
11 Accounting, Rates, Methods, and General Accounting departments (joining Ameren
12 Services when Union Electric merged with Central Illinois Public Service to form Ameren
13 Corporation in the 1990s). In 1992, I joined the Property Tax Section of the Tax
14 Department and have worked in this group up to the present. For approximately the past
15 10 years, I have been responsible for the filings with the Missouri State Tax Commission
16 ("STC") to establish the assessed valuation and taxes due for the state-assessed electric and
17 natural gas operations of Ameren Missouri. During that period, I also testified before the
18 STC in Ameren Missouri's appeal of 16 counties' tax assessment of Ameren Missouri's

1 natural gas assets (which I address further below) and have testified before county Boards
2 of Equalization in property tax assessment appeals. I also testified before the Missouri
3 Public Service Commission in 2015 concerning the property tax impact related to the
4 construction of the Mark Twain Transmission Line by Ameren Transmission Company of
5 Illinois.

6 **Q. What is the purpose of your surrebuttal testimony in this proceeding?**

7 A. My surrebuttal testimony responds to the rebuttal testimony of the Atchison
8 County Assessor, the Atchison County Clerk, the DeKalb County Assessor, the DeKalb
9 County Clerk, and the Tarkio R-I School District Superintendent.

10 Also, my surrebuttal testimony will further explain and quantify the property tax
11 impact of Ameren Missouri's ownership of the Brickyard Hills Wind Facility as compared
12 to ownership of it by the wind developer.

13 **Q. Have any Atchison County officials expressed concern over a loss in**
14 **local property tax revenue if Ameren Missouri becomes the owner of the Brickyard**
15 **Hills Wind Facility?**

16 A. Yes, the Atchison County Assessor in rebuttal testimony states that the
17 county would "lose"¹ approximately \$959,000 annually in locally assessed property taxes
18 that the wind developer (EDF) would otherwise pay to the County for distribution to the
19 local taxing authorities. The document ATC Exhibit 1 was provided by the Assessor to
20 support this tax amount. However, ATC Exhibit 1 shows the average annual locally
21 assessed property tax "loss" would be \$1.6 million. This \$1.6 million figure provides no
22 tax reduction to reflect an Enhanced Enterprise Zone ("EEZ") property tax abatement that

¹ It should be noted that regardless of the ownership of the facility, Atchison County will see an increase in property taxes if the facility is built as opposed to the situation where the facility is not built at all.

1 is available to EDF in Atchison County, nor does it reflect applicable depreciation as a
2 reduction to the assessed valuation which, as I discuss below, is required by Missouri law.

3 Also, the Atchison County Clerk in rebuttal testimony provides the same ATC
4 Exhibit 1 as part of her testimony to show the \$1.6 million "loss" of average annual locally
5 assessed property tax revenues, if Ameren Missouri becomes the owner of the wind facility.
6 Again, the ATC Exhibit 1 overstates the amount of "loss" of tax revenues by the tax
7 authorities within Atchison County, because neither the available EEZ property tax
8 abatement nor a proper accounting for depreciation is reflected in the tax calculations.

9 I will discuss what Atchison County could reasonably expect to receive in property
10 taxes if the facility were owned by an entity other than a regulated utility like Ameren
11 Missouri versus receipts under Ameren Missouri ownership later in my testimony.

12 **Q. Have any other county officials expressed concern over a loss in local**
13 **property tax revenue if Ameren Missouri owns the Brickyard Hills Wind Facility?**

14 A. Both the DeKalb County Assessor and the DeKalb County Clerk in rebuttal
15 testimony state an opposition to Ameren Missouri ownership of the Brickyard Hills Wind
16 Facility over concern that a decision in favor of Ameren Missouri would have a negative
17 impact on DeKalb County property tax revenues, should Ameren Missouri decide to
18 purchase a wind facility in DeKalb County in the future. The Superintendent of the Tarkio
19 R-I School District also filed testimony expressing concerns about property taxes.

20 **Q. If Ameren Missouri owns the Brickyard Hills Wind Facility, how would**
21 **the facility be valued and taxed for property tax purposes?**

22 A. Like any other Ameren Missouri-owned generation facility, the amount of
23 property tax Ameren Missouri would pay on the Brickyard Hills Wind Facility is governed

1 by legislation enacted by the Missouri General Assembly, specifically, Section 153.034,
2 RSMo. The wind facility property, exclusive of the land and land rights and buildings at
3 the facility, would be classified as state assessed (distributable) property. Subject to the
4 requirements of Missouri law and supervision of its decisions by the courts, the STC
5 instead of a local assessor or Board of Equalization is responsible for setting the assessed
6 valuations of the state assessed (distributable) property. The total distributable assessed
7 value is then apportioned to each taxing authority in the Ameren Missouri system based on
8 the number of circuit miles within the taxing authority. The tax rate for each taxing
9 authority is then applied to the assessed value to calculate the amount of tax due. For school
10 taxation purposes, the total distributable assessed value within a county is taxed at the
11 simple average of all school district tax rates within the county to determine the tax due.
12 This tax is then allocated to all school districts in the county based on several factors
13 including attendance, enrollment, etc.

14 The land and land rights and buildings at the wind facility would be classified as
15 local assessed property regardless of ownership. Their value would be determined by the
16 local county assessor, and all the resulting property taxes would be paid to the taxing
17 authorities in the county.

18 **Q. Is this a fair method to value the non-land and land rights property**
19 **owned by an investor-owned utility and determine the appropriate property tax?**

20 A. The legislature has decided that it is, presumably because central
21 assessment means that the tax revenues generated by such property which the utility is
22 using to provide service to its customers will primarily benefit the jurisdictions where those
23 same customers reside. Put another way, since those customers' utility rates are based in

1 part on the property taxes the utility pays, the legislature has apparently determined that
2 the locales where those customers reside and are paying utility rates based on those taxes
3 should benefit from the taxes the utility pays. As Ameren Missouri witness Ajay Arora
4 indicates, legislation has been introduced in Missouri to change this for wind facilities on
5 a prospective basis, but today this remains the law.

6 **Q. Would central assessment of the Brickyard Hills Wind Facility be**
7 **similar to the assessment of all other generation facilities in the Ameren Missouri**
8 **system in Missouri?**

9 A. Yes. As I noted, the central assessment of the Brickyard Hills Wind Facility
10 would be no different than the central assessment of all other generating facilities in the
11 Ameren Missouri system, including the Callaway Plant in Callaway County, the Labadie
12 Plant in Franklin County, the Rush Island Plant in Jefferson County, the Meramec Plant in
13 St. Louis County, the Sioux Plant in St. Charles County, the Taum Sauk Plant in Reynolds
14 County, the Osage Plant in Miller County, or the Terra-Gen Wind Facility in Schuyler and
15 Adair Counties. The legislation enacted by the Missouri General Assembly has determined
16 the method of property taxation for investor-owned utilities.

17 **Q. What is the method currently used by the Atchison and DeKalb County**
18 **Assessors in the valuation and taxation of wind tower facilities in their counties?**

19 A. In the rebuttal testimony of both the Atchison County Assessor and the
20 DeKalb County Assessor, the locally assessed valuation of wind tower facilities is based
21 on using the constructed cost of each tower, then adjusting this cost by 60% obsolescence
22 for the first two years of the wind tower's life, then by 63% obsolescence for the next two
23 years, and then by 65% obsolescence for all years thereafter. These amounts are then

1 multiplied by a statutory commercial real property assessment percentage of 32% to
2 determine assessed value. Finally, the tax levy rates of the various taxing districts in which
3 the wind tower is located are applied in arriving at the tax amount for each tower.

4 **Q. Given your significant familiarity and experience with assessment of**
5 **generating assets in Missouri, do you have an opinion as to whether this approach is**
6 **consistent with the requirements of the laws governing assessment of such property**
7 **in Missouri?**

8 A. I do. It is my opinion that this approach is *not* consistent with those
9 requirements because it fails to account for a mandatory deduction from value for the
10 depreciation the property will experience.

11 **Q. Please explain.**

12 A. While the STC has not been called upon to determine the details of the
13 methodology that must be used to assess a wind generation facility, I believe a cost
14 approach to valuation would be used for wind generation facilities because they are
15 relatively new and there is insufficient comparable sales data available to use a different
16 approach. That is the approach used by Atchison and DeKalb Counties for assessing the
17 existing wind farms in those counties, except that both Atchison County and DeKalb
18 County omit the proper and required deduction for depreciation.

19 **Q. Why are you of the opinion that accounting for depreciation is required**
20 **by Missouri law?**

1 A. Because the Missouri courts recently reversed the decisions of 16 county
2 assessors (and of the STC) who assessed special use property (in that case natural gas
3 distribution facilities)² without accounting for depreciation.

4 **Q. Please explain.**

5 A. Like the assessor in Atchison County, the assessors in those 16 counties
6 used the reproduction (also called the original cost) approach to determining the value of
7 the assets. The Company appealed their assessments on several grounds, including on the
8 ground that the law requires that depreciation be accounted for. The local Boards of
9 Equalization (which is the first step in any property tax appeal process) affirmed the
10 assessments, as did the STC. Ameren Missouri then appealed the STC decision to the
11 courts and ultimately, all three districts of the Missouri Court of Appeals reversed the STC
12 on the ground that the assessment failed to properly account for depreciation. The main
13 opinion issued by the courts is from the Western District of the Court of Appeals, which
14 extensively analyzed the question. The Southern District of the Court of Appeals
15 essentially adopted the Western District's reasoning, and the Eastern District Court of
16 Appeals, in a more limited opinion, also agreed with the Western District's conclusion that
17 depreciation had to be taken into account. To summarize, what the Western District said
18 was that "[r]egardless of the cost approach utilized, 'it is recognized that a proper deduction
19 [from valuation] must be made for depreciation.'"³

² Most if not all utility property is special use property.

³ *Ameren Missouri v. Cole County Assessor*, 534 S.W.3d 352, 367 (Mo. App. W.D. 2017), citing *Stephen & Stephen Properties, Inc. v. State Tax Comm'n*, 499 S.W.2d 798, 803 (Mo. banc 1973). The Eastern District also recognized that when the cost approach is used, a proper deduction for depreciation must be made. *Ameren Missouri v. Cape Girardeau County Assessor*, 539 S.W.3d 779 (Mo. App. E.D. 2017). The Southern District agrees. *Ameren Missouri v. Bollinger and Butler County Assessors*, 544 S.W.3d 246 (Mo. App. S.D. 2017).

1 **Q. What impact does Atchison County's failure to account for**
2 **depreciation have on its estimates of future property tax revenues it would receive**
3 **from the wind facility, if it were built, if it were owned by an unregulated developer**
4 **and locally assessed, versus if it were assessed by the STC in accordance with Missouri**
5 **law if owned by Ameren Missouri?**

6 A. The failure to account for depreciation grossly overstates the property taxes
7 that would be due by following the law and taking depreciation into account.

8 **Q. By how much?**

9 A. Assuming no tax abatement at all using Atchison County's existing EEZ
10 authority (according to documents obtained from the County, the three other wind facilities
11 in the County have received tax abatements of 65%, 60%, and 60%, respectively, through
12 2030 so I don't believe this is a realistic assumption), and not properly accounting for
13 depreciation, would result in a tax liability (using existing tax rates in Atchison County) of
14 approximately \$48.7 million over the expected 30-year life of the facility. Properly taking
15 depreciation into account would reduce that amount to approximately \$25.1 million. In my
16 opinion, this is the absolute most that could reasonably be expected under a proper
17 application of the property tax laws in Missouri, even if an unregulated developer owned
18 the facility and was receiving no tax abatement at all. This equates to an annual average
19 difference of approximately \$786,000 – less than half of the \$1.6 million claimed by the
20 County.

1 **Q. What are the comparable figures if an EEZ tax abatement were applied**
2 **as has been done for the other wind facilities in the county?**

3 A. Assuming that the tax abatement (using a 60% abatement provided to two
4 of the other three wind facilities in the County through 2030),⁴ the total tax liability for an
5 unregulated developer would drop to approximately \$20 million over 30 years.

6 **Q. Have you estimated the property taxes Atchison County would receive**
7 **if Ameren Missouri owns the facility?**

8 A. Yes. Accounting for certain property (on-site buildings, roads) that would
9 be locally assessed under the law and additional tax revenues Atchison County would
10 receive, due to its allocation of part of the STC assessed property taxes on the majority of
11 the wind facility assets, approximately \$6.8 million over 30 years under current law.

12 The difference then between ownership by a developer and ownership by Ameren
13 Missouri (assuming any tax abatement ends in 2030 consistent with other tax abatements
14 in place in the County) is approximately \$440,000 per year over the 30-year life of the
15 facility.⁵

16 **Q. Does this mean that the \$1.6 million "loss" claimed by the County is**
17 **incorrect?**

18 A. Yes. By failing to properly account for depreciation, the County grossly
19 overstates its "loss," exaggerating it by more than three and one-half times.

⁴ While it is my understanding that the Company's attorneys have requested documentation from Atchison County to confirm the terms of the EEZ and other tax abatements, it is also my understanding that the County has not fully responded to the Company's discovery requests and consequently I cannot verify all the details about the EEZ abatements in the County, including all the EEZ terms, at this time. I reserve the right to supplement my testimony once the discovery is received.

⁵ Based on figures provided by Atchison County and by the Tarkio R-I Superintendent, I estimate that the portion of this difference attributable to the school district is approximately \$14,000.

1 **Q. To be clear, am I correct that the \$440,000 does not represent an actual**
2 **loss of tax revenues as compared to tax revenues Atchison County is receiving today,**
3 **but instead, simply reflects a reduction in potential future tax revenues Atchison**
4 **County would receive in the future if the wind facility is built?**

5 A. As I noted earlier, that's correct. If the wind facility is not built, Atchison
6 County won't receive any of the \$20 million *or* the \$6.8 million. Put another way, Atchison
7 County will receive millions of dollars of *new* tax revenues if the facility is built, regardless
8 of the entity that owns it. I should also note that because Ameren Missouri has some circuit
9 miles in DeKalb County, ownership of the facility by Ameren Missouri will provide
10 DeKalb County some additional property tax revenue that would not exist under local
11 assessment by Atchison County.

12 **Q. Given your discussion of the recent Court of Appeals' decisions, do you**
13 **have an opinion about the relevance of the STC decision pointed to by DeKalb**
14 **County's witness involving a 2012 property tax assessment of a wind facility located**
15 **in DeKalb County?**

16 A. Yes, I should first note that while DeKalb County does not outright make
17 this claim, it appears that the suggestion is that the STC has endorsed the approach used by
18 DeKalb County, which as I understand is the same or similar to the approach being used
19 by Atchison County which as I noted fails to account for depreciation.

1 **Q. Does the STC decision regarding that DeKalb County wind facility**
2 **endorse any particular approach?**

3 A. No, it does not. That STC decision simply affirmed a DeKalb County
4 assessment for one tax year, and did so because the STC applied a presumption in favor of
5 the assessor and simply found that the wind facility did not meet its burden to overturn the
6 assessment. A presumption simply accepts something as true without any substantial proof
7 to the contrary. Neither the STC decision nor the circuit court order affirming it discusses
8 or endorses any particular methodology.

9 In fact, in the Ameren Missouri litigation where the STC was just reversed, the STC
10 again applied a presumption in favor of the assessor, but the Courts concluded that the STC
11 erred anyway because of the fundamental requirement that a proper depreciation deduction
12 be made.

13 **Q. Please summarize your conclusions.**

14 A. A proper calculation of property taxes to be paid to the County by an
15 unregulated wind developer over the 30-year life of the project must account for
16 depreciation and would almost certainly have included a tax abatement, at least through
17 2030. This means that the so-called "loss" the County claims is just approximately
18 \$440,000 per year, not the \$1.6 million Atchison County is claiming. And this is not a true
19 "loss." Under current law, Ameren Missouri as the facility owner would still pay the
20 County an incremental approximately \$6.8 million over 30 years in new tax revenues that
21 without the facility Atchison County would not receive at all.

22 **Q. Does this conclude your surrebuttal testimony?**

23 A. Yes, it does.

In the Matter of the Application of Union)
Electric Company d/b/a Ameren Missouri for)
Permission and Approval and a Certificate of)
Convenience and Necessity Authorizing it to)
Construct a Wind Generation Facility.)

STATE OF MISSOURI)
) ss
CITY OF ST. LOUIS)

CATHLEEN A DEHNE
Notary Public – Notary Seal
St. Louis City – State of Missouri
Commission Number 17119727
My Commission Expires Mar 7, 2021