BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Tariff Filings of Union Electric Company d/b/a Ameren Missouri, to Increase Its Revenues for Retail Electric Service.	)))	File No. ER-2022-0337

AMEREN MISSOURI'S RESPONSE TO OFFICE OF THE PUBLIC COUNSEL'S OBJECTION TO AMEREN MISSOURI'S COMPLIANCE TARIFFS

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Company" or "Ameren Missouri"), and for its Response to the above-referenced objection lodged by the Office of the Public Counsel ("OPC"), states as follows:

1. Simply stated: OPC's claim that following the General Assembly's mandate that an exceedance of the cap provided for by §393.1655.6, RSMo. (Cum Supp. 2023) requires a reopening of the record in a rate case via a rehearing application by some party, if it were correct, would lead to absurd and illogical results[1] and would thwart the intention of the General Assembly. This is because acceding to such an absurd and illogical result would violate basic principles of statutory interpretation.[2]

2. Section 393.1655.6 provides as follows:

> If the difference between (a) the electrical corporation's class average overall rate at any point in time while this section applies to the electrical corporation, and (b) the electrical corporation's class average overall rate as of the date rates are set in the electrical corporation's most recent general rate proceeding concluded prior to the date the electrical corporation gave notice under subsection 5 of section 393.1400, reflects a compound annual growth rate of more than two percent for the large power service rate class, the class average overall rate **shall** increase by

[1] *See, e.g,* ***Jones v. Prokes***, 637 S.W.3d 110, 116 (Mo. App. W.D. 2021) (Applying the well-established principle that the courts, when engaging in statutory interpretation, "'presume a logical result, as opposed to an absurd or unreasonable one," and "are always led to avoid statutory interpretations that are unjust, absurd, or unreasonable.'" (*quoting State v. Slavens*, 375 S.W.3d 915, 919 (Mo. App. S.D. 2012)).

[2] The primary rule of statutory construction is to give effect to the intention of the legislature. *See, e.g.,* ***In the Matter of Union Elect. Co. v. Pub. Serv. Comm'n,*** 591 S.W.3d 478, 485 (Mo. App. W.D. 2019)

> an amount so that the increase **shall** equal a compound annual growth rate of two percent over such period **for the large power service class**, with the reduced revenues arising from limiting the large power service class average overall rate increase to two percent **to be allocated to all the electrical corporation's other customer classes** through the application of a uniform percentage adjustment to the revenue requirement responsibility of the other customer classes (emphasis added).

3. OPC does not claim that the General Assembly's mandate can be ignored. OPC does not claim that there has been no exceedance of the large power service ("LPS") cap. OPC does not claim that Ameren Missouri has incorrectly calculated the exceedance, or incorrectly allocated it to "all the electrical corporation's other customer classes." That the cap applies, that there is an exceedance that must be reallocated, the amount of that exceedance, and the accuracy of the rates calculated to reflect that exceedance, are undisputed. Indeed, Staff has confirmed that the compliance tariffs in fact do reflect the rates dictated by the Commission's decisions in this case and dictated by the mandatory application of §393.1655.6. *See* Staff Recommendation and Response to Commission Orders filed today, recommending approval of the Company's compliance tariffs and stating that the "allocation of revenue requirement as ordered by the Commission has been modified consistent with the provisions of §393.1655.6, RSMo."

4. What OPC does allege, however, is an objection to the rates reflected in the Company's compliance tariffs that, from a practical perspective, thwarts the General Assembly's intention as reflected in the statutes that govern the Commission's actions in rate cases.

5. Sustaining OPC's objection – irrespective of whether this is OPC's intention – would likely prevent implementation of the rates the Commission has determined are necessary to constitute just and reasonable rates from taking effect within 11 months, i.e., by July 1, 2023. As the Commission itself has recognized, "the statutes show that the General Assembly wants

these actions [rate cases] resolved eleven months after their commencement."[3] Yet if, as OPC contends, rehearing must be sought and obtained and the record must be reopened, the Commission would find itself in the position of having to afford parties a reasonable time to allow a challenge to any order on rehearing. Given that there are as of today just 8 days until July 1 and prior appellate court determinations that a couple days is not reasonable, the General Assembly's intention that rates set in this case take effect in 11 months would likely be thwarted. And overriding this legislative intent would not be based in any way on a claim that the rates submitted by Ameren Missouri are wrong. Instead, it would be based on a reading of the Commission's rules and the statutes governing rehearing that are at war with the General Assembly's later enactment of §393.1655.6. Put another way, after the delay is over (and the Company has been permanently deprived of revenues it should have been able to charge under just and reasonable rates as determined by the Commission and starting when intended by the General Assembly), the *exact same rates that have already been submitted by the Company will then take effect.* Regardless of intent, the only result of sustaining OPC's objection would be to put off charging the exact same rates that it is undisputed will apply as a result of this case. There is no sound legal or policy reason or requirement to do so.

6. The application of basic principles of statutory interpretation dictates the conclusion that OPC's claim that the mandated cap cannot be applied unless rehearing is sought, granted, and then additional evidence is taken, is simply wrong in two ways. First, it is unreasonable and absurd to interpret the Commission's rule (20 CSR 4240-2.110(8)) together with §393.1655.6 and the statutes governing rehearing in a way that requires a rehearing

[3] *Order Regarding Reconsideration of Order Regarding Filings Related to Compliance Tariffs,* In the Matter of KCP&L Greater Missouri Operations, 2013 WL 299354 (Mo.P.S.C.) (Jan. 16, 2013).

application and an order granting rehearing in at least every single case where the cap is triggered by a rate case Report and Order.[4] Second, OPC's argument in effect is adding a rehearing requirement to §393.1655.6 when the statute contains no such requirement. The unreasonableness and absurdity of the first point is demonstrated by the mathematical realities discussed below.

7. Section 393.1655.6 and the definitions in §393.1655.7 that must be applied to apply subsection 6 require several pieces of information that are *unknowable* until the Commission issues its Report and Order[5] resolving the rate case:

a. The RESRAM rate that is to be in effect on the day new base rates are expected to take effect (here July 1, 2023) must be known;

b. The FAC rate that is to be in effect on the day new base rates are expected to take effect (here July 1, 2023) must be known;

c. The billing units must be known; and

d. The revenue requirement increase to be allocated to the LPS class must be known.

8. Under OPC's reading of the rules and statutes, only via a rehearing application (which, by definition, could only be filed post-issuance of the Report and Order since before then there is nothing to rehear) can the record be reopened to receive additional evidence because 20 CSR 4240-2.110(8) closes the window to reopen the record once briefs are filed – in this case, on May 15, 2023. But in this case, it was literally impossible to know the requisite facts – and thus

[4] Administrative rules are interpreted under the same principles as are statutes. *See, e.g.,* ***Bartholomew v. Dir. of Revenue***, 462 S.W.3d 465, 470 (Mo. App. E.D. 2015).

[5] On a given set of facts perhaps an FAC rate could be known prior to issuance of a Report and Order but it all depends on timing. Regardless, whether the cap applies and if so, what is the exceedance cannot be known without having *all* of the requisite information.

literally impossible to include them in an evidentiary record – at or before the moment OPC claims they must have been included in the record in order to apply the mandate of §393.1655.6.

9. Prior to the close of the evidentiary hearing, the FAC rate that would be in effect on July 1, 2023, was unknown. On the last day when the record could have in theory been reopened under 20 CSR 4240-2.110(8) (says OPC), the FAC rate that would be in effect on July 1, 2023, was unknown.[6] On both of those dates, the RESRAM rate that would be in effect was unknown.[7] On both of those dates, the revenue requirement increase the Commission would order to be allocated to the LPS class was unknown. On both of those dates, the billing units were unknown.[8]

10. The fact that whether the LPS cap is exceeded *at all*, and by how much *cannot be known until the Report and Order is issued,* means that OPC is interpreting §393.1655.6 to require that an application for rehearing be filed and that the Commission sustain it and reopen the record *in every single case* where the Report and Order's resolution of the case is then determined to have caused an LPS cap exceedance. Such a result is illogical and absurd, demonstrating that OPC has misinterpreted §393.1655.6 by effectively importing into it a requirement that rehearing always be sought and granted, and additional evidence admitted, before the cap can be applied.

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[6] The Commission did not approve the now-effective FAC rate until after May 15 (approved May 18). Even if it had been approved before May 15, there are numerous timing scenarios that could apply in different rate cases, depending on the timing of when FAC or RESRAM rate changes occur, that would mean that such rates would not be known because changes are pending but not approved. In this case it doesn't matter – the rate was not approved when, according to OPC, the window to reopen a record closed.

[7] Under the operation of Ameren Missouri's RESRAM, a new RESRAM rate takes effect on the date new base rates take effect because of the RESRAM rebase. However, what the new RESRAM rate as a result of the rebase will be is unknowable until the Commission resolves the case via its Report and Order.

[8] While it is true that the parties had stipulated what those billing units should be, the Commission had not approved the April 7, 2023, Stipulation and Agreement. For that matter, the revenue requirement increase itself was unknown for the same reason.

11. The obvious purpose of requiring parties to seek rehearing of decisions made by the Commission that the party claims are in error is to give the Commission an opportunity to correct those errors, which if corrected would obviate the need to appeal the Report and Order to the courts.[9] OPC, however, is misusing the rehearing statute because OPC has no substantive disagreement with the fact that the LPS cap in fact does apply or with the amount of the exceedance at issue. Approving compliance tariffs that reflect the statutorily mandated allocation of the undisputed exceedance to other customer classes is not an error that the Commission needs to be afforded an opportunity to correct. To the contrary, approving such compliance tariffs is in fact what §393.1655.6 *requires the Commission to do*. Indeed, interpreting §393.1655.6 such that rehearing and an amended report and order is *not* necessary *is* eminently logical and reasonable, as the record in this case shows. Specifically, all information necessary to assess the applicability of the cap, the precise calculation of the exceedance, and the reallocation of the exceedance as mandated by the statute are before the Commission and all parties prior to the compliance tariffs being approved or taking effect. It is illogical and unreasonable to conclude that there must have been rehearing and amended Report and Order to accomplish this; it has already been accomplished.

12. As noted, OPC is in effect adding requirements to §393.1655.6 that do not exist, in violation of basic principles of statutory interpretation. Indeed, nothing in §393.1655.6 evinces the General Assembly's intention that the Commission, in every case where the Commission's Report and Order triggers the cap, must rehear its Report and Order, reopen the record, and then amend its Report and Order. Much like it did when it claimed that the PISA

[9] That is why a timely rehearing application is a condition precedent to maintaining an appeal at all. *See* §§ 386.500, - .515.

statute[10] overrode the RES statute's[11] requirement that all RES compliance costs and benefits be recovered/returned (OPC's position that 15% of them should be excluded from both mechanisms), OPC is reading §393.1655.6 in a way that adds requirements that are simply not there. *See In the Matter of Union Elect. Co.,* 591 S.W.3d at 486-87. In rejecting OPC's argument that if correct would lead to a conflict between the two statutes, the Court of Appeals rejected creating a conflict between the two statutes in part on its finding that "nothing in the PISA statute explicitly indicates an intention to curtail or limit the RESRAM statute." Similarly, nothing in §393.1655.6 indicates that the statute creates a mandatory rehearing requirement whenever the cap is triggered, which as discussed earlier, cannot be determined until the Report and Order is issued.[12]

13. The compliance tariffs reflect the revenue requirement and class allocation decisions the Commission made in this case, modified as they must be by operation of §393.1655.6 to apply the LPS cap that the Commission is bound to respect. Approving them to take effect July 1, 2023, will be faithful to the General Assembly's intention that new rates take effect in 11 months, and to §393.1655.6.

WHEREFORE, Ameren Missouri respectfully requests that the Commission overrule OPC's objection and approve the Company's compliance tariffs to take effect and apply to service rendered on and after July 1, 2023.

[10] §393.1400.
[11] §393.1030.
[12] Under OPC's argument, the same problem would exist not just for the LPS cap, but for the overall cap (which is not triggered in this case) under §393.1655.4 since most of the information one must know but cannot know until the Report and Order is issued would also not be known in applying the overall cap. This further reinforces just how absurd and illogical OPC's interpretation is.

Respectfully submitted,

/s/ James B. Lowery

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ATTORNEYS FOR UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI

Dated: June 23, 2023

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on all parties of record via electronic mail (e-mail) on this 23rd day of June, 2023.

/s/ James B. Lowery
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