BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of	)	
Union Electric Company d/b/a	)	Case No. ET-2021-0082
Ameren Missouri for Approval of	)	Tracking No. YE-2021-0081
Its Surge Protection Program.	)	

INITIAL POST-HEARING BRIEF OF UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Company" or "Ameren Missouri"), and for its Initial Post-Hearing Brief, states as follows:

Summary of Argument and Evidence

This is a simple case. Ameren Missouri filed this case for two straightforward reasons: (1) to improve customer choice; and (2) to promote affordability of its electric service rates. The proposed surge protection program is voluntary. The evidence is that some customers, probably between five to eight percent (approximately 50,000 – 80,000), will decide to subscribe, just as customers did when other utilities offered essentially the same service at roughly the same price.

The Company's analysis of the proposed program's economics demonstrates that at those participation levels, the program is highly likely to generate revenues significantly in excess of its costs, meaning that it will lower rates for all customers – subscribers and non-subscribers alike. The record in this case further shows that even if the program (unrealistically) *literally gained no subscribers at all*, at worst customers might be "harmed" to the tune of perhaps 3 cents per month over three years, since the total expected program costs over the three-year period after which the Company has committed to file a financial analysis of the program would be less than $3 million *in total* – less than $1 million per year. And even this small risk to customers is overstated both because regulatory lag would likely impose some of those costs on the Company's shareholders,

and because there is no reason to believe that the program would garner absolutely no subscribers at all.

As noted, what is expected to happen – as supported by the record evidence in this case – is that there will be *at least* approximately $47 million of net benefits generated by the program over its first 20 years of operation that will lower rates for *all customers*. That same modeling shows that should the Company be as successful as Florida Power & Light Company, which has offered a very similar program for 20-30 years, those net benefits will exceed $100 million. And that same conservative modeling shows that even in a worst-case scenario, where a mere two percent of the Company's customers sign up by the end of program year three, the net benefits will still be positive, both on a nominal and net present value ("NPV") basis.

The benefits are driven by the fact that the $9.95 per month program participation charge is expected to be at least three times the program costs.[1] Why $9.95 per month? Because charging that price for the service provided under the proposed program puts it squarely in line with the price charged by other similar programs, demonstrating that customers participating in those similar programs at a similar price find that the value of such a service is worth the monthly service charge. There is no reason to believe that the same will not be true of the Company's proposed program. Indeed, the program charge is not, nor should it be, based on the program's "cost of service" because the point of this regulated offering is to let those customers who want the service – who decide themselves that it provides them fair value – to participate such that they produce revenues in excess of cost to promote more affordable electric rates for all.

[1] The expected program cost of $3 per customer per month is for the Company's conservatively estimated expected case. If participation is lower (in the worst-case modeled), the cost would be $7.23 per customer per month or, if participation matches the best-case modeled, the cost would be $1.95 per customer per month.

It is also important that the Commission keep in mind what the program is and is not. Participants are *not* buying a surge protection device for which they are then responsible. To the contrary, they are buying a *service* provided by their trusted, regulated utility that they cannot get on their own. By enrolling, participating customers (a) get the convenience of paying a modest monthly charge, which will be reflected as a separate line item on their monthly utility bill to be paid along with their other monthly utility charges; (b) get protection from a well-researched, highly reliable, proven device installed in the meter box outside their home, which will provide protection to all devices connected to their home's electric system arising from surges entering their home through the electric meter; and (c) avoid the need to pay an upfront charge to buy a different device, and the need to locate, evaluate, and pay a qualified electrician to come into their home to install it (and repair or replace it if it fails).

Finally, the arguments that have been made suggesting that the Commission is powerless to approve and regulate the proposed program fail to stand up to even the thinnest level of scrutiny. The surge protection devices are beyond any reasonable question "electric plant" within the meaning of § 386.020(14) because they are to be furnished "in connection with" the Company's provision of electric service to its customers. It is equally clear that the Commission's jurisdiction over the program would be ongoing. It is similarly clear that the Commission has routinely approved other programs that do not fit the Staff's narrow (and flawed) claims about the constrictive limits on the Commission's jurisdiction. If Staff's viewpoint were accurate, the Commission has been stepping (unlawfully) beyond its jurisdiction for years. It has not.

The bottom line is that the record in this case demonstrates that the Commission should approve the proposed program thereby giving Ameren Missouri's customers the choice of participating; should give all customers the likelihood of having their rates favorably impacted by

the program over time; and should condition its approval, as Ameren Missouri itself recommends, by requiring that Ameren Missouri file with the Commission a financial analysis of the program's first three years of operation and thus create a docket through which the Commission can decide whether indeed the program should continue.

Facts

Ameren Missouri proposes to offer an optional surge protection program to willing participants for a program charge of $9.95 per month.[2] If a customer signs up, an installer will come to their home and install a surge protection device within the meter box on the base of the Company's meter.[3] The device is to be supplied by the leading manufacturer of such devices in the country and will stop damage from surges that would otherwise come into the home through the electric meter in all but about 5 out of every 10,000 instances.[4] The device will be owned by the Company, reflected in its rate base, has a useful life of 15 years, and will be maintained and replaced by the Company at its expense.[5] The revenues from the monthly participant service charges will offset the revenue requirement as they are baked into rates, and each customer that participates will supply enough revenues to fully offset the return and depreciation associated with including the devices in rate base, even if the customer chooses not to continue his or her participation.[6]

The surge protection device will provide protection for all of a customer's electric powered equipment that is plugged into/connected to the home's electric system, regardless of whether the equipment is motor-driven appliance (like a refrigerator or washer and dryer) or electronic (like a

[2] Ex. 3 (Schneider Direct), p. 7, ll. 3-4.
[3] Id.
[4] Tr. p. 76, l. 10-11; Ex. 3, p. 3, ll. 16-18.
[5] Ex. 4, p. 8, ll. 1-2
[6] Tr. p. 124, l. 21 to p. 125, l. 8. This is true whether the fee revenue comes from two-plus full years of participation, or less than two years of participation but payment of termination fees such that all customers that participate will pay an amount equivalent to having participated for two years.

TV) because the device will stop surges that would otherwise enter through the meter from damaging all such equipment.[7] In addition, in those very rare cases where the device does fail and then damages customer equipment, if that equipment is motor driven the manufacturer will provide compensation up to specified per claim and aggregate liability limits for repair or replacement of the covered equipment.[8] For clarity, none of the program charges paid by participants to the Company are used to pay manufacturer warranty claims – neither the Company nor its customers are liable for those claims. Instead, all warranty claims are paid by the manufacturer.[9] Because the devices rarely fail, manufacturer payments logically will be minimal. However, the manufacturer's warranty is not the primary benefit of the program. Instead, the primary program benefit is the high level of protection provided by the device itself, including the peace of mind that goes with it.[10]

Customers have a choice as to whether to participate. Participation is a convenient way to gain additional protection against damage from surges. That convenience is reflected in the fact that participants need not select and hire an electrician, need not select and buy a device, need not let the electrician into their home to install the device, and need not pay for the device and installation separately and upfront.[11] Instead, the Company has researched and selected a quality device and will take care of its installation, maintenance, and removal (if the participant chooses to leave the program) without the need for the participant to take any steps beyond the initial call to sign-up for the program.[12] And the monthly charge for the service will be reflected in a separate

[7] Ex. 4 (Schneider Surrebuttal), p. 3, ll. 8 – 17.
[8] Tariff Sheet No. 166.1; Ex. 3, p. 7, ll. 7-12.
[9] Tr. p. 144, ll. 11-19.
[10] Ex. 4, p. 3, ll. 15-17; Tr. p. 108, ll. 3-17.
[11] Ex. 4, p. 7, l. 18 to p. 8, l. 2.
[12] Tr. p. 108, ll. 7-13; Tariff Sheet No. 166.1 (outlining the means to enroll in the program).

line item on the participating customer's bill, allowing the customer to conveniently pay it with the rest of the customer's electric service charges each month.[13]

Protection is provided if the surge comes through the electric meter, regardless of the source of the surge. For example, if lightning strikes the meter, service line, the Company's electric system, the ground, or wherever else and then enters the home through the meter, the device will either stop the surge from causing damage in the first place (9,995 out of 10,000 times) or there will be manufacturer warranty coverage for covered equipment.[14] If the surge comes through a telephone line or a coaxial cable or from another source (e.g., a direct lightning strike on the house) then the device cannot protect against the surge, just as some other device that might be installed at the electrical panel or plugged into an outlet in the wall could not provide protection.[15]

The Company's program is modeled after other similar, and similarly priced, utility programs offered across the country.[16] Some of those programs are longstanding.[17] All of them are offered as an unregulated service where all revenues (and profits) go to shareholders.[18] The Company's proposal is, by design, different. It is different because the Company proposes to reflect all revenues (and costs) of the program in the revenue requirement used to set its electric rates so that the expected profits from the program can contribute to affordability of electric service for all customers.[19] It is true that this creates a small risk, especially during the early start-up phase of the program, that revenues reflected in rates will not fully cover program costs.[20] That is true of

[13] Ex. 3, p. 6, ll. 22-23.
[14] Ex. 4, p. 10, l. 19 to p. 11, l. 7; Tr. p. 111, ll. 21-23.
[15] Tariff Sheet No. 166.2, Item 4.a.
[16] Ex. 4, p. 9, l. 16 to p. 10, l. 1 and Schedule JS-S1.
[17] Ex. 4, p. 6, ll. 6-8.
[18] Tr. p. 73, ll. 15-19; Ex. 5, p. 8, ll. 21-25; p. 9, ll. 8-15.
[19] Ex. 5 (Wills Direct), p. 3, l. 12 to p. 4, l. 7; Tr. p. 65, ll. 1-5.
[20] Tr. p. 71, ll. 1-25; Ex. 1 (Byrne Surrebuttal), p. 6, l. 19 to p. 7, l. 2.

other Commission-approved programs, such as the Company's Electric Vehicle Corridor Charging Program.[21] It is also true as earlier noted, however, that under reasonable assumptions based on detailed analysis and experience of other similar programs it is conservatively estimated that in the expected case the program will generate more than $47 million of net benefits over first 20 years of its operation.[22] That estimate is conservative because to simplify the analysis the Company assumed – unrealistically but conservatively – that it will gain not a single new participating customer after year 5, meaning it would create not a single dollar of new revenue after year 5 and indeed would (under such assumption) see program revenues fall starting in year 15.[23] But even with this conservative modeling assumption, the program is expected to make money, nominally and on a net present value basis. Not only is it expected to make money in the expected case where just five percent of the Company's customers participate by year 5, but it would make money even if only two percent participated (the "worst-case scenario"). This worst-case scenario is a worse case than any of the peer programs examined have actually experienced.[24] And if a participation level of eight percent of eligible customers can be achieved (the "best case scenario"), as is the case with Florida Power & Light Company's well-established program, the program will make even more money and provide an even greater offset to revenue requirement for the benefit of all

[21] Ex. 5, p. 7, ll. 4-14.
[22] Ex. 6, p. 14, l. 13 to p. 15, l. 11 (Updating the net benefits modeled in the expected case for the Company's direct case filing to account for property taxes and the impact of plant-in-service accounting ($600,000 and $300,000, respectively), and resulting in revised net benefits of $47.4 million.
[23] Ex. 3, p. 8, l. 7 to p. 9, l. 7.
[24] Tr. p. 132, ll. 5 – 15; Ex. 1, p. 10, l. 7 to p. 11, l. 4.

customers. The following table summarizes the results of the Company's conservatively estimated financial modeling: [25]

Scenario	**Worst** 20,000 Participants (Yr. 5) (all figures except last row in millions of dollars)	**Expected** 50,000 Participants (Yr. 5) (all figures except last row in millions of dollars)	**Best** 80,000 Participants (Yr. 5) (all figures except last row in millions of dollars)
Nominal Net Benefits	$5.8	$47.4	$102.9
NPV of Benefits	$3.8	$28.6	$58.5
Levelized Cost per Participant per Month	$7.23	$3.00	$1.95
Revenue per Participant per Month	$9.95	$9.95	$9.95

The approval sought in this case is simple. The Company is asking the Commission to approve the program tariff, with one clarification outlined at page 11, lines 5-7 of Mr. Schneider's surrebuttal testimony (Exhibit 2), and with one condition. The condition, recommended by the Company is that the Commission order the Company to file, within 45 days of the conclusion of the first three years of the program's operation, a financial analysis reflecting the program's financial performance during that initial three-year period. The condition should further provide that such filing will create a docket, to which Staff and OPC will automatically be parties, that will

[25] The $47.4 million figure in this table was addressed in footnote 21. The figures in the "Levelized Cost per Participant per Month" row are found in Mr. Will's surrebuttal testimony (Ex. 6), at page 4, l. 10-14 and footnote 2. The remaining figures in this table are summarized in Table 2 on page 9 of Mr. Schneider's direct testimony (Ex. 1). Note that the nominal net benefit figures in the Worst-and Best-case columns will be slightly lower once the property taxes and plant-in-service accounting impacts discussed above are accounted for – dollar for dollar lower (by $900,000) for the nominal net benefits numbers, and somewhat lower (but less than $900,000 lower because of the impact of discounting) in the NPV numbers. In all cases, however, the nominal net benefits and NPV values remain positive by millions of dollars.

entitle the parties to discovery rights, and that will empower the Commission, after hearing if the parties cannot otherwise agree, to either order that the program continue, order that it continue but only if the Company were to make specified program modifications, or order that it be terminated. While the Company understands that the Commission cannot make future ratemaking determinations in this docket respecting treatment of the program costs and revenues, the Company asks that the Commission only approve the program if it believes, based on the record in this docket, that it should be an above-the-line regulated program offering.

The proposed program will be administered by a third-party administrator with a dedicated toll-free number for the Company's program.[26] The Company will ensure that there is full disclosure of the Program's risks, costs, and benefits, including specifically the protection the surge protection device does and does not provide and the terms and scope of the manufacturer's warranty should the device fail to stop a surge.[27] The third-party administrator will also assist participants if they do have a claim against the manufacturer's warranty.[28] While the customer education and marketing materials for the proposed program have not yet been developed, the Company is completely open to soliciting and receiving Staff and Office of the Public Counsel input in terms of how it can make sure customers understand the program, what they would be or are paying for, and what the program benefits – including the manufacturer warranty – are and are not. As Company witness Jared Schneider indicated when discussing this issue with Commissioner Rupp, "we want to make sure customers are informed; that they understand to the best of our ability the coverage they are getting, the capability of the device, you know, what other types of surges, you know, that there's other entry points for surges that this device can't protect

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[26] Tr. p. 79, ll. 13-18.
[27] Tr. p. 95, l. 17 to p. 96, l. 1; p. 98, l. 10 to p. 99, l. 3; p. 99, l. 21 to p. 100, l. 8.
[28] Tr. p. 67, ll. 17-18; p. 79, l. 17-18.

against. So again, it's all about we want to make sure that the customer is informed before they can make their decision as to whether or not to enroll."[29]

The proposed program, by design, is priced at a monthly service charge level modeled after other similar programs, some of which have been in existence for many years. That price is (conservatively) expected to exceed program costs by a factor of more than three, which then provides a significant pool of net benefits that will offset the Company's revenue requirement as those net benefits are baked into rates. The proposed program is intentionally part of the Company's larger affordability initiative by which it is systematically working to (a) reduce ongoing operations and maintenance expenses, and (b) produce new revenue streams to offset revenue requirement.[30] The latter goal was a key underpinning of the Electric Vehicle Corridor Charging Program approved by the Commission in 2019.

Argument – Issues for Decision[31]

I. May Ameren Missouri lawfully offer its proposed surge protection program as a regulated program?

Yes. The surge protection devices to be installed for the proposed program will clearly be property of Ameren Missouri, an electrical corporation and public utility under the Commission's jurisdiction. Those devices will clearly be used in connection with Ameren Missouri's sale or furnishing of electricity to its retail customers. Consequently, under the plain terms of Section 386.020(14), RSMo. (Cum. Supp. 2020),[32] the surge protection devices are "electric plant" includable in Ameren Missouri's rate base.[33] Moreover, the proposed program is also clearly a use or accommodation to be provided by Ameren Missouri which, as noted, is a public utility, in

[29] Tr. p. 98, l. 18 to p. 99, l. 1.
[30] Fn. 19, supra.
[31] Following the List of Issues submitted by the parties.
[32] All statutory references are to the Revised Statutes of Missouri, Cum. Supp. 2020, unless otherwise noted.
[33] Even the Office of the Public Counsel ("OPC") agrees. Tr. p. 49, ll. 12-21.

furnishing a service – the surge protection program – to its customers. *See* Section 386.020(48). The law does not require that a service such as the proposed surge protection program be absolutely necessary or essential to the furnishing of basic electric (utility) service to be offered as a regulated program, as the definitions of "electric plant" and "service" show. Neither of those definitions expressly or by implication contain an "absolute necessity" requirement. That the surge protection program can be offered as a regulated program is consistent with the Commission's historical practice. For example, prior to the adoption of the Missouri Energy Efficiency Investment Act ("MEEIA"),"[34] Missouri electric utilities (and gas utilities, which are not in any event subject to MEEIA), offered energy efficiency programs, including non-low-income programs, as regulated programs whereby customers had the option (but were not required) to participate in the program and to receive incentives or other services paid for with utility funds with those expenditures included in the utility's rates.[35] Similarly, as noted the Company has an EV Corridor Charging incentive program. Ameren Missouri and utilities in general were and remain fully able to offer safe and adequate (electric or gas) service without these optional programs, but that does not mean that these optional programs were or are not properly offered as regulated programs.

During opening statement, Staff counsel raised a new statutory argument claiming that Section 386.250, RSMo. (2016), which outlines the Commission's jurisdiction, means that unless the service literally involves the manufacture of, or sale of, or distribution of (here) electricity, the Commission completely lacks jurisdiction over it.[36] This argument is as obviously flawed as the first argument Staff made in opposition to the proposed program (in its Recommendation), where it attempted to rewrite the definition of "electric plant" to require that utility property be "be used

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[34] Missouri Energy Efficiency Investment Act.
[35] Ex. 1, p. 6, l. 19 to p. 7, l. 12; p. 7, l. 19 to p. 8, l. 1.
[36] Tr. p. 44, ll. 6-12.

for **and** in connection with the sale or furnishing of electricity," when in fact the statute expressly provides that the property need only be "be used for **or** in connection with the sale or furnishing of electricity." Section 386.020(14) (emphasis added).

Staff's argument myopically focuses on a few words in subdivision (1) of Section 386.250 but ignores subdivision (7) of the same statute. This violates basic principles of statutory construction. When interpreting a statute, courts are not guided by an isolated sentence. To the contrary, courts will look to the provisions of the whole law and its object and policy. *Schieffer v. DeCleene,* 539 S.W.3d 798, 805 (Mo. App. E.D. 2017). Moreover, statutes are to be read *in pari materia* (construed together with not in isolation) with related sections. *Id.* Subdivision (7) provides that the Commission's jurisdiction extends to "such other and further extent, and to all such other and additional matters and things, and in such further respects as may herein appear, either expressly or impliedly." As just outlined, the devices are, *expressly*, within the definition of electric plant and, as such, the Commission surely must have jurisdiction over their deployment. Similarly, Section 386.020(48) expressly includes within the definition of "service" utility property (here, surge protection devices) "employed by . . . [a] public utility in performing any service . . . devoted to the public purposes of the . . . utility" [and devoted to] the use and accommodation of consumers or patrons."

But even if subdivision (7) did not exist, Staff's constrictive interpretation of subdivision (1) is plainly wrong, as demonstrated by the opinion in *In the Matter of Invenergy Transmission LLC, Grain Belt Express Clean Line, LLC et al. v. Pub. Serv. Comm'n*, 604 S.W.3d 634, 642 (Mo. App. W.D. 2020). As the Commission knows, after obtaining a certificate of convenience and necessity (a line certificate under Section 393.170.1) for an interstate direct current transmission line that will traverse Missouri, the then project developer, Clean Line Energy Partners (through a

special purpose entity, GBE Holding), reached agreement with Invenergy to sell the "Grain Belt" project (more specifically, to sell the project company, Grain Belt Express Clean Line Energy LLC ("Grain Belt")) to Invenergy. Because Grain Belt owned electric plant, Invenergy's (and Staff's view) was that permission for the sale was required under Section 393.190.1, RSMo (2016). The landowners appealed, claiming that the Commission lacked jurisdiction over Grain Belt since the property was not yet used to provide transmission service. The Court of Appeals disagreed, citing both Sections 386.250(1) and 386.020(14). The rationale underlying the opinion and upholding the Commission's jurisdiction to require permission was that since the property constituted electric plant (which covers property used or "*to be used")* to provide service, the Commission had jurisdiction. The Court's reliance on subdivision (1), without regard to the existence of subdivision (7), demonstrates that the fact that electric plant was involved confers jurisdiction on the Commission. Put another way, the court found that the reason the Commission had jurisdiction in the Grain Belt case was not because Grain Belt would manufacture, sell, or distribute electricity, which Staff claims in this case is essential for the Commission to have jurisdiction to regulate the proposed surge protection program. Instead, the Grain Belt court said that jurisdiction existed because the Commission has jurisdiction over electric plants[37] which as discussed above are defined by Section 386.020(14). What *Grain Belt* teaches is that instead of supporting Staff's argument, as it contended at hearing, subdivision (1) refutes Staff's new argument since for the reasons discussed above clearly the surge protection devices are electric plant owned by Ameren Missouri and used or to be used "in connection with" the provision of electric service.

[37] 604 S.W.3d at 642.

II. If it is lawful, should the Commission approve an Ameren Missouri surge protection program and treat the revenue, expense and investment associated with it as a regulated activity?

Yes, including for the reasons discussed in response to Issue No. 1 above. Treating the program as a regulated program and including its financial impacts in the revenue requirement used to set rates each time a rate review occurs is good public policy. As the Company's financial analysis shows, the proposed program is expected to generate revenues significantly above its costs over time, with an expected cumulative net benefit to non-participants over the next twenty years of more than $47 million,[38] and more if the program is as popular as some others operated in other states. As discussed above, those projections are conservative in that they only account for a program that adds participants from year one to five when, in fact, the Company expects to continue to operate the program in the long-term and plans to continue to add program participants well beyond year five. Consequently, it is expected that the cumulative benefits reflected in rates will be even higher. Using those same conservative assumptions, on a net present value basis the program is expected to produce more than $28 million of benefits and, even in the (also conservatively estimated) worst case, more than $3.5 million of benefits.[39]

The proposed program is specifically designed to produce those kinds of benefits because it is a part of the Company's larger, ongoing initiative of taking steps where it can, to promote the affordability of its electric service, including by generating new revenues to offset its revenue requirement. This allows Ameren Missouri to provide better service by offering customers an optional service that meets their needs or wants, while growing overall revenues to all customers' benefit. Moreover, Commission regulation of such programs is in the public interest for the very reason that the Commission can then have oversight and control over the program to ensure that

[38] Footnote 25, *supra*.
[39] Table on page 8, *supra.*

its terms and charges are just and reasonable. As Staff Counsel conceded in response to Commissioner questions, when programs such as this are offered by a utility holding company through an unregulated subsidiary, the Commission has no oversight over it.[40] By offering the program as a regulated service, the Company accomplishes two things an unregulated program cannot deliver: (1) it gives the Commission oversight over the program; and (2) it enables it to plow revenues back to all customers through a reduction in its revenue requirement.

As also discussed above, this is not the first program the Company has brought to the Commission as part of its affordability initiative, having also sought and obtained approval of a Charge Ahead Electric Vehicle Corridor charging incentive program in 2019. See *Report and Order*, File No. ET-2018-0132.[41] Both this proposed program and the Charge Ahead corridor program are intentionally designed to produce new revenues above the marginal cost of operating the program, and therefore contribute to covering the fixed costs of providing electric service and ultimately to reduce rates for all customers from what those rate levels would otherwise have to be to cover the Company's fixed costs. As Company witness Tom Byrne put it in response to questions from the bench: "I think the main reason we proposed it [the program] as regulated is we wanted to improve affordability for all of our customers. That's why we wanted to do it on a regulated basis rather than unregulated."[42]

Indeed, not allowing this program to be offered as a regulated service would be bad public policy.[43] Today many utility customers want options in their electric service, including things like the Company's voluntary but optional Community Solar offering, the EV corridor charging program noted earlier, energy efficiency programs, and the proposed surge protection program at

[40] Tr., p. 56, l. 23 to p. 57, l. 6.
[41] EFIS Item No. 150.
[42] Tr, p. 65, ll. 1-5.
[43] Ex. 1, pp. 7-9.

issue in this case. Confining utilities only to what they have "traditionally" done or to what is absolutely necessary to provide basic service will not provide them with the convenience, control, and choice they deserve, and it would likely preclude them from meeting future customer needs and expectations that could be met as the industry evolves and as we are able to take advantage of a greater proliferation of distributed energy resources, multi-directional power flows, advanced communication capabilities and other modern technology.

The Company concedes that of course, it is possible that the program will fail, just as it is possible that any number of decisions made by utilities or the Commission itself might not turn out as expected. It is possible that due to rate case timing there could be a situation where the early-years' startup costs might mean that the program lost some money during the test year and if the test year costs and revenues are reflected in rates it could raise overall rates until it can turn profitable and then have those rates reset to reflect that profit. As earlier discussed, such outcomes are extremely unlikely, and the magnitude of any momentary detriment is exceedingly small. The Company has committed to the Commission – and is asking the Commission to bind it to that commitment by conditioning program approval – to come back to the Commission with a financial analysis after three years that will let the Commission revisit an approval decision, with full procedural rights to Staff and OPC in such a docket. The risk? At the very, very most an unrealistic hypothetical "loss" to customers of about $2.8 million *over three years* – three cents per month – and even that unrealistically assumes the Company would bear none of it, although due to regulatory lag such an assumption is highly likely to be wrong.[44] As Mr. Wills testified, it is highly unlikely that the program would be up and running in a manner that would cause any costs or revenues associated with it to be reflected in the Company's pending electric rate case.[45] Whether

[44] Tr. p. 145, l. 6 to p. 145, l. 20.
[45] Tr., p. 142, ll. 12-14.

one uses the Company's estimated 21-month interval between rate cases or the 26 month interval Staff witness Lange used for her testimony,[46] this means that the first date any activity from the proposed program would likely be reflected in Ameren Missouri rates would be between November of 2023 and March or 2024 (the end of File No. ER-2021-0240 plus 21 to 26 months). All agree that the proposed program has start-up costs that will drag its financial results down initially. If the program revenues cannot overcome those costs between start-up and November 2023 to March 2024 (at the earliest), Ameren Missouri – not customers -- will bear the shortfall.

III. If the Commission determines it is appropriate to regulate Ameren Missouri's surge protection program:

A. Should it authorize Ameren Missouri to offer its program at the proposed rate and under the requested tariff provisions?

Yes, with two changes. First, the program tariff should be clarified as outlined at page 11, lines 4-7 of Ameren Missouri witness Jared Schneider's surrebuttal testimony, to clarify the provision regarding lightning strikes. Second, the Commission should condition its program as just described so that it can reexamine the program after three years.

B. Should the Commission impose a condition on any approval of the program that requires Ameren Missouri to hold non-participating customers harmless from the revenue requirement associated with the surge protection program?

No. The Commission should approve the program as a regulated program, based on the record evidence indicating that it is highly likely to produce net benefits for all customers over time. As noted, doing so is not risk-free, albeit the evidence demonstrates that doing so would be a very low risk proposition. The Commission declined to impose a similar hold harmless condition when OPC proposed it on the EV Corridor Charging Program the Commission approved, it should similarly decline to do so now. Customers stand to benefit from the likely lower rates the program

[46] Ex. 13, p. 20, ll. 11-14; Ex. 5, p. 10, ll. 15-16.

will provide. Giving them all the upside but forcing shareholders to ensure the downside is unfair; the Company would not pursue the program under such a term. If the Commission believes the program is worthy and will likely lower rates for all, it should simply approve with the Company-recommended condition discussed above.

IV. Should the Company provide customer education and outreach in conjunction with any program that may be authorized?

Absolutely, and it will, as discussed above.

V. Should the Commission require any specific accounting treatment related to the program, apart from that accounting required by the Uniform System of Accounts?

No, Ameren Missouri accounting for the Program in compliance with the Uniform System of Accounts ("USoA") is the only accounting that should be required. However, as discussed by Ameren Missouri witness Mitchell J. Lansford in his surrebuttal testimony, Ameren Missouri is willing to use managerial accounting (i.e., subaccounts/coding) to capture discrete, incremental costs and revenues from the program, such as the investment in the devices, depreciation of those investments, payments to the third-party administrator who will run the program and participant revenues. Additional accounting is unnecessary and impractical, as discussed by Mr. Lansford (see specifically, page 3, l. 5 to page 4, l. 4 of Mr. Lansford's surrebuttal testimony).[47] However, the Company has committed to prepare, in support of future general rate cases, an analysis that would use reasonable allocation methods to identify the amounts it believes are included in the revenue requirement that directly relate to the program.[48]

[47] Ex. 2 (Lansford Surrebuttal).
[48] Ex. 2, p. 4, l. 20 to p. 5, l. 6.

A. Should Ameren Missouri be required to separately designate depreciation expense and return (as defined in Section 393.1400, RSMo.) on capital investments made in the program and included in the PISA deferral mechanism?

Ameren Missouri agrees to calculate this impact and provide such analysis in the financial analysis to be filed within 45 days after the third year of the program's operation, and in conjunction with future rate cases.

B. Should Ameren Missouri be required to maintain all program records?

Ameren Missouri will do so in accordance with its records retention policies. The primary program records are expected to be accounting and regulatory records. General and subsidiary ledgers, general and subsidiary journals, journal vouchers, and significant or required analyses provided to the Commission require permanent retention under the policy.

For all of the reasons stated above the Commission should approve the program.

Respectfully submitted,

/s/ James B. Lowery

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First-Class United States Postal Mail, postage prepaid, on this 14th day of May 2021, to all counsel of record.

/s/ *James B. Lowery*