

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

In the Matter of the Revenue Effects	)	
Upon Missouri Utilities of the Tax Cuts	)	File No. AW-2018-0174
And Jobs Act of 2017.	)	

**AMEREN MISSOURI’S RESPONSE TO COMMISSION ORDER**

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), and for its response to the *Order Opening a Working Proceeding Regarding the Effects Upon Missouri Utilities of the Tax Cuts of 2017 and Directing Response* issued by the Commission on January 3, 2018, (the “Order”), states as follows:

**INTRODUCTION**

The Order directs Commission-regulated electrical corporations, gas corporations and Missouri-American Water Company to respond to five questions which had been posed by Staff in a Staff filing made on December 27, 2017, in this docket.<sup>1</sup> The Company will address each question (if applicable to it) in the order in which it was posed. However, it is important to set the context for this docket and the Staff’s questions.

First, Ameren Missouri agrees that cost savings from income tax rate reductions should, and ultimately will, be passed on to utility customers. The Company will commit the resources necessary to collaborate with the Commission Staff, the Office of the Public Counsel ("OPC"), and other stakeholders in this and any other necessary proceeding that ensures Ameren Missouri's rates are adjusted in an appropriate manner and at an appropriate time to reflect both the impact of the tax law changes and other changes in Ameren Missouri’s cost of service. But there are challenges facing all parties in accomplishing this goal.

---

<sup>1</sup> See Staff’s Motion to Solicit Input.

Most significantly, as outlined below, Missouri law requires that utility rates only be adjusted based on the Commission's consideration of "all relevant factors" (i.e., all cost and revenue changes must be properly considered). As a consequence, rates may not be adjusted to reflect a change in tax law, or any other single factor, in isolation. Rates may only be adjusted after a full cost of service analysis. This limitation on the Commission's ability to adjust rates prohibits "single-issue ratemaking" whether (as is typical) the utility is facing increasing costs, as well as when a utility's costs are decreasing.

This is not the only obstacle to quickly addressing the impact of the Act on utility customers, particularly given the complexities inherent in addressing these tax reform-related issues. The Act is less than one month old. The changes to the tax code are comprehensive and complex, as demonstrated by the fact that the legislation and related commentary is over 1,000 pages long. Moreover, certain key information is lacking. For example, tax professionals typically rely on Congressional interpretation (commonly referred to as the "Blue Book") which does not yet exist, and there will inevitably be technical corrections to the Act that have not yet been made. In addition, Treasury Department Guidance, which is also relied upon by tax professionals in applying the tax code, has not yet been issued with respect to a number of important issues that may have a material impact on determining a utility's taxable income. For these reasons, the Company simply cannot say at this point what amount is the proper level of income taxes for a more current cost of service calculation, although the analyses submitted with this response provide a preliminary estimation.

Moreover, even if one desired to adjust the Company's cost of service for the impact of the Act, it is very difficult to determine what amount of income tax expense should be deducted from Ameren Missouri's existing electric or gas revenue requirement. In order to make an adjustment, one must know the amount of income tax expense included in Ameren Missouri's cost of service with the

Act in effect, as compared to the income tax expense included in the cost of service upon which Ameren Missouri's current rates are based. And here is where the problem lies - Ameren Missouri's current revenue requirement (for both its electric and gas operations) that underlie its existing rates were the result of comprehensive settlements that do not specify any particular elements of the revenue requirement, including income taxes. As a result, no one knows what exact amount of income tax is included in the revenue requirement underlying Ameren Missouri's current rates. Although it is possible to develop a range of the level of income tax expense that is included in the settlement based on the positions of the parties prior to entering into the settlement, determining an appropriate figure that could be compared to the Company's current income tax liability under the Act will be difficult.

Regardless of these obstacles, Ameren Missouri agrees that customer rates should ultimately reflect the impacts of the Act. Consequently, Ameren Missouri is committed to working with this proceeding's participants to address the obstacles, and determining what appropriate rates should be and when they can be reset. The analyses submitted in response to Question e (discussed in greater detail below) will provide a starting point for those efforts. Those analyses, including one that estimates the impact of the Act, reflect a preliminary and partial estimate of Ameren Missouri's cost of service on a going forward basis, and indicate that it is likely that the impacts of the Act, together with other factors, will lower Ameren Missouri's cost of service (for both its electric and gas operations) and, ultimately, its rates in an amount yet to be determined.

## **THE STAFF'S QUESTIONS**

**Question a:** *What is the appropriate avenue for effectuating change to utility rates as a result of the federal income tax reductions?*

The appropriate avenue for effectuating any change in rates is through a general rate proceeding where all relevant factors are considered.

As earlier noted, there is currently no avenue under Missouri law for effectuating change to utility rates based solely on a single event or circumstance (i.e., a single issue such as tax reform) that, in isolation, causes a change in utility revenues or expenses. This prohibition against single-issue ratemaking is firmly established in Missouri, including by the holding of the seminal 1979 Missouri Supreme Court opinion in *State ex rel. Utility Consumers Council of Missouri v. Pub. Serv. Comm'n*, 585 S.W.2d 41 (Mo. 1979) (“*UCCM*”). *UCCM* holds that in setting utility rates, the Commission is required as a matter of law to consider all factors relevant to the proper maximum price to be charged. *Id.* at 56. While its analysis indicates that the Act will reduce the income tax component of Ameren Missouri’s cost of service, such income tax component reduction is only one factor of numerous factors required under Missouri law to determine an appropriate rate level for the Company.

While there are no avenues to effectuate a change in a utility’s rates solely due to the effects of the Act on cost of service, there are methods to change utility rates to account for those effects and all other factors that must be considered when rates are set. There are two methods by which a general rate proceeding can occur, as discussed in *UCCM*.

The most common general rate proceeding procedure is for the utility to file tariffs initiating a rate change (usually a rate increase) through the so-called “file and suspend” method reflected in Sections 393.140 and 393.150, RSMo.<sup>2</sup> In such a proceeding, the utility files tariffs reflecting

---

<sup>2</sup> All statutory references are to the Revised Statutes of Missouri (2016), unless otherwise noted.

proposed rates based upon a cost of service study rooted in a test period that accounts for all of the test period's revenues and expenses, including certain generally accepted normalization and annualization adjustments as well as any relevant exclusions from cost of service for below-the-line or other appropriate items.

The other method of processing a general rate proceeding is the "complaint method," arising under Sections 386.390, 393.260, and 393.270. As a practical matter, the complaint method is generally utilized if a qualified party (OPC, representatives of local government in the utility's service territory, or twenty-five customers of the utility) claim that the utility's existing rates are no longer just and reasonable and the utility itself declines to initiate a file and suspend rate case to adjust its rates. Under the complaint method generally, the Commission's Staff audits the utility and prepares its own comprehensive cost of service study, as will the utility in response, and the case proceeds in a manner similar to a general rate proceeding initiated by the file and suspend method.<sup>3</sup> Further, the Commission has held that a cost of service study done in a complaint case must look forward and take into account known ongoing and future costs. To do otherwise, "would be contrary to sound ratemaking principles."<sup>4</sup>

**Question b:** *Is a different avenue appropriate for regulated corporations and Commission regulated pass-through entities such as S Corporations, LLCs and partnerships?*

Not applicable to Ameren Missouri.

**Question c:** *What is the appropriate mechanism(s) for effectuating change to utility rates as a result of the federal income tax reductions?*

---

<sup>3</sup> One notable exception is that the complaint method does not include an operation of law date as does the file and suspend method. For file and suspend cases, Section 393.150 sets maximum suspension periods and also requires that rate proceedings thereunder be given preference over all other questions pending before the Commission.

<sup>4</sup> File No. EC-2014-0223, Report and Order, p. 20. See also *State ex rel. Missouri Water Co. v. Public Service Commission*, 308 S.W.2d 704, 719 (Mo. 1957) (In order to set rates, an "'honest and intelligent forecast of probable future values, made upon a view of all the relevant circumstances, is essential.'" (quoting *State of Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission et al.*, 262 U.S. 276, 288 (1922))).

As outlined in response to Question a, the appropriate mechanism to effect a change to utility rates in response to the Act is through a Report and Order resolving a general rate proceeding in which new rates are determined based on all relevant factors which would include, but cannot be limited to, consideration of the impact of the Act on the utility's rates.

**Question d:** *How does the change to the federal income tax affect pending rate cases? Can the change be considered in the pending rate cases?*

Utilities with pending rate cases are in a different position than those, like Ameren Missouri, which do not have a pending rate case.

Since all relevant factors are being considered in a rate case, if timing permits, changes to income taxes may be able to be included in that rate case without violating the *UCCM* principles.

**Question e:** *Please calculate the first-year approximate annual Missouri jurisdictional change in cost of service for each utility that is projected to result from implementation of the Tax Cuts and Job Acts of 2017 (all other things being equal) and provide supporting workpapers for this calculation.)*

Ameren Missouri can calculate an estimate of its 2018 cost of service with and without this tax change. However, as noted above it cannot determine the difference between the income tax expense reflected in an estimated 2018 revenue requirement and the income tax expense reflected in its current rates.

This is both because the income tax component in the cost of service that underlies its current rates is unknown, and because the unknown aspects of how the Act will be applied create a significant uncertainty in what Ameren Missouri's income tax expense will be under the Act.

Consequently, included with this filing as confidential<sup>5</sup> Exhibits A and B<sup>6</sup> are the results of a partial and preliminary cost of service studies, both of which use Ameren Missouri's 2018 budget for its operations and maintenance ("O&M") expenses together with capital additions included in its budget for 2018. Exhibits A and B also account for non-federal tax reform-related increases in cost of service and provide a comparison after accounting for those increases to the revenue requirement that underlies its current rates.

**WHEREFORE**, Ameren Missouri hereby files the foregoing response to the Commission's January 3, 2018, Order.

Respectfully submitted,

**/s/ James B. Lowery**  
**James B. Lowery**, #40503  
SMITH LEWIS, LLP  
P.O. Box 918  
Columbia, Missouri 65205  
(573) 443-3141 (T)  
(573) 443-3141 (F)  
[lowery@smithlewis.com](mailto:lowery@smithlewis.com)

**Wendy K. Tatro**, # 60261  
Dir. and Asst. General Counsel  
**Paula N. Johnson**, #68963  
Sr. Corporate Counsel  
1901 Chouteau Avenue, MC 1310  
P.O. Box 66149  
St. Louis, MO 63166-6149  
(314) 554-4673 (phone)  
(314) 554-4014 (facsimile)  
[amerenmoservice@ameren.com](mailto:amerenmoservice@ameren.com)

**Attorneys for Union Electric Company  
d/b/a Ameren Missouri**

---

<sup>5</sup> The exhibits are marked confidential because they contain material non-public financial information.

<sup>6</sup> One for the Company's electric operations and one for the Company's gas operations. Workpapers for the studies reflected in Exhibits A and B are being provided to the Staff and OPC concurrently with this filing.

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic transmission, facsimile or email to counsel for Staff and Public Counsel on this 31st day of January, 2018.

/s/ James B. Lowery