

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

In the Matter of the Application of Union     )  
Electric Company d/b/a Ameren Missouri     )  
for Approval of a Tariff Setting a Rate for     )  
Electric Vehicle Charging Stations.             )

File No. ET-2016-0246

**APPLICATION FOR REHEARING**

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”) and, pursuant to Section 386.510, RSMo and 4 CSR 240-2.160(1), submits this Application for Rehearing (“Application”) in response to the Missouri Public Service Commission’s (“Commission”) Report and Order in the above-referenced matter. In support of its Application, the Company states as follows:

1. On April 19, 2017, the Commission issued its Report and Order in this case, denying Ameren Missouri’s Application for approval of a tariff authorizing an electric vehicle (“EV”) charging station pilot program along the I-70 corridor. Ameren Missouri requests rehearing based on the Commission’s determination that it has no jurisdiction over utility-owned EV charging stations.

2. Ameren Missouri disagrees with the Commission’s determination that utility-owned EV stations are not “electric plant” subject to jurisdiction. The Commission based its decision on two attractive, but misleading, equivalencies:

- An EV charging station simply provides “the service of charging a battery” rather than providing light, heat, and power; and
- Monopoly status is the key to the need for regulation.

However, neither of these suppositions is entirely accurate:

- A *utility-owned* charging station provides electricity directly from the utility to the consumer with no intermediary; and
- Monopoly status is *one aspect* that can inform the need for regulation and that can be easily outweighed by other aspects.

## **I. Utility-Owned EV Charging Stations Meet the Definition of Electric Plant.**

### **A. Electric Plant**

3. The Commission’s denial of jurisdiction over utility-owned EV charging stations hinges on its determination that these charging stations do not constitute “electric plant.”<sup>1</sup>

4. The facilities-based definition of “electric plant,” that largely controls the jurisdictional question in this case was enacted in 1913, and has not been updated to accommodate technological innovations that make competition for electric power possible. However, this has not prohibited the state of New York from addressing that very issue. The New York Public Service Commission, which has a definition of electric plant nearly identical to the state of Missouri’s, determined that while it did not have jurisdiction over third-party EV charging stations:

We do have jurisdiction over the owner or operator of a Charging Station, where that owner or operator otherwise falls within the ... definition of ‘electric corporation.’<sup>2</sup>

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<sup>1</sup> Report and Order, p. 10 – 12.

<sup>2</sup> Declaratory Ruling on Jurisdiction over Publicly Available Electric Vehicle Charging Stations, *In the Matter of Electric Vehicle Policies*, p. 4, fn 7, New York Public Service Commission Case 13-E-0199 issued November 22, 2013. Notably, Missouri’s Public Service Commission Law (codified generally as Chs. 386 and 393, RSMo.) is based on New York’s Public Service Commission Law. See then Chief Judge Seiler’s dissent in *State ex rel. Jackson Cty. v. Pub. Serv. Com.*, 532 S.W.2d 20, 34 (Mo. 1975), where Judge Seiler notes that Missouri’s law is based on the New York law.

5. New York's definition,<sup>3</sup> marked to show the differences between it and Missouri's statute,<sup>4</sup> reads as follows:

The term "Electric plant," when used in this chapter, includes all real estate, fixtures and personal property operated, ~~controlled~~, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power...

6. It is appropriate, then, to more closely examine the definition as it pertains to Missouri to see if it, too, should reach the same interpretation as the state of New York did with its nearly identical statute. Missouri's statute defines "electric plant" as including, in relevant part:

*...all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in the connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power ...*<sup>5</sup> [Emphasis added].

As Ameren Missouri has consistently maintained during this proceeding, the Company is intending to *own and operate* EV charging stations to *sell and furnish electricity* to EVs so that they may be *lighted, heated, and powered*.<sup>6</sup> The Commission erroneously argues that this is *not* what the Company is doing, but it does so through the use of several false equivalencies.

7. The Commission determined that this was not, in fact, what the Company would be doing because the electricity would be provided to a battery.<sup>7</sup> Arguing that the EV's battery

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<sup>3</sup> Laws of New York, PSL § 2(12).

<sup>4</sup> Missouri's statute, 386.020(14) RSMo, was used as the starting point; where differences occur, Missouri's language is marked with a strikethrough, and New York's language in PSL § 2(12) is marked with underlining.

<sup>5</sup> Section 386.020(14) RSMo.

<sup>6</sup> Surrebuttal Testimony of Thomas M. Byrne, p. 4.

<sup>7</sup> Confusingly, the Commission also notes that the lack of a tariff has not prohibited Kansas City Power & Light Company ("KCPL") from providing EV charging services. This conclusion, however, ignores the fact that KCPL is providing that energy for free and has also been denied Commission jurisdiction in File No. ER-2016-0285.

provides the power is an attractive, but misleading, analogy. By that logic, it is not outside the realm of possibility that a utility-owned, large-scale battery storage unit would not itself be regulated.

8. More on point, at no time is any portion of a utility's service to a customer exempted from regulation because that power is being used to charge a telephone, a rechargeable battery, etc. In other words, the location of the battery within a car rather than inside a home does not change the fact that Ameren Missouri has proposed a means to provide light, heat and power to a customer.

9. The Commission has also equated utility-owned EV charging stations to a laundromat, stating that a laundromat uses electricity to provide a laundry service rather than a regulated activity. This ignores the fact that *Ameren Missouri's* EV charging stations would be providing electricity to an end-user consumer. In other words, Ameren Missouri would own the equipment – as well as the electricity – up until the point that ownership of the power transfers to the customer. That is not the case with a laundromat, or a smart-phone charging station or kiosk, an RV park, or an airplane at an airport. In all of those cases, Ameren Missouri *does not own the equipment necessary* to dry the clothing, charge the phones, power the RVs, or plug in the airplane. The Company *is not the entity* providing those services to the ultimate consumer. Instead, the Company is providing electricity to the laundromat, to the smart-phone charging station or kiosk owner, to the RV park, and to the airport. *Those entities* then own the electricity, a portion of which is then delivered to another end-use consumer. In the Company's EV charging station proposal, there is no such intermediary – Ameren Missouri is directly providing electricity for “light, heat or power” to the EV; the fact that the car's battery is involved is irrelevant.

10. Logically, the statutory definition of “electric plant” includes all property, equipment, and facilities up to and including the electric meter. Beyond the meter, the customer owns and controls not only the facilities used to convey electricity, *but the electricity itself*. Furthermore, any transfer of electricity for compensation on the customer side of a meter is not a sale – it is a re-sale. Historically – and consistently – the Commission implicitly has accepted the meter as the point at which statutorily-defined “electric plant” ends because rate base used for ratemaking purposes includes only real estate, facilities, and equipment up to and including electric meters. Facilities and equipment on the customer side of the meter are not included in rate base.

11. Simply stated, the contention that an EV charging station owned by an electrical corporation only charges a battery rather than supplies electricity to an EV is incorrect. The energy used to charge EV batteries is electricity, and that electricity comes from the incumbent utility – in this case, from Ameren Missouri.

12. Clearly, utility-owned and operated EV charging stations are “electric plant” as defined by §386.020(14): Ameren Missouri’s proposed charging islands are at the end of an unbroken chain of “real estate, fixtures and personal property” owned, operated, or controlled by a public utility that are used “for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity...” A fair and reasonable interpretation of §386.020(14) and an analysis of the regulatory and ratemaking principles that the Commission routinely applies lead inexorably to a conclusion that “electric plant” includes all facilities and equipment, up to and including the electric meter, that a public utility owns, operates, or controls and uses to generate, transmit, or distribute electricity. There is no dispute that Ameren Missouri uses “real estate, fixtures and personal property” it owns or controls to generate, transmit,

distribute, and sell electricity that is used for light, heat, or power. And, no language within the statutory definition of “electric plant” provides any basis to distinguish a charging station from any other fixture or piece of real or personal property Ameren Missouri uses to transmit and distribute electricity to customers.

13. The biggest flaw in the Commission’s logic is treating an electric vehicle battery differently than any other piece of customer-owned, electrical equipment. If the commodity Ameren Missouri provides is electricity, and all facilities used to transmit that electricity are owned and operated by Ameren Missouri up to the point the electricity is sold to the customer, then those facilities qualify as “electric plant” under the statutory definition. It makes no difference whether the point at which the Company sells electricity to a customer is a vehicle battery, a washing machine, or any other type or piece of electrical equipment. The statute requires the Commission answer only two questions to determine whether facilities qualify as electric plant:

- Are the facilities owned and operated by an electrical corporation?
- Are those facilities used to transmit or distribute electricity to a customer?

For the vehicle charging services Ameren Missouri proposes in this case, the answer to both questions is “yes.” Because the answer to both questions is yes, the statutory definition of “electric plant” is satisfied, and the Commission must conclude that all the facilities the Company would use for its proposed service are indeed “electric plant” as defined in Chapter 386.

## **B. Monopoly Status**

14. The Commission also stated that the Company’s monopoly status was supportive of its finding that the EV charging stations are not subject to regulation. Again, the Commission is relying on an attractive but misleading equivalence. Case law also states that public interest is

paramount: "...the phrase 'necessary or convenient for the public service' is premised upon the best public interest being served by 'adequate facilities'..."<sup>8</sup> Unfortunately, the state of Missouri – particularly the I-70 corridor – is not served by adequate facilities. The availability of fast-charging stations along the corridor was not even sufficient for one of this case's witnesses to travel from St. Louis to Jefferson City and back again.<sup>9</sup> Ameren Missouri's pilot program would not hinder competition; such a scenario is not possible where no provider exists. If anything, as stated at hearing, Ameren Missouri hopes that providing a means to increase EV traffic along the corridor will provide additional investment opportunities for other competitors.

15. The Commission must examine its legal obligations to determine the scope of its jurisdiction in the context of its enabling statutes. Because the primary rule of statutory construction requires that the words of a statute be interpreted according to their ordinary meaning, there is nothing in the Public Service Commission Law – more specifically in §386.250 or relevant definitions in §386.020 – that suggests the Commission can ignore the plain meaning of statutes just because it concludes a service is not a "natural monopoly." Again, the state of New York has addressed this very issue, and reached the same conclusion as Ameren Missouri in this proceeding: While third-party EV charging stations are exempt from regulation, utility-owned charging stations are not.

16. Missouri's Public Service Commission Law – particularly some of its definitions – may not have kept pace with advances in technology that have occurred since it was enacted in 1913. Still, the Public Service Commission Law is clear: if Ameren Missouri is an electrical corporation and public utility,<sup>10</sup> then any facility through which it furnishes electricity used to

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<sup>8</sup> *Ozark Electric Cooperative v. Public Service Commission*, 527 S.W. 2d 390, 392 (Mo. App. 1975).

<sup>9</sup> Mark J. Nealon live testimony, Tr. p. 159.

<sup>10</sup> No party disputed in this proceeding that Ameren Missouri is an electrical corporation and a public utility.

provide light,<sup>11</sup> heat and power is, in fact, accomplished through “electric plant” in Missouri, and that activity *is therefore regulated as a matter of law*. The Public Service Commission Law does not condition the Commission’s jurisdiction on the degree to which the service is a monopoly or in “need” of regulation. Unless and until the General Assembly sees fit to change portions of the Public Service Commission Law to address changes in technology and markets, such as those at issue in this case, the Commission must interpret the law that the legislature has enacted.

**WHEREFORE**, for the reasons stated above, Ameren Missouri seeks rehearing on the issue of whether its proposed EV charging island pilot project is within the jurisdiction of the Commission, and requests the Commission reverse its determination that utility-owned and operated EV charging stations are not, in fact, electric plant pursuant Missouri law.

Respectfully submitted,

By: /s/ Paula N. Johnson

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

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<sup>11</sup> For the reasons outlined in this pleading and throughout this proceeding by Ameren Missouri, the Company’s furnishing of electricity to provide electricity light, heat, and power is exactly what it would be accomplishing through the electric vehicle charging stations.



## CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed, this 17<sup>th</sup> day of May, 2017, to counsel for all parties on the Commission's service list in this case.

*/s/ Paula N. Johnson* \_\_\_\_\_