

**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

RESPONSE TO ORDER DIRECTING FILING

By its order dated October 18, 2016, the Missouri Public Service Commission (“Commission”) directed Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “the Company”), the Commission Staff (“Staff”), and other interested parties to respond to arguments made by the Office of the Public Counsel (“OPC”) and the Consumers Council of Missouri (“Consumers Council”) that question the Commission’s jurisdiction to approve Ameren Missouri’s tariff establishing a pilot program for electric vehicle charging stations at five sites along the Interstate 70 (“I-70”) corridor and at a sixth site in Jefferson City. More specifically, the Commission requested parties subject to the order to address three questions: 1) What is the statutory authority under which the Commission may approve the tariff filed by Ameren Missouri in this case?; 2) Are there any factual questions that must be addressed in determining the Commission’s jurisdiction over electric charging stations?; and 3) Is a certificate of convenience and necessity required for Ameren Missouri to build, install, and operate the electric vehicle charging stations?

The Company responds as follows to questions the Commission posed in its order:

**The Commission Has Jurisdiction to Approve
Ameren Missouri’s Proposed Tariff**

While the Commission’s authority to regulate electric vehicle charging services provided by non-utilities is unclear, there is no question it has full authority to regulate the same or similar services provided by public utilities on an above-the-line basis. In their respective filings in File

No. EW-2016-0123 – the workshop docket the Commission convened to consider a range of issues related to electric vehicle charging – Missouri’s four investor-owned electric utilities unanimously agreed if electric vehicle charging services are offered by a public utility the Commission has full legal authority to regulate those services. In its final report in that docket, Staff agreed with that conclusion, stating: “existing Missouri law *generally requires the Commission to regulate* the operation of [electric vehicle] charging stations and rates charged for their use.” (Emphasis added)

Section 386.250, RSMo,¹ plainly states the Commission has jurisdiction over “the manufacture, sale or distribution of . . . electricity for light, heat, and power, within the state . . .” Missouri courts have interpreted that statute and other relevant provisions of the Public Service Commission Law to vest the Commission with full authority “to supervise, regulate and control the public utilities within its jurisdiction.” *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 48-49 (Mo. banc 1979). It therefore follows that if a proposed service involves the sale of electricity for power, and the entity providing the service is a public utility, the Commission has jurisdiction to regulate that service if the utility offers, or is allowed to offer, those services through a filed tariff on an above-the-line basis.

Four interrelated provisions of Section 386.020 also are relevant to determining the Commission’s jurisdiction. Under Section 386.020(43), every “electrical corporation,” as defined elsewhere in the statute, is “declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission . . .” Section 386.020(15) defines “electrical corporation” as any entity “owning, operating, controlling or managing any electric plant . . .” Section 386.020(14) defines “electrical plant” as real estate, fixtures, facilities, and personal

¹ All references to Missouri statutes are to the Revised Statutes of Missouri unless otherwise indicated.

property used in the “generation, transmission, distribution, sale or furnishing” of electricity for light, heat or power. Although the definition of “electrical plant” does not explicitly require facilities be devoted to the public use or that electricity produced or transmitted by electrical plant be sold to the public, Missouri courts consistently have ruled those requirements are implicit. “[T]he operation of the electric plant must . . . be coupled with a public interest; otherwise the Commission can have no authority whatsoever over it. The electric plant must, in short, be devoted to a public use before it is subject to public regulation.” *State ex rel. M. O. Danciger & Company v. Public Service Commission*, 205 S.W. 36, 40 (Mo. 1918).² Finally, Section 386.020(48) defines “service” to include “any product or commodity furnished by any . . . public utility,” that uses the utility’s equipment and facilities, and is provided “to the use and accommodation of consumers or patrons.”

Applying these four definitions, the electric vehicle charging pilot program at issue in this case is clearly within the Commission’s jurisdiction because 1) a public utility 2) proposes to use its electrical plant 3) to offer, on an above-the-line basis, a product or commodity 4) for the use and accommodation of customers and that serves the public interest.

The Office of the Public Counsel’s Motion to Reject Ameren Missouri’s Electric Vehicle Charging Station Tariff (“Motion”), which was joined by the Consumers Council of Missouri, argues the Commission should reject Ameren Missouri’s proposal because installing, owning, and operating electric vehicle charging stations is not a public utility service. But that argument is contrary to both applicable law and simple logic.

The Motion first claims facilities Ameren Missouri would use to provide electric vehicle charging services do not satisfy the statutory definition of “electric plant” because those facilities

²See also *Hurricane Deck Holding Co. v. Pub. Serv. Comm’n*, 289 S.W.3d 260, 264 (Mo. App. 2009) (“public use” requirement is implicit in statutes defining a “public utility.”)

would not be used for light, heat, or power. That claim is obviously inaccurate because vehicle charging stations the Company proposes to install most certainly would provide *power* to electric vehicles connected to those stations, thereby allowing them to be driven.³

But not only is the Motion's argument contrary to applicable law, it is fundamentally unreasonable and illogical. Are Ameren Missouri's facilities not "electric plant" when they are used to re-charge a cell phone or any of the other numerous twenty-first century technologies that rely on rechargeable batteries as a power source? If the answer is "no," then how could some of those same facilities cease to be "electric plant" when the battery being recharged is in an electric vehicle? The obvious answer is the interpretation of what constitutes "electric plant" under the statute does not – and cannot – change based on the end use of electricity generated by and transmitted through those facilities. All of the Company's facilities used to supply electricity necessary to recharge vehicle batteries are no less "electric plant" when they perform that function than when they are used to supply energy to other battery-powered devices or any other end use.

The Motion next argues the Company's proposal is outside the Commission's jurisdiction because electric vehicle charging services, and plant and facilities used to provide those services, are not "in all respects just and reasonable," as required by Section 393.130. While it is hard to fully understand what the movants mean by this argument, it appears to be related to concerns only a small fraction of Ameren Missouri's customers would use vehicle charging services. But all customers do not have to use – or have to be able to use – every public utility service or offering in order for that service or offering to be fair and reasonable.

³ It also could be argued the charging stations provides light and heat as well, because unless an electric vehicle is charged its headlights, interior lights, and heater cannot function.

The list of services and offerings available from Missouri utilities that cannot be used by all customers is lengthy, and includes co-generation arrangements and rates and solar and other energy-efficiency rebates whose availability is capped by law. If Section 393.130 does not prohibit those services or offerings, then why would a different interpretation or application of the statute be appropriate – or permissible – when the service at issue is electric vehicle charging? As was the case with the argument discussed in the preceding paragraph, the Office of the Public Counsel and the Consumers Council of Missouri are not entitled to selectively – and inconsistently – interpret a statute to suit their needs at a particular moment. And the same rule applies to the Commission when deciding issues regarding its jurisdiction.

The Motion’s final argument concerns the possibility Ameren Missouri’s retail electric customers will be required to subsidize the proposed vehicle charging services if revenues derived from those services are not sufficient to cover all pilot program costs. The likelihood a subsidy will be required and the miniscule amount of that subsidy, are matters the Company has openly disclosed and discussed throughout this case. But the need for a subsidy has nothing to do with the Commission’s jurisdiction over Ameren Missouri’s proposal to build and operate electric vehicle charging stations. Instead, arguments regarding required subsidies go to the merits of the Company’s proposal, and should have been expressed in recommendations that were required to be filed on October 13, 2016. So even if a subsidy is required to support the vehicle charging pilot program, that fact does not provide a basis for the Commission to reject or deny the tariff for lack of jurisdiction. That principle does not change – notwithstanding the Motion’s seeming assertion to the contrary – just because the universe of potential charging station users who might benefit from a subsidy is not limited to the Company’s retail customer base. And, as the Company has repeatedly pointed out throughout this docket, for the majority of

the three-year term of the proposed pilot project, Ameren Missouri's shareholders, not its customers, will bear almost the entire cost burden of that project.

The Motion also briefly discusses the issue of competition, although it is hard to determine how or whether the Office of the Public Counsel or the Consumers Council of Missouri believes competition affects the Commission's jurisdiction to approve the tariff or allow it to become effective by operation of law. If the movants intended that discussion to buttress their argument the Commission lacks jurisdiction over Ameren Missouri's proposed tariff, then the argument must fail. Like arguments regarding subsidies, arguments regarding competition go to the merits of the Company's proposal, not to the Commission's jurisdiction. One or both movants had the opportunity to make that argument in recommendations required to be filed on October 13, 2016, and for whatever reason, neither did so.

**No Additional Factual Questions Need to Be Addressed to Determine
The Commission's Jurisdiction in This Case**

Ameren Missouri does not believe there are any additional factual questions that need to be addressed in order for the Commission to decide jurisdictional questions raised in the Motion. As the preceding discussion makes clear, no additional facts are necessary for the Commission to conclude that:

- a. the Company is a public utility;
- b. electric plant will be used to provide the proposed vehicle charging services;
- c. those services qualify as a "service" under the definition in Section 386.020(48);
- d. vehicle charging services would be offered to the public and are in the public interest;
and
- e. Ameren Missouri proposes to offer vehicle charging services on an above-the-line basis.

Those facts are sufficient to establish the Commission's jurisdiction over the Company's proposed pilot program tariff.

**No Additional Certificate of Convenience and Necessity Is Required
To Enable Ameren Missouri to Build, Install, and Operate Vehicle Charging Stations**

Because all proposed vehicle charging stations would be installed and operated within Ameren Missouri's certificated service area, no additional certificate of convenience and necessity is required. Missouri law has long recognized a public utility is not required to obtain an additional certificate of convenience and necessity to construct, extend, or operate facilities within service territory already granted to it by the Commission. *See, e.g., State ex rel. Harline v. Public Service Commission*, 343 S.W.2d 177, 180 (Mo. App.1960).

Conclusion

For all the reasons stated in this response, the Commission should deny the Motion. Applicable law is clear: the Commission has jurisdiction over services offered by a public utility, within its certificated service area, on an above-the-line basis, using the utility's electrical plant, to satisfy the public's needs and interests. Ameren Missouri's proposed tariff to establish, as a pilot program, a system of electric vehicle charging stations along the I-70 corridor and in Jefferson City satisfies each jurisdictional criterion established by law. The Commission should therefore issue an order approving the tariff or take no action, and thereby allow the tariff to go into effect by operation of law.

Respectfully submitted,

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**ATTORNEYS FOR UNION ELECTRIC
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing filing was served via e-mail on counsel for all parties of record on this 21st day of October, 2016.

/s/ Paula N. Johnson