

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

**In the Matter of Union Electric Company, d/b/a)
AmerenUE's Tariff to Increase Its Annual) Case No. ER-2011-0028
Revenues for Electric Service)**

BRIEF OF MISSOURI RETAILERS ASSOCIATION

Missouri Retailers Association (MRA) will address two issues in its brief: property taxes and class cost of service/rate design.

I. PROPERTY TAXES

A. Introduction

Ameren Missouri bears the burden of persuasion on the issue of the amount of property taxes to be included in its revenue requirement, just as it has on every other issue in the case. Section 393.140, RSMo 2000.¹ In this regard, the Commission should keep in mind that Ameren has had complete property tax information since November, 2010, as well as complete information on its property tax assessments and liabilities for all years prior to 2010 since before it filed the present case. Ameren Missouri produced a single-sheet workpaper containing a summary formula calculation to support its claim for \$135 million in property taxes, including a \$16 million adjustment to test year expense. This unexplained summary is woefully inadequate to support its claims. Based on the record in this case, the Commission should include \$119,000,000 of property taxes in Ameren's cost of service, and order a tracker for Ameren's 2010 property tax.

B. How Ameren Missouri's Property is Taxed

¹ All statutory references are to the Revised Statutes of Missouri, 2000 unless otherwise noted.

1. Property assessed centrally by the State Tax Commission.

As a first step, the State Tax Commission estimates the fair market value of all of Ameren's taxable property located in Missouri based upon reports filed by Ameren. §153.030.3. From this fair market value, the Tax Commission deducts the fair market value of locally assessed property. The Tax Commission then assesses the real property remaining at the statutory rate of 32%, and the personal property at 33% of its fair market value. (Ex. 505, Table II, pp. 2-5). The Tax Commission then allocates that assessed value to political subdivisions based upon the ratio of miles of wire in the political subdivision to the miles of wire system-wide. (§153.030; 151.080; Ex. 505, Table II, pp. 2-5). The exception is for school districts. (§151.150).

To determine Ameren Missouri's property tax bill in a particular political subdivision, that political subdivision's levy rate is applied to the assessed value allocated to that political subdivision with the exception of school districts. (§151.140). The property tax for school purposes on Ameren Missouri's state-assessed property is determined in each county by applying the average school levy of school districts within the county to the state-assessed value allocated to the county. (§151.150). The tax proceeds are then allocated to the school district based on student population. (§151.150.2).

2. Locally assessed property.

Ameren Missouri's property which is assessed by the county assessor is returned, valued, assessed and taxed in the same manner as any other property in the county. That is, Ameren Missouri returns its personal property to the assessor on the forms prescribed (together with Ameren Missouri's market value estimate). The then assessor lists and values the Ameren

Missouri's real property on the assessment rolls. Like other locally assessed property, the levy rate of each political subdivision is applied to the assessed value of Ameren Missouri's property to determine the tax bill. (§151.140).

C. Ameren's Estimate of Its Ongoing Property Tax Expense is Demonstrably Too High

From the record, we know the following:

- Ameren Missouri paid property taxes in 2010 in Missouri, Illinois and Iowa.
- the total tax bill for Ameren Missouri in 2010 was \$119 million. (Tr. 1290, ln 16-1291, ln 4).
- Ameren Missouri paid property taxes on construction work in progress in St. Charles County, the site of the Sioux Scrubber construction, in 2010 based on an assessed value of \$82, 675,207 (in turn based on original costs of \$496,100,850). (Tr. 1289, ln 24-1290, ln 2; Ex. 501, p. 2).
- Ameren has paid the tax bill based on that assessment (Tr. 1292, ln 3-7), but has not provided the Commission with the dollar amount of those taxes.
- Construction work in progress for the Sioux Scrubbers will disappear from the assessment and property tax rolls in St. Charles County in 2011 and all subsequent tax years, and that it will be included in the state-assessed property valued and apportioned by the State Tax Commission. (§153.034.1; 153.034.2(2)).
- Ameren Missouri has appealed its state-assessed property valuation for 2010, asking the State Tax Commission to reduce the market value of that property by at least \$400 million. (Ex. 500, p. 7).

- Ameren Missouri has paid \$28.8 million of its state-assessed property tax for 2010 under protest, based upon its appeal with the State Tax Commission. (Tr. 1287, ln 19-23).
- The Taum Sauk plant in Reynolds County for the property tax year 2010 was assessed at \$80,632,022 based on an original cost of \$483,840,513 (Exhibit 501, p. 4).
- The Taum Sauk Reservoir in property tax year 2009 was assessed at \$53,585,250, based on an original cost of \$321,450,269. (Ex. 501, p. 7).
- Ameren Missouri paid property taxes in Reynolds County based on those assessments in 2009 and 2010.
- The Taum Sauk CWIP in Reynolds County for the year 2010 comprised 39% of all assessed value for that year in Reynolds County (\$80,632,022/\$205,779,203). (Ex. 501, p. 3; Ex. 505, p. 10).
- The Taum Sauk construction work in progress in 2009 constituted 29% of all the assessed value in Reynolds County (\$53,585,250/\$182,544,587). (Ex. 501, p. 7; Ex. 505, p. 11).
- The assessed value of the Taum Sauk plant in Reynolds County increased by \$27,046,722 (\$80,632,022 minus \$53,585,250) between 2009 and 2010.
- The assessed value of the Taum Sauk construction work in progress increased 50% (\$27,046,772/\$53,585,250) between 2009 and 2010.
- The market value of the St. Charles County Sioux Scrubber CWIP that will be state-assessed in 2011 (\$496,100,850) (Ex. 501, p. 2) This is approximately the same market value by which Ameren is challenging its State Tax Commission assessment for 2010 (\$6.2 billion - \$5.8 billion = \$400 million) (Ex. 500, p. 7).

Ameren leaves questions critical to its claimed adjustment unanswered. If there is an increase in locally assessed property tax in Reynolds County from the completion of the Taum Sauk reservoir, how much will it be? Section 137.073 provides:

.2. Whenever changes in assessed valuation are entered in the assessor's books for any personal property, in the aggregate, or for any subclass of real property as such subclasses are established in section 4(b) of article X of the Missouri Constitution and defined in section 137.016, the county clerk in all counties and the assessor of St. Louis City shall notify each political subdivision wholly or partially within the county or St. Louis City of the change in valuation of each subclass of real property, individually, and personal property, in the aggregate, exclusive of new construction and improvements. All political subdivisions shall immediately revise the applicable rates of levy for each purpose for each subclass of real property, individually, and personal property, in the aggregate, for which taxes are levied to the extent necessary to produce from all taxable property, exclusive of new construction and improvements, substantially the same amount of tax revenue as was produced in the previous year for each subclass of real property, individually, and personal property, in the aggregate, except that the rate may not exceed the most recent voter-approved rate.

.4. ...The value of new construction and improvements shall include the additional assessed value of all improvements or additions to real property which were begun after and were not part of the prior year's assessment, except that the additional assessed value of all improvements or additions to real property which had been totally or partially exempt...

If Reynolds County increases the assessed value of the Taum Sauk reservoir, it appears that a levy rollback will be in order. In addition, there is the question of how much the Reynolds County property tax generates, and how much those political subdivisions might increase their budgets for 2011. Ameren provides no clarity on these matters that are critical to its case, and about which it unquestionably has information.

Will State Tax Commission assessments, in tax years 2011 and beyond, be more or less than the final 2010 assessment? Ameren has challenged \$400,000,000 or more of the market

value that serves as the basis for the State Tax Commission's assessment. If that challenge is successful, it would offset substantially or perhaps eliminate all of the increase in value caused by the addition of the Sioux Scrubbers to state assessment. This, in turn, would leave Ameren's tax bill at or below the 2010 level.

A party that leaves the forum in "the nebulous twilight of speculation and conjecture" fails to meet its burden of proof. *See, Mprove v. KLT Telecom, Inc.*, 135 S.W.3d 481, 490 (Mo. App. 2004); *Thompson v. City of West Plains*, 935 S.W.2d 334, 338 (Mo. App. 1996). Ameren's evidence leaves the Commission to speculation and conjecture on the issue; Exhibit 415, a single line of rough estimate is not sufficient to extract \$130,000,000 from ratepayers. Ameren has not met its burden of proof on the issue, and it is not the role of the parties or the Commission to fill that void.

The Commission's only reasonable resolution of the conundrum that Ameren has created is to base Ameren's revenue requirement in this case upon \$119,000,000 in property tax expense, and order a tracker for the protested \$28,000,000 in 2010 property taxes until final resolution of the appeal.

II. CLASS COST OF SERVICE/RATE DESIGN

The AMRA is a signatory of the nonunanimous stipulation and agreement (S&A) on class cost of service (CCOS) and rate design. The MRA Concur with the other signatories that the S&A represents a reasonable compromise of litigation positions, while moving generally, gradually to cost of service based upon cost to serve.

The Municipal Group opposed the S&A, however it has advanced no cogent basis for doing so. In the last Ameren rate case, the Commission exempted the Municipal Group from any

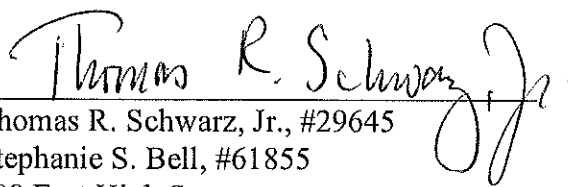
impact of the rate increase granted to Ameren. In that case there was no CCOS study that included the lighting class. The three studies in evidence in this case all support a shift of revenues to the lighting class of more than 15 percent.

The MRA will not extol or explicate the technicalities of the studies. Rather, the MRA asks the Commission not to conflate the police power with the taxing power. The Municipal Group is essentially asking the Commission to exercise its police power to obviate the need for the municipalities to exercise the taxing power. It is the duty of each municipality to make the decisions that balance the police power – providing street lighting - with the need to exercise the tax power to pay for it. The Commission should not succumb to the temptation to inject itself into this local issue.

WHEREFORE, the MRA asks the Commission to set Ameren's property tax expense at \$119,000,000, order Ameren to set up a tracker for its 2010 state-assessed property tax, and to approve the nonunanimous S&A on CCOS and rate design.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing pleading were sent to each of the following parties of record via electronic transmission this 1st day of June, 2011:

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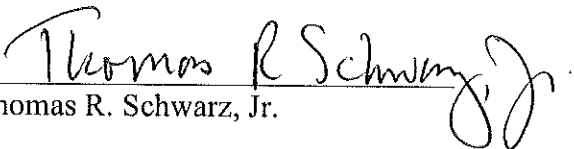
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