BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariffs to Decrease Its Revenues for Electric Service.	)))	File No. ER-2019-0355

AMEREN MISSOURI'S RESPONSE IN OPPOSITION
TO PUBLIC COUNSEL'S APPLICATION FOR REHEARING

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri"), and in response to the Office of the Public Counsel's ("OPC") request that the Commission rehear issues relating to the Commission's rejection of OPC's attempt to change the sharing percentage in Ameren Missouri's fuel adjustment clause ("FAC"), states as follows:

1. OPC's rehearing request is nothing more than a re-argument of points it made in its testimony, at hearing, and in its briefing. The Commission has already considered OPC's position and explicitly rejected it: "The facts in this case, however, do not show that there is any reason to adjust the sharing mechanism." *Report and Order*, p. 12. Pointing to the same record and repeating the same arguments does not change those facts, nor does it change the conclusion the Commission has already reached.

2. The thrust of OPC's rehearing request is premised on its conclusory claim that the Commission has acted arbitrarily in rejecting OPC's position (Sections II and III in OPC's rehearing request). Notably, OPC fails to acknowledge the legal standard by which its claim of arbitrariness must be judged. Under that standard, the Commission would have acted arbitrarily only if its findings were "not based on substantial evidence" or if it had "completely fail[ed] to consider an important aspect or factor of the issue before it…." *Beverly Enterprises-Missouri Inc. v. Dept. of Soc. Services*, 349 S.W.3d 337, 334 (Mo. App. W.D. 2008). But there is clearly substantial and competent evidence of record in this case supporting the Commission's decision,

and even OPC does not (nor could it) claim that the Commission did not consider the important aspects of the FAC sharing issue.

3. Respecting the argument made in Section II of OPC's request, simply stated, the Commission considered several factors and concluded that more sharing was not justified. Those factors included the complete and admitted lack of imprudent behavior on the part of the Company over the past 11 years, the affirmative incentive provided by the risk of prudence review disallowances, the affirmative incentive provided by the risk of loss of the FAC entirely, and the 5% sharing that is in place. That the conclusion the Commission reached on that record differs from the one OPC wants it to reach does not render the Commission's decision arbitrary. There was evidence to support the decision and the Commission considered OPC's arguments and evidence, which is all the Commission was required to do. OPC also misstates the record in an attempt to support its claim of arbitrariness when it makes the hyperbolic claim that the Commission's reasoned rejection of OPC's viewpoint amounts to demanding "that things get worse," before ordering them to get better. OPC Rehearing Application, p. 2. The statement is pure nonsense for many reasons, including that it presupposes that things are bad (they can't get worse if they aren't bad to begin with), and it presupposes that there has been some evidentiary demonstration that under the 95%/5% sharing in the FAC Ameren Missouri lacks sufficient incentive to prudently manage its net energy costs. *There is no such evidence* and indeed there is *evidence to the contrary*.

4. With respect to the argument made in Section III of OPC's request, OPC predictably ignores the conscious decision and findings made by the Commission not just in this case, but in the many prior cases based on *evidence of record*, on which the Commission based its decision to initially approve and then continue Ameren Missouri's FAC with a 95%/5%

sharing mechanism. OPC also continues to divert attention from the issue in this case: was there substantial and competent evidence of record to support the sharing mechanism the Commission approved? Answering that question has nothing to do with what was OPC witness Mantle's expression of an opinion in response to, respectfully, Commissioner Rupp's speculation about whether the 95%/5% mechanism first adopted for Aquila, Inc. was the result of a negotiation among Commissioners in 2007. And it matters not how or why the Commission at that time chose a sharing mechanism for Aquila. What matters is that the Commission consciously and independently, based on record evidence, affirmatively approved the 95%/5% mechanism proposed by Ameren Missouri in the case, just as it affirmatively did so based on record evidence when Ameren Missouri first obtained approval of its FAC. *See* pages 3 to 9 of the Company's initial brief for a discussion of the evidence.

5. With respect to OPC's claim that the burden of proof has been shifted (Section IV of OPC's request), Ameren Missouri proposed a 95%/5% sharing mechanism when it filed this case, and put on specific substantial and competent evidence to support that proposal, including: (a) reasons why it did not need a sharing mechanism at all while explaining that it was proposing one out of deference to the Commission's prior conclusions that some sharing is appropriate; (b) evidence of the ample incentives that exist for it to prudently manage its FAC, including the risk of prudence disallowances and the risk outright loss of the FAC; and (c) evidence that it had significantly cut net energy costs while managing its FAC under a 95%/5% sharing mechanism. That evidence met Ameren Missouri's burden. What OPC claims is "burden shifting" is nothing more than the Commission weighing all the evidence and reaching a conclusion based on that evidence that OPC does not like. That is not burden shifting.

6. In Section V of its request OPC, as it (via Ms. Mantle) has done repeatedly over the years, tries to tie a dispute about the classification of certain wholesale contracts back in 2009 to the sharing mechanism in Ameren Missouri's FAC. One has nothing to do with the other, as the Commission has made clear: "In short, the Commission's decision in EO-2010-0255 [the case cited by OPC] *does not support the argument that Ameren Missouri needs a larger financial incentive within the fuel adjustment clause*" (emphasis added).

7. Finally, with respect to the mistake OPC points out in Section VI of its request, it is true that Finding of Fact No. 14 on page 9 of the *Report and Order* is not accurate as written because a majority of the changes in FAC rates over the past roughly 11 years have reflected higher actual net energy costs as compared to the base. This Finding of Fact is clearly not essential to the question of the appropriate sharing mechanism. In any event, if the Commission believes there is some significance in the direction of FAC rate changes as it relates to a decision about the appropriate sharing percentage in this case it can accurately amend the finding to observe that since 2015, seven of the 13 changes have resulted in decreases. With respect to OPC's claim that Ameren Missouri ought to want more sharing given the decreases, as outlined in Ameren Missouri's briefing in this case, it does not desire more sharing so it can profit from these decreases. Why? Because from Ameren Missouri's perspective, sharing is not necessary at all and it certainly ought not be viewed as a means to profit or to lose when volatile and uncertain net energy costs change as compared to the base.

WHEREFORE, there being no basis for granting rehearing in this case, Ameren Missouri respectfully requests the Commission enter its order denying OPC's rehearing request and making such correction as it sees fit to Finding of Fact No. 14.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on all parties of record via electronic mail (e-mail) on this 8th day of June, 2020.

/s/James B. Lowery
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