Exhibit No.: ____________
Issue(s): Tracking Inflation Reduction Act (IRA) Benefits/Impairment Reductions In Income Tax Calculations
Witness/Type of Exhibit: Riley/Rebuttal
Sponsoring Party: Public Counsel
Case No.: ER-2022-0337

REBUTTAL TESTIMONY

OF

JOHN S. RILEY

Submitted on Behalf of the Office of the Public Counsel

UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI

CASE NO. ER-2022-0337

** ____________________________________ **
Denotes Confidential Information that has been redacted

February 15, 2023

PUBLIC

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JOHN S. RILEY

UNION ELECTRIC COMPANY

D/B/A AMEREN MISSOURI

CASE NO. ER-2022-0337

Q. What is your name and what is your business address?

A. John S. Riley, PO Box 2230, Jefferson City, Missouri 65102

Q. By whom are you employed and in what capacity?

A. I am employed by the Missouri Office of the Public Counsel ("OPC") as a Utility Regulatory Supervisor.

Q. What is your educational background?

A. I earned a B.S. in Business Administration with a major in Accounting from Missouri State University.

Q. What is your professional work experience?

A. I was employed by the OPC from 1987 to 1990 as a Public Utility Accountant. In this capacity I participated in rate cases and other regulatory proceedings before the Public Service Commission ("Commission"). From 1994 to 2000 I was employed as an auditor with the Missouri Department of Revenue. I was employed as an Accounting Specialist with the Office of the State Court Administrator until 2013. In 2013, I accepted a position as the Court Administrator for the 19th Judicial Circuit until April, 2016 when I joined the OPC as a Public Utility Accountant III and have since been promoted to Supervisor. I have also prepared income tax returns, at a local accounting firm, for individuals and small business from 2014 through 2017.

Q. Are you a Certified Public Accountant ("CPA") licensed in the state of Missouri?

A. Yes. I've been a Certified Public Accountant since 1998. As a CPA, I am required to continue my professional training by attending Missouri State Board of Accountancy qualified educational seminars and classes. The State Board of Accountancy requires that I spend a minimum of 40 hours a year in training that continues and expands my education in the field of accountancy. I am also a member of the Institute of Internal Auditors ("IIA") which provides its members with seminars and literature that assist CPAs with their annual educational requirements.

Q. Have you previously filed testimony before the Missouri Public Service Commission?

A. Yes I have. A listing of my Case filings is attached as JSR-R-1.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my testimony is to discuss potential ways to allow Ameren Missouri ("Ameren" or "UE") ratepayers to fully benefit from the recent tax law changes that were incorporated in the Inflation Reduction Act ("IRA"). I will also point out that both UE's and Staff's calculation of income tax does not include a reduction for ratepayer funded impairment write-offs. Failure to include this taxable income reduction greatly overstates the income tax expense built into the revenue requirement.

Q. Could you provide an overview of some of the benefits that are incorporated into the IRA?

A. The IRA has extended the duration of previously established Production Tax Credits ("PTC") and Investment Tax Credits ("ITC") for existing and new Solar and Wind facilities. It has also included tax credits for other zero emission projects such as batteries and geothermal. Another credit has been implemented for existing nuclear facilities as well. An additional feature of this Act is that credits can be sold to other companies.

Q. How can these credits benefit Ameren Missouri's ratepayers?

A. First and foremost will be a dollar-for-dollar reduction in UE's income tax liability[1] on the Ameren consolidated group income tax return, which will translate to an income tax expense reduction built into the Cost-of-Service.

Q. What are your initial thoughts concerning Mr. Lansford's proposal to establish trackers for the accumulation of various tax credits so the balances can be administered in future cases?

A. I am generally supportive of UE's initiative. As Mr. Lansford pointed out, the tax credit availability will begin to occur in between rate cases (outside a test year) and without some interim recognition, some of these tax credits will be lost and no benefit would be available to the ratepayer.

Q. Do you have any apprehensions towards Mr. Lansford's proposal?

A. Yes. Mr. Lansford explains that one of the impacts of the IRA that needs to be tracked is the CMT. CMT is an acronym for Corporate Minimum Tax. The IRS refers to the provision as CAMT ("Corporate Alternative Minimum Tax"). It is similar to the Alternative Minimum Tax that has been in the code for decades. I'll refer to the provision as CMT also.

Q. Would you briefly describe the CMT?

A. Mr. Lansford gave a brief explanation in testimony but in a nut shell, CMT is approximately 15% of Adjusted Financial Statement Income ("AFSI"). It appears that the Corporation, in this case the consolidated Ameren Corporation, will face a tentative minimum 15% tax on AFSI so I am assuming that there will be a tax liability, spread among the subsidiaries, every year going forward.

[1] Within IRS established limitations.

Q. What is your concern with tracking the CMT?

A. I'm not concerned with tracking the tax, however, Mr. Lansford has proposed that the payment of this tax would create a Deferred Tax Asset[2] ("DTA"). He likens the payment to a prepayment of the taxes before they are due and therefore should be afforded rate base inclusion and be multiplied by the weight cost of capital[3] like any other rate base item. I believe this an inconsistent application of current income tax calculations.

Q. Why do you believe this is an inconsistency?

A. From reading Mr. Lansford's testimony, I almost get the impression that UE will have to pay these taxes out of its own pocket (prepayment) causing a DTA. Or maybe Mr. Lansford views this scenario as a similar situation as a net operating loss ("NOL") where the NOL is considered a DTA due to the inability to use the Deferred Income Tax because the tax obligation is zero? The witness fails to mention that the CMT will be recognized in the income tax expense which will be built into the revenue requirement. Given that any tax liability will be addressed and compensated in the cost of service, I fail to comprehend the "deferral" in this tax picture.

UE has been afforded nearly a billion dollars in income tax expense in rates since 2012[4] and had taxable income in only one of those years. No one ever suggested that all that unused income tax expense be recorded as a deferred tax liability. Why then should a tax payment that has been recognized and compensated for in the cost of service, be considered a rate base item?

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[2] Mr. Lansford describes the scenario on page 7 of his supplemental testimony. Q&A describing the implementation of the CMT payment.
[3] Lansford supplemental, page 11, line 15 and footnote 12.
[4] Using income tax requirements balances from Staff's Accounting Schedules listed in EFIS in Ameren cases since 2012.

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Q. Does Mr. Lansford propose any other DTA balances?

A. Yes, Mr. Lansford attempts to point out a timing difference between PTCs and ITCs recognition in a tracker and when UE would be able to benefit (apply to taxes) from credit generation. He proposes a DTA in rate base to recognize this difference. Rate base recognition poses a dilemma. On one hand, ratepayers are responsible for the tax credits through rates, but UE would like a rate of return on the unused credits. I don't think UE's proposal is the current practice with PTCs. The credits haven't cost UE any money so a ROR would be applied to a "nonmonetary" asset.

IMPAIRMENTS WERE NOT INCLUDED IN TAX CALCULATIONS

Q. What are impairments?

A. Impairments are a taxable income deductions that a company applies on its tax return. It is a write-off of obsolete assets prior to the assets complete depreciation on the general ledger. The quick answer is that a company disposes of an asset and this disposal creates a loss on the income tax return thereby reducing its tax liability.

Q. For ratemaking purposes, how is this asset treated?

A. The asset is removed from rate base along with corresponding depreciation reserve. Rate base is recalculated in the next rate case to reflect the disposal. There would be a rate base reduction and revenue requirement reduction (rate base multiplied by ROR) to match.

Q. How does the impairment affect the company?

A. The company receives a tax deduction for the impairment.

Q. How is the ratepayer effected by the removal of the asset from rate base?

A. Revenue requirement would be reduced by the ROR on the net asset value removed from rate base.

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Q. Do UE or Staff propose to flow UE's impairment income tax reduction to ratepayers?

A. No. Neither UE nor Staff recognize this tax deduction in their cost-of-service tax calculations.

Q. Why should ratepayers benefit from these impairment-created tax deductions?

A. The impairments are utility specific disposal of rate base and therefore a product of ratepayer funding. The company has enjoyed a rate of return (profit) for years on the asset that is the focus of the impairment. Ratepayers funded a tax on the profits created by the value of the asset in question. In a sense, judging from the impairment balance on the Ameren consolidated group tax return, the value was overstated. The ratepayer should benefit from the tax savings on the asset.

Q. Does the Commission recognize some tax advantages utilities enjoy?

A. Deferred tax liabilities are created and booked against rate base because the company enjoys a ratepayer funded (interest free loan) tax deferral created by tax timing differences. The Commission recognizes and includes in rate base an adjustment for the tax deferral. On that same basis, the Commission should recognize and compensate the ratepayer for the permanent tax deduction that results from the early disposal of that same rate base.

Q. How should the Commission recognize the impairment deduction in setting UE's revenue requirement?

A. UE has experienced significant impairments in recent years. The impairment recorded on the 2021 through 2017 federal income tax return totaled just over **______ **. This amounts to about ** ______** on average every year. It would therefore be reasonable for the Commission to order a **______ ** impairment deduction included in the calculation of the tax component of UE's revenue requirement. I estimate that such a

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[5] ** ______
______ **

deduction would decrease UE's overall revenue requirement by $5.96 million. In addition, I recommend the Commission order an actual impairment tax liability tracker be established to allow the impairment tax liability deduction to be tracked moving forward and the balance adjusted with each rate case.

Q. What happens if the Commission does not establish a tax tracker for ongoing impairments and retirements?

A. The early retirement of Rush Island and other coal fired power plants will create huge tax write-offs (impairments). If the Commission doesn't recognize these permanent tax advantages, then UE ratepayers will be funding an artificially elevated income tax expense. In a sense they will be funding a permanent tax benefit.

Q. Would you please summarize your testimony?

A. I agree with UE's position that the various tax credits it gets generated through the IRA should be tracked in order to provide its ratepayers a later benefit through reduced rates. I disagree that CMT payments or recognition of tax credits should be recorded as deferred tax assets increasing rate base.

Ratepayers are being denied the income tax benefits of early retirements (impairments) due to Staff and UE not recognizing these benefits against income tax in their current income tax calculations.

Q. Does this conclude your rebuttal testimony?

A. Yes.

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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 Adjust Its	)	Case No. ER-2022-0337
Revenues for Electric Service	)	

<u>AFFIDAVIT OF JOHN S. RILEY</u>

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

John S. Riley, of lawful age and being first duly sworn, deposes and states:

1. My name is John S. Riley. I am a Utility Regulatory Supervisor for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

John S. Riley
Utility Regulatory Supervisor

Subscribed and sworn to me this 15th day of February 2023.

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI
TIFFANY HILDEBRAND
My Commission Expires
August 8, 2023
Cole County
Commission #15637121

Tiffany Hildebrand
Notary Public

My Commission expires August 8, 2023.