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 Permission and Approval and a Certificate of Public Convenience and Necessity Authorizing it to Construct a Wind Generation Facility.	)))))	File No. EA-2018-0202

AMEREN MISSOURI'S STATEMENT OF POSITION

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or the "Company"), and in response to the Commission's October 15, 2018 *Order Modifying Procedural Schedule*, hereby submits its Statement of Position on the one issue left to be resolved in this docket, as follows:

Issue Presented:

Does Ameren Missouri's election under Section 393.1400.5, RSMo, on September 1, 2018, which under Section 393.1400.2 requires that 85% of depreciation expense and return on the High Prairie project be deferred to a regulatory asset preclude the inclusion of 15% of said depreciation and return in Ameren Missouri's RESRAM?

Ameren Missouri's Position:

No, S.B. 564 did not repeal any part of the Missouri Renewable Energy Standard ("RES"),[1] including its requirement that electrical corporations be allowed to utilize a rider (i.e., a

[1] Sections 393.1025 - .1030, RSMo. (2016).

RESRAM – a mechanism "for recovery outside of the context of a regular rate case"[2]) to recover its prudently-incurred costs of complying with the RES. Office of the Public Counsel ("OPC") witness Dr. Geoff Marke's opinions to the contrary are not competent, nor are they supported by (and in fact they are rebutted by) the plain terms of both the RES and S.B. 564. His opinions are also directly contradicted by basic principles of ratemaking, well-established principles of statutory interpretation, and if adopted, would lead to an inherently illogical and unfair result.

Please see the pre-filed surrebuttal testimonies of Ameren Missouri witnesses Tom Byrne and Steve Wills, as well as of Staff witness Jamie S. Myers, for additional discussion of why the answer to the question presented is "no."

SB 564 Reaffirms the Full Effectiveness of the RESRAM.

Rather than repealing the RES, S.B. 564[3] completely reaffirms it as shown by an examination of two of its provisions, Section 393.1400 (PISA) and Section 393.1655 (the rate moratorium/rate cap provision). Subsections 3 and 4 of Section 393.1655 impose rate caps on an electric utility electing to use PISA. Ameren Missouri has made that election. Subsection 5 of Section 393.1655 prevents rate riders approved under Section 393.266 (a fuel adjustment clause, an environmental cost recovery mechanism, a conservation mechanism) or under Section 393.1030

[2] Section 393.1030.2(4), RSMo. All statutory references other than the statutory sections enacted by S.B. 564 are to the Revised Statutes of Missouri (2016).
[3] 2018 Mo. Legis. Serv. S.B. 564 (Vernon's) (West No. 40).

(the RESRAM) from causing a utility to exceed the applicable cap. Subsection 5 provides that if the rate under one of those riders would cause the average overall rate to exceed the cap, the rate charged to customers under that rider must be reduced to a level so that the cap is not breached. If that happens, a pool of dollars (the rider rate reduction necessary to prevent the breach times the units) will be created and those dollars will get added to the PISA regulatory asset created by Section 393.1400.

The very existence of these two sections tell us that the General Assembly knew that riders (including the RESRAM) could be in place and that customers could be paying charges reflecting rates under both the RESRAM and base rates reflecting amounts recorded to the PISA regulatory asset if the utility elected PISA and had a RESRAM. The fact that only 85% of return and depreciation on plant-in-service (including wind) additions can be deferred to the PISA regulatory asset doesn't speak at all to the operation of a RESRAM, except that of course it must be the case that a utility can't *both* recover that 85% of return and depreciation through an amortization of the PISA regulatory asset balance in base rates and then double-recover it again in the RESRAM. To allow double-recovery would violate basic ratemaking principles and would be illogical and absurd.

But S.B. 564 did not need to call out a prohibition on double-recovery any more than there needs to be a statute that states that if a level of a particular cost (e.g., fuel costs; RES compliance costs) is already reflected in the revenue requirement upon base rates are set those same costs can't

also be reflected in a rider. That is exactly the circumstance that will exist when 85% of the depreciation and return on a renewable energy resource used for RES compliance is included in the PISA regulatory asset and ultimately in base rates; that is, a portion of the RES compliance costs for that resource will be reflected in base rates and a portion will be reflected in the RESRAM.

This basic ratemaking fact demonstrates that Dr. Marke's claim that "Ameren Missouri should not be able to have it both ways"[4] is nothing more than hyperbole. Ameren Missouri will not have anything "both ways" but will simply recover all its RES compliance costs as the RES statute contemplates– no more and no less. Indeed, if Dr. Marke were correct, Ameren Missouri would fail to recover RES compliance costs during any period between when those costs are being incurred and until base rates would be set in a rate case to reflect them, yet the clear mandate of the RES is that utilities can recover those costs "outside the context of a general rate case."[5]

There are other provisions of S.B. 564 that further reaffirm the effectiveness of the RES' requirement that utilities be able to recover their RES compliance costs in a RESRAM. SB 564 also enacted new Section 393.1670. Section 393.1670.1 specifically addressed Subdivision (1) of Subsection 2 of Section 393.1030. That subdivision of that subsection sets the 1% maximum retail rate impact limit on the RES. It does not, however, have anything to do with the rider (RESRAM) provisions of the RES statute, which are found in Subdivision (4) of Subsection 2. Section 393.1670

[4] Marke Rebuttal, p. 11, ll. 15-15.
[5] *Id.*

did not amend the RES statute, but it meant that if the new solar rebates mandated by Section 393.1670 would cause the utility to exceed the 1% RES cap, the rebates were to still be paid. Moreover, Subsection 2 of new Section 393.1670 makes specific reference to the "rate adjustment mechanism under Section 393.1030" (i.e., to the RESRAM). If the provisions of the RES requiring the Commission to offer a rider to recover prudently-incurred RES compliance costs was repealed by SB 564, SB 564 would not have specifically referred to the rider.

Dr. Marke's opinion is directly contradicted by well-established principles of statutory interpretation.

While not saying so, what Dr. Marke is in effect claiming is that the RES has been repealed by implication.[6] But "repeal by implication" is (a) disfavored,[7] and (b) certainly can't have occurred when the bill at issue expressly reaffirms the existence of the very provision that Dr. Marke claims was repealed. Moreover, Dr. Marke's logic to the effect that the requirement that the PISA regulatory asset be included in rate base without offset means that the General Assembly "knew about the RESRAM, FAC, and other adjustments and instead chose to expressly exclude them from PISA"[8] is flawed and in fact, illogical. Including the PISA regulatory asset in rate base – which only deals with 85% of the depreciation and return costs – has absolutely nothing to do with the existence and operation of the RESRAM, which will only deal with the remaining 15%. The

[6] As evidenced by his somewhat protracted discussion of legislative intent.
[7] *See, e.g., Crawford v. Div. of Employment Security*, 376 S.W.3d 658, 665 (Mo. *banc* 2012) ("Repeal by implication is disfavored.")
[8] Marke Rebuttal, p. 14, ll. 4-5.

guiding principle of statutory interpretation is to give effect to the intention of the General Assembly. *See, e.g., Ports Petroleum Co., Inc. of Ohio v. Nixon,* 37 S.W.3d 237, 240 (Mo. *banc* 2001). If a statute needs to be construed, a basic tenet of statutory construction is that if two statutes can be interpreted in harmony, the court must do so to give effect to both statutes and to avoid conflicts between them. *See, e.g., South Metropolitan Fire Protection Dist. v. City of Lee's Summit,* 278 S.W.3d 659, 666 (Mo. *banc* 2009). Ameren Missouri's election of PISA means that 85% of the return and depreciation of the wind facility incurred between rate cases will be recovered through PISA, which gives effect to Section 393.1400. Inclusion of the remaining 15% in the RESRAM gives effect to Section 393.1040.2(4)'s requirement that utilities be allowed to recover RES compliance costs in a rider (unless, as noted, they are being recovered elsewhere). This gives effect to both statutes, and is logical.

Dr. Marke's policy argument about "inaccurate price signals" is irrelevant, is simply wrong, and would lead to an inherently unfair result.

Dr. Marke claims that aside from contravening the intent of S.B. 564, allowing that part of the return and depreciation not recorded to the PISA regulatory asset to be recovered in a RESRAM would "create inaccurate price signals." That claim is irrelevant to what S.B. 564 means and, in any event, is simply wrong. With or without S.B. 564, the minute RES compliance costs are included in rate base when a RESRAM is rebased in each rate case, there is essentially no chance at all that customers paying a charge (or receiving a credit) under a RESRAM will receive an

accurate price signal of the full cost of RES compliance since some portion of the RES compliance costs will lose transparency since they will be included in the revenue requirement used to set the base rates they are paying.

Not only is Dr. Marke's "price signal" argument simply wrong for that reason, but it is also simply wrong for another reason that demonstrates the inherent unfairness of OPC's position.

Under the RESRAM that all parties, including OPC, agree should be adopted in this docket, 100% of the very significant federal Production Tax Credit ("PTC") benefits to be received from energy production from the High Prairie project (approximately $400 million over 10 years) will offset the RES compliance costs included in the RESRAM between rate cases. Yet, if OPC were right, less than 100% of the RES compliance costs will be included in those same RESRAM rates (whether a net charge or a net credit). Consequently, the RESRAM charge/credit will inaccurately understate the net REC compliance costs (or overstate the net benefits); i.e., the price signal will be inaccurate. Moreover, customers would unfairly be receiving 100% of the benefit while paying just 85% of the capital costs. This too is an illogical, unfair, and absurd result, and further demonstrates that Dr. Marke's "interpretation" of S.B. 564 runs directly counter to basic principles of statutory interpretation.[9]

[9] As earlier noted, the plain language of S.B. 564 does not support Dr. Marke's argument, but even if there were ambiguity in the language in some respect, basic principles of statutory construction tell us that the statute should not be construed in a manner that leads to unreasonable, illogical, or absurd results. *See, e.g., Aquila Foreign Qualifications Corp. v. Dir. Of Revenue*, 362 S.W.3d 1, 4 (Mo. *banc* 2012). Accepting Dr. Marke's argument would do just that, in violation of those basic statutory interpretation principles.

Conclusion.

Dr. Marke is not competent to opine regarding the General Assembly's intention in adopting S.B. 564. Dr. Marke's incompetent opinion on the subject is also directly contradicted by the terms of the bill, and is counter to basic ratemaking and statutory interpretation principles. Dr. Marke's "policy" arguments – that Ameren Missouri should not be able to have it both ways and that inaccurate price signals will exist unless his position is adopted – are demonstrably flawed. Finally, Dr. Marke's position would lead to an illogical, unfair, and absurd result where customers will receive 100% of the benefits of RES compliance but avoid a portion of the RES compliance costs that produce that benefit.

WHEREFORE, Ameren Missouri hereby submits its Statement of Position.

Respectfully submitted,

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

Dated: October 23, 2018.

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been e-mailed or mailed, via first-class United States Mail, postage pre-paid, to counsel of record this 23rd day of October, 2018.

/s/ James B. Lowery
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