

**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)

Case No. ET-2016-0246
Tariff No. YE-2017-0052

STAFF'S INITIAL BRIEF

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Initial Brief*, states as follows:

INTRODUCTION:

Statement of the Case:

On August 15, 2016, Union Electric Company d/b/a Ameren Missouri filed an *Application for Approval of a Tariff Authorizing a Pilot Program for Electric Vehicle Charging Stations*. On the same day, the Commission directed Staff to file a recommendation no later than September 28, 2016. On September 13, 2016, the Commission granted the intervention applications of the Midwest Energy Consumers Group (“MECG”); the Division of Energy of the Missouri Department of Economic Development (“MoDOE”); the Natural Resources Defense Council (“NRDC”); Brightergy, LLC; ChargePoint, Inc.; Sierra Club; Consumers Council of Missouri (“CCM”); and the Missouri Industrial Energy Consumers (“MIEC”).

Staff filed its *Recommendation* as ordered on September 28, 2016, wherein Staff stated that Ameren Missouri plans to install six charging islands in its service territory; that the projected costs associated with installation and maintenance of the electric vehicle charging station program will likely not be entirely offset by the revenues realized from the proposed tariff, such that an additional subsidy from the ratepayers would also

be necessary; and that since only 0.14 percent of customers in Ameren's service territory have registered an electric vehicle, that popular demand sufficient to support the pilot program appears to be lacking. Staff recommended that the Commission approve the proposed tariff sheets on the condition that all revenues, expenses and investment associated with the program be recorded below the line in order to hold ratepayers harmless; and that the company gather data and report annually on the impact of charging stations on grid reliability.

Also on September 28, NRDC and Sierra Club filed their recommendations proposing certain modifications to Ameren's proposed tariff. NRDC and Sierra Club are both supportive of vehicle electrification and the development of Ameren Missouri's electric vehicle infrastructure pilot program. Both parties point out a number of benefits of transportation electrification and argue that access to charging stations is critical for development of the electric vehicle market. However, both parties also disagree with Ameren Missouri's use of a flat time-based electricity rate and recommend that Ameren Missouri replace that rate with a volumetric rate based on the amount of electricity consumed. They argue that the time-based rate structure discriminates against electric vehicle drivers with less powerful onboard chargers and threatens to eliminate the fuel cost savings of driving on electricity for that large group of electric vehicles. Sierra Club also suggests, in the alternative, a time-based tariff on a per minute basis rather than 15-minute intervals.

On September 30, 2016, the Office of the Public Counsel ("OPC") filed a motion to reject or suspend the tariff filing, stating that it supports Staff's recommendation.

On October 4, 2016, Ameren Missouri filed a *Response* to the recommendations, including as Attachment A to its response a sample tariff incorporating the proposed changes to its original filed tariff recommended by NRDC and Sierra Club. On October 5, 2016, MoDOE submitted a response supporting the modified tariff filed by Ameren Missouri as Attachment A.

On October 6, 2016, the Commission issued its order rejecting Ameren Missouri's original tariff filing and authorizing Ameren Missouri to file a new tariff consistent with the sample tariff filed as Attachment A of its *Response*. Ameren did so on October 7, 2016.

On October 13, 2016, the OPC and CCM filed motions to reject the tariff, asserting that the Commission lacks jurisdiction to approve the proposed tariff because the proposed activity is not a public utility service. OPC also asserted that the tariff ought not to be approved because (1) the charging stations will serve the general public rather than Ameren Missouri's ratepayers; (2) the 99.96% of Ameren Missouri's ratepayers who do not operate electric vehicles would be required to subsidize the very few that do; (3) and because EV charging is a competitive service, not a regulated utility service.

On October 18, the Commission directed that Staff respond to the jurisdictional arguments of OPC and CCM, and also to these questions:

(A) What is the statutory authority under which the Commission may approve the tariff filed by Ameren Missouri in this case?

(B) Are there any factual questions that must be addressed in determining the Commission's jurisdiction over electric vehicle charging stations?

(C) Is a certificate of convenience and necessity required for Ameren Missouri to build, install, and operate the electric vehicle charging stations?

Staff responded that § 393.140(11), RSMo.,¹ authorizes the Commission to approve Ameren Missouri's proposed tariff; that, due to the peculiarities of § 386.020, the facts applicable to each EV charging station must be fully developed in order to determine whether or not the Commission has jurisdiction over any particular charging station; and that Ameren Missouri does not need a CCN to establish a charging station within its certificated service territory, but does need a CCN to establish a charging station outside its certificated service territory.

On October 26, 2016, the Commission suspended the tariff until March 6, 2017, and instituted contested case procedures. A procedural schedule was set on November 9, 2016, which provided dates for the filing of prepared testimony and set an evidentiary hearing on January 12, 2017.

Issues for Determination:

The procedural schedule called for the development and filing of a joint list of the issues to be determined. In fact, two such lists were filed. Based on the two lists, the issues for determination are as follows:

1. Commission Jurisdiction

Does the Commission have jurisdiction to regulate utility-owned and operated electric vehicle charging stations operated in a utility's service area?

2. Public Policy

A. Are there public benefits realized from the installation of electric vehicle

¹ All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri ("RSMo.") as currently supplemented and effective.

charging stations, specifically if the Commission were to approve Ameren Missouri's proposed pilot project?

B. Is Ameren acting as a regulated utility in offering this service?

C. Does the pilot design proposed by Ameren, impact competition with third parties for charging station sites in its service territory?

3. Costs:

Should the cost of installing the electric vehicle charging stations be booked below the line or above the line and recovered from ratepayers?

4. Rates:

Does Ameren Missouri's proposed tariff represent the proper rate design for its EV charging station pilot project?

ARGUMENT:

Introduction:

Ameren Missouri's application, which opened this matter, proposes to install electric vehicle ("EV") charging stations along the I-70 corridor and in Jefferson City. The proposal is referred to as a pilot project, with just six stations being installed at this time, and the company will charge customers for use of the stations. Currently, Ameren Missouri has charging stations at its main offices for use by its employees, but does not operate any charging stations for profit.

Not all EVs or their chargers are created equal. There are all-electric vehicles, also known as battery electric vehicles ("BEV"), which can run only on an electric charge (e.g., Nissan Leaf, BMW i3); there are plug-in electric vehicles ("PEV"), which run partially on electric charges and partially on a traditional gasoline powered engine

(e.g., Toyota Prius, Mitsubishi Outlander); there are fuel cell electric vehicles, which run on hydrogen gas that the vehicle motor converts into electric energy; and there are conventional hybrids, which have an electric motor but cannot be plugged in, instead recharging their electric batteries off of the gasoline engine (e.g., Honda Civic Hybrid, Toyota Camry Hybrid).

References to AC and DC refer to alternating current and direct current types of electrical delivery. EV batteries use DC current and the various EVs have either an onboard conversion system which can convert the current into the type the EV battery needs to charge or the charging station itself has a converter that converts the electrical current before it reaches the EV. Due to this difference in charging abilities, EV charging stations have differences based on what type of EV they can charge. The speed of the chargers also varies. For example the ChargePoint brand has two types of level two charger that rate at 7.2kW and 7.7kW; and a level three charger (also known as a fast charger) that has three levels rating from 24 to 62.5kW. Different brands of EVs have different connectors for charging ports so in order to be compatible, ChargePoint's stations have five different styles of attachments.

Tesla is one of the most recognizable brands of electric vehicles on the market now. As part of the promotion of its product, Tesla installed a network of 800 supercharger stations boasting 5,121 supercharger ports across the United States.² These chargers deliver up to 120kW but are only compatible with Tesla vehicles.

Staff's position on the individual issues is set out below. In summary, the Commission has jurisdiction to regulate electric vehicle charging stations because, by

²Tesla- <http://www.tesla.com/supercharger>.

the parameters of the proposed program, a charging station will sell electricity obtained from the Ameren Missouri power grid to the general public. That activity is the very definition of a public utility. Because this is a regulated activity, it must be recorded above the line for ratemaking purposes. Recording the costs and revenues of the program above the line opens up ratepayers to liability for the costs of this program. Unfortunately, EV charging stations are relatively new technology and any benefits proposed by this program are mere projections made from educated guesses. At this time, Staff cannot support a resolution that requires the ratepayers to bear the risks of a program that may not sustain itself, let alone ever produce net revenues. Therefore, Staff proposes to impute whatever amount of revenue is necessary to cover the costs of the program in order to hold the ratepayers harmless. Staff will reconsider its position in future rate cases based on the results of the pilot program.

1. Commission Jurisdiction:

Does the Commission have jurisdiction to regulate utility-owned and operated electric vehicle charging stations operated in a utility's service area?

Staff asserts that the Commission most certainly has jurisdiction over Ameren Missouri's proposed activity of installing EV charging stations for the purpose of selling electricity to the general public in charging electric vehicles.

The Commission is a creature of statute and its jurisdiction in any situation must be found by reference to the plain language of the Missouri statutes.³ Statutory language applicable to EV charging stations is not hard to discover. Section 386.250, provides:

³ *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 47 (Mo. banc 1979).

The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter (1) To the manufacture, sale or distribution of . . . electricity for light, heat and power, within the state, and to persons or corporations owning, leasing, operating or controlling the same; and to . . . electric plants, and to persons or corporations owning, leasing, operating or controlling the same[.]

The statute confers jurisdiction over two activities: first, the activity of manufacturing, selling or distributing electricity for light, heat or power; second, the activity of owning or operating “electric plants.” What is an “electric plant”? Section 386.020(14) defines “electric plant” as “all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power[.]”

EV charging stations are devices used to convey electricity into electric vehicles. Electric vehicles, like all automobiles, convey passengers and property from place to place over the public roads and highways and are equipped with lights and heating systems. The electricity delivered into electric vehicles by EV charging stations are necessarily used for light, heat and power. It follows, therefore, that EV charging stations fall within the definition of “electric plant” and that the activities of owning and operating them and using them to charge electric vehicles fall squarely within the ambit of the statute. Section 386.020(15) in turn, defines every entity “owning, operating, controlling or managing any electric plant” to be an “electrical corporation.” Section 386.020(43) defines every electrical corporation as a public utility “subject to the

jurisdiction, control and regulation of the commission and to the provisions of this chapter[.]” Consequently, the operation of an EV charging station is generally subject to the regulation of the Commission.

There are undoubtedly fact patterns where an EV charging station would not be subject to the Commission’s jurisdiction, just as there are circumstances in which the operation of electric plant and the distribution and sale of electricity are not within the Commission’s jurisdiction.⁴ The use of an EV charging station by its owner to charge her own vehicle, for example, would not make her a public utility, just as her use of a wall socket to power an electric lamp does not make her a public utility. The courts have emphasized the fact-based nature of the analysis by cautioning that whether or not a given actor is a public utility depends upon what it actually does.⁵

Section 386.020(15) contains certain exceptions and the courts have also glossed this statutory definition.⁶ Railroads that generate power for railroad purposes or for the use of their tenants are not electrical corporations. Any entity that generates and distributes electricity on private property for railroad purposes or for its own use or for the use of its tenants is not an electrical corporation. However, both of these

⁴ By statute, for example, the Commission does not regulate municipal power plants or rural electric cooperatives. In the lead case, ***State ex rel. M. O. Danciger & Co. v. Public Service Commission of Missouri***, 275 Mo. 483, 205 S.W. 36 (1918), the Missouri Supreme Court determined that the sale of electricity to approximately half of the population of the village of Weston did not make the local brewer a public utility since connection was by invitation only. The cited statute contains exceptions for electricity used personally or provided to tenants or used by railroads or given away free of charge.

⁵ ***State ex rel. and to the use of Cirese v. Public Service Comm’n of Missouri***, 178 S.W.2d 788, 790 (Mo. App., W.D. 1944).

⁶ ***State ex rel. M. O. Danciger & Co. v. Public Service Commission of Missouri***, 275 Mo. 483, 205 S.W. 36 (1918).

exemptions may be lost if the electricity is sold to others.⁷ The Missouri Supreme Court has held that, in addition to using electric plant to produce electricity for light, heat and power, an entity must hold itself out as serving the general public before it becomes a public utility.⁸

Staff has elsewhere expressed the view that EV charging stations should be treated in a manner similar to the treatment formerly accorded to pay telephones.⁹ Telephone companies that operated pay telephones within their certificated service areas did not need any additional certification to do so; the telephones were treated as utility plant and the Commission regulated the rates. However, third-party operators had to obtain a certificate for each pay telephone that they operated. At one time, there were many hundreds of active pay telephone certificates.

Turning to the arguments made by OPC and CCM, Staff notes that sophistry cannot defeat the unmistakable intention of the General Assembly. Calling the electricity delivered into an electric vehicle “transportation fuel” is a distinction without a difference. As discussed above, electric vehicles use electricity for light, heat and power and the activity of charging them necessarily falls within the Commission’s jurisdiction. Arguments involving bottled water and liquid natural gas are mere red herrings. Those activities are not before the Commission in this case.

Chairman Hall, in questioning Sierra Club attorney Joe Halso, pointed out that

⁷ § 386.020(15). While the statute is clear that “sale to others” extinguishes the exemption, the **Danciger** case conditions the loss of the exemption on the nature of the relationship of the buyer and seller. By “others,” presumably the statute means buyers that are not tenants.

⁸ **Danciger**, *supra*.

⁹ **In the Matter of a Working Case Regarding Electric Vehicle Charging Facilities**, Case No. EW-2016-0123 (**Corrected Staff Report**, filed Aug. 9, 2016) p. 12.

New York State’s statutory scheme is similar to Missouri’s and questioned how New York had handled this situation. The New York Commission in 2013 issued an order¹⁰ stating that, “this Commission does not have jurisdiction over (1) Charging Stations; (2) the owners or operators of Charging Stations, so long as the owners or operators do not otherwise fall within the Public Service Law’s definition of ‘electric corporation.’”¹¹ The New York Commission went on to state that it would “maintain continuing jurisdiction over the transactions between electric distribution utilities and the owners and operators of Charging Stations.”¹² The determinations of other state commissions under their state laws are interesting, but not determinative. This Commission must apply Missouri law to the facts of record and can only conclude that the activity proposed by Ameren Missouri is a regulated activity.

At the evidentiary hearing there was discussion of a microgrid scenario in which an individual operated EV charging stations using electricity obtained from personal windmills or solar panels. MoDOE witness, Martin Hyman, testified that the important factor to consider is the sale of the energy, not the source of the energy.¹³ If an entity is selling electricity to the general public, under the *Danciger* analysis, that entity is operating as a public utility subject to the Commission’s regulation.

2. Public Policy:

A. Are there public benefits realized from the installation of electric vehicle charging stations, specifically if the Commission were to approve Ameren

¹⁰ *In the Matter of Electric Vehicle Policies*, Case No. 13-E-0199 (*Declaratory Ruling on Jurisdiction over Publicly Available Electric Vehicle Charging Stations*, 2013), p. 2.

¹¹ *Id.*

¹² *Id.* at p. 5.

¹³ Tr. 473-474.

Missouri's proposed pilot project?

Staff is unaware of any concrete benefits that can be shown from the proposed installation of electric vehicle charging stations which would be applicable to the general public. This position is not intended to discount the potential benefits expressed in the testimony of other parties, merely to indicate that Staff's research has not produced any data to that effect. Staff does recognize some benefit specific to electric vehicle owners in an increased number of charging stations.

Several of the parties in testimony championed benefits to be gained through EV charging from smoothing out the peaks and valleys of usage naturally occurring among residential customers. Peaking times for electric utilities are generally in the morning before customers leave for work and in the evening when they return home from work. To have a smoothing effect, customers would need to charge at off-peak times such as the middle of the day or late at night. What the parties do not include in their analyses is the fact that, without some type of motivation to charge at times of low usage, EV charging customers may not have any effect on the peaks and valleys of usage. It is just as likely that a residential customer will return home around 5:30 or 6pm and immediately plug in their EV to charge as it is that they will wait until 8 or 9pm.

In the case of public charging stations such as the ones that Ameren has proposed in this matter, EV drivers are more likely to stop and charge their EVs during the daytime than at night, which has no guarantee of positive effects. A time of use ("TOU") rate would be the simplest way to incent EV drivers by offering lower rates if the drivers charge their EV at off-peak times. While a TOU rate could have noticeable effects on at-home charging patterns, there is no research that demonstrates that it

would have positive effects on public charging times, due to the fact that public chargers are used for necessity when one is on the road. An EV driver is unlikely to wait for an off-peak time to charge his or her EV at a public station when traveling.

Parties have also proposed that ratepayers will benefit from an increased load resulting from an increase in EV charging. However, upon the implementation of this pilot program (should the Commission approve it), the same number of EVs will be on the road as there are presently. Those EV owners are already charging their vehicles and increasing load. Over time, the number of EV drivers may increase and Ameren Missouri may realize greater load building resulting from these new customers using the public charging stations; however, there is no guarantee of that these proposed benefits will ever materialize.

B. Is Ameren acting as a regulated utility in offering this service?

Yes. Under existing law, the activity of selling electricity to the general public for light, heat and power is the activity of being an electrical corporation and public utility. This is necessarily a regulated service, whoever is providing it, whether it is Ameren Missouri using electricity that it has generated and transmitted and then distributed to that charging point or whether it is a third party who is reselling electricity that they're buying from Ameren Missouri or someone else. The Courts of Missouri have said whether someone is engaged in public utility business depends on what they actually do.¹⁴ In other words, the Commission must parse the facts and determine, are they selling a utility service such as electricity to the general public for light, heat and power? If so, they are a public utility.

¹⁴ *Cirese, supra.*

Throughout the course of the evidentiary hearing, parties referred to prior cases before this Commission that they compared to the present matter. Ameren Missouri referenced the ***Hurricane Deck*** case,¹⁵ which involved a developer who provided water service to the residents of subdivisions it had constructed when the water utility that had been serving the subdivisions went into receivership. In that case, Commission found that Hurricane Deck was operating as a public utility by providing water service and billing the customers of the subdivisions.¹⁶ The Court of Appeals upheld the Commission's decision.¹⁷ Although the statutes applicable to water utilities are somewhat different, the act of selling electricity to the general public for light, heat and power is the essence of the regulated activity of an electric utility.

MoDOE referenced Case No. EO-2011-0090, in which Kansas City Power & Light Company ("KCPL") filed an application requesting the authority to encumber several EV charging stations in order to receive funds from the U.S. Department of Energy ("DOE") associated with the department's Midwest Regional Alternative Fuels Project. Staff recommended approval of the encumbrance with the condition that the Commission's order not be considered a finding by the Commission of the value of the encumbrance for ratemaking purposes and reserved the right to consider the transaction for ratemaking purposes in a future proceeding, which the Commission so

¹⁵ ***Hurricane Deck Holding Co. v. Missouri Public Service Commission***, 289 S.W.3d 260 (Mo. App., W.D. 2009).

¹⁶ ***Staff v. Hurricane Deck Holding Company***, WC-2006-0303 (***Order Granting in Part and Denying in Part Staff's Motion for Summary Determination***, issued Aug. 31, 2006).

¹⁷ ***Hurricane Deck***, *supra*.

ordered.¹⁸ The only similarity of that matter to this matter is the presence of EV charging stations. KCPL did not request recovery of any costs involved with the stations through rates due to the DOE funding and did not request that the Commission set rates for using the stations. The stations were placed in KCPL's certificated service area.

Turning to the arguments made by OPC and CCM, Staff notes that sophistry cannot defeat the unmistakable intention of the General Assembly. Calling the electricity delivered into an electric vehicle "transportation fuel" is a distinction without a difference. As demonstrated above, electric vehicles use electricity for light, heat and power and the activity of charging them necessarily falls within the Commission's jurisdiction.

In this case, Ameren Missouri proposes to sell electricity from charging stations to whoever wants it. That is the essence of the regulated business of an electric utility and Staff views charging stations as being simply one more variety of electric plant as defined in 386.020. Persons operating such plant for the purpose of selling electricity to the general public are unmistakably engaged in the utility business. In Missouri, that can only be done lawfully under a certificate from this Commission. Ameren has such certificates and all of the proposed charging station locations are within its certificated service area.

C. Does the pilot design proposed by Ameren impact competition with third parties for charging station sites in its service territory?

The question has it backwards. Some of those third parties are already in

¹⁸ *In the Matter of the Application of Kansas City Power & Light Company for Authority to Encumber Certain Clean Cities Equipment*, Case No. EO-2011-0090 (*Staff Recommendation to Approve Application, With Condition*, filed Oct. 15, 2010; amended, Oct. 19, 2010).

violation of Missouri law. They do not have certificates from this Commission authorizing them to engage in that business either inside Ameren's service territory or outside it. Under Missouri law, the operation of utility plant for the purpose of serving the general public cannot lawfully be undertaken except by authority of this Commission. The third party vendors who are evidently already engaged in this activity, without any certificates, are violating the law. Staff will identify them and bring actions against them before this Commission as appropriate. The Commission's General Counsel may take action against them in Circuit Court.

3. Costs:

Should the cost of installing the electric vehicle charging stations be booked below the line or above the line and recovered from ratepayers?

The costs associated with installing the charging stations and the revenues attributed to the stations should be booked above the line. Those costs and revenues will be reviewed by Staff in Ameren Missouri's next general rate case, and a revenue imputation be applied for any costs exceeding the amount of revenues. This is an evolution of Staff's position on this point and reflects both its position that electric vehicle charging stations operated by an electric utility are part of its regulated business operations and its concern that the ratepayers not bear the risk and provide a subsidy supporting the Company's effort to establish a new market for its service.

In Case No. ER-2004-0570, The Empire District Electric Company entered into a stipulation with several parties to the case agreeing to impute revenues related to special discounts provided to certain of its industrial customers included in its fuel and

purchased power recovery.¹⁹ The imputation was referred to as the Interim Energy Clause and it is described as follows:

The 2005 Stipulation established a set amount of fuel and purchased power recovery in base rates, with an additional amount recoverable through an additional charge, within fixed limits. If the fuel and purchased power costs fell within this “collar,” Empire could recover them. If fuel and purchased power costs fell below the collar, then Empire would refund a certain portion to ratepayers. If fuel and purchased power costs were above the collar, then Empire would absorb those costs.²⁰

In Staff’s Rebuttal filed in Empire’s subsequent rate case, Case No. ER-2006-0315, witness Curt Wells testified that “by imputing revenues in this way, the stipulated discounts should²¹ ‘...not affect the rates of Empire’s other Missouri retail customers or be recovered from Empire’s other Missouri ratepayers....’”²²

In the Commission’s order for Case No. ER-2006-0315, it found Empire Electric was significantly under-recovering its fuel and purchased power costs and permitted it to recover its prudently incurred costs.²³ This case can be differentiated from the matter presently before the Commission because fuel and purchased power costs have been previously determined to be prudent expenses for which investor-owned utilities may recover from their ratepayers. However, this case is persuasive due to the fact that it exemplifies a prior agreement for the imputation of costs, approved by the Commission,

¹⁹ *In the Matter of The Empire District Electric Company*, Case No. ER-2004-0570 (**Report and Order**, issued Mar. 10, 2005).

²⁰ *In the Matter of The Empire District Electric Company*, Case No. ER-2006-0315, (**Report and Order**, issued Dec. 21, 2006), p. 38.

²¹ *In the Matter of The Empire District Electric Company*, Case No. ER-2006-0315, Wells’ Rebuttal, p.2, ll. 10-15.

²² *In the Matter of The Empire District Electric Company*, Case No. ER-2004-0570 (**Stipulation and Agreement**) p. 12.

²³ *In the matter of The Empire District Electric Company*, Case No. ER-2006-0315 (**Report and Order**, issued Dec. 21, 2006), pp. 43-44.

which was subjected to a later review and determination once more factual information could be evaluated by the Commission; and held the ratepayers harmless until such information could be obtained.

Ameren Missouri has stated that the subsidy is so small it is inconsequential to the ratepayers.²⁴ However, no subsidy is reasonable if ratepayers are not benefitting from the program, therefore imputing revenues pending evidence of ratepayer benefits is the most effective manner in which to protect Ameren Missouri's customers.

Commission Kenney questioned Staff in its opening about letting the shareholders take all of the risk and receive none of the rewards.²⁵ Staff's position is that at this stage, while benefits cannot be cemented and the program is proposed by Ameren Missouri as a pilot program, the ratepayers should not bear any risks. Instead, the shareholders should bear the risk of this investment which is, after all, intended to develop a new market for the sale of electricity.

After the duration of the pilot program, there should be a consideration of the benefits resulting from the pilot program. The Missouri Energy Efficiency Investment Act ("MEEIA"; see 4 CSR 240-20.093) includes several detailed provisions requiring a utility to show the benefits that will be realized and costs accrued as a result of energy efficiency programs.²⁶ In this way, the Commission can review projections of what can be expected based on studies conducted of prior energy efficiency programs and calculations of benefits resulting from lower usage. Currently, there is no comparable statute for EV charging stations to provide such studies and permit such review. Staff's

²⁴ Nealon, Direct at p. 25, l. 3.

²⁵ Tr. 71-73.

²⁶ Rule 4 CSR 240-20.093(4)(5)(6)(7)(8).

proposal will ensure that ratepayers are protected from harm until such benefits materialize and, in the interim, shareholders will bear the risk and reap the benefits.

4. Rates:

Does Ameren Missouri's proposed tariff represent the proper rate design for its EV charging station pilot project?

Staff believes that customers of EV charging stations have the right to a payment method that is easy to compare and understand, just like at gas stations. Ameren's revised tariff proposes two different rate metrics, one in dollars for its Level 2 stations and one in kWh for its Level 3 stations. Staff is concerned that customers will be confused as to why they are paying differently at the two types of stations and which type of station will be more cost effective. Staff proposes that Ameren Missouri's EV charging stations charge either by the dollar or the kWh, but not both. Commissioner Rupp proposed a flat service fee for any type of charging at either type of station. Staff has not explored this proposal and does not take a position on the proposal at this time.

CONCLUSION:

Staff recognizes that the only real issue to be decided is whether the Commission has jurisdiction to regulate EV charging stations owned by a regulated public utility. Staff's answer to that question is a clear "yes" based on its analysis of the facts, the applicable statutes and the case law.

The remaining issues are merely refinements of that larger issue. Staff notes that each of the parties to this case is pursuing its own agenda. The reality is that there are not very many EVs on the road yet and Ameren Missouri's pilot program is not a response to any public demand for the service. It is, instead, a speculative venture

intended to create and support a new market for Ameren Missouri's product: electricity. It may succeed; it may not. Because it is a speculative venture primarily intended to benefit the shareholders by producing load growth, the ratepayers should not bear any of the risks. The shareholders should bear the risks and, in fairness, pocket the rewards, if any, until such time as the project turns a profit and revenue imputation ends.²⁷

The rates for EV charging should be clear and concise to allow EV charging customers to easily understand the amount they will pay for charging their EV. Staff is by no means opposed to the wave of the future, but it wants to ensure that the ratepayers don't get caught in the undertow.

WHEREFORE, on account of all the foregoing, Staff prays that the Commission will determine each issue in accordance with Staff's position and approve Ameren Missouri's revised proposed tariffs.

Respectfully submitted,

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²⁷ This would necessarily occur as part of a general rate case.

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Certificate of Service

I certify that a true and correct copy of the foregoing was served electronically, or hand-delivered, or via First Class United States Mail, postage prepaid, on all parties of record herein on this **17th day of February, 2017**.

s/ Kevin A. Thompson