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MISSOURI PUBLIC SERVICE COMMISSION

FILE NO. ER-2021-0240

DIRECT TESTIMONY

OF

TOM BYRNE

ON

BEHALF OF

UNION ELECTRIC COMPANY

D/B/A AMEREN MISSOURI

**St. Louis, Missouri
March 2021**

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DIRECT TESTIMONY

OF

TOM BYRNE

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I. INTRODUCTION

1

2 **Q. Please state your name and business address.**

3 A. Tom Byrne, Union Electric Company d/b/a Ameren Missouri ("Ameren
4 Missouri" or "Company"), One Ameren Plaza, 1901 Chouteau Avenue, St. Louis, Missouri
5 63103.

6 **Q. What is your position with Ameren Missouri?**

7 A. I am Senior Director of Regulatory Affairs.

8 **Q. Please describe your educational background and employment
9 experience.**

10 A. In 1980, I graduated from the University of Missouri-Columbia with
11 Bachelor of Journalism and Bachelor of Science-Business Administration degrees. In
12 1983, I graduated from the University of Missouri-Columbia law school. From 1983-1988,
13 I was employed as an attorney for the Staff of the Missouri Public Service Commission
14 ("Commission"). In that capacity, I handled rate cases and other regulatory proceedings
15 involving all types of Missouri public utilities. In 1988, I was hired as a regulatory attorney
16 for Mississippi River Transmission Corporation, an interstate gas pipeline company
17 regulated by the Federal Energy Regulatory Commission ("FERC"). In that position, I
18 handled regulatory proceedings at the FERC and participated in some cases at the
19 Commission. From 1995-2000, I was employed as a regulatory attorney for Laclede Gas

1 Company, now known as Spire Missouri, Inc. ("Spire"). In that position, I handled rate
2 cases and other regulatory proceedings before the Commission. In 2000, I was hired as a
3 regulatory attorney by Ameren Services Company and I originally handled regulatory
4 matters involving local gas distribution companies owned by operating subsidiaries of
5 Ameren Corporation (now Ameren Illinois Company and Ameren Missouri). In 2012, I
6 was promoted to the position of Director and Assistant General Counsel, and I was assigned
7 to handle both gas and electric cases in Missouri. In 2014, I was promoted to my current
8 position, Senior Director of Regulatory Affairs.

9 **II. PURPOSE OF TESTIMONY**

10 **Q. What is the purpose of your direct testimony?**

11 A. The purpose of my direct testimony is to support Ameren Missouri's
12 calculation of rate case expense, which is included as part of the revenue requirement in
13 this case sponsored through the direct testimony of Ameren Missouri witness Mitchell
14 Lansford.

15 **Q. What annual amount of rate case expense has Mr. Lansford included**
16 **in his calculation of the Company's revenue requirement?**

17 A. Mr. Lansford has included \$0.751 million of rate case expenses in his
18 calculation of the Company's revenue requirement.

19 **Q. How was this amount determined?**

20 A. Mr. Lansford calculated the average expenses incurred in Ameren
21 Missouri's last three electric rate cases (excluding the cost of a depreciation study required
22 by Commission rules), as reflected below:

23 File No. ER-2014-0258 \$2.589 million

1	File No. ER-2016-0179	\$0.792 million
2	File No. ER-2019-0335	\$1.125 million
3	Average Rate Case Expense	\$1.502 million

4 Then, he normalized this amount by dividing it by two, to reflect a conservative
5 assumption that rate cases will be filed by the Company every two years. This results in a
6 revenue requirement for rate case expense of \$0.751 million (not counting depreciation
7 study costs). With regard to the expense incurred for the depreciation study in this case,
8 Mr. Lansford used the cost of the last depreciation study (associated with File No. ER-
9 2019-0335) as an estimate for the cost of the study submitted in this case, but divided this
10 cost over a period of five years to determine the normalized revenue requirement impact
11 since the Commission's rules require electric utilities to submit depreciation studies every
12 five years. Adding the normalized depreciation study costs of \$0.015 million results in a
13 total revenue requirement impact of rate case expense of \$0.766 million.

14 **Q. Is this a reasonable amount of rate case expense to include in the**
15 **Company's revenue requirement?**

16 A. In my opinion, it is. The rate cases that were used in developing the average
17 rate case expense address a variety of circumstances. Two of the cases were settled, so the
18 expense the Company incurred for those rate cases is a bit lower than the average. The
19 other case was litigated, which caused higher-than-average expenses. The average of these
20 rate cases, which reflects the actual experience of the Company and does not account for
21 inflation, is reasonable in my view and in fact may be understated given that it includes
22 two settled cases. Over the past approximately 15 years, Ameren Missouri has had eight
23 electric rate cases, six of which were not settled in full.

1 A normalization assumption that rate cases will be filed every two years is also
2 quite reasonable and in fact, conservative. Over the last approximately 15 years, Ameren
3 Missouri has filed a rate case approximately every 22 months.¹

4 **Q. Has Ameren Missouri been diligent in controlling its rate case**
5 **expenses?**

6 A. Yes, we have. We use in-house attorneys to litigate our cases, and our
7 primary outside attorney, James Lowery, is from central Missouri, where the hourly rates
8 for attorneys are typically lower than in larger cities. The other outside attorneys that will
9 assist with this case also charge similar rates. We are also diligent in using internal
10 witnesses to support our case where possible and carefully consider cost when we hire
11 outside witnesses.

12 **Q. In two relatively recent Commission cases involving Evergy Metro, Inc.**
13 **("Evergy")² and Spire, the Commission ordered those utilities to share in the costs**
14 **incurred in litigating their rate cases, and those decisions were upheld by the Missouri**
15 **Courts of Appeal for the Western District and the Southern District. Does this suggest**
16 **that the Commission should require the sharing of rate case expenses in all cases?**

17 A. In my opinion, no. Although the court decisions indicate that it was lawful
18 for the Commission to require the utilities to share the cost of the rate cases based on the
19 specific circumstances in those two particular situations, I do not think that it is good
20 regulatory policy to require cost sharing in all cases. Utilities are required to file rate cases
21 to update their revenue requirements so that their rates reflect the legitimate increases in

¹ More recent history also suggests that a two-year amortization period is conservative given that over the past approximately 5 years, the Company has filed an electric rate case approximately every 27 months.

² Formerly known as Kansas City Power & Light ("KCP&L").

1 the costs they must incur to provide safe and adequate service to customers (or in some
2 cases to reduce rates to reflect decreased costs). Rate cases are necessary to ensure the
3 financial integrity of utilities and to ensure they have the cash flow and access to capital
4 they need to invest in their systems and otherwise provide services, all of which ultimately
5 benefit customers. They are also necessary to ensure that customers are paying no more or
6 less than they should for utility service. Moreover, the frequency of rate cases can be
7 dictated by statute if a utility is to retain an electric fuel adjustment clause or a gas or water
8 infrastructure system replacement surcharge. In short, rate case expenses are a normal cost
9 of providing service to customers and prudently incurred rate case expenses should be
10 included in rates.

11 **Q. Does the fact that utility shareholders benefit from rate cases provide a**
12 **reason that shareholders should share rate case expenses?**

13 A. No. Both shareholders and customers benefit from the setting of just and
14 reasonable rates, including setting an appropriate return on equity ("ROE"), approval of
15 regulatory mechanisms that give utilities a fair opportunity to actually earn their authorized
16 return, and approval of the overall revenue requirement by the Commission. The idea that
17 some aspects of a rate case or some proposals are "solely for the benefit of shareholders"
18 is conceptually flawed. For example, if the utility advocates, as Ameren Missouri does
19 here, for the use of a 9.9% ROE in setting its revenue requirement, the fact that other
20 parties may advocate for something less does not make the efforts Ameren Missouri
21 undertook (and the related expense) solely for the benefit of shareholders. Aside from that
22 example, it is important to recognize that shareholders benefit in some way or another from
23 almost everything a utility does and that is exactly how public utility regulation is designed

1 to operate. To take another example, shareholders benefit from the installation of capital
2 items which are included in rate base because they earn a return on those assets, but
3 customers also benefit because those assets are used to provide them service. Shareholders
4 should earn a return because they provide the equity capital that a utility must have if it is
5 going to discharge its obligation to provide safe and adequate service at just and reasonable
6 rates. The fact that they benefit by earning a return does not mean that a portion of the cost
7 of every generating unit, substation, pole, and wire should be borne by shareholders.
8 Similarly, shareholders benefit from recovering operations and maintenance expenses that
9 enable the utility to operate its system, provide service to customers, and collect money
10 from customers. However, it would not be appropriate for utility shareholders to bear a
11 portion of prudent and necessary operations and maintenance costs which are also
12 benefitting customers, even if those costs have gone up and even if those increases mean
13 the Commission needs to raise rates in order for the rates to be just and reasonable. Prudent
14 rate case expenses are no different, and they ought to be fully reflected in the revenue
15 requirement upon which rates are based. Otherwise, a prudent and necessary expense of
16 operating a public utility is simply being ignored.

17 **Q. Do utility commissions in other states require utility shareholders to**
18 **bear a portion of their prudently-incurred rate case expenses?**

19 A. Not typically. In 2011, the Commission Staff submitted a questionnaire on
20 this topic to the other 49 states. The survey data, contained in a Staff Report issued in
21 August 2015, indicated that for most commissions that responded, either rate case expenses
22 were not an issue or all prudent expenditures were allowed, with no sharing or cap on the
23 expenses. None of the survey respondents indicated that they had a general policy

1 apportioning rate case expenses between shareholders and customers (File No. AW-2011-
2 0330, Staff Report, August 2013, page 8). Based on this survey, it appears that such a
3 policy would be outside the mainstream of utility regulation across the country.

4 **Q. Even if it was appropriate to apportion rate case expenses in the Spire**
5 **and Evergy cases as decided by the Western and Southern District Courts of Appeals,**
6 **does that mean it is appropriate to apportion such expenses in this case?**

7 A. No. If rate case expense apportionment is to be used, it should only be used
8 where the facts of the case suggest that it is warranted. In the Spire appeal, the Southern
9 District Court of Appeals listed numerous specific facts and circumstances set forth in the
10 Commission's findings in that case which the Commission concluded justified its decision
11 to apportion rate case expenses. Many if not all of those facts do not pertain to Ameren
12 Missouri's case, such as purposefully taking "aggressive" positions, filing a request that has
13 a "cushion" in it, asking for an authorized ROE far above ROEs awarded to comparable
14 utilities, and asking for a host of new largely shareholder-focused mechanisms not
15 demonstrated to be necessary to support just and reasonable rates

16 **Q. What about the idea that the utility is at some kind of significant (the**
17 **implication is "unfair") advantage over other parties?**

18 A. The relatively modest amount of Ameren Missouri's proposed rate case
19 expense is not enough to provide it with a significant financial advantage over other
20 participants. As noted, the Company is not taking aggressive, shareholder-only focused
21 positions, but rather, is seeking just and reasonable rates reflective of its cost of service.
22 The Staff is of course funded by utility assessments, the largest portion of which are paid
23 by the Company, and the question of what resources the Office of the Public Counsel

1 ("OPC") should or should not have is a matter of policy for the General Assembly; the
2 Company should not be denied recovery of legitimate rate case expenses based on that
3 policy decision. And the idea that entities like the Missouri Industrial Energy Consumers
4 ("MIEC") and the Midwest Energy Consumers Group ("MECG"), which are funded by
5 large national or multi-national corporations (often much larger corporations than Ameren
6 Missouri), are at a "significant disadvantage" is simply not true. The Commission should
7 keep in mind that the utility must deal with multiple adverse parties and address every issue
8 in a rate case, regardless of which party raised it and regardless of the merits of the issue
9 they raise.

10 **Q. Did the Missouri Supreme Court recently uphold a rate case sharing**
11 **decision involving Spire?**

12 A. Yes, it did, but that decision agreed with the Western District decision that
13 I discussed earlier and was based on the underlying evidentiary hearing before the
14 Commission in that particular rate case. I have already discussed both why the theory that
15 only shareholders benefit from some positions is not true, or certainly not true in all cases,
16 and have already discussed why Spire's aggressive and shareholder-focused positions in
17 that case – on that particular evidentiary record – are different than the circumstances of
18 this case. The Supreme Court did not indicate that rate case expense sharing should or must
19 occur, and my reading of the opinion is that the Supreme Court simply decided that case
20 based on the applicable standard of review applied to the record. In the words of the Court,
21 while the record supported that Spire was taking positions to subordinate ratepayer interests
22 to shareholder interests, we are not "seeking to subordinate ratepayers' interests to those of

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1 the utility investors."³ As such, regardless of the record in the Spire case, rate case expense
2 sharing is not justified in this case.

3 **Q. Does this conclude your direct testimony?**

4 **A. Yes, it does.**

³ *Spire Missouri, Inc. v. Pub. Serv. Comm'n et al.*, Case No. SC97834, Slip. Op, p. 13 (Feb. 9, 2021).

