

Exhibit No.:
Issue(s): Rate Case Expense
Witness: Tom Byrne
Type of Exhibit: Surrebuttal Testimony
Sponsoring Party: Union Electric Company
File No.: ER-2021-0240
Date Testimony Prepared: November 5, 2021

MISSOURI PUBLIC SERVICE COMMISSION

FILE NO. ER-2021-0240

SURREBUTTAL TESTIMONY

OF

TOM BYRNE

ON

BEHALF OF

UNION ELECTRIC COMPANY

d/b/a Ameren Missouri

**St. Louis, Missouri
November 5, 2021**

SURREBUTTAL TESTIMONY

OF

TOM BYRNE

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

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

4 **Q. Are you the same Tom Byrne that filed direct and rebuttal testimony in this**
5 **proceeding?**

6 A. Yes, I am.

7 **Q. What is the purpose of your surrebuttal testimony in this proceeding?**

8 A. I am responding to the rebuttal testimony filed by Staff witness Mark Oligschlaeger
9 regarding rate case expense.

10 **Q. What was Mr. Oligschlaeger's recommendation for rate case expense?**

11 A. Staff's recommendation continues to be to allow recovery of only 50% of our
12 prudently-incurred rate case expense.

13 **Q. Did Mr. Oligschlaeger provide a specific basis for the recommendation?**

14 A. He did not. His rebuttal testimony discusses the reasons why sharing can be
15 justified, but no one on Staff has provided a justification for the specific recommendation to
16 exclude 50% of our prudent rate case expenditures in this case.

1 **Q. In your opinion, is this treatment of Ameren Missouri's rate case expense**
2 **appropriate?**

3 A. No. For all of the reasons set forth in my direct and rebuttal testimonies, it is most
4 appropriate for the revenue requirement in this case to include Ameren Missouri's entire rate case
5 expense (using an average of the rate case expenses the Company incurred over the last three rate
6 cases, normalized over two years). Staff calls its recommendation "sharing" but it is really an
7 exclusion of 50% of prudently-incurred costs from the revenue requirement.

8 Traditionally, costs are excluded when a utility expenditure is not prudent. But Staff makes
9 no imprudence allegation here. In fact, Mr. Oligschlaeger states, "Staff is not challenging the
10 reasonableness or prudence of Ameren Missouri's expenditures in recent cases..."¹ He also
11 states,"... Staff is not questioning the prudence of the payments to any of these consultants [in
12 this case]..."²

13 Even if one accepts that there may be situations where some sharing of rate case expense
14 between customers and shareholders could be appropriate, there is no evidence to support Staff's
15 recommendation to exclude 50% of the prudently-incurred costs in this case. There is no
16 Commission regulation making 50% the rule for all utilities. There are no specific allegations in
17 this case to justify excluding this or any other level of the Company's prudent rate case
18 expenditures. Instead, Staff relies on broad-based language and speculation about possible abuses
19 that it does not allege have occurred in this case.

20 **Q. Can you provide an illustration of Mr. Oligschlaeger's arguments?**

21 A. I can provide several. Mr. Oligschlaeger says that "there is a high probability that
22 some recommendations advocated by utilities through the rate case process will ultimately be

¹ File No. ER-2021-0240, Mark Oligschlaeger Rebuttal Testimony, p. 4, l. 3-4.

² *Id.*, p. 4, l. 11-12.

1 found by the Commission to not be in the public interest."³ His rebuttal testimony fails to name a
2 single proposal made by Ameren Missouri that could fall into this category – likely because no
3 such proposal exists in this case.

4 Walking through Ameren Missouri's external witnesses and their recommendations
5 demonstrates a complete absence of proposals that are "against the public interest." Return on
6 equity (Ann Bulkley) and depreciation rates (John Spanos, the costs of which Staff does not oppose
7 including in the revenue requirement) are necessary elements of any rate case, as Staff would
8 acknowledge. Ms. Bulkley is proposing an authorized return on equity that is just 15 basis points
9 higher than the range recommended by the Staff. Staff and the Company have some differences
10 on their depreciation rate proposals, but the fact that they have differing recommendations is an
11 insufficient basis for something to be "against public interest." John Reed testified that the costs
12 of Ameren Services ("AMS") are reasonable and in compliance with the requirements of the
13 Commission's Affiliate Transaction rules as a means to meet the Company's burden of going
14 forward with evidence that supports its AMS costs. Given longstanding controversies with the
15 Office of the Public Counsel ("OPC") on AMS issues, Mr. Reed's engagement was warranted; no
16 "proposal" to benefit just shareholders is being sponsored by Mr. Reed.⁴ Staff raises no concern
17 with Mr. Reed's testimony, demonstrating his testimony cannot be what Mr. Oligschlaeger warns
18 of as making a proposal that is not in the public interest. Ameren Missouri's final external expert
19 is Dr. Ahmad Faruqui, who testifies about Ameren Missouri's current rate design as it continues
20 down the path of Time of Use ("TOU") rates. Dr. Faruqui brings an experienced perspective about

³ File No. ER-2021-0240, Mark Oligschlaeger Rebuttal Testimony, p. 3, l. 2-4.

⁴ Mr. Reed also filed rebuttal testimony in response to OPC and Missouri Industrial Energy Consumers ("MIEC") attempts to disallow investment in the Company's High Prairie Energy Center in violation of a stipulation they agreed to (and with which they were ordered to comply) and their violation of basic standards governing the recovery of prudently-incurred costs.

1 the shift to TOU rates that we believe continues to be beneficial to the Commission as it considers
2 various proposals about TOU rates. Again, Staff does not object to the rate structure, offering
3 mostly tweaks that Staff believes will improve the TOU rate experience for customers.

4 **Q. Mr. Oligschlaeger points out that multiple individuals at these consulting**
5 **firms are working on testimony. Does that increase rate case expense?**

6 A. It has the opposite effect. Let's look at Ms. Bulkley as an example. One option
7 would be for her alone to work on her testimony in our case and for her to charge her rate for all
8 of that work. Instead, Ms. Bulkley has a supporting team, who charge a lower rate for their work
9 than Ms. Bulkley does. Moving some of her work to members of her team lowers the overall cost
10 of her testimony. This is true for the other testifying consultants engaged by the Company for this
11 case. The very practice which Mr. Oligschlaeger points to as a demonstration of a loss of control
12 over costs is actually a way to save money.

13 **Q. What rate case expense does Ameren Missouri incur beyond these four**
14 **witnesses?**

15 A. Ameren Missouri has expenditures for attorneys working on this case, the same
16 attorneys it uses for other regulatory work, and all with reasonable hourly charges. Rate cases are
17 extremely time-intensive exercises, and this is especially true for the utility that must address every
18 single issue raised by every party to the case. There are charges for two temporary employees,
19 both paralegals, to assist in processing the case, including the over one thousand data requests (not
20 counting subparts which themselves number in the hundreds if not thousands) received in this case,
21 with over 850 of those requests coming from Staff alone. There are charges for overnighting discs
22 for workpapers, or data requests to Staff and other parties when the files are too large to be

1 transmitted another way. Going forward, if this case goes to hearing, there will be more witness
2 and attorney fees, as well as printing, food, transportation, and hotel charges that will be included.

3 **Q. Mr. Oligschlaeger compares rate case expense to other expenditures that are**
4 **typically removed from the revenue requirement or even booked to non-utility accounts.⁵ Is**
5 **this a fair comparison?**

6 A. I do not believe it is. The items listed are expenditures for which no amount is
7 included in the Company's revenue requirement. An expenditure that isn't appropriate for inclusion
8 in the revenue requirement is far different than an expenditure that Staff admits is prudent and
9 appropriate but argues that 50% of it should not be included in the revenue requirement. And again,
10 this argument provides no case-specific support for the percentage proposed by Staff.

11 **Q. Mr. Oligschlaeger makes a statement that "The interests of utility customers**
12 **and utility companies cannot be considered to even generally coincide within the rate case**
13 **process."⁶ How do you respond?**

14 A. I am unsure why Mr. Oligschlaeger would make this statement. It is clearly in the
15 customers' interest that a utility have rates set at a level to allow it to pay employee wages and
16 contractor services, to purchase supplies needed to repair and upgrades its system – in other words,
17 to do all the things required to provide safe and adequate service. This is central to the statutory
18 requirement that the Commission set just and reasonable rates which allow utilities to provide safe
19 and adequate service while giving them a reasonable opportunity to earn a fair return on the
20 investment they have made and dedicated to the public service. That a utility believes and provides
21 evidence that meeting that standard requires a higher revenue requirement than another party
22 (including Staff) may support, does not mean that the expenditures the utility incurred to make its

⁵ File No. ER-2021-0240, Mark Oligschlaeger Rebuttal Testimony, p. 5.

⁶ *Id.*, p. 6, l. 6-7.

1 case did not benefit customers. To the contrary, the Commission benefits from a well-reasoned
2 and supported case so that it can ultimately decide what the just and reasonable rates are. And
3 when the Commission – as it certainly does – sets rates at a higher level than Staff or other parties
4 supported, that indeed benefits customers. It benefits them because it supports delivery of safe and
5 adequate service, and it benefits them because it promotes financial health of the utility and the
6 utility's access to the capital it needs to provide that service at a reasonable cost. It is also important
7 to point out that rate cases do not always result in increased rates for customers. Ameren Missouri's
8 last two rate cases resulted in rate reductions, which clearly benefited customers.

9 The bottom line is that the test for cost recovery has traditionally been, for good reason,
10 whether the cost was prudently-incurred and of some benefit to customers. Ameren Missouri's rate
11 case expense satisfies both of these standards. Staff has articulated no sufficient justification to
12 manufacture a different rule here.

13 **Q. Mr. Oligschlaeger goes on to characterize his recommendation as a reasonable**
14 **approach to apportion costs equitably.⁷ How should the Commission look at this proposal?**

15 A. At the risk of repeating myself, Staff is relying upon generalities and has failed to
16 provide any support for the specific percentage they recommend. Even if the Commission believes
17 some costs should be borne by shareholders in this case, Staff provides no basis for why 50% is
18 the right number. Why not exclude 25%? Why not exclude 10%? Without any basis for the amount
19 excluded, Staff's recommendation is unsupported and cannot be considered to be a reasonable
20 approach.

21 **Q. Does this conclude your surrebuttal testimony?**

22 A. Yes, it does.

⁷ File No. ER-2021-0240, Mark Oligschlaeger Rebuttal Testimony, p. 6, l. 7-9.

**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)
Increase Its Revenues for Electric Service.)

Case No. ER-2021-0240

AFFIDAVIT OF TOM BYRNE

STATE OF MISSOURI)
)**ss**
CITY OF ST. LOUIS)

Tom Byrne, being first duly sworn on his oath, states:

My name is Tom Byrne, and on his oath declare that he is of sound mind and lawful age;
that he has prepared the foregoing *Surrebuttal Testimony*; and further, under the penalty of perjury,
that the same is true and correct to the best of my knowledge and belief.

/s/ Tom Byrne

Tom Byrne

Sworn to me this 4th day of November, 2021.