

Exhibit No.:
Issue(s): Rate Case Expense
Witness: Tom Byrne
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Sponsoring Party: Union Electric Company
File No.: GR-2021-0241
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MISSOURI PUBLIC SERVICE COMMISSION

FILE NO. GR-2021-0241

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 two 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 this
12 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 L. Oligschlaeger Rebuttal Testimony, p. 4, ll. 3-4.

² *Id.*, p. 4, ll. 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) are necessary elements of any rate case,
7 as Staff would acknowledge. Ms. Bulkley is proposing an authorized return on equity that is just
8 5 basis points higher than the range recommended by the Staff. The final external witness is John
9 Reed, who testified that the costs of Ameren Services ("AMS") are reasonable and in compliance
10 with the requirements of the Commission's Affiliate Transaction rules as a means to meet the
11 Company's burden of going forward with evidence that supports its AMS costs. Given
12 longstanding controversies with the Office of the Public Counsel on AMS issues, Mr. Reed's
13 engagement was warranted; no "proposal" to benefit just shareholders is being sponsored by Mr.
14 Reed. Staff raises no concern with Mr. Reed's testimony, demonstrating his testimony cannot be
15 what Mr. Oligschlaeger warns of as making a proposal that is not in the public interest

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

18 A. It has the opposite effect. Let's look at Ms. Bulkley as an example. One option
19 would be for her alone to work on her testimony in our case and for her to charge her rate for all
20 of that work. Instead, Ms. Bulkley has a supporting team, who charge a lower rate for their work
21 than Ms. Bulkley does. Moving some of her work to members of her team lowers the overall cost
22 of her testimony. This is true for the other testifying consultants engaged by the Company for this

³ *Id.*, p. 3, ll. 2-4.

1 case. The very practice which Mr. Oligschlaeger points to as a demonstration of a loss of control
2 over costs is actually a way to save money.

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

5 A. Ameren Missouri has expenditures for three outside attorneys working on this case,
6 the same attorneys it uses for other regulatory work and all with reasonable hourly charges. Rate
7 cases are extremely time-intensive exercises, and this is especially true for the utility that must
8 address every single issue raised by every party to the case. There are charges for two temporary
9 employees, both paralegals, to assist in processing the case, including processing Company
10 responses to the numerous data requests in this case. There are charges for overnighting discs for
11 workpapers or data requests to Staff and other parties when the files are too large to be transmitted
12 another way. Going forward, if this case goes to hearing, there will be more witness and attorney
13 fees, as well as printing, food, transportation, and hotel charges included.

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

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

⁴ *Id.*, p. 4, ll. 3-10.

1 **Q. Mr. Oligschlaeger makes a statement that "The interests of utility customers**
2 **and utility companies cannot be considered to even generally coincide within the rate case**
3 **process."**⁵ **How do you respond?**

4 A. I am unsure why Mr. Oligschlaeger would make this statement. It is clearly in the
5 customers' interest that a utility have rates set at a level to allow it to pay employee wages and
6 contractor services, to purchase supplies needed to repair and upgrades its system – in other words,
7 to do all the things required to provide safe and adequate service. This is central to the statutory
8 requirement that the Commission set just and reasonable rates which allow utilities to provide safe
9 and adequate service while giving them a reasonable opportunity to earn a fair return on the
10 investment they have made and dedicated to the public service. That a utility believes and provides
11 evidence that meeting that standard requires a higher revenue requirement than another party
12 (including Staff) may support, does not mean that the expenditures the utility incurred to make its
13 case did not benefit customers. To the contrary, the Commission benefits from a well-reasoned
14 and supported case so that it can ultimately decide what the just and reasonable rates are. And
15 when the Commission – as it certainly does – sets rates at a higher level than Staff or other parties
16 supported, that indeed benefits customers. It benefits them because it supports delivery of safe and
17 adequate service, and it benefits them because it promotes financial health of the utility and the
18 utility's access to the capital it needs to provide that service at a reasonable cost. It is also important
19 to point out that rate cases do not always result in increased rates for customers. Ameren Missouri's
20 last gas rate case resulted in a rate reduction, which clearly benefited customers.

21 The bottom line is that the test for cost recovery has traditionally been, for good reason,
22 whether the cost was prudently-incurred and of some benefit to customers. Ameren Missouri's rate

⁵ *Id.*, p. 6, ll. 6-7.

1 case expense satisfies both of these standards. Staff has articulated no sufficient justification to
2 manufacture a different rule here.

3 **Q. Mr. Oligschlaeger goes on to characterize his recommendation as a reasonable**
4 **approach to apportion costs equitably.⁶ How should the Commission look at this proposal?**

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

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

12 A. Yes, it does.

⁶ *Id.*, p. 6, ll. 7-10.

