

Exhibit No.:
Issue(s): Commission Jurisdiction
and Policy
Considerations
Witness: Thomas M. Byrne
Sponsoring Party: Union Electric Company
Type of Exhibit: Surrebuttal Testimony
File No.: ET-2016-0246
Date Testimony Prepared: December 19, 2016

MISSOURI PUBLIC SERVICE COMMISSION

FILE NO. ET-2016-0246

SURREBUTTAL TESTIMONY

OF

THOMAS M. BYRNE

ON

BEHALF OF

**UNION ELECTRIC COMPANY
d/b/a Ameren Missouri**

**St. Louis, Missouri
December 2016**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

SURREBUTTAL TESTIMONY
OF
THOMAS M. BYRNE
FILE NO.

I. INTRODUCTION

Q. Please state your name and business address.

A. Thomas M. Byrne, Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), One Ameren Plaza, 1901 Chouteau Avenue, St. Louis, Missouri 63103.

Q. What is your position with Ameren Missouri?

A. I am Senior Director of Regulatory Affairs.

Q. Please describe your educational background and employment experience.

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

1 attorney for Laclede Gas Company. In that position I handled rate cases and other
2 regulatory proceedings before the Commission. In 2000, I was hired as a regulatory
3 attorney by Ameren Missouri and I originally handled regulatory matters involving
4 Ameren's gas businesses in both Missouri and Illinois. In 2012, I was promoted to the
5 position of Director and Assistant General Counsel and I was assigned to handle both gas
6 and electric cases in Missouri. In 2014, I was promoted to my current position, Senior
7 Director of Regulatory Affairs.

8 **Q. Have you previously filed testimony before the Commission?**

9 A. No I have not. Although I have litigated many cases before the
10 Commission over my 33-year career, this is the first case in which I have submitted
11 testimony.

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

13 A. First, my testimony discusses the limited nature of Ameren Missouri's
14 proposal in this case. Second, my testimony will respond to the issues regarding the
15 Commission's jurisdiction raised in the rebuttal testimony of various other parties. And,
16 finally, I will explain why I believe valid policy considerations support approval of
17 Ameren Missouri's pilot program, and the tariff proposed to implement that pilot.

18 **I. Scope of the Pilot Project**

19 **Q. What is the scope of the pilot program Ameren Missouri is proposing**
20 **in this case?**

21 A. The scope of Ameren Missouri's pilot program is quite limited. We are
22 proposing to install just six long-distance electric vehicle charging stations within our
23 service territory, with five of the charging stations located along the Interstate Highway

1 70 (“I-70”) corridor, and a sixth charging station located in Jefferson City. As explained
2 in detail in the direct testimony of Ameren Missouri witness Mark Nealon, the goals of
3 the pilot program are for Ameren Missouri to gain experience in installing and operating
4 electric vehicle charging stations, and to enable electric vehicles to travel on Interstate 70
5 and to Jefferson City, where currently no DC fast-charging stations exist for use by the
6 general public. The expectation is that once this barrier to electric vehicle ownership is
7 removed, the adoption rate for electric vehicles in Ameren Missouri’s service territory
8 will increase to the ultimate benefit of all of Ameren Missouri’s customers.

9 **Q. Would approval of Ameren Missouri’s limited pilot program establish**
10 **a precedent dictating standards governing broader installation of electric vehicle**
11 **charging stations by utility and/or non-utility market participants in Missouri?**

12 A. No, it would not. Specifically, this case does not involve the issue of
13 whether utilities should broadly install electric vehicle charging stations on a non-pilot
14 basis across their service territories, and it does not involve the question of whether non-
15 utilities are permitted to install electric vehicle charging stations on an unregulated basis.
16 Although these issues may eventually have to be addressed by the Commission and/or
17 Missouri courts, they are not the subject of this case.

18 **II. Jurisdiction**

19 **Q. Is there any question that the Commission has jurisdiction over the**
20 **charging stations that are the subject of the proposed pilot?**

21 A. Not in my opinion. It is clear to me that when an electrical corporation
22 regulated by the Commission proposes to install electric vehicle charging stations in
23 order to sell electricity to the general public within its certificated service territory in

1 Missouri, then that activity is subject to the Commission’s jurisdiction. Here Ameren
2 Missouri is a “public utility” and an “electrical corporation” as those terms are defined in
3 Section 386.020 RSMo 2000, and Ameren Missouri’s provision of electric service to
4 customers within its certificated service territory is unquestionably subject to the
5 Commission’s jurisdiction as a general matter. The facilities Ameren Missouri will use
6 to deliver electricity to customers using the proposed charging stations constitute
7 “electric plant,” which is defined to include “all real estate, fixtures and personal property
8 operated, controlled, owned, used or to be used for or in connection with or to facilitate
9 the generation, transmission, distribution, sale or furnishing of electricity for light, heat or
10 power...” Section 386.020(14) RSMo 2000. As others have pointed out, electric
11 vehicles use electricity for light, heat and power. Finally, Ameren Missouri will be
12 offering its electric vehicle charging service indiscriminately to the public, which is a
13 hallmark of public utility service. In these specific circumstances, there is no question
14 that Ameren Missouri’s installation and operation of the proposed electric vehicle
15 charging stations constitutes the provision of electric service which is subject to
16 Commission jurisdiction.

17 **III. Public Policy**

18 **Q. Would it be a good policy decision for the Commission to approve**
19 **Ameren Missouri’s proposed pilot?**

20 **A.** Yes, in my opinion it would be. Ameren Missouri’s proposal to construct
21 six charging stations along I-70 and in Jefferson City is a very small scale proposal which
22 would impose only negligible cost on customers and carries negligible risk. But the
23 potential benefits of the program are significant. First of all, by allowing Ameren

1 Missouri to dip its toe in the water of vehicle charging, Ameren Missouri, the
2 Commission, and other stakeholders will have the opportunity to get “hands on”
3 experience in this developing area. Ameren Missouri witness Mr. Nealon has identified
4 numerous learning opportunities, and there are likely some others that we can’t foresee at
5 this time. Exploring a developing market like vehicle charging is exactly what pilot
6 programs are best suited for, and in fact other states are using pilot programs to
7 experiment with electric vehicle charging. Ameren Missouri witness Philip Sheehy
8 discusses this in his surrebuttal testimony.

9 Second, in spite of the small scale and cost of the proposed pilot, placing charging
10 stations along I-70 will remove a significant barrier to electric vehicle purchases. If
11 electric vehicle owners in St. Louis can drive to Columbia or Jefferson City or Kansas
12 City, it will make their vehicles much more valuable than if they are stranded in the St.
13 Louis metropolitan area. The charging stations Ameren Missouri proposes to install will
14 begin to solve the “chicken and the egg” problem, where the free market is unwilling to
15 build publicly-available DC fast chargers until there are more electric vehicles, and
16 customers are less willing to buy electric vehicles when there are no publicly-available
17 long-distance charging stations. This is a rare opportunity where a small investment can
18 make a material difference in encouraging behavior which advances a nascent industry
19 and helps the environment. The Commission should not let this opportunity pass.

20 Third, approval of this pilot will have real, tangible benefits for all of Ameren
21 Missouri’s customers, the general public, and the state of Missouri. As explained in Mr.
22 Nealon's testimony, more electric vehicles will reduce pollution and improve health for
23 Ameren Missouri customers and other citizens. Use of electric vehicles will reduce the

1 cost of using gasoline purchased from out-of state providers and have a favorable impact
2 on the state’s economy. And to the extent that the existence of long-distance charging
3 stations encourages the purchase of more electric vehicles, it will allow Ameren Missouri
4 to more broadly spread its fixed costs to the benefit of all customers.

5 Fourth, approval of this pilot is consistent with state policy as embodied in the
6 Missouri Comprehensive Statewide Energy Plan (“Energy Plan”) and the Missouri
7 Department of Transportation’s Road to Tomorrow initiative. The Energy Plan
8 specifically acknowledges that “electric vehicle charging stations need access to the
9 electric grid and will likely impact the design, operation and cost of the grid. Due to this
10 interrelation, electric utilities are uniquely positioned to help support electric vehicle
11 infrastructure and charging station networks.”¹ Ameren Missouri’s installation of the
12 proposed long-distance charging stations is also consistent with the Road to Tomorrow
13 initiative, whose goal it is to “ensure that electric vehicle drivers have access to charging
14 stations at home, at work, and on the road—creating a new way of thinking about
15 transportation that will drive America forward.”²

16 The bottom line is that the many potential benefits of this pilot program far
17 outweigh its minimal cost.

18 **Q. In its recommendation filed in this proceeding on September 28, 2016,**
19 **the Commission Staff recommends that this pilot program be approved, but**
20 **Ameren Missouri should be required to book all revenues, expenses and capital**
21 **investment below-the-line. How do you respond?**

¹<https://energy.mo.gov/energy/docs/MCSEP.pdf>

²www.modot.org/road2tomorrow/

1 A. Staff’s proposal to book all costs and revenues below-the-line is unusual
2 and very puzzling. As I previously testified, this service is within the Commission’s
3 jurisdiction and approval of the pilot is in the public interest. Under these circumstances,
4 requiring Ameren Missouri to book the costs and revenues below-the-line is unwarranted
5 and likely unlawful. I cannot think of another example where the Commission has
6 approved a tariffed service, required reporting, but then not permitted the utility to
7 recover its cost of providing that service, which is something to which a utility is entitled
8 by law. The Staff can’t have it both ways: if this is a legitimate utility service satisfying
9 a real need, Ameren Missouri must be allowed to recover its costs of providing that
10 service. If it is not a legitimate utility service, Ameren Missouri should not be providing
11 it at all.

12 **Q. If Ameren Missouri is required to book costs and revenues associated**
13 **with this program below-the-line, will it proceed with the pilot?**

14 A. No. Ameren Missouri provides contributions to many worthy charities
15 which are always booked below-the-line. But we are not willing to sponsor development
16 of the electric vehicle market as a charitable endeavor. If costs and revenues must be
17 booked below-the-line, we will not proceed with our pilot.

18 **Q. Will shareholders pay any of the costs of this program if it is booked**
19 **above-the-line?**

20 A. Yes. Due to regulatory lag, Ameren Missouri’s shareholders will bear the
21 return and depreciation on the charging facilities between the point in time when they are
22 placed in service and when they are included in rates in a subsequent rate case, less any
23 associated revenues. Because no costs associated with the proposed pilot have been or

1 will be included in the revenue requirement used to set rates in Ameren Missouri's
2 pending general rate case, File No. ER-2016-0179, as long as rates set in that case remain
3 in effect the Company's shareholders will bear any costs that exceed the amount of
4 revenue generated from the proposed charging stations.

5 **Q. Isn't it a problem that your pilot will require subsidies from**
6 **customers who do not use the service?**

7 A. Not in my opinion. As my previous answer makes clear, as long as rates
8 set in File No. ER-2016-0179 remain in effect, there will be no subsidies provided by
9 Ameren Missouri's customers. And as I also previously stated, all customers will derive
10 some benefits from the program in the form of cleaner air, state economic development
11 and increased electric usage over which Ameren Missouri's fixed costs are spread. In the
12 future, there may be some subsidy required, but the amount of that subsidy will be
13 miniscule. If all costs associated with the proposed pilot were included in rates in the
14 Company's pending rate case, we estimate the amount of subsidy required would be
15 approximately one cent per customer per month. But since Ameren Missouri's
16 shareholders will bear the cost of the pilot until a final order is issued in the Company's
17 next general rate case, any subsidy that may be required in the future will be even less
18 than that. Moreover, as Mr. Nealon stated in his direct testimony, even this initial
19 subsidy, over time, is expected to result in a net benefit to all customers, as the use of
20 electric vehicles increases.

21 It is important to note that some degree of subsidy is inherent in the provision of
22 almost all utility services. For example, residential customers who live close to electric
23 generating plants subsidize those who live farther away. Higher load factor industrial

Direct Testimony of
Thomas M. Byrne

1 customers may subsidize lower load factor customers in the same rate class. Higher
2 income customers subsidize lower income customers who take advantage of programs
3 such as Ameren Missouri's low income weatherization program. There is nothing wrong
4 with some degree of subsidization in support of a program that provides public benefits.
5 In this case, the level of subsidy is so small compared to the benefits it provides no reason
6 to reject the program.

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

8 A. Yes, it does.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Union Electric Company)
d/b/a Ameren Missouri's) File No. ET-2016-0246
)

AFFIDAVIT OF THOMAS M. BYRNE

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

Thomas M. Byrne, being first duly sworn on his oath, states:

1. My name is Thomas M. Byrne. I work in the City of St. Louis, Missouri, and I am employed by Union Electric Company d/b/a Ameren Missouri as Senior Director Regulatory Affairs.

2. Attached hereto and made a part hereof for all purposes is my Surrebuttal Testimony on behalf of Union Electric Company d/b/a Ameren Missouri consisting of nine (9) pages, and no Schedules, all of which have been prepared in written form for introduction into evidence in the above-referenced docket.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct.



Thomas M. Byrne

Subscribed and sworn to before me this 19th day of December, 2016.



Notary Public

My commission expires:

