

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

In the Matter of the Union Electric Company d/b/a )  
Ameren Missouri’s Tariffs to Decrease Its ) File No. ER-2019-0335  
Revenues for Electric Service )

**PUBLIC COUNSEL’S RESPONSE TO AMEREN MISSOURI’S REPLY AND CLARIFICATION OF  
PUBLIC COUNSEL’S POSITION**

COMES NOW, the Office of the Public Counsel (OPC), by and through and counsel, and wishes to clarify as follows regarding its position as to the procedural schedule filed by the Staff of the Public Service Commission (Staff) in the above captioned docket.

1. Staff has just recently filed a proposed procedural schedule agreed to by several, but not all parties to the above captioned docket. The proposed procedural schedule is predicated on Union Electric d/b/a Ameren Missouri’s requested test year of the twelve months ending December 31, 2018, with a true-up and adjustment period through December 31, 2019.<sup>1</sup>
2. The OPC does not object to the proposed procedural schedule. However, the OPC continues to maintain that Ameren Missouri’s requested true-up and adjustment is unjustified and unsupported.
3. Adjustments to a test year should only be made if: 1) the adjustment is done for an event that is “known and measurable”; 2) including the event promotes “the proper relationship of investment, revenues, and expense”; and 3) the particular event must be representative of expected future conditions.<sup>2</sup>

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<sup>1</sup> Staff’s proposed update through June 30, 2019, with a true-up ending December 31, 2019, also coincides within the parameters of its proposed procedural schedule.

<sup>2</sup> *State ex rel. GTE N., Inc. v. Pub. Serv. Comm’n*, 835 S.W.2d 356, 368 (Mo. App. W.D. 1992).

4. As this Commission has recently noted, the use of true-ups is “generally limited to those accounts necessarily affected by some significant known and measurable change.”<sup>3</sup>

5. However, as previously noted in Public Counsel’s Response to Proposed Historical Test Year and Adjustment Period, Ameren Missouri’s testimony identifies no specific known or measurable cost drivers during the true-up or adjustment period that make the test year alone an inaccurate representation of Ameren Missouri’s accounts.

6. Rather than correct this omission, Ameren Missouri has doubled down in its Reply that a mere “basket of items” is sufficient for a true up. Ameren Missouri also invokes past Commission orders as precedent, and even claims that this Commission has “never imposed such a requirement...that there be some major “specific” item or “cost driver”...that the utility must point to” to support its true up and adjustment requests.<sup>4</sup>

7. The Commission should bear in mind that by “basket of items,” Ameren Missouri is requesting to add over a billion dollars in additional plant from an entire year of true-up, touching every facet of its rate base and plant components. The true-up was never intended to essentially create a two-year test year, especially for a case that is captioned as rate decrease.

8. Indeed, as this Commission itself argued last month before the Missouri Supreme Court, adjustments to the test years are only supportable by discrete, known and measurable events.<sup>5</sup> Ameren Missouri’s suggestion that this Commission has never required identified events or distinctly unique costs to support a true-up or adjustment is simply not accurate.

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<sup>3</sup> *Report and Order*, WR-2010-0111 p. 7 (Aug. 18, 2010).

<sup>4</sup> *Ameren Missouri’s Reply to Public Counsel’s Response to Proposed Historical Test Year and Adjustment Period*, ER-2019-0335 (Aug. 1, 2019).

<sup>5</sup> *Suggestions in Opposition to Application for Transfer, Spire Mo., Inc. v. Pub. Serv. Comm’n*, SC97834 (Jun. 10, 2019) (citing *State ex rel. GTE N., Inc.*, 835 S.W.2d at 367).

9. Furthermore, it should be noted that Ameren Missouri's reliance on previous Commission cases as precedent is particularly odd given its position less than one year ago that there "is no *stare decisis* in administrative law" and that no prior Commission order is binding onto a future case.<sup>6</sup>

10. Ameren Missouri's changing opinions notwithstanding, the prior dockets it relies upon actually support Public Counsel's position. The rate cases identified by Ameren Missouri were when the Company was undergoing significant additions of and improvements to baseload generation units such as investments in scrubbers at the Sioux Energy Center<sup>7</sup> or Taum Sauk.<sup>8</sup> Such identifiable expenses can be used to justify the requested true-up periods used, but are not apparent here. Here, Ameren Missouri has only signaled to all of its regular and ongoing plant in service additions.

**WHEREFORE**, the OPC responds to Ameren Missouri's reply, offers this clarification as to its position on Ameren Missouri's proposed true-up and adjustment period, and renews its request that the Commission deny Ameren Missouri's requested true-up and adjustment period.

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<sup>6</sup> See *Ameren Missouri's Reply to Response of Dekalb County, Missouri to Ameren Missouri's Opposition to Application to Intervene of Dekalb County, Missouri*, EA-2019-0021 (Nov. 13, 2018).

<sup>7</sup> See *Direct Testimony of Gary Weiss*, ER-2012-0166 p. 4 (Feb. 3, 2012).

<sup>8</sup> See *Direct Testimony of Gary Weiss*, ER-2011-0028 p. 29 (Sept. 3, 2010).

Respectfully,

**OFFICE OF THE PUBLIC COUNSEL**

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 2<sup>nd</sup> day of August, 2019, with notice of the same being sent to all counsel of record.

/s/ Caleb Hall