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Case No.: ER-2019-0335

SURREBUTTAL TESTIMONY

OF

ROBERT E. SCHALLENBERG

Submitted on Behalf of the Office of the Public Counsel

UNION ELECTRIC COMPANY
D/B/A AMEREN MISSOURI

FILE NO. ER-2019-0335

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February 14, 2020

NON-PROPRIETARY

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UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI
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1 **Q. Please state your name and business address.**

2 A. My name is Robert E. Schallenberg. My business address is Governor Office Building,
3 Suite 650, 200 Madison Street, and Post Office Box 2230, Jefferson City, Missouri 65102.

4 **Q. By whom are you employed and what is your position?**

5 A. I am employed by the Office of the Public Counsel (OPC or Public Counsel) as the Director
6 of Policy.

7 **Q. Are you the same Robert E. Schallenberg that filed direct and rebuttal in this case?**

8 A. Yes.

9 **Q. What is the purpose of your surrebuttal testimony?**

10 A. The purpose of my surrebuttal testimony is to clarify what Public Counsel is seeking in this
11 case. The OPC is seeking proof that the costs Union Electric Company's d/b/a Ameren
12 Missouri (UEC or Company) pays Ameren Services Company (AMS) for goods and
13 services are just and reasonable and were all prudently incurred expenditures. In other
14 words, OPC seeks documentary evidence demonstrating Staff actually audited these
15 affiliate transactions for prudence in conformance with the Supreme Court's mandate that
16 the Commission may not view affiliate transactions with any "presumption of prudence."
17 "A presumption of prudence is inconsistent with the rationale for the affiliate transaction
18 rules and with the PSC's obligation to prevent regulated utilities from subsidizing their non-
19 regulated operations." *Office of the Public Counsel v. Missouri Public Service Commission*
20 *and Atmos Energy Corporation*, 409 S.W.3d 371(Mo. banc 2013).

1 An alternative would be for UEC to show that it had obtained a variance from the
2 Commission so it did not have to apply the affiliate transaction rule's presumption of
3 imprudence.

4 I address the portions of the UEC and Commission Staff's (Staff) rebuttal testimony
5 regarding the affiliate transaction documentation issue. In this case, my analysis is that
6 there is simply no evidence of prudence. Neither the Staff nor UEC have produced any
7 evidence to support the prudence of the \$218,000,000.

8 **Q. Is the \$218 million the best estimation of the AMS costs included in this case?**

9 A. No. The starting point is \$218 million plus all of the Company and Staff Adjustments to
10 increase AMS costs in this case.

11 **Q. Does the Company represent that they have a CAM in any of their filings and**
12 **submittals?**

13 A. Yes, their current affiliate transaction report Tab A page 2, lines 15 through 17 states that
14 **

15 **

16 **Q. Has the Commission actually approved this CAM or variances?**

17 A. No. UEC also has no approved variances from the rule or an approved CAM, which could
18 allow UEC to participate in the affiliate transactions now that are non-compliant. UEC has
19 and continues to participate in affiliate transactions prohibited by the rule because they
20 have not done what they said they would do in their current affiliate transactions report.

1 **Response to Mark Oligschlaeger Rebuttal**

2 **Q. On page 7 lines 18 – 19, Mr. Oligschlaeger’s comments that: “In this audit, Staff did**
3 **not find any irregularities or excessive charges to Ameren Missouri by AMS, and**
4 **accordingly has not proposed any disallowances of those expenses.” Are you satisfied**
5 **with Staff’s analysis?**

6 A. No. Mr. Oligschlaeger’s response indicates that Staff “reviewed” costs with a
7 “presumption of prudence.” That is Staff “presumed” the costs were prudent and then
8 looked for “irregularities.” However, the Commission may not approve affiliate
9 transactions through the “lens of a presumption of prudence.” This is a complete deterrent
10 to the Commission’s ability to find any of the affiliate transactions were prudently incurred.

11 **Q. Does the fact that Staff reviewed this case just, “as it has in many Ameren Missouri**
12 **rate cases over the past 15 years” as Mr. Oligschlaeger says provide any reassurance?**

13 A. No, the case law concerning review of affiliate transaction changed in July of 2013. At
14 that time Staff should have changed how it reviewed affiliate transactions so it could assist
15 the Commission in complying with the Supreme Court opinion. If Staff has not changed
16 anything in its review process in the past 15 years, then it indicates that nothing is being
17 done to comply with the Supreme Court’s decision seven years ago.

18 **Q. What about Mr. Oligschlaeger’s response that, to his knowledge, “the Commission**
19 **has not ordered any disallowances of AMS charges or other affiliated transactions in**
20 **general rate proceedings during the period of time the ATRs have been in effect.”**

21 A. Again, the fact that no disallowances have been made does not establish that no violations
22 have occurred. In my opinion the Staff treats affiliate transactions the same as corporate
23 allocations. A cursory review of UEC’s affiliate transactions is wholly inadequate to give

1 the Commission sufficient evidence to approve these costs as prudently incurred and that
2 the purpose of its rule is being satisfied. The Supreme Court noted that the presumption of
3 prudence “sets out *an evidentiary presumption* created by the PSC. That standard provides
4 that the utility's expenditures are presumed to be prudent until adequate contrary evidence
5 is produced, at which point the presumption disappears from the case.” *Atmos Energy*
6 *Corporation*, 409 S.W.3d 371. A presumption that costs of transactions between affiliates
7 are prudent is inconsistent with this decision.

8 **Q. In his Rebuttal Mr. Oligschlaeger testifies service company transactions should not**
9 **be viewed as being as necessarily prone to potential abuse as other kinds of affiliated**
10 **transactions. Oligschlaeger Reb. pg. 8 lns 6 – 10. Do you agree?**

11 A. There is nothing to support such a theory, and in fact, Mr. Oligschlaeger offers nothing but
12 a general statement about a “reasonable expectation” of cost-effectiveness.

13 **Q. Does support of a “general concept” provide any proof a cost is prudently incurred?**

14 A. No.

15 **Q. Is there any testimony demonstrating the expectation holds true in this case?**

16 A. No.

17 **Q. On page 8, lns 11 – 16, Mr. Oligschlaeger responds to the question of whether the**
18 **benefit of service companies have been recognized by other regulatory bodies, is this**
19 **relevant?**

20 A. No. My issue is not with UEC’s use of a service company, just with their lack of
21 demonstration of compliance with the affiliate transaction rules. In addition, I believe Mr.
22 Oligschlaeger’s reliance on the Public Utility Holding Company Act (PUHCA) is
23 misleading. Congress repealed the entirety of PUHCA 1935 in the Energy Policy Act of

1 2005. The repeal became effective on February 8, 2006. As of that date, all of the SEC-
2 enforced requirements and restrictions placed on public utility holding companies
3 under PUHCA 1935 were removed.

4 **Q. Mr. Oligschlaeger testifies that “AMS charges are calculated at its cost, with no profit**
5 **margin included in its charges to affiliates, it can be presumed that most other types**
6 **of affiliated transactions involve charging of a profit margin to the buyer of the goods**
7 **and services.” Do you agree?**

8 **A.** No. AMS is registered with the Missouri Secretary of State as a “For Profit” business entity.
9 See Schedule RES-S-2. AMS will create profit for Ameren Corporation by shifting costs
10 to UEC to recover from its customers instead of offsetting the costs against corporate
11 profits. AMS’ profitability off of Ameren Missouri customers is demonstrated in its tax
12 returns. AMS is a company included in Ameren’s consolidated federal income tax return.
13 The following chart shows AMS taxable income from past income tax returns: **

1 **

2 **Q. On page 9, Ins 6 – 12, Mr. Oligschlaeger states that it is his understanding that UEC**
3 **is not compelled to take any particular good or service offered by AMS, among**
4 **other things. Has Mr. Oligschlaeger provided any evidence to support his**
5 **understanding?**

6 A. No.

7 **Q. Has he identified this understanding in any responses to data requests?**

8 A. No.

9 **Q. Has he supported this understanding with any documents?**

10 A. No.

11 **Q. In the same paragraph, Mr. Oligschlaeger also mentions a review process for UEC to**
12 **determine its needs for and to evaluate the economics of services received from AMS.**
13 **Is this sufficient?**

14 A. No. This is equivalent to letting the foxes guard the henhouse. Ameren Missouri's incentive
15 to adequately review its relationship with AMS is questionable given the inextricable
16 connection between the two companies, and their ultimate profitability for Ameren
17 Corporation.

18 **Q. Mr. Oligschlaeger concludes this paragraph with a suggestion to the Company. What**
19 **does Mr. Oligschlaeger suggest?**

20 A. That "Ameren Missouri should continue to take reasonable measures to ensure that receipt
21 of services from AMS is a low-cost course of action, and to bypass AMS for services when
22 prudent and instead utilize third party vendors for the service or to provide its own service."

23 **Q. Does Mr. Oligschlaeger explain what a "reasonable measure" would be?**

1 A. No. Mr. Oligschlaeger identifies no reasonable measures. At a minimum, an example could
2 have been competitive bidding, but UEC does not competitively bid the goods and services
3 that AMS charges to UEC.

4 **Q. What is the basis for your answer regarding competitive bidding?**

5 A. The response to MoPSC staff data request 0519 indicates that UEC did not bid out any
6 AMS services or products during the test year. The response to OPC data request 1022
7 indicates that the Company does not document the reasons it does not use competitive
8 bidding. The only documentation available is the hindsight testimony of UEC witnesses
9 Mr. Byrne and Mr. Reed in another case.

10 **Q. Mr. Oligschlaeger says that you testify in your direct testimony that UEC must**
11 **competitively bid every AMS transaction. Do you agree?**

12 A. No. As Mr. Oligschlaeger correctly states, the affiliate transaction rule require utilities to
13 *either* competitively bid for goods and services otherwise obtainable from affiliates, or
14 demonstrate good cause why competitive bidding is not needed. I am just asking to see
15 the “good cause” beyond Ameren simply wanting to use AMS, and for AMS be treated on
16 the same basis as UEC would treat non-affiliate suppliers or buyers. UEC is showing a
17 preference to AMS as it does not have to be the best supplier to win the company’s business
18 and will receive the business even when it is better for UEC to address the need internally.

19 **Q. Are there other reasonable measures that need to be taken to ensure UEC is only**
20 **using affiliate transactions when it is the utility’s best choice?**

21 A. Yes, The utility must evaluate what its costs would be if the utility obtained the good or
22 service on its own. While UEC has opportunities to examine its costs to provide the good

1 or service in-house, the Company has failed to utilize this opportunity formally and only
2 performed this reasonable process once on an informal basis.

3 **Q. What is the basis for your response?**

4 A. The apparent lack of control UEC has over what AMS charges are attributed to it. The OPC
5 data request 1017 and 1025 show that every AMS employee has the ability to charge UEC.
6 At this time, AMS employees are trained that they choose the entities they will charge, how
7 much they will be charged, and the account to record the charges. The rationale for
8 justifying this approach is that AMS employees know best what work is being done. In
9 UEC's recent gas case, OPC Data Requests 1016 response notes the results of an
10 examination in 2014 of AMS employees charging a significant amount of time to UEC.
11 Certain AMS employees worked 90% or more of their time for UEC. No guidelines were
12 established from this study and no further work of this kind was undertaken.

13 **Q. Mr. Oligschlaeger describes Benchmarking on page 9 In 22 – page 10. What is**
14 **benchmarking and is it allowed by the affiliate transaction rule?**

15 A. Mr. Oligschlaeger says “Benchmarking is an attempt to determine the market value of a
16 given good or service through research of the relevant competitive markets (for example,
17 taking a survey of the price of goods/services available from unaffiliated third parties).”

18 **Q. Is benchmarking comparable to competitive bidding?**

19 A. No. It is a half-measure, and UEC still needs an approved rule variance or Commission
20 approved CAM for benchmarking to be a replacement compliance measure. But again,
21 UEC has no approved rule variances.

22 **Q. On page 10, lns 11 – 20, Mr. Oligschlaeger discusses your criticisms that UEC is not**
23 **in compliance with the affiliate transaction rule due to its failure to receive any**

1 **Commission approved variances from the affiliate transaction rule. What is his**
2 **response?**

3 A. Mr. Oligschlaeger states that he disagrees with the contention that UEC is not in
4 compliance with the affiliate transaction rule due to its failure to receive any Commission
5 approved variances but then immediately admits that UEC has not received Commission
6 approval of any variances. Mr. Oligschlaeger does testify that: “Ameren Missouri
7 currently has several ATR variance requests outstanding in the context of Case No. EO-
8 2017-0176,” but these requests have never been granted, so obviously the company has no
9 Commission approved variances.

10 **Q. If Mr. Oligschlaeger’s only testimony is that there are variances “outstanding,” why**
11 **does he disagree with your contention that the Company has no Commission**
12 **approved variances from the affiliate transaction rule?**

13 A. I do not know. Mr. Oligschlaeger testifies that “good cause in Case No. EO-2017-0176 has
14 been shown by Ameren Missouri to justify its variance requests.” However, he never
15 states what this good cause is, and, regardless, the Commission itself has never approved
16 the variance requests.

17 **Q. So are you saying that Staff’s position is that because it believes “good cause exists”**
18 **in a completely different case, in which the Commission has neither heard testimony**
19 **or issued any order, there is sufficient evidence for the Commission to make a**
20 **determination regarding the prudence of the affiliate transections in this case?**

21 A. I cannot speak for Staff’s position, but it appears that is what Staff is arguing. However,
22 “good cause” in another docket is not evidence of anything pertaining to this rate case.

1 **Q. Has Mr. Oligschlaeger provided any documentation related to this case to support his**
2 **position?**

3 A. The Response to OPC DR 588 to Staff in RES-S-3 purports to show the underlying support
4 for Mr. Oligschlaeger's conclusions that UEC is currently in compliance with the rule. It
5 shows that Mr. Oligschlaeger did not review any documentation regarding the question of
6 the Company's compliance with the rule.

7 **Q. Does Mr. Oligschlaeger claim the Auditing Department reviewed any specific**
8 **company documentation that proved the Company's affiliate transactions with AMS**
9 **were prudent?**

10 A. No.

11 **Q. Does Mr. Oligschlaeger's faith that UEC has an "intent" to abide by the terms of the**
12 **non-unanimous agreement reached in Case No. EO-2017-0176 matter?**

13 A. No. As Mr. Oligschlaeger himself points out, the Commission suspended the procedural
14 schedule before the Commission ruled on that stipulation. The Stipulation has no force and
15 effect.

16 **Q. Do Staff and Ameren suggest another approach to address affiliate transactions**
17 **compliance?**

18 A. Yes. They suggest OPC should file a complaint against UEC.

19 **Q. Do you agree with this approach?**

20 A. No. This is beside the point. A rate case is the time to audit costs and set the costs charged
21 to customers.

22 **Q. Can you summarize your response to Mr. Oligschlaeger's testimony?**

1 A. Public Counsel’s issue in this case is the fact that neither the Company nor Staff actually
2 put forth, let alone proved in any way that these affiliate transaction costs were prudently
3 incurred. While it is the Company’s burden to prove that its affiliate transactions are
4 prudent, it appears Mr. Oligschlaeger simply presumes UEC’s affiliate transactions are
5 prudent. The affiliate transaction rule defines exactly what proof is required and the Court
6 has been abundantly clear about what audit of affiliate transactions is required.
7 Mr. Oligschlaeger offered his “opinion” on issues, but if Staff had performed the audit with
8 the special scrutiny to affiliate transactions, he would have produced a notable amount of
9 evidence.

10 **Response to Tom Byrne Rebuttal**

11 **Q. Mr. Byrne testifies that: “It is not clear whether Ameren Missouri has materially**
12 **violated the Affiliate Transaction Rule at all.” Rebuttal, Pg 2, lns 38-39. What is your**
13 **response?**

14 A. It is clear UEC has materially violated the rule. The evidence shows that UEC has
15 violated requirements in areas that include all its affiliate transactions. For
16 example, UEC fails to maintain documentation in sufficient detail to show its
17 compliance with 20 CSR 4240-20.015(4)(6)(C).

18 **Q. At pg. 2 lns 22 – 23, Mr. Byrne claims “Ameren Missouri has no material level of**
19 **transactions with unregulated affiliates.” Is this accurate?**

20 A. No. UEC engages in more than \$220,000,000 affiliate transactions with AMS, which is
21 without question an unregulated affiliate of UEC. Any suggestion that level of costs is
22 immaterial is false. Ironically, Mr. Oligschlaeger agrees with this contention on page 11

1 In 8. However, if Mr. Byrne truly believes that this amount is not material, it begs the
2 question why company should try so hard to oppose this adjustment.

3 **Q. Mr. Byrne’s testimony on page 3 lines 1 – 2 states that AMS provides service to UEC**
4 **on a “continual basis.” Does a “continual basis” exempt those transactions from the**
5 **rule?**

6 A. No. Mr. Byrne has not cited to any provision of the affiliate transaction rule that would
7 lead to this conclusion. If it were true the rule only addressed a few discrete transactions
8 there would have been no reason to promulgate the rule.

9 **Q. Does the fact that UEC’s corporate structure has undergone no changes since**
10 **formation in 1997, as Mr. Byrne testifies on page 3, lns 13 – 17, matter in this case?**

11 A. No. the affiliate transaction rule did not go into effect for UEC until June 2003. The fact
12 that UEC’s corporate structure would otherwise have violated a rule that did not exist at
13 that time means nothing.

14 **Q. Mr. Byrne discusses the PUHCA of 1935 on pages 3 – 4 of his testimony. Does the**
15 **PUHCA matter in this case?**

16 A. As already addressed when discussing Mr. Oligschlaeger’s testimony, no. PUHCA was
17 repealed in 2005. Moreover, Mr. Byrne relies on PUHCA to establish that service
18 companies were required to provided services “at cost.” This is irrelevant to the affiliate
19 transaction rule which requires the utility to procure goods or services at the lower of fully
20 distributed cost if the utility did them itself or fair market price. If either the fully distributed
21 cost or fair market price of the goods or services fell below the “price” for the service
22 company to provide the same, the utility should just not use the service company.

1 **Q. Mr. Byrne also discussed the “widespread” use of service companies on page 5 of his**
2 **testimony. Is this relevant to your issue?**

3 A. No. I have no problem with the use of a service company in principal. I only ask that UEC
4 abide by the Commission’s affiliate transaction rules by providing the requisite data to
5 justify its expenditures.

6 **Q. What do you say in response to Mr. Byrne’s Rebuttal on page 5 – 6, that customers**
7 **have not been adversely impacted by UEC’s purchases from AMS?**

8 A. This statement is incorrect. UEC is paying and being charged by AMS costs that AMS is
9 incurring to operate its non-state regulated utility especially Ameren Corporation. The
10 record in this case recognize some examples of AMS inappropriate charges to UEC. For
11 example, UEC continues to pay an increasing amount of the operation of Ameren’s non-
12 state regulated entities. I showed this in Schedule RES-R-7 attached to my rebuttal
13 testimony.

14 **Q. How do you respond to Mr. Byrne’s testimony that other parties have been aware of**
15 **UEC’s affiliate transactions for 20 years because it filed a Cost Allocation Manual**
16 **annually?**

17 A. The rule became effective for UEC in June, 2003. I note that the Company did not submit
18 a CAM for Commission approval until it was required to make this filing in ER-2016-0179.

19 OPC Data Request 1100 requested:

20 “Did UEC file its first CAM for Commission approval due to a requirement
21 in an agreement/settlement approved in a prior UEC Missouri general rate
22 case?”

23 The Company’s response was:

1 “As OPC knows, a stipulation in File No. ER-2014-0258 required Ameren
2 Missouri to file a CAM for approval in its next electric general rate
3 proceeding (which was File No. ER-2016-0179), which Ameren Missouri
4 did. As OPC also knows, an additional stipulation in File No. ER-2016-
5 0179 called for Ameren Missouri to propose a CAM for approval in File
6 No. EO-2017-0176 instead of File No. ER-2016-0179, which Ameren
7 Missouri has done. Ameren Missouri has since submitted its CAM covering
8 calendar year 2018 and, as the notice filed in File No. EO-2017-0176
9 indicates, seeks approval of that CAM which, in all material respects, is
10 identical to the CAM submitted jointly by Ameren Missouri and the Staff
11 in File No. EO-2017-0176.”
12

13 **Q. Is Mr. Byrne’s claim that “all of Ameren Missouri’s costs and revenues have been**
14 **comprehensively examined in eight electric rate cases and four gas rate cases filed**
15 **since the Rule was first adopted” speak to the prudence of the affiliate transactions?**

16 A. No. The cases were examined under the Commission’s presumption of prudence practice.
17 That practice ended with the Supreme Court decision on August 14, 2013. The utility now
18 has the affirmative burden of showing its affiliate transactions are prudent. Compliance
19 with the rule was a good first step in satisfying the utilities’ burden to show the prudence
20 of its affiliate transactions.

21 On July 3, 2014, UEC’s next electric rate case after the Supreme Court’s decision, File No.
22 ER-2014-0258, was filed. In this case, Staff, OPC, and Missouri Industrial Energy
23 Consumers (MIEC) had affiliate transaction issues with such areas as UEC’s being
24 allocated a share of AMC compensation paid to AMC directors and Ameren Services’
25 office in Washington D.C. Ameren Services were issues as to the level of its allocations
26 that should be included in UEC’s revenue requirement. Parties also were seeking a
27 Commission order to open a separate docket to further examine AMS costs after the case
28 was closed.

1 These issues and others were resolved by a stipulation and agreement that increased the
2 Staff's revenue requirement and an UEC commitment that it will seek Commission
3 approval of its CAM as part of its next rate case.

4 **Q. What happened in UEC's next rate case?**

5 A. UEC's next rate case was ER-2017-0179. This filing contained a CAM that UEC applied
6 the Commission for approval. In that case, a stipulation and agreement transferred the
7 CAM issue to a separate docket, EO-2017-0176. Thus the UEC CAM approval process did
8 not start from a baseline of prudent UEC affiliate transactions. The CAM approval process
9 started from a baseline of questioning the validity of UEC affiliate transactions at a
10 transition point following a Supreme Court finding that affiliate transaction cannot be
11 presumed prudent and required affirmative action to meet that burden itself.

12 **Q. How do you respond to Mr. Byrne's argument on pages 7 – 8 of his testimony that**
13 **concludes that, because AMS is providing services "at cost" to UEC, the Company is**
14 **not engaged in "cross-subsidization" and therefore not in violation of the affiliate**
15 **transaction rule?**

16 A. I believe that this is primarily a legal issue, so I think it would better be addressed in
17 briefing. However, as far as my own opinion is concerned, cross-subsidization can still
18 easily occur if the service company (AMS) requires the utility to take more goods or
19 services than it actually needs. That is why the affiliate transaction rule exists in the first
20 place; to require utilities to prove that their affiliate transaction costs are reasonable and
21 prudent.

22 **Q. On pages 11 – 14, Mr. Byrne attempts to argue that UEC has not "consistently"**
23 **violated the letter of the affiliate transaction rules. Is he correct?**

1 A. No. Most of his arguments are repetitive of points I have already addressed, so I will not
2 repeat myself here. However there are several key points I wish to reiterate.

3 First, even if a service company was truly providing goods and services “at cost” that still
4 does not mean that the utility should employ a service company because the utility might
5 still be able to receive services elsewhere at a lower cost. Staff Witness Oligschlaeger
6 makes this same point in his own rebuttal testimony at page 9, lns 1 – 4:

7 “Even with the existence of a service company, there may still be
8 opportunities for a regulated utility to obtain services from an unaffiliated
9 third party at a lower cost than from a service company. In that
10 circumstance, it would be uneconomic and imprudent for the utility to rely
11 on the service company for provision of those particular services.”
12

13 Second, the fact that the Commission has granted KCPL/GMO/Westar a waiver from the
14 affiliate transactions rule, does not help Mr. Byrne’s argument, it hinders it. The rule has
15 section 10 which addresses variances. In this section the rule states:

16 “(10) Variances.

17 (A) A variance from the standards in this rule may be obtained by
18 compliance with paragraphs (10)(A)1. or (10)(A)2. **The**
19 **granting of a variance to one regulated electrical**
20 **corporation does not constitute a waiver respecting or**
21 **otherwise affect the required compliance of any other**
22 **regulated electrical corporation to comply with the**
23 **standards. The scope of a variance will be determined based**
24 **on the facts and circumstances found in support of the**
25 **application.** 1. The regulated electrical corporation shall
26 request a variance upon written application in accordance with
27 commission procedures set out in 4 CSR 240-2.060(11); or”
28 (Emphasis added)
29

30 The rule states that the waiver granted to KCPL/GMO does not constitute a waiver for
31 UEC. The variance will be determined based on the facts and circumstances found in
32 support of the application.

1 **Q. Mr. Byrne discusses case number EO-2017-0176 beginning on page 15. Is this case**
2 **relevant?**

3 A. No. As I already explained when discussing Mr. Oligschlaeger's testimony, this case has
4 been suspended and no final decision was reached. That being said, I find it humorous to
5 note on page 16 of his rebuttal testimony, Mr. Byrne acknowledges that variances to the
6 affiliate transaction rule are necessary for what he calls a "not-for-profit" service company,
7 thereby all but admitting that the AMS structure violates the affiliate transaction rule. Of
8 course, UEC has no such variances.

9 **Q. How do you respond to Mr. Byrne's discussion of the renting of UEC's corporate**
10 **headquarters on page 16 – 17?**

11 A. UEC has provided no evidence to show that AMS is leasing this corporate space from UEC
12 at its fair market value.

13 **Q. Why are you recommending disallowance of the entire costs?**

14 A. Because UEC has not proven prudence.

15 **Response to John Reed Rebuttal**

16 **Q. Mr. Reed suggests you have not provided any justification for disallowing a single**
17 **dollar of the affiliate transactions between AMS and UEC. How do you respond?**

18 A. The Company did not provide a single document that it determined the fair market price or
19 the fully distributed cost for UEC to provide the service for itself. Affiliate transactions
20 are not occurring between independent buyers and sellers, so they may not be presumed to
21 be prudent.

1 **Q. Mr. Reed claims you “effectively presume[] that under the ‘lower of cost or market’**
2 **standard for affiliate transaction pricing that the market value of all of Ameren**
3 **Missouri’s corporate support services is zero.” Reed Rebuttal p. 1:24 -2:26.**

4 A. I do not presume any particular value of the goods and services AMS provides to UEC.
5 There is no documentation that either UEC or AMS has proven the prudence of any of
6 these costs by using the “lower of cost or market” standard required by the Commission’s
7 affiliate transactions rule. The fact that they are corporate support services does not allow
8 the Commission to apply a “presumption of prudence.”

9 **Q. What else do you challenge?**

10 A. I also challenge all of the other “facts” he lists at Reed Rebuttal p. 3-4 as wholly irrelevant
11 to the issue in this case of whether any of the affiliate transactions between AMS and UEC
12 are just and reasonable and prudently incurred.

13 His claim that AMS has provided services to the Company for 22 years and that the services
14 provided to UEC, and the pricing of these services, has remained largely the same for many
15 years indicates the Company did not adjust its recordkeeping to be able to demonstrate its
16 transactions are prudently incurred as a result of the Supreme Court’s 2013 Opinion.

17 **Q. On page 3:16-21, Mr. Reed “[i]n its 1997 order approving the merger of Union**
18 **Electric and CIPS, the Missouri Commission also approved the formation of AMS,**
19 **which is a centralized service company that provides various corporate support**
20 **services to AMC affiliates at cost.” Is this accurate?**

21 A. It is equally irrelevant. Even if it is true that the Commission approved the holding company
22 structure, including the utilization of AMS as the group’s corporate support services
23 provider in Case No. EM-96-149 as Mr. Reed contends, that does not address the changing.

1 His second fact is equally irrelevant. In approving a “holding company structure” the
2 Commission did not approve the prudence of any affiliate transactions. In fact a thorough
3 reading of EM-96-149 proves this statement to be false. The Commission recognized that,
4 “The corporate structure resulting from the proposed merger will include Ameren as a
5 federally regulated utility holding company.” But the federal regulation at that time was
6 the PUHCA which was repealed in 2005.

7 **Q. Also on p. 4, Mr. Reed testifies that the “use of service companies” remains common.
8 Is this relevant?**

9 A. No. As I have said, I have no problem with the use of a service company in principal. I
10 only ask that UEC abide by the Commission’s affiliate transaction rules and the 2013
11 Supreme Court Opinion by providing the necessary data to justify its expenditures.

12 **Q. Mr. Reed claims your statement, “Affiliate transactions are commonly done on terms
13 that are not in the best interest of all the persons or entities entering into the
14 agreement” is unsupported. Reed rebuttal p. 6:4-5. Do you have support for this
15 statement?**

16 A. My support is the Commission’s rule and statements the Commission has made
17 promulgating the rules: In the Commission’s words in the Missouri Register when the
18 Commission promulgated the rules; “Foregoing opportunity costs or shifting the costs of
19 unregulated activities to ratepayers will not generally be in the interests of ratepayers, or
20 for that matter, the longer term interests of the regulated companies. Mo. Reg. p. 55, Vol.
21 25, (Jan. 3, 2000, Vol.25).

22 **Q. Mr. Reed concludes that the context for the affiliate transaction rule is “no longer
23 applicable for UEC.” Do you agree?**

1 A. No. Mr. Reed's position is effectively one that argues for the full repeal of consumer
2 protections from affiliate transaction abuses.

3 **Q. In response to your conclusion: "There is no documentation that UEC has ever been**
4 **in compliance with the Commission's affiliate transaction rules" Mr. Reed refers**
5 **to the number of pages filed in another case. How do you reply?**

6 A. None of the documents contain anything resembling the results of third party bids or the
7 cost to UEC to produce the goods and services itself to support the prudence of a single
8 transaction claimed in the \$220,000,000 in affiliate transactions costs.

9 **Q. Mr. Reed finds it notable you did not refer to any of this material in your direct**
10 **testimony. Is this relevant?**

11 A. No. Those materials are testimony in a completely separate case that do nothing to
12 demonstrate that a single affiliate transaction was prudent. I have reviewed all documents
13 provided in this case and found nothing supporting the prudence of any affiliate transaction.

14 **Q. Why don't you provide any specific examples of UEC's transactions with affiliates**
15 **that you believe are incorrectly priced, or that result in unreasonable expense levels**
16 **for UEC?**

17 A. I cannot cite to specific examples because there is no evidence filed to determine how any
18 affiliate transaction was priced. I have no way of determining the levels of expense due to
19 the total absence of evidence.

20 **Q. Mr. Reed claims that it is not likely that UEC could have secured the services AMS**
21 **provides at a lower cost from itself or a third party. Rebuttal p. 9. Do you agree?**

1 A. No. It is highly likely that UEC could secure the same goods and services from third parties
2 or other methods at a lower cost. But, again, there is no evidence of any sort to support
3 Mr. Reed's opinion.

4 **Q. Does Mr. Reed prove what AMS' costs would be lower?**

5 A. No. He merely speculates that "AMS's cost should be equal to or below" that of UEC.

6 **Q. Does Mr. Reed support his speculation that having a service provider providing a**
7 **service that pays a competitive wage, but has no profit margin, will always have a**
8 **lower cost than a for-profit company that pays a competitive wage? Reed Rebuttal p.**
9 **10-11.**

10 A. No.

11 **Q. Can you summarize your response to Mr. Reed's rebuttal testimony?**

12 A. The Commission cannot rely on Mr. Reed's conclusions or presumptions that AMS costs
13 are lower than UEC's costs to serve itself because he provides no documentation
14 supporting his conclusions or presumptions. Of course, what documentation I have seen
15 shows ** ** from internal assessment.
16 See RES-S-4.

17 **Mr. Hasse Rebuttal Testimony**

18 **Q. Is Mr. Hasse correct that you assert that the Company is not in compliance with the**
19 **Rules?**

20 A. Yes. The Company's failure to train and advise personnel regarding the affiliate
21 transaction rule is one of my issues with the Company.

1 **Q. Mr. Hasse's testimony recounts UEC's training efforts regarding affiliate transaction**
2 **rule compliance. Did your rebuttal testimony address the Company's efforts**
3 **regarding the training provided to employees?**

4 A. No. The element of effort put into training is not a factor excusing the Company from
5 compliance with the affiliate transaction rule.

6 **Q. Why are you just now criticizing the Company's lack of training?**

7 A. I did not have any information about the Company's training until this case. OPC did not
8 receive the new training material nor was OPC asked to comment.

9 **Q. Does Mr. Hasse have any workpapers to support his rebuttal testimony?**

10 A. No. Mr. Hasse had no work papers supporting his testimony.

11 **Q. Mr. Hasse refers back to the stipulation in the EO-2017-0176 case to justify UEC's**
12 **affiliate transactions with AMS. How do you respond to that?**

13 A. I've already addressed why referencing an agreement in another docket, that the
14 Commission has yet to approve, does nothing to prove that AMS related costs are prudent.

15 **Q. Does this conclude your testimony?**

16 A. Yes.