BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Permission and Approval and a Certificate of Convenience and Necessity Authorizing it to Construct a Wind Generation Facility	)))))	**File No. EA-2018-0202** Tariff No. YE-2018-0158

STAFF'S STATEMENT OF POSITION

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through the undersigned counsel, and for its *Statement of Position* states:

Does Ameren Missouri's election under Section 393.1400.5, RSMo, on September 1, 2018, which under Section 393.1400.2 requires that 85% of depreciation expense and return on the High Prairie project be deferred to a regulatory asset preclude the inclusion of 15% of said depreciation and return in Ameren Missouri's RESRAM?

No, Ameren Missouri's utilization of Section 393.1400.2, RSMo., also known as plant-in-service accounting (PISA), does not preclude Ameren Missouri from including the remaining 15% of prudently incurred depreciation (return of) and return on plant necessary to comply with the statutory requirements of 393.1030 RSMo., in an authorized RESRAM.[1]

The Office of the Public Counsel's lay opinion that prior proposed versions of 393.1400 RSMo., included references to a 100% or all of the depreciation and return on qualifying plant while the final truly agreed to and passed version has 85% of depreciation and return on qualifying plant means the legislative intent is for a utility not to recover a 100% of RES compliance cost is contrary to the plain reading of the

[1] *See generally*, Surrebuttal Testimony of Jamie S. Myers, page 4.

statute and Missouri case law. Also contrary to Missouri case law and the plain reading of the statute is the argument that the Legislature knew about the RESRAM and did not explicitly include it in the PISA statute, therefore rendering the statutes irreconcilable.

Legislative history is "at best interesting, at worst distracting and misleading, and in neither case are authoritative" when statutes are straightforward and clear.[2] Senate Bill 564 is a complete legislative act, meant to be taken in total, and is unambiguous.

> When words of statute are unambiguous, first canon, that court must presume that legislature says in statute what it means and means in statute what it says there, is also last canon; judicial inquiry is complete.[3]

OPC does not argue that the statute is ambiguous, therefore the Commission has no need to turn to legislative history to discern the meaning of the statute. Turning to legislative history without arguing a statute is ambiguous is an attempt for OPC to argue what a statute should be without examining what the statute actually is.

Senate Bill 564 enacts 393.1400 RSMo., which allows an electric utility to opt in to PISA, and book 85% of the depreciation and return on qualifying plant to a regulatory asset to be considered for inclusion in the utility's next general rate proceeding. Furthermore, if an electric utility opts in to 393.1400 RSMo., it is bound by the "rate cap" provisions of 393.1655 RSMo. The rate cap also includes language relating to rate adjustment mechanisms under 386.266 RSMo., (the fuel adjustment clause and environmental cost recovery mechanism) as well as 393.1030.4, RSMo., the RESRAM. By including the costs flowing through these rate adjustment mechanisms in calculating if a utility has exceeded the compound annual growth rate limitation, or rate cap,

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[2] N. States Power Co. v. United States, 73 F.3d 764 (8th Cir. 1996).

[3] Connecticut Nat. Bank v. Germain, 503 U.S. 249, 112 S. Ct. 1146, 117 L. Ed. 2d 391 (1992).

the Legislature has explicitly acknowledged that an electric utility can elect PISA as well as flow costs through a RESRAM.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand delivered, transmitted by facsimile or by electronic mail to all counsel of record on this 23rd day of October, 2018.

/s/ Nicole Mers