

**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 )  
Approval of its Surge Protection Program )

**File No. ET-2021-0082**  
Tariff No. YE-2021-0081

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**REPORT AND ORDER**

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**Issue Date:** July 28, 2021

**Effective Date:** August 27, 2021

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## **APPEARANCES**

### **UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI**

**James Lowery**, JBL Law, LLC, 3406 Whitney Court, Columbia, Missouri 65203

**Eric Kendall Banks**, Banks Law LLC, 1824 Chouteau Avenue, St. Louis, Missouri 63103

### **STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:**

**Whitney Payne**, Post Office Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

### **OFFICE OF THE PUBLIC COUNSEL:**

**Nathan Williams**, Chief Deputy Public Counsel, PO Box 2230, Jefferson City, Missouri 65102.

**REGULATORY LAW JUDGE:** Ronald D. Pridgin

# REPORT AND ORDER

## I. Procedural History

### **A. Tariff Filings, Notice, and Intervention**

On September 21, 2020, Union Electric Company d/b/a Ameren Missouri filed tariff sheets designed to implement a surge protection program. The tariff sheets, denominated Tariff No. YE-2021-0081 by the Commission, bore an effective date of December 20, 2020. Ameren Missouri extended the effective date of the tariff to July 31, 2021. The Commission then suspended the tariff until September 30, 2021.

The Commission issued an order and notice on September 22, 2020. The Commission received no intervention requests.

### **B. Evidentiary Hearing**

The evidentiary hearing was held on April 13, 2021. Due to the COVID-19 pandemic, the hearing was convened via WebEx. During the hearing, the Commission admitted the testimony of nine witnesses, and received 17 exhibits into evidence. Post-hearing briefs were filed according to the post-hearing procedural schedule. The final post-hearing briefs were filed on May 25, 2021, and the case was deemed submitted for the Commission's decision on that date.<sup>1</sup>

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<sup>1</sup> "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 20 CSR 4240-2.150(1).

## **II. General Matters**

### **A. General Findings of Fact**

1. Ameren Missouri is a public utility and an electrical corporation in Missouri.<sup>2</sup>
2. The Office of the Public Counsel (“OPC”) is a party to this case pursuant to Section 386.710(2), RSMo<sup>3</sup>, and by Commission Rule 20 CSR 4240-2.010(10).
3. The Staff of the Missouri Public Service Commission (“Staff”) is a party to this case pursuant to Section 386.071, RSMo, and Commission Rule 20 CSR 4240-2.010(10).
4. The Commission finds that any given witness’ qualifications and overall credibility are not dispositive as to each and every portion of that witness’ testimony. The Commission gives each item or portion of a witness’ testimony individual weight based upon the detail, depth, knowledge, expertise, and credibility demonstrated with regard to that specific testimony. Consequently, the Commission will make additional specific weight and credibility decisions throughout this order as to specific items of testimony as is necessary.<sup>4</sup>
5. Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.<sup>5</sup>

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<sup>2</sup> *Application*, p. 1 (filed September 21, 2020).

<sup>3</sup> Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

<sup>4</sup> Witness credibility is solely a matter for the fact-finder, “which is free to believe none, part, or all of the testimony”. *State ex rel. Public Counsel v. Missouri Public Service Comm’n*, 289 S.W.3d 240, 247 (Mo. App. 2009).

<sup>5</sup> An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. *State ex rel. Missouri Office of Public Counsel v. Public Service Comm’n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).

### **III. Disputed Issues**<sup>6</sup>

- I. *May Ameren Missouri lawfully offer its proposed surge protection program as a regulated program?*

#### **Findings of Fact**

6. A surge is a transient wave of voltage or current in an electric circuit typically lasting less than a few milliseconds.<sup>7</sup>

7. The surge protection device Ameren Missouri proposes to use is designed to protect electrical devices from voltage surges and spikes. The device provides this protection by limiting voltage surges that occur in the normal electrical system as power is supplied to an electronic device.<sup>8</sup>

8. If a customer wants to participate in the surge protection program, an installer will install a surge protection device within the meter box on the base of the electric meter.<sup>9</sup>

9. The device is designed to protect covered home appliances from surges that pass through the meter. Should the device fail, the manufacturer's limited warranty is designed to provide compensation.<sup>10</sup>

10. Surge protection devices such as the one Ameren Missouri offers in this case are used in connection with the furnishing of electricity. If Ameren Missouri weren't providing electricity, then the surge protection device would have no use.<sup>11</sup>

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<sup>6</sup> Because the Commission has decided to reject Ameren Missouri's program, the Commission need not address Issues III and following. Those issues were whether the Commission should impose certain conditions on the program if the Commission approved it.

<sup>7</sup> Ex. 3, p. 2.

<sup>8</sup> Ex. 3, p. 3.

<sup>9</sup> Ex. 3, p. 7.

<sup>10</sup> Ex. 3, p. 7; Ex. 4, p. 10; Tr. 111.

<sup>11</sup> Ex. 1, pp. 4-5.

11. The warranty provides coverage for 15 years, of up to \$5,000 per appliance, \$5,000 per occurrence, and \$50,000 in the aggregate. The warranty would cover motor-driven equipment such as HVAC units, refrigerators, washers and dryers, dishwashers, freezers, fans, and cooking appliances.<sup>12</sup>

### **Conclusions of Law**

Electric plant includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.<sup>13</sup>

### **Decision**

The surge protection devices that Ameren Missouri wishes to provide are electric plant. These devices are to be used in connection with the distribution, sale or furnishing of electricity. Staff and OPC have presented policy reasons for the Commission to find that these devices are not plant. However, the Commission is not permitted to graft policy reasons, however sound, onto the plain meaning of the controlling statute.<sup>14</sup>

Furthermore, the Commission is aware other regulated utilities may be offering similar programs that are unregulated. The Commission will open a new file, and order

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<sup>12</sup> Ex. 3, p. 7.

<sup>13</sup> Section 386.020(14) RSMo.

<sup>14</sup> *In the Matter of KCP&L's Request for Authority to Implement a General Rate Increase for Electric Service v. Mo. Public Serv. Comm'n*, 557 S.W.3d 460, 472 (Mo. App. 2018).

its Staff to report to the Commission its understanding of unregulated surge protection programs that regulated utilities are offering.

*II. If it is lawful, should the Commission approve an Ameren Missouri surge protection program and treat the revenue, expense and investment associated with it as a regulated activity?*

### **Findings of Fact**

12. The surge protection program is not needed because Ameren Missouri is already providing safe, reliable, and adequate electrical service.<sup>15</sup>

13. The proposed surge protection program is potentially misleading to customers because it only includes motor-driven household equipment.<sup>16</sup> Non motor-driven equipment, such as electronics, would not be covered.<sup>17</sup>

14. If allowed into rate base, the surge protection devices would likely need to stay in rate base for 15 years.<sup>18</sup>

15. Alternatively, customers have several options to purchase their own surge protection devices.<sup>19</sup>

16. These competitive surge protection devices would provide a similar level of protection as the devices proposed by Ameren Missouri in this case.<sup>20</sup>

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<sup>15</sup> Ex. 3, pp. 2-3; Ex. 9, p. 3.

<sup>16</sup> Ex. 7, p. 2.

<sup>17</sup> Ex. 7, pp. 3-4; Tr, 105.

<sup>18</sup> Tr. 120-121

<sup>19</sup> Ex. 7, pp. 5-6.

<sup>20</sup> Ex. 9, p. 3; Ex. 13, p. 26.



17. While Ameren Missouri seeks to have its surge protection program regulated by the Commission, Ameren Missouri also attempts to insulate itself from any meaningful regulation by claiming the device manufacturer is entirely responsible for handling device failures and warranty claims.<sup>21</sup>

18. The surge protection program appears to require that a customer prove that the device was working before the customer can make a claim under the warranty.<sup>22</sup>

19. Ameren Missouri's cost/benefit analysis of the surge protection program is unreliable.<sup>23</sup>

20. The surge protection program would charge a perpetual monthly fee of \$9.95. This charge would shift the risk of low and short-term participation to non-participating ratepayers.<sup>24</sup>

21. The design of the surge protection program shifts the risk of low participation and short-term participation to non-participating ratepayers.<sup>25</sup>

22. The surge protection program would not have a cost-based rate. If a customer stayed in the surge protection program for the full 15-year life, then that customer would spend \$1,800 for what Ameren Missouri prices as an approximately \$70 device.<sup>26</sup>

### **Conclusions of Law**

No additional Conclusions of Law are needed.

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<sup>21</sup> Tr. 27.

<sup>22</sup> Tr. 80.

<sup>23</sup> Ex. 13, pp. 20-25.

<sup>24</sup> Ex. 13, pp. 12ff.

<sup>25</sup> Ex. 13, pp. 12, 19.

<sup>26</sup> Tr. 33.

## **Decision**

The Commission will not approve the surge protection program. The program is flawed in that customers using the program would be dealing with a third-party device manufacturer that the Commission does not regulate. The Commission cannot protect customers against that third-party's actions.

Also, any customer education Ameren Missouri provides should cover what is covered, but also explicitly warn customers what is not covered. For example, the pending program would not cover non motor-driven equipment, such as televisions, computers, electronic gaming systems, smart devices, etc.

However, the Commission would consider a pilot program that remedies these issues. If the pilot program established that Ameren Missouri, and not a third-party provider, would guarantee the device, with only subscribers paying that cost, then the Commission would consider such a program. Such a program should also give clear notice to customers of all items not covered by a warranty.

### **THE COMMISSION ORDERS THAT:**

1. Ameren Missouri's proposed surge protection program is rejected.
2. The tariff sheets submitted on September 21, 2020, bearing Tariff No. YE-2021-0081 are rejected.

3. This Report and Order shall become effective on August 27, 2021.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Silvey, Chm., Coleman, Holsman, and  
Kolkmeier CC., concur and certify compliance  
with the provisions of Section 536.080, RSMo (2016).  
Rupp, C., dissents.

Pridgin, Regulatory Law Judge

**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 28<sup>th</sup> day of July, 2021.**



  
**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**July 28, 2021**

**File/Case No. ET-2021-0082**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

**Sincerely,**



**Morris L. Woodruff  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.