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**MISSOURI PUBLIC SERVICE COMMISSION**

**FILE NO. ET-2021-0082**

**SURREBUTTAL TESTIMONY**

**OF**

**TOM BYRNE**

**ON**

**BEHALF OF**

**UNION ELECTRIC COMPANY**

**d/b/a Ameren Missouri**

**St. Louis, Missouri  
March, 2021**

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**SURREBUTTAL TESTIMONY**

**OF**

**TOM BYRNE**

**FILE NO. ET-2021-0082**

**I. INTRODUCTION**

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**Q. Please state your name and business address.**

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

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**Q. What is your position with Ameren Missouri?**

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A. I am the Senior Director of Regulatory Affairs.

8

**Q. Please describe your educational background and employment experience.**

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A. In 1980, I graduated from the University of Missouri-Columbia with a Bachelor of Journalism and a 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

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1 Commission. From 1995-2000, I was employed as a regulatory attorney for Laclede Gas  
2 Company (now known as Spire Missouri Inc.). In that position, I handled rate cases and  
3 other regulatory proceedings before the Commission. In 2000, I was hired as a regulatory  
4 attorney by Ameren Services Company and I originally handled regulatory matters  
5 involving local gas distribution companies owned by operating subsidiaries of Ameren  
6 Corporation (now Ameren Illinois Company and Ameren Missouri). In 2012, I was  
7 promoted to the position of Director and Assistant General Counsel, and I was assigned to  
8 handle both gas and electric cases in Missouri. In 2014, I was promoted to my current  
9 position as Senior Director of Regulatory Affairs.

10 **II. PURPOSE OF TESTIMONY**

11 **Q. What is the purpose of your Surrebuttal Testimony in this proceeding?**

12 A. The purpose of my Surrebuttal Testimony is to respond, in general, to the  
13 positions Staff has taken in this case. In particular I provide a high  
14 level response to the overall position Staff has taken in this case, and I will respond to  
15 specific portions of the rebuttal testimony of Staff witnesses Sarah Lange and Lisa  
16 Ferguson.

17 **Q. What is your overall reaction to the position Staff has taken in this**  
18 **case?**

19 A. I am a bit stunned by the degree of opposition to this proposal reflected in  
20 the Staff recommendation filed in this case and in portions of Staff's rebuttal testimony.  
21 We are proposing a relatively simple and modest program--an optional surge protection  
22 program where customers could voluntarily subscribe to a service to protect their  
23 appliances from electrical surges that enter the residence through the electric meter. Our

1 research shows that some customers want such a service and will be willing to pay for the  
2 service. We have designed and priced this service so that it is expected – under a wide  
3 range of scenarios -- to provide a contribution to Ameren Missouri's fixed costs and over  
4 the long run benefit non-participating customers, which contributes to keeping rates  
5 affordable. Giving our customers choices to help meet their evolving desires and  
6 expectations from their electric utility is laudable as is looking for creative ways to keep  
7 rates affordable for all customers.

8 **Q. Does Staff recognize these points?**

9 A. Not at all. Staff argues that our proposal violates the law, constitutes  
10 "an abuse of monopoly power," represents an effort to enrich our shareholders at  
11 the expense of customers, and would be virtually impossible to audit.

12 **Q. Are any of these objections to the proposed program valid?**

13 A. Not in my opinion.

14 **Q. Why does the Staff argue that Ameren Missouri's proposal to offer a  
15 surge protection program is unlawful?**

16 A. The Staff apparently believes that surge protection collars are outside the  
17 definition of "electric plant" contained in Section 386.020(14) RSMo and that this  
18 effectively prevents the Company from offering the surge protection service as a regulated  
19 offering. Section 386.020(14) provides as follows:

20 **"Electric plant"** includes all real estate, fixtures and personal property  
21 operated, controlled, owned, and ***used or to be used for or in connection***  
22 ***with*** or to facilitate the generation, transmission, distribution, sale or  
23 furnishing of electricity for light, heat or power; and any conduits, ducts or  
24 other devices, materials, apparatus or property for containing, holding or  
25 carrying conductors used or to be used for the transmission of electricity for  
26 light, heat or power [emphasis added].

1           In its recommendation filed in this case, the Staff described the functions of a surge  
2 protection collar, and stated:

3           These functions, while noble, cannot be said to be in furtherance of the  
4 manufacture, sale or distribution of electricity for light, heat or power. By  
5 the nature of Ameren Missouri's own description, the device functions  
6 alongside the existing provision of electricity into the customer's home. The  
7 question would be can this device be considered a piece of electric plant?  
8 While the collar is a fixture as that term is used in the statutory definition,  
9 it does not facilitate the generation, transmission, distribution, sale or  
10 furnishing of the electricity.<sup>1</sup>

11           In her rebuttal testimony Staff witness Ferguson expanded on this theme. She  
12 explains that in her opinion the surge protection program should not be regulated because  
13 "[w]hile the surge protection program may have its benefits for customers, it is not a  
14 *necessity* for customers as they can still receive electrical service without the surge  
15 protection device" (emphasis added).<sup>2</sup> She goes on to say that "Ameren Missouri is trying  
16 to portray this Program as an 'extension' of its base provision of electric service because,  
17 without that assumption it is clear that the Program should not be regulated under the  
18 jurisdiction of the Commission *as it is not based on the manufacture and sale of*  
19 *electricity*" (emphasis added).<sup>3</sup>

20           **Q.     Is the Staff's view that Missouri law prohibits Ameren Missouri from**  
21 **offering surge protection service as a regulated offering supported by the plain**  
22 **language of the statute on which the Staff relies?**

23           A.     No, it isn't. The definition of "electric plant" contained in the statute clearly  
24 is not limited to items strictly necessary to facilitate the generation, transmission,  
25 distribution, sale or furnishing of electricity as Staff suggests. Instead, the statute includes

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<sup>1</sup> ET-2021-0082, Staff Recommendation, Paragraph 4, filed November 10, 2020.

<sup>2</sup> Rebuttal Testimony of Lisa Ferguson, p. 3, lines 6 - 8.

<sup>3</sup> Rebuttal Testimony of Lisa Ferguson, p. 3, lines 11-14

1 a second category of items—items used or to be used "in connection with" the generation,  
2 transmission, distribution, sale or furnishing of electricity. Surge protection collars are  
3 unquestionably used in connection with the furnishing of electricity. If there were no  
4 electricity being furnished, the surge protection collar would have no function.

5 The Staff's confusion about this point is also reflected in Staff witness Lange's  
6 testimony. She summarily states, "Ameren Missouri has not demonstrated that the  
7 proposed program falls under the Commission's jurisdiction."<sup>4</sup> She also argues that just  
8 because the program is cost effective doesn't mean it should be approved as a regulated  
9 service. She points out that if all cost effective programs could be provided by regulated  
10 utilities that could justify Ameren Missouri providing a kitten petting service as a regulated  
11 offering.<sup>5</sup> But the obvious difference is that Ameren Missouri's proposed surge protection  
12 program is provided "in connection with" the Company's delivery of electric service – just  
13 as the statute contemplates -- whereas a kitten petting service would have no connection  
14 with electric service.

15 **Q. Ms. Ferguson opposes Ameren Missouri offering the surge**  
16 **protection service as a regulated activity because it is not a strict "necessity" in order**  
17 **for Ameren Missouri to deliver basic electric service. Are the regulated activities of**  
18 **Missouri utilities limited to those that are strictly necessary to deliver basic electric**  
19 **service?**

20 A. No. There are many examples where utilities engage in regulated activities  
21 that are not strictly necessary for the delivery of basic electric service to Missouri  
22 customers. For some of these activities, all the utility does is earn revenues that offset its

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<sup>4</sup> Rebuttal Testimony of Sarah L. K. Lange, p. 26, lines 6-7.

<sup>5</sup> Rebuttal Testimony of Sarah L. K. Lange, p. 26, lines 13-25.

1 revenue requirement that in turn reduces rates for its customers. For example, utilities  
2 sometimes lease property which is temporarily not being used to provide utility service and  
3 credit customers for the lease revenues in rate cases. Ameren Missouri leases pole space  
4 and communications tower space to other companies and credits revenues to customers. In  
5 the past, Ameren Missouri has engaged in coal refinement operations at its coal-fired  
6 energy centers which earned revenue for customers, yet those operations were not  
7 necessary to produce electricity at those plants. Perhaps most significantly, Ameren  
8 Missouri regularly sells any excess power that it generates and credits revenues to  
9 customers through the fuel adjustment clause. None of these activities is strictly necessary  
10 for the generation, transmission, distribution, sale or furnishing of electricity to Missouri  
11 customers. But all of these activities are performed "in connection with" the Company's  
12 provision of electric service and are treated as regulated activities with costs and revenues  
13 above-the-line.

14 **Q. All of the examples you listed above involve optimizing the use of assets**  
15 **that are needed to provide basic electric service. Are there any examples of regulated**  
16 **activities done "in connection with" the provision of electric service that, like the**  
17 **proposed surge protection program, do not simply involve optimizing the use of**  
18 **existing regulated assets?**

19 **A.** Yes. Several examples come to mind. One is the program that the  
20 Commission recently approved which enables Ameren Missouri to incentivize electric  
21 vehicle charging station construction in its service territory. This program is expected to  
22 ultimately benefit customers by fostering new sources of revenue for regulated electric  
23 service to electric vehicles, as well as provide environmental benefits. But the program



1 itself is not directly providing electric service—it is a service "in connection with" the  
2 provision of electric service. Energy efficiency ("EE") programs are another example.  
3 Although the Missouri Energy Efficiency Investment Act is a specific statute that  
4 authorizes electric utilities to engage in energy efficiency programs, electric utilities were  
5 engaging in such programs long before the statute was passed. And there is no similar  
6 gas energy efficiency statute. Again, EE programs are not strictly necessary for the provision  
7 of electric service, they are just provided "in connection with" such service and provide  
8 benefits to customers. A third example is Spire Missouri's appliance repair program, which  
9 as I understand it provides above-the-line revenues to help reduce the cost of basic gas  
10 service for customers. Again, this program is not strictly necessary for Spire to provide  
11 basic gas service to its customers, but it is provided in connection with gas service and it  
12 helps keep the cost of basic gas service lower than it would otherwise be.

13 **Q. Even if it would be legal for Ameren Missouri to provide the proposed**  
14 **surge protection service, wouldn't it be a better policy decision for the Commission to**  
15 **confine Ameren Missouri and other regulated electric utilities to just providing what**  
16 **Staff apparently views as traditional utility service, just like they provided in the**  
17 **1930's, '40's and '50's?**

18 **A.** No. In my opinion it would be a bad policy decision to limit utilities to  
19 providing only those services they have traditionally provided. Today many utility  
20 customers want options from their electric service providers that modern technology  
21 affords. This can range from time-of-use rate options enabled by AMI meters to new  
22 products and services provided in connection with electric service, such as voluntary  
23 renewable energy subscription programs (like the Company's Community Solar offering), or

1 the surge protection service we are proposing in this case. Commissioner Rupp has long  
2 advocated that utilities should be working diligently to provide their customers more  
3 convenience, choice and control—the three Cs. I completely agree with Commissioner  
4 Rupp on this point. But if utilities are confined to only doing what they've always done the  
5 way they have always done it, as the Staff's position suggests, there will be no opportunities  
6 to enhance the three Cs for customers. Surge protection is a perfect example of a service  
7 that enhances convenience, choice, and control for customers and electric utilities should  
8 be encouraged to offer.

9 Looking to the future, as customers' needs and expectations continue to evolve, and  
10 the "grid of the future" increasingly incorporates distributed renewable resources, multi-  
11 directional power flows, advanced communications facilities and other modern technology  
12 it will be increasingly important for regulated electric utilities to have the flexibility to offer  
13 more and better services to their customers to take advantage of the opportunities that this  
14 evolution will present. Confining electric utilities to providing "basic electric service" of  
15 the type provided in the 1930's, '40's and '50's in such an evolving environment, with so  
16 many opportunities for customers is not an appropriate policy decision in my opinion.

17 **Q. But can't surge protection service be provided on an unregulated basis?**  
18 **Doesn't that suggest that it should not be provided as a Commission-regulated**  
19 **offering?**

20 A. Surge protection can be and is provided in various forms on an unregulated  
21 basis. The simplest example of this is a surge protection strip that is available in any  
22 hardware store. But just because a service is available in some form or another from  
23 unregulated providers does not suggest that the Commission should preclude the option of

1 customers obtaining services provided "in connection with" regulated electric service from  
2 their electric utility. Some customers may want the convenience of getting surge protection from  
3 their electric utility. Some customers may feel more confident if their electric utility is  
4 responsible for installing a surge protection collar than if someone else does it. Some  
5 customers may feel more confident that the Commission regulates the service that their  
6 utility provides. There is simply no reason to prevent customers from having the option of  
7 a regulated surge protection service provided in connection with basic utility services.

8 **Q. Since surge protection could, theoretically, be provided on an**  
9 **unregulated basis, why doesn't Ameren Missouri just offer it as an unregulated**  
10 **service like other utilities across the country already have?**

11 A. There are at least two reasons that Ameren Missouri is not offering this  
12 service on an unregulated basis. First, Ameren Missouri's business model is entirely  
13 focused on providing the best Commission-regulated service possible to its customers. We  
14 want to focus on providing not just reliable service at reasonable rates, but also offering  
15 customers options to customize their service as technology permits—more convenience,  
16 choice and control. We don't have any unregulated Missouri operations, and we are not  
17 interested in venturing into the unregulated world with this program. Second, an important  
18 aspect of this program is that it is expected to contribute to Ameren Missouri's recovery of  
19 fixed costs and keep rates more affordable for all customers over the long run. If Ameren  
20 Missouri offered the service on an unregulated basis, shareholders would keep profits from  
21 the service, and the customer affordability benefits would not be realized.

1           **Q.     If the surge protection service is approved by the Commission, would**  
2 **Ameren Missouri be willing to shoulder any losses that the program might sustain**  
3 **and still use any profits to reduce rates for customers?**

4           A.     No. Ameren Missouri is not willing to agree to a one-sided model where  
5 shareholders pay all losses but customers reap all gains that might occur. If offering this  
6 program is deemed beneficial and approved by the Commission we would expect all costs  
7 and revenues to be above-the-line and a representative amount of each included in the  
8 calculation of the Company's revenue requirement in its rate cases. It is certainly possible  
9 that due to start-up costs the program could experience short-term losses at the beginning.  
10 But our analyses, which were not even seriously challenged by the Staff or Office of Public  
11 Counsel, should provide the Commission with confidence that over the long run the  
12 revenues will exceed the costs, since the rate we are proposing to charge is just about triple  
13 the cost of the program under expected enrollment levels. And it is important to note that  
14 regulatory lag inherent in the rate setting process will naturally result in the sharing of any  
15 losses and gains between customers and the Company. For example, if there are short-term  
16 losses at the beginning of the program shareholders will share the losses until the costs and  
17 revenues are included in rates. Similarly, the Company will keep any gains from the  
18 program in between rate cases, and those gains will be reflected in rates once each rate case  
19 is complete. Nonetheless we expect that over the long run this program will provide  
20 substantial and sustained benefits to all customers.

21           **Q.     Ms. Ferguson argues that if the program is approved it would create**  
22 **almost insurmountable problems for auditors in the Company's rate cases. Do you**  
23 **agree?**

1           A.     No, I do not. The only challenges that would occur is if the Staff wants to  
2 adopt a one-sided approach where all losses are borne by shareholders and all benefits  
3 retained by customers. If that approach were adopted Staff would have to develop detailed  
4 cost calculations, including allocation of overhead costs for the program in every rate case  
5 in order to disallow any temporary losses. But as previously mentioned, this approach is  
6 not appropriate. If this program is approved all costs and revenues should remain above-  
7 the-line. Staff certainly could check on the progress of the program through data requests,  
8 but there would be no need to perform the detailed cost study that Staff is concerned about.

9           I should also point out that this program could be beneficial to customers even if it  
10 doesn't earn a "profit" based on a full allocation of costs. So long as the program pays for  
11 the variable costs associated with it, and provides some contribution to the Company's fixed  
12 costs, non-participating customers will still benefit.

13           **Q.     If Staff doesn't perform a detailed cost study to follow every penny of**  
14 **direct and allocated costs associated with the program in every rate case, couldn't the**  
15 **program result in large subsidies from non-participating customers?**

16           A.     No. The scope of the program is small relative to Ameren Missouri's  
17 revenue requirement. Although it is possible that the program could experience some  
18 losses in its early years, the magnitude of these short-term losses should not be significant.  
19 Ameren Missouri witness Steven Wills has provided detailed calculations that support this  
20 point. And, as I previously indicated, the evidence strongly suggests that over the long run  
21 the revenues from the program will provide a contribution to help customer affordability  
22 under a wide range of scenarios. Although the success of any program can never be 100%

1 guaranteed until it is tried, there is strong evidence that this particular program is likely to  
2 be successful.

3 **Q. If Staff doesn't exhaustively examine the costs and revenues of the**  
4 **program in each rate case, how will the Commission be able to determine if the**  
5 **program is actually helping with customer affordability?**

6 A. I would suggest that the Commission require as a condition of approving  
7 this program that the Company submit a report on the program three years after it is  
8 launched. This report would, among other things, show whether the program achieved its  
9 goal of enhancing affordability to non-participating customers. In the unlikely event that  
10 the program is failing to achieve its affordability goals, then the Company would need to  
11 end it and of course the Commission always retains the power to determine if a given tariff  
12 is no longer just and reasonable. Again, this is a modest program that has the potential to  
13 give participating customers an option they desire and is expected to help with affordability  
14 to other customers. The Commission should approve it.

15 **Q. Is this an important case?**

16 A. Yes. Although the surge protection program Ameren Missouri has  
17 proposed is modest, and the financial stakes are relatively low, I view this case as a  
18 critically important fork in the road for Missouri regulation. The important policy question  
19 that is being presented to the Commission in this case is whether utilities should be  
20 confined to providing basic utility service of the kind that they have historically provided,  
21 and whether the services they offer should only be those strictly necessary to deliver  
22 electricity to customers. Our view is that the regulated activities of electric utilities should  
23 not be so confined and that electric utilities should be encouraged to offer regulated

Surrebuttal Testimony of  
Tom Byrne

1 products and services that their customers want, that are provided "in connection with"  
2 basic electric service, that afford customers more convenience, choice and control over the  
3 services they receive, and that have the ability to contribute to overall affordability for  
4 electric service for all customers. How the Commission addresses these issues in this case  
5 will be informative to Missouri utilities and all other stakeholders.

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

7 A. Yes it does.

**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                )     File No. ET-2021-0082  
for Approval of its Surge Protection Program.        )

**AFFIDAVIT OF TOM BYRNE**

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

Tom Byrne, being first duly sworn on his oath, states:

My name is Tom Byrne and on his oath declare that he is of sound mind and lawful age;  
that he has prepared the foregoing *Surrebuttal Testimony*; and further, under the penalty of perjury,  
that the same is true and correct to the best of my knowledge and belief.

*/s/Tom Byrne*  
Tom Byrne

Sworn to me this 19<sup>th</sup> day of March, 2021.