

Exhibit No.:  
Issue(s): Rate Case Expense  
Witness: Tom Byrne  
Type of Exhibit: Direct Testimony  
Sponsoring Party: Union Electric Company  
File No.: ER-2019-0335  
Date Testimony Prepared: July 3, 2019

**MISSOURI PUBLIC SERVICE COMMISSION**

**FILE NO. ER-2019-0335**

**DIRECT TESTIMONY**

**OF**

**TOM BYRNE**

**ON**

**BEHALF OF**

**UNION ELECTRIC COMPANY**

**D/B/A AMEREN MISSOURI**

**St. Louis, Missouri  
July 2019**

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

9 **II. PURPOSE OF TESTIMONY**

10 **Q. What is the purpose of your direct testimony?**

11 A. The purpose of my direct testimony is to support Ameren Missouri's  
12 calculation of rate case expense, which is included as part of the revenue requirement in  
13 this case sponsored through the direct testimony of Ameren Missouri witness Laura Moore.

14 **Q. What is the annual amount of rate case expense that Ms. Moore has**  
15 **included in her calculation of the Company's revenue requirement?**

16 A. Ms. Moore has included \$555,496 of rate case expenses in her calculation  
17 of the Company's revenue requirement.

18 **Q. How was this amount determined?**

19 A. Ms. Moore calculated the average expenses incurred in Ameren Missouri's  
20 last three electric rate cases (excluding the cost of a depreciation study required by  
21 Commission rules), as reflected below:

22	File No. ER-2012-0166	\$1.485 million
23	File No. ER-2014-0258	\$2.444 million

1           File No. ER-2016-0179           \$0.581 million  
2           Average Rate Case Expense       \$1.503 million

3           Then she calculated an amortization of this amount over three years, resulting in a  
4 revenue requirement for rate case expense of \$501,045 (not counting depreciation study  
5 costs). With regard to the expense incurred for the depreciation study in this case, Ms.  
6 Moore used the cost of the last depreciation study (associated with File No. ER-2014-0258)  
7 as an estimate for the cost of the study submitted in this case but used an amortization  
8 period of five years to determine the revenue requirement impact, since the Commission's  
9 rules require electric utilities to submit depreciation studies every five years. Adding a  
10 five-year amortization of the depreciation study costs to the \$501,045 results in a total  
11 revenue requirement impact of rate case expense of \$555,496.

12           **Q.    Is this a reasonable amount of rate case expense to include in the**  
13 **Company's revenue requirement?**

14           A.    In my opinion, it is. The rate cases that were used in developing the average  
15 rate case expense address a variety of circumstances. One of the cases was settled, so the  
16 expense the Company incurred for that rate case is a bit lower than the average. The other  
17 cases were litigated, which caused higher-than-average expenses. The average of these  
18 rate cases, which reflects the actual experience of the Company and does not account for  
19 inflation, is reasonable in my view.

20           Amortization over a three-year period is also quite reasonable and in fact,  
21 conservative. Over the last approximately 13 years, Ameren Missouri has filed a rate case  
22 approximately every 22 months. A three-year amortization spreads rate case expenses over

1 a relatively long period compared to the Company's recent experience regarding the timing  
2 of rate cases, reducing the amount of expense that is included in the revenue requirement.<sup>1</sup>

3 **Q. Has Ameren Missouri been diligent in controlling its rate case**  
4 **expenses?**

5 A. Yes, we have. We use in-house attorneys to litigate our cases, along with  
6 one outside attorney, James Lowery, from central Missouri, where the hourly rates for  
7 attorneys are typically lower than in larger cities. We are also diligent in using internal  
8 witnesses to support our case where possible and carefully considering cost when we hire  
9 outside witnesses.

10 **Q. In two recent Commission cases involving Kansas City Power & Light**  
11 **Company and Spire Missouri, the Commission ordered those utilities to share in the**  
12 **costs incurred in litigating their rate cases, and those decisions were upheld by the**  
13 **Missouri Courts of Appeal for the Western District and the Southern District. Does**  
14 **this suggest that the Commission should require the sharing of rate case expenses in**  
15 **all cases?**

16 A. In my opinion, no. Although the court decisions indicate that it was lawful  
17 for the Commission to require the utilities to share the cost of the rate cases in those two  
18 particular situations, I do not think that it is good regulatory policy to require cost sharing  
19 in all cases. Utilities are required to file rate cases to update their revenue requirements so  
20 that their rates reflect the legitimate increases in the costs they must incur to provide safe  
21 and adequate service to customers (or in some cases to reduce rates to reflect decreased

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<sup>1</sup> More recent history also suggests that a three-year amortization period is conservative given that over the past approximately 5 years, the Company has filed an electric rate case at approximately two and one-half year intervals.

1 costs). Rate cases are necessary to ensure the financial integrity of utilities and to ensure  
2 they have the cash flow and access to capital they need to invest in their systems and  
3 otherwise provide services, all of which ultimately benefit customers. They are also  
4 necessary to ensure that customers are paying no more or less than they should for utility  
5 service. Moreover, the frequency of rate cases can be dictated by statute if a utility is to  
6 retain an electric fuel adjustment clause or a gas or water infrastructure system replacement  
7 surcharge. In short, rate case expenses are a normal cost of providing service to customers  
8 and a reasonable amount of prudently incurred rate case expenses should be included in  
9 rates.

10 **Q. Does the fact that utility shareholders benefit from rate cases provide a**  
11 **reason that shareholders should share rate case expenses?**

12 A. No. Shareholders benefit in some way or another from almost everything a  
13 utility does and that is exactly how public utility regulation is designed to operate. For  
14 example, the installation of capital items which are included in rate base benefits of  
15 shareholders because they earn a return on those assets. They should earn a return because  
16 they provide the equity capital that a utility must have if it is going to discharge its  
17 obligation to provide safe and adequate service at just and reasonable rates. The fact that  
18 they earn a return does not mean that a portion of the cost of every generating unit,  
19 substation, pole, and wire should be borne by shareholders. Similarly, shareholders benefit  
20 from operations and maintenance expenses that enable the utility to operate its system,  
21 provide service to customers, and collect money from customers. However, it would not  
22 be appropriate for utility shareholders to bear a portion of prudent and necessary operations  
23 and maintenance costs. Prudent rate case expenses are no different, and they ought to be

1 fully reflected in the revenue requirement upon which rates are based. Otherwise, a prudent  
2 and necessary expense of operating a public utility is simply being ignored.

3 **Q. Do commissions in other states require utility shareholders to bear a**  
4 **portion of their prudently-incurred rate case expenses?**

5 A. Not typically. In 2011, the Commission Staff submitted a questionnaire on  
6 this topic to the other 49 states. The survey data, contained in a Staff Report issued in  
7 August 2015, indicated that for most commissions that responded, either rate case expenses  
8 were not an issue or all prudent expenditures were allowed, with no sharing or cap on the  
9 expenses. None of the survey respondents indicated that they had a general policy  
10 apportioning rate case expenses between shareholders and customers. (File No. AW-2011-  
11 0330, Staff Report, August 2013, page 8). Based on this survey, it appears that such a  
12 policy would be outside the mainstream of utility regulation across the country.

13 **Q. Even if it was appropriate to apportion rate case expenses in the Spire**  
14 **Missouri and KCPL cases, does that mean it is appropriate to apportion such**  
15 **expenses in this case?**

16 A. No. If rate case expense apportionment is to be used, it should only be used  
17 where the facts of the case suggest that it is warranted. In the Spire Missouri appeal, the  
18 Southern District listed numerous specific facts and circumstances set forth in the  
19 Commission's findings in that case which the Commission concluded justified its decision  
20 to apportion rate case expenses. Few of those facts and circumstances apply in this case.  
21 The Commission's findings in that case were as follows:<sup>2</sup>

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<sup>2</sup> The following bullet points recite the Commission's findings in its Amended Report and Order in File No. GR-2017-0215.

- 1       • While Spire Missouri is able to recoup the cost of its legal counsel and expenses  
2       through utility service rates, the Office of the Public Counsel ("OPC"), the entity  
3       representing ratepayers, operates within a tight annual budget, and the intervenors  
4       pay their own legal and expert witness expenses.
- 5       • Spire Missouri's witness testified that the company enters into a rate case with an  
6       estimate of its rate case expenses but had no firm ceiling or other mechanism in  
7       place to limit those expenses.
- 8       • Approximately half of the issues in this case were raised by Spire Missouri, which  
9       has a high level of discretion and control over the content and methodologies  
10      proposed in the rate case.
- 11      • Awarding a utility all of its incurred rate case expenses could provide the utility  
12      with a significant financial advantage over other participants in the rate case  
13      process, who may be constrained by budgetary and other financial restrictions.  
14      Such a practice does not encourage reasonable levels of cost containment in the  
15      utility's rate case expense decisions.
- 16      • Staff proposed one disallowance for the procurement of an outside consultant firm,  
17      ScottMadden, to perform a Cash Working Capital study. Staff proposed that this  
18      expense be born entirely by the shareholders and not be shared with the ratepayers  
19      because it was not a prudent expense.
- 20      • [OPC] also recommended a disallowance for the expenses related to Spire  
21      Missouri's witness Thomas J. Flaherty, because of the high hourly rate charged by  
22      this expert.

- 1       • [Spire Missouri] also admitted that it purposefully takes the more 'aggressive'
- 2           positions and builds in 'a little bit of cushion' into its requests.
- 3       • Spire Missouri has pursued issues and incurred rate case expenses in this case that
- 4           largely benefit only the shareholders, such as employing an outside expert witness
- 5           to support its recommended return on equity of 10.35 percent, the highest of any
- 6           large Missouri utility including two utilities owning nuclear power plants, and
- 7           litigating the Forest Park property issue.
- 8       • Spire Missouri has pursued more new, unique shareholder-focused ratemaking
- 9           tools in this case to insulate shareholders from risk, such as three new tracking
- 10          mechanisms (environmental expense tracker, cyber security tracker, and major
- 11          capital projects tracker) and a revenue stabilization mechanism.
- 12       • Spire Missouri has pursued utility expenses that are highly discretionary, do not
- 13          benefit customers, and are typically allocated entirely to shareholders, such as
- 14          incentive compensation tied to earnings per share and a retention mechanism, a
- 15          onetime adder to ROE for its claimed benefits of acquisitions in Alabama and
- 16          Mississippi, and performance metrics.
- 17       • Spire Missouri's witness for rate case expense testified that the basic 'goal' of the
- 18          rate case is to receive its revenue requirement increase, that 'there is a little bit of
- 19          cushion built into what [Spire Missouri] asked for,' and that [Spire Missouri] never
- 20          expected to actually receive that amount. Such a request is purely for the benefit
- 21          of the shareholders.
- 22       • [A] number of these litigated issues were unique shareholder-focused ratemaking
- 23          tools, such as the revenue stabilization mechanism, the requested high rate of return

1 of 10.35 percent, three new tracking mechanisms to limit shareholder risk, and  
2 earnings-based incentive compensation which has been consistently denied by the  
3 Commission. It was Spire Missouri's decision and entirely within Spire Missouri's  
4 power to pursue these issues and to file this rate case and the shareholders stood to  
5 benefit from those issues. Also, [Spire Missouri's] witness admitted that the  
6 company 'padded' its revenue requirement beyond what it expected to receive by  
7 pursuing strong positions on issues it did not expect to win, which is clearly to the  
8 benefit of the shareholders over the ratepayers. Finally, rate case expense for this  
9 proceeding has far exceeded [Spire East's] and [Spire West's] estimates and their  
10 historical rate case expense levels.

11 • Staff and [the OPC] each argue that certain expenses of Spire Missouri in this  
12 matter were not prudent and should be borne entirely by the shareholders.  
13 However, the Commission does not find that any specific individual items of rate  
14 case expense were imprudent. A rate case expense sharing mechanism will act as  
15 sufficient incentive for the company to manage its costs.

16 **Q. Which of the facts and circumstances from the Spire Missouri case that**  
17 **the Commission cited do not apply in this case?**

18 A. Most of the Commission's findings related to rate case expenses in the Spire  
19 Missouri are not applicable in this case:

20 • Because Ameren Missouri is utilizing an average of the expenses from its last three  
21 electric rate cases, it does have a "firm ceiling" in place to limit the amount of rate  
22 case expenses it can recover in this case.

- 1       • The Commission found that approximately half of the issues in the Spire Missouri  
2       case were raised by Spire Missouri; in this case Ameren Missouri has used  
3       commonly accepted methodologies to calculate most expenses and determine its  
4       revenue requirement (which is a rate reduction). I do not expect that Ameren  
5       Missouri's methodologies will raise a disproportionate number of issues.
- 6       • The relatively modest amount of Ameren Missouri's proposed rate case expense is  
7       not enough to provide it with a significant financial advantage over other  
8       participants. As noted, the Company is placing a firm ceiling on its rate case  
9       expense request in this case. The Staff is of course funded by utility assessments,  
10      the largest portion of which are paid by the Company, and the question of what  
11      resources OPC should or should not have is a matter of policy for the General  
12      Assembly; the Company should not be denied legitimate rate case expenses based  
13      on that policy decision. And the idea that entities like the Missouri Industrial  
14      Energy Consumers ("MIEC") and the Missouri Energy Consumers Group  
15      ("MECG"), which are funded by large national or multi-national corporations  
16      (often much larger corporations than Ameren Missouri), are at a "significant  
17      disadvantage" is simply not true. The Commission should keep in mind that the  
18      utility must deal with multiple adverse parties and address each and every issue in  
19      a rate case, regardless of which party raised it.
- 20      • Ameren Missouri does not expect parties to recommend disallowances for  
21      imprudently incurred costs of outside experts. However, if the Commission finds  
22      that the cost of a particular expert is unreasonable or imprudent, the Commission

1           should make an evidentiary-based finding of imprudence and disallow the  
2           imprudent part of that particular expense, not all of the other reasonable expenses.

3           • Ameren Missouri is not pursuing issues similar to those that the Commission  
4           identified in the Spire Missouri case that some might claim as benefitting only  
5           shareholders, such as a high return on equity.

6           • Ameren Missouri is not pursuing new, unique beneficial to shareholder only  
7           ratemaking tools.

8           • Ameren Missouri is not pursuing expenses that are highly discretionary, do not  
9           benefit customers and are typically allocated to shareholders, like incentive  
10          compensation tied to earnings, an adder on its return on equity or performance  
11          metrics.

12          • Ameren Missouri has not testified that there is cushion in its revenue requirement  
13          or that the Company never expects to recover the amount that it is requesting. In  
14          fact, Ameren Missouri's revenue requirement is well-founded and supported by  
15          evidence.

16          For all of these reasons, Ameren Missouri is in a vastly different position than Spire  
17          Missouri was. Its rate case expenses are reasonable and consequently the Commission  
18          should allow it to reflect in its rates the full amount that Ms. Moore has included in her  
19          calculation of the Company's revenue requirement.

20               **Q.     Does this conclude your direct testimony?**

21               A.     Yes, it does.

