

Exhibit No.:  
Issue(s): Policy  
Witness: Tom Byrne  
Type of Exhibit: Surrebuttal Testimony  
Sponsoring Party: Union Electric Company  
File No.: GR-2019-0077  
Date Testimony Prepared: July 10, 2019

**MISSOURI PUBLIC SERVICE COMMISSION**

**FILE NO. GR-2019-0077**

**SURREBUTTAL TESTIMONY**

**OF**

**TOM BYRNE**

**ON**

**BEHALF OF**

**UNION ELECTRIC COMPANY**

**d/b/a Ameren Missouri**

**St. Louis, Missouri  
July, 2019**

**P**

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1 the amount of refunds Ameren Missouri receives as a result of the ongoing property tax appeals  
2 for its gas distribution operations between June 1, 2019 through the true-up cutoff established by  
3 the Commission in its next general rate case as a deferred regulatory liability. However, Staff  
4 suggests that the proper ratemaking treatment for the regulatory liability would be determined by  
5 the Commission in a future rate case.

6 **Q. Do you have any update on the status of the May 17, 2019 Missouri State Tax**  
7 **Commission Hearing Officer order ruling in favor of Ameren Missouri that Mr. Kunst**  
8 **mentioned in his rebuttal testimony?**

9 A. Yes. On June 14, 2019, the Respondent (the Assessor for Cole County, Missouri)  
10 applied for review of the Hearing Officer's decision and order after remand. So, this litigation is  
11 ongoing.

12 **Q. Do you agree with Mr. Kunst's proposed one-way tracker to account for**  
13 **property tax appeal refunds without any corresponding offsets?**

14 A. No. The Company's primary position is that no tracker should be established at this  
15 time, since relatively few of the property tax refunds have been paid to date and it is unclear if or  
16 when any other refunds will be paid in the future. However, if the Commission does decide to  
17 implement a tracker, it should include not only the property tax refunds, but also the significant  
18 costs that Ameren Missouri was required to incur in order to pursue multiple property tax cases  
19 through three appeals to the Missouri Courts of Appeals, along with the remand of those cases.  
20 The attorneys' fees, consultants' fees, and other costs incurred (and those that are yet to be  
21 incurred), in order to obtain these extremely favorable rulings, which if sustained will not only  
22 produce refunds from property taxes paid in past years but should also reduce future property taxes,  
23 clearly should be included as an offset in the tracker. Staff's position to "cherry pick" the refunds

1 without considering the costs that needed to be incurred and continue to be incurred in order to  
2 obtain any refunds is unreasonable.

3 **Q. You also propose inclusion in the tracker of property tax expense changes**  
4 **incurred since 2009, but on page 5, lines 11-14 of Mr. Kunst's rebuttal testimony, he states**  
5 **that he opposes including property tax changes in the tracker. Why is it appropriate to do**  
6 **so?**

7 A. Ameren Missouri's current rates are based on a revenue requirement that included  
8 property taxes from 2009. The property tax appeals started in the year 2013 and were pursued for  
9 every year thereafter. Since 2009, Ameren Missouri's property taxes increased materially, but those  
10 property tax increases were not reflected in the rates paid by customers. If customers are to receive  
11 the property tax refunds associated with 2013 and subsequent years, they should also have to pay  
12 the property taxes for those years. Said another way: customers should not get refunds of property  
13 taxes that were never used to set the Company's revenue requirement in the first place. As a  
14 consequence, the property tax expense changes since 2009 should also be included as an offset in  
15 the tracker.

16 **Q. For property tax refunds that have already been received, Mr. Kunst argues**  
17 **that they should be amortized over \*\* \_\_\_\_\_,\*\* the period until the Staff proposes that**  
18 **Ameren Missouri should be required to file another gas rate case. Do you agree with this**  
19 **portion of Mr. Kunst's testimony?**

20 A. No. As I stated in my rebuttal testimony, Ameren Missouri cannot be required to  
21 file a gas rate case, and it has no present intention to file such a case in **\*\* \_\_\_\_\_.\*\*** Due to  
22 the relatively small magnitude of the refunds that have already been received (approximately  
23 \$600,000), which would be more than completely offset by the litigation costs and property tax

1 increases experienced since 2009, I recommend that these amounts be included in the tracker and  
2 addressed along with any future refunds. If the Commission does decide to amortize this balance  
3 at this time, it should be amortized over a longer period. If an amortization period is ordered for  
4 the refunds that have already been received, I would recommend an amortization period of five  
5 years.

6 **III. DONATION OF ELDON, MO PROPERTY**

7 **Q. Please explain Staff's allegations about the Eldon, Missouri property the**  
8 **Company donated in 2007 to the American Legion and repurchased in 2018.**

9 A. Staff witness Kunst contends the donated property was "necessary and useful" at  
10 the time it was donated, so Section 393.190.1 RSMo. required the Company to obtain Commission  
11 authorization prior to making the donation. Mr. Kunst alleges Ameren Missouri did not obtain fair  
12 market value for the property that could have been used to offset the cost of constructing  
13 replacement facilities (at 804 South Walnut in Eldon, Missouri). As a consequence, Mr. Kunst  
14 proposes to replace the price Ameren Missouri paid for the property in 2018 with the updated net  
15 book value of the property when donated in 2007, which results in a reduction of gas rate base of  
16 \$17,597.<sup>1</sup>

17 **Q. How does Ameren Missouri respond to Mr. Kunst's allegations?**

18 A. First, Mr. Kunst's allegations regarding the donation of the Eldon, Missouri  
19 building are extremely untimely. The 2007 donation has been reflected in the Company's rate base  
20 in several previous gas and electric rate cases. Staff did not challenge the donation when the facility  
21 was removed from the Company's rate base in the 2010 gas rate case (File No. GR-2010-0363),  
22 nor did the Staff challenge the donation in five separate electric rate cases that have occurred since

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<sup>1</sup> Rebuttal testimony of Staff witness Jason Kunst, p. 19.

1 the donation—File Nos. ER-2010-0036, ER-2011-0028, ER-2012-0166, ER-2014-0258, and  
2 ER-2016-0179. Staff did not allege that Commission approval was required for the donation and  
3 did not question the prudence of the Company's decision to donate the property in any of those  
4 cases. Instead, Staff waited until more than a decade later when facility needs changed triggering  
5 the Eldon property to be acquired again to try and challenge the 12-year-old donation. Prudence  
6 must be evaluated when the donation occurred, with the information known at the time of the  
7 donation, and not with the benefit of hindsight.

8           Second, even with the benefit of hindsight, the facts support the prudence of both the  
9 donation of the facility in 2007 and the re-acquisition of the facility over a decade later. When the  
10 facility was donated in 2007, it was not needed for Ameren Missouri's operations. In fact, only  
11 four employees worked at the building (two gas employees and two electric employees), and they  
12 could more efficiently be transitioned at another facility. The property was on the market for fifteen  
13 years, but no potential buyers expressed interest in the property over that period. Although the  
14 Company did not receive any payment for the donation of the property, it did benefit from the  
15 donation. In particular, the donation provided tax benefits (\$11,938) and it allowed the Company  
16 to avoid incurring operation and maintenance expenses for an unneeded facility (estimated at  
17 \$10,613 per year). The donation of the property in 2007 was clearly a prudent decision.

18           The re-acquisition of the property over a decade later was also prudent. By that time,  
19 Ameren Missouri's facility needs had changed and it was able to consolidate two other operating  
20 centers into the re-acquired Eldon facility. This arrangement also improved the efficiency of  
21 Ameren Missouri's operations.

22           The bottom line is that Mr. Kunst has provided no evidence of the Company's imprudence,  
23 either when the Eldon property was donated over a decade ago, or when it was re-acquired.

1 Consequently, the costs of the Eldon facility should be included in Ameren Missouri's rate base  
2 with no offset.

3 **Q. Mr. Kunst also alleges that Ameren Missouri violated Section 393.190.1**  
4 **RSMo. (2016) by failing to obtain Commission approval prior to donating the Eldon facility**  
5 **in 2007. Do you agree with Mr. Kunst on this point?**

6 A. No, Mr. Kunst's legal analysis is incorrect. Section 393.190.1, RSMo. (2016),  
7 requires Commission approval prior to a gas or electric corporation selling or otherwise disposing  
8 of the whole or any part of its "franchise, works or system, necessary or useful in the performance  
9 of its duties to the public..." However, Section 393.190.1 goes on to state: "Nothing in this  
10 subsection contained shall be construed to prevent the sale, assignment, lease or other disposition  
11 by any ... public utility of a class designated in this subsection of property, which is not necessary  
12 or useful in the performance of its duties to the public..." The Eldon facility is not subject to this  
13 statute for two reasons: first, it is not part of Ameren Missouri's "franchise, works or system" and  
14 second, it was not "necessary or useful in the performance of [Ameren Missouri's] duties to the  
15 public" at the time that it was donated.

16 **Q. Why was the Eldon facility not part of Ameren Missouri's "franchise, works**  
17 **or system"?**

18 A. Ameren Missouri's "franchise" is its legal authorization to conduct business. The  
19 Eldon facility clearly does not fall into that definition. The Company's "works or system" is  
20 comprised of gas pipes, valves, compressors, gas control systems and other facilities used to  
21 deliver gas to customers. On the electric side of the business, it includes all of the generators,  
22 substations, transformers, poles and wires that deliver electricity to customers. But it does not  
23 include a building where four employees work in Eldon, Missouri.



1           **Q.     Mr. Kunst points out that the Eldon facility was "included in rates and paid**  
2 **for by ratepayers" as part of his argument that the Company should have sought permission**  
3 **to donate the facility. Is that a consideration that the Commission should take into account?**

4           A     No. Section 393.190.1, RSMo. does not require utilities to seek approval to transfer  
5 any item that has been "included in rates and paid for by ratepayers." If that were the standard, the  
6 Commission would be required to approve hundreds or maybe even thousands of applications  
7 every year to transfer small buildings, vehicles, construction equipment, office furniture, and other  
8 items that are disposed of by utilities every day. The statute specifically limits the requirement to  
9 the "franchise, works or system" of the utility to limit filings to the transfer of those items that  
10 directly impact the utility's ability to deliver service to its customers. The building in Eldon was  
11 not one of those items.

12           **Q.     Why do you say that the Eldon facility was not "necessary or useful in the**  
13 **performance of [Ameren Missouri's] duties to the public" when it was donated in 2007?**

14           A.     The Eldon facility was not necessary or useful because the Company had  
15 determined that the property was no longer needed to support operations, and the four employees  
16 (two gas and two electric) who were housed there could more efficiently be housed in another  
17 location. The Company had the property on the market for fifteen years. It's hard to imagine how  
18 a property could be less necessary or useful than that. For this reason as well, this property is  
19 clearly not covered by Section 393.190.1, and there is no public policy reason that the Commission  
20 should be required to approve the disposal of every facility that is no longer necessary or useful to  
21 every utility's operations.

1           **Q.     Even if the Commission would have been required to approve the donation**  
2 **under section 393.190.1, RSMo, which Ameren Missouri does not concede, what enforcement**  
3 **mechanism would be available to the Commission?**

4           A.     Under Section 386.570.1, RSMo, the Commission may assess a penalty of not less  
5 than one hundred dollars nor more than two thousand dollars for each offense. It is not appropriate  
6 for the Commission to try to challenge a twelve-year-old transaction, say it was void, and then roll  
7 forward the alleged value to a subsequent transaction.

8           **IV.    TRACKING COST SAVINGS FROM SELF-ASSESSMENT INITIATIVES**

9           **Q.     Explain Staff's recommendation for the Company to track cost savings from**  
10 **self-assessment initiatives.**

11          A.     Staff witness Kunst testifies that he is concerned that Ameren Missouri has  
12 undertaken self-assessment initiatives and it is not tracking cost savings in all cases. Mr. Kunst is  
13 recommending that the Commission order Ameren Missouri to track cost savings in instances  
14 where specific initiatives or programs are implemented by Ameren Missouri for the purpose of  
15 cutting costs or improving processes and efficiencies.<sup>2</sup>

16          **Q.     Is Mr. Kunst's concern valid?**

17          A.     In my opinion, it is not. Ameren Missouri has undertaken numerous self-assessment  
18 initiatives, including the KPMG review of Business and Corporate Services cited in Mr. Kunst's  
19 testimony. Ameren Missouri also has a significant internal continuous improvement initiative  
20 whereby it is continuously seeking ways to improve its processes across the Company. These are  
21 valuable initiatives that ultimately will improve processes and reduce costs paid by customers. But  
22 measuring the impact of each individual process improvement is often difficult or impossible.

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<sup>2</sup> Rebuttal testimony of Staff witness Jason Kunst, p. 25, lines 1-3.

1 Typically, such an effort requires making educated guesses about what would have happened in  
2 the absence of the process improvement and what the cost impact of that alternate scenario would  
3 be. In the context of energy efficiency, it costs Ameren Missouri literally millions of dollars to  
4 intelligently compare the impact of an energy efficiency measure to "what would have happened"  
5 in the absence of the measure. Many process improvements do not directly and immediately save  
6 costs at all—for example an individual improvement in a process will not immediately reduce  
7 Ameren Missouri's workforce and cut its labor costs. But many process improvements will, over  
8 the longer term, yield savings, or at least free up time for employees to work on other projects that  
9 might otherwise have to be postponed. And all of the savings that Ameren Missouri actually  
10 realizes from process improvements will ultimately be reflected in test year costs, which will be  
11 used to set rates. Ameren Missouri has chosen to focus its limited resources on aggressively  
12 working to identify and implement process improvements. The cost savings resulting therefrom  
13 will be reflected in test year data. The Commission should not require Ameren Missouri to expend  
14 the resources necessary to measure cost savings for each such initiative.

15 **V. OPC'S SUPPORT OF DE'S PROPOSED CHP PROGRAM**

16 **Q. Does OPC support DE's proposed CHP program?**

17 A. Yes, but only "as long as there are no costs passed on to Ameren Gas's  
18 nonparticipant ratepayers (i.e., nonparticipants are held harmless)."<sup>3</sup>

19 **Q. If the Commission orders the Company to provide a CHP program as**  
20 **proposed by DE, will costs for the program be passed on to Ameren Missouri's**  
21 **nonparticipant customers?**

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<sup>3</sup> OPC witness Geoff Marke, rebuttal testimony, p. 16.

1           A.     Possibly. Neither Dr. Marke nor DE explain how CHP program costs would not be  
2 passed on to nonparticipant customers. As I explained in my rebuttal testimony, it is inappropriate  
3 for DE to propose (and now OPC to support) a CHP program, and particularly inappropriate to  
4 propose that nonparticipating customers be insulated without correspondingly proposing a  
5 mechanism for how to so insulate customers.

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

7           A.     Yes, it does.

