

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Union Electric)	
Company d/b/a Ameren Missouri's)	Case No. EE-2022-0329
Request for a Waiver from Tariff)	
Sheets 146 through 150)	

**PUBLIC COUNSEL'S RESPONSE
TO PROPOSED TARIFF REVISIONS**

COMES NOW the Office of the Public Counsel ("Public Counsel") in response to the proposed tariff revisions states:

1. Union Electric Company d/b/a Ameren Missouri initiated this case after identifying a problem related to certain tariff provisions that require specific actions when the Company is short on fossil fuel inventory. In response, Ameren proposes to replace Ameren's MO P.S.C. Schedule No. 6, Sheet Nos. 146 through 150, with new tariff sheets.

2. Ameren's proposed tariff revisions seek to make significant changes to its General Rules and Regulations, Section VIII. Emergency Energy Conservation Procedure (EECP), which includes, (A) Energy Usage Reduction Program (EURP); and (B) Essential Services. This response to Ameren's proposed tariff changes will start with a review of the current procedures that Ameren seeks to replace.

A. Ameren's Current Energy Usage Reduction Program

3. Ameren's current EURP addresses situations where Ameren is running low on fossil fuel inventory, prompting specific step-by-step actions to

reduce usage by Ameren and its customers. It provides steps that are clear and easy to understand, it provides the order they are to be taken, includes a hierarchy of usage curtailments, and important protections for residential and essential services. The EURP provides:

Step 1 – Steps taken when Ameren is down to 50 days of generation¹

- 1.1 - Industrial customers surveyed to determine anticipated energy reductions and to gather information on the non-critical load they could shed, if needed.

Step 2 – Steps taken when Ameren is down to 40 days of generation²

- 2.1 - Company reduces its own usage
- 2.2 - Interruptible customer loads “shall be curtailed”
- 2.3 - Government facilities requested to reduce usage
- 2.4 - Company makes public appeals for voluntary usage reductions
- 2.5 - Company requests reductions from large industrial customers
- 2.6 - Company requests reductions from sales for resale customers

Step 3 – Steps taken when Ameren is down to 30 days of generation³

Ameren will request authority from State and Federal authorities to implement the following reductions:

- 3.1 – Eliminate outdoor flood and advertising lighting to minimum safe levels, and single sign for commercial open after dark.
- 3.2 -- Reduce non-essential uses to residences, stores, offices, and factories to minimum functional and safety levels.
- 3.3 – Reduce parking lot, street, and alley lights to minimum safe levels.
- 3.4 – Heating to no more than 66°F; or by cooling to no less than 80°F.
- 3.5 – Adjust work schedules that require light, heat or cooling beyond normal office or plant hours.

¹ Union Electric Company, Electric Service, MO PSC Schedule No. 6, 1st Revised Sheet No. 146

² *Id.*

³ *Id.*, Original Sheet No. 147

- 3.6 – Curtail sports, entertainment, and recreational activities.
- 3.7 – Close public museums, art galleries, historic buildings, etc.
- 3.8 – Require commercial establishments to operate on schedule not exceeding 6 days per week, with maximum of 48 hours per week (except essential services).

Step 4 – Steps taken when Ameren is down to 25 days of generation⁴

Ameren will request authority from State and Federal authorities to implement the following reductions:

- 4.1 – Industrial to immediately curtail monthly usage by 30%.
- 4.2 – Commercial to immediately curtail usage to 40 hrs./week.
- 4.3 – Residential to immediately curtail usage to the minimum possible.

Step 5: - Steps taken to preserve fuel and maintain essential services⁵

Ameren will request authority from State and Federal authorities to implement the following, and “to assure continuous electric supply to essential services.” Essential services excluded from full compliance.

- 5.1 - Implement progressive reduction of industrial and commercial customers down to levels required for basic plant and employee safety and security.
- 5.2 - Require further residential curtailment to minimum levels (minimum “life-support” requirements)

Step 6 – Actions to be implemented as necessary⁶

- 6.1 – Advance notice of customer interruptions released to news media. Large industrial and commercial customers contacted.
- 6.2 – No rotating outages for circuits known to include essential services.
- 6.3 – Each sales for resale customer will interrupt loads on its system on a rotating basis to achieve same percentage as Company.

⁴ *Id.*, Original Sheet No. 148

⁵ *Id.*

⁶ *Id.*, Original Sheet No. 149

4. The above plan outlines specific actions Ameren is to take to manage situations where it is unable to meet the energy needs of its customers. It provides meaningful customer protections, especially for residential customers and essential services, to ensure those customers are prioritized to best protect the public from harmful curtailments.

B. Ameren's Current Essential Services Provision

5. Ameren's current tariff Sheet Nos. 149 to 150 include a section titled "Essential Services," and lists types of facilities that "must strive to meet, but are not mandated to meet, the requirements of the several steps" listed under the EURP explained above. These protections are provided for the following:

- Any facility whose function is known to Company to be necessary to the support of life.
 - a. Certain hospital services and nursing homes.
 - b. Non-hospital facilities, such as iron lungs and kidney machines.
- Any facility whose function is known to the Company to be necessary for national, state or local security.
 - a. Missile sites
 - b. Defense communication network centers
 - c. Civil defense facilities
 - d. Prisons
 - e. Other governmental activities essential to national defense

6. The current EECPP serves the primary purpose of ensuring the most vulnerable segments of the public are protected to the fullest extent possible should Ameren need to take measures to reduce usage. Residential customers, hospitals, and facilities that protect national, state or local security, are to be among the last to have their usage curtailed should curtailments be necessary.

C. Ameren's Proposed Tariffs

7. Ameren's proposed tariffs take a different approach. Instead of listing out the steps to be taken to reduce usage in the tariff (a binding document that cannot be altered without Commission approval), Ameren's proposal references other documents that are not a part of the tariff, and that would allow Ameren to alter its procedures without seeking Commission approval.

8. In place of the EURP, Ameren's proposed Sheet No. 146 states the Company will comply with the following:

- a. MISO's⁷ Market Capacity Emergency Operating Procedure;
- b. NERC's⁸ Emergency Operations Procedure;
- c. NERC's Emergency Preparedness and Operations Procedure;
- d. the Ameren Capacity and Emergency Plan; and
- e. the Ameren Load Reduction Procedure.

Ameren's tariff includes a footnote stating, "Items (d) and (e) are required by NERC, and have been reviewed and approved by" MISO.⁹

D. Public Counsel's Concerns with Ameren's Proposed EECP

a. Usage Reduction

9. Ameren's proposal, when compared to the existing customer protections in Tariff Sheet Nos. 146-150, raises several concerns. First, the purpose of the current EECP is to protect Ameren's customers, and it achieves this by outlining steps Ameren will take to reduce usage. The EECP includes an orderly process for reducing load in a manner that is least disruptive to the needs

⁷ Midcontinent Independent System Operator

⁸ North American Electric Reliability Corporation

of Ameren's customers; in particular, residential and essential service customers. Ameren's proposed EECP, however, references multiple documents that do not provide the clear and concise process outlined in the current EECP. Instead, it relies upon NERC, MISO, and other Ameren documents subject to change without Commission authority, and without the clear usage reduction plan currently in the EECP. These external documents add a concerning amount of uncertainty and lack the clarity for the EECP.

10. Public Counsel agrees with Ameren that the reference to Ameren's fossil fuel inventory is outdated given Ameren's increased reliance on nuclear generation, renewable energy generation, and the ability to receive energy through MISO. However, changing the tariff to remove the fossil fuel references and requirements may not require a complete dismantling of the procedures meant to ensure usage reductions are accomplished in a manner that protects the public and is least disruptive for Ameren's customers.

11. Public Counsel recommends the Commission direct Ameren to provide a detailed narrative, with references to specific requirements, explaining the approach it will take if it is required to reduce customer usage. This narrative should address each specific step provided in the EURP and explain whether Ameren is abandoning that step, and why such change is in the public interest.

b. Essential Services

12. Public Counsel's second concern is Ameren's proposed change in how it defines and treats essential services. The current EECP clearly defines

⁹ Items (a) through (e) are attached to this pleading. These documents were provided to Public Counsel by Ameren.

essential services and the usage reduction steps that do not apply to these services. Ameren's proposed tariff revision states:

Defined Essential Services – Depending on the circumstances of the event, the Company in its discretion will not interrupt circuits critical for the operation of the system or critical loads that are essential to the health, safety, and welfare of the communities the Company serves.

Public Counsel recommends the Commission direct Ameren to provide a detailed narrative of what facilities it considers to be essential to the health, safety, and welfare of the communities the Company serves, and what approach it will take in exercising its discretion to interrupt a circuit essential to the health, safety and welfare of the public. This provision is a significant departure from the current tariff, which states at Step 6.2 on Sheet No. 149, "Rotating outages of circuits which are known to include the essential services described in Section B hereof will not be undertaken." Further explanation by Ameren should be necessary before granting Ameren the discretion to curtail essential services.

c. Liability of Company.

13. Ameren's current EECF does not contain a company liability provision. As Ameren seeks to move to a process that provides greater discretion to Ameren in its curtailment decisions, Ameren's simultaneous request to limit its liability is a concern. Public Counsel appreciates the Staff's concerns with Ameren's initial proposal, and Staff's changes to that proposal; however, Public Counsel has concerns with the revised language as well. It states:

Liability of Company

Disruptions in service consistent with this Emergency Conservation Plan shall not be considered inconsistent with the Company's

Continuity of Service obligations contained in the General Rules and Regulations, Section I. General Provisions at paragraph J.

The Continuity of Service obligations contained in the General Rules and Regulations, Section I, General Provisions at paragraph J states:

J. CONTINUITY OF SERVICE

Company will make all reasonable efforts to provide the service requested on an adequate and continuous basis, but will not be liable for service interruptions, deficiencies or imperfections which result from conditions which are beyond the reasonable control of the Company. The Company cannot guarantee the service as to continuity, freedom from voltage and frequency variations, reversal of phase rotation or single phasing. The Company will not be responsible or liable for damages to customer's apparatus resulting from failure or imperfection of service beyond the reasonable control of the Company. In cases where such failure or imperfection of service might damage customer's apparatus, customer should install suitable protective equipment. (emphasis added)

The proposed “Liability of Company” provision could be interpreted to create a forgone conclusion that the Company made “all reasonable efforts to provide the service requested on an adequate and continuous basis.” However, the Continuity of Service provision limits Ameren’s liability for interruptions that are outside the Company’s reasonable control. The new proposed EECP would introduce a significant level of control by Ameren in curtailing usage, and allow Ameren to implement usage reductions in ways that would not require Commission approval. Ameren should not be automatically determined to have met its obligations without regard for the decisions it makes.¹⁰

¹⁰ See *PSC v. Mo. Gas Energy*, 388 S.W.3d 221, 231 (Mo. App. W.D. 2012). “Because we find no statute empowering the Commission to abrogate a customer's right to sue a public utility company for negligence involving personal injury or property damage, we conclude that the Commission does not have the statutory authority to approve of a public utility's attempt to abrogate these common law rights in a tariff sheet. The legislature is the appropriate entity to

14. If service disruptions become necessary due to outside forces that are not within Ameren's control, and it exercise its discretion to curtail usage, Ameren could still point to the Continuity of Service provision and argue it is not liable so long as its decisions were reasonable.

15. Public Counsel recommends the Commission direct Ameren to remove this provision from its proposed tariff changes.

16. Ameren's proposed tariff revisions raise an additional issue that may not be appropriate for this tariff case, but would be appropriate in Ameren's upcoming rate case. Given the impacts across Missouri due to the February 2021 Winter Storm Uri, and the potential for this to reoccur, it may be appropriate to consider a process for implementing usage reductions for economic reasons to avoid extreme price spikes. Processes could be put into place to trigger notices, requests for reduced usage, and even controlled outages to mitigate extreme rate impacts. In the current Evergy rate case, Public Counsel witness, Dr. Geoff Marke, responds to similar tariff revisions proposed by Evergy with a recommendation that Evergy conduct a Value of Lost Load Study "to accurately determine the price levels at which customers would prefer Evergy to take action to reduce load instead of paying extreme prices."¹¹ Public Counsel makes no recommendation on this proposal in this case, but encourages Ameren to consider addressing such as study in its upcoming general rate case.

abrogate negligence claims against public utilities involving personal injury or property damage or it is the entity to expressly delegate that power to the Commission.⁷ Until the legislature does so and does so explicitly, however, the Commission has no authority to abrogate an action for common law negligence involving personal injury or property damage."

¹¹ Case No. ER-2022-0130, Rebuttal Testimony of Geoff Marke, pp. 42-46.

WHEREFORE, the Office of the Public Counsel respectfully offers this response to Ameren's proposed tariff revisions.

Respectfully submitted,

/s/ Marc Poston

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 21st day of July 2022.

/s/ Marc Poston
