

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

In the Matter of Union Electric Company d/b/a)	
Ameren Missouri's LED Street Lighting Update)	File No. ET-2016-0152
and Tariff Filing)	Tariff No. YE-2016-0159

PUBLIC COUNSEL'S REPLIES TO STAFF AND AMEREN MISSOURI

COMES NOW the Office of the Public Counsel ("OPC" of "Public Counsel") and for its *Replies to Staff and Ameren Missouri* states:

Reply to Staff

1. In its *Response*, the Commission's Staff ("Staff") cites no statutory authority for a rate change outside of a general rate case. Instead, Staff begins its *Response* by stating that "[t]ariff changes in compliance with Commission rules or a *Report and Order* in a rate case may be made without a hearing since the necessary due process procedures and consideration of relevant factors occurred during the rulemaking or the rate case proceeding." Public Counsel does not make a due process argument. Instead, Public Counsel asserts that Missouri law permits the Commission only to set "just and reasonable rates." *See* Mo. Rev. Stat. §§ 393.130 (Cum. Supp. 2013), 393.140 (2000). And what rate is just and reasonable is determined through the consideration of "all relevant factors." *State ex rel. Util. Consumers' Council of Mo., Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 51-58 (Mo. 1979) ("UCCM"); Mo. Rev. Stat. § 393.270.4 (2000). Further, a failure to consider all relevant factors when setting rates is referred to as "single-issue ratemaking," and is prohibited. *State ex rel. Pub. Counsel v. Pub. Serv. Comm'n*, 397 S.W.3d 441, 448 (Mo. App. W.D. 2013). Without evaluating all relevant factors in a general rate case, the Commission exceeds its statutory authority.

2. Staff's suggestion that a rate case in 2011 satisfies the legal requirement that all relevant factors be considered when setting rates in this tariff filing for 2016 is without merit. The

Commission, in 2011, could not have evaluated all relevant factors as it relates to this filing – four years later – because the putative facts underlying this rate change *did not exist* in 2011. Any time the Commission sets a rate, it has an obligation to consider all relevant factors.

3. In support of its misguided argument, Staff states that “[t]he Commission further instructed Ameren Missouri to only file an LED tariff when ‘it is appropriate to do so’[.]” Staff then concludes, without support, that “[c]lear from the Commission’s language is an understanding that an LED tariff may be filed independent of a rate case[.]” Absent other statutory authority, the only appropriate time to adjust rates is after consideration of all relevant factors in a general rate case. Public Counsel suggests that Staff’s unsupported assertion that the Commission’s language allows the company to change its rates outside of a general rate case is wrong. Rather, the Commission’s order should be understood within the context of existing Missouri Law – that the appropriate time to change rates is after consideration of all relevant factors. This must be the case, of course, because the Commission is well aware that it cannot bind future Commissions.

4. Staff then lists certain instances when the Commission approved tariff sheets “under similar circumstances,” and asserts that the Commission has approved tariff changes incorporating new products or services without a hearing. Staff then concludes, incorrectly, that in this case “a new service is being offered apart from services provided by existing technologies contemplated in Ameren Missouri’s current tariff.” Staff’s argument is flawed for at least three reasons.

5. First, the Staff cites no statutory basis for its conclusion that rates for new service do not require evaluation of all relevant factors in a general rate case. Instead, Staff lists a few instances when the Commission approved rates for new services. However, this is not persuasive because:

The PSC "is a body of limited jurisdiction and has only such powers as are expressly conferred upon it by the Statutes and powers reasonably incidental thereto." *State ex rel. and to Use of Kansas City Power & Light Co. v. Buzard*, 350 Mo. 763, 168 S.W.2d 1044, 1046 (Mo. banc 1943). "Neither convenience, expediency or necessity are proper matters for consideration in the determination of whether or not an act of the commission is authorized by statute." *State ex rel. Mo. Cable Telecomms. Ass'n v. Mo. Pub. Serv. Comm'n*, 929 S.W.2d 768, 772 (Mo. App. 1996).

State ex rel. Cass County, Mo. v. Pub. Serv. Comm'n, 259, S.W.3d 544, 547-48 (Mo. App. W.D. 2008)(hereafter "*Cass County*"). Where the Commission has no statutory authority, it cannot act.

6. Second, even when the Commission has the statutory authority to act, all Commission decisions must be reasonable. *State ex rel. Mo. Gas Pipeline LLC v. Mo. Pub. Serv. Comm'n*, 366 S.W.3d 493, 495-496 (Mo. 2012). A Commission order is reasonable when it is supported by substantial, competent evidence on the whole record. *Id.* In this case, Ameren Missouri did not submit *any* testimony explaining or supporting the proposed changes. The only document submitted by Ameren Missouri is a report titled "Light Emitting Diode (LED) Street and Outdoor Area Lighting Report" that lists no author and is not verified by any affidavit (Doc. No.

1). The Staff does not address this deficiency in its *Response*.

7. Third, using LED light bulbs on existing company-owned poles for street and outdoor area lighting service is not a "new" service. The company is currently providing light service to those poles, and will continue to do so – just with a different kind of bulb. This is not a new service.

Reply to Ameren Missouri

8. Ameren Missouri states that its proposed tariff change is not prohibited because “the Company is proposing a new rate, an initial rate, which does not fall into the category of a prohibited tariff change.” (Doc. No. 15, p. 2). The company, too, then lists a few instances where the Commission permitted a rate for a new service outside of a rate case. *Id.* For the same reasons that Staff’s argument fails, so does the company’s.

9. The Commission must act within the limits of its statutory authority. Here, Ameren cites no statutory authority to implement a “new” rate outside of a rate case. Absent statutory authority, a list of the instances where the Commission may have done so in the past bears no weight. *See Cass County*, at 547-48.

10. Using LED light bulbs to provide service on existing company-owned poles is not a new service. It is the same service that customers currently receive at the Commission-approved rates.

11. Ameren Missouri also fails to address Public Counsel’s contention that the tariff filing, even if legal, must be supported by substantial, competent evidence on the whole record. In this case, Ameren Missouri did not submit *any* testimony explaining or supporting the proposed changes. The only document submitted by Ameren Missouri is a report titled “Light Emitting Diode (LED) Street and Outdoor Area Lighting Report” that lists no author and is not verified by any affidavit (Doc. No. 1).

WHEREFORE Public Counsel offers its *Replies to Staff and Ameren Missouri* and requests that the Commission reject tariff sheets Mo. P.S.C. Schedule No. 6., 2nd Revised Sheet No. 58; Mo. P.S.C. Schedule No. 6., 2nd Revised Sheet No. 58.1; Mo. P.S.C. Schedule No. 6., 2nd Revised Sheet No. 58.2; Mo. P.S.C. Schedule No. 6., 2nd Revised Sheet No. 58.3; Mo. P.S.C. Schedule No. 6., 2nd Revised Sheet No. 58.4; Mo. P.S.C. Schedule No. 6., 2nd Revised Sheet No. 58.5 filed in this case by Ameren Missouri.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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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 5th day of January 2016:

/s/ Tim Opitz
