

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

In the Matter of the Application of Union	)	Case No. <u>ET-2018-0132</u>
Electric Company d/b/a Ameren Missouri for	)	Tracking Nos. YE-2018-0103,
Approval of Efficient Electrification Program	)	YE-2018-0104, and
	)	YE-2018- 0105

**THE OFFICE OF THE PUBLIC COUNSEL’S MOTION TO DISMISS  
UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI’S APPLICATION**

COMES NOW the Office of the Public Counsel and for its motion to dismiss Union Electric Company d/b/a Ameren Missouri’s application states:

**Lack of Jurisdiction**

1. Ameren Missouri filed three sets of tariff sheets designed for implementing two new programs— Charge Ahead – Electric Vehicles, and Charge Ahead – Business Solutions— both of which entail Ameren Missouri providing explicit subsidies to others to promote the use of electricity. The Charge Ahead – Electric Vehicles program would provide payments from Ameren Missouri to others to install electric vehicle charging stations and the Charge Ahead – Business Solutions program would provide payments from Ameren Missouri to others as an inducement to use electric versions of equipment such as forklifts and ground support equipment at airports, instead of propane-, gasoline-, or diesel-fueled versions of that equipment. As proposed, Ameren Missouri would recoup not only the costs of those subsidization payments broadly in the rates its retail customers pay, but also the costs of the associated line extensions, as well as any other new line extension.

2. Both of Ameren Missouri’s Charge Ahead programs go beyond the purpose for which the Legislature established the Commission. As the Commission stated in its Report and

Order in Case No. ER-2016-0285, “The Commission was established to prevent this unnecessary duplication of [natural monopoly] service on the theory that such over-crowding of the field will eventually be a burden on the public. These laws are based on a policy to substitute regulated monopoly for destructive competition in order to protect the public.” Ameren Missouri has intentionally designed its Charge Ahead programs to increase the use of electricity for purposes where other energy sources are now used by subsidizing the acquisition cost of nonutility facilities and equipment. Unlike the express subsidies approved by voter initiative that are labeled “solar rebates” and codified in § 393.1030, RSMo., and the subsidies authorized by the Missouri Energy Efficiency Investment Act (§ 393.1075, RSMo.), there is no statutory authority for the Commission to authorize Ameren Missouri’s proposed explicit, load-building customer subsidies.

3. Further, the Commission’s concern about “[i]ntroducing a regulated entity such as KCPL [or Ameren Missouri] into a competitive market creates the potential for inefficiencies as the negative consequences of any given risk are merely shifted to captive ratepayers” that it stated when addressing Kansas City Power & Light Company’s request to rate base its investment in electric vehicle charging stations applies to both of Ameren Missouri’s Charge Ahead programs because Ameren Missouri proposes that its captive ratepayers pay for the program subsidies and associated line extensions. What the Commission said about charging stations in paragraph 116 of its Report and Order in Case No. ER-2016-0285 applies equally to including Ameren Missouri’s proposed subsidies in its rate base here:

116. If the charging stations go into rate base, utilities would receive a reasonable chance to recover a rate of return on that investment from ratepayers. This is problematic for services that can be considered both nonessential and/or in which a competitive market already exists. Allowing utilities to recover costs for such services from ratepayers effectively creates a regulatory barrier for new entries, unfairly punishes existing competition, and shifts risk from utility shareholders to ratepayers. Instead of promoting growth, an insulated regulated monopoly can undermine competition, which may reduce efficiency.

### **Noncompliance with rule 4 CSR 240-2.060(4)(A)**

4. Aside from Ameren Missouri's new programs being premised on relief beyond the Commission's authority to grant, the Commission should dismiss Ameren Missouri's application because it fails to comply with the rule 4 CSR 240-2.060(4)(A) requirement that requests for relief from the Commission's promotional practices rules must include "[s]pecific indication of the statute, rule, or tariff from which the variance or waiver is sought."

5. Ameren Missouri's request for relief from the Commission's promotional practices rules is stated in paragraph 8 of its application:

8. Because incentives will be offered for the installation and use of equipment, by the letter of the Commission's Promotional Practices rule, the Charge Ahead program requires a variance pursuant to 4 CSR 240-14.010(2) providing for variances from Chapter 14 of the Commission's rules (i.e., the Promotional Practices rule) for good cause shown."

6. The Commission's promotional practices rules found at 4 CSR 240-14.020 and 14.030 include a number of requirements:

#### **4 CSR 240-14.020(1)**

(1) No public utility shall offer or grant any of the following promotional practices for the purpose of inducing any person to select and use the service or use additional service of the utility:

(A) The financing of real property, including the construction of any building, when the property is not owned or otherwise possessed by the utility or its affiliate;

(B) The furnishing of consideration to any architect, builder, engineer, subdivider, developer or other person for work done or to be done on property not owned or otherwise possessed by the utility or its affiliate, except for studies to determine comparative capital costs and expenses to show the desirability or feasibility of selecting one (1) form of energy over another;

(C) The acquisition from any builder, subdivider, developer or other person of any easement, right-of-way, license, lease or other property for consideration in excess of the reasonable cost or value;

(D) The furnishing of consideration to any dealer, architect, builder, engineer, subdivider, developer or other person for the sale, installation or use of appliances or equipment;

(E) The provision of free, or less than cost or value, wiring, piping, appliances or equipment to any other person; provided, that a utility, engaged in an appliance

merchandising sales program, shall not be precluded from conducting legitimate closeouts of appliances, clearance sales and sales of damaged or returned appliances;

(F) The provision of free, or less than cost or value, installation, operation, repair, modification or maintenance of appliances, equipment, wiring or piping of any other person;

(G) The granting of a trade-in allowance on the purchase of any appliance or equipment in excess of the market value of the trade-in as well as the granting of an allowance for the appliance or equipment when the allowance varies by the type of energy consumed in the appliance or equipment;

(H) The financing of the acquisition of any appliance or equipment at a rate of interest or on terms more favorable than those generally applicable to sales by nonutility dealers in the appliances or equipment, except sales to company employees;

(I) The furnishing of consideration to any person for any advertising or publicity purpose of that person, except for payments not exceeding one-half (1/2) of the reasonable cost or value for joint advertising or publicity with a dealer in appliances or equipment for the sale or other provision of same if the utility is prominently identified as a sponsor of the advertisement; and

(J) The guaranteeing of the maximum cost of electric or gas utility service, except the guaranteeing of the cost of space heating or cooling for a single season, when the cost is at or above the cost of providing service and when the guarantee is for the purpose of improving the utility's off-peak season load factor.

#### **4 CSR 240-14.030**

(1) All promotional practices of a public utility or its affiliate shall be just and reasonable, reasonable as a business practice, economically feasible and compensatory and reasonably calculated to benefit both the utility and its customers.

(2) No public utility or its affiliate, directly or indirectly, in any manner or by any device whatsoever, shall offer or grant to any person any form of promotional practice except as is uniformly and contemporaneously extended to all persons in a reasonable defined class. No public utility or its affiliate, in the granting of a promotional practice, shall make, offer or grant any undue or unreasonable preference or advantage to any person or subject any person to any undue or unreasonable prejudice or disadvantage. No public utility or its affiliate shall establish or maintain any unreasonable difference in the offering or granting of promotional practices either as between localities or as between classes to whom promotional practices are offered or granted.

(3) The promotional practices of a public utility or affiliate shall not vary the rates, charges and rules of the tariff pursuant to which service is rendered to a customer. No new promotional practice which has not been previously filed with the commission shall be made or offered unless first filed on a tariff with the commission.

Wherefore, the Office of the Public Counsel moves the Commission to dismiss Union Electric Company d/b/a Ameren Missouri's application because it requests relief beyond the Commission's jurisdiction and because it does not comply with Commission rule 4 CSR 240-2.060(4)(A). If the Commission does not dismiss Ameren Missouri's application, in the alternative, the Office of the Public Counsel moves the Commission to suspend the tariff sheets Ameren Missouri filed in this case to which the Commission assigned Tracking Nos. YE-2018-0103, YE-2018-0104, and YE-2018-0105 for at least 120 days, requests that the Commission hold an evidentiary hearing, and requests that the Commission set a prehearing conference for purposes of developing a procedural schedule.

Respectfully,

/s/ Nathan Williams

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 5<sup>th</sup> day of April 2018.

/s/ Nathan Williams