

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

In the Matter of the Application of)	
Union Electric Company d/b/a)	<u>Case No. ET-2021-0082</u>
Ameren Missouri for Approval of)	Tracking No. YE-2021-0081
Its Surge Protection Program.)	

STAFF STATEMENT OF POSITIONS

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and provides below its *Statement of Positions*.

I. May Ameren Missouri lawfully offer its proposed surge protection program as a regulated program?

No. Ameren Missouri has provided insufficient evidence that this program is under the lawful jurisdiction of the Commission, pursuant to Section 386.250, RSMo. The program is not based on the manufacture and sale of electricity,¹ and the devices have not been determined to be required pursuant to Commission Rule 20 CSR 4240-10.030(23), which requires Ameren Missouri to operate its system to maintain voltages within a practicable tolerance while not holding the utility responsible for causes beyond its control.² The costs and benefits to participants arising under the program are largely derived not from the proposed surge protection collars themselves, but from the warranty covering the devices, provided by the manufacturer, which is not under the Commission’s jurisdiction.³ Therefore, neither the surge protection collar devices⁴ proposed for inclusion in Ameren Missouri’s program nor the warranties covering them meet the statutory definition of “electric plant” under Section 386.020(14), RSMo.⁵ Ameren Missouri did not provide a single example of a regulated surge protection program in the United States.⁶ Similar programs have been offered by other Missouri regulated utilities without regulation or Commission authorization for decades, including those offered currently by the Evergy affiliates and by Liberty (Empire).⁷

Finally, the proposed design of this program would deprive future Commissions of the opportunity to review the reasonableness of Ameren Missouri’s rates and terms.⁸

¹ Ferguson Rebuttal, P. 3.

² Staff Recommendation, P. 2.

³ Bax Rebuttal, Pp. 3-4.

⁴ The description for USOA account 370 does include a broad category of “protective devices,” in the description of the meter account.

⁵ The definition of “electric plant” under Section 386.020(14), RSMo (Supp. 2020) is not identical to the use of that term in the FERC USOA, as discussed in the testimony of Staff witness Ferguson.

⁶ Coffey Rebuttal P. 3; Ferguson Rebuttal P. 4.

⁷ Coffey Rebuttal P. 3; Bax Rebuttal P. 5.

⁸ Lange Rebuttal Pp. 9, 25.

II. If it is lawful, should the Commission approve an Ameren Missouri surge protection program and treat the revenue, expense and investment associated with it as a regulated activity?

No. Even if the Commission accepts the proposed surge protection collar devices as “electric plant” within the meaning of Section 386.250 as recently interpreted by the Western District,⁹ these surge protection collar devices are not properly included in Ameren Missouri’s regulated rate base in that it is not prudent for Ameren Missouri to invest in a program for which the utility is not uniquely situated to provide the service. The Ameren Missouri program is poorly designed.¹⁰ While customers do not typically have a choice for their electric service provider, there are alternative surge protection devices available, to those included in the proposed Ameren Missouri surge protection program, which may include a warranty from the device manufacturer.¹¹ These competitive alternatives available to customers would provide a similar level of protection against the type of surges identified by Ameren Missouri.¹²

Finally, the cost/benefit analysis Ameren Missouri provides in support of the program is not reliable.¹³ Among Staff’s other concerns, the design of a perpetual monthly charge for the recovery of the device and its installation shifts the risk of low participation and of short-term participation to non-participating ratepayers, while also making the design less attractive to would-be participants.¹⁴

III. If the Commission determines it is appropriate to regulate Ameren Missouri’s surge protection program:

A. Should it authorize Ameren Missouri to offer its program at the proposed rate and under the requested tariff provisions?

- No. The proposed rate is not cost based as all other cost of service tariffed rates are based.¹⁵
- No. The proposed design shifts risk to nonparticipants.
 - Ameren Missouri proposes a pricing method that holds non-participants responsible for the revenue requirement associated with providing the service, as well as the risk to indemnify the shareholders for the actual cost of providing the

⁹ See *In the Matter of: Kansas City Power and Light Company’s Request for Authority to Implement a General Rate Increase for Electric Service v. Missouri Public Service Commission and Midwest Energy Consumers Group*, 557 S.W.3d 340, (Mo. App. 2018).

¹⁰ Staff Recommendation, P. 7.

¹¹ Coffey Rebuttal P. 5; Ferguson Rebuttal, P. 3.

¹² Ferguson Rebuttal, P. 3; Lange Rebuttal P. 26.

¹³ Lange Rebuttal, Pp. 20-25.

¹⁴ Lange Rebuttal, Pp. 12, 19; 13-14.

¹⁵ Wills Surrebuttal P.4,

service in the event assumptions prove wrong or that participation does not continue.¹⁶

- Ameren Missouri's retail rates are currently designed to cover its cost of service, so it is problematic to include those costs in the proposed Surge Protection rate design, as it would result in short-term double recovery of those costs.¹⁷
- The analysis supporting Ameren Missouri's assertions of potential non-participant benefit relies on unrealistic assumptions, most significantly the mixing and matching of Mr. Schneider's life cycle analysis with Mr. Will's rate impact projections.¹⁸
- The proposed rate design purports to establish a rate to remain in effect and insulated from adjustment in general rate cases for 15 or more years.¹⁹
- The proposed design does not convey adequate details about the program to customers, or include detail necessary for reasonable tariff administration and enforcement. In general, the tariff provided is vague and does not include necessary parameters. For example, virtually all pertinent terms and conditions are described as contained in the manufacturer's warranty; however, the manufacturer is not disclosed and contact information is not provided; details of what will or will not be covered by warranty are not included²⁰
- The proposed design does not offset program rate base with "termination revenues," as received, but instead Ameren Missouri has stated its intent to retain the program revenues and any received termination fees for shareholders.²¹

B. Should the Commission impose a condition on any approval of the program that requires Ameren Missouri to hold non-participating customers harmless from the revenue requirement associated with the surge protection program?

Yes. Ameren Missouri has proposed the Surge Protection Program as a customer affordability initiative and a voluntary program. If regulated, at a minimum, the Program should be revenue

¹⁶ Lange Rebuttal, P. 10.

¹⁷ Lange Rebuttal, P. 25.

¹⁸ Lange Rebuttal, Pp. 20-21.

¹⁹ Lange Rebuttal Pp. 9, 25.

²⁰ Staff Recommendation, P. 7.

²¹ Lange Rebuttal, P. 12.

requirement neutral to all non-participants. As such, Ameren Missouri should absorb any Program costs that are not offset by Program revenues during and between rate cases. This is also necessary to prevent subsidization of the Program by non-participants. The necessary accounting treatment recommended by Staff is provided in the Rebuttal testimony of Lisa Ferguson and cited under Issue V., below.²²

IV. Should the Company provide customer education and outreach in conjunction with any program that may be authorized?

Yes.²³ Ameren Missouri should develop and make available to its customers a robust set of frequently asked questions (FAQ) that addresses the specifics of the program, and educational resources that cover power surges and the different types of surge protection devices available outside the program.

V. Should the Commission require any specific accounting related to the program apart from accounting required by the Uniform System of Accounts?

Yes, as stated below²⁴:

- Ameren Missouri should uniquely code all revenue, expense (including any property tax and income tax) and investment (interest, return on equity, tax impact) so as to delineate these items from all other revenue, expense and investment beginning from Program inception throughout the life of the Program.
- Ameren Missouri should follow all electric affiliate transaction rules, (as necessary) whether the Program is offered on a regulated or unregulated basis.

A. Should Ameren Missouri be required to separately designate depreciation expense and return (as defined in 393.1400) on capital investments made in the program and included in the PISA deferral mechanism?

Yes. If the Commission finds that the program is lawful and should be regulated, then the surge protection devices are considered “qualifying electric plant” as that definition is used in Section 393.1400.3, RSMo.²⁵ Ameren Missouri has stated that the program rate is based on more than the cost to provide the service. As such, Staff assumes that the depreciation expense and return components are

²² Ferguson Rebuttal, Pp. 6-7,18.

²³ Coffey Rebuttal, P. 6.

²⁴ Ferguson Rebuttal, Pp. 6-7,18.

²⁵ Ferguson Rebuttal, P. 15-16.

included in the monthly participant rate. Ameren Missouri should separately designate the depreciation expense and return on equity costs (and any associated carrying costs) for this program that are included in the PISA deferral mechanism for future rate case adjustment so as to prevent double recovery of these items in rates.²⁶

B. Should Ameren Missouri be required to maintain all program records?

Yes. Ameren Missouri must retain all Program records in order for Staff to verify that all revenue, expense, and investment was actually incurred/received, to verify compliance with electric affiliate transaction rules (as needed), as well as to propose any possible adjustments for protection of non-participants (Issue III(B) above), possible prudence disallowances or annualization/normalization of program components.²⁷

WHEREFORE, Staff respectfully submits its *Statement of Positions* in this case; and prays the Commission will grant such relief as is just in the circumstances.

Respectfully submitted,

/s/ Whitney Payne

Whitney Payne
Senior Counsel
Missouri Bar No. 64078
Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8706 (Telephone)
(573) 751-9285 (Fax)
whitney.payne@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 5th day of April, 2021, to all counsel of record.

/s/ Whitney Payne

²⁶ Ferguson Rebuttal, Pp. 15-16.

²⁷ Ferguson Rebuttal, Pp. 6-7.