

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

In the Matter of the Application	)		
Of Union Electric Company	)	Case No.	ET-2016-0246
d/b/a Ameren Missouri for Approval	)		
of a Tariff Setting a Rate for	)	Tracking No.	YE-2017-0030
Electric Vehicle Charging Stations	)		
	)		

**MISSOURI DIVISION OF ENERGY'S  
STATEMENT OF POSITIONS**

COMES NOW the Missouri Division of Energy, by and through the undersigned counsel, and for its *Statement of Positions* in the above styled matter, states:

**LIST OF ISSUES**

**1. Commission Jurisdiction**

**Does the Commission have jurisdiction to regulate utility-owned and operated electric vehicle charging stations operated in a utility's service area?**

Yes, the Commission has jurisdiction to regulate utility-owned and operated electric vehicle charging stations operated in a utility service area. The legal standard to determine whether the Commission has jurisdiction over a service was memorialized by the Missouri Supreme Court in State ex rel. M.O. Danciger & Co. v. Pub. Serv. Comm'n of Missouri, 275 Mo. 483, 205 S.W. 36, 39 (1918), where the Court stated:

For the operation of the electric plant must of necessity be for a public use, and therefore be coupled with a public interest; otherwise the Commission can have no authority whatever over it. The electric plant must, in short, be devoted to a public use before it is subject to public regulation. Munn v. Illinois, 94 U. S. 113, 24 L. Ed. 77. Since the sole right of regulation depends upon the public interest, the subdivisions quoted above, and which define an electric plant and an electric corporation, mean the same, whether the idea of a public use

is expressly written therein or not; it is, nevertheless, of necessity connoted and to be understood therein.

To determine “public use” the Court relied on the following test:

The fundamental characteristic of a public calling is indiscriminate dealing with the general public. As Baron Alderson said in the leading case: ‘Everybody who undertakes to carry for any one who asks him is a common carrier. The criterion is whether he carries for particular persons only, or whether he carries for every one. If a man holds himself out to do it for every one who asks him, he is a common carrier; but if he does not do it for every one, but carries for you and me only, that is a matter of special contract.’ State ex rel. M.O. Danciger & Co. v. Pub. Serv. Comm'n of Missouri, 275 Mo. 483, 205 S.W. 36, 42 (1918)

The Commission has jurisdiction to regulate Ameren Missouri’s proposed electric vehicle charging station pilot program operated in the Company’s utility service area as the proposed tariff service passes both elements of the Danciger test: (1) Ameren Missouri will be operating electric vehicle charging stations, which constitute electric plant; (2) Ameren Missouri will be devoting the electric vehicle charging stations to a public use.

While Ameren Missouri is not seeking cost recovery of the costs associated with this pilot program in this case or its pending rate case, because the pilot program is a part of the Company’s regulated utility business these costs will be recoverable in a subsequent rate case; therefore, the Commission is not obligated to determine in this case if any of the pilot program costs should be recovered in future rates.

## 2. Public Policy

**Are there public benefits realized from the installation of electric vehicle charging stations, specifically if the Commission were to approve Ameren Missouri's proposed pilot project?**

Yes, there are public benefits realized from the Commission approving Ameren Missouri's pilot project. As shown through the competent and substantial evidence of Ameren Missouri and the other proponents there are numerous public benefits that will be realized from the pilot project, which will further enhance public policy. The Supreme Court has stated, "the very highest evidence of the public policy of any state is its statutory law,' and, 'if there is legislation on the subject, the public policy of the state must be derived from such legislation" State ex rel. City of St. Louis v. Pub. Serv. Comm'n of Missouri, 335 Mo. 448, 459, 73 S.W.2d 393, 400 (1934). The Court has also stated that it is proper for the Commission to determine the public policy of the state with relation to public utilities:

By act of assembly, the Public Service Commission was the designated government agency to enforce its declared public policy, whether that policy [originated] by statute or was created by the commission. It is an arm of the state government, created for the benefit of the people as well as the utilities it in part controls. There has been placed under the regulation, supervision, and control of the commission generally all matters relating to rights, facilities, service, and other correlated matters of a public service company. State ex rel. & to Use of Cirese v. Ridge, 345 Mo. 1096, 1099–100, 138 S.W.2d 1012, 1014 (1940).

The development of electric vehicle charging station infrastructure is consistent with state and federal law as well as the recommendations of Missouri's Comprehensive State

Energy Plan; therefore, the Commission should find that the public benefits that will be realized by Ameren Missouri pilot project will further enhance public policy in Missouri.

### 3. Rates

#### **Does Ameren Missouri's proposed tariff represent the proper rate design for its EV charging station pilot project?**

Yes, Ameren Missouri's proposed tariff represents a proper rate design for its EV charging station pilot program. The test for determining the propriety of a rate design is whether the rates are just, reasonable, and in the public interest. (See State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n, 600 S.W.2d 222, 223 (Mo.App. W.D. 1980), discussing Section 393.150(1), RSMo., provisions allowing the Commission to determine the propriety of new rates.)

With regard to just and reasonable rates Missouri's courts have held that, "Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling. It is not theory but the impact of the rate order which counts." State ex rel. Missouri Water Co. v. Pub. Serv. Comm'n, 308 S.W.2d 704, 714 (Mo. 1957); citing, Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333.

With regard to the public interest Missouri's courts have held that the public interest is a matter of policy to be determined by the Commission. State ex rel. Public Water Supply District v. Public Service Commission, 600 S.W.2d 147, 154 (Mo. App.1980). It is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served. State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri, 848 S.W.2d 593, 597-598 (Mo. App.1993). The Commission has previously held that determining what is in the interest of the public is a balancing process. In the Matter of Sho-Me Power Electric Cooperative's Conversion from a Chapter 351 Corporation to a Chapter 394 Rural Electric Cooperative, Case No. EO-93-0259, Report and Order issued September 17, 1993, 1993

WL 719871 (Mo. P.S.C.). In making such a determination, the total interests of the public served must be assessed. Id.

Ameren Missouri and the proponents of the pilot program have provided competent and substantial evidence supporting the tariff rates. These rates will result in just and reasonable rates because their impact will be just and reasonable. The tariff rates will be in the public interest as the total interests of the public served will be balanced.

WHEREFORE, the Missouri Division of Energy respectfully files its *Statement of Positions*.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been served electronically on all counsel of record this 6th day of January, 2017.

/s/ Alexander Antal

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